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15 *Attorneys for Defendant*
16 *Sun-Maid Growers of California*

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 MARGARET MCGARITY, on behalf of
20 herself and all others similarly situated,
21
22 Plaintiff,
23
24 v.
25 SUN-MAID GROWERS OF
26 CALIFORNIA and DOES 1 through 10,
27 inclusive,
28 Defendants.

Case No. **'24CV0714 BAS DEB**
[San Diego Superior Court Case No. 37-
2024-00012618-CU-FR-CTL]
**DEFENDANT SUN-MAID
GROWERS OF CALIFORNIA'S
NOTICE OF REMOVAL**
Complaint filed: March 18, 2024

1 PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1332 (as amended
2 by the Class Action Fairness Act 2005, Pub. L. 109-2, section 4(a) (“CAFA”)),
3 1441(a) and (b), 1446, and 1453, Defendant Sun-Maid Growers of California (“Sun-
4 Maid”) hereby removes the above-entitled action from the Superior Court of
5 California, County of San Diego to the United States District Court for the Southern
6 District of California. In support of this Notice of Removal, Sun-Maid states as
7 follows:

8 **INTRODUCTION**

9 1. This case is hereby removed from state court to federal court pursuant to
10 28 U.S.C. § 1332 because at the time the Class Action Complaint (“Complaint”) was
11 filed: (1) the putative class proposed by Plaintiff Margaret McGarity includes more
12 than 100 members; (2) minimal diversity of citizenship exists; and (3) the amount
13 placed in controversy by Plaintiff’s claims exceeds \$5,000,000, exclusive of interest
14 and costs. Therefore, this Court has original jurisdiction under 28 U.S.C. § 1332(d).

15 **THE STATE COURT ACTION**

16 2. On March 18, 2024, McGarity filed an action in the Superior Court of
17 California, County of San Diego, captioned *Margaret McGarity v. Sun-Maid Growers*
18 *of California, et al.*, Case No. 37-2024-00012618-CU-FR-CTL.

19 3. McGarity effected service of the Complaint on March 20, 2024.

20 4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons,
21 Complaint, and other documents served on Sun-Maid are attached as Exhibit A. These
22 documents constitute the only process, pleadings, or other orders served upon Sun-Maid
23 in this action.

24 5. McGarity’s Complaint seeks monetary damages, penalties, injunctive
25 relief, and other relief from Sun-Maid in connection with the following alleged causes
26 of action: (a) violation of California’s Consumers Legal Remedies Act, known as the
27 “CLRA” (Cal. Civil Code § 1750 *et seq.*), (b) violation of California’s False
28 Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), (c) violation of

1 California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), (d)
2 breach of express warranty, (e) breach of implied warranty, and (f) intentional
3 misrepresentation.

4 **TIMELINESS OF REMOVAL**

5 6. This Notice of Removal has been filed within thirty (30) days after Sun-
6 Maid was served with a copy of the Summons and Complaint on March 20, 2024.

7 **PLAINTIFF’S NON-OPPOSITION TO REMOVAL**

8 7. Plaintiff does not currently intend to oppose removal based on the
9 information currently available to her but reserves the right to do so. The undersigned
10 counsel certifies that he is authorized to make this representation to the Court herein
11 after consultation with McGarity’s counsel.

12 **JURISDICTION PURSUANT TO CAFA**

13 8. Under CAFA, “[t]he district courts shall have original jurisdiction of any
14 civil action in which the matter in controversy exceeds the sum or value of
15 \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any
16 member of a class of plaintiffs is a citizen of a State different from any defendant.” 28
17 U.S.C. § 1332(d)(2)(A). CAFA also provides for jurisdiction in the district court
18 where the proposed class involves 100 or more members, or where the primary
19 defendant is not a State, a State official, or other governmental entity. 28 U.S.C. §
20 1332(d)(5). As set forth below, this is a civil action over which this Court has original
21 jurisdiction under 28 U.S.C. § 1332(d) because it is a civil action filed as a class
22 action involving more than 100 members; the amount in controversy exceeds the sum
23 of \$5,000,000, exclusive of interest and costs, based on the allegations that McGarity
24 sets forth in the Complaint; at least one member of the class of plaintiffs is a citizen of
25 a different state than at least one defendant; and no defendant is a state, state official,
26 or government entity.

1 **I. Numerosity**

2 9. CAFA provides that the district courts shall not have jurisdiction over
3 actions “where the number of members of all proposed plaintiff classes in the
4 aggregate is less than 100.” 28 U.S.C. § 1332(d)(5). Plaintiff has proposed two
5 putative classes and one putative subclass:

- 6 • **Nationwide Class** – All natural persons who purchased at least one of the Class
7 Products in the United States within the applicable statute of limitations period.
- 8 • **California Class** – All natural persons who purchased at least one of the Class
9 Products in the state of California within the applicable statute of limitations
10 period.
- 11 • **California Consumer Subclass** – All natural persons who purchased at least
12 one of the Class Products in the state of California, for personal, family, or
13 household purposes, within the applicable statute of limitations period.

14 Compl. ¶ 59. The “Class Products” are defined as Sun-Maid yogurt raisin products.
15 *Id.* ¶ 1. Plaintiff defines the “applicable statute of limitations period” as four years.
16 *Id.* ¶ 4. There are over 100 proposed class members. *See id.* ¶ 63 (“The number of
17 individuals who purchased Class Products during the relevant time period is *at least in*
18 *the hundreds*”) (emphasis added). Therefore, the numerosity requirement for CAFA
19 jurisdiction set forth in 28 U.S.C. § 1332(d)(5) is satisfied.

20 **II. Diversity Of Citizenship**

21 10. CAFA’s minimal diversity requirement is satisfied when any class
22 member is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2);
23 *see Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1276 (9th Cir. 2017). The
24 parties’ citizenship is determined by their status at the action’s commencement. *See*
25 *Mann v. City of Tucson*, 782 F.2d 790, 794 (9th Cir. 1986).

26 **A. At Least One Putative Class Member Is Not a Citizen of California**

27 11. To establish citizenship for diversity purposes, a natural person must be
28 both: (a) a citizen of the United States, and (b) a domiciliary of one particular state.

1 *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). “A
2 person’s domicile is her permanent home, where she resides with the intention to
3 remain or to which she intends to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d
4 853, 857 (9th Cir. 2001). A party’s residence may serve as prima facie evidence of
5 that party’s domicile. *State Farm Mut. Auto. Ins. v. Dyer*, 19 F.3d 514, 520 (10th Cir.
6 1994). At least one putative class member is a citizen of a state other than California.
7 Compl. ¶ 59 (defining the nationwide class as “[a]ll natural persons who purchased at
8 least one of the Class Products in the United States within the applicable statute of
9 limitations period”); *see also id.* ¶ 63 (“Class Products is [sic] sold *throughout the*
10 *United States* and the State of California.” (emphasis added)).

11 **B. Sun-Maid Is a Citizen of California**

12 12. Sun-Maid is, at the time of the filing of this action, and still is, a citizen of
13 California. Sun-Maid is a California cooperative and has its headquarters at 6795 N.
14 Palm Ave., 2nd Floor, Fresno, CA 93704. *Id.* ¶ 13. It is thus a citizen of California.
15 *See* 28 U.S.C. § 1332(c)(1) (providing that “a corporation shall be deemed to be a citizen
16 of every State and foreign state by which it has been incorporated and of the State or
17 foreign state where it has its principal place of business”).

18 13. Because the putative nationwide class has at least one class member who
19 is a citizen of a state other than California, and Sun-Maid is a citizen of California,
20 diversity of citizenship exists under CAFA. *See* 28 U.S.C. § 1332(d)(2) (where the
21 amount in controversy is satisfied, “[t]he district courts shall have original jurisdiction
22 of any civil action . . . in which . . . any member of a class of plaintiffs is a citizen of a
23 State different from any defendant”); *see also Hicks v. Grimmway Enters., Inc.*, 2023
24 WL 3319362, at *5 (S.D. Cal. May 9, 2023) (“[M]inimal diversity exists between the
25 proposed class, which necessarily encompasses citizens of any state, and Defendant,
26 who is a citizen of . . . California.”).

1 **III. The Amount in Controversy Exceeds \$5,000,000**

2 14. CAFA authorizes the removal of class action cases in which, among the
3 other elements described above, the amount in controversy for all class members
4 exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2). The claims of the individual class
5 members shall be aggregated to determine whether the matter in controversy exceeds
6 the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. §
7 1332(d)(6). “[W]hen a defendant seeks federal-court adjudication, the defendant’s
8 amount-in-controversy allegation should be accepted when not contested by the
9 plaintiff or questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v.*
10 *Owens*, 574 U.S. 81, 87 (2014).

11 15. In determining whether the amount in controversy exceeds \$5,000,000,
12 the Court must presume that the plaintiff will prevail on each and every one of the
13 claims. *Letuligasenoa v. Int’l Paper Co.*, 2014 WL 2115246, at *2 (N.D. Cal. May 20,
14 2014) (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp.
15 2d 993, 1001 (C.D. Cal. 2002)). The amount in controversy “does not mean likely or
16 probable liability; rather, it refers to possible liability.” *Greene v. Harley-Davidson,*
17 *Inc.*, 965 F.3d 767, 772 (9th Cir. 2020).

