

COPY

**SUMMONS ON FIRST AMENDED**  
**(CITACION JUDICIAL)** CLASS ACTION COMPLAINT

SUM-100

**NOTICE TO DEFENDANT:** APPLE & EVE LLC dba NORTHLAND, a  
**(AVISO AL DEMANDADO):** New York Limited Liability  
Company; **AND DOES 1-50 INCLUSIVE,**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ORIGINAL FILED**

JUN 04 2010

LOS ANGELES  
SUPERIOR COURT

**YOU ARE BEING SUED BY PLAINTIFF:** BETH PRIZER, on behalf  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** of herself and  
others similarly situated,

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
600 S. COMMONWEALTH AVENUE

CASE NUMBER:  
(Número del Caso):  
BC436849

LOS ANGELES, CA 90005  
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
KINGSLEY & KINGSLEY, APC (818) 990-8300 FAX (818) 990-2903

ERIC B. KINGSLEY, ESQ. SBN-185123  
ELANA R. LEVINE, ESQ. SBN-234155 KELSEY PETERSON-MORE, ESQ. SBN-260264  
16133 VENTURA BLVD., SUITE 1200, ENCINO, CA 91436  
DATE: JUN 04 2010 Clerk, by JOHN A. CLARKE, Deputy  
(Fecha) (Secretario) (Adjunto) PARK ENG

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

1 KINGSLEY & KINGSLEY, APC  
ERIC B. KINGSLEY, ESQ., SBN-185123  
2 ELANA R. LEVINE, ESQ., SBN-234155  
KELSEY PETERSON-MORE, ESQ., SBN-260264  
3 16133 VENTURA BL., SUITE 1200  
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4 (818) 990-8300, FAX (818) 990-2903

JUN 04 2010

LOS ANGELES  
SUPERIOR COURT

5 Attorneys for Plaintiff

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10  
11 BETH PRIZER, on behalf of )  
of herself and others similarly situated, )  
12 Plaintiff, )

Case No.: BC436849

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

13 v. )

- 14 (1) VIOLATION OF THE UNFAIR )  
COMPETITION LAW (Business and )  
Professions Code §17200 *et seq.*)
- 15 (2) VIOLATION OF THE FALSE )  
ADVERTISING LAW (Business and )  
Professions Code §17500 *et seq.*)
- 16 (3) VIOLATION OF THE CONSUMER )  
LEGAL REMEDIES ACT (Civil Code )  
§1750 *et seq.*)
- 17 (4) MONEY HAD AND RECEIVED )
- 18 (5) BREACH OF THE IMPLIED COVENANT )  
OF GOOD FAITH AND FAIR DEALING

15 APPLE AND EVE LLC dba )  
NORTHLAND, a New York Limited )  
Liability Company; and Does 1-50, )  
16 Inclusive, )  
17 Defendants. )

**JURY TRIAL DEMANDED**

21  
22 Plaintiff, Beth Prizer (“Plaintiff”), complaining of the above-named Defendant, alleges as follows,  
23 which allegations are upon information and belief insofar as they pertain to the conduct of the  
24 Defendant:

25 **I. INTRODUCTION**

26 The claims asserted herein are brought under the California Business & Professions Code  
27 §§17500, *et seq.* (“FAL”), California Business & Professions Code §§17200, *et seq.* (“UCL”),  
28 California Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.* (“CLRA”), and

1 common law, as a result of Defendant APPLE & EVE dba NORTHLAND, LLC's ("Northland" or  
2 "Defendant") pattern and practice of fraudulently, unfairly, deceptively, and unlawfully packaging,  
3 marketing, promoting, and selling its "100% Juice" Products. Specifically, Defendant's "100% Juice"  
4 Products which have been packaged, advertised, marketed and sold based on the label and other forms  
5 of advertising to Plaintiff and others similarly situated, represent that the Products are composed of  
6 100% juice of the juices identified in the product label, when, in actuality, the Products are primarily  
7 composed of less expensive apple, grape, and pear juice.

8 As a consequence of Northland's unfair and deceptive practices, Plaintiff and members of the  
9 proposed Class have purchased the "100% Juice" Products under the false impression that the Products  
10 are actually composed of 100% juice of the juices identified on the container's label. For example,  
11 when purchasing "100% Juice Cranberry Pomegranate," Plaintiff believed that she was actually  
12 purchasing 100% cranberry pomegranate juice, when, in actuality, she was purchasing cheaper apple  
13 and grape juice concentrates in addition to pomegranate and cranberry juice concentrates. Each  
14 consumer has been exposed to the material misrepresentations and/or omissions which are prominently  
15 displayed on the packaging for the "100% Juice" Products prior to purchasing them. Additionally,  
16 Defendant makes the same material misleading statements and/or omissions on its website and other  
17 advertising materials.

