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and Alexander Vuckovic, individually
11 and on behalf of classes of similarly
situated individuals
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13 (Additional counsel on signature page)

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MICHAEL STILES and
ALEXANDER VUCKOVIC,
17 individually and on behalf of classes of
similarly situated individuals,
18
Plaintiffs,

19 v.

20 TRADER JOE'S COMPANY, a
California Corporation; and DOES 1
21 through 5,
22
Defendant.

) Case No.

) **CLASS ACTION COMPLAINT**
) **FOR:**

-) 1. **Fraudulent Inducement**
-) 2. **Cal. Comm. Code § 2313**
-) 3. **Cal. Civil Code § 1750**
-) 4. **Cal. Bus. & Profs. Code §**
17500; and
-) 5. **Cal. Bus. & Profs. Code §**
17200

) **DEMAND FOR JURY TRIAL**

23
24 Plaintiffs Michael Stiles and Alexander Vuckovic bring this action on their
25 own behalf and on behalf of the Classes they seek to represent, based upon their own
26 personal knowledge as to themselves and their own acts and upon information and
27 belief and the investigation of their counsel as to all other matters, and allege as
28

1 follows:

2 **NATURE OF THE CASE**

3 1. Defendants Trader Joe’s Company and Trader Joe’s East Inc. (“Trader
4 Joe’s”) manufacture, market, distribute, and sell a variety of maple cereal and maple
5 oatmeal products, including Trader Joe’s Frosted Maple and Brown Sugar Shredded
6 Bite Size Wheats and Trader Joe’s Oatmeal Complete Maple and Brown Sugar.
7 These products are misbranded because the front packaging claims that the products
8 contain maple when, in fact, maple is not an ingredient in the products.

9 2. Trader Joe’s conduct breaches its express warranties with consumers,
10 constitutes false advertising, and violates the California Consumer Legal Remedies
11 Act, the California False Advertising Law, the California Unfair Competition Law,
12 the California Sherman Food, Drug, and Cosmetic Law, the Federal Food, Drug, and
13 Cosmetic Act and implementing regulations, and constitutes fraudulent inducement.

14 3. Plaintiffs bring this action on behalf of themselves and classes of
15 purchasers to stop Defendant from mislabeling its Trader Joe’s Oatmeal Complete
16 Maple and Brown Sugar as containing “maple” when maple is not an ingredient in
17 the product. In addition, Plaintiff, on behalf of himself and the proposed class, seeks
18 restitution and other equitable, injunctive, declaratory, and monetary relief as set forth
19 below.

20 **PARTIES**

21 4. Plaintiff Michael Stiles (“Stiles”) is a resident of Woodland Hills,
22 California. During at least the last four years, several times during those years, Stiles
23 purchased Trader Joe’s Oatmeal Complete Maple and Brown Sugar at a various
24 Trader Joe’s retail stores located in Woodland Hills, Encino and Studio City,
25 California.

26 5. Plaintiff Alexander Vuckovic (“Vuckovic”) is a resident of Cambridge,
27 Massachusetts. During the last four years, Vuckovic purchased both Trader Joe’s

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1 Frosted Maple and Brown Sugar Shredded Bite Size Wheats and Trader Joe’s
2 Oatmeal Complete Maple and Brown Sugar at Trader Joe’s retail stores in
3 Cambridge, Massachusetts.

4 6. Plaintiff Stiles and Plaintiff Vuckovic are collectively referred to in this
5 complaint as Plaintiffs.

6 7. Defendant Trader Joe’s Company is a California corporation with its
7 principal place of business in Monrovia, California. It maintains a registered agent for
8 service of process at 2804 Gateway Oaks Drive #200, Sacramento, California 95833.

9 8. Defendant Trader Joe’s East Inc. is a Massachusetts corporation with its
10 principal place of business in Boston, Massachusetts. It maintains a registered agent
11 for service of process at 44 School Street, Suite 325, Boston, Massachusetts 02108.

12 9. Based on information and belief, Trader Joe’s East Inc. is a wholly
13 owned subsidiary of Trader Joe’s Company and Trader Joe’s East Inc. owns and
14 operates stores which use the “Trader Joe’s” name on the east coast of the United
15 States. For purposes of simplicity in this complaint, Defendants Trader Joe’s
16 Company and Trader Joe’s East Inc. will be referred to collectively as “Trader Joe’s”
17 or “Defendants”.

