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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEBORAH ESPARZA, as an individual,
and on behalf of all others similarly
situated,

Plaintiff,

v.

McCORMICK & COMPANY INC., a
Maryland Corporation,

Defendant.

Case No.: 2:15-cv-05823

CLASS ACTION COMPLAINT

(Jury Trial Demanded)

1. Violation of California Unfair Competition Law, Business and Professions Code §17200, *et seq.*
2. Violation of California Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.*

CLASS ACTION COMPLAINT

1 Plaintiff Deborah Esparza, individually, and on behalf of all others similarly
2 situated, by and through undersigned counsel, files this Class Action Complaint
3 against Defendant McCormick & Company, Incorporated (“McCormick” or
4 “Defendant”), and alleges as follows:

5 NATURE OF THE CASE

6 1. McCormick is an iconic American company. For more than 125 years,
7 McCormick has sold its branded McCormick spices and seasonings to generations of
8 consumers. In the \$10 billion per year global consumer spices and seasonings
9 category, McCormick has an industry-dominating 22% market share—four times the
10 size of its next largest global competitor.

11 2. One of McCormick’s hallmark products is black pepper. Indeed,
12 McCormick has been the clear market leader in sales of black pepper in the United
13 States for many years.

14 3. For decades, McCormick has marketed and sold its branded McCormick®
15 Pure Ground Black Pepper in tins instantly recognizable to millions of American
16 consumers. McCormick has also marketed and sold its branded McCormick® Black
17 Peppercorn in bottles that are substantially covered by a non-transparent label and
18 have a non-transparent, built-in grinder. In addition to marketing and selling the
19 pepper products just described, McCormick is the leading supplier of private label
20 items (also known as store brands), including supplying store-branded tins of pure
21 ground black pepper.

22 4. Recently, the commodity price of black pepper skyrocketed in the global
23 market. Normally, a company facing dramatically increased ingredient costs will
24 either pass those increased costs on to consumers by raising prices or will absorb the
25 higher commodity costs and suffer eroding profit margins (or some combination
26 thereof). However, sometime in or around January or February 2015, McCormick
27 began shipping tens of millions of the pepper products described above with about
28 25% less black pepper. McCormick deceptively continued selling black pepper in

1 the same-sized containers—which are now substantially underfilled—rather than
2 shrinking the size of the containers to reflect the reduced fill.

3 5. By using the same-sized containers that have been recognized in the
4 consumer marketplace for years and then by underfilling those containers,
5 McCormick deceptively misleads consumers into thinking that they are purchasing
6 the same quantity of black pepper as they had historically. While the containers do
7 identify the new reduced net weight of the product in small print on the bottom of the
8 containers, consumers are not otherwise informed of this material change in the
9 quantity of black pepper, nor that these containers are substantially underfilled.
10 McCormick relies upon consumers' familiarity with the containers' sizes and
11 appearance, engrained through decades of marketing, to mislead consumers into
12 thinking that they are receiving the historic quantities of black pepper at the same
13 price point when, in reality, McCormick is filling those containers with about 25%
14 less black pepper. By misleading consumers in this manner, McCormick is able to
15 offset the high cost of the commodity, while preserving its margins.

16 THE PARTIES

17 6. Plaintiff Deborah Esparza is a resident of California and resides in the
18 County of Los Angeles.

19 7. Defendant McCormick & Company, Incorporated is a Maryland
20 corporation, with its principal place of business located in Sparks, Maryland.
21 McCormick describes itself as a global leader in flavor. McCormick manufactures,
22 markets, and distributes spices, seasoning mixes, condiments, and other flavor
23 products to the entire food industry, including retail outlets, food manufacturers, and
24 food services businesses. McCormick manufactures, supplies, markets, and
25 distributes, the pepper products at issue herein.

26 JURISDICTION AND VENUE

27 8. This Court has jurisdiction over this action pursuant to the Class Action
28 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of

1 diverse citizenship from the Defendant, there are more than 100 class members, and
2 the aggregate amount in controversy exceeds \$5,000,000.