## 18 II. THE PARTIES

19 1. BETH PRIZER ("Plaintiff") is a citizen of California who maintains her permanent  
20 residence in California.

21 2. APPLE & EVE, LLC dba NORTHLAND ("Defendant") is a California limited liability  
22 company doing business in California.

23 3. The true names and capacities, whether individual, corporate, associate, or otherwise,  
24 of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore  
25 sues Defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed  
26 and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is  
27 legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave  
28 of court to amend this Complaint to reflect the true names and capacities of the defendants designated

1 hereinafter as DOES when such identities become known.

2 4. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted  
3 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
4 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally  
5 attributable to the other Defendants.

### 6 **III. JURISDICTION AND VENUE**

7 5. This Court has jurisdiction over all causes of action asserted herein under the California  
8 Constitution.

9 6. Defendant is a California limited liability company doing substantial business in the  
10 State of California. Defendant sells its “100% Juice” Products that are the subject of this lawsuit  
11 throughout the State of California.

12 7. Each of the business acts and practices described herein was performed, in whole or in  
13 part, in the State of California.

14 8. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil  
15 Procedure §395. Defendant APPLE & EVE, LCC dba NORTHLAND operates in California, and sells  
16 its juice products nationwide, including within the State of California and the County of Los Angeles.  
17 The unlawful, unfair, and fraudulent business acts and practices and false advertising alleged herein  
18 have a direct effect on Plaintiff and those similarly situated within the State of California and Los  
19 Angeles County.

### 20 **IV. NATURE OF ACTION**

21 9. At all times relevant to the matters alleged in this Complaint, Northland has made, and  
22 continues to make, misrepresentations and/or omissions regarding its “100% Juice” Products.  
23 Defendant makes, labels, and advertises several different juice varieties as “100% Juice.” Such  
24 Northland juices include: Cranberry, Organic Cranberry, Cranberry Cherry, Cranberry Grape, Cranberry  
25 Raspberry, Cranberry Blackberry, Cranberry Blueberry, Cranberry Pomegranate, Pomegranate  
26 Blueberry, Black Cherry Goji, Blueberry Acai, Blueberry Blackberry Acai, and Raspberry Pomegranate  
27 Goji (“Products”).

28 10. Each juice varietal in Northland’s line of Products is labeled as 100% juice accompanied

1 just below by images of the fruits identified in the juice varietal's label. For example, Northland "100%  
2 Juice Cranberry Pomegranate" appears directly adjacent to pictures of a pomegranate and cranberries,  
3 just as "100% Juice Cranberry Blueberry" appears adjacent to images of cranberries and blueberries.

4 11. As a consequence of Northland's unfair and deceptive practices, Plaintiff and members  
5 of the Class have purchased, based on the label and other forms of advertising, the "100% Juice"  
6 Products under the false impression that the Products are actually composed of 100% juice of the juices  
7 identified on the container's label when, in actuality, the Products are primarily composed of less  
8 expensive apple, grape, and pear juice, a fact which Northland knew and misrepresented and failed to  
9 disclose to its consumers.<sup>1</sup>

10 12. Each consumer has been exposed to the material misrepresentations and/or omissions  
11 which are prominently displayed on the packaging for the "100% Juice" Products prior to purchasing  
12 the product. Additionally, Northland makes the same material, misleading statements and/or omissions  
13 on its website and other advertising materials.

14 13. As a result of Northland's misrepresentations and/or omissions regarding its "100%  
15 Juice" Products, Plaintiff and the putative class substantially overpaid for the Products because they  
16 did not receive the Product they paid for. Instead, Plaintiff and the Class received an inferior product  
17 of diminished value. Had Plaintiff and the putative Class been made aware that the "100% Juice"  
18 Products contained far less of the juices Northland identified on the container's label, and were actually  
19 primarily composed of less expensive apple, grape, and pear juice, they would not have purchased the  
20 "100% Juice" Products at all, or would have paid significantly less for them.

