

1 Benjamin M. Lopatin, Esq. (SBN 281730)
2 blopatin@ELPlawyers.com
3 EGGNATZ, LOPATIN & PASCUCCI, LLP
4 2201 Market St., Suite H
5 San Francisco, CA 94114
6 Tel.: (415) 324-8620
7 Fax: (415) 520-2262

8 *Counsel for Plaintiff Mojan Kazemi*
9 *and the Proposed Class*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **MOJAN KAZEMI**, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 **DAVE’S GOURMET, INC.**, a Virginia
17 corporation,

18 Defendant.

CASE NO.: 16-cv-5269

JUDGE:

COMPLAINT

CLASS ACTION

1. Violations of Bus. & Prof. Code §§ 17500 *et seq.* (False Advertising Law);
2. Violations of Bus. & Prof. Code §§ 17200 *et seq.* (Fraudulent Prong of Unfair Competition Law);
3. Violations of Bus. & Prof. Code §§ 17200 *et seq.* (Unfair Prong of Unfair Competition Law);
4. Violations of Bus. & Prof. Code §§ 17200 *et seq.* (Unlawful Prong of Unfair Competition Law);
5. Violations of Florida’s Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, *et seq.*; and
6. Negligent Misrepresentation.

JURY TRIAL DEMANDED

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1 Plaintiff, Mojan Kazemi (“Plaintiff”), individually, and on behalf of all others similarly
2 situated (“Putative Class”), by and through the undersigned counsel, and pursuant to all applicable
3 *Federal Rules of Civil Procedure*, hereby files this Class Action Complaint, and alleges against
4 Defendant, Dave’s Gourmet, Inc., (“Dave’s Gourmet” or “Defendant”), as follows:

5 **I. INTRODUCTION**

6 1. At all material times hereto, Defendant has unlawfully, fraudulently, unfairly,
7 misleadingly, and/or deceptively represented that several varieties of its pasta sauces contain
8 Evaporated Cane Juice (“ECJ”), despite the fact that ECJ is a term which is prohibited from use
9 on food labels under California, Florida, and federal law. Defendant’s pasta sauces include, but
10 are not limited to, the following varieties:

- 11 a. Red Heirloom Pasta Sauce;
12 b. Butternut Squash Pasta Sauce;
13 c. Roasted Garlic & Sweet Basil Pasta Sauce;
14 d. Spicy Heirloom Marinara Pasta Sauce; and
15 e. all other substantially similar products
16 (collectively “Products”).

17 2. The Products’ ECJ ingredient listing is false or likely to deceive reasonable
18 consumers because ECJ is a term which is prohibited from use on food labels under California,
19 Florida, and federal law because it misleads consumers into thinking they are not purchasing the
20 functional equivalent of “sugar.”

21 3. Therefore, Plaintiff brings this class action individually, and on behalf of all others
22 similarly situated, to secure, among other things, equitable relief, declaratory relief, restitution, and
23 in the alternative damages, for a Putative Class of similarly situated purchasers, against Defendant,
24 for: (1) Violations of Business and Professions Code §§ 17500 *et seq.* (False Advertising Law or
25 FAL); (2) Violations of Business and Professions Code §§ 17200 *et seq.* (Fraudulent Prong of
26 UCL); (3) Violations of Business and Professions Code §§ 17200 *et seq.* (Unfair Prong of Unfair
27 Competition Law or UCL); (4) Violations of Business and Professions Code §§ 17200 *et seq.*

1 (Unlawful Prong of UCL); (5) Violations of Florida’s Deceptive and Unfair Trade Practices Act,
2 FLA. STAT. §§ 501.201, *et seq.*; and (6) Negligent Misrepresentation.

3 4. In addition, Plaintiff is seeking an Order requiring Defendant to cease from
4 representing on the packaging, website, and all other advertising that the Products contain ECJ.

5 5. Plaintiff expressly does not seek to contest or enforce any state law that has
6 requirements beyond those required by federal laws or regulations.

7 6. All allegations herein are based on information and belief and/or are likely to have
8 evidentiary support after reasonable opportunity for further investigation and discovery.

9 **II. JURISDICTION AND VENUE**

10 7. This Court has jurisdiction over the subject matter presented by this Class Action
11 Complaint because it is a class action arising under the Class Action Fairness Act of 2005
12 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original
13 jurisdiction of the Federal Courts of any class action in which any member of the Putative Class is
14 a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in
15 the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Pursuant to 28 U.S.C. §
16 1332(d)(2)(A), Plaintiff alleges that the total claims of the individual members of the Putative Class
17 in this action are in excess of \$5,000,000.00, in the aggregate, exclusive of interest and costs, and
18 as set forth below, diversity of citizenship exists under CAFA because, as more fully set forth
19 below, Plaintiff is a citizen of Florida and Defendant can be considered a citizen of Virginia for
20 diversity purposes.

21 8. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as
22 set forth below, Defendant conducts business in, and may be found in, this district, and Plaintiff
23 purchased the subject Products of this action in this judicial district.

24 **III. PARTIES**

25 9. Plaintiff, Mojan Kazemi, is an individual more than 18 years old, and is a citizen of
26 Florida, who resides in Palm Beach County. Plaintiff respectfully requests a jury trial on all damage
27 claims.
28

1 10. Defendant Dave's Gourmet is a Virginia corporation with its principal place of
2 business located at 2000 Mckinnon Avenue, Bldg. 428, Suite 5, San Francisco, California 94124.
3 Defendant can be considered a "citizen" of California or Virginia for diversity purposes. At all
4 times material hereto Defendant promoted and marketed the Products at issue in this jurisdiction
5 and in this judicial district.

6 11. The advertising for the Products relied upon by Plaintiff was prepared and/or
7 approved by Defendant and its agents, with such advertising originating in this State, and was
8 disseminated by Defendant and its agents through advertising containing the misrepresentations
9 alleged herein.

10 12. The advertising for the Products was designed to encourage consumers to purchase
11 the Products and reasonably misled the reasonable consumer, i.e. Plaintiff and the Putative Class
12 into purchasing the Products.

