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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

14 ALEX KHASIN, individually and on behalf of
all others similarly situated,

15 Plaintiff,

16 v.

17 R. C. BIGELOW, INC.,

18 Defendant.

Case No. 3:12-cv-02204-JSW

**AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION**

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

JURY TRIAL DEMANDED

20
21 Plaintiff, through his undersigned attorneys, brings this lawsuit against Defendant as to his
22 own acts upon personal knowledge and as to all other matters upon information and belief. In
23 order to remedy the harm arising from Defendant’s illegal conduct, which has resulted in unjust
24 profits, Plaintiff brings this action on behalf of a class of all persons in California who, since
25 May 2, 2008 to the present (the “Class Period”), purchased Defendant’s Green tea products for
26 personal or household use (“Misbranded Food Products”).

27 **INTRODUCTION**

28 1. Every day, millions of Americans purchase and consume packaged foods. In order

1 to protect these consumers, identical federal and California laws require truthful, accurate
2 information on the labels of packaged foods. This case is about a company that flouts those laws
3 even after companies with identical products with similar claims on their labels received warning
4 letters from the FDA notifying those companies that their products were misbranded. The
5 Defendant was and is fully aware of these laws as well as FDA guidance documents on the
6 subjects, and the aforementioned warning letters. The law is clear: misbranded food cannot
7 legally be manufactured, held, advertised, distributed or sold. Misbranded food is worthless as a
8 matter of law, and purchasers of misbranded food are entitled to a refund of their purchase price
9 or other relief and compensation as determined by this Court.

10 2. Defendant R. C. Bigelow, Inc. (hereinafter “Bigelow” or “Defendant”) is a tea
11 company based in Fairfield, Connecticut. It markets the green tea products involved in this
12 litigation.

13 3. Bigelow recognizes that health claims drive sales. It actively promotes the
14 presence of antioxidants in its tea products and the alleged health benefits from using these
15 products. In a recent press release Bigelow stated:

16 It is widely accepted in the medical and nutrition communities that all teas..., have
17 health benefits deriving from polyphenols, the powerful antioxidants found in tea
18 that help control free radicals (the unstable compounds that destroy cells).

19 Research has shown polyphenols have many health benefits including fighting the
20 effects of aging, and reducing the risk for some cancers, high cholesterol and high
21 blood pressure. Polyphenols can bolster the immune system to better resist flu,
22 other virus and bacteria, strengthen capillaries and prevent infection. New research
23 studies are continually being conducted in order to better understand how tea
24 polyphenols work to support good health and possibly to prevent and treat many
25 health conditions.

26 [http://admin.specialtyfood.com/fileManager/65609Bigelow-Superfruit_Teasdocx_\(1\).pdf](http://admin.specialtyfood.com/fileManager/65609Bigelow-Superfruit_Teasdocx_(1).pdf)

27 4. Bigelow also makes unlawful health claims, nutrient content claims, and
28 antioxidant claims directly on packages of the Misbranded Food Products. For example, upon
information and belief Defendant has sold at least the following green tea products in the Class
Period:

Green Tea

- 1 Green Tea Decaffeinated
- Green Tea with Mint
- 2 Green Tea with Lemon
- Green Tea with Lemon Decaffeinated
- 3 Green Tea with Pomegranate
- Green Tea with Pomegranate Decaffeinated
- 4 Green Tea with Pomegranate (Iced Tea)
- Green Tea with Peach
- 5 Green Tea with Wild Blueberry and Acai
- Green Tea with Wild Blueberry and Acai Decaffeinated
- 6 Green Tea with Mango

7 The package front panel of each green tea product listed in this paragraph, including Bigelow’s
8 Green Tea with Lemon, purchased by Plaintiff and shown below, bears the statement “*Healthy*
9 *Antioxidants.*” Attached hereto as Exhibit 1 is a compilation of pictures of Bigelow green tea
10 products showing that each product has the same unlawful antioxidant claim on the front of the
11 package. Such claims have been repeatedly targeted by the FDA as unlawful for tea and other
12 food products. Upon information and belief, the back panel of all green tea products, including
13 Bigelow’s Green Tea with Lemon, purchased by Plaintiff and shown below, boasts, “*Mother*
14 *Nature gave us a wonderful gift when she packed powerful antioxidants into green tea...*” This
15 same claim appears on the other green tea products as well. Such claims have been repeatedly
16 targeted by the FDA as unlawful for tea and other food products.

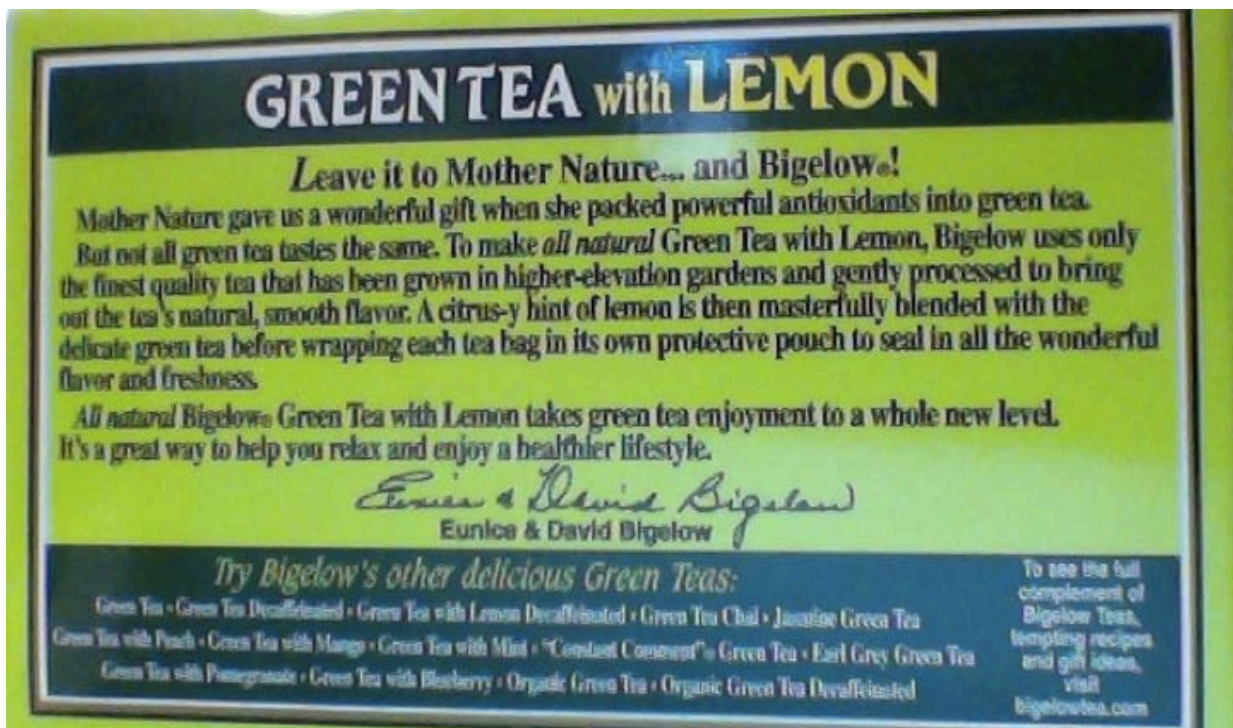
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FRONT OF PACKAGE

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BACK OF PACKAGE



1 5. Statements similar to those appearing on the packages of the Bigelow Green Tea
2 with Lemon purchased by Plaintiff also appear on each of the other Misbranded Food Products
3 manufactured and sold by the Defendant. Said products are of a single kind (tea). The only
4 difference is flavor. These other Bigelow products share the same size and shape packaging.
5 Unlawful nutrient content claims, antioxidant claims, and health claims appear on the labels of
6 each of these Misbranded Food Products.

7 6. The Misbranded Food Products are a single product: tea. These products share
8 the same size and shape packaging. The only difference is flavor. The same unlawful antioxidant
9 claims, nutrient content claims, and/or health claims appear on the labels of each of these other
10 products.

11 7. During various times during the Class Period, Plaintiff read the nutrient content
12 claims regarding the presence of beneficial antioxidants and the health claims appearing on
13 Defendant's labels as specified above and relied on this information in making his decisions to
14 purchase Defendant's tea products. Plaintiff paid a premium for Defendant's products with the
15 purported health benefits. Had Plaintiff known the truth, that the products did not in fact contain
16 recognized and accepted nutritional and healthful value, Plaintiff would not have paid such a
17 premium or would not have bought the products at all.

