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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SEVAK KRIKORIAN, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

POST CONSUMER BRANDS LLC, a  
limited liability company,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. Seq.*
4. BREACH OF EXPRESS WARRANTY
5. UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

Plaintiff Sevak Krikorian (“Plaintiff” or “Krikorian”), each individually and each on behalf of all others similarly situated, bring this class action complaint against

1 Post Consumer Brands, LLC (“Defendant” and/or “Post Consumer Brands”) and  
2 alleges as follows:

3 **SUMMARY OF THE ACTION**

4 1. This is a class action lawsuit brought on behalf of all purchasers of  
5 Rachael Ray pet food products (the “**Products**”), sold online and at retail locations  
6 throughout California and the United States.

7 2. Defendant falsely and deceptively advertises the Products as containing  
8 “No **Artificial Preservatives**” and as “**Natural Food**” (“**Challenged**  
9 **Representations**”). However, contrary to the Products’ Challenged Representations,  
10 as explained in detail below, the Products actually contain citric acid — an artificial  
11 preservative ingredient used in food products.

12 3. Through falsely, misleadingly, and deceptively labeling the Products,  
13 Defendant seeks to take advantage of consumers’ desire for a truly premium products  
14 that are free from preservatives. Yet, Defendant does so at the expense of unwitting  
15 consumers, as well as Defendant’s lawfully acting competitors, over whom Defendant  
16 maintains an unfair competitive advantage.

17 4. Plaintiff brings this action individually and in a representative capacity  
18 on behalf of similarly situated consumers who purchased the Products during the  
19 relevant Class Period (Class and/or Subclass defined infra), for dual primary  
20 objectives: **One**, Plaintiff seeks, on Plaintiff’s individual behalf and on behalf of the  
21 Class/Subclass, a monetary recovery of the price premium Plaintiff and consumers  
22 overpaid for Products that should, but fails to, comport with the Challenged  
23 Representations (which may include, for example, damages, restitution,  
24 disgorgement, and/or any applicable penalties, fines, or punitive/exemplary damages)  
25 solely to the extent that the causes of action pled herein permit such recovery. **Two**,  
26 Plaintiff seeks, on his individual behalf and on behalf of the Class/Subclass, injunctive  
27 relief to stop Defendant’s unlawful manufacture, marketing, and sale of the Products  
28 with the Challenged Representations to avoid or mitigate the risk of deceiving the

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1 public into believing that the Products conform to the Challenged Representations, by  
2 requiring Defendant to change its business practices, which may include one or more  
3 of the following: removal or modification of the Challenged Representations from the  
4 Products' labels, removal or modification of the Challenged Representations from the  
5 Products' advertising, modification of the Products' formulation be it a change in  
6 ingredients or its sourcing and manufacturing processes, and/or discontinuance of the  
7 Products' manufacture, marketing, and/or sale.

8 5. True and correct copies of the Products' labels are pictured below.

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**Rachael Ray Nutrish Real Salmon, Veggies & Brown Rice Recipe Gentle Digestion Dry Dog Food<sup>1</sup>**



**Ingredients**

Salmon, Chicken Meal, Ground Whole Corn, Dried Peas, Grain Sorghum, Soybean Meal, Corn Gluten Meal, Chicken Fat (preserved With Mixed Tocopherols), Brown Rice, Dried Plain Beet Pulp, Flaxseed, Whole Millet, Dried Carrots, Dicalcium Phosphate, Natural Flavor, Malted Barley Flour, Salt, Calcium Carbonate, Taurine, Choline Chloride, Vitamins (vitamin E Supplement, Ascorbic Acid (source Of Vitamin C), Niacin, Vitamin A Supplement, Thiamine Mononitrate, D-calcium Pantothenate, Riboflavin Supplement, Pyridoxine Hydrochloride, Vitamin B12 Supplement, Folic Acid, Biotin, Vitamin D3 Supplement), minerals (ferrous Sulfate, Zinc Sulfate, Copper Sulfate, Sodium Selenite, Manganese Sulfate, Calcium Iodate), Zinc Sulfate, Citric Acid (preservative), Rosmary Extract

<sup>1</sup> The Rachael Ray Nutrish Real Salmon, Veggies & Brown Rice Recipe Gentle Digestion Dry Dog Food includes, but is not limited to, the following sizes and/or variations: (a) 13-lb bag, and (b) 26 lb-bag.

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**Rachael Ray Nutrish Peak Protein Open Prairie Recipe, Beef, Venison & Lamb Dry Dog Food<sup>2</sup>**



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<sup>2</sup> The Rachael Ray Nutrish Peak Protein Open Prairie Recipe, Beef, Venison & Lamb Dry Dog Food includes, but is not limited to, the following sizes and/or variations: (a) 4-lb bag, (b) 12-lb bag, (c) 23-lb bag, and (d) 23-lb bag (bundle of 2).

Rachael Ray Nutrish Premium Natural Dry Dog Food, Real Beef, Pea, & Brown Rice Recipe<sup>3</sup>

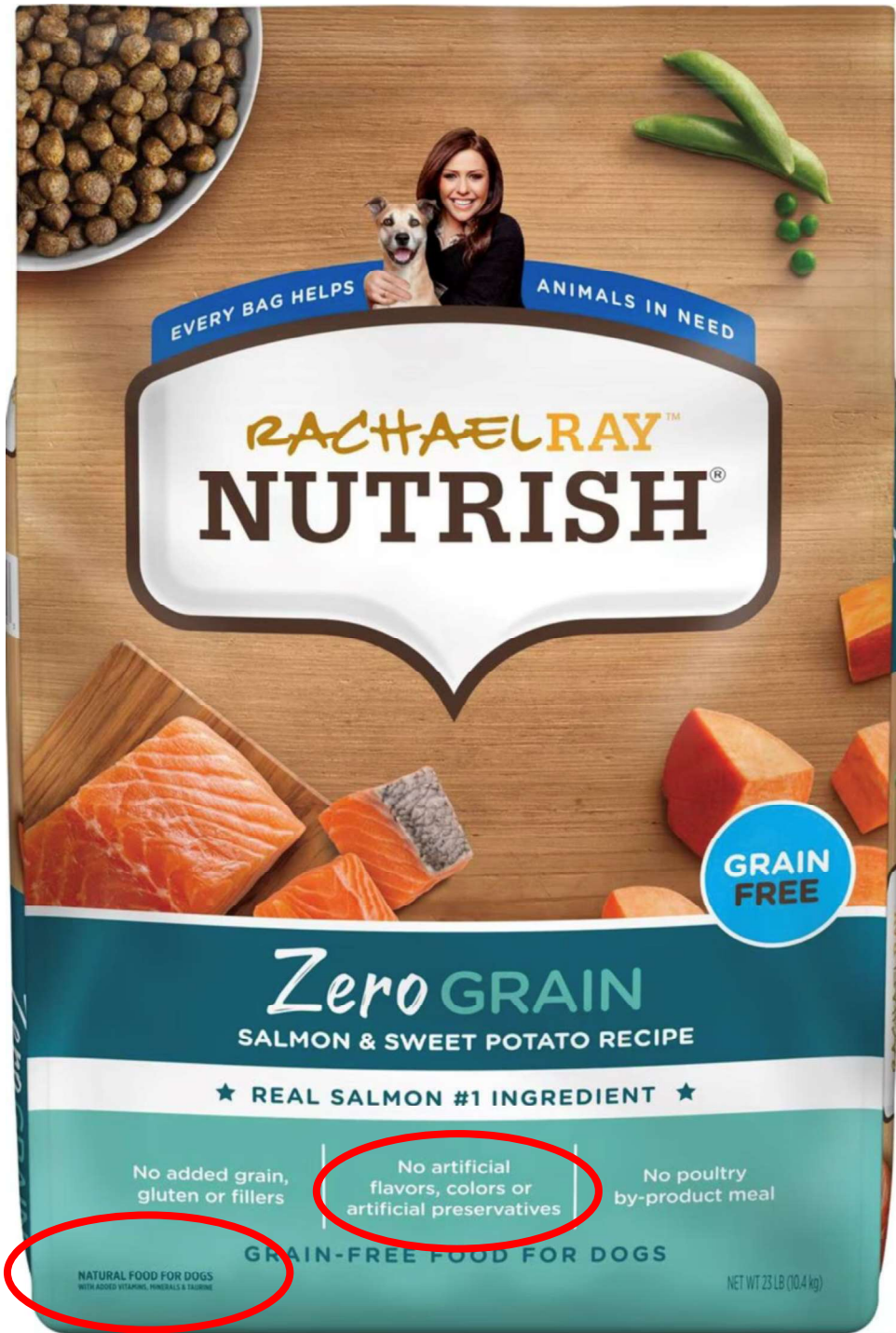
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<sup>3</sup> The Rachael Ray Nutrish Premium Natural Dry Dog Food includes, but is not limited to, the following sizes and/or variations: (a) 5.5-lb bag, (b) 6-lb bag, (c) 13-lb bag, (d) 14-lb bag, (e) 26-lb bag, (f) 28-lb bag, (g) 40-lb bag, (h) 40-lb bag (bundle of 2), and (i) 50-lb bag. The Rachael Ray Nutrish Premium Natural Dry Dog Food also comes in the following flavors and/or variations: (a) Beef, Pea, & Brown Rice, (b) Chicken & Vegetables, and (c) Turkey, Brown Rice & Venison.



