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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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Attorneys for Plaintiff

E-filing

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

Ch

SAN JOSE DIVISION

HRL

CV 12-01831

13 CHAD BRAZIL, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 DOLE FOOD COMPANY, INC.,
18 DOLE PACKAGED FOODS, LLC,

19 Defendants.

Case No.

CLASS ACTION AND REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
EQUITABLE AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

21 Plaintiff, through his undersigned attorneys, brings this lawsuit against Defendants Dole
22 Food Company, Inc. and Dole Packaged Foods, LLC (collectively, "Dole" or "Defendants") as to
23 his own acts upon personal knowledge, and as to all other matters upon information and belief. In
24 order to remedy the harm arising from Defendants' illegal conduct, which has resulted in unjust
25 profits, Plaintiff brings this action on behalf of a nationwide class of consumers who, within the
26 last four years, purchased Defendants' fruit products labeled "All Natural Fruit" despite
27 containing artificial or unnatural ingredients, flavorings, coloring, and/or chemical preservatives
28 (collectively, such fruit products are referred to herein as "Misbranded Food Products").

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 companies that flout those laws. The law is clear: misbranded
5 food cannot legally be manufactured, held, advertised, distributed or sold. Misbranded food is
6 worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of their
7 purchase price.

8 2. Dole is a multinational corporation with approximately 200 brands of food, mainly
9 fruits and vegetables, that are sold in California, the United States and throughout the world.
10 According to its 2010 Annual Report: (i) Dole is the world's leading producer, marketer and
11 distributor of fruit and vegetables and one of the world's largest producers of bananas and
12 pineapples; (ii) Dole is an industry leader in packaged fruit products, packaged salads and fresh-
13 packed vegetables, and (iii) Dole maintains number one market share positions in North
14 American bananas, North American iceberg lettuce, celery, cauliflower, and packaged fruit
15 products.

16 3. For the fiscal year ended January 1, 2011, Dole generated revenues of
17 approximately \$6.9 billion. Dole products are marketed and distributed in more than 90
18 countries.

19 4. As part of its overall marketing strategy, Dole has recognized the desire of many
20 of its consumers to eat a healthier diet. Dole recognizes that health claims drive sales, and,
21 consequently, actively promotes the health benefits of its products.

22 5. For example, in its 2010 Annual Report, Dole states:

- 23 • "the market for fresh produce has increased faster than the rate of population
24 growth, supported by ongoing trends including greater consumer demand for
25 *healthy*, fresh and convenient foods"
- 26 • "*Health*-conscious consumers are driving much of the growth..."

- 1 • “The North American packaged foods industry is expected to show stable
2 growth, over the next several years led by products that offer consumers
3 *healthy* choices for their daily needs.”
- 4 • “The introduction of FRUIT BOWLS in 100% juice demonstrates that Dole is
5 uniquely positioned to capitalize on the growing trend toward *healthier*
6 eating.”
- 7 • “In the United States, we expect category growth in both our packaged salads
8 and frozen fruit businesses in line with the trends toward *healthy* eating.”

9 6. Defendants’ website, www.dole.com, is also largely dedicated to promoting good
10 nutrition, healthy eating, weight loss, fitness, etc. Dole’s first page states “Dole just made it
11 easier to learn how to eat the right foods and live a better, healthy life!”

12 7. Defendants actively promote the purported health benefits of their Misbranded
13 Food Products, notwithstanding the fact that such promotion violates California and federal law.

14 8. For example, the principal display panel of Dole’s Sugar-Free Mixed Fruit in
15 Cherry Gel label states, in part, that the fruit is “All Natural Fruit,” despite the fact that that the
16 product is artificially flavored and contains, among others, the following artificial and unnatural
17 ingredients: sucralose, cochineal extract (color), caramel color, and ascorbic acid. The principal
18 display panel of Dole’s Sugar-Free Mixed Fruit in Cherry Gel label is as follows:



1 9. The back of the Dole Sugar-Free Mixed Fruit in Cherry Gel lists the ingredients:
2 “maltitol, carrageenan, cochineal extract (color), locust bean gum, natural and artificial flavors,
3 fumaric acid, maltodextrin, sodium citrate, potassium citrate, ascorbic acid (to promote color
4 retention, caramel color, sucralose, and malic acid.”

5 10. If a manufacturer is going to make a claim on a food label, the label must meet
6 certain legal requirements that help consumers make informed choices and ensure that they are
7 not misled. As described more fully below, Defendants have made, and continue to make, false
8 and deceptive claims in violation of federal and California laws that govern the types of
9 representations that can be made on food labels. These laws recognize that reasonable consumers
10 are likely to choose products claiming to have a health or nutritional benefit over otherwise
11 similar food products that do not claim such benefits. More importantly, these laws recognize
12 that the failure to disclose the presence of risk-increasing nutrients is deceptive because it
13 conveys to consumers the net impression that a food makes only positive contributions to a diet,
14 or does not contain any nutrients at levels that raise the risk of diet-related disease or health-
15 related condition.

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

22 12. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the
23 term “misleading” is a term of art. Misbranding reaches not only false claims, but also those
24 claims that might be technically true, but still misleading. If any one representation in the
25 labeling is misleading, the entire food is misbranded, nor can any other statement in the labeling
26 cure a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking
27 and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-*
28 *Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove

1 that anyone was actually misled.

2 13. In promoting the health benefits of their Misbranded Food Products, Defendants
3 claim to understand the importance of communicating responsibly about their products.
4 Nevertheless, Defendants have made, and continue to make, false and deceptive claims on their
5 Misbranded Food Products in violation of federal and California laws that govern the types of
6 representations that can be made on food labels.

7 14. In making their unlawful "All Natural" claims on their Misbranded Food Products,
8 Defendants have violated nutrient content labeling regulations mandated by federal and California
9 law, which forbid the use of such labeling if the product contains artificial ingredients, flavorings,
10 coloring, and/or chemical preservatives.

11 15. Defendants have made, and continue to make, unlawful nutrient content claims on
12 food labels of their Misbranded Food Products that are prohibited by federal and California law
13 and which render these products misbranded. Under federal and California law, Defendants'
14 Misbranded Food Products cannot legally be manufactured, advertised, distributed, held or sold.
15 Defendants' false and misleading labeling practices stem from their global marketing strategy.
16 Thus, the violations and misrepresentations are similar across product labels and product lines.