13 13. Defendant is the owner, manufacturer, and distributor of the Products, and is the
14 company that created and/or authorized the unlawful, fraudulent, unfair, misleading, and/or
15 deceptive advertising and statements for the Products.

16 14. Plaintiff alleges that, at all times relevant herein, Defendant and its subsidiaries,
17 affiliates, and other related entities, as well as their respective employees, were the agents, servants
18 and employees of Defendant, and at all times relevant herein, each was acting within the purpose
19 and scope of that agency and employment.

20 15. Plaintiff further alleges on information and belief that at all times relevant herein,
21 the distributors and retailers who delivered and sold the Products, as well as their respective
22 employees, also were Defendant's agents, servants, and employees, and at all times herein, each
23 was acting within the purpose and scope of that agency and employment.

24 16. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein,
25 Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their
26 respective employees, planned, participated in and furthered a common scheme to induce members
27 of the public to purchase the Products by means of untrue, misleading, deceptive, and/or fraudulent
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1 representations, and that Defendant participated in the making of such representations in that it
2 disseminated those misrepresentations and/or caused them to be disseminated.

3 17. Whenever reference in this Complaint is made to any act by Defendant or its
4 subsidiaries, affiliates, distributors, retailers, and other related entities, such allegation shall be
5 deemed to mean that the principals, officers, directors, employees, agents, and/or representatives
6 of Defendant committed, knew of, performed, authorized, ratified, and/or directed that act or
7 transaction on behalf of Defendant while actively engaged in the scope of their duties.

8 **IV. FACTUAL ALLEGATIONS**

9 **Defendant's Unlawful Advertising of the Products**

10 18. At all material times hereto, Defendant manufactures, distributes, markets,
11 advertises, and sells the Products that list ECJ as an ingredient when in fact, that claim is false,
12 deceptive, and likely to mislead reasonable consumers, because ECJ is a term which is prohibited
13 from use on food labels under California, Florida, and federal law.

14 19. Defendant's listing of ECJ is displayed on the ingredient panel of each individual
15 packaging of the Products.

16 20. Defendant unlawfully markets, advertises, sells and distributes the Products
17 throughout the United States to purchasers in grocery stores, food chains, mass discounters, mass
18 merchandisers, club stores, convenience stores, drug stores, and/or dollar stores as containing ECJ.

19 21. All of the Products' labeling and/or packaging uniformly and consistently state that
20 the Products contain ECJ.

21 22. As a result, all consumers within the Putative Class, including Plaintiff, who
22 purchased the Products, were exposed to the same ECJ deception in the same location on the
23 ingredient label of the packaging for the Products.

24 23. Plaintiff and members of the Putative Class would have paid less for the Products
25 or would not have purchased the Products had they known that the Products' listing of ECJ as an
26 ingredient claim was false, misleading, and deceptive.

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1 24. In addition, Plaintiff and members of the Putative Class, were charged a price
2 premium for the Products over and above other comparable products that do not claim to list ECJ
3 as an ingredient.

4 **Identical California, Florida, and federal laws Regulate Food Labeling**

5 25. Food manufacturers are required to comply with federal and state laws and
6 regulations governing the labeling of the food products. Primary among these laws is the Federal
7 Food, Drug, and Cosmetic Act (“FDCA”) and its labeling regulations, including those set forth in
8 21 C.F.R. 101.

9 26. California, Florida, and federal law have placed similar requirements on food
10 companies that are designed to ensure that the claims companies make to consumers about their
11 products are both honest and accurate.

12 27. Pursuant to California’s Sherman Food, Drug & Cosmetic Law (the “Sherman
13 Act”), California has expressly adopted the federal labeling requirements and indicated that “[a]ll
14 food labeling regulations and any amendments to those regulations adopted pursuant to the federal
15 act, in effect on January 1, 1993, or adopted on or after that date shall be the food regulations of
16 this state.” *California Health & Safety Code* §§ 110100 *et seq.*

17 28. Additionally, pursuant to the Florida Food Safety Act, the purpose of that chapter is
18 to “[p]rovide legislation which shall be uniform, as provided in this chapter, and administered so
19 far as practicable in conformity with the provisions of, and regulations issued under the authority
20 of, the Federal Food, Drug, and Cosmetic Act [...] to the extent that it expressly prohibits the false
21 advertisement of food.” FLA. STAT. § 500.02.

22 29. California and Florida have also enacted various laws and regulations that adopt and
23 incorporate specific enumerated federal food laws and regulations. For example, food products are
24 misbranded under section 110660 of the *California Health & Safety Code* if their labeling is false
25 and misleading in one or more particulars. Additionally, under Florida law, the “manufacture, sale
26 or delivery, holding or offering for sale of any food that is adulterated or misbranded” is prohibited.
27 FLA. STAT. § 500.04(1).

28

1 30. Likewise, under the FDCA section 403(a), a food is “misbranded” if “its labeling is
2 false or misleading in any particular,” or “its advertising is false or misleading in a material
3 respect.” 21 U.S.C. § 343(a).

4 31. Thus, the California and Florida claims alleged herein are parallel to those of the
5 FDCA.

6 **Defendant’s Use of “Evaporated Cane Juice” As an Ingredient on Its Labels**
7 **is False, Deceptive, and Misleading**

8 32. Defendant has unfairly, unlawfully, deceptively, and misleadingly represented that
9 the Products contain ECJ as an ingredient on the ingredient label of its packaging. Notably, the
10 proper term to use instead of ECJ is “sugar.”¹

11 33. Defendant’s listing of ECJ as an ingredient is false or likely to deceive reasonable
12 consumers because Defendant uses the term “ECJ” to make its Products appear healthier than a
13 product that contains added sugar as an ingredient.

14 34. The labeling and advertising for the Products was designed to encourage consumers
15 to purchase the Products with the belief that the Products contain no sugar and are healthier, when
16 in fact, the Products contain the functional equivalent of sugar: ECJ.