Rachael Ray Nutrish Zero Grain, Grain-Free Dry Dog Food<sup>4</sup>



<sup>4</sup> The Rachael Ray Nutrish Zero Grain, Grain-Free Dry Dog Food includes, but is not limited to, the following sizes and/or variations: (a) 11.5-lb bag, (b) 13-lb bag, (c) 23-lb bag, (d) 23-lb bag (bundle of 2), (e) 26-lb bag. The Rachael Ray Nutrish Zero Grain, Grain-Free Dry Dog Food also includes, but is not limited to, the following flavors and/or variations: (a) Chicken & Sweet Potato, and (b) Salmon & Sweet Potato.

Rachael Ray Nutrish Savory Bites Dry Cat Food<sup>5</sup>

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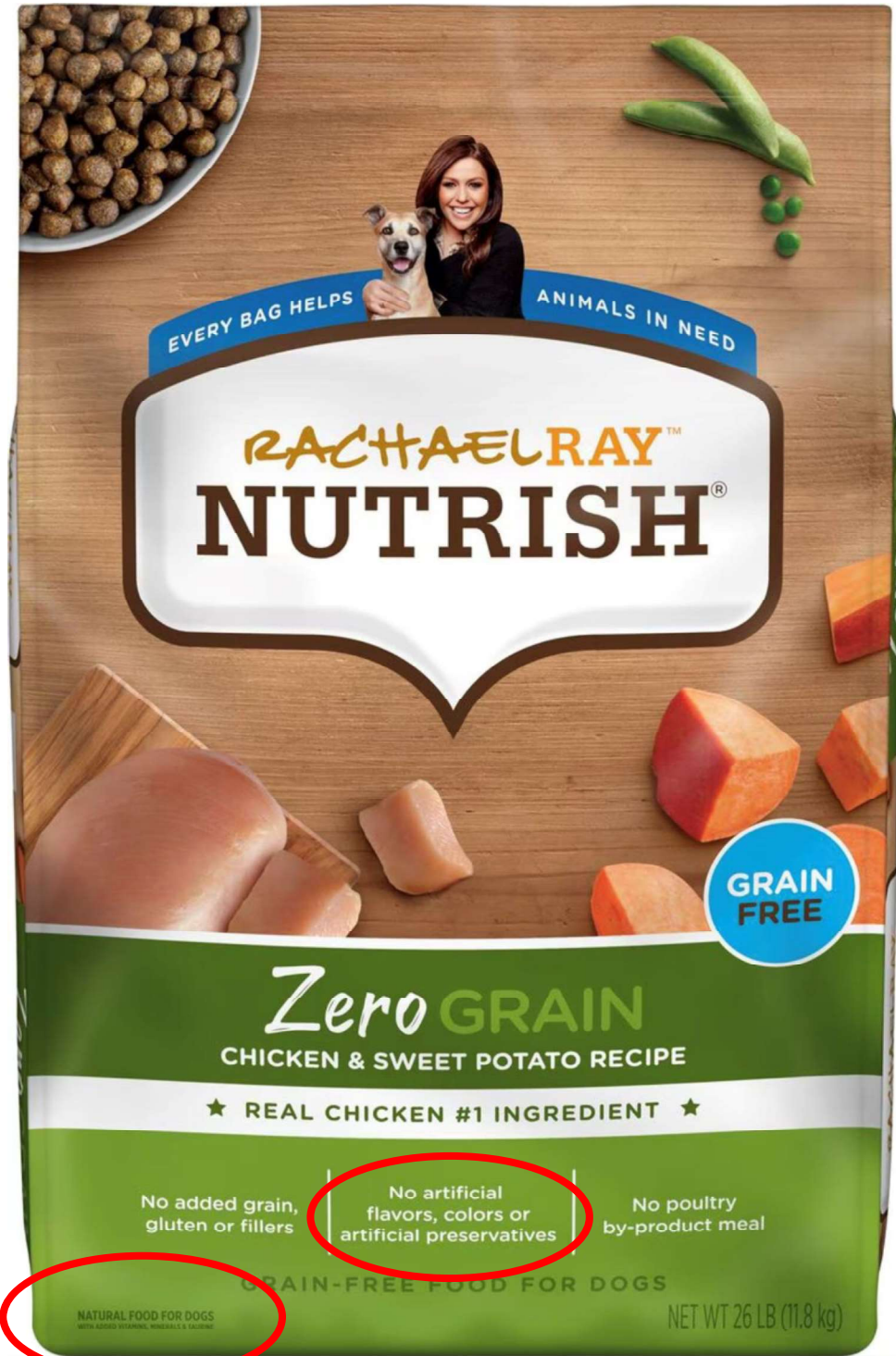


<sup>5</sup> The Rachael Ray Nutrish Savory Bites Dry Cat Food also comes in the following sizes and/or variations: (a) 2.5-lb bag, (b) 5-lb bag, and (c) 12-lb bag. The Rachael Ray Nutrish Savory Bites Yummy Dry Cat Food also includes, but is not limited to, the following flavors and/or variations: (a) Chicken & Veggies, and (b) Salmon & Veggies.



**Rachael Ray Nutrish Zero Grain Chicken & Sweet Potato Recipe Grain-Free Dry Dog Food<sup>6</sup>**

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<sup>6</sup> The Rachael Ray Nutrish Zero Grain Chicken & Sweet Potato Recipe Grain-Free Dry Dog Food includes, but is not limited to, the following sizes and/or variations: (a) 11.5-lb bag, (b) 13-lb bag, (c) 23-lb bag, (d) 23-lb bag (bundle of 2), and (e) 26-lb bag.

Rachael Ray Nutrish Bark Real Beef Jerky, Peanut Butter & Bacon Dog Treats<sup>7</sup>



<sup>7</sup> The Rachael Ray Nutrish Bark Real Beef Jerky, Peanut Butter & Bacon Dog Treats includes, but is not limited to, the following sizes and/or variations: (a) 4.5 oz, and (b) 11 oz.

Rachael Ray Nutrish Bark Jerky-Style Peanut Butter & Bacon with Real Chicken Dog Treat<sup>8</sup>



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<sup>8</sup> The Rachael Ray Nutrish Bark Jerky-Style Peanut Butter & Bacon with Real Chicken Dog Treat includes, but is not limited to, the following sizes and/or variations: (a) 4.5 oz, and (b) 28 oz.



1 6. Consumers are deceived by Defendant’s labeling and advertising of the  
 2 Products with the Challenged Representations believing that they are purchasing a  
 3 preservative-free Product. Consumers rely on Defendant’s labeling and advertising of  
 4 the Products with the Challenged Representations to be truthful and would not know  
 5 that the Products actually contain a well-documented, artificial preservative.

6 7. Reasonable consumers such as Plaintiff do not have specialized  
 7 knowledge necessary to identify ingredients in the Products as being inconsistent with  
 8 Defendant’s advertised “No Artificial Preservatives” and “Natural Food”  
 9 representations.

10 8. Defendant knows that consumers are willing to pay more for natural,  
 11 healthy products, and advertises the Products with the intention that consumers rely  
 12 on the Challenged Representations made on the front of the Products packaging.

13 9. By falsely labeling the Products with the Challenged Representations,  
 14 Defendant has profited from consumers’ preference for pet food products that are  
 15 healthier or made free of preservatives.

### **PARTIES**

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 17 10. **Plaintiff:** Plaintiff is, and at all times relevant hereto was, a citizen of  
 18 California. Plaintiff purchased various flavors of the Products at different times  
 19 during the Class Period, and most recently, he purchased the Rachael Ray Nutrish  
 20 Gentle Digestion with Real Salmon, Veggies & Brown Rice Dry Dog Food from a  
 21 Target store in Los Angeles, California, in November of 2024. **In making his**  
 22 **purchase**, Plaintiff relied upon Defendant’s labeling and advertising claims,  
 23 specifically the representations stating “No Artificial Preservatives” and “Natural  
 24 Food” prominently displayed on the front of the product packaging. Plaintiff  
 25 understood these representations to mean that the products were free from artificial  
 26 preservatives and artificial ingredients. Had Plaintiff known that the products  
 27 contained artificial preservatives or ingredients, he would not have purchased the  
 28

1 products or would have paid significantly less for them. As a result, Plaintiff suffered  
2 economic injury.

3 11. These claims were prepared and approved by Defendant and its agents  
4 and disseminated statewide and nationwide, to encourage consumers to purchase the  
5 Products.

6 12. **Plaintiff's Future Harm:** Plaintiff would like to purchase the Products  
7 again only if he can be sure that Defendant is compliant with the state consumer  
8 protection laws. Plaintiff continues to see Defendant's Products in stores available for  
9 purchase, and desires to purchase it again if the representation regarding the  
10 Challenged Representations were in fact true. Since Plaintiff would like to purchase  
11 the Products again to obtain a pet food product that, as advertised, is truly preservative  
12 free and natural, Plaintiff would purchase it again in the future—despite the fact that  
13 it was once marred by false advertising or labeling—as Plaintiff would reasonably,  
14 but incorrectly, assume the Products were improved (no longer contain preservatives  
15 and artificial ingredients). In that regard, Plaintiff is an average consumer who is not  
16 sophisticated in the chemistry, manufacturing, and formulation of pet food products,  
17 such as the Products. Neither Plaintiff, nor reasonable consumers, have the requisite  
18 knowledge to accurately differentiate between ingredients that are “artificial  
19 preservatives” or not. Accordingly, Plaintiff is at risk of reasonably, but incorrectly,  
20 assuming that Defendant fixed the formulation of the Products such that Plaintiff may  
21 buy it again, believing it to no longer be falsely advertised. Plaintiff is, therefore,  
22 currently and in the future deprived of the ability to rely on the Challenged  
23 Representations. Based on information and belief, the labeling of the Product  
24 purchased by Plaintiff is typical of the labeling of the Products purchased by members  
25 of the class.

