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Attorney for Individual and Representative Plaintiff Aleta Lilly

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

v.

CONAGRA FOODS, INC., a Delaware corporation,

Defendant.

Case No. 12-CV-0225 RGK

FIRST AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Aleta Lilly ("Plaintiff") brings this class action suit against ConAgra Foods, Inc. ("ConAgra" or "Defendant"), on behalf of herself and the proposed Class who purchased David® Sunflower Seeds ("Sunflower Seeds" or "Products"). The Sunflower Seeds are brand owned, delivered, developed, manufactured, marketed, and sold by ConAgra. In support of Plaintiff's First Amended Class Action Complaint, Plaintiff alleges, based on her personal experience and the investigation of her counsel, as follows:

NATURE OF THE CASE

1. Plaintiff Aleta Lilly regularly purchased various David® Sunflower Seeds, which are the salted sunflower kernels and shells made by ConAgra, throughout California during the class period defined herein. Plaintiff relied on the Nutrition Fact Label in deciding to purchase the Products.

2. ConAgra falsely and misleadingly represents the actual sodium content of the Sunflower Seeds on the Product's packaging.

3. All natural, unsalted sunflower seeds are high in potassium, protein and Vitamin E and low in sodium.[1] However, manufacturers in the United States, including ConAgra, add salt and other seasonings to sunflower seed shells and market the product as an ideal snack food.[2]

4. The United States Food and Drug Administration ("FDA") requires food manufacturers to provide consumers with the nutritional content of food products —such as the amount of sodium — and requires that the sodium content be placed conspicuously in the product's Nutrition Fact Label. 21 U.S.C. § 343(q)(1)(D); 21 C.F.R. § 101.9(a) *et.*

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[1] http://www.nhlbi.nih.gov/health/public/heart/hbp/dash/new_dash.pdf (last visited Jan. 05, 2012); http://www.sunflowernsa.com/health/ideal-snack/ (last visited Jan. 05, 2012).

[2] http://www.davidseeds.com/about-us.jsp (last visited Jan. 05, 2012).

seq.[3] A product which does not meet these requirements is misbranded under federal law (21 U.S.C. § 343(a)) and California law, namely, the Sherman Food, Drug and Cosmetic Law.

5. During the Class Period, ConAgra engaged in a marketing scheme through the use of omissions and misleading representations on its Products and website to mislead consumers into purchasing the Sunflower Seeds. ConAgra packages and sells sunflower seeds within their shells. However, at least through August 31, 2012, ConAgra's Sunflower Seeds available for purchase by consumers at retail locations listed the sodium content of only the sunflower kernels in the Nutrition Facts Label. ConAgra, however, either did not disclose the dangerously high salt content of both the sunflower kernels *and* the shell's food coating in the Nutrition Facts Label at all, or did not state the dangerously high salt content of the sunflower kernels *and* shells in equal prominence in the Nutrition Fact Label as it does the salt content of the sunflower kernels. The Nutrition Facts Labels ConAgra displays on its website at www.davidseeds.com, however, continue to list the sodium for only the kernels.

6. Persons who buy the Product place both the kernel *and* the shell in their mouths, and the Nutrition Facts Label merely listing the lower sodium content of the kernel while not listing the much higher sodium content of the shell's food coating is unlawful, unfair, deceptive, and likely to deceive reasonable consumers. Similarly, disclosing the higher sodium content of both the kernel *and* the shell's food coating outside of the Nutrition Facts Label is unlawful, unfair, deceptive, and likely to deceive reasonable consumers. Under both scenarios, reasonable consumers are likely to focus

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[3] *See also* FDA's Guidance For Industry: Food Labeling Guide at N1, available at *http://www.fda.gov/downloads/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/UCM265446.pdf* (last visited Jan. 05, 2012).

on the sodium content set forth in the Nutrition Facts Label, and are likely to be misled and believe that the sodium content of the Product is much lower than what is actually is.

7. High sodium intake can lead to hypertension or high blood pressure. High blood pressure can increase the risk of heart attacks, strokes, heart failure, and kidney failure.[4]

8. With millions of Americans at risk for or suffering from high blood pressure, consumers need clear Nutrition Facts Labels that accurately conveys a food's sodium content.

9. ConAgra's Products were misbranded and therefore its practices are unlawful, unfair, misleading and deceptive because the Nutrition Fact Labels do not disclose, or fail to clearly and accurately disclose, the sodium content of the Product in its entirety and its intended consumption.

10. Plaintiff seeks an order that compels ConAgra to (1) cease marketing its Products using the misleading representations complained of herein, (2) conduct a corrective advertising campaign, and (3) provide monetary relief to Plaintiff and Class members for Defendant's unlawful, unfair and fraudulent conduct.