3 9. This Court has personal jurisdiction over the parties because Defendant
4 conducts substantial business in this State, has systematic and continuous ties with
5 this State, and has agents and representatives that can be found in this State. Thus,
6 Defendant has sufficient minimum contacts with or otherwise purposefully avails
7 itself of the markets in this State, or otherwise has sufficient contacts with this
8 District to justify it being fairly brought into court in this District.

9 10. Venue is proper in this District under 28 U.S.C. § 1391(a) because, as a
10 corporation subject to personal jurisdiction in this District, Defendant conducts
11 business in this District. This Court accordingly has jurisdiction over this action and
12 venue is proper in this District.

13 11. Defendant's registered agent for service of process in California is CSC
14 Lawyers Incorporating Service located at 2710 Gateway Oaks Drive, Suite 150N,
15 Sacramento, CA 95833.

16 **FACTUAL ALLEGATIONS**

17 12. On or about June 27, 2015, Plaintiff purchased, for personal use, a tin of
18 McCormick® Pure Ground Black Pepper, believing it was substantially filled to
19 capacity. Plaintiff subsequently learned that this product actually contained only
20 approximately 3 ounces net weight of ground black pepper. Plaintiff would not have
21 purchased this product had she known that it was substantially underfilled, or
22 Plaintiff would not have paid what she did for the product.

23 13. As described, McCormick markets and sells branded McCormick® Pure
24 Ground Black Pepper and McCormick® Black Peppercorn Grinder, and supplies
25 store-branded tins of pure ground black pepper.

26 ***McCormick® Pure Ground Black Pepper***

27 14. For decades, McCormick has sold its branded McCormick® Pure Ground
28 Black Pepper in non-transparent metal tins, which have become the industry

1 standard.

2 15. Tins of McCormick® Pure Ground Black Pepper have been marketed
3 and sold to consumers in the United States in three different package sizes: a small
4 metal tin (the “Small Tin”); a medium metal tin (the “Medium Tin”); and a large
5 metal tin (the “Large Tin”). Prior to early 2015, these tins were substantially filled to
6 capacity.

7 16. The Small Tin measures approximately 3 1/16” tall, 1 5/16” deep, and 2
8 5/16” wide. Currently, it holds 1.5 ounces of ground black pepper (left side of Photo
9 A below). Prior to early 2015, however, McCormick substantially filled the Small
10 Tin to capacity with 2 ounces of ground black pepper (right side of Photo A below).
11 Although the amount of ground black pepper in the Small Tin has been reduced by
12 25% since early 2015, the actual size of the Small Tin has, at all relevant times,
13 remained the same.

14 Photo A



25 17. The Medium Tin measures approximately 3 10/16” tall, 1 9/16” deep,
26 and 2 13/16” wide. Currently, it holds 3 ounces of ground black pepper (right side of
27 Photo B below). Prior to early 2015, however, McCormick substantially filled the
28 Medium Tin to capacity with 4 ounces of ground black pepper (left side of Photo B

below). Although the amount of ground black pepper in the Medium Tin has been reduced by 25% since early 2015, the actual size of the Medium Tin has, at all relevant times, remained the same.

Photo B



18. The Large Tin measures approximately 4 10/16" tall, 2 4/16" deep, and 3 5/16" wide. Currently, it holds 6 ounces of ground black pepper (right side of Photo C below). Prior to early 2015, however, McCormick substantially filled the Large Tin to capacity with 8 ounces of ground black pepper (left side of Photo C below). Although the amount of ground black pepper in the Large Tin has been reduced by 25% since early 2015, the actual size of the Large Tin has, at all relevant times, remained the same.

Photo C



McCormick® Black Peppercorn Grinder

19. For years, McCormick has sold its branded McCormick® Black Peppercorn Grinder in bottles with a non-transparent, built-in grinder and substantially covered by a non-transparent label.