18 10. Trader Joe’s is a chain of specialty grocery stores with approximately
19 453 stores in 45 states and Washington D.C. Trader Joe’s claims to be a market
20 leader in organic and fresh food groceries in the United States. As part of its
21 operations, Trader Joe’s is engaged in the manufacture, labeling, marketing,
22 distribution, and sale of maple cereal and maple oatmeal products, including Trader
23 Joe’s Frosted Maple and Brown Sugar Shredded Bite Size Wheats and Trader Joe’s
24 Oatmeal Complete Maple and Brown Sugar, which it sells in its retail locations in
25 California, Massachusetts and throughout the nation.

26 11. Plaintiffs are currently ignorant of the true names and capacities,
27 whether individual, corporate, associate, or otherwise, of the Defendants sued herein

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1 under the fictitious names Does 1 through 5, inclusive, and therefore, sues such
2 Defendants by such fictitious names. Plaintiffs will seek leave to amend this
3 complaint to allege the true names and capacities of said fictitiously named
4 Defendants when their true names and capacities have been ascertained. Plaintiffs are
5 informed and believe and based thereon allege that each of the fictitiously named Doe
6 Defendants are legally responsible in some manner for the events and occurrences
7 alleged herein, and for the damages suffered by Plaintiffs.

8 12. Plaintiffs are informed and believe and based thereon allege that all
9 defendants, including the fictitious Doe Defendants, were at all relevant times acting
10 as actual agents, conspirators, ostensible agents, partners and/or joint venturers and
11 employees of all other defendants, and that all acts alleged herein occurred within the
12 course and scope of said agency, employment, partnership, and joint venture,
13 conspiracy or enterprise, and with the express and/or implied permission, knowledge,
14 consent, authorization and ratification of their co-Defendants; however, each of these
15 allegations are deemed “alternative” theories whenever not doing so would result in a
16 contraction with the other allegations.

17 13. All Defendants, including Does 1 through 5, are collectively referred to
18 as “Defendants” or “Trader Joe’s.”

19 14. Whenever this complaint refers to any act of Defendants, the allegations
20 shall be deemed to mean the act of those defendants named in the particular cause of
21 action, and each of them, acting individually, jointly and severally, unless otherwise
22 alleged.

23 **JURISDICTION & VENUE**

24 15. The Court has original jurisdiction over this action pursuant to 28 U.S.C.
25 § 1332(d), because (a) at least one member of the putative class is a citizen of a state
26 different from Defendants, (b) the amount in controversy exceeds \$5,000,000,
27 exclusive of interest and costs, and (c) none of the exceptions under that subsection

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1 apply to this action.

2 16. This Court has personal jurisdiction over Defendant because it conducts
3 operations and/or sales in California, is registered to do business in California, and
4 the acts alleged herein originated in this District.

5 17. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a
6 substantial part of the events giving rise to the claim occurred in this District.

7 **COMMON ALLEGATIONS OF FACT**

8 **Consumer Preferences and Expectations Regarding**
9 **Products Containing Maple**

10 18. Maple syrup and maple sugar are premium ingredients that companies
11 add to sweeten food products. They are preferred over other sweeteners for a variety
12 of reasons relating to taste, quality, health benefits, origin, and other reasons.

13 19. Maple syrup contains an abundant amount of naturally occurring
14 minerals such as calcium, manganese, potassium and magnesium. It is also a source
15 of beneficial antioxidants that have shown to help prevent cancer, support the
16 immune system, lower blood pressure and slow the effects of aging. See
17 <http://vermontmaple.org> (last visited June 13, 2016).

18 20. Maple syrup is believed to have a higher nutritional value than all other
19 common sweeteners. See <http://vermontmaple.org> (last visited June 13, 2016).

20 21. Maple sugar is made when all of the water in the maple syrup is boiled
21 away. It is then stirred while very hot allowing any water that is left to evaporate as
22 steam. The result is a dry pure granular maple sugar that can be substituted for white
23 processed granulated sugar. See [http://vermontmaple.org/maple-products/maple-](http://vermontmaple.org/maple-products/maple-sugar/)
24 [sugar/](http://vermontmaple.org/maple-products/maple-sugar/) (last visited May 2, 2016).

