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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/11/2015 at 04:47:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 MARCY KRINSK, MAYAN MOONEY AND
CHAYLA CLAY, Individually and on Behalf of
12 All Others Similarly Situated,

13 Plaintiffs,

14 v.

15 MONSTER BEVERAGE CORPORATION, a
16 Delaware corporation, MONSTER ENERGY
COMPANY, a Delaware corporation, f/k/a
17 Hansen Beverage Company, and DOES 1
18 through 50, inclusive,

19 Defendants.

Case No: 37-2014-20192-CU-BT-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (2) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (3) Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
- (4) Misleading Advertising (Cal. Bus. & Prof. Code § 17500, *et seq.*)
- (5) Untrue Advertising (Cal. Bus. & Prof. Code § 17500, *et seq.*)
- (6) Violation of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750. *et seq.*
- (7) Restitution Based on Quasi-Contract/ Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiffs CHAYLA CLAY and MAYAN MOONEY, on behalf of themselves and all
2 others similarly situated, and plaintiff Marcy Krinsk, individually (collectively “Plaintiffs”), brings
3 this Complaint against defendants MONSTER BEVERAGE CORPORATION, a Delaware
4 corporation, and MONSTER ENERGY COMPANY, a Delaware corporation, f/k/a Hansen
5 Beverage Company, (“Defendants” or “Hansen”) and DOES I through 50, inclusive, as follows:

6 **INTRODUCTION**

7 1. Plaintiffs Chayla Clay and Mayan Mooney brings this action pursuant to Code of
8 Civil Procedure § 382 against the Hansen Defendants, and Does 1 through 50, inclusive
9 (collectively with Hansen, “Defendants”), on behalf of all consumers who, while residing within
10 the State of California within four years of the filing of this lawsuit, purchased any of the
11 “Misbranded Products,” which include all Hansen’s juices, juice box, and Smoothie Nectar
12 products, and/or all Hubert-branded Lemonade products. The labels for each of these products
13 carry representations about the ingredients or alleged healthful properties of the products that are
14 intended to induce, and have induced, California consumers to purchase the products. These
15 representations, however, are false, misleading, and unlawful for the reasons alleged below.

16 2. Plaintiff Marcy Krinsk brings that action individual, for her purchases of the
17 Misbranded Products.

18 3. Plaintiffs alleges that Defendants’ conduct violates California’s Business and
19 Professions Code sections 17200, *et seq.* (the Unfair Competition Law, or “UCL”), California’s
20 Business and Professions Code sections 17500, *et seq.* (the False Advertising Law, or “FAL”), and
21 the Consumers Legal Remedies Act of the California Civil Code sections 1750, *et seq.* (the
22 “CLRA”). Plaintiff also alleges that Defendants’ conduct is grounds for restitution on the basis of
23 quasi-contract/unjust enrichment.

24 4. Plaintiffs seek damages and restitution stemming from Defendants’ false labeling
25 and advertising. Plaintiff also seeks declaratory and injunctive relief to ensure that Defendants
26 remove any and all false or misleading labels and advertisements relating to the Misbranded
27 Products and to prevent them from making similar representations in the future.

PARTIES

1
2 1. Plaintiff Marcy Krinsk is, and at all relevant times was, a resident of San Diego,
3 California and was (and remains) a citizen of this State. Ms. Krinsk purchased Defendant’s
4 Hansen’s juices products at Vons, during the class period. Ms. Krinsk brings her lawsuit
5 individually against the Hansen Defendants.

6 2. Plaintiff Chayla Clay is, and at all relevant times was, a resident of San Diego,
7 California and was (and remains) a citizen of this State. Plaintiff Clay purchased Defendant’s
8 Hansen’s juices, juice box, and Smoothie Nectar products, and/or all Hubert-branded Lemonade
9 products at Henrys and other San Diego stores, during the class period. Ms. Clay brings this action
10 on behalf of herself and all similarly situated.

11 3. Plaintiff Mayan Mooney is, and at all relevant times was, a resident of San Diego,
12 California and was (and remains) a citizen of this State. Plaintiff Mooney purchased Defendant’s
13 Hubert-branded Lemonade products at Seven-Eleven and other San Diego stores, during the class
14 period. Mr. Mooney brings this action on behalf of himself and all similarly situated.

15 4. Hansen has its headquarters in Corona, California, and upon information and belief
16 operates, manages and directs its nationwide sales and business operations from its offices in
17 California. Hansen also maintains manufacturing, storage, and distribution centers in California,
18 from which Hansen operates and directs the majority, or at least a substantial proportion, of its
19 nationwide sales and business operations. It is therefore believed and averred that a substantial
20 portion of the misleading labeling and related misconduct at issue in this Complaint occurred, was
21 conducted, and/or was directed in and emanated from California, including, but not limited to: (a)
22 the design of the Defendants’ packaging; (b) the review, approval and revision of Defendants’
23 products and labeling; (c) the selection and integration of ingredients into the Defendants’
24 products; (d) the distribution of the Defendants’ products; and (e) the management and supervision
25 of sales operations to Plaintiff and the putative classes (as defined herein).

26 5. The true names and capacities, whether individual, corporate, associate, or whatever
27 else, of the defendants sued herein as Does 1 to 50, inclusive, are currently unknown to Plaintiff,
28 who therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474.

1 Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein
2 as Does is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
3 seeks leave of court to amend this Complaint to reflect the true names and capacities of the
4 defendants designated herein as Does when their identities become known. (As used herein,
5 “Defendants” refers to Hansen and Does 1 to 50, inclusive.)

6 6. Plaintiffs are informed and believe and thereon alleges that each defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
8 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
9 defendant are legally attributable to the other Defendants.

10 7. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5
11 because the obligations giving rise to liability occurred in part in the County of San Francisco,
12 State of California.

13 **BACKGROUND**

14 8. Hansen deceptively labels and advertises the Misbranded Products in the following
15 ways-all of which create the impression that the Misbranded Products are natural, healthy
16 beverages.

