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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**RYAN SCOTT BUNTING,
BRANDON GRADY, TYLER
UNDERWOOD and NICHOLAS
HILLA, Individually And On
Behalf Of All Others Similarly
Situating,**

Plaintiffs,

v.

**MCCORMICK & COMPANY,
INC.,**

Defendant.

Case No.: '15CV1648 BAS BGS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

INTRODUCTION

1. RYAN SCOTT BUNTING, BRANDON GRADY, TYLER UNDERWOOD and NICHOLAS HILLA (hereinafter “Plaintiffs”), individually and on behalf of all others similarly situated, bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful and deceptive actions of MCCORMICK & COMPANY, INC. (“Defendant” or “McCormick”) with respect to the packaging of its ground black pepper. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. McCormick is the market leader in sales of ground pepper in the United States, packaged in its iconic red and white tins. For decades, McCormick has sold its ground pepper in three tin sizes, which contained 2, 4 and 8 ounces of pepper, respectively (individually, “Product,” or collectively, “Products”). In or about January or February of 2015, however, McCormick reduced the volume of ground black pepper contained in its tins by 25%. McCormick did not, however, make a corresponding reduction in the size of the tins. Thus, the same size tins as consumers have purchased for decades now contain 25% “empty” space, or slack-fill.
3. On information and belief, McCormick is relying upon the goodwill of its brand, and consumer’s familiarity with the size and appearance of its opaque tins, to deceptively mislead consumers into thinking that they are purchasing the same quantity of pepper as was sold historically. While the tins do state the net weight on the bottom of the tin in small print, consumers are not otherwise informed of the reduction in the quantity of ground black pepper contained therein. Moreover, because the tins are not transparent, there is no way for a consumer to visually verify how much pepper is contained in the package.

4. On information and belief, consumers who have purchased Defendant's Products have come to rely on the constancy of those Products. They do not specifically recall, for example, that the tins contain 2, 4 or 8 ounces of pepper. Rather, they recall the size, shape and color of the packaging, and the McCormick brand name, when they make a purchase. "Simply stated: labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label" *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328 (2011).
5. Plaintiffs purchased McCormick's ground pepper Products after February 2015. Plaintiffs expected that they would be receiving a "full" tin of pepper. Plaintiffs were surprised and disappointed, however, when they discovered that the tins contained significant empty space, or slack-fill. Had Plaintiffs known about the slack-fill at the time of purchase, they would not have bought Defendant's Products.
6. Defendant's conduct violates Consumer protection and food labeling laws of the states of California, Minnesota, Michigan and Illinois.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).
8. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.
9. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

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10. The Court has personal jurisdiction over Defendant because its ground pepper Products are advertised, marketed, distributed and sold through the State of California; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in the State of California; Defendant is authorized to do business in the State of California; and Defendant has sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial activity with the State of California.
11. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred within this judicial district, Defendant has marketed and sold the Products at issue in this action in this judicial district, and it conducts business within this judicial district. In addition, Plaintiff Ryan Scott Bunting resides in this judicial district.

PARTIES

12. Plaintiff Ryan Scott Bunting (“Bunting”) is a citizen of the State of California and resides in San Diego, California. Plaintiff Bunting purchased the Product for personal consumption after February 2015 in San Diego, California. Plaintiff Bunting purchased the Product in reliance on Defendant’s packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff Bunting known the truth about Defendant’s misrepresentations, he would not have purchased the premium priced Product.
13. Plaintiff Brandon Grady (“Grady”) is a citizen of the State of Minnesota and resides in Minneapolis, Minnesota. Plaintiff Grady purchased the Product for personal consumption after February 2015 in St. Paul, Minnesota. Plaintiff Grady purchased the Product in reliance on Defendant’s packaging in containers made, formed or filled as to be misleading and containing non-

functional slack-fill. Had Plaintiff Grady known the truth about Defendant's misrepresentations, he would not have purchased the premium priced Product.

14. Plaintiff Tyler Underwood ("Underwood") is a citizen of the State of Michigan and resides in Detroit, Michigan. Plaintiff Underwood purchased the Product for personal consumption after February 2015 in Detroit, Michigan. Plaintiff Underwood purchased the Product in reliance on Defendant's packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff Underwood known the truth about Defendant's misrepresentations, he would not have purchased the premium priced Product.

15. Plaintiff Nicholas Hilla ("Hilla") is a citizen of the State of Illinois and resides in Chicago, Illinois. Plaintiff Hilla purchased the Product for personal consumption after February 2015 in Chicago, Illinois. Plaintiff Hilla purchased the Product in reliance on Defendant's packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff Hilla known the truth about Defendant's misrepresentations, he would not have purchased the premium priced Product.

