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10 *Attorneys for Plaintiff*

11 UNITED STATES DISTRICT COURT  
 12 EASTERN DISTRICT OF CALIFORNIA

13 ANGELENA LEWIS, on behalf of herself and  
 14 those similarly situated,

15 Plaintiff,

16 v.

17 TROPICANA PRODUCTS, INC. a division of  
 PepsiCo, Inc.,

18 Defendant.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Angelena Lewis, by her undersigned attorneys, brings this class action complaint  
2 against Tropicana Products, Inc., a division of PepsiCo, Inc. (“Defendant”). Plaintiff’s allegations  
3 are based upon personal knowledge as to her own acts and upon information and belief as to all  
4 other matters.

5 **NATURE OF THE ACTION**

6 1. This class action lawsuit asserts that the leading producer and marketer of branded  
7 fruit juices, Tropicana Products, Inc., a division of PepsiCo, Inc., (“Tropicana”) has been falsely  
8 claiming that its heavily processed, designed and modified “not-from-concentrate” orange juice  
9 (“NFC juice”) is 100% pure and natural orange juice. Despite Tropicana’s “100% pure and  
10 natural” claim, Tropicana’s NFC juice is heavily processed and flavored – it is not 100% pure  
11 and natural.

12 2. Mass marketed orange juice such as Tropicana’s cannot be fresh squeezed as fresh  
13 squeezed orange juice is unstable and has a short shelf-life. Mingua Jia, Q. Zhang, H., Min, D.,  
14 *Pulsed Electric Field Processing Effects on Flavor Compounds and Microorganisms of Orange*  
15 *Juice*, 65 Food Chemistry 445-51 (1999). Industrial processing and storage improves shelf life,  
16 but adversely affects the flavor, aroma, and nutritional qualities of orange juice. Jordan, M. J.,  
17 Goodner, K. L., Laencina, J. *Deaeration and Pasteurization Effects on the Orange Juice*  
18 *Aromatic Fraction*, 36 Lebensm-Wiss. U. Technol. 391-96 (2003).

19 3. Nonetheless, to extend shelf-life, Tropicana NFC juice undergoes extensive  
20 processing which includes the addition of aromas and flavors to its NFC juice. This extensive  
21 processing changes the essential nature of the NFC juice sold by Tropicana. It is not natural  
22 orange juice. It is instead a product that is scientifically engineered in laboratories, not nature,  
23 which explains its shelf-life of more than two months.

24 4. Tropicana is well aware that consumers want and demand natural products, and it  
25 seeks to take advantage of that consumer preference by deceptively promoting and marketing its  
26 NFC juice as “100% pure and natural” even though it has been pasteurized, deaerated, stripped of  
27 its flavor and aroma, stored for long periods of time before it ever reaches consumers, and  
28

1 then flavored, before it is packaged directly into the carton. Some of the non-natural aspects of  
2 these processes include:

- 3 (a) the removal of naturally present air from the intercellular spaces of the  
4 juice through the deaeration process;
- 5 (b) the reduction and deactivation of naturally occurring enzymes and  
6 microbial activity through pasteurization;
- 7 (c) long term storage of deaerated and pasteurized juices for a year or  
8 longer;
- 9 (d) the addition of chemically engineered “flavor packs” to mimic the flavor that  
10 natural orange juice has, which because it is natural requires no flavor pack;  
and
- 11 (e) the mixing of numerous types of oranges from Florida and Brazil that are  
12 then flavored to cover up the varietal and geographic differences.

11 5. Tropicana makes no mention of its use of or reliance upon added flavoring and  
12 aroma or the extent to which its processing alters the essential nature of the juice in its NFC  
13 juice advertisements or on its label. Instead, Tropicana includes on its NFC juice packaging an  
14 illustration of an orange with a straw stuck into it, which is meant to convey the message that  
15 its NFC juice is fresh from the orange. This reinforces the “100% Pure & Natural Orange  
16 Juice” claim in large, prominent type.

17 6. Tropicana’s NFC juice costs more than the juice sold by its rivals that is made  
18 from reconstituted juice made from concentrate. NFC juice is not fresher than reconstituted  
19 juice made from concentrate.

20 7. Tropicana’s ability to extract a premium for its product is a testament to the  
21 success of its deceptive marketing campaign. Tropicana’s market share is typically about 40  
22 percent of all the orange juice sold each year. Tropicana generated worldwide retail sales exceeding  
23 \$5 billion in 2010 alone.