17 ***Hansen Unlawfully Claims That the Misbranded Products Are Natural.***

18 9. Hansen advertises, labels, and represents the Misbranded Products as being
19 “Natural,” “100% Natural,” or “All Natural.” These claims appear on the product labels and even
20 in the product names of the Misbranded Products. This claim is reinforced on Hansen’s website,
21 which depicts a verdant field, trees, a blue sky, and butterflies. Some of the Misbranded Products
22 labeled as natural also state that they are “naturally sweetened with Truvia.”

23 10. These representations are false or, at best, deceptive and misleading. Webster’s New
24 World Dictionary defines “natural” as “produced or existing in nature; not artificial or
25 manufactured.”¹ Moreover, “all” is defined as “the whole extent or quantity of.”² Thus the

26 _____
27 ¹ Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 1 984), “natural,”
definition no. 2 at p.947.

28 ² *Id.*, “all,” definition no. 1 at p. 36.

1 combined use of “all natural” on the labels of the Mislabeled Products indicates to the average
2 reasonable person that “the whole extent or quantity of” the ingredients contained in the food
3 products are “produced or existing in nature; not artificial or manufactured.”

4 11. Although the Food and Drug Administration (“FDA”) does not directly regulate the
5 term “natural,” the FDA has established a policy defining the outer boundaries of the use of that
6 term by clarifying that a product is not natural if it contains color additives, artificial flavors, or
7 synthetic substances.³ Specifically, the FDA states: “[T]he agency will maintain its policy (Ref. 32)
8 regarding the use of ‘natural,’ as meaning that nothing artificial or synthetic (including all color
9 additives regardless of source) has been included in, or has been added to, a food that would not
10 normally be expected to be in the food.” 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003). The FDA has
11 issued numerous warning letters owing to the presence of synthetic ingredients such as ascorbic
12 and citric acid in so-called “natural” products without proper identification.

13 12. This policy is consistent with consumers’ understanding of the word “natural.”
14 Consumers understand “natural” to exclude synthetic ingredients, food additives, or chemical
15 preservatives. In a 2007 survey conducted by the Natural Marketing Institute, the majority of
16 respondents believed that the term “natural” in a product label meant that the product contained
17 100 percent natural ingredients, no artificial flavors, no artificial colors, no preservatives, no
18 chemicals, and a substantial percentage thought that it meant that the product was not highly
19 *processed. Moreover, 81 percent of respondents found products claiming to be “natural”*
20 *very/somewhat important when purchasing food or beverage products. And large majorities also*
21 *found that products containing no preservatives, no artificial ingredients, no artificial flavors, and*
22 *no artificial colors to be very/somewhat important when purchasing food and beverage products.*
23 *These percentages are even larger among the health-conscious segments of the US population,*
24 *which are large-approximately 40 percent. What is more, the survey found that these trends have*
25 *increased from previous years, and consequently the subject labeling statements are probably far*
26 *more important to consumers today. Significantly, the survey also found that package labeling was*

27 ³ See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.html>.
28

1 by far the most important source of information influencing consumers' purchasing decisions,
2 especially among the health-conscious segment of the population.

3 13. The labeling of products as "natural" or "all natural" (or words of similar import)
4 carries implicit health benefits important to consumers-benefits for which consumers are willing to
5 pay a premium over comparable products that are not so labeled and marketed. Defendants have
6 cultivated and reinforced a corporate image based on this theme, which they have emblazoned on
7 almost all of the Misbranded Products and even use the word "natural" in the trade name of certain
8 products (e.g., sodas and juices), despite the use of synthetic ingredients in these products. The
9 presence of synthetic ingredients in the Misbranded Products renders Defendants' product labels
10 and advertising false and misleading.

11 14. Moreover, like the FDA, the United States Department of Agriculture ("USDA"),
12 which regulates the labeling of meat and poultry, has also set limits on the use of the term
13 "natural." The USDA's Food Safety and Inspection Service states that the term "natural" may be
14 used on labeling of meat and poultry products so long as "(1) the product does not contain any
15 artificial flavor or flavorings, color ingredient, or chemical preservative ... or any other artificial or
16 synthetic ingredient, and (2) the product and its ingredients are not more than minimally
17 processed."

18 15. According to the USDA, "[m]inimal processing may include: (a) those traditional
19 processes used to make food edible or to preserve it or to make it safe for human consumption, *e.g.*,
20 smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not
21 fundamentally alter the raw product and/or which only separate a whole, intact food into
22 component parts, *e.g.*, grinding meat, separating eggs into albumen and yolk, and pressing fruits to
23 produce juices."⁴ However, "[r]elatively severe processes, *e.g.*, solvent extraction, acid hydrolysis,
24 and chemical bleaching would clearly be considered more than minimal processing."⁵

25 16. Under USDA policy, a product cannot be labeled as being "natural" if an ingredient

26 _____
27 ⁴ See the United States Department of Agriculture Food Standards and Labeling Policy book available at
http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited December 18, 2013).

28 ⁵ *Ibid.*

1 would significantly change the character of the product to the point that it could no longer be
2 considered a natural product. Moreover, any product purporting to be “natural” must conspicuously
3 identify any synthetic ingredients used on the label (*e.g.*, “all natural ingredients except dextrose,
4 modified food starch, *etc.*”). For example, a “turkey roast” cannot be called a “natural” product if it
5 contains beet coloring but can still bear the statement “all natural ingredients modified by beet
6 coloring.” Defendants do not, however, include any such limiting language on the Misbranded
7 Products.⁶

8 17. The terms “synthetic” and “artificial” closely resemble each other and in common
9 parlance are taken as synonymous. The scientific community defines “artificial” as something not
10 found in nature, whereas “synthetic” is defined as something man-made, whether it merely mimics
11 nature or is not found in nature.⁷ In the scientific community, “synthetic” includes substances that
12 are also “artificial,” but a synthetic substance also can be artificial or non-artificial.⁸ However, the
13 common understanding of “artificial” resembles the scientific community’s definition of
14 “synthetic.” Indeed Webster’s New World Dictionary defines “artificial” as “anything made by
15 human work, especially if in intimation of something natural,” whereas “synthetic” is defined as “a
16 substance that is produced by chemical synthesis and is used as a substitute for a natural substance
17 which it resembles.”⁹

18 18. Congress has defined “synthetic” to mean “a substance that is formulated or
19 manufactured by a chemical process or by a process that chemically changes a substance extracted
20 from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to
21 substances created by naturally occurring biological processes.” 7 U.S.C. § 6502(21). *See also* 7
22 C.P.R. § 205.2 (defining, in USDA’s National Organic Program regulations, a “nonsynthetic” as “a
23 substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic

24 ⁶ *Ibid.*

25 ⁷ Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume1, Issue1 (July/August/
26 September 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/> (last visited December 18,
2013).