25 22. Trader Joe's represents that maple sugar and/or maple syrup is used in
26 its Trader Joe's Frosted Maple and Brown Sugar Shredded Bite Size Wheats and
27 Trader Joe's Oatmeal Complete Maple and Brown Sugar. The front packaging of
28 both products include the word "maple" in the product names. The front packaging

1 of Trader Joe's Oatmeal Complete Maple and Brown Sugar also prominently depicts
2 a picture of oatmeal sweetened with maple and brown sugar.

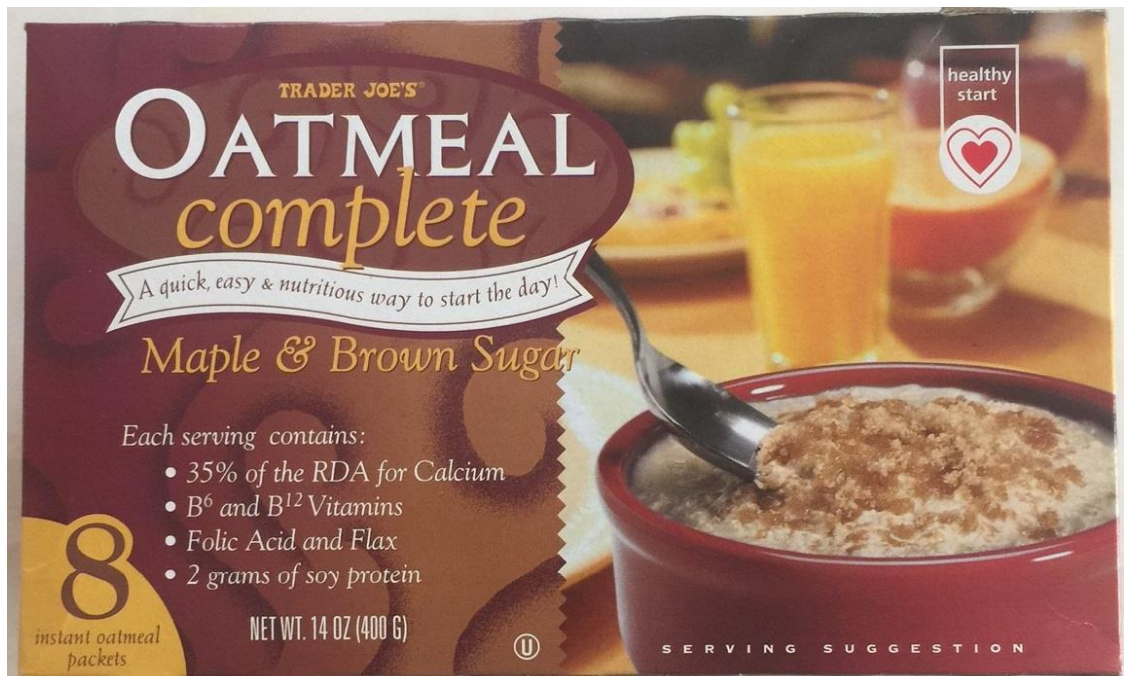
3 23. Consumers reasonably rely on the products' name along with such
4 images and/or statements to indicate that the products contain maple syrup and/or
5 maple sugar.

6 24. Food products that are represented as containing maple syrup or maple
7 sugar command a premium in the marketplace. In addition, companies increase sales
8 when they represent that a product contains these ingredients.

9 **Trader Joe's Mislabels and Falsely Advertises Its Cereals As Containing
10 Maple Syrup and/or Maple Sugar.**

11 25. Defendants manufacture, promote, distribute, and sell Trader Joe's
12 Frosted Maple and Brown Sugar Shredded Bite Size Wheats and Trader Oatmeal
13 Complete Maple and Brown Sugar. The products prominently state "maple" in the
14 product names.

