

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X Index No.

JAMES ANESTIS, individually on behalf of
himself and all others similarly situated,

Plaintiff,

- against -

COMPLAINT

HARVEST BEVERAGE GROUP LLC, JOSEPH
SAVINO, individually and as a member of HARVEST
BEVERAGE GROUP LLC, DAVID MILBURN,
individually and as a member of HARVEST
BEVERAGE GROUP LLC and MICHAEL R. WOOD,
individually and as a member of HARVEST
BEVERAGE GROUP LLC,

Defendants.

-----X

Plaintiff James Anestis (“plaintiff”), individually and on behalf of all others similarly
situated, by his attorneys, alleges the following upon information and belief, except for those
allegations pertaining to plaintiff, which are based on personal knowledge:

1. Plaintiff brings this action against Harvest Beverage Group LLC (“defendant
HBG” or the “company defendant”), Joseph Savino, individually and as a member of Harvest
Beverage Group LLC (“defendant Savino”), David Milburn, individually and as a member
of Harvest Beverage Group LLC (“defendant Milburn”) and Michael R. Wood, individually
and as a member of Harvest Beverage Group LLC (“defendant Wood,” together with
defendant Savino and defendant Milburn, the “Individual Defendants”) (collectively,
“defendants”), on behalf of himself and a class consisting of all consumers nationwide who
purchased any products of defendant HBG identified herein at any time during the applicable
statute of limitations period up to and including the present (the “class period”).

FACTS AND BACKGROUND

2. Defendant HBG is a producer and seller of juice products bearing the name “Juisi” (the “Product” or “Products”).

3. The Products are sold in various flavors and blends.

4. The names of the Products include but are not limited to Carrot Root, Cucumber Mint, Kale Punch, Watermelon, Pineapple Jamu and Chocolate Almond Milk.

5. The Products are sold in 16 ounce bottles.

6. The Products are sold to consumers at traditional brick-and-mortar retail locations throughout the country.

7. The Products are sold directly to consumers from the websites of defendant HBG and third-party companies.

8. The Products sold in retail locations are identical to those sold online.

9. The Products have similar packaging, labeling and advertising with respect to material information disclosed thereupon.

10. Defendant HBG represents the Products as raw through its product labels and product packaging, which, *inter alia*, indicate the Products are “raw & cold-pressed,” “100% raw juice,” “raw/vegan/gluten & dairy free” and “kept raw & safe with HPP.”

11. Defendant HBG represents the Products as fresh via its website, through questions such as “How long does your juice stay fresh?,” which are answered in the affirmative.

12. Defendant HBG represents the Products as not heated via its website, stating “Instead of heating our juice...”

13. Defendant HBG manufactures the Products through the hydraulic extraction of aqueous liquid from fruits and vegetables.

14. The resultant expressed aqueous liquid is placed in bottles then subjected to high pressure processing.

15. The bottles are loaded into a cylindrical pressure vessel.

16. The cylindrical pressure vessel is then loaded into a high-pressure chamber.

17. Water is added to the cylindrical pressure vessel and the vessel is closed.

18. The contents of the juice bottles are pressurized at levels up to 87,000 pounds per square inch (“psi”)/600 megapascal (“MPa”).

19. The Products are held at the target pressure for 3 to 10 minutes.

20. The pressure is applied uniformly in all directions simultaneously.

21. The act of compression during this process increases the temperature of the products by approximately 3 °C for every 100 MPa.

22. After the pressure holding time, the pressure is released.

23. The Products are then offered for sale to consumers.

24. As a result of the application of high pressure, the Products have been processed to prevent, reduce or eliminate the presence of pathogens, bacteria and microorganisms.

25. As a result of the application of high pressure, the Products experience an increase in temperature and become hotter.

26. As a result of the application of high pressure, the Products do not spoil as quickly compared to how quickly they would spoil if they remained in their state after extraction.

27. As a result of the application of high pressure, the Products are preserved.

28. As a result of the application of high pressure, the shelf-life of the Products

is extended to 30 to 45 days.

29. By prolonging the expiration date of the product, high pressure processing can remove volatility from a business which would have to discard entire batches of non-processed juice products after three days.

30. After hydraulic extraction from fruits and vegetables, the resulting expressed aqueous liquid has not been processed, preserved, heated or treated.