18 16. Sun-Maid denies the merits of each of McGarity’s claims and the
19 theories upon which recovery is sought; however, for the sole purpose of determining
20 whether jurisdiction exists pursuant to CAFA, the amount in controversy for all class
21 members exceeds \$5,000,000, exclusive of interest and costs.

22 17. ***Damages Claims Against Sun-Maid:*** McGarity asserts six claims based
23 on Sun-Maid’s labeling its yogurt covered raisin products as “Yogurt Covered.”
24 Compl. ¶¶ 1–2, 70–118. McGarity claims that she and the putative class members
25 have been damaged “because they would have paid less for the Class Products, or
26 would not have purchased them at all.” *Id.* ¶ 78. She and the putative class seek
27 damages for purchases of the Class Products made during the four years preceding the
28 filing of the Complaint. *Id.* ¶ 4. The sales of the Class Products exceed \$5,000,000

1 during this putative class period. *See* Decl. of David Dewall ¶ 3, submitted herewith.
2 Indeed, sales of the Class Products in the United States have exceeded \$25 million
3 each year over the four-year class period. *Id.* Assuming that McGarity will prevail on
4 this claim, the amount in controversy exceeds \$5,000,000.

5 18. **Punitive Damages:** McGarity alleges that he and the putative class
6 members are entitled to punitive damages. Compl. at Prayer for Relief ¶ F. For the
7 reasons stated above, possible compensatory damages, including for McGarity’s
8 CLRA claims, exceed \$5,000,000. And “juries ha[ve] awarded punitive damages at
9 ratios higher than 1:1 for claims based on the CLRA.” *Greene v. Harley-Davidson,*
10 *Inc.*, 965 F.3d 767, 772 (9th Cir. 2020). Assuming that McGarity will prevail on this
11 claim, it is reasonable to assume at least a 1:1 ratio of compensatory to punitive
12 damages. Accordingly, the amount in controversy exceeds \$10,000,000.

13 19. **Attorneys’ Fees:** Plaintiff also seeks an unspecified amount of attorneys’
14 fees. Compl. at Prayer for Relief ¶ H. Attorneys’ fees are properly considered when
15 determining the amount in controversy for the purposes of removal. *See Galt G/S v.*
16 *JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“where an underlying statute
17 authorizes an award of attorneys’ fees . . . such fees may be included in the amount in
18 controversy”). The Ninth Circuit has established “[t]wenty-five percent of the fund as
19 the benchmark for a reasonable fee award in common fund cases.” *In re Bluetooth*
20 *Headset Prods. Liab. Lit.*, 654 F.3d 935, 942 (9th Cir. 2011); *In Re Nat’l Collegiate*
21 *Athletic Ass’n Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, *2 (N.D. Cal.
22 2017) (the 25% benchmark is “presumptively reasonable.”). As noted above, sales of
23 the Class Products in the United States have exceeded \$25 million each year over the
24 four-year class period. Assuming that McGarity will prevail and be awarded
25 attorneys’ fees, the amount in controversy exceeds \$5,000,000.

26 20. Based on the foregoing, jurisdiction is proper under CAFA because (a)
27 there are more than 100 putative class members, (b) the requirements for minimal
28

1 diversity are met, and (c) the amount in controversy exceeds \$5,000,000, exclusive of
2 interest and costs.¹

3 **VENUE**

4 21. The Southern District of California is the United States District Court
5 embracing the place where Plaintiff’s state court action is pending. Venue thus lies in
6 this Court pursuant to 28 U.S.C. § 1441(a).

7 **NON-WAIVER OF DEFENSES**

8 22. By removing this action from the Superior Court of California, County of
9 San Diego, Sun-Maid does not waive any defenses available to it.

10 23. By removing this action, Sun-Maid does not admit any of the allegations
11 in the Complaint.

12 24. After filing this Notice of Removal, Sun-Maid will promptly serve
13 written notice of this Notice of Removal on counsel for all adverse parties and file the
14 same with the Clerk of the San Diego Superior Court in accordance with 28 U.S.C. §
15 1446(d).

16 **WHEREFORE**, Sun-Maid removes the above-entitled action now pending in
17 the Superior Court of California, County of San Diego to this Court.

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24 _____
25 ¹ Although Sun-Maid does not bear the burden of proof, the exceptions to removal
26 under 28 U.S.C. § 1332(d) do not apply to this case. In particular, the “local
27 controversy” exception to CAFA, where more than two-thirds of the putative class
28 members are citizens of the State in which the action was originally filed, does not
apply because Plaintiff seeks to certify a nationwide class of purchasers of the Class
Products.

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Respectfully submitted,

DATED: April 19, 2024

WINSTON & STRAWN LLP

By: /s/ Daniel M. Aronsohn
Christopher M. Murphy
Daniel M. Aronsohn

*Attorneys for Defendant
Sun-Maid Growers of California*

EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SUN-MAID GROWERS OF CALIFORNIA; and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARGARET MCGARITY, on behalf of herself and all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego County Superior Court
330 W. Broadway
San Diego, CA 92101

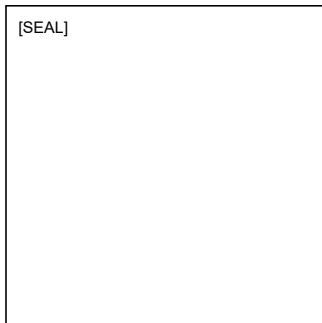
CASE NUMBER: (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Aubry Wand, The Wand Law Firm, P.C., 100 Oceangate, Suite 1200, Long Beach, CA 90802, (310) 590-4503

DATE: _____ Clerk, by _____, Deputy
(Fecha) _____ (Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 **THE WAND LAW FIRM, P.C.**
Aubry Wand (SBN 281207)
2 100 Oceangate, Suite 1200
3 Long Beach, CA 90802
4 Telephone: (310) 590-4503
5 Email: awand@wandlawfirm.com

6 **FARUQI & FARUQI, LLP**
Lisa Omoto (SBN 303830)
7 1901 Avenue of the Stars, Suite 1060
8 Los Angeles, CA 90067
9 Telephone: (424) 256-2884
10 Email: lomoto@faruqilaw.com

11 *Attorneys for Plaintiff and the Putative Classes*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15 MARGARET MCGARITY, on behalf of
16 herself and all others similarly situated,

17 Plaintiff,

18 v.

19 SUN-MAID GROWERS OF CALIFORNIA;
20 and DOES 1 through 10, inclusive,

21 Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

1. Violation of California Consumers Legal Remedies Act
2. Violation of California False Advertising Law
3. Violation of California Unfair Competition Law
4. Breach of Express Warranty (Cal. Com. Code § 2313)
5. Breach of Implied Warranty (Cal. Com. Code § 2314)
6. Intentional Misrepresentation

DEMAND FOR JURY TRIAL

1 Plaintiff Margaret McGarity and (“Plaintiff”), on behalf of herself and all others similarly
2 situated, brings this class action against Defendant Sun-Maid Growers of California (“Sun-Maid”
3 or “Defendant”), and Does 1 through 10, based on Sun-Maid’s false and deceptive advertising and
4 labeling regarding its yogurt raisin products. Plaintiff makes the following allegations based on the
5 investigation of her counsel, and on information and belief, except as to allegations pertaining to
6 Plaintiff individually, which are based on her personal knowledge.

7 **INTRODUCTION**

8 1. During the statute of limitations period, Sun-Maid has marketed, labeled, advertised,
9 and sold its yogurt raisin products (the “Class Products”) to consumers with packaging that has
10 prominently and unequivocally represented that they are yogurt covered raisins.

11 2. The Class Products’ packaging unequivocally states that the raisins are “Yogurt
12 Covered” (the “*Yogurt Claim*”).

13 3. Reasonable consumers believe, based on the *Yogurt Claim*, that the Class Products
14 are healthy snacks because they are raisins covered in yogurt, both of which are widely known as
15 healthy foods. However, unbeknownst to consumers, the Class Products are not covered with yogurt,
16 as yogurt is defined under federal regulations, and as consumers commonly understand the term.
17 They are, in fact, raisins coated with a flavored candy shell. Therefore, they are more akin to candies
18 such as Raisinets and Tootsie Rolls than they are to the healthy snack that Sun-Maid markets them
19 as.

20 4. Plaintiff seeks relief in this action individually, and on behalf of all other similarly
21 situated individuals who purchased the falsely and deceptively labeled Class Products during the
22 statute of limitations period (beginning four years prior to the date that this Complaint was originally
23 submitted to the Court for filing on February 9, 2024), for violations of California’s Consumers
24 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, California’s False Advertising Law, Cal. Bus.
25 & Prof. Code § 17500, *et seq.*, California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
26 17200, breach of express and implied warranty (Cal. Com. Code §§ 2313-2314), and intentional
27 misrepresentation (i.e., common law fraud).

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JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant because Sun-Maid is a California cooperative that is qualified to do business in California and regularly conducts business in California. Defendant has distributed the Class Products throughout California, including in this County.