21 14. As a result of Northland's false and misleading statements and failure to disclose, as well  
22 as Northland's other conduct described in this Complaint, Plaintiff and the putative Class bought tens,  
23 if not hundreds, of thousands of units of the "100% Juice" Products and have suffered – and continue  
24 to suffer – injury in fact as a result of Northland's misrepresentations and/or omissions. Additionally,  
25

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26 <sup>1</sup> Although Plaintiff believes that it may be a typographical error, as of the date of this filing of this First Amended  
27 Complaint, on its website, Defendant lists the ingredients for its "100% Juice Cranberry" as: "100% juice from apple, pear and grape  
28 juice concentrates (filtered water, juice concentrates), citric acid, natural flavor, vegetable color, fruit extracts (grape skin, blueberry,  
pomegranate, cranberry, red grape & apple), ascorbic acid (vitamin C), vitamin A palmitate, vitamin E acetate." Thus, as it is  
described on Defendant's own website, it appears that Northland "100% Juice Cranberry" may not contain any cranberry juice at all.

1 Northland acquired money or property from Plaintiff and the Class as a result of its unfair, deceptive,  
2 and unlawful conduct as alleged herein.

3 15. Northland's conduct as alleged herein violates, *inter alia*, the California Unfair  
4 Competition Law ("UCL"), the California False Advertising Law ("FAL"), the Consumer Legal  
5 Remedies Act ("CLRA"), and common law.

6 16. This action seeks, among other things, damages; equitable and injunctive relief;  
7 restitution of all amounts illegally retained by Northland; and disgorgement of all ill-gotten profits from  
8 Northland's wrongdoing.

## 9 V. OVERVIEW OF APPLICABLE LAW

### 10 A. The Unfair Competition Law

11 17. The Unfair Competition Law ("UCL") prohibits "unfair competition," which is defined  
12 by Business and Professions Code §17200 as including "any unlawful, unfair or fraudulent business act  
13 or practice . . ."

14 18. As the California Supreme Court has noted, the UCL's "purpose is to protect both  
15 consumers and competitors by promoting fair competition in commercial markets for goods and  
16 services." (*Kasky v. Nike Inc.* (2002) 27 Cal.4th 939, 949.) The UCL is broadly worded, leading the  
17 California Supreme Court to observe that the UCL "was intentionally framed in its broad, sweeping  
18 language, precisely to enable judicial tribunals to deal with the innumerable new schemes which the  
19 fertility of man's invention would contrive." (*Barquis v. Merchants Collection Association* (1972) 7  
20 Cal.3d 94, 112 [citations and internal quotation marks omitted].) The UCL contains no express intent,  
21 knowledge, or negligence requirement, and therefore has been construed as "impos[ing] strict liability."  
22 (*Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1333.)

23 19. "Because Business and Professions Code §17200 is written in the disjunctive, it  
24 establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair, or  
25 fraudulent." (*Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647.)

26 20. The unlawful prong of §17200 proscribes "anything that can properly be called a  
27 business practice and that at the same time is forbidden by law." (*People v. McKale* (1979) 25 Cal.3d  
28 626, 632; *see also Podolosky v. First Healthcare Corp., supra*, 50 Cal.App.4th at p. 647 ["Virtually any

1 state, federal or local law can serve as the predicate for an action under Business and Professions Code  
2 section 17200."]; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839 ["The 'unlawful'  
3 practices prohibited by §17200 are any practices forbidden by law, be it civil or criminal, federal, state,  
4 or municipal, statutory, regulatory, or court-made."].)

5 21. The unfair prong of §17200 "provides an independent basis for relief"; in other words,  
6 "[i]t is not necessary for a business practice to be 'unlawful' in order to be subject to an action under the  
7 unfair competition law." (*Smith v. State Farm Mutual Automobile Insurance Co.* (2001) 93 Cal.App.4th  
8 700, 718.) "In general the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices. . .'  
9 [Citation.]" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861,  
10 887.)

11 22. The courts of this State have adopted several tests for determining whether a business  
12 act or practice is *unfair*.

13 23. A business practice is unfair "when that practice 'offends an established public policy  
14 or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious.'" (*State*  
15 *Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102 [quoting *People v.*  
16 *Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 530].)

17 24. Another "test of whether a business practice is unfair involves an examination of [that  
18 practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the  
19 alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the  
20 gravity of the harm to the alleged victim. . ." (*State Farm Fire & Casualty Co. v. Superior Court, supra*,  
21 45 Cal.App.4th at pp. 1103-1104.)

22 25. It also is an unfair business practice when the defendant's conduct "threatens an incipient  
23 violation of [a law], or violates the policy or spirit of [a law] because its effects are comparable to or  
24 the same as a violation of the law, or otherwise significantly threatens or harms competition."  
25 (*Cel-Tech Communication, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187; see  
26 also *Scripps Clinic v. Superior Court (Thompson)* (2003) 108 Cal.App.4th 917, 940.)