31. This expressed juice is available to consumers for purchase.

32. This expressed juice, which has not been processed, preserved, heated or treated, is marketed and sold as cold-pressed, raw juice, and commands a premium price.

33. Consumers seek out such juice products because they are not processed, preserved, heated or treated.

34. Consumers pay a premium price for such unprocessed, unpreserved, unheated and untreated juice products due in part to their possessing a greater number of bacteria, pathogens and microorganisms.

35. The premium price paid for such juice products by consumers is partly a result of its limited shelf-life.

36. As a result of being subjected to the application of high pressure, the Products are not consistent with the claims, representations and warranties provided by defendant HBG.

37. Defendant HBG's representations of the Products as raw is false or misleading since the Products are subjected to processing and preservation through the application of high pressure.

38. Defendant HBG's description of the Products as raw is false or misleading in

conjunction with the shelf-life of the Products of 30 to 45 days.

39. Defendant HBG's description of the Products as raw is false or misleading since the Products contain fewer bacteria, pathogens and microorganisms than products which have not been processed, treated preserved or heated.

40. Defendant HBG's description of the Products as raw is false or misleading because the Products experience an increase in temperature and are heated as a result of the application of high pressure.

41. Defendant HBG's representations of the Products as raw suggests and implies that the Products are not processed, preserved, heated or treated.

42. Defendant HBG's representations of the Products as raw implies that the Products contain a greater number of bacteria, pathogens and microorganisms than they actually possess.

43. Defendant HBG's description of the Products as raw is false or misleading because the Products are treated to affect the bacteria, pathogens and microorganisms which exist within the expressed juice which has not been processed, preserved, heated or treated.

44. Defendant HBG's representation of the Products as "raw and safe" is deceptive and misleading, in that bacteria and microorganisms have been eliminated, rendering the Products safer, as a result of being subjected to the application of high pressure

45. As the Products have been processed to prevent, reduce or eliminate the presence of pathogens, bacteria and microorganisms through the application of high pressure, the representations of the Products as raw is contradictory to its claims that the Products are safe.

46. By describing the Products as raw, defendant HBG sought to attract

consumers who were seeking a juice product which had not been processed, preserved, heated or treated following its extraction from produce.

47. By describing the Products as fresh, defendant HBG sought to attract consumers who were seeking a juice product which had not been processed, preserved, heated or treated following its extraction from produce.

48. By describing the Products as not having been heated, defendant HBG sought to attract consumers who were seeking a juice product which had not experienced an increase in temperature and became hotter as a result of the production process.

49. Juice which has not been treated, processed, preserved or heated following its extraction from produce is required to bear a warning label advising of the risks of consuming such a product.

50. Defendant HBG knew their representation that the Products were raw was false or misleading because the Products did not contain such a warning label.

51. The description of the Products as fresh is false or misleading in conjunction with the extended shelf-life of the Products.

52. The representations of the Products as fresh implies that the Products are in their raw state and have not been subjected to any form of preservation.

53. The representations of the Products as fresh is false or misleading since the Products are subjected to processing and preservation through the application of high pressure.

54. The Products are represented as raw, fresh and not heated, yet defendants do not disclose that the Products are processed, preserved, treated and experience an increase in temperature as a result of being subjected to the application of high pressure.

55. As a result of being subjected to the application of high pressure, the Products are not raw.

56. As a result of being subjected to the application of high pressure, the Products are not fresh.

57. As a result of being subjected to the application of high pressure, the Products are heated.

58. Defendant HBG's representations of the Products are false, deceptive and misleading because the Products are not raw, not fresh and are heated.

59. Defendants possesses superior knowledge vis-à-vis consumers of the processes by which the Products are made.

60. Consumers cannot discover the true nature of the Products and the effects of the methods of production used by defendants to make the Products from reading the labels, packaging and advertising on the Products.

JURISDICTION and VENUE

61. Jurisdiction is proper pursuant to CPLR §§ 301 and 302.

62. This Court has jurisdiction over Harvest Beverage Group LLC because it conducts and transacts business in the State of New York, contracts to supply goods within the State of New York and supplies goods within the State of New York.

63. This Court has jurisdiction over Joseph Savino, individually and as a member of Harvest Beverage Group LLC, because he conducts and transacts business in New York, contracts to supply goods within New York and supplies goods within New York, on behalf of Harvest Beverage Group LLC.