6. Venue is proper in this County pursuant to California Code of Civil Procedure § 395, *et seq.* and Cal. Civ. Code § 1780(d). Sun-Maid regularly conducts business throughout this County and made the misrepresentations that had a substantial effect in this County. A substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this County. Plaintiff resides in this County, and she purchased Sun-Maid’s yogurt covered raisins in this County within the statute of limitations period.

PLAINTIFF

7. Plaintiff is a citizen of the United States and the State of California. She currently resides in Dulzura, California.

8. In or around August 2022, Plaintiff purchased a six-box package of Sun-Maid’s Vanilla Yogurt Covered Raisins at a Walmart in La Mesa, California for which she recalls paying between \$2 to \$4. Plaintiff saw and relied on the *Yogurt Claim* in making this purchase. More specifically, Plaintiff reasonably believed, based on the *Yogurt Claim*, that she was buying raisins that were in fact covered with yogurt. This belief was an important part of her decision to purchase the product. Had Plaintiff known that the product is a candy-coated raisin that is merely vanilla yogurt-flavored, she would not have purchased the product, or she would have paid less for it. Thus, Plaintiff has suffered injury in fact and lost money as a result of Sun-Maid’s misleading, false, unfair, and deceptive practices, as alleged herein.

9. Although Plaintiff currently believes that the Class Products are not made with yogurt as represented, she cannot trust any of Sun-Maid’s representations, and she lacks personal knowledge as to the specific conditions under which Sun-Maid manufactures the Class Products. Therefore, even though Plaintiff would like to continue purchasing the Class Products if she knew

1 that they were made with yogurt, Plaintiff will for the time being refrain from doing so. This is a
2 tangible and ongoing harm to Plaintiff that cannot be rectified absent an injunction.

3 **DEFENDANT**

4 10. Sun-Maid, directly and/or through its agents, marketed, advertised, and sold dried
5 fruit snacks, including the Class Products, across the nation, at all times during the statute of
6 limitations period.

7 11. On information and belief, the operations and conduct relevant to the allegations and
8 claims in this Complaint predominately emanate from California.

9 12. Sun-Maid has maintained significant contacts in California, having started in the San
10 Joaquin Valley in 1912. Sun-Maid is comprised of 750 grower families with vineyards in
11 California's Central Valley.

12 13. Sun-Maid is a California cooperative that maintains its principal place of business
13 and headquarters at 6795 N. Palm Ave., 2nd Floor, Fresno, California, 93704-1088.

14 14. Sun-Maid's factory is in Kingsburg, California.

15 15. On information and belief, Sun-Maid's executive management team is based in, and
16 works out of, these headquarters. On further information and belief, all relevant operations and
17 business policies and practices were created, designed, contracted, implemented, modified, and/or
18 maintained in California.

19 16. For example, Sun-Maid directs all corporate affairs to its Fresno headquarters.¹

20 17. In 2021, Sun-Maid rolled out a marketing campaign called "Imagine That," which
21 was conceived, designed, and implemented by officers working at Sun-Maid's Fresno headquarters.

22 18. In addition to producing the Class Products in California, Sun-Maid made the
23 decision to advertise the Class Products as healthy yogurt snacks, and label the Class Products with
24 the *Yogurt Claim*, in California.

25 19. Plaintiff and Class members would not have purchased the Class Products, or would
26 have paid less for them, had they known that the *Yogurt Claim* is false and deceptive. Therefore,
27

28 _____
¹ <https://www.sunmaid.com/contact-us/corporate-contact/> (last accessed February 01, 2024).

1 they have suffered injury in fact and lost money as a result of Sun-Maid’s unlawful conduct, as
2 alleged herein, and the economic injury suffered by Plaintiff and Class members was caused by Sun-
3 Maid’s policies and practices that originated from its headquarters in Fresno, California.

4 20. On further information and belief, Sun-Maid maintains no offices or locations
5 outside of California. Thus, all the unlawful conduct alleged herein emanated from California.

6 21. Based on these facts, extraterritorial application of California laws to the Class is
7 appropriate. *See, e.g., Wershba v. Apple Computer, Inc.*, 110 Cal. Rptr. 2d 145, 159 (2001)
8 (certifying nationwide class based on violation of Cal. Bus. & Prof. Code § 17500 because the
9 defendant was a “California corporation” and the brochures containing the purported
10 misrepresentations “were prepared in and distributed from California.”); *In re iPhone 4S Consumer*
11 *Litig.*, No. 12-cv-1127-CW, 2013 WL 3829653, *7 (N.D. Cal. July 23, 2013) (holding California
12 consumer protection law applied to non-residents where wrongful conduct originated from
13 California); *Wang v. OCZ Tech. Grp., Inc.*, 276 F.R.D. 618, 630 (N.D. Cal. 2011) (holding that
14 California law could apply to a nationwide class because “[t]he facts alleged are that the misleading
15 marketing, advertising, and product information are ‘conceived, reviewed, approved, or otherwise
16 controlled from [the defendant’s] headquarters in California.’”).

17 22. Alternatively, the Court can and should address choice-of-law issues at the class
18 certification stage. *See, e.g., Donohue v. Apple, Inc.*, 871 F.Supp.2d 913, 922 (N.D. Cal. 2012)
19 (issues regarding the assertion of nationwide class claims “boil down to questions of whether
20 common issues predominate and whether plaintiff can adequately represent absent class members,
21 issues that are better resolved at the class certification stage.”).

22 23. The true names and capacities of Does 1 through 10, inclusive, are unknown to
23 Plaintiff at this time, and Plaintiff therefore sues such Doe defendants under fictitious names. On
24 information and belief, each Defendant designated as a Doe is in some manner highly responsible
25 for the occurrences alleged herein, and Plaintiff’s and Class members’ injuries and damages, as
26 alleged herein, were proximately caused by the conduct of such Doe defendants. Plaintiff will seek
27 leave of the Court to amend this Complaint to allege the true names and capacities of such Doe
28 defendants when ascertained.

FACTUAL ALLEGATIONS

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A. The Class Products

24. The Class Products consist of Sun-Maid raisins that have been sold with packaging that has borne the *Yogurt Claim*, including but not limited to, Vanilla Yogurt Covered Raisins and Strawberry & Vanilla Yogurt Covered Raisins.

25. The Class Products are generally sold in packages containing six 1 oz. boxes. They are also sold in 8 oz. bags. The *Yogurt Claim*, however, is prominently displayed in the same manner across all package sizes and types.

26. Representative images are set forth below:



1 **B. The Yogurt Claim is False and Deceptive**

2 27. As can be seen from the above images, the *Yogurt Claim* conveys the unequivocal
3 message that the Class Products are covered with yogurt.

4 28. However, the Class Products are not covered with yogurt. To the contrary, they are
5 coated with a highly-processed candy coating.

6 29. In the ingredients section in fine print for the Vanilla Yogurt Covered Raisins it
7 states:

8 INGREDIENTS: VANILLA YOGURT FLAVORED COATING (SUGAR,
9 HYDROGENATED PALM KERNEL OIL, NONFAT MILK POWDER, YOGURT
10 POWDER (CULTURED WHEY AND NONFAT MILK), WHEY POWDER, COLOR
11 ADDED (TITANIUM DIOXIDE), SOY LECITHIN-AN EMULSIFIER, AND VANILLA),
12 CALIFORNIA RAISINS, TAPIOCA DEXTRIN, CONFECTIONER’S GLAZE.

13 30. In the ingredients section in fine print for the Strawberry & Vanilla Yogurt Covered
14 Raisins it states:

15 INGREDIENTS: FLAVORED COATINGS (SUGAR, HYDROGENATED PALM
16 KERNEL OIL, NONFAT MILK POWDER, YOGURT POWDER (CULTURED WHEY,
17 NONFAT MILK), WHEY POWDER, COLOR ADDED (TITANIUM DIOXIDE,
18 ANNATTO, VEGETABLE JUICE), SOY LECITHIN-AN EMULSIFIER, NATURAL
19 FLAVOR, VANILLA), RAISINS, TAPIOCA DEXTRIN, CITRIC ACID,
20 CONFECTIONER’S GLAZE.

21 31. The ingredient list for the Vanilla Yogurt Covered Raisins states that the raisins have
22 a “vanilla yogurt flavored coating” while the ingredient list for the Strawberry & Vanilla Yogurt
23 Covered Raisins states that the raisins have “flavored coatings.”²

24 32. Yogurt powder, an ingredient in the flavored coatings, does not offer any of the
25 expected nutritional benefits of bona fide yogurt. Rather, yogurt powder is a preservative that is

26 ² This is not a valid disclaimer. *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008)
27 (“reasonable consumers should [not] be expected to look beyond misleading representations on the
28 front of the box to discover the truth from the ingredient list in small print on the side of the box.”);
Brady v. Bayer Corp., 237 Cal. Rptr. 3d 683, 692–93 (Ct. App. 2018) (approving *Williams* and
stating that “a back label ingredients list that conflicted with, rather than confirming, a front label
claim could not defeat an action”). Moreover, assuming *arguendo* that a reasonable consumer reads
the ingredient list in fine print on the back of the product, it would not put a reasonable consumer
on notice that the Class Products are not made with yogurt.

