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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SCOTT BISHOP, individually and on behalf of all others similarly situated,

Plaintiff,

v.

7-ELEVEN, INC.

Defendant.

Case No5:12-CV-02621-EJD

SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

1. Plaintiff, Scott Bishop ("Plaintiff"), through his undersigned attorneys, brings this lawsuit against Defendant 7-Eleven, Inc. ("Defendant" or "7-Eleven") as to his own acts upon personal knowledge, and as to all other matters upon information and belief.

2. The "Class Period" is May 21, 2008 to the date of Class notice.

3. Plaintiff purchased Defendant's 7-Select Cheddar & Sour Cream potato chips ("Cheddar & Sour Cream Chips") during the Class Period. Pictures of the Cheddar & Sour Cream Chips are attached as Exhibit 1 and specific descriptions of the label are included below.

4. "Class Products" are Defendant's Cheddar & Sour Cream Chips and Defendant's following substantially similar potato chips:

- 7-Select Barbeque Kettle Style Chips;
- 7-Select Barbeque Potato Chips;
- 7-Select Big Bite Hot Dog Chips;
- 7-Select Jalapeño Kettle Style Chips;
- 7-Select Salt & Pepper Kettle Style Chips;
- 7-Select Original Kettle Style Chips;

- 7-Select Original Potato Chips;
- 7-Select Salt & Vinegar Kettle Chips;
- 7-Select Sour Cream & Onion Kettle Chips; and
- 7-Select Sour Cream & Onion Chips.

Defendant's Cheddar & Sour Cream Chips and the Class Products all bear the same identical unlawful and misleading "0g Trans Fat" label statement. Defendant's Cheddar & Sour Cream Chips and the Class Products all bear the same identical unlawful and misleading "No Cholesterol" label statement. The Class Products differ only in flavor from Defendant's Cheddar & Sour Cream Chips.

SUMMARY OF THE CASE

A. Unlawful Prong of the UCL

5. Plaintiff's case has two distinct facets. First, the "UCL unlawful" part based on the unlawful sale of an illegal product. Plaintiff's first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiff alleges that Defendant packages and labels Class Products, including its Cheddar & Sour Cream Chips, in violation of California's Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA"). These violations do not require a finding that the labels are "misleading" and alone render the Class Products, including Defendant's Cheddar & Sour Cream Chips "misbranded."

6. Under California law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold or possessed, have no economic value and are legally worthless. Cal. Health & Safety Code § 110760. Indeed, the sale or possession of misbranded food is a criminal act in California. The sale of misbranded products is illegal under California and federal law and can result in the seizure of misbranded products and the imprisonment of those involved.

7. California law is clear that reliance by Plaintiff or the Class members is not a necessary element for a UCL plaintiff to prevail under the unlawful prong for a claim based on the sale of an illegal product. *See Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1020 (9th Cir.

2011)(explaining that a California state law claim under the UCL focuses on "defendant's conduct," rather than any reliance by plaintiff or individualized proof of deception or injury); *see also Ries v. Arizona Beverages USA, LLC*, 287 F.R.D. 523, 537-38 (N.D. Cal. 2012)(stating liability is imposed and relief available under the unlawful prong "without individualized proof of deception, reliance, and injury."); *In re Tobacco II Cases*, 46 Cal. 4th 298, 325, fn 17 (Cal. 2009))("We emphasize that our discussion of causation in this case is limited to such cases where, as here, a UCL action is based on a fraud theory involving false advertising and misrepresentations to consumers. The UCL defines "unfair competition" as "includ[ing] any unlawful, unfair or fraudulent business act or practice …." (§ 17200) There are doubtless many types of unfair business practices in which the concept of reliance, as discussed here, has no application."); *Medrazo v. Honda of N. Hollywood*, 205 Cal. App. 4th 1, 12 (March 21, 2012) ("the Supreme Court also explained that an actual reliance requirement does not apply to UCL actions that are not based upon a fraud theory"); *Steroid Hormone Product Cases*, 181 Cal. App. 4th 145, 159 (Cal. App. 2d Dist. 2010)(holding that 'California courts have repeatedly held that relief under the UCL is available without individualized proof of deception, reliance and injury.'); *Frezza v. Google Inc*., 5:12-CV-00237-RMW, 2013 WL 1736788 at *6 n.3 (N.D. Cal. Apr. 22, 2013) (". . . no reliance is required to prove violations of the UCL based on "unlawful" or "unfair" conduct."); *Olivera v. Am. Home Mortg. Servicing, Inc*., 689 F. Supp. 2d 1218, (N.D. Cal. 2010) ("For claims based on the "unfair" or "unlawful" prong of the UCL claim, courts have held that the plaintiff need not allege reliance on misrepresentations, and may allege 'causation more generally.'"); *Rand ex rel. Dolch v. Am. Nat. Ins. Co.*, CIV, C 09-0639 SI, 2010 WL 2595142 at *3 (N.D. Cal. June 22, 2010) ("Moreover, reliance is only required under the fraud prong of the UCL, and is not an element under the "unfair" or "unlawful" prongs of that statute'); *In re Ditropan XL Antitrust Litig.*, 529 F. Supp. 2d 1098, 1106 (N.D. Cal., May 11, 2007)("Plaintiffs need not allege reliance.…However, where, as here, plaintiffs allege that they were harmed by other types of misconduct actionable under the UCL the Court finds no basis for requiring reliance on misrepresentations."); "[t]here are a number of theories that have been litigated and rejected as defenses to claims alleging 'unlawful'

business practices . . . . Lack of Deception No Defense: That no one was actually deceived by the practice is not a defense to a section 17200 "unlawful" business practice claim. Stern, § 5.166, BUS. & PROF. C. § 17200 PRACTICE (The Rutter Group 2012).

8. Thus, the unlawful sale of a misbranded product that was illegal to sell or possess – standing alone without any allegations of deception by Defendant, or review of or reliance on the labels by Plaintiff – gives rise to Plaintiff's first cause of action under the UCL. In short, Defendant's injury causing unlawful conduct in selling an illegal product to an unsuspecting consumer is the only necessary element needed for UCL liability. All Plaintiff needs to show is that he bought an unlawful product and was injured as a result. This claim does not sound in fraud. In the present case, Plaintiff was injured by the Defendant's illegal sale of its misbranded Cheddar & Sour Cream Chips. Plaintiff paid money to purchase an illegal product that was worthless and could not be legally sold or possessed. Plaintiff was also unwittingly placed in a worse legal situation as a result of Defendant's unlawful sale of an illegal product to him. Plaintiff would not have purchased Defendant's Cheddar & Sour Cream Chips had he known that the chips were illegal and could not be lawfully possessed. No reasonable consumer would purchase such a product. The Class suffered the same injuries as Plaintiff due to the Class' purchase of the Class Products.

9. Under California law, which is identical to federal law, Defendant's product listed below is unlawful because it is misbranded due to violations of the Sherman Law, as alleged herein:

Purchased Product	**Unlawful Label Statements**	**Sherman Law Violation (directly or through incorporation of FDCA)**
7 Select Cheddar & Sour Cream Potato Chips	"0g Trans Fat" "No Cholesterol"	21 C.F.R. § 101.13 21 C.F.R. § 101.62 Cal. Health & Safety Code § 110390 Cal. Health & Safety Code § 110395 Cal. Health & Safety Code § 1103398 Cal. Health & Safety Code § 110400 Cal. Health & Safety Code § 110660

		Cal. Health & Safety Code § 110665 Cal. Health & Safety Code § 110670 Cal. Health & Safety Code § 110705 Cal. Health & Safety Code § 110760 Cal. Health & Safety Code § 110765 Cal. Health & Safety Code § 110770

10. The Class Products, Defendant's 7 Select potato chip products, identified below (and in paragraphs 4, 23 and 47), which are substantially similar and have the identical unlawful "0g Trans Fat" and "No Cholesterol" label statements as Defendant's Cheddar & Sour Cream Chips are also unlawful under California and federal law. The misbranding of those labels is uniform, with the unlawful "0g Trans Fat" and "No Cholesterol"[1] statements which are found on Defendant's Cheddar & Sour Cream Chips also appearing on the following substantially similar products:

- 7-Select Barbeque Kettle Style Chips;
- 7-Select Barbeque Potato Chips;
- 7-Select Big Bite Hot Dog Chips;
- 7-Select Jalapeño Kettle Style Chips;
- 7-Select Salt & Pepper Kettle Style Chips;
- 7-Select Original Kettle Style Chips;
- 7-Select Original Potato Chips;
- 7-Select Salt & Vinegar Kettle Chips;
- 7-Select Sour Cream & Onion Kettle Chips; and
- 7-Select Sour Cream & Onion Chips.

[1] Defendant's "No Cholesterol" claim is also improper for an additional reason. This claim appears on Defendant's Cheddar & Sour Cream Chips and Defendant's products listed in paragraph 10 directly next to Defendant's "0g Trans Fat" statement. The term "Cholesterol Free" or "No Cholesterol" may be used on labeling of a food with a Referenced Amount Customarily Consumed (RACC) of two (2) tablespoons or less that contains more than 13g of total fat per 50g only if the following criteria, set forth in 21 CFR 101.62 (d)(1)(ii) are met: (1) the food contains less than 5mg of cholesterol per RACC and per labeled serving; (2) the food contains no ingredient that is generally understood by consumers to contain cholesterol; (3) the food contains 2g or less of saturated fatty acids per RACC; and (4) the label or labeling discloses the level of total fat in a serving… Where a product label states "no cholesterol" and contains more than 13 grams of fat per 50 grams but does not reveal the fat it contains per serving size on that panel, it is likewise misbranded. Defendants' snack products fail to meet the requirements to make a "No Cholesterol" claim as they contain more than 13 grams of fat per 50 grams and do not reveal the fat they contain per serving size on the panel. The Plaintiff read and relied on this illegal label statement when making his purchasing decision.

11. The product labels listed in paragraph 10 likewise violate the Sherman Law. The only difference between Defendant's products listed in paragraph 10 and Defendant's Cheddar & Sour Cream Chips are flavor variances. The Sherman Law does not differentiate between products; it governs labels. Thus, an unlawful labeling statement is unlawful regardless of what flavor chips it is on. Because such unlawful labeling statements result in products being misbranded and illegal to sell or possess, a separate, independent violation of the unlawful prong and has occurred in this case due to the unlawful sale of these products. This unlawful sale claim should be distinguished from the Plaintiff's separate claim that in relying on the Defendant's unlawful "0g Trans Fat" and "No Cholesterol" labeling statements he was misled into buying a product he would not have otherwise purchased. This is a separate claim under the unlawful prong but one where the Plaintiff has in fact relied on the labeling statements in question.

