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Complaint Filed



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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 22 2017

BY Sandra Ortega
SANDRA ORTEGA, DEPUTY

Attorneys for Plaintiff and the Class

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 JESSICA GOMEZ, individually, and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 JELLY BELLY CANDY COMPANY and DOES
16 1-25, Inclusive,

17 Defendants.

Case No.:

CIVDS 1703007

CIVDS 17030

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

\$900.00, 170222-1100 8
\$100.00-170222-1101 8
\$435.00, 170222-1099 8

19 **I. INTRODUCTION**

20 Jelly Belly Candy Company ("Defendant" or "JELLY BELLY") manufactures, markets, and
21 sells various food products, including Sport Beans ("product" or "Sport Beans"). Defendant goes out
22 of its way to advertise Sport Beans as a sports performance aid by not only naming the product as they
23 did but by claiming on the product's packaging that Sport Beans are "energizing," and that they
24 contain carbs, electrolytes, and vitamins. In order to make the product appear even more appropriate
25 for athletes and less like a candy, Defendant lists "evaporated cane juice" as an ingredient in its
26 product. "Sugar" is not found in the ingredient list of Defendant's product. Nowhere does Defendant
27 explain to consumers (1) that "evaporated cane juice" is not juice and (2) that "evaporated cane juice"
28 by its common and usual name is sugar. By so doing, Defendant is able to deceive consumers,

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1 including Plaintiff, regarding basic nature of the product and its contents.

2 Defendant's misrepresentations regarding the product were designed to, and did, deceive
3 Plaintiff and others similarly situated (collectively the "Class") with regard to the ingredients and
4 nature of the product. Plaintiff and members of the Class relied on Defendant's misrepresentations
5 and would not have paid as much, if at all, for the product but for Defendant's misrepresentations.

6 Plaintiff brings this class action lawsuit to enjoin the ongoing deception of thousands of
7 consumers by Defendant, and to recover the money taken by this unlawful practice.

8 **THE PARTIES**

9 **A. Plaintiff.**

10 1. Plaintiff, Jessica Gomez, is, and at all times relevant hereto, was an individual residing
11 in San Bernardino County, California. Plaintiff purchased the product last year in San Bernardino
12 County, California. Prior to purchasing Defendant's product, Plaintiff reviewed and relied upon
13 Defendant's advertising and ingredients as detailed above. Plaintiff relied on Defendant's
14 representations regarding the ingredients of Defendant's product, as detailed herein, and but for those
15 representations, Plaintiff would not have purchased or paid as much for the product.

16 **B. Defendant.**

17 Plaintiff is informed and believes, and upon such information and belief alleges:

18 2. Defendant, Jelly Belly Candy Company ("JELLY BELLY" or "Defendant") is a company
19 organized and existing under the laws of the state of California, with a principal place of business
20 located at One Jelly Belly Lane, Fairfield, CA 94533. Defendant offers the product for sale through
21 various channels, including the internet and retailers throughout the nation, including the State of
22 California. Defendant, directly and through its agents, has substantial contacts with and receives
23 substantial benefits and income from and through the State of California. Defendant is the owner and
24 distributor of the product and is the company that created and/or authorized the false, misleading, and
25 deceptive advertisements and packaging for the product.

26 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein
27 as DOES 1 to 25, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is
28 informed and believes and thereon alleges that each of the DOE defendants is in some manner legally

1 responsible for the damages suffered by Plaintiff and the members of the class as alleged herein.
2 Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when
3 they have been ascertained, along with appropriate charging allegations, as may be necessary.

4 4. At all times mentioned herein, Defendants, and each of them, were members of, and
5 engaged in, a joint venture, partnership, and common enterprise, and acted within the course and
6 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

7 5. At all times mentioned herein, the acts and omissions of Defendants, and each of them,
8 contributed to the various acts and omissions of each and all of the other Defendants in proximately
9 causing the injuries and damages as alleged herein.

10 6. At all times mentioned herein, Defendants, and each of them, ratified each and every
11 act or omission complained of herein. At all times mentioned herein, Defendants, and each of them,
12 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
13 causing the damages as alleged herein.

14 **III. JURISDICTION AND VENUE**

15 7. This Court has jurisdiction over all causes of action asserted herein.