1 used to extend shelf life in foods such as condiments, dips, and spreads. In essence, it is a flavor
2 supplement and emulsifier, not yogurt.

3 33. Yogurt powder is also highly processed and heat-treated. The yogurt powder does
4 not contain any viable cultures, as the heat in the drying process kills these helpful bacteria. In fact,
5 the National Yogurt Association (“NYA”), a national non-profit trade association, has stated that
6 “since heat-treated yogurts do not contain [live and active cultures] or provide the functional benefits
7 of [live and active cultures], heat-treated yogurt products are inherently misleading to consumers
8 and should be labeled with some other descriptive or fanciful name.”³

9 34. The NYA also opined that “labeling a product ‘heat-treated after culturing’ would
10 not cure the potential for consumer deception since the statement fails to sufficiently inform
11 consumers about the deficiencies of a heat-treated product and how it differs functionally from
12 traditional yogurt.”⁴

13 35. The Federal Food, Drug & Cosmetic Act (“FDCA”) regulates the sale of food and
14 beverages to the consuming public. 21 U.S.C.A. § 301. The Act was promulgated in significant part
15 to prevent consumer deception and was principally implemented through the creation of a uniform
16 system of labeling.

17 36. The FDCA and its implementing regulations have identified the words and
18 statements that must or may be included on labeling, and they have specified how prominently and
19 conspicuously those words and statements must appear. These provisions, known as “Standards of
20 Identity,” ensure that statements are presented on labels in such a way as to likely be read and
21 understood by the ordinary individual under customary conditions of purchase and use. 21 U.S.C. §
22 343(f).

23 37. The FDCA’s definition of yogurt is thorough, and it breaks down specifications
24 based on the type of dairy used, the amount of milkfat contained in the finished product, etc. It
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26 ³ *National Yogurt Association, Comments to Milk and Cream Products and Yogurt Products;*
27 *Proposal to Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend the*
28 *Standard for Yogurt* (Docket No. FDA-200-P-0126) (Apr. 29, 2009) at 11.

⁴ *See id.* at 5.

1 provides, in part, “Yogurt is the food produced by culturing one or more of the basic dairy
2 ingredients specified in paragraph (b) of this section and any of the optional dairy ingredients
3 specified in paragraph (c) of this section with a characterizing bacterial culture that contains *the*
4 lactic acid-producing bacteria, *Lactobacillus delbrueckii subsp. bulgaricus* and *Streptococcus*
5 *thermophilus*. 21 C.F.R. § 131.200(a) (emphasis added).⁵

6 38. Yogurt is made by adding the lactic acid producing bacterias (*Lactobacillus*
7 *delbrueckii subsp. Bulgaricus* and *Streptococcus thermophilus*) to a source of dairy to ferment it.
8 Thus, one of the primary health benefits associated with yogurt is that it contains active cultures
9 with bacteria—known as probiotics—that is beneficial for gut health.⁶

10 39. Plaintiff has independently verified through testing that the yogurt powder contained
11 in the Class Products does not contain *Lactobacillus delbrueckii subsp. bulgaricus* and
12 *Streptococcus thermophilus* or any live cultures. Thus, it is not yogurt, as defined under 21 C.F.R.
13 § 131.200(a).

14 40. The cultures are the source of one of the primary health benefits of yogurt. The health
15 and nutritional benefits from lactic acid bacteria include improved digestion of lactose and control
16 of intestinal infections, some types of cancer, and serum cholesterol levels.⁷

17 41. Reasonable consumers believe that the yogurt coating the raisins, like bona fide
18 yogurt, contains probiotic bacteria which can “improve the gut biome and improve digestive
19 health.”⁸ Indeed, a 2009 Study by Harris Interactive surveyed 2000 individuals and found that 78%
20 of the respondents and 86% of yogurt consumers expected to find live and active cultures in yogurt.⁹

21 _____
22 ⁵ Other live cultures can be added. 21 C.F.R. § 131.200(d)(1).

23 ⁶ <https://www.medicalnewstoday.com/articles/295714> (last accessed February 01, 2024).

24 ⁷ “Reconstituted yogurt from yogurt cultured milk powder mix has better overall characteristics
25 than reconstituted yogurt from commercial yogurt powder”, Lijie Song, Kayanush J. Argana,
<https://www.sciencedirect.com/science/article/pii/S0022030214005748> (last accessed February
01, 2024).

26 ⁸ “Health Benefits of Yogurt,” <https://www.webmd.com/diet/health-benefits-yogurt> (last accessed
February 01, 2024).

27 ⁹ Harris Interactive, “Live and Active Culture Survey,” [https://downloads.regulations.gov/FDA-](https://downloads.regulations.gov/FDA-2000-P-0126-0088/content.pdf)
28 [2000-P-0126-0088/content.pdf](https://downloads.regulations.gov/FDA-2000-P-0126-0088/content.pdf) (March 25, 2009).

1 42. Thus, the Class Products do not provide one of the primary health benefits of yogurt,
2 which reasonable consumers expect, rendering the *Yogurt Claim* false and deceptive.

3 43. On March 21, 2014, Philip Spiller, the then Acting Director of the Office of
4 Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, sent
5 an informational letter to Sun-Maid, which states in pertinent part that:

6 Furthermore, in the ingredient statement of each product, the “yogurt powder” is a sub-
7 ingredient of a “yogurt coating” ingredient. Based on this information, an example of a more
8 appropriate statement of identity for each product appears to be “Vanilla Yogurt-Flavored
Covered Raisins” and “Vanilla Yogurt-Flavored Coated Covered Cherries.”

9 *See Exhibit A.*

10 44. In other words, Sun-Maid should include the text “Vanilla Yogurt-Flavored Covered
11 Raisins” on the consumer facing front label of its product package. The Class Products do not
12 contain that text as shown *supra* ¶ 26.

13 45. In short, the yogurt powder is just a secondary ingredient in the yogurt flavored
14 coating. Given that it is comprised of cultured whey and non-fat milk, it does not have (and never
15 had) the characteristic lactic acid producing bacteria (*Lactobacillus delbrueckii subsp. Bulgaricus*
16 *and Streptococcus thermophilus*) required to classify it as yogurt, as this term is commonly
17 understood by consumers or as defined under federal regulations.

18 46. Moreover, most of the ingredients in the Class Products are unhealthy and unnatural,
19 as explained below:

- 20 • There is added sugar, which speaks for itself.
- 21 • There is confectioner’s glaze made from shellac, which is derived from resin scraped from
22 the branches of trees left from when an insect creates a hard, waterproof cocoon. It is
23 commonly used as a glaze in several candy products, including candy corn, Whoppers,
24 Raisinets, Milk Duds, Tootsie Rolls, Sugar Babies, and Junior Mints.

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- 1 • Hydrogenated palm kernel oil, as the name suggests, is oil derived from palm fruit that is
2 then combined with hydrogen. It is not a natural oil. It is often added to food to preserve
3 consistency. It is considered dangerous because it is in high in saturated fats.¹⁰
- 4 • Titanium dioxide is a manufactured chemical that is often used as a pigment in paint,
5 sunscreen, and food coloring. In this case, it is added to make the yogurt flavored coating
6 white. Titanium dioxide is a known carcinogen. It is on the list banned of banned substances
7 under California’s Proposition 65.
- 8 • Soy lecithin is a food additive derived from soy and is often used as an emulsifier (i.e., to
9 prevent fats and oils and from mixing with other substances) in foods, as is the case here.
10 Soy lecithin may be considered harmful, but at a minimum it is an unnatural ingredient that
11 does not provide any health benefits.
- 12 • Tapioca dextrin is a starch that acts as an adhesive coating for candy, snack and vegetable,
13 and meat substrates. It is also it is an unnatural ingredient that does not provide any health
14 benefits.

15 47. In combination, the ingredients that make up the flavored coating do not constitute
16 real yogurt. Several of them are unnatural and at least one of them is a potential carcinogen.
17 Holistically, the flavored coating is an unhealthy candy coating, not an actual yogurt coating. The
18 ingredients are similar to those found in Candy Coated Tootsie Roll Snowballs.¹¹

19 48. Thus, the *Yogurt Claim* is false under federal regulations and it is deceptive because
20 it misleads reasonable consumers into believing the Class Products are healthy yogurt snacks.
21 Conversely, reasonable consumers do not expect, based on *Yogurt Claim*, that the Class Products
22 are coated with a highly-processed candy coating that contains no yogurt and never contained any
23 yogurt.

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26 ¹⁰ Almost all the fat in the product is from saturated fat found in processed ingredients such as the
27 hydrogenated palm kernel oil.

28 ¹¹ Both the Tootsie Roll product and the Class Products contain added sugar, palm oil, whey,
titanium dioxide, soy lecithin, and tapioca dextrin.