17 35. Defendant’s product labeling fails to accurately identify sugar as an “added
18 ingredient” of its food products. Rather, the label identifies ECJ as an ingredient, despite the fact
19 that the FDCA requires that the ingredient be called “sugar” or “dried cane syrup.” The ingredient
20 is not “juice,” but is “sugar” or “syrup.” 21 C.F.R. § 101.4 (a)(1) provides “[i]ngredients required
21 to be declared on the label or labeling of a food...shall be listed by common or usual name... .”
22 The common or usual name for an ingredient is the name established by common usage or by
23 regulation. 21 C.F.R. § 102.5. These federal regulations have been adopted by California pursuant
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25
26 1. Plaintiff alleges that the ingredient called “evaporated cane juice” used by Defendant was in
27 fact sugar. It is possible, however, that instead of adding crystallized sugar as the ingredient at issue
28 that the Defendant added dried sugar cane syrup as the ingredient at issue. The common and usual
name of such a syrup is “dried cane syrup” as detailed in 21 C.F.R. § 168.130. Regardless of
whether the ingredient in question was sugar or dried cane syrup, calling the ingredient ECJ is
unlawful and violates the same state and federal statutory and regulatory provisions and is contrary
to FDA policy and guidance.

1 to the Sherman Law. As discussed below, ECJ is not the common or usual name of any sweetener
2 as established by common usage or by regulation.

3 36. Further, the Food and Drug Administration (“FDA”) has specifically warned
4 companies not to use the term “evaporated cane juice.” The FDA has issued these warnings because
5 a label containing the term “evaporated cane juice” (1) is “false and misleading;” (2) it is a violation
6 of a number of labeling regulations designed to ensure that manufacturers label their products with
7 the common and usual names of the ingredients they use and accurately describe the ingredients
8 they utilize; and (3) the ingredient in question is not a juice.

9 37. According to the FDA’s published policy, “evaporated cane juice” is simply a “false
10 and misleading” way of describing sugar, and therefore, it is improper to disguise sugar in a product
11 as a type of “juice.”

12 38. In October of 2009, the FDA issued *Guidance for Industry: Ingredients Declared*
13 *as Evaporated Cane Juice, Draft Guidance*,² (“2009 ECJ Guidance”) which advised industry that
14 sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by
15 names which suggest that the ingredients are juice, such as “evaporated cane juice.” The **FDA**
16 **considers such representations to be “false and misleading”** under section 403(a)(1) of the Act
17 (21 U.S.C. § 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing
18 properties (i.e., that the ingredients are sugars or syrups) as required by 21 C.F.R. section 102.5.

19 39. Defendant violated 21 C.F.R. §§ 101.4 and 102.5 (adopted and incorporated by
20 reference by Sherman Law § 110100 and Sherman Law § 110725). Sherman Law § 110725
21 mandates that a product is misbranded if the common and usual ingredient names are not used.
22 Further, the *Florida Statutes* mandate that a product is misbranded if the common and usual
23 ingredient names are not used. FLA. STAT. § 500.09(b).

24 40. As a result of Defendant’s misrepresentations, Plaintiff purchased the Products
25 instead of other similar products that did not make the false ECJ ingredient listing.

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27
28 2. See *ECJ Guidance*, FDA,
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm> (last visited Sept. 13, 2016).

1 41. Plaintiff and members of the Putative Class relied upon Defendant's ECJ ingredient
2 listing in making their purchase of the Products.

3 42. Plaintiff and members of the Putative Class would not have purchased the Products
4 if they did not contain ECJ, or in the alternative, Plaintiff and members of the Putative Class would
5 not have paid the premium purchase price they paid for the Products.

6 43. Thus, Defendant's ECJ ingredient listing is false, misleading, and likely to deceive
7 reasonable consumers such as Plaintiff and the Putative Class, into purchasing the Products.

8 44. Plaintiff and the other Putative Class members reasonably relied to their detriment
9 on Defendant's misleading representations and omissions.

10 45. Plaintiff and the other Putative Class members were among the intended recipients
11 of Defendant's deceptive representations and omissions.

12 46. Upon information and belief, Defendant made the deceptive representations and
13 omissions regarding the Products with the intent to induce Plaintiff's and the other Putative Class
14 members' purchase of the Products.

15 47. Defendant's representations and omissions are material in that a reasonable person
16 would attach importance to such information and would be induced to act upon such information
17 in making purchase decisions.

18 48. Thus, Plaintiff's and the other Putative Class members' reliance upon Defendant's
19 misleading and deceptive representations and omissions may be presumed. The materiality of those
20 representations and omissions also establishes causation between Defendant's conduct and the
21 injuries sustained by Plaintiff and the Putative Class.

22 49. Upon information and belief, in making the false, misleading, and deceptive
23 representations and omissions, Defendant knew and intended that consumers would pay a price
24 premium for the Products over comparable products that are not represented as containing ECJ,
25 thereby furthering Defendant's private interest of increasing sales for the Products, and decreasing
26 the sales of products by Defendant's competitors that do not claim to contain ECJ.

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1 50. As an immediate, direct, and proximate result of Defendant's false, misleading, and
2 deceptive representations and omissions, Defendant injured Plaintiff and the other Putative Class
3 members in that Plaintiff and other Putative Class members:

- 4 a. paid a sum of money for the Products that was not as represented;
5 b. paid a premium price for the Products that was not as represented;
6 c. were deprived the benefit of the bargain because the Products they purchased were
7 different than what Defendant warranted;
8 d. were deprived the benefit of the bargain because the Products they purchased had
9 less value than what was represented by Defendant;
10 e. did not receive a product that measured up to their expectations as created by
11 Defendant;
12 f. purchased a product that was of a lower quality than what Defendant promised;
13 g. were denied the benefit of knowing what they ingested; and
14 h. were denied the benefit of truthful consumer food labels.

15 51. Had Defendant not made the false, misleading, and deceptive representations and
16 omissions, Plaintiff and the other Putative Class members would not have been economically
17 injured because Plaintiff and the other Putative Class members would have paid less for the
18 Products or would not have purchased the Products at all.

