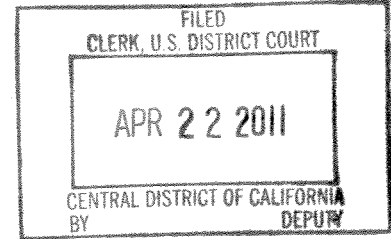


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10 Attorneys for Plaintiffs WESTERN SUGAR
COOPERATIVE, MICHIGAN SUGAR CO., and C & H
11 SUGAR CO., INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 WESTERN SUGAR COOPERATIVE, a
Colorado cooperative, MICHIGAN
15 SUGAR COMPANY, a Michigan
corporation, and C & H SUGAR
16 COMPANY, INC., a Delaware
corporation,

17
18 Plaintiffs,

19 vs.

20 ARCHER-DANIELS-MIDLAND
COMPANY, a Delaware corporation,
21 CARGILL, INC., a Delaware corporation,
CORN PRODUCTS INTERNATIONAL,
22 INC., a Delaware corporation, THE
CORN REFINERS ASSOCIATION,
23 INC., a Delaware corporation, PENFORD
PRODUCTS CO., a Delaware
corporation, ROQUETTE AMERICA,
24 INC., a Delaware corporation, and TATE
& LYLE INGREDIENTS AMERICAS,
25 INC., a Delaware corporation,

26 Defendants.
27
28

Case No.

CV 11-3473 ^{CBM}
(MANX)

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR
FALSE ADVERTISING IN
VIOLATION OF (1) THE
LANHAM ACT (15 U.S.C. §
1125(a)), AND (2) CALIFORNIA'S
UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE §
17200, ET SEQ.)**

JURY TRIAL DEMANDED

1 Western Sugar Cooperative, Michigan Sugar Company, and C&H Sugar
2 Company, Inc. (collectively “Plaintiffs”) hereby allege as follows.

3 **PROLOGUE**

4 1. Since researchers first synthesized it for commercial use within the
5 processed food industry in the late 1960s, the use and consumption of high-fructose
6 corn syrup—or “HFCS”—has become nearly ubiquitous in American beverages
7 and food. In recent years, scientists and other observers noted that this dramatic
8 growth in the use of HFCS, which increased by over 1000% between 1970 and
9 1990, bears a strong temporal relationship to the growth in American obesity. After
10 some researchers began to publish hypotheses based on testing of a potential causal
11 relationship between the dramatic, concurrent rises in HFCS consumption and
12 obesity, HFCS sales began a steady and sustained decline.

13 2. Consumers increasingly seek to avoid food and drink containing HFCS
14 given the emerging science linking it to possible nutritional and health problems,
15 including obesity but also extending to a wide range of metabolic conditions. Other
16 consumers avoid HFCS out of a desire to confine their diets to natural foods and
17 fulfill their desire for sweeteners to sugar from cane and beet plants. Responding to
18 consumer preferences, more and more food manufacturers have replaced HFCS
19 with sugar—and at the same time promote their products’ use of “real sugar” or the
20 absence of HFCS.

21 3. The HFCS industry has not taken the decrease in sales lightly. Instead,
22 the Corn Refiners Association (“CRA”) and its member companies (collectively
23 “Defendants”) have crafted a publicity campaign to revitalize and rebrand HFCS.
24 This ongoing, evolving effort has already manifested in a variety of different
25 strategies, including the promotion of HFCS as “natural,” and the assertions of
26 equivalence between HFCS and sugar—such as “sugar is sugar,” “your body can’t
27 tell the difference” and claims that HFCS is “nutritionally the same as table sugar.”
28 Defendants have even pursued the more drastic approach of attempting to eliminate

1 HFCS from the lexicon. Several now refer to it in advertising and pricing sheets as
2 “corn sugar” and are seeking to obtain United States Food and Drug Administration
3 (“FDA”) approval to substitute “corn sugar” for “high fructose corn syrup” on
4 ingredient labels.

5 4. Seeking to co-opt the goodwill of “sugar” and even changing the
6 HFCS name by calling it a kind of sugar to sidestep growing consumer sentiment is
7 paradigmatically false and misleading advertising for several reasons.

8 5. First, “corn sugar” is already the FDA-approved name of a distinct
9 sweetener made from corn starch, and has been for decades. Seeking to appropriate
10 the name of an existing, natural and vastly different sweetener sends to the
11 consuming public a literally false message about the nature of the product being
12 advertised and sold, and misleads them in a manner that will cause confusion.