27 ⁸ *Ibid.*

28 ⁹ *See* Webster’s New World Dictionary of the American Language, 2nd College Ed. (Simon & Schuster, 28 1984),
“artificial,” definition SYN at p.79.

1 process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21))”.

2 19. The Misbranded Products are not natural because they actually contain synthetic
3 ingredients (e.g., citric acid, ascorbic acid, phosphoric acid, tartaric acid, calcium lactate, calcium
4 gluconate) and color additives (e.g., grape skin extract, fruit and vegetable juice). *See* 21 C.P.R. §
5 101.9(c)(8)(v), 101.36(d), 101.36(e)(11)(i).

6 20. Although these substances may occur naturally, the ingredients Hansen uses are
7 chemically manufactured and highly processed-thus rendering them not natural.

8 21. Moreover, Truvia is not natural because its primary ingredient is erythritol, a sugar
9 alcohol usually made by processing genetically modified corn. In fact, Truvia uses only a small
10 amount of the stevia extract Rebiana A (“Reb A”), which is itself a chemically processed form of
11 stevia and hence not natural. However, the ingredient statement on the Misbranded Products
12 claiming to be “sweetened with Truvia” does not even disclose the existence of erythritol, only Reb
13 A, even though Reb A constitutes only one percent of Truvia.

14 22. The Misbranded Products also boast that they contain a substantial percentage of
15 vitamins and antioxidants such as vitamins C and E. These claims appear both on product labels
16 and in advertising material. For example, Hansen’s webpage for Apple Grape Juice states, “Besides
17 great taste, there’s the added benefit of naturally occurring antioxidants, as well as 120% Vitamin
18 C. Not a drop of sugar or a speck of preservatives added.”

19 23. Hansen misrepresents the provenance of the vitamin C and leads consumers to
20 believe that both it and the claimed antioxidant activity in the Misbranded Products are derived
21 from fruit and not chemical sources.

22 24. Further, Hansen’s Diet Sodas are misbranded because although they purport to be
23 “naturally flavored,” they contain artificial flavors such as citric acid and phosphoric acid, which
24 impart a tangy or sour taste to the sodas. These artificial flavors appear in the ingredient statement
25 of the sodas before the natural flavor extracts. Indeed the natural flavor extract almost always
26 appears last in the ingredient statement.

27 25. Because the Misbranded Products contain artificial flavoring and chemical
28 preservatives without stating this fact on the product labels, Defendants violated the California’s

1 Sherman Food, Drug, and Cosmetic Law, including California Health & Safety Code § 110740. In
2 this way, Defendants have also violated California Health & Safety Code § 110705 because words,
3 statements, or other information required pursuant to the Sherman Law to appear on the label or
4 labeling are not prominently placed upon the label or labeling with conspicuousness, as compared
5 with other words, statements, designs, or devices in the labeling and in terms as to render them
6 likely to be read and understood by the ordinary individual under customary conditions of purchase
7 and use.

8 ***Hansen Unlawfully Claims the Misbranded Products Contain “No Preservatives.”***

9 26. Rather than disclose the presence of chemical preservatives as required by law,
10 Defendants state the opposite through labeling statements claiming the Misbranded Products
11 contain “no preservatives.”

12 27. The Federal Regulations require food and beverage manufacturers to disclose the
13 presence of chemical preservatives “on the food or on its container or wrapper, or on any two or all
14 three of these, as may be necessary to render such statement likely to be read by the ordinary
15 person under customary conditions of purchase and use of such food.” 21 CFR § 101.22(c).

16 28. “The term chemical preservative means any chemical that, when added to food,
17 tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars,
18 spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood
19 smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 CFR § 101.22(a)(5).

20 29. Pursuant to 21 C.F.R. § 101.22(j), a food to which a chemical preservative(s) is
21 added shall, except when exempt pursuant to 21 C.F.R. § 101.100 bear a label declaration stating
22 both the common or usual name of the ingredient(s) and a separate description of its function, e.g.,
23 “preservative,” “to retard spoilage,” “a mold inhibitor,” “to help protect flavor,” or “to promote
24 color retention.”

25 30. The Misbranded Products fail to comply with the requirements of 21 C.F.R. §
26 101.22. Because many of the Misbranded Products have lengthy shelf-lives, they contain a number
27 of chemical preservatives such as ascorbic acid, citric acid, and vitamin E; however, the labels of
28 these products fail to describe the function of these chemical preservatives, thus violating the law

1 and concealing their presence.

2 31. Ascorbic acid, citric acid, and vitamin E are not types of common salt, sugar,
3 vinegar, spice, or oil extracted from spices, nor are they substances added to food by direct
4 exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal
5 properties. As used by Defendants in their products, these chemicals prevent or retard deterioration
6 of the products. Therefore these chemicals are “chemical preservatives” in Hansen’s products, as
7 defined in 21 C.F.R. § 101.22(a)(5), and must be disclosed and identified as such.

8 ***Hansen Unlawfully Claims That the Misbranded Products Contain “100% Juice.”***

9 32. Hansen’s juice products falsely advertise that they are made with 100 percent juice.