18 8. If a manufacturer is going to make a claim on a food label, the label must meet
19 certain legal requirements that help consumers make informed choices and ensure that they are
20 not misled. As described more fully below, Defendant has made, and continues to make, false
21 and deceptive claims in violation of federal and California laws that govern the types of
22 representations that can be made on food labels. These laws recognize that reasonable consumers
23 are likely to choose products claiming to have a health or nutritional benefit over otherwise
24 similar food products that do not claim such benefits.

25 9. Under California law, which is identical to federal law, a number of the
26 Defendant's food labeling practices are unlawful because they are deceptive and misleading to
27 consumers. These include:
28

- 1 a. Making unlawful nutrient content claims on the labels of food
- 2 products that fail to meet the minimum nutritional requirements
- 3 legally required for the nutrient content claims being made;
- 4 b. Making unlawful antioxidant claims on the labels of food products
- 5 that fail to meet the minimum nutritional requirements legally
- 6 required for the antioxidant claims being made;
- 7 c. Making unlawful and unapproved health claims about their
- 8 products that are prohibited by law; and

9 10. These practices are not only illegal but they mislead consumers and deprive them

10 of the information they require to make informed purchasing decisions. Thus, for example, a

11 mother who reads labels because she wants to purchase healthy foods for her family would be

12 misled by Defendant's practices and labeling.

13 11. California and federal laws have placed numerous requirements on food

14 companies that are designed to ensure that the claims that companies make about their products to

15 consumers are truthful, accurate and backed by acceptable forms of scientific proof. When a

16 company such as Bigelow makes unlawful nutrient content, antioxidant, or health claims that are

17 prohibited by regulation, consumers such as Plaintiff are misled.

18 12. Identical federal and California laws regulate the content of labels on packaged

19 food. The requirements of the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

20 ("FDCA") were adopted by the California legislature in the Sherman Food Drug & Cosmetic

21 Law, California Health & Safety Code § 109875 *et seq.* (the "Sherman Law"). Under both the

22 Sherman Law and FDCA section 403(a), food is "misbranded" if "its labeling is false or

23 misleading in any particular," or if it does not contain certain information on its label or in its

24 labeling. 21 U.S.C. § 343(a).

25 13. Under the FDCA, the term "false" has its usual meaning of "untruthful," while

26 the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those

27 claims that might be technically true, but still misleading. If any one representation in the

28 labeling is misleading, then the entire food is misbranded, and no other statement in the labeling

 can cure a misleading statement. "Misleading" is judged in reference to "the ignorant, the

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

4 14. On August 23, 2010, the FDA sent a warning letter to Unilever, the parent
5 company of Lipton Tea, one of Bigelow’s biggest competitors, informing Unilever of Lipton
6 Tea’s failure to comply with the FDCA and its regulations (the “FDA Warning Letter,” is
7 attached hereto as Exhibit 2 and made a part hereof by reference) for remarkably similar nutrient
8 content claims to those Bigelow is presently making on its product labels. The FDA Warning
9 Letter to Unilever stated, in pertinent part:

10 **Unauthorized Nutrient Content Claims**

11 Under section 403(r)(1)(A) of the Act [21 U.S.C. 343(r)(1)(A)], a claim that
12 characterizes the level of a nutrient which is of the type required to be in the
13 labeling of the food must be made in accordance with a regulation promulgated by
14 the Secretary (and, by delegation, FDA) authorizing the use of such a claim. The
15 use of a term, not defined by regulation, in food labeling to characterize the level
16 of a nutrient misbrands a product under section 403(r)(1)(A) of the Act.

17 Nutrient content claims using the term “antioxidant” must also comply with the
18 requirements listed in 21 CFR 101.54(g). These requirements state, in part, that for
19 a product to bear such a claim, an RDI must have been established for each of the
20 nutrients that are the subject of the claim (21 CFR 101.54(g)(1)), and these
21 nutrients must have recognized antioxidant activity (21 CFR 101.54(g)(2)). The
22 level of each nutrient that is the subject of the claim must also be sufficient to
23 qualify for the claim under 21 CFR 101.54(b), (c), or (e) (21 CFR 101.54(g)(3)).
24 For example, to bear the claim “high in antioxidant vitamin C,” the product must
25 contain 20 percent or more of the RDI for vitamin C under 21 CFR 101.54(b).
26 Such a claim must also include the names of the nutrients that are the subject of
27 the claim as part of the claim or, alternatively, the term “antioxidant” or
28 “antioxidants” may be linked by a symbol (e.g., an asterisk) that refers to the same
symbol that appears elsewhere on the same panel of the product label, followed by
the name or names of the nutrients with recognized antioxidant activity (21 CFR
101.54(g)(4)). The use of a nutrient content claim that uses the term “antioxidant”
but does not comply with the requirements of 21 CFR 101.54(g) misbrands a
product under section 403(r)(2)(A)(i) of the Act.

24 Your webpage entitled “Tea and Health” and subtitled “Tea Antioxidants”
25 includes the statement, “LIPTON Tea is made from tea leaves rich in naturally
26 protective antioxidants.” The term “rich in” is defined in 21 CFR 101.54(b) and
27 may be used to characterize the level of antioxidant nutrients (21 CFR
28 101.54(g)(3)). However, this claim does not comply with 21 CFR 101.54(g)(4)
because it does not include the nutrients that are the subject of the claim or use a
symbol to link the term “antioxidant” to those nutrients. Thus, this claim
misbrands your product under section 403(r)(2)(A)(i) of the Act.

1 This webpage also states: “[t]ea is a naturally rich source of antioxidants.” The
2 term “rich source” characterizes the level of antioxidant nutrients in the product
3 and, therefore, this claim is a nutrient content claim (see section 403(r)(1) of the
4 Act and 21 CFR 101.13(b)). Even if we determined that the term “rich source”
5 could be considered a synonym for a term defined by regulation (e.g., “high” or
6 “good source”), nutrient content claims that use the term “antioxidant” must meet
7 the requirements of 21 CFR 101.54(g). The claim “tea is a naturally rich source of
8 antioxidants” does not include the nutrients that are the subject of the claim or use
9 a symbol to link the term “antioxidant” to those nutrients, as required by 21 CFR
10 101.54(g)(4). Thus, this claim misbrands your product under section
11 403(r)(2)(A)(i) of the Act.

12 The product label back panel includes the statement “packed with protective
13 FLAVONOID ANTIOXIDANTS.” The term “packed with” characterizes the level
14 of flavonoid antioxidants in the product; therefore, this claim is a nutrient content
15 claim (see section 403(r)(1) of the Act and 21 CFR 101.13(b)). Even if we
16 determined that the term “packed with” could be considered a synonym for a term
17 defined by regulation, nutrient content claims that use the term “antioxidant” must
18 meet the requirements of 21 CFR 101.54(g). The claim “packed with
19 FLAVONOID ANTIOXIDANTS” does not comply with 21 CFR 101.54(g)(1)
20 because no RDI has been established for flavonoids. Thus, this unauthorized
21 nutrient content claim causes your product to be misbranded under section
22 403(r)(2)(A)(i) of the Act.

23 The above violations are not meant to be an all-inclusive list of deficiencies in
24 your products or their labeling. It is your responsibility to ensure that all of your
25 products are in compliance with the laws and regulations enforced by FDA. You
26 should take prompt action to correct the violations. Failure to promptly correct
27 these violations may result in regulatory actions without further notice, such as
28 seizure and/or injunction.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm224509.htm>

15. As shown above, the front panel on many Bigelow green tea products contains
the statement “*Healthy Antioxidants.*” The back panel touts the “*packed powerful antioxidants
into green tea.*” As determined by the FDA in the Unilever/Lipton warning letter, such health
claims are in violation of 21 U.S.C. § 352(f)(1), and therefore the products are misbranded.

16. Defendant has made, and continues to make, food label claims that are prohibited
by California and federal law. Under California and federal law, Defendant’s Misbranded Food
Products cannot legally be manufactured, advertised, distributed, held or sold. Defendant’s false
and misleading labeling practices stem from its global marketing strategy. Thus, the violations
and misrepresentations are similar across product labels and product lines. Defendant’s violations
of law are numerous and include: (1) the illegal advertising, marketing, distribution, delivery and

1 sale of Defendant's Misbranded Food Products to consumers and (2) the utilization of unlawful
2 antioxidant claims, nutrient content claims, and health claims on its product labels.

