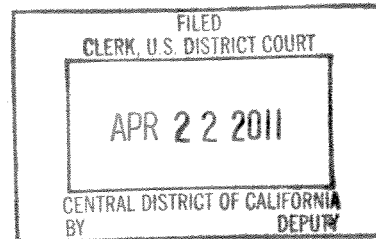


1 Adam R. Fox (State Bar No. 220584)  
 Adam.Fox@ssd.com  
 2 SQUIRE, SANDERS & DEMPSEY (US) LLP  
 555 South Flower Street, 31st Floor  
 3 Los Angeles, CA 90071  
 Telephone: +1.213.624.2500  
 4 Facsimile: +1.213.623.4581



5 David S. Elkins (State Bar No. 148077)  
 David.Elkins@ssd.com  
 6 SQUIRE, SANDERS & DEMPSEY (US) LLP  
 600 Hansen Way  
 7 Palo Alto, CA 94304  
 Telephone: +1.650.856.6500  
 8 Facsimile: +1.650.843.8777

9 *[Additional Counsel Identified On Signature Page]*

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,

Case No. **CV 11-3473** <sup>CBM</sup>  
 (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.)**

17 Plaintiffs,

18 vs.

**JURY TRIAL DEMANDED**

19 ARCHER-DANIELS-MIDLAND  
 20 COMPANY, a Delaware corporation,  
 CARGILL, INC., a Delaware corporation,  
 21 CORN PRODUCTS INTERNATIONAL,  
 INC., a Delaware corporation, THE  
 22 CORN REFINERS ASSOCIATION,  
 INC., a Delaware corporation, PENFORD  
 23 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

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.”<sup>1</sup> 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.<sup>2</sup> 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 <sup>1</sup> 21 C.F.R. 184.1857.

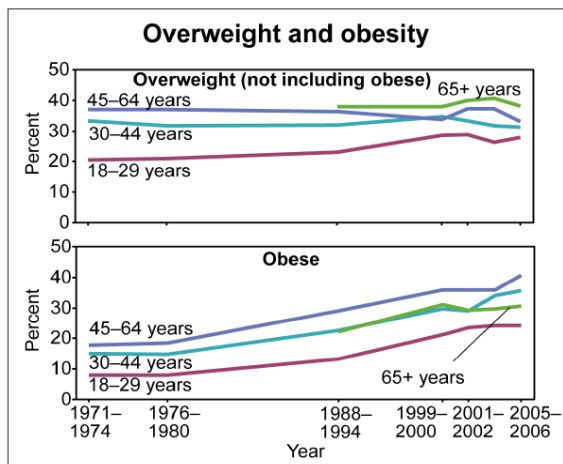
28 <sup>2</sup> 21 C.F.R. 184.1854.

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

### 9 *The Rise of HFCS Mirrors the Rise of the Obesity Epidemic*

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

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



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

28 <sup>4</sup> <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.<sup>5</sup>

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.”<sup>6</sup>

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 <sup>5</sup> 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 <sup>6</sup> 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.<sup>7</sup>

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.”<sup>8</sup> 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.”<sup>9</sup>

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.”<sup>10</sup>

---

24 <sup>7</sup> *Id.*

25 <sup>8</sup> *Id.*

26 <sup>9</sup> Neilson at 2619.

27 <sup>10</sup> 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;<sup>11</sup>
- 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.”<sup>12</sup>

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.

---

25 <sup>11</sup> 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).*

<sup>12</sup> Princeton study at 5.

1 *The HFCS Backlash Causes Sales To Drop*

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

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

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

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

25  
26  
27 <sup>13</sup> [http://www.npd.com/press/releases/press\\_090330.html](http://www.npd.com/press/releases/press_090330.html).

28 <sup>14</sup> [http://www.msnbc.msn.com/id/37189171/ns/business-consumer\\_news/](http://www.msnbc.msn.com/id/37189171/ns/business-consumer_news/).

