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17 UNITED STATES DISTRICT COURT
 18 CENTRAL DISTRICT OF CALIFORNIA

19 JILLIANN PEREZ, on behalf of herself
 20 and all others similarly situated,

21 Plaintiffs,

22 v.

23 GOYA FOODS, INC., a New Jersey
 24 Corporation, and DOES 1-10, inclusive,

25 Defendants.

26 **Case No.**

27 **CLASS ACTION**
 28 **COMPLAINT FOR:**

1. VIOLATION OF THE FALSE
 ADVERTISING LAWS ("FAL");
 Bus. & Prof. Code § 17500;

2. VIOLATION OF CALIFORNIA'S
 UNFAIR COMPETITION LAWS
 ("UCL"); Bus. & Prof. Code § 17200
 et seq.;

3. VIOLATION OF CALIFORNIA'S
 CONSUMER LEGAL REMEDIES
 ACT ("CLRA"); Civil Code § 1750 et
 seq.

DEMAND FOR JURY TRIAL

1 Plaintiff Jilliann Perez (also referred to as “Plaintiff”), on behalf of herself
2 and all others similarly situated, alleges as follows. Plaintiff’s allegations are based
3 on the investigation of counsel, and thus on information and belief, except as to the
4 individual actions of Plaintiff, as to which Plaintiff has personal knowledge.

5 **THE PARTIES**

- 6 1. Plaintiff Jilliann Perez is a citizen and resident of Los Angeles County,
7 California who purchased Malta Goya (also referred to as the “Product”) from
8 Porto’s Bakery in Burbank many times over the past several years.
- 9 2. Plaintiff is informed and believes, and upon such information and belief
10 alleges, that Goya Foods, Inc. (also referred to as “Defendant” or “Goya
11 Foods”) is a New Jersey corporation, with its principle place of business in
12 New Jersey, that markets, distributes, and/or sells Malta Goya. Defendant
13 sells Malta Goya to consumers in California and throughout the nation.
- 14 3. Plaintiff does not know the true names or capacities of the persons or entities
15 sued herein as DOES 1-10, inclusive, and therefore sues such DOE
16 Defendants by such fictitious names. Plaintiff is informed and believes, and
17 upon such information and belief alleges, that each of the DOE Defendants is
18 in some manner legally responsible for the damages suffered by Plaintiff and
19 the members of the Class as alleged herein. Plaintiff will amend this
20 Complaint to set forth the true names and capacities of these DOE Defendants
21 (Goya Foods, Inc. and DOE Defendants will jointly hereafter be referred to as
22 “Defendants”) when they have been ascertained, along with appropriate
23 charging allegations, as may be necessary.
- 24 4. At all times herein mentioned, Defendants, and each of them, were the agents,
25 principals, servants, employees, and subsidiaries of each of the remaining
26 Defendants, and were at all times acting within the purpose and scope of such
27 agency, service, and employment, and directed, consented, ratified, permitted,
28 encouraged, and approved the acts of each of the remaining Defendants.

JURISDICTION AND VENUE

- 1
- 2 5. This Court has subject matter jurisdiction pursuant to the Class Action
- 3 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member
- 4 is of diverse citizenship from one Defendant; there are more than 100 Class
- 5 members nationwide; the aggregate amount in controversy exceeds
- 6 \$5,000,000; and minimal diversity exists.
- 7 6. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
- 8 substantial part of the events or omissions giving rise to the claims occurred
- 9 and/or emanated from this District, and Defendant has caused harm to Class
- 10 members residing in this District.

