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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MOMO REN and JOHN DOES 1-100,
on behalf of themselves and others similarly situated,

Plaintiffs,

v.

UNILEVER UNITED STATES, INC., PEPSICO, INC.
and THE PEPSI LIPTON TEA PARTNERSHIP,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, MOMO REN and JOHN DOES 1-100 (“Plaintiffs”), on behalf of themselves and on behalf of a class comprised of New York State consumers, by and through their undersigned attorneys, hereby file this Class Action Complaint against Defendants, UNILEVER UNITED STATES, INC., PEPSICO, INC. and THE PEPSI LIPTON TEA PARTNERSHIP (“Defendants”), and state as follows based upon their own personal knowledge and the investigation of their counsel:

NATURE OF THE ACTION

1. Plaintiffs, MOMO REN and JOHN DOES 1-100, on behalf of themselves and others similarly situated, by and through their undersigned attorneys, bring this class action against Defendants, UNILEVER UNITED STATES, INC. (“UNILEVER”), PEPSICO, INC.

(“PEPSICO”) and THE PEPSI LIPTON TEA PARTNERSHIP (“PARTNERSHIP”) (collectively, “Defendants”), for the deceptive practice of marketing the Pure Leaf™ Iced Tea ready-to-drink tea products as “All Natural” and free of preservatives when they contain citric acid, a non-natural, highly chemically processed ingredient regularly used as a preservative in ready-to-drink tea products. Citric acid is used in all of the flavors of Defendants’ Pure Leaf™ Iced Tea 18.5 ounce and 59 ounce products, including:

- (i) Pure Leaf™ Iced Tea: Unsweetened Tea;
- (ii) Pure Leaf™ Iced Tea: Sweet Tea;
- (iii) Pure Leaf™ Iced Tea: Extra Sweet Tea;
- (iv) Pure Leaf™ Iced Tea: Lemon;
- (v) Pure Leaf™ Iced Tea: Peach;
- (vi) Pure Leaf™ Iced Tea: Raspberry;
- (vii) Pure Leaf™ Iced Tea: Green Tea with Honey;
- (viii) Pure Leaf™ Iced Tea: Tea & Lemonade;
- (ix) Pure Leaf™ Iced Tea: Not Too Sweet Honey Green Tea; and
- (x) Pure Leaf™ Iced Tea: Not Too Sweet Peach Tea
(collectively, “Products”).

2. This case is about the deceptive manner in which the Defendants labeled, packaged and marketed their Products to the general public during the Class Period. Defendants’ promotion of the Products is deceptive because it builds upon the fiction that the Products are natural, real brewed tea from tea leaves with no added preservatives or artificial coloring whatsoever, when they are not.

3. Defendants’ “All Natural” claims are deceptive. The term “All Natural” only applies to those products that contain no non-natural or synthetic ingredients and consist entirely of ingredients that are only minimally processed. The Defendants, however, deceptively labeled Products as “All Natural,” even though they all contain synthetic ingredients such as citric acid (2-hydroxypropane-1,2,3-tricarboxylic acid), which is not extracted from citric fruits but

industrially synthesized via complex chemical synthetic routes and thus cannot be considered “minimally processed.”²

4. Defendants also engaged in deceptive labeling practices by failing to disclose that the Products contain citric acid as a preservative and/or by expressly representing on the front label that the Products contain “No Preservatives.” All of the Products contain citric acid, which is commonly used as a preservative in commercial ready-to-drink tea drinks. Tea is fertile ground for bacterial/mold growth. Without the addition of preservatives, a bottle of freshly brewed tea would turn stale and moldy in a matter of days, and would certainly not keep its “fresh brewed taste” for months of the Products’ shelf life, as Defendants have promised on each and every Product label.

5. By marketing the Products as being “All Natural” and free of preservatives, Defendants wrongfully capitalized on and reaped enormous profits from consumers’ strong preference for food products made entirely of natural ingredients and free of preservatives.

6. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons in New York State, who, from the applicable limitations period up to and including the present (“Class Period”), purchased for consumption and not resale any of Defendants’ Products.