64. This Court has jurisdiction over David Milburn, individually and as a member

of Harvest Beverage Group LLC, because he conducts and transacts business in New York, contracts to supply goods within New York and supplies goods within New York, on behalf of Harvest Beverage Group LLC.

65. This Court has jurisdiction over Michael R. Wood, individually and as a member of defendant Harvest Beverage Group LLC, because he conducts and transacts business in New York, contracts to supply goods within New York and supplies goods within New York, on behalf of Harvest Beverage Group LLC.

66. Venue is proper pursuant to CPLR § 503(d) because the principal place of business identified in the articles of organization filed by Harvest Beverage Group LLC with the New York Secretary of State is in Westchester County.

PARTIES

67. Plaintiff is a citizen of the State of New York.

68. Defendant Harvest Beverage Group LLC is a limited liability company organized under the laws of New York.

69. Upon information and belief, defendant Joseph Savino is a natural person who resides in New York.

70. Upon information and belief, defendant Savino is, or has been, a member, officer, partner, principal, shareholder, owner or agent of defendant Harvest Beverage Group LLC.

71. Upon information and belief, defendant Michael R. Wood is a natural person who resides in New York.

72. Upon information and belief, defendant Wood is, or has been, a member, officer, partner, principal, shareholder, owner or agent of defendant Harvest Beverage Group

LLC.

73. Upon information and belief, defendant David Milburn is a natural person who resides in Connecticut.

74. Upon information and belief, defendant Milburn is, or has been, a member, officer, partner, principal, shareholder, owner or agent of defendant Harvest Beverage Group LLC.

75. The Individual Defendants (defendants Savino, Wood and Milburn) have, or had, the authority and power to control or direct the acts, practices and conduct of defendant Harvest Beverage Group LLC and/or actually participated in and directed the acts, practices and conduct of defendant Harvest Beverage Group LLC.

76. Upon information and belief, the Individual Defendants exercise or exercised complete domination and control over defendant Harvest Beverage Group LLC and improperly utilize or utilized the privilege of doing business in the limited liability company form to perpetrate the wrongs, acts and injustices described herein.

77. Upon information and belief, defendant Harvest Beverage Group LLC fails to adhere to the formalities required by the Limited Liability Company Law of New York, by failing to file, *inter alia*, certificates of publication and biennial statements, with the New York Secretary of State.

78. As a result of the foregoing, the Individual Defendants are jointly and severally liable with the Company Defendant for the acts, practices and conduct set forth in the complaint.

79. In May 2014, plaintiff purchased a Juisi Watermelon in New York State for no less than \$5.99 excluding tax.

80. Plaintiff paid a premium for the Juisi Watermelon because prior to purchasing the Product, he saw and relied upon the Product's packaging, labeling and advertising, which stated the Product was "100% raw juice," "raw & cold-pressed," "raw/vegan/gluten & dairy free," and "kept raw & safe with HPP."

81. Plaintiff paid a premium for the Juisi Watermelon because prior to purchasing the Product, he saw and relied upon defendant HBG's website, which stated the Products were fresh, through questions including "How long does your juice stay fresh?," which was answered in the affirmative.

82. Plaintiff paid a premium for the Juisi Watermelon because prior to purchasing the Product, he saw and relied upon defendant HBG's website, which stated the Products were not heated, through statements including "Instead of heating our juice..."

83. The Product's packaging, labeling and advertising failed to inform plaintiff that the Juisi Watermelon was processed, treated, preserved and heated.

84. Defendant HBG's website failed to inform plaintiff that the Juisi Watermelon was processed, treated, preserved and heated.

85. Plaintiff purchased the Juisi Watermelon for personal consumption.

86. Plaintiff opted against buying less expensive juices not purported to be raw.

87. Plaintiff opted against buying less expensive juices not purported to be fresh.

88. Plaintiff opted against buying less expensive juices not purported to be never heated.

89. To their detriment, plaintiff and class members relied on defendants' false and misleading advertising, misrepresentations, mislabeling and material omissions.

90. Defendants' mislabeling and omissions induced consumers, including

plaintiff and class members, to purchase the Products at a premium price.

91. As a result of purchasing the Products at a premium price in reliance on advertising and representations that are false, misleading and deceptive, and which contained material omissions, plaintiff and class members suffered an injury in fact.