13 6. Second, Defendants’ re-branding efforts promoting HFCS as
14 “natural”—despite the absence of any naturally occurring fructose in corn or corn
15 starch and the fact that HFCS is a man-made product that did not even exist in
16 commerce until the late 1960s—is also literally false and misleads consumers in a
17 manner that will cause confusion.

18 7. Third, Defendants’ assertions that HFCS or “corn sugar” is
19 nutritionally the same as the real sugar from cane and beet plants and handled in the
20 same way by the body are also literally false and mislead consumers in a manner
21 that will cause confusion. Scientific studies demonstrate clear molecular
22 differences between HFCS and sugar and clear differences in how the human body
23 processes them. Additionally, scientific studies demonstrate an increasingly likely
24 link between consumption of HFCS and a variety of health problems, principally
25 obesity, elevated cholesterol and triglycerides, diabetes but also extending to other
26 metabolic disorders.

27 8. Defendants’ representations equating HFCS with real sugar—such as
28 “sugar is sugar,” “your body can’t tell the difference” and “nutritionally the same as

1 table sugar”—misleads the consuming public in light of the emerging science
 2 showing otherwise and the resultant uncertainty (at best) as to the truth of
 3 Defendants’ statements that HFCS is no different from sugar.

4 9. Defendants’ resort to such literally false and misleading statements
 5 harms consumers, harms the makers of real sugar and harms any dialogue based on
 6 the truth. This lawsuit seeks to put an end to the deception.

7 **JURISDICTION AND VENUE**

8 10. The Court has jurisdiction over the subject matter presented by this
 9 Complaint because it includes a claim of false advertising under the Lanham Act,
 10 15 U.S.C. §§1051, *et seq.*, including 15 U.S.C. §1121, which expressly provides
 11 that claims arising thereunder are subject to federal subject matter jurisdiction. The
 12 Court also has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338.
 13 The Court has subject matter jurisdiction over the state law claim because it arises
 14 from the same nucleus of operative facts underlying the Lanham Act claim, and 28
 15 U.S.C. §1367 authorizes the Court to exercise supplemental jurisdiction over all
 16 other claims so related.

17 11. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) because
 18 a substantial part of the events or omissions giving rise to the Plaintiffs’ claims
 19 occurred in this district and because defendants are subject to personal jurisdiction
 20 in this District.

21 **PARTIES**

22 ***Plaintiffs***

23 12. Plaintiff C & H Sugar Company, Inc. (“C&H”), a sugar producer,
 24 refiner and distributor, is a corporation organized under the laws of the State of
 25 Delaware, having a principal place of business at 830 Loring Avenue, Crockett, CA
 26 94525.

27 13. Plaintiff Michigan Sugar Company (“Michigan Sugar”), also a sugar
 28 processor, producer and distributor, is a non-profit agricultural cooperative

1 corporation organized under the laws of the State of Michigan, having a principal
2 place of business located at 2600 South Euclid Avenue, Bay City, MI 48706.

3 14. Plaintiff Western Sugar Cooperative (“Western Sugar”), also a sugar
4 processor, producer and a distributor, is a cooperative organized under the laws of
5 the State of Colorado, having a principal place of business at 7555 East Hampden
6 Avenue, Suite 600, Denver, CO 80231.

7 ***Defendants***

8 15. Defendant The Corn Refiners Association, Inc. (“CRA”) is a Delaware
9 corporation with a principal place of business located at 1701 Pennsylvania Ave.
10 NW, Suite 950, Washington, DC 20006.

11 16. Defendant Archer-Daniels-Midland Company (“ADM”) is a Delaware
12 corporation with a principal place of business located at 4666 Faries Parkway, Box
13 1470, Decatur, IL 62525. ADM is a CRA member, and two of its employees or
14 agents are members of CRA’s board of directors.

15 17. Defendant Cargill, Inc. (“Cargill”) is a Delaware corporation with a
16 principal place of business located at PO Box 9300, Minneapolis, MN 55440-9300.
17 Cargill is a CRA member, and two of its employees or agents are members of
18 CRA’s board of directors.

19 18. Defendant Corn Products International, Inc. (“Corn Products”) is a
20 Delaware corporation with a principal place of business located at 5 Westbrook
21 Corporate Center, Westchester, IL 60154. Corn Products is a CRA member, and
22 two of its employees or agents are members of CRA’s board of directors.

23 19. Defendant Penford Products Co. (“Penford”) is a Delaware corporation
24 with a principal place of business located at 1001 First St. SW, Cedar Rapids, IA
25 52404. Penford is a CRA member, and two of its employees or agents are members
26 of CRA’s board of directors.

27 20. Defendant Roquette America, Inc. (“Roquette”) is a Delaware
28 corporation with a principal place of business located at 1417 Exchange St.,

1 Keokuk, IA 52632. Roquette is a CRA member, and two of its employees or agents
2 are members of CRA's board of directors.