3
4 **PARTIES**

5 17. Plaintiff Alex Khasin is a resident of Walnut Creek, California who purchased
6 Misbranded Food Products in California since May 2, 2008, four (4) years prior to the filing of
7 the original complaint.

8 18. Defendant, R. C. Bigelow, Inc. is a Connecticut corporation with its principle
9 place of business in Fairfield, Connecticut. Bigelow is one of the largest tea producers in the
10 country with sales in the hundreds of millions of dollars over the Class Period.

11 19. Bigelow is a leading producer of retail specialty green tea products. Bigelow sells
12 its Misbranded Food Products to consumers through grocery stores and other retail stores
13 throughout California.

14 **JURISDICTION AND VENUE**

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

19 21. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
20 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
21 between citizens of different states.

22 22. The Court has personal jurisdiction over Defendant because a substantial portion
23 of the wrongdoing alleged in this Fourth Amended Complaint occurred in California, Defendant
24 is authorized to do business in California, has sufficient minimum contacts with California, and
25 otherwise intentionally avails itself of the markets in California through the promotion, marketing
26 and sale of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible
27 under traditional notions of fair play and substantial justice.
28

1 artificial flavoring, artificial coloring and chemical preservatives but fail to adequately disclose
2 that fact on their labeling.

3 **B. FDA Enforcement History**

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

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

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

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

24 ... Accurate food labeling information can assist consumers in making healthy
25 nutritional choices. FDA intends to monitor and evaluate the various FOP labeling
26 systems and their effect on consumers' food choices and perceptions. FDA
27 recommends that manufacturers and distributors of food products that include FOP
28 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

1 with enforcement action where such FOP labeling or labeling systems are used in a
2 manner that is false or misleading.

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

8 29. Despite the issuance of the 2009 FOP Guidance, Defendant did not remove the
9 unlawful and misleading food labeling claims from its Misbranded Food Products.

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

14 In the early 1990s, the Food and Drug Administration (FDA) and the food industry
15 worked together to create a uniform national system of nutrition labeling, which
16 includes the now-iconic Nutrition Facts panel on most food packages. Our citizens
17 appreciate that effort, and many use this nutrition information to make food
18 choices. Today, ready access to reliable information about the calorie and nutrient
19 content of food is even more important, given the prevalence of obesity and diet-
20 related diseases in the United States. This need is highlighted by the
21 announcement recently by the First Lady of a coordinated national campaign to
22 reduce the incidence of obesity among our citizens, particularly our children.
23 With that in mind, I have made improving the scientific accuracy and usefulness of
24 food labeling one of my priorities as Commissioner of Food and Drugs. The latest
25 focus in this area, of course, is on information provided on the principal display
26 panel of food packages and commonly referred to as “front-of-pack” labeling. The
27 use of front-of-pack nutrition symbols and other claims has grown tremendously in
28 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. ...

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

At that time, we urged food manufacturers to examine their product labels in the
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
labels to bring them into line with the goals of the Nutrition Labeling and
Education Act of 1990. Unfortunately, however, we continue to see products

1 marketed with labeling that violates established labeling standards.

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

9
10 These examples and others that are cited in our warning letters are not indicative
11 of the labeling practices of the food industry as a whole. In my conversations with
12 industry leaders, I sense a strong desire within the industry for a level playing field
13 and a commitment to producing safe, healthy products. That reinforces my belief
14 that FDA should provide as clear and consistent guidance as possible about food
15 labeling claims and nutrition information in general, and specifically about how
16 the growing use of front-of-pack calorie and nutrient information can best help
17 consumers construct healthy diets.

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

24 31. Notwithstanding the Open Letter, Defendant continued to utilize unlawful food
25 labeling claims despite the express guidance of the FDA in the Open Letter.

26 32. In addition to its guidance to industry, the FDA has sent warning letters to
27 industry, including many of Defendant's peer/competitor food manufacturers for the same types
28 of unlawful nutrient content claims described above.

33. In these letters dealing with unlawful nutrient content claims, the FDA indicated
that, as a result of the same type of claims utilized by the Defendant, 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." These warning letters were not isolated as the FDA has
issued numerous warning letters to other companies for the same type of food labeling claims at
issue in this case; the same being released as public records discoverable and downloadable from
the internet.

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

7 35. Defendant also continued to ignore the FDA's Guidance for Industry, A Food
8 Labeling Guide which details the FDA's guidance on how to make food labeling claims.
9 Defendant continues to utilize unlawful claims on the labels of its Misbranded Food Products. As
10 such, Defendant's Misbranded Food Products continue to run afoul of FDA guidance as well as
11 California and federal law.

12 36. Despite the FDA's numerous warnings to industry of which Defendant was aware,
13 Defendant has continued to sell products bearing unlawful food labeling claims without meeting
14 the requirements to make them.

15 37. Plaintiff did not know, and had no reason to know, that the Defendant's
16 Misbranded Food Products were misbranded and bore food labeling claims despite failing to meet
17 the requirements to make those food labeling claims. Similarly, Plaintiff did not, and had no
18 reason to know, that Bigelow's Misbranded Food Products he purchased were misbranded
19 because their labeling was false and misleading.

20 **C. Defendant's Food Products Are Misbranded**

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

25 39. Nutrient content claims are claims about specific nutrients contained in a product.
26 They are typically made on the front of packaging in a font large enough to be read by the
27

1 average consumer. Because these claims are relied upon by consumers when making purchasing
2 decisions, the regulations govern what claims can be made in order to prevent misleading claims.

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

6 41. 21 C.F.R. § 101.13 provides the general requirements for nutrient content claims,
7 which California has expressly adopted. *See* California Health & Safety Code § 110100. 21
8 C.F.R. § 101.13 requires that manufacturers include certain disclosures when a nutrient claim is
9 made and, at the same time, the product contains certain levels of unhealthy ingredients, such as
10 fat and sodium. It also sets forth the manner in which that disclosure must be made, as follows:

11 (4)(i) The disclosure statement “See nutrition information for ___ content” shall be
12 in easily legible boldface print or type, in distinct contrast to other printed or
13 graphic matter, and in a size no less than that required by §101.105(i) for the net
14 quantity of contents statement, except where the size of the claim is less than two
15 times the required size of the net quantity of contents statement, in which case the
16 disclosure statement shall be no less than one-half the size of the claim but no
17 smaller than one-sixteenth of an inch, unless the package complies with
18 §101.2(c)(2), in which case the disclosure statement may be in type of not less
19 than one thirty-second of an inch.

20 (ii) The disclosure statement shall be immediately adjacent to the nutrient content
21 claim and may have no intervening material other than, if applicable, other
22 information in the statement of identity or any other information that is required to
23 be presented with the claim under this section (e.g., see paragraph (j)(2) of this
24 section) or under a regulation in subpart D of this part (e.g., see §§101.54 and
25 101.62). If the nutrient content claim appears on more than one panel of the label,
26 the disclosure statement shall be adjacent to the claim on each panel except for the
27 panel that bears the nutrition information where it may be omitted.

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

43. An “implied nutrient content claim” is defined as any claim that: (i) describes the
food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a
certain amount (e.g., “high in oat bran”); or (ii) suggests that the food, because of its nutrient
content, may be useful in maintaining healthy dietary practices and is made in association with an

1 explicit claim or statement about a nutrient (*e.g.*, “healthy, contains 3 grams (g) of fat”). 21
2 C.F.R. § 101.13(b)(2)(i-ii).

3 44. These regulations authorize use of a limited number of defined nutrient content
4 claims. In addition to authorizing the use of only a limited set of defined nutrient content terms on
5 food labels, these regulations authorize the use of only certain synonyms for these defined terms.
6 If a nutrient content claim or its synonym is not included in the food labeling regulations it cannot
7 be used on a label. Only those claims, or their synonyms, that are specifically defined in the
8 regulations may be used. All other claims are prohibited. 21 CFR § 101.13(b).

