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11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 SUSIE JEAN JOHNSON, on behalf of
 14 herself, all others similarly situated, and
 15 the general public,

16 Plaintiff,

17 v.

18 TROPICANA MANUFACTURING
 19 COMPANY, INC. a Delaware corporation;
 20 PEPSICO., INC., a North Carolina
 21 corporation,

22 Defendants.

Case No: '19CV1164 GPC KSC

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Susie Jean Johnson (“Plaintiff”), hereby brings this Action against
2 Defendants Tropicana Manufacturing Company, Inc. and PepsiCo., Inc. (“Defendants”
3 or “Tropicana”), alleging that Defendants’ Tropicana Pure Premium 100% Orange Juice
4 with Calcium & Vitamin D Product (the “Product”) is misbranded and falsely advertised
5 and otherwise violates consumer protection laws, and upon information and belief and
6 investigation of counsel alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over this action under the Class Action
9 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Defendants are citizens of
10 different states from that of the Plaintiff, the putative class size is greater than 100
11 persons, and the amount in controversy in the aggregate for the putative Class exceeds
12 the sum or value of \$5 million exclusive of interest and costs.

13 2. This Court has both general and specific personal jurisdiction over the
14 Defendants because Defendants have conducted and continue to conduct substantial
15 business in the State of California and in the County of San Diego. Plaintiff purchased
16 the Product in the County of San Diego.

17 3. This Court has specific personal jurisdiction arising from Defendants’
18 decision to advertise and sell the Product in California. Defendants have sufficient
19 minimum contacts with this State and sufficiently avail themselves to the markets of this
20 State through their manufacture, promotion, sales, and marketing of the Product to
21 consumers within the State to render the exercise of jurisdiction by this Court reasonable.

22 4. Venue is proper in the United States District Court for the Southern District
23 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events
24 giving rise to the claims occurred within this judicial district, Defendants has marketed
25 and sold the Product at issue in this action within this judicial district, and they conduct
26 business within this judicial district. Plaintiff also purchased the Product within this
27 District.

1 **PARTIES**

2 5. Plaintiff Susie Jean Johnson is an individual consumer over the age of
3 eighteen who resides in La Mesa, California.

4 6. Defendant Tropicana Manufacturing Company, Inc. is a Delaware
5 corporation that manufactures the Product. Plaintiff is informed and believes that
6 Defendant Tropicana Manufacturing Company, Inc. maintains its principal place of
7 business in Bradenton, Florida. Defendant Tropicana Manufacturing Company, Inc. is
8 registered to do business in the state of California as entity number C2326121.

9 7. Defendant PepsiCo., Inc. is a North Carolina corporation and is the parent
10 company of Defendant Tropicana Manufacturing Company, Inc. Plaintiff is informed and
11 believes that Defendant PepsiCo., Inc. maintains its principal place of business in
12 Purchase, New York. Defendant PepsiCo., Inc. is registered to do business in the state
13 of California as entity number C1577264.

14 8. Defendants manufacture, advertise, market, distribute, and sell the Product
15 in California.

16 **FACTUAL ALLEGATIONS**

17 9. Defendants manufacture, distribute, advertise, market, and sell the
18 Tropicana Pure Premium 100% Orange Juice with Calcium & Vitamin D Product (the
19 “Product”).

20 10. The Product is labeled as if its flavored exclusively with natural ingredients.
21 For example, the Product shows a photo of an orange with a straw in it and says, “100%
22 Orange Juice” and “Pure Premium.”

23 11. Defendants intended to give reasonable consumers, like Plaintiff Johnson,
24 the impression that the Product was all-natural by packaging, labeling, and advertising
25 the Product in a manner that suggests the Product is all-natural. However, the Product
26 contains d-l-malic acid, which is an undisclosed artificial flavoring ingredient.

27 12. A true and correct copy of the Product’s front label is provided below:
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1 **A. Defendants Do Not Disclose that the Product is Artificially Flavored**

2 13. The ingredients label on the Product states, “100% Pure pasteurized orange
3 juice, calcium hydroxide, citric acid, **malic acid**, and vitamin D3.” (emphasis added)

4 14. The “malic acid” listed in the Product’s ingredient list is an artificial flavor.

5 15. Defendant failed to include the legally required “artificially flavored”
6 disclosure on the Product’s labels.

7 16. Under these circumstances, the Product’s labels violate California and
8 federal statutes and state common law in multiple respects.

9 17. First, because the Product contains additional flavoring ingredients that
10 simulate and reinforce the characterizing flavor, the front label is required by law to
11 disclose those additional flavors rather than misleadingly suggest that the product is
12 naturally flavored. (California Health & Safety Code § 109875 *et seq.*, (Sherman Law),
13 incorporating 21 C.F.R. § 101.22.).¹

14 18. Second, the Product’s ingredients list violates federal and state law because
15 identifies, misleadingly, the d-l-malic acid flavoring only as the general “malic acid”
16 instead of using the specific, non-generic name of the ingredient. (*See* 21 C.F.R. §
17 101.4(a)(1)).