3 21. Defendant Tate & Lyle Ingredients Americas, Inc. ("Tate & Lyle") is a
4 Delaware corporation with a principal place of business located at 2200 East
5 Eldorado St., Decatur, IL 62525. Tate & Lyle is a CRA member, and two of its
6 employees or agents are members of CRA's board of directors.

7 **FACTUAL BACKGROUND**

8 ***What Is High-Fructose Corn Syrup?***

9 22. High-fructose corn syrup, or HFCS, is a nearly ubiquitous commercial
10 sweetener used in a variety of products, with soft drinks among the best known.
11 Despite the presence of "corn" in the product's full name, HFCS is not a natural
12 product—one cannot simply extract it from an ear of corn. Rather, corn yields corn
13 starch (sometimes called corn flour), which is commonly used in kitchens as a
14 thickening agent. Corn starch can be turned into corn syrup, which, as its name
15 implies, is a viscous liquid that is about 100% dextrose, a type of glucose. Corn
16 starch can also be turned into "corn sugar," which the FDA identifies as a foodstuff
17 "produced by the complete hydrolysis of corn starch with safe and suitable acids or
18 enzymes, followed by refinement and crystallization."¹ Like the substance from
19 which it is made, corn sugar is almost 100% dextrose.

20 23. The only sweetener that may be labeled simply as "sugar" is the natural
21 sucrose found in sugar cane and sugar beet plants.² Sucrose is an organic
22 disaccharide consisting of equal parts glucose and fructose joined by a glycosidic
23 bond. Humans have used sugar for millennia to sweeten food and drink.

24 24. HFCS is a man-made product. It has been commercially available only
25 since the late 1960s, when Japanese researchers discovered a method of

26
27 ¹ 21 C.F.R. 184.1857.

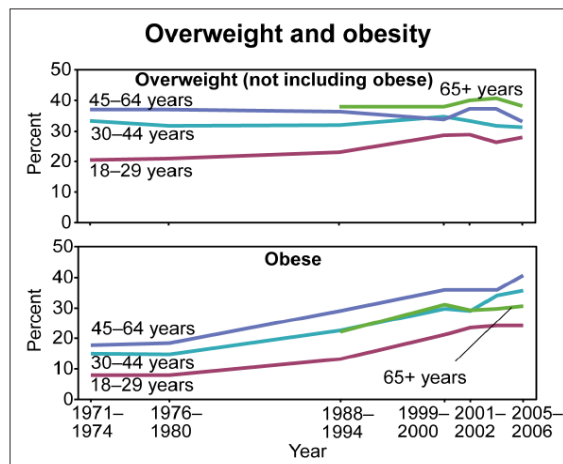
28 ² 21 C.F.R. 184.1854.

enzymatically transforming some of the glucose in corn syrup into fructose, which does not naturally occur in the plant. The glucose and fructose that primarily comprise HFCS are monosaccharides, lacking the covalent molecular bond found in the organic sucrose molecule. Free fructose is highly soluble in water and makes bread crusts browner, cookies softer and everything sweeter.³ As a result, over the past 40 years HFCS has rapidly become a staple in food and beverage production, particularly in the United States. That popularity has been fueled in part by heavy subsidies to the American corn industry that help make HFCS cheaper than sugar.

The Rise of HFCS Mirrors the Rise of the Obesity Epidemic

25. At least as early as 2003, the United States Surgeon General, testifying before a House subcommittee, warned of “a health crisis affecting every state, every city, every community, and every school across our great nation. [¶] The crisis is obesity. It’s the fastest-growing cause of disease and death in America.”⁴

26. The obesity epidemic in the United States has received considerable attention over the past few years—with good reason. In 1970, about 15 percent of the United States population met the definition for obesity. Since 1970—about the same time that the commercial use of HFCS began its rapid ascent—obesity rates have also skyrocketed, as shown in the below chart.



³ E. Neilson, *The Fructose Nation*, 18 J. Am. Soc. Nephrology 2619 (2007) (“Neilson”).

⁴ <http://www.surgeongeneral.gov/news/testimony/obesity07162003.htm>.