12. Defendant has violated the Sherman Law § 110760, which makes it unlawful for any person to manufacture, sell, deliver, hold or offer for sale any food that is misbranded. As discussed below, the illegal sale of a misbranded product to a consumer results in an independent violation of the unlawful prong of the UCL that is separate and apart from the underlying unlawful labeling practice that resulted in the product being misbranded. While not required, the Plaintiff relied on the fact that the Defendant's Cheddar & Sour Cream Chips were legal and that their labeling and label claims were legal.

B. Misleading Prong of the UCL

13. Second, the "misleading" part. In addition to being unlawfully misbranded under the Sherman Law, the illegal "0g Trans Fat" and "No Cholesterol" statements found on the label of Defendant's Cheddar & Sour Cream Chips and the Class Products is also misleading, deceptive and fraudulent. Prior to purchase, Plaintiff reviewed the illegal "0g Trans Fat" and "No Cholesterol" statements on the label of the Cheddar & Sour Cream Chips, reasonably relied in substantial part on the unlawful and misleading "0g Trans Fat" and "No Cholesterol" statements, and was thereby misled in deciding to buy the Cheddar & Sour Cream Chips. Plaintiff was deceived into purchasing the chips because of Defendant's unlawful "0g Trans Fat" and "No Cholesterol" statements and believed that Defendant's Cheddar & Sour Cream Chips

were healthier than other potato chip products. Defendant also misled Plaintiff to believe that the Cheddar & Sour Cream Chips were legal to purchase and possess. Had Plaintiff known that the chips were misbranded he would not have bought Defendant's Cheddar & Sour Cream Chips. Plaintiff relied 1) on the Defendant's explicit representations that its products contained "0g Trans Fat" and "No Cholesterol" and were thus healthier than other potato chips lacking such statements and 2) the Defendant's implicit representation based on Defendant's material omission of material facts that the Defendant's Cheddar & Sour Cream Chips purchased by the Plaintiff were legal to sell and possess. The Defendant had a duty to disclose the illegality of its misbranded products because 1) it had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiff; and (2) the Defendant actively concealed a material fact from the Plaintiff. The Defendant had a duty to disclose the information required by the labeling laws discussed herein because of the disclosure requirements contained in those laws and because in making its nutrient content claims it made partial representations that are misleading because other material facts have not been disclosed.

14. The Cheddar & Sour Cream Chips and the Class Products are mislabeled in exactly the same unlawful way. Plaintiff did not know, and had no reason to know, that Defendant's Cheddar & Sour Cream Chips were misbranded under the Sherman Law and bore food labeling claims that failed to meet food labeling requirements. In addition, Plaintiff was misled by the "0g Trans Fat" and "No Cholesterol" label statement on Defendant's Cheddar & Sour Cream Chips.

15. Due to Defendant's misbranding of the Cheddar & Sour Cream Chips, Plaintiff lost money by purchasing unlawful products.

16. Thus, in this case, where Defendant unlawfully sold products containing an unlawful "0g Trans Fat" and "No Cholesterol" statements omitting the mandatory disclosure statement, there is: 1) a violation of specific labeling regulations; 2) a violation the UCL's misleading and unlawful prongs due to Plaintiff's reliance on the unlawful labeling statements; and 3) an independent violation of the UCL's unlawful prong due to Defendant's sale of an illegal product that is unlawful to possess.

FACTUAL ALLEGATIONS

17. Defendant manufactures, markets and sells a variety of food products, including potato chips. Defendant has unlawfully utilized the unlawful and misleading "0g Trans Fat" and "No Cholesterol" label statements on its 7-Select potato chip products and substantially similar potato chip products identified herein.

18. Defendant's use of the "0g Trans Fat" and "No Cholesterol" label statements is unlawful and misleading because its products do not contain the required disclosure statement referring consumers to the nutrition panel for additional information. This disclosure statement is required pursuant to 21 C.F.R. § 101.13(h) and California law. Defendant's Cheddar & Sour Cream Chips and the Class Products contain 13g of fat or more, and therefore the disclosure statement required by 21 C.F.R. § 101.13(h) is required.

19. Identical California and federal laws regulate the content of labels on packaged food. The requirements of the federal FDCA were adopted by the California legislature in the Sherman Law. Under both the Sherman Law and FDCA Section 403(a), food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its label or its labeling. Cal. Health & Safety Law §§ 110660, 110705; 21 U.S.C. § 343.

20. Plaintiff's claims are brought under California's Sherman law.

21. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but which are still misleading. If any representation in the labeling is misleading, the entire food is misbranded, and no other statement in the labeling can cure a misleading statement.

22. The labels and labeling of Defendant's products included in the class are unlawful and misleading due to the following conduct:

> Making unlawful and misleading "0 grams Trans Fat" claims and failing to utilize the mandatory disclosure statement required to inform consumers the products contained deleterious ingredients at levels deemed to pose a danger of diet related disease or condition.

23. Defendant sells the following substantially similar potato chip products

("Class Products") with the identical unlawful "0g Trans Fat" and "No Cholesterol" label statements found on the Cheddar and Sour Cream Chips (Exhibit 1) purchased by Plaintiff:

- 7-Select Barbeque Kettle Style Chips (Exhibit 2);
- 7-Select Barbeque Potato Chips (Exhibit 3);
- 7-Select Big Bite Hot Dog Chips (Exhibit 4);
- 7-Select Jalapeño Kettle Style Chips (Exhibit 5);
- 7-Select Salt & Pepper Kettle Style Chips (Exhibit 6);
- 7-Select Original Kettle Style Chips (Exhibit 7);
- 7-Select Original Potato Chips (Exhibit 8);
- 7-Select Salt & Vinegar Kettle Chips (Exhibit 9);
- 7-Select Sour Cream & Onion Kettle Chips (Exhibit 10); and
- 7-Select Sour Cream & Onion Chips (Exhibit 11).

24. Exemplar labels are provided in Exhibits 1-11. These exhibits are true, correct and accurate photographs of Defendant's identical "0g Trans Fat" and "No Cholesterol" package labels.

25. Each of the above listed 7-Eleven product labels contain the "0g Trans Fat" and "No Cholesterol" statements, but do not contain the required disclosure statement. In other words, the Class Products are unlawful for the exact same reasons that the product purchased by Plaintiff is unlawful. The fact that one chip product tastes like sour cream and another tastes like salt and vinegar is completely immaterial and irrelevant.

26. Defendant's "0g Trans Fat" and "No Cholesterol" label statements violated 21 C.F.R. 101.13(h) (adopted and incorporated by reference by Cal. Health & Safety Code § 110100) and thus violated the unlawful prong of the UCL. These violations rendered the Class Products, including Defendant's Cheddar & Sour Cream Chips misbranded under the Sherman Law. As misbranded products their sale was prohibited under California Health & Safety Code § 110760.

27. Defendant's failure to include the required disclosure statement in 21 C.F.R. 101.13(h) is also misleading (independent of being unlawful) because Plaintiff relied on Defendant's "0g Trans Fat" and "No Cholesterol" label statements, thus violating the misleading prong of the UCL.

28. Defendant's products, referenced in paragraph 23, contain the identical unlawful

"0g Trans Fat" and "No Cholesterol" label statements as the Cheddar & Sour Cream Chips and therefore are identically unlawful and misleading. Whether products have the same identical unlawful statement is the most important consideration in determining whether or not a plaintiff has standing for products he did not purchase.

29. Defendant's practices are unlawful and mislead consumers and deprive them of the information required to make informed purchasing decisions.

30. Similarly, California and federal laws have placed numerous requirements on food companies that are designed to ensure that the claims that companies make about their products to consumers are truthful, accurate and backed by acceptable forms of scientific proof. When Defendant makes false and unlawful "0g Trans Fat" and "No Cholesterol" claims that are prohibited by regulation, consumers such as Plaintiff are misled.

31. Defendant has made, and continues to make, unlawful claims on its food label of its Cheddar & Sour Cream Chips and the Class Products that are prohibited by federal and California law and which render these products misbranded. Under federal and California law, Defendant's Cheddar & Sour Cream Chips and the Class Products cannot legally be manufactured, advertised, distributed, held or sold. Under the unlawful prong of the UCL, Defendant's conduct of selling misbranded products is actionable irrespective of any reliance, by product purchasers like Plaintiff. (See ¶ 7 *supra*).

32. Defendant's failure to include the required disclosure statement is also misleading. Plaintiff relied on Defendant's "0g Trans Fat" and "No Cholesterol" statements when making his purchasing decision.

33. Defendant's violations of law is its illegal labeling practices which misbrand its products and the illegal advertising, marketing, distribution, delivery and sale of Defendant's misbranded Cheddar & Sour Cream Chips and the Class Products to consumers in California and throughout the United States.

34. Defendant could have easily complied with the labeling regulations by simply adding a disclosure statement to the front of its package under its "0g Trans Fat" and "No Cholesterol" statements.

35. As a result, consumers, including Plaintiff and the Class, purchased products that fail to comply with the mandatory labeling requirements and standards established by law such that the products are misbranded and rendered unfit for sale. These products contained levels of fat the FDA has deemed to be deleterious to health and do not contain the required disclosure statement informing consumers of the levels of fat contained in Defendant's products.

36. Plaintiff and the Class have been damaged by Defendant's illegal conduct in that they purchased misbranded and worthless products that were illegal to sell or possess based on Defendant's illegal labeling of the products and otherwise lost money.

PARTIES

37. Plaintiff Scott Bishop is a resident of San Jose, California who purchased Defendant's 7 Select Cheddar & Sour Cream potato chips, in California during the four (4) years prior to the filing of this Complaint (the "Class Period"). Attached as Exhibit 1 is a true, correct and accurate copies and depictions of the Cheddar & Sour Cream Chips purchased by Plaintiff.

38. Defendant 7-Eleven is a Texas company with its principle place of business located in the City of Dallas, Dallas County, Texas.