27 26. More recently, one Court of Appeal has fashioned a test for determining whether a  
28 practice is unfair based upon section 5 of the Federal Trade Commission Act (United States Code, title

1 15, section 41 *et seq.*). Under this test, "[a]n act or practice is unfair if [1] the consumer injury is  
2 substantial, [2] is not outweighed by any countervailing benefits to consumers or to competition, and  
3 [3] is not an injury the consumers themselves could reasonably have avoided." (*Daugherty v. American*  
4 *Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839 [bracketed numbers added].)

5 27. The fraudulent prong of §17200 "affords protection against the probability or likelihood  
6 as well as the actuality of deception or confusion." (*Payne v. United California Bank* (1972) 23  
7 Cal.App.3d 850, 856.) "The test is whether the public is likely to be deceived." (*South Bay Chevrolet*  
8 *v. General Motors Acceptance Corp., supra*, 72 Cal.App.4th at p. 888.)

9 **B. The False Advertising Law**

10 28. Business and Professions Code §17500, a provision of the False Advertising Law  
11 ("FAL"), provides in relevant part that it is: (a) "unlawful for any person, firm, corporation or  
12 association," (b) "to make or disseminate or cause to be made or disseminated before the public in this  
13 state," (c) "in any newspaper or other publication, or any advertising device, . . .or in any other manner  
14 or means," (d) "any statement, concerning. . .[the performance of] services. . .which is untrue or  
15 misleading," (e) "which is known, or which by the exercise of reasonable care should be known, to be  
16 untrue or misleading," and (f) "with intent directly or indirectly to. . .perform services, professional or  
17 otherwise. . .or to induce the public to enter into any obligation relating thereto. . ."

18 29. The FAL applies broadly to commercial speech and includes within its purview not  
19 merely advertisements specific to products or services being sold, but also to more general statements  
20 intended to burnish a corporation's image in the eyes of the public. (See *Kasky v. Nike, Inc., supra*, 27  
21 Cal.4th 939.)

22 30. A statement is "untrue or misleading" for purposes of §17500 "if members of the public  
23 are likely to be deceived." (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.)

24 31. While §17200 can be violated with no showing that the defendant acted intentionally,  
25 knowingly, or negligently, §17500 requires proof that the statement was "known, or which by the  
26 exercise of reasonable care should be known, to be untrue or misleading" (Business and Professions  
27 Code §17500), which creates a negligence standard. (See *Khan v. Medical Board* (1993) 12  
28 Cal.App.4th 1834, 1846.) Under this standard, a seller has "a duty of investigation," such that the

1 seller's "failure to verify and investigate breaches the duty of care when facts are present which would  
2 put a reasonable person on notice of possible misrepresentations." (*People v. Superior Court (Forest*  
3 *E. Olson, Inc.*) (1982) 137 Cal.App.3d 137, 139.)

4 32. A violation of §17500 may be the subject of a civil action seeking an injunction and/or  
5 restitution. (Business and Professions Code §§17535 and 17536.)

6 **C. The Consumer Legal Remedies Act**

7 33. The Consumer Legal Remedies Act ("CRLA") codified in Civil Code § 1750 *et seq.*, acts  
8 as a complement to the UCL in that it protects "consumers against unfair and deceptive business  
9 practices" and "provide[s] efficient and economical procedures to secure such protection." (Civ. Code  
10 §1760.)

11 34. The CRLA enumerates the following unfair methods of competition and unfair or  
12 deceptive acts or practices as "unlawful", among others: (1) Representing that goods or services have  
13 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;  
14 (2) Representing that goods or services are of a particular standard, quality, or grade, or that goods are  
15 of a particular style or model, if they are of another; (3) Advertising goods or services with intent not  
16 to sell them as advertised. (Civ. Code §1770.)

17 35. The remedies available under the CRLA are cumulative to those available under other  
18 statutory and case law. (*Wang v. Massey Chevrolet* (2002) 97 Cal.App.4th 856; Civ Code §1752.)

19 **VI. FACTUAL ALLEGATIONS**

20 36. At all times relevant to the matters alleged in this Complaint, Northland has made,  
21 and continues to make, misrepresentations and/or omissions regarding its "100% Juice" Products.  
22 Specifically, the Products which have been packaged, advertised, marketed and sold by Defendant  
23 based on the label and other forms of advertising to Plaintiff and others similarly situated, represent  
24 that the Products are actually composed of 100% juice of the juices identified on the container's  
25 label when, in actuality, the Products are primarily composed of less expensive apple, grape, and  
26 pear juice, a fact which Northland knew and misrepresented and failed to disclose to its consumers.

