

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

10-62926 CA 08

NICOLE CRUZ, as an individual
consumer and on behalf of all others
similarly situated,

Plaintiff,

vs

TROPICANA PRODUCTS, INC. and
PUBLIX SUPER MARKETS, INC.,

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF

State of Florida Class

JURY TRIAL REQUESTED

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DIVISION

Plaintiff alleges:

I. PARTIES

1. Plaintiff, **NICOLE CRUZ** ("Plaintiff"), is an individual consumer who, at all times material hereto, was and is a resident of Miami-Dade County, Florida.

2. Defendant, **TROPICANA PRODUCTS, INC.** ("Defendant" or "Tropicana"), is a corporation organized under the laws of the State of Delaware, with its principal place of business in Bradenton, Florida. Tropicana is a division of PepsiCo, Inc. Tropicana is the leading producer and marketer of branded fruit juices in the United States. Its products are marketed in the United States under a variety of brand names, including the Trop50 Pomegranate Blueberry Juice Beverage (the "Product") which is the subject of this lawsuit.

3. Defendant, **PUBLIX SUPER MARKETS, INC.** ("Defendant" or "Publix"), is a corporation organized under the laws of the State of Florida, with its principal place of business in Lakeland, Florida. Publix is the largest employee-owned supermarket chain in the United States, with over 1,000 supermarkets in five states. Publix sells Tropicana products, including Trop50 Pomegranate Blueberry Juice Beverage which is the subject of this lawsuit.

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II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this class action because it is an action brought on behalf of Florida purchasers of Trop50 Pomegranate Blueberry Juice Beverage at retail stores in Florida, including but not limited to Publix, and the matter in controversy is not expected to exceed the aggregate sum of \$5,000,000, exclusive of interest and costs. Therefore, this action is not subject to removal under the Class Action Fairness Act. Plaintiff resides in this County, and Defendants are subject to personal jurisdiction in this County.

5. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the claims alleged occurred in this County. Plaintiff resides within this County and bought the Product within this County.

III. FACTUAL ALLEGATIONS

6. This is a proposed class action seeking redress for Defendants' deceptive practices in misrepresenting and/or omitting the true nature of Trop50 Pomegranate Blueberry Juice Beverage. Specifically, the Product, which has been packaged, advertised, marketed and sold by Tropicana, based on the label and other forms of advertising to Plaintiff and others similarly situated, represented that the primary ingredients in the juice product are pomegranate and blueberry juice. In fact, the Product contains very little pomegranate or blueberry juice, a fact which Tropicana knew and purposely failed to disclose to its consumers. The Product consists primarily of cheap apple and other juices. To date, Tropicana has taken no meaningful steps to clear up consumers' misconceptions regarding the Product.

7. Publix is a supermarket chain that sells the Product to consumers at its more than 700 supermarkets in the State of Florida, including in Miami-Dade County where Plaintiff purchased the Product.

8. It has become recently well known that both pomegranate and blueberry juices are high in powerful antioxidants, recognized for years to be helpful in maintaining health and preventing disease. Pomegranate juice has very high levels of unique polyphenols¹, potent antioxidants that are

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¹Polyphenols are a class of phytochemicals found in plants. Phenol is a kind of molecule, a carbon-based chemical structure, and many of them bound together form a polyphenol.

1 especially effective at neutralizing free radicals², helping to prevent cell and tissue damage that can lead
2 to dysfunctions and diseases associated with aging. Based on laboratory and human pilot studies, the
3 juice of the pomegranate has been effective in reducing heart disease risk factors, including LDL
4 oxidation, macrophage oxidative status, and foam cell formation, all of which are steps in
5 atherosclerosis and cardiovascular disease. Pomegranate juice has also been shown to reduce systolic
6 blood pressure by inhibiting serum angiotensin-converting enzyme, may inhibit viral infections, and
7 may also have antibacterial effects against dental plaque.