24 8. Plaintiff seeks relief in this action individually, and as a class action on behalf of  
25 all purchasers of Tropicana NFC juice labeled and marketed as being “100% pure and  
26 natural orange juice,” for unjust enrichment, breach of express warranty, and violation of the  
27 consumer fraud laws of the various states including the California Consumers Legal Remedies Act  
28

1 (“CLRA”), Civil Code §§1750, *et seq.*, California Unfair Competition Law, Bus. & Prof. Code  
2 §§17200 *et seq.*, and California False Advertising Law, Bus. & Prof. Code §17500 *et seq.*

3 **THE PARTIES**

4 9. Plaintiff Angelena Lewis is a citizen of California who resides in Vacaville,  
5 California. Lewis purchased Tropicana NFC juice, which was represented as being “100% pure  
6 and natural orange juice” from retail stores in Vacaville, California. Plaintiff saw and read  
7 Tropicana’s misrepresentations that Tropicana NFC juice is “100% pure and natural orange  
8 juice,” and relied on such misrepresentations in deciding to purchase Tropicana NFC juice.  
9 Plaintiff would not have purchased Tropicana NFC juice had she known that it was extensively  
10 processed and flavored.

11 10. Defendant Tropicana is a division of PepsiCo, Inc., a Delaware corporation with its  
12 principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.  
13 Tropicana manufactures markets and sells NFC juice nationwide.

14 **JURISDICTION AND VENUE**

15 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d), in that  
16 this is class action in which there are more than 100 class members and the aggregate amount in  
17 controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class  
18 member is a citizen of a state different from Defendants.

19 12. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action  
20 because a substantial part of the events, omissions and acts giving rise to the claims herein  
21 occurred in this District. Plaintiff Angelena Lewis, a citizen of California, purchased Tropicana  
22 NFC juice from a retail store in this District, and Defendant Tropicana distributed, advertised  
23 and sold NFC juice, which is the subject of the present complaint, in this District.

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1 **FACTS COMMON TO ALL CLAIMS**

2 **Tropicana NFC Juice Is Not Pure, Fresh or Natural**

3 13. Tropicana realizes that consumers are increasingly aware of the relation between  
4 health and diet and that consumers are demanding fresh and natural products that are  
5 minimally processed.

6 14. Tropicana also recognizes the growing interest in premium quality juices, with very  
7 mild pasteurization, distributed refrigerated, and with a limited shelf-life. Vervoort, L., Van der  
8 Plancken, I., Grauwet, T., Timmermans, R., Mastwijk, H., Matser, A., Hendrickx, M., and Van  
9 Loey, A., *Comparing Equivalent Thermal, High Pressure and Pulsed Electric Field Processes for*  
10 *Mild Pasteurization of Orange Juice Part II: Impact on specific chemical and biochemical quality*  
11 *parameters*, 12 *Innovate Food Science and Emerging Technologies* 466-477 (2011).

12 15. Throughout Tropicana's marketing materials, advertising, website, labeling,  
13 packaging and point of sale materials, Tropicana represents that its NFC juice is "100% pure and  
14 natural orange juice."

15 16. The label for Tropicana NFC juice prominently features in large type "100%  
16 pure and natural orange juice."

17 17. Tropicana also maintains a website, YouTube, Facebook, and Twitter sites for the  
18 purposes of marketing Tropicana NFC juice and where it touts the purity, freshness, and health  
19 benefits of its NFC juice.

20 18. Tropicana recognizes that consumers are increasingly concerned about the types of  
21 foods they put into their bodies and the role of good nutrition in their overall health and well-  
22 being.

23 19. While Tropicana claims that "making Tropicana orange juice is truly an art" it is  
24 far more a science.

25 20. Tropicana NFC juice is not 100% pure and natural orange juice, but rather is  
26 both extensively processed and flavored.

1 **Tropicana NFC Juice Undergoes Deaeration**

2 21. "Air is naturally present in the intercellular spaces of fruits. During fruit maceration,  
3 homogenization, and juice extraction cells are crushed, the cell wall is disrupted and air is mixed in  
4 to the juice. Air can be present as dissolved gas in solution or associated with the pulp particles, for  
5 example, in orange juice. During cell disruption, metabolites and enzymes that are normally  
6 compartmentalized are mixed, producing chemical and biochemical reactions. Oxygen in air,  
7 present in the spaces between the juice vesicles, and from the surroundings, saturates the juice  
8 producing oxidation reactions that often result in browning, changes in aroma, and loss of  
9 nutritional value. These reactions are exacerbated by the increase in temperature during  
10 pasteurization and reduce the overall quality of the product during storage." Garcia-Torres, R.,  
11 Ponagandla, N. R., Rouseff, R. L., Goodrich- Schneider, R. M., and Reyes-De-Corcuera, J. I.,  
12 *Effects of Dissolved Oxygen in Fruit Juices and Methods of Removal*, 8 Comprehensive Rev. in  
13 Food Sci. & Food Safety, 409 (2009).

14 22. Because oxygen reduces the quality of stored orange juice, Tropicana uses  
15 deaeration to remove dissolved oxygen from the juice.

16 23. Tropicana deliberately fails to mention that after being squeezed from oranges,  
17 its NFC juice undergoes deaeration, which strips the juice of oxygen, so it doesn't oxidize.