27 37. Plaintiff purchased Northland "100% Juice Cranberry Pomegranate" in December  
28 2009. She purchased after reading and relying upon the labeling, packaging and marketing for

1 Northland “100% Juice Cranberry Pomegranate.” Specifically, Plaintiff relief upon the label for  
2 Northland’s “100% Juice Cranberry Pomegranate.” Plaintiff decided to purchase Northland’s  
3 “100% Juice Cranberry Pomegranate” juice because she believed that the product was composed  
4 completely or substantially composed of cranberry and pomegranate juices even though it is actually  
5 primarily composed of less expensive apple and grape juice. In doing so, Plaintiff paid a very  
6 significant premium over what she would have paid for a juice blend consisting primarily of apple  
7 and grape juice.

8 38. In reality, Northland “100% Juice Cranberry Pomegranate” juice did not contain  
9 100% cranberry and pomegranate juice as Defendant had promised; instead, it consisted mainly of  
10 apple and grape juice. Plaintiff therefore paid much more for the Northland “100% Juice Cranberry  
11 Pomegranate” juice than she would have but for the marketing and labeling creating the impression  
12 that the product consisted exclusively, or at least primarily, of cranberry and pomegranate juice.

13 39. Even though Northland “100% Juice Cranberry Pomegranate” contains less than  
14 100% pomegranate and cranberry juice and is primarily composed of less expensive apple and white  
15 grape juice, Northland created deceptive and misleading labels for its “100% Juice Cranberry  
16 Pomegranate” juice.

17 40. As a result of this misleading and deceptive labeling and/or marketing, the average  
18 consumer, including Plaintiff, is unaware of the true percentage of the juice identified in the  
19 Products’ labels that is actually contained in Northland “100% Juice” Products.

20 41. Northland’s representations regarding its “100% Juice” Products are false,  
21 misleading and/or fail to disclose material facts. Northland knew or should have known and/or was  
22 reckless in not knowing and disclosing that “100% Juice” Products contained far less of the juice  
23 identified in the Products’ labels than it represented to Plaintiff and the Class.

24 42. Northland knew or should have known that its representations concerning the “100%  
25 Juice” Products were likely to deceive consumers into believing that they were purchasing a product  
26 that contained 100% of the juice identified in the Products’ labels, or a substantial amount thereof,  
27 when, in actuality, “100% Juice” Products are primarily composed of less expensive apple, pear,  
28 and grape juice.



1 fact include, without limitation:

- 2 (a) whether Defendant's claims regarding "100% Juice" Products are deceptive  
3 and/or misleading;
- 4 (b) whether Defendant engaged in false and/or misleading advertising;
- 5 (c) whether "100% Juice" Products contain less than 100% of the juice identified  
6 in the Product labels than represented and, if so, what percentage of  
7 juice identified in the Product labels they actually contain;
- 8 (d) whether Defendant's conduct as alleged herein violates the CLRA;
- 9 (e) whether Defendant's conduct as alleged herein violates the FAL;
- 10 (f) whether Defendant's conduct as alleged herein violates the UCL;
- 11 (g) whether Defendant's conduct as alleged herein constitutes a breach of the  
12 implied covenant of good faith and fair dealing;
- 13 (h) whether Defendant's conduct as alleged herein constitutes unjust enrichment;
- 14 (i) whether Plaintiff and Class members have sustained monetary loss and the  
15 proper measure of that loss; and
- 16 (j) whether Plaintiff and Class members are entitled to declaratory and injunctive  
17 relief.

18 These and other questions of law or fact which are common to the members of the Class  
19 predominate over any questions affecting only individual members of the Class.

20 **C. Typicality**

21 49. The claims of the named Plaintiff are typical of the claims of the proposed class.  
22 Plaintiff and all members of the proposed class sustained injuries and damages arising out of and  
23 caused by Defendant's unlawful, unfair and fraudulent business acts and practices and deceptive  
24 advertising in the marketing and sale of its "100% Juice" Products to consumers as alleged herein.

25 **D. Adequacy of Representation**

26 50. Plaintiff will fairly and adequately represent and protect the interests of the members  
27 of the proposed class. Plaintiff has no interests antagonistic to the interests of the other members of  
28 the proposed Class. Plaintiff is similarly situated in interest to all members of the proposed Class.

