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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 WILLIAM BECKMAN and LINDA
15 GANDARA, individuals, on behalf of
16 themselves, and all persons similarly situated,

17 Plaintiffs,

18 v.

19 ARIZONA CANNING COMPANY, LLC, a
20 Delaware limited liability company; STATER
21 BROS. MARKETS, a California corporation;
22 and DOES 1 to 10 inclusive,

23 Defendants.

CASE NO.: 37-2016-00035593-CU-BT-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE RELIEF:**

- (1) **UNFAIR COMPETITION**
(Bus. & Prof. Code § 17200 et seq.);
- (2) **DECEPTIVE AND MISLEADING
ADVERTISING**
(Bus. & Prof. Code § 17500 et seq.); and
- (3) **VIOLATION OF THE CONSUMER
LEGAL REMEDIES ACT**
(Civ. Code § 1750 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiffs, William Beckman and Linda Gandara (hereinafter “Plaintiffs”), by and
2 through their attorneys of record, bring this action on behalf of themselves, and all persons
3 similarly situated against Defendant Arizona Canning Company, LLC and Defendant Stater
4 Bros. Markets. (hereinafter “Defendants”), on the following grounds:

5 **INTRODUCTION**

6 1. This class action is brought on behalf of all consumers who purchased Sun Vista
7 whole bean products¹ from a retailer, such as Stater Bros. Markets, within the state of
8 California for personal, family, or household purposes, and not for resale purposes.

9 2. Plaintiffs seek damages, restitution, and injunctive relief, as well as reasonable
10 attorneys’ fees and litigation costs, as provided under California law.

11 3. All allegations in this Complaint are based upon information and belief except
12 for those allegations that pertain to Plaintiffs, which are based on their own personal
13 knowledge. Each allegation in this Complaint has evidentiary support or is likely to have
14 evidentiary support after a reasonable opportunity for further investigation and discovery.

15 **JURISDICTION AND VENUE**

16 4. Pursuant to California Code of Civil Procedure (“Code Civ. Proc.”) § 382,
17 California Civil Code (“Civ. Code”) § 1781, and California Business and Professions Code
18 (“Bus. & Prof. Code”) § 17203, Plaintiffs bring this action on behalf of themselves, and on
19 behalf of all persons within the Class, as defined below in paragraph 7.

20 5. The Court has jurisdiction over this action pursuant to Code Civ. Proc. §
21 410.10. Defendants advertise and sell Sun Vista whole bean products to California residents.
22 The amount in controversy, exclusive of interest, costs, and attorneys’ fees, exceeds the
23 minimum jurisdictional amount of this Court.

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27 ¹ Sun Vista whole bean products (collectively “Sun Vista Beans”) include but are not
28 limited to Sun Vista brand pinto, black, kidney, and white beans, all of which list water as the first
ingredient.

6. Venue as to Defendants is properly in this jurisdictional district, pursuant to Code Civ. Proc. § 395(a). The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the state of California.

a) Defendant Arizona Canning Company transacts business through a number of retail locations throughout California, including Stater Bros. Markets, maintains an office in California, and is otherwise within this Court's jurisdiction for service of process.

b) Defendant Stater Bros. Markets transacts business throughout southern California, maintains an office in California, and is otherwise within this Court's jurisdiction for service of process.

CLASS DEFINITION

7. The proposed Class consists of all consumers who purchased Sun Visa whole bean products (hereinafter “Sun Vista Beans”) from a retailer, such as Stater Bros. Markets, within the state of California for personal, family, or household purposes, and not for resale purposes, during the period commencing on the date that is within four (4) years prior to the filing of this Complaint and through the present date (hereinafter the “Class Period”).² To the extent that equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

8. The Class is comprised of “consumers” and “members of the public,” as the terms are used in California’s Civil Code and Business and Professions Code.

THE PARTIES

I. PLAINTIFFS

9. Plaintiff William Beckman at all material times mentioned herein:

a) Resided in and continues to reside in the county of San Diego;

b) Purchased one or more cans of Sun Vista Beans from various retail stores in San Diego, including Stater Bros. Markets;

² Excluded from the Class are Plaintiffs' attorneys of record, their employees, and their family members, as well as any judges to which this action is assigned, and their family members.

- 1 c) Was deceived by the image on the label of the can of Sun Vista Beans,
2 which portrayed a bowl full of beans;
3 d) Was deceived by the information on the label of a can of Sun Vista
4 Beans, indicating how much product was in the container;
5 e) Was deceived by size of the container of a can of Sun Vista Beans to
6 determine that it was filled with beans;
7 f) Suffered injury in fact by purchasing Sun Vista Beans, a product he
8 would not have otherwise purchased but for the misrepresentations.