7. Defendants marketed their Pure Leaf™ Iced Tea Products in a way that is deceptive to consumers under the consumer protection laws of New York State. Defendants have been

² See, e.g., *Biotechnology in the chemical industry*, THE ESSENTIAL CHEMICAL INDUSTRY, March 18, 2013, available at <http://www.essentialchemicalindustry.org/materials-and-applications/biotechnology-in-the-chemical-industry.html>; Luciana P.S Vandenberghe et al., _____ *Solid-state fermentation for the synthesis of citric acid by Aspergillus niger*, BIORESOURCE TECHNOLOGY, 74:2, 175–178, September 2000. available at <http://www.sciencedirect.com/science/article/pii/S0960852499001078>.

unjustly enriched as a result of their conduct. For these reasons, Plaintiffs seek the relief set forth herein.

JURISDICTION AND VENUE

8. The Court has jurisdiction over all causes of action asserted herein pursuant to the New York State Constitution, Article 6 § 7, because this case is a cause not given by statute to other trial courts.

9. Plaintiffs have standing to bring this action pursuant to NY GBL § 349 et. seq.

10. The Court has jurisdiction over the parties herein. Defendant PEPSICO, INC. is a company organized under the laws of Delaware with its headquarters located at Pepsico, Inc., 700 Anderson Hill Road, Purchase, New York 10577 and directly through its agents, has substantial contacts with and receives benefits and income from and through New York State. Defendant PEPSI LIPTON TEA PARTNERSHIP operates as a subsidiary of PEPSICO, INC.

11. The Court has personal jurisdiction over Defendants because the Products are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint in New York State; Defendants are authorized to do business in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

12. Venue is proper in this district because Defendants are subject to personal jurisdiction in New York State. Defendant PEPSICO, INC. has headquarters located at Pepsico, Inc., 700 Anderson Hill Road, Purchase, New York 10577. Plaintiffs and Class members also

purchased the Products in New York State. Defendants and other out-of-state participants can be brought before this Court pursuant to the provisions of New York State Civil Practice, Law and Rules (“CPLR”) §§ 301 and 302.

PARTIES

Plaintiffs

13. Plaintiff MOMO REN is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. During the Class Period, Plaintiff REN purchased multiple Pure Leaf™ Iced Tea Products, including the Pure Leaf™ Iced Tea: Unsweetened Tea Product, for personal consumption within the State of New York. Plaintiff REN purchased the Products from pharmacies including but not limited to Duane Reade located in Queens County. The purchase price was \$2.19 (or more) for an individual Product. Plaintiff REN substantially relied on Defendants’ “No Preservatives” and “All Natural” claims in deciding to purchase the Products. Plaintiff REN purchased the Products at a premium price and was financially injured as a result of Defendants’ deceptive conduct as alleged herein.

14. Plaintiffs JOHN DOES 1-100 are, and at all relevant times hereto have been, citizens of the State of New York. Plaintiffs JOHN DOES 1-100 have purchased the Products for personal consumption within the State of New York. Plaintiffs JOHN DOES 1-100 purchased the Products from convenience stores, supermarkets, and pharmacies located in the State of New York. Plaintiffs JOHN DOES 1-100 purchased the Products at premium prices and were financially injured as a result of Defendants’ deceptive conduct as alleged herein.

Defendants

15. Defendant UNILEVER UNITED STATES, INC. (“UNILEVER”) is a corporation organized under the laws of Delaware with headquarters at 800 Sylvan Avenue, Englewood

Cliffs, New Jersey 07632 and an address for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801. Unilever manufactures, markets, distributes and sells tea products under the household tea brand Lipton®, which includes the Pure Leaf™ Iced Tea Products.

16. Defendant PEPSICO, INC. (“PEPSICO”) is corporation organized under the laws of North Carolina with its principle place of business at Pepsico, Inc., 700 Anderson Hill Road, Purchase, New York 10577 and an address for service of process at C/O C T Corporation System, 111 Eighth Avenue, New York, NY 10011.

17. Defendant PEPSI LIPTON TEA PARTNERSHIP (the “PARTNERSHIP”) is a joint venture between UNILEVER and PEPSICO. UNILEVER and PEPSICO created the PARTNERSHIP in 1991 for the marketing of ready-to-drink teas in North America. The Partnership operates as a subsidiary of PEPSICO, with its principle place of business at 700 Anderson Hill Road, Purchase, New York 10577. PEPSICO and UNILEVER each control 50% of the shares in the PARTNERSHIP. The PARTNERSHIP manufactures, distributes and sells the Pure Leaf™ Real Brewed Tea Products. Upon information and belief, the joint venture is controlled by a board that is evenly split between PEPSICO personnel and UNILEVER personnel and its operations are conducted by personnel that remain PEPSICO and UNILEVER employees.