PARTIES

11. Plaintiff Aleta Lilly ("Plaintiff") is a resident and citizen of Inglewood, California. In approximately 2011, concerned about her blood pressure level, Plaintiff sought a low-sodium snack. After reading and relying on the statements made by ConAgra regarding the sodium content on the ConAgra's Sunflower Seed's Nutrition Fact Label (which did not clearly and accurately convey the sodium content of the Product in its entirety), Plaintiff regularly bought the David® Sunflower Seeds Original in various sizes, including, but not limited to, the 1.75 oz bags and the 5.25 oz bags in Inglewood and Los Angeles, California. Plaintiff reasonably relied on the sodium

[4] *See* http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm209155.htm

content listed in the Nutrition Facts Label set forth on the David® Sunflower Seeds Original products. Had Plaintiff known the true sodium content — inclusive of both the kernel and shell — she would not have otherwise purchased the products.

12. Defendant ConAgra is a Delaware corporation with a principal place of business in Omaha, Nebraska. However, one of ConAgra's main manufacturing plants is located in Fresno, California. It sells and markets David® Sunflower Seeds, the subject matter of this dispute, in California and throughout the United States. ConAgra has a general office for its Grocery Foods Group in Irvine, California and several offices located throughout California. ConAgra is one of North America's leading food companies, with consumer brands in 97% of America's households sold in grocery, convenience, mass merchandise and club stores. ConAgra's Sunflower Seeds are one of the most widely sold sunflower seeds in the United States and are available in a wide array of flavors and snack products.

JURISDICTION

13. Defendant is engaged in inter-state commerce or activity affecting inter-state commerce. This Court has *in personam* jurisdiction over Defendant because, among other things, it engaged in illegal schemes and acts directed at persons, and had the intended effect of causing injury to persons, residing in, located in, or doing business in the State of California (the "Judicial District") and throughout the United States. Defendant is present in this Judicial District, and/or conducted a substantial part of its business in this Judicial District, and/or has extensive contacts with this forum and/or a substantial part of the actions which gave rise to Plaintiff's causes of action occurred in or emanated from this Judicial District.

14. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds $5 million, exclusive of interests and costs; the number of members of the proposed Class

exceed 100; and Plaintiff and many members of the proposed Class are citizens of a state different than the state of the Defendant.

15. Venue is proper in this District under 28 U.S.C. § 1391(a) because Plaintiff is a resident and citizen of this District; a substantial part of the events or omissions giving rise to the claims occurred within this District; and/or Defendant has caused harm to Class members residing within this District.

FACTUAL ALLEGATIONS

Sodium Content in Food Products

16. Most people eat too much sodium often unknowingly. The human body needs only 200 mg of sodium per day. The Institute of Medicine recommends 1500 mg of sodium per day as the Adequate Intake level for most Americans and advises individuals to limit their sodium intake to less than 2,300 mg per day, the Tolerable Upper Limit.[5]

17. Current dietary guidelines for Americans recommend that adults in general should consume no more than 2,300 mg of sodium per day.[6]

18. Furthermore, according to the Centers for Disease Control and Prevention, the groups listed below should consume no more than 1,500 mg of sodium per day and meet the potassium recommendation (4,700 mg/day) with food. This recommendation applies to approximately half of the U.S. population overall and the majority of adults:

- Those 51 years of age or older;
- African Americans;
- Those with high blood pressure;

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[5] *See* United States Department of Agriculture and United States Department of Health and Human Services, *Dietary Guidelines for Americans, 2010* at page 23, *available at* http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf (last visited Jan. 05, 2012).

[6] *Id.*

- Those with diabetes; and
- Those with chronic kidney disease.

19. Too much sodium causes the human body to retain water, putting an extra burden on the heart and blood vessels. High sodium consumption raises blood pressure.[7] High blood pressure is one of the major risk factors for heart disease and stroke — the U.S.'s first and third leading causes of death.

20. Research shows when salt intake is reduced, blood pressure begins decreasing for most people within a few days to weeks. Populations that consume diets low in salt do not experience the increase in blood pressure with age that is seen in most Western countries.

21. Thus, it is important that nutrition claims, especially claims relating to sodium content, are accurate for consumers.

ConAgra

22. ConAgra produces consumer and commercial foods.

23. In 2009, the sale of ConAgra's consumer foods, including Sunflower Seeds, reached approximately $4.45 billion.[8] In the same year, the sale of ConAgra's snacks and Store Brands products, including Sunflower Seeds, reached $1.5 billion.[9]

24. David® Sunflower Seeds are the most widely sold sunflower seeds in the United States.[10] The Sunflower Seeds are sold in a variety of flavors, including Original,

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[7] *See* http://www.cdc.gov/features/dsSodium/.

[8] http://www.sec.gov/Archives/edgar/data/23217/000095012310067148/c58842e10vk.htm

[9] http://www.sec.gov/Archives/edgar/data/23217/000095012309025102/c52384e10vk.htm

[10] http://www.nclnet.org/images/PDF/sunflower-seeds-1.pdf (last visited Jan. 05, 2012); http://www.davidseeds.com/about-us.jsp (last visited Jan. 05, 2012).