8 9. Like the pomegranate, the blueberry is considered a “wonder fruit” or “super fruit”
9 and has become a popular drink among health conscious consumers because of its known high
10 antioxidant capacity. Blueberries are also highly protective to the cardiovascular system and nervous
11 system and are among the fruits with the highest antioxidant activity.

12 10. With the nutritional and health benefits of pomegranate and blueberry juices
13 becoming widely known, consumer demand for pomegranate and blueberry juices has increased rapidly.
14 It was this enormous new market that Tropicana hoped to tap with the sale of its Trop50 Pomegranate
15 Blueberry Juice Beverage product.

16 11. In 2010, Tropicana introduced a new line of “Trop50” “juice beverages”, which
17 includes Trop50 Pomegranate Blueberry Juice Beverage, advertised as being made with real juice and
18 having 50 per cent less sugar and calories, and no artificial sweeteners. The Trop50 line is touted as
19 providing a full day’s supply of Vitamin C and being a good source of antioxidant Vitamin E in each
20 eight-ounce glass. Specifically, on its website (www.trop50.com) Trop50 Pomegranate Blueberry Juice
21 Beverage is advertised as follows:

22 Trop50 Pomegranate Blueberry offers the rich, delicious taste of pomegranates
23 and lush blueberries, with the nutrition you expect from Tropicana. Each 8 oz.
24 glass provides a good source of antioxidants - 100% of your day’s supply of
25 vitamin C and a good source of vitamin E. Made with fruit juices and no artificial
26 sweeteners, each glass of Trop50 Pomegranate Blueberry brings you the goodness
27 of juice with 50% less sugar and calories.

27 ²Free radicals are atoms or molecules in one’s body with an unpaired electron making them highly unstable.
28 Normally, electrons come in pairs, and therefore, the free radicals collide with other molecules in an attempt to steal an
electron, which in turn may start a chain reaction, causing damage to cell membranes and DNA through a process known
as oxidative stress. Indeed, free radicals are able to aggressively destroy healthy cells and have been linked to serious
health threats, such as cancer and heart disease.

1 12. Tropicana’s Trop50 Pomegranate Blueberry Juice Beverage purports to combine two
2 of nature’s most potent antioxidants, pomegranates and blueberries, into a single juice product.
3 However, the truth is that the main ingredients in Tropicana’s Trop50 Pomegranate Blueberry Juice
4 Beverage are neither purely pomegranate nor blueberry juice, but instead it is a mixture of cheap apple
5 juice and grape juice concentrates with pomegranate juice and blueberry juice concentrates.

6 **The Label of Trop50 Pomegranate Blueberry Juice Beverage**

7 13. Even though the Trop50 Pomegranate Blueberry Juice Beverage contains very little
8 pomegranate or blueberry juice, Tropicana made a tactical marketing and/or advertising decision to
9 create a deceptive and misleading label with many elements not required by state or federal regulations.
10 For example, despite the fact that the Product consists primarily of apple and grape juices that are
11 significantly cheaper than pomegranate juice, Tropicana decided to give this juice product the brand
12 name of “Trop50 Pomegranate Blueberry Juice Beverage” and to prominently depict a sliced
13 pomegranate and blueberries on the front label, among other misleading elements. The label on the
14 Product substantially appears as set out in the attached **Exhibit 1**.

15 14. Tropicana could have given the Product many other names. For example, Tropicana
16 could have named this Product “Apple Juice” as apple juice is the primary juice in the Product.

17 15. Tropicana’s decision to name its product “Trop50 Pomegranate Blueberry Juice
18 Beverage” demonstrates Tropicana’s intention to focus consumers on the pomegranate and blueberry
19 juice in the Product while downplaying the cheaper juices it primarily contains.