JURISDICTION AND VENUE

39. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed class; (2) members of the proposed class have a different citizenship from Defendant; and (3) the claims of the proposed class members exceed $5,000,000 in the aggregate.

40. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of $75,000, and is between citizens of different states.

41. The Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoing alleged in this Second Amended Complaint occurred in California, Defendant is authorized to do business in California, Defendant has sufficient minimum contacts with California, and Defendant otherwise intentionally avails itself of the markets in California through the promotion, marketing and sale of merchandise, sufficient to render the exercise of

jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

42. Because a substantial part of the events or omissions giving rise to these claims occurred in this District and because the Court has personal jurisdiction over Defendant, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

SHERMAN LAW VIOLATIONS

A. Defendant's Conduct is Unlawful

43. As to his unlawful claim, Plaintiff alleges pursuant to Federal Rule of Civil Procedure 8 as follows:

44. Plaintiff's case is brought in two parts, the first part is pursuant to the unlawful prong of the UCL, Cal. Bus. & Prof. Code § 17200 ("UCL"). Plaintiff alleges that Defendant packaged and labeled its Cheddar & Sour Cream Chips and Class Products in violation of California's Sherman Law which adopts, incorporates, and is in all relevant aspects, identical to the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.* ("FDCA"). Defendant's Cheddar & Sour Cream Chips and Class Products with identical types of "0g Trans Fat" and "No Cholesterol" labeling violations are "misbranded."

45. 21 C.F.R. § 101.13(h) states:

> If a food … contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less … per 50 g … then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for __ content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."

46. During the class period identified herein, Plaintiff purchased Defendant's 7-Select Cheddar & Sour Cream potato chips labeled with the unlawful statements "0g Trans Fat" and "No Cholesterol." The Cheddar & Sour Cream Chips purchased by Plaintiff fails to bear the mandatory disclosure statement required to inform consumers that the products contained deleterious ingredients at levels deemed by regulators to pose a risk of a "diet related" "disease or health condition."

47. Defendant also manufactured and sold the following 7-Select potato chip products which contain similar ingredients and more importantly, the same identical "0g Trans Fat" and "No Cholesterol" label statements:

- 7-Select Barbeque Kettle Style Chips;
- 7-Select Barbeque Potato Chips;
- 7-Select Big Bite Hot Dog Chips;
- 7-Select Jalapeño Kettle Style Chips;
- 7-Select Salt & Pepper Kettle Style Chips;
- 7-Select Original Kettle Style Chips;
- 7-Select Original Potato Chips;
- 7-Select Salt & Vinegar Kettle Chips;
- 7-Select Sour Cream & Onion Kettle Chips; and
- 7-Select Sour Cream & Onion Chips.

None of these products bore the mandatory disclosure statement required to inform consumers that the products contained deleterious levels of fat deemed by regulators to pose a risk of a diet related disease or health condition.

48. All of these products are labeled with the same identical unlawful and misleading "0 grams Trans Fat" and "No Cholesterol" label statements and all omit the required disclosure statement. Exhibits 1-11 are photographs of the labels of the above referenced substantially similar products which contain the same or similar "0g Trans Fat" and "No Cholesterol" label statements as the Cheddar & Sour Cream Chips Plaintiff purchased and which omit the required disclosure statement.

49. The labels in Exhibits 1-11 are true, correct and accurate copies of those labels.

50. The unlawful and misleading "0g Trans Fat" and "No Cholesterol" label statements appear on the labels of all of Defendant's 7-Eleven potato chip Class Products listed in paragraph 47 and all of these products omit the mandatory disclosure statement.

51. Plaintiff reasonably relied on the misrepresentation that Defendant's Cheddar & Sour Cream Chips were not misbranded under the Sherman Law and were therefore legal to buy and possess. However, reliance is not required. (*See* ¶ 7 supra). Plaintiff would not have purchased 7-Eleven potato chips had he known they were illegal to purchase and possess.

52. To appeal to consumer preferences, Defendant made improper nutrient content claims on the Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47 by

using the "0 grams Trans Fat" and "No Cholesterol" statements despite the fact that the products contained disqualifying levels of fat. These nutrient content claims were improper because Defendant failed to include disclosure statements required by law that are designed to inform consumers of the inherently unhealthy aspects of those products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's Sherman Law.

53. Defendant's unlawful "0g Trans Fat" and "No Cholesterol" statements on its Cheddar & Sour Cream Chips and the Class Products result in two separate and independent unlawful violations: one based on specific unlawful labeling statements relied on by Plaintiff to his detriment and one based on the unlawful sale of an illegal misbranded product to the unsuspecting Plaintiff. The specific labeling violations are Defendant's unlawful "0g Trans Fat" and "No Cholesterol" nutrient content claims which violate 21 CFR § 101.13 and Sherman Law § 110100. Because of these labeling violations, Defendant's products are misbranded under Sherman Law § 110660, Sherman Law § 110670 and Sherman Law § 110705. Defendant's act of selling a misbranded product violates Sherman Law § 110760 which prohibits the sale or possession of misbranded products.

54. Defendant's sale of these misbranded product results in an independent violation of the unlawful prong that is separate from the labeling violation. (*See* ¶7 *supra*). Plaintiff has two distinct claims under the unlawful prong. The first arises from Defendant's unlawful "0g Trans Fat" and "No Cholesterol" label statements on its Cheddar & Sour Cream Chips and the Class Products. When Plaintiff relied on these unlawful claims to his detriment when purchasing Defendant's Cheddar & Sour Cream Chips he was injured and therefore has a claim arising from his purchase of a product in reliance on the illegal "0g Trans Fat" and "No Cholesterol" labeling claims made by Defendant. Plaintiff has a second, independent claim arising from being sold an illegal product in an unlawful sale. The only necessary element of this latter claim is Defendant's sale of a misbranded product that injured Plaintiff whose injury arises from the unlawful sale of an illegal product that is unlawful to sell and unlawful to possess. No reliance by the consumer is necessary. Plaintiff has been deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product,

Plaintiff has been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

B. Defendant Makes Misleading "0g Trans Fat" and "No Cholesterol" Claims

55. As to his misleading claim, Plaintiff alleges pursuant to Federal Rule of Civil Procedure 9(b) as follows:

56. Plaintiff read and relied upon Defendant's front of package "0g Trans Fat" and "No Cholesterol" label statements, and Plaintiff was thus deceived. Plaintiff was further unaware that Defendant's Cheddar & Sour Cream snack chips contained total fat at levels in the food that, according to the FDA, "may increase the risk of disease or health related condition that is diet related." Because of Defendant's unlawful and misleading "0g Trans Fat" and "No Cholesterol" claims and omitted disclosure statement, Plaintiff was misled to believe that the product was healthier than other potato chip products by containing no appreciable levels of trans fats. Plaintiff was misled to believe the products did not contain fat at levels that may increase the risk of disease or health related conditions. Defendant's "0g Trans Fat" and "No Cholesterol" label claims and omitted disclosure statement led Plaintiff to believe that Cheddar & Sour Cream Chips were a healthier choice than other potato snack products. In addition, Plaintiff did not know, and had no reason to know, that Defendant's Cheddar & Sour Cream Chips were misbranded by the "0g Trans Fat" and "No Cholesterol" nutrient claims despite failing to meet the requirements to make those nutrient claims.

57. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of the disclosure rules and is *per se* "misleading." The fat which Defendant failed to disclose is material.

58. Defendant repeatedly violated these provisions when it prominently stated "0g Trans Fat" and "No Cholesterol" on its labels on the Class Products without the mandatory disclosure statement.

59. The "0g Trans Fat" and "No Cholesterol" claims on these products is misleading as they contain disqualifying levels of fat which exceed the 13 gram disclosure threshold.

60. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the unqualified nutrient claims of "0g Trans Fat" and "No Cholesterol" claims on its food products if its products contain fat in excess of 13 grams, saturated fat in excess of 4 grams, cholesterol in excess of 60 milligrams, or sodium in excess of 480mg per 50 grams, unless the product also displays a disclosure statement that informs consumers of the product's fat, saturated fat and sodium levels.

61. These regulations are intended to ensure that consumers are not misled into the erroneous belief that a product that claims to be low in trans fat, but actually has other unhealthy fat levels, is a healthy or healthier choice, because of the lack of trans fats.

62. Nevertheless, Defendant's products' labels stated that its products contained "0g Trans Fat" and "No Cholesterol" without such a disclosure even though all the potato chip products in the Class, and listed in paragraph 38, contain fat in excess of 13 grams per 50g serving.

63. In October 2009, the FDA issued its FOP Guidance, to address its concerns about front of package labels. Despite the issuance of the 2009 FOP Guidance, Defendant did not remove the improper and misleading "0g Trans Fat" and "No Cholesterol" nutrient content claims from its Cheddar & Sour Cream Chips and the identically labeled products identified in paragraph 47.

64. Notwithstanding the Open Letter (Exhibit 12), Defendant continued to use this improper trans fat nutrient content claim, despite the express guidance of the FDA in the Open Letter that "claims that a product is free of trans fats, which imply that the product is a better choice than products without the claim, can be misleading when a product is high in saturated fat [or sodium, cholesterol or total fat], and especially so when the claim is not accompanied by the required statement referring consumers to the more complete information on the Nutrition Facts panel." *Id.*

65. Defendant also ignored the FDA's Guidance for Industry, A Food Labeling Guide, which detailed the FDA's guidance on how to make nutrient content claims about food products that contain "one or more nutrients [like total fat at levels] in the food that may increase the risk

of disease or health related condition that is diet related." Defendant utilized improper trans fat and cholesterol nutrient claims on the labels of its Defendant's Cheddar & Sour Cream Chips and identically labeled products identified in paragraph 47. As such, these products ran afoul of FDA guidance as well as California and federal law.

66. In addition to its guidance to industry, the FDA has sent warning letters to the industry, including many of Defendant's peer food manufacturers, for the same identical types of improper "0 grams Trans Fat" nutrient content claims described above. In these letters the FDA indicated that as a result of the same identical type of 0 gram trans fat claims utilized by Defendant, products were in "violation of the Federal Food, Drug, and Cosmetic Act … and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101)" and "misbranded within the meaning of section 403 because the product label bears a nutrient content claim but does not meet the requirements to make the claim."