20. Bottles of McCormick® Black Peppercorn Grinder have been marketed and sold to consumers in the United States in two different package sizes: a small bottle with a built-in grinder (the “Small Grinder”) and a large bottle with a built-in grinder (the “Large Grinder”). Prior to early 2015, these bottles were substantially filled to capacity.

21. The Small Grinder measures approximately 4 12/16” tall and 4 8/16” wide. Currently, it holds 1 ounce of black peppercorn. Prior to early 2015, however, McCormick substantially filled the Small Grinder to capacity with 1.24 ounces of black peppercorn. Although the amount of black peppercorn in the Small Grinder has been reduced by 19% since early 2015, the actual size of the Small Grinder has, at all relevant times, remained the same.

22. Photo D below shows the original bottle holding 1.24 ounces (on the right) and the current bottle now holding 1 ounce (on the left). Only the non-transparent label has been removed to show the contents of the bottles.

Photo D



23. Photo E below shows the current bottle now holding 1 ounce, but with the non-transparent label that conceals to consumers whether the bottle is filled to capacity.

Photo E



24. The Large Grinder measures approximately 5 8/16" tall and 1 13/16" wide. Currently, it holds 2.5 ounces of black peppercorn (Photo F below). Prior to early 2015, McCormick substantially filled the Large Grinder to capacity with 3.1 ounces of black peppercorn. Although the amount of black peppercorn in the Larger Grinder has been reduced by 19% since early 2015, the actual size of the Large Grinder has, at all relevant times, remained the same.

Photo F



1 ***Store-Branded Ground Black Pepper***

2 25. McCormick produces about half of store-branded spices sold annually,
3 and store brands account for a significant share (about 36%) of spices like pepper.
4 McCormick supplies store-branded tins of pure ground black pepper, including the
5 Great Value brand sold in Walmart Stores. These store-branded tins of pure ground
6 black pepper are non-transparent and are similarly sized and shaped as McCormick®
7 Pure Ground Black Pepper.

8 26. As with its branded McCormick® Pure Ground Black Pepper, prior to
9 early 2015, McCormick substantially filled to capacity the store-branded tins of pure
10 ground black pepper that it supplied.

11 27. However, since early 2015, McCormick reduced the amount of ground
12 black pepper contained in the McCormick-supplied, store-branded tins, even though
13 the actual size of the store-branded tins has, at all relevant times, remained the same.

14 28. Great Value-branded pepper tins also began to be underfilled in the
15 *identical* manner as the McCormick-branded pepper tins: e.g., traditional 4 ounce tins
16 are now filled with only 3 ounces of pepper; traditional 8 ounce tins are now filled
17 with only 6 ounces. The Great Value brand pepper fill practices thus kept in lock-
18 step, at the same exact time, with McCormick's pepper fill practices.

19 29. Photo G below shows a 3 ounce tin of Great Value Pure Ground Black
20 Pepper with a shelf label that has yet to be updated to reflect the new reduced fill.
21 Indeed, the shelf label references the 4 ounces contained in the traditional tin. The 3
22 ounce tin is being sold for the same price as the 4 ounce tin, even though it contains
23 25% less black pepper.

Photo G



30. Similarly, Photo H below shows a 6 ounce tin of Great Value Pure Ground Black Pepper with a shelf label that has yet to be updated to reflect the new reduced fill. Indeed, the shelf label still references the 8 ounces contained in the traditional tin. The 3 ounce tin is being sold for the same price as the 4 ounce tin, even though it contains 25% less black pepper.

Photo H



1 ***McCormick's Deceptive Slack-Filling***

2 31. The McCormick® Pure Ground Black Pepper, McCormick® Black
3 Peppercorn Grinder, and McCormick-supplied, store-branded pure ground black
4 pepper (including the Great Value brand) that were marketed and sold in substantially
5 underfilled containers since early 2015, as described above, are hereinafter
6 collectively referred to as the "Reduced Products."