18. Defendant UNILEVER, through its subsidiary Lipton, provides the tea ingredient to the PARTNERSHIP. Defendant PEPSICO, through its subsidiaries and affiliates, mix, bottle, label and distribute the products using its extensive bottling and distribution network used in the manufacture and sales of its other products. Both UNILEVER and PEPSICO market the products of the PARTNERSHIP. The 1994 10K Annual Report of PEPSICO describes the

PARTNERSHIP as follows: “The Pepsi/Lipton Tea Partnership, a joint venture of PCNA [PepsiCo of North America] and Thomas J. Lipton Co., develops and sells tea concentrate to Pepsi-Cola bottlers and develops and markets ready-to-drink tea products under the LIPTON trademark. Such products are distributed by Pepsi-Cola bottlers throughout the United States.”

19. Defendants jointly develop, manufacture, distribute, market and sell ready-to-drink tea products throughout the fifty states and the District of Columbia. The labeling, packaging, and advertising for the Pure Leaf™ Iced Tea Products, relied upon by Plaintiffs, were prepared and/or approved by Defendants and their agents, and were disseminated by Defendants and their agents through advertising containing the misrepresentations alleged herein. Such labeling, packaging and advertising were designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiffs and the Class, into purchasing the Products. Defendants owned, manufactured and distributed the Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling, packaging and advertising for the Products.

FACTUAL ALLEGATIONS

Pure Leaf™ Iced Tea

20. Defendants market the Pure Leaf™ Iced Tea Products under the household tea brand name Lipton®. The Products are ready-to-drink tea products available at most supermarket chains and other retail outlets throughout the United States, including but not limited to Walmart, Target, Walgreens, Duane Reade, and Amazon.



Image available at https://fbcdn-sphotos-e-a.akamaihd.net/hphotos-ak-xap1/v/t1.0-9/10447743_655562857862849_915124474392161108_n.png?oh=25366e0117397b4bbfc469c914a2fd22&oe=55610AA9&__gda__=1432751840_3df51d36be5b7c188f6ca6a9bcb5106e

21. Defendants have consistently conveyed the very specific message to consumers throughout the United States, including Plaintiffs and Class members, that the Products are “Real Brewed Tea,” which is nothing but pure, freshly brewed tea from tea leaves with neither preservative nor artificial coloring. Defendants would have the consumers believe that drinking the Product is the same as drinking freshly brewed tea from tea leaves at home.

Deceptive Labeling and Advertising

22. Defendants’ misleading marketing campaign begins with its deceptive product name and description, “PURE LEAF™ REAL BREWED TEA,” which is prominently represented in large font print on the front label of the Products. Also on the front label of each and every Product, Defendants prominently represent, in capital letters, that the Product is “ALL NATURAL” with “FRESH BREWED TASTE,” and has, also in capital letters, “NO PRESERVATIVES” and “NO ADDED COLOR.” (See below). Such verbal representations, combined with an image featuring fresh tea leaves encapsulated in a drop of water imply that the Products are nothing but freshly brewed tea from tea leaves and water. Defendants’ exhaustive advertising campaign builds on this deception.



Image available at http://media3.popsugar-assets.com/files/2013/05/09/060/n/1922195/e6039854cee846a3_Pure-Leaf-Unsweetened.xxxlarge_2x/i/Pure-Leaf-Unsweetened-Tea.jpg.

23. To add variations on the same fictional theme (i.e., that the Products are nothing more than freshly brewed tea from tea leaves or tea bags sold in a plastic bottle), Defendants represent on the side panel of the Product label the following:



Through incorporating an image of a leafy twig being held by a hand, Defendants sought to reinforce the idea that “everything in here is real and natural.”

24. Besides labeling the Products as “All Natural” and with “No Preservatives,” Defendants conducted an extensive and widespread marketing campaign via the Internet, utilizing savvy social media marketing such as Facebook, Twitter, YouTube channel, Pinterest, Instagram, Tumblr, as well as other private blogs, all geared toward promoting the same idea to

consumers, including Plaintiffs and Class members, that the Products contain nothing but all natural, freshly brewed tea from tea leaves.