18 24. Importantly, when orange juice is stripped of oxygen it is also stripped of important  
19 volatile compounds that provide flavor and aroma. Jordan, M.J., Goodner, K.L., Laencina, J.,  
20 *Deaeration and Pasteurization Effects on the Orange Juice Aromatic Fraction*, 35 Lebensmittel  
21 Wissenschaft und Technologie, 391-396 (2003).

22 25. To ensure a high elimination of dissolved oxygen, Tropicana preheats its NFC  
23 juice before deaeration. Heating orange juice further alters its flavor and reduces its aromatic  
24 quality.

25 **Tropicana NFC Juice Is Pasteurized and Stored For Up To One Year**

26 26. Tropicana NFC juice is also pasteurized to improve the shelf-life, but this also  
27 alters the delicate flavor and reduces the aromatic quality of the juice.  
28

1 27. Pasteurization, a form of thermal processing, reduces, inactivates, or eliminates  
2 enzyme and microbial activity in orange juice to extend its shelf-life, but also further reduces  
3 aroma and flavor qualities, and produces undesirable off-flavor and off-odor compounds.

4 28. Pasteurization profoundly effects aroma composition and can create off-flavors  
5 or their precursors from Maillard, Strecker, and acid catalyzed hydration reactions. *See* Perez-  
6 Cacho, P. R. and Rouseff, R., *Processing and Storage Effects on Orange Juice Aroma: A Review*,  
7 56 J. Agric. Food Chem., 9785-9796 (2008).

8 29. Finally, aroma and flavor volatiles are further altered by storage. In fact, increased  
9 storage time leads to a decrease in sweet odor, strength of the orange odor, sweet flavor, sour  
10 flavor, and orange aftertaste, and increases off-flavors and off-odors. *See* Baxter, I. A., Easton,  
11 K, Schneebeli, K., Whitfield, F., *High Pressure Processing of Australian Navel Orange Juices:*  
12 *Sensory Analysis and Volatile Flavor Profiling*, 6 Innovative Food Sci. & Emerging Tech., 372-387  
13 (2005).

14 30. Tropicana advertises that its NFC juice is squeezed from fresh oranges, again  
15 pushing the freshness of the product, yet fails to disclose to consumers that its product may be  
16 made from orange juice that has been pasteurized and stored for as long as one year.

17 31. Tropicana understands that: pasteurization changes physical and chemical  
18 properties of orange juice; heat drives off volatiles altering the original flavor of the fresh  
19 orange juice; and increased storage time and temperature conditions of storage can cause orange  
20 juice to deteriorate in taste and nutritional value.

21 **Tropicana Adds Aroma And Flavor To Its NFC Juice**

22 32. The mixture of volatile compounds with aroma activity is responsible for the  
23 characteristic aroma of orange juice. Garcia-Torres, R., Ponagandla, N. R., Rouseff, R. L.,  
24 Goodrich-Schneider, R. M., and Reyes-De-Corcuera, J. I., *Effects of Dissolved Oxygen in Fruit*  
25 *Juices and Methods of Removal*, 8 Comprehensive Reviews in Food Sci. & Food Safety, 416  
26 (2009).

1           33.     Freshly squeezed orange juice tastes fresh naturally; however, after the volatiles  
2 are stripped from the orange juice and it is processed thermally the remaining liquid is  
3 essentially sugary, orange liquid that lacks the flavor and aroma of orange juice.

4           34.     Without the addition of flavoring and aroma, Tropicana's NFC juice would be an  
5 unpleasant, sugary orange liquid that would not only be unappealing, but nearly undrinkable.

6           35.     Tropicana adds aroma and flavoring to its NFC juice – the addition of which  
7 serves a technical function– to provide its processed orange juice an aromatic and flavor profile  
8 closer to fresh juice and to mask the affects of processing and storage. The resulting product  
9 does not taste like fresh squeezed orange juice.

10          36.     Tropicana adds aroma and flavoring, referred to by some in the industry as flavor  
11 packs, designed by chemists and/or flavorists from processed orange oils and essence.

12          37.     Flavor packs are unnatural and are products of science.

13          38.     Flavor packs, not the grower in the grove or the fruit itself, give Tropicana NFC  
14 juice its distinctive taste. Thus, the distinctive taste of Tropicana is a product of science (*i.e.*,  
15 flavor packs), not the fruit.

16          39.     Flavor packs, which are made from processed orange oil and essence, are not  
17 “processing aids” or “incidental additives” as those terms are defined by the United States  
18 Food and Drug Administration because they are added in significant levels and serve a technical  
19 function.

20          40.     Flavorists design the flavor packs to emphaize and highlight certain aromas  
21 and flavors associated with orange juice by fractioning orange oil and essence into individual  
22 components, reformulating them, and blending them in varying mixtures. The aroma and  
23 flavoring added to the NFC juice bears little resemblance to the natural orange oil and  
24 essence that leaves the juice during deaeration or that is altered during pasteurization or storage.