67. The warning letters were hardly isolated, as the FDA has issued at least nine other warning letters to other companies for the same identical type of improper "0g Trans Fat" nutrient content claims at issue in this case.

68. This Court has found this exact kind of label representation to be misleading.

69. "A disqualifying level of, say, saturated fat is four grams per 'reference amount customarily consumed.'" 21 C.F.R. § 101.13(h)(1); *Chacanaca v. Quaker Oats Co.*, 752 F. Supp. 2d 1111 (N.D. Cal. 2010).

70. If this level is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. *Id.*

71. This is because the Agency has reasoned that the beneficent claim, standing alone, would be misleading." *Id.*

72. This Court has already held that a disqualifying claim such as Defendant's "0 grams Trans Fat," even if accurate, may be unlawful and misleading. *Wilson v. Frito-Lay North America, Inc*., 2013 WL 1320468 (N.D. April 1, 2013)(Plaintiffs sufficiently alleged claim that the "0 Grams Trans Fat" statement on bags of potato chips was deceptive because, accompanied by a disclosure of at least one of the ingredients that 21 C.F.R. § 101.13(h)(1) requires to be

disclosed, they and other reasonable consumers would think that the statements on the labels make accurate claims about the labeled products' nutritional content when, in fact, they do not; disqualifying claim such as; "0 grams Trans Fat," even if accurate, may be unlawful and misleading).

73. In *Chacanaca*, Judge Seeborg explained:

> The federal regulatory statute provides for this precise scenario: that is, it categorizes as misleading and therefore prohibited even true nutrient content claims if the presence of another "disqualifying" nutrient exceeds and amount established by regulation. The Agency has by regulation imposed "disqualifying" levels for only four nutrients: total fat, saturated fat, cholesterol, and sodium. 21C.F.R. §§ 101.13(h)(1), 101.14(a)(4). It is important to note how disqualifying claims work. A disqualifying level of say, saturated fat is four grams per "reference amount customarily consumed." 21C.F.R. § 101.13 (h)(1). If this level is exceeded, a food purveyor is prohibited from making an unqualified claim touting the health benefits of another nutrient in the food. This is because the Agency has reasoned that the beneficent claim, standing alone, would be misleading.

Chacanaca, 752 F. Supp. 2d at 1122 (emphasis in original).

74. Despite the FDA's numerous warnings to industry, Defendant continued to sell Cheddar & Sour Cream Chips and the Class Products identified in paragraph 47 bearing improper "0g Trans Fat" and "No Cholesterol" nutrient content claims without meeting the requirements to make this claim.

75. Defendant's conduct misled Plaintiff because, with Defendant failing to disclose the high fat, Plaintiff was misled into believing Defendant's product to be a healthier choice than other potato chip products. Plaintiff is conscious of the healthiness of the products he purchases, and Defendant's unlawful statements and omitted mandatory disclosures deprived Plaintiff of his ability to take into account those foods' contributions, or not, to Plaintiff's total dietary composition. Defendant concealed the deleterious attributes of its food, and Plaintiff was misled and deceived, both by Defendant's statements of the healthy attributes ("0g Trans Fat" and "No Cholesterol") and failure to disclose the deleterious food attributes (fat content over 13g). Plaintiff was misled by the Defendant's unlawfully prominent display of the ostensible good traits of its product, and unlawful failure to disclose the bad.

76. Plaintiff reasonably relied on this label representation when making his purchase decision and was misled by the "0g Trans Fat" and "No Cholesterol" representations as described below. Plaintiff would not have purchased Cheddar & Sour Cream Chips had he known the truth about these products, i.e. that the products failed to only make positive contributions to Plaintiff's diet and that the products contain one or more nutrients like total fat at levels in the food that increased the risk of disease and/or dietary health related conditions and that the Cheddar & Sour Cream Chips were not "healthier" than other potato chip products. Plaintiff had other food alternatives that satisfied such standards and Plaintiff also had cheaper alternatives. Reasonable consumers would have been misled in the same identical manner as Plaintiff.

77. Defendant's unlawful failure to use the mandatory disclosure is actionable. Plaintiff was unlawfully misled to believe that the products were low in fat by the "0g Trans Fat" and "No Cholesterol" statements, and, as a result, he purchased the Cheddar & Sour Cream Chips. Plaintiff was misled and deceived through the very means and methods the FDA sought to regulate.

78. Plaintiff and the Class would not have purchased the Cheddar & Sour Cream Chips and the Class products identified in paragraph 47 had they not been misled by Defendant's unlawful "0 grams Trans Fat" and "No Cholesterol" claims and been properly informed by Defendant of the deleterious attributes of those products, and had they otherwise not have been improperly misled and deceived as stated herein.

DEFENDANT HAS VIOLATED CALIFORNIA LAW

79. Defendant has violated California Health & Safety Code § 110390 which makes it unlawful to disseminate false or misleading food advertisements that include statements on products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product.

80. Defendant has violated California Health & Safety Code § 110395 which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

81. Defendant has violated California Health & Safety Code §§ 110398 and 110400 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely advertised.

82. Defendant has violated California Health & Safety Code § 110660 because the labels on its Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47 are false and misleading in one or more ways.

83. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded under California Health & Safety Code § 110665 because its labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations adopted thereto.

84. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded under California Health & Safety Code § 110670 because its labeling fails to conform with the requirements for nutrient content and health claims set forth in 21 U.S.C. § 343(r) and the regulations adopted thereto.

85. Defendant's Cheddar & Sour Cream Chips and Class Products are misbranded under California Health & Safety Code § 110705 because words, statements and other information required by the Sherman Law to appear on its labeling either are missing or not sufficiently conspicuous.

86. Defendant has violated California Health & Safety Code § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

87. Defendant has violated California Health & Safety Code § 110765 which makes it unlawful for any person to misbrand any food.

88. Defendant has violated California Health & Safety Code § 110770 which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for deliver any such food.

PLAINTIFF PURCHASED DEFENDANT'S CHIPS WITH UNLAWFUL AND MISLEADING LABELS

89. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

90. Plaintiff purchased Defendant's Cheddar & Sour Cream Chips as described above on numerous occasions during the Class Period. Because of Defendant's unlawful conduct, that product was unlawful to sell, and should not have been on the store shelves. As such, the label is unlawful, and Defendant's conduct actionable. (See ¶ 7 *supra*).

91. Plaintiff read the "0g Trans Fat" and "No Cholesterol" statements on Defendant's Cheddar & Sour Cream Chips before purchasing them. Defendant's labels falsely conveyed to Plaintiff the net impression that the Cheddar & Sour Cream Chips he bought made only positive contributions to a diet, and did not contain any nutrients at levels that raised the risk of diet-related disease or health-related condition.

92. Plaintiff read the unlawful and misleading "0g Trans Fat" and "No Cholesterol" statements on the label of Defendant's Cheddar & Sour Cream Chips before purchasing it. If Plaintiff had known that the unlawful and misleading statements that he read on Defendant's label misbranded the Cheddar & Sour Cream Chips rendering them unlawful to possess or sell Plaintiff would not have purchased such the chips. In addition, Defendant's unlawful statements misled Plaintiff and falsely conveyed to Plaintiff the net impression that the Cheddar & Sour Cream Chips he bought made only positive contributions to a diet, and did not contain any nutrients at levels that raised the risk of diet-related disease or health-related conditions. Plaintiff relied on Defendant's label statements identified above and based and justified the decision to purchase Defendant's Cheddar & Sour Cream Chips, in substantial part, on Defendant's "0g Trans Fat" and "No Cholesterol" label statements.

93. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's Cheddar & Sour Cream Chips were misbranded as set forth herein, and would not have bought the products had they known the truth about them.

94. At point of sale, Plaintiff did not know, and had no reason to know, that the "0g Trans Fat" and "No Cholesterol" claims on the Cheddar & Sour Cream Chips was improper and unauthorized as set forth herein, and would not have bought the products absent the claims.

95. At point of sale, Plaintiff did not know and had no reason to know that Defendant's Cheddar & Sour Cream Chips were misbranded, or that Defendant's "0g Trans Fat" and "No Cholesterol" claims were improper and unauthorized, and Plaintiff would not have purchased those products at the premium price paid.

96. As a result of Defendant's unlawful and misleading label statements contained on the Cheddar & Sour Cream Chips, Plaintiff and thousands of others in California bought the Cheddar & Sour Cream Chips and the Class Products listed in paragraph 47. Defendant's "0g Trans Fat" and "No Cholesterol" label statements on the Cheddar & Sour Cream Chips are false and misleading and were material and were designed to increase sales of the Cheddar & Sour Cream Chips. A reasonable person would attach importance to Defendant's "0g Trans Fat" and "No Cholesterol" label statements in determining whether to purchase the Cheddar & Sour Cream Chips.

97. A reasonable person would also attach importance to whether Defendant's products were legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Cheddar & Sour Cream Chips. Plaintiff would not have purchased Defendant's Cheddar & Sour Cream Chips had he known they were not capable of being legally sold or held. No reasonable consumer would have knowingly purchased a product that was illegal to sell or possess.

CLASS ACTION ALLEGATIONS

98. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure 23(b)(2) and 23(b)(3) on behalf of the following "Class:"

All persons in California who, within the Class Period, purchased:

- 7-Select Barbeque Kettle Style Chips;
- 7-Select Barbeque Potato Chips;
- 7-Select Big Bite Hot Dog Chips;
- 7-Select Jalapeño Kettle Style Chips;
- 7-Select Salt & Pepper Kettle Style Chips;

- 7-Select Original Kettle Style Chips;
- 7-Select Original Potato Chips;
- 7-Select Salt & Vinegar Kettle Chips; and
- 7-Select Sour Cream & Onion Kettle Chips.

99. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

100. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

101. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

102. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its Class Products sold to consumers;

b. Whether the Class Products were misbranded as a matter of law;

c. Whether Defendant made improper and misleading nutrient content claims;

d. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq*., California Bus. & Prof. Code § 17500 *et seq*., the Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq*., and the Sherman Law;

e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief; and

f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

103. Typicality: Plaintiff's claims are typical of the claims of the Class because Plaintiff bought Defendant's Cheddar & Sour Cream Chips during the Class Period. 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 in violation of California law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct, which was uniform as to the Class Products. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

104. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

105. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual

members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

106. 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.

107. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

108. 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.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Unlawful Business Acts and Practices

109. Plaintiff incorporates by reference each allegation set forth above.

110. Defendant's use of the "0g Trans Fat" and "No Cholesterol" label statements on its Cheddar & Sour Cream Chips and the Class Products constitutes unlawful business acts and practices.

111. Under California law, injury causing unlawful conduct, such as Defendant's, is the only element necessary for the UCL claim. (*See* ¶ 7). No reliance is necessary when the unlawful sale of an illegal product is at issue. While not required, Plaintiff relied on the Defendant's unlawful labeling statements when making his purchase decisions and therefore bought a product he would not have otherwise purchased in reliance on the Defendant's unlawful labeling

statements. Plaintiff also relied on the legality of the Defendant's products and the labeling and label claims of those products. Plaintiff would not have purchased Defendant's Cheddar & Sour Cream Chips had he known they were not capable of being legally sold or held. No reasonable consumer would have knowing purchased a product that was illegal to sell or possess.

112. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period.

113. Defendant is a corporation and, therefore, is a "person" within the meaning of the Sherman Law.

114. Defendant's business practices are unlawful under § 17200, *et seq*. by virtue of Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

115. Defendant's business practices are unlawful under § 17200, *et seq*. by virtue of Defendant's violations of § 17500, *et seq*., which forbids untrue and misleading advertising.

116. Defendant's business practices are unlawful under § 17200, *et seq*. by virtue of Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq*.

117. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and the Class Products that were not capable of being sold or held legally and have no economic value and which were legally worthless. Plaintiff and the Class lost money as a direct result of Defendant's unlawful conduct.

118. As a result of Defendant's unlawful business practices, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the Cheddar & Sour Cream Chips and the Class Products.

119. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiff and the Class.

120. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by

Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips by Plaintiff and any money paid for Defendant's Class Products purchased by the Class.

SECOND CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Unfair Business Acts and Practices

121. Plaintiff incorporates by reference each allegation set forth above.

122. Defendant's use of the "0g Trans Fat" and "No Cholesterol" labeling statements on its Cheddar & Sour Cream Chips and the Class Products as set forth herein constitutes unfair business acts and practices.

123. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period.

124. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant's Cheddar & Sour Cream Chips and Class Products that they would not have purchased absent Defendant's illegal conduct.

125. Defendant's deceptive marketing, advertising, packaging and labeling of its Cheddar & Sour Cream Chips and Class Products and its sale of unsalable misbranded products that were illegal to possess was of no benefit to consumers, and the harm to consumers and competition is substantial.

126. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and Class Products that were not capable of being legally sold or held and that have no economic value and were legally worthless. Due to Defendant's misbranding of the Cheddar & Sour Cream Chips and Class Products, Plaintiff and the Class lost money.

127. Plaintiff and the Class who purchased Defendant's Cheddar & Sour Cream Chips and Class Products had no way of reasonably knowing that the products were misbranded and were not properly marketed, advertised, packaged and labeled, and thus could not have reasonably avoided the injury each of them suffered.

128. The consequences of Defendant's conduct as set forth herein outweigh any justification, motive or reason therefor. Defendant's conduct is and continues to be immoral,

unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and the Class.

129. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips by Plaintiff and any money paid for Defendant's Class Products purchased the Class.

THIRD CAUSE OF ACTION
Business and Professions Code § 17200, *et seq.*
Fraudulent Business Acts and Practices

130. Plaintiff incorporates by reference each allegation set forth above.

131. Defendant's use of the "0g Trans Fat" and "No Cholesterol" labeling statements on its Cheddar & Sour Cream Chips and the Class Products as set forth herein constitutes fraudulent business practices under California Business and Professions Code sections § 17200, *et seq.*

132. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period.

133. Defendant's misleading marketing, advertising, packaging and labeling of the Cheddar & Sour Cream Chips and Class Products and misrepresentation that the products were salable, capable of possession and not misbranded were likely to deceive reasonable consumers, and in fact, Plaintiff and members of the Class were deceived. Defendant has engaged in fraudulent business acts and practices.

134. Defendant's fraud and deception caused Plaintiff and the Class to purchase Defendant's Cheddar & Sour Cream Chips and Class Products that they would otherwise not have purchased had they known the true nature of those products.

135. Defendant sold Plaintiff and the Class Cheddar & Sour Cream Chips and Class Products that were not capable of being sold or held legally and that have no economic value and were legally worthless. Due to Defendant's fraud and deception, Plaintiff and the Class lost money.

136. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips by Plaintiff and any money paid for the Class Products by the Class.

FOURTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Misleading and Deceptive Advertising

137. Plaintiff incorporates by reference each allegation set forth above.

138. Plaintiff asserts this cause of action for violations of California Business and Professions Code § 17500, *et seq*. for misleading and deceptive advertising against Defendant.

139. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period.

140. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream Chips and Class Products for sale to Plaintiff and members of the Class by way of product labeling. These labels misrepresented and/or omitted the true contents and nature of Defendant's Cheddar & Sour Cream Chips and Class Products. Defendant's advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that such labels were intended as inducements to purchase Defendant's Cheddar & Sour Cream Chips and Class Products and are statements disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive as set forth herein.

141. In furtherance of its plan and scheme, Defendant prepared and distributed within California and nationwide via product labels, statements of "0g Trans Fat" and "No Cholesterol" that misleadingly and deceptively represented the composition and the nature of Defendant's Cheddar & Sour Cream Chips and Class Products. Plaintiff and the Class necessarily and reasonably relied on Defendant's materials, and were the intended targets of such representations.

142. Defendant's conduct in disseminating misleading and deceptive statements in California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable consumers by obfuscating the true composition and nature of Defendant's Cheddar & Sour Cream Chips and Class Products in violation of the "misleading prong" of California Business and Professions Code § 17500, *et seq*.

143. As a result of Defendant's violations of the "misleading prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and have no economic value and are legally worthless. Due to Defendant's misleading advertising, Plaintiffs and the Class lost money.

144. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips or Class Products by Plaintiff and the Class.

FIFTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Untrue Advertising

145. Plaintiff incorporates by reference each allegation set forth above.

146. Plaintiff assert this cause of action against Defendant for violations of California Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

147. Defendant sold Cheddar & Sour Cream Chips and Class Products in California during the Class Period.

148. Defendant engaged in a scheme of offering Defendant's Cheddar & Sour Cream Chips and Class Products for sale to Plaintiff and the Class by way of product labels. These materials with the label statements "0g Trans Fat" and "No Cholesterol" misrepresented and/or omitted the true contents and nature of Defendant's Cheddar & Sour Cream Chips and Class Products. Defendant's labels were made in California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq*. in that the labels were

intended as inducements to purchase Defendant's Cheddar & Sour Cream Chips and Class Products, and are statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were untrue.

149. In furtherance of its plan and scheme, Defendant prepared and distributed in California and nationwide via product labels, statements that falsely advertise the composition of Defendant's Cheddar & Sour Cream Chips and Class Products, and falsely misrepresented the nature of those products. Plaintiff and the Class were the intended targets of such representations and would reasonably be deceived by Defendant's materials.

150. Defendant's conduct in disseminating untrue labels throughout California deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of Defendant's Cheddar & Sour Cream Chips and Class Products in violation of the "untrue prong" of California Business and Professions Code § 17500.

151. As a result of Defendant's violations of the "untrue prong" of California Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Misbranded products cannot be legally sold or held and have no economic value and are legally worthless. Due to Defendant's untrue advertising, Plaintiff and the Class lost money.

152. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Cheddar & Sour Cream Chips or Class Products by Plaintiff and the Class.

SIXTH CAUSE OF ACTION
Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*

153. Plaintiff incorporates by reference each allegation set forth above.

154. This cause of action is brought pursuant to the CLRA. Defendant's violations of the CLRA are willful, oppressive and fraudulent, thus supporting an award of punitive damages.

155. On June 1, 2012, Plaintiff sent his Notice and Demand Letter pursuant to the CLRA, Cal. Civ. Code §§ 1782(a)(1) and (2), via certified mail to counsel for Defendant 7-Eleven in San Francisco, California. To date, 7-Eleven has not responded to Plaintiff's Notice and Demand Letter.

156. Over thirty days have passed since Plaintiff sent Defendant 7-Eleven his Notice and Demand Letter. Plaintiff now seeks damages under the CLRA.

157. Plaintiff and the Class, having given proper notice to Defendant 7-Eleven are entitled to actual and punitive damages against Defendant 7-Eleven for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

158. Defendant's actions, representations and conduct have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale of goods to consumers.

159. Defendant sold the Cheddar & Sour Cream Chips and Class Products in California and throughout the United States during the Class Period.

160. Plaintiff and members of the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §1761(d).

161. Defendant's Cheddar & Sour Cream Chips and Class Products were and are "goods" within the meaning of Cal. Civ. Code §1761(a).

162. By using the "0g Trans Fat" and "No Cholesterol" label statements on its Cheddar & Sour Cream Chips and the Class Products, Defendant violated and continues to violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent the particular ingredients, characteristics, uses, benefits and quantities of the goods.

163. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods

of competition and unfair or fraudulent acts or practices in that they misrepresent the particular standard, quality or grade of the goods.

164. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitute unfair methods of competition and unfair or fraudulent acts or practices in that they advertise goods with the intent not to sell the goods as advertised.

165. By engaging in the conduct set forth herein, Defendant has violated and continues to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitute unfair methods of competition and unfair or fraudulent acts or practices in that they represent that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

166. Plaintiff requests that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2) and award Plaintiff actual and punitive damages. If Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class will continue to suffer harm.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on behalf of the general public, prays for judgment against Defendant as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution or disgorgement to Plaintiff and the Class;

C. For an order requiring Defendant to immediately cease and desist from selling its Cheddar & Sour Cream Chips and Class Products listed in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For remedies, as appropriate, pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding punitive damages;

G. For an order awarding pre-and post-judgment interest; and

H. For an order providing such further relief as this Court deems proper.

Dated: August 20, 2013

Respectfully submitted,

s/ David McMullan, Jr.

David McMullan, Jr. (admitted *pro hac vice)*
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P.O. Box 927
Lexington, MS 39095
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Ben F. Pierce Gore (SBN 128515)
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Fax: (408) 369-0752
pgore@prattattorneys.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed and served via the Court's ECF filing system this 20th day of August, 2013.