16. On information and belief, Defendant McCormick is a publicly-traded Maryland corporation with its headquarters and principal place of business in Sparks, Maryland. McCormick is one of the largest producers of spices and herbs in the world and is the largest spice distributor in the United States. On information and belief, McCormick's ground black pepper is among its best selling products and is sold in sales outlets throughout the United States, including grocery stores, retail chains such as Walmart, and through online retailers, including Amazon. Defendant is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

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FACTUAL ALLEGATIONS

Federal and State Laws Prohibit Non-functional Slack Fill

17. Under the Federal Food Drug and Cosmetic Act (“FDCA”), 21 U.S.C. § 343(d), a food shall be deemed to be misbranded if “(a) . . . (1) its labeling is false or misleading in any particular”; or “(d) If its container is so made, formed, or filled as to be misleading.”
18. Under the FDCA, the term “false” has its usual meaning of untruthful, while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951) (citations omitted). Under the FDCA, it is not necessary to prove that anyone was actually misled.
19. Pursuant to 21 C.F.R. §100.100, a food is misbranded if “its container is so made, formed or filled as to be misleading.” In addition, “(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual 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) Protection of the contents of the package;
 - (2) The requirements of the machines used for enclosing the contents in such package;
 - (3) Unavoidable product settling during shipping and handling;
 - (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where

such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package”

20. None of the above safe-harbor provisions applies to the Products. Defendant intentionally incorporated non-functional slack-fill in its packaging of the Products in order to mislead the consumers, including Plaintiffs and Members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a product with slack-fill. *See* 21 C.F.R. § 100.100(a)(1-6).”).
21. Consumer protection and food labeling laws of the states of California, Minnesota, Michigan and Illinois impose requirements which mirror the federal law. California Business & Professions Code states, “[n]o container shall be made, formed, or filled as to be misleading” and “[a] container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill.” *See* Cal. Bus. & Prof. Code § 12606 (incorporating the safe harbor provisions of the CFR). *See also* Cal. Health and Safety Code § 110690 (“Any food is misbranded if its container is so made, formed, or filled as to be misleading.”); Minn. Stat. §§ 34A.03(a) (“Food is misbranded if: (1) its labeling is false or misleading in any particular . . . (4) its container is so made, formed, or filled as to be misleading”); Mich. Food Law §

289.1109(n) (“‘Misbranded’ means food to which any of the following apply: . . . (i) Its labeling is false or misleading in any particular (iv) Its container is so made, formed, or filled as to be misleading.”); 410 ILCS 620/11 (“A food is misbranded - (a) If its labeling is false or misleading in any particular (d) If its container is so made, formed or filled as to be misleading.”).

Defendant McCormick’s Products Contain Non-Functional Slack-Fill

22. McCormick has processed and distributed ground black pepper for decades. McCormick sales of black pepper tins (both the McCormick brand as well as McCormick sales using retailer private labels) are estimated to be approximately 70% or more of total domestic black pepper tin sales.
23. McCormick has been recognized by the United States Federal Trade Commission (“FTC”) as the world’s largest spice company and a dominant seller in the marketplace.
24. McCormick is a sophisticated and experienced marketplace participant and has settled enforcement actions brought against it by the FTC.¹
25. On information and belief, for decades, McCormick has sold ground black pepper in metal tins that have become widely recognized by consumers. These non-transparent metal tins come in different sizes: (i) a small metal tin measuring approximately 3 1/16” tall, 1 5/16” deep, and 2 5/16” wide, which was previously substantially filled to capacity with 2 ounces of ground black pepper (the “Small Tin”); (ii) a medium metal tin measuring approximately 3 10/16” tall, 1 9/16” deep, and 2 13/16” wide, which was previously substantially filled to capacity with 4 ounces of ground black pepper (the “Medium Tin”); and (iii) a large metal tin measuring approximately 4 10/16” tall, 2 4/16” deep, and 3 5/16” wide, which was previously substantially filled to capacity with 8 ounces of ground black pepper (the “Large Tin”).

¹ <https://www.ftc.gov/public-statements/2000/06/distribution-law-developments-federal-trade-commission>.

26. On information and belief, these tin sizes and fills became widely used throughout the industry and the marketplace. Many ground black pepper manufacturers sell ground pepper in substantially the same size tins with the same 2, 4 and 8 ounce fills that Defendant previously used in its Products.
27. On information and belief, as consumers became accustomed and conditioned to the traditionally-sized tins and fills sold by McCormick and others, they came to rely on the consistency of a known tin size and made purchasing decisions based on the non-transparent tin sizes.
28. On information and belief, in or around January or February 2015, McCormick intentionally began shipping tens of millions of tins of ground black pepper that contained substantially less (25%) ground black pepper than the traditional-sized tins had historically contained. However, rather than change the size of the tin from the traditional size to a new size that reflected the reduced fill, McCormick deceptively and misleadingly continued to use the same traditional-sized tins that had been used for decades, giving the false impression that nothing about the contents of the tin had changed.
29. McCormick's non-transparent tins of ground black pepper are now approximately 25% empty, which constitutes nonfunctional slack-fill as follows:

Tin Size	McCormick Traditional Fill	Current McCormick Fill
Small	2 ounces	1.5 ounces (25% slack-fill)
Medium	4 ounces	3 ounces (25% slack-fill)
Large	8 ounces	6 ounces (25% slack-fill)

30. Photo A below shows the traditional McCormick Small Tin, which now contains 1.5 ounces of ground pepper (on the left) and the traditional 2-ounce fill (on the right). Although the tins note in small print the actual weight of ground black pepper contained therein, consumers are not otherwise informed of the decrease in ground black pepper from the traditional fill or that the tin contains a significant void. On information and belief, consumers rely upon

the traditional size of the tins as the basis of making a purchasing decision and believe the tins are effectively full, as they have been for decades. The McCormick Small Tin with the 1.5-ounce-slack-fill (on the left) falsely appears to contain the same amount of ground black pepper as the other with 2-ounce fill.