9 10. Plaintiff Linda Gandara at all material times mentioned herein:

- 10 a) Resided in and continues to reside in the county of San Diego;
11 b) Purchased one or more cans of Sun Vista Beans from various San Diego
12 area retail stores;
13 c) Was misled by the advertisement on the label of the can of Sun Vista
14 Beans, which portrayed a bowl full of beans;
15 d) Was misled by the information on the label of a can of Sun Vista Beans,
16 indicating how much product was in the container;
17 e) Was misled by the size of the container of a can of Sun Vista Beans to
18 determine that it was filled with beans;
19 f) Suffered injury in fact by purchasing Sun Vista Beans, a product she
20 would not have otherwise purchased but for the misrepresentations.

21 **II. DEFENDANTS**

22 11. Defendant Arizona Canning Company, LLC (hereinafter "Arizona Canning") is
23 a Delaware limited liability corporation, which operates as a subsidiary of La Costeña USA,
24 Inc. Arizona Canning is engaged in the business of canning and preserving various food
25 products, including Sun Vista Beans, which are distributed and available in a variety of retail
26 stores, including Stater Bros. Markets, throughout the United States and the state of
27 California.

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12. Defendant Stater Bros. Markets (hereinafter “Stater Bros.”) is a California corporation, which is engaged in the business of operating various supermarket stores, which sell Sun Vista Beans, throughout southern California.

13. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiffs, who therefore sues these defendants by such fictitious names pursuant to Code Civ. Proc. § 474. Plaintiffs will amend their complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

14. At all times mentioned herein, the acts alleged to have been done by Defendants are also alleged to have been done by the unascertained defendants mentioned above, and by each of their agents and employees who acted within the scope of their agency and/or employment.

15. At all times mentioned herein, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained herein. Each defendant and all doe defendants were and are acting with the authority of each and every other defendant and are acting as agents of each and every other defendant or doe defendant.

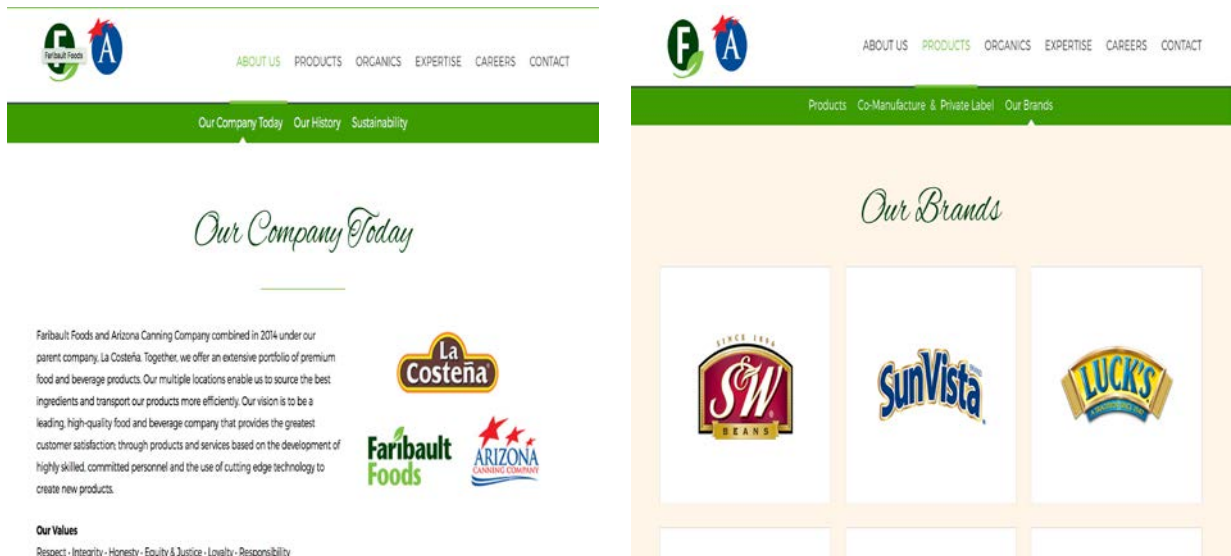
FACTUAL ALLEGATIONS

16. Plaintiffs allege that Defendants violated California Law by misleading consumers to believe that cans of Sun Vista Beans are primarily filled with beans through its advertisement, label, and fill.

I. DEFENANT ARIZONA CANNING PRODUCES AND SELLS SUN VISTA BEANS IN VARIOUS RETAIL STORES, INCLUDING STATER BROS. MARKETS, THROUGHOUT THE STATE OF CALIFORNIA.

17. Arizona Canning produces and sells canned beans under the Sun Vista brand. The Sun Vista brand was established in 1959. Sun Vista offers a variety of whole bean

products including pinto beans, black beans, white beans, and red kidney beans. In 2007, Arizona Canning, which is based in Tucson, Arizona, acquired the Sun Vista brand of beans from Faribault Foods. In 2014, Faribault Foods and Arizona Canning merged under their parent company, La Costeña. Together they offer an extensive collection of food and beverage products, including Sun Vista beans. (See generally <http://www.faribaultfoods.com>.)