19 52. Accordingly, Plaintiff and the other Putative Class members have suffered injury in
20 fact and lost money or property as a result of Defendant's wrongful conduct.

21 53. Plaintiff and the Putative Class face a real and immediate threat of future harm in
22 the form of deceptively labeled, packaged, and marketed Products sold at inflated prices based upon
23 the deception that the Products contain ECJ, despite the fact that ECJ is a term which is prohibited
24 from use on food labels under California, Florida, and federal law. Absent an injunctive order,
25 Plaintiff and the Putative Class cannot rely on Defendant's Products to be truthful and non-
26 misleading, and the Products will continue to be sold at an artificially inflated price beyond its true
27 market value.
28

1 a. **Nationwide Class.** Plaintiff brings this action on behalf of Plaintiff and on behalf
2 of a nationwide class, as follows:

3 i. **Nationwide Class.**

4 1. Pursuant to Rule 23(a) and (b)(2), all individuals who purchased one
5 or more of the Products throughout the United States, for personal
6 use and not resale, during the four-year period preceding the date of
7 the filing of this Complaint, through and to the date Notice is
8 provided to the Class;

9 2. Pursuant to Rule 23(a) and (b)(3) all individuals who purchased one
10 or more of the Products, throughout the United States for personal
11 use and not resale, during the four-year period preceding the date of
12 the filing of this Complaint, through and to the date Notice is
13 provided to the Class.

14 ii. **Statewide Class.** Plaintiff brings this action on behalf of Plaintiff and on
15 behalf of a statewide class, as follows:

16 1. **Florida Class.**

17 a. Pursuant to Rule 23(a) and (b)(2), all individuals who
18 purchased one or more of the Products throughout the State
19 of Florida, for personal use and not resale, during the four-
20 year period preceding the date of the filing of this Complaint,
21 through and to the date Notice is provided to the Class;

22 b. Pursuant to Rule 23(a) and (b)(3), all individuals who
23 purchased one or more of the Products throughout the State
24 of Florida, for personal use and not resale, during the four-
25 year period preceding the date of the filing of this Complaint,
26 through and to the date Notice is provided to the Class.

27 62. Plaintiff respectfully reserves the right to amend the Class definition if further
28 investigation and discovery indicates that the Class definition should be narrowed, expanded, or

1 otherwise modified, including a reservation of the right to seek to certify subclasses, if discovery
2 reveals that modifying the class definitions and/or seeking additional subclasses would be
3 appropriate, including subclasses by state and/or purchase location.

4 63. Excluded from the Putative Class are governmental entities, Defendant, any entity
5 in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
6 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded
7 from the Putative Class is any judge, justice, or judicial officer presiding over this matter and the
8 members of their immediate families and judicial staff.

9 64. Defendant's representations, practices, and/or omissions were applied uniformly to
10 all members of the Putative Class, including any subclass, so that the questions of law and fact are
11 common to all members of the Putative Class and any subclass.

12 65. All members of the Putative Class and any subclass were and are similarly affected
13 by the deceptive advertising for the Products, and the relief sought herein is for the benefit of
14 Plaintiff and members of the Putative Class and any subclass.

15 **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**

16 66. Based on the annual sales of the Products and the popularity of the Products, it is
17 readily apparent that the number of consumers in both the Putative Class and any subclass are so
18 large as to make joinder impractical, if not impossible. Members of the Putative Class and any
19 subclass may be notified of the pendency of this action by recognized, Court-approved notice
20 dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or
21 published notice.

22 **Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and (b)(3)**

23 67. Questions of law and fact common to the Putative Class and any subclass exist that
24 predominate over questions affecting only individual members, including:

- 25 a. Whether Defendant's business practices and representations related to the
26 marketing, labeling, and sales of the Products were unfair, deceptive, fraudulent,
27 and/or unlawful in any respect, thereby violating Cal. Bus. & Prof. Code §§ 17200
28 *et seq.*;

- 1 b. Whether Defendant violated Cal. Bus. & Prof. Code §§ 17500 *et seq.*, with its
2 practices and representations related to the marketing, labeling, and sales of the
3 Products;
4 c. Whether Defendant violated Florida Deceptive and Unfair Trade Practices Act,
5 Sections 501.201 to 201.213, *Florida Statutes* by engaging in false, deceptive, or
6 misleading advertising or unfair methods of competition;
7 d. Whether Defendant’s conduct as set forth above constitutes negligent
8 misrepresentation;
9 e. Whether knowledge of the fact that the Products contain sugar, and not ECJ, is
10 material to a reasonable consumer;
11 f. Whether the claim that the Products contain ECJ is misleading to a reasonable
12 consumer;
13 g. Whether a reasonable consumer is likely to be deceived by claims that the Products
14 contain ECJ, despite the fact that ECJ is a term which is prohibited from use on food
15 labels under California, Florida, and federal law;
16 h. Whether Defendant’s conduct as set forth above injured consumers, and if so, the
17 extent of the injury.

18 **Typicality—Federal Rule of Civil Procedure 23(a)(3)**

19 68. The claims asserted by Plaintiff in this action are typical of the claims of the
20 members of the Putative Class and any subclass, as the claims arise from the same course of conduct
21 by Defendant, and the relief sought within the Putative Class and any subclass is common to the
22 members of each. Further, there are no defenses available to Defendant that are unique to Plaintiff.

23 **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4):**

24 69. Plaintiff will fairly and adequately represent and protect the interests of the members
25 of the Putative Class and any subclass.

26 70. Plaintiff has retained counsel competent and experienced in both consumer
27 protection and class action litigation. The Putative Class’s and any subclass’s interests will be fairly
28 and adequately protected by Plaintiff’s counsel. Undersigned counsel has represented consumers

1 in a wide variety of actions where they have sought to protect consumers from fraudulent and
2 deceptive practices.