26 13. **Defendant.** Post Consumer Brands, LLC is a Minnesota limited liability  
27 company that maintains its principal place of business at 20802 Kensington Blvd.  
28 Lakeville, MN 55044. At all times during the class period, Defendant was the

1 manufacturer, distributor, marketer, and seller of the Products. Post Consumer  
2 Brands, LLC directly and through its agents, has substantial contacts with and  
3 receives substantial benefits and income from and through the State of California.

4 **JURISDICTION AND VENUE**

5 14. This Court has jurisdiction over all causes of action asserted herein  
6 pursuant to the California Constitution, Article VI, § 10, because this case is a cause  
7 not given by statute to other trial courts. This Court has subject matter jurisdiction of  
8 this action pursuant to 28 U.S.C. § 1332 and the Class Action Fairness Act of 2005  
9 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in  
10 controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is  
11 minimal diversity because at least one plaintiff and defendant are citizens of different  
12 states. This Court has supplemental jurisdiction over any state law claims pursuant to  
13 28 U.S.C. § 1367.

14 15. Venue is proper in this District under 28 U.S.C. § 1391, because a  
15 substantial part of the events, omissions, and acts giving rise to the claims herein  
16 occurred in this District. Plaintiff is a citizen of California who resides in this District.  
17 Plaintiff purchased the Product in this District. Defendant has deliberately marketed,  
18 advertised, and sold the Products within this District. Defendant receives substantial  
19 compensation from sales in this District.

20 16. Defendant is subject to personal jurisdiction in California based upon  
21 sufficient minimum contacts which exist between Defendant and California.  
22 Defendant is authorized to do and is doing business in California.

23 **FACTUAL ALLEGATIONS**

24 **A. Citric Acid**

25 17. Defendant advertises and display on the front labels of each of the  
26 Products that they are “Natural Food” and contain “No Artificial Preservatives”  
27 thereby misleading reasonable consumers into believing that the Products are free  
28 from artificial preservatives. However, the Products contain a well-known and well-  
documented artificial preservative, citric acid.



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1 18. Citric acid acts as a preservative when added to food products, including  
 2 the Products at issue. Citric acid acts as a preservative in the Products regardless of  
 3 the subjective purpose or intent for why Defendant added citric acid to the Products  
 4 because citric acid acts as a preservative *even if* very low levels are contained in the  
 5 Product.<sup>9</sup>

6 19. The Food and Drug Administration (“FDA”) defines a chemical  
 7 preservative as “any chemical that, when added to food, tends to prevent or retard  
 8 deterioration thereof, but does not include common salt, sugars, vinegars, spices, or  
 9 oils extracted from spices, substances added to food by direct exposure thereof to  
 10 wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21  
 11 C.F.R. §101.22(a)(5).

12 20. The FDA classifies and identifies citric acid as a preservative in its  
 13 Overview of Food Ingredients, Additives, and Colors, on the FDA’s website and  
 14 provides examples of uses of preservatives like citric acid, including, in food.<sup>10</sup>

15 **Types of Food Ingredients**

16 The following summary lists the types of common food ingredients, why they are used,  
 17 and some examples of the names that can be found on product labels. Some additives are  
 18 used for more than one purpose.

Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid, citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

26 <sup>9</sup> See Doores, S., 1993. Organic acids. In: Davidson, P.M., Branen, A.L. (Eds.), *Antimicrobials in Foods*. Marcel Dekker, Inc., New York, pp. 95-136.

27 <http://base.dnsgb.com.ua/files/book/Agriculture/Foods/Antimicrobials-in-Food.pdf>

28 <sup>10</sup> *Overview of Food Ingredients, Additives & Colors, FOOD AND DRUG ADMINISTRATION, available at* <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>.

1 21. Citric acid’s classification as a preservative is further confirmed by a  
 2 Warning Letter sent by the FDA to the manufacturer of Chiquita brand “Pineapple  
 3 Bites with Coconut” and “Pineapple Bites,” in which the FDA proclaimed the  
 4 “Pineapple Bites” and “Pineapple Bites with Coconut” products are further  
 5 misbranded within the meaning of Section 403(k) of the Act [21 U.S.C. 343(k)] in  
 6 that they contain the chemical preservative ascorbic acid and *citric acid* but their  
 7 labels fail to declare these preservatives with a description of their functions. 21 CFR  
 8 101.22.”<sup>11</sup>

9 22. The Agricultural Marketing Service of the United States Department of  
 10 Agriculture (“USDA”) has also recognized the use of citric acid as a preservative  
 11 stating that “Citric acid has a wide variety of uses, some of which can provide  
 12 preservative functions, primarily though lowering the pH of the food.”<sup>12</sup>

13 23. The USDA’s Food Safety Inspection Service’s “Guideline for Label  
 14 Approval” states that “[s]ome common chemical preservatives include BHA, BHT,  
 15 calcium propionate, citric acid, natamycin and sodium propionate.”<sup>13</sup>

16 24. Academic journals have also noted the use of citric acid as a  
 17 preservative.<sup>14</sup> Indeed, “Citric acid acts as a preservative in many processed foods,  
 18 keeping them fresh. It does this by slowing or helping prevent the formation of  
 19  
 20

21 <sup>11</sup> See FDA label compliance website,  
 22 <https://www.fdalabelcompliance.com/letters/ucm228663>.

23 <sup>12</sup> Citric Acid and Salts, UNITED STATES DEPARTMENT OF AGRICULTURE, available  
 at <https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

24 <sup>13</sup> FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF AGRICULTURE,  
 available at [https://www.fsis.usda.gov/sites/default/files/media\\_file/documents/FSIS-GD-2023-0001.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf)

25 <sup>14</sup> K. Kirimura, et al., Citric Acid, COMPREHENSIVE BIOTECHNOLOGY (SECOND  
 26 EDITION)(2011), available at  
 27 <https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>;  
 K.M.S. Islam, Use of citric acid in broiler diets, WORLD’S POULTRY SCIENCE  
 28 JOURNAL VOL.68,ISSUE 1(Feb. 21, 2012), available  
 at <https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646> ( “Citric Acid (CA) is a weak organic acid which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

1 bacteria, mold, yeast, and fungus.”<sup>15</sup> “Today, citric acid is one of the most common  
2 and widely-used preservatives in the world[.]”<sup>16</sup>

3 25. The Encyclopedia Britanica also classifies citric acid as a preservative  
4 because it has antioxidant properties.<sup>17</sup>

5 **B. Defendant’s Use of Citric Acid**

6 26. Defendant uses a synthetic form of citric acid that is derived from heavy  
7 chemical processing.<sup>18</sup> The citric acid used in the Products is commercially produced  
8 and is manufactured using a type of black mold called *Aspergillus niger*.<sup>19</sup> Chemical  
9 solvents such as n-octyl alcohol and synthetic isoparaffinic petroleum hydrocarbons  
10 are used to extract the citric acid that Defendant uses in the Products from *aspergillus*  
11 *niger* fermentation liquor. See 21 C.F.R § 173.280. The citric acid that Defendant uses  
12 in the Products is produced through chemical solvent extraction and contains residues  
13 of those chemical solvents.

14 27. An article published in the *Toxicology Reports Journal* explains that citric  
15 acid produced through aspergillus niger fermentation is artificial: Citric acid naturally  
16 exists in fruits and vegetables. However, it is not the naturally occurring citric acid,  
17 but the manufactured citric acid (MCA) that is used extensively as a food additive.  
18 Approximately 99% of the world’s production of MCA is carried out using the fungus  
19 *Aspergillus niger* since 1919. *Aspergillus niger* is a known allergen.<sup>20</sup>

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21 <sup>15</sup> What is citric acid, and what is it used for?, MEDICAL NEWS TODAY (July 23, 2021),  
available at <https://www.medicalnewstoday.com/articles/citric-acid>

22 <sup>16</sup> Citric Acid: One of the Most Important Preservatives in The World, FBCINDUSTRIES, INC.  
(Feb. 5, 2019), available at [https://fbcindustries.com/citric-acid-one-of-the-most-important-](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)  
23 [preservatives-in-the-world/](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)

24 <sup>17</sup> Preservatives, BRITANICA, available at [https://www.britannica.com/topic/food-](https://www.britannica.com/topic/food-additive/Preservatives#ref502211)  
[additive/Preservatives#ref502211](https://www.britannica.com/topic/food-additive/Preservatives#ref502211)

25 <sup>18</sup> A. Hesham, Y. Mostafa & L. Al-Sharqi, Optimization of Citric Acid Production by  
Immobilized Cells of Novel Yeast Isolates, 48 MYCOBIOLOGY 122, 123 (2020), available at  
26 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/> (emphasis added).