Defendants' All Natural Claims Violate Identical State and Federal Law

25. Defendants' labeling and advertising of the Products as "All Natural" violate various state and federal laws against misbranding.

26. The federal Food, Drug, and Cosmetic Act (the "FDCA") provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular." 21 U.S.C. § 343 (a)(1).

27. Defendants' "All Natural" claims also violate various state laws against misbranding which mirror federal law. New York State law broadly prohibit the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*:

Pursuant to N.Y. Agm. Law § 201, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular... ."

28. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

Definition of Natural

29. The FDA did not intend to and has repeatedly declined to establish a final rule with regard to a definition of the term “All Natural” in the context of food labeling. As such, Plaintiffs’ state consumer protection law claims are not preempted by federal regulations. See *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012). Additionally, the primary jurisdiction doctrine does not apply “because the FDA has repeatedly declined to adopt formal rule-making that would define the word ‘natural.’” *Id.* at p. 8.

30. The “FDA has not developed a definition for use of the term natural or its derivatives,” but it has loosely defined the term “All Natural” as a product that “does not contain added color, artificial flavors, or synthetic substances.” According to federal regulations, an ingredient is synthetic if it is:

[a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. 7 C.F.R. §205.2.

31. Although there is not an exact definition of “All Natural” in reference to food, cosmetic or oral care ingredients, there is no reasonable definition of “All Natural” that includes ingredients that, even if sourced from “nature,” are subjected to extensive transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau (“NAD”) has found that a “All Natural” ingredient does not include one that, while “literally sourced in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the” ingredient that is included in the final product.

Citric Acid Is Not a Natural Ingredient

32. Citric acid (2-hydroxy-propane-1,2,3-tricarboxylic acid) is a synthetic, non-natural ingredient. While the chemical's name has the word "citric" in it, citric acid is no longer extracted from the citrus fruit but industrially manufactured by fermenting certain genetically mutant strains of the black mold fungus, *Aspergillus niger*.³

33. A technical evaluation report for the substance citric acid compiled by the United States Department of Agriculture, Agricultural Marketing Service ("USDA AMS") for the National Organic Program classified citric acid as "Synthetic Allowed". See **EXHIBIT A**, Page 4, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5067876>. As one of the USDA AMS reviewers commented,

"[Citric acid] is a natural[ly] occurring substance that commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic." *Id.* at 3.

The report further explains, under the "How Made" question, that citric acid is made –

"Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, *Aspergillus niger* (a mold) or *Candida guilliermondii* (a yeast). Citric acid is recovered from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid." *Id.* at 4.

34. Because citric acid is a synthetic acid and cannot be reasonably considered a natural ingredient, Defendants' claim that the Products are "All Natural" is false, deceptive, and misleading, and the Products are misbranded under federal and state law.

³ See, e.g., Belén Max, et al., *Biotechnological production of citric acid*, BRAZILIAN JOURNAL OF MICROBIOLOGY, 41.4 São Paulo (Oct./Dec. 2010).

Defendants' No Preservatives Claims Violate Identical State and Federal Law

35. Defendants' labeling, packaging and marketing practices are deceptive and or misleading because the Products fail to disclose that the citric acid is used as a preservative and/or that the Products prominently represent on the front label, that they contain "No Preservatives." All Products use citric acid (2-hydroxypropane-1,2,3-tricarboxylic acid), a non-natural, highly chemically processed ingredient regularly used as a preservative (due to its acidic pH level which creates an environment where bacteria cannot thrive) in ready-to-drink tea products.