11 **FACTUAL ALLEGATIONS**

- 12 7. Goya Foods, Inc. is an international Latin cuisine distributor that
- 13 sells/distributes over 1,500 different products. Defendant claims that “[Goya
- 14 Foods] is the largest, Hispanic-owned food company in the United States” for
- 15 their authentic Latin cuisine. Defendant also plays an influential role in the
- 16 eating healthy initiative. As of 2012, Goya Foods joined Michelle Obama’s
- 17 “My Plate,” which was established to improve the nutrition and well-being of
- 18 Americans.
- 19 8. Further, Goya foods has captured thousands of consumers with their
- 20 “high-quality, fresh-tasting, Latino foods,” but Defendant has also misled
- 21 thousands of consumers with one product in particular: Malta Goya.
- 22 9. Many soft drinks contain caramel color to turn them brown; but this coloring
- 23 is not as harmless as it sounds. Some of this artificial coloring contains an
- 24 impurity 4-methylimidazole (4-MeI), which in 2011 the International Agency
- 25 for Research on Cancer determined to be “possibly carcinogenic to humans.”
- 26
- 27
- 28

- 1 10. Further, as of January 7, 2011, California Proposition 65's list of "Chemical
2 Known to the State to Cause Cancer or Reproductive Toxicity"¹ named 4-
3 MeI as a chemical that is known to the state to cause cancer or birth defects.
4 As a result, any product that exposes consumers to more than 29 micrograms
5 of 4-MeI are supposed to carry a health-warning label per California's Prop.
6 65.
- 7 11. Defendant's Malta Goya beverages contain this carcinogenic chemical, 4-
8 MeI. Further, a recent report² found that the amount of 4-MeI in Malta Goya
9 exceeded this 29 microgram by ten times the amount the threshold California
10 Proposition 65 has established. As a result, Malta Goya beverages are
11 required to have a health warning label for all consumers to see.
- 12 12. As a result of Defendant's omission, Plaintiff believed Malta Goya was safe
13 to consume. Plaintiff and the members of the Class would have never
14 purchased or consumed Malta Goya had they known it contained high
15 carcinogenic levels of 4-MeI. A Proposition 65 warning would have properly
16 warned Plaintiff and other consumers that make up the Class about the
17 possible associated risks when consuming Malta Goya.
- 18 13. Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands of
19 California and nationwide consumers by Defendant, and to recover the
20 monetary gains taken by this unlawful practice.

21 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

- 22 14. Plaintiff brings this action on behalf of herself and on the behalf of all others
23 similarly situated, as members of the Class or subclasses (collectively referred
24 to hereafter as the "Class") defined as follows:

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26
27 ¹ http://oehha.ca.gov/prop65/prop65_list/files/P65single013114.pdf

28 ² <http://www.consumerreports.org/cro/news/2014/01/caramel-color-the-health-risk-that-may-be-in-your-soda/index.htm>

1 (1) California Class: The Class that Plaintiff seeks to represent (“the
 2 California Class”) consists of all persons who are citizens or residents
 3 of California who purchased and/or consumed any Malta Goya
 4 beverages within the four years prior to the filing of the initial
 5 complaint. Excluded from the Class are Defendant, any parent,
 6 subsidiary, affiliate or controlled person of Defendant, as well as the
 7 officers and directors of Defendant, and the immediate family member
 8 of any such person. Also excluded is any judge who may preside over
 9 this case.

10 (2) Nationwide Class: The Class that Plaintiff seeks to represent (“the
 11 Nationwide Class”) is defined to include all persons in the United
 12 States who purchased and/or consumed any Malta Goya beverages
 13 within the four years prior to the filing of the initial complaint.
 14 Excluded from the Class are Defendant, any parent, subsidiary, affiliate
 15 or controlled person of Defendant, as well as the officers and directors
 16 of Defendant, and the immediate family member of any such person.
 17 Also excluded is any judge who may preside over this case.

18 15. This action is brought and may be properly maintained as a class action
 19 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and
 20 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
 21 predominance and superiority requirements of those provisions.