27 <sup>19</sup> *Id*; Pau Loke Show, et al., Overview of citric acid production from *Aspergillus niger*,  
FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available  
28 [at https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653](https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653)

<sup>20</sup> Iliana E. Sweis, et al., *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOLOGY REP. 5:808-812 (2018), available at  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/> Case 2:24-cv-03721-MWF-AJR



1           28. The Food and Drug Administration (“FDA”) has also sent warning letters  
2 to companies stating that certain products labeled as “natural” are misbranded because  
3 they contain *artificial* citric acid as an ingredient. For example, on August 29, 2001,  
4 the FDA sent Hirzel Canning Company (“Hirzel”) a warning letter regarding its  
5 canned tomato products. With respect to Hirzel’s Chopped Tomatoes Onions &  
6 Garlic and Chopped Mexican Tomatoes & Jalapenos, the FDA stated that these  
7 products could not bear the “All Natural” claim on the label because the products  
8 contained a synthetic ingredient, citric acid.

9           29. Consumption of manufactured citric acid has been associated with  
10 adverse health events like joint pain with swelling and stiffness, muscular and  
11 stomach pain, as well as shortness of breath.<sup>21</sup> The *Toxicology Reports Journal* article  
12 explains that “the potential presence of impurities or fragments from the *Aspergillus*  
13 *niger* in [manufactured citric acid] is a significant difference that may trigger  
14 deleterious effects when ingested.”<sup>22</sup>

15           **C. Defendant Misleads Plaintiff and Reasonable Consumers, Who Relied on**  
16           **the Material and False Advertising Claims to their Detriment**

17           30. **Materiality.** The Challenged Representations are material to reasonable  
18 consumers, including Plaintiff, in deciding to buy the Products. Specifically, the  
19 composition of the Products containing no artificial preservatives, and being  
20 natural—is important to consumers and motivates them to buy the Products.

21           31. **Reliance.** The Class, including Plaintiff, reasonably relied on the  
22 Challenged Representations in deciding to purchase the Products.

23           32. **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiff,  
24 do not know, and have no reason to know, at the time of purchase, that the Products’  
25 Challenged Representations are false, misleading, deceptive, and unlawful. That is  
26 because consumers, including Plaintiff, do not work for Defendant and therefore have  
27

28 \_\_\_\_\_  
<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

1 no personal knowledge of the actual ingredients used to make the Products or how  
 2 those ingredients are made, including whether preservative or artificial ingredients  
 3 are included. Additionally, average consumers do not have the specialized knowledge  
 4 of a chemist or product-developer. Thus, reasonable consumers, like Plaintiff, cannot  
 5 discern from the Products' ingredient disclosures whether certain ingredients, are  
 6 artificial or preservatives. Furthermore, reasonable consumers, like Plaintiff, do not  
 7 ordinarily review information on the back or side panels of a consumer product's  
 8 packaging, like the Products' packaging, particularly dense, fine-print ingredient  
 9 disclosures, or review such information on websites. Indeed, studies show that only  
 10 approximately 7.7% to 11.6% of people even look at the side or back labels of  
 11 consumer goods, such as ingredient lists, before they buy it.<sup>23</sup>

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 14 <sup>23</sup> Grunert, Klaus, et. al, *Nutrition knowledge, and use and understanding of nutrition information*  
 15 *on food labels among consumers in the UK*, 55 *Appetite* 177, at 179-181 (2010) available at  
 16 [https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A4](https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6655A&originRegion=us-east-1&originCreation=20220720162546)  
 17 [87F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6](https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6655A&originRegion=us-east-1&originCreation=20220720162546)  
 18 [655A&originRegion=us-east-1&originCreation=20220720162546](https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6655A&originRegion=us-east-1&originCreation=20220720162546) (consumer purchasing behavior  
 19 study using in-store observation and interview data collection methodology to realistically estimate  
 20 the degree consumers use nutritional information (found on side/back panels of food product labels  
 21 and packaging), finding: (1) only **11.6% of respondents**, who looked at a product and placed it in  
 22 their shopping cart, **were actually observed looking at the side/back panels of its packaging or**  
 23 **labels** (panels other than the front panel) before placing it in the cart; (2) of those who looked at the  
 24 side/back panels, only 31.8% looked at it the product "in detail" (i.e., 3.7% of respondents who  
 25 looked at the product, looked at side/back panels in detail)); and (3) the **respondents self-reported**  
 26 **frequency of reviewing side/back panels** (for nutritional information) **is overreported by 50%**  
 27 when the in-store interview data and observational data are compared); Grunert, Klaus, et. al, *Use*  
 28 *and understanding of nutrition information on food labels in six European countries*, 18(3) *Journal*  
 of *Public Health* 261, 261, 263, 266 (2010), available at  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2967247/> (last accessed February 24, 2025)  
 (consumer purchasing behavior study using in-store observation and interview data collection  
 methodology to evaluate whether people look at food labels before buying them, where they looked,  
 and how long they looked, finding: (1) respondents spent, on average, approximately 35 seconds,  
 per product, on products they bought; and (2) 62.6% of respondents looked at the front packaging,  
 and **only 7.7% looked elsewhere (side/back panels) on the packaging**, for products they bought);  
 Benn, Yael, et al., *What information do consumers consider and how do they look for it, when*  
*shopping for groceries online*, 89 *Appetite* 265, 265, 270 (2015), available at  
<https://www.sciencedirect.com/science/article/pii/S0195666315000422#bib0060> (last accessed  
 February 24, 2025) (consumer purchasing behavior study using online eye-movement tracking and  
 recordation, finding: (1) once on the product webpages, respondents tend to look at the pictures of  
 products, rather than examine detailed product information; and (2) by comparison to pictures of  
 products where 13.83-19.07% of respondents fixated, far less fixated on subsidiary information:  
 4.17% of respondents looked at nutrition information, 3.30% ingredients, 2.97% allergy  
 information, and 0.09% recycling information for example).

1 33. The average consumer spends generally not more than 13 seconds to  
 2 make an in-store purchasing decision.<sup>24</sup> That decision is heavily based upon the  
 3 product's front labeling because consumers do not have time to review and read every  
 4 portion of the label and inspect in detail the rear label which depicts in small print the  
 5 ingredients.

- 6 a. **Defendant's Knowledge.** Defendant knew, or should have known,  
 7 that the Challenged Representations were false, misleading, deceptive,  
 8 and unlawful, at the time that Defendant manufactured, marketed,  
 9 advertised, labeled, and sold the Products using the Challenged  
 10 Representations to Plaintiff and the Class. Defendant intentionally and  
 11 deliberately used the Challenged Representations, alongside their  
 12 massive marketing campaign and brand strategy, to cause Plaintiff and  
 13 similarly situated consumers to buy the Products believing that the  
 14 Challenged Representations are true. **Knowledge of Falsity.**  
 15 Defendant marketed the Products with the Challenged  
 16 Representations, but Defendant opted to formulate and manufacture  
 17 them in a manner that does not conform to these representations.  
 18 Specifically, Defendant advertised and labeled the Products with the  
 19 Challenged Representations, but, instead of using only non-artificial  
 20 and non-preservative ingredients, Defendant chose to make the  
 21 Products with citric acid, a well-documented artificial preservative.
- 22 b. **Knowledge of Reasonable Consumers' Perception.** Defendant  
 23 knew, or should have known, that the Challenged Representations  
 24 would lead reasonable consumers into believing that the Products were  
 25 preservative free—i.e., the Products do not contain artificial  
 26 preservative ingredients. Not only has Defendant labeled the Products  
 27 with the Challenged Representations and executed a long-standing  
 28 brand strategy and advertising campaign to identify the Products with  
 the Challenged Representations, but Defendant also has an obligation  
 under section 5 of the Federal Trade Commission Act, codified at 15  
 U.S.C. §§ 45, to evaluate its marketing claims from the perspective of  
 the reasonable consumer. That means Defendant was statutorily  
 obligated to consider whether the Challenged Representations, be it in  
 isolation or conjunction with its marketing campaign, would mislead  
 reasonable consumers into believing that the Products were made of  
 only non-artificial-preservative ingredients. Thus, Defendant either  
 knew the Challenged Representations were misleading before it  
 marketed the Products to the Class, including Plaintiff, or Defendant

<sup>24</sup> Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN (Jan. 13, 2015), <https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-window/> (citing *Shopping Takes Only Seconds... In-Store and Online*, EHRENBERG-BASS INSTITUTE OF MARKETING SCIENCE (2015)) (last visited February 24, 2025).



1 would have known that it was deceptive had Defendant complied with  
2 its statutory obligations.

3 c. **Knowledge of Materiality.** Defendant knew or should have known  
4 that the Challenged Representations are material to consumers. *First*,  
5 manufacturers and marketers, like Defendant, generally reserve the  
6 front primary display panel of labels on consumer products for the  
7 most important and persuasive information, which they believe will  
8 motivate consumers to buy the products. Here, the conspicuousness of  
9 the Challenged Representations on the Products' labels demonstrate  
10 Defendant's awareness of its importance to consumers and  
11 Defendant's understanding that consumers prefer and are motivated to  
12 buy products that conform to the Challenged Representations. *Second*,  
13 manufacturers and marketers repeat marketing claims to emphasize  
14 and characterize a brand or product line, shaping the consumers'  
15 expectations, because they believe those repeated messages will drive  
16 consumers to buy the Products. Here, the constant, unwavering use of  
17 the Challenged Representations on the Products, advertisements, and  
18 throughout Defendant's marketing campaign, evidence Defendant's  
19 awareness that the falsely advertised Product-attribute is important to  
20 consumers. It also evidences Defendant's intent to convince  
21 consumers that the Products conform to the Challenged  
22 Representations and, ultimately, drive sales.

