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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

FEB 22 2017

V. Alvarado

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1 APEX TRIAL LAW  
2 A Professional Corporation  
3 Ryan M. Ferrell, Bar No. 258037  
4 rferrell@apextrial.com  
5 Thomas W. Kohler, Bar No. 312552  
6 tkohler@apextrial.com  
7 4100 Newport Place Drive, Suite 800  
8 Newport Beach, CA 92660  
9 Tel: (949) 438-0033  
10 Fax: (949) 299-0133

11 Attorneys for Plaintiff and the Class

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

11 RONALD RODRIGUEZ, individually, and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 SOUTHEASTERN MILLS, INC. and DOES 1-  
16 25, Inclusive,

17 Defendants.

Case No.: **RIC 17 0 30 58**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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**I. INTRODUCTION**

20 Southeastern Mills, Inc. ("Defendant" or "Southeastern") manufactures, markets, and sells  
21 various food products, including Better Than Bouillon ("product" or "Better Than Bouillon").  
22 Defendant goes out of its way to advertise its products, including its Better Than Bouillon, as healthy.  
23 In order to propagate its healthy claims, Defendant lists "evaporated cane juice" as an ingredient in its  
24 product. "Sugar" is not found on the ingredient list of Defendant's product. In fact, "sugar" is not  
25 even found on the Nutrition Facts; instead, Defendant lists "carbohydrates" to again mask the actual  
26 sugar content of the product. *There is no mention of sugar anywhere on the packaging of the*  
27 *product.* Nowhere does Defendant explain to consumers that "evaporated cane juice" is (1) not juice  
28 and (2) "evaporated cane juice" in its common and usual name is sugar. By so doing, Defendant is

1 able to deceive consumers, including Plaintiff, regarding the health claims made by Defendant.

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 health claims of the product. Plaintiff and members of the Class relied on Defendant's  
5 misrepresentations and would not have paid as much, if at all, for the product but for Defendant's  
6 misrepresentations.

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

9 **THE PARTIES**

10 **A. Plaintiff.**

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

17 **B. Defendant.**

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

19 2. Defendant, Southeastern Mills, Inc. ("Southeastern" or "Defendant") is a limited liability  
20 company organized and existing under the laws of the state of Georgia, with a principal place of  
21 business located at 333 Old Lindale Road, Rome, GA 30161. Defendant offers the product for sale  
22 through various channels, including the internet and retailers throughout the nation, including the State  
23 of California. Defendant, directly and through its agents, has substantial contacts with and receives  
24 substantial benefits and income from and through the State of California. Defendant is the owner and  
25 distributor of the product and is the company that created and/or authorized the false, misleading, and  
26 deceptive advertisements and packaging for the product.

27 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein  
28 as DOES 1 to 25, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is

1 informed and believes and thereon alleges that each of the DOE defendants is in some manner legally  
2 responsible for the damages suffered by Plaintiff and the members of the class as alleged herein.  
3 Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when  
4 they have been ascertained, along with appropriate charging allegations, as may be necessary.

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

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

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

### 15 **III. JURISDICTION AND VENUE**

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

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

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

### 25 **IV. FACTS**

26 10. Defendant manufactures, markets, and sells the product. The product is marketed as  
27 healthy. In the ingredient list for the product, Defendant lists "evaporated cane juice" as an ingredient.  
28 Defendant does not list "sugar" or any other commonly known sweetener. The term "sugar" or any

1 other common name for sugar is not found anywhere on the product labeling. Nowhere on the product  
2 or in the ingredient list does Defendant explain that "evaporated cane juice" is not actually juice and is  
3 actually sugar.

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

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

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

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

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

26 16. The FDA has decreed that "evaporated cane juice" is not the common or usual name of  
27 any type of sweetener, including sugar. Sugar is defined in 21 C.F.R. §101.4(b)(20) and 21 C.F.R.  
28 §184.1854, as the usual or common name for the crystallization from sugar cane or sugar beet juice

1 that has been extracted by pressing or diffusion, then clarified and evaporated. 21 C.F.R. §168.130  
2 defines cane syrup.

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

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

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

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

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

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

25 **V. CLASS ACTION ALLEGATIONS**

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

28 ///

1 All persons located within the United States who purchased Defendant's  
2 Better Than Bouillon labeled with "evaporated cane juice" at any time  
3 during the four years preceding the filing of this Complaint (the  
4 "Class").