7 32. As a consequence of McCormick's actions, consumers are being misled
8 into believing that they are buying a larger volume of black pepper than is actually
9 contained in the Reduced Products.

10 33. The price of the Reduced Products, notwithstanding the significant
11 reduction in the amount of black pepper contained therein, has remained
12 approximately the same.

13 34. Unless consumers carefully study the net weight number in small print on
14 the front of the Reduced Products, consumers are being misled by McCormick's
15 deceptive practice. Consumers are paying approximately the same amount for the
16 same-sized containers, but unknowingly receiving substantially less black pepper.

17 35. McCormick's misleading practices are known in the industry as "slack-
18 fill."

19 36. Section 403(d) of the federal Food, Drug, and Cosmetic Act ("FDCA")
20 prohibits nonfunctional slack-fill. The prohibition against slack-fill is set forth in 21
21 C.F.R. § 100.100, which provides:

22
23 In accordance with section 403(d) of the act, a food shall be deemed to be
24 misbranded if its container is so made, formed, or filled as to be misleading.

25 (a) A container that does not allow the consumer to fully view its
26 contents shall be considered to be filled as to be misleading if it contains
27 nonfunctional slack-fill. Slack-fill is the difference between the actual
28 capacity of a container and the volume of product contained therein.
Nonfunctional slack-fill is the empty space in a package that is filled to
less than its capacity for reasons other than:

- 1 (1) Protection of the contents of the package;
- 2 (2) The requirements of the machines used for enclosing the contents in
3 such package;
- 4 (3) Unavoidable product settling during shipping and handling;
- 5 (4) The need for the package to perform a specific function (e.g., where
6 packaging plays a role in the preparation or consumption of a food),
7 where such function is inherent to the nature of the food and is clearly
8 communicated to consumers;
- 9 (5) The fact that the product consists of a food packaged in a reusable
10 container where the container is part of the presentation of the food and
11 has value which is both significant in proportion to the value of the
12 product and independent of its function to hold the food, e.g., a gift
13 product consisting of a food or foods combined with a container that is
14 intended for further use after the food is consumed; or durable
15 commemorative or promotional packages; or
- 16 (6) Inability to increase level of fill or to further reduce the size of the
17 package (e.g., where some minimum package size is necessary to
18 accommodate required food labeling (excluding any vignettes or other
19 nonmandatory designs or label information), discourage pilfering,
20 facilitate handling, or accommodate tamper-resistant devices).

21 37. McCormick lacks any lawful justification for slack-filling the Reduced
22 Products. The fact that McCormick was able to fill and ship greater amounts of
23 pepper in the same containers for decades demonstrates beyond all doubt that its new
24 slack-filling practices cannot qualify for exception.

25 38. Similarly, the California Fair Packaging and Labeling Act, Cal. Bus. &
26 Prof. Code § 12606.2, prohibits slack-filling and provides in relevant part:

27 This section shall be interpreted consistent with the comments by
28 the United States Food and Drug Administration on the regulations
contained in Section 100.100 of Title 21 of the Code of Federal
Regulations, interpreting Section 403(d) of the Federal Food, Drug, and
Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments are reported on
pages 64123 to 64137, inclusive, of Volume 58 of the Federal Register.

39. As a result of McCormick's misleading and deceptive use of the same-sized containers, with unlawful slack-fill, Plaintiff and consumers have purchased Reduced Products manufactured, sold, and/or supplied by McCormick which are unlawfully slack-filled and contain substantially less black pepper than Plaintiff and consumers previously received in the same-sized containers. As a result, Plaintiff and the Class have been damaged.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following Class, defined as:

All persons who, as end-purchasers and not for resale, purchased McCormick® Pure Ground Black Pepper, McCormick® Black Peppercorn Grinder, or McCormick-supplied store-branded tins of pure ground black pepper (including the Great Value brand) since January 1, 2015.