Photo A



31. Photo B shows the McCormick Medium Tins with the traditional 4-ounce fill (on the left) and the 3-ounce slack-fill (on the right). The size of the McCormick Medium Tin with the 3-ounce slack-fill (on the right) deceptively and misleadingly appears to have the same amount of ground pepper as the other tin with 4-ounce fill.

Photo B

32. Photo C below shows the traditional McCormick Large Tins with the 8-ounce traditional fill and the 6-ounce slack-fill. The McCormick Large Tins with an 8-ounce fill (on the left) was marketed for decades. McCormick's use of the same McCormick Large Tin with a 6-ounce fill with nonfunctional slack-fill (on the right) gives the deceptive and misleading impression that there is more ground pepper in the tin.

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Photo C

33. On information and belief, consumers are misled into believing that they are buying a larger volume of ground black pepper than is contained in the McCormick slack-filled tins.
34. On information and belief, in many or most instances, McCormick intentionally maintained the price of its standard sized tins, notwithstanding the significant reduction in the amount of ground black pepper contained in the traditional tin, which had the effect of further adding to the perception that nothing had changed. It appears that millions, if not tens of millions, of these McCormick slack-filled tins have replaced traditional-fill tins in virtually every retailer throughout the United States that stocks McCormick products.
35. While in most instances it appears that the slack-filled tins have replaced the traditional-fill tins on retailer shelves (thereby precluding any notice to the consumer of the change), in at least one location, the same sized McCormick tins with different amounts of ground black pepper are or were selling for the

exact same price, further misleading the consumer. *See* Photo D below (photo showing two McCormick's Small Tins, one containing the traditional fill of 2-ounces and the other containing the new slack-filled amount of 1.5 ounces, with a shelf label promoting one price).

Photo D



36. On information and belief, consumers are also deprived of making fair comparative shopping decisions. Side-by-side, McCormick Small Tins and Medium Tins appear to be identical in size to the comparable competitor's black pepper tins, leading consumers to the reasonable assumption (and accurate until McCormick began slack-filling their traditionally sized tins) that they contain the same quantity of pepper. *See* Photo E below (photo showing McCormick pepper on the left containing 3-ounce fill, and competitor product on the right with 4-ounce fill). In fact, the McCormick slack-filled Small Tins and Medium Tins contain less ground pepper than the competitor's tin. The blatant use of slack-fill is misleading and deceptive to consumers.

Photo E

37. Based on sales data, it appears that McCormick has likely shipped and sold tens of millions of these deceptive and misleading slack-filled tins since January or February 2015, constituting tens of millions of dollars of ground black pepper sales.
38. On information and belief, consumers have relied upon, and are continuing to rely upon, the traditional size of the tins as the basis for making a purchasing decision and believe the tins contain the same traditional fill, rather than the reduced slack-fill that they cannot see in the non transparent tin.
39. On information and belief, McCormick is selling and will continue to sell ground black pepper using these blatantly deceptive and misleading slack-filled tins.

40. Defendant's packaging and advertising of the Products violate various state laws against misbranding with requirements which mirror the FDCA, as described herein.

Plaintiffs Relied on Defendant's Misleading and Deceptive Conduct and Were Injured as a Result

41. The types of misrepresentations made, as described herein, were considered by Plaintiffs and Class Members (as would be considered by a reasonable consumer) when deciding to purchase the Products. Reasonable consumers, including Plaintiffs and Class Members, attached importance to whether Defendant's Products were misbranded, *i.e.*, not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

42. Plaintiffs and Class Members did not know, and had no reason to know, that the Products contained non-functional slack-fill.

43. Defendant's Product packaging was a material factor in Plaintiffs' and Class Members' decisions to purchase the Products. Based on Defendant's Product packaging, Plaintiffs and Class Members believed that they were getting more of the Products than was actually being sold. Had Plaintiffs known Defendant's packaging was slack-filled, they would not have bought the slack-filled Products.

44. Plaintiffs and Class Members paid the full price of the Products and received less Product than they expected due to the non-functional slack-fill in the Products.

45. There is no practical reason for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of the Products being purchased by consumers.

46. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct.

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CLASS ACTION ALLEGATIONS

47. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes (collectively, the “Class” or “Classes”):

The California Class

48. Plaintiff Bunting seeks to represent a class consisting of the following subclass (the “California Class”):

All California residents who made retail purchases of McCormick ground black pepper Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Minnesota Class

49. Plaintiff Grady seeks to represent a class consisting of the following subclass (the “Minnesota Class”):

All Minnesota residents who made retail purchases of McCormick ground black pepper Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Michigan Class

50. Plaintiff Underwood seeks to represent a class consisting of the following subclass (the “Michigan Class”):

All Michigan residents who made retail purchases of McCormick ground black pepper Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Illinois Class

51. Plaintiff Hilla seeks to represent a class consisting of the following subclass (the “Illinois Class”):

All Illinois residents who made retail purchases of McCormick ground black pepper Products in containers made, formed or filled as to be misleading and with non-functional slack-fill, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

52. The proposed Classes exclude current and former officers and directors of Defendant, Members of the immediate families of the officers and directors of Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

53. Plaintiffs reserve the right to revise the Class definitions based on facts learned in the course of litigating this matter.