Ranch, Bar-B-Q, Nacho Cheese, Dill Pickle, Jalapeno Hot Salsa, Buffalo-Style Ranch, and Hot & Spicy.

25. The market for sunflower seeds is intensely competitive. The target market includes, but is not limited to athletes — especially baseball players — both children and adults, and sports fans.

26. Since 1991, David® Sunflower Seeds has sponsored the Babe Ruth League, promoting the "Eat. Spit. Be Happy" slogan to youth baseball and softball players ages 5 to 18 nationwide. The Babe Ruth League has over 900,000 players across the U.S.

27. Thus, David® Sunflower Seeds are marketed to a wide array of consumers, including children, nationwide.

ConAgra Manufactures, Delivers, Markets and Sells Misbranded Sunflower Seeds and Makes Material Misrepresentations and Misleading Statements

28. Although the Sunflower Seeds product is one of ConAgra's best selling products, ConAgra misleadingly understates the amount of sodium contained in Sunflower Seeds.

29. For example, on the Nutrition Facts Label of a 1.75 oz bag of David® Original Roasted and Salted Sunflower Seeds (Exhibit A hereto), ConAgra represented the Serving Size as "(25g of kernels)*" and stated in the Nutrition Facts Label that this amounts to 110 mg of sodium, or 5% of the daily value recommended for a typical 2,000 calorie diet. However, in small print at the bottom of the Sunflower Seeds' package below the list of ingredients, ConAgra indicated that the Serving Size equates to "(49.6g) in the shell".

30. A 1.75 oz bag of the Sunflower Seeds contains approximately 1090mg of sodium. The 1090mg of sodium (the sodium content of the kernel *and* the shell's food coating) was omitted from the Nutrition Facts Label, in violation of federal and state law, and the reasonable consumer was misled to believe the sodium content of the Product is less than it actually is.

31. Another example of the Sunflower Seeds' misleading packaging occurred on the Nutrition Fact Label of a 5.25 oz bag of David® Original Sunflower Seeds Buffalo Style Ranch flavor, where ConAgra represented that a 1/4 cup (30g kernels) amounts to 150 mg of sodium, or 6% of the daily value recommended for a typical 2,000 calorie diet (see Exhibit B). However, according to a letter dated July 28, 2011 from the National Consumers League to the FDA (see Exhibit C, Appendix 1),[11] in extremely fine print at the bottom of the Sunflower Seeds' package outside of the Nutrition Fact Label, ConAgra presents a very different and surprising picture of the sodium content of the Sunflower Seeds:

> "Nutrition facts are for the sunflower seed kernel. The sodium total including the shell is **1260mg (53% daily value)**." (emphasis added). [12]

32. This purported disclosure, however, was not in equal prominence as the sodium content of the kernels in the Nutrition Fact Label.

33. Other manufacturers and competitors of ConAgra, such as Frito-Lay, disclose the entire sodium content (including the kernel and shell) in each serving of sunflower seeds on the Nutrition Facts Label. *See, e.g.*, Exhibit C, Appendix 2 (Frito Lay conspicuously discloses that their sunflower seeds contain 90mg of sodium per serving or 4% of a consumer's daily value based on kernel only, and 2100mg of sodium or 87% of a consumer's daily value when salt on the shell is included in its Nutrition Facts).

34. ConAgra's Sunflower Seeds' packages expressly state that the intended manner for consuming the Sunflower Seeds is to place the entire **shell** and the **kernel** in the mouth. For example, on a 1.75 oz of David® Roasted & Salted Original Sunflower Seeds, the Sunflower Seeds package instructs how to eat the seeds:

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[11] http://www.nclnet.org/images/PDF/sunflower-seeds-1.pdf.

[12] *See* http://www.nclnet.org/newsroom/press-releases/545-ncl-calls-on-the-fda-to-investigate-misleading-labeling-on-david-sunflower-seed-products.

> "crack the **shell** with your teeth, eat the seed and spit the shell. Experienced seeders pop a handful of seeds in their mouth and store them in one cheek, then transfer a seed over to the other side with their tongue, crack it, then eat the seed and split the **shell**." (emphasis added).

35. Most consumers, including Plaintiff, eat sunflower seeds in this manner. Once placed in consumers' mouths, consumers ingest some, if not all, of the sodium from the sunflower seeds' shell which is not reflected in the Nutrition Facts Label.

36. Thus, the amount of sodium and the percentage of a consumer's percentage of daily value of sodium represented on the Products' Nutrition Facts Label are drastically understated, misleading, and likely to deceive reasonable consumers.

37. ConAgra must make nutrient content claims clear and understandable to enable consumers to make informed food choices. As stated above, Sunflower Seeds' Nutrition Facts Labels are unlawful, unfair, fraudulent, misleading and deceptive.