18 19. Lastly, the Defendants conceal the true nature of the Product. Defendants
19 labeled the Product in a manner that suggests it is made with only natural flavors even
20 though the Product contains d-l-malic acid – an undisclosed artificial flavor made from
21 petrochemicals.

22 20. There is a compound found in nature that is sometimes referred to informally
23 as malic acid.

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25 ¹ California’s Sherman Food, Drug and Cosmetic Act, California Health & Safety Code
26 § 109875 *et seq.*, incorporates into California law all regulations enacted pursuant to the
27 U.S. Food Drug and Cosmetic Act. An act or omission that would violate an FDCA
28 regulation necessarily violates California’s Sherman Law. (Health & Safety Code, §
110100.) Regulatory citations in the text are to California’s Sherman Law and reference
the corresponding federal regulation for convenience.

1 21. The natural form of malic acid is correctly and specifically identified as “l-
2 malic acid.” L-malic acid occurs naturally in various types of fruits and vegetables.

3 22. That, however, is not the compound that Defendants put in the Product.
4 Instead, Defendants flavor the Product with a synthetic industrial chemical called d-l
5 malic acid,² in the form of a racemic mixture of d- and l-isomers. This type of “malic
6 acid” is not naturally-occurring but is manufactured in petrochemical plants from
7 benzene or butane – components of gasoline and lighter fluid, respectively – through a
8 series of chemical reactions, some of which involve highly toxic chemical precursors and
9 byproducts.

10 23. Testing of the Product that was conducted on May 8, 2019 confirms the
11 presence of artificial d-l malic acid.

12 24. The “d-l-malic acid” used by Defendants is an inexpensive synthetic
13 chemical used in processed food products to make a tangy or tart taste, like one would
14 expect from fresh fruits like oranges.

15 25. Both the natural and unnatural forms of malic acid are considered “GRAS”
16 (generally recognized as safe) for use as flavorings in foods marketed to adults³; the d-
17 malic acid form, however, has never been extensively studied for its health effects in
18 human beings. Both forms confer a “tart, fruity” flavor to food products.⁴

19 26. Although the malic acid that is placed in the Product to simulate its
20 characterizing fruit flavor is d-l-malic acid – the artificial petrochemical – Defendants
21 pretend otherwise, conflating the natural and artificial flavorings and deceiving
22 consumers.

23 27. Because the Product contains an artificial flavor, both federal and state law
24 require the Product’s front and back label to state the Product contains artificial flavoring.

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26 ² D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic
27 acid.

28 ³ The d-l form of malic acid, the one used by Defendants, is forbidden for use in baby
foods out of health concerns if consumed by infants.

⁴ <https://thechemco.com/chemical/malic-acid/> (last visited June 20, 2019).

1 (21 C.F.R. § 101.22.)

2 28. Neither the Product’s front-label nor its back-label contains disclosures.
3 Defendants intentionally designed the Product’s labels without the required “Artificial
4 Flavoring” disclosures to deceiving consumers into believing that the Product contains
5 no artificial ingredients, artificial flavoring agents or artificial chemicals. It is currently
6 unknown whether the Product is also contaminated with precursor chemicals used in the
7 manufacture of d-1 malic acid.

8 29. California law, incorporating and identically mirroring U.S. Food, Drug and
9 Cosmetic Act regulations by reference, requires that a food’s label accurately describe
10 the nature of the food product and its characterizing flavors. (21 C.F.R. § 102.5(a).)

11 30. Under FDA regulations, a recognizable primary flavor identified on the
12 front label of a food product is referred to as a “characterizing flavor.” (21 C.F.R. §
13 101.22.)

14 31. FDA regulations and California law establish that if “the label, labeling, or
15 advertising of a food makes any direct or indirect representations with respect to the
16 primary recognizable flavors by word, vignette, e.g., description of a fruit, or other
17 means” then “such flavor shall be considered the characterizing flavor.” (California’s
18 Sherman Law, incorporating 21 C.F.R. § 101.22(i).)

19 32. “Orange Juice” is a primary recognizable flavor identified on the Product’s
20 front label. Orange Juice is a characterizing flavors under California and federal
21 regulations.

22 33. If a product’s characterizing flavor is not created exclusively by the
23 characterizing flavor ingredient, the product’s front label must state that the product’s
24 flavor was simulated or reinforced with either or both of natural or artificial flavorings.
25 If any artificial flavor is present which “simulates, resembles or reinforces” the
26 characterizing flavor, the food must be prominently labeled as “Artificially Flavored.”
27 (California’s Sherman Law, incorporating 21 C.F.R. § 101.22(i)(3), (4).)