54. Numerosity: This action has been brought and may properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class Members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are hundreds of thousands of Members in the Class. Based on sales of the Products, it is estimated that each Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of Members. The Members of the Class are so numerous that joinder of all Members is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

55. Typicality: Plaintiffs' claims are typical of the claims of the Members of the Class as all Members of the Class are similarly affected by Defendant's wrongful conduct, as detailed herein.
56. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Members of the Class in that they have no interests antagonistic to those of the other Members of the Class. Plaintiffs have retained experienced and competent counsel.
57. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class Members may be relatively small, the expense and burden of individual litigation make it impracticable for the Members of the Class to individually seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action. If Class treatment of these claims were not available, Defendant would likely unfairly receive thousands of dollars or more in improper charges.
58. Common Questions Predominate: Common questions of law and fact exist as to all Members of the Class and predominate over any questions solely affecting individual Members of the Class. Among the common questions of law and fact applicable to the Class are:
- i. Whether Defendant labeled, packaged, marketed, advertised and/or sold ground black pepper Products to Plaintiffs, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;
 - ii. Whether Defendant's actions constitute violations of 21 C.F.R. 100, *et seq.*;
 - iii. Whether Defendant's actions constitute violations of food labeling laws of the states of California, Minnesota, Michigan and Illinois;

- iv. Whether Defendant's actions constitute violations of consumer protection laws of the states of California, Minnesota, Michigan and Illinois;
- v. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of its ground black pepper Products;
- vi. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of ground black pepper Products constituted an unfair, unlawful or fraudulent practice;
- vii. Whether Defendant's packaging of the ground black pepper Products constituted nonfunctional slack-fill;
- viii. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;
- ix. Whether the Members of the Class have sustained damages as a result of Defendant's wrongful conduct;
- x. The appropriate measure of damages and/or other relief; and
- xi. Whether Defendant should be enjoined from continuing its unlawful practices.

- 59. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.
- 60. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.
- 61. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only

individual Members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

62. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all Members of the Class, although certain Class Members are not parties to such actions.

63. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, *et seq.* (On behalf of California consumers only)

64. Plaintiff Bunting realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

65. Plaintiff Bunting brings this claim individually and on behalf of the other Members of the California Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code 1761(d).

66. Plaintiff Bunting and California Class Members are consumers who purchased the Products for personal, family or household purposes. Plaintiff Bunting and the California Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code 1761(d). Plaintiff Bunting and the California Class Members are not sophisticated experts with independent knowledge of corporate branding, labeling and packaging practices.

67. Products that Plaintiff Bunting and other California Class Members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code 1761(a).

68. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.
69. Defendant violated federal and California law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill, and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.
70. California's Consumers Legal Remedies Act, Cal. Civ. Code 1770(a)(5), prohibits "Misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have quantities they do not have.
71. Cal. Civ. Code 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods as containing more product than they in fact contain.
72. Plaintiff Bunting and the California Class Members are not sophisticated experts about the corporate branding, labeling and packaging practices. Plaintiff Bunting and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.
73. Plaintiff Bunting and the California Class suffered injuries caused by Defendant because (a) they would not have purchased the Products on the

same terms absent Defendant's illegal and misleading conduct as set forth herein; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive packaging in containers made, formed or filled as to be misleading and containing non-functional slack-fill; and (c) the Products did not have the quantities as promised.

74. On or about July 9, 2015, prior to filing this action, a CLRA notice letter was served on Defendant which complies with California Civil Code 1782(a). Plaintiff Bunting sent McCormick and Company, Incorporated, individually and on behalf of the proposed Class, a letter via Federal Express, Direct Signature Required and personal service, advising Defendant that it is in violation of the CLRA and demanding that it cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff Bunting's letter is attached hereto as EXHIBIT 1.

75. Wherefore, Plaintiff Bunting seeks injunctive relief for these violations of the CLRA.

COUNT II

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, California Business & Professions Code § 17200, *et seq.* (On behalf of California Consumers Only)

76. Plaintiff Bunting realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

77. Plaintiff Bunting brings this claim individually and on behalf of the Members of the proposed California Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

78. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising..."

79. Defendant violated federal and California law because the Products are packaged in containers made, formed or filled as to be misleading and that contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

A. “Unlawful” Prong

80. Defendant’s business practices, described herein, violated the “unlawful” prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(d), the CLRA, Cal. Bus. & Prof. Code § 12606, California Health & Safety Code §§ 110690, and other applicable law as described herein.

81. Defendant violated section 12606 of the Business and Professions Code, in that Defendant packaged its Products in non-conforming type containers. Said non-conforming packages contained extra space by volume in the interior of the container. The extra space provided no benefit to the contents of the packaging and misled consumers. In addition, Defendant packaged its Products in containers made, formed, or filled as to be misleading to a potential customer as to the actual size and filling of the package with Defendant’s Products.