25          41.     Tropicana also uses flavor packs to improve the flavor and aroma of lower quality  
26 juice.



1           42. Ethyl butyrate is one of the chemicals found in high concentrations in the flavor  
2 packs added to Tropicana's NFC juice sold in North American markets.

3           43. The flavor packs used for Tropicana NFC juice sold in other markets use less  
4 ethyl butyrate and highlight other fragrances and flavors that are preferred in those markets,  
5 further revealing that NFC juice is not pure and natural.

6           44. Tropicana also adds orange essence to its NFC juice including water- soluble  
7 orange essence, which dilutes the NFC juice.

8           45. Tropicana adds water-soluble orange essence because it provides the "freshest"  
9 characteristics to the NFC juice.

10          46. Regardless of the time of year, Tropicana orange juice tastes the same even  
11 though it is made from different varieties and different blends of oranges that ripen at different  
12 times of the year because Tropicana uses added flavoring and aroma to maintain product  
13 consistency to address variations in the quality, variety, source, and ratios of oranges used  
14 (Valencia, Hamlin or Pera, for example).

15          47. Due to the use of flavor packs, the flavor and aroma of Tropicana's NFC juice is  
16 consistent all year long despite natural variations in the quality, variety or source of the orange  
17 juice.

18          48. By adding flavoring and aroma, Tropicana is able to make its NFC juice taste  
19 more like "fresh" Valencia (the most prized orange grown in Florida) even while it increases  
20 the ratio of Hamlin (the most heavily planted orange grown in Florida) or Pera (the most  
21 heavily planted orange grown in Brazil) included in the juice.

22          49. Tropicana fails to mention the use of flavor packs or that it is the addition of flavor  
23 packs to the NFC juice that makes it taste "fresh" and mask the effects of processing and storage.

24          50. Tropicana claims falsely that the "secret is right there on every carton or bottle of  
25 Tropicana Pure Premium: the juice is 100% pure and natural orange juice" while deliberately  
26 omitting any reference to Tropicana's use of or reliance upon flavor packs that are designed,  
27 not grown, by flavorists.

28

1           51.     Tropicana does not disclose to consumers on its labeling or mention in its  
2 advertising that its NFC juice is dependent upon and enhanced by added flavoring and aroma.

3           52.     Further, in its advertisements Tropicana suggests that there is no space for  
4 anything other than pure, fresh, natural orange juice in its cartons. For example, in Tropicana's ad  
5 "Tropicana Pure Premium Puts The "Good" In Morning, it claims, "We squeeze 16 fresh-picked  
6 oranges into each 59-oz carton of Tropicana Pure Premium orange juice, and absolutely no  
7 space for added sugar, water or preservatives. Tropicana, we put the good in morning." This  
8 is false as Tropicana adds flavoring and aroma to its NFC juice.

9           53.     Tropicana does, however, suggest on its website that the orange oil extracted  
10 from the same fruit that is juiced is reintroduced to the juice for "consistent quality and  
11 flavor," but then suggests that the flavor of the oranges is protected by gentle squeezing and  
12 that the handling of the oranges provides that "unique, straight-from-the-orange Tropicana  
13 taste." This is false and belies the importance of using flavoring and aroma created from  
14 orange oils and essence from different fruit (*i.e.*, fruit other than those that were squeezed and  
15 provided the orange pulp, cloud, and serum) that is reconfigured and recombined by flavorists  
16 and added to its NFC juice.

17 **Topicana's Misrepresentations That NFC Juice Is "100% Pure And Natural Orange Juice"**

18           54.     Tropicana leaves out the details about how its NFC juice is produced,  
19 processed, and flavored in its advertisements and on its cartons and containers. Instead,  
20 Tropicana NFC juice is marketed as 100% pure and natural orange juice made from fresh  
21 squeezed oranges.

22           55.     Tropicana has engaged in a uniform marketing and advertising program  
23 representing that NFC juice is 100% pure and natural and made from fresh oranges to induce  
24 consumers to purchase NFC juice in reliance upon these representations. These representations  
25 were prominently displayed on Tropicana's label, and within Tropicana's advertisements,  
26 promotional materials and website.

1           56.     Tropicana’s commercials, print advertising, and on-line marketing is false and  
2 misleading in that it omits that: (a) NFC juice is extensively processed; (b) stored for as  
3 long as one year; and (c) that the flavor of the NFC juice is dependent upon added flavoring and  
4 aroma, while indicating that the product is 100% pure and natural orange juice.

5           57.     Tropicana leaves out the details about how its orange juice is produced,  
6 processed, and flavored in its advertisements and on its cartons and containers. Instead,  
7 Tropicana NFC juice is marketed as 100% pure and natural orange juice.

8           58.     When Florida is not producing oranges, Tropicana’s NFC juice is a mixture of  
9 Florida juice, some or all of which has been stored from previous seasons, and Pera orange juice  
10 processed in Brazil and shipped to the United States.