9 45. Only approved nutrient content claims will be permitted on the food label, and all
10 other nutrient content claims will misbrand a food. It is thus clear which types of claims are
11 prohibited and which types are permitted. Manufacturers are on notice that the use of an
12 unapproved nutrient content claim is prohibited conduct. 58 Fed. Reg. 2302. In addition, 21
13 U.S.C. § 343(r)(2), whose requirements have been adopted by California, prohibits using
14 unauthorized undefined terms and declares foods that do so to be misbranded.

15 46. Similarly, the regulations specify absolute and comparative levels at which foods
16 qualify to make these claims for particular nutrients (*e.g.*, low fat . . . more vitamin C) and list
17 synonyms that may be used in lieu of the defined terms. Certain implied nutrient content claims
18 (*e.g.*, “healthy”) also are defined. The daily values (DVs) for nutrients that the FDA has
19 established for nutrition labeling purposes have application for nutrient content claims, as well.
20 Claims are defined under current regulations for use with nutrients having established DVs;
21 moreover, relative claims are defined in terms of a difference in the percent DV of a nutrient
22 provided by one food as compared to another. *See e.g.*, 21 C.F.R. §§ 101.13 and 101.54.

23 1. Defendant Has Made Unlawful and Misleading Nutrient
24 Content Claims

25 47. Defendant’s nutrient content claims on its labels that its green tea has “*packed*
26 *powerful antioxidants*” are unlawful and misleading.

27 48. In order to appeal to consumer preferences, Defendant has repeatedly made
28 unlawful nutrient content claims about antioxidants that fail to utilize one of the limited defined

1 terms. These nutrient content claims are unlawful because they failed to comply with the nutrient
2 content claim provisions in violation of 21 C.F.R. §§ 101.13 and 101.54, which have been
3 incorporated in California’s Sherman Law. To the extent that the terms used to describe
4 antioxidants without a recognized daily value or RDI (such as “natural source”) are deemed to be
5 a synonym for a defined term like “contain” the claim would still be unlawful because, as these
6 nutrients do not have established daily values, they cannot serve as the basis for a term that has a
7 minimum daily value threshold as the defined terms at issue here do.

8 49. Defendant’s claims concerning unnamed antioxidant nutrients are false because
9 Defendant’s use of a defined term is in effect a claim that the products have met the minimum
10 nutritional requirements for the use of the defined term (antioxidants) when they have not.

11 50. For example, nutrient content claims that Defendant make on the labels of its teas
12 are false and unlawful because they use defined terms such as “*packed powerful antioxidants*”
13 Defendant uses these terms to describe antioxidants and flavonoids that fail to satisfy the
14 minimum nutritional thresholds for these defined terms.

15 51. An “excellent source” claim requires a nutrient to be present at a level at least 20%
16 of the Daily Value for that nutrient while “contains” and “provides” claims require a nutrient to
17 be present at a level at least 10% of the Daily Value for that nutrient. Defendant’s “*packed*
18 *powerful antioxidants*” claim is an “excellent source” claim requiring 20% DV.

19 52. Therefore, for example, the claim that mother nature “*packed powerful*
20 *antioxidants*” into Defendants products is false and unlawful. Defendant’s teas do not meet the
21 minimum nutrient level threshold to make such a claim, which is 20% or more of the RDI or the
22 DRV of a nutrient per reference amount customarily consumed. Defendant’s teas do not meet the
23 minimum nutrient level threshold to make such a claim, which is 10% or more of the RDI or the
24 DRV of a nutrient per reference amount customarily consumed.

25 53. Defendant’s misuse of defined terms is not limited to the nutrient content claims
26 on one or two products. Defendant’s tea related claims are part of a widespread practice of
27 misusing defined nutrient content claims to overstate the nutrient content of its tea products. The
28

1 statements regarding antioxidants and the health benefits to be derived from consuming
2 defendant's products appear on each variety of Defendant's Green Tea Products. These other
3 products are substantially similar to the tea products purchased by Plaintiff.

4 54. FDA enforcement actions targeting identical or similar claims to those made by
5 Defendant have made clear the unlawfulness of such claims. Defendant knew or should have
6 known about these enforcement actions. For example, on March 24, 2011, the FDA sent Jonathan
7 Sprouts, Inc. a warning letter (Exhibit 4) where it specifically targeted a "source" type claim like
8 the one used by Defendant. In that letter the FDA stated:

9
10 Your Organic Clover Sprouts product label bears the claim "Phytoestrogen
11 Source[.]" Your webpage entitled "Sprouts, The Miracle Food! - Rich in Vitamins,
12 Minerals and Phytochemicals" bears the claim "Alfalfa sprouts are one of our
13 finest food sources of . . . saponin." These claims are nutrient content claims
14 subject to section 403(r)(1)(A) of the Act because they characterize the level of
15 nutrients of a type required to be in nutrition labeling (phytoestrogen and saponin)
16 in your products by use of the term "source." Under section 403(r)(2)(A) of the
17 Act, nutrient content claims may be made only if the characterization of the level
18 made in the claim uses terms which are defined by regulation. However, FDA has
19 not defined the characterization "source" by regulation. Therefore, this
20 characterization may not be used in nutrient content claims.

21 55. It is thus clear that a "source" claim like the one utilized by Defendant is unlawful
22 because the "FDA has not defined the characterization 'source' by regulation" and thus such a
23 "characterization may not be used in nutrient content claims."

24 56. The types of misrepresentations made above would be considered by a reasonable
25 consumer like the Plaintiff when deciding to purchase the products. Plaintiff placed great
26 importance on the claimed presence of "packed *powerful antioxidants*" in choosing Defendant's
27 products over other tea products and alternative beverage products.

28 57. The nutrient content claims regulations discussed above are intended to ensure that
consumers are not misled as to the actual or relative levels of nutrients in food products.

58. Defendant has violated these referenced regulations. Plaintiff relied on Bigelow's
nutrient content claims when making his purchase decisions and was misled because he
erroneously believed the implicit misrepresentation that the Bigelow products he was purchasing
met the minimum nutritional threshold to make such claims. Antioxidant and nutrient content was

1 important to the Plaintiff in trying to buy “healthy” food products. Plaintiff would not have
2 purchased these products had he known that the Bigelow products did not in fact satisfy such
3 minimum nutritional requirements with regard to the claimed antioxidants and nutrients.

4 59. For these reasons, Defendant’s nutrient content claims are false and misleading
5 and in violation of 21 C.F.R. §§ 101.13 and 101.54 and identical California law, and the products
6 at issue are misbranded as a matter of law. Defendant has violated these referenced regulations.
7 Therefore, Defendant’s Misbranded Food Products are misbranded as a matter of California and
8 federal law and cannot be sold or held and thus are legally worthless. Plaintiff and members of
9 the Class who purchased the Defendant’s Misbranded Food Products paid an unwarranted
10 premium for the products.

11 60. Plaintiff was thus misled by the Defendant’s unlawful labeling practices and
12 actions into purchasing products he would not have otherwise purchased had he known the truth
13 about those products. Plaintiff had cheaper alternatives.

14 61. Defendant’s claims in this respect are false and misleading and the products are in
15 this respect misbranded under identical California and federal laws.

16 2. Defendant Has Made Unlawful and Misleading Antioxidant
17 Nutrient Content Claims

18 62. In addition to Defendant’s violation of the general, basic provisions of the
19 Sherman Law as to making a nutrient content claim, Defendant also has violated identical
20 California and federal labeling regulations specific to antioxidants.

21 63. Federal and California regulations regulate antioxidant claims as a particular type
22 of nutrient content claim. Specifically, 21 C.F.R. § 101.54(g) contains special requirements for
23 nutrient claims that use the term “antioxidant”:

- 24 (1) the name of the antioxidant must be disclosed;
25 (2) there must be an established Recommended Daily Intake (“RDI”) for that
26 antioxidant, and if not, no “antioxidant” claim can be made about it;

1 (3) the label claim must include the specific name of the nutrient that is an
2 antioxidant and cannot simply say “antioxidants” (*e.g.*, “high in antioxidant vitamins C and E”),¹
3 *see* 21 C.F.R. § 101.54(g)(4);

4 (4) the nutrient that is the subject of the antioxidant claim must also have
5 recognized antioxidant activity, *i.e.*, there must be scientific evidence that after it is eaten and
6 absorbed from the gastrointestinal tract, the substance participates in physiological, biochemical
7 or cellular processes that inactivate free radicals or prevent free radical-initiated chemical
8 reactions, *see* 21 C.F.R. § 101.54(g)(2);

9 (5) the antioxidant nutrient must meet the requirements for nutrient content
10 claims in 21 C.F.R. § 101.54(b), (c), or (e) for “High” claims, “Good Source” claims, and “More”
11 claims, respectively. For example, to use a “High” claim, the food would have to contain 20% or
12 more of the Daily Reference Value (“DRV”) or RDI per serving. For a “Good Source” claim, the
13 food would have to contain between 10-19% of the DRV or RDI per serving, *see* 21 C.F.R. §
14 101.54(g)(3); and

15 (6) the antioxidant nutrient claim must also comply with general nutrient
16 content claim requirements such as those contained in 21 C.F.R. § 101.13(h) that prescribe the
17 circumstances in which a nutrient content claim can be made on the label of products high in fat,
18 saturated fat, cholesterol or sodium.