B. “Unfair” Prong

82. Defendant’s business practices, described herein, violated the “unfair” prong of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant’s advertising is of no benefit to consumers, and its failure to comply with the FDCA, the CFR and parallel California labeling requirements and deceptive advertising concerning the quantity of the Products offends the public policy advanced by the FDCA to ensure that “foods are safe, wholesome, sanitary, and properly labeled.” 21 U.S.C. §§ 393(b)(2)(A).

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C. “Fraudulent” Prong

83. Defendant violated the “fraudulent” prong of the UCL by misleading Plaintiff Bunting and the California Class to believe that the Products contained more content than they actually do and that such packaging and labeling practices were lawful, true and not intended to deceive or mislead consumers.
84. Plaintiff Bunting and the California Class Members are not sophisticated experts about the corporate branding, labeling, and packaging practices of the Products. Plaintiff Bunting and the California Class acted reasonably when they purchased the Products based on their belief that Defendant’s representations were true and lawful.
85. Plaintiff Bunting and the California Class lost money or property as a result of Defendant’s UCL violations because (a) they would not have purchased the Products on the same terms absent Defendant’s illegal conduct as set forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a price premium for the Products due to Defendant’s misrepresentations; and (c) the Products did not have the quantities as represented.
86. The conduct of Defendant as set forth above demonstrates the necessity for granting injunctive relief restraining such and similar acts of unfair competition pursuant to California Business and Professions Code. Unless enjoined and restrained by order of the court, Defendant will retain the ability to, and may engage in, said acts of unfair competition, and misleading advertising. As a result, Plaintiffs are entitled to injunctive and monetary relief.

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COUNT III
VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,
California Business & Professions Code § 17500, *et seq.*
(On behalf of California Consumers Only)

87. Plaintiff Bunting realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:
88. Plaintiff Bunting brings this claim individually and on behalf of the Members of the proposed California Class for Defendant’s violations of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*
89. Under the FAL, the State of California makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”
90. Defendant engaged in a scheme of offering misbranded Products for sale to Plaintiff Bunting and the California Class Members by way of packaging the Products in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Such practice misrepresented the content and quantity of the misbranded Products. Defendant’s advertisements were made in California and come within the definition of advertising as contained in Bus. & Prof Code §§ 17500, *et seq.* in that the product packaging was intended as inducements to purchase Defendant’s Products. Defendant knew its conduct was unauthorized, inaccurate, and misleading.
91. Defendant violated federal and California law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

92. Defendant violated 17500, *et seq.* by misleading Plaintiff Bunting and the California Class to believe that the Product packaging contains more ground black pepper than it in fact contains, as described herein.
93. Defendant knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that its representations about the quantities of the Products were untrue and misleading.
94. Plaintiff Bunting and the California Class lost money or property as a result of Defendant's FAL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations; and (c) the Products did not have the benefits, or quantities as promised, and as a result the class is entitled to monetary and injunctive relief.

COUNT IV
VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD
ACT

Minn. Stat. §§ 325F.68, *et seq.*
(On behalf of Minnesota Consumers Only)

95. Plaintiff Grady realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:
96. Plaintiff Grady brings this claim individually and on behalf of the Members of the proposed Minnesota Class for Defendant's violations of Minnesota's Unlawful Practices Act, Minn. Stat. §§ 325F.68, *et seq.*
97. The Act provides, in pertinent part: "The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any

1 person has in fact been misled, deceived, or damaged thereby, is
2 enjoined”

3 98. Defendant violated federal and Minnesota law because the Products are
4 packaged in containers made, formed or filled as to be misleading and that
5 contain non-functional slack-fill. In addition, as described herein, Defendant
6 intended that consumers rely on the misleading and opaque packaging, which
7 is the same size as the previous, traditional tins. Defendant packaged its
8 Products in containers made, formed, or filled as to be false and misleading to
9 a potential customer as to the actual size and filling of the package with
10 Defendant’s Products.

11 99. Defendant violated federal and Minnesota law because the Products are
12 misbranded and misrepresented, as described herein. Specifically, the
13 containers are formed, or filled as to be misleading in violation of the Act,
14 which prohibits misleading and deceptive practices in connection with the
15 sale of any merchandise.

16 100. Plaintiff Grady and the Minnesota Class Members are not sophisticated
17 experts about the corporate branding, labeling, and packaging practices of the
18 Products. Plaintiff Grady and the Minnesota Class acted reasonably when
19 they purchased the Products based on their belief that Defendant’s
20 representations were true and lawful.

21 101. Plaintiff Grady and the Minnesota Class lost money or property as a result of
22 Defendant’s violations because (a) they would not have purchased the
23 Products on the same terms absent Defendant’s illegal conduct as set forth
24 herein, or if the true facts were known concerning Defendant’s
25 representations; (b) they paid a price premium for the Products due to
26 Defendant’s misrepresentations; and (c) the Products did not have the
27 quantities as promised. Plaintiff Grady and the Class are entitled to monetary
28 relief.

102. The conduct of Defendant as set forth above demonstrates the necessity for granting injunctive relief restraining such and similar fraudulent acts. Unless enjoined and restrained by order of the court, Defendant will retain the ability to, and may engage in, said acts of misrepresentation.