10 33. However, this is false owing to the addition of numerous synthetic, non-juice
11 ingredients. A beverage purporting to be juice must contain a percentage juice declaration. *See* 21
12 C.F.R. § 101.30(a). Where non-juice ingredients result in a diminution of the juice soluble solids or
13 a change in the volume of the product, then the 100 percent juice declaration is inappropriate. *Id.* at
14 subdiv. (b)(3). Moreover, even where there is no diminution of juice soluble solids or change in
15 volume, a 100 percent juice declaration is unlawful unless it is accompanied by the phrase “with
16 added_,” the blank being filled in with a term such as “ingredient(s),” “preservative,” or
17 “sweetener,” as appropriate (e.g., “1 00% juice with added sweetener”). *Ibid.*

18 34. Because the Misbranded Products do not contain this additional language, they are
19 mislabeled, and a reasonable consumer would be misled into believing that he or she is purchasing
20 a product that contains 100 percent juice and nothing else.

21 ***Hansen Unlawfully Claims That the Misbranded Products Contain No Added Sugar.***

22 35. Hansen’s juice products are intended to appeal to consumers who are concerned
23 with their sugar and caloric intake. In order to target sales to this demographic Hansen claims that
24 the misbranded juice products contain “No Sugar Added.” This claim is reinforced on Hansen’s
25 website, which states that certain products, such as Apple Raspberry Juice, are “naturally
26 sweetened” with Truvia.

27 36. The Misbranded Products are mislabeled because they make the nutrient content
28 claim “No Sugar Added” but are made from concentrated fruit juices. A manufacturer is prohibited

1 from using the term “No Added Sugar” where the product contains concentrated fruit juice. *See* 21
2 C.F.R. § 101.60(c)(2)(ii). A product purporting to have “No Added Sugar” must also bear a
3 statement that the food is not “low calorie” or “calorie reduced” unless the product meets the
4 requirements for making such claims. *Id.* at subdiv. *Id.* at subdiv: (c)(2)(v). These products do not
5 qualify as low-calorie foods because they provide more than 40 calories per reference amount
6 customarily consumed. *See* 21 C.F.R. § 101.60(b)(2). However, the Misbranded Products do not
7 carry the required disclaimer, nor do they, as required “direct[] consumers’ attention to the
8 nutrition panel for further information on sugar and calorie content.” 21 C.F.R. § 101.60(c)(2)(v).

9 37. Because consumers may reasonably be expected to regard terms that represent that a
10 product contains “no sugar added” as indicating a product which is low in calories or significantly
11 reduced in calories, consumers are misled when foods that are not low-calorie as a matter of law
12 are falsely represented through the use of phrases like “no sugar added” which they are not allowed
13 to bear owing to high calorie levels and absence of mandated disclaimer or disclosure
14 requirements.

15 ***Hansen Unlawfully Misbrands the Products Made from Concentrate.***

16 38. Hansen’s juice products are misbranded because they do not comply with
17 regulations governing juices made from concentrate. *See* 21 C.F.R. § 102.33(g)(1). These
18 regulations require the name of a beverage that is made from concentrate to include a term
19 indicating that fact, such as “from concentrate” or “reconstituted.” *Ibid.* The regulations further
20 provide that “such terms must be included in the name of each individual juice or ... once adjacent
21 to the product name so that it applies to all the juices.” *Ibid.* Further, “[t]he term shall be in a type
22 size no less than one-half the height of the letters in the name of the juice.”

23 39. Hansen’s juice products are misbranded because although the labels include a
24 statement that the juice is from concentrate, in many instances this statement is small, less than
25 one-half the height of the letters in the name of the juice, and purposely positioned to mislead the
26 average consumer, which again violates California law. *See* California Health & Safety Code §
27 110705.

28 ///

1 ***Hansen Unlawfully Claims the Misbranded Products Are unsweetened with Splenda.***

2 40. Hansen’s Diet Sodas claim to be sweetened with Splenda, an artificial sweetener
3 purportedly derived from sugar, and the front labels often show a Splenda logo.

4 41. This claim is deceptive because these products lead consumers to believe they are
5 sweetened only or primarily with Splenda when in fact they are also sweetened with acesulfame
6 potassium, a different artificial sweetener that has been linked to medical conditions such as
7 impaired cognitive function and is therefore avoided by many consumers.¹⁰

8 42. The statement “Sweetened with Splenda” is rendered additionally deceptive because
9 the ingredient statements disclose that acesulfame potassium is often the *primary* sweetener in
10 these products, with Splenda being secondary.

11 ***Hansen Unlawfully Fortifies the Misbranded Products.***

12 43. Hansen claims that many of the Misbranded Products such as its Blue Sky sodas
13 contain vitamins and antioxidants including ascorbic acid (synthetic vitamin C), beta carotene
14 (synthetic vitamin A), and tocopherols (synthetic vitamin E). However, these vitamins and
15 antioxidants are not naturally occurring; rather, Hansen fortifies these products with synthetic
16 vitamins and antioxidants.

17 44. This is improper. “The Food and Drug Administration does not encourage
18 indiscriminate addition of nutrients to foods, nor does it consider it appropriate to fortify ... snack
19 foods such as candies and carbonated beverages.” 21 CFR § 104.20(a). A nutrient cannot be added
20 to a food or beverage unless it is physiologically available from the food. *Id.* at sub.(g). A
21 manufacturer may not make false or misleading statements regarding the addition of vitamins or
22 minerals. *Id.* at sub.(h).

23 45. Hansen violates federal labeling law by fortifying snack foods and carbonated
24 beverages with vitamins and antioxidants. What is more, vitamins such as vitamins A and E are not
25 physiologically available when added to beverages because they are fat soluble, meaning that they

26 _____
27 ¹⁰ See Cong, et al. “Long-Term Artificial Sweetener Acesulfame Potassium Treatment Alters Neurometabolic
28 Functions in C57BL/6J Mice,” *Plus ONE*, Aug. 7, 2013, available at 28 <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0070257> Center for Science in the Public Interest, <http://www.cspinet.org/reports/asekquot.html>.