1 *Overweight and Obesity Statistics*, U.S. Dept. Health & Human Servs., Nat'l Insts.
 2 Health (Feb. 2010) (<http://win.niddk.nih.gov/publications/PDFs/stat904z.pdf>).
 3 From 1980 to 2002 alone, obesity rates doubled; about one-third of the adult
 4 population was deemed obese as of 2006.⁵

5 27. From 1970 to 1990, meanwhile, consumption of HFCS increased over
 6 1000%, "far exceeding the changes in intake of any other food or food group.
 7 HFCS now represents > 40% of caloric sweeteners added to foods and beverages
 8 and [as of 2004 was] the sole caloric sweetener in soft drinks in the United States."⁶

9 28. The existence of an association between the obesity epidemic and the
 10 meteoric rise in HFCS consumption has increasingly been the focus of attention by
 11 medical, health and food science researchers and by consumers. In 2004, a
 12 landmark scientific report articulated the association in stark terms:

13 The increased use of HFCS in the United States mirrors
 14 the rapid increase in obesity. The digestion, absorption,
 15 and metabolism of fructose differ from those of
 16 glucose. . . . Hepatic metabolism of fructose favors de
 17 novo lipogenesis. In addition, unlike glucose, fructose
 18 does not stimulate insulin secretion or enhance leptin
 19 production. Because insulin and leptin act as key afferent
 20 signals in the regulation of food intake and body weight,
 21 this suggests that dietary fructose may contribute to
 22 increased energy intake and weight gain. Furthermore,
 23 calorically sweetened beverages may enhance caloric
 24 overconsumption. Thus, the increase in consumption of

25
 26 ⁵ C. Ogden, et al., Prevalence Of Overweight And Obesity In The United States, 1999–2004,
 295:13 J. Am. Med. Ass'n 1549–55 (2006).

27 ⁶ G. Bray, et al., Consumption Of High-Fructose Corn Syrup In Beverages May Play A Role In
 28 The Epidemic Of Obesity, 79 Am. J. Clinical Nutrition 537 (2004) ("Bray").

1 HFCS has a temporal relation to the epidemic of obesity,
 2 and the overconsumption of HFCS in calorically
 3 sweetened beverages may play a role in the epidemic of
 4 obesity.⁷

5 29. The precise role of HFCS in the obesity epidemic, as well as its
 6 contribution to a variety of health problems, is still the subject of scientific debate.
 7 Nevertheless, numerous researchers have identified as part of the likely problem the
 8 added fructose in the human diet, estimated to have “increased nearly 30% between
 9 1970 and 2000.”⁸ It is noted that “[f]ructose is metabolized differently than
 10 glucose,” and as a result can lead to insulin resistance (a precursor to diabetes),
 11 increased hypertension, and accelerated endothelial dysfunction, which can
 12 aggravate heart disease. “What we end up with is a familiar caloric additive
 13 provoking a new spate of metabolic dysfunction.”⁹

14 30. Although some have sought to spread the blame to reach sugar as well
 15 as HFCS, the results of a Princeton University study published in 2010 provides
 16 evidence that sucrose and HFCS have different metabolic effects. Researchers
 17 observed that rats fed HFCS-55 (the kind commonly used in sweetened beverages)
 18 gained “significantly more body weight” than those fed sucrose—despite each
 19 control group consuming the same calories. “This increase in body weight with
 20 HFCS was accompanied by an increase in adipose fat, notably in the abdominal
 21 region, and elevated circulating triglyceride levels. Translated to humans, these
 22 results suggest that excessive consumption of HFCS may contribute to the
 23 incidence of obesity.”¹⁰

24 ⁷ *Id.*

25 ⁸ *Id.*

26 ⁹ Neilson at 2619.

27 ¹⁰ M. Bocarsly, et al., High-Fructose Corn Syrup Causes Characteristics Of Obesity In Rats:
 28 Increased Body Weight, Body Fat And Triglyceride Levels, *Pharmacol. Biochem. Behav.* (2010)
 (the “Princeton study”).

1 31. Observing that “HFCS is different than sucrose in many ways,” the
 2 Princeton study identified several important differences between the two sweeteners
 3 that may account for the study’s results and conclusion recited above. Among other
 4 noted differences:

- 5 • The fructose content of HFCS-55 is slightly higher than in sucrose;¹¹
- 6 • Because fructose is absorbed further down the intestine than glucose,
 7 much of its metabolism occurs in the liver, where it is converted to a
 8 precursor to the backbone of the triglyceride molecule;
- 9 • The free fructose in HFCS is metabolically broken down before it reaches
 10 the rate-limiting enzyme required to cleave the disaccharide sucrose,
 11 resulting in increases in glycerol and fatty acids that are absorbed by
 12 adipose tissue; and
- 13 • HFCS bypasses the insulin-driven satiety system, suppressing “the degree
 14 of satiety that would normally ensue with a meal of glucose or sucrose,
 15 and this could contribute to increased body weight.”¹²

16 32. The Princeton study is not alone in observing these distinctions
 17 between HFCS and sucrose; other researchers have observed and published
 18 scholarly articles about such differences. Indeed, even those researchers who have
 19 published testing suggesting alternative conclusions have readily admitted that the
 20 comparative analysis of HFCS and sucrose (at a minimum) remains the subject of
 21 debate and further analysis.