COUNT V
VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE
PRACTICES ACT
Minn. Stat. §§ 325D.43, *et seq.*
(On behalf of Minnesota Consumers Only)

103. Plaintiff Grady realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

104. Plaintiff Grady brings this claim individually and on behalf of the Members of the proposed Minnesota Class for Defendant's violations of Minnesota's Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43, *et seq.*

105. The Act provides, in pertinent part: "A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"

106. Defendant engaged in unfair, unconscionable and deceptive acts by offering misbranded Products for sale to Plaintiff Grady and the Minnesota Class Members by way of packaging the Products in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Such practice misrepresented the characteristics and quantity of the misbranded Products.

107. Furthermore, as described herein, Defendant failed to reveal to consumers the material fact that it had decreased the quantity of Product contained in its traditional size tins. Defendant relied on consumers' familiarity with its Product packaging to intentionally mislead and deceive Minnesota

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consumers. Moreover, based on Defendant’s conduct, such consumers could not reasonably know about the slack-filled containers.

108. Defendant violated federal and Minnesota law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

109. Plaintiff Grady and the Minnesota Class lost money or property as a result of Defendant’s violations of the Minnesota Trade Practices Act because (a) they would not have purchased the Products on the same terms absent Defendant’s unlawful conduct as set forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a price premium for the Products due to Defendant’s misrepresentations; and (c) the Products did not have the benefits, or quantities as promised. Plaintiff Grady and the Class are entitled to monetary relief.

110. The conduct of Defendant as set forth above demonstrates the necessity for granting injunctive relief restraining such and similar deceptive trade practices.

COUNT VI
VIOLATION OF MICHIGAN CONSUMER PROTECTION ACT
MCL §§ 445.901, *et seq.*
(On behalf of Michigan Consumers Only)

111. Plaintiff Underwood realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

112. Plaintiff Underwood brings this claim individually and on behalf of the Members of the proposed Michigan Class for Defendant’s violations of Michigan’s Consumer Protection Act, MCL §§ 445.901, *et seq.*

113. Michigan’s Consumer Protection Act states that “(1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows . . . (c) Representing that goods or

services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.”

114. Defendant engaged in unfair, unconscionable and deceptive acts by offering misbranded Products for sale to Plaintiff Underwood and the Michigan Class Members by way of packaging the Products in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Such practice misrepresented the content, characteristics and quantity of the misbranded Products.

115. Furthermore, as described herein, Defendant failed to reveal to consumers the material fact that it had decreased the quantity of Product contained in its traditional size tins. Defendant relied on consumers’ familiarity with its Product packaging to intentionally mislead and deceive Michigan consumers. Moreover, based on Defendant’s conduct, such consumers could not reasonably know about the slack-filled containers.

116. Defendant violated federal and Michigan law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

117. Defendant violated MCL §§ 445.901, *et seq.* by misleading Plaintiff Underwood and the Michigan Class to believe that the Product packaging contains more ground black pepper than it in fact contains, as described herein.

118. Plaintiff Underwood and the Michigan Class lost money or property as a result of Defendant’s violations of the Michigan Consumer Protection Act because (a) they would not have purchased the Products on the same terms absent Defendant’s unlawful conduct as set forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a price

premium for the Products due to Defendant's misrepresentations; and (c) the Products did not have the benefits, or quantities as promised, and as a result the class is entitled to monetary and injunctive relief.

119. The conduct described herein constitutes an unlawful method, act or practice in trade or commerce, and is appropriate for treatment on a classwide basis.

COUNT VII
VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT
815 ILCS § 505, *et seq.*
(On behalf of Illinois Consumers Only)

120. Plaintiff Hilla realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

121. Plaintiff Hilla brings this claim individually and on behalf of the Members of the proposed Illinois Class for Defendant's violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505, *et seq.*

122. The Illinois Law states that unfair methods of competition and unfair or deceptive acts and practices include "the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact"

123. Defendant engaged in unfair competition and deceptive acts by offering misbranded Products for sale to Plaintiff Hilla and the Illinois Class Members by way of packaging the Products in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Such practice misrepresented the characteristics and quantity of the misbranded Products.

124. Furthermore, as described herein, Defendant failed to reveal to consumers the material fact that it had decreased the quantity of Product contained in its traditional size tins. Defendant relied on consumers' familiarity with its Product packaging to intentionally mislead and deceive Illinois consumers.

Moreover, based on Defendant's conduct, such consumers could not reasonably know about the slack-filled containers.

125. Defendant violated federal and Illinois law because the Products are packaged in containers made, formed or filled as to be misleading and which contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

126. Defendant's deceptive acts and practices occurred in the course of trade or commerce because they occurred during the advertising, offering for sale, sale or distribution of the Products. *See* 815 ILCS § 505/1(f).

127. Plaintiff Hilla and the Illinois Class lost money or property as a result of Defendant's violations of the Minnesota Trade Practices Act because (a) they would not have purchased the Products on the same terms absent Defendant's unlawful conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations; and (c) the Products did not have the benefits, or quantities as promised, and as a result the class is entitled to monetary and injunctive relief.