16 8. Venue is proper in this Court because Plaintiff purchased the product in this County and
17 because Defendant has received substantial compensation from sales in this County. Specifically,
18 Defendant knowingly engages in activities directed at consumers in this County, and Defendant
19 obtains substantial benefits from its scheme perpetrated in this County. Plaintiff has filed concurrently
20 herewith the declaration of venue required by Civil Code Section 1780(d) and is attached hereto as
21 Exhibit One.

22 9. Defendant and other out-of-state participants can be brought before this Court pursuant
23 to California's "long-arm" jurisdictional statute.

24 **IV. FACTS**

25 10. Defendant manufactures, markets, and sells the product, Sport Beans. The product is
26 marketed as "quick energy for sports performance" and its packaging highlights its carbohydrate,
27 electrolyte, and vitamin content. In the ingredient list for the product, Defendant lists "evaporated
28 cane juice" as an ingredient. Defendant does not list "sugar" or any other commonly known

1 sweetener in its list of ingredients. Nowhere on the product or in the ingredient list does Defendant
2 explain that “evaporated cane juice” is not actually juice and is actually sugar.

3 11. The Food and Drug Administration (“FDA”) has warned manufacturers and advertisers
4 not to use the term “evaporated cane juice” because: (1) it is false and misleading; (2) the term violates
5 a number of labeling regulations requiring products to be labeled with the usual and common names of
6 ingredients and to accurately describe those ingredients; and (3) “evaporated cane juice” is not juice.

7 12. Accurate labeling is required in order to help consumers make informed choices and
8 not be misled. As detailed herein, Defendant has made, and continues to make, false and deceptive
9 claims in violation of federal and California laws that govern labeling claims.

10 13. California and federal laws are identical and regulate the labeling of food. The Federal
11 Food Drug & Cosmetic Act (“FDCA”) was adopted by California through the Sherman Food Drug &
12 Cosmetic Law, California Health & Safety Code § 109875, et seq. (“Sherman Law”). Under FDCA
13 403(a), food is “misbranded” when “its labeling is false or misleading in any particular,” and/or if it
14 does not contain required information on its labeling. 21 U.S.C. § 343(a).

15 14. According to the FDCA, if any claim made on the labeling of a product is false or
16 misleading, the food product is misbranded, and no other labeling statement can cure misleading
17 statement(s). “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous
18 who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192
19 F.2d 62, 75 (9th Cir. 1951).

20 15. Ingredients, such as “evaporated cane juice”, are not to be listed by names, which
21 suggest that the ingredients are anything other than sugar or syrup because it fails to reveal the basic
22 nature of the food and its properties as required by 21 C.F.R. § 102.5. By listing “evaporated cane
23 juice” as an ingredient of its product, Defendant has violated federal and California labeling
24 regulations.

25 16. The FDA has decreed that “evaporated cane juice” is not the common or usual name of
26 any type of sweetener, including sugar. Sugar is defined in 21 C.F.R. §101.4(b)(20) and 21 C.F.R.
27 §184.1854, as the usual or common name for the crystallization from sugar cane or sugar beet juice
28 that has been extracted by pressing or diffusion, then clarified and evaporated. 21 C.F.R. §168.130

1 defines cane syrup.

2 17. Sugar cane products must be described by their usual or common name, sugar or cane
3 syrup. 21 C.F.R. §101.4; 21 C.F.R. §184.1854; and 21 C.F.R. §168.1340.

4 18. The FDA has directed that sweeteners should not be listed by names that suggest that
5 the ingredients are juice. The FDA considers such listing as “false and misleading” under section
6 403(a)(1) of the FDCA (21 U.S.C. 343(a)(1)) because listing in this manner does not reveal the basic
7 nature of the food and its properties as required by 21 C.F.R. § 102.5. Despite these requirements,
8 Defendant has made, and continues to make false and misleading representations regarding its product
9 in violation of both federal and California laws regarding appropriate and legal labeling.

10 19. Under both federal and California law, Defendant’s misbranded product cannot be
11 manufactured, advertised, distributed, or sold. Defendant’s deceptive and false labeling stems from its
12 desire to label its foods with perceived healthy characteristics. Such deceptive and false labeling
13 drives sales of the product, and did in fact deceive Plaintiff and California consumers.