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

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

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

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

- 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,

1 and the fair and efficient handling of all class members' claims in a single forum. The conduct of this  
2 action as a class action conserves the resources of the parties and of the judicial system and protects  
3 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible  
4 mechanism that allows an opportunity for legal redress and justice.

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

## 8 VI. CAUSES OF ACTION

### 9 FIRST CAUSE OF ACTION

#### 10 NEGLIGENT MISREPRESENTATION

##### 11 (By Plaintiff and on Behalf of the Class Against Defendant)

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

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

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

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

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

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

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

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



1 damages arising out of personal injuries.

2 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

28 44. There is no other adequate remedy at law, and Plaintiff and Class members will suffer

1 irreparable harm unless Defendant's conduct is enjoined.

2 45. Plaintiff's counsel mailed to Defendant, by certified mail, return receipt requested, the  
3 written notice required by Civil Code Section 1782(a) on December 14, 2016. A Copy of the letter is  
4 attached hereto as Exhibit Two.

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

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

11 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

27 52. Each of the aforementioned representations alleged in this Complaint was false and  
28 misleading regarding the ingredients of the product.

53. By disseminating and publishing these assertions in connection with the sale of the product, Defendant has engaged in and continues to engage in false advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

54. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

55. Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of Defendant's ill-gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

56. Plaintiff and Class members seek to enjoin Defendant from engaging in these wrongful practices, as alleged herein, in the future. There is no other adequate remedy at law and if an injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

#### FOURTH CAUSE OF ACTION

## UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES

**(CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

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

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

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

59. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*, in that Defendant's actions are unfair, unlawful, and fraudulent, and because Defendant has made unfair, deceptive, untrue, or misleading statements in advertising media, including the Internet, within the meaning of California Business and Professions Code §§ 17200, *et seq.*

60. Defendant knew or should have known by exercising reasonable care that its

1 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,  
2 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,  
3 by misrepresenting in its advertising and marketing of the product to Plaintiff, Class members, and the  
4 consuming public.

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

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

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

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

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

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

24 67. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an  
25 order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive  
26 business practices and any other act prohibited by law, including those set forth in the Complaint.  
27 Plaintiff and the Class also seek an order-requiring Defendant to make full restitution of all moneys it  
28 wrongfully obtained from Plaintiff and the Class.

1 **PRAYER FOR RELIEF**

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

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

16  
17 **DEMAND FOR JURY TRIAL**

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

20  
21 Dated: February 22, 2017

APEX TRIAL LAW  
A Professional Corporation

22  
23  
24 By: 

Ryan M. Ferrell

25 Attorney for Plaintiff and the Class  
26  
27  
28

# Exhibit 1

1 I, Ronald Rodriguez, 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 Riverside 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 Ronald R. Rodriguez  
14 Ronald Rodriguez  
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# **Exhibit 2**





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

December 14, 2016

**VIA CERTIFIED MAIL**

Southeastern Mills, Inc.  
333 Old Lindale Road  
Rome, GA 30161

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 Better Than Bouillon. The Better Than Bouillon 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.

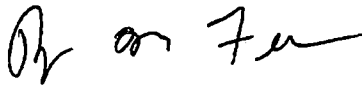
“Guidance for Industry: Ingredients Declared as Evaporated Cane Juice”  
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm>

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 Better Than Bouillon to Plaintiff, Class members, and the consuming public that Better Than Bouillon 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", written in a cursive style.

Ryan M. Ferrell, Esq.



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

4050 Main Street - 2nd Floor

Riverside, CA 92501

[www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov)

NOTICE OF ASSIGNMENT TO DEPARTMENT  
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

RODRIGUEZ VS SOUTHEAST

CASE NO. RIC1703058

This case is assigned to the Honorable Judge Sharon J. Waters in Department 10 for all purposes.

The Case Management Conference is scheduled for 04/24/17 at 8:30 in Department 10.

Department 5 and 10 are located at 4050 Main St, Riverside, CA 92501.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

by: \_\_\_\_\_

VANESSA ALVARADO, Deputy Clerk

Date: 02/22/17