COUNT VIII

NEGLIGENT MISREPRESENTATION

(On Behalf of the Consumers in California, Minnesota, Michigan and Illinois)

128. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein, and further allege as follows:

129. Defendant, directly or through its agents and employees, made false representations, concealments and non disclosures to Plaintiffs and Members of the Class.

130. Defendant as the manufacturer, packager, labeler and initial seller of the Products purchased by Plaintiffs and Class Members had a duty to disclose the true quantity of the Products and to refrain from selling them in containers made, formed or filled as to be misleading and which contain non-functional slack-fill. Defendant had exclusive knowledge of material facts not known or

1 reasonably accessible to Plaintiffs and Class Members; Defendant actively
2 concealed material facts from Plaintiffs and Class Members and Defendant
3 made partial representations that are misleading because some other material
4 fact has not been disclosed. Defendant's failure to disclose the information it
5 had a duty to disclose constitutes material misrepresentations and materially
6 misleading omissions which misled Plaintiffs and Class Members, who relied
7 on Defendant in this regard to disclose all material facts accurately, truthfully
8 and fully.

9 131. Plaintiffs and Members of the Class reasonably relied on Defendant's
10 representation that the Products contain more pepper than actually packaged.

11 132. In making the representations of fact to Plaintiffs and Members of the Class
12 described herein, Defendant has failed to fulfill its duties to disclose the
13 material facts set forth above. The direct and proximate cause of this failure
14 to disclose was Defendant's negligence and carelessness.

15 133. Defendant, in making the misrepresentations and omissions, and in engaging
16 in the acts alleged above, knew or reasonably should have known that the
17 representations were not true. Defendant made and intended the
18 misrepresentations to induce the reliance of Plaintiffs and Members of the
19 Class.

20 134. As the manufacturer of its Products, Defendant is in the unique position of
21 being able to provide accurate information about those Products. Therefore
22 there is a special and privity-like relationship between Defendant and
23 Plaintiffs and other consumers.

24 135. Defendant has a duty to correct the misinformation it disseminated through its
25 advertising of the Products. By not informing Plaintiffs and Members of the
26 Class, Defendant breached its duty. Defendant also gained financially from
27 and as a result of this breach.

28 136. By and through such deceit, misrepresentations and/or omissions, Defendant
intended to induce Plaintiffs and Members of the Class to alter their position

to their detriment. Plaintiffs and Members of the Class relied upon these false representations when purchasing ground black pepper Products in over sized tin packages, which reliance was justified and reasonably foreseeable.

137. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and Members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for ground black pepper Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

138. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and Members of the Class.

139. Plaintiffs and Members of the Class are entitled to relief in an amount to be proven at trial, and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- (A) For an Order certifying the California Class, appointing Plaintiff Bunting representative of the California Class, and designating his counsel as counsel for the California Class;
- (B) For an Order certifying the Minnesota Class, appointing Plaintiff Grady representative of the Minnesota Class, and designating his counsel as counsel for the Minnesota Class;
- (C) For an Order certifying the Michigan Class, appointing Plaintiff Underwood representative of the Michigan Class, and designating his counsel as counsel for the Michigan Class;
- (D) For an Order certifying the Illinois Class, appointing Plaintiff Hilla representative of the Illinois Class, and designating his counsel as counsel for the Illinois Class;
- (E) For an Order declaring that Defendant's conduct violated the CLRA, Cal. Civ. Code § 1750, *et seq.*, and awarding injunctive relief;

- (F) For an Order declaring that Defendant's conduct violated California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, and California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*, and awarding (i) injunctive relief, (ii) actual damages, (iii) prejudgment and post judgment interest, (iv) exemplary and/or punitive damages pursuant to Cal. Civ. Code § 3294, (v) costs of suit, and (iv) reasonable attorneys' fees pursuant to, *inter alia*, Cal. Code of Civ. Proc § 1021.5;
- (G) For an Order declaring that Defendant's conduct violated the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.* and the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43, *et seq.*, and awarding (i) injunctive relief, (ii) damages, (iii) disbursements, (iv) costs of suit, and (v) reasonable attorneys' fees pursuant to, *inter alia*, Minn. Stat. 8.31;
- (H) For an Order declaring that Defendant's conduct violated Michigan's Consumer Protection Act, MCL §§ 445.901, *et seq.*, and awarding (i) injunctive relief, (ii) actual damages, (iii) prejudgment and post judgment interest, (iv) costs of class notice, as appropriate, and (v) other appropriate relief;
- (I) For an Order declaring that Defendant's conduct violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505, *et seq.*, and awarding (i) actual damages, and (ii) other relief that the Court deems proper;
- (J) For an Order finding that Defendant made Negligent Misrepresentations in each of the states of California, Minnesota, Michigan and Illinois, and awarding special, general, and compensatory damages to Plaintiffs and the California Class, Minnesota Class, Michigan Class and Illinois Class;
- (K) For compensatory damages in amounts to be determined by the Court and/or jury;
- (L) For prejudgment interest on all amounts awarded;

- 1 (M) For an order of restitution and all other forms of equitable monetary relief, as
2 pleaded;
3 (N) For injunctive relief as pleaded or as the Court may deem proper;
4 (O) For an Order awarding Plaintiffs and the Class their reasonable attorneys'
5 fees and expenses and costs of suit as pleaded; and
6 (P) For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiffs, individually and on behalf of all others similarly situated, hereby
9 demand a jury trial on all claims so triable.