20 16. As the label reveals (**Exhibit 1**), Tropicana made a tactical marketing and/or
21 advertising decision to specifically position to words “Pomegranate” and “Blueberry”, to place the
22 “Pomegranate Blueberry” term in its label with a background evocative of the colors of pomegranates
23 and blueberries, and to position “Pomegranate Blueberry” prominently on the front label. The effect
24 of the label is to communicate that the Product is composed primarily of pure pomegranate and
25 blueberry juices. As a result, purchasers, like Plaintiff, of Trop50 Pomegranate Blueberry Juice
26 Beverage are likely to be misled and deceived by the Product’s label and to reasonably expect that the
27 juice product actually consists primarily of pomegranate and blueberry juices.

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1 17. Plaintiff's claim that Tropicana's Product label is misleading and deceptive does not
2 seek to challenge the Product's formal name and labelling in areas for which the Food and Drug
3 Administration ("FDA") has promulgated regulations implementing the Federal Food Drug and
4 Cosmetic Act ("FFDCA"). Plaintiff's claim does not seek to contest or enforce the FFDCA or FDA
5 regulation requirements, nor does Plaintiff seek an interpretation of the FDA regulations. Instead,
6 Plaintiff's claim is predicated on the fact that the naming and labelling are misleading and deceptive
7 even if they comply with the minimum requirements set forth by the FDA regulations, as the FDA
8 regulations simply set a "floor", or "minimum" requirements. Indeed, compliance with the minimum
9 requirements is necessary, but is not sufficient to determine if a product's label is false and misleading
10 and simply does not provide a shield from liability. *See, e.g., Wyeth v. Levine*, 129 S.Ct. 1187, 1202
11 (2009).

12 18. On September 13, 2010, in a similar false advertising lawsuit, a jury sitting for the
13 United States District Court Central District of California in *Pom Wonderful LLC v. Welch Foods, Inc.*,
14 Case No. CV 09-567-AHM (AGRx), found that the name, label, packaging or advertising of the 100%
15 Juice Welch's White Grape Pomegranate beverage, which was the subject of that lawsuit, was, although
16 literally true, nevertheless deceptive or had a tendency to deceive a substantial number of actual
17 consumers. The jury further found that Welch's intended the name, label, packaging or advertising to
18 deceive consumers.

19 19. Plaintiff's state law claims are aimed at the features of the naming and labelling which
20 are voluntary and not required by the FDA regulations that Tropicana selected in order to maximize the
21 label's deceptive impact upon Plaintiff and other consumers. FDA regulations did not require
22 Tropicana to name its product "Trop50 Pomegranate Blueberry Juice Beverage" as opposed to a myriad
23 of other options. Tropicana made that decision because of its marketing strategy. Similarly, FDA
24 regulations did not require Tropicana to place a depiction of a sliced pomegranate and some blueberries
25 that dominates the entire front label in conjunction with the name "Pomegranate Blueberry". Tropicana
26 made that decision because of its marketing strategy. Tropicana's marketing misleads consumers into
27 believing that its Product primarily contains pomegranate and blueberry juice. Tropicana's marketing
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1 campaign is designed to cause consumers to buy Trop50 Pomegranate Blueberry Juice Beverage as a
2 result of this deceptive message, and Tropicana has succeeded.

3 **Tropicana's Website and Other Advertising**

4 20. In addition to the Product's label, Tropicana deceptively describes the Trop50
5 Pomegranate Blueberry Juice Beverage on its website (www.trop50.com). This interactive website is
6 accessible to the general public and also conveys in a similar deceptive manner that the Product consists
7 of primarily pomegranate and blueberry juices. *See Exhibit 2.* Further, the Product's label identifies
8 a toll-free number as a resource for additional consumer information about the Product.

9 21. Tropicana's website identifies its Product as "Pomegranate Blueberry" which "offers
10 the rich, delicious taste of pomegranates and lush blueberries" "[m]ade with fruit juices" without
11 identifying that pomegranate and blueberry juices are not the primary juices in the Product and that
12 actually apple juice, which is a much less expensive juice, is the primary juice.³ The website
13 prominently displays the name "Pomegranate Blueberry" and further shows an image of the front of the
14 bottle with a depiction of a pomegranate and blueberries on it. The claim on the website that the
15 Product "offers the rich, delicious taste of pomegranates and lush blueberries" deceptively conveys the
16 marketing and/or advertising message in a calculated way to lead consumers, including Plaintiff, to
17 believe that the Product primarily contains pomegranate and blueberry juices, when in fact it does not.