1 cannot be absorbed by the body in the absence of fat, which the Misbranded Products do not
2 contain.

3 46. Moreover, Hansen deceptively represents that these sodas contain naturally
4 occurring vitamins and antioxidants through the depiction on product labels of images of fruits
5 such as raspberries and grapes with well-known antioxidant activity and vitamin content when in
6 fact the Misbranded Products contain *added* vitamins and antioxidants.

7 *Allegations as to the Named Plaintiffs*

8 47. Plaintiffs are and, throughout the entire class period, has been a resident of San
9 Diego County, California. Plaintiffs, are concerned about and try to avoid consuming foods that are
10 not natural, such as products containing synthetic, artificial or chemical ingredients, as well as
11 products that are high in sugar. For this reason, Plaintiffs are willing to pay and has paid a premium
12 for foods that are natural and has endeavored to refrain from buying equivalent foods which are not
13 natural and which do contain synthetic, artificial, or chemical ingredients and are high in sugar.

14 48. During the class period, Plaintiffs purchased, among other products, multiple
15 Hansen Juices and Juice Boxes, and Hubert's Lemonade from various grocery store markets
16 throughout California.

17 49. Before buying Hansen's products, Plaintiffs saw pictures of fruit on the product
18 labels and read statements that these products were "Natural," "100% Natural," "All Natural,"
19 "naturally flavored," "naturally sweetened with Truvia," "GMO Free," and contained "No
20 Preservatives," "100% juice," and specified antioxidants and vitamins, and Plaintiffs relied on
21 these representations in deciding to buy the products. Plaintiffs understood these representations as
22 meaning there was nothing artificial, synthetic, or chemically fabricated in the products, that they
23 did not contain preservatives, and that the antioxidants were derived from natural sources (such as
24 fruits) and were physiologically available when ingested.

25 50. Consistent with this understanding, Plaintiffs did not see the small statements on
26 some of the product labels that the juices came from concentrate. Plaintiffs also read the "no sugar
27 added" statement on the products and believed that these were lower calorie or reduced-calorie
28 drinks and/or were not sweetened using concentrated fruit juice (or other sweeteners) and/or were

1 drawn to the products because of this label. Plaintiffs relied on this front-of-the-package
2 representation and did not scrutinize the nutrition panel for information on sugar and caloric
3 content.

4 51. Moreover, Plaintiffs believed that sodas fortified with antioxidants and vitamins
5 were healthier for themselves and their families because the vitamins and antioxidants were
6 naturally occurring and could represent a source of the specified vitamins and antioxidants needed
7 in their diets.

8 52. Finally, Plaintiffs relied on label representations that Hansen's Diet Soda was
9 sweetened with Splenda, which they preferred to other sweeteners because they believed that it was
10 derived from sugar.

11 53. Plaintiffs not only purchased these products because of the identified representations
12 but also paid more money than they would have had to pay for other similar products that did not
13 make similar representations. Indeed, had Plaintiffs known that Defendants' representations were
14 false or deceptive, it would not have purchased these products but would have purchased brands
15 that accurately represented the product or, if these were not available, would have purchased less
16 expensive products that did not make such representations. In this way, Plaintiffs did not receive
17 the products it had bargained for and have lost money as a result in the form of paying money to
18 Defendants and paying a premium for Defendants' products owing to the misrepresentations.

19 **CLASS ALLEGATIONS**

20 54. Plaintiffs Chayla Clay and Mayan Mooney bring this action on behalf of themselves
21 and those similarly situated as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs
22 Chayla Clay and Mayan Mooney seek to represent the following class: All persons who were
23 residents in California when they purchased one or more of the Misbranded Products from four
24 years prior to the filing of the Complaint and continuing to the present.

25 55. The class excludes counsel representing the class, governmental entities,
26 Defendants, any entity in which Defendants have a controlling interest, Defendants' officers,
27 directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and
28 assigns, any judicial officer presiding over this matter, the members of their immediate families

1 and judicial staff, and any individual whose interests are antagonistic to other putative class
2 members.

3 56. Plaintiffs Chayla Clay and Mayan Mooney reserve the right under California Rule
4 of Court 3.765 to amend or modify the class description with greater particularity or further
5 division into subclasses or limitation to particular issues.

6 57. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
8 of interest in the litigation and the class is easily ascertainable.

9 **A. Numerosity**

10 58. The potential members of the class as defined are so numerous that joinder of all
11 members of the class is impracticable. Although the precise number of putative class members has
12 not been determined at this time, Plaintiffs are Chayla Clay and Mayan Mooney informed and
13 believes that the proposed classes include thousands of members.

14 **B. Commonality**

15 59. There are questions of law and fact common to the class that predominate over any
16 questions affecting only individual putative class members. These common questions of law and
17 fact include:

- 18 a. Whether Defendants' conduct was a "fraudulent practice" within the
19 meaning of the Unfair Competition Law ("UCL"), Business & Professions
20 Code § 17200, in that it was likely to mislead consumers;
- 21 b. Whether Defendants' conduct was an "unfair practice" within the meaning
22 of the UCL in that it offended established public policy and is immoral,
23 unethical, oppressive, unscrupulous or substantially injurious to consumers;
- 24 c. Whether Defendants' conduct was an "unlawful" practice within the
25 meaning of the UCL;
- 26 d. Whether Defendants' conduct was likely to deceive a consumer acting
27 reasonably in the same circumstances;
- 28 e. Whether Defendants advertise or market the Misbranded Products in a way

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that is false or misleading;

- f. Whether Defendants violated California Business and Professions Code §§17500, *et seq.*;
- g. Whether Defendants violated California Civil Code §§ 1750, *et seq.*;
- h. Whether Plaintiffs and members of the putative class are entitled to restitution, injunctive, declaratory and/or other equitable relief;
- i. Whether Defendants have been unjustly enriched through the misrepresentations alleged herein; and
- j. Whether Plaintiffs and the members of the class sustained monetary loss.