3 **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2)**

4 71. Certification also is appropriate because Defendant acted, or refused to act, on
5 grounds generally applicable to both the Putative Class and any subclass, thereby making
6 appropriate the final injunctive relief and declaratory relief sought on behalf of the Putative Class
7 and any subclass as respective wholes. Further, given the large number of consumers of the
8 Products, allowing individual actions to proceed in lieu of a class action would run the risk of
9 yielding inconsistent and conflicting adjudications.

10 **Superiority—Federal Rule of Civil Procedure 23(b)(3)**

11 72. A class action is a fair and appropriate method for the adjudication of the
12 controversy, in that it will permit a large number of claims to be resolved in a single forum
13 simultaneously, efficiently, and without the unnecessary hardship that would result from the
14 prosecution of numerous individual actions and the duplication of discovery, effort, expense and
15 burden on the courts that individual actions would engender.

16 73. The benefits of proceeding as a class action, including providing a method for
17 obtaining redress for claims that would not be practical to pursue individually, outweigh any
18 difficulties that might be argued with regard to the management of this class action. Absent a class
19 action, it would be highly unlikely that the representative Plaintiff or any other members of the
20 Putative Class or any subclass would be able to protect their own interests because the cost of
21 litigation through individual lawsuits might exceed expected recovery.

22 74. Certification of this class action is appropriate under *Federal Rule of Civil*
23 *Procedure* Rule 23, because the questions of law or fact common to the respective members of the
24 Putative Class and any subclass predominate over questions of law or fact affecting only individual
25 members. This predominance makes class litigation superior to any other method available for a
26 fair and efficient decree of the claims.

27
28 **VI. CAUSES OF ACTION**

COUNT I

Violation of False Advertising Law—Cal. Bus. & Prof. Code §§ 17500 *et seq.*

(Brought on Behalf of Plaintiff and the Putative Nationwide Class Against Defendant)

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4 75. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
5 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
6 verbatim.

7 76. Throughout the Class Period Defendant engaged in a public advertising and
8 marketing campaign representing that the Products contain ECJ, despite the fact that ECJ is a term
9 which is prohibited from use on food labels under California and federal law.

10 77. Defendant's advertisements and marketing representations are misleading, untrue,
11 and likely to deceive reasonable consumers.

12 78. Defendant engaged in its advertising and marketing campaign with the intent to
13 directly induce customers to purchase the Products based on false claims.

14 79. In violation of California Bus. & Prof. Code §§ 17500 *et seq.*, Defendant
15 disseminated, or caused to be disseminated, the deceptive Products' labeling and advertising
16 representations.

17 80. Defendant's labeling and advertising representations for the Products are by their
18 very nature unfair, deceptive, and/or unlawful within the meaning of California Bus. & Prof. Code
19 §§ 17500 *et seq.*

20 81. The representations were at all material times hereto likely to deceive reasonable
21 consumers, including Plaintiff and members of the Putative Class.

22 82. Defendant violated California Bus. & Prof. Code §§ 17500 *et seq.*, in making and
23 disseminating the deceptive representations alleged herein.

24 83. Defendant knew or should have known that the representations were false,
25 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the
26 Putative Class.

27 84. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and
28 similarly situated purchasers of the Products have suffered economic damages.

1 85. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of
2 improperly advertising the Products as described herein.

3 86. Plaintiff would have paid less for the Products or would not have purchased the
4 Products but for Defendant's misleading statements about the Products.

5 87. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all
6 similarly situated purchasers, seeks an order of this Court requiring Defendant to restore to
7 purchasers of the Products all monies that may have been acquired by Defendant as a result of such
8 false, unfair, deceptive, and/or unlawful acts or practices. Plaintiff and members of the Putative
9 Class seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten
10 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and
11 misleading statements, and other relief allowable under California Business & Professions Code
12 Section 17535.

13 88. Furthermore, as a result of Defendant's violations of the FAL, Plaintiff and similarly
14 situated purchasers of the Products are entitled to restitution for out-of-pocket expenses and
15 economic harm.

16 89. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated purchasers of the
17 Products are further entitled to pre-judgment interest as a direct and proximate result of Defendant's
18 wrongful conduct. The amount on which interest is to be calculated is a sum certain and capable of
19 calculation, and Plaintiff and similarly situated purchasers of the Products are entitled to interest in
20 an amount according to proof.

21 **COUNT II**

22 **Violation of UCL: Fraudulent Prong—Cal. Bus. & Prof. Code §§ 17200 et seq.**

23 **(Brought on Behalf of Plaintiff and the Putative Nationwide Class Against Defendant)**

24 90. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
25 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
26 verbatim.

27 91. Cal. Bus. & Prof. Code § 17200 prohibits any "fraudulent...business act or
28 practice." To prove a cause of action under the "fraudulent" prong of the UCL, the plaintiff need

1 only show that Plaintiff and members of the Putative Class are “likely to be ‘deceived’” by the
2 conduct.³ Notably, a UCL violation can be established even if no one was actually deceived, relied
3 upon the fraudulent practice, or sustained any injury.

4 92. Thus, Defendant’s acts and practices are fraudulent in that they have deceived and/or
5 are likely to deceive, Plaintiff and members of the Putative Class. Specifically, Defendant’s
6 business practices as alleged herein are fraudulent because they are likely to deceive Plaintiff and
7 members of the Putative Class into believing the Products have characteristics, uses, and benefits
8 they do not have, including that they contain ECJ, despite the fact that ECJ is a term which is
9 prohibited from use on food labels under California and federal law.

10 93. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and
11 has lost money or property as a result of Defendant’s actions as set forth herein.

12 94. Defendant’s deceptive and fraudulent business acts and practices were the direct and
13 proximate cause of Plaintiff’s and members of the Putative Class’s injuries. Plaintiff and members
14 of the Putative Class relied on Defendant’s deceptive and fraudulent business acts and practices to
15 their detriment in that but for Defendant’s misrepresentation that the Products contain ECJ, despite
16 the fact that ECJ is a term which is prohibited from use on food labels under California and federal
17 law, Plaintiff and members of the Putative Class would have paid less for the Products, would not
18 have purchased the Products, and/or the Products are worth less because of the true state of the
19 Products. Moreover, Plaintiff and members of the Putative Class were denied the benefit of the
20 bargain when they decided to purchase the Products over competitor products that are less
21 expensive and/or are properly labeled as containing “sugar.”