38. Plaintiff Aleta Lilly regularly purchased various packages of David® Sunflower Seeds, including the 1.75 oz and 5.25 oz size bags.

39. In 2011, Plaintiff purchased various packages of the David® Sunflower Seeds approximately once to twice a month. Plaintiff purchased the Original variety products on or around January 7, 2011, January 30, 2011, February 5, 2011, February 26, 2011, March 11, 2011, March 19, 2011, March 24, 2011, April 16, 2011, May 13, 2011, May 21, 2011, May 25, 2011, June 11, 2011, June 18, 2011, July 2, 2011, July 9, 2011, July 29, 2011, August 11, 2011, August 26, 2011, and August 28, 2011.

40. Plaintiff purchased the products in various stores in Inglewood and Los Angeles, California including 7-Eleven, Vons, AMPM, local liquor stores and gas stations.

41. Concerned with her blood pressure level, Plaintiff read and relied on the Nutrition Facts Label in deciding to purchase the products.

42. Had Plaintiff known the true sodium content — inclusive of both the kernel and shell — she would not have otherwise purchased the products.

43. Plaintiff ceased purchasing the David® Sunflower Seeds Original products after learning of the product's true sodium content.

CLASS ALLEGATIONS

44. This action has been brought, and may be properly maintained, under Fed. R. Civ. P. 23(a)(1)-(4) and 23(b)(1), (2) or (3) and case law thereunder.

45. Plaintiff brings this action as a class action on behalf of herself and all others similarly situated. The proposed Class is initially defined as follows:

"All persons residing in California who, from January 8, 2008 through August 31, 2012 ("Class Period"), purchased, for personal use and not resale, David® Sunflower Seeds."

The Class does excludes Defendant ConAgra, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff. Plaintiff reserves her right to amend the class definition after the opportunity to complete discovery.

Numerosity of the Class

(Fed. R. Civ. P. 23(a)(1))

46. Class members are so numerous that their individual joinder is impractical. Plaintiff estimates that the Class is comprised of hundreds of thousands of members. The precise number of class members and their identities are unknown to Plaintiff at this time, but may be ascertained from Defendant's records or may be notified of the pendency of this action by mail by published notice.

Predominance of Common Questions of Fact and Law

(Fed. R. Civ. P. 23(a)(2); 23(b)(3))

47. Common questions of law and fact exist as to all members of the Class as required by Fed. R. Civ. P. 23(a)(2). These questions predominate over the questions affecting only individual Class members as required by Fed. R. Civ. P. 23(b)(3). The common legal and factual questions include:

(a) Whether ConAgra failed to disclose, in the Nutrition Facts Label of its David® Sunflower Seed products, the sodium content of the kernel and the shell's food coating;

(b) Whether ConAgra manufactured, delivered, marketed and sold misbranded David® Sunflower Seeds;

(c) Whether ConAgra's omissions and misrepresentations are likely to deceive reasonable consumers;

(d) Whether ConAgra's conduct as alleged herein violates the Consumers Legal Remedies Act;

(e) Whether ConAgra's conduct as alleged herein violated the False Advertising Law;

(f) Whether ConAgra's conduct as alleged herein violates the Unfair Competition Law; and

(g) The nature of the relief, including equitable relief, to which Plaintiff and Class members are entitled.

Typicality of Claims

(Fed. R. Civ. P. 23(a)(3))

48. Plaintiff's claims are typical of the claims of the Class, because Plaintiff, like all other Class members, purchased David® Sunflower Seeds during the Class Period.

Adequacy of Representation

(Fed. R. Civ. P. 23(a)(4))

49. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the members and she has retained counsel competent and

experienced in complex class action and consumer litigation, including substantial experience in the types of claims alleged herein.

50. The interests of all Class members will be fairly and adequately protected by Plaintiff and her counsel.

Superiority of a Class Action

(Fed. R. Civ. P. 23(b)(3))

51. A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and the Class members. The damages suffered by each individual class member, while significant, are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. And, even if the members of the Class themselves could afford such individual litigation, the court system could not, given the many cases that would need to be filed.

52. Individualized litigation would also present a potential for inconsistent or contradictory judgments. Individualized litigation would increase the delay and expense to all parties and the court system, given the complex legal and factual issues involved. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

Risk of Inconsistent or Dispositive Adjudications and the Appropriateness of Final Injunctive or Declaratory Relief

(Fed. R. Civ. P. 23(b)(1) and (2))

53. In the alternative, this action may properly be maintained as a class action, because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for Defendant; or

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or

(c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

(For Violations of California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, against Defendant)

54. Plaintiff incorporates by reference and realleges all paragraphs previously alleged as if fully set forth herein and further alleges as follows.