92. The members of the proposed class consist of men and women across the country who purchased the Products.

CLASS ALLEGATIONS

93. Plaintiff brings this matter pursuant to Article 9 of the CPLR on behalf of himself and those similarly situated. As detailed in this complaint, defendants orchestrated deceptive marketing and labeling practices. Defendants' customers were uniformly impacted by and exposed to this misconduct. Accordingly, this complaint is uniquely situated for class-wide resolution, including injunctive relief.

94. The class is defined as all consumers, in all states, who purchased the Products at any time during the period within the applicable statute of limitations.

95. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as indicated by the presence of elements required by CPLR § 901.

96. The class is so numerous that joinder of all members, whether otherwise permitted, is impracticable. CPLR § 901(a)(1).

97. Plaintiff believes that there are thousands of consumers who are class members as described above who have been damaged by, *inter alia*, defendants' deceptive and misleading practices.

98. Questions of law or fact common to the class predominate over any questions

affecting only individual members. CPLR § 901(a)(2).

99. These questions include, but are not limited to:

- (a) Whether defendants are responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased the Products;
- (b) Whether defendants' misconduct alleged herein demonstrates whether defendants engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of the Products;
- (c) Whether defendants' false and misleading statements and concealment of material facts regarding the Products were likely to deceive reasonable consumers;
- (d) Whether plaintiff and class members are entitled to injunctive relief; and
- (e) Whether plaintiff and class members are entitled to money damages under the same causes of action as other class members.

100. Plaintiff is a member of the class. Plaintiff's claims are typical of the claims of each class member, in that, every member of the class was susceptible to the same deceptive, misleading conduct and purchased the Products. Plaintiff is entitled to relief under the same causes of action as other class members. CPLR § 901(a)(3).

101. Plaintiff is an adequate class representative because his interests do not conflict with the interests of class members he seeks to represent. Plaintiff's claims are common to all members of the class and plaintiff has a strong interest in vindicating his rights. Plaintiff has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the class. The class members' interests will be fairly and adequately

protected by plaintiff and his counsel. Defendants have acted in a manner generally applicable to the class, making relief appropriate with respect to plaintiff and class members. The prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications. CPLR § 901(a)(4).

102. Common issues of law and fact predominate over any inquiry into individual conduct. CPLR § 901(a)(5).

103. No inquiry into individual conduct is necessary, only a narrow focus on defendants' deceptive and misleading product marketing and labeling practices.

104. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- (a) The joinder of thousands of individual class members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- (b) The individual claims of class members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive, if not impossible, to justify individual actions;
- (c) When defendants' liability has been adjudicated, all class members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- (d) This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims;

- (e) Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- (f) This class action assures uniformity of decisions among class members; and
- (g) The class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of New York GBL § 349

105. Plaintiff repeats and realleges each and every allegation contained in all foregoing paragraphs as if fully set forth herein.

106. Defendants represent that the Products are raw.

107. Defendants' representations that the Products are raw are not limited to conduct with respect to plaintiff and has a broader impact on consumers at-large.

108. Defendants' acts or practices are not unique to the parties.

109. All consumers purchasing the Products are subject to the same representations of defendants.

110. Defendants' acts or practices are consumer-oriented.

111. Defendants' representations that the Products are raw deceived the public into believing the Products have not been processed to prevent, treat, reduce or eliminate the presence of pathogens, bacteria or microorganisms after being extracted from the fruits and vegetables.

112. Defendants' representations that the Products are raw deceived the public into believing the Products had not been heated or experienced an increase in temperature as a

result of the application of high pressure after being extracted from the fruits and vegetables.

113. Defendants' representations that the Products are raw is material because whether or not a product has been processed, preserved, treated or heated after being extracted from the fruits and vegetables affects a consumer's decision whether to purchase a juice product.

114. Defendants' representations that the Products are raw is material because there exist comparable products which have not been processed, preserved, treated, heated or experienced an increase in temperature as a result of the application of high pressure after being extracted from fruits and vegetables.

115. Plaintiff observed and relied upon defendants' representations that the Product was raw prior to purchasing the Product.

116. As a result of defendants' representations that the Product was raw, plaintiff paid more for the Product than he would have paid had he known that the Product was processed, preserved, treated, heated or experienced an increase in temperature as a result of the application of high pressure.