/s/ David McMullan, Jr.
David McMullan, Jr.


SELECT
Cheddar & Sour Cream
FLAVORED POTATO CHIPS
Classic. Thick and crispy.
0g Trans Fat • No Cholesterol

Nutrition Facts/ Información Nutrimental

Serving Size/Tamaño de la Porción 1 oz (28g/ About/Aprox. 22 chips/papas fritas)
Servings Per Container 2.5/Porciones por Envase 2.5

Amount per Serving / Cantidad por Porción	
Calories / Calorías 160 (670kJ)	
Calories from Fat / Calorías de Grasa 90	
	% Daily Value*/% Valor Diario*
Total Fat / Grasas Totales 10g	15%
Saturated Fat / Grasa Saturada 2.5g	13%
Trans Fat / Grasa Trans 0g	
Polyunsaturated Fat / Grasa Poliinsaturada 6g	
Monounsaturated Fat / Grasa Monoinsaturada 1.5g	
Cholesterol / Colesterol 0mg	0%
Sodium / Sodio 170mg	7%
Total Carbohydrate / Carbohidratos Totales 15g	5%
Dietary Fiber / Fibra Dietética 1g	4%
Sugars / Azúcares 1g	
Protein / Proteínas 2g	

Vitamin A / Vitamina A	0%	• Vitamin C / Vitamina C	8%
Calcium / Calcio	0%	• Iron / Hierro	4%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

*Los Porcentajes de Valores Diarios están basados en una dieta de 2 000 calorías. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades calóricas.

	Calories / Calorías:	2,000	2,500
Total Fat / Grasa Total	Less than / Menos de	65g	80g
Sat Fat / Grasa Sat	Less than / Menos de	20g	25g
Cholesterol / Colesterol	Less than / Menos de	300mg	300mg
Sodium / Sodio	Less than / Menos de	2,400mg	2,400mg
Total Carbohydrate / Carbohidrato Total		300g	375g
Dietary Fiber / Fibra Dietética		25g	30g

Calories per gram / Calorías por gramo:
Fat / Grasa 9 • Carbohydrate / Carbohidrato 4 • Protein / Proteína 4

INGREDIENTS: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: COTTONSEED, SUNFLOWER, SOYBEAN, CANOLA, OR CORN OIL), WHEY POWDER, MALTODEXTRIN, SOUR CREAM (CULTURED CREAM, LACTIC ACID, PARTIAL


SELECT
99¢
4118821
02:31
Kettle Style
BARBEQUE FLAVORED POTATO CHIPS
Extra crunchy
0g Trans Fat • No Cholesterol
NATURALLY AND ARTIFICIALLY FLAVORED
SERVING SUGGESTION
NET WT 2.25 OZ (63.7g) / CONT NET 63.7g


trition Facts/
ormación Nutrimental
Size/Tamaño de la Porción 1 oz (28g)
(Aprox. 18 chips/papas fritas)
gs Per Container About 2/Porciones por Envase Aprox. 2
t per Serving / Cantidad por Porción
ories / Calorías 150 (628kJ)
Calories from Fat / Calorías de Grasa 70
% Daily Value*/% Valor Diario*
al Fat / Grasas Totales 8g 12%
turated Fat / Grasa Saturada 2g 10%
ans Fat / Grasa Trans 0g
Polyunsaturated Fat / Grasa Polinsaturada 4.5g
Monounsaturated Fat / Grasa Monoinsaturada 1g
olesterol / Colesterol 0mg 0%
dium / Sodio 170mg 7%
al Carbohydrate / Carbohidratos Totales 17g 6%
Dietary Fiber / Fibra Dietética 1g 4%
ars / Azúcares 0g
ein / Proteínas 2g
Vitamin A / Vitamina A 2% • Vitamin C / Vitamina C 10%
Calcium / Calcio 3% • Iron / Hierro 4%
VEGETABLE OIL (CONTAINS ONE OR
COTTONSEED, PEANUT, SUNFLOWER,
SUGAR, DEXTROSE, SALT,
ONION, TOMATO
TORULA YEAST,
CITRIC ACID, AND CARAMEL
ACEITE VEGETAL (CONTIENE UNO O MÁS DE
ALGODÓN, CACAHUATE,
AZÚCAR, DEXTROSA, SAL,
AHUMADO,
Y CEBOLLA EN POLVO, LEVADURA DE
ESPECIAS, ÁCIDO CÍTRICO Y
Satisfaction
SELECT
What
mean to
truly
It means
discovering
highest quality
made by
best chip
at the
possible
It also has
something to
with love, work
other stuff,
but we're
just
about


99¢
SELECT
Barbeque
FLAVORED POTATO CHIPS
Classic, Thin and crispy
0g Trans Fat • No Cholesterol


Nutrition Facts/
Información Nutrimental
SELECT
What does it
mean to be really
truly satisfied?
It means
discovering the
highest quality chips,
made by the
best chip makers,
at the best
possible value.
It also has
something to do
with love, work and
other stuff,
but we're mostly
just concerned
about chips.


SELECT
BEST BY
NOV 04 2013
99¢
4218332
13:44
BIG BITE
Hot Dog FLAVORED
POTATO CHIPS
Classic. Thick and crispy.
0g Trans Fat • No Cholesterol
NATURALLY AND ARTIFICIALLY FLAVORED
SERVING SUGGESTION
Dog Flavored Potato Chips
s fritas sabor a hot dog
NET WT 2.5 OZ (70.8g) / CONT. NET. 70.8g

Nutrition Facts/ Información Nutrimental

Serving Size / Tamaño de la Porción 1 oz (28g)
About/Aprox. 20 chips/papas fritas)
Servings Per Container 2.5/Porciones por Envase 2.5

Amount per Serving / Cantidad por Porción

Calories / Calorías 160 (670kJ)
Calories from Fat / Calorías de Grasa 90

	% Daily Value*/% Valor Diario*
Total Fat / Grasas Totales 10g	15%
Saturated Fat / Grasa Saturada 2.5g	13%
Trans Fat / Grasa Trans 0g	
Polyunsaturated Fat / Grasa Poliinsaturada 6g	
Monounsaturated Fat / Grasa Monoinsaturada 1.5g	
Cholesterol / Colesterol 0mg	0%
Sodium / Sodio 135mg	6%
Total Carbohydrate / Carbohidratos Totales 15g	5%
Dietary Fiber / Fibra Dietética 1g	4%
Sugars / Azúcares 1g	
Protein / Proteínas 2g	

Vitamin A / Vitamina A	0%	• Vitamin C / Vitamina C	10%
Calcium / Calcio	0%	• Iron / Hierro	4%

* Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
Porcentajes de Valores Diarios están basados en una dieta de 2,000 calorías. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades calóricas.

	Calories/Calorías:	2,000	2,500
Total Fat / Grasa Total	Less than / Menos de	65g	80g
Sat. Fat / Grasa Sat.	Less than / Menos de	20g	25g
Cholesterol / Colesterol	Less than / Menos de	300mg	300mg
Sodium / Sodio	Less than / Menos de	2,400mg	2,400mg
Total Carbohydrate / Carbohidrato Total		300g	375g
Dietary Fiber / Fibra Dietética		25g	30g

Calories per gram / Calorías por gramo:
Fat / Grasa 9 • Carbohydrate / Carbohidrato 4 • Protein / Proteína 4

INGREDIENTS: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: COTTONSEED, SUNFLOWER, SOYBEAN, CANOLA, OR CORN OILS), SOYBEAN OIL, MALTODEXTRIN, NATURAL FLAVORING, TOMATO POWDER, SPICE AND HERB, SODIUM DIACETATE, SUGAR, SKIM MILK POWDER, MODIFIED CORNSTARCH, CITRIC ACID, VINEGAR, MONOSODIUM GLUTAMATE, GARLIC POWDER, ONION POWDER, SILICON DIOXIDE, POLYSORBATE 80, TURMERIC AND PAPRIKA.
CONTAINS: MILK

INGREDIENTES: PAPAS, ACEITE VEGETAL (CONTIENE UNO O MÁS DE LOS SIGUIENTES: ACEITE DE SEMILLA DE ALGODÓN, GIRASOL, SOYA, CANOLA O MAÍZ), SAL, ACEITE DE SOYA, MALTODEXTRINA, SABORIZANTE NATURAL, TOMATE EN POLVO, ESPECIAS Y HIERBAS AROMATICAS, DIACETATO DE SODIO, AZÚCAR, LECHE DESCREMADA EN POLVO, ALMIDÓN MODIFICADO, ÁCIDO CÍTRICO, VINAGRE, GLUTAMATO MONOSÓDICO, AJO EN POLVO, CEBOLLA EN POLVO, DIÓXIDO DE SILICIO, POLISORBATO 80, CÚRCUMA Y PAPRIKA.
CONTIENE: LECHE

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1-800-255-0711

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TCA-030408-D46
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01-800-277-SELECT

MADE IN THE U.S.A. / HECHO EN E.U.A.

What does it mean to be really, truly satisfied?

It means discovering the highest quality chip made by the best chip makers, at the best possible value.

It also has something to do with love, work and other stuff, but we're mostly just concerned about chips.

Solo Para México / For Mexico Only:

Cantidad por Porción / Amount Per Serving	
Vitamina A / Vitamin A	
Vitamina C / Vitamin C	
Calcio / Calcium	
Hierro / Iron	

**Los porcentajes de VNR (Valor Nutrimental de Referencia) están basados en las recomendaciones ponderadas en la NOM-051-SCFI/SSA1-2010.
**Percent VNR (Nutritional Value Reference) are based on weighted recommendations in the NOM-051-SCFI/SSA1-2010.