11           59.     Processed NFC juice from Brazil is exported to ports in the United States in  
12 converted bulk carriers, tankers, and other massive shipping vessels. These orange juice  
13 tankers carry millions of gallons of orange juice cargo that is carried in cylindrical tanks. Tanker,  
14 Shipping & Trade, *Bulk Carrier is Transformed Into an Orange Juice Carrier*, June-July 2011, at  
15 20-21.

16           60.     Brazil is quickly becoming a larger supplier of orange juice to Tropicana and  
17 contributes more than 20% of the juice contained in Tropicana NFC juice at times during the  
18 year. This percentage is expected to grow over time as Brazil ships more processed NFC juice to  
19 the United States.

20           61.     While Tropicana provides videos and images of its groves in Florida, it has never  
21 advertised or shown pictures of massive orange juice tankers that carry millions of gallons  
22 of orange juice cargo in enormous cylindrical tanks, much less trumpeted its dependence upon  
23 them and their cargo.

24           62.     For example, in its “Tropicana Orange Grove Tour” on its YouTube page,  
25 Tropicana invites consumers to: “Step into nature and see one of the groves where our 16  
26 fresh-picked oranges squeezed in each 59-oz. of Tropicana Pure Premium come from. Watch  
27 the goodness!”  
28



- 1 f) whether Tropicana concealed from Plaintiff and the Class that  
2 NFC juice did not conform to its stated representations;
- 3 g) whether, by the misconduct set forth in this Complaint, Tropicana  
4 has engaged in unfair, fraudulent or unfair business practices with respect  
5 to the advertising, marketing and sales of NFC juice;
- 6 h) whether Tropicana violated the California Consumers Legal Remedies Act,  
7 California Unfair Competition Law and California False Advertising Law;
- 8 i) whether Class members suffered an ascertainable loss as a result of the  
9 Tropicana's misrepresentations;
- 10 j) whether, as a result of Tropicana's misconduct as alleged herein, Plaintiff  
11 and Class members are entitled to restitution, injunctive and/or  
12 monetary relief and, if so, the amount and nature of such relief.

13 68. Plaintiff's claims are typical of the claims of the members of the Class because  
14 Plaintiff and each member of the Class were similarly affected by Tropicana's wrongful conduct.

15 69. Plaintiff is an adequate representative of the Class because her interests do not  
16 conflict with the interests of the Class members she seeks to represent, she has retained competent  
17 counsel experienced in prosecuting class actions, and she intends to prosecute this action  
18 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and  
19 her counsel.

20 70. The class mechanism is superior to other available means for the fair and efficient  
21 adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack  
22 the resources to undergo the burden and expense of individual prosecution of the complex and  
23 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases  
24 the delay and expense to all parties and multiplies the burden on the judicial system presented by  
25 the complex legal and factual issues of this case. Individualized litigation also presents a potential  
26 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer  
27 management difficulties and provides the benefits of single adjudication, economy of scale, and  
28 comprehensive supervision by a single court. Class treatment will ensure that all claims and  
claimants are before this Court for consistent adjudication of the liability issues.

**COUNT I**  
**(Unjust Enrichment)**

1  
2       71. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
3 forth herein.

4       72. Plaintiff brings this claim individually and on behalf of the members of the Class.

5       73. “The unjust enrichment claim can be made from common classwide proof.”  
6 *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a  
7 nationwide class where plaintiffs alleged defendants were unjustly enriched through a common  
8 scheme.). “Although there are numerous permutations of the elements of the unjust enrichment  
9 cause of action in the various states, there are few real differences. In all states, the focus of an  
10 unjust enrichment claim is whether the defendant was *unjustly* enriched. At the core of each state’s  
11 law are two fundamental elements – the defendant received a benefit from the plaintiff and it would  
12 be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus  
13 of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D.  
14 46, 58 (D.N.J. 2009) (quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007)).

15       74. Plaintiff and Class members conferred a benefit on Tropicana by purchasing the  
16 mislabeled NFC orange juice.

17       75. Tropicana has been unjustly enriched in retaining the revenues derived from Plaintiff  
18 and Class members’ purchases of the NFC juice. Retention under these circumstances is unjust and  
19 inequitable because Tropicana misrepresented that the NFC juice was 100% pure and natural when  
20 it was actually heavily processed and flavored.

21       76. Plaintiff and Class members suffered a money loss as a result of Tropicana’s unjust  
22 enrichment because: (a) they would not have purchased the NFC juice on the same terms if the true  
23 facts concerning the juice’s actual composition had been known; and (b) they paid a price premium  
24 due to the mislabeling of the NFC juice.

25       77. Because Tropicana’s retention of the non-gratuitous benefit conferred on it by  
26 Plaintiff and Class members is unjust and inequitable, Tropicana must pay restitution to Plaintiff  
27 and the Class members for its unjust enrichment, as ordered by the Court.  
28

**COUNT II**  
**(Breach of Express Warranty)**

1  
2 78. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
3 forth herein.