1 Counsel who represents Plaintiff are competent and experienced in litigating large class actions.

2 **E. Superiority of Class Action**

3 51. A class action is superior to other available means for the fair and efficient  
4 adjudication of this controversy. Individual joinder of all proposed class members is not  
5 practicable, and questions of law and fact common to the proposed class predominate over any  
6 questions affecting only individual members of the proposed class. Each member of the proposed  
7 class has been damaged and is entitled to recovery by reason of Defendant's unlawful, unfair and  
8 fraudulent business acts and practices and deceptive advertising in the marketing and sale of its  
9 "100% Juice" Products.

10 52. Class action treatment will allow those similarly situated persons to litigate their  
11 claims in the manner that is most efficient and economical for the parties and the judicial system.  
12 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
13 action that would preclude its maintenance as a class action.

14 **VIII.**

15 **FIRST CAUSE OF ACTION**

16 **UNFAIR, MISLEADING AND DECEPTIVE BUSINESS PRACTICES**

17 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

18 53. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
19 paragraphs as if fully set forth herein.

20 54. This is a Representative Private Attorney General Action and Class Action for Unfair  
21 Business Practices. Plaintiff on behalf of himself, the general public, and others similarly situated,  
22 bring this claim pursuant to Business and Professions Code §17200 *et seq.* The conduct of each  
23 Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful  
24 to Plaintiff, the general public, and the Class. Plaintiff seeks to enforce important rights affecting  
25 the public interest within the meaning of Code of Civil Procedure §1021.5.

26 55. Plaintiff is a "person" within the meaning of Business and Professions Code §17204,  
27 and therefore has standing to bring this cause of action for restitution and other appropriate  
28 equitable relief.

1           56.       Northland’s conduct as alleged herein constitutes unlawful, unfair and/or fraudulent  
2 business acts and practices.

3           57.       Defendant, by labeling, marketing, promoting, distributing, and selling its falsely  
4 labeled “100% Juice” Products either knew or in the exercise of reasonable care, should have known  
5 that their conduct was misleading and deceptive and therefore in violation of §17200 et seq. of the  
6 Business and Professions Code.

7           58.       Northland intentionally and misleadingly designed the labels for its “100% Juice”  
8 Products to: include and prominently emphasize the words of certain fruits in the product’s name; to  
9 characterize and emphasize the Products as “100% Juice,” by prominently displaying pictures of  
10 fruits appearing in the Products’ labels on the front label of each container; by failing to identify all  
11 of the juices contained in the Products on the front label, and by failing to identify the percentage  
12 quantities of each such juice, among other misleading elements.

13           59.       Northland intentionally and misleading did so in order to falsely communicate to  
14 consumers that exclusive or primary ingredients in “100% Juice” Products are the juices identified  
15 in the Products’ names and labeling, when, in fact, the Products are primarily composed of less  
16 expensive apple, grape, and pear juice.

17           60.       As a proximate result of the above mentioned acts of Defendant, Plaintiff and others  
18 similarly situated reasonably relied on the Defendant’s representations that its “100% Juice ”  
19 Products were exclusively composed of the juice identified in the Products’ labels and purchased the  
20 Products at a value greater than the Products would have sold for if properly labeled. Plaintiff and  
21 Class Members have been damaged and are entitled to restitution in a sum as may be proven.

22           61.       Plaintiff and members of the Class have suffered injury in fact and have lost money  
23 or property as a result of Northland’s unfair competition, as more fully set forth herein. Plaintiff and  
24 members of the Class have been injured because they overpaid for the Products, since they did not  
25 receive the products that they paid for, but instead received inferior products of diminished value.  
26 Plaintiff and members of the Class have been injured because, had they been made aware that the  
27 “100% Juice” Products contained less than 100% of the juice identified in the Products’ name and  
28 label, or contained a substantially less percentage than represented, and that the Products are

1 actually primarily composed of less expensive apple, grape, and pear juice, they would not have  
2 purchased "100% Juice" Products or would have paid less for them.

3 62. Northland, through its acts of unfair competition, has unfairly acquired money from  
4 Plaintiff and the members of the Class. Plaintiff can determine the amount of money that Northland  
5 has improperly obtained through discovery.

6 63. Unless Northland is enjoined from continuing to engage in the unlawful, unfair,  
7 fraudulent, untrue, and deceptive business acts and practices as described herein, consumers will  
8 continue to be exposed to and damaged by Northland's unfair competition.