14 20. Defendant’s misrepresentations regarding the product were designed to, and did, lead
15 Plaintiff and others similarly situated (collectively the “Class”) to believe that the product were of a
16 quality that they are not and did not contain ingredients which, in fact, are found in the product.
17 Plaintiff and members of the Class relied on Defendant’s misrepresentations and would not have paid
18 as much, if at all, for the product but for Defendant’s misrepresentations.

19 21. Defendant sells the product for approximately \$5.00 based on the preceding false
20 advertising claims. As a result, Defendant has wrongfully taken hundreds of thousands of dollars from
21 consumers.

22 22. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands
23 of consumers by Defendant, and to recover the funds taken by this unlawful practice.

24 **V. CLASS ACTION ALLEGATIONS**

25 23. Plaintiff brings this class action for damages and other monetary relief on behalf of the
26 following class:

1 All persons located within the United States who purchased Sport Beans
2 labeled with "evaporated cane juice" at any time during the four years
3 preceding the filing of this Complaint (the "Class").

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

10 25. The proposed Class is so numerous that individual joinder of all its members is
11 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
12 the total number of Class members is at least in the hundreds of thousands and members of the Class
13 are numerous and geographically dispersed across California. While the exact number and identities
14 of the Class members are unknown at this time, such information can be ascertained through
15 appropriate investigation and discovery. The disposition of the claims of the Class members in a
16 single class action will provide substantial benefits to all parties and to the Court.

17 26. There is a well-defined community of interest in the questions of law and fact involved
18 affecting the plaintiff class and these common questions predominate over any questions that may
19 affect individual Class members. Common questions of fact and law include, but are not limited to,
20 the following:

- 21 a. Whether Defendant's products are labeled with "evaporated cane juice";
- 22 b. Whether Defendant has falsely represented that the product has benefits
- 23 which it does not have;
- 24 c. Whether Defendant knew that its ingredient claims were false;
- 25 d. Whether Defendant's conduct constitutes breach of express warranty;
- 26 e. Whether Defendant's conduct constitutes breach of the implied warranty of
- 27 fitness for a particular purpose;
- 28 f. Whether Defendant's conduct constitutes negligent misrepresentation;

- g. Whether Defendant's conduct constitutes a violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- h. Whether Defendant's conduct constitutes a violation of California's false advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- i. Whether Defendant's conduct constitutes an unfair, unlawful, and/or fraudulent business practice in violation of California's unfair competition law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- j. Whether Plaintiff and Class members are entitled to compensatory damages, and if so, the nature of such damages;
- k. Whether Plaintiff and Class members are entitled to restitutionary relief; and
- l. Whether Plaintiff and Class members are entitled to injunctive relief.

27. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct since they all relied on Defendant's representations concerning the ingredients of the product and purchased the product based on those representations.

28. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

29. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the class is impracticable. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all class members' claims in a single forum. The conduct of this

1 action as a class action conserves the resources of the parties and of the judicial system and protects
2 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
3 mechanism that allows an opportunity for legal redress and justice.

4 30. Adjudication of individual class members' claims with respect to Defendant would, as a
5 practical matter, be dispositive of the interests of other members not parties to the adjudication, and
6 could substantially impair or impede the ability of other class members to protect their interests.

7 **VI. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **NEGLIGENT MISREPRESENTATION**

10 **(By Plaintiff and on Behalf of the Class Against Defendant)**

11 31. Plaintiff incorporates by this reference the allegations contained in the paragraphs
12 above as if fully set forth herein.

13 32. During the Class Period, Defendant's misrepresented the ingredients of the product to
14 consumers through the advertising, marketing, and sale of the product.

15 33. Defendant's misrepresentations regarding the product ingredients were false and
16 misleading because "evaporated cane juice" is not juice.

17 34. Defendant's misrepresentations regarding the labeling of the ingredients were material
18 because a reasonable consumer would attach importance to them in determining whether to purchase
19 and consume the product.

20 35. Defendant's material misrepresentations regarding the product are false and made
21 without reasonable grounds for believing them to be true.

22 36. Defendant made material misrepresentations regarding the ingredients of the product
23 with the intent to induce Plaintiff and Class members to purchase and consume the product.

24 37. Plaintiff and Class members reasonably relied on Defendant's material
25 misrepresentations in choosing to purchase and consume the product.