1 **C. The Yogurt Claim is Material**

2 49. Consumers prefer to purchase and eat healthy foods and are willing to pay a premium
3 on foods marketed and labeled as being healthy.¹²

4 50. Because of its reputation as a health food, there is a “health halo” surrounding the
5 presence of yogurt in a product. The health halo effect is the act of “overestimating the healthfulness
6 of an item based on a single claim, such as being low in calories or low in fat.”¹³ Over the past two
7 decades, the yogurt industry has boomed into prominence, estimated to be worth over 14 billion
8 dollars by 2024.¹⁴

9 51. In recent years, Sun-Maid has incorporated a line of “yogurt-covered products” to
10 exploit the “health halo” effect of yogurt, in effect combining yogurt with raisins to convey the
11 notion that the Class Products are an extremely healthy fruit-covered yogurt snack that also tastes
12 great.¹⁵

13 52. Indeed, Sun-Maid is also well-aware that consumers prefer healthy snack products—
14 i.e., that the *Yogurt Claim* is material. This message is evident from Sun-Maid’s off-label marketing.
15 For example, Sun-Maid provides information regarding the health benefits of the Class Products on
16 its website. It has touted raisins as “antioxidant powerhouses” and a “healthy snack” and described
17 its Vanilla Yogurt Covered Raisins as “raisins wrapped in a creamy blanket of vanilla yogurt—
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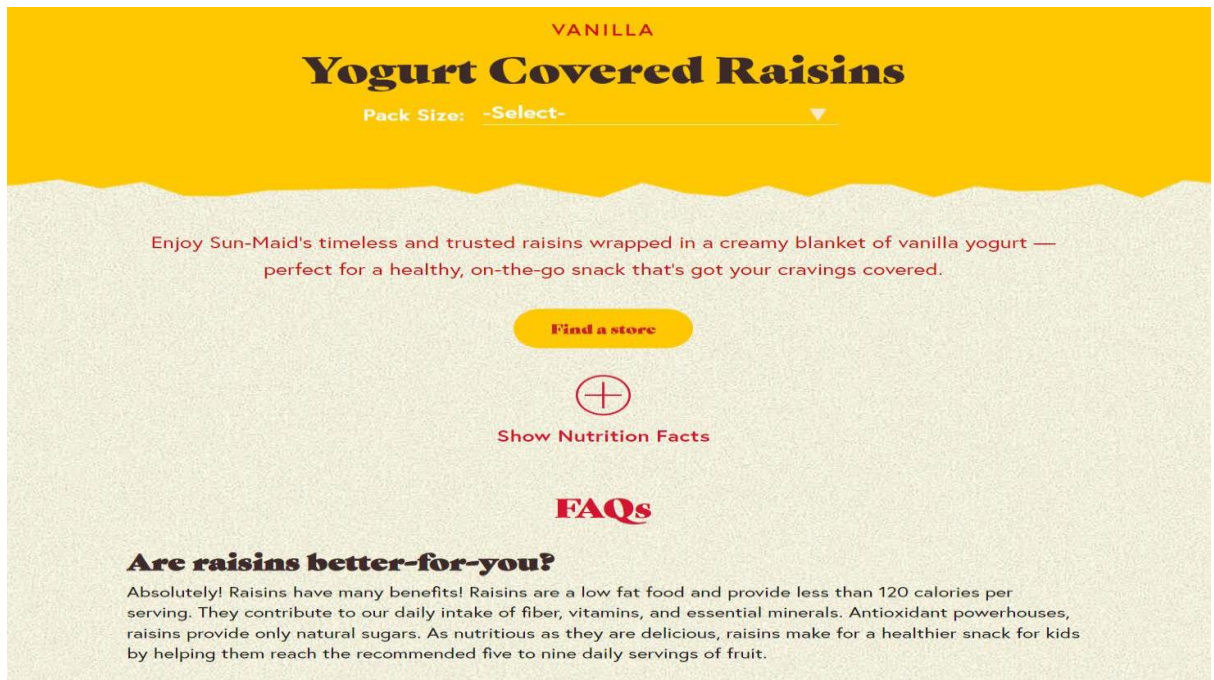
21 ¹² See, e.g., Nancy Gagliardi, “Consumers Want Healthy Foods—And Will Pay More For Them,”
22 *Forbes* (Feb. 18, 2015) (“88% of those polled are willing to pay more for healthier foods”)
<https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/?sh=67a817b975c5> (last accessed February 01, 2024).

23 ¹³ See “[The health halo: how good PR is misleading shoppers](#),” John Pelozza and William
24 Montford, <https://www.theguardian.com/sustainable-business/2015/mar/11/know-what-you-eat-health-halo#:~:text=The%20health%20halo%20effect%20refers,the%20overconsumption%20of%20certain%20foods>. (last accessed February 01, 2024).

25 ¹⁴ See <https://thecounter.org/the-yogurt-industry-is-expected-to-reach-14-5-billion-by-2024/> (last
26 accessed February 01, 2024)

27 ¹⁵ Related claims, including “Non GMO,” which bolster the reasonable belief that the Products are
28 healthy yogurt snacks, are also prominently printed on the front packaging.

1 perfect for a health, on-the-go snack that’s got your cravings covered” on its website during the
2 statute of limitations period:¹⁶



27 ¹⁶ Although Plaintiff is not alleging that consumers rely on Sun-Maid’s website representations, they
28 nonetheless reveal Sun-Maid’s belief that the *Yogurt Claim* is material, and the intent to exploit the health halo of yogurt.

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2 53. Further propagating the misconception that the Class Products are healthy yogurt
3 snacks is the fact that they are generally placed in the healthy snack aisle of the grocery store—i.e.,
4 where nuts and dried fruits are sold—not the candy aisle where Raisinets are sold.

5 54. Similarly, while shopping online, the Class Products are sold under the “Direct
6 Fruits” section at Vons and Pavilions,¹⁷ the “Health Kids Snacks” section at Walmart,¹⁸ and the
7 “Dried Fruit & Raisins” section at Target.¹⁹

8 55. In 2019, Sun-Maid launched a marketing campaign “to drive consumer awareness of
9 the new reformulation. The overarching message is that Yogurt Covered Raisins are a whole fruit
10 snack and permissible indulgence that kids will crave and moms will approve.”²⁰

11 56. A corollary product is chocolate covered raisins. For example, Raisinets, and other
12 candy covered raisin brands have additives similar to the Class Products, such as soy lecithin and
13 tapioca dextrin. Raisinets are known as candy and are not advertised or labeled otherwise. For
14 example, they are sold in the candy aisle of the grocery store with other equally unhealthy products
15 such as Candy Coated Tootsie Roll Snowballs. However, when you compare Raisinets, Candy
16 Coated Tootsie Roll Snowballs, and the Class Products, their nutritional value is materially the
17 same—i.e., they are all equally bad for your health.

18 57. As set forth in the following chart, Raisinets, Candy Coated Tootsie Roll Snowballs,
19 and the Vanilla Yogurt Covered Raisins contain similar nutritional content:²¹

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21 ¹⁷ <https://www.vons.com/shop/product-details.184740172.html> (last accessed February 01, 2024).

22 ¹⁸ <https://www.walmart.com/ip/Sun-Maid-Yogurt-Raisins-Strawberry-Vanilla-Dried-Fruit-Healthy-Snack-1-oz-6-Ct/315136034?w113=2226&selectedSellerId=0> (last accessed February 01, 2024)

23 ¹⁹ <https://www.target.com/p/sun-maid-strawberry-vanilla-yogurt-raisins-6ct/-/A-82237797#lnk=sametab> (last accessed February 01, 2024).

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25 ²⁰ Sun-Maid, Cision PR Newswire, “Sun-Maid Revamps its Yogurt Covered Raisins to Better
26 Appeal to Millennials.” <https://www.prnewswire.com/news-releases/sun-maid-revamps-its-yogurt-covered-raisins-to-better-appeal-to-millennials-300913394.html> (last accessed February 01, 2024).

27 ²¹ These nutritional values are based on 24g for Raisinets, 31g for Tootie Rolls, and 28g for the
28 Vanilla Yogurt Covered Raisins. Accordingly, the values have also been adjusted so that they are

Serving	Raisinets Dark Chocolate	Candy Coated Tootsie Roll Snowballs	Sun-Maid Vanilla Yogurt Covered Raisins
Calories	110	110; 85.14	120; 102.84
Fat	4.5g	2g; 1.55g	5g; 4.29
Sodium	0	5mg; 3.87mg	15mg; 12.86mg
Fiber	1g	N/A	<1g; < 0.86g
Total Sugars	14g	17g; 13.16g	17g; 14.57g
Added Sugars	13g	17g; 13.16g	9g; 7.71g
Protein	1g	0g; 0g	<1g; < 0.86g

58. Consumers purchased, and continue to purchase, the Class Products in part because the *Yogurt Claim* conveys the unequivocal message that they are natural and healthy yogurt covered raisins. Plaintiff and Class members would have paid less for the Class Products, or they would not have purchased them at all, but for the *Yogurt Claim*. Therefore, Plaintiff and Class members have suffered a financial injury in the form of paying a price premium that the Class Products command in the market as a result of Sun-Maid's representations that they are covered with yogurt.