23 d. **Defendant Continued Deception, Despite Its Knowledge.**  
24 Defendant, as the manufacturer and marketer of the Products, had  
25 exclusive control over the Challenged Representations' inclusion on  
26 the Products' labels, and advertisements—i.e., Defendant readily and  
27 easily could have stopped using the Challenged Representations to sell  
28 the Products. However, despite Defendant's knowledge of the  
Challenged Representations' falsity, and Defendant's knowledge that  
consumers reasonably rely on the Challenged Representations in  
deciding to buy the Products, Defendant deliberately chose to market  
the Products with the Challenged Representations thereby misleading  
consumers into buying or otherwise overpaying for the Products.  
Thus, Defendant knew, or should have known, at all relevant times,  
that the Challenged Representations mislead reasonable consumers,  
such as Plaintiff, into buying the Products to attain the product-  
attributes that Defendant falsely advertised and warranted. Indeed,  
notwithstanding Plaintiff's demand to Defendant to stop misleading  
consumers with the Challenged Representations, Defendant has  
continued to market the Products using the Challenged  
Representations.

34. By letter dated December 9, 2024, Plaintiff advised Defendant of its false  
and misleading claims pursuant to California Civil Code Section 1782, subdivision  
(a) regarding Defendant's use of citric acid – a preservative ingredient. Plaintiff has  
provided Defendant with notice of its violations of the CLRA pursuant to Civil Code  
§ 1782(a).

1           **D. No Adequate Remedy at Law**

2           35. **No Adequate Remedy at Law.** Plaintiff and members of the Class are  
3 entitled to equitable relief as no adequate remedy at law exists.

4  
5           a. **Broader Statutes of Limitations.** The statutes of limitations for the  
6 causes of action pled herein vary. The limitations period is four years for  
7 claims brought under the UCL, which is one year longer than the statutes  
8 of limitations under the FAL and CLRA. In addition, the statutes of  
9 limitations vary for certain states' laws for breach of warranty and unjust  
10 enrichment/restitution, between approximately 2 and 6 years. Thus,  
11 California Subclass members who purchased the Products more than 3  
12 years prior to the filing of the complaint will be barred from recovery if  
equitable relief were not permitted under the UCL. Similarly, Nationwide  
Class members who purchased the Products prior to the furthest reach-  
back under the statute of limitations for breach of warranty, will be barred  
from recovery if equitable relief were not permitted for restitution/unjust  
enrichment.

13           b. **Broader Scope of Conduct.** In addition, the scope of actionable  
14 misconduct under the unfair prong of the UCL is broader than the other  
15 causes of action asserted herein. It includes, for example, Defendant's  
16 overall unfair marketing scheme to promote and brand the Products with  
17 the Challenged Representations, across a multitude of media platforms,  
18 including the Product's labels, over a long period of time, in order to gain  
19 an unfair advantage over competitor products and to take advantage of  
20 consumers' desire for products that comport with the Challenged  
21 Representation. The UCL also creates a cause of action for violations of  
22 law (such as statutory or regulatory requirements and court orders related  
23 to similar representation and omission made on the type of products at  
24 issue). Thus, Plaintiff and Class members may be entitled to restitution  
25 under the UCL, while not entitled to damages under other causes of action  
26 asserted herein (e.g., the FAL requires actual or constructive knowledge  
27 of the falsity; the CLRA is limited to certain types of plaintiff (an  
28 individual who seeks or acquires, by purchase or lease, any goods or  
services for personal, family, or household purposes) and other statutorily  
enumerated conduct). Similarly, unjust enrichment/restitution is broader  
than breach of warranty. For example, in some states, breach of warranty  
may require privity of contract or pre-lawsuit notice, which are not  
typically required to establish unjust enrichment/restitution. Thus,  
Plaintiff and Class members may be entitled to recover under unjust  
enrichment/restitution, while not entitled to damages under breach of  
warranty, because they purchased the products from third-party retailers  
or did not provide adequate notice of a breach prior to the commencement  
of this action.

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- c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because Defendant continues to misrepresent the Products with the Challenged Representations. Injunctive relief is necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Products that has resulted from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements that the Products’ Challenged Representations are not true and providing accurate information about the Product’s true nature; and/or requiring prominent qualifications and/or disclaimers on the Products’ front label concerning the Products’ true nature. An injunction requiring affirmative disclosures to dispel the public’s misperception and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages). In addition, Plaintiff is *currently* unable to accurately quantify the damages caused by Defendant’s future harm, because discovery and Plaintiff’s investigation have not yet completed, rendering injunctive relief all the more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Products sales, and quantities of past/future Product sales.
- d. **Public Injunction.** Further, because a “public injunction” is available under the UCL, damages will not adequately “benefit the general public” in a manner equivalent to an injunction.
- e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA are claims asserted on behalf of Plaintiff and the California Subclass against Defendant, while breach of warranty and unjust enrichment/restitution are asserted on behalf of Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as restitution, would bar recovery for non-California members of the Class. In other words, legal remedies available or adequate under the California-specific causes of action (such as the UCL, FAL, and CLRA) have no impact on this Court’s jurisdiction to award equitable relief under the remaining causes of action asserted on behalf of non-California putative class members.

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1 **CLASS ALLEGATIONS**

2 36. **Class Definition.** Plaintiff brings this action as a class action pursuant to  
3 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all  
4 others similarly situated, and as members of the Classes defined as follows:

5 All persons or entities that, within four years prior to the filing  
6 of this Complaint through present, purchased the Products in  
7 the United States, displaying the Challenged Representations  
8 on the Products’ labels, for purposes other than resale  
9 (“**Nationwide Class**”); and

10 All persons or entities that, within four years prior to the filing  
11 of this Complaint through present, purchased the Products in  
12 California, displaying the Challenged Representations on the  
13 Products’ labels, for purposes other than resale (“**California  
14 Subclass**”)

15 (“**Nationwide Class**” and “**California Subclass**,” collectively, “**Class**”).

16 37. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant,  
17 its assigns, successors, and legal representatives; (ii) any entities in which Defendant  
18 has controlling interests; (iii) federal, state, and/or local governments, including, but  
19 not limited to, their departments, agencies, divisions, bureaus, boards, sections,  
20 groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this  
21 matter and person within the third degree of consanguinity to such judicial officer.

22 38. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves  
23 the right to amend or otherwise alter the class definitions presented to the Court at the  
24 appropriate time in response to facts learned through discovery, legal arguments  
25 advanced by Defendant, or otherwise.

26 39. **Numerosity:** Members of the Class are so numerous that joinder of all  
27 members is impracticable. Upon information and belief, the Nationwide Class  
28 consists of tens of thousands of purchasers (if not more) dispersed throughout the  
United States, and the California Subclass likewise consists of thousands of

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1 purchasers (if not more) dispersed throughout the State of California. Accordingly, it  
2 would be impracticable to join all members of the Class before the Court.

3 **40. Common Questions Predominate:** There are numerous and substantial  
4 questions of law or fact common to all members of the Class that predominate over  
5 any individual issues. Included within the common questions of law or fact are:

- 6 a. Whether Defendant engaged in unlawful, unfair or deceptive business  
7 practices by advertising and selling the Products;
- 8 b. Whether Defendant's conduct of advertising and selling the Products as  
9 being preservative free and natural, creating the reasonable assumption  
10 that the Products do not contain any artificial preservative ingredients,  
11 when the Products contains citric acid, constitutes an unfair method of  
12 competition, or unfair or deceptive act or practice, in violation of Civil  
13 Code section 1750, *et seq.*
- 14 c. Whether Defendant used deceptive representation in connection with the  
15 sale of the Products in violation of Civil Code section 1750, *et seq.*;
- 16 d. Whether Defendant represented that the Products have characteristics or  
17 quantities that they do not have in violation of Civil Code section 1750,  
18 *et seq.*;
- 19 e. Whether Defendant advertised the Products with intent not to sell it as  
20 advertised in violation of Civil Code section 1750, *et seq.*;
- 21 f. Whether Defendant's labeling and advertising of the Products is untrue  
22 or misleading in violation of Business and Professions Code section  
23 17500, *et seq.*;
- 24 g. Whether Defendant knew or by the exercise of reasonable care should  
25 have known its labeling and advertising was and is untrue or misleading  
26 in violation of Business and Professions Code section 17500, *et seq.*;
- 27 h. Whether Defendant's conduct is an unfair business practice within the  
28 meaning of Business and Professions Code section 17200, *et seq.*
- i. Whether Defendant's conduct is a fraudulent business practice within the  
meaning of Business and Professions Code section 17200, *et seq.*
- j. Whether Defendant's conduct is an unlawful business practice within the  
meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Plaintiff and the Class paid more money for the Products than  
they actually received;
- l. How much more money Plaintiff and the Class paid for the Products than  
they actually received;

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- m. Whether Defendant’s conduct constitutes breach of warranty;
- n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- o. Whether Defendant was unjustly enriched by its unlawful conduct.

41. **Typicality:** Plaintiff’s claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members, purchased Defendant’s misleading and deceptive Products. Defendant’s unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant’s conduct. Plaintiff’s and Class Members’ claims arise from the same practices and course of conduct and are based on the same legal theories.

42. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members’ interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

43. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant’s unlawful conduct will continue without remedy while Defendant profits from and enjoy its ill-gotten gains;
- c. Given the size of individual Class Members’ claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members

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have no substantial interest in individually controlling the prosecution of individual actions;

- d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused to them by Defendant.

44. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

45. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

46. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**COUNT ONE**

**Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.***

***(On Behalf of the California Subclass)***

47. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

48. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products within the applicable statute of limitations.