19 64. The antioxidant labeling for Bigelow’s Misbranded Food Products promoting
20 these products violate California law: (1) because the names of the antioxidants are not disclosed
21 on the product labels; (2) because there are no RDIs for the antioxidants being touted, including
22 flavonoids and polyphenols; (3) because the claimed antioxidant nutrients fail to meet the
23 requirements for nutrient content claims in 21 C.F.R. § 101.54(b), (c), or (e) for “High” claims,
24 “Good Source” claims, and “More” claims, respectively; and (4) because Defendant lacks

25 _____
26 ¹ Alternatively, when used as part of a nutrient content claim, the term “antioxidant” or
27 “antioxidants” (such as “high in antioxidants”) may be linked by a symbol (such as an asterisk)
28 that refers to the same symbol that appears elsewhere on the same panel of a product label
followed by the name or names of the nutrients with the recognized antioxidant activity. If this is
done, the list of nutrients must appear in letters of a type size height no smaller than the larger of
one half of the type size of the largest nutrient content claim or 1/16 inch.

1 adequate scientific evidence that the claimed antioxidant nutrients participate in physiological,
2 biochemical, or cellular processes that inactivate free radicals or prevent free radical-initiated
3 chemical reactions after they are eaten and absorbed from the gastrointestinal tract.

4 65. For example, as discussed above, the package label of Bigelow Green Tea with
5 Lemon bears the statement "*Healthy Antioxidants.*" The back panel further boasts, "*Mother*
6 *Nature gave us a wonderful gift when she packed powerful antioxidants into green tea* Similar
7 unlawful statements appear on all Bigelow Green tea products. These same violations were
8 condemned in the FDA Warning Letter to Unilever/Lipton discussed above and attached as
9 Exhibit 2.

10 66. These same violations were condemned in numerous other warning letters to other
11 tea companies of which Defendant knew or should have known including the April 11, 2011
12 warning letter to Diaspora Tea & Herb Co., LLC (attached as Exhibit 3) which states in pertinent
13 part:

14 Additionally, your website bears nutrient content claims using the term
15 "antioxidant." ... Such a claim must also include the names of the nutrients that
16 are the subject of the claim as part of the claim or, alternatively, the term
17 "antioxidant" or "antioxidants" may be linked by a symbol (e.g., an asterisk) that
18 refers to the same symbol that appears elsewhere on the same panel of the product
19 label, followed by the name or names of the nutrients with recognized antioxidant
20 activity, 21 CFR 101.54(g)(4). The use of a nutrient content claim that uses the
21 term "antioxidant" but does not comply with the requirements of 21 CFR
22 101.54(g) misbrands a product under section 403(r)(2)(A)(i) of the Act. The
23 following are examples of nutrient content claims on your website that use the
24 term "antioxidant" but do not include the names of the nutrients that are the
25 subject of the claim as required under 21 CFR 101.54(g)(4): "Yerba Maté is...rich
26 in... antioxidants."; ... "Caffeine-free Green Rooibos...contain[s] high
27 concentrations of antioxidants...."

28 Additionally, the following are examples of nutrient content claims on your
website that use the term "antioxidant," but where the nutrients that are the subject
of the claim do not have an established RDI as required under 21 CFR
101.54(g)(1): ... "White Tea... contain[s] high concentrations of... antioxidant
polyphenols (tea catechins)...."; ... "Antioxidant rich...222mg polyphenols per
serving!"; ... "Antioxidant rich...109mg polyphenols per serving!"

The above violations are not meant to be an all-inclusive list of deficiencies in
your products and their labeling. It is your responsibility to ensure that products
marketed by your firm comply with the Act and its implementing regulations. We
urge you to review your website, product labels, and other labeling and
promotional materials for your products to ensure that the claims you make for
your products do not cause them to violate the Act. The Act authorizes the seizure

1 of illegal products and injunctions against manufacturers and distributors of those
2 products, 21 U.S.C. §§ 332 and 334.

3 67. For these reasons, Defendant's antioxidant claims at issue in this Complaint are
4 misleading and in violation of 21 C.F.R. § 101.54 and California law, and the products at issue
5 are misbranded as a matter of law. Misbranded products cannot be legally manufactured,
6 advertised, distributed, held or sold and are legally worthless. Plaintiff and members of the Class
7 who purchased these products paid an unwarranted premium for these products.

8 68. In addition to the FDA Warning Letters to Unilever and Diaspora Tea & Herb Co.,
9 LLC discussed above (Exhibits 2 and 3), the FDA has issued numerous warning letters addressing
10 similar unlawful antioxidant nutrient content claims. *See, e.g.*, FDA warning letter dated
11 February 22, 2010 to Redco Foods, Inc. regarding its misbranded Salada Naturally Decaffeinated
12 Green Tea product because "there are no RDIs for (the antioxidants) grapeskins, rooibos (red tea)
13 and anthocyanins"; FDA warning letter dated February 22, 2010 to Fleminger Inc. regarding its
14 misbranded TeaForHealth products because the admonition "[d]rink high antioxidant green tea" .
15 . . "does not include the nutrients that are the subject of the claim or use a symbol to link the term
16 antioxidant to those nutrients". These warning letters were hardly isolated. Defendant is aware of
17 these FDA warning letters.

18 69. The types of misrepresentations made above would be considered by a reasonable
19 consumer when deciding to purchase the products. They directly contradict current scientific
20 research, which has concluded: "[T]he evidence today does not support a direct relationship
21 between tea consumption and a physiological AOX [antioxidant] benefit." This conclusion was
22 reported by Dr. Jane Rycroft, Director of Lipton Tea Institute of Tea, in an article published in
23 January, 2011, in which Dr. Rycroft states:

24 Only a few scientific publications report an effect of tea on free radical damage in
25 humans using validated biomarkers in well designed human studies.
26 Unfortunately, the results of these studies are at variance and the majority of the
27 studies do not report significant effects . . .

27 Therefore, despite more than 50 studies convincingly showing that flavonoids
28 possess potent antioxidant activity *in vitro*, the ability of flavonoids to act as an
antioxidant *in vivo* [in humans], has not been demonstrated.

1 Based on the current scientific consensus that the evidence today does not support
2 a direct relationship between tea consumption and a physiological AOX benefit...

3 No evidence has been provided to establish that having antioxidant activity/content
4 and/or antioxidant properties is a beneficial physiological effect.

5 Rycroft, Jane, "The Antioxidant Hypothesis Needs to be Updated," Vol. 1, *Tea Quarterly Tea*
6 *Science Overview*, Lipton Tea Institute of Tea Research (Jan. 2011), pp. 2-3.

7 70. This scientific evidence and consensus conclusively establishes the improper
8 nature of the Defendant's antioxidant claims, as they cannot possibly satisfy the legal and
9 regulatory requirement that the nutrient that is the subject of the antioxidant claim must also have
10 recognized antioxidant activity, *i.e.*, there must be substantial scientific evidence that after it is
11 eaten and absorbed from the gastrointestinal tract, the substance participates in physiological,
12 biochemical or cellular processes that inactivate free radicals or prevent free radical-initiated
13 chemical reactions, *see* 21 C.F.R. § 101.54(g)(2).

14 71. The antioxidant regulations discussed above are intended to ensure that consumers
15 are not misled as to the actual or relative levels of antioxidants in food products and purported
16 beneficial health benefits from consuming the food product.