17 16. Defendants' violations of law include the illegal advertising, marketing,
18 distribution, delivery and sale of Defendants' Misbranded Food Products to consumers in
19 California and throughout the United States.

20 PARTIES

21 17. Plaintiff Chad Brazil is a resident of Santa Cruz, California who purchased Dole
22 Misbranded Food Products during the four (4) years prior to the filing of this Complaint (the
23 "Class Period").

24 18. Defendant Dole Food Company, Inc. is a Delaware corporation with its principal
25 place of business in Westlake Village, California.

26 19. Defendant Dole Packaged Foods, LLC is a California limited liability corporation
27 with its principal place of business in Westlake Village, California. Defendant Dole Packaged
28 Foods, LLC is a subsidiary of Defendant Dole Food Company, Inc.

1 20. Collectively, Defendants are leading producers of retail food products, including
2 the Misbranded Food Products. Defendants sell their food products to consumers through
3 grocery and other retail stores throughout the United States.

4 JURISDICTION AND VENUE

5 21. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)
6 because this is a class action in which: (1) there are over 100 members in the proposed class;
7 (2) members of the proposed class have a different citizenship from Defendants; and (3) the
8 claims of the proposed class members exceed \$5,000,000 in the aggregate.

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

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

14 24. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
15 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
16 between citizens of different states.

17 25. The Court has personal jurisdiction over Defendants because a substantial portion
18 of the wrongdoing alleged in this Complaint occurred in California, Defendants are authorized to
19 do business in California, have sufficient minimum contacts with California, and otherwise
20 intentionally avail themselves of the markets in California the United States through the
21 promotion, marketing and sale of merchandise, sufficient to render the exercise of jurisdiction by
22 this Court permissible under traditional notions of fair play and substantial justice.

23 26. Because a substantial part of the events or omissions giving rise to these claims
24 occurred in this District and because the Court has personal jurisdiction over Defendants, venue is
25 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).
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1 **FACTUAL ALLEGATIONS**

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

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

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

11 29. In addition to its blanket adoption of federal labeling requirements, California has
12 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
13 federal food laws and regulations. For example, food products are misbranded under California
14 Health & Safety Code § 110660 if their labeling is false and misleading in one or more
15 particulars; are misbranded under California Health & Safety Code § 110665 if their labeling fails
16 to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and
17 regulations adopted thereto; are misbranded under California Health & Safety Code § 110670 if
18 their labeling fails to conform with the requirements for nutrient content and health claims set
19 forth in 21 U.S.C. § 343(r) and regulations adopted thereto; are misbranded under California
20 Health & Safety Code § 110705 if words, statements and other information required by the
21 Sherman Law to appear on their labeling are either missing or not sufficiently conspicuous; are
22 misbranded under California Health & Safety Code § 110735 if they are represented as having
23 special dietary uses but fail to bear labeling that adequately informs consumers of their value for
24 that use; and are misbranded under California Health & Safety Code § 110740 if they contain
25 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose
26 that fact on their labeling.

1 **B. FDA Enforcement History**

2 30. In recent years the FDA has become increasingly concerned that food
3 manufacturers were disregarding food labeling regulations. To address this concern, the FDA
4 elected to take steps to inform the food industry of its concerns and to place the industry on notice
5 that food labeling compliance was an area of enforcement priority.

6 31. In October 2009, the FDA issued a *Guidance For Industry: Letter regarding Point*
7 *Of Purchase Food Labeling* to address its concerns about front of package labels (“2009 FOP
8 Guidance”). The 2009 FOP Guidance advised the food industry:

9 FDA’s research has found that with FOP labeling, people are less likely to check
10 the Nutrition Facts label on the information panel of foods (usually, the back or
11 side of the package). It is thus essential that both the criteria and symbols used in
12 front-of-package and shelf-labeling systems be nutritionally sound, well-designed
13 to help consumers make informed and healthy food choices, and not be false or
14 misleading. The agency is currently analyzing FOP labels that appear to be
15 misleading. The agency is also looking for symbols that either expressly or by
16 implication are nutrient content claims. We are assessing the criteria established by
17 food manufacturers for such symbols and comparing them to our regulatory
18 criteria.

19 It is important to note that nutrition-related FOP and shelf labeling, while currently
20 voluntary, is subject to the provisions of the Federal Food, Drug, and Cosmetic
21 Act that prohibit false or misleading claims and restrict nutrient content claims to
22 those defined in FDA regulations. Therefore, FOP and shelf labeling that is used in
23 a manner that is false or misleading misbrands the products it accompanies.
24 Similarly, a food that bears FOP or shelf labeling with a nutrient content claim that
25 does not comply with the regulatory criteria for the claim as defined in Title 21
26 Code of Federal Regulations (CFR) 101.13 and Subpart D of Part 101 is
27 misbranded. We will consider enforcement actions against clear violations of these
28 established labeling requirements. . .

... Accurate food labeling information can assist consumers in making healthy
nutritional choices. FDA intends to monitor and evaluate the various FOP labeling
systems and their effect on consumers' food choices and perceptions. FDA
recommends that manufacturers and distributors of food products that include FOP
labeling ensure that the label statements are consistent with FDA laws and
regulations. FDA will proceed with enforcement action against products that bear
FOP labeling that are explicit or implied nutrient content claims and that are not
consistent with current nutrient content claim requirements. FDA will also proceed
with enforcement action where such FOP labeling or labeling systems are used in a
manner that is false or misleading.

1 32. The 2009 FOP Guidance recommended that “manufacturers and distributors of
2 food products that include FOP labeling ensure that the label statements are consistent with FDA
3 law and regulations” and specifically advised the food industry that it would “proceed with
4 enforcement action where such FOP labeling or labeling systems are used in a manner that is
5 false or misleading.”

6 33. Despite the issuance of the 2009 FOP Guidance, Defendant did not remove the
7 unlawful and misleading food labeling claims from their Misbranded Food Products.

8 34. On March 3, 2010, the FDA issued an “Open Letter to Industry from [FDA
9 Commissioner] Dr. Hamburg” (hereinafter, “Open Letter”). The Open Letter reiterated the FDA’s
10 concern regarding false and misleading labeling by food manufacturers. In pertinent part the letter
11 stated:

12 In the early 1990s, the Food and Drug Administration (FDA) and the food industry
13 worked together to create a uniform national system of nutrition labeling, which
14 includes the now-iconic Nutrition Facts panel on most food packages. Our citizens
15 appreciate that effort, and many use this nutrition information to make food
16 choices. Today, ready access to reliable information about the calorie and nutrient
17 content of food is even more important, given the prevalence of obesity and diet-
related diseases in the United States. This need is highlighted by the
announcement recently by the First Lady of a coordinated national campaign to
reduce the incidence of obesity among our citizens, particularly our children.