1           49. **The UCL.** California Business & Professions Code, sections 17200, *et*  
2 *seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that  
3 “unfair competition shall mean and include unlawful, unfair or fraudulent business  
4 practices and unfair, deceptive, untrue or misleading advertising.”

5           50. **False Advertising Claims.** Defendant, in its labeling and advertising of  
6 the Products, made false and misleading statements and fraudulent omissions  
7 regarding the quality and characteristics of the Products—specifically, the Challenged  
8 Representations (i.e., that the Products contain no artificial preservatives and are  
9 natural food) — despite the fact the Products contain citric acid, a well-documented  
10 artificial preservative. Such claim and omission appear on the front labels of the  
11 Products, which are sold at retail stores, point-of-purchase displays, and online.

12           51. **Defendant’s Deliberately False and Fraudulent Marketing Scheme.**  
13 Defendant does not have any reasonable basis for the claims about the Products made  
14 in Defendant’s advertising and on Defendant’s labeling because the Products contain  
15 citric acid, a well-documented artificial preservative. Defendant knew and knows that  
16 the Products contain citric acid, yet Defendant intentionally advertises and markets  
17 the Products to cause reasonable consumers to believe that the Products are  
18 preservative free and natural.

19           52. **False Advertising Claims Cause Purchase of Product.** Defendant’s  
20 labeling and advertising of the Products led to, and continue to lead to, reasonable  
21 consumers, including Plaintiff, believing that the Products were preservative free, to  
22 the exclusion of artificial preservative ingredients.

23           53. **Injury In Fact.** Plaintiff and the California Subclass have suffered injury  
24 in fact and have lost money or property as a result of and in reliance upon Defendant’s  
25 Challenged Representations—namely Plaintiff and the California Subclass lost the  
26 purchase price for the Products they bought from Defendant.

27           54. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein,  
28 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.



1 The UCL prohibits unfair competition and provides, in pertinent part, that “unfair  
2 competition shall mean and include unlawful, unfair or fraudulent business practices  
3 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code §  
4 17200. In addition, Defendant’s use of various forms of advertising media to  
5 advertise, call attention to, or give publicity to the sale of goods or merchandise that  
6 are not as represented in any manner constitutes unfair competition, unfair, deceptive,  
7 untrue or misleading advertising, and an unlawful business practice within the  
8 meaning of Business and Professions Code Sections 17200 and 17531, which  
9 advertisements have deceived and are likely to deceive the consuming public, in  
10 violation of Business and Professions Code Section 17200.

11 **55. No Reasonably Available Alternatives/Legitimate Business Interests.**

12 Defendant failed to avail itself of reasonably available, lawful alternatives to further  
13 its legitimate business interests.

14 **56. Business Practice.** All of the conduct alleged herein occurred and  
15 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of  
16 a pattern, practice and/or generalized course of conduct, which will continue on a  
17 daily basis until Defendant voluntarily alter its conduct or Defendant is otherwise  
18 ordered to do so.

19 **57. Injunction.** Pursuant to Business and Professions Code Sections 17203  
20 and 17535, Plaintiff and the members of the California Subclass seek an order of this  
21 Court enjoining Defendant from continuing to engage, use, or employ their practice  
22 of labeling and advertising the sale and use of the Products. Likewise, Plaintiff and  
23 the members of the California Subclass seek an order requiring Defendant to disclose  
24 such misrepresentation, and to preclude Defendant’s failure to disclose the existence  
25 and significance of said misrepresentation.

26 **58. Causation/Damages.** As a direct and proximate result of Defendant’s  
27 misconduct in violation of the UCL, Plaintiff and members of the California Subclass  
28 were harmed in the amount of the purchase price they paid for the Products. Further,

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1 Plaintiff and members of the California Subclass have suffered and continue to suffer  
2 economic losses and other damages including, but not limited to, the amounts paid  
3 for the Products, and any interest that would have accrued on those monies, in an  
4 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
5 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains  
6 to compensate Plaintiff and the California Subclass for said monies, as well as  
7 injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future harm  
8 that will result.

9       **59. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
10 cause of action for violation of the UCL on behalf of Plaintiff and the California  
11 Subclass. Defendant’s unfair, fraudulent, and unlawful conduct described herein  
12 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of  
13 punitive damages as permitted by law. Defendant’s misconduct is malicious as  
14 Defendant acted with the intent to cause Plaintiff and consumers to pay for a Products  
15 that they were not, in fact, receiving. Defendant willfully and knowingly disregarded  
16 the rights of Plaintiff and consumers as Defendant was, at all times, aware of the  
17 probable dangerous consequences of their conduct and deliberately failed to avoid  
18 misleading consumers, including Plaintiff. Defendant’s misconduct is oppressive as,  
19 at all relevant times, said conduct was so vile, base, and/or contemptible that  
20 reasonable people would look down upon it and/or otherwise would despise such  
21 corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel  
22 and unjust hardship in knowing disregard of their rights. Defendant’s misconduct is  
23 fraudulent as Defendant intentionally misrepresented and/or concealed material facts  
24 with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting  
25 malice, oppression, and/or fraud was committed, authorized, adopted, approved,  
26 and/or ratified by officers, directors, and/or managing agents of Defendant.

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1 **“Unfair” Prong**

2 60. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when  
3 “any injury it causes outweighs any benefits provided to consumers and the injury is  
4 one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto*  
5 *Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

6 61. **Injury.** Defendant’s actions of mislabeling the Products with the  
7 Challenged Representations do not confer any benefit to consumers; rather, doing so  
8 causes injuries to consumers, who do not receive a product commensurate with their  
9 reasonable expectations, overpay for the Products, and receive a product of lesser  
10 standards than what they reasonably expected to receive. Consumers cannot avoid  
11 any of the injuries caused by Defendant’s deceptive labeling and/or advertising of the  
12 Products. Accordingly, the injuries caused by Defendant’s deceptive labeling and  
13 advertising outweigh any benefits.

14 62. **Balancing Test.** Some courts conduct a balancing test to decide if a  
15 challenged activity amounts to unfair conduct under California Business and  
16 Professions Code Section 17200. They “weigh the utility of the Defendant’s conduct  
17 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada,*  
18 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

19 63. **No Utility.** Here, Defendant’s conduct of labeling the Products as  
20 containing “No Artificial Preservatives” and “natural food”—when the Products  
21 contain citric acid, has no utility and financially harms purchasers. Thus, the utility of  
22 Defendant’s conduct is vastly outweighed by the gravity of harm.

23 64. **Legislative Declared Policy.** Some courts require that “unfairness must  
24 be tethered to some legislative declared policy or proof of some actual or threatened  
25 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735  
26 (9th Cir. 2007).

27 65. **Unfair Conduct.** Defendant’s labeling and advertising of the Products,  
28 as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes

1 unfair conduct. Defendant knew or should have known of its unfair conduct.  
2 Defendant's misrepresentation constitutes an unfair business practice within the  
3 meaning of California Business and Professions Code Section 17200.

4       **66. Reasonably Available Alternatives.** There existed reasonably available  
5 alternatives to further Defendant's legitimate business interests, other than the  
6 conduct described herein. Defendant could have refrained from labeling the Products  
7 with the Challenged Representations.

8       **67. Defendant's Wrongful Conduct.** All of the conduct alleged herein  
9 occurs and continues to occur in Defendant's business. Defendant's wrongful conduct  
10 is part of a pattern or generalized course of conduct repeated on thousands of  
11 occasions daily.

12       **68. Injunction.** Pursuant to Business and Professions Code Sections 17203,  
13 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
14 from continuing to engage, use, or employ their practices of labeling the Products  
15 with the Challenged Representation.

16       **69. Causation/Damages.** Plaintiff and the California Subclass have suffered  
17 injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff  
18 and the California Subclass paid an unwarranted premium for the Products.  
19 Specifically, Plaintiff and the California Subclass paid for Products that were  
20 supposedly artificial preservative free, but instead purchased Products that contain  
21 citric acid, a well-documented preservative. Plaintiff and the California Subclass  
22 would not have purchased the Products, or would have paid substantially less for the  
23 Products, if they had known that the Products' advertising and labeling were  
24 deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of  
25 ill-gotten gains pursuant to the UCL.

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1 **“Fraudulent” Prong**

2 70. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits  
3 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*  
4 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

5 71. **Fraudulent & Material Challenged Representation.** Defendant used  
6 the Challenged Representations with the intent to sell the Products to consumers,  
7 including Plaintiff and the California Subclass. The Challenged Representations are  
8 false, and Defendant knew or should have known of its falsity. The Challenged  
9 Representations are likely to deceive consumers into purchasing the Products because  
10 it is material to the average, ordinary, and reasonable consumer.

11 72. **Fraudulent Business Practice.** As alleged herein, the misrepresentation  
12 by Defendant constitutes a fraudulent business practice in violation of California  
13 Business & Professions Code Section 17200.

14 73. **Reasonable and Detrimental Reliance.** Plaintiff and the California  
15 Subclass reasonably and detrimentally relied on the material and false Challenged  
16 Representations to their detriment in that they purchased the Products.

17 74. **Reasonably Available Alternatives.** Defendant had reasonably  
18 available alternatives to further its legitimate business interests, other than the conduct  
19 described herein. Defendant could have refrained from labeling the Products with the  
20 Challenged Representations. Alternatively, they could have refrained from including  
21 citric acid as an ingredient within the Products.