22 95. Finally, upon information and belief, Defendant is aware that the claims it made
23 about the Products are false, misleading, and likely to deceive reasonable consumers.

24 96. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on
25 behalf of the Putative Class, seeks an order of this Court for injunctive relief and disgorging and
26 restoring all monies that have been acquired by Defendant as a result of Defendant’s business acts

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3. See *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009); *Stearns v. TicketMaster Corp.*, 655 F.3d 1013, 1020 (9th Cir. 2011).

1 or practices described herein. Plaintiff, the Putative Class, and the general public may be irreparably
 2 harmed or denied an effective and complete remedy in the absence of such an order.

3 97. As a result of Defendant’s violations of the UCL, Plaintiff and the Putative Class
 4 are entitled to restitution for out-of-pocket expenses and economic harm.

5 98. Pursuant to Civil Code § 3287(a), Plaintiff and the Putative Class are further entitled
 6 to pre-judgment interest as a direct and proximate result of Defendant’s unfair and fraudulent
 7 conduct. The amount on which interest is to be calculated is a sum certain and capable of
 8 calculation, and Plaintiff and the Putative Class are entitled to interest in an amount according to
 9 proof.

10 COUNT III

11 Violation of UCL: Unfair Prong—Cal. Bus. & Prof. Code §§ 17200 et seq.

12 *(Brought on Behalf of Plaintiff and the Putative Nationwide Class Against Defendant)*

13 99. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
 14 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
 15 verbatim.

16 100. Cal. Bus. & Prof. Code § 17200 prohibits any “unfair...business act or practice.”
 17 Defendant’s business practices, as alleged herein, are “unfair” within the meaning of the UCL
 18 because: (1) Defendant’s conduct caused, or is likely to cause, substantial injury to Plaintiff and the
 19 members of the Putative Class; (2) such injury is not reasonably avoidable by Plaintiff and members
 20 of the Putative Class due to Defendant’s exclusive knowledge of the exact character and content of
 21 the Products’ ingredients; and (3) the injury is not outweighed by any countervailing benefits to
 22 competition or Plaintiff and members of the Putative Class.

23 101. Further, Defendant committed “unfair” business acts or practices by engaging in
 24 conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff
 25 and members of the Putative Class; and engaging in conduct that undermines or violates the spirit
 26 or intent of the consumer protection laws alleged herein.⁴

27
 28
 4. *See People v. Casa Blanca Convalescent Home, Inc.*, 159 Cal. App. 3d 509, 530 (1984).

1 102. Plaintiff and members of the Putative Class suffered injury in fact and lost money
2 or property as a result of Defendant’s deceptive advertising: they were denied the benefit of the
3 bargain when they decided to purchase the Products over competitor products that are less
4 expensive and/or are properly labeled as containing “sugar.”

5 103. First, the injury to Plaintiff and members of the Putative Class is substantial because
6 but for Defendant’s misrepresentation that the Products contain ECJ, Plaintiff and members of the
7 Putative Class would have paid less for the Products, would not have purchased the Products, and/or
8 the Products are worth less because of the true state of the Products. Moreover, Plaintiff and
9 members of the Putative Class were denied the benefit of the bargain when they decided to purchase
10 the Products over competitor products that are less expensive and/or are properly labeled as
11 containing “sugar.”

12 104. Second, given the fact that Defendant had exclusive knowledge of the exact
13 character and content of the Products’ ingredients and Plaintiff and members of the Putative Class
14 had no reason to believe that the Products contain sugar, the resulting injury is not of the variety
15 that Plaintiff and members of the Putative Class could reasonably have avoided.

16 105. Third, the injury to Plaintiff and members of the Putative Class is not outweighed
17 by any countervailing benefits to competition or Plaintiff and members of the Putative Class. Any
18 purported benefits to Plaintiff and members of the Putative Class from the inclusion of the ECJ
19 ingredient listing on the Products, if any, is negated by the deceptive advertising that the Products
20 contain ECJ.

21 106. Finally, Defendant had an improper motive (profit before accurate marketing) in its
22 practices related to the deceptive labeling and advertising of the Products, as set forth above, which
23 is immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff and
24 members of the Putative Class. Defendant’s conduct also offends established public policies against
25 engaging in false and misleading advertising, unfair competition, and deceptive conduct towards
26 consumers.

27 107. Plaintiff reserves the right to allege further conduct that constitutes other unfair
28 business acts or practices.

1 108. As purchasers and consumers of Defendant's Products, and as members of the
2 general public who purchased and used the Products, Plaintiff and the Putative Class are entitled to
3 bring this class action seeking all available remedies under the UCL.

4 109. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on
5 behalf of the Putative Class, seeks an order of this Court for injunctive relief and disgorging and
6 restoring all monies that have been acquired by Defendant as a result of Defendant's business acts
7 or practices described herein. Plaintiff, members of the Putative Class, and the general public may
8 be irreparably harmed or denied an effective and complete remedy in the absence of such an order.

9 110. As a result of Defendant's violations of the UCL, Plaintiff and the Putative Class
10 are entitled to restitution for out-of-pocket expenses and economic harm.

11 111. Pursuant to Civil Code § 3287(a), Plaintiff and the Putative Class are further entitled
12 to pre-judgment interest as a direct and proximate result of Defendant's unfair and fraudulent
13 conduct. The amount on which interest is to be calculated is a sum certain and capable of
14 calculation, and Plaintiff and the Putative Class are entitled to interest in an amount according to
15 proof.

16 COUNT IV

17 Violation of the UCL: Unlawful Prong—Cal. Bus. & Prof. Code §§ 17200 et seq.

18 *(Brought on Behalf of Plaintiff and the Putative Nationwide Class Against Defendant)*

19 112. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
20 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
21 verbatim.