117. As a result of defendants' acts and practices, plaintiff and class members are entitled to monetary damages, injunctive relief, restitution, disgorgement of all monies obtained by means of defendants' unlawful conduct, interest, and attorney's fees and costs.

SECOND CAUSE OF ACTION

Violation of New York GBL § 349

118. Plaintiff repeats and realleges each and every allegation contained in all foregoing paragraphs as if fully set forth herein.

119. Defendants' website represents that the Products are fresh and not heated.

120. Defendants' representations that the Products are fresh and not heated are not limited to conduct with respect to plaintiff and has a broader impact on consumers at-large.

121. Defendants' acts or practices are not unique to the parties.

122. All consumers purchasing the Products are subject to the same representations of defendants.

123. Defendants' acts or practices are consumer-oriented.

124. Defendants' representations that the Products are fresh deceived the public into believing the Products were not processed nor subjected to a form of preservation.

125. Defendants' representations that the Products are not heated deceived the public into believing the Products had not been subjected to an increase in temperature and made hotter as a result of the application of high pressure.

126. Defendants' representations that the Products are fresh and not heated deceived the public into believing the Products were not processed nor subjected to a form of preservation.

127. Defendants' representations that the Products are fresh and not heated is material because whether or not a product is fresh and not heated or subjected to an increase in temperature as a result of the production process affects a consumer's decision whether to purchase a juice product.

128. Defendants' representations that the Products are fresh and not heated are material because there exist comparable products which have not been processed, preserved, treated or heated and such products are readily available to consumers.

129. Plaintiff observed the representations on defendants' website that the Products were fresh and not heated prior to purchasing the Product.

130. Plaintiff relied upon defendants' representations.

131. As a result of defendants' representations that the Products were fresh and not heated, plaintiff paid more for the Product than he would have otherwise paid.

132. As a result of defendants' acts and practices, plaintiff and class members are entitled to monetary damages, injunctive relief, restitution, disgorgement of all monies obtained by means of defendants' unlawful conduct, interest, and attorney's fees and costs.

THIRD CAUSE OF ACTION

Violation of New York GBL § 350

133. Plaintiff repeats and realleges each and every allegation contained in all foregoing paragraphs as if fully set forth herein.

134. Defendants' labels and advertising indicate the Products are raw.

135. Defendants' labels and advertising that the Products are raw is not limited to conduct with respect to plaintiff and has a broader impact on consumers at-large.

136. Defendants' labeling and advertising of the Products is consumer-oriented.

137. Defendants' labels and advertising is not unique to the parties.

138. All consumers purchasing the Products are subject to the same labels and advertising of defendants.

139. Defendants' representations in its labels and advertising that the Products are raw deceived the public into believing the Products consisted of the aqueous liquid expressed from fruits and vegetables as a result of the hydraulic extraction, which was not processed, treated, preserved or heated.

140. Defendants' representations in its labels and advertising that the Products are raw deceived the public into believing the Products have not been processed to prevent,

reduce or eliminate the presence of bacteria, microorganisms and pathogens.

141. Defendants' representations in its labels and advertising that the Products are raw deceived the public into believing the Products had not been heated or experienced an increase in temperature following the extraction from fruits and vegetables.

142. Defendants' labels and advertising stating that the Products are raw is likely to mislead a reasonable consumer acting reasonably under the circumstances.

143. Defendants' labels and advertising that the Products are raw is material because whether or not a product consists of unprocessed, untreated, unpreserved and unheated aqueous liquid expressed from fruits and vegetables as a result of hydraulic extraction affects a consumer's decision whether to purchase the Products.

144. Defendants' labels and advertising that the Products are raw is material because there exist products which consist of unprocessed, untreated, unpreserved and unheated aqueous liquid expressed from fruits and vegetables as a result of hydraulic extraction, and such products are readily available to consumers.

145. Plaintiff observed the labels and advertising on the Products indicating that the Products were raw prior to purchasing the Product.

146. Plaintiff relied on defendants' labels and advertising.

147. As a result of defendants' labeling and advertising that the Products are raw, Plaintiff paid more for the Product than he would have paid had he known that the Product was not raw and was actually processed, treated, preserved and heated.

148. As a result of defendants' labeling and advertising, plaintiff and class members are entitled to monetary damages, injunctive relief, restitution, disgorgement of all monies obtained by means of defendants' unlawful conduct, interest, and attorney's fees and

costs.