Consérvese en un lugar fresco

0 27548 31187 6


SELECT
BEST BY
NOV 04 2013
99¢
4118022
Kettle Style
JALAPEÑO FLAVORED POTATO CHIPS
Extra crunchy
Og Trans Fat • No Cholesterol
Jalapeño Flavored
Kettle Style Potato Chips
Papas fritas estilo casero
sabor a jalapeño
NET WT 2.25 OZ (63.7g) / CONT. NET. 63.7g


Nutrition Facts/
Información Nutrimental
Calories 150 (628kJ)
Calorías de Grasa 70
% Daily Value* / % Valor Diario*
Total Fat / Grasas Totales 8g 12%
Saturated Fat / Grasa Saturada 2g 10%
Trans Fat / Grasa Trans 0g
Polyunsaturated Fat / Grasa Polinsaturada 5g
Monounsaturated Fat / Grasa Monoinsaturada 1g
Cholesterol / Calesterol 0mg 0%
Sodium / Sodio 160mg 7%
Total Carbohydrate / Carbohidratos Totales 16g 5%
Dietary Fiber / Fibra Dietética 1g 4%
Sugars / Azúcares 1g
Protein / Proteínas 2g
Vitamin A / Vitamina A 0% • Vitamin C / Vitamina C 10%
Calcium / Calcio 0% • Iron / Hierro 4%
SELECT
What
mean to be
truly satisfie
It means
discovering
highest quality
made by th
best chip mak
at the best
possible va
It also
something
with love, wo
other stuf
but we're ma
just concerne
about chips
VEGETABLE OIL (CONTAINS ONE OR
SUNFLOWER,
SALT, MALTODEXTRIN,
ONION & GARLIC POWDER,
ARTIFICIAL FLAVORS, CITRIC ACID,
ACEITE VEGETAL (CONTIENE UNO O MÁS
DE ALGODÓN, CACAHUATE,
SAL, MALTODEXTRINA,
CEBOLLA Y AJO EN
SABORIZANTES NATURALES Y
Satisfaction
Guaranteed


SELECT
BEST BY
SEP 23 2013
99¢
4313822
20:40
Kettle Style
SALT & PEPPER FLAVORED POTATO CHIPS
Extra crunchy
0g Trans Fat • No Cholesterol
NATURALLY AND ARTIFICIALLY FLAVORED
Salt & Pepper Flavored
Kettle Style Potato Chips
Papas fritas estilo casero
sabor a sal y pimienta
NET WT 2.25 OZ (63.7g) / CONT. NET. 63.7g

Información Nutrimental
Serving Size/Tamaño de la Porción 1 oz (28g)
About/Aprox. 18 chips/papas fritas)
Servings Per Container About 2/Porciones por envase Aprox. 2

Amount per Serving / Cantidad por Porción	
Calories / Calorías 150 (628kJ)	
Calories from Fat / Calorías de Grasa 70	
	% Daily Value*/% Valor Diario*
Total Fat / Grasas Totales 8g	12%
Saturated Fat / Grasa Saturada 2g	10%
Trans Fat / Grasa Trans 0g	
Polyunsaturated Fat / Grasa Poliinsaturada 4.5g	
Monounsaturated Fat / Grasa Monoinsaturada 1g	
Cholesterol / Colesterol 0mg	0%
Sodium / Sodio 200mg	8%
Total Carbohydrate / Carbohidratos Totales 16g	5%
Dietary Fiber / Fibra Dietética 1g	4%
Sugars / Azúcares 1g	
Protein / Proteínas 2g	

Vitamin A / Vitamina A	0%	• Vitamin C / Vitamina C	10%
Calcium / Calcio	2%	• Iron / Hierro	4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
* Los Porcentajes de Valores Diarios están basados en una dieta de 2 000 calorías. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades calóricas.

	Calories / Calorías:	2,000	2,500
Total Fat / Grasa Total	Less than / Menos de	65g	80g
Sat Fat / Grasa Sat.	Less than / Menos de	20g	25g
Cholesterol / Colesterol	Less than / Menos de	300mg	300mg
Sodium / Sodio	Less than / Menos de	2,400mg	2,400mg
Total Carbohydrate / Carbohidrato Total		300g	375g
Dietary Fiber / Fibra Dietética		25g	30g

Calories per gram / Calorías por gramo:
Fat / Grasa 9 • Carbohydrate / Carbohidrato 4 • Protein / Proteína 4

INGREDIENTS: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: COTTONSEED, PEANUT, SUNFLOWER, CANOLA, CORN OR SOYBEAN OIL), SALT, SPICES, SUGAR, CORN SYRUP SOLIDS, MODIFIED CORN STARCH, WHEY, MONOSODIUM GLUTAMATE, ONION & GARLIC POWDER, HYDROLYZED SOY PROTEIN, AUTOLYZED YEAST EXTRACT, SODIUM DIACETATE, CITRIC ACID, LACTOSE, SODIUM CASEINATE, DISODIUM INOSINATE & DISODIUM GUANYLATE, CARAMEL COLOR, AND NATURAL FLAVOR.
CONTAINS: MILK, SOY

INGREDIENTES: PAPAS, ACEITE VEGETAL (CONTIENE UNO O MÁS DE LOS SIGUIENTES: ACEITE DE SEMILLA DE ALGODÓN, CACAHUATE, GIRASOL, CANOLA, MAÍZ O SOYA), SAL, ESPECIAS, AZÚCAR, SÓLIDOS DE JARABE DE MAÍZ, ALMIDÓN MODIFICADO, SOLIDOS DE LA LECHE, GLUTAMATO MONOSÓDICO, CEBOLLA Y AJO EN POLVO, PROTEÍNA HIDROLIZADA DE SOYA, EXTRACTO DE LEVADURA AUTOLIZADA, DIACETATO SÓDICO, ÁCIDO CÍTRICO, LACTOSA, CASEINATO, INOSINATO DISÓDICO Y GUANILATO DISÓDICO, COLOR CARAMELO Y SABORIZANTE NATURAL.
CONTIENE: LECHE, SOYA

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DALLAS, TX 75201
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1-800-255-[illegible]

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NO. 9350-A
PARQUE INDUSTRIAL KALOS
GUADALUPE, N.L., MÉXICO 67110
CCA-030408-D46
WWW.7-ELEVEN.COM.MX

HECHO EN E.U.A.

Contáctanos sin costo
01-800-277-SELECT

SELECT

What does it mean to be re[illegible] truly satisfied?

It means discovering the highest quality chip[illegible] made by the best chip maker[illegible] at the best possible valu[illegible]

It also has something to do with love, work [illegible] other stuff, but we're mos[illegible] just concern[illegible] about c[illegible]

Solo Para México / For Mexico Only	
Cantidad por Porción / Amount Per Serving	
Vitamina A / Vitamin A	
Vitamina C / Vitamin C	
Calcio / Calcium	
Hierro / Iron	

* *Los porcentajes de VNR (Valor Nutrimental de Referencia) están basados en [illegible] ponderadas en la NOM-051-SCFI/SSA1-2010.
** Percent VNR (Nutrient Reference Value) are based on weighted [illegible] NOM-051-SCFI/SSA1-2010.

Consérvese en [illegible]

0 52348 51167


SELECT
Kettle Style
ORIGINAL POTATO CHIPS
Extra crunchy
Og Trans Fat • No Cholesterol
Kettle Style Potato Chips
Papas fritas estilo
casero originales
SERVING SUGGESTION
NET WT 2.25 OZ (63.7g) / CONT. NET. 63.


Nutrition Facts/
Información Nutrimental
Calories / Calorías 150
Total Fat / Grasas Totales 9g 14%
Saturated Fat / Grasa Saturada 2g 10%
Trans Fat / Grasa Trans 0g
Polyunsaturated Fat / Grasa Polinsaturada 5g
Monounsaturated Fat / Grasa Monoinsaturada 1.5g
Cholesterol / Colesterol 0mg 0%
Sodium / Sodio 85mg 4%
Total Carbohydrate / Carbohidratos Totales 16g 5%
Dietary Fiber / Fibra Dietética 1g 4%
Sugars / Azúcares 1g
Protein / Proteínas 2g
Vitamin A / Vitamina A 0% • Vitamin C / Vitamina C 10%
Calcium / Calcio 0% • Iron / Hierro 4%
SELECT
What does it mean to be really, truly satisfied?
It means discovering the highest quality chips made by the best chip maker at the best possible value.
It also has something to do with love, work and other stuff, but we're more just concerned about chips.
Satisfaction Guaranteed


SELECT
Original
POTATO CHIPS
Classic. Thin and crispy.
0g Trans Fat • No Cholesterol
Original Potato Chips
Papas fritas originales
SERVING SUGGESTION
NET WT 2.5 OZ (70.8g) / CONT. NET 70.8


Nutrition Facts/
Información Nutrimental
Total Fat / Grasas Totales 15g 15%
Saturated Fat / Grasa Saturada 2.5g 13%
Trans Fat / Grasa Trans 0g
Cholesterol / Colesterol 0mg 0%
Sodium / Sodio 125mg 5%
Total Carbohydrate / Carbohidratos Totales 15g 5%
Dietary Fiber / Fibra Dietética 1g 4%
Sugars / Azúcares 1g
Protein / Proteínas 2g
Vitamin A / Vitamina A 0% • Vitamin C / Vitamina C 10%
Calcium / Calcio 0% • Iron / Hierro 4%
SELECT
What does it
mean to be
truly satisfied?
It means
discovering the
highest quality chi
made by the
best chip makers
at the best
possible value.
It also has
something to do
with love, work and
other stuff,
but we're
just
about


Kettle Style


Información Nutrimental
Amount per Serving / Cantidad por Porción
Calories / Calorías 140 (586kJ)
Calories from Fat / Calorías de Grasa 70
% Daily Value* / % Valor Diario*
Total Fat / Grasas Totales 8g 12%
Saturated Fat / Grasa Saturada 2g 10%
Trans Fat / Grasa Trans 0g
Polyunsaturated Fat / Grasa Polinsaturada 4.5g
Monounsaturated Fat / Grasa Monoinsaturada 1g
Cholesterol / Colesterol 0mg 0%
Sodium / Sodio 290mg 12%
Total Carbohydrate / Carbohidratos Totales 16g 5%
Dietary Fiber / Fibra Dietética 1g 4%
Sugars / Azúcares 1g
Protein / Proteínas 2g
Vitamin A / Vitamina A 0% • Vitamin C / Vitamina C 10%
Calcium / Calcio 0% • Iron / Hierro 4%
What does it mean to be really, truly satisfied?
It means discovering the highest quality chip made by the best chip maker at the best possible value
It also has something to with love, w other s but we're just concern about chips


SELECT
BEST BY
NOV 11 2013
99¢
4319322
20:20
Kettle Style
SOUR CREAM & ONION FLAVORED POTATO
Extra crunchy
0g Trans Fat • No Choles
Sour Cream & Onion Flavored
Style Potato Chips
as fritas estilo casero
a crema y cebolla
NET WT 2.25 OZ (63.7g) / CONT. NET.