55. Defendant is a "person" within the meaning of Cal. Civ. Code §§ 1761(c) and 1770, and provide "goods" within the meaning of Cal. Civ. Code §§ 1761(a) and 1770. Defendant's customers, including Plaintiff and Class members, are "consumers" within the meaning of Cal. Civ. Code §§ 1761(d) and 1770. Each purchase of David® Sunflower Seeds by Plaintiff and each Class member constitutes a "transaction" within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

56. The conduct and actions of Defendant complained of herein constitute violations of the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1770(a)(5), (a)(7) and (a)(9).

57. Among other things, Defendant made material misrepresentations and omissions regarding the Sunflower Seeds that it knew were deceptive and likely to deceive reasonable consumers.

58. Defendant had a legal duty to disclose the sodium content of both the kernel and the shell's food coating in the sodium declaration of Nutrition Facts Label of the Products. Among other things, the duty to disclose was triggered by the FDA, including 21 U.S.C. § 343(q), and California law, namely, the Sherman Food, Drug and Cosmetic Law. Cal. Civ. Code § 110665. Defendant's affirmative statements about the sodium content of the Product and Defendant's exclusive knowledge regarding the Product's true sodium content also triggered the duty to disclose. The facts concealed and/or inadequately disclosed by Defendant were material, in that a reasonable person would have considered them important in deciding whether or not to purchase the Sunflower Seeds. Defendant's concealment, omissions and deceptive practices, in violation of the CLRA, were designed to induce Plaintiff and Class members to purchase Defendant's Sunflower Seeds.

59. Defendant intended to do the act that was deceptive and/or fraudulent, namely, to market and sell their Sunflower Seeds while failing to disclose the material nutritional claims clearly and accurately as described herein.

60. The CLRA makes it unlawful for a company to:

(a) Represent that its goods had characteristics, ingredients, uses, benefits, or quantities which they do not have. Cal. Civ. Code § 1770(a)(5);

(b) Represent that goods are of a particular standard, quality or grade when they are of another standard, quality or grade. Cal. Civ. Code § 1770(a)(7); and

(c) Advertise goods with the intent not to sell them as advertised, Cal. Civ. Code § 1770(a)(9).

61. Defendant's acts, practices, representations, omissions, and courses of conduct with respect to the production, promotion and marketing of its Sunflower Seeds, violated the Consumers Legal Remedies Act in that, among other things:

(a) ConAgra represented that the Sunflower Seeds have characteristics ingredients, uses, benefits, or quantities, which they do not have, in violation of Cal. Civ. Code § 1770(a)(5);

(b) ConAgra represented that the Sunflower Seeds were of a particular standard, quality or grade, when they were of another standard, quality, or grade, in violation of Cal. Civ. Code § 1770(a)(7); and

(c) ConAgra advertised Sunflower Seeds with an intent not to sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9).

62. As a direct and proximate result of Defendant's violations, Plaintiff and Class members were injured.

63. Plaintiff sent out written notices complying with Cal. Civ. Code § 1782(a). Defendant did not provide a remedy within 30 days of receipt.

64. Plaintiff has complied with Cal. Civ. Code § 1780(d) by submitting a declaration attached to the original complaint filed on January 10, 2012 and attached hereto.

65. Plaintiff, on behalf of herself and all others similarly situated, seeks equitable relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct described herein. Plaintiff, on behalf of herself and all others similarly situated, seeks damages and restitution under the CLRA and any other relief deemed proper.

SECOND CAUSE OF ACTION

(For Violations of California's False Advertising Laws, Cal. Bus. & Prof. Code §§ 17500, *et seq.)*

66. Plaintiff incorporates by reference and realleges all paragraphs previously alleged as if fully set forth herein and further alleges as follows.

67. The conduct and actions of Defendant complained of herein constitute deceptive and fraudulent actions in violation of the False Advertising Law ("FAL"). Cal. Bus. & Prof. Code §§ 17500, *et seq.*

68. Among other things, Defendant made representations understating the levels of sodium in the Products' Nutrition Fact Label on its packaging and its website that were deceptive and likely to deceive reasonable consumers. Plaintiff relied on Defendant's representations. Defendant's misleading practices continue to this day.

69. As a result of Defendant's wrongful conduct, Plaintiff suffered injury in fact and lost money or property.

70. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks, among other things, equitable relief in the form of an order requiring Defendant to refund, or partially refund, Plaintiff and Class members for the price of the Sunflower Seeds paid and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct described herein.

THIRD CAUSE OF ACTION

(For Violations of the California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*,)

71. Plaintiff incorporates by reference and realleges all paragraphs previously alleged as if fully set forth herein and further alleges as follows.

72. The conduct and actions of Defendant complained of herein constitute unlawful, unfair and/or fraudulent actions in violation of the Unfair Competition Law ("UCL"). Cal. Bus. & Prof. Code §§ 17200, *et seq.*

73. Defendant's practices constitute "unlawful" business practices in violation of the UCL because, among other things, they violate the CLRA, the FAL, and California's Sherman Food, Drug & Cosmetic Law, California Health and Safety Code § 109875, *et*

seq. including but not limited to §§ 110290, 110390, 110395, 110398, 110400, 110665, 110760, 110765, and 110770.