C. Adequacy of Representation

60. Plaintiffs Chayla Clay and Mayan Mooney will fairly and adequately represent and protect the interests of the class. Counsel who represent Plaintiffs and putative class members are experienced and competent in litigating class actions.

D. Superiority of Class Action

61. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of putative class members is not practicable, and questions of law and fact common to putative class members predominate over any questions affecting only individual putative class members. Each putative class member has been damaged and is entitled to recovery by reason of Defendants’ illegal policies or practices of failing to compensate putative class members properly.

62. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs Chayla Clay and Mayan Mooney are unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

Unlawful Business Practices in Violation of Business and Professions Code §§ 17200, *et seq.*

63. Plaintiffs incorporate by reference each allegation set forth above.

1 64. Defendants’ conduct constitutes unlawful business acts and practices under 12
2 Business & Professions Code §§ 17200, *et seq.*

3 65. Defendants sold Misbranded Products in California during the class period.

4 66. Defendant Hansen is a corporation and, therefore, is a “person” within the meaning
5 of the Sherman Food Drug & Cosmetic Law, California Health & Safety Code §§ 109875, *et seq.*
6 (the “Sherman Act”). The Sherman Act adopts, incorporates and is identical to the federal Food,
7 Drug & Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* (“FDCA”).

8 67. Defendants’ business practices are unlawful under § 17200, *et seq.*, by virtue of
9 Defendants’ violations of the advertising provisions of Article 3 of the Sherman Act and the
10 misbranded food provisions of Article 6 of the Sherman Act.

11 68. Defendants’ business practices are unlawful under Business & Professions Code §§
12 17200, *et seq.* by virtue of Defendants’ violations of § 17500, *et seq.*, which forbids untrue and
13 misleading advertising.

14 69. Defendants’ business practices are unlawful under Business & Professions Code §§
15 17200, *et seq.* by virtue of Defendants’ violations of the Consumers Legal Remedies Act, Cal. Civ.
16 Code §§ 1750, *et seq.*

17 70. Under California law, a food product that is misbranded cannot legally be
18 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold,
19 possessed, have no economic value, and are legally worthless. Indeed the sale, purchase or
20 possession of misbranded food is a criminal act in California and the FDA even threatens food
21 companies with seizure of misbranded products.

22 71. Defendants sold Plaintiffs and members of the putative class Misbranded Products
23 that were not capable of being sold or legally held and which had no economic value and were
24 legally worthless. Plaintiffs and each putative class member paid a premium price for the
25 Misbranded Products.

26 72. As a result of Defendants’ illegal business practices, Plaintiffs and the members of
27 the putative class are entitled to an order enjoining such future conduct and such other orders and
28 judgments which may be necessary to disgorge Defendants’ ill-gotten gains and to restore to any

1 putative class member any money paid for the Misbranded Products.

2 73. Defendants' unlawful business acts present a threat and reasonable continued
3 likelihood of injury to Plaintiffs and each member of the putative class.

4 SECOND CAUSE OF ACTION

5 Unfair Business Practices in Violation of 6 Business & Professions Code §§ 17200, *et seq.*

7 74. Plaintiffs incorporate by reference each allegation set forth above.

8 75. The UCL defines unfair business competition to include any "unlawful, unfair or
9 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.
10 Cal. Bus. & Prof. Code § 17200.

11 76. A business act or practice is "unfair" under the UCL if the reasons, justifications,
12 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
13 victims.

14 77. Defendants' conduct as set forth herein constitutes unfair business acts and
15 practices.

16 78. Defendants sold Misbranded Products in California during the class period.

17 79. Plaintiffs and the members of the putative class suffered a substantial injury by
18 virtue of buying Defendants' Misbranded Products, which they would not have purchased absent
19 Defendants' illegal conduct.

20 80. Defendants' deceptive marketing, advertising, packaging and labeling of their
21 Misbranded Products and their sale of unsalable misbranded products that were illegal to possess
22 were of no benefit to consumers, and the harm to consumers and competition is substantial.

23 81. Defendants sold Plaintiffs and the members of the putative class Misbranded
24 Products that were not capable of being legally sold or held and that had no economic value and
25 were legally worthless. Plaintiffs and the members of the putative class paid a premium price for
26 the Misbranded Products.

27 82. Plaintiffs and the members of the putative class who purchased Defendants'
28 Misbranded Products had no way of reasonably knowing that the products were misbranded and

1 were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably
2 avoided the injury each of them suffered.

3 83. The consequences of Defendants' conduct as set forth herein outweigh any
4 justification, motive or reason therefor. Defendants' conduct is and continues to be unlawful,
5 unscrupulous and contrary to public policy, and is substantially injurious to Plaintiffs and the
6 members of the putative class.

7 84. As a result of Defendants' conduct, Plaintiffs and the members of the putative class,
8 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
9 conduct by Defendants, and such other orders and judgments which may be necessary to disgorge
10 Defendants' ill-gotten gains and restore any money paid for Defendants' Misbranded Products by
11 Plaintiffs and the members of the putative class.

12 **THIRD CAUSE OF ACTION**

13 **Fraudulent Business Practices in Violation of** 14 **Business and Professions Code §§ 17200, *et seq.***

15 85. Plaintiffs incorporate by reference each allegation set forth above.

16 86. Defendants' conduct as set forth herein constitutes fraudulent business practices
17 under California Business and Professions Code sections §§ 17200, *et seq.*

18 87. Defendants sold Misbranded Products in California during the class period.

19 88. Defendants' misleading marketing, advertising, packaging, and labeling of the
20 Misbranded Products and misrepresentation that the products were capable of sale, capable of
21 possession, and not misbranded were likely to deceive reasonable consumers, and in fact Plaintiffs
22 and the members of the putative class were deceived.

23 89. Defendants' fraud and deception caused Plaintiffs and the members of the putative
24 class to purchase Misbranded Products that they would otherwise not have purchased had they
25 known the true nature of those products.

26 90. Defendants sold Plaintiffs and the members of the putative class Misbranded
27 Products that were not capable of being sold or legally held and that had no economic value and
28 were legally worthless. Plaintiffs and the members of the putative class paid a premium price for

1 the Misbranded Products.