28 34. A food product’s label must also include a statement of the “presence or

1 absence of any characterizing ingredient(s) or component(s) ... when the presence or
2 absence of such ingredient(s) or component(s) in the food has a material bearing on price
3 or consumer acceptance ... and consumers may otherwise be misled about the presence
4 or absence of the ingredient(s) or component(s) in the food.” (California’s Sherman Law,
5 incorporating 21 C.F.R. § 102.5(c).) Such statements must be in boldface print on the
6 front display panel and of sufficient size for an average consumer to notice. (*Id.*)

7 35. The synthetic d-l malic acid in the Product simulates, resembles, and
8 reinforces the characterizing orange juice flavor for the Product.

9 36. For example, the Product contains pure pasteurized orange juice, but it also
10 contains d-l-malic acid, a synthetic flavoring material used to create, simulate, or
11 reinforce the characterizing orange juice flavor.

12 37. Under these regulations, Defendants were required to place prominently on
13 the Product’s front labels a notice sufficient enough to allow reasonable consumers to
14 understand that the Product contained artificial flavorings.

15 38. Defendants failed to do so, deceiving consumers and violating California
16 law, federal law, and corresponding state common laws.

17 39. Accordingly, Plaintiff and the Class were unaware that the Product
18 contained artificial flavors when they purchased them.

19 40. When purchasing the Product, Plaintiff and class members were seeking
20 products of particular qualities that were flavored only with the natural ingredients
21 claimed on the label and which did not contain artificial flavoring.

22 41. Plaintiff is not alone in these purchasing preferences. As reported in Forbes
23 Magazine, 88% of consumers polled recently indicated they would pay more for foods
24 perceived as natural or healthy. “All demographics [of consumers] – from Generation Z
25 to Baby Boomers – say they would pay more” for such products, specifically including
26 foods with no artificial flavors.⁵ Forty-one percent (41%) of consumers rated the absence
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28 ⁵ *Consumers Want Healthy Foods - And Will Pay More For Them*”; Forbes Magazine, February 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers->

1 of artificial flavors in food products as “Very Important,” and eighty percent (80%) of
2 North American consumers are willing to pay a premium for foods with no artificial
3 ingredients.⁶

4 42. John Compton, the former CEO of Defendant PepsiCo., spoke to investors
5 at the Morgan Stanley Consumer & Retail Conference, stating: “We have talked
6 extensively to consumers about this idea, and they come back and tell us the number one
7 motivation for purchase is products that claim to be natural.”

8 43. Defendants’ labeling and advertising reflect these consumer preferences –
9 not by making the Product solely with natural ingredients, but instead by concealing the
10 fact that the Product is artificially flavored.

11 44. California’s Health & Safety Code states that “[a]ny food is misbranded if
12 it bears or contains any artificial flavoring, artificial coloring, or chemical preservative,
13 unless its labelling states that fact.” (California Health & Safety Code, § 110740.)

14 45. California law requires Defendants to include sufficient notice on the
15 Product’s labels to alert California consumers that the Product is artificially flavored.
16 Defendants failed to do so. Accordingly, Defendants’ Product is misbranded and illegal
17 to distribute or sell in California. (California Health & Safety Code, §§ 110740, 110760,
18 110765.)

19 46. Because the Product violated California law, it was misbranded when
20 offered for sale in California.

21 47. Defendants were aware that consumers, like Plaintiff and the Class, prefer
22 natural products to those that are artificially flavored.

23 48. Defendants deceived Plaintiff and the Class into purchasing the Product by

24 _____
25 want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5; (last visited March 22,
26 2018).

27 ⁶ The Nielsen Company, Global Health and Wellness Survey, “Healthy Eating Habits
28 Around the World,” 2015; <https://www.nielsen.com/content/dam/niensenglobal/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf>; (last visited March 22, 2018).

1 unlawfully concealing that it was artificially flavored.

2 49. Plaintiff and the Class lost money as a result of Defendants' conduct because
3 they would not have purchased the Product or would not have paid as much as they had
4 in the absence of Defendants' misrepresentations and omissions.

5 **B. Plaintiff's Purchase of the Product**

6 50. Plaintiff Johnson purchased the Product several times since April 2018 in
7 San Diego County, California during the Class Period defined herein.

8 51. Plaintiff Johnson's most recent purchase was in January 2019 at the
9 Albertsons located 2899 Jamacha Road, El Cajon, CA 92019.

10 52. Plaintiff Johnson was deceived by, and justifiably relied upon, the Product's
11 deceptive labeling, which claimed it was "Pure Premium," and "100% Orange Juice."
12 Plaintiff Johnson, like any reasonable consumer, believed that if a beverage states it is
13 "premium" and 100% Orange Juice, then the beverage is not made with artificially
14 ingredients. Ms. Johnson's belief was reaffirmed by Defendants' omission that the
15 Product contains artificial flavoring.