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this class action pursuant to Cal. Code of Civ. P. § 382, and all other applicable laws and rules, individually, and on behalf of all members of the following Classes:

Nationwide Class

All natural persons who purchased at least one of the Class Products in the United States within the applicable statute of limitations period.

California Class

All natural persons who purchased at least one of the Class Products in the state of California within the applicable statute of limitations period.

all based on a 24g serving size – i.e. the Vanilla Yogurt Covered Raisins are multiplied by 85.7% and the Tootsie Roll products are multiplied by 77.4%.

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California Consumer Subclass

All natural persons who purchased at least one of the Class Products in the state of California, for personal, family, or household purposes, within the applicable statute of limitations period.

60. Excluded from the Classes are the following individuals and/or entities: Sun-Maid and its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity in which Sun-Maid has a controlling interest; all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

61. Plaintiff reserves the right to modify or amend the definition of the proposed Classes and/or add subclasses before the Court determines whether class certification is appropriate.

62. Plaintiff is a member of the Nationwide Class and the California Subclasses.

63. Numerosity: The proposed Classes are so numerous that joinder of all members would be impractical. Class Products is sold throughout the United States and the State of California. The number of individuals who purchased Class Products during the relevant time period is at least in the hundreds. Accordingly, Class members are so numerous that their individual joinder herein is impractical. While the precise number of Class members and their identities are unknown to Plaintiff at this time, these Class members are identifiable and ascertainable.

64. Common Questions Predominate: There are questions of law and fact common to the proposed Classes that will drive the resolution of this action and will predominate over questions affecting only individual Class members. These questions include, but are not limited to, the following:

- a. Whether Sun-Maid misrepresented material facts and/or failed to disclose material facts in connection with the packaging, marketing, distribution, and sale of the Class Products;
- b. Whether Sun-Maid’s use of challenged packaging constituted false or deceptive advertising;

- 1 c. Whether Sun-Maid engaged in unfair, unlawful and/or fraudulent business
- 2 practices;
- 3 d. Whether Sun-Maid's unlawful conduct, as alleged herein, was intentional and
- 4 knowing;
- 5 e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and
- 6 if so, in what amount;
- 7 f. Whether Sun-Maid is likely to continue using false, misleading or unlawful
- 8 conduct such that an injunction is necessary; and
- 9 g. Whether Plaintiff and the Classes are entitled to an award of reasonable
- 10 attorneys' fees, interest, and costs of suit.

11 65. Sun-Maid has engaged in a common course of conduct giving rise to violations of
12 the legal rights sought to be enforced uniformly by Plaintiff on behalf of the proposed Classes.
13 Similar or identical statutory and common law violations, business practices, and injuries are
14 involved. The injuries sustained by members of the proposed Classes flow, in each instance, from a
15 common nucleus of operative fact, namely, Sun-Maid's deceptive packaging and advertising of
16 Class Products. Each instance of harm suffered by Plaintiff and Class members has directly resulted
17 from a single course of illegal conduct. Each Class member has been exposed to the same deceptive
18 practice, as (a) the packaging of Class Products bears the same material *Yogurt Claim*, and (b) the
19 Class Products do not meet this representation of fact. Therefore, individual questions, if any, pale
20 in comparison to the numerous common questions presented in this action.

21 66. Superiority: Because of the relatively small damages at issue for each individual
22 Class member, no Class member could afford to seek legal redress on an individual basis.
23 Furthermore, individualized litigation increases the delay and expense to all parties and multiplies
24 the burden on the judicial system presented by the complex legal and factual issues of this case.
25 Individualized litigation also presents a potential for inconsistent or contradictory judgments. A
26 class action is superior to any alternative means of prosecution.

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1 67. Typicality: The representative Plaintiff’s claims are typical of those of the proposed
2 Classes, as all members of the proposed Classes are similarly affected by Sun-Maid’s uniform
3 unlawful conduct as alleged herein.

4 68. Adequacy: Plaintiff will fairly and adequately protect the interests of the proposed
5 Classes as her interests do not conflict with the interests of the members of the proposed Classes she
6 seeks to represent, and she has retained counsel competent and experienced in similar class action
7 litigation. The interests of the members of the Classes will be fairly and adequately protected by the
8 Plaintiff and her counsel.

9 69. Sun-Maid has also acted, or failed to act, on grounds generally applicable to Plaintiff
10 and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards
11 of conduct toward the members of the Classes.

12 **FIRST CLAIM FOR RELIEF**
13 **Violation of California’s Consumers Legal Remedies Act**
14 **California Civil Code § 1750, *et seq.***
 (For the Nationwide Class and California Consumer Subclass)

15 70. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set
16 forth herein.

17 71. Plaintiff brings this claim individually and on behalf of the members of the proposed
18 California Consumer Subclass against Sun-Maid pursuant to California’s Consumers Legal
19 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

20 72. The Class Products are a “good” within the meaning of Cal. Civ. Code § 1761(a),
21 and the purchases of the Class Products by Plaintiff and members of the California Consumer
22 Subclass constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

23 73. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
24 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
25 have...” By marketing the Class Products with their current packaging, Sun-Maid has represented and
26 continues to represent that the Class Products have characteristics (i.e., covered with yogurt) that they
27 do not have. Therefore, Sun-Maid has violated section 1770(a)(5) of the CLRA.

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1 74. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
2 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another.” By marketing the Class Products with their current packaging, Sun-Maid has represented
4 and continues to represent that the Class Products are of a particular standard (i.e., covered with yogurt)
5 which they do not possess. Therefore, Sun-Maid has violated section 1770(a)(7) of the CLRA.

6 75. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
7 to sell them as advertised.” By marketing the Class Products as raisins covered with yogurt, but not
8 intending to sell Class Products as such (i.e., selling them with the knowledge that they are covered with
9 highly-processed yogurt-flavored candy coating), Sun-Maid has violated section 1770(a)(9) of the
10 CLRA.

11 76. At all relevant times, Sun-Maid has known or reasonably should have known that its
12 *Yogurt Claim* on the Class Products’ packaging is false and deceptive, and that Plaintiff and other
13 members of the California Consumer Subclass would reasonably and justifiably rely on it when
14 purchasing the Class Products. Nonetheless, Sun-Maid persisted in making the *Yogurt Claim* on the
15 Class Products’ labels in order to deceive consumers into believing they are buying a healthy snack
16 with real yogurt, as opposed to a candy-coated raisin.

17 77. Plaintiff and members of the California Consumer Subclass have justifiably relied
18 on Sun-Maid’s misleading *Yogurt Claim* when purchasing the Class Products. Moreover, based on
19 the materiality of Sun-Maid’s misleading and deceptive conduct, reliance may be presumed or
20 inferred for Plaintiff and members of California Consumer Subclass.

21 78. Plaintiff and members of the California Consumer Subclass have suffered and
22 continue to suffer injuries caused by Sun-Maid because they would have paid less for the Class
23 Products, or would not have purchased them at all, had they known that the *Yogurt Claim* was untrue.

24 79. On February 8, 2024, Plaintiff, by and through her counsel, sent a notice and demand
25 letter to Sun-Maid of her intent to pursue claims under the CLRA, and an opportunity to cure,
26 consistent with Cal. Civ. Code § 1782. Sun-Maid received this notice and demand letter on February
27 14, 2024.

28

1 80. Because Sun-Maid has failed to fully rectify or remedy the damages caused after
2 waiting more than the statutorily required 30 days after Sun-Maid received the foregoing notice and
3 demand letter, Plaintiff is timely filing this Complaint for damages, as permitted under Cal. Civ.
4 Code § 1782(d). Plaintiff also requests that this Court enjoin Sun-Maid from continuing to violate
5 the CLRA as discussed herein and/or from violating the CLRA in the future. Plaintiff also requests
6 an award of actual and punitive damages, attorneys’ fees and costs, and any other relief that the
7 Court deems proper, pursuant to Cal. Civ. Code § 1780(a).

8 81. Pursuant to § 1780(d) of the Act, attached hereto as **Exhibit B** is the affidavit
9 showing that this action has been commenced in the proper forum.

10 **SECOND CLAIM FOR RELIEF**
11 **Violation of California’s False Advertising Law**
12 **California Business & Professions Code § 17500, *et seq***
 (*For the Classes*)

13 82. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set
14 forth herein.

15 83. Plaintiff brings this claim individually and on behalf of the members of the proposed
16 Classes against Sun-Maid pursuant to California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.
17 Code § 17500, *et seq.*

18 84. The FAL makes it “unlawful for any person to make or disseminate or cause to be
19 made or disseminated before the public . . . in any advertising device . . . or in any other manner or
20 means whatever, including over the Internet, any statement, concerning . . . personal property or
21 services professional or otherwise, or performance or disposition thereof, which is untrue or
22 misleading and which is known, or which by the exercise of reasonable care should be known, to
23 be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

24 85. Sun-Maid has represented and continues to represent to the public, including Plaintiff
25 and members of the proposed Classes, through its deceptive packaging, that the Class Products are
26 covered with yogurt. Because Sun-Maid has disseminated misleading information regarding Class
27 Products, and Sun-Maid knows, knew, or should have known, through the exercise of reasonable
28 care, that the *Yogurt Claim* is misleading, Sun-Maid has violated the FAL.