41. **Numerosity – Fed. R. Civ. P. 23(a)(1).** The members of the Class are so numerous that joinder of all members is impracticable. While the number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that the Class numbers in the thousands or hundreds of thousands.

42. **Commonality and Predominance – Fed. R. Civ. P. (a)(2).** There is a well-established community of interest in the questions of law and fact affecting the parties to be represented in this action. All members of the Class were affected by McCormick's deceptive packaging and marketing and unlawful slack-fill of the Reduced Products.

43. Common questions of law and fact include, but are not limited to:

- Whether Defendant's conduct resulting in the Reduced Products in the same-sized containers but with substantially less black pepper constitutes unlawful slack-filling;

- Whether Defendant's packaging of the Reduced Products was unfair, deceptive, and/or unlawful;
- Whether the appearance of Defendant's packaging represented that the Reduced Products were of a particular standard, quality, or quantity when they were not;
- Whether Defendant misrepresented the content in the Reduced Products has been supplied in accordance with Defendant's previous representation;
- Whether the class members obtained the benefit of their bargain in purchasing the Reduced Products;
- Whether, as a result of Defendant's misconduct, the Class is entitled to equitable and injunctive relief; and

44. If certified as a class action, resolving these issues for Plaintiff or any other Class members will drive the resolution of the claims of the entire Class.

45. ***Certification of the Class Pursuant to Fed. R. Civ. P. 23(b)(3).*** Questions of law and fact common to the Class predominate over questions that may affect only individual members of the Class. The overarching issue boils down to this—was Defendant's packaging of the Reduced Products materially deceptive? The common issues predominate over any individualized issues.

46. ***Typicality – Fed. R. Civ. P. 23(a)(3).*** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff has the same interests as all members of the Class in that the nature and character of the challenged conduct is the same. Plaintiff and all members of the Class challenge Defendant's conduct and share the same type of injury under the same legal theories. The resolution of the Plaintiff's claim will simultaneously resolve the claims of all others.

47. ***Adequacy of Representation – Fed. R. Civ. P. 23(a)(4).*** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

1 Plaintiff has retained competent counsel experienced in consumer class litigation.
2 Plaintiff is a member of the Class and does not have interests antagonistic to or in
3 conflict with members of the Class. Neither Plaintiff nor Plaintiff's counsel have any
4 interests that might cause them not to vigorously pursue this claim for the Class.
5 Plaintiff's claims are the same as those of the claims of the Class, which all arise
6 from the same operative facts and are based on the same legal theories.

7 48. ***Declaratory and Injunctive Relief – Fed. R. Civ. P. 23(b)(2).*** Defendant
8 has acted or refused to act on grounds generally applicable to Plaintiff and the other
9 members of the Class, thereby making appropriate final injunctive relief and
10 declaratory relief, as described below, with respect to the members of the Class.

11 49. ***Superiority – Fed. R. Civ. P. 23(b)(3).*** A class action is superior to other
12 available methods for the fair and efficient adjudication of this controversy because
13 the membership of the Class is so numerous and sufficiently geographically
14 widespread that joinder of all members is impracticable. In addition, the prosecution
15 of separate actions by individual members of the Class would create a risk of
16 incompatible standards of conduct for Defendant and inconsistent or varying
17 adjudications for all parties. Class treatment will permit a large number of similarly
18 situated persons to prosecute their common claims in a single forum simultaneously,
19 efficiently, and without the unnecessary duplication of evidence, effort, or expense
20 that numerous individual actions would engender. The benefits of proceeding
21 through the class mechanism, including providing injured person or entities a method
22 for obtaining redress on claims that could not be practicably pursued individually,
23 substantially outweighs any potential difficulties in management of this class action.

24 50. Any difficulty in the management of this case as a class action would be
25 far outweighed by the management of thousands of individual actions.