9 64. Pursuant to the Business and Professions Code, this Court should make such orders  
10 or judgments, including the appointment of a receiver, as may be necessary to disgorge Defendants  
11 of ill-gotten profits which may be necessary to restore to Plaintiff and the Proposed Class the  
12 money Defendants have unlawfully received.

## 13 IX

### 14 SECOND CAUSE OF ACTION

#### 15 UNTRUE OR MISLEADING ADVERTISING

#### 16 PURSUANT TO BUSINESS & PROFESSIONS CODE §17500

17 65. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
18 paragraphs as if fully set forth herein.

19 66. At all times herein mentioned, Defendants labeled, marketed, advertised, promoted,  
20 distributed, and sold falsely labeled its "100% Juice" Products to consumers throughout California,  
21 the United States, and the World.

22 67. The misrepresentations, acts and non-disclosures by Northland of the material facts  
23 detailed above constitute false and misleading advertising and therefore constitute a violation of the  
24 FAL.

25 68. Since at least four years prior to the filing of the Complaint and continuing to the  
26 present, Defendants have engaged in advertising campaigns to sell the falsely labeled "100% Juice"  
27 Products to the public, including Plaintiff and others.

28 69. The advertisements are and were disseminated to and received by the public. The

1 advertisements included the labeling of its "100% Juice" Products as well as any and all references  
2 to "100% Juice" Products sold by Defendants throughout California

3 70. Defendant's advertising was untrue and/or misleading and likely to deceive the  
4 public in that Defendant represented to Plaintiff and the Class that the exclusive or primary  
5 ingredients in "100% Juice" Products are the juices identified and named in the label of each  
6 varietal, when, in fact, the Products are primarily composed of less expensive apple, grape, and pear  
7 juice. Thus, Northland represented that "100% Juice" Products were composed of ingredients of a  
8 higher quality than was actually the case.

9 71. The false and misleading advertising was material to Plaintiff and the putative class  
10 members in connection with their respective decisions to purchase "100% Juice" Products.

11 72. Plaintiff and the putative Class relied on the false advertisements and  
12 misrepresentations, which played a substantial part in influencing the decision of Plaintiff and the  
13 Class to purchase "100% Juice" Products.

14 73. In making and disseminating the statements herein alleged, Defendants knew, or by  
15 the exercise of reasonable care should have known, that the statements were untrue or misleading  
16 and so acted in violation of Business and Professions Code §17500.

17 74. Pursuant to Business and Professions Code §17535, this Court should make such  
18 orders or judgments, including the appointment of a receiver, as may be necessary to restore  
19 Plaintiff and members of the Proposed Class, money paid to or acquired by Defendants in  
20 connection with the sales of the falsely labeled its "100% Juice" Products.

21 **X.**

22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

24 **PURSUANT TO CIVIL CODE §1750 ET SEQ.**

25 75. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
26 paragraphs as if fully set forth herein.

27 76. Defendant is a "person" as defined by Civil Code §1761(c).

28 77. Plaintiff and the Class are "consumers" within the meaning of Civil Code §1761(d).

1           78.       The “100% Juice” Products labeled, marketed, advertised, promoted, distributed, and  
2 sold by Defendant are “goods” within the meaning of Civil Code §1761(a).

3           79.       Defendant collectively violated the Consumer Legal Remedies Act ("CLRA") by  
4 misrepresenting to and/or actively concealing material facts from Plaintiff and the Class. These  
5 material misrepresentations made by Defendant in violation of the CLRA include the following:

6                   (1)       Falsely representing that its “100% Juice” Products have characteristics,  
7 ingredients, uses, benefits, or quantities which they do not have (Civil Code §1770(a)(5));

8                   (2)       Falsely representing that its “100% Juice” Products are of a particular  
9 standard, quality, or grade (Civil Code §1770(a)(7)); and

10                  (3)       Advertising its “100% Juice” Products with intent not to sell them as  
11 advertised (Civil Code §1770(a)(9)).

12           80.       The facts that Defendants misrepresented and/or concealed are material in that a  
13 reasonable person would have considered them important in deciding whether or not to purchase  
14 Defendant’s “100% Juice” Products and whether to pay a premium price for juice composed  
15 exclusively or primarily of more expensive cranberry, pomegranate juice, goji, and acai, when, in  
16 fact, the products are primarily composed of less expensive apple and white grape juice

17           81.       The material facts were misrepresented and/or concealed to induce Plaintiff and  
18 others to purchase the falsely labeled “100% Juice” Products.