FOURTH CAUSE OF ACTION

Fraud

149. Plaintiff repeats and realleges each and every allegation contained in all foregoing paragraphs as if fully set forth herein.

150. Defendants represent that the Products are raw and fresh.

151. Defendants' representations that the Products are raw and fresh are material because whether or not a product is processed, treated, preserved and not subjected to an increase in temperature, after being extracted from fruits and vegetables, affects a consumer's decision whether to purchase the Products.

152. Defendants' representations that the Products are raw are material because whether or not a product consists of unprocessed, untreated, unpreserved and unheated aqueous liquid expressed from fruits and vegetables as a result of hydraulic extraction affects a consumer's decision whether to purchase the Products.

153. Defendants' representations that the Products are raw are material because there exist products which consist of unprocessed, untreated, unpreserved and unheated aqueous liquid expressed from fruits and vegetables as a result of hydraulic extraction, and such products are readily available to consumers.

154. Defendants' representations of the Products as raw suggests and implies that the Products are not processed, preserved, heated or treated.

155. Defendants' representations of the Products as raw implies that the Products contain a greater number of bacteria, pathogens and microorganisms than they actually possess.

156. Defendants' representations that the Products are raw are false because the Products contain fewer bacteria, pathogens and microorganisms than products which have not been processed, treated preserved or heated.

157. Defendants' knew their representations that the Products are raw was false because it knew that the aqueous liquid expressed from the fruits and vegetables was processed, preserved, treated, heated and experienced an increase in temperature prior to being sold to consumers, as a result of being subjected to the application of high pressure.

158. Defendants knew their representations that the Products are raw was false because defendants knew the Products had a shelf-life of 30 to 45 days as a result of being subjected to preservation.

159. Defendants knew that a juice product which has not been treated, processed, preserved or heated following its extraction from produce is required to bear a warning label advising of the risks of consuming such a product.

160. Defendants knew their representation that the Products were raw was false because they did not contain such a warning label.

161. Defendants intentionally represented the Products as raw because consumers will pay a premium for juice products which have not been processed, preserved, treated, heated or experienced an increase in temperature as a result of the production process after being extracted from fruits and vegetables.

162. Defendants intentionally represented the Products as raw because consumers will pay a premium for products which possess a greater number of bacteria, pathogens and microorganisms.

163. Defendants' representations of the Products as fresh indicates and implies that

the Products are in their raw state and have not been subjected to preservation.

164. Defendants' representations of the Products as fresh is false since the Products are subjected to processing and preservation through the application of high pressure.

165. Defendants knew their representation that the Products were fresh were false because defendant knew that the Products were processed and subjected to preservation whereby the Products would have a shelf-life of 30 to 45 days.

166. Defendants knew their representations that the Products were fresh were false because defendants knew that juice products existed and were available for sale which consist of aqueous liquid expressed from fruits and vegetables, as a result of hydraulic extraction, that had not been processed, preserved, treated to reduce the presence of bacteria, pathogens and microorganisms or experienced an increase in temperature as a result of the application of high pressure.

167. Defendants intentionally represented that the Products are fresh because consumers will pay a premium for products which have not been processed, treated, preserved or heated.

168. Plaintiff had reason to rely, and did rely, upon defendants' representations that the Product was raw and fresh.

169. Plaintiff suffered injury through payment of a premium price for the Product as a result of defendants' representations.

170. As a result of defendants' fraud, plaintiff and class members are entitled to monetary damages, injunctive relief, restitution, disgorgement of all monies obtained by means of defendants' unlawful conduct, interest, and attorney's fees and costs.

FIFTH CAUSE OF ACTION

Breach of Express Warranty

171. Plaintiff repeats and realleges each and every allegation contained in all foregoing paragraphs as if fully set forth herein.

172. Defendants provided plaintiff and class members an express warranty in the form of written and oral affirmations of fact, on their website and on the Products, promising and representing that the Products are raw, fresh and not heated.

173. The above affirmations of fact were not couched as “belief” or “opinion,” and were not “generalized statements of quality not capable of proof or disproof.”

174. These affirmations of fact became part of the basis for the bargain and were material to the transactions for plaintiff and class members.

175. Plaintiff and class members reasonably relied upon defendants’ affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy the Products.