16 53. Plaintiff Johnson, as a reasonable consumer, is not required to subject
17 consumer food products to laboratory analysis, to scrutinize the labels on the back of
18 products to discover that its front label is false and misleading, or to search the labels for
19 information that federal regulations require be displayed prominently on the front – and,
20 in fact, under state law are entitled to rely on statements that Defendants deliberately
21 place on the Product's labeling. Defendants, but not Plaintiff, knew or should have known
22 that this labeling was in violation of federal regulations and state law.

23 54. Because Plaintiff reasonably assumed the Product was free of artificial
24 flavoring, based on the Product's labels, when it was not, she did not receive the benefit
25 of their purchase. Instead of receiving the benefit of a product free of artificial flavoring,
26 Plaintiff received the Product that was unlawfully labeled to deceive consumers into
27 believing that they were naturally flavored and contained no artificial flavoring, in
28 violation of federal and state labeling regulations.

1 55. Plaintiff would not have purchased the Product in the absence of
2 Defendants' misrepresentations and omissions. Had Defendants not violated California
3 law, Plaintiff would not have been injured.

4 56. The Product was worth less than what Plaintiff paid for, and class members
5 would not have paid as much as they had for the product absent Defendants' false and
6 misleading statements and omissions.

7 57. Plaintiff and the Class therefore lost money as a result of Defendants'
8 unlawful behavior. Plaintiff and the Class altered their position to their detriment and
9 suffered a loss in an amount equal to the amounts they paid for the Product.

10 58. Plaintiff intends to, seeks to, and will purchase the Product again when she
11 can do so with the assurance that the Product's labels, which indicate that the Product is
12 naturally flavored, are lawful and consistent with the Product's ingredients.

13 **CLASS ACTION ALLEGATIONS**

14 59. Plaintiff bring this action on behalf of herself and all others similarly situated
15 (the "Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

16 60. The California Class is defined as follows:

17 All California citizens who made retail purchases of the Product
18 in California on or after June 20, 2015 and until notice is
19 disseminated to the Class, for personal use and not for resale,
20 excluding Defendants and Defendants' officers, directors,
21 employees, agents and affiliates, and the Court and its staff (the
22 "Class").

23 61. During the Class Period, the Product unlawfully contained the undisclosed
24 artificial flavoring ingredient called d-l malic acid and was otherwise improperly labeled.
25 Defendants failed to label the Product as required by California law.

26 62. During the Class Period, the Class purchased the misbranded Product, and
27 paid a price premium for the Product compared to similar products lawfully labeled.

28 63. The proposed Class meets all criteria for a class action, including

1 numerosity, commonality, typicality, predominance, superiority, and adequacy of
2 representation.

3 64. This action has been brought and may properly be maintained as a class
4 action against Defendants. While the exact number and identities of other Class
5 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that
6 there are hundreds of thousands of members in the Class. The members of the Class are
7 so numerous that joinder of all members is impracticable, and the disposition of their
8 claims in a class action rather than in individual actions will benefit the parties and the
9 courts.

10 65. The proposed Class satisfies typicality. Plaintiff's claims are typical of and
11 are not antagonistic to the claims of other Class members. Plaintiff and the Class
12 members all purchased the Product, were deceived by the false and deceptive labeling,
13 and lost money as a result of purchasing the Product that was illegal to sell.

14 66. The proposed Class satisfies superiority. A class action is superior to any
15 other means for adjudication of the Class members' claims because each Class member's
16 claim is modest, based on the Product's retail purchase price which is generally about
17 \$5.00 per unit. It would be impractical for individual Class members to bring individual
18 lawsuits to vindicate their claims.

19 67. Because Defendants' misrepresentations were made on the labels of the
20 Product, all Class members, including Plaintiff, were exposed to and continue to be
21 exposed to the omissions and affirmative misrepresentations. If this action is not brought
22 as a class action, then Defendants can continue to deceive consumers and violate
23 California law with impunity.

24 68. The proposed Class representative satisfies adequacy of representation.
25 Plaintiff is an adequate representative of the Class as she seeks relief for the Class, her
26 interests do not conflict with the interests of the Class members, and she has no interests
27 antagonistic to those of other Class members. Plaintiff has retained counsel competent in
28 the prosecution of consumer fraud and class action litigation.

1 69. There is a well-defined community of interest in questions of law and fact
2 common to the Class, and these predominate over any individual questions affecting
3 individual Class members in this action.