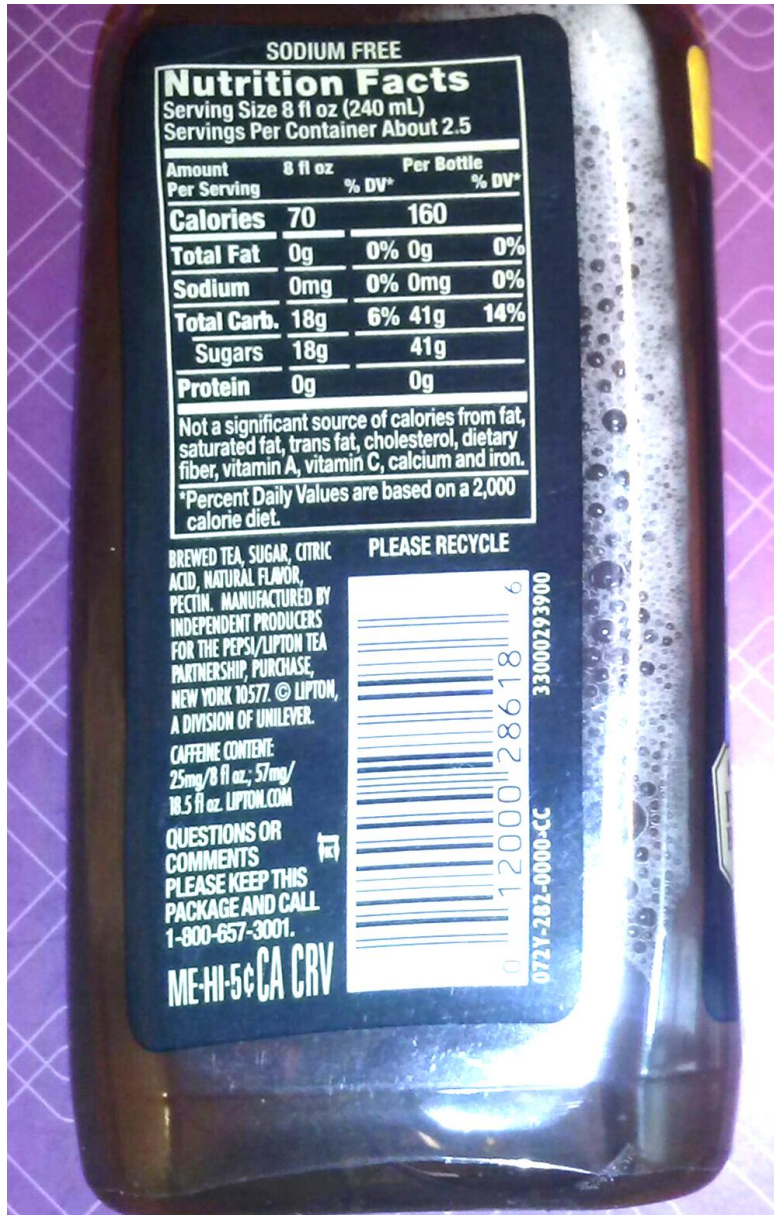
36. The FDCA provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular, or ... (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, *unless* it bears labeling stating that fact... ." 21 U.S.C. §§ 343 (a)(1), 343 (k).

37. Defendants' packaging and advertising of the Products also violate various state laws against misbranding which mirror federal law. New York law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*:

Pursuant to N.Y. Agm. Law § 201, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular... 11. If it bears or contains any artificial flavoring, artificial coloring, or permitted chemical preservative, unless it bears labeling stating that fact."

38. The term "chemical preservative" means "any chemical that, when added to food tends to prevent or retard deterioration thereof[.]" 21 C.F.R. § 101.22(a)(5).

39. While citric acid is listed in the fine print on the back of the Product in the list of ingredients (see below), Defendants deliberately made no mention of the function of the citric acid in violation of state and federal laws.



40. Image of the back label of the Pure Leaf™ Iced Tea: Lemon, which lists the following ingredients: Brewed Tea, Sugar, Citric Acid, Natural Flavor, Pectin.

41. On Defendants’ Pure Leaf™ Iced Tea Facebook page devoted to promoting the Products (<https://www.facebook.com/PureLeaf>), Defendants listed the function of the citric acid used in all flavors of the Products as “PROVIDES TARTNESS,” again failing to disclose that citric acid is used as a preservative in the Products:

PURE LEAF FLAVORS

There's an all natural, fresh brewed Pure Leaf™ Iced Tea for every taste, from our unsweetened tea to our teas sweetened with sugar to our selection of fruit flavored teas.

Browse our selection of refreshing Pure Leaf™ Iced Teas and choose one that's right for you. Find a local market where you can pick up your favorite flavor today.

CURRENT FLAVORS

DIET ICED TEA WITH LEMON

INGREDIENTS: TEA BREWED FROM LIPTON® TEA LEAVES, CITRIC ACID (PROVIDES TARTNESS), NATURAL FLAVOR, POTASSIUM CITRATE, MALIC ACID, PECTIN, SUCRALOSE, ACESULFAME POTASSIUM.