74. Defendant's actions and practices constitute "unfair" business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and/or any utility of such practices is outweighed by the harm caused consumers. Defendant's actions violate the legislative policy set forth in the federal and state laws governing food labeling, and of protecting consumers and preventing persons from unlawful, unfair, fraudulent business practices and false and deceptive advertising. Defendant's practices caused substantial injury to Plaintiff and Class members, are not outweighed by any benefits, and Plaintiff and Class members could not have reasonably avoided this injury.

75. Defendant's actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff relied on Defendant's representations in the Nutrition Facts Label of the Products.

76. As a result of Defendant's wrongful conduct as alleged herein, Plaintiff has suffered injury in fact and has lost money or property.

77. Accordingly, Plaintiff, on behalf of herself and all others similarly situated, seeks equitable relief in the form of an order requiring Defendant to refund, or partially refund, Plaintiff and Class members for the price paid for the Sunflower Seeds and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct described herein, which continues to this day.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and Class members, prays for relief as follows:

A. For an order that this action may be maintained as a class action under Rule 23 of the Fed. R. Civ. Proc., that Plaintiff be appointed the Class representative, and that Plaintiff's counsel be appointed as counsel for the Class;

B. For an order requiring Defendant to pay restitution in such amount that Plaintiff and Class members paid to purchase the Sunflower Seeds or the profits Defendants obtained from those transactions;

C. For Defendant to pay actual compensatory damages for economic losses in such amount that Plaintiff and the Class members paid to purchase for the Sunflower Seeds;

D. For an order prohibiting Defendant from engaging in the alleged misconduct described herein;

E. For an award of attorneys' fees;

F. For an award of the costs of suit incurred herein, including expert witness fees;

G. For an award of interest, including prejudgment interest, at the legal rate; and

H. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all claims so triable.

DATED: June 27, 2014

Respectfully submitted,

FINKELSTEIN THOMPSON LLP

By: /s/ Rosemary M. Rivas

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San Francisco, California 94111
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Counsel for Individual and Representative Plaintiff Aleta Lilly

DECLARATION OF ROSEMARY M. RIVAS

I, Rosemary M. Rivas, declare as follows:

1. I am a partner with the law firm Finkelstein Thompson LLP, counsel for Plaintiff Aleta Lilly in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to Cal. Civ. Code § 1780(d). I make this declaration based on my research of public records and also upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research of public records and personal knowledge, Defendant ConAgra Foods, Inc. conducts business within this County and this County is where a substantial number of the transactions giving rise to this complaint occurred.

I declare under penalty of perjury under the laws of the United States and State of California this 27th day of June 2014 in San Francisco, California that the foregoing is true and correct.

By: /s/ Rosemary M. Rivas

EXHIBIT A


DAVID
Sunflower Seeds
ORIGINAL
HOW TO EAT DAVID SEEDS
KIDS SAFETY
While Sunflower Seeds are a healthful and delicious snacking choice, they are never recommended for infants or toddlers, as the seeds can pose a choking threat to their safety.
ConAgra Foods
QUESTIONS OR COMMENTS, call Mon.-Fri., 10:00 A.M. - 7:00 P.M. (CST), 1-800-799-2800 (except national holidays).
2 760264EL Z
Best By
JUN 15 2011
Nutrition Facts
Serving Size 1 package (25g kernels)*
Amount Per Serving
Calories 160 Calories from Fat 110
% Daily Value**
Total Fat 12g 18%
Saturated Fat 1.5g 8%
Trans Fat 0g
Polyunsaturated Fat 7g
Monounsaturated Fat 3.5g
Cholesterol 0mg 0%
Sodium 110mg 5%
Total Carbohydrate 4g 1%
Dietary Fiber 3g 12%
Sugars less than 1g
Protein 7g
Calcium 2% • Iron 8%
Vitamin E 35% • Niacin 10%
Folic Acid 15% • Phosphorus 20%
Magnesium 25% • Zinc 10%
*Contains less than 2 percent of the Daily Value of vitamin A and vitamin C.
*Equates to (49.6g) in the shell
**Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.
INGREDIENTS: Sunflower Seeds and Salt.