4 70. Questions of law and fact common to Plaintiff and the Class include:

- 5 i. Whether Defendants failed to disclose the presence of the artificial
6 flavoring ingredient d-l malic acid in the Product;
- 7 ii. Whether Defendants' labeling omissions and representations
8 constituted false advertising under California law;
- 9 iii. Whether Defendants' conduct constituted a violation of California's
10 Unfair Competition Law;
- 11 iv. Whether Defendants' conduct constituted a violation of California's
12 Consumer Legal Remedies Act;
- 13 v. Whether the Class is entitled to restitution, rescission, actual
14 damages, punitive damages, attorney fees and costs of suit, and
15 injunctive relief; and
- 16 vi. Whether members of the Class are entitled to any such further relief
17 as the Court deems appropriate.

18 71. Plaintiff will fairly and adequately protect the interests of the Class, has no
19 interest that is incompatible with the interests of the Class, and has retained counsel
20 competent and experienced in class litigation.

21 72. Defendants have acted on grounds applicable to the entire Class, making
22 final injunctive relief or declaratory relief appropriate for the Class as a whole.

23 73. Class treatment is therefore appropriate under California law.

24 74. Class damages will be adduced at trial through expert testimony and other
25 competent evidence.

26 75. California law holds that the price-premium consumers paid for the falsely-
27 advertised Product, as a percentage of the Product's retail price, is a proper measure of
28 Class damages.

1 76. Food-industry consumer research is consistent and readily supports such
2 estimates of that price-premium, as consumers quantitatively report that they seek out,
3 value, and are willing to pay a premium for food products with no artificial flavors.

4 77. On information and belief, based on publicly-available information,
5 Plaintiff alleges that the total amount in controversy exclusive of fees, costs, and interest,
6 based on the estimated price premium and revenue for sales to the Class in California
7 during the proposed Class Period, exceeds \$5 million.

8 **CAUSES OF ACTION**

9 **I.**

10 **FRAUD BY OMISSION**

11 **Cal. Civ. Code §§ 1709-1710**

12 **(by Plaintiff on behalf of the Class against Defendants)**

13 78. Plaintiff re-alleges and incorporates by reference the allegations made
14 elsewhere in the Complaint as if set forth in full herein.

15 79. Plaintiff brings this claim for fraud by omission pursuant to California Civil
16 Code §§ 1709-1710, *et seq.*

17 80. Defendants actively concealed material facts, in whole or in part, with the
18 intent to induce Plaintiff and members of the Class to purchase the Product. Specifically,
19 Defendants actively concealed the truth about the Product by not disclosing the existence
20 of artificial flavoring ingredients on the front label of the Product as is required by
21 California and federal law.

22 81. Plaintiff and the Class were unaware of these omitted material facts and
23 would not have purchased the Product, or would have paid less for the Product, if they
24 had known of the concealed facts.

25 82. Plaintiff and the Class suffered injuries that were proximately caused by
26 Defendants' active concealments and omissions of material facts.

27 83. Defendants' fraudulent concealments and omissions were a substantial
28 factor in causing the harm suffered by Plaintiff and the Class because they would not

1 have purchased the Product or would have paid less for the Product if all material facts
2 were properly disclosed.

3 **II.**

4 **NEGLIGENT MISREPRESENTATION**

5 **Cal. Civ. Code §§ 1709-1710**

6 **(by Plaintiff on behalf of the Class against Defendants)**

7 84. Plaintiff re-alleges and incorporates by reference the allegations made
8 elsewhere in the Complaint as if set forth in full herein.

9 85. Plaintiff bring this claim for negligent misrepresentation pursuant to
10 California Civil Code §§ 1709-1710, *et seq.*

11 86. Defendants had a duty to disclose to Plaintiff and Class Members the
12 existence of artificial flavoring ingredients on the front labels of the Product pursuant to
13 California and federal law. Defendants were in a superior position to Plaintiff and the
14 Class Members such that reliance by Plaintiff and the Class was justified. Defendants
15 possessed the skills and expertise to know the type of information that would influence a
16 consumer’s purchasing decision.

17 87. During the applicable Class period, Defendants negligently or carelessly
18 misrepresented, omitted, and concealed from consumers material facts regarding the
19 Product, including the existence of artificial flavoring ingredients.

20 88. Defendants were careless in ascertaining the truth of its representations in
21 that it knew or should have known that Plaintiff and the Class would not have realized
22 the true existence of artificial flavoring ingredients in the Product.

23 89. Plaintiff and the Class were unaware of the falsity of Defendants’
24 misrepresentations and omissions and, as a result, justifiably relied on them when making
25 the decision to purchase the Product.

26 90. Plaintiff and the Class would not have purchased the Product, or would have
27 paid less for the Product, if the true facts had been known.

28

1 **III.**

2 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

3 **Cal. Civ. Code §§ 1750, *et seq.***

4 **(by Plaintiff on behalf of the Class against Defendants)**

5 91. Plaintiff re-alleges and incorporates herein by reference the allegations
6 contained in all preceding paragraphs, and further allege as follows:

7 92. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
8 *seq.* (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and
9 unconscionable commercial practices in connection with the sale of any goods or services
10 to consumers.