26 51. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting
27 this Complaint against Defendant under Cal. Civ. Code § 1021.5, because:
28

- A successful outcome in this action will result in the enforcement of important rights affecting the public interest;
- This action will result in the cessation of business practices which are unfair, and will result in restitution, disgorgement, or both, of monies which Defendant should not equitably retain, thereby providing significant benefit to the Class and the general public;
- Private enforcement of this action eliminates the necessity of costly public enforcement during an economic climate in which public resources are strained; and
- If at all possible, such fees should not, in the interest of justice, be paid out of any recovery.

CAUSATION AND INJURY

52. By reason of the above-described conduct and bad faith, Defendant caused actual harm, injury-in-fact, and loss of money to Plaintiff and each member of the Class. Plaintiff was injured in the following ways:

- Plaintiff paid approximately \$3.29 (plus tax) for the purpose of receiving a product whose container was substantially filled with black pepper.
- Plaintiff received a product with unlawful slack-fill.
- Plaintiff received 25% less black pepper than the amount the container historically had.
- If the product was substantially filled to capacity, Plaintiff would not have suffered the damage and economic loss described herein.
- Plaintiff would not have purchased the product from Defendant, or would not have purchased it for the price it was offered by Defendant, had she known it was substantially underfilled.
- The perceived quantity attracted Plaintiff and consumers to the Reduced Products and resulted in purchases of Reduced Products that would not have otherwise occurred.

- 1 • The perceived quantity of pepper in the Reduced Products was a
2 substantial reason that Plaintiff and consumers chose the Reduced
3 Products.
- 4 • The size of the containers used for the Reduced Products created the
5 impression with Plaintiff and consumers that they were substantially
6 filled to capacity.
- 7 • Defendant has not reimbursed Plaintiff or putative class members.
- 8 • Plaintiff and members of the Class have each been deprived of the
9 amount they paid for the Reduced Products, requiring restitution.
- 10 • Plaintiff and members of the Class have been deprived of the benefit of
11 their bargains and suffered other damages by purchasing Reduced
12 Products.
- 13 • Plaintiff and members of the Class have incurred economic losses as a
14 result of Defendant's deceptive conduct.

COUNT I

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

17 53. Plaintiff incorporates all preceding and succeeding allegations by
18 reference as if fully set forth herein.

19 54. Plaintiff brings this action individually, on behalf of the Class, and on
20 behalf of the general public pursuant to § 17200 *et seq.* of the Bus. & Prof. Code, the
21 Unfair Competition Law ("UCL"). California's UCL prohibits "unfair competition,
22 [which] shall mean and include any unlawful, unfair, or fraudulent business act or
23 practice and unfair, deceptive, untrue or misleading advertising" Cal. Bus. &
24 Prof. Code § 17200. Defendant's practices are both unlawful and unfair under the
25 UCL.

26 55. As stated above, section 403(d) of the FDCA prohibits nonfunctional
27 slack-fill as deceptive. 21 C.F.R. § 100.100. California's Sherman Law incorporates
28

1 this slack-fill prohibition. Section 110505 of the Sherman Law states:

2
3 Definitions and standards of identity, quality, and fill of container, and any
4 amendments to the definitions and standards, adopted pursuant to the federal act
5 in effect on the effective date of this part, or adopted on or after that date, are
6 the definitions and standards of identity, quality, and fill of container of this
7 state. Cal. Health & Saf. Code § 110505.

8 56. Nonfunctional slack-filling practices are also prohibited, independently,
9 by the California Fair Packaging and Labeling Act, Cal. Bus. & Prof. Code § 12606.2.

10 57. McCormick's slack filling practices violate the Sherman Law and the
11 Fair Packaging and Labeling Act, and are therefore unlawful under the UCL.

12 58. Defendant's nonfunctional slack-filling practice is also unfair under the
13 UCL because Defendant used deceptive packaging sizes, misleading consumers as to
14 the amount of black pepper contained in the Reduced Products, as described above.