18 22. Plaintiff's claim that Tropicana's website is misleading and deceptive is based on
19 specific marketing and/or advertising content which Tropicana displays on its website, distinct from the
20 misleading aspects of the Product label. Significantly, the misleading and deceptive website content
21 was not required by FDA labelling regulations. Instead, Tropicana voluntarily selected each of the
22 features on its website in order to maximize its impact on consumers seeking to obtain information
23 concerning the Product. However, nowhere in the website does Tropicana inform consumers that the
24 primary juice in the Product is not actually pomegranate juice or blueberry juice, but in fact cheap apple
25 juice. Plaintiff is not alleging that the Tropicana website is in derogation of regulations in anyway, only
26 that it violates Florida state law.

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28 ³While the ingredient panel found on the back label of a sample bottle of Trop50 Pomegranate Blueberry Juice Beverage lists apple juice as an ingredient, the www.trop50.com website does not provide a list of the actual ingredients contained in the Product.

1 23. In addition, Plaintiff is informed and believes and on that basis alleges that Tropicana
2 has also engaged in other forms of advertising and/or marketing of its Trop50 Pomegranate Blueberry
3 Juice Beverage, including print advertisements, as well as point-of-purchase displays and national
4 in-store sampling programs at retailers like Publix. Through the uniform deceptive and misleading
5 advertising and marketing campaign, Tropicana leads consumers to believe that the primary ingredients
6 in the Product are pomegranate and blueberry juices.

7 24. As a result of this campaign, the average consumer, unaware that the Product actually
8 contains very little pomegranate and blueberry juices, has purchased the Product believing that the
9 Product is derived primarily from these two juices. The primary ingredient of the Product is actually
10 apple juice, which is much less expensive than pomegranate or blueberry juice and does not contain as
11 many antioxidants as those juices.

12 25. Consumers' confusion is reasonable given that some companies are selling juices
13 advertised as pomegranate and/or blueberry juice which truly are composed either entirely or primarily
14 of those juices. For example, on information and belief, Plaintiff alleges that R. W. Knudsen Just
15 Pomegranate, POM Wonderful 100% Pomegranate Juice, and Odwalla PomaGrand Pomegranate Juice
16 are juice products that actually contain primarily pomegranate juice.

17 26. Accordingly, Tropicana's representations regarding the Trop50 Pomegranate
18 Blueberry Juice Beverage are false, misleading and/or fail to disclose material facts. Tropicana knew
19 or should have known and/or was reckless in not knowing and disclosing that Trop50 Pomegranate
20 Blueberry Juice Beverage contained very little pomegranate or blueberry juice. Tropicana knew or
21 should have known that its representations concerning the Product were likely to deceive consumers
22 into believing they were purchasing primarily pomegranate and blueberry juices.

23 27. Upon information and belief, Publix was aware of the false and misleading
24 advertising of the Product when it sold the Product to Plaintiff and other consumers during the Class
25 Period.

26 28. Plaintiff has on several occasions purchased Trop50 Pomegranate Blueberry Juice
27 Beverage during the relevant Class Period, often buying it from Publix Supermarket located at
28 18330 Collins Ave., Sunny Isles Beach, Florida 33160. For example, Plaintiff purchased bottles of

1 Trop50 Pomegranate Blueberry Juice Beverage approximately twice per month in August and
2 September, 2010. Plaintiff paid the retail price of approximately \$3.99 for each bottle.