4 79. Plaintiff brings this claim individually and on behalf of the members of the Class.

5 80. Tropicana, as the designer, manufacturer, marketer, distributor, or seller expressly  
6 warranted that the NFC juice was “100% pure and natural orange juice.”

7 81. In fact, Tropicana’s NFC juice undergoes extensive processing, lengthy storage, and  
8 is dependent upon added aroma and flavoring in a makeup not found in nature.

9 82. Plaintiff and Class members were injured as a direct and proximate result of  
10 Defendant’s breach because: (a) they would not have purchased the NFC juice on the same terms if  
11 the true facts concerning the juice’s actual composition had been known; and (b) the NFC juice did  
12 not have the composition, attributes, characteristics, nutritional value, health qualities or value as  
13 promised.

**COUNT III**  
**(Violation of the Consumers Legal Remedies Act (“CLRA”), Civil Code §§ 1750, et. seq.)**  
**(Injunctive Relief Only)**

14  
15 83. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
16 forth herein.

17 84. Plaintiff brings this claim on behalf of the California Subclass under California law.

18 85. CLRA § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
19 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
20 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
21 does not have.” Defendant violated this provision by representing its NFC juice as 100% pure and  
22 natural when the juice is actually heavily processed and flavored.

23 86. CLRA § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a  
24 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
25 another.” Defendant violated this provision by representing its NFC juice as 100% pure and natural  
26 when the juice is actually heavily processed and flavored.  
27  
28

1 87. CLRA § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell  
2 them as advertised.” Defendant violated this provision by representing its NFC juice as 100% pure  
3 and natural when the juice is actually heavily processed and flavored.

4 88. Plaintiff and the California Subclass members suffered injuries caused by  
5 Defendant’s misrepresentations because: (a) they were induced to purchase a product they would  
6 not have otherwise purchased if they had known that Tropicana’s NFC juice was heavily processed  
7 and flavored; (b) they paid a price premium due to the mislabeling of the NFC juice as “100% pure  
8 and natural.”

9 89. On January 6, 2012, prior to the filing of this Complaint, a CLRA notice letter was  
10 served on Defendant Tropicana which complies in all respects with California Civil Code § 1782(a).  
11 Plaintiff Lewis sent Defendant a letter *via* certified mail, return receipt requested, advising  
12 Tropicana that it is in violation of the CLRA and must correct, repair, replace or otherwise rectify  
13 the goods alleged to be in violation of § 1770. Tropicana was further advised that in the event that  
14 the relief requested has not been provided within thirty (30) days, Lewis will amend this Complaint  
15 to include a request for monetary damages pursuant to the CLRA. A true and correct copy of  
16 Plaintiff Lewis’ CLRA letter is attached hereto as Exhibit A.

17 90. Wherefore, Plaintiff seeks only injunctive relief for this violation of the CLRA.

18 **COUNT IV**  
19 **(Violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et. seq.*)**  
20 **(Injunctive Relief and Restitution Only)**

21 91. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
22 forth herein.

23 92. Plaintiff brings this claim on behalf of the California Subclass under California law.

24 93. Tropicana is subject to the Unfair Competition Law (“UCL”), Bus. & Prof. Code §  
25 17200 *et seq.* The UCL provides, in pertinent part: “Unfair competition shall mean and include  
26 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
27 advertising ....”  
28



1 94. Throughout the Class Period, Tropicana committed acts of unfair competition, as  
2 defined by § 17200, by using false and misleading statements to promote the sale of NFC juice, as  
3 described above.

4 95. Tropicana's conduct is unfair in that the harm to Plaintiff and the Class arising from  
5 Tropicana's conduct outweighs the utility, if any, of those practices.

6 96. Tropicana's conduct, described herein, violated the "fraudulent" prong of the UCL  
7 by representing that its NFC juices were "100% pure and natural" when in fact they were not.

8 97. Plaintiff and California Subclass members have suffered injury and actual out of  
9 pocket losses as a result of Tropicana's UCL violations because: (a) Plaintiff and the Class were  
10 induced to purchase a product they would not have otherwise purchased had they known its true  
11 composition; and (b) Plaintiff and the Class were induced to pay substantially more for Tropicana  
12 NFC juice than they would have paid if its true characteristics had not be concealed or  
13 misrepresented.

14 98. Pursuant to California Business & Professions Code § 17203, Plaintiffs and the Class  
15 are therefore entitled to: (a) an Order requiring Tropicana to cease the acts of unfair competition  
16 alleged herein; (b) an Order requiring corrective disclosures; (c) full restitution of all monies paid to  
17 Tropicana as a result of their deceptive practices; (d) interest at the highest rate allowable by law;  
18 and (e) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code  
19 of Civil Procedure §1021.5.