22 75. **Business Practice.** All of the conduct alleged herein occurs and continues  
23 to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern  
24 or generalized course of conduct.

25 76. **Injunction.** Pursuant to Business and Professions Code Sections 17203,  
26 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
27 from continuing to engage, use, or employ their practice of labeling the Products with  
28 the Challenged Representations.

1           77. **Causation/Damages.** Plaintiff and the California Subclass have suffered  
2 injury in fact and have lost money as a result of Defendant’s unfair conduct. Plaintiff  
3 and the California Subclass paid an unwarranted premium for the Products.  
4 Specifically, Plaintiff and the California Subclass paid for a Products that was  
5 supposedly contained no artificial preservatives, but instead purchased Products that  
6 contain citric acid, a well-documented artificial preservative. Plaintiff and the  
7 California Subclass would not have purchased the Products, or would have paid  
8 substantially less for the Products, if they had known that the Products’ advertising  
9 and labeling were deceptive. Accordingly, Plaintiff seeks damages, restitution and/or  
10 disgorgement of ill-gotten gains pursuant to the UCL.

11   **“Unlawful” Prong**

12           78. **Unlawful Standard.** The UCL identifies violations of other laws as  
13 “unlawful practices that the unfair competition law makes independently actionable.”  
14 *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

15           79. **Violations of CLRA and FAL.** Defendant’s labeling of the Products, as  
16 alleged herein, violates California Civil Code sections 1750, *et seq.* (the “**CLRA**”)  
17 and California Business and Professions Code sections 17500, *et seq.* (the “**FAL**”) as  
18 set forth below in the sections regarding those causes of action.

19           80. **Additional Violations.** Defendant’s conduct in making the false  
20 representation described herein constitutes a knowing failure to adopt policies in  
21 accordance with and/or adherence to applicable laws, as set forth herein, all of which  
22 are binding upon and burdensome to its competitors. This conduct engenders an unfair  
23 competitive advantage for Defendant, thereby constituting an unfair, fraudulent  
24 and/or unlawful business practice under California Business & Professions Code  
25 sections 17200-17208. Additionally, Defendant’s misrepresentation of material facts,  
26 as set forth herein, violates California Civil Code sections 1572, 1573, 1709, 1710,  
27 1711, and 1770, as well as the common law.

1           81. **Unlawful Conduct.** Defendant’s labeling and advertising of the  
2 Products, as alleged herein, are false, deceptive, misleading, and unreasonable, and  
3 constitute unlawful conduct. Defendant knew or should have known of its unlawful  
4 conduct.

5           82. **Reasonably Available Alternatives.** Defendant had reasonably  
6 available alternatives to further its legitimate business interests, other than the conduct  
7 described herein. Defendant could have refrained from labeling the Products with the  
8 Challenged Representations and/or omitting the use of artificial preservative  
9 ingredients within the Products.

10           83. **Business Practice.** All of the conduct alleged herein occurs and continues  
11 to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern  
12 or generalized course of conduct.

13           84. **Injunction.** Pursuant to Business and Professions Code Section 17203,  
14 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
15 from continuing to engage, use, or employ its practice of false and deceptive  
16 advertising of the Products.

17           85. **Causation/Damages.** Plaintiff and the California Subclass have suffered  
18 injury in fact and have lost money as a result of Defendant’s unfair conduct. Plaintiff  
19 and the California Subclass paid an unwarranted premium for the Products.  
20 Specifically, Plaintiff and the California Subclass paid for a Products that were  
21 supposedly artificial preservative free, but instead purchased Products that contain  
22 citric acid – a preservative ingredient. Plaintiff and the California Subclass would not  
23 have purchased the Products, or would have paid substantially less for the Products,  
24 if they had known that the Products’ advertising and labeling were deceptive.  
25 Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten  
26 gains pursuant to the UCL.

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**COUNT TWO**

**Violation of California False Advertising Law**

**(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

**(*On Behalf of the California Subclass*)**

86. **Incorporation by reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

87. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

88. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading advertising[.]”

89. **False & Material Challenged Representations Disseminated to Public.** Defendant violated section 17500 when they advertised and marketed the Products through the unfair, deceptive, untrue, and misleading Challenged Representations disseminated to the public through the Products’ labeling, marketing, and advertising. This representation was false because the Products does not conform to it. The representation was material because it is likely to mislead a reasonable consumer into purchasing the Products.

90. **Knowledge.** In making and disseminating the representation alleged herein, Defendant knew or should have known that the representations were untrue or misleading, and acted in violation of § 17500.

91. **Intent to Sell.** Defendant’s Challenged Representations were specifically designed to induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

92. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further,



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1 Plaintiff and members of the Class have suffered and continue to suffer economic  
2 losses and other damages including, but not limited to, the amounts paid for the  
3 Products, and any interest that would have accrued on those monies, in an amount to  
4 be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the  
5 FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate  
6 Plaintiff and the California Subclass for said monies, as well as injunctive relief to  
7 enjoin Defendant’s misconduct prevent ongoing and future harm that will result.

8 93. **Punitive Damages.** Defendant’s unfair, fraudulent, and unlawful conduct  
9 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
10 warranting an award of punitive damages as permitted by law. Defendant’s  
11 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and  
12 consumers to pay for Products that they were not, in fact, receiving. Defendant  
13 willfully and knowingly disregarded the rights of Plaintiff and consumers as  
14 Defendant was aware of the probable dangerous consequences of its conduct and  
15 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant’s  
16 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,  
17 and/or contemptible that reasonable people would look down upon it and/or otherwise  
18 would despise such corporate misconduct. Said misconduct subjected Plaintiff and  
19 consumers to cruel and unjust hardship in knowing disregard of their  
20 rights. Defendant’s misconduct is fraudulent as Defendant, at all relevant times,  
21 intentionally misrepresented and/or concealed material facts with the intent to deceive  
22 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
23 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
24 officers, directors, and/or managing agents of Defendant.

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**COUNT THREE**

**Violation of California Consumers Legal Remedies Act**

**(Cal. Civ. Code §§ 1750, *et seq.*)**

**(*On Behalf of the California Subclass*)**

94. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

95. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

96. **CLRA Standard.** The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.

97. **Goods/Services.** The Products are a “good,” as defined by the CLRA in California Civil Code §1761(a).

98. **Defendant.** Defendant is a “person,” as defined by the CLRA in California Civil Code §1761(c).

99. **Consumers.** Plaintiff and members of the California Subclass are “consumers,” as defined by the CLRA in California Civil Code §1761(d).

100. **Transactions.** The purchase of the Products by Plaintiff and members of the California Subclass are “transactions” as defined by the CLRA under California Civil Code § 1761(e).

101. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by selling the Products to Plaintiff and the California Subclass through the false, misleading, deceptive, and fraudulent Challenged Representations.

a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [it] do[es] not have.”

1 b. Section 1770(a)(7) by representing that the Products “[is] of a particular  
2 standard, quality, or grade . . . [when] [it is] of another.”

3 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to  
4 sell [it] as advertised.”

5 102. **Knowledge.** Defendant’s uniform and material representation regarding  
6 the Products was likely to deceive, and Defendant knew or should have known that  
7 their representations were untrue and misleading.

8 103. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in  
9 that Defendant intentionally misled and withheld material information from  
10 consumers, including Plaintiff, to increase the sale of the Products.

11 104. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the  
12 California Subclass could not have reasonably avoided such injury. Plaintiff and  
13 members of the California Subclass were unaware of the existence of the facts that  
14 Defendant suppressed and failed to disclose, and Plaintiff and members of the  
15 California Subclass would not have purchased the Products and/or would have  
16 purchased it on different terms had they known the truth.

17 105. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass  
18 suffered harm as a result of Defendant’s violations of the CLRA because they relied  
19 on the Challenged Representations in deciding to purchase the Products. The  
20 Challenged Representations were a substantial factor. The Challenged  
21 Representations were material because a reasonable consumer would consider it  
22 important in deciding whether to purchase the Products.

23 106. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California  
24 Civil Code, section 1782, more than thirty days prior to the filing of this complaint,  
25 on or around December 9 of 2024, Plaintiff’s counsel, acting on behalf all members  
26 of the Class, mailed a Demand Letter, via U.S. certified mail, return receipt requested,  
27 addressed to Defendant Post Consumer Brands, LLC at its headquarters and principal  
28

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1 place of business (20802 Kensington Blvd. Lakeville, MN 55044), and its registered  
2 agent addresses (251 Little Falls Drive Wilmington, DE 19808).

3       **107. Causation/Damages.** As a direct and proximate result of Defendant's  
4 misconduct in violation of the CLRA, Plaintiff and members of the California  
5 Subclass were harmed in the amount of the purchase price they paid for the Products.  
6 Further, Plaintiff and members of the Class have suffered and continue to suffer  
7 economic losses and other damages including, but not limited to, the amounts paid  
8 for the Products, and any interest that would have accrued on those monies, in an  
9 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
10 violation of this Act in the form of damages, restitution, disgorgement of ill-gotten  
11 gains to compensate Plaintiff and the California Subclass for said monies.