1 86. As a result of Sun-Maid’s false advertising, Sun-Maid has and continues to
2 unlawfully obtain money from Plaintiff and members of both Classes. Plaintiff therefore requests
3 that the Court cause Sun-Maid to restore this fraudulently obtained money to them and members of
4 the proposed Classes, to disgorge the profits Sun-Maid made on these transactions, and to enjoin
5 Sun-Maid from violating the FAL or violating it in the same fashion in the future as discussed herein.
6 Otherwise, Plaintiff and members of the proposed Classes may be irreparably harmed and/or denied
7 an effective and complete remedy.

8 **THIRD CLAIM FOR RELIEF**
9 **Violation of California’s Unfair Competition Law (“UCL”),**
10 **California Business & Professions Code § 17200, *et seq.***
11 **(*For the Classes*)**

12 87. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set
13 forth herein.

14 88. Plaintiff brings this claim individually and on behalf of the members of the proposed
15 Classes against Sun-Maid.

16 89. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that “unfair
17 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
18 deceptive, untrue or misleading advertising”

19 90. Under the UCL, a business act or practice is “unlawful” if it violates any established
20 state or federal law. Sun-Maid’s false and misleading advertising of Class Products was and
21 continues to be “unlawful” because it violates the CLRA, the FAL, federal regulations (including
22 21 C.F.R. § 131.200), and other applicable laws as alleged herein. As a result of Sun-Maid’s
23 unlawful business acts and practices, Sun-Maid has unlawfully obtained money from Plaintiff, and
24 members of the proposed Classes.

25 91. Under the UCL, a business act or practice is “unfair” if the Sun-Maid’s conduct is
26 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
27 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity
28 of the harm to the alleged victims. Sun-Maid’s conduct was and continues to be of no benefit to
purchasers of the Class Products, as it is misleading, unfair, unlawful, and is injurious to consumers

1 who rely on the packaging. Deceiving consumers into believing the Class Products are raisins
2 covered with yogurt, when they are candy-coated raisins with yogurt flavor, is of no benefit to
3 consumers. Therefore, Sun-Maid’s conduct was and continues to be “unfair.” As a result of Sun-
4 Maid’s unfair business acts and practices, Sun-Maid has and continues to unfairly obtain money
5 from Plaintiff, and members of the proposed Classes.

6 92. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is
7 likely to deceive members of the consuming public. Sun-Maid’s conduct was and continues to be
8 fraudulent because it has the effect of deceiving consumers into believing that the Class Products
9 are raisins covered with yogurt, when they are candy-coated raisins with yogurt flavor. Because
10 Sun-Maid misled Plaintiff and members of both Classes, Sun-Maid’s conduct was “fraudulent.” As
11 a result of Sun-Maid’s fraudulent business acts and practices, Sun-Maid has and continues to
12 fraudulently obtain money from Plaintiff and members of the proposed Classes.

13 93. Plaintiff requests that the Court cause Sun-Maid to restore this unlawfully, unfairly,
14 and fraudulently obtained money to them, and members of the proposed Classes, to disgorge the
15 profits Sun-Maid made on these transactions, and to enjoin Sun-Maid from violating the UCL or
16 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff and members
17 of the proposed Classes may be irreparably harmed and/or denied an effective and complete remedy.

18 **FOURTH CLAIM FOR RELIEF**
19 **Breach of Express Warranty**
20 **California Commercial Code § 2313**
21 ***(For the Classes)***

22 94. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set
23 forth herein.

24 95. Plaintiff brings this claim individually and on behalf of the members of the proposed
25 Classes against Sun-Maid.

26 96. California’s express warranty statute provides that “(a) Any affirmation of fact or
27 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of
28 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,”
and “(b) Any description of the goods which is made part of the basis of the bargain creates an

1 express warranty that the goods shall conform to the description.” Cal. Com. Code § 2313.

2 97. Sun-Maid has expressly warranted on the Class Products’ packaging that they are
3 yogurt covered raisins through the *Yogurt Claim*.

4 98. This representation about the Class Products is: (a) an affirmation of fact or promise
5 made by Sun-Maid to consumers that Class Products are yogurt covered raisins; (b) became part of
6 the basis of the bargain to purchase the Class Products when Plaintiff and other consumers relied on
7 the representation; and (c) created an express warranty that the Class Products would conform to
8 the affirmation of fact or promise. In the alternative, the representation about the Class Products is
9 a description of goods which were made as part of the basis of the bargain to purchase the Class
10 Products, and which created an express warranty that the Class Products would conform to the
11 product description.

12 99. Plaintiff and members of the Classes reasonably and justifiably relied on the
13 foregoing express warranties, believing that the Class Products did in fact conform to those
14 warranties.

15 100. Sun-Maid has breached the express warranties made to Plaintiff and members of the
16 proposed Classes by failing to the produce the Class Products in accordance with the *Yogurt Claim*,
17 as expressly warranted on the packaging.

18 101. Plaintiff and members of the proposed Classes paid a premium price for the Class
19 Products but did not obtain the full value of the Class Products as represented. If Plaintiff and
20 members of the proposed Classes had known of the true nature of the Class Products, they would
21 not have been willing to pay the premium price charged in the market. As a result, Plaintiff and
22 members of the Classes suffered injury and deserve to recover all damages afforded under the law.

23 102. On February 8, 2024, Plaintiff, by and through her counsel, sent a notice and demand
24 letter to Sun-Maid of her intent to pursue claims for breach of express and implied warranty and the
25 factual basis for those claims. This letter was sent within one month of when Plaintiff first
26 discovered the facts giving rise to her claims.

27 **FIFTH CLAIM FOR RELIEF**
28 **Breach of Implied Warranty**

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California Commercial Code § 2314(2)(f)
(For the Classes)

103. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set forth herein.

104. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Sun-Maid.

105. California’s implied warranty of merchantability statute provides that “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

106. California’s implied warranty of merchantability statute also provides that “[g]oods to be merchantable must be at least such as . . . (f) [c]onform to the promises or affirmations of fact made on the container or label if any.” Cal. Com. Code § 2314(2)(f).

107. Sun-Maid is a merchant with respect to the sale of the Class Products. Therefore, a warranty of merchantability is implied in every contract for sale of the Class Products to California consumers.

108. By advertising the Class Products with their current packaging, Sun-Maid made an implied promise that the Class Products are made with yogurt, such that they would provide actual health benefits. The Class Products do not, however, “conform to the promises...made on the container or label” because they do not possess any actual yogurt, and they never did. Further, the yogurt-flavored coating contains no live cultures and is chock full of sugar and saturated fat. Plaintiff, as well as consumers, did not receive the goods as impliedly warranted by Sun-Maid to be merchantable.

109. Therefore, the Products are not merchantable under California law and Sun-Maid has breached its implied warranty of merchantability with respect to the Class Products.

110. If Plaintiff and members of the Nationwide Class and California Subclass had known that the Products were not made with real yogurt, they would not have been willing to pay the premium price associated with them or would not have purchased them at all. Therefore, as a direct and/or indirect result of Sun-Maid’s breach, Plaintiff and members of the Nationwide Class

1 and California Subclass have suffered injury and deserve to recover all damages afforded under
2 the law.

3 111. On February 8, 2024, Plaintiff, by and through her counsel, sent a notice and demand
4 letter to Sun-Maid of her intent to pursue claims for breach of express and implied warranty and the
5 factual basis for those claims. This letter was sent within one month of when Plaintiff first
6 discovered the facts giving rise to her claims.

7 **SIXTH CLAIM FOR RELIEF**
8 **Intentional Misrepresentation**
9 ***(for the Classes)***

10 112. Plaintiff repeats the allegations contained in paragraphs 1-69 above as if fully set
11 forth herein.

12 113. Plaintiff brings this claim individually and on behalf of the members of the proposed
13 Classes against Sun-Maid.

14 114. Sun-Maid marketed the Class Products in a manner indicating that they are yogurt
15 covered raisins. Therefore, Sun-Maid has made misrepresentations about the Class Products.

16 115. The *Yogurt Claim* is material to a reasonable consumer because it relates to the
17 quality and healthfulness of the Class Products. A reasonable consumer attaches importance to such
18 representations and is induced to act thereon in making purchasing decisions with respect to fruit
19 and yogurt covered snacks.

20 116. At all relevant times, Sun-Maid knew that the *Yogurt Claim* was misleading. Sun-
21 Maid intends for Plaintiff and other consumers rely on the *Yogurt Claim*, as evidenced by Sun-Maid
22 intentionally and conspicuously placing it on the packaging of the Class Products. This can also be
23 seen in Sun-Maid's marketing campaign. In the alternative, Sun-Maid acted recklessly in making
24 the *Yogurt Claim* without regard to the truth.

25 117. Plaintiff and members of the proposed Classes have reasonably and justifiably relied
26 on Sun-Maid's intentional misrepresentations (i.e., the *Yogurt Claim*) when purchasing the Class
27 Products, and had the correct facts been known, would not have purchased them at the prices at
28 which they were sold in the market.