18 With that in mind, I have made improving the scientific accuracy and usefulness of
19 food labeling one of my priorities as Commissioner of Food and Drugs. The latest
20 focus in this area, of course, is on information provided on the principal display
21 panel of food packages and commonly referred to as “front-of-pack” labeling. The
22 use of front-of-pack nutrition symbols and other claims has grown tremendously in
recent years, and it is clear to me as a working mother that such information can be
helpful to busy shoppers who are often pressed for time in making their food
selections. ...

23 As we move forward in those areas, I must note, however, that there is one area in
24 which more progress is needed. As you will recall, we recently expressed concern,
25 in a “Dear Industry” letter, about the number and variety of label claims that may
26 not help consumers distinguish healthy food choices from less healthy ones and,
indeed, may be false or misleading.

27 At that time, we urged food manufacturers to examine their product labels in the
28 context of the provisions of the Federal Food, Drug, and Cosmetic Act that
prohibit false or misleading claims and restrict nutrient content claims to those
defined in FDA regulations. As a result, some manufacturers have revised their

1 labels to bring them into line with the goals of the Nutrition Labeling and
2 Education Act of 1990. Unfortunately, however, we continue to see products
3 marketed with labeling that violates established labeling standards.

4 To address these concerns, FDA is notifying a number of manufacturers that their
5 labels are in violation of the law and subject to legal proceedings to remove
6 misbranded products from the marketplace. While the warning letters that convey
7 our regulatory intentions do not attempt to cover all products with violative labels,
8 they do cover a range of concerns about how false or misleading labels can
9 undermine the intention of Congress to provide consumers with labeling
10 information that enables consumers to make informed and healthy food choices

11

12 These examples and others that are cited in our warning letters are not indicative
13 of the labeling practices of the food industry as a whole. In my conversations with
14 industry leaders, I sense a strong desire within the industry for a level playing field
15 and a commitment to producing safe, healthy products. That reinforces my belief
16 that FDA should provide as clear and consistent guidance as possible about food
17 labeling claims and nutrition information in general, and specifically about how
18 the growing use of front-of-pack calorie and nutrient information can best help
19 consumers construct healthy diets.

20 I will close with the hope that these warning letters will give food manufacturers
21 further clarification about what is expected of them as they review their current
22 labeling. I am confident that our past cooperative efforts on nutrition information
23 and claims in food labeling will continue as we jointly develop a practical,
24 science-based front-of-pack regime that we can all use to help consumers choose
25 healthier foods and healthier diets.

26 35. Notwithstanding the Open Letter, Defendants continued to utilize unlawful food
27 labeling claims despite the express guidance of the FDA in the Open Letter.

28 36. In addition to its guidance to industry, the FDA has sent warning letters to
industry, including many of Defendants' peer food manufacturers for the same types of unlawful
nutrient content claims described above.

37. In these letters the FDA indicated that, as a result of the same type of claims
utilized by Defendants, products were in "violation of the Federal Food, Drug, and Cosmetic Act
... and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR §
101)" and "misbranded within the meaning of section 403(r)(1)(A) because the product label
bears a nutrient content claim but does not meet the requirements to make the claim."

1 38. The warning letters were hardly isolated as the FDA has issued other warning
2 letters to other companies for the same type of food labeling claims at issue in this case.

3 39. The FDA stated that the agency not only expected companies that received
4 warning letters to correct their labeling practices but also anticipated that other firms would
5 examine their food labels to ensure that they are in full compliance with food labeling
6 requirements and make changes where necessary. Defendants did not change the labels on its
7 Misbranded Food Products in response to these warning letters.

8 40. Defendant also continued to ignore the 2009 FOP Guidance which detailed the
9 FDA's guidance on how to make food labeling claims. Defendants ignored this guidance as well
10 and continued to utilize unlawful claims on the labels of their Misbranded Food Products. As
11 such, the Defendants' Misbranded Food Products continue to run afoul of 2009 FOP Guidance as
12 well as federal and California law.

13 41. Despite the FDA's numerous warnings to industry, Defendants have continued to
14 sell products bearing unlawful food labeling claims without meeting the requirements to make
15 them.

16 42. Plaintiff did not know, and had no reason to know, that the Defendants'
17 Misbranded Food Products were misbranded and bore food labeling claims despite failing to meet
18 the requirements to make those food labeling claims.

19 **C. Defendants Make Unlawful "All Natural Fruit" Claims**

20 43. In its rule-making and warning letters to manufacturers, the FDA has repeatedly
21 stated its policy to restrict the use of the term "natural" in connection with added color, synthetic
22 substances and flavors as provided in 21 C.F.R. § 101.22.

23 44. The FDA has also repeatedly affirmed its policy regarding the use of the term
24 "natural" as meaning that nothing artificial or synthetic (including all color additives regardless of
25 source) has been included in, or has been added to, a food that would not normally be expected to
26 be in the food.

27 45. The FDA considers use of the term "natural" on a food label to be truthful and
28 non-misleading when "nothing artificial or synthetic...has been included in, or has been added to,

1 a food that would not normally be expected to be in the food.” See 58 FR 2302, 2407, January 6,
2 1993.

3 46. Any coloring or preservative can preclude the use of the term “natural” even if the
4 coloring or preservative is derived from natural sources. Further, the FDA distinguishes between
5 natural and artificial flavors in 21 C.F.R. § 101.22.

6 47. Defendants’ “All Natural Fruit” labeling practices violate the 2009 FOP Guidance
7 Sec. 587.100, which states: “[t]he use of the words ‘food color added,’ ‘natural color,’ or similar
8 words containing the term ‘food’ or ‘natural’ may be erroneously interpreted to mean the color is
9 a naturally occurring constituent in the food. Since all added colors result in an artificially
10 colored food, we would object to the declaration of any added color as ‘food’ or ‘natural.’”

11 48. Likewise, California Health & Safety Code § 110740 prohibits the use of artificial
12 flavoring, artificial coloring and chemical preservatives unless those ingredients are adequately
13 disclosed on the labeling.