19           82.       Plaintiff and the Proposed Class suffered damages as a direct and proximate result of  
20 Defendants' conduct in violation of the CLRA, as evidenced by their purchase of the falsely labeled  
21 “100% Juice” Products. Plaintiff and the Proposed Class were induced to buy “100% Juice”  
22 Products as a direct result of Defendant’s false labeling. Plaintiff and the Proposed Class would not  
23 have purchased “100% Juice” Products, or would have paid substantially less than they actually  
24 paid, but for Defendant’s false labeling.

25           83.       Plaintiff, on behalf of herself and others similarly situated, demands judgment  
26 against Defendants under the CLRA for restitution and/or disgorgement of profits unlawfully  
27 obtained, and for an award of attorneys' fees pursuant to Civil Code §1780(d).

28           84.       In accordance with §1782(a) of the CLRA, thirty (30) days before filing the instant

1 amended complaint, Plaintiff notified Defendant in writing by certified mail of the particular  
2 violations of §1770 of the Act and demanded Northland correct or rectify the problems associated  
3 with the actions detailed above and give notice to all affected consumers of its intent to so act. As of  
4 the date of the filing of this amended complaint, Defendant has not responded to Plaintiff's letter  
5 and seemingly refuses to rectify the problems.

6 **XI.**

7 **FOURTH CAUSE OF ACTION**

8 **MONEY HAD AND RECEIVED**

9 85. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
10 paragraphs as if fully set forth herein.

11 86. As a result of the conduct described above, Defendant has received and may continue  
12 to receive the money of Plaintiff and the Proposed Class for its falsely labeled "100% Juice"  
13 Products. The money was intended for the purchase of Products actually composed of 100% juice  
14 of the juices identified on the container's label. Because Defendant's "100% Juice" Products are  
15 primarily composed of less expensive apple, grape, and pear juice, not the juices identified in the  
16 container's label, Plaintiff and the proposed Class did not receive the benefit of their purchase  
17 money. Defendant has not returned or given the money to Plaintiff and the Proposed Class.

18 87. It would be unjust and inequitable to allow Defendant to retain its ill-gotten profits,  
19 which it cannot with good conscience retain. Therefore, Defendant should be required to disgorge  
20 profits unlawfully obtained.

21 **XII.**

22 **FIFTH CAUSE OF ACTION**

23 **BREACH OF THE IMPLIED COVENANT**

24 **OF GOOD FAITH AND FAIR DEALING**

25 88. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
26 paragraphs as if fully set forth herein.

27 89. In every contract or agreement there is an implied promise of good faith and fair  
28 dealing meaning that each party will not do anything to unfairly interfere with the right of any other

1 party to receive the benefits of the contract.

2 90. Defendant unfairly interfered with Plaintiff's right, and the rights of the Class, to  
3 receive the benefits of the contract in that it knew Plaintiff and the proposed Class relied upon its  
4 labeling, yet it unfairly, unlawfully, and fraudulently mislabeled its "100% Juice" Products to  
5 influence the purchasing decisions of Plaintiff and the proposed Class.

6 91. As a result of Defendant's unfair, unlawful, and fraudulent acts, Plaintiff, and all  
7 others similarly situated, were harmed. Defendant's caused damage to Plaintiffs as they were  
8 induced to buy a falsely labeled juice from Defendant when the actual Products purchased was of  
9 inferior quality.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff and members of the Class request that the Court enter an order or  
12 judgment against Defendant as follows:

- 13 1. Certification of the proposed Class and notice thereto to be paid by Defendant;
- 14 2. Adjudge and decree that Defendant has engaged in the conduct alleged herein;
- 15 3. For restitution and disgorgement on those causes of action where available;
- 16 4. For an injunction on those causes of action where available;
- 17 5. For an accounting by Defendant for any and all profits derived by Defendant's  
18 herein-alleged unlawful, unfair, and fraudulent conduct and business acts and practices.
- 19 6. An award of statutory damages according to proof;
- 20 7. An award of special damages according to proof;
- 21 8. For compensatory and general damages on those causes of action where available;
- 22 9. For exemplary/punitive damages on those causes of action where available;
- 23 10. Interest at the maximum allowable rate on any amounts awarded;

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- 11. Reasonable attorneys' fees and costs as allowed by statute; and
- 12. Any and all such other and further relief that this Court may deem proper.

DATED: June 4, 2010

KINGSLEY & KINGSLEY, APC

By: 

ERIC B. KINGSLEY  
Attorneys for Plaintiff