Nutrition Facts / Información Nutrimental

Serving Size/Tamaño de la Porción 1 oz (28g/
About/Aprox. 18 chips/papas fritas)
Servings Per Container About 2/Porciones por Envase Aprox. 2

Amount per Serving / Cantidad por Porción

Calories / Calorías 150 (628kJ)
Calories from Fat / Calorías de Grasa 70

	% Daily Value*/% Valor Diario*
Total Fat / Grasas Totales 8g	12%
Saturated Fat / Grasa Saturada 2g	10%
Trans Fat / Grasa Trans 0g	
Polyunsaturated Fat / Grasa Poliinsaturada 4.5g	
Monounsaturated Fat / Grasa Monoinsaturada 1g	
Cholesterol / Colesterol 0mg	0%
Sodium / Sodio 115mg	5%
Total Carbohydrate / Carbohidratos Totales 17g	6%
Dietary Fiber / Fibra Dietética 1g	4%
Sugars / Azúcares 2g	
Protein / Proteínas 2g	

Vitamin A	0%	• Vitamin C / Vitamina C	10%
Calcium	0%	• Iron / Hierro	4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
* Los Porcentajes de Valores Diarios están basados en una dieta de 2 000 calorías. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades calóricas.

	Calories / Calorías:	2,000	2,500
Total Fat	Less than / Menos de	65g	80g
Sat. Fat	Less than / Menos de	20g	25g
Cholesterol	Less than / Menos de	300mg	300mg
Sodium	Less than / Menos de	2,400mg	2,400mg
Total Carbohydrate / Carbohidrato Total		300g	375g
Dietary Fiber / Fibra Dietética		25g	30g

Calories per gram / Calorías por gramo:
Fat / Grasa 9 • Carbohydrate / Carbohidrato 4 • Protein / Proteína 4

INGREDIENTS: POTATOES, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: COTTONSEED, PEANUT, SUNFLOWER, CANOLA, CORN OR SOYBEAN), WHEY POWDER, NONFAT DRY MILK, ONION POWDER, SALT, CULTURED CREAM, LACTIC ACID), CITRIC ACID, DISODIUM GUANYLATE & DISODIUM INOSINATE, MONOSODIUM GLUTAMATE, SPICE, SILICON DIOXIDE, MALTODEXTRIN, MODIFIED CORNSTARCH, PARTIALLY HYDROGENATED SOYBEAN AND/OR COTTONSEED OIL, SODIUM CITRATE, CREAM POWDER, PARTIALLY HYDROGENATED SOYBEAN AND/OR COTTONSEED OIL, FOOD STARCH MODIFIED, AND ARTIFICIAL FLAVORS.

INGREDIENTES: PAPAS, ACEITE VEGETAL (CONTIENE UNO O MÁS DE LOS SIGUIENTES: ACEITE DE SEMILLA DE ALGODÓN, CACAHUATE, GIRASOL, CANOLA, MAÍZ O SOYA), SUEROS DE LA LECHE, LECHE DESCREMADA EN POLVO, SAL, CREMA ACIDA (CREMA CULTIVADA, ÁCIDO LÁCTICO), CEBOLLA EN POLVO, MALTODEXTRINA, GLUTAMATO MONOSÓDICO, INOSINATO DISÓDICO, GUANILATO DISÓDICO, ÁCIDO LÁCTICO CON ALMIDÓN MODIFICADO, SILICE, CITRATO DE SODIO, CREMA EN POLVO, ACEITE DE SOYA Y/O SEMILLA DE ALGODÓN PARCIALMENTE HIDROGENADO, ALMIDÓN MODIFICADO, SABORIZANTE NATURAL Y ARTIFICIAL.

What does it mean to be really, truly satisfied?

It means discovering highest quality chips made by the best chip makers, at the best possible value.

It also has something to do with love, work and other stuff, but we're mostly just concerned about chips.

Solo Para México / For Mexico Only	
Cantidad por Porción / Amount Per Serving	
Vitamina A / Vitamin A	
Vitamina C / Vitamin C	
Calcio / Calcium	
Hierro / Iron	

**Los porcentajes de VNR (Valor Nutrimental de Referencia) están basados en las recomendaciones ponderadas en la NOM-051-SCFI/SSA1-2010.
**Percent VNR (Nutritional Value Reference) based on weighted recommendations in the NOM-051-SCFI/SSA1-2010

Consérvese en un lugar fresco


NOV 04 2013
99¢
4218431
SELECT
Sour Cream & Onion
FLAVORED POTATO CHIPS
Classic. Thin and crispy.
0g Trans Fat • No Cholesterol
NET WT 2.5 OZ (70.8g) / CONT. NET. 7


utrition Facts/
oformación Nutrimental
Fat / Grasas Totales
urated Fat / Grasa Saturada 2.5g
ns Fat / Grasa Trans 0g
ly unsaturated Fat / Grasa Polinsaturada 5g
nounsaturated Fat / Grasa Monoinsaturada 1.5g
esterol / Colesterol 0mg
um / Sodio 220mg
l Carbohydrate / Carbohidratos Totales 15g
Dietary Fiber / Fibra Dietética 1g
gars / Azucares 2g
n / Proteinas 2g
SELECT
What does it mean to be really, truly satisfied?
It means discovering the highest quality chips, made by the best chip makers, at the best possible value.
It also has something to do with love, work and other stuff but we're mostly just concerned about chips.
Satisfaction Guaranteed

Food

Open Letter to Industry from Dr. Hamburg

New Front-of-Package Labeling Initiative Main Page[1]

March 3, 2010

Dear Industry:

In the early 1990s, the Food and Drug Administration (FDA) and the food industry worked together to create a uniform national system of nutrition labeling, which includes the now-iconic Nutrition Facts panel on most food packages. Our citizens appreciate that effort, and many use this nutrition information to make food choices. Today, ready access to reliable information about the calorie and nutrient content of food is even more important, given the prevalence of obesity and diet-related diseases in the United States. This need is highlighted by the announcement recently by the First Lady of a coordinated national campaign to reduce the incidence of obesity among our citizens, particularly our children.

With that in mind, I have made improving the scientific accuracy and usefulness of food labeling one of my priorities as Commissioner of Food and Drugs. The latest focus in this area, of course, is on information provided on the principal display panel of food packages and commonly referred to as "front-of-pack" labeling.[1] The use of front-of-pack nutrition symbols and other claims has grown tremendously in recent years, and it is clear to me as a working mother that such information can be helpful to busy shoppers who are often pressed for time in making their food selections.

I believe we now have a wonderful opportunity to make a significant advancement in public health if we can devise a front-of-pack labeling system that consumers can understand and use. We intend to work closely with food manufacturers, retailers, and others in the design process, and I hope that every food processor will contribute its views on how we can do this in the best way possible. In the meantime, FDA will soon issue new draft guidance relating to front-of-pack calorie and nutrient labeling. The agency is also planning to issue a draft guidance that would recommend nutritional criteria for foods that make "dietary guidance" statements (such as "Eat 2 cups of fruit a day for good health") in their labeling.

As we move forward in those areas, I must note, however, that there is one area in which more progress is needed. As you will recall, we recently expressed concern, in a "Dear Industry" letter, about the number and variety of label claims that may not help consumers distinguish healthy food choices from less healthy ones and, indeed, may be false or misleading.

At that time, we urged food manufacturers to examine their product labels in the context of the provisions of the Federal Food, Drug, and Cosmetic Act that prohibit false or misleading claims and restrict nutrient content claims to those defined in FDA regulations. As a result, some manufacturers have revised their labels to bring them into line with the goals of the Nutrition Labeling and Education Act of 1990. Unfortunately, however, we continue to see products marketed with labeling that violates established labeling standards.

To address these concerns, FDA is notifying a number of manufacturers that their labels are in violation of the law and subject to legal proceedings to remove misbranded products from the marketplace. While the warning letters that convey our regulatory intentions do not attempt to cover all products with violative labels, they do cover a range of concerns about how false or

misleading labels can undermine the intention of Congress to provide consumers with labeling information that enables consumers to make informed and healthy food choices. For example:

- Nutrient content claims that FDA has authorized for use on foods for adults are not permitted on foods for children under two. Such claims are highly inappropriate when they appear on food for infants and toddlers because it is well known that the nutritional needs of the very young are different than those of adults.
- Claims that a product is free of trans fats, which imply that the product is a better choice than products without the claim, can be misleading when a product is high in saturated fat, and especially so when the claim is not accompanied by the required statement referring consumers to the more complete information on the Nutrition Facts panel.
- Products that claim to treat or mitigate disease are considered to be drugs and must meet the regulatory requirements for drugs, including the requirement to prove that the product is safe and effective for its intended use.
- Misleading "healthy" claims continue to appear on foods that do not meet the long- and well-established definition for use of that term.
- Juice products that mislead consumers into believing they consist entirely of a single juice are still on the market. Despite numerous admonitions from FDA over the years, we continue to see juice blends being inaccurately labeled as single-juice products.

These examples and others that are cited in our warning letters are not indicative of the labeling practices of the food industry as a whole. In my conversations with industry leaders, I sense a strong desire within the industry for a level playing field and a commitment to producing safe, healthy products. That reinforces my belief that FDA should provide as clear and consistent guidance as possible about food labeling claims and nutrition information in general, and specifically about how the growing use of front-of-pack calorie and nutrient information can best help consumers construct healthy diets.

I will close with the hope that these warning letters will give food manufacturers further clarification about what is expected of them as they review their current labeling. I am confident that our past cooperative efforts on nutrition information and claims in food labeling will continue as we jointly develop a practical, science-based front-of-pack regime that we can all use to help consumers choose healthier foods and healthier diets.

Sincerely,

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

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[1] Although the principal display panel is not always on the front of a food package, in this letter we use "front-of-pack" as a synonym for principal display panel; i.e., the part of the package label that is most likely to be examined under customary conditions of display for retail sale. See 21 C.F.R. 101.1.

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1. /Food/IngredientsPackagingLabeling/LabelingNutrition/ucm202726.htm