14 49. The FDA has sent out numerous warning letters concerning this issue. Defendants
15 are aware of these FDA warning letters.

16 50. Defendants have unlawfully labeled a number of their food products as being “All
17 Natural Fruit” when they actually contain artificial ingredients and flavorings, artificial coloring
18 and chemical preservatives. These products include the following:

19 Canned Fruit 15.25 oz - Mandarin Oranges
20 Canned Fruit 15.25 oz - Tropical Fruit
21 Fruit in plastic 24.5 oz Jars - Mandarin Oranges
22 Fruit in plastic 24.5 oz Jars - Mixed Fruit
23 Fruit in plastic 24.5 oz Jars - Pineapple Chunks
24 Fruit in plastic 24.5 oz Jars - Sliced Peaches
25 Fruit in plastic 24.5 oz Jars - Tropical Fruit
26 Packaged Fruit - Mandarins in Orange Gel
27 Packaged Fruit - Mixed Fruit in Black Cherry Gel
28 Packaged Fruit - Mixed Fruit in Cherry Gel (Sugar
Free)
Packaged Fruit - Peaches in Strawberry Gel
Packaged Fruit - Pineapple in Strawberry Gel (Sugar
Free)
Real Fruit Bites with yogurt - apple chunks

1 Real Fruit Bites with yogurt - mango chunks

2 51. A reasonable consumer would expect that when Defendants label their products as
3 "All Natural Fruit," the product's ingredients are "natural" as defined by the federal government
4 and its agencies. A reasonable consumer would also expect that when Defendants label their
5 products as "All Natural Fruit," the product ingredients are "natural" under the common use of
6 that word. A reasonable consumer would understand that "All Natural Fruit" products do not
7 contain synthetic, artificial, or excessively processed ingredients.

8 52. Consumers are thus misled into purchasing Defendants' products with synthetic
9 unnatural ingredients that are not "All Natural Fruit" as falsely represented on their labeling.
10 Defendants' products in this respect are misbranded under federal and California law.

11 **D. Defendants Have Violated California Law**

12 53. Defendants have violated California Health & Safety Code § 110390 which makes
13 it unlawful to disseminate false or misleading food advertisements that include statements on
14 products and product packaging or labeling or any other medium used to directly or indirectly
15 induce the purchase of a food product.

16 54. Defendants have violated California Health & Safety Code § 110395 which makes
17 it unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

18 55. Defendants have violated California Health & Safety Code §§ 110398 and 110400
19 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any
20 food that has been falsely advertised.

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

23 a. Defendants' Misbranded Food Products are misbranded under California
24 Health & Safety Code § 110665 because their labeling fails to conform to the requirements for
25 nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto;

26 b. Defendants' Misbranded Food Products are misbranded under California
27 Health & Safety Code § 110670 because their labeling fails to conform with the requirements for
28

1 nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted
2 thereto; and

3 c. Defendants' Misbranded Food Products are misbranded under California
4 Health & Safety Code § 110705 because words, statements and other information required by the
5 Sherman Law to appear on their labeling either are missing or not sufficiently conspicuous.

6 57. Defendants have violated California Health & Safety Code § 110760 which makes
7 it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
8 misbranded.

9 58. Defendants' Misbranded Food Products are misbranded under California Health &
10 Safety Code § 110755 because they purport to be or are represented for special dietary uses, and
11 their labels fail to bear such information concerning their vitamin, mineral, and other dietary
12 properties as the Secretary determines to be, and by regulations prescribes as, necessary in order
13 fully to inform purchasers as to its value for such uses.

14 59. Defendants have violated California Health & Safety Code § 110765 which makes
15 it unlawful for any person to misbrand any food.

16 60. Defendants have violated California Health & Safety Code § 110770 which makes
17 it unlawful for any person to receive in commerce any food that is misbranded or to deliver or
18 proffer for deliver any such food.

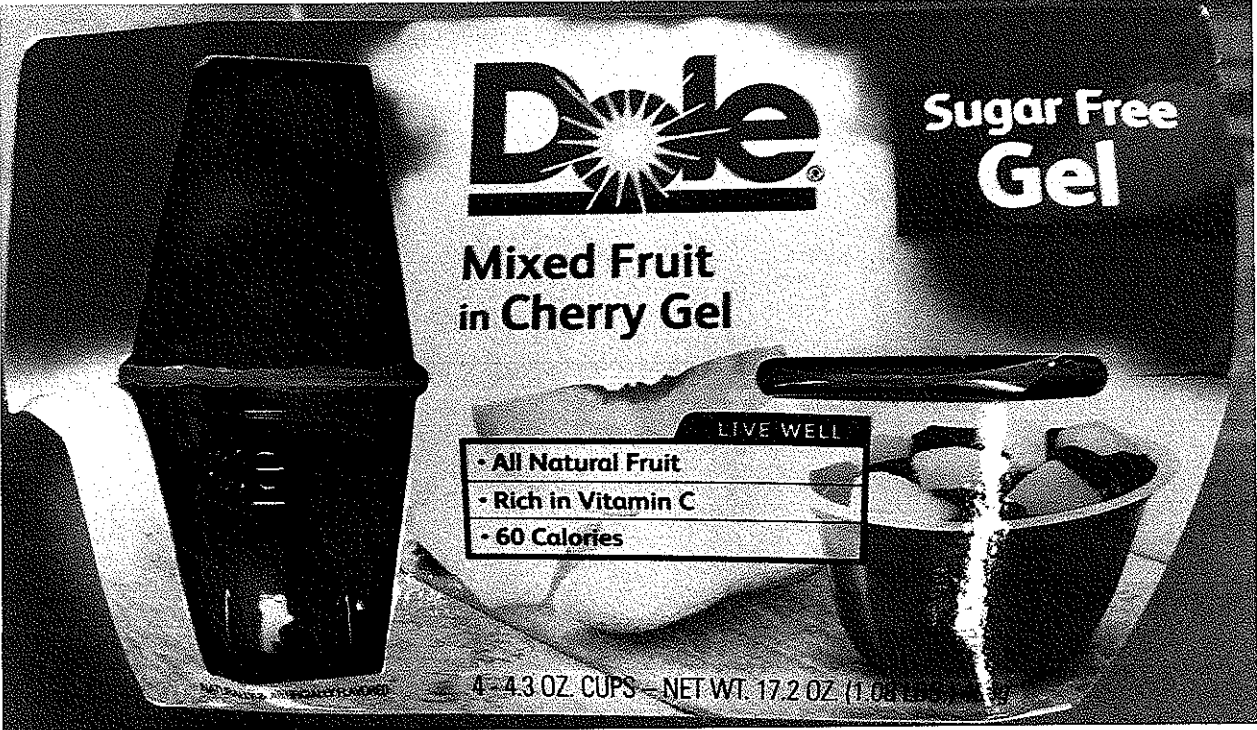
19 61. Defendants have violated the standard set by 21 C.F.R. § 101.13(h), which has
20 been incorporated by reference in the Sherman Law, by failing to include on their product labels
21 the nutritional information required by law.