17 72. Plaintiff relied on Defendant's antioxidant and health claims when making his
18 purchase decisions over the last four years and was misled because he erroneously believed the
19 implicit misrepresentation that the Defendant's products he was purchasing met the minimum
20 nutritional threshold to make such claims. Antioxidant and flavonoid content was important to
21 Plaintiff in trying to buy "healthy" food products. Plaintiff would not have purchased these
22 products had she known that the Defendant's products did not in fact satisfy such minimum
23 nutritional requirements with regard to antioxidants and the consumption of defendant's tea did
24 not, in fact, result in the purported health benefits touted by Defendant.

25 73. For these reasons, Defendant's antioxidant claims at issue in this Complaint are
26 false and misleading and in violation of 21 C.F.R. §§ 101.13 and 101.54 and identical California
27 law, and the products at issue are misbranded as a matter of law. Defendant has violated these
28 referenced regulations. Therefore, Defendant's Misbranded Food Products are misbranded as a
matter of California and federal law and cannot be sold or held and thus are legally worthless.

1 Additionally, Plaintiff was misled and deceived by the actions of the Defendant in violation of
2 California Law.

3 74. Defendants' claims in this respect are false and misleading and the products are in
4 this respect misbranded under identical California and federal laws, Misbranded products cannot
5 be legally sold and are legally worthless. Plaintiff and members of the Class who purchased these
6 products paid an unwarranted premium for these products.

7
8 3. Defendant Has Made Unlawful and Misleading Health Claims

9 75. Defendant violated identical California and federal law by making numerous
10 unapproved health claims about its products. It has also violated identical California and federal
11 law by making numerous unapproved claims about the ability of its products to cure, mitigate,
12 treat and prevent various diseases that render its products unapproved drugs under California and
13 federal law. Moreover, in promoting the ability of its products to have an effect on certain
14 diseases such as cancer and heart disease among others, Defendant has violated the advertising
15 provisions of the Sherman law.

16 76. A health claim is a statement expressly or implicitly linking the consumption of a
17 food substance (*e.g.*, ingredient, nutrient, or complete food) to risk of a disease (*e.g.*,
18 cardiovascular disease) or a health-related condition (*e.g.*, hypertension). *See* 21 C.F.R. §
19 101.14(a)(1), (a)(2), and (a)(5). Only health claims made in accordance with FDCA requirements,
20 or authorized by FDA as qualified health claims, may be included in food labeling. Other express
21 or implied statements that constitute health claims, but that do not meet statutory requirements,
22 are prohibited in labeling foods.

23 77. 21 C.F.R. § 101.14, which has been expressly adopted by California, provides
24 when and how a manufacturer may make a health claim about its product. A "Health Claim"
25 means any claim made on the label or in labeling of a food, including a dietary supplement, that
26 expressly or by implication, including "third party" references, written statements (*e.g.*, a brand
27 name including a term such as "heart"), symbols (*e.g.*, a heart symbol), or vignettes, characterizes
28 the relationship of any substance to a disease or health-related condition. Implied health claims

1 include those statements, symbols, vignettes, or other forms of communication that suggest,
2 within the context in which they are presented, that a relationship exists between the presence or
3 level of a substance in the food and a disease or health-related condition (*see* 21 CFR §
4 101.14(a)(1)).

5 78. Further, health claims are limited to claims about disease risk reduction, and
6 cannot be claims about the diagnosis, cure, mitigation, or treatment of disease. An example of an
7 authorized health claim is: “Three grams of soluble fiber from oatmeal daily in a diet low in
8 saturated fat and cholesterol may reduce the risk of heart disease. This cereal has 2 grams per
9 serving.”

10 79. A claim that a substance may be used in the diagnosis, cure, mitigation, treatment,
11 or prevention of a disease is a drug claim and may not be made for a food. 21 U.S.C. §
12 321(g)(1)(D).

13 80. The use of the term “healthy” is not a health claim but rather an implied nutrient
14 content claim about general nutrition that is defined by FDA regulation.

15 81. 21 C.F.R. § 101.65, which has been adopted by California, sets certain minimum
16 nutritional requirements for making an implied nutrient content claim that a product is healthy.
17 For example, for unspecified foods the food must supply at least 10 percent of the RDI of one or
18 more specified nutrients. Defendants have misrepresented the healthiness of their products while
19 failing to meet the regulatory requirements for making such claims. In general, the term may be
20 used in labeling an individual food product that:

21 Qualifies as both low fat and low saturated fat;

22 Contains 480 mg or less of sodium per reference amount and per labeled serving,
23 and per 50 g (as prepared for typically rehydrated foods) if the food has a reference
24 amount of 30 g or 2 tbsps or less;

25 Does not exceed the disclosure level for cholesterol (*e.g.*, for most individual food
26 products, 60 mg or less per reference amount and per labeled serving size); *and*

27 Except for raw fruits and vegetables, certain frozen or canned fruits and
28 vegetables, and enriched cereal-grain products that conform to a standard of
identity, provides at least 10% of the daily value (DV) of vitamin A, vitamin C,
calcium, iron, protein, *or* fiber per reference amount.

1 Where eligibility is based on a nutrient that has been added to the food, such
2 fortification must comply with FDA's fortification policy.

3 21 C.F.R. § 101.65(d)(2). FDA's regulation on the use of the term healthy also encompasses
4 other, derivative uses of the term health (*e.g.*, healthful, healthier) in food labeling. 21 C.F.R. §
5 101.65(d).

6 82. Bigelow has violated the provisions of 21 C.F.R. § 101.14, 21 C.F.R. § 101.65, 21
7 U.S.C. § 321(g)(1)(D), 21 U.S.C. § 321(m) and 21 U.S.C. § 352(f)(1) on a number of its
8 products. For example, the claim on the green tea package front label: "*Healthy Antioxidants*" and
9 the claim on the package back panel: "*Mother Nature gave us a wonderful gift when she packed*
10 *powerful antioxidants into green tea....*" is in violation of the aforesaid law.

11 83. As FDA found in regard to the therapeutic claims made by Unilever/Lipton and
12 Diaspora Tea & Herb Co. discussed above, the therapeutic claims on Bigelow's labels establish
13 that their products are drugs because they are intended for use in the cure, mitigation, treatment,
14 or prevention of disease. Bigelow's Misbranded Food Products are not generally recognized as
15 safe and effective for the above referenced uses and, therefore, the products are "new drugs"
16 under section 201(p) of 21 U.S.C. § 321(p). New drugs may not be legally marketed in the U.S.
17 without *prior* approval from FDA as described in section 505(a) of 21 U.S.C. § 355(a). FDA
18 approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate
19 that the drug is safe and effective.

20 84. As discussed above and as shown in Exhibits 1 and 2, the FDA has conducted
21 reviews of similar products to Bigelow's tea products and concluded that those companies were
22 "in violation of the Federal Food, Drug, and Cosmetic Act ... and the applicable regulations in
23 Title 21, Code of Federal Regulations, Part 101 (21 CFR 101)." FDA found the products to be
24 misbranded stating, "Your product is offered for conditions that are not amenable to self-
25 diagnosis and treatment by individuals who are not medical practitioners; therefore, adequate
26 directions for use cannot be written so that a layperson can use this drug safely for its intended
27 purposes. Thus, your ... product is misbranded under section 502(f)(1) of the Act in that the
28

1 labeling for this drug fails to bear adequate directions for use [21 U.S.C. § 352(f)(1)].” See
2 Exhibits 1 and 2.

3 85. The package front panel of Bigelow’s Misbranded Food Products claims a level of
4 “*healthy antioxidants*” and “packed powerful antioxidants” but their products do not contain any
5 antioxidant substance or nutrient with an established RDI.

6 86. Plaintiff saw the health related claims on the packages at various times during the
7 Class Period and relied on the Defendant’s health claims which influenced his decision to
8 purchase the Defendant’s products. Plaintiff would not have bought the products had he known
9 Defendant’s claims were false, misleading, unapproved and that the products were misbranded.

10 87. Plaintiff and members of the Class were misled into the belief that such claims
11 were legal and had passed regulatory muster and were supported by science capable of securing
12 regulatory acceptance. Because this was not the case, the Plaintiff and members of the Class have
13 been deceived.

14 88. Defendant’s materials and advertisements not only violate regulations adopted by
15 California such as 21 C.F.R. § 101.14, they also violate California Health & Safety Code §
16 110403 which prohibits the advertisement of products that are represented to have any effect on
17 enumerated conditions, disorders and diseases including cancer and heart diseases unless the
18 claims have federal approval.