3 29. As a result of Tropicana's representations and/or omissions, Plaintiff overpaid for the
4 Product she purchased because the value of the Product was diminished at the time of sale. Had
5 Plaintiff been aware that the Trop50 Pomegranate Blueberry Juice Beverage included very little
6 pomegranate or blueberry juice, she would not have purchased the Product, would have paid less for
7 it, or would have purchased another juice product. For all the reasons stated herein, Plaintiff suffered
8 injury in fact and has lost money or property as a result of Defendant's actions.

9 30. As a result of Defendants' false and misleading statements and failures to disclose,
10 as well as Defendants' other conduct described in this Complaint, Plaintiff and Class members bought
11 hundreds of thousands of units of Trop50 Pomegranate Blueberry Juice Beverage and have suffered and
12 continue to suffer injury as a result of Defendants' misrepresentations and/or omissions.

13 31. Defendants' conduct as alleged herein violates, *inter alia*, the Florida Deceptive and
14 Unfair Trade Practices Act, Chapter 501, Florida Statutes.

15 32. This action seeks, among other things, equitable and injunctive relief, restitution of
16 all amounts retained by Defendants, and disgorgement of all ill-gotten profits from Defendants'
17 wrongdoing.

18 **IV. CLASS ACTION ALLEGATION**

19 33. Pursuant to FLA R. CIV. P. 1.220, Plaintiff brings this action on behalf of herself and
20 a Class of persons comprised of all consumers residing in Florida who purchased Trop50 Pomegranate
21 Blueberry Juice Beverage for personal, family or household purposes during the past four years (the
22 "Class"). Defendants' advertising and promotional practices as detailed above were applied uniformly
23 to all members of the Class throughout the relevant time period, so that the questions of law and fact
24 detailed herein are common to all members of the Class. All Class members were and are similarly
25 affected by having purchased Trop50 Pomegranate Blueberry Juice Beverage for its intended and
26 foreseeable purpose as promoted, marketed, advertised, packaged and labelled by Defendants and as
27 set forth in detail above.

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1 34. Based on the annual sales of the Product and the popularity of the Product, the
2 number of purchasers of the Product would likely be in the many thousands, thereby making individual
3 joinder impossible. The Class is therefore so numerous that joinder of all members would be
4 impracticable. Questions of law and fact common to the Class exist and predominate over questions
5 affecting only individual members, including, *inter alia*:

- 6 (a) Whether Defendants' acts and practices in connection with the promotion,
7 marketing, advertising, packaging, labelling, distribution and sale of the
8 Product were deceptive trade practices within the meaning of Section
9 501.204, *Florida Statutes* (The Unfair Competition Law or "UCL").
- 10 (b) Whether Defendants breached warranties in the sale of the Product;
- 11 (c) Whether Defendants' acts and practices in connection with the promotion,
12 marketing, advertising, packaging, labelling and sale of the Product
13 unjustly enriched Defendants at the expense of, and to the detriment of,
14 Plaintiff and other Class members; and
- 15 (d) Whether Defendants' conduct as set forth above injured consumers and if
16 so, the extent of such injury.

17 35. The claims asserted by Plaintiff in this action are typical of the claims of other Class
18 members as her claims arise from the same course of conduct by Defendants as detailed above, and the
19 relief she seeks is common.

20 36. Plaintiff will fairly and adequately represent and protect the interests of the Class
21 members. Plaintiff has retained counsel competent and experienced in both consumer protection and
22 class action litigation.

23 37. Certification of this class action is appropriate under FLA. R. CIV. P. 1.220 because
24 the questions of law or fact common to the Class members as detailed above predominate over
25 questions of law or fact affecting only individual members. This predominance makes class litigation
26 superior to any other methods available for the fair and efficient group-wide adjudication of these
27 claims. Absent a class action remedy, it would be highly unlikely that other Class members would be
28 able to protect their own interests because the cost of litigation through individual lawsuits would
exceed any expected recovery. Certification is also appropriate because Defendants have acted or
refused to act, and continues to act, on grounds generally applicable to the Class, thereby making
appropriate final injunctive relief with respect to the Class as a whole. Further, given the large number

1 of consumers of the Product, allowing individual actions to proceed in lieu of a class action would run
2 the risk of yielding inconsistent and conflicting adjudications.