22 16. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
 23 joinder of all of its members is impractical. While the exact number and
 24 identities of Class members are unknown to Plaintiff at this time and can only
 25 be ascertained through appropriate discovery, Plaintiff is informed and
 26 believes the Class includes thousands of members. Plaintiff alleges that the
 27 Class may be ascertained by the records maintained by Defendant.
 28

1 17. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
2 members of the Class, which predominate over any questions affecting only
3 individual members of the Class. These common legal and factual questions,
4 which do not vary from Class member to Class member, and which may be
5 determined without reference to the individual circumstances of any class
6 member, include, but are not limited to, the following:

- 7 (a) Whether Defendant engaged in false or misleading advertising;
- 8 (b) Whether Defendant's conduct violates the California Legal and
9 Remedies Act ("CLRA") or other laws;
- 10 (c) Whether Defendant's conduct is "unfair" or "unlawful" under
11 *Business & Professional Code* Section 17200;
- 12 (d) Whether, as a result of Defendant's misconduct, Plaintiff and the
13 Class are entitled to damages, restitution, equitable relief and
14 other relief, and the amount and nature of such relief.

15 18. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
16 members of the Class. Plaintiff and all members of the Class have sustained
17 injury and are facing irreparable harm arising out of Defendant's common
18 course of conduct as complained of herein. The losses of each member of the
19 Class were caused directly by Defendant's wrongful conduct as alleged
20 herein.

21 19. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
22 interests of the members of the Class. Plaintiff has retained attorneys
23 experienced in the prosecution of class actions, including complex consumer
24 and mass tort litigation.

25 20. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
26 methods of fair and efficient adjudication of this controversy, since individual
27 litigation of the claims of all Class members is impracticable. Even if every
28 Class member could afford individual litigation, the court system could not.

1 It would be an unduly burdensome to the courts in which individual litigation
 2 of numerous issues would proceed. Individualized litigation would also
 3 present the potential for varying, inconsistent or contradictory judgments, and
 4 would magnify the delay and expense to all parties and to the court system
 5 resulting from multiple trials of the same complex factual issues. By contrast,
 6 the conduct of this action as a class action, with respect to some or all of the
 7 issues presented herein, presents fewer management difficulties, conserves
 8 the resources of the parties and of the court system, and protects the rights of
 9 each Class member.

10 21. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
 11 thousands of individual Class members would create the risk of inconsistent
 12 or varying adjudications with respect to, among other things, the need for and
 13 the nature of proper notice, which Defendant must provide to all Class
 14 members.

15 22. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
 16 individual Class members would create a risk of adjudications with respect to
 17 them that would, as a practical matter, be dispositive of the interests of the
 18 other Class members not parties to such adjudications or that would
 19 substantially impair or impede the ability of such non-party Class members to
 20 protect their interests.

21 23. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects
 22 generally applicable to the Class, thereby making appropriate final injunctive
 23 relief with regard to the members of the Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Business and Professions Code § 17500**

26 **(Violation of the False Advertising Act)**

27 **(By Plaintiff and the Class Against Defendants)**

28 24. Plaintiff hereby incorporates paragraphs 1-23 above as if set forth in full.

1 25. California *Business and Professions Code* § 17500 provides that “[i]t is
 2 unlawful for any ... corporation . . . with intent . . . to dispose of . . . personal
 3 property . . . to induce the public to enter into any obligation relating thereto,
 4 to make or disseminate or cause to be made or disseminated . . . from this
 5 state before the public in any state, in any newspaper or other publication, or
 6 any advertising device, or by public outcry or proclamation, or in any other
 7 manner or means whatever, including over the Internet, any statement . . .
 8 which is untrue or misleading, and which is known, or which by the exercise
 9 of reasonable care should be known, to be untrue or misleading”

10 26. Defendant misled consumers by withholding the proper warning and failing
 11 to disclose what is required as stated in the Code, as alleged above.

12 27. As a direct and proximate result of Defendant’s misleading advertising and
 13 withheld warning, Plaintiff and the members of the Class have suffered injury
 14 in fact and have lost money.

15 28. The failure to warn consumers regarding Defendant’s Malta Goya beverages
 16 presents a continuing threat to Plaintiff and the Class in that Defendant
 17 persists and continues to engage in these practices, and will not cease doing
 18 so unless and until forced to do so by this Court. Defendant’s conduct will
 19 continue to cause irreparable injury to consumers unless enjoined or
 20 restrained.