19 89. Defendant’s health claims were also improper because of their inadequate
20 nutritional profiles.

21 90. 21 C.F.R. § 101.14, which has been expressly adopted by California, prohibits
22 manufacturers from making any health claim about products that have inadequate nutrient levels.

23 91. In addition, 21 C.F.R. § 101.65, which has been adopted by California, sets certain
24 minimum nutritional requirements for making an implied nutrient content claim that a product is
25 healthy. For example, for unspecified foods the food must be low in fat, saturated fat, sodium and
26 cholesterol and supply at least 10 percent of the RDI of one or more specified nutrients.

1 92. Defendant has misrepresented the healthiness of its products while failing to meet
2 the regulatory thresholds for making such claims either because the products lack minimum
3 nutritional requirements to make such a claim.

4 93. Defendant Misbranded Food Products violate 21 C.F.R. § 101.14 or 21 C.F.R. §
5 101.65.

6 94. Plaintiff saw such health related claims and relied on the Defendant's health
7 claims which influenced his decision to purchase the Defendant's products. Plaintiff would not
8 have bought the products had he known Defendant's products failed to meet the minimum
9 nutritional threshold for such health claims.

10 95. Plaintiff and members of the Class was misled into the belief that such
11 Defendant's products met the minimum nutritional thresholds for the health claims that were
12 made about them. Because this was not the case, the Plaintiff and members of the Class have been
13 deceived.

14 96. Plaintiff and members of the Class have been misled by Defendant's unlawful
15 labeling practices and actions into purchasing products they would not have otherwise purchased
16 had they known the truth about these products. Plaintiff and members of the Class who purchased
17 these products paid an unwarranted premium for these products.

18 97. Defendant's health related claims are false and misleading and the products are in
19 this respect misbranded under identical California and federal laws, Misbranded products cannot
20 be legally sold and thus are legally worthless.

21 **D. Defendant Has Violated California Law**

22 98. The back panel of Bigelow's Misbranded Food Products claims a level of
23 "antioxidants" but their products do not contain any antioxidant substance or nutrient with an
24 established RDI. Bigelow makes various health related benefits to be derived from using its
25 products but, as with the Lipton and Diaspora Tea & Herb Co. products, Bigelow's tea products
26 do not have approval from FDA to make the health related claims. Moreover, the health related
27 claims are in violation of 21 U.S.C. § 352(f)(1) and therefore the products are misbranded.
28

1 99. Defendant has manufactured, advertised, distributed and sold products that are
2 misbranded under California law. Misbranded products cannot be legally manufactured,
3 advertised, distributed, sold or held and are legally worthless as a matter of law.

4 100. Defendant has violated California Health & Safety Code §§ 109885 and 110390
5 which make it unlawful to disseminate false or misleading food advertisements that include
6 statements on products and product packaging or labeling or any other medium used to directly or
7 indirectly induce the purchase of a food product.

8 101. Defendant has violated California Health & Safety Code § 110395 which makes it
9 unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

10 102. Defendant has violated California Health & Safety Code § 110398 which makes it
11 unlawful to deliver or proffer for delivery any food that has been falsely advertised.

12 103. Defendant has violated California Health & Safety Code § 110660 because its
13 labeling is false and misleading in one or more ways, as follows:

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

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

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

23 104. Defendant has violated California Health & Safety Code § 110760 which makes it
24 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
25 misbranded.

26 105. Defendant has violated California Health & Safety Code § 110765 which makes it
27 unlawful for any person to misbrand any food.
28

1 106. Defendant has violated California Health & Safety Code § 110770 which makes it
2 unlawful for any person to receive in commerce any food that is misbranded or to deliver or
3 proffer for deliver any such food.

4 107. Defendant has violated the standard set by 21 C.F.R. § 101.2, which has been
5 incorporated by reference in the Sherman Law, by failing to include on their product labels the
6 nutritional information required by law.

7 108. Defendant has violated the standards set by 21 CFR §§ 101.13, and 101.54, which
8 have been adopted by reference in the Sherman Law, by including unauthorized antioxidant
9 claims on their products. Defendant has violated the standards set by 21 CFR §§ 101.14, and
10 101.65, which have been adopted by reference in the Sherman Law, by including unauthorized
11 health and healthy claims on their products.

12 **E. Plaintiff Purchased Defendant's Misbranded Food Products**

13 109. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
14 diet.

15 110. Plaintiff purchased Defendant's Misbranded Food Products at issue in this Fourth
16 Amended Complaint and throughout the Class Period.

17 111. Plaintiff purchased Defendant's Misbranded Food Products at issue in this
18 Fourth Amended Complaint on numerous occasions throughout the Class Period including the
19 following products: Green Tea; Green Tea with Lemon, and Green Tea Naturally Decaffeinated.

20 112. Plaintiff read the labels on Defendant's Misbranded Food Products, including the
21 antioxidant, nutrient content, and health claims, where applicable, before purchasing them.
22 Plaintiff would have foregone purchasing Defendant's products and bought other products readily
23 available at a lower price.

24 113. Plaintiff reasonably relied on Defendant's package labeling and packaging and
25 product placement. Plaintiff read the antioxidant, nutrient content and health labeling claims
26 including the "healthy antioxidants," and "packed with powerful antioxidants" claims and based
27 and justified the decision to purchase Defendant's products in substantial part on Defendant's
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1 package labeling including the antioxidant, nutrient content and health labeling claims, and
2 representations related to Defendant's food products before purchasing them.

3 114. Plaintiff reasonably relied on Defendant's package labeling, packaging, and
4 product placement, and justified the decision to purchase Defendant's Misbranded Food Products
5 in substantial part on Defendant's package labeling as well as product packaging and product
6 placement including the claims, and based and justified the decision to purchase Defendant's
7 products in substantial part on Defendant's package labeling including the antioxidant, nutrient
8 content and health labeling claims including the "healthy antioxidants," and "packed with
9 powerful antioxidants" claims, and representations related to Defendant's food products before
10 purchasing them.

11 115. At the point of sale, Plaintiff did not know, and had no reason to know, that
12 Defendant's products were misbranded as set forth herein, and would not have bought the
13 products, or paid a premium for them, had he known the truth about them.

14 116. At point of sale, Plaintiff did not know, and had no reason to know, that
15 Defendant's antioxidant, nutrient content and health labeling claims including the "healthy
16 antioxidants," and "packed with powerful antioxidants" claims on the products' labels were
17 unlawful and unauthorized as set forth herein, and would not have bought the products had he
18 known the truth about them.

19 117. After Plaintiff learned that Defendant's Misbranded Food Products are falsely
20 labeled, he stopped purchasing them.

21 118. Plaintiff justified the decision to purchase Defendant's products in substantial part
22 on Defendant's false and unlawful representations.

23 119. As a result of Defendant's misrepresentations, Plaintiff and thousands of others in
24 California purchased the Misbranded Food Products at issue.

25 120. Defendant's labeling, advertising and marketing as alleged herein are false and
26 misleading and were designed to increase sales of the products at issue. Defendant's
27 misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a
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1 reasonable person would attach importance to Defendant's representations in determining
2 whether to purchase the products at issue.

3 121. A reasonable person would also attach importance to whether Defendant's
4 products were legally salable, and capable of legal possession, and to Defendant's representations
5 about these issues in determining whether to purchase the products at issue. Plaintiff would not
6 have purchased Defendant's Misbranded Food Products had he known they were not capable of
7 being legally sold or held.

8 122. These Misbranded Food Products 1) whose essential characteristics had been
9 misrepresented by the Defendant; 2) which had their nutritional and health benefits
10 misrepresented and overstated by the Defendant, and 3) which were misbranded products which
11 could not be resold and whose very possession was illegal; were worthless to the Plaintiff and as a
12 matter of law.

13 **F. All Misbranded Food Products Are Substantially Similar**

14 123. Defendant's Misbranded Food Products, i.e., all greens teas, are substantially
15 similar.

16 124. The Misbranded Food Products have the same labels, packaging, and sizes.

17 125. The Misbranded Food Products are the same product, tea. The only difference in
18 the Misbranded Food Products is the flavor of the tea.

19 **CLASS ACTION ALLEGATIONS**

20 126. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
21 23(b)(2) and 23(b)(3) on behalf of the following class:

22 All persons in California who purchased Defendant's Green tea products for
23 personal or household use since May 2, 2008 (the "Class").