3 38. A class action is an appropriate method for the group-wide adjudication of this
4 controversy in that it will permit a large number of claims to be resolved in a single forum
5 simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution
6 of numerous individual actions and the duplication of discovery, effort, expense and burden on the
7 courts that such individual actions would engender. The benefits of proceeding as a class action,
8 including providing a method for obtaining redress for claims that would not be practical to pursue
9 individually, outweigh any difficulties that might be claimed with regard to the management of this
10 action.

11 **V. FIRST CAUSE OF ACTION**

12 **(Violation of Section 501.204, *Florida Statutes*,
13 *The Unfair Competition Law*)**

14 39. Plaintiff repeats and re-alleges all preceding paragraphs as if fully set forth herein
15 verbatim.

16 40. The UCL (FLA. STAT. 501.204) states:

17 (1) Unfair methods of competition, unconscionable acts or practices, and
18 unfair or deceptive acts or practices in the conduct of any trade or commerce are
hereby declared unlawful.

19 (2) It is the intent of the Legislature that, in construing subsection (1), due
20 consideration and great weight shall be given to the interpretations of the Federal
Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal
Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006.

21 41. "Consumer" means an individual; child, by and through its parent or legal guardian;
22 business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary;
23 corporation; any commercial entity, however denominated; or any other group or combination. As set
24 forth in detail above, Defendants wrongfully marketed, advertised, promoted, packaged, labelled,
25 distributed and sold the Product representing that the primary ingredients in the juice product are
26 pomegranate and blueberry juice when, in fact, the Product contains very little pomegranate or blueberry
27 juice, in violation of Florida law. FLA. STAT. 501.203(7).

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1 42. Moreover, Defendants willfully failed to disclose, with the intention of inducing
2 consumers to purchase the Product, material information including, but not limited to the fact that the
3 Product contains very little pomegranate or blueberry juice, in violation of Florida law.

4 43. As a result of the deceptive trade practices described above, Plaintiff and other
5 members of the Class are entitled to damages in an amount to be determined at trial.

6 **VI. SECOND CAUSE OF ACTION**
7 **(Breach of Express Warranty)**

8 44. Plaintiff repeats and re-alleges all preceding paragraphs as if fully set forth herein
9 verbatim.

10 45. As set forth *supra*, Defendants provided Plaintiff and other members of the Class with
11 written express warranties indicating that the primary ingredients in the Product are pomegranate and
12 blueberry juice when, in fact, the Product contains very little pomegranate or blueberry juice. The
13 Product was also provided with implied warranties that it was merchantable and would pass without
14 objection in the trade or industry. However, as detailed above, the Product breached Defendants'
15 express warranties and is not merchantable because the Product contains very little pomegranate or
16 blueberry juice. As the Product is a foodstuff, privity is not required to assert such claims against
17 Defendants.

18 46. By virtue of the breach of the above warranties, Plaintiff and other members of the
19 Class have been damaged in an amount to be determined at trial in that, among other things, they
20 purchased and overpaid for the Product that did not conform to what was promised as promoted,
21 marketed, advertised, packaged and labelled by Defendants, and were deprived of the benefit of their
22 bargain.

23 **VII. THIRD CAUSE OF ACTION**
24 **(Breach of Implied Warranty of Fitness**
25 **for Particular Purpose)**

26 47. Plaintiff repeats and re-alleges all preceding paragraphs as if fully set forth herein
27 verbatim.