15 59. Plaintiff and members of the Class purchased Reduced Products that
16 were marketed, sold, or supplied by Defendant.

17 60. If Plaintiff and members of the Class knew that the Reduced Products
18 were not substantially filled to capacity, they reasonably would not have purchased
19 them or would have paid a significant amount less than what Defendant collected.
20 Defendant therefore obtained an unfair economic advantage and obtained Plaintiff's
21 business unfairly.

22 61. In addition, by failing to offer a refund, Defendant has been able to
23 obtain and retain consumers' money.

24 62. The substantial harm caused by Defendant's business practices outweighs
25 any benefit, justification, or motivation of the Defendant. Plaintiff and other
26 consumers could not have reasonably avoided or anticipated the deceptive nature of
27 the packaging of the Reduced Products, as the containers were non-transparent or
28 substantially covered by non-transparent labeling.

63. The acts complained of constitute unfair and unlawful business practices

1 in violation of Business and Professions Code §17200, *et. seq.* Such acts and
2 violations have not abated and will continue to occur unless enjoined.

3 64. The unfair and unlawful business practices set forth have and continue to
4 injure Plaintiffs, the Class, and the general public and cause the loss of money. These
5 violations have unjustly enriched Defendant at the expense of Plaintiff and the Class.
6 As a result, Plaintiff, the Class, and the general public are entitled to injunctive relief,
7 restitution, and all other equitable relief the Court deems appropriate.

9 **COUNT II**

10 **(Violation of California Consumers Legal Remedies Act,** 11 **California Civil Code §§ 1750, *et seq.*)**

12 65. Plaintiff incorporates all preceding and succeeding allegations by
13 reference as if fully set forth herein.

14 66. The Consumer Legal Remedies Act (“CLRA”), California Civil Code §
15 1750 *et seq.*, applies to Defendant’s actions and conduct because such actions and
16 conduct pertain to transactions that were intended to result and/or resulted in the sale
17 of goods and services to consumers.

18 67. The CLRA’s protections, like those of California’s UCL, are cumulative
19 and, therefore, are “in addition to any other procedures or remedies for any violation
20 or conduct provided for in another law.” Cal. Civ. Code § 1752.

21 68. Defendant is a “person” as that term is defined in Cal. Civ. Code § 1761
22 because it is an “individual, partnership, corporation, limited liability company,
23 association, or other group, however organized.”

24 69. The transactions described herein were “transactions” as that term is
25 defined in Cal. Civ. Code § 1761 because they constitute an “agreement between a
26 consumer and any other person, whether or not the agreement is a contract enforceable
27 by action, and includes the making of, and the performance pursuant to, that
28 agreement.”

1 70. The transactions at issue involve “goods” as that term is defined in Cal.
2 Civ. Code §1761 because they involve the purchase and sale of merchandise, which
3 are tangible chattel bought to be used primarily for personal, family, or household
4 purposes.

5 71. By entering into the subject transactions to purchase Reduced Products,
6 Plaintiff and the members of the Class are “consumers” as that term is defined in Cal.
7 Civ. Code § 1761 because they sought, by purchase, goods and services for personal,
8 family, or household use.

9 72. Venue is proper pursuant to Cal. Civ. Code §1780(d) because Defendant
10 does business in this County and its registered agent for service of process is CSC
11 Lawyers Incorporating Service located at 2710 Gateway Oaks Drive, Suite 150N,
12 Sacramento, CA 95833, and it is where the Plaintiff’s transaction or a substantial
13 portion thereof occurred. A Declaration of counsel for Plaintiff establishing this Court
14 as the proper venue for this action is attached hereto as Exhibit A.