(See <http://www.faribaultfoods.com/about.php#our-company>;
<http://www.faribaultfoods.com/products.php>.)

18. Sun Vista Beans are sold in 15 oz., 29 oz., 40 oz., and 108 oz. cans, as well as in an 8 pack of 15 oz. cans. (See <http://arizonacanning.com/index.php?id=37>.) Sun Vista beans are sold at various retail stores throughout California including but not limited to Stater Bros. Markets.



(<http://arizonacanning.com/index.php?id=37>.)

II. DEFENDANT STATER BROS. SELLS SUN VISTA BEANS TO CONSUMERS IN SOUTHERN CALIFORNIA.

19. Stater Bros. is a privately held supermarket chain that operates 168 stores throughout southern California. (See <http://www.staterbros.com/history/>.)

20. Defendant Stater Bros. advertised and sold, and continues to advertise and sell Sun Vista Beans to consumers, such as Plaintiff Beckman, in the state of California. As shown below, Stater Bros. has publicized Sun Vista Beans for sale in its “weekly ad.”



(<http://www.staterbros.com/weekly-ads-catalog/sept-21-28/>.)

21. Plaintiff Beckman and other members of the putative Class purchased one or more cans of Sun Vista Beans from Stater Bros. and other various retail stores in California.

III. CONSUMERS ARE DECEIVED BY THE ADVERTISEMENT, LABEL, AND FILL OF SUN VISTA BEANS.

22. Sun Vista Beans are sold in opaque canned containers, which are often made out of steel, tin and aluminum. Although the metal can ensures that the food inside maintains its nutritional value, consumers are unable to view the contents of the container. As a result,

1 consumers depend upon the product advertisement, label, and the fill of the container to
2 conduct product comparisons.

3 **A. The Advertising on Sun Vista Beans Labels is False and Misleading.**

4 23. The Sun Vista brand uses consistent advertising and labeling on its various
5 whole bean products. Specifically, the Sun Vista Bean label depicts a bowl full of plump and
6 hearty beans with glimmer of shine, and little to no water. See the images below taken from
7 <http://www.arizonacanning.com>.





24. Contrary to the picturesque advertisement on the labels shown above, when a can of Sun Vista Beans is opened, consumers are met with the repulsive sight of bean water, as shown below.



25. When Sun Vista Beans are poured out into a bowl or a pot, the unfortunate image remains the same as the beans are fully submerged in in a large amount of water.

26. The image of a bowl full of hearty beans with little to no water placed on the label of Sun Vista Beans is a blatant misrepresentation of what is truly inside the container, an inappropriately large amount of water and a small amount of beans.

B. Sun Vista Beans Labels are Misleading.

27. Sun Vista Beans are sold in opaque containers, which prohibit a consumer from viewing the contents. As a result, consumers rely on the information provided on the label, such as the net weight and serving size, to make informed product comparisons.

28. Reasonable consumers presume that the container is filled with the amount of food product indicated on the label, usually identified as the net weight. This supposition is further represented by the image of the food product depicted on the can.

29. In this case, Plaintiffs and other putative Class Members reasonably believed that a can of Sun Vista Beans contained the amount of beans indicated on the respective labels.³

30. According to the Nutrition Facts section of the product label, a 29 oz. can of Sun Vista pinto beans contains about “about 6 servings.” Pursuant to the label, a serving is defined as one half cup, or 4 oz.⁴ With this information a consumer can deduce that a 29 oz. can of Sun Vista pinto beans contains approximately 3 full cups, or 24 oz., of beans, and about 0.625 cups, or 5 oz., of water. Resulting in a container that is mostly filled with beans.

31. Subsequently, a serving size of one half cup, or 4 oz., would contain approximately 4 oz. of beans and 0.83 oz. of water. Therefore, a reasonable consumer can conclude that a serving would be made up of mostly beans.



³ It is common knowledge that beans are rehydrated, as such a reasonable consumer would expect to find some water within the container.

⁴ It is common knowledge that there are eight (8) U.S. ounces in one (1) U.S. customary cup.

1 32. In a home investigation, Plaintiff Gandara found that a 29 oz. can of Sun Vista
2 pinto beans actually contained about 1.6 cups, or 13 oz., of beans and about 2 cups, or 16 oz.,
3 of water. Significantly less beans than indicated on the label.

4 33. This finding is supported by the fact that when Plaintiff Gandara drained the
5 water from the 29 oz. can of Sun Vista pinto beans she was left with less than a half of a can
6 of beans, as shown below.



19 34. Plaintiff Gandara's findings indicate that:

- 20 a) The amount of water in a 29 oz. can of Sun Vista pinto beans is
21 significantly more than the 5 oz., or 0.625 cups, implied on the label.
22 b) Sun Vista pinto beans contain more water than beans, since 16 oz. of the
23 29 oz. of the can is water, and only 13 oz. are beans.
24 c) A serving size of one half cup, or 4 oz., contains approximately 2.16 oz.
25 of beans and 2.66 oz. of water.
26 d) Water is used as a deceptive filler in Sun Vista Beans.