22
 23
 24
 25 ¹¹ An even more recent publication by researchers from the University of Southern California
 26 demonstrated that tested beverages sweetened with HFCS had a mean fructose content higher
 27 than 55%, with several major brands apparently produced with HFCS that is 65% fructose. *See*
 28 Ventura, et al., Sugar Content of Popular Sweetened Beverages Based on Objective Laboratory
 Analysis: Focus on Fructose Content, *Obesity J.* (Oct. 2010).

¹² Princeton study at 5.

The HFCS Backlash Causes Sales To Drop

33. As the sampling of scientific literature shown above demonstrates, HFCS has become the focus of a maelstrom of events and serious research requiring a reassessment of its use: the obesity epidemic's rise and concurrent rise in HFCS consumption; scientific research pointing to HFCS's likely role in obesity and other health problems; and an overall consumer preference for natural, as opposed to man-made, foodstuffs.

34. Consumer concerns regarding the presence of HFCS in food and drinks is palpable. For example, market research firm The NPD Group, Inc., in a 2008 survey of consumer food safety concerns, reported that 58% of those surveyed listed HFCS as a food safety concern—just under the level of concern about mad cow disease (65%) and ahead of consumer concern over the use of bovine growth hormone in milk-producing cows (54%).¹³

35. Growing consumer concern about and reassessment of HFCS has already led a growing number of food and beverage producers to replace it with sugar. For example, on May 17, 2010, www.msnbc.com reported:

ConAgra Foods Inc. has removed high fructose corn syrup from its Hunt's brand ketchup. Shoppers have been shying away from high-fructose corn syrup due to health concerns, and it was consumer demand that drove the changes, said Hunt's brand manager Ryan Toreson. Hunt's is the latest brand to make the shift. PepsiCo Inc. removed all high-fructose corn syrup from sports drink Gatorade and replaced it with cane sugar.¹⁴

¹³ http://www.npd.com/press/releases/press_090330.html.

¹⁴ http://www.msnbc.msn.com/id/37189171/ns/business-consumer_news/.

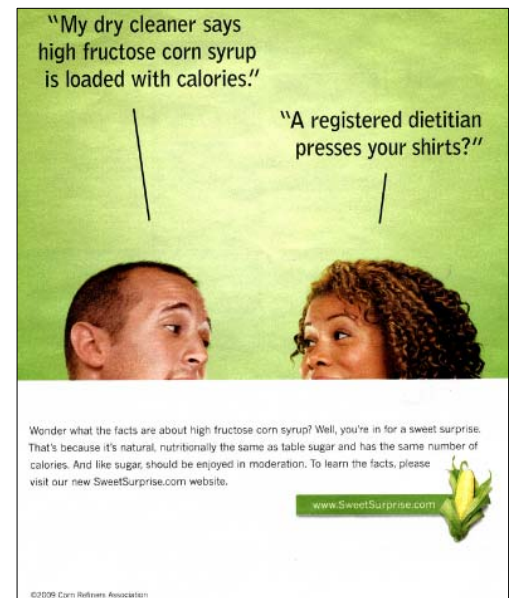
36. Food and beverage producers switching from HFCS to sugar are doing so with consumer preferences and concerns in mind, as shown by the promotion of “real sugar” and/or the absence of HFCS in products, as the examples here show.



37. The growing concern over HFCS has thus led to its decreased sales. Since the United States Surgeon General's testimony to Congress in 2003 warning of the rising obesity epidemic, sales of HFCS have declined 11%.¹⁵

The CRA's \$50 Million Campaign To Remake HFCS Into “Corn Sugar”

38. Evidently alarmed by the growing vilification of HFCS and resulting drop in sales, HFCS producers—led by the CRA, acting as the other Defendants' agent—attempted to turn consumer sentiment around beginning in June 2008. According to the New York Times, the CRA, working with its ad agency DDB and a team at Ogilvy Public Relations, had by May 2010, already “plowed more than \$30 million over the last two years into an ad campaign called ‘Sweet Surprise’ that highlights what it says are vague and unsubstantiated opinions.”¹⁶



¹⁵ UDSA Economic Research Service, Corn Sweetener Supply, Use, and Trade, Table 30: U.S. High Fructose Corn Syrup (HFCS) Supply and Use, by Calendar Year.

¹⁶ <http://www.nytimes.com/2010/05/02/business/02syrup.html?ref=corn&pagewanted=all>.