12       **108. Injunction.** Given that Defendant's conduct violated California Civil  
13 Code section 1780, Plaintiff and members of the California Subclass are entitled to  
14 seek, and do hereby seek, injunctive relief to put an end to Defendant's violations of  
15 the CLRA and to dispel the public misperception generated, facilitated, and fostered  
16 by Defendant's false advertising campaign. Plaintiff has no adequate remedy at law.  
17 Without equitable relief, Defendant's unfair and deceptive practices will continue to  
18 harm Plaintiff and the California Subclass. Accordingly, Plaintiff seeks an injunction  
19 to enjoin Defendant from continuing to employ the unlawful methods, acts, and  
20 practices alleged herein pursuant to section 1780(a)(2), and otherwise requires  
21 Defendant to take corrective action necessary to dispel the public misperception  
22 engendered, fostered, and facilitated through Defendant's deceptive labeling of the  
23 Products with the Challenged Representations.

24       **109. Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct  
25 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
26 warranting an award of punitive damages as permitted by law. Defendant's  
27 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and  
28 consumers to pay for Products that they were not, in fact, receiving. Defendant



1 willfully and knowingly disregarded the rights of Plaintiff and consumers as  
2 Defendant was, at all times, aware of the probable dangerous consequences of its  
3 conduct and deliberately failed to avoid misleading consumers, including Plaintiff.  
4 Defendant's misconduct is oppressive as, at all relevant times, said conduct was so  
5 vile, base, and/or contemptible that reasonable people would look down upon it and/or  
6 otherwise would despise such corporate misconduct. Said misconduct subjected  
7 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their  
8 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times,  
9 intentionally misrepresented and/or concealed material facts with the intent to deceive  
10 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
11 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
12 officers, directors, and/or managing agents of Defendant. Accordingly, Plaintiff seeks  
13 an award of punitive damages against Defendant.

#### 14 **COUNT FOUR**

#### 15 **Breach of Warranty**

#### 16 ***(On Behalf of the Nationwide Class and California Subclass)***

17 110. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by  
18 reference all allegations contained in this complaint, as though fully set forth herein.

19 111. **Nationwide Class & California Subclass.** Plaintiff brings this claim  
20 individually and on behalf of the Class who purchased the Products within the  
21 applicable statute of limitations.

22 112. **Express Warranty.** By advertising and selling the Products at issue,  
23 Defendant made promises and affirmations of fact on the Products' labeling, and  
24 through their marketing and advertising, as described herein. This labeling and  
25 advertising constitute express warranties and became part of the basis of the bargain  
26 between Plaintiff and members of the Class and Defendant. Defendant purports,  
27 through the Products' labeling and advertising, to create express warranties that the  
28 Products, among other things, conforms to the Challenged Representations.

1           **113. Implied Warranty of Merchantability.** By advertising and selling the  
2 Products at issue, Defendant, a merchant of goods, made promises and affirmations  
3 of fact that the Products are merchantable and conform to the promises or affirmations  
4 of fact made on the Products' labeling, and through their marketing and advertising,  
5 as described herein. This labeling and advertising, combined with the implied  
6 warranty of merchantability, constitute warranties that became part of the basis of the  
7 bargain between Plaintiff and members of the Class and Defendant—to wit, that the  
8 Products, among other things, conform to the Challenged Representations.

9           **114. Breach of Warranty.** Contrary to Defendant's express warranties, the  
10 Products do not conform to the Challenged Representations and, therefore, Defendant  
11 breached its warranties about the Products and its qualities.

12           **115. Causation/Remedies.** As a direct and proximate result of Defendant's  
13 breach of express warranty, Plaintiff and members of the Class were harmed in the  
14 amount of the purchase price they paid for the Products. Further, Plaintiff and  
15 members of the Class have suffered and continue to suffer economic losses and other  
16 damages including, but not limited to, the amounts paid for the Products, and any  
17 interest that would have accrued on those monies, in an amount to be proven at trial.  
18 Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of  
19 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff  
20 and the Class for said monies, as well as injunctive relief to enjoin Defendant's  
21 misconduct to prevent ongoing and future harm that will result.

22           **116. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
23 cause of action for breach of warranty on behalf of Plaintiff and the Class.  
24 Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes  
25 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
26 damages as permitted by law. Defendant's misconduct is malicious as Defendant  
27 acted with the intent to cause Plaintiff and consumers to pay for Products that they  
28 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights

1 of Plaintiff and consumers as Defendant was aware of the probable dangerous  
2 consequences of its conduct and deliberately failed to avoid misleading consumers,  
3 including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said  
4 conduct was so vile, base, and/or contemptible that reasonable people would look  
5 down upon it and/or otherwise would despise such misconduct. Said misconduct  
6 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard  
7 of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant  
8 times, intentionally misrepresented and/or concealed material facts with the intent to  
9 deceive Plaintiff and consumers. The wrongful conduct constituting malice,  
10 oppression, and/or fraud was committed, authorized, adopted, approved, and/or  
11 ratified by officers, directors, and/or managing agents of Defendant.

## 12 COUNT FIVE

### 13 **Unjust Enrichment/Restitution**

#### 14 *(On Behalf of the Nationwide Class and California Subclass)*

15 **117. Incorporation by Reference.** Plaintiff re-alleges and incorporates by  
16 reference all allegations contained in this complaint, as though fully set forth herein.

17 **118. Nationwide Class & California Subclass.** Plaintiff brings this claim  
18 individually and on behalf of the Class who purchased the Products within the  
19 applicable statute of limitations.

20 **119. Plaintiff/Class Conferred a Benefit.** By purchasing the Products,  
21 Plaintiff and members of the Class conferred a benefit on Defendant in the form of  
22 the purchase price of the Products.

23 **120. Defendant's Knowledge of Conferred Benefit.** Defendant had  
24 knowledge of such benefit and Defendant appreciated the benefit because, were  
25 consumers not to purchase the Products, Defendant would not generate revenue from  
26 the sales of the Products.

27 **121. Defendant's Unjust Receipt Through Deception.** Defendant's owing  
28 acceptance and retention of the benefit is inequitable and unjust because the benefit

1 was obtained by Defendant's fraudulent, misleading, and deceptive representation  
2 and omission.

3       **122. Causation/Damages.** As a direct and proximate result of Defendant's  
4 unjust enrichment, Plaintiff and members of the Class were harmed in the amount of  
5 the purchase price they paid for the Products. Further, Plaintiff and members of the  
6 Class have suffered and continue to suffer economic losses and other damages  
7 including, but not limited to, the amounts paid for the Products, and any interest that  
8 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
9 Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or  
10 disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies,  
11 as well as injunctive relief to enjoin Defendant's conduct to prevent ongoing and  
12 future harm that will result.

13       **123. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
14 cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendant's  
15 unfair, fraudulent, and unlawful conduct described herein constitutes malicious,  
16 oppressive, and/or fraudulent conduct warranting an award of punitive damages as  
17 permitted by law. Defendant's misconduct is malicious as Defendant acted with the  
18 intent to cause Plaintiff and consumers to pay for a Products that they were not, in  
19 fact, receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff  
20 and consumers as Defendant was aware of the probable dangerous consequences of  
21 their conduct and deliberately failed to avoid misleading consumers, including  
22 Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said conduct  
23 was so vile, base, and/or contemptible that reasonable people would look down upon  
24 it and/or otherwise would despise such corporate misconduct. Said misconduct  
25 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard  
26 of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant  
27 times, intentionally misrepresented and/or concealed material facts with the intent to  
28 deceive Plaintiff and consumers. The wrongful conduct constituting malice,



1 oppression, and/or fraud was committed, authorized, adopted, approved, and/or  
2 ratified by officers, directors, and/or managing agents of Defendant.

3 **PRAYER FOR RELIEF**

4 124. WHEREFORE, Plaintiff, individually and on behalf of all others  
5 similarly situated, prays for judgment against Defendant as follows:

- 6 a. **Certification:** For an order certifying this action as a class action,  
7 appointing Plaintiff as the Class Representative, and appointing  
8 Plaintiff's Counsel as Class Counsel, consistent with applicable law;
- 9 b. **Declaratory Relief:** For an order declaring that Defendant's conduct  
10 violates the statutes and laws referenced herein, consistent with  
11 applicable law and pursuant to only those causes of action so permitted;
- 12 c. **Injunction:** For an order requiring Defendant to change its business  
13 practices to prevent or mitigate the risk of the consumer deception and  
14 violations of law outlined herein. This includes, for example, orders that  
15 Defendant immediately ceases and desists from selling the unlawful  
16 Products in violation of law; that enjoin Defendant from continuing to  
17 market, advertise, distribute, and sell the Products in the unlawful manner  
18 described herein; that require Defendant to engage in an affirmative  
19 advertising campaign to dispel the public misperception of the Products  
20 resulting from Defendant's unlawful conduct; and/or that require  
21 Defendant to take all further and just corrective action, consistent with  
22 applicable law and pursuant to only those causes of action so permitted;
- 23 d. **Damages/Restitution/Disgorgement:** For an order awarding monetary  
24 compensation in the form of damages, restitution, and/or disgorgement to  
25 Plaintiff and the Class, consistent with applicable law and pursuant to  
26 only those causes of action so permitted;
- 27 e. **Punitive Damages/Penalties:** For an order awarding punitive damages,  
28 statutory penalties, and/or monetary fines, consistent with applicable law  
and pursuant to only those causes of action so permitted;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and  
costs, consistent with applicable law and pursuant to only those causes of  
action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and  
post-judgment interest, consistent with applicable law and pursuant to  
only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court  
deems just and proper.

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**DEMAND FOR JURY TRIAL**

125. Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

**MALK & POGO LAW GROUP, LLP**



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Valter Malkhasyan, Esq.  
Erik Pogosyan, Esq.

*Counsel for Plaintiff and the  
Proposed Class*

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