2 91. As a result of Defendants' conduct as set forth herein, Plaintiffs and each member of
3 the putative class, pursuant to Business and Professions Code § 17203, are entitled to an order
4 enjoining such future conduct by Defendants, and such other orders and judgments which may be
5 necessary to disgorge Defendants' ill-gotten gains and restore any money paid for Defendants'
6 Misbranded Products by Plaintiffs and the members of the putative class.

7 **FOURTH CAUSE OF ACTION**

8 **Misleading Advertising in Violation of**
9 **Business and Professions Code §§ 17500, et seq.**

10 92. Plaintiffs incorporate by reference each allegation set forth above.

11 93. Plaintiffs asserts this cause of action for violations of California Business and
12 Professions Code §§ 17500, *et seq.*, for misleading and deceptive advertising against Defendants.

13 94. Defendants sold Misbranded Products in California during the class period.
14 Defendants engaged in a scheme of offering the Misbranded Products for sale to Plaintiffs and the
15 members of the putative class by way of, *inter alia*, product packaging and labeling, and other
16 promotional materials. These materials misrepresented and/or omitted the true contents and nature
17 of Defendants' Misbranded Products.

18 95. Defendants' advertisements and inducements were made within California and
19 come within the definition of advertising as contained in Business and Professions Code §§ 17500,
20 *et seq.*, in that such product packaging and labeling, and promotional materials were intended as
21 inducements to purchase Defendants' Misbranded Food Products and are statements disseminated
22 by Defendants to Plaintiffs and the members of the putative class that were intended to reach the
23 members of the putative class. Defendants knew, or in the exercise of reasonable care should have
24 known, that these statements were misleading and deceptive as set forth herein.

25 96. In furtherance of its plan and scheme, Defendants prepared and distributed within
26 California via product packaging and labeling, and other promotional materials, statements that
27 misleadingly and deceptively represented the composition and the nature of Defendants'
28 Misbranded Products. Plaintiffs and members of the putative class necessarily and reasonably

1 relied on Defendants' material and were the intended targets of such representations.

2 97. Defendants' conduct in disseminating misleading and deceptive statements in
3 California and nationwide to Plaintiffs and the members of the putative class was and is likely to
4 deceive reasonable consumers by obfuscating the true composition and nature of Defendants'
5 Misbranded Products, in violation of the "misleading prong" of California Business and
6 Professions Code §§ 17500, *et seq.*

7 98. As a result of Defendants' violations of the "misleading prong" of California
8 Business and Professions Code §§ 17500, *et seq.*, Defendants have been unjustly enriched at the
9 expense of Plaintiffs and the members of the putative class. Misbranded products cannot be legally
10 sold or held and have no economic value and are legally worthless. Plaintiffs and the members of
11 each Class paid a premium price for the Misbranded Products.

12 99. Plaintiffs and the members of the putative class, pursuant to Business and
13 Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendants,
14 and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten
15 gains and restore any money paid for Defendants' Misbranded Food Products by Plaintiff and the
16 members of the putative class.

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18 **FIFTH CAUSE OF ACTION**

19 **Untrue Advertising in Violation of**
20 **Business and Professions Code §§ 17500, *et seq.***

21 100. Plaintiffs incorporate by reference each allegation set forth above.

22 101. Plaintiffs asserts this cause of action against Defendant for violations of California
23 Business and Professions Code §§ 17500, *et seq.*, regarding untrue advertising. Defendants sold
24 Misbranded Products in California during the class period.

25 102. Defendants engaged in a scheme of offering Defendants' Misbranded Products for
26 sale to Plaintiffs and the members of the putative class by way of product packaging and labeling,
27 and other promotional materials. These materials misrepresented and/or omitted the true contents
28 and nature of Defendants' Misbranded Products. Defendants' advertisements and inducements

1 were made in California and come within the definition of advertising as contained in Business and
2 Professions Code §§ 17500, *et seq.*, in that the product packaging, labeling, and promotional
3 materials were intended as inducements to purchase Defendants’ Misbranded Product and are
4 statements disseminated by Defendants to Plaintiffs and the members of the putative class.
5 Defendants knew, or in the exercise of reasonable care should have known, that these statements
6 were untrue.

7 103. In furtherance of its plan and scheme, Defendants prepared and distributed in
8 California and nationwide via product packaging and labeling, and other promotional materials,
9 statements that falsely advertise the composition of Defendants’ Misbranded Products, and falsely
10 misrepresented the nature of those products. Plaintiffs and the members of the putative class were
11 the intended targets of such representations and would reasonably be deceived by Defendants’
12 materials.

13 104. Defendants’ conduct in disseminating untrue advertising throughout California
14 deceived Plaintiffs and the members of the putative class by obfuscating the contents, nature, and
15 quality of Defendants’ Misbranded Products, in violation of the “untrue prong” of California
16 Business and Professions Code § 17500.

17 105. As a result of Defendants’ violations of the “untrue prong” of California Business
18 and Professions Code §§ 17500, *et seq.*, Defendants have been unjustly enriched at the expense of
19 Plaintiffs and the members of the putative class. Misbranded products cannot be legally sold or
20 held and have no economic value and are legally worthless. Plaintiffs and the members of the
21 putative class paid a premium price for the Misbranded Products.

22 106. Plaintiffs and the members of the putative class, pursuant to Business and
23 Professions Code §§ 17535, are entitled to an order enjoining such future conduct by Defendants,
24 and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten
25 gains and restore any money paid for Defendants’ Misbranded Food Products by Plaintiffs and the
26 members of the putative class.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of the Consumers Legal Remedies Act,**
3 **California Civil Code §§ 1750, *et seq.***

4 107. Plaintiffs incorporate by reference each allegation set forth above.

5 108. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
6 California Civil Code §§ 1750, *et seq.* (the “CLRA”).

7 109. Plaintiffs and each member of the putative class are “consumers” within the
8 meaning of Civil Code § 1761(d).