1 39. The CRA's "Sweet Surprise" campaign features a website dedicated to
2 the re-branding effort (www.sweetsurprise.com), Internet banner advertising,
3 exhibitions at professional organizations, TV commercials and print ads, such as
4 the one on the preceding page. The campaign attempts to recast HFCS as a natural
5 product, nutritionally identical and directly comparable to sugar. As the above ad
6 claims, HFCS is "natural, nutritionally the same as table sugar and has the same
7 number of calories."

8 40. With HFCS sales continuing to slump, however, the CRA and its
9 members re-doubled their re-branding effort in the second half of 2010. While
10 continuing to label HFCS as "natural" and "the same as sugar"—despite not being
11 found in nature and despite the clear molecular differences between the two—CRA
12 and its members sought to change consumers' attitudes by obtaining FDA approval
13 to change the product's name so that consumers will no longer see "high fructose
14 corn syrup" listed as an ingredient on food and drink labels. Rather, consumers
15 would see the name of a different sweetener: "corn sugar."

16 41. Impatient for this approval, the CRA and several of the Defendants
17 have already jumped the gun, calling HFCS "corn sugar" in advertising and in
18 pricing sheets for their food ingredient customers. On information and belief, the
19 CRA and other Defendants have thereby added to their investment to rebrand
20 HFCS so that their total expenditure thus far is equal to or greater than \$50 million.

21 42. Corn sugar and HFCS are not the same. The FDA and food industry
22 have long recognized corn sugar as dextrose in crystalline form, derived from corn
23 starch. HFCS, on the other hand, is a processed syrup mixture created by
24 enzymatically converting the naturally occurring dextrose into varying amounts of
25 fructose, the percentage of which can be controlled according to the preferred
26 industrial use (e.g., HFCS-42, HFCS-55 and HFCS-90, containing 42%, 55% and
27 90% fructose, respectively). HFCS likewise has long been known by its name in
28 the food industry. Indeed, the corn-refining industry itself proposed the name "high

1 fructose corn syrup” to the FDA in a 1977 petition. The FDA approved that label
 2 in 1983, and reaffirmed it in 1996 as part of the FDA’s comprehensive review of
 3 sugar and syrup sweeteners.¹⁷

4 43. Despite having proposed the FDA-approved label for HFCS over thirty
 5 years ago, Defendants, acting through the CRA, submitted a “citizen’s petition” to
 6 the FDA on September 14, 2010 to change the name of HFCS. Acknowledging
 7 that FDA regulations provide that “corn sugar” is the approved label for a real and
 8 distinct corn sugar product, Defendants’ petition asks that the FDA radically change
 9 that agency’s long-standing labeling system for sugars and syrups. In particular,
 10 Defendants want the FDA to allow them to appropriate the name of the authentic
 11 corn sugar product so that they can re-label HFCS as “corn sugar.” Defendants did
 12 not make their request to more closely associate their product with corn. Rather,
 13 Defendants’ request seeks to appropriate the goodwill of natural sugar.

14 44. Defendants’ pending FDA petition received considerable media
 15 scrutiny when submitted,¹⁸ and the FDA has received a large volume of public
 16 comments regarding the petition—approximately 10-1 against the change.

17 45. Defendants, however, were not content to proceed through FDA or
 18 other formal channels to obtain approval to use their desired “corn sugar” label.
 19 Rather, they simply appropriated the name at the same time they submitted their
 20 petition to the FDA and began using it in advertising and other documentation. In
 21 other words, despite recognizing the need for FDA approval to re-brand HFCS,
 22 Defendants simply started using “corn sugar” without waiting for such approval.

23
 24 ¹⁷ 48 Fed. Reg. 5,716 (Feb. 8, 1983); 61 Fed. Reg. 43,447 (Aug. 23, 1996).

25 ¹⁸ See for example *A New Name for Corn Syrup*, N.Y. Times (Sept. 14, 2010),
 26 <http://well.blogs.nytimes.com/2010/09/14/a-new-name-for-high-fructose-corn-syrup/#>;
 27 *Corn Refiners Left with Bitter Taste Over Sugar*, Financial Times (Sept. 17, 2010),
 28 <http://www.ft.com/cms/s/0/fcf19a16-c280-11df-956e-00144feab49a.html#axzz1JvvLCdly>;
 “*Corn Sugar*” *Makers Hope You’ll Buy the New Name*, NPR (Sept. 19, 2010),
<http://www.npr.org/templates/story/story.php?storyId=129971532>.