26 38. As a direct and proximate result of Defendant's conduct, Plaintiff and Class members
27 have incurred damages in an amount to be proven at trial. Plaintiff and Class members are not seeking
28 damages arising out of personal injuries.

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4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

6 **(CAL. CIV. CODE §§ 1750, *ET SEQ.*)**

7 **(By Plaintiff and on Behalf of the Class Against Defendant)**

8 39. Plaintiff incorporates by this reference the allegations contained in the paragraphs
9 above as if fully set forth herein.

10 40. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
11 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
12 purchased the product in reliance on Defendant's labeling of the product.

13 41. Defendant has engaged in and continues to engage in business practices in violation of
14 California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false and
15 unsubstantiated representations concerning the ingredients of the product. These business practices
16 are misleading and/or likely to mislead consumers and should be enjoined.

17 42. Defendant has engaged in deceptive acts or practices intended to result in the sale of
18 the product in violation of Civil Code § 1770. Defendant knew and/or should have known that its
19 representations of fact concerning the ingredients of the product were material and likely to mislead
20 the public. Defendant affirmatively misrepresented that the product had certain benefits, which they
21 do not have.

22 43. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
23 including but not limited to, the following provisions: (1) using deceptive representations in
24 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods
25 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
26 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with
27 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate
28 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or

1 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

2 44. There is no other adequate remedy at law, and Plaintiff and Class members will suffer
3 irreparable harm unless Defendant's conduct is enjoined.

4 45. Plaintiff's counsel mailed to Defendant, by certified mail, return receipt requested, the
5 written notice required by Civil Code Section 1782(a) on November 12, 2016. A Copy of the letter is
6 attached hereto as Exhibit Two.

7 46. The declaration of venue required by Civil Code § 1780(d) is attached hereto as Exhibit
8 One.

9 47. Defendant's wrongful business practices constituted, and constitute, a continuing
10 course of conduct in violation of the Consumers Legal Remedies Act since Defendant is still
11 representing that their product has characteristics, uses, benefits, and abilities which are false and
12 misleading, and have injured Plaintiff and the Class.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

15 **(CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)**

16 **(By Plaintiff and on Behalf of the Class Against Defendant)**

17 48. Plaintiff incorporates by this reference the allegations contained in the paragraphs
18 above as if fully set forth herein.

19 49. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
20 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
21 purchased the product in reliance on Defendant's marketing claims as outlined herein.

22 50. Defendant has engaged in false advertising as it has disseminated false and/or
23 misleading representations about the product.

24 51. Defendant knew or should have known by exercising reasonable care that its
25 representations were false and/or misleading. During the Class Period, Defendant engaged in false
26 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its
27 advertising and marketing of the product to Plaintiff, Class members, and the consuming public the
28 ingredients of its product.

1 the meaning of California Business and Professions Code §§ 17200, *et seq.*

2 60. Defendant knew or should have known by exercising reasonable care that its
3 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,
4 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
5 by misrepresenting in its advertising and marketing of the product to Plaintiff, Class members, and the
6 consuming public.

7 61. Each of the aforementioned representations alleged in this Complaint was false and
8 misleading regarding the ingredients of the product.

9 62. Defendant's business practices, as alleged herein, are unfair because they offend
10 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially
11 injurious to consumers in that consumers are misled by the claims made with respect to the product as
12 set forth herein.

13 63. Defendant's business practices, as alleged herein, are unlawful because they violate the
14 Consumers Legal Remedies Act and False Advertising Law.

15 64. Defendant's business practices, as alleged herein, are fraudulent because they are likely
16 to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the
17 product have characteristics and benefits they in fact do not have.

18 65. Defendant's wrongful business practices constituted, and constitute, a continuing
19 course of conduct of unfair competition since Defendant are marketing and selling their product in a
20 manner likely to deceive the public.

21 66. As a direct and proximate result of Defendant's wrongful business practices in
22 violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and members of the Class have
23 suffered economic injury by losing money as a result of purchasing the product. Plaintiff and
24 members of the Class would not have purchased or would have paid less for the product had they
25 known that they were not as represented.