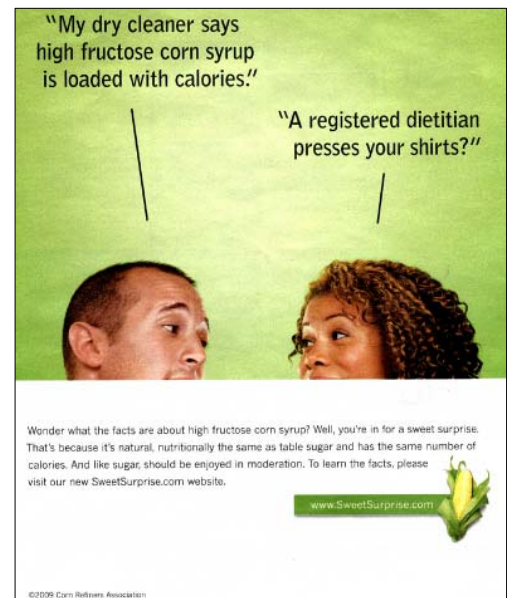
1 36. Food and beverage producers switching from HFCS to sugar are doing  
2 so with consumer preferences and concerns in mind, as shown by the promotion of  
3 “real sugar” and/or the absence of HFCS in products, as the examples here show.



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

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

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



26 <sup>15</sup> USDA Economic Research Service, Corn Sweetener Supply, Use, and Trade, Table 30: U.S.  
27 High Fructose Corn Syrup (HFCS) Supply and Use, by Calendar Year.

28 <sup>16</sup> <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.<sup>17</sup>

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,<sup>18</sup> 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 <sup>17</sup> 48 Fed. Reg. 5,716 (Feb. 8, 1983); 61 Fed. Reg. 43,447 (Aug. 23, 1996).

25 <sup>18</sup> 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/#>;  
*Corn Refiners Left with Bitter Taste Over Sugar*, Financial Times (Sept. 17, 2010),  
27 <http://www.ft.com/cms/s/0/fcf19a16-c280-11df-956e-00144feab49a.html#axzz1JvvLCdly>;  
28 “*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](http://www.corn.org) and  
13 [www.sweetsurprise.com](http://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

1 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

22 53. The third category is comprised of Defendants’ false and/or misleading  
23 representations of fact that HFCS is nutritionally and metabolically the same as  
24 sugar, i.e., “sugar is sugar” and “your body can’t tell the difference.” These  
25 representations are literally false or, at best, reckless and misleading in light of the  
26 irrefutable molecular differences between the free-floating monosaccharides  
27 fructose and glucose in HFCS and the bonded disaccharide sucrose, as well as the  
28 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,

11 SQUIRE, SANDERS & DEMPSEY (US) LLP

12 By: /s/ Adam R. Fox

13 Adam R. Fox

14 David S. Elkins

15 Attorneys for Plaintiffs WESTERN SUGAR  
16 COOPERATIVE, MICHIGAN SUGAR CO., and C & H  
SUGAR CO., INC.

17 *Additional Counsel for Plaintiffs:*

18 James P. Murphy (*Pro Hac Vice* forthcoming)

James.Murphy@ssd.com

19 John A. Burlingame (*Pro Hac Vice* forthcoming)

John.Burlingame@ssd.com

20 SQUIRE, SANDERS & DEMPSEY (US) LLP

1201 Pennsylvania Ave., N.W., Ste. 500

21 Washington, DC 20004

Telephone: +1.202.626.6793

22 Facsimile: +1.202.626.6780

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

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

April 22, 2011

Respectfully submitted,  
SQUIRE, SANDERS & DEMPSEY (US) LLP

By: /s/ Adam R. Fox  
Adam R. Fox  
David S. Elkins  
Attorneys for Plaintiffs WESTERN SUGAR  
COOPERATIVE, MICHIGAN SUGAR CO., and C & H  
SUGAR CO., INC.

*Additional Counsel for Plaintiffs:*

James P. Murphy (*Pro Hac Vice* forthcoming)  
James.Murphy@ssd.com  
John A. Burlingame (*Pro Hac Vice* forthcoming)  
John.Burlingame@ssd.com  
SQUIRE, SANDERS & DEMPSEY (US) LLP  
1201 Pennsylvania Ave., N.W., Ste. 500  
Washington, DC 20004  
Telephone: +1.202.626.6793  
Facsimile: +1.202.626.6780