1 46. CRA admitted as much in its recent “reply to comments” letter
2 submitted to the FDA on April 4, 2011. The CRA states that

3 When CRA filed its citizen petition, it conducted a nation-
4 wide high profile campaign in connection with the
5 petition. This campaign has garnered more than 1.6
6 billion impressions in major broadcast and print media.
7 *CRA is also continuously running national, educational*
8 *television commercials that equate HFCS and corn sugar.*
9 *These commercials have earned in excess of 2 billion*
10 *impressions since September 2010.* (Emphasis added.)

11 47. The changed focus of Defendants’ re-branding effort is further evident
12 from the promotional statements on the CRA’s www.corn.org and
13 www.sweetsurprise.com websites (with emphases added):

- 14 • *“It is important that consumers recognize added sugars*
15 *in the diet. Despite its confusing name, high fructose corn*
16 *syrup is simply corn sugar - or an added sugar in the*
17 *diet.”*
- 18 • *“High fructose corn syrup is simply a kind of corn sugar.*
19 *It has the same number of calories as sugar and is*
20 *handled similarly by the body.”*
- 21 • *“High fructose corn syrup is simply a kind of corn*
22 *sugar that is handled by your body like sugar or honey.”*
- 23 • *“Whether it’s corn sugar or cane sugar, your body can’t*
24 *tell the difference. Sugar is sugar.”*

25 48. At about the same time that Defendants submitted their petition to the
26 FDA, ADM, Cargill, Corn Products and Tate & Lyle also began using “corn sugar”
27 as a synonym for HFCS in their marketing materials, including their price lists.
28

FIRST CLAIM FOR RELIEF

(VIOLATIONS OF SECTION 43(A) OF THE LANHAM ACT – FALSE ADVERTISING)

49. Plaintiffs reallege and incorporate by this reference each and every allegation contained in paragraphs 1 through 48 above as if set forth in full here.

50. Defendants have made and continue to make literally false and/or misleading representations of fact in their advertising and/or promotion in commerce regarding HFCS. As detailed above, Defendants' false and/or misleading representations of fact generally fall into one of the following categories.

51. The first category of Defendants' false and/or misleading representations of fact stems from their unilateral appropriation of the label "corn sugar"—"in excess of 2 billion impressions since September 2010"—when that label has long been used for a recognized form of sugar in crystalline form with no fructose. Defendants have done so in defiance of the FDA's regulatory scheme for labeling for sweeteners and syrups. In particular, Defendants' use of the label "corn sugar" falsely suggests to consumers that HFCS is or is similar to the actual corn sugar product, when in fact the two products are wholly different.

52. The second category is comprised of Defendants' false and/or misleading representations of fact that HFCS is a "natural" product. These representations falsely assert that HFCS is found in nature, when in fact it is a man-made product that did not exist for commercial consumption before the late 1960s.

53. The third category is comprised of Defendants' false and/or misleading representations of fact that HFCS is nutritionally and metabolically the same as sugar, i.e., "sugar is sugar" and "your body can't tell the difference." These representations are literally false or, at best, reckless and misleading in light of the irrefutable molecular differences between the free-floating monosaccharides fructose and glucose in HFCS and the bonded disaccharide sucrose, as well as the scientific studies and analyses, such as those published by Bray, Neilson and the

1 Princeton study, to name just a few, which demonstrate a likely causal link between
2 HFCS consumption and obesity, hyperlipidemia, hypertension and other health
3 problems that is not equally presented by the consumption of sucrose.

4 54. Moreover, the false and/or misleading nature of these representations
5 are demonstrated by past statements of the CRA and some of its members
6 themselves—when it suited them to distinguish HFCS from sugar. For example,
7 the CRA trumpeted (at a hearing in an antidumping investigation conducted by the
8 government of the United Mexican States in the late 1990s) the fundamental
9 physical, chemical and molecular differences between HFCS and sugar.

10 55. Defendants' false and/or misleading representations of fact violate
11 Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)). Defendants have made and
12 are making these false and/or misleading representations of fact in interstate
13 commercial advertising and/or promotion—in this district and elsewhere—and the
14 effects of Defendants' acts throughout the United States are intended to and do fall
15 upon Defendants in this district and elsewhere.

16 56. As a result of the foregoing, Plaintiffs have been damaged in an
17 amount that will be ascertained according to proof. Plaintiffs' damages include
18 actual damages in the form of price erosion and lost profits stemming from
19 artificially reduced demand caused by the Defendants' false and misleading
20 advertising (whether or not consumer demand has been retained by or driven to
21 HFCS or other competitive sweeteners); the disgorgement of any profits that
22 Defendants unfairly realized, retained or gained through their unlawful conduct; the
23 monetary expenditures that Defendants have made on their false and misleading
24 rebranding campaigns and that Plaintiffs have made and will be required to make
25 on corrective advertising and education to inform the consuming public of the truth;
26 and the costs of this action.