118. Therefore, as a direct and proximate result of Sun-Maid's intentional

1 misrepresentations, Plaintiff and members of the Classes have suffered economic losses and other
2 general and specific damages, including but not limited to the amounts paid for the Class Products,
3 and any interest that would have accrued on those monies, all in an amount to be proven at trial.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, individually and on behalf of the proposed Classes, respectfully
6 prays for following relief:

7 A. Certification of this case as a class action on behalf of the Classes defined above,
8 appointment of Plaintiff as Class representative, and appointment of her counsel as Class counsel;

9 B. A declaration that Sun-Maid's actions, as described herein, violate the claims
10 described herein;

11 C. An award to Plaintiff and the proposed Classes of restitution and/or other equitable
12 relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment
13 that Sun-Maid obtained from Plaintiff and the proposed Classes as a result of its unlawful, unfair
14 and fraudulent business practices described herein;

15 D. An award of injunctive and other equitable relief as is necessary to protect the
16 interests of Plaintiff and Class members, including, *inter alia*, an order prohibiting Sun-Maid from
17 engaging in the unlawful act described above;

18 E. An award of all economic, monetary, actual, consequential, and compensatory
19 damages caused by Sun-Maid's conduct;

20 F. An award of punitive damages;

21 G. An award of nominal damages;

22 H. An award to Plaintiff and her counsel of reasonable expenses and attorneys' fees;

23 I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest, to
24 the extent allowable; and

25 J. For such further relief that the Court may deem just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff, on behalf of herself and the proposed Classes, hereby demands a jury trial with
28 respect to all issues triable of right by jury.

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DATED: March 18, 2024

THE WAND LAW FIRM, P.C.



By: _____
Aubry Wand

FARUQI & FARUQI, LLP
Lisa T. Omoto

*Attorneys for Plaintiff and the Putative
Classes*

EXHIBIT A



MAR 21 2014

Barry Kriebel
President
Sun-Maid Growers of California
13525 S. Bethel Avenue
Kingsburg, California 93631-9212

REC'D MAR 28 2014

Dear Mr. Kriebel:

This letter is in reference to your Sun-Maid® “Vanilla Yogurt Raisins Mini-Snacks” and your Sun-Maid “Vanilla Yogurt Cherries” products, which were recently brought to our attention. We offer the following information concerning the product labels, particularly with regard to the ingredient statement and the statement of identity.

As you may know, the Food and Drug Administration’s (FDA’s) ingredient labeling regulations are found in Title 21 of the Code of Federal Regulations, section 101.4 (21 CFR 101.4). We note that one of the ingredients in the Sun-Maid “Vanilla Yogurt Raisins Mini-Snacks” product is “nonfat yogurt powder;” however, the sub-components of the “nonfat yogurt powder” are not listed. We note that all ingredients, including the ingredients of multi-component foods must be listed on the product label in accordance with 21 CFR 101.4(b)(2), unless exempt under 21 CFR 101.100. In addition, the word “natural” before the words “California raisins” is not provided for in 21 CFR 101.4.

We also offer comments on the statement of identity of your Sun-Maid “Vanilla Yogurt Raisins Mini-Snacks” and your Sun-Maid “Vanilla Yogurt Cherries” products. The name of each product must accurately describe the basic nature of the food (21 CFR 101.3 and 102.5). As you may know, yogurt and nonfat yogurt are standardized foods in accordance with 21 CFR 131.200 and 21 CFR 131.206, respectively. Therefore, your products must contain the standardized food, yogurt, in order to bear the name “yogurt” in the statement of identity. If the ingredient that you have identified as “yogurt powder” for your Sun-Maid “Vanilla Yogurt Raisins Mini-Snacks” and your Sun-Maid “Vanilla Yogurt Cherries” products is yogurt that has been dried, then we do not object to the inclusion of the term “yogurt” in the statement of identity for each product. However, if there is no ingredient in either product that meets the yogurt or nonfat yogurt standards, then the statement of identity of each product must not contain the term “yogurt” unqualified as a part of the name. Furthermore, in the ingredient statement of each product, the “yogurt powder” is a sub-ingredient of a “yogurt coating” ingredient. Based on this information, an example of a more appropriate statement of identity for each product appears to be “Vanilla Yogurt-Flavored Covered Raisins” and “Vanilla Yogurt-Flavored Coated Covered Cherries.”

Page-2- Mr. Barry Kreibel

We hope that you find the information in this letter helpful in ensuring that your Sun-Maid “Vanilla Yogurt Raisins Mini-Snacks” and Sun-Maid “Vanilla Yogurt Cherries” products are accurately labeled. You may wish to visit our website at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm> for additional information on our food labeling regulations.

If you have any questions or if you wish to respond to this letter, please address your response to Ms. Felicia B. Billingslea, Director, Food Labeling and Standards Staff, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740.

We wish to thank you in advance for your attention to these matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'P. Spiller', with a large, sweeping flourish extending to the left.

Philip Spiller
(Acting) Director
Office of Nutrition, Labeling,
and Dietary Supplements
Center for Food Safety
and Applied Nutrition
Food and Drug Administration

EXHIBIT B

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Margaret McGarity, declare as follows:

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

2. This Class Action Complaint is filed in the proper place of trial because the transaction giving rise to my claims, i.e., my purchase of the products at issue, occurred in this county.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on 2/1/2024 | 9:56 PM EST at La Mesa, California.

DocuSigned by:
Margaret McGarity
D492FD202190457...
Margaret McGarity

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
DIVISION:	Central
TELEPHONE NUMBER:	(619) 450-7072
PLAINTIFF(S) / PETITIONER(S):	MARGARET MCGARITY
DEFENDANT(S) / RESPONDENT(S):	SUN-MAID GROWERS OF CALIFORNIA
MCGARITY VS SUN-MAID GROWERS OF CALIFORNIA [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2024-00012618-CU-FR-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Marcella O McLaughlin

Department: C-72

COMPLAINT/PETITION FILED: 03/18/2024

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/30/2024	01:30 pm	C-72	Marcella O McLaughlin

Case Management Conferences (CMCs) may be conducted virtually or in person. Anyone wishing to appear remotely should visit the "Appearing for Hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

CM

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Aubry Wand (SBN 281207) The Wand Law Firm, P.C., 100 Oceangate, Suite 1200, Long Beach, CA 90802 TELEPHONE NO.: (310) 590-4503 FAX NO.: EMAIL ADDRESS: awand@wandlawfirm.com ATTORNEY FOR (Name): Plaintiff Margaret McGarity	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice	
CASE NAME: McGarity v. Sun-Maid Growers of California	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> U d <input type="checkbox"/> L d (Amount demanded exceeds \$35,000) (Amount demanded is \$35,000 or less)	C C D <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check box below for the case type that best describes this case:

<p>A T r</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) O r P I P D D (P r l r P r r D r D) T r <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) N P I P D D (O r) T r <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) E <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>C r</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) R P r r <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) U D r <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) J d R <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>P r C C L (C R C r r)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) E r J d <input type="checkbox"/> Enforcement of judgment (20) M C C <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) M C P <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Six
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 18, 2024

Aubry Wand

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. P

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM

T P d O r F Fr P r If you are filing a first paper (for example, a complaint) in a civil case, you 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 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 **r r** 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.

T P r R C C 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.

T P r C C 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

<p>A T r 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)</p> <p>O r P I P D D (P r l r Pr r D r D) T r 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</p> <p>N P I P D D (O r) T r 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)</p> <p>E Wrongful Termination (36) Other Employment (15)</p>	<p>C r 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 complete) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>R Pr r 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)</p> <p>U D r Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</p> <p>J d R 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</p>	<p>Pr C C L (C R C r R) 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 complete case type listed above) (41)</p> <p>E r J d 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</p> <p>M C C 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-complete) Other Civil Complaint (non-tort non-complete)</p> <p>M C P 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</p>
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
Short Title: McGarity vs Sun-Maid Growers of California [E-FILE]	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 37-2024-00012618-CU-FR-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

Electronic Filing Summary Data

Electronically Submitted By: Aubry Wand
On Behalf of: MARGARET MCGARITY
Transaction Number: 21999504
Court Received Date: 03/18/2024
Filed Date: 03/18/2024
Filed Time: 10:34 AM
Fee Amount Assessed: \$1,435.00
Case Number: 37-2024-00012618-CU-FR-CTL
Case Title: McGarity vs Sun-Maid Growers of California [E-FILE]
Location: Central
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 35000

Status

Documents Electronically Filed/Received

Accepted Complaint
Accepted Civil Case Cover Sheet
Accepted Original Summons

Comments

Clerk's Comments:
Events Scheduled

Hearing(s)	Date	Time	Location	Department
Civil Case Management Conference	08/30/2024	01:30 PM	Central	C-72

Electronic Filing Service Provider Information

Service Provider: LegalConnect
Email: support@legalconnect.com

Contact Person: LEGALCONNECT Support
Phone: (800) 909-6859

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sun-Maid Lawsuit Claims Yogurt-Covered Raisins Nowhere Near as Healthy as Advertised](#)