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1 35. Although consumers can expect to find some water in canned beans because
2 they are a rehydrated product, it is unreasonable for a consumer to anticipate that a container
3 of canned beans would be filled with significantly more water than beans.

4 36. Moreover, Sun Vista Beans lists water as the first ingredient on its label. The
5 ingredients section is located on the opposite side of the image of Sun Vista Beans. A
6 reasonable consumer would expect for water to be listed in the ingredients since beans are
7 rehydrated. However, a reasonable consumer would not expect or know that the ingredients
8 are listed in order of predominance by weight.

9 37. It is irrational to expect that consumers would not be misled by the
10 misrepresentations on the label of Sun Vista Beans, where the only indication of truth is
11 concealed in the small print of the ingredients section of the label.

12 38. Based on the above, it is clear that information provided on the label is unfairly
13 deceptive because the label suggests that consumers are receiving approximately 24 oz., or 3
14 cups of beans when they are actually only receiving 13 oz., or 1.625 cups.

15 39. Defendants are knowingly depriving consumers out of 11 oz., or 1.375 cups, of
16 beans.

17 **C. Sun Vista Beans Containers are Filled to be Misleading.**

18 40. Sun Vista Beans are sold in opaque containers, which prohibit a consumer from
19 viewing the contents.

20 41. Reasonable consumers presume that the container is filled with the amount of
21 product indicated on the label, usually identified as the net weight.

22 42. In this case, Plaintiffs and other putative Class Members rationally believed that
23 a can of Sun Vista Beans was appropriately filled with beans.

24 43. Plaintiffs and other members of the putative Class also relied upon the feel and
25 weight of the container.

26 44. Unfortunately, as described herein, Sun Vista Beans cans were deceptively
27 filled with a significant amount of water.

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1 **IV. BOTH FEDERAL AND CALIFORNIA LAW PROHIBIT THE MISBRANDING**
2 **OF FOOD PRODUCTS SOLD TO CONSUMERS.**

3 45. Pursuant to both California and Federal Law, Defendants are prohibited from
4 misleading consumers as to the quantity or fill of the container, or misbranding any food
5 product.

6 **A. Federal Law Prohibits the Misbranding of Food Items and the Unfair and**
7 **Deceptive Labeling of Consumer Commodities.**

8 46. The Federal Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 301 et seq.,
9 regulates food, drugs, and cosmetics produced and sold in the United States. Specifically, 21
10 U.S.C. § 331(b) prohibits “the adulteration or misbranding of any food...in interstate
11 commerce.”

12 47. Pursuant to 21 U.S.C. § 343 “a food shall be deemed to be misbranded – (a) If
13 (1) its labeling is false or misleading...(d) If its container is so made, formed or filled as to be
14 misleading...”

15 48. Title 21 of the Code of Federal Regulations (“21 C.F.R.”) § 1.21(a)(1) provides:
16 “Labeling of a food...product shall be deemed to be misleading if it fails to reveal facts that
17 are: (1) Material in light of other representations made or suggested by statement, word,
18 design, device of any combination thereof.”

19 49. As a matter of policy, Congress has declared that packages and labels should
20 enable consumers to obtain accurate information as to the quantity of the contents and should
21 facilitate value comparisons because informed consumers are essential to the fair and efficient
22 functioning of a free market economy. (15 U.S.C. § 1451.) Pursuant to 15 U.S.C. § 1452 it is
23 unlawful for any person to unfairly and deceptively package and label any consumer
24 commodity.

25 50. Sun Vista Beans are misbranded pursuant to Federal law for the following
26 reasons: (1) its label contains a false and misleading advertisement; (2) its label contains false
27 and misleading information as to its net weight and contents; and (3) its container is filled to
28 be misleading.

1 51. Defendants knowingly produced and sold misbranded food products to
2 consumers throughout California and the United States.

3 **B. California Law Makes it Unlawful to Falsely Advertise or Misbrand Any**
4 **Food Product Sold in California.**

5 52. The Sherman Food, Drug, and Cosmetic Law (California Health and Safety
6 Code § 109875 et seq.) regulates the packaging, labeling, and advertising of food, drugs, and
7 cosmetics in California.

8 53. California Health and Safety Code (“Health & Saf. Code”) § 110100 directly
9 incorporates regulations declared under the FDCA with respect to food labeling requirements.
10 Additionally, Health & Saf. Code § 110505 adopts FDCA standards with respect to the standards
11 of identity, quality, and fill of container.

12 54. Specifically, Health & Saf. Code § 110390, states: “It is unlawful for any
13 person to disseminate any false advertisement of any food, drug, device, or cosmetic. An
14 advertisement is false if it is false or misleading in any particular.”