27 57. Because Defendants made and continue to make their false and/or
28 misleading representations of fact about HFCS in intentional disregard of their

1 falsity and/or misleading nature, Plaintiffs are entitled to an award of enhanced
 2 damages under Section 35(a) of the Lanham Act (15 U.S.C. §1117(a)). Moreover,
 3 this is an exceptional case for which the Court should award Plaintiffs' their
 4 reasonable attorneys' fees.

5 58. Defendants' activities have caused and will cause irreparable harm to
 6 Plaintiffs for which they have no adequate remedy at law. In particular,
 7 Defendants' past and continuing false and/or misleading representations of fact, as
 8 alleged above, are causing irreparable harm, continuing to the foreseeable future,
 9 and are a serious and unmitigated hardship. Plaintiffs will continue to suffer
 10 irreparable injury to their goodwill, rights and businesses unless and until
 11 Defendants and any others in active concert with them are enjoined from continuing
 12 their wrongful acts.

13 **SECOND CLAIM FOR RELIEF**

14 **(UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200)**

15 59. Plaintiffs reallege and incorporate by this reference each and every
 16 allegation contained in paragraphs 1 through 58 above as if set forth in full here.

17 60. California's unfair competition law (the "UCL"), codified in California
 18 Business & Professions Code §§17200, *et seq.*, in pertinent part prohibits unfair
 19 competition arising from any unlawful, unfair or fraudulent business act or practice
 20 and unfair, deceptive, untrue or misleading advertising. Defendants' activities
 21 alleged above constitute (i) unlawful business acts and/or practices and (ii) unfair,
 22 deceptive, untrue and/or misleading advertising under the UCL.

23 61. Defendants' violation of Lanham Act section 43(a) (15 U.S.C.
 24 §1125(a)), as set forth in Plaintiffs' First Claim for Relief, constitutes an unlawful
 25 business act or practice under the UCL. *See Cleary v. News Corp.*, 30 F.3d 1255,
 26 1263 (9th Cir. 1994) (observing the Ninth Circuit's consistent holding that an
 27 action for unfair competition under the UCL is "substantially congruent" to a claim
 28 under the Lanham Act) (citations omitted); *Kelley Blue Book v. Car-Smarts, Inc.*,

1 802 F. Supp. 288-89 (C.D. Cal. 1992) (holding that when a plaintiff establishes a
 2 Lanham Act violation based on a likelihood of confusion, an independent UCL
 3 claim is also established) (citations omitted).

4 62. As also alleged above, Defendants have made false and/or misleading
 5 representations of fact about HFCS in at least print, Internet and television
 6 advertising. In so doing, Defendants have violated the UCL's prohibition against
 7 unfair, deceptive, untrue and/or misleading advertising, independent of Defendants'
 8 Lanham Act violations.

9 63. Defendants' activities have caused and will cause irreparable harm to
 10 Plaintiffs for which they have no adequate remedy at law. In particular,
 11 Defendants' past and continuing false and/or misleading representations of fact, as
 12 alleged above, are causing irreparable harm, continuing to the foreseeable future,
 13 and are a serious and unmitigated hardship. Plaintiffs will continue to suffer
 14 irreparable injury to their goodwill, rights and businesses unless and until
 15 Defendants and any others in active concert with them are enjoined from continuing
 16 their wrongful acts.

17 **PRAYER**

18 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
 19 them, as follows:

20 a. That the Court enjoin Defendants from continuing to make false and/or
 21 misleading representations of fact about HFCS;

22 b. That Defendants pay Plaintiffs damages for the harms they have
 23 suffered and continue to suffer as a result of Defendants' false and/or misleading
 24 advertising, promotion and/or marketing, reflecting a disgorgement of illicit gains
 25 from such advertising, promotion and/or marketing, and providing a corrective
 26 advertising award as permitted by law;

27 c. That this Court award Plaintiffs three times any damages award
 28 pursuant to 15 U.S.C. §1117;

1 d. That this case be found to be exceptional within the meaning of 15
2 U.S.C. §1117;

3 e. That the Court award Plaintiffs their costs and expenses of suit,
4 including all reasonable attorneys' fees they have incurred and will incur in this
5 matter;

6 f. That the Court award Plaintiffs prejudgment and post-judgment
7 interest; and

8 g. That the Court grant Plaintiffs such other and further relief as the
9 Court deems just and proper.

10 April 22, 2011

Respectfully submitted,

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12 By: /s/ Adam R. Fox

13 Adam R. Fox

14 David S. Elkins

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

April 22, 2011

Respectfully submitted,

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