21 **SECOND CAUSE OF ACTION**

22 **Business and Professions Code § 17200 et seq.**

23 **(Violation of the Unfair Competition Law)**

24 **(By Plaintiff and the Class Against Defendant)**

25 29. Plaintiff hereby incorporates paragraphs 1-28 above as if set forth in full.

26 30. California *Business and Professions Code* § 17200 et seq. (the “Unfair
 27 Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of
 28 “unfair competition,” which include any unlawful or unfair business practice.

- 1 31. The UCL imposes strict liability. Plaintiff need not prove Defendant
2 intentionally or negligently engaged in unlawful or unfair business practices
3 — but only that such practices occurred. Further, in order to prevail on this
4 cause of action, it is not necessary for Plaintiff to show that Defendant acted
5 with intent or malice, nor is it necessary for Plaintiff to show Defendant’s
6 knowledge or scienter related to the false or misleading nature of Defendant’s
7 claims.
- 8 32. The material misrepresentations, concealment, and non-disclosures by
9 Defendant as part of its marketing and advertising of Malta Goya beverages
10 are unlawful, unfair, and fraudulent business practices prohibited by the UCL.
- 11 33. In carrying out such marketing, Defendant has violated the Consumer Legal
12 Remedies Act, the False Advertising Law, and various other laws,
13 regulations, statutes, and/or common law duties. Defendant’s business
14 practices alleged herein, therefore, are unlawful within the meaning of the
15 UCL.
- 16 34. The harm to Plaintiff and members of the public outweighs the utility of
17 Defendant’s practices and, consequently, Defendant’s practices, as set forth
18 fully above, constitute an unfair business act or practice within the meaning
19 of the UCL.
- 20 35. Defendant’s practices are additionally unfair because they have caused
21 Plaintiff and the Class substantial injury, which is not outweighed by any
22 countervailing benefits to consumers or to competition, and which is not an
23 injury the consumers themselves could have reasonably avoided.
- 24 36. Defendant’s practices, as set forth above, have misled the general public in
25 the past and will mislead the general public in the future. Consequently,
26 Defendant’s practices constitute an unlawful and unfair business practice
27 within the meaning of the UCL.
28

- 1 37. Pursuant to Business and Professions Code § 17204, an action for unfair
 2 competition may be brought by any “person . . . who has suffered injury in
 3 fact and has lost money or property as a result of such unfair competition.”
 4 Defendant’s wrongful misrepresentations and omissions have directly and
 5 seriously injured Plaintiff and the putative Class by causing them to purchase
 6 Malta Goya beverages based upon Defendant’s failure to warn.
- 7 38. The unlawful, unfair, and fraudulent business practices of Defendant are
 8 ongoing and present a continuing threat that members of the public will be
 9 misled into purchasing Malta Goya beverages that contain a potentially
 10 serious carcinogen without any warning; they will be damaged financially
 11 and put themselves at risk for potential adverse health consequences.
- 12 39. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
 13 injunctive relief ordering Defendant to cease this unfair competition, as well
 14 as disgorgement and restitution to Plaintiff and the Class of all of Defendant’s
 15 revenues associated with its unfair competition, or such portion of those
 16 revenues as the Court may find equitable.

17 **THIRD CAUSE OF ACTION**

18 **Civil Code § 1750 et seq.**

19 **(Violation of the Consumer Legal Remedies Act)**

20 **(By Plaintiff and the Class Against Defendant)**

- 21 40. Plaintiff hereby incorporates paragraphs 1-39 above as if set forth in full.
- 22 41. The Consumer Legal Remedies Act creates a non-exclusive statutory remedy
 23 for unfair methods of competition and unfair acts or business practices. *See*
 24 *Revels v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-
 25 declared purpose is to protect consumers against these unfair business
 26 practices and to provide efficient and economical procedures to secure such
 27 protection. Cal. Civil Code § 1760. The CLRA was designed to be liberally
 28

1 construed and applied in favor of consumers to promote its underlying
2 purposes. *Id.*

3 42. Plaintiff has standing to pursue this claim, as Plaintiff purchased and
4 consumed Malta Goya, and lost money as a result of such purchase along
5 with exposing herself to potentially negative health risks. Plaintiff would
6 have never purchased Malta Goya had he known it contained 4-MeI at a level
7 that required a Proposition 65 warning.