26 67. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an
27 order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive
28 business practices and any other act prohibited by law, including those set forth in the Complaint.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against Defendant, and each of them, as follows:

1. For an order certifying the Class, appointing Plaintiff and Plaintiff's counsel to represent the Class, and notice to the Class to be paid by Defendant;
2. For damages suffered by Plaintiff and Class members;
3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by Defendant;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For both pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded;
6. For Plaintiff's costs of the proceedings herein;
7. For reasonable attorneys' fees as allowed by statute; and
8. For any and all such other and further relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: February 15, 2017

APEX TRIAL LAW
A Professional Corporation

By: 
Thomas Kohler

Attorney for Plaintiff and the Class

EXHIBIT 1

1 I, Jessica Gomez, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that San Bernardino County is a
8 county in which Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

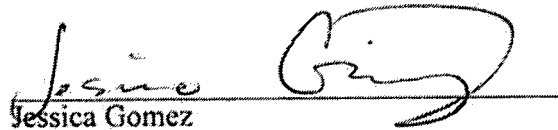
12
13 
14 Jessica Gomez

EXHIBIT 2



4100 Newport Place, Suite 800
Newport Beach, CA 92660
Phone: (949) 438-0033
Fax: (949) 299-0133
Email: rferrell@apextrial.com

November 12, 2016

VIA CERTIFIED MAIL

Jelly Belly Candy Company
One Jelly Belly Lane
Fairfield, CA 94533

Attention: Legal Department

*Re: Class Action For Violations of California B&P Codes 17200,
17500 and California Consumer Legal Remedies Act*

Ladies and Gentlemen:

Please give this letter your immediate attention.

This law firm has been retained to prosecute a class action lawsuit against you for violations of California Business & Professions Code Sections 17200 and 17500 and California Consumer Legal Remedies Act (California Civil Code §§ 1750, *et seq.*).

First, our client purchased your product Sport Beans. The Sport Beans lists as an ingredient "evaporated cane juice." Use of the term evaporated cane juice is an attempt to hide the sugar content. The FDA has recently weighed in on the use of "evaporated cane juice" on ingredient lists to mask the sugar content of a product. In part, the FDA stated as follows:

- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as "evaporated cane juice," which suggest that the ingredients are made from or contain fruit or vegetable "juice" as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe the basic nature of

the food and its characterizing properties (i.e., that the ingredients are sugars or syrups), as required by 21 CFR 102.5.

- Thus, the term “evaporated cane juice” is false or misleading because it suggests that the sweetener is “juice” or is made from “juice” and does not reveal that its basic nature and characterizing properties are those of a sugar.
- As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food . . . shall be listed by common or usual name” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)).
- This guidance is intended to help consumers make informed choices among sweeteners by promoting accurate and consistent labeling. To that end, we are advising the regulated industry of our view that the term “evaporated cane juice” is not the common or usual name of any type of sweetener and that this ingredient should instead be declared on food labels as “sugar,” preceded by one or more truthful, non-misleading descriptors if the manufacturer so chooses (e.g., “cane sugar”). [...] the term “evaporated cane juice” describes neither the basic nature of the food nor its characterizing properties, and therefore does not comply with 21 CFR 102.5(a).
- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as “evaporated cane juice,” which suggest that the ingredients are made from or contain fruit or vegetable “juice” as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups), as required by 21 CFR 102.5.

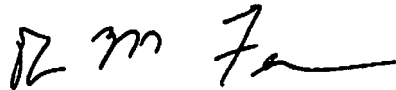
“Guidance for Industry: Ingredients Declared as Evaporated Cane Juice”
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm>

Second, through the use of the term “evaporated cane juice” to mask

sugar, you have violated California Civil Code § 1770(a)(5) (representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have. You have also violated California B&P Code §§ 17500, *et seq.*, by misrepresenting in its advertising and marketing of Sport Beans to Plaintiff, Class members, and the consuming public that Sport Beans contains "evaporated cane juice" instead of the common name of the ingredient "sugar." Finally, you have also violated Professions Code §§ 17200, *et seq.*, in that Defendant's actions are unfair, unlawful, and fraudulent, within the meaning of California Business and Professions Code §§ 17200, *et seq.*

Finally, we intend to file a class action lawsuit within twenty-one days of today's date. If you believe that any of the assertions in this letter or the attached draft complaint are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R M Ferrell", with a long horizontal flourish extending to the right.

Ryan M. Ferrell, Esq.