20 **COUNT V**  
**(False Advertising)**  
**(False Advertising Law, Business & Professions Code § 17500 et seq.)**

21 99. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth  
22 herein.

23 100. Plaintiff brings this claim on behalf of the California Subclass under California law.

24 101. California's False Advertising Law (*Bus. & Prof. Code § 17500, et seq.*) makes it  
25 "unlawful for any person to make or disseminate or cause to be made or disseminated before the  
26 public in this state, . . . in any advertising device . . . or in any other manner or means whatever,  
27 including over the Internet, any statement, concerning . . . personal property or services,  
28

1 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and  
2 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
3 misleading.”

4 102. Throughout the Class Period, Tropicana committed acts of false advertising, as  
5 defined by §17500, by using false and misleading statements to promote the sale of NFC juice, as  
6 described above.

7 103. Tropicana knew or should have known, through the exercise of reasonable care that  
8 the statements were untrue and misleading.

9 104. Tropicana’s actions in violation of § 17500 were false and misleading such that the  
10 general public is and was likely to be deceived.

11 105. Plaintiff and California Subclass members suffered lost money or property as a  
12 result of Defendants’ FAL violations because: (a) Plaintiff and the Class were induced to purchase a  
13 product they would not have otherwise purchased had they known its true composition; and (b)  
14 Plaintiff and the Class were induced to pay substantially more for Tropicana NFC juice than they  
15 would have paid if its true characteristics had not be concealed or misrepresented.

16 106. Plaintiff brings this action pursuant to § 17535 for injunctive relief to enjoin the  
17 practices described herein and to require Tropicana to issue corrective disclosures to consumers.

18 **COUNT VI**  
19 **(Violation of the Consumer Fraud Laws of the Various States)**

20 107. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
21 forth herein.

22 108. Plaintiff brings this claim individually and on behalf of the members of the Class.

23 109. By mislabeling and selling the NFC juice as “100% pure and natural” when in fact it  
24 is not, Tropicana has engaged in unfair competition or unlawful, unfair, misleading,  
25 unconscionable, or deceptive acts in violation of the state consumer statutes listed below.

26 110. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
27 in violation of ALA. CODE § 8.19-1, et seq.  
28

1 111. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of ALASKA STAT. CODE § 45.50.471, et seq.

3 112. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of ARIZ. REV. STAT. § 44-1522, et seq.

5 113. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of ARK. CODE ANN. § 4-88-107, et seq.

7 114. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
8 or have made false representations in violation of COLO. REV. STAT. § 6-1-101, et seq.

9 115. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of CONN. GEN. STAT. § 42-110b, et seq.

11 116. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of DEL. CODE ANN. tit. 6, § 2511, et seq.

13 117. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
14 or made false representations in violation of D.C. CODE ANN. § 28-3901, et seq.

15 118. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of FLA. STAT. ANN. § 501.201, et seq.

17 119. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of GA. CODE ANN. §10-1-392, et seq.

19 120. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of HAW. REV. STAT. § 480, et seq.

21 121. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of IDAHO CODE § 48-601, et seq.

23 122. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of 815 ILL. COMP. STAT. 505/1, et seq.

25 123. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
26 in violation of IND. CODE ANN. § 24-5-0.5-1, et seq.

1 124. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of IOWA CODE §714.16, et seq.

3 125. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of KAN. STAT. § 50-623, et seq.

5 126. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of KY. REV. STAT. ANN. § 367.110, et seq.

7 127. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of LA. REV. STAT. § 51:1404, et seq.

9 128. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of ME. REV. STAT. tit. 5, § 205-A, et seq.

11 129. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of MD. CODE. ANN., COM. LAW § 13-101, et seq.

13 130. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation MASS. GEN LAWS ch. 93A, §1, et seq.

15 131. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of MICH. COMP. LAWS § 445.901, et seq.

17 132. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of MINN. STAT. § 8.31, et seq.

19 133. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of MISS. CODE ANN. § 75-24-3, et seq.

21 134. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of MO. REV. STAT. § 407.010, et seq.

23 135. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of MONT. CODE ANN. § 30-14-101, et seq.

25 136. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
26 in violation of NEB. REV. STAT. § 59-1601, et seq.

1 137. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of NEV. REV. STAT. 598.0903, et seq.

3 138. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of N.H. REV. STAT. ANN. § 358-A:1, et seq.

5 139. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of N.M. STAT. ANN. § 57-12-1, et seq.

7 140. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of N.Y. GEN. BUS. LAW § 349, et seq.

9 141. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of N.J.S.A. 56:8-1, et seq.

11 142. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
12 in violation of N.C. GEN. STAT. § 75-1.1, et seq.

13 143. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation of N.D. CENT. CODE § 51-15-01, et seq.

15 144. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
16 or made false representations in violation of OKLA. STAT. tit. 15, § 751, et seq.

17 145. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of OR. REV. STAT. § 646.605, et seq.

19 146. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
20 in violation of 73 PA. CONS. STAT. § 201-1, et seq.