15 55. Pursuant to the Health & Saf. Code, it is unlawful for any person to
16 manufacture, sell, deliver, hold, or offer for sale any food, drug, device, or cosmetic that is
17 falsely advertised. (Health & Saf. § 110395.) It is also unlawful for any person to advertise
18 any food, drug, device, or cosmetic that is adulterated or misbranded. (Health & Saf. Code §
19 110398.)

20 56. According to Health & Saf. Code, any food is misbranded if its labeling is false or
21 misleading. (Health & Saf. Code § 110660.) A food is also “misbranded if its container is so made,
22 formed, or filled as to be misleading.” (Health & Saf. Code § 110690.)

23 57. Pursuant to Health & Saf. Code § 110760, it is unlawful for any person to
24 manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

25 58. As indicated above, the representations on Sun Vista Beans labels provides false
26 and misleading information to the consumer. Therefore, Sun Vista Beans product labels contain
27 false advertisements in violation of California law.

28 59. Sun Vista Beans products are considered misbranded under California law because,

as described herein, its label is false and misleading and the container is filled to be misleading.

60. Defendants violated California law by (1) disseminating false advertisements of Sun Vista Beans in the state of California; (2) producing and selling Sun Vista Beans, which are falsely advertised, in the state of California; (3) advertising Sun Vista Beans, which are misbranded, in the state of the California; and (4) producing and selling misbranded Sun Vista Beans in the state of California.

V. PLAINTIFFS AND PUTATIVE CLASS MEMBERS WERE INJURED AND CONTINUE TO BE INJURED BY DEFENDANTS' PRODUCTION AND SALE OF MISBRANDED SUN VISTA BEANS.

61. Defendants intentionally misinformed and misled Plaintiffs and other members of the putative Class in order to induce them into purchasing Sun Vista Beans.

62. As a result of Defendants' unfair and deceptive conduct, consumers, including Plaintiffs, sustained injury by purchasing Sun Vista Beans because they would not have purchased Sun Vista Beans if they had known the truth about the product.

CLASS ALLEGATIONS

63. Plaintiffs bring this action on behalf of themselves, and on behalf of all persons within the defined class outlined in paragraph 7.

64. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code Civ. Proc. § 382 and Civ. Code § 1781, in that:

- a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b) Nearly all factual, legal, statutory, declaratory, and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every member of the Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;

- c) The parties opposing the Class have acted or have refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and
- d) Common questions of law and fact exist as to the members of the Class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i) The interests of Class Members in individually controlling the prosecution or defense of separate actions;
 - ii) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
 - iii) The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
 - iv) The difficulties likely to be encountered in the management of a class action.

65. The Court should permit this action to be maintained as a class action pursuant to Code Civ. Proc. § 382 and Civ. Code § 1781 because:

- a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- b) A class action is superior to any other available method for the fair and efficient adjudication of Class Members' claims;
- c) The members of the Class are so numerous that it is impracticable to bring all Class Members before the Court;
- d) Plaintiffs' claims are typical of the claims of the Class;
- e) Plaintiffs and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

- 1 f) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the common law and statutory violations and other
3 improprieties alleged, and in obtaining adequate compensation for the
4 damages that Defendant's actions have inflicted upon the Class;
- 5 g) Plaintiffs can and will fairly and adequately protect the interest of the
6 Class;
- 7 h) There is a community of interest in ensuring that the combined assets
8 and available insurance of Defendants are sufficient to adequately
9 compensate the members of the Class for the injuries sustained; and
- 10 i) Defendants have acted or refused to act on grounds generally applicable
11 to the Class, thereby making final injunctive relief appropriate with
12 respect to the Class as a whole.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

16 **UNFAIR COMPETITION**

17 **[Bus. & Prof. Code § 17200 et seq.]**

18 66. Plaintiffs reallege and incorporate by this reference, as though fully set forth
19 herein, all paragraphs of this Complaint.

20 67. Bus. & Prof. Code § 17200 et seq. codifies California's Unfair Competition
21 Law ("UCL"), which broadly prohibits "any unlawful, unfair, or fraudulent business act or
22 practice and unfair, deceptive, untrue or misleading advertising..."

23 68. The UCL permits a cause of action to be brought if a practice violates some
24 other law. In effect, the "unlawful" prong of the UCL makes a violation of the underlying law
25 a per se violation of Bus. & Prof. Code § 17200. (*Cel-Tech Commc'ns, Inc. v. Los Angeles*
26 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal, state,
27 statutory, or common law – can serve as a predicate for a § 17200 "unlawful" violation. (*See*
28 *Farmers Ins. Exch. v. Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

1 69. A practice may be “unfair” under the UCL even if some other law does not
2 specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th
3 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the
4 “unfair” standard is intentionally broad to allow courts maximum discretion is prohibiting new
5 schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-181.)