11 93. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §
12 1761(d). The Product is a “good” as defined by Cal. Civ. Code § 1761.

13 94. Defendants’ failure to label the Product in compliance with federal and state
14 labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial
15 practice.

16 95. Defendants’ conduct violates the CLRA, including but not limited to, the
17 following provisions:

18 § 1770(a)(5): representing that goods have characteristics, uses, or benefits
19 which they do not have.

20 § 1770(a)(7): representing that goods are of a particular standard, quality, or
21 grade if they are of another.

22 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

23 § 1770(a)(16): representing the subject of a transaction has been supplied in
24 accordance with a previous representation when it has not.

25 96. As a result of Defendants’ violations, Plaintiff and the Class suffered
26 ascertainable losses in the form of the price premiums they paid for the deceptively
27 labeled and marketed Product, which they would not have paid had the Product been
28 labeled truthfully, and in the form of the reduced value of the Product purchased

1 compared to the Product as labeled and advertised.

2 97. On or about June 6, 2019, prior to filing this action, Plaintiff sent a CLRA
3 notice letter to Defendant PepsiCo. which complies with California Civil Code § 1782(a).
4 Plaintiff sent PepsiCo., individually and on behalf of the proposed Class, a letter via
5 Certified Mail, advising Defendant that it is in violation of the CLRA and demanding
6 that it cease and desist from such violations and make full restitution by refunding the
7 monies received therefrom.

8 98. Wherefore, Plaintiff seeks injunctive relief Defendants' violations of the
9 CLRA. If Defendants fail to take the corrective action described in Plaintiff's CLRA
10 letter within 30 days of the date that the letter was sent, then Plaintiff will seek leave to
11 amend her complaint to add a claim for damages under the CLRA.

12 **IV.**

13 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

14 **(UNLAWFUL PRONG)**

15 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

16 **(by Plaintiff on behalf of the Class against Defendants)**

17 99. Plaintiff re-allege and incorporates by reference each and every allegation
18 contained elsewhere in this Complaint as if fully set forth herein.

19 100. Section 17200 of the California Business & Professions Code ("Unfair
20 Competition Law" or "UCL") prohibits any "unlawful," "unfair" and "fraudulent"
21 business practice. Section 17200 specifically prohibits any "unlawful . . . business act or
22 practice."

23 101. The UCL borrows violations of other laws and statutes and considers those
24 violations also to constitute violations of California law.

25 102. Defendants' practices as described herein were at all times during the Class
26 Period and continue to be unlawful under, *inter alia*, FDA regulations and California's
27 Sherman Law.

28 103. Among other violations, Defendants' conduct in unlawfully packaging and

1 labeling and distributing the Product in commerce in California violated U.S. FDA and
2 California packaging and labeling regulations.

3 104. The Product’s front labels fail to disclose that it contains synthetic artificial
4 flavoring and is not flavored with all natural orange juice in violation of 21 C.F.R. §
5 101.22 and California’s Sherman Law.

6 105. The Product contains the synthetic d-l-malic acid flavoring ingredient.

7 106. The d-l-malic acid is a synthetic flavoring material which creates, simulates,
8 or reinforces the Product’s characterizing “Orange Juice” flavor.

9 107. The d-l-malic acid in the Product is not derived from any natural material as
10 defined in the applicable state regulations and is therefore, by law, an artificial flavoring.

11 108. Defendants fail to inform consumers of the presence of artificial flavors in
12 the Product on the front label as required by law.

13 109. Defendants’ packaging, labeling, advertising, and marketing is intentionally
14 designed to give consumers the impression that they are buying an all-natural product
15 instead of a product that contains artificial flavors, and is therefore likely to deceive
16 reasonable consumers.

17 110. Defendants’ conduct further violates other applicable California and federal
18 regulations as alleged herein.

19 111. Defendants’ practices are therefore unlawful under Section 17200 *et seq.* of
20 the California Business and Professions Code.

21 **V.**

22 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
23 **(UNFAIR PRONG)**

24 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

25 **(by Plaintiff on behalf of the Class against Defendants)**

26 112. Plaintiff re-alleges and incorporates by reference each and every allegation
27 contained elsewhere in this Complaint as if fully set forth herein.

28 113. Section 17200 of the California Business & Professions Code (“Unfair

1 Competition Law” or “UCL”) prohibits any “unfair . . . business act or practice.”
2 Defendants’ practices violate the Unfair Competition Law “unfair” prong as well.

3 114. Defendants’ practices as described herein are “unfair” within the meaning
4 of the California Unfair Competition Law because the conduct is unethical and injurious
5 to California residents and the utility of the conduct to Defendants does not outweigh the
6 gravity of the harm to consumers.