176. Upon information and belief, defendants were given opportunities to cure their default but did not.

177. Contrary to defendants’ affirmations of fact, defendants breached the express warranty because the Products are not raw, not fresh and are heated.

178. As a result of the foregoing, plaintiff and class members have been damaged in the amount paid for defendants’ products, together with interest, from the date of purchase.

SIXTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

179. Plaintiff repeats and realleges each and every allegation contained in the

foregoing paragraphs as if fully set forth herein.

180. Defendants are in the business of manufacturing, producing, distributing, and selling juice products.

181. Under the Uniform Commercial Code's implied warranty of merchantability, defendants warranted to plaintiff and class members that the Products are raw, fresh and not heated.

182. Defendants breached the implied warranty of merchantability in that the Products are not raw, not fresh and are heated.

183. Defendants breached the implied warranty of merchantability in that the Products do not conform to the promises or affirmations of fact made on the Products' containers, labels or literature. Any reasonable consumer would not accept the Products if they knew that the Products are not raw, not fresh and are heated.

184. The inability of the Products to meet the label description was wholly due to defendants' fault and without plaintiff's fault or neglect, and was solely due to the defendants' manufacture and distribution of the Products to the public.

185. As a result of the foregoing, plaintiff and class members have been damaged in the amount paid for the Products, together with interest thereon from the date of purchase.

SEVENTH CAUSE OF ACTION

Unjust Enrichment

186. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

187. Plaintiff, on behalf of himself and consumers nationwide, brings a common law claim for unjust enrichment.

188. Defendants' conduct violated, *inter alia*, New York General Business Law § 392-b by (a) putting upon an article of merchandise, bottle, wrapper, package, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, a false description or other indication of or respecting the kind of such article or any part thereof and (b) selling or offering for sale an article, which to their knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified.

189. Defendants' unlawful conduct as described in this complaint, including but not limited to the representations of the Products as raw and 100% raw, allowed defendants to knowingly realize substantial revenues from selling the Products at the expense, and to the detriment and/or impoverishment, of the plaintiff and class members, and to defendants' benefit and enrichment. Defendants have thereby violated fundamental principles of justice, equity, and good conscience.

190. Plaintiff and class members conferred significant financial benefits and paid substantial compensation to defendants for Products that were not as defendants represented.

191. Under common law principles of unjust enrichment, it is inequitable for defendants to retain the benefits conferred by plaintiff and class members' overpayments.

192. Plaintiff and class members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which plaintiff and class members may seek restitution.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,

prays for judgment as follows:

1. Declaring this action to be a proper class action and certifying plaintiff as the representative of the class under Article 9 of the CPLR;
2. Entering preliminary and permanent injunctive relief against defendants, directing defendants to correct their practices and to comply with the law;
3. Awarding monetary damages, including treble damages, pursuant to GBL § 349 and GBL § 350, and punitive damages;
4. Awarding plaintiff and class members their costs and expenses incurred in this action, including reasonable allowance of fees for plaintiff's attorneys and experts, and reimbursement of plaintiff's expenses; and
5. Granting such other and further relief as the Court may deem just and proper.

Dated: February 18, 2017

Respectfully Submitted,

Levin-Epstein & Associates, P.C.

By: /s Joshua Levin Epstein
Joshua Levin-Epstein
1 Penn Plaza
Suite 2527
New York, NY 10119
New York, NY 10119
Tel: (212) 792-0046
Fax: (212) 563-7108
Joshua@levinepstein.com

Counsel for Plaintiff

INDEX NO.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

JAMES ANESTIS, individually on behalf of himself and all others similarly situated,

PLAINTIFF,

- AGAINST -

HARVEST BEVERAGE GROUP LLC, JOSEPH SAVINO, individually and as
a member of HARVEST BEVERAGE GROUP LLC, DAVID MILBURN,
individually and as a member of HARVEST BEVERAGE GROUP LLC and
MICHAEL R. WOOD, individually and as a member of HARVEST BEVERAGE
GROUP LLC,

DEFENDANTS.

COMPLAINT

Levin-Epstein & Associates, P.C.
1 Penn Plaza
Suite 2527
New York, NY 10119
Tel: (212) 792-0046
Fax: (212) 563-7108
joshua@levinepstein.com

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: February 18, 2017
New York, New York

/s Joshua Levin-Epstein
JOSHUA LEVIN-EPSTEIN