EXHIBIT B


DAVID
JUMBO
SUNFLOWER SEEDS
BUFFALO STYLE RANCH
NATURAL AND ARTIFICIAL FLAVOR
Eat. Spit.
Be Happy!®
CRACK INTO THE INCREDIBLE VARIETY
of DAVID Sunflower, Kernel and Pumpkin Seeds today!
ORIGINAL
Hot & Spicy
KIDS SAFETY
While Sunflower Seeds are a delicious snacking choice, they are never recommended for infants or toddlers, as the seeds can pose a choking threat to their safety.
2177 0 342 LL T
Best by: SEP 04 2011
Nutrition Facts
Serving Size 1/4 Cup (30g Kernels)*
Servings Per Container About 2.5
Amount Per Serving
Calories 190 Calories from Fat 140
% Daily Value**
Total Fat 16g 25%
Saturated Fat 2.5g 13%
Trans Fat 0g
Polyunsaturated Fat 9g
Monounsaturated Fat 3.5g
Cholesterol 0mg 0%
Sodium 150mg 6%
Total Carbohydrate 5g 2%
Dietary Fiber 2g 8%
Sugars less than 1g
Protein 7g
Calcium 2% • Iron 6%
Vitamin E 10% • Niacin 4%
Folic Acid 20% • Phosphorus 25%
Magnesium 30% • Zinc 10%
Contains less than 2 percent of the Daily Value of vitamin A and vitamin C.
*Equates to 1 1/4 cup in the shell (68g).
**Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:
Calories: 2,000 2,500
Total Fat Less than 65g 80g
Saturated Fat Less than 20g 25g
Cholesterol Less than 300mg 300mg
Sodium Less than 2400mg 2400mg
Total Carbohydrate 300g 375g
Dietary Fiber 25g 30g
INGREDIENTS: SUNFLOWER SEEDS, SALT, PARTIALLY HYDROGENATED SOYBEAN OIL, CONTAINS LESS THAN 2% OF THE FOLLOWING: MIXED TRIGLYCERIDES, BUTTERMILK POWDER, CORN SYRUP SOLIDS, NATURAL AND ARTIFICIAL FLAVORS (INCLUDES SOY), ACETIC ACID, WHEY POWDER, ONION POWDER, TOMATO POWDER, GARLIC POWDER, SUGAR, NONFAT DRY MILK, DEXTROSE, LACTIC ACID, PARSLEY, YEAST EXTRACT, CITRIC ACID, MALIC ACID, PARTIALLY HYDROGENATED SOYBEAN AND COTTONSEED OILS, DISODIUM INOSINATE, DISODIUM GUANYLATE.
CONTAINS: MILK, SOY.
Nutrition facts are for the sunflower seed kernel. The sodium total including the shell is 1260mg (53% daily value).
ConAgra Foods
Food you love
ConAgra Foods, Inc.
P.O. Box 3768, Dept. DS
Omaha, NE 68103-0768 U.S.A.
QUESTIONS OR COMMENTS, call Mon.-Fri., 9:00 AM-7:00 PM (CST), 1-800-799-2800 (except national holidays). Please have entire package available when you call so we may gather information off the label.
Visit us at www.davidseeds.com
0 24200 46187 8

EXHIBIT C

NATIONAL CONSUMERS LEAGUE
1701 K Street, NW, Suite 1200 Washington, DC 20006
Main: (202) 835-3323 Fax: (202) 835-0747 www.nclnet.org

July 28, 2011

The Honorable Margaret Hamburg, M.D.
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Ave
Silver Spring, MD 20993-0002

Dear Dr. Hamburg:

On behalf of the National Consumers League[1] (NCL), I write to you to request a review of the accuracy of the nutrition facts labeling of David Sunflower Seeds, manufactured by ConAgra Foods, Inc. of Omaha, Nebraska, which are the most popular sunflower seeds sold in the US.

On the nutrition facts label of a 5.25oz bag of David Original Sunflower Seeds, the company represents that a ¼ cup of seeds amount to 135 mg of sodium, or 6% of the daily value recommended for a typical 2,000 calorie diet.

But there's a catch: that amount of sodium is only for the kernel. In fine print at the bottom of the package, below the list of ingredients, the company presents a very different picture of the sodium content of its seeds:

> "Nutrition facts are for the sunflower seed kernel. The sodium total including the shell is **1260mg (53% daily value)**."

The nutrition facts in question ought to reflect the way that ConAgra envisions consumers would eat their seeds. Fortunately, on every package, they tell us how:

> "How to Eat David Seeds: Crack the shell with your teeth, eat the seed and spit the shell. Experienced seeders pop a handful of seeds in their mouth and store them in one cheek, then transfer a seed over to the other side with their tongue, crack it, then eat the seed and spit the shell."

Likewise, the product website describes six steps to take when consuming the seeds:

> "Step 1: Pop a handful of seeds in your mouth
> Step 2: Store seeds in one side of your cheek

[1] The National Consumers League, founded in 1899, is America's pioneer consumer organization. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit www.nclnet.org.

Step 3: Now, transfer one seed to the other side
Step 4: Crack the shell with your teeth
Step 5: Remove the seed with your tongue
Step 6: Spit the shell, eat the seed and repeat!"[2]

As part of the "David Seeder" regimen, consumers are expected to put the seed in their mouth and ingest its salt content. The nutrition facts labeling should reflect this reality.