22 **E. Plaintiff Purchased Defendants' Misbranded Food Products**

23 62. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
24 diet.

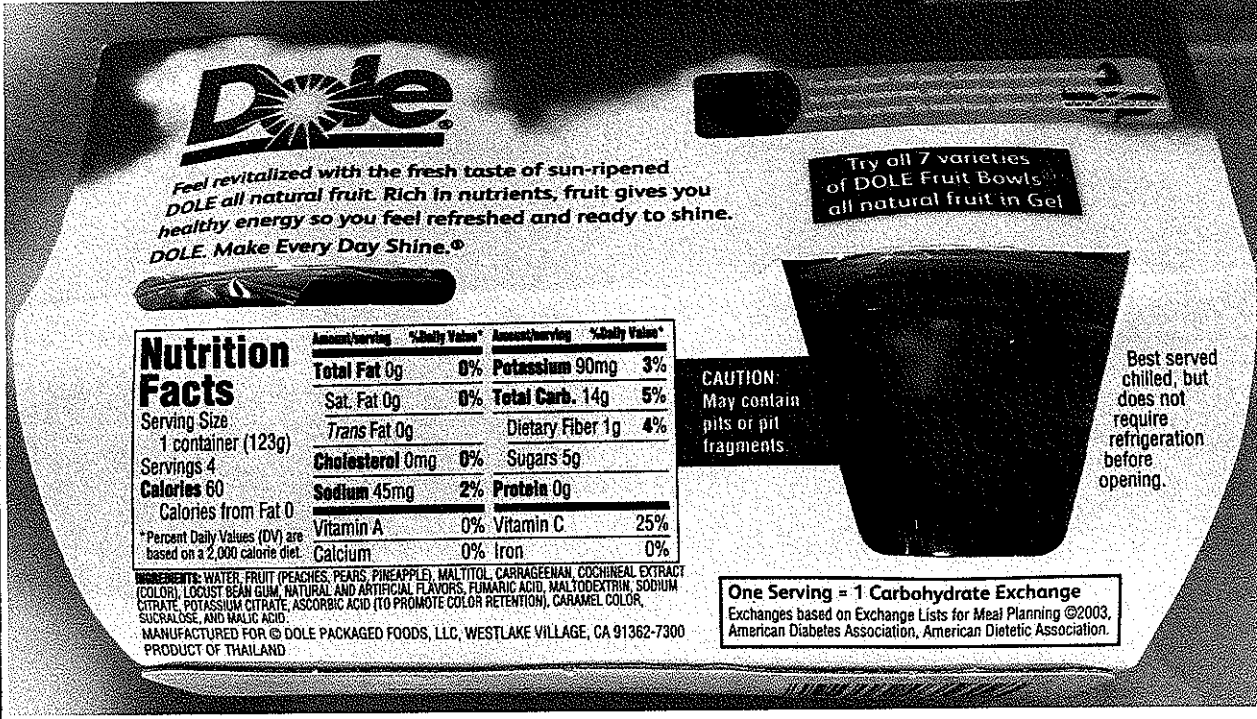
25 63. During the Class Period, Plaintiff purchased Defendants' Misbranded Food
26 Products, including Dole Mixed Fruit in Cherry Gel (Sugar Free),
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- All Natural Fruit
- Rich in Vitamin C
- 60 Calories

4 - 4.3 OZ. CUPS - NET WT. 17.2 OZ. (1.08 LB.)



Feel revitalized with the fresh taste of sun-ripened DOLE all natural fruit. Rich in nutrients, fruit gives you healthy energy so you feel refreshed and ready to shine. DOLE. Make Every Day Shine.®

Try all 7 varieties of DOLE Fruit Bowls all natural fruit in Gel

| Nutrition Facts | | Amount/serving | %Daily Value* | Amount/serving | %Daily Value* |
|---|--------------------|----------------|---------------|----------------|---------------|
| Serving Size | 1 container (123g) | Total Fat | 0g 0% | Potassium | 90mg 3% |
| Servings | 4 | Sat. Fat | 0g 0% | Total Carb. | 14g 5% |
| Calories | 60 | Trans Fat | 0g | Dietary Fiber | 1g 4% |
| Calories from Fat | 0 | Cholesterol | 0mg 0% | Sugars | 5g |
| *Percent Daily Values (DV) are based on a 2,000 calorie diet. | | Sodium | 45mg 2% | Protein | 0g |
| | | Vitamin A | 0% | Vitamin C | 25% |
| | | Calcium | 0% | Iron | 0% |

CAUTION: May contain pits or pit fragments.