21 147. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
22 in violation of R.I. GEN. LAWS § 6-13.1-1, et seq.

23 148. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
24 in violation of S.C. CODE § 39-5-10, et seq.

25 149. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
26 in violation of S.D. CODIFIED LAWS § 37-24-1, et seq.

1 150. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
2 in violation of TENN. CODE ANN. § 47-18-101, et seq.

3 151. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
4 in violation of TEX. BUS. & COM. CODE ANN. § 17.41, et seq.

5 152. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
6 in violation of UTAH CODE. ANN. § 13-11-1, et seq.

7 153. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
8 in violation of VT. STAT. ANN. tit. 9, § 2451, et seq.

9 154. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
10 in violation of VA. CODE ANN. § 59.1-196, et seq.

11 155. Tropicana has engaged in unfair competition or unfair, deceptive or fraudulent acts  
12 or practices in violation of WASH. REV. CODE § 19.86.010, et seq.

13 156. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
14 in violation of W. VA. CODE § 46A-6-101, et seq.

15 157. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
16 in violation of WIS. STAT. § 100.18, et seq.

17 158. Tropicana has engaged in unfair competition or unfair or deceptive acts or practices  
18 in violation of WYO. STAT. ANN. § 40-12-101, et seq.

19 159. The acts, practices, misrepresentations and omissions by Tropicana described above,  
20 and Tropicana's dissemination of deceptive and misleading advertising and marketing materials in  
21 connection therewith, occurring in the course of conduct involving trade or commerce, constitute  
22 unfair methods of competition and unfair or deceptive acts or practices within the meaning of each  
23 of the above-enumerated statutes, because each of these statutes generally prohibits deceptive  
24 conduct in consumer transactions, and Defendant violated each of these statutes by representing the  
25 representing the NFC juices were "100% pure and natural" when in fact they were not.

26 160. Plaintiff and Class Members were injured as a direct and proximate result of  
27 Tropicana's unfair, deceptive and/or unconscionable acts and practices, because: (a) Plaintiff and  
28

1 the Class were induced to purchase a product they would not have otherwise purchased had they  
2 known its true composition; and (b) Plaintiff and the Class were induced to pay substantially more  
3 for Tropicana NFC juice than they would have paid if its true characteristics had not be concealed  
4 or misrepresented.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
7 judgment as follows:

- 8 a. For an order certifying the Plaintiff Class under Rule 23 of the Federal Rules  
9 of Civil Procedure and naming Plaintiff as Class Representative and her  
10 attorneys as Class Counsel to represent the Class members;
- 11 b. For an order declaring Tropicana's conduct violates the statues referenced  
12 herein;
- 13 c. For an order finding in favor of the Plaintiff, the nationwide Class and the  
14 California Subclass on all counts asserted herein;
- 15 d. For an order awarding compensatory, treble, and punitive damages in  
16 amounts to be determined by the Court and/or jury;
- 17 e. For prejudgment interest on all amounts awarded;
- 18 f. For an order of restitution and all other forms of equitable monetary relief;
- 19 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 20 h. For an order awarding Plaintiff, the Class, and the California Subclass their  
21 reasonable attorneys' fees and expenses and costs of suit.
- 22 i. For such other further relief the Court deems proper.

23 **DEMAND FOR TRIAL BY JURY**

24 Plaintiff demands a trial by jury of all issues so triable.

25 /

26 /

27 /

28

1 Dated: January 6, 2012

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: /s/ Sarah N. Westcot  
4 Sarah N. Westcot

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6 Sarah N. Westcot (State Bar No. 264916)  
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19 E-Mail: scott@bursor.com

20 *Attorneys for Plaintiff*

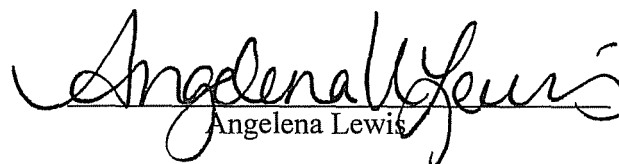


1 I, Angelena Lewis, declare as follows:

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

5 2. The Complaint filed in this action is filed in the proper place for trial under Civil  
6 Code Section 1780(d) in that defendant Tropicana Products, Inc. does business in Solano County  
7 and a substantial portion of the transaction complained of occurred in Solano County within the  
8 Eastern District of California. I purchased Tropicana not-from-concentrate orange juice at retail  
9 stores in Vacaville, California in 2011. I was not aware when I made the purchases that the juice  
10 was heavily processed and flavored. The description of the juice as pure and natural on the label  
11 was a substantial factor influencing my decision to purchase the juice. I would not have purchased  
12 the juice if I had known that it was heavily processed and flavored and not made from natural  
13 orange juice.

14 I declare under the penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct, executed on January 6, 2012 at Benicia, California.

16  
17   
18 Angelena Lewis  
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