15 26. In addition, the front packaging of Trader Joe's Oatmeal Complete
16 Maple and Brown Sugar also prominently depicts a picture of oatmeal sweetened
17 with maple. The front packaging of this product is depicted in the photograph below:



1 27. The front packaging of Trader Joe's Frosted Maple and Brown Sugar
2 Shredded Bite Size Wheats is depicted below:



20 28. However, these products do not contain any maple syrup or maple sugar,
21 and are therefore misbranded under state and federal laws.

22 29. In making their purchasing decisions, consumers, including Plaintiffs
23 and Class Members, rely on the labeling (including the name of the product and/or
24 images of the product being sweetened with maple on the front of the packaging) to
25 inform them of whether products contain maple syrup and/or maple sugar.

26 30. The presence of maple, a premium ingredient, in these products has a
27 material bearing on consumers' (including Plaintiffs' and Class Members') decision
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1 to purchase.

2 31. According to the Vermont Maple Sugar Makers' Association and over
3 ten other maple industry groups, this business practice injures consumers and maple
4 syrup manufacturers:

5 This unchecked misbranding has an adverse impact on manufacturers
6 of products containing real maple syrup, as it allows cheaper products
7 not containing premium ingredients to compete with those actually
8 containing maple syrup. Further, it deceives consumers into believing
9 they are purchasing a premium product when, in fact, they have a
product of substantially lower quality.

10 See Feb. 15, 2016 Letter from Vermont Maple Sugar Makers' Association to
11 the Food and Drug Administration available at
12 <https://consumermediallc.files.wordpress.com/2016/02/fdamaple.pdf> (last
13 visited June 13, 2016); see also, March 10, 2016 letter from various
14 members of Congress to Food and Drug Administration Commissioner
15 available at
16 [https://www.leahy.senate.gov/imo/media/doc/FINAL_Letter_FDA_Maple%](https://www.leahy.senate.gov/imo/media/doc/FINAL_Letter_FDA_Maple%20Labeling_3.10.16.pdf)
17 [20Labeling_3.10.16.pdf](https://www.leahy.senate.gov/imo/media/doc/FINAL_Letter_FDA_Maple%20Labeling_3.10.16.pdf) (last visited June 13, 2016).

18 32. Accordingly, Plaintiffs and members of the Class have been harmed
19 because they overpaid for the products (or would not have purchased the products)
20 had they known that the products did not contain any maple syrup or maple sugar.

21 **PLAINTIFFS' INDIVIDUAL ALLEGATIONS**

22 33. Over at least the last four years, Plaintiff Stiles purchased Trader Joe's
23 Oatmeal Complete Maple and Brown Sugar at various Trader Joe's retail stores
24 located in Los Angeles County, California. During this same time period, Plaintiff
25 Vuckovic purchased both Trader Joe's Frosted Maple and Brown Sugar Shredded
26 Bite Size Wheats and Trader Joe's Oatmeal Complete Maple and Brown Sugar at
27 Trader Joe's retail stores in Cambridge, Massachusetts.

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40. Plaintiff Stiles brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and a subclass defined as follows:

California Subclass: All individuals who, from four years prior to the filing of this Complaint through the date of certification, purchased Trader Joe’s Oatmeal Complete Maple and Brown Sugar in California.

41. Excluded from the Classes are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants, and Defendants’ agents, legal representatives, predecessors, successors, assigns, and employees. Also excluded from the Classes are the judge and staff to whom this case is assigned, and any member of the judge’s immediate family.

42. Plaintiffs reserve the right to revise the definition of the Classes based on facts learned during discovery.

43. The exact number of persons in the Classes, as herein identified and described, is unknown but is estimated to number in the thousands. The Classes are so numerous that joinder of individual members herein is impracticable.

44. Plaintiffs will fairly and adequately represent and protect the interests of the other members of each Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and consumer class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiffs nor theirs counsel has any interest adverse to those of the other members of the Classes.

45. Absent a class action, most members of each Class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple

1 individual actions or piecemeal litigation in that it conserves the resources of the
2 courts and the litigants, and promotes consistency and efficiency of adjudication.

3 46. Defendant has acted and failed to act on grounds generally applicable to
4 the Plaintiffs and the other members of each Class in falsely advertising and
5 mislabeling its products as containing maple, requiring the Court's imposition of
6 uniform relief to ensure compatible standards of conduct toward members of the
7 Classes