8 43. Defendant's wrongful business practices constituted, and constitute, a
9 continuing course of conduct in violation of the California Consumer Legal
10 Remedies Act since Defendant is still representing that Malta Goya is safe to
11 consume without any warning label, which is false and misleading.

12 44. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5,
13 7, and 9 of Civil Code Section 1770(a) by engaging in the unfair and/or
14 deceptive acts and practices set forth herein. Defendant's unfair and
15 deceptive business practices in carrying out the marketing program described
16 above were and are intended to and did and do result in the purchase of
17 Defendant's Malta Goya by consumers, including Plaintiff, in violation of the
18 CLRA. Cal. Civ. Code § 1770 *et seq.*

19 45. As a result of Defendant's unfair and/or deceptive business practices, Plaintiff
20 and the putative class member have suffered damage and lost money in that
21 they paid for a product that contains a potentially harmful carcinogen without
22 being warned of such fact. Plaintiff seeks and is entitled to an order enjoining
23 Defendant from continuing to engage in the unfair and deceptive business
24 practices alleged herein.

25 46. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant
26 in writing of the particular violations of Section 1770 of the CLRA (the
27 "Notice Letter"). If Defendant fails to comply with Plaintiff's demands
28 within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of

1 the CLRA, Plaintiff will amend this Complaint to further request damages
2 under the CLRA.

3 **PRAYER FOR RELIEF**


4 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
5 relief and judgment as follows:

- 6 1. For preliminary and permanent injunctive relief enjoining Defendant, its
7 agents, servants and employees, and all persons acting in concert with it, from
8 engaging in, and continuing to engage in, the unfair, unlawful and/or
9 fraudulent business practices alleged above and that may yet be discovered in
10 the prosecution of this action;
 - 11 2. For certification of the putative class;
 - 12 3. For restitution and disgorgement of all money or property wrongfully
13 obtained by Defendant by means of its herein-alleged unlawful, unfair, and
14 fraudulent business practices;
 - 15 4. For an accounting by Defendant for any and all profits derived by Defendant
16 from its herein-alleged unlawful, unfair and/or fraudulent conduct and/or
17 business practices;
 - 18 5. An award of statutory damages according to proof, except that no damages
19 are currently sought on Plaintiff's Cause of Action regarding the Consumer
20 Legal Remedies Act at this time;
 - 21 6. An award of general damages according to proof, except that no damages are
22 currently sought on Plaintiff's Cause of Action regarding the Consumer Legal
23 Remedies Act at this time;
 - 24 7. An award of special damages according to proof, except that no damages are
25 currently sought on Plaintiff's Cause of Action regarding the Consumer Legal
26 Remedies Act at this time;
- 27
28

- 1 8. Exemplary damages, except that no damages are currently sought on
- 2 Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at
- 3 this time;
- 4 9. For attorneys' fees and expenses pursuant to all applicable laws, including,
- 5 without limitation, the CLRA and the common law private attorney general
- 6 doctrine;
- 7 10. For costs of suit; and
- 8 11. For such other and further relief as the Court deems just and proper.

9
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11 DATED: March 14, 2014

12
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14 KIRTLAND & PACKARD LLP

15 By: 

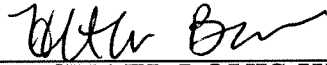
16 MICHAEL LOUIS KELLY
 17 BEHRAM V. PAREKH
 18 HEATHER M. BAKER
 19 *Counsel for Plaintiff and the Class*

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all issues so triable.

DATED: March 14, 2014

KIRTLAND & PACKARD LLP

By: 
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. BAKER
Counsel for Plaintiff and the Class

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KIRTLAND & PACKARD LLP

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DECLARATION OF PROPER VENUE BY JILLIANN PEREZ

I, Jilliann Perez, declare as follows:

1. I am a Plaintiff in this action, and am a resident and citizen of the State of California. I have personal knowledge of the facts alleged herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county where Defendant does business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Jilliann Perez

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