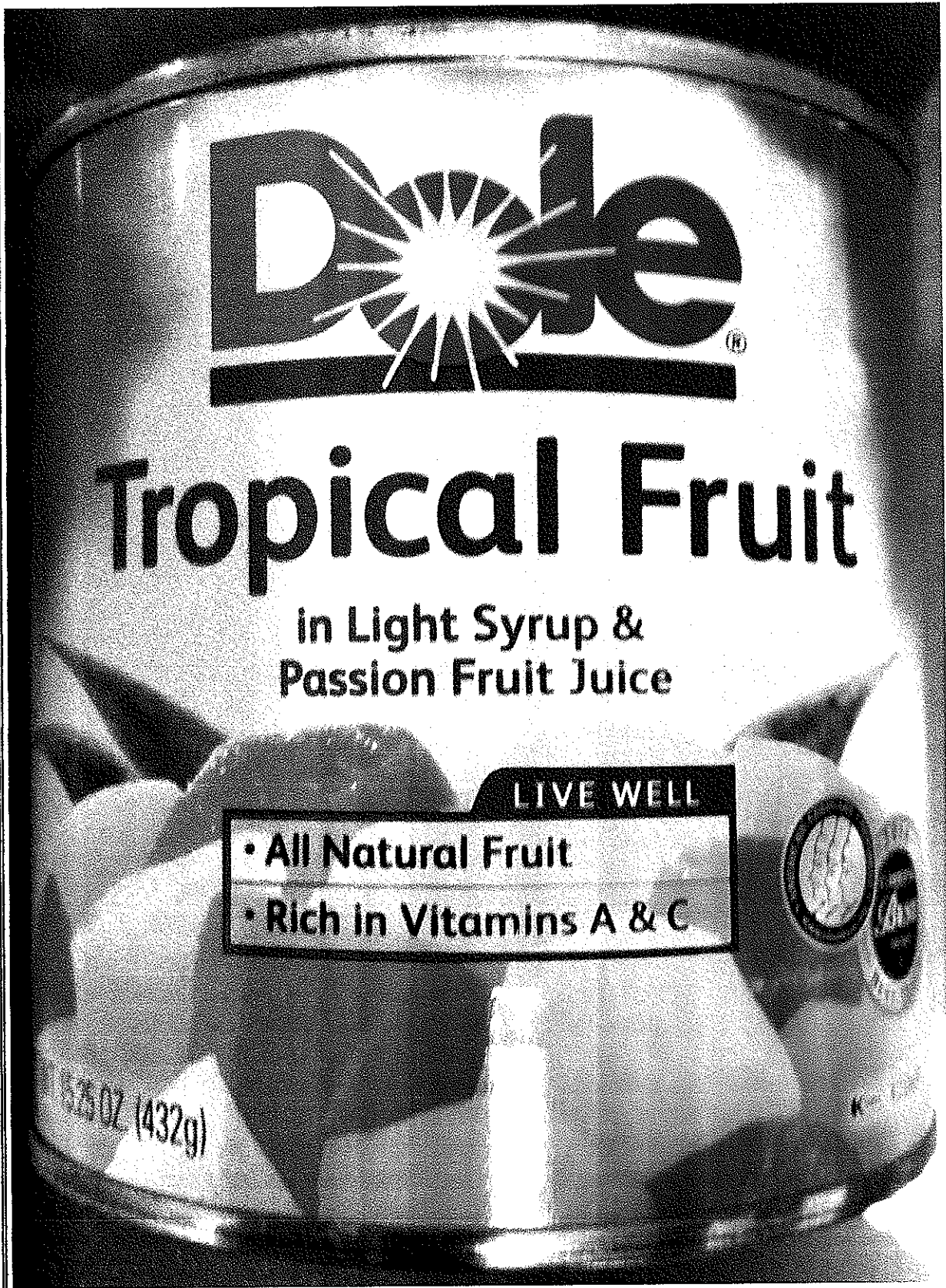
Best served chilled, but does not require refrigeration before opening.

INGREDIENTS: WATER, FRUIT (PEACHES, PEARS, PINEAPPLE), MALTITOL, CARRAGEENAN, COCHINEAL EXTRACT (COLOR), LOCUST BEAN GUM, NATURAL AND ARTIFICIAL FLAVORS, FUMARIC ACID, MALTODEXTRIN, SODIUM CITRATE, POTASSIUM CITRATE, ASCORBIC ACID (TO PROMOTE COLOR RETENTION), CARAMEL COLOR, SUCRALOSE, AND MALIC ACID.
MANUFACTURED FOR © DOLE PACKAGED FOODS, LLC, WESTLAKE VILLAGE, CA 91362-7300
PRODUCT OF THAILAND

One Serving = 1 Carbohydrate Exchange
Exchanges based on Exchange Lists for Meal Planning ©2003, American Diabetes Association, American Dietetic Association.

1 Tropical Fruit in Light Syrup & Passion Fruit Juice

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For more than 100 years, Dole has been committed to our environment, our employees and the communities in which we operate. To learn how, please visit www.dole.com

Nutrition Facts

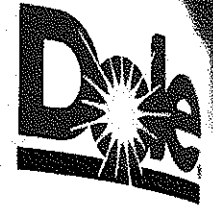
Serving Size 1/2 cup (122g)
Servings Per Container about 3.5

| Amount Per Serving | |
|--------------------------------------|----------------------------|
| Calories 90 | Calories from Fat 0 |
| | % Daily Value* |
| Total Fat 0g | 0% |
| Saturated Fat 0g | 0% |
| Trans Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 0mg | 0% |
| Potassium 150mg | 4% |
| Total Carbohydrate 21g | 7% |
| Dietary Fiber 1g | 4% |
| Sugars 20g | |
| Protein 0g | |
| Vitamin A 20% • Vitamin C 90% | |
| Calcium 0% • Iron 0% | |

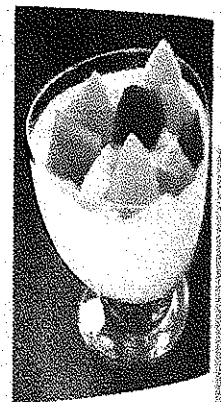
* Percent Daily Values are based on a 2,000 calorie diet.

INGREDIENTS: PINEAPPLE, PASSION FRUIT (RED AND YELLOW), WATER, SUGAR, PASSION FRUIT JUICE FROM CONCENTRATE (WATER, PASSION FRUIT JUICE CONCENTRATE), CITRIC ACID, ASCORBIC ACID (VITAMIN C), NATURAL FLAVORS, VITAMIN A PALMITATE, AND BETA CAROTENE (COLOR).

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WESTLAKE VILLAGE, CA 91362-7300
PRODUCT OF THAILAND



Feel revitalized with the best nutrients, fruit gives you the DOLE. Make Every Day Shine.



Perfect with gelatin

For recipe ideas, see www.dole.com

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1 64. Plaintiff read the labels on Defendants' Misbranded Food Products, including the
2 "All Natural Fruit" label claims, before purchasing them.

3 65. Plaintiff relied on Defendants' package labeling including the "All Natural Fruit"
4 label claims, and based and justified the decision to purchase Defendants' products in substantial
5 part on Defendants' package labeling.

6 66. At point of sale, Plaintiff did not know, and had no reason to know, that
7 Defendants' products were misbranded as set forth herein, and would not have bought the
8 products had he known the truth about them.

9 67. At point of sale, Plaintiff did not know, and had no reason to know, that
10 Defendants' "All Natural Fruit" label claims were unlawful and unauthorized as set forth herein,
11 and would not have bought the products had he known the truth about them.