7 115. While Defendants’ decision to label the Product deceptively and in violation
8 of California law may have some utility to Defendants in that it allows Defendants to sell
9 the Product to consumers who otherwise would not purchase an artificially-flavored
10 product at the premium retail price, or at all, if it were labeled correctly, and to realize
11 higher profit margins than if they formulated or labeled the Product lawfully, this utility
12 is small and far outweighed by the gravity of the harm inflicted on California consumers.

13 116. Defendants’ conduct with respect to the labeling, advertising, and sale of
14 Defendants’ Product is also unfair to consumers because it allows Defendants to sell the
15 Product to consumers who otherwise would not purchase an artificially flavored product.
16 The consumer injury is substantial, not outweighed by benefits to consumers or
17 competition, and not one that consumers themselves could reasonably have avoided.

18 117. Defendants’ conduct also injures competing beverage product
19 manufacturers, distributors, and sellers that do not engage in the same unfair and
20 unethical behavior.

21 118. Moreover, Defendants’ practices violate public policy expressed by specific
22 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False
23 Advertising Law, and the FDA regulations cited herein.

24 119. Plaintiff’s and the California Class’s purchases of the Product all took place
25 in California.

26 120. Defendants labeled the Product in violation of federal regulations and
27 California law requiring truth in labeling.

28 121. Defendants consciously failed to disclose material facts to Plaintiff and the

1 California Class in Defendants’ advertising and marketing of the Product.

2 122. Defendants’ conduct is unconscionable because, among other reasons, it
3 violates 21 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to
4 include:

5 A statement of artificial flavoring . . . [which] shall be placed on the food or on its
6 container or wrapper, or on any two or all three of these, as may be necessary to
7 render such a statement likely to be read by the ordinary person under customary
8 conditions of purchase and use of such food.

9 123. Defendants’ conduct is also “unconscionable” because it violates, *inter alia*,
10 21 C.F.R. § 101.22, which requires all food products for which artificial flavoring
11 provides a characterizing flavor to disclose this fact prominently on the product’s front
12 label.

13 124. Defendants intended that Plaintiff and the Class rely on Defendants’ acts
14 and omissions to induce them to purchase the Product.

15 125. Had Defendants disclosed all material information regarding the Product,
16 Plaintiff and the Class would not have purchased the Product or would only have been
17 willing to pay less for the Product than they did.

18 126. Plaintiff suffered an injury in fact and lost money or property as a result of
19 Defendants’ deceptive advertising: they were denied the benefit of the bargain when they
20 purchased the Product based on Defendants’ violation of the applicable laws and
21 regulations, and purchased the Product in favor of competitors’ products, which are less
22 expensive, contain no artificial flavoring, or are lawfully labeled.

23 127. The acts, omissions, and practices of Defendants detailed herein
24 proximately caused Plaintiff and other members of the Class to suffer an ascertainable
25 loss in the form of, *inter alia*, the price premium of monies spent to purchase the Product
26 they otherwise would not have, and they are entitled to recover such damages, together
27 with appropriate penalties, including restitution, damages, attorneys’ fees and costs of
28 suit.

1 128. Section 17200 also prohibits any “unfair, deceptive, untrue or misleading
2 advertising.” For the reasons set forth above, Defendants engaged in unfair, deceptive,
3 untrue and misleading advertising in violation of California Business & Professions Code
4 § 17200.

5 129. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks
6 an order requiring Defendants to immediately cease such acts of unlawful, unfair, and
7 fraudulent business practices and requiring Defendants to return to the Class the amount
8 of money improperly collected.

9 **VI.**

10 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
11 **(FRAUDULENT PRONG)**

12 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

13 **(by Plaintiff on behalf of the Class against Defendants)**

14 130. Plaintiff re-allege and incorporates by reference each and every allegation
15 contained elsewhere in this Complaint as if fully set forth herein.

16 131. Section 17200 of the California Business & Professions Code (“Unfair
17 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent”
18 business practice.

19 132. Defendants’ practices as described herein are “fraudulent” within the
20 meaning of the California Unfair Competition Law because Defendants’ conduct is likely
21 to mislead a reasonable consumer.

22 133. The Product’s front labels fail to disclose that it contains synthetic artificial
23 flavoring and is not flavored with all natural orange juice in violation of 21 C.F.R. §
24 101.22 and California’s Sherman Law.

25 134. The Product contains the synthetic d-l-malic acid flavoring ingredient.

26 135. The d-l-malic acid is a synthetic flavoring material which creates, simulates,
27 or reinforces the Product’s characterizing “Orange Juice” flavor.

28 136. The d-l-malic acid in the Product is not derived from any natural material as

1 defined in the applicable state regulations and is therefore, by law, an artificial flavoring.

2 137. Defendants fail to inform consumers of the presence of artificial flavors in
3 the Product on the front label as required by law.

4 138. Defendants' packaging, labeling, advertising, and marketing is intentionally
5 designed to give consumers the impression that they are buying an all-natural product
6 instead of a product that contains artificial flavors, and is therefore likely to deceive
7 reasonable consumers.