22 113. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful...business act or practice."
23 A business practice is "unlawful" under the UCL if it violates any other law or regulation.
24 Defendant's acts, omissions, misrepresentations, practices, and non-disclosures as alleged herein
25 constitute "unlawful" business acts and practices because Defendant's conduct violates the FAL.

26 114. Defendant's conduct is also "unlawful" in that it violates § 43(a) the Lanham Act,
27 15 U.S.C. § 1125(a) by introducing false statements of fact into interstate commerce about its
28 Products that were material in that they were likely to influence consumers' purchasing decisions,

1 and that had a tendency to deceive, or actually deceived a substantial portion of Defendant's
2 audience, resulting in injury.

3 115. Defendant's conduct is further "unlawful" in that it violates the FDCA and its
4 implementing regulations as follows:

- 5 a. 21 U.S.C. § 331(a) (prohibiting the "introduction or delivery for introduction into
6 interstate commerce of any food, drug, device tobacco Products, or cosmetic that is
7 ... misbranded");
- 8 b. 21 U.S.C. § 331(b) (prohibiting the "misbranding of any food, drug, device, tobacco
9 Products, or cosmetic in interstate commerce");
- 10 c. 21 U.S.C. § 331(c) (prohibiting the "receipt in interstate commerce of any food,
11 drug, device, tobacco Products, or cosmetic that is ... misbranded, and the delivery
12 or proffered delivery thereof for pay or otherwise");
- 13 d. 21 U.S.C. § 331(g) (prohibiting the "giving of a guaranty or undertaking...which
14 guaranty or undertaking is false");
- 15 e. 21 U.S.C. § 343(a) (which deems any food misbranded when the label contains a
16 statement that is "false or misleading in any particular");
- 17 f. 21 C.F.R. § 101.4(a)(1) ("[i]ngredients required to be declared on the label or
18 labeling of a food...shall be listed by common or usual name...");
- 19 g. 21 C.F.R. § 102.5(a) ("The common or usual name of a food, which may be a coined
20 term, shall accurately identify or describe, in as simple and direct terms as possible,
21 the basic nature of the food or its characterizing properties or ingredients");

22 116. Defendant further violates the FDCA's implementing regulation, 21 C.F.R. § 1.21,
23 because the Products' packaging fails to reveal material facts, namely, that the Products actually
24 contain "sugar," "in light of other representations made;" specifically, the ECJ ingredient listing
25 described herein as misleading due to the fact that ECJ is a term which is prohibited from use on
26 food labels.

27 117. Defendant's conduct is further "unlawful" by violating the California Sherman
28 Food, Drug, and Cosmetic Law ("Sherman Law"), *see* Cal. Health & Safety Code §§ 109875-

1 111900, which incorporates the provisions of the FDCA. *See id.* §§ 110110-110115. Specifically,
2 but not limited to, the following provisions:

- 3 h. § 110290 (“In determining whether the labeling or advertisement of a food...is
4 misleading, all representations made or suggested by statement, word, design,
5 device sound, or any combination of these shall be taken into account. The extent
6 that the labeling or advertising fails to reveal facts concerning the food...or
7 consequences of customary use of the food...shall also be considered.”);
- 8 i. § 110390 (“It is unlawful for any person to disseminate any false advertisement of
9 any food...An advertisement is false if it is false or misleading in any particular.”);
- 10 j. § 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer
11 for sale any food...that is falsely advertised.”);
- 12 k. § 110398 (“It is unlawful for any person to advertise any food ...that is
13 misbranded.”);
- 14 l. § 110400 (“It is unlawful for any person to receive in commerce any food...that is
15 falsely advertised or to deliver or proffer for delivery any such food.”);
- 16 m. § 110680 (“Any food is misbranded if its labeling or packaging does not conform
17 to the requirements of Chapter 4 (commencing with Section 110290).”);
- 18 n. § 110705 (“Any food is misbranded if any word, statement, or other information
19 required pursuant to this part to appear on the label or labeling is not prominently
20 placed upon the label or labeling and in terms as to render it likely to be read and
21 understood by the ordinary individual under customary conditions of purchase and
22 use.”);
- 23 o. § 110725(a) (“Any food fabricated from two or more ingredients is misbranded
24 unless it bears a label clearly stating the common or usual name of each ingredient”).
- 25 p. § 110760 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer
26 for sale any food that is misbranded.”);
- 27 q. § 110765 (“It is unlawful for any person to misbrand any food.”); and
- 28

1 r. § 110770 (“It is unlawful for any person to receive in commerce any food that is
2 misbranded or to deliver or proffer for delivery any such food.”).

3 118. As detailed above, Defendant’s misrepresentations constitute violations of the
4 FDCA and the Sherman Law, and, as such, violate the UCL’s “unlawful” prong.

5 119. Defendant’s unlawful practices include disseminating false and/or misleading
6 representations about the Products.

7 120. Defendant used these deceptive misrepresentations to induce Plaintiff and members
8 of the Putative Class to purchase products that were of lesser value and quality than advertised.

9 121. As a result of Defendant’s misleading advertising, Plaintiff suffered injury in fact
10 and lost money or property. Plaintiff was denied the benefit of the bargain when Plaintiff decided
11 to purchase Defendant’s Products over other comparable products that are less expensive and/or
12 are properly labeled as containing “sugar.”

13 122. Thus, Plaintiff and members of the Putative Class relied on Defendant’s unlawful
14 business acts and practices to their detriment in that but for Defendant’s misrepresentation that the
15 Products contain ECJ, despite the fact that ECJ is a term which is prohibited from use on food
16 labels, Plaintiff and members of the Putative Class would have paid less for the Products, would
17 not have purchased the Products, and/or the Products are worth less because of the true state of the
18 Products.

19 123. Because Defendant’s business conduct in advertising, marketing, and selling the
20 Products using false and misleading statements, in violation of the FAL and/or other federal and
21 state laws or regulations alleged herein, it constitutes a per se violation of the “unlawful” prong of
22 the UCL.