6 70. A business act or practice is deemed “fraudulent” under Bus. & Prof. Code §
7 17200 where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*
8 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or
9 damages is not required. (*Id.*) The fraudulent prong may be used to attack the deceptive
10 manner in which otherwise lawful contract terms are presented to an individual. (*See*
11 *Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true
12 statement may be unlawful under § 17200 if it is “couched in such a manner that is likely to
13 mislead or deceive..., such has by failing to disclose other relevant information.” (*Id.*)

14 71. The unfair competition statute is not confined to anticompetitive business practices,
15 but is also directed toward the public’s right to protection from fraud, deceit, and unlawful conduct.
16 (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.4th 499, 519.)

17 72. The UCL’s purpose is to protect both consumers and competitors by promoting fair
18 competition in commercial markets for goods and services. (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th
19 939, 949.)

20 **UNLAWFUL:**

21 **Federal Law -**

22 73. Defendants violated Bus. & Prof. Code § 17200 prohibition against engaging in an
23 unlawful act or practice by violating the following Federal laws:

- 24 a) Defendants violated 21 U.S.C. § 331(b), which prohibits “the adulteration or
25 misbranding of any food...in interstate commerce” by producing and selling
26 Sun Vista Beans which (1) contain a label with false and misleading net
27 weight and serving size information; (2) are filled with more water than
28

beans; and (3) contain a label with misleading advertisement that represents to consumers that the can is filled mostly with beans.

- b) Defendants violated the policy of 15 U.S.C. § 1451 by producing and selling Sun Vista Beans that have a label with false and misleading information. Defendants' practice prohibits consumers from being able to obtain accurate information to conduct accurate value comparisons.
- c) Defendants violated 15 U.S.C. § 1452 by producing and selling unfairly and deceptively labeled Sun Vista Beans, which are a consumer commodity.

California Law -

74. Defendants violated Bus. & Prof. Code § 17200 by violating the following California laws:

- a) Defendants violated Health & Saf. Code § 110390, which makes it unlawful to disseminate any false advertisement of any food, by distributing and selling Sun Vista Beans, which contain false and misleading advertisements on its label.
- b) Health & Saf. Code § 110395 makes it unlawful for any person to manufacture, sell...or offer for sale any food...that is falsely advertised. Defendants violated Health & Saf. § 110395 by manufacturing and selling Sun Vista Beans in California, which as described herein are falsely advertised.
- c) Defendants violated Health & Saf. Code § 110398 by advertising and selling Sun Vista Beans in California whose (1) labeling is false and misleading; and (2) container is filled as to be misleading.
- d) Health & Saf. Code § 110760 makes it unlawful for any person to manufacture sell, or offer for sale any food that is misbranded. Defendants violated Health & Saf. Code § 110760 by producing and selling misbranded Sun Vista Beans in the state of California.

1 e) Defendants violated Health & Saf. Code § 110765 by misbranding Sun Vista
2 Beans.

3 f) As discussed below, Defendants violated Bus. & Prof. Code § 17500 et seq.

4 g) As discussed below, Defendants violated California's Consumers Legal
5 Remedies Act.

6 75. Pursuant to the above, Defendants clearly engaged in unlawful acts and practices in
7 violation of Bus. & Prof. Code § 17200.

8 76. Plaintiffs and putative Class Members reserve their right to allege other violations of
9 law which constitute other unlawful business acts or practices, as investigation and discovery
10 warrants.

11 **UNFAIR:**

12 77. Defendants' practice of exhibiting a bowl full of stout and hearty beans with
13 glimmer of shine and little to no water on the label of all of its Sun Vista Beans is false and
14 misleading. The portrayal is misleading because Sun Vista Beans actually contain more water than
15 beans. In fact, the beans are fully submerged in water. Although consumers expect for canned
16 beans to have some water, a reasonable consumer would not expect 50% or more of the container
17 to be filled water. The image deceives consumers by depicting a false expectation of what the
18 consumer is actually purchasing. Defendants' practice is a blatant unfair practice pursuant to Bus.
19 & Prof. Code § 17200.

20 78. Defendants' regular practice of placing false and misleading net weight and serving
21 size information on the label of Sun Vista Beans is an unfair business practice pursuant to Bus. &
22 Prof. Code § 17200 since the practice misleads consumers into believing that they are purchasing a
23 product that is mostly filled with beans.

24 79. Defendants' practice of filling its Sun Vista Beans product containers with
25 substantially more water than beans, is an inherently unfair practice pursuant to Bus. & Prof. Code
26 § 17200. By engaging in this practice, Defendants knowingly deprive consumers out of 11 oz., or
27 1.375 cups, of beans.

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FRAUDULENT:

80. Defendants' practice of falsely advertising, misrepresenting, and misbranding Sun Vista Beans to consumers is not only unlawful, but also constitutes a fraudulent business practice under the UCL. This is particularly true as Plaintiffs and other putative Class Members are likely to be, and are actually deceived, as to quality and quantity of the product they are purchasing. The representations of Sun Vista Beans on its advertisement, label, and fill prohibits consumers from making informed comparisons.

81. Defendants' fraudulent business practices are a blatant violation of Bus. & Prof. Code § 17200.

82. As a direct and proximate result of Defendants' unfair business practices and deceptive, untrue, and misleading advertising, Plaintiffs and other members of the Class suffered injury in fact when they purchased Sun Vista Beans for personal, family or household consumption. Plaintiffs would not have purchased Sun Vista Beans absent Defendants' misrepresentations.

83. Through its unlawful, unfair, and fraudulent business practices, Defendants reaped, and continue to reap, the benefits and profits at the expense of Plaintiffs and members of the putative Class. Plaintiffs allege that if Defendants are not enjoined, they will continue to engage in conduct that is injurious to the public and violates California law.

84. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs and the putative Class are entitled to and seek restitution and an injunction prohibiting Defendants from continuing to engage in unlawful, unfair, fraudulent, and misleading business practices, as well as any other relief the Court deems appropriate.

85. Plaintiffs and the putative Class also seek reasonable attorneys' fees and costs incurred in bringing this action, pursuant to Civ. Code § 1021.5.

86. Plaintiffs, on behalf of themselves and other members of the Class, requests further relief described in the below prayer.

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1 **SECOND CAUSE OF ACTION**

2 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **DECEPTIVE AND MISLEADING ADVERTISING**

4 **[Bus. & Prof. Code § 17500 et seq.]**

5 87. Plaintiffs reallege and incorporate by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint

7 88. According to Bus. & Prof. Code § 17500, it is unlawful to make an untrue or
8 misleading statement in connection with the sale or dissemination of goods or services, if the
9 person making the statement knew or should have known the statement was untrue or
10 misleading.

11 89. Section 17500 prohibits “not only advertising which is false, but also
12 advertising which[,] although true, is either actually misleading or which has a capacity,
13 likelihood or tendency to deceive or confuse the public.” (*Colgan v. Leatherman Tool Group,*
14 *Inc.* (2006) 135 Cal.App.4th 663, 679.)

15 90. According to California law, virtually any statement made in connection with
16 the sale of a product or service is advertising. (*See e.g., Chern v. Bank of America* (1976) 15
17 Cal.3d 866, 875-876.) Product labels are “advertising” within the meaning of § 17200 and §
18 17500. (58 Ops.Attny.Gen. 297 (1975).)

19 91. Advertising is untrue or misleading if a reasonable consumer would be deceived.
20 (*Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 682.) A “reasonable
21 consumer” is defined pursuant to California law as “the ordinary consumer acting reasonably under
22 the circumstances, [who] is not versed in the art of inspecting and judging a product, in the process
23 of its preparation or manufacture.” (*Id* [internal quotation marks omitted].)

24 92. In determining whether advertising is misleading or deceptive, California Courts
25 evaluate the advertisement’s entire impression, including words, images, format, and product
26 placement. (*See Committee on Children’s Television, Inc. v. General Foods Corp., supra*, 35
27 Cal.3d at 210.) California law does not require a reasonable consumer to look beyond the
28 deceptive advertising to discover the truth. (*See Williams v. Gerber Products Co.* (9th Cir. 2008)

1 552 F.3d 934, 938 [Appellate court disagreeing with the district court that reasonable consumers
2 should be expected to look beyond the misleading representations on the front of the box to
3 discover the truth from the ingredient list in small print on the side of the box.].)

4 93. Defendants' practices, described herein, have deceived and have continued to
5 deceive Plaintiffs and members of the putative Class by compelling consumers to rely on the
6 misleading and false information provided on Sun Vista Beans labels.

7 94. By their own actions, Defendants have and continue to disseminate uniform
8 advertising concerning Sun Vista Beans. As described herein, Sun Vista Beans advertising is
9 unfair, deceptive, untrue, and misleading, thus falling within the meaning of Bus. & Prof. Code §
10 17500 et seq.

11 95. Defendants knew or should have known that the advertising on Sun Vista Beans is
12 unfairly deceptive, untrue and misleading because (a) Sun Vista Beans contain more water than
13 beans, (2) pursuant to 21 C.F.R. § 101.4(a)(1)⁵ Defendant Arizona Canning listed water as the first
14 ingredient.

15 96. Defendants intended for Plaintiffs and other putative Class Members to depend
16 upon the false and misleading information placed on Sun Vista Beans labels. In fact, Plaintiffs and
17 other Class Members were deceived by the false and misleading advertisement.

18 97. Due to Defendants' untrue, misleading, and deceptive advertising, Plaintiffs and the
19 putative Class have suffered injury by purchasing a product they would not have otherwise
20 purchased.

21 98. Plaintiffs and the other members of the Class are entitled to, and seek, equitable
22 relief in the form of restitution for all monies paid for Sun Vista Beans, disgorgement of the profits
23 derived from Defendants' false and misleading advertising, as well as reasonable attorneys' fees
24 and costs incurred as a result of bringing this action.

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28 ⁵ Pursuant to 101.4(a)(1) ingredients are required to be listed in descending order of
predominance by weight.

99. Moreover, Plaintiffs and the putative Class are also entitled to, and do seek, an injunction prohibiting Defendants from continuing to engage in such conduct and for an order requiring Defendants to make full disclosures to correct its prior misrepresentations and omissions.

100. Plaintiffs, on behalf of themselves and Class Members, request further relief as described in the below prayer.

THIRD CAUSE OF ACTION

(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)

VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT

[Civ. Code § 1750 et seq.]

101. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, all paragraphs of this Complaint.

102. California’s Consumer Legal Remedies Action (“CLRA”), as codified in Civ. Code § 1750 et seq., provides protection for California consumers against unfair, deceptive and unlawful practices, and unconscionable practices in connection with the sale of any goods or services.

103. Specifically, Civ. Code § 1770(a) provides:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he or she does not have;

...

- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style, model, if they are another.

...

- (9) Advertising goods or services with intent not to sell them as advertised.

1 104. Sun Vista Beans are “goods” as defined by Civ. Code § 1761(a). Defendants
2 are persons under Civ. Code § 1761(c). Plaintiffs and members of the putative Class are
3 “consumers” by way of Civ. Code § 1761(d). The purchase of Sun Vista Beans is a
4 “transaction” pursuant to Civ. Code § 1761(e).

5 105. Defendants have violated and continue to violate the CLRA by engaging in the
6 following unlawful practices in transactions with Plaintiffs and other Class Members, which
7 were intended to result in, and did result in, the sale of Sun Vista Beans.

8 106. As argued herein, Defendants represented and continue to represent to
9 consumers that they are purchasing a can of Sun Vista Beans, which contains mostly beans,
10 when in fact Sun Vista Beans contain more than 50% water fill in violation of Civ. Code §
11 1770(a)(5).

12 107. As specified herein, Defendants falsely represented and continue to represent to
13 consumers that Sun Vista Beans meet the industry standard for canned beans, when in fact the
14 cans are filled with mostly water, resulting in soup-like beans in violation of Civ. Code §
15 1770(a)(7).

16 108. As indicated herein, Defendants advertised Sun Vista Beans as containing
17 largely beans with little to no water. However, Defendants knowingly produced and sold Sun
18 Vista Beans, which contain more water filler than beans, contrary to the advertisement in
19 violation of Civ. Code § 1770(a)(9).

20 109. Defendants have violated and continue to violate the CLRA by representing to
21 consumers who purchase Sun Vista Beans that they are receiving mostly beans, while failing
22 to disclose the material fact, that Sun Vista Beans actually contain more water filler than
23 beans.

24 110. Defendants knew or should have known that the representations were false and
25 misleading, and that the omissions were of material facts that were required to be disclosed.
26 This is especially true, as the label lists water as the first ingredient.

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111. Due to Defendants' failure to disclose material facts related to the actual characteristics and composition of Sun Vista Beans, Plaintiffs and the putative Class were and continue to be irreparably harmed.

112. Plaintiffs and putative Class Members would not have purchased Sun Vista Beans had they known the true nature of the falsely represented product.

113. Defendants' conduct is fraudulent, wanton, and malicious.

114. Plaintiffs, individually and on behalf of the other members of the Class, seek a Court order enjoining the above-described wrongful acts and practices of Defendants pursuant to Civ. Code § 1780(a)(2).

115. Pursuant to Civ. Code § 1780(e), Plaintiffs and the Class Members are entitled to, and seek, reasonable attorneys' fees and all costs incurred in bringing this action, as well as any other relief the Court deems just and proper pursuant to Civ. Code § 1780(a)(5).

116. Plaintiffs, on behalf of themselves and other members of the Class, request further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against Defendants and in favor of the Class as follows:


- a. That the Court determine that this action may be maintained as a Class Action with the named Plaintiffs as Class Representatives;
- b. For the attorneys appearing on the above caption to be named as Class Counsel;
- c. For an order declaring that Defendants' conduct violates the statutes referenced herein;
- d. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- e. For restitution and all other forms of equitable monetary relief;
- f. For injunctive relief ordering the above-described unfair business practices to cease or as the Court may deem proper; and
- g. For prejudgment interest on all amounts awarded;

- 1 h. For attorneys' fees and costs incurred in bringing this action, pursuant to
2 Civ. Code §§ 1780(e) and 1021.5; and
3 i. For any other relief the Court may deem as just and proper.
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5 Dated: October 11, 2016

CLARK LAW GROUP
PETTERSEN & BARK

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9 By: _____


R. Craig Clark
Dawn M. Berry
William D. Pettersen
Attorneys for Plaintiffs and Putative Class

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15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs demand a jury trial on all issues triable to a jury.
17

18 Dated: October 11, 2016

CLARK LAW GROUP
PETTERSEN & BARK

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21
22 By: _____


R. Craig Clark
Dawn M. Berry
William D. Pettersen
Attorneys for Plaintiffs and Putative Class