8 139. Defendants' conduct further violates other applicable California and federal
9 regulations as alleged herein.

10 140. Defendants' practices are therefore fraudulent under Section 17200 *et seq.*
11 of the California Business and Professions Code.

12 **VII.**

13 **VIOLATIONS OF THE FALSE ADVERTISING LAW**

14 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

15 **(by Plaintiff on behalf of the Class against Defendants)**

16 141. Plaintiff re-alleges and incorporates by reference each and every allegation
17 contained elsewhere in this Complaint as if fully set forth herein.

18 142. Defendants advertised and distributed, in California and in interstate
19 commerce, the Product that unlawfully failed to disclose the presence of artificial
20 flavoring as required by federal and state food labeling regulations.

21 143. The Product's labeling and advertising in California presents the Product as
22 if it were solely naturally-flavored and contain the natural fruit(s) shown on the labels.

23 144. Under California's False Advertising Law ("FAL"), Business and
24 Professions Code § 17500 *et seq.*,

25 "It is unlawful for any person, firm, corporation or association, or any
26 employee thereof with intent directly or indirectly to dispose of real or
27 personal property . . . to make or disseminate or cause to be made or
28 disseminated before the public in this state, or to make or disseminate
or cause to be made or disseminated from this state before the public in
any state, in any newspaper or other publication, or any advertising

1 device . . . any statement, concerning that real or personal property . . .
2 which is untrue or misleading, and which is known, or which by the
3 exercise of reasonable care should be known, to be untrue or
4 misleading. . . .” Cal. Bus. & Prof. Code § 17500.

5 145. Defendants’ labeling and advertising statements on the Product’s labels and
6 in advertising and marketing materials are “advertising device[s]” under the FAL.

7 146. Defendants’ labeling and advertising statements, which communicated to
8 consumers that the Product was naturally flavored and omitted the fact that the Product
9 contained a synthetic artificial flavor, were untrue and misleading, and Defendants at a
10 minimum by the exercise of reasonable care should have known those actions were false
11 or misleading.

12 147. Defendants’ conduct violated California’s False Advertising Law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated in
15 California, and the general public, pray for judgment against Defendants as follows:

- 16 A. An order confirming that this action is properly maintainable as a class
17 action as defined above;
- 18 B. An order appointing Plaintiff as class representatives and The Law Office
19 of Ronald A. Marron as counsel for the Class;
- 20 C. An order requiring Defendants to bear the cost of Class notice;
- 21 D. An order declaring that the conduct complained of herein violates the
22 CLRA;
- 23 E. An order declaring that the conduct complained of herein violates the UCL;
- 24 F. An order declaring that the conduct complained of herein violates the FAL;
- 25 G. An order requiring Defendants to disgorge any benefits received from
26 Plaintiff and any unjust enrichment realized as a result of the improper and
27 misleading labeling, advertising, and marketing of the Product;
- 28 H. An order requiring Defendants to pay restitution and damages to Plaintiff
and Class members so that they may be restored any money which was

1 acquired by means of any unfair, deceptive, unconscionable or negligent
2 acts;

3 I. An award of punitive damages in an amount to be proven at trial;

4 J. An order enjoining Defendants’ deceptive and unfair practices;

5 K. An order requiring Defendants to conduct corrective advertising;

6 L. An award of pre-judgment and post-judgment interest;

7 M. An award of attorney fees and costs; and

8 N. Such other and further relief as this Court may deem just, equitable, or
9 proper.

10 **JURY DEMAND**

11 Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek
12 a jury trial for claims sounding in equity.

13
14 DATED: June 20, 2019

Respectfully Submitted,

15
16 /s/ Ronald A. Marron
17 Ronald A. Marron

18
19 **LAW OFFICES OF RONALD A. MARRON**
20 Ronald A. Marron
21 *ron@consumersadvocates.com*
22 Michael T. Houchin
23 *mike@consumersadvocates.com*
24 651 Arroyo Drive
25 San Diego, CA 92103
26 Telephone: (619) 696-9006
27 Fax: (619) 564-6665
28 ***Counsel for Plaintiff and the
Proposed Class***

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I (a) PLAINTIFFS
SUSIE JEAN JOHNSON, individually and on behalf of all others similarly situated

DEFENDANTS
TROPICANA MANUFACTURING COMPANY, INC., a Delaware corporation

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Manatee County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'19CV1164 GPC KSC

(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive, San Diego, CA 92103
Tel: 619-696-9006

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Diversity Action Under Class Action Fairness Act 28 U.S.C. 1332d
Brief description of cause:
California Consumers Legal Remedies Act, Cal. Civ. Code Sec. 1750, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/20/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tropicana, PepsiCo Hit with False Advertising Class Action in California Over 'Natural' Orange Juice Claims](#)