15 73. Defendant has violated Cal. Civ. Code §§ 1770(a)(5), (7), (9), and (16) in
16 at least the following respects:

- 17 • In violation of Cal. Civ. Code, § 1770(a)(5), Defendant’s packaging and
18 marketing of the Reduced Products falsely or deceptively depicted them
19 as being substantially filled to capacity, thus representing that the
20 Reduced Products had characteristics or quantities which they did not
21 have;
- 22 • In violation of Cal. Civ. Code, § 1770(a)(7), Defendant’s packaging and
23 marketing of the Reduced Products falsely or depicted them as being
24 substantially filled to capacity, thus representing that the Reduced
25 Products had a particular standard, quality, or grade which they did not
26 have;
- 27 • In violation of Civil Code § 1770(a)(9), Defendants advertised goods or
28 services with intent not to sell them as advertised; and
- In violation of Cal. Civ. Code, § 1770(a)(16), Defendant’s packaging and
marketing of the Reduced Products falsely or depicted them as being

1 substantially filled to capacity, thus representing that the Reduced
 2 Products contained the same quantity of black pepper in accordance with
 Defendant's previous representations when it did not;

3 74. Defendant's violation of Cal. Civ. Code, § 1770, caused damage to
 4 Plaintiff and members of the Class and threatened additional injury if the violations
 5 continue. This damage includes the loss of the perceived quantity of the products
 6 purchased by Plaintiff and members of the Class and monies paid by Class members.

7 75. Plaintiff and members of the Class seek injunctive relief under this claim.
 8 By letter dated July 31, 2015, mailed via certified mail as directed in Cal. Civ. Code §
 9 1782, Plaintiff notified Defendant of its violations of the CLRA and demanded that
 10 Defendant provide a remedy that rectifies its conduct. If Defendant fails to respond
 11 adequately to Plaintiff's written demand within thirty days, Plaintiff will amend this
 12 Class Action Complaint to request damages and other relief as permitted by Cal. Civ.
 13 Code §1780.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests that the Court grant the following
 16 relief:

17 A. An Order certifying this case as a class action pursuant to Fed. R. Civ. P.
 18 23, appointing Plaintiff Deborah Esparza as Class Representative, and
 19 Plaintiff's Counsel as Class Counsel;

20 B. An award of restitution to Plaintiff and the Class;

21 C. An order of all injunctive and equitable relief allowed by law;

22 D. An order requiring Defendant to pay reasonable attorneys' fees, costs,
 23 and disbursements, finding:

24 1. A successful outcome in this action will result in the enforcement of
 25 important rights affecting the public interest;

26 2. This action will result in the cessation of business practices which are
 27 unfair, and will result in restitution, disgorgement, or both, of monies which
 28 Defendant should not equitably retain, thereby providing significant benefit to the

1 Class and the general public;

2 3. Private enforcement of this action eliminates the necessity of costly
3 public enforcement during an economic climate in which public resources are
4 strained; and

5 4. If at all possible, such fees should not, in the interest of justice, be paid
6 out of any recovery.

7 E. All other relief allowed at equity or law; and

8 F. All other relief the Court deems just and proper in the circumstances.

9
10 Respectfully submitted,

11 RIDOUT MARKER + OTTOSON LLP

12 Dated: July 31, 2015

By: /s/ Christopher P. Ridout

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22 *Attorneys for Plaintiff Deborah Esparza,*
23 *and the Putative Class*

EXHIBIT “A”

AFFIDAVIT OF CHRISTOPHER P. RIDOUT

I, Christopher P. Ridout, declare as follows:

1. I am an attorney with the law firm of Ridout Marker + Ottoson LLP, counsel for Plaintiff Deborah Esparza ("Plaintiff") 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 California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant McCormick & Company, Incorporated (hereinafter "Defendant"), does business within the County of Los Angeles and Plaintiff purchased Defendant's product within the County of Los Angeles, as alleged in the Class Action Complaint.

I declare under penalty of perjury under the laws of the United States and the State of California this 31st day of July, 2015 in Long Beach, California that the foregoing is true and correct.

Executed this 31st day of July, 2015 at Long Beach, California.

By: /s/Christopher P. Ridout
CHRISTOPHER P. RIDOUT