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Clerk of the Superior Court
By: Justin Jones, Deputy Clerk

FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
501 West Broadway, Suite 1250
San Diego, California 92101-3579
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHAYLA M. CLAY, on behalf of herself and
others similarly situated,

Plaintiffs,

v.

CHOBANI LLC; SAFEWAY INC.; THE VONS
COMPANIES, INC., and DOES 1 through 50,
inclusive,

Defendants.

Case No: 37-2014-00028287-CU-BT-CTL

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Chayla M. Clay ("Plaintiff"), on behalf of herself and other similarly situated California state customers, by and through her undersigned attorneys, hereby files the Class Action Complaint against Defendants, Chobani LLC ("Chobani"), and Safeway Inc., and The Vons Companies (collectively the "Distribution Defendants"), and states as follows based upon her own personal knowledge and the investigation of their counsel.

INTRODUCTION

1. Product labels have occupied an important role in assisting consumers in making healthy and informed food choices.

2. Against the backdrop, with consumers demanding healthy options that fit their dietary and nutritional needs, Chobani market itself in California as "America's Top Greek

CLASS ACTION COMPLAINT

File No. 7603.01

1 Yogurt.” The Chobani manufactures, and markets and sells (through the Distribution Defendants)
2 Chobani® Greek yogurt products (herein referred to as the “Products,” as such term is defined in
3 Paragraph 19 below) throughout California.

4 3. As part of their extensive and comprehensive nationwide marketing campaign,
5 Defendants have actively promoted the naturalness and health benefits of the Products by using
6 Product packaging, their website at www.chobani.com and social media outlets such as Facebook
7 and Twitter in misleading California consumers by misrepresenting their yogurt ingredients.

8 4. Defendants intentionally misrepresented and continue to misrepresent to California
9 consumers that their Products (including products targeted to children), contain “evaporated cane
10 juice” even though “evaporated cane juice” is not “juice” at all - it is nothing more than sugar
11 sounding like a healthier sweetener. Further, evaporated cane juice is not the common practice or
12 usual name for any type of sweetener, or even a juice, the use of such a name being false and
13 misleading. Defendants uniformly list evaporated cane juice as an ingredient on the Products, as
14 well as on the website located at www.chobani.com.

15 5. Defendants prominently display the number zero (shown as “0%”) on the top and
16 front paneling of their Product packaging without providing any context as to what the 0%
17 represents.

18 6. Defendants intend to create confusion by causing purchasers to impute any meaning
19 to the 0% that consumers wish, such as that the Products lack sugar, carbohydrates, calories, or
20 other content which a consumer may believe is unhealthy. Defendants do so by attempting to
21 adopt similar marketing campaign features as Coke Zero and Pepsi Max, whom also display
22 “Zero” or “0” on their products to convey that products are sugar-free or calorie-free. The labeling
23 of “0%” on Defendants’ packaging, without additional immediate context, is false and misleading.

24 7. Defendants’ Products in fact typically contain about 16 grams of sugar per
25 container, which is equivalent to 4 packets of sugar and is as healthy as eating a Nestle Fudge ice
26 cream bar, which contains 15 grams of sugar per serving. Defendants’ Products do not contain 0%
27 of sugar, a main cause of obesity in America. (See Gary Taubes, *Is Sugar Toxic*, New York Times,
28 Apr. 13, 2011 at <http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted>

1 =all).

2 8. Due to Defendants' marketing, consumers are led to believe that their Products are a
3 healthy alternative when in reality they are not and contain more sugar than regular cookies (See
4 Paragraph 51 below). Defendants purposely mislead the public because Defendants willfully want
5 the public to think the "0%" means no sugar or calories when consumers are shopping in
6 supermarket aisles and only see the "0%," and not the fine print that shows how unhealthy and full
7 of sugar the Products are.

8 9. Plaintiffs bring the proposed consumer class action on behalf of herself and all other
9 California residents, who, from the applicable limitations period up to and including the present
10 (the "Class Period"), purchased in California for consumption and not resale any of the Products.

11 10. Defendants' representations were and continue to be false and materially
12 misleading. The FDA has specifically warned companies not to use the term "evaporated cane
13 juice" because it is "false and misleading," does not accurately describe the ingredients utilized,
14 and because "Evaporated Cane Juice" is not a juice.

15 11. Defendants' actions constitute violations of the federal Food Drug & Cosmetic Act
16 ("FDCA") Section 403(a)(1) (21 U.S.C. 343(a)(1)), the California Unfair Competition Law
17 ("UCL") California Business and Professions Code §§ 17200, *et seq.*, and the California
18 Consumers Legal Remedies Act ("CLRA") California Civil Code §§ 1750, *et seq.*

19 12. Defendants violated statutes enacted in California designed to protect consumers
20 against unfair, deceptive, fraudulent and unconscionable trade and business practices and false
21 advertising, under the CLRA and the UCL.

22 13. Chobani's misbranding and mislabeling of its yogurt Products is not unintentional.
23 While marketing Cobani yogurt Products as a healthy alternative, Defendants simultaneously
24 deceive Plaintiff and other consumers by mischaracterizing the sugar of the Products. Moreover,
25 Defendants' "0%" claim is misleading as reasonable consumers are not able to ascertain a plain or
26 clear meaning of such assertion.

27 14. As a direct result of Defendants' unlawful and deceptive sales practices, Chobani®
28 has become the best-selling brand of Greek yogurt in the United States with an estimated sales

1 revenue in 2012 of \$1 billion (based on public filings with the federal government). With respect to
2 California-only sales, Defendants have collected tens of millions of dollars from the sale of the
3 Products in this State that they would not otherwise not received from Plaintiff and the Class.

4 JURISDICTION AND VENUE

5 15. The Court has original jurisdiction pursuant to Cal. Civ. Proc. §§ 382 and 410.10.
6 The matter in controversy, exclusive of interest and costs, likely does not exceed the sum or value
7 of \$5,000,000 and is a class action in which Class Plaintiff is a California citizen.

8 16. The Court has jurisdiction over all causes of action asserted herein pursuant to the
9 California Constitution, Article VI, §10, because the case asserts claims not given by statute to
10 other trial courts. Jurisdiction is also proper under Cal. Bus. & Prof. Code §17535, *et seq.* The
11 Court has jurisdiction over the state law claims because they form part of the same case or
12 controversy under Article III of the United States Constitution.

13 17. The Court has personal jurisdiction over Defendants because the Products are
14 advertised, marketed, distributed, and sold throughout San Diego County and California;
15 Defendants engaged in the wrongdoing alleged in the Complaint throughout California; Defendants
16 are authorized to do systematic business within California; and Defendants have sufficient
17 minimum contacts with California and/or otherwise have intentionally availed themselves of the
18 markets in California, rendering the exercise of jurisdiction by the Court permissible under
19 traditional notions of fair play and substantial justice. Defendants are engaged in substantial and
20 not isolated activity within the State.

21 18. Pursuant to Cal. Civ. Code § 395, the Court is the proper venue for the action
22 because a substantial part of the events, omissions, and acts giving rise to the claims herein
23 occurred in the District. Plaintiff is a citizen of California. Moreover, Defendants manufactured,
24 distributed, advertised, and sold the Products, which are the subject of the present Complaint, in
25 San Diego County, California. Also, the amount in controversy between the parties does not
26 exceed the \$75,000.00 necessary for individual case removal to federal court. 28 U.S.C. § 1332.

27 PARTIES

28 19. Plaintiff Chayla M. Clay is, and at all times relevant hereto has been, a citizen of the

1 State of California, residing in San Diego County. Over the past three years, Plaintiff has purchased
 2 Chobani® Greek yogurt products with evaporated cane juice as an ingredient for personal
 3 consumption within the State of California. Plaintiffs have purchased the Chobani® Products
 4 listed below:

Fruit on the Bottom				
Apricot	Blended			
Blackberry	Coconut			
Blood Orange	Key Lime			
Blueberry	Lemon	Flip™	Simply 100™	
Mango	Non-Fat Plain	Almond Coco Loco	Blackberry	
Passion Fruit	Pineapple	Blueberry Power	Blueberry	
Peach	Pink Grapefruit	Clover Hone	Key Lime	
Pineapple	Plain	Key Lime Crumble	Peach	Kids
Pomegranate	Strawberry	Nutty for Nana	Pineapple	Banana
Raspberry	Strawberry Banana	Peachy Pistachio	Pineapple Coconut	Chocolate Dust
Strawberry	Vanilla	Tropical Escape	Strawberry	Grape Watermelon
Strawberry Banana	Watermelon	Vanilla Golden Crunch	Vanilla	Strawberry

17 Plaintiff purchased the Products from various local stores, particularly. Plaintiff has purchased the
 18 Products from stores located in San Diego County, including but not limited to Vons and Safeway
 19 grocery stores in California.

20 20. Defendant Chobani, LLC is a limited liability company organized under the laws of
 21 Delaware with a principal executive office and address for service of process located at 147 State
 22 Highway 320, Norwich, New York, 13815. Defendant Chobani LLC was formerly known as
 23 Chobani, INC. and prior to that was known as Agro-Farma, INC.

24 21. Defendants Safeway Inc. ("Safeway"), a Delaware corporation headquartered in
 25 Pleasanton, California, and The Vons Companies, Inc., a Michigan corporation also headquartered
 26 in Pleasanton, California (the "Distribution Defendants") have served (and continue to serve) as
 27 major distributors of the Mars Defendant's Purchased Products in California during the Class
 28 Period.

22. The true names and capacities of defendants sued herein under California Code of Civil Procedure § 474 as DOES 1 through 50, inclusive, is presently unknown to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend the Complaint and include these Doe Defendants' true names and capacities when they are ascertained. Each of the fictitiously-named defendant is responsible in some manner for the illegal conduct alleged herein and for the injuries suffered by Plaintiff and the general public as a consequence thereof.

23. Chobani and the Distribution Defendants have approved, ratified, controlled, directed, had knowledge of, and/or otherwise been legally responsible for all aspects of the wrongful acts and practices of certain Doe Defendants and about which Plaintiff complains. A unity of interest exists between Chobani and the Distribution Defendants and certain of Doe defendants such that justice dictates that any liability created by the acts and/or omissions of one be imposed upon the others who should be held legally and financially responsible for all aspects of the wrongful acts and practices about which Plaintiffs complain. One or more of the named defendants is the alter-ego of certain Doe Defendants and, accordingly, liability should be imposed upon the others on that basis.

24. In accordance with California law, both Chobani and the Distribution Defendants are liable to Plaintiff and the Class as a direct participant, aider and abettor, co-conspirator, enabler or their otherwise jointly responsible for the improper, unlawful, deceptive, misleading, unfair, and fraudulent acts and practices that Defendants continues to conduct in this State to the detriment of residents, consumers, competitors and members of the general public of California.

25. Moreover, California law applies to all claims set forth in the Class Action Complaint because Plaintiff lives in California and purchased the Purchased Products in California. Accordingly, California has significant contacts and/or a significant aggregation of contacts with the claims asserted by Plaintiff and all Class members.

FACTUAL ALLEGATIONS

26. Defendants manufacture, distribute, market, and sell Chobani yogurt Products in California, and proclaim on their website that the Products are "made with only natural

1 ingredients.” The Defendants further claim that the Products contain “No artificial flavors or
2 sweeteners,” “No preservatives,” and that the sugar in the Products “come from milk (lactose), real
3 fruit (fructose), honey and evaporated cane juice (which is less processed than white table sugar
4 and is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic strained
5 Greek yogurt products.)

6 27. The Products are available at most supermarket chains and other retail outlets
7 throughout California, including operated by Defendants Vons and Safeway.

8 **Defendants Make Unlawful ECJ Claims**

9 28. Defendants deceptively advertise and market all of the Products using the term
10 evaporated cane juice (“ECJ”), a term that is a false and misleading name for another less healthy
11 food or ingredient that has a common or usual name – “sugar.”

12 29. Defendants use the term ECJ on all the Product packaging. Defendants use the term
13 ECJ to make their Products appear healthier than others containing “sugar” as an ingredient in its
14 place.

15 30. Plaintiff was misled when she relied upon the use of the term ECJ on Defendants’
16 packaging, assuming it was healthier than sugar.

17 31. Sugar cane products exist in many different forms, ranging from raw sugars and
18 syrups to refined sugar and molasses. These products are differentiated by their moisture, molasses,
19 and sucrose content as well as by crystal size and any special treatments. Sugar cane products are
20 required by regulation (21 C.F.R. § 101.4) to be described by their common or usual names,
21 “sugar” (21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854) or “cane syrup” (21 C.F.R. §
22 168.130). Other sugar cane products have common or usual names established by common usage
23 such as molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar and demerara sugar.

24 32. The U.S. Food and Drug Administration (“FDA”) has instructed that sweeteners
25 derived from sugar cane syrup should not be listed in the ingredient declaration by names which
26 suggest that the ingredients are juice, such as “dehydrated cane juice” or “evaporated cane juice.”
27 In fact, the FDA’s published policy states that “evaporated cane juice” is simply a deceptive way of
28 describing sugar, and therefore, it is false and misleading to dress up sugar as a type of “juice.” See

1 <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodL>
 2 <abelingNutrition/ucm181491.html>.

3 33. Defendants sell the Products using the deceptive ingredient name "Evaporated Cane
 4 Juice", including but not limited to the following Products:

Chobani® Greek Yogurt - Fruit on the Bottom	
Product	Label Violation/Misrepresentation
Apricot	http://www.chobani.com/Products/fruit-on-the-bottom#apricot
Blackberry	http://www.chobani.com/Products/fruit-on-the-bottom#blackberry
Black Cherry	http://www.chobani.com/Products/fruit-on-the-bottom#black-cherry
Blood Orange	http://www.chobani.com/Products/fruit-on-the-bottom#bloodorange
Blueberry	http://www.chobani.com/Products/fruit-on-the-bottom#blueberry
Mango	http://www.chobani.com/Products/fruit-on-the-bottom#mango
Passion Fruit	http://www.chobani.com/Products/fruit-on-the-bottom#passion-fruit
Pear	http://www.chobani.com/Products/fruit-on-the-bottom#pear
Pineapple	http://www.chobani.com/Products/fruit-on-the-bottom#pineapple
Pomegranate	http://www.chobani.com/Products/fruit-on-the-bottom#pomegranate
Raspberry	http://www.chobani.com/Products/fruit-on-the-bottom#raspberry
Strawberry	http://www.chobani.com/Products/fruit-on-the-bottom#strawberry
Strawberry Banana	http://www.chobani.com/Products/fruit-on-the-bottom#strawberry-banana

Chobani® Greek Yogurt – Blended	
Product	Label Violation/Misrepresentation
Blueberry	http://www.chobani.com/Products/blended#blueberry
Coconut	http://www.chobani.com/Products/blended#coconut
Key Lime	http://www.chobani.com/Products/blended#key-lime
Lemon	http://www.chobani.com/Products/blended#lemon
Non-Fat Plain	http://www.chobani.com/Products/blended#non-fat-plain
Pineapple	http://www.chobani.com/Products/blended#pineapple
Pink Grapefruit	http://www.chobani.com/Products/blended#pink-grapefruit
Plain	http://www.chobani.com/Products/blended#plain
Strawberry	http://www.chobani.com/Products/blended#strawberry
Strawberry Banana	http://www.chobani.com/Products/blended#strawberry-banana
Vanilla	http://www.chobani.com/Products/blended#vanilla
Vanilla Chocolate Chunk	http://www.chobani.com/Products/blended#vanilla-chocolate-chunk
Watermelon	http://www.chobani.com/Products/blended#watermelon

Chobani® Greek Yogurt – Simply 100™	
Product	Label Violation/Misrepresentation
Black Cherry	http://www.chobani.com/Products/simply-100#black-cherry
Blueberry	http://www.chobani.com/Products/simply-100#blueberry
Key Lime	http://www.chobani.com/Products/simply-100#key-lime
Peach	http://www.chobani.com/Products/simply-100#peach
Pineapple	http://www.chobani.com/Products/simply-100#pineapple
Pineapple Coconut	http://www.chobani.com/Products/simply-100#pineapple-coconut
Strawberry	http://www.chobani.com/Products/simply-100#strawberry
Vanilla	http://www.chobani.com/Products/simply-100#vanilla

Chobani® Greek Yogurt – Flip™	
Product	Label Violation/Misrepresentation
Almond Coco Loco	http://www.chobani.com/Products/flip#almond-coco-loco
Blueberry Power	http://www.chobani.com/Products/flip#blueberry-power
Clover Honey	http://www.chobani.com/Products/flip#clover-honey
Key Lime Crumble	http://www.chobani.com/Products/flip#kev-lime-crumble
Nutty for Nana	http://www.chobani.com/Products/flip#nutty-for-nana
Peachy Pistachio	http://www.chobani.com/Products/flip#peachy-pistachio
Strawberry Sunrise	http://www.chobani.com/Products/flip#strawberry-sunrise
Tropical Escape	http://www.chobani.com/Products/flip#tropical-escape
Vanilla Golden Crunch	http://www.chobani.com/Products/flip#vanilla-golden-crunch

Chobani® Greek Yogurt Kids	
Product	Label Violation/Misrepresentation
Banana	http://www.chobani.com/Products/kids#banana
Chocolate Dust	http://www.chobani.com/Products/kids#chocolate-dust
Grape Watermelon	http://www.chobani.com/Products/kids#grape-watermelon
Strawberry	http://www.chobani.com/Products/kids#strawberry

Defendants' General Misrepresentations

34. On Defendants' website, <http://www.chobani.com/our-craft>, Defendants state under the heading "Craft" that "[h]ow we make our product matters, a cup of yogurt won't change the world, but how we make it might." Defendants' website continues to state that the third prong in their process is "Natural Ingredients ... Then we take care to add only real fruit and natural sweeteners. It's a thoughtful process that, unlike some of the other guys, ensures we never use preservatives." Such narrative sells and misrepresents that Defendants' Products are healthier than

1 other products sweetened with "sugar." However, the Products are sweetened with regular sugar
2 just as any other competitor yogurt.

3 35. On Chobani's website, www.chobani.com, under FAQ (frequently asked questions),
4 these Defendants mislead California consumers with purposeful misrepresentations as to their
5 Products' health benefits when the Products contain significant amounts of sugar:

6 a. Under "Why Choose Chobani?" Defendant states "Chobani contains only natural
7 ingredients so it's a naturally good for you indulgence ... Plus, our authentic
8 straining process results in a rich and creamy yogurt, so it's a good-for-you-way to
9 satisfy your cravings."

10 b. Under "How does the Fruit on the Bottom of your Flavored Chobani Taste So
11 Fresh?" Chobani claims "We use only the highest quality real fruit-no goopy jelly
12 here."

13 c. Under "Does Chobani contain any Artificial Sweeteners?" Chobani claims "No.
14 We use wholesome milk and real fruit to craft our Chobani Greek Yogurt Products.
15 The sugars found in our products come from milk (lactose), real fruit (fructose),
16 honey and evaporated cane juice (which is less processed than white table sugar and
17 is used to sweeten the fruit, vanilla and chocolate chunk preps used in our authentic
18 strained Greek yogurt products)." The description is deceptive as Defendants should
19 say they sweeten their Products with plain old sugar, as their competitors Darmon,
20 Stonyfield Farms, and Yoplait do.

21 36. As detailed above, Defendants' Products are not low in sugar and are no different
22 from other drinks or yogurts that are packed with sugar. The Nutrition Facts for the Products
23 purchased by Plaintiff ranged from thirteen (13) to twenty-three (23) grams of sugar, but the
24 ingredient sections failed to list "sugar" as an ingredient. Similarly, Chobani's Kids yogurt line for
25 kids purchased by Plaintiff state that they have thirteen (13) grams of sugar, but the ingredient
26 section fails to list "sugar" as an ingredient. Thirteen grams of sugar equals 3 to 6 packets of sugar
27 (and is more sugar than is present in a serving of Jolly Rancher hard candy or Tootsie Pop).
28 Thirteen grams of sugar is also the same amount of sugar present in a Charms Blow Pop lollipop

1 and is almost the same amount of sugar in a Nestle Fudge ice cream bar (15 grams of sugar).
 2 Defendants' Products are not healthy or "good for you," are glorified junk food and can be a
 3 contributor to obesity, diabetes and heart disease.

4 37. Chobani and the Distribution Defendants identify "Evaporated Cane Juice" as an
 5 ingredient on their Product labels. The FDA has specifically warned companies not to use the term
 6 "Evaporated Cane Juice" because (1) it is "false and misleading," (2) its use is in violation of a
 7 number of labeling regulations designed to ensure that manufacturers label their products with the
 8 common and usual names of the ingredients they use and accurately describe the ingredients they
 9 utilize; and (3) the ingredient involved is not a juice.

10 38. In October of 2009, the FDA issued Guidance for Industry: Ingredients Declared as
 11 Evaporated Cane Juice, which advised industry that:

12 [T]he term "evaporated cane juice" has started to appear as an ingredient on food
 13 labels, most commonly to declare the presence of sweeteners derived from sugar
 14 cane syrup. **However, FDA's current policy is that sweeteners derived from
 sugar cane syrup should not be declared as "evaporated cane juice" because
 that term falsely suggests that the sweeteners are juice ...**

15 "Juice" is defined by CFR 120.1(a) as "the aqueous liquid expressed or extracted
 16 from one or more fruits or vegetables, purees of the edible portions of one or more
 fruits or vegetables, or any concentrates of such liquid or puree." ...

17 As provided in 21 CFR 101.4(a)(1), "Ingredients required to be declared on the
 18 label or labeling of a food ... shall be listed by common or usual name ... " The
 19 common or usual name for an ingredient is the name established by common usage
 or by regulation (21 CFR 102.5(a)) ...

20 Sugar cane products with common or usual names defined by regulation are sugar
 21 (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled "syrup") (21 CFR
 168.130) (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado
 sugar, and demerara sugar) ...

22 The intent of the draft guidance is to advise the regulated industry of FDA's
 23 view that the term "evaporated cane juice" is not the common or usual name of
 24 any type of sweetener, including dried cane syrup. Because cane syrup has a
 standard of identity defined by regulation in 21 CFR 168.130, the common or usual
 name for the solid or dried form of cane syrup is "dried cane syrup." ...

25 Sweeteners derived from sugar cane syrup should not be listed in the
 26 ingredient declaration by names which suggest that the ingredients are juice,
 27 such as "evaporated cane juice." FDA considers such representations to be
 28 false and misleading under 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because
 they fail to reveal the basic nature of the food and its characterizing properties
 (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5.
 Furthermore, sweeteners derived from sugar cane syrup are not juice and should not

1 be included in the percentage juice declaration on the labels of beverages that are
2 represented to contain fruit or vegetable juice (see 21 CFR 101.30).

3 <http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm181491.htm> (emphasis added)

4 39. The FDA's position is clear that "evaporated cane juice" labels are "false and
5 misleading" when referring to granular sugar. Despite the issuance of the 2009 FDA Guidance,
6 Defendants proceeded with the unlawful and misleading term from their misbranded Products.

7 40. Under the Federal Food Drug and Cosmetic Act ("FDCA"), the term "false" has its
8 usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches
9 not only false claims, but also those claims that might be technically true, but still misleading. If
10 anyone representation in the labeling is misleading, the entire food is misbranded. No other
11 statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the
12 ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze."
13 *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). FDCA liability standards
14 make it unnecessary to prove that anyone was actually misled.

15 41. Another tactic employed by Defendants in their effort to make the Products appear
16 healthier is to list the daily value of the Fruit on the Bottom Products as "0%" on their website. The
17 daily value ("DV") is a general guide created by the FDA that permits consumers to understand if a
18 serving is high or low in a particular nutrient. A general rule is a DV of 5% or less means that a
19 nutrient is low, while a DV of 20% or more means that a nutrient is high. The FDA has stated that
20 "[n]o daily reference value has been established for sugars because no recommendations have been
21 made for the total amount to eat in a day." As a result, sugar content in a serving is expressed to the
22 nearest gram on a nutrition facts label but typically no daily value is included. See exemplar FDA
23 label below:

24 ///

25 ///

26 ///

27 ///

28 ///

Nutrition Facts	
Serving Size 1 container (226g)	
Amount Per Serving	
Calories 110	Calories from Fat 0
% Daily Value*	
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol Less than 5mg	1%
Sodium 160mg	7%
Total Carbohydrate 15g	5%
Dietary Fiber 0g	0%
Sugars 10g	0%
Protein 13g	
Vitamin A 0%	Vitamin C 24%
Calcium 45%	Iron 0%
*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.	

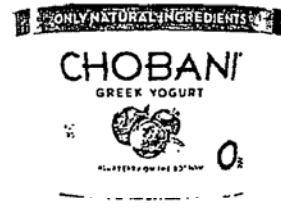
<http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm274593.htm>
(as it appeared on 8/11/14).

42. On their website, Defendants include the nutrition facts for all of their Products and prominently display a "0%" as the daily value for sugar in their Fruit on the Bottom Products. See exemplar labels below:



Serving Size 5.3oz (150g)
Servings per Container 1

Amount per Serving	%DV*
Calories 120	Calories from Fat 0
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat -	-
Cholesterol 5mg	2%
Sodium 60mg	3%
Total Carbs 19g	6%
Dietary Fiber 1g	2%
Sugars 15g	-
Protein 12g	24%
Vitamin A 0% Vitamin C 10%	
Calcium 15% Iron 0%	



Serving Size 5.3oz (150g)
Servings per Container 1

Amount per Serving	%DV*
Calories 110	Calories from Fat 0
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat -	-
Cholesterol 5mg	2%
Sodium 60mg	3%
Total Carbs 19g	6%
Dietary Fiber 1g	2%
Sugars 15g	-
Protein 12g	24%
Vitamin A 0% Vitamin C 10%	
Calcium 15% Iron 0%	

1 <http://www.chobani.com/products/fruit-on-the-bottom#black-cherry> (as it appeared on 8/11/14).

2 <http://www.chobani.com/products/fruit-on-the-bottom#blueberry> (as appeared on 8/11/14).


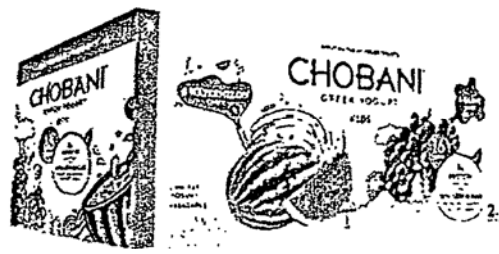
3 A reasonable consumer is likely to believe that 1) there is an established daily value for
4 sugar and 2) that the grams of sugar present in the Fruit on the Bottom Products are well below the
5 recommended daily value.

6 43. Defendants mislead consumers into paying a premium price for the Products that do
7 not satisfy the minimum standards established by law for those products and for inferior or
8 undesirable ingredients or for products that contain ingredients not listed on the label.

9 **Kids Misrepresentations**

10 44. Defendants' Products are not as healthy and nutritious as they purport to be.
11 Defendants willfully seek to conceal the added sugar in their Products from nationwide consumers.

12 45. The ingredients in Defendants' regular yogurt Products are nearly identical to
13 Chobani's Kids yogurt line geared towards kids. See ingredients list below:

Fruit on the Bottom – Black Cherry	Kids – Grape Watermelon
 <p>ONLY NATURAL INGREDIENTS</p> <p>CHOBANI GREEK YOGURT</p> <p>0g</p>	 <p>CHOBANI GREEK YOGURT</p>
<p>Ingredients</p> <p>Nonfat Yogurt (Cultured Pasteurized Nonfat Milk, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei), Black Cherries, Evaporated Cane Juice, Cherry Juice Concentrate, Pectin, Locust Bean Gum, Natural Flavor.</p> <p>http://www.chobani.com/products/fruit-on-the-bottom#black-cherry</p>	<p>Ingredients</p> <p>Grape: Lowfat Yogurt (Cultured Pasteurized Nonfat Milk, Cream, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L. Casei), Evaporated Cane Juice, Grape Juice Concentrate, Natural Flavors, Locust Bean Gum, Pectin, Fruit and Vegetable Juice Concentrate (For Color), Lemon Juice Concentrate.</p> <p>Watermelon: Lowfat Yogurt (Cultured Pasteurized Nonfat Milk, Cream, Live and Active Cultures: S. Thermophilus, L. Bulgaricus, L. Acidophilus, Bifidus and L.</p>

Casei), Evaporated Cane Juice, Watermelon Juice Concentrate, Locust Bean Gum, Pectin, Fruit and Vegetable Juice Concentrate (For Color), Lemon Juice Concentrate, Natural Flavor.

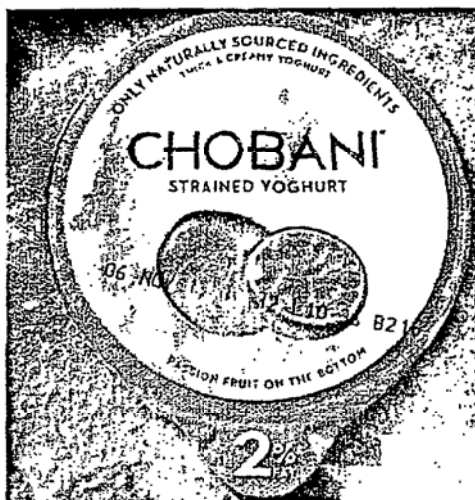
<http://www.chobani.com/products/kids#grape-and-watermelon>

46. Defendants' Kids yogurt line is specifically designed for and marketed to children, making the deception that much more pernicious and outrageous.

47. Defendants deceptively market their Kids line to parents seeking healthy options for their children.

Defendants' "0%" Misrepresentations

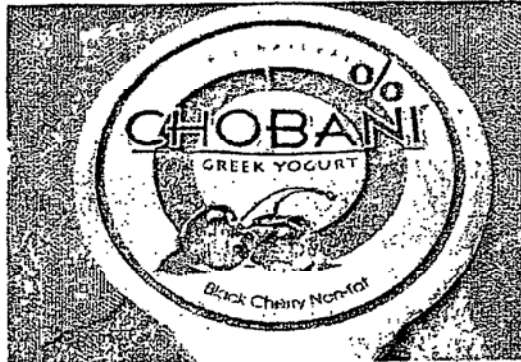
48. Defendants' "Fruit on the Bottom" and "Blended" Products also prominently display the number zero percent (shown as "0%") on the top and front of their Product packaging without any indication what the value means or pertains to. See exemplar labels below:



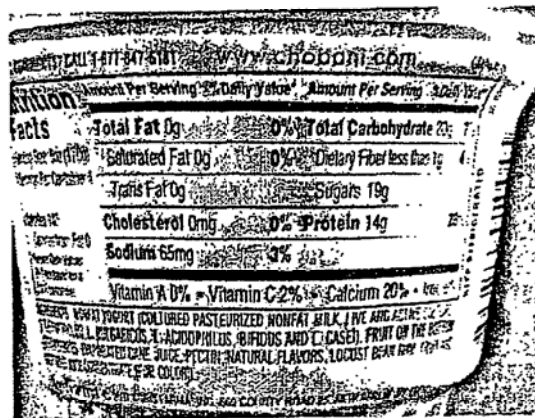
ONLY NATURAL INGREDIENTS

CHOBANI

GREEK YOGURT



49. From Defendants' own detailed Product label in the 'Nutrition Facts' section of the Blueberry Blended yogurt, there are 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron. Similarly, the Nutrition Facts section of the Fruit on the Bottom Strawberry yogurt states that there are 0 calories from fat, 0 grams of trans fat, 0% saturated fat, 0% total fat, 0% vitamin A and 0% iron in the Product. Defendants' Products contain various 0%'s in the "Nutrition Facts" section. See exemplar label below:



50. Defendants contribute to America's obesity problem in that half of all Americans

are overweight. If a consumer ate as much of the Products as they liked, they may well become obese. The sugar content of the "Fruit on the Bottom" and "Blended" Products is as below:

Fruit on the Bottom	Sugar Content (in grams)
Apricot	15g
Blackberry	15g
Blood Orange	15g
Blueberry	15g
Black Cherry	17g
Mango	16g
Passion Fruit	15g
Peach	15g
Pineapple	15g
Pomegranate	15g
Raspberry	16g
Strawberry	15g
Strawberry Banana	16g

Blended	Sugar Content (in grams)
Coconut	13g
Key Lime	16g
Lemon	15g
Pineapple	23g
Pink Grapefruit	17g
Strawberry	23g
Strawberry Banana	16g
Vanilla	16g
Watermelon	12g

As stated previously, a Nestle Fudge ice cream bar contains 15 grams of sugar. Eating a Chobani® yogurt is no different (in fact, many times may be worse) than eating ice cream because its sugar content may be higher.

51. Defendants' marketing campaign is intended to mislead consumers into believing that the Products are healthy and nutritious when they are not. One container of Defendants' Black Cherry flavored Blended yogurt has significantly more sugar in a serving than Chips Ahoy cookies or Oreo cookies. See below:

Product	Sugar content per serving (in grams)
Chobani Blended - Black Cherry	24
Nabisco Oreo Sandwich Cookies	14
Nabisco Oreo Double Stuff Cookies	13
Nabisco Chips Ahoy Cookies - Original	11

52. Consumption of the Products is not part of a healthier lifestyle as the Products have no health benefits and are comparable to eating junk food.

53. Plaintiff and the Class paid a premium price for the Products, as the following prices for the Products indicate:

Fruit on the Bottom, 5.3 oz.	\$1.59
Greek Yogurt, 5.3 oz. (each) 4 pack	\$4.99
Blended, 5.3 oz.	\$1.59
Greek Yogurt, 16 oz.	\$3.99
Greek Yogurt, 32 oz.	\$5.99
Kids, 3.5 oz. (each) 4 pack	\$3.69
Simply 100, 5.3 oz.	\$1.59
Simply 100, 5.3 oz. (each) 4 pack	\$4.99

Similar Products (*i.e.*, non-Greek, no "0%" and non ECJ products) made by Defendants' competitor Dannon are sold at Vons as follows:

Dannon Yogurt Light & Fit, 6 oz.	10 for \$5.00
Dannon 99% Fat Free Fruit on the Bottom, 6 oz.	\$3.49

54. Plaintiff and the Class have been damaged by Defendants' deceptive and unfair conduct in that they purchased a misbranded Product or paid prices they otherwise would not have paid had Defendants not misrepresented their Products' ingredients.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings her action as a class action pursuant Cal. Code Civ. Proc. §389 and Cal. Civ. Code § 1781 on behalf of the following class (the "Class"):

All person who, while residing in California within the last four (4) years, made retail purchases in California of the Chobani Products and/or such subclasses as the Court may deem appropriate.

Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any

entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom the lawsuit is assigned.

56. Plaintiff reserves the right to revise the Class definition based on facts learned through litigating the matter.

57. The action can be maintained as a class action under Cal. Code Civ. Proc. § 389 and Cal. Civ. Code §1781 because there is a well defined community of interest in the litigation and the proposed Class is easily ascertainable.

58. While the exact number and identities of other Class members are unknown to Plaintiff at this time, Plaintiff is informed and believe that there are hundreds of thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

59. Questions of law and fact predominate and arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. whether listing sugar as ECJ on their Products is false and misleading;
- b. whether listing the ingredient "evaporated cane juice" is misleading because it is not "juice";
- c. whether identifying sugar as ECJ renders the yogurt Products at issue misbranded;
- d. whether Defendants failed to properly disclose that ECJ is not an accepted lawful term for sugar;
- e. whether Defendants engaged in a marketing practice intended to deceive consumers by substituting the term ECJ for sugar in their yogurt Products;
- f. whether displaying "0%" on the top and front label of their Products without additional context is improper as deceptive or misleading;
- g. whether Defendants have been unjustly enriched at the expense of Plaintiff and the putative Class; and
- j. whether Defendants should be barred from marketing their yogurt Products when listing ECJ as an ingredient.

60. Plaintiff's claims are typical of those of the Class members because Plaintiff and the

1 other Class members sustained damages arising out of the same wrongful conduct, as detailed
2 herein. Plaintiff purchased Defendants' Products during the Class Period and sustained similar
3 injuries arising out of Defendants' conduct in violation of California law. Defendants' unlawful,
4 unfair and fraudulent actions concern the same business practices described herein irrespective of
5 individual experiences. The injuries of the Class were caused directly by Defendants' wrongful
6 misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all
7 Class members and represents a common thread of misconduct resulting in injury to all members
8 of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to
9 the claims of the members of the Class and are based on the same legal theories.

10 61. Plaintiff will fairly and adequately represent and pursue the interests of the Class
11 and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff
12 understand the nature of their claims herein, have no disqualifying conditions, and will vigorously
13 represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that
14 conflict with or are antagonistic to the interests of the Class. Plaintiff has retained highly competent
15 and experienced class action attorneys to represent their interests and those of the Class. Plaintiff
16 and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate
17 there class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class
18 and will diligently discharge those duties by vigorously seeking the maximum possible recovery
19 for the Class.

20 62. A class action is superior to other available methods for the fair and efficient
21 adjudication of the controversy. The damages suffered by any individual class member are too
22 small to make it economically feasible for an individual class member to prosecute a separate
23 action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in there
24 forum. Furthermore, the adjudication of the controversy through a class action will avoid the
25 potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no
26 difficulty in the management of the action as a class action.

27 63. The prerequisites to maintaining a class action for injunctive relief or equitable
28 relief pursuant to Cal. Bus. & Prof. Code §§17203 and 17535 are satisfied, as Defendants have

acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

64. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535 are satisfied, as questions of law or fact common to the California Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

65. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices may make declaratory relief with respect to the Class as a whole appropriate.

FIRST CAUSE OF ACTION

Business and Professions Code § 17200, *et seq.*

Unlawful Business Acts and Practices

1. Plaintiff incorporates by reference each allegation set forth above.
2. Defendants' conduct constitutes unlawful business acts and practices.
3. Defendants marketed and sold Purchased Products in California.
4. Defendants are corporations and, therefore are "persons" within the meaning of the Sherman Law.

5. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of Defendants' violations of the advertising provisions of the Sherman Law (Article 3) and the misbranded food provisions of the Sherman Law (Article 6).

6. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of Defendants' violations of Cal. Bus. & Prof. Code § 17500, *et seq.*

7. Defendants marketed and sold Plaintiff and the Class Purchased Products that were misbranded and thus not capable of being legally sold in California. Plaintiff and the Class paid a

1 premium price for these unlawful Purchased Products.

2 8. As a result of Defendants' illegal business practices, Plaintiff and the Class,
3 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
4 conduct and such other orders and judgments which may be necessary to disgorge Defendants' ill-
5 gotten gains and to restore to any Class Member any money paid for the Purchased Products.

6 9. Defendants' unlawful business acts present a threat and reasonable continued
7 likelihood of deception to Plaintiff and the Class.

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

12 **SECOND CAUSE OF ACTION**

13 **Business and Professions Code § 17200, *et seq.***

14 **Unfair Business Acts and Practices**

15 11. Plaintiff incorporates by reference each allegation set forth above.

16 12. Defendants' conduct as set forth herein constitutes unfair business acts and
17 practices.

18 13. Defendants sold Purchased Products in and throughout California during the Class
19 Period.

20 14. Defendants' deceptive marketing, advertising, packaging and labeling of their
21 Purchased Products was of no benefit to consumers, and the harm and injury to consumers and
22 competition is substantial. Plaintiff and members of the Class suffered a substantial injury by
23 virtue of buying Defendants' Purchased Products that they would not have purchased absent the
24 Defendants' illegal conduct as set forth herein.

25 15. Defendants' sold Plaintiff (and the Class) Purchased Products that were misbranded
26 in violation of California law. Plaintiff and the Class paid a premium price for the Purchased
27 Products. Plaintiff and the Class who purchased Defendants' Purchased Products had no way of
28 reasonably knowing that the products were misbranded and were not properly marketed,

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

3 16. The consequences of Defendants' conduct as set forth herein outweighs any
4 justification, motive or reason therefor. Defendants' conduct is and continues to be immoral,
5 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the
6 Class.

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

11 **THIRD CAUSE OF ACTION**

12 **Business and Professions Code § 17200, *et seq.***

13 **Fraudulent Business Acts and Practices**

14 18. Plaintiff incorporates by reference each allegation set forth above.

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

17 20. Defendants sold Purchased Products in and throughout California during the Class
18 Period.

19 21. Defendants' misleading marketing, advertising, packaging and labeling of the
20 Purchased Products and its misrepresentations that the products at issue were salable, capable of
21 legal possession and not misbranded were likely to deceive reasonable consumers, and in fact,
22 Plaintiff and members of the Class were deceived. Defendants have engaged in fraudulent business
23 acts and practices in this State.

24 22. Defendants' fraud and deception caused Plaintiff and the Class to purchase Chobani
25 Products that they would otherwise not have purchased had they known the true nature of those
26 products.

27 23. Defendants marketed and sold Plaintiff and the Class Chobani Products that were
28 not capable of being lawfully sold in this State. Plaintiff and the Class paid a premium price for the

1 Chobani Products.

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

7 **FOURTH CAUSE OF ACTION**

8 **Business and Professions Code § 17500, *et seq.***

9 **Misleading and Deceptive Advertising**

10 25. Plaintiff incorporates by reference each allegation set forth above.

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

13 27. Defendants marketed, distributed and sold Chobani Products in California to
14 residents of the State during the Class Period.

15 28. Defendants engaged in a scheme of advertising and offering Chobani Products for
16 sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling,
17 and other promotional materials. These materials misrepresented and/or omitted the true contents
18 and nature of Chobani Products. Defendants' advertisements and inducements were made within
19 California and come within the definition of advertising as contained in Business and Professions
20 Code § 17500, *et seq.*, in that such product packaging and labeling, and promotional materials were
21 intended as inducements to purchase Chobani Products and are statements disseminated by
22 Defendants to Plaintiff and the Class that were intended to reach members of the Class. Defendants
23 knew, or in the exercise of reasonable care should have known, that these statements were
24 misleading and deceptive as set forth herein.

25 29. In furtherance of their plan and scheme, Defendants prepared and distributed within
26 California via Chobani Product packaging and labeling, print media, and other promotional
27 materials, statements that misleadingly and deceptively represented the ingredients contained in
28 and the nature of Chobani Products. Plaintiff and the Class necessarily and reasonably relied on

1 Defendants' materials, and were the intended targets of such representations.

2 30. Defendants' conduct in disseminating misleading and deceptive statements in
3 California to Plaintiff and the Class was and is likely to deceive reasonable consumers by
4 obfuscating the true ingredients and nature of Chobani Products in violation of the "misleading
5 prong" of California Business and Professions Code § 17500, *et seq.*

6 31. As a result of Defendants' violations of the "misleading prong" of California
7 Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
8 expense of Plaintiff and the Class. These misbranded products cannot be legally sold in California.
9 Plaintiff and the Class paid a premium price for these Products.

10 32. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
11 entitled to an order enjoining such future conduct by Defendants, and such other orders and
12 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money
13 paid for Chobani Products by Plaintiff and the Class.

14 **FIFTH CAUSE OF ACTION**

15 **Business and Professions Code § 17500, *et seq.***

16 **Untrue Advertising**

17 33. Plaintiff incorporates by reference each allegation set forth above.

18 34. Plaintiff asserts the cause of action against Defendants for violations of California
19 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

20 35. Defendants sold misbranded and mislabeled Chobani Products in California during
21 the Class Period.

22 36. Defendants engaged in a scheme of offering Chobani Products for sale to Plaintiff
23 and the Class by way of product packaging and labeling, advertisements, and other promotional
24 materials. These materials misrepresented and/or omitted the true contents and nature of the
25 Products. Defendants' advertisements and inducements were made in California and come within
26 the definition of advertising as contained in Business and Professions Code § 17500, *et seq.* in that
27 the product packaging and labeling, and promotional materials were intended as inducements to
28 purchase Chobani Products, and are statements disseminated by all Defendants to Plaintiff and the

1 Class. All Defendants knew, or in the exercise of reasonable care should have known, that these
2 statements were untrue and/or deceptive.

3 37. In furtherance of their plan and scheme, Defendants prepared and distributed in
4 California via product packaging and labeling, and other promotional materials, statements that
5 falsely advertise the ingredients contained in Chobani Products, and falsely misrepresented the
6 nature of those products. Plaintiff and the Class were the intended targets of such representations
7 and would reasonably be deceived by Defendants' materials.

8 38. Defendants' conduct in disseminating untrue advertising throughout California and
9 nationwide deceived Plaintiff and members of the Class by obfuscating the contents, nature and
10 quality of Chobani Products in violation of the "untrue prong" of California Business and
11 Professions Code § 17500.

12 39. As a result of Defendants' violations of the "untrue prong" of California Business
13 and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of
14 Plaintiff and the Class. Misbranded and mislabeled products cannot be legally sold and are legally
15 worthless. Plaintiff and the Class paid a premium price for the Products.

16 40. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
17 entitled to an order enjoining such future conduct by Defendants, and such other orders and
18 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money
19 paid for Defendants' Purchased Products by Plaintiff and the Class.

20 SIXTH CAUSE OF ACTION

21 Consumers Legal Remedies Act, Cal. Civ. Code §1750, et seq.

22 41. Plaintiff incorporates by reference each allegation set forth above.

23 42. The cause of action is brought pursuant to the CLRA. Defendants' violations of the
24 CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive
25 damages.

26 43. Plaintiff and the Class are entitled to actual and punitive damages against
27 Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),
28 Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices,

1 providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and
2 any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

3 44. Defendants' actions, representations and conduct have violated, and continue to
4 violate the CLRA, because they extend to transactions that are intended to result, or which have
5 resulted, in the sale of goods or services to consumers.

6 45. Defendants sold Purchased Products in California during the Class Period.

7 46. Plaintiff and members of the Class are "consumers" as that term is defined by the
8 CLRA in Cal. Civ. Code §1761(d).

9 47. Defendants' Purchased Products were and are "goods" within the meaning of Cal.
10 Civ. Code §1761(a).

11 48. By engaging in the conduct set forth herein, Defendants violated and continue to
12 violate Section 1770(a)(5), of the CLRA, because Defendants' conduct constitutes unfair methods
13 of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular
14 ingredients, characteristics, uses, benefits and quantities of the goods.

15 49. By engaging in the conduct set forth herein, Defendants violated and continue to
16 violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods
17 of competition and unfair or fraudulent acts or practices, in that they misrepresented the particular
18 standard, quality or grade of the goods.

19 50. By engaging in the conduct set forth herein, Defendants violated and continue to
20 violate Section 1770(a)(9) of the CLRA, because Defendants' conduct constitutes unfair methods
21 of competition and unfair or fraudulent acts or practices, in that they advertised goods with the
22 intent not to sell the goods as advertised.

23 51. By engaging in the conduct set forth herein, Defendants have violated and continue
24 to violate Section 1770(a)(16) of the CLRA, because Defendants' conduct constitutes unfair
25 methods of competition and unfair or fraudulent acts or practices, in that they represented that a
26 subject of a transaction has been supplied in accordance with a previous representation when they
27 have not.

28 52. Plaintiff requests that the Court enjoin Defendants from continuing to employ the

1 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
2 Defendants are not restrained from engaging in these practices in the future, Plaintiff and the Class
3 will continue to suffer harm.

4 53. Concurrent with the filing of the complaint, Plaintiff served on Defendants
5 (pursuant to Section 1782(a) of the CLRA) a notice to cease and desist from the practices alleged
6 herein.

7 54. In the event Defendants fail to provide an appropriate remedy or relief for its
8 violations of the CLRA within 30 days of its receipt of the CLRA demand notice, Plaintiff will
9 amend the Complaint to seek monetary and punitive damages, attorneys' fees and costs, and any
10 other relief the Court deems proper from all Defendants.

11 55. Plaintiff will demonstrate that the violations of the CLRA by Defendants were
12 willful, oppressive and fraudulent, thus supporting an award of actual and punitive damages.
13 Consequently, Plaintiff and the Class are entitled to actual and punitive damages against
14 Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),
15 Plaintiff and the Class will be entitled to an order enjoining the above-described acts and practices,
16 providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and
17 any other relief deemed appropriate (including treble damages for Plaintiff and all other Class
18 members over the age of 65 pursuant to Cal. Civ. Code §§ 1761(f) and 1780(b)(1)).

19 **SEVENTH CAUSE OF ACTION**

20 **Negligent Misrepresentation**

21 66. Plaintiff incorporates by reference each allegation set forth above.

22 67. Defendants, directly or through their agents and employees, made false
23 representations, concealments, and nondisclosures to Plaintiff and members of the Class.

24 68. In making the representations of fact to Plaintiff and members of the Class
25 described herein, Defendants have failed to fulfill their duty to disclose the material facts set forth
26 above. The direct and proximate cause of the failure to disclose was Defendants' negligence and
27 carelessness.

28 69. Defendants, in making the misrepresentations and omissions, and in doing the acts

1 alleged above, knew or reasonably should have known that the representations were not true.
2 Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and
3 members of the Class.

4 70. Plaintiff and members of the Class relied upon these false representations and
5 nondisclosures by Defendants when purchasing the Products, which reliance was justified and
6 reasonably foreseeable.

7 71. As a result of Defendants' wrongful conduct, Plaintiff and members of the Class
8 have suffered and continue to suffer economic losses and other general and specific damages,
9 including but not limited to the amounts paid for the Products, and any interest that would have
10 been accrued on those monies, all in an amount to be determined according to proof at time of trial.

11 EIGHTH CAUSE OF ACTION

12 Unjust Enrichment

13 72. Plaintiff incorporates by reference each allegation set forth above.

14 73. Defendants received certain monies as a result of their uniform deceptive marketing
15 of their Products with ECJ and/or displaying a "0%" on the top and front label Product packaging
16 and in their marketing campaigns that are excessive and unreasonable.

17 74. Plaintiff and the Class conferred a benefit on Defendants through purchasing their
18 Products with ECJ and/or displaying a "0%" on the top and front label Product packaging and in
19 their marketing campaigns, and Defendants have knowledge of the benefit and has voluntarily
20 accepted and retained the benefits conferred on it.

21 75. Defendants will be unjustly enriched if they are allowed to retain such funds, and
22 each Class member is entitled to an amount equal to the amount they enriched Defendants and for
23 which Defendants have been unjustly enriched.

24 PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
26 judgment against Defendants, as follows:

- 27 A. For an order certifying the California Class and naming Plaintiff as representative of
28 the Class and Plaintiff's attorneys as Class Counsel to represent members of the

1 Class;

2 B. For an order declaring the Defendants' conduct violates the statutes referenced
3 herein;

4 C. For an order finding in favor of Plaintiff and the California Class;

5 D. For compensatory and punitive damages in amounts to be determined by the Court
6 and/or jury;

7 E. For prejudgment interest on all amounts awarded;

8 F. For an order of restitution and all other forms of equitable monetary relief;

9 G. For injunctive relief as pleaded or as the Court may deem proper;

10 H. For an order awarding Plaintiff and the Class attorneys' fees and expenses and costs
11 of suit; and

12 I. Such other relief as the Court may deem appropriate.

13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury
15 trial on all claims so triable.

16 Respectfully submitted,

17 Dated: August 19, 2014

FINKELSTEIN & KRINSK, LLP

18
19 By: 

20 Mark L. Knutson, Esq.
21 Jeffrey R. Krinsk, Esq.

22 Attorneys for Plaintiff
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