9 110. The purchases of the Defendants’ Misbranded Products by consumers constitute
10 “transactions” within the meaning of Civil Code § 1761 (e), and the Misbranded Products offered
11 by Defendants constitute “goods” within the meaning of Civil Code § 1761(a).

12 111. Defendants have violated, and continue to violate, the CLRA in at least the
13 following respects:

- 14 a. In violation of Civil Code § 1770(a)(5), Defendants represented that the
15 Misbranded Products had characteristics which they did not have;
- 16 b. In violation of Civil Code § 1770(a)(7), Defendants represented that the
17 Misbranded Products were of a particular standard, quality, or grade, of
18 which they were not; and
- 19 c. In violation of Civil Code § 1770(a)(9), Defendants advertised the
20 Misbranded Products with the intent not to provide what it advertised.

21 112. As a direct and proximate cause of Defendants’ violation of the CLRA as alleged
22 hereinabove, Plaintiffs and members of the putative class have suffered harm by Defendants’ to
23 induce them to purchases Misbranded Products and pay a premium therefore where such products
24 did not conform to Defendants’ representations. As a result, Plaintiffs, at this time, seeks
25 injunctive relief against Defendants requiring them to cease and desist from further instances of
26 advertising and selling Misbranded Products in California.

27 113. In addition, concurrent with the filing of this Complaint, pursuant to § 1782(a) of
28 the CLRA, in conjunction with the filing of this action, Plaintiffs will separately notify Defendants

1 by certified mail, return receipt requested, of the particular violations of § 1770 of the CLRA and
2 demand that Defendants remedy the actions described above and give notice to all similarly
3 affected California consumers of its intention to do so.

4 114. If Defendants fail to respond to Plaintiff's demand within 30 days of this notice,
5 pursuant to § 1782(d) of the CLRA, Plaintiff will amend this Complaint to request actual damages,
6 plus punitive damages, interest and attorneys' fees. Additionally, Plaintiffs will seek to recover up
7 to \$5,000 per eligible Class members as provided for under § 1780(b) of the CLRA. Accordingly,
8 at the present time (and without prejudice to plaintiff's right to further amendment), pursuant to §
9 1782(d) of the CLRA, plaintiffs only seeks an order enjoining the above-described wrongful acts
10 and practices of defendant, plus costs and attorneys' fees, and any other relief which the Court
11 deems proper.

12 SEVENTH CAUSE OF ACTION

13 Restitution Based on Quasi-Contract/Unjust Enrichment

14 115. Plaintiffs incorporate by reference each allegation set forth above.

15 116. Defendants' conduct in enticing Plaintiffs and putative class members to purchase
16 the Misbranded Products through their false and misleading advertising and packaging as described
17 throughout this Complaint is unlawful because the statements contained on Defendants' product
18 labels are untrue.

19 117. Defendants' took monies from Plaintiffs and members of the putative class for
20 products that purported to comply with the representations set forth above, even though the
21 Misbranded Products did not conform to these representations.

22 118. Defendants have been unjustly enriched at the expense of Plaintiffs and the putative
23 class as result of Defendants' unlawful conduct alleged herein, thereby creating a quasi-contractual
24 obligation on Defendants to restore these ill-gotten gains to Plaintiffs and putative class members.

25 119. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs and
26 putative class members are entitled to restitution or restitutionary disgorgement, in an amount to be
27 proved at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves self and on behalf of the other members
3 of the putative class, pray as follows:

4 A. For an order certifying that this action is properly brought and may be maintained as
5 a class action, that Plaintiff Chayla Clay and Mayan Mooney be appointed the Class
6 Representatives, and that Plaintiffs’ counsel be appointed counsel for the class;

7 B. For restitution in such amount that Plaintiffs and all putative class members paid to
8 purchase the Misbranded Products, or the premiums paid therefor on account of the
9 misrepresentation as alleged above, or restitutionary disgorgement of the profits Defendants have
10 obtained from those transactions;

11 C. For compensatory damages for causes of action for which they are available;

12 D. For injunctive relief allowable under Civil Code § 1780;

13 E. For punitive damages for causes of action for which they are available;

14 F. For a declaration and order enjoining Defendants from advertising their products
15 misleadingly in violation of California’s Sherman Food, Drug, and Cosmetic Law, and other
16 applicable laws and regulations as specified in this Complaint;

17 G. For an order awarding reasonable attorneys’ fees and the costs of suit herein;

18 H. For an award of pre- and post-judgment interest;

19 I. For an order requiring an accounting for, and imposition of, a constructive trust
20 upon all monies received by Defendants’ as a result of the unfair, misleading, fraudulent and
21 unlawful conduct alleged herein; and

22 J. Such other and further relief as may be deemed necessary or appropriate.

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March 11, 2015
Dated: ~~January 30, 2014~~

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

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AFFIDAVIT OF VENUE BY PLAINTIFF CHAYLA CLAY

I, CHAYLA CLAY, hereby declare that:

1. I am one of the plaintiffs in the above captioned case and assert a cause of action against Defendants MONSTER BEVERAGE CORPORATION and MONSTER ENERGY COMPANY for violations of the California Consumer Legal Remedies Act. I am a competent adult, over eighteen years of age, and at times material to this action I have been a citizen of the United States and a resident of the State of California. I am making this declaration in support of the First Amended Class Action Complaint, attached hereto.

2. I purchased Defendants' Hansen branded juices, juice boxes, and Smoothie Nectar products at Henry's and other San Diego stores, during the past four years. As such, the transaction which gave rise to this Complaint occurred within the County of San Diego.

3. Additionally, Defendant advertises and distributes its Hansen branded juices, juice boxes, and Smoothie Nectar products through San Diego County, thus Defendant conducts substantial business within this County.

4. Accordingly, pursuant to California Code of Civil Procedure, section 1780, the Superior Court of the State of California, County of San Diego is the proper venue for Plaintiff's Consumer Legal Remedies Act claims.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on March 24th 2015 in San Diego, California.


CHAYLA CLAY