23 124. As purchasers and consumers of Defendant’s Products, and as members of the
24 general public who purchased and used the Products, Plaintiff and the Putative Class are entitled to
25 and bring this class action seeking all available remedies under the UCL.

26 125. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually and on
27 behalf of the Putative Class, seeks an order of this Court for injunctive relief and disgorging and
28 restoring all monies that may have been acquired by Defendant as a result of such unlawful business

1 acts or practices. Plaintiff, the Putative Class, and the general public may be irreparably harmed
2 and/or denied an effective and complete remedy in the absence of such an order.

3 126. As a result of Defendant’s violations of the UCL, Plaintiff and the Putative Class
4 are entitled to restitution for out-of-pocket expenses and economic harm.

5 127. Pursuant to Civil Code § 3287(a), Plaintiff and the Putative Class are further entitled
6 to pre-judgment interest as a direct and proximate result of Defendant’s unlawful business conduct.
7 The amount on which interest is to be calculated is a sum certain and capable of calculation, and
8 Plaintiff and the Putative Class are entitled to interest in an amount according to proof.

9 **COUNT V**

10 **Violations of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, et**

11 **seq.**

12 ***(Brought on behalf of Plaintiff and the Putative Florida Class Against Defendant)***

13 128. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
14 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
15 verbatim.

16 129. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade
17 Practices Act, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of FDUTPA is
18 to “protect the consuming public...from those who engage in unfair methods of competition, or
19 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”
20 FLA. STAT. § 501.202(2).

21 130. The sale of the Products at issue in this case was a “consumer transaction” within
22 the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213,
23 *Florida Statutes*.

24 131. Plaintiff is a “consumer” as defined by Section 501.203, *Florida Statutes*.
25 Defendant’s Products are a “good” within the meaning of the Act. Defendant is engaged in trade
26 or commerce within the meaning of the Act.

1 132. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of
2 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
3 conduct of any trade or commerce.”

4 133. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the
5 interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1)
6 of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead –
7 and have misled – the consumer acting reasonably under the circumstances and, therefore, violate
8 Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

9 134. Defendant has violated the Act by engaging in the unfair and deceptive practices
10 described above, which offend public policies and are immoral, unethical, unscrupulous and
11 substantially injurious to consumers. Specifically, Defendant has represented that the Products
12 contain ECJ, despite the fact that ECJ is a term which is prohibited from use on food labels.

13 135. Plaintiff and Putative Class Members have been aggrieved by Defendant’s unfair
14 and deceptive practices in that they purchased and consumed Defendant’s Products.

15 136. Reasonable consumers rely on Defendant to honestly represent the true nature of
16 their ingredients.

17 137. Defendant has deceived reasonable consumers, like Plaintiff and the Putative Class,
18 into believing the Products did not contain any sugar, rather than containing sugar’s functional
19 equivalent: ECJ.

20 138. The knowledge required to discern the true nature of Defendant’s Products is beyond
21 that of the reasonable consumer—namely that the ECJ is sugar’s functional equivalent. Defendant’s
22 representations lead reasonable consumers to believe that the Products had no added sugar, when
23 in fact, ECJ is sugar’s functional equivalent.

24 139. The damages suffered by the Plaintiff and the Putative Class were directly and
25 proximately caused by the deceptive, misleading, and unfair practices of Defendant, as described
26 above.

1 140. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Putative Class
2 seek a declaratory judgment and court order enjoining the above described wrongful acts and
3 practices of the Defendant, and for restitution and disgorgement.

4 141. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*,
5 Plaintiff and the Putative Class make claims for damages, attorney's fees, and costs.

6 142. WHEREFORE, Plaintiff demands judgment for damages against Defendant,
7 including all costs associated with prosecuting this matter, prejudgment interest, and attorney's fees
8 if so warranted, and such further relief as this Court deems just and proper.

9 **COUNT VI**

10 **Negligent Misrepresentation**

11 ***(Brought on Behalf of Plaintiff and the Putative Nationwide Class Against Defendant)***

12 143. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the
13 preceding paragraphs one (1) through seventy-four (74) of this Complaint as if fully set forth herein
14 verbatim.

15 144. Defendant has negligently represented a material fact to the public, including
16 Plaintiff and the Putative Class, that the Products contain ECJ, despite the fact that ECJ is a term
17 which is prohibited from use on food labels.

18 145. Defendant knew or should have known that these omissions would materially affect
19 Plaintiff's and the Putative Class's decisions to purchase the Products.

20 146. Plaintiff and other reasonable consumers, including the Putative Class, reasonably
21 relied on Defendant's representations set forth herein, and, in reliance thereon, purchased the
22 Products.

23 147. The reliance by Plaintiff and the Putative Class was reasonable and justified in that
24 Defendant appeared to be, and represented itself to be, a reputable business, and it distributed the
25 Products through reputable companies.

26 148. Plaintiff would not have been willing to pay for Defendant's Products if they knew
27 that the Products were deceptively marketed as containing ECJ when in fact ECJ is the functional
28 equivalent of sugar.

- 1 3. For actual damages in an amount to be determined at trial for all causes of action;
- 2 4. For an award of attorney's fees the Court might deem just, appropriate, or proper;
- 3 5. For an award of costs;
- 4 6. For any other award the Court might deem just, appropriate, or proper; and
- 5 7. For pre- and post-judgment interest on any amounts awarded.

6
7 **VIII. DEMAND FOR JURY TRIAL**

8 Plaintiff respectfully demands a jury trial on all issues so triable.

9
10 **DATED: September 14, 2016**

Respectfully Submitted,

11 */s/ Benjamin M. Lopatin*

12 Benjamin M. Lopatin, Esq. (SBN: 281730)

13 blopatin@ELPlawyers.com

14 EGGNATZ, LOPATIN & PASCUCCI, LLP

2201 Market St., Suite H

San Francisco, CA 94114

15 Tel.: (415) 324-8620

16 Fax: (415) 520-2262

17 *Counsel for Plaintiff Mojan Kazemi*
18 *and the Proposed Class*