Frito Lay, a competitor that also manufactures sunflower seeds, uses a more accurate nutrition facts label. As seen in appendix 2 attached to this letter, Frito Lay lists both the nutrition facts for the kernel and for the kernel with the seed. The information is presented in a clear, easily understandable format that simplifies the consumers' job of making informed choices. The difference in sodium intake between 90mg without the kernel and 2100mg with the kernel is not trivial and could lead consumers to eat sunflower seeds in a different way, accounting for the evident difference in sodium content.

The NCL applauds recent efforts under your leadership at the FDA to advocate reducing the sodium content of foods Americans eat and to prioritize improvements in the accuracy and usefulness of food labeling.[3] With millions of Americans at risk for or suffering from high blood pressure, consumers need clear nutrition fact labeling that accurately conveys sodium content.

We request that the Food and Drug Administration review this concerning misbranding of nutrition fact labeling that we believe to be in violation of Sections 403 (a) and 403 (q) of the Food, Drug and Cosmetic Act, 21 USC §343 (a), (q). We also ask that the FDA send a warning letter to ConAgra Foods, Inc. in order to resolve this labeling disparity. Thank you for your attention to this significant consumer concern.

Sincerely,

Sally Greenberg
Executive Director

Enclosures

cc Dennis Baker, Regional Food and Drug Director, Southwest Region
cc Eric Mueller, Investigator, Omaha, NE Resident Post

[2] Website, David Seeds, "About us," http://www.davidseeds.com/about-us.jsp.
[3] Speech, Margaret Hamburg, M.D., The Atlantic's Food Summit, Washington, D.C., 4 March 2010.

APPENDIX 1

David Original Sunflower Seeds - 5.25 Oz

Nutrition Facts			
Serving Size	1/4 cup	(30g kernel) *	
Servings Per Container	About 2.5		
Amount per Serving			
Calories	190	Calories from Fat	130
		% Daily Value**	
Total Fat	15.0 g	23 %	
Saturated Fat	1.5 g	8 %	
Trans Fat	0.0 g		
Polyunsaturated Fat	8.0 g		
Monounsaturated Fat	4.0 g		
Cholesterol	0 mg	0 %	
Sodium	135 mg	6 %	
Total Carbohydrate	5 g	2 %	
Dietary Fiber	4 g	16 %	
Sugars	<1 g		
Protein	9 g		
Vitamin A	0 %	Vitamin C	0 %
Calcium	2 %	Iron	8 %
Vitamin E	40 %	Niacin	10 %
Folic Acid	20 %	Phosphorus	25 %
Magnesium	30 %	Zinc	10 %
*Equates to	3/4 cup	in shell (60g)	
**Percent Daily Values are based on 2,000 calorie diet. Your daily values may be higher or lower depending upon your caloric needs.			
	Calories	2,000	2,500
Total Fat	Less than	65 g	80 g
Saturated Fat	Less than	20 g	25 g
Cholesterol	Less than	300 mg	300 mg
Sodium	Less than	2,400 mg	2,400 mg
Total Carbohydrate		300 g	375 g
Dietary Fiber		25 g	30 g
CONTENTS Sunflower Seeds and Salt.			

"Nutrition facts are for the sunflower seed kernel. The sodium total including the shell is 1260mg (53% daily value)."

APPENDIX 2

FRITO-LAY® Sunflower Seeds

INGREDIENTS: SUNFLOWER SEEDS AND SALT.
NO PRESERVATIVES.

Nutrition Facts

Serving Size 1 oz.

Amount Per Serving	1 oz. kernels	1 oz. kernels with salt on shell
Calories	190	190
Calories from Fat	140	140
	% Daily Value*	
Total Fat 16g, 16g	**25%**	**25%**
Saturated Fat 2g, 2g	**9%**	**9%**
Trans Fat 0g, 0g		
Polyunsaturated Fat 9g, 9g		
Monounsaturated Fat 6g, 6g		
Cholesterol 0mg, 0mg	**0%**	**0%**
Sodium 90mg, 2100mg	**4%**	**87%**
Total Carbohydrate 5g, 5g	**2%**	**2%**
Dietary Fiber 3g, 3g	**13%**	**13%**
Sugars less than 1g, less than 1g		
Protein 6g, 6g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	2%	2%
Iron	6%	6%

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

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

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Facsimile: (415) 398-8704

Counsel for Individual and Representative Plaintiff Aleta Lilly

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware corporation

Defendant.

Case No. 12-cv-0225-RGK (SHx)

PROOF OF SERVICE

I, Anita Rivas, declare as follows:

I am employed by Finkelstein Thompson, 505 Montgomery, Street, Suite 300, San Francisco, California 94111. I am over the age of eighteen years and am not a party to this action. On June 27, 2014, I served the following document(s):

FIRST AMENDED CLASS ACTION COMPLAINT

[X] **BY CM/ECF**: I electronically submitted the foregoing to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 27th day of June 2014 at San Francisco, California.

_____

Anita Rivas