10 Dated: July 23, 2015

Respectfully submitted,

11
12 **KAZEROUNI LAW GROUP, APC**

13 By: /s/ Abbas Kazerounian

14 Abbas Kazerounian

15 ATTORNEYS FOR PLAINTIFFS

16 **GOTTLIEB & ASSOCIATES**

Jeffrey M. Gottlieb, Esq. (JG-7905)

17 Dana L. Gottlieb, Esq. (DG-6151)

Pro hac vice to be filed

18 150 East 18th Street

19 Suite PHR

New York, NY 10003

20 NYJG@aol.com

21 danalgottlieb@aol.com

22 Telephone: (212) 228-9795

23 Facsimile: (212) 982-6284
24
25
26
27
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ryan Scott Bunting, Brandon Grady, Tyler Underwood, and Nicholas Hilla, Individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff **San Diego**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Abbas Kazerounian, Esq. (249203); Gouya Ranekouhi, Esq. (288267)
Kazerouni Law Group, APC (800) 400-6808
245 Fischer Avenue, Suite D1, Costa Mesa, CA 92626

DEFENDANTS

McCormick & Company, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'15CV1648 BAS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:
Diversity;

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/23/2015

SIGNATURE OF ATTORNEY OF RECORD

s/Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

PLAINTIFFS' EXHIBIT 1

Plaintiff Bunting's Letter to McCormick & Company, Inc.

In The Case Of

Ryan Scott Bunting, et al,

v.

McCormick & Company, Inc.

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Joshua Swigart, Esq. – Of Counsel
Robert Hyde, Esq. – Of Counsel
Andrei Armas, Esq. – Of Counsel

July 8, 2015

SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

McCormick & Company, Inc.
c/o CSC – Lawyers Incorporating Service (Agent for Service)
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

RE: Demand Letter Pursuant to California Civil Code § 1782

Dear Sir or Madam:

This letter serves as notice and demand for corrective action by McCormick & Company, Inc. (“McCormick”) pursuant to the Consumers Legal Remedies Act, California Civil Code § 1782 (“CLRA”). This letter is sent on behalf of our client, Ryan Bunting,¹ a purchaser of McCormick Pure Ground Black Pepper in the state of California, and all other persons similarly situated. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

As of about January or February of 2015, McCormick reduced the volume of ground black pepper sold in its traditional tins by approximately 25%. McCormick did not, however, make a corresponding reduction in the size of the tins. Thus, the same size tins as consumers have purchased for decades now contain 25% “empty” space, or slack-fill. This is true for each of the small, medium and large tins containing McCormick black ground pepper. Although those tins previously contained 2, 4 and 8 ounces of product, respectively, they now contain 1.5, 3 and 6 ounces of product. Consumers rely on the traditional size of the tins as the basis for making purchasing decisions and believe the tins are effectively full, as they have been for decades. Consumers are surprised and disappointed, however, when they purchase the black pepper and discover that the tins contain 25% slack fill.

¹ This firm represents Mr. Bunting. Please refrain from contacting Mr. Bunting directly. Please direct any and all communications to this office.

The above-described representations are false and misleading and constitute unlawful, unfair, or fraudulent acts or practices and unfair methods of competition in violation of the CLRA, including but not limited to §§ 1770(a)(5) and (9). The representations also violate California's Unfair Competition Law and False Advertising Law, California Business & Professions Code §§ 17200, *et seq.*, and 17500, *et seq.* McCormick has and continues to mislead consumers into believing that the tins containing its ground black pepper are full, when in fact they contain substantial slack-fill. These misrepresentations allow McCormick to increase its sales, charge a premium price for its product, and capture market share from its competitors.

If our client had known about the slack-fill contained in McCormick's ground black pepper, he would not have purchased the product. Our client is a citizen of the State of California and is a consumer as defined in California Civil Code § 1761(d) because he purchased McCormick ground black pepper for personal, family, or household purposes. Among other things, our client relied on the size of the McCormick black pepper tin, and his prior experience in purchasing that product. As a result, our client suffered loss of money.

We hereby demand on behalf of our client and all other similarly situated that McCormick immediately: (1) cease and desist from continued sale of all McCormick black pepper products containing slack-fill; (2) initiate corrective action; and (3) offer to refund the purchase price of all misrepresented McCormick ground black pepper products purchased by our client, plus reimbursement for interest. Please comply with this demand within thirty (30) days from receipt of this letter. Additionally, this letter also serves as notice to McCormick of its duty to preserve and retain all documents, tangible items, and electronically stored information that is potentially relevant to this matter.

If McCormick wishes to enter into discussions to resolve the demands asserted in this letter, please contact me immediately. Your cooperation in this matter would be greatly appreciated.

Yours truly,

/s/ Abbas Kazerounian

Abbas Kazerounian, Esq.
Direct Line: 800-400-6808 Ext: 2
Email: ak@kazlg.com

cc: Joshua B. Swigart, Esq.