24 127. The following persons are expressly excluded from the Class: (1) Defendant and
25 its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
26 proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its
27 staff.

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

3 129. Numerosity: Based upon Defendant's publicly available sales data with respect to
4 the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
5 joinder of all Class members is impracticable.

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

- 11 a. Whether Defendant engaged in unlawful, unfair or deceptive
12 business practices by failing to properly package and label its
Misbranded Food Products sold to consumers;
- 13 b. Whether the food products at issue were misbranded or unlawfully
14 packaged and labeled as a matter of law;
- 15 c. Whether Defendant made unlawful and misleading antioxidant,
16 nutrient content and health related claims with respect to the food
products it sold to consumers;
- 17 d. Whether Defendant violated California Bus. & Prof. Code § 17200
18 *et seq.*, California Bus. & Prof. Code § 17500 *et seq.*, the Consumer
Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, and the
Sherman Law;
- 19 e. Whether Plaintiff and the Class are entitled to equitable and/or
20 injunctive relief;
- 21 f. Whether Defendant's unlawful, unfair and/or deceptive practices
22 harmed Plaintiff and the Class; and
- 23 g. Whether Defendant was unjustly enriched by its deceptive
practices.

24 131. Typicality: Plaintiff's claims are typical of the claims of the Class because
25 Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's
26 unlawful, unfair and/or fraudulent actions concern the same business practices described herein
27 irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar
28 injuries arising out of Defendant's conduct in violation of California law. The injuries of each

1 member of the Class were caused directly by Defendant's wrongful conduct. In addition, the
2 factual underpinning of Defendant's misconduct is common to all Class members and represents
3 a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims
4 arise from the same practices and course of conduct that give rise to the claims of the Class
5 members and are based on the same legal theories.

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

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

3 153. Defendant sold Plaintiff and the Class Misbranded Food Products that were not
4 capable of being legally sold or held and that were legally worthless. Plaintiff and the Class paid a
5 premium for the Misbranded Food Products.

6 154. Plaintiff and the Class who purchased Defendant's Misbranded Food Products had
7 no way of reasonably knowing that the products were misbranded and were not properly
8 marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the
9 injury suffered.

10 155. The consequences of Defendant's conduct as set forth herein outweigh any
11 justification, motive or reason therefore. Defendant's conduct is and continues to be immoral,
12 unethical, illegal, unscrupulous, contrary to public policy, and is substantially injurious to
13 Plaintiff and the Class.

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

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21 **THIRD CAUSE OF ACTION**

22 **Business and Professions Code § 17200 *et seq.***
23 **Fraudulent Business Acts and Practices**

24 157. Plaintiff incorporates by reference each allegation set forth above.

25 158. Defendant's conduct as set forth herein constitutes fraudulent business practices
26 under California Business and Professions Code sections § 17200 *et seq.*

27 159. Defendant sold Misbranded Food products nationwide and in California during the
28 Class Period.

1 contained in Business and Professions Code §17500 *et seq.* in that such product packaging and
2 labeling, and promotional materials were intended as inducements to purchase Defendant's
3 Misbranded Food Products and are statements disseminated by Defendant to Plaintiff and the
4 Class that were intended to reach members of the Class. Defendant knew, or in the exercise of
5 reasonable care should have known, that these statements were misleading and deceptive as set
6 forth herein.

7
8 168. In furtherance of its plan and scheme, Defendant prepared and distributed within
9 California and nationwide via product packaging and labeling, and other promotional materials,
10 statements that misleadingly and deceptively represented the composition and nature of
11 Defendant's Misbranded Food Products. Plaintiff and the Class necessarily and reasonably relied
12 on Defendant's materials, and were the intended targets of such representations.

13 169. Defendant's conduct in disseminating misleading and deceptive statements in
14 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
15 consumers by obfuscating the true composition and nature of Defendant's Misbranded Food
16 Products in violation of the "misleading prong" of California Business and Professions Code §
17 17500 *et seq.*

18 170. As a result of Defendant's violations of the "misleading prong" of California
19 Business and Professions Code § 17500 *et seq.*, Defendant has been unjustly enriched at the
20 expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and are
21 legally worthless. Plaintiff and the Class paid a premium price for the Misbranded Food Products.

22 171. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
23 entitled to an order enjoining such future conduct by Defendant, and such other orders and
24 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
25 money paid for Defendant's Misbranded Food Products by Plaintiff and the Class.

26 **FIFTH CAUSE OF ACTION**

27 **Business and Professions Code § 17500 *et seq.*** **Untrue Advertising**

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

1 173. Plaintiff asserts this cause of action against Defendant for violations of California
2 Business and Professions Code § 17500 *et seq.*, regarding untrue advertising.

3 174. Defendant sold mislabeled Misbranded Food Products nationwide and in
4 California during the Class Period.

5 175. Defendant engaged in a scheme of offering Defendant's Misbranded Food
6 Products for sale to Plaintiff and the Class by way of product packaging and labeling, and other
7 promotional materials. These materials misrepresented and/or omitted the true contents and
8 nature of Defendant's Misbranded Food Products. Defendant's advertisements and inducements
9 were made in California and come within the definition of advertising as contained in Business
10 and Professions Code §17500 *et seq.* in that the product packaging and labeling, and promotional
11 materials were intended as inducements to purchase Defendant's Misbranded Food Products, and
12 are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the
13 exercise of reasonable care should have known, that these statements were untrue.

14 176. In furtherance of its plan and scheme, Defendant prepared and distributed in
15 California and nationwide via product packaging and labeling, and other promotional materials,
16 statements that falsely advertise the composition of Defendant's Misbranded Food Products, and
17 falsely misrepresented the nature of those products. Plaintiff and the Class were the intended
18 targets of such representations and would reasonably be deceived by Defendant's materials.

19 177. Defendant's conduct in disseminating untrue advertising throughout California and
20 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and
21 quality of Defendant's Misbranded Food Products in violation of the "untrue prong" of California
22 Business and Professions Code § 17500.

23 178. As a result of Defendant's violations of the "untrue prong" of California Business
24 and Professions Code § 17500 *et seq.*, Defendant has been unjustly enriched at the expense of
25 Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally
26 worthless. Plaintiff and the Class paid a premium price for the Misbranded Food Products.
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1 of competition and unfair or fraudulent acts or practices in that it misrepresents the particular
2 ingredients, characteristics, uses, benefits and quantities of the goods.

3 189. By engaging in the conduct set forth herein, Defendant violated and continues to
4 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods
5 of competition and unfair or fraudulent acts or practices in that it misrepresents the particular
6 standard, quality or grade of the goods.

7 190. By engaging in the conduct set forth herein, Defendant violated and continues to
8 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods
9 of competition and unfair or fraudulent acts or practices in that Defendant advertises goods with
10 the intent not to sell the goods as advertised.

11 191. By engaging in the conduct set forth herein, Defendant has violated and continue
12 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair
13 methods of competition and unfair or fraudulent acts or practices in that Defendant represents that
14 a subject of a transaction has been supplied in accordance with a previous representation when
15 they have not.

16 192. Plaintiff requests that the Court enjoin Defendant from continuing to employ the
17 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
18 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class
19 will continue to suffer harm.

20 193. Pursuant to Section 1782(a) of the CLRA, Plaintiff's counsel served Defendant
21 with notice of Defendant's violations of the CLRA. Plaintiff's counsel served Defendant by
22 certified mail, return receipt requested.

23 194. Defendant has failed to provide appropriate relief for its violations of the CLRA
24 within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to Sections
25 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages, punitive damages,
26 attorneys' fees and costs, and any other relief the Court deems proper.
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and the Class, in light of the fact that the products were not what Defendant purported them to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to Plaintiff and the Class of all monies paid to Defendant for the products at issue.

202. As a direct and proximate result of Defendant’s actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his and the Class’ claims.

PRAYER FOR RELIEF

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

- A. For an order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;
- B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the Class;
- C. For an order requiring Defendant to immediately cease and desist from selling its Misbranded Food Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;
- D. For all remedies available pursuant to Cal. Civ. Code § 1780;
- E. For an order awarding attorneys’ fees and costs;
- F. For an order awarding punitive damages;
- G. For an order awarding pre-and post-judgment interest; and
- H. For an order providing such further relief as this Court deems proper.

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Dated: August 14, 2015

Respectfully submitted,

s/J. Price Coleman

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