12 68. As a result of Defendants unlawful "All Natural Fruit" label claims, Plaintiff and
13 thousands of others in California and throughout the United States purchased the Misbranded
14 Food Products at issue.

15 69. Defendants' labeling, advertising and marketing as alleged herein are false and
16 misleading and were designed to increase sales of the products at issue. Defendants'
17 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a
18 reasonable person would attach importance to Defendants' misrepresentations in determining
19 whether to purchase the products at issue.

20 70. A reasonable person would also attach importance to whether Defendants'
21 products were legally salable, and capable of legal possession, and to Defendants' representations
22 about these issues in determining whether to purchase the products at issue. Plaintiff would not
23 have purchased Defendants' Misbranded Food Products had he known they were not capable of
24 being legally sold or held.

CLASS ACTION ALLEGATIONS

25
26 71. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
27 23(b)(2) and 23(b)(3) on behalf of the following class:

28 All persons in the United States who, within the last four years, purchased

1 Defendants' fruit products labeled "All Natural Fruit" despite containing artificial
2 or unnatural ingredients, flavorings, coloring, and/or chemical preservatives (the
"Class").

3 72. The following persons are expressly excluded from the Class: (1) Defendants and
4 their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from
5 the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and
6 its staff.

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

9 74. Numerosity: Based upon Defendants' publicly available sales data with respect to
10 the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
11 joinder of all Class members is impracticable.

12 75. Common Questions Predominate: This action involves common questions of law
13 and fact applicable to each Class member that predominate over questions that affect only
14 individual Class members. Thus, proof of a common set of facts will establish the right of each
15 Class member to recover. Questions of law and fact common to each Class member include, just
16 for example:

- 17 a. Whether Defendants engaged in unlawful, unfair or deceptive
18 business practices by failing to properly package and label their
Misbranded Food Products sold to consumers;
- 19 b. Whether the food products at issue were misbranded as a matter of
20 law;
- 21 c. Whether Defendants made unlawful and misleading "All Natural"
claims with respect to their food products sold to consumers;
- 22 d. Whether Defendants violated California Bus. & Prof. Code §
23 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, the
Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*,
24 California Civ. Code § 1790, *et seq.*, 15 U.S.C. § 2301, *et seq.*, and
the Sherman Law;
- 25 e. Whether Plaintiff and the Class are entitled to equitable and/or
26 injunctive relief;
- 27 f. Whether Defendants' unlawful, unfair and/or deceptive practices
harmed Plaintiff and the Class; and
- 28 g. Whether Defendants were unjustly enriched by their deceptive

1 practices.

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

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

20 78. Superiority: There is no plain, speedy or adequate remedy other than by
21 maintenance of this class action. The prosecution of individual remedies by members of the
22 Class will tend to establish inconsistent standards of conduct for Defendants and result in the
23 impairment of Class members' rights and the disposition of their interests through actions to
24 which they were not parties. Class action treatment will permit a large number of similarly
25 situated persons to prosecute their common claims in a single forum simultaneously, efficiently
26 and without the unnecessary duplication of effort and expense that numerous individual actions
27 would engender. Further, as the damages suffered by individual members of the Class may be
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1 relatively small, the expense and burden of individual litigation would make it difficult or
2 impossible for individual members of the Class to redress the wrongs done to them, while an
3 important public interest will be served by addressing the matter as a class action. Class
4 treatment of common questions of law and fact would also be superior to multiple individual
5 actions or piecemeal litigation in that class treatment will conserve the resources of the Court and
6 the litigants, and will promote consistency and efficiency of adjudication.

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

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

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

18 CAUSES OF ACTION

19 **FIRST CAUSE OF ACTION**

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

21 **Unlawful Business Acts and Practices**

22 82. Plaintiff incorporates by reference each allegation set forth above.

23 83. Defendants' conduct constitutes unlawful business acts and practices.

24 84. Defendants sold Misbranded Food Products in California and throughout the
25 United States during the Class Period.

26 85. Defendants are corporations and, therefore, each is a "person" within the meaning
27 of the Sherman Law.
28

1 86. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
2 Defendants' violations of the advertising provisions of Article 3 of the Sherman Law and the
3 misbranded food provisions of Article 6 of the Sherman Law.

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

6 88. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
7 Defendants' violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

8 89. Defendants sold Plaintiff and the Class Misbranded Food Products that were not
9 capable of being sold, or held legally and which were legally worthless.

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

15 91. Defendants' unlawful business acts present a threat and reasonable continued
16 likelihood of injury to Plaintiff and the Class.

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

22 **SECOND CAUSE OF ACTION**
23 **Business and Professions Code § 17200, *et seq.***

24 **Unfair Business Acts and Practices**

25 93. Plaintiff incorporates by reference each allegation set forth above.

26 94. Defendants' conduct as set forth herein constitutes unfair business acts and
27 practices.

1 95. Defendants sold Misbranded Food Products in California and throughout the
2 United States during the Class Period.

3 96. Plaintiff and members of the Class suffered a substantial injury by virtue of buying
4 Defendants' Misbranded Food Products that they would not have purchased absent Defendants'
5 illegal conduct.

6 97. Defendants' deceptive marketing, advertising, packaging and labeling of their
7 Misbranded Food Products and their sale of unsalable misbranded products that were illegal to
8 possess was of no benefit to consumers, and the harm to consumers and competition is
9 substantial.

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

12 99. Plaintiff and the Class who purchased Defendants' Misbranded Food Products had
13 no way of reasonably knowing that the products were misbranded and were not properly
14 marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the
15 injury each of them suffered.

16 100. The consequences of Defendants' conduct as set forth herein outweigh any
17 justification, motive or reason therefor. Defendants' conduct is and continues to be immoral,
18 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and
19 the Class.

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

25 **THIRD CAUSE OF ACTION**
26 **Business and Professions Code § 17200, et seq.**
27 **Fraudulent Business Acts and Practices**

28 102. Plaintiff incorporates by reference each allegation set forth above.

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

3 104. Defendants sold Misbranded Food Products in California and throughout the
4 United States during the Class Period.

5 105. Defendants' misleading marketing, advertising, packaging and labeling of the
6 Misbranded Food Products and misrepresentation that the products were salable, capable of
7 possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff
8 and members of the Class were deceived. Defendants have engaged in fraudulent business acts
9 and practices.

10 106. Defendants' fraud and deception caused Plaintiff and the Class to purchase
11 Defendants Misbranded Food Products that they would otherwise not have purchased had they
12 known the true nature of those products.

13 107. Defendants sold Plaintiff and the Class Misbranded Food Products that were not
14 capable of being sold or held legally and that were legally worthless.

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

20 **FOURTH CAUSE OF ACTION**
21 **Business and Professions Code § 17500, *et seq.***
22 **Misleading and Deceptive Advertising**

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

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

26 111. Defendants sold Misbranded Food Products in California and throughout the
27 United States during the Class Period.

1 112. Defendants engaged in a scheme of offering Defendants Misbranded Food
2 Products for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging
3 and labeling, and other promotional materials. These materials misrepresented and/or omitted the
4 true contents and nature of Defendants Misbranded Food Products. Defendants' advertisements
5 and inducements were made within California and throughout the United States and come within
6 the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that
7 such product packaging and labeling, and promotional materials were intended as inducements to
8 purchase Defendants' Misbranded Food Products and are statements disseminated by Defendants
9 to Plaintiff and the Class that were intended to reach members of the Class. Defendants knew, or
10 in the exercise of reasonable care should have known, that these statements were misleading and
11 deceptive as set forth herein.

12 113. In furtherance of their plan and scheme, Defendants prepared and distributed
13 within California and nationwide via product packaging and labeling, and other promotional
14 materials, statements that misleadingly and deceptively represented the composition and the
15 nature of Defendants' Misbranded Food Products. Plaintiff and the Class necessarily and
16 reasonably relied on Defendants' materials, and were the intended targets of such representations.

17 114. Defendants' conduct in disseminating misleading and deceptive statements in
18 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
19 consumers by obfuscating the true composition and nature of Defendants Misbranded Food
20 Products in violation of the "misleading prong" of California Business and Professions Code §
21 17500, *et seq.*

22 115. As a result of Defendants' violations of the "misleading prong" of California
23 Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
24 expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are
25 legally worthless.

26 116. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
27 entitled to an order enjoining such future conduct by Defendants, and such other orders and
28

1 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any
2 money paid for Defendants' Misbranded Food Products by Plaintiff and the Class.

3 **FIFTH CAUSE OF ACTION**
4 **Business and Professions Code § 17500, *et seq.***
5 **Untrue Advertising**

6 117. Plaintiff incorporates by reference each allegation set forth above.

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

9 119. Defendants sold Misbranded Food Products in California and throughout the
10 United States during the Class Period.

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

21 121. In furtherance of their plan and scheme, Defendants prepared and distributed in
22 California and nationwide via product packaging and labeling, and other promotional materials,
23 statements that falsely advertise the composition of Defendants' Misbranded Food Products, and
24 falsely misrepresented the nature of those products. Plaintiff and the Class were the intended
25 targets of such representations and would reasonably be deceived by Defendants' materials.

26 122. Defendants' conduct in disseminating untrue advertising throughout California
27 deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of
28

1 Defendants' Misbranded Food Products in violation of the "untrue prong" of California Business
2 and Professions Code § 17500.

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

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

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

13 125. Plaintiff incorporates by reference each allegation set forth above.

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

18 127. At the time of any amendment seeking damages under the CLRA, Plaintiff will
19 demonstrate that the violations of the CLRA by Defendants were willful, oppressive and
20 fraudulent, thus supporting an award of punitive damages.

21 128. Consequently, Plaintiff and the Class will be entitled to actual and punitive
22 damages against Defendants for their violations of the CLRA. In addition, pursuant to Cal. Civ.
23 Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-
24 described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of
25 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court
26 pursuant to Cal. Civ. Code § 1780.

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

4 130. Defendants sold Misbranded Food Products in California and throughout the
5 United States during the Class Period.

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

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

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

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

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

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

27 137. Plaintiff requests that the Court enjoin Defendants from continuing to employ the
28 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If

1 Defendants are not restrained from engaging in these practices in the future, Plaintiff and the
2 Class will continue to suffer harm.

3 **SEVENTH CAUSE OF ACTION**
4 **Restitution Based on Unjust Enrichment/Quasi-Contract**

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

6 139. As a result of Defendants' fraudulent and misleading labeling, advertising,
7 marketing and sales of Defendants' Misbranded Food Products Defendants were enriched at the
8 expense of Plaintiff and the Class.

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

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

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

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

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

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

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

27 146. Defendants' "All Natural" claims constitute "express warranties" as defined by
28 Cal. Civ. Code § 1791.2.

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

4 148. Despite Defendants' express warranties regarding their food products, they do not
5 comply with food labeling regulations under federal and California law.

6 149. Defendants breached their express warranties regarding their Misbranded Food
7 Products in violation of Cal. Civ. Code § 1790, *et seq.*

8 150. Defendants sold Plaintiff and members of the Class Defendants' Misbranded Food
9 Products that were not capable of being sold or held legally and which were legally worthless.

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

12 152. Defendants' breaches of warranty were willful, warranting the recovery of civil
13 penalties pursuant to Cal. Civ. Code § 1794.

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

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

17 154. Plaintiff and members of the Class are "consumers" as defined by 15 U.S.C. §
18 2301(3).

19 155. Defendants are "suppliers" and "warrantors" as defined by 15 U.S.C. § 2301(4) &
20 (5).

21 156. Defendants' food products are "consumer products" as defined by 15 U.S.C. §
22 2301(1).

23 157. Defendants' "All Natural" claims constitute "express warranties."

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

27 159. Despite Defendants' express warranties regarding their food products, they do not
28 comply with food labeling regulations under federal and California law.

1 160. Defendants breached their express warranties regarding their Misbranded Food
2 Products in violation of 15 U.S.C. §§ 2301, *et seq.*

3 161. Defendants sold Plaintiff and members of the Class Misbranded Food Products
4 that were not capable of being sold or held legally and which were legally worthless.

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

7 **JURY DEMAND**

8 Plaintiff hereby demands a trial by jury of his claims.

9 **PRAYER FOR RELIEF**

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

12 A. For an order certifying this case as a class action and appointing Plaintiff and his
13 counsel to represent the Class;

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

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

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

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

23 F. For an order awarding punitive damages;

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

25 ///

26 ///

27 ///

28 ///

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

2
3 Dated: April 11, 2012

Respectfully submitted,

4 *Ben F. Pierce Gore*

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