CAFFEINE CONTENT: 24mg/8 fl oz

NUTRITION FACTS				
Serving Size 8 fl oz (240 mL)				
Servings Per Container 2.5				
Amount Per Serving	8 fl oz	% DV*	Per Bottle	% DV*
Calories	0		10	
Total Fat	0g	0%	0g	0%
Sodium	0mg	0%	0mg	0%
Total Carbohydrate	0g	0%	0g	0%
Sugars	0g		0g	
Protein	0g		0g	

Image available at https://www.facebook.com/PureLeaf/app_353580498023662.

42. While the acidic pH of citric acid would most certainly provide tartness to the Products, such explanation is pretextual because the real function of the citric acid in the Products is as a preservative.⁴

43. The U.S. Food and Drug Administration (“FDA”) routinely required that food manufacturers disclose the fact that citric acid is used as a preservative. In a Warning Letter

⁴ See, e.g., Lawrence, Clare L., et al., *Evidence of a new role for the high-osmolarity glycerol mitogen-activated protein kinase pathway in yeast: regulating adaptation to citric acid stress*, MOLECULAR AND CELLULAR BIOLOGY 24.8 (2004): 3307-3323.

dated October 6, 2010, the FDA warned the manufacturers of the Chiquita brand "Pineapple Bites with Coconut" and "Pineapple Bites" products, that they are in violation of the FDCA and the federal regulations promulgated pursuant to the FDCA:

“The ‘Pineapple Bites’ and ‘Pineapple Bites with Coconut’ products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions. 21 CFR 101.22.”

See **EXHIBIT B**, FDA Warning Letter dated October 6, 2010 (emphasis added).

44. Defendants’ misleading labeling practices go even further. Apart from not having disclosed the function of the citric acid, Defendants expressly labeled the Products as, check mark, “No Preservatives,” even though such was patently false.

45. Because the Products similarly contain citric acid and Defendants similarly “fail[ed] to declare [such] preservative with a description of [its] functions,” *see id.*, and because the Products are expressly labeled as containing “No Preservatives,” the Products are misbranded food under the FDCA and state laws which incorporate by reference federal food labeling regulations. 21 U.S.C. §§ 343(a)(1), 343(k); N.Y. Agm. Law § 201.

The Impact of Defendants’ Deceptive Conduct

46. By representing the Products as “All Natural” and free of preservatives, Defendants sought to capitalize on consumers’ preference for natural Products with no preservatives and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural Products because of this association as well as the perceived higher quality, health and safety benefits and low impact on the environment.

47. As a result of Defendants’ deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that claimed to be “All Natural” and free of

preservatives. Moreover, Plaintiffs and Class members have paid a premium for the Products over other tea products sold on the market.

48. Although Defendants represented that the Products are “All Natural” and free of preservatives, they failed to also disclose material information about the Products; the fact that they contained unnatural, synthetic, and/or artificial ingredients which is used as a preservative. This non-disclosure, while at the same time branding the Products “All Natural” and free of preservatives was deceptive and likely to mislead a reasonable consumer, including Plaintiffs and Class members.

49. A representation that a product is “All Natural” and free of preservatives is material to a reasonable consumer when deciding to purchase a product.

50. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendants’ Products are “misbranded,” i.e., not legally salable, or capable of legal possession, and/or contain highly processed ingredients.

51. Plaintiffs did not know, and had no reason to know, that the Products were not “All Natural,” nor free of preservatives.

52. Defendants’ Product labeling and misleading online and otherwise marketing campaign was a material factor in Plaintiffs’ and Class members’ decisions to purchase the Products. Relying on Defendants’ deceptive and/or misleading Product labeling and other promotional material, Plaintiffs and Class members believed that they were getting Products that and were “All Natural” and contains no preservatives. Had Plaintiffs known the truth about Defendants’ Products, they would not have purchased them.

53. Defendants' Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendants' misrepresentations are part of their systematic Product packaging practice.

54. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

55. Defendants' false and deceptive labeling is misleading and in violation of the FDCA, food labeling laws and consumer protection laws of each of the fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

56. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

57. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to contain to be "All Natural" and/or without preservatives. The following table indicates that the Products are sold at a premium price over other brand name ready-to-drink tea products:

Brand	Product	Size	Price⁵
Lipton	Green Tea Citrus	16.9 fluid ounce (pack of 12)	\$0.415/bottle
Lipton	Diet Green Tea	16.9 fluid ounce (pack of 12)	\$0.415/bottle
Honest Tea	Honey Green Tea	16.9 fluid ounce (pack of 12)	\$1.542/bottle
Pure Leaf™	Iced Tea	18.5 fluid ounce (pack of 12)	\$2.50/bottle

Plaintiffs Were Injured as a Result of Defendants’ Misleading and Deceptive Conduct

58. Defendants’ labeling as alleged herein is false and misleading and was designed to increase sales of the Products at issue. Defendants’ misrepresentations are part of their systematic labeling practice.

59. Plaintiffs and Class members were exposed to and relied on Defendants’ labeling, packaging, as well as extensive marketing campaign of the Products, including misrepresentations made via social media as stated herein. At the time of purchase, Plaintiffs and Class members read the labels on Defendants’ Products, including labels which represented that the Products were “All Natural” and contained no preservatives.

60. Defendants’ labeling claims were a material factor in Plaintiffs and Class members’ decisions to purchase the Products. Based on Defendants’ claims, Plaintiffs and Class members believed that the Products were a better and healthier choice than other available tea products.

61. Plaintiffs and Class members did not know that the Products were neither “All Natural” nor free of preservatives. Plaintiffs and Class members would not have bought the purchased Products had they known that the Products all contain citric acid, which is highly processed, industrially produced and used as a preservative.

⁵ Pricing information obtained from www.amazon.com as of January 28, 2015.

62. Plaintiffs and Class members were exposed to these misrepresentations prior to purchase and relied on them. As a result of such reliance, Plaintiffs and Class members deemed the Products to be more preferable to other products which do not claim to be “All Natural” or free of preservatives. Plaintiffs and Class members would not have bought the Products had they not been misled by Defendants’ misrepresentations into believing that the Products were better and healthier than they were.

63. At the point of sale, Plaintiffs and Class members did not know, and had not reason to know, that Defendants’ Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

64. As a result of Defendants’ misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

65. Defendants’ labeling, advertising, and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendants’ misrepresentations are a part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendants’ representations in determining whether to purchase the Products at issue. Plaintiffs and Class members would not have purchased Defendants’ misbranded Products had they known they were misbranded.

66. Plaintiffs and the Class (defined below) have been damaged by Defendants’ deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be “All Natural” or free of preservatives.

CLASS ACTION ALLEGATIONS

67. Plaintiffs bring this action as a class action pursuant CPLR § 902 on behalf of the following class (the “Class”):

All persons or entities in the State of New York who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

68. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

69. This action is proper for class treatment under CPLR § 902. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

70. Questions of law and fact arise from Defendants’ conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. whether labeling “All Natural” on Products containing one or more highly processed ingredients, including citric acid, was false and misleading;
- b. whether labeling “No Preservatives” and failing to disclose that the Products used preservatives on Products containing highly processed ingredients such as citric acid was false and misleading;

- c. whether Defendants engaged in a marketing practice intended to deceive consumers by labeling Products as “All Natural” and without preservatives, even though such Products contained one or more highly processed ingredients, including citric acid;
- d. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products purchased were different than what Defendants warranted;
- e. whether Defendants deprived Plaintiffs and the Class of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendants;
- f. whether Defendants caused Plaintiffs and the Class to purchase a substance that was other than what was represented by Defendants;
- g. whether Defendants caused Plaintiffs and the Class to purchase Products that were artificial, synthetic, or otherwise unnatural;
- h. whether Defendants have been unjustly enriched at the expense of Plaintiffs and other Class members by their misconduct;
- i. whether Defendants must disgorge any and all profits they have made as a result of their misconduct; and
- j. whether Defendants should be enjoined from marketing the Products as “All Natural,” “No Preservatives,” and whether Defendants should be required to disclose the fact that an ingredient was used as a preservative.

71. Plaintiffs’ claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as

detailed herein. Plaintiffs purchased Defendants' Products and sustained similar injuries arising out of Defendants' conduct in violation of New York State law. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

72. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

73. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this

forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

74. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to CPLR § 902 are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

75. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to CPLR § 902 are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

76. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

77. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

78. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

79. Plaintiffs bring this claim on behalf of themselves and the other members of the Class for an injunction for violations of New York’s Deceptive Acts or Practices Law, General Business Law § 349 (“NY GBL”).

80. NY GBL § 349 provides that “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful.”

81. Under the § 349, it is not necessary to prove justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

82. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

83. The practices employed by Defendants, whereby Defendants labeled, packaged, and marketed their Products as “All Natural” and free of preservatives were unfair, deceptive, and misleading and are in violation of the NY GBL § 349.

84. The foregoing deceptive acts and practices were directed at customers.

85. Defendants should be enjoined from labeling their Products as “All Natural” and “No Preservatives,” and should be required to disclose that one or more ingredients were used as preservatives, as described above pursuant to NY GBL § 349.

86. Plaintiffs, on behalf of themselves and all others similarly situated, respectfully demands a judgment enjoining Defendants’ conduct, awarding costs of this proceeding and attorneys’ fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

87. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

88. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Products as “All Natural” and free of preservatives.

89. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their Products are “All Natural” and free of preservatives were unfair, deceptive, and misleading and are in violation of NY GBL § 349.

90. The foregoing deceptive acts and practices were directed at consumers.

91. Plaintiffs and the other Class members suffered a loss as a result of Defendants’ deceptive and unfair trade acts. Specifically, as a result of Defendants’ deceptive and unfair trade

acts and practices, Plaintiffs and the other Class members suffered monetary losses associated with the purchase of Products, *i.e.*, the purchase price of the Product and/or the premium paid by Plaintiffs and the Class for said Products.

COUNT III

NEGLIGENT MISREPRESENTATION

92. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

93. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

94. In making the false, misleading, and deceptive representations and omissions, Defendants knew and intended that consumers would pay a premium for Products labeled as “All Natural” and free of preservatives over comparable products that are not so labelled, furthering Defendants’ private interest of increasing sales for its Products and decreasing the sales of products that are truthfully offered as “All Natural” and free of preservatives by Defendants’ competitors, or those that do not claim to be “All Natural” nor free of preservatives.

95. As an immediate, direct, and proximate result of Defendants’ false, misleading, and deceptive representations and omissions, Defendants injured Plaintiffs and the other Class members in that they paid a premium price for Products that were not as represented.

96. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants’ negligence and carelessness.

97. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

98. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

99. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Products and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT IV

BREACH OF EXPRESS WARRANTIES

100. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

101. Defendants provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that their Products are "All Natural" and contain no preservatives.

102. This breach resulted in damages to Plaintiffs and the other members of the Class who bought Defendants' Products but did not receive the goods as warranted in that the Products were not as healthy nor as pure as they appear to be.

103. As a proximate result of Defendants' breach of warranties, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendants promised in their promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

COUNT V

UNJUST ENRICHMENT

104. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs, and further allege as follows:

105. As a result of Defendants' deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendants were enriched, at the expense of Plaintiffs and members of the Class, through the payment of the purchase price for Defendants' Products.

106. Plaintiffs and members of the Class conferred a benefit on Defendants through purchasing the Products, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on it.

107. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

108. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiffs, and all others

similarly situated, in light of the fact Defendants have misrepresented that the Products are “All Natural” and free of preservatives, when in fact, the Products contain synthetic, unnatural ingredients such as citric acid, which is used as a preservative.

109. Defendants profited from their unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiffs and Class members, under circumstances in which it would be unjust for Defendants to be permitted to retain said benefit.

110. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and has lost money or property as a result of Defendants’ actions, as set forth herein. Defendants are aware that the claims and/or omissions that they made about the Products are false, misleading, and likely to deceive reasonable consumers, such as Plaintiffs and members of the Class.

111. Plaintiffs and Class members do not have an adequate remedy at law against Defendants (in the alternative to the other causes of action alleged herein).

112. Accordingly, the Products are valueless such that Plaintiffs and Class members are entitled to restitution in an amount not less than the purchase price of the Products paid by Plaintiffs and Class members during the Class Period.

113. Plaintiffs and Class members are entitled to restitution of the excess amount paid for the Products, over and above what they would have paid if the Products had been adequately advertised, and Plaintiffs and Class members are entitled to disgorgement of the profits Defendants derived from the sale of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, seek judgment against Defendants, as follows:

- A. For an order certifying the Class and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- B. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiffs and the Class;
- D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper;
- H. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- I. Any other relief the Court may deem appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: June 26, 2015

Respectfully submitted,

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ClassAction.org

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