28 48. Plaintiff and other members of the Class purchased the Product which was promoted,
marketed, advertised, packaged and labelled as containing primarily pomegranate and blueberry juices
when, in fact, the Product contains very little pomegranate or blueberry juice. Pursuant to these sales

1 and by their reputations regarding the reputable nature of their companies and related entities,
2 Defendants warranted by their promotion, marketing, advertising, packaging and labelling of the
3 Product that it contained primarily pomegranate and blueberry juices. Plaintiff and Class members
4 bought the Product from Defendants, relying on their skill and judgment in furnishing suitable goods,
5 as well as Defendants' representations that the Product contained primarily pomegranate and blueberry
6 juices. However, as detailed above, the Product breached Defendants' implied warranties because the
7 Product contains very little pomegranate or blueberry juice.

8 49. Defendants breached the warranty implied at the time of sale in that Plaintiff and
9 Class members did not receive a product that contained primarily pomegranate and blueberry juices,
10 and thus, the Product was not fit for the purpose as promoted, marketed, advertised, packaged, labelled
11 or sold.

12 50. As a proximate result of the breach of warranty by Defendants, Plaintiff and other
13 members of the Class have suffered damages in an amount to be determined at trial in that, among other
14 things, they purchased and paid for a Product that did not conform to what was promised as promoted,
15 marketed, advertised, packaged and labelled by Tropicana and/or Publix, and they were deprived of the
16 benefit of their bargain and spent money on a Product that did not have any value or had less value than
17 warranted or a Product that they would not have purchased and consumed had they known the true facts
18 about it.

19 **VIII. FOURTH CAUSE OF ACTION**
20 **(Unjust Enrichment)**

21 51. Plaintiff repeats and re-alleges all preceding paragraphs, as if fully set forth herein
22 verbatim.

23 52. As a result of Defendants' deceptive, fraudulent and misleading labelling, advertising,
24 marketing and sales of the Product, described in detail above, Defendants were enriched through
25 excessive revenue derived from the sales of the Product. Defendants appreciated and/or knew the
26 benefit of the receipt of such excessive revenue. This excessive revenue has been received by
27 Defendants at the expense of Plaintiff and other members of the Class, under circumstances in which
28 it would be unjust for Defendants to be permitted to retain the benefit.

1 53. Under the circumstances, it would be against equity and good conscience to permit
2 Defendants to retain the ill-gotten benefits that they received from Plaintiff and other members of the
3 Class in light of the fact that the Product was not what Defendants purported it to be. Thus, it would
4 be unjust or inequitable for Defendants to retain the benefit without restitution to Plaintiff and other
5 members of the Class for the monies paid to Defendants for the Product.

6 54. Plaintiff and other members of the Class are entitled to the establishment of a
7 constructive trust consisting of the benefit conferred upon Defendants in the form of their excessive
8 revenue derived from the sale of the Product from which Plaintiff and other Class members may make
9 claims on a *pro rata* basis for restitution.

10 **IX. PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for judgment as follows:

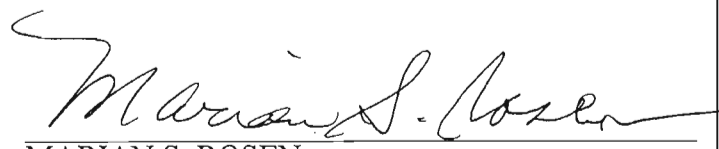
- 12 (a) Certification of the Class, certifying Plaintiff as representative of the Class, and
13 designating her counsel as counsel for the Class;
14 (b) For a declaration that Defendants have committed the violations of law alleged herein;
15 (c) For damages based on the violations of law alleged herein pursuant to, without
16 limitation, Florida's UCL, the amount of which is to be determined at trial;
17 (d) For damages based on breach of warranty, the amount of which is to be determined
18 at trial;
19 (e) For equitable monetary relief;
20 (f) For pre- and post-judgment interest at the legal rate on the foregoing sums; and
21 (g) For such further relief as this Court may deem just and proper.

22 **X. DEMAND FOR JURY TRIAL**

23 Plaintiff demands a trial by jury on all claims so triable.
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1 DATED: December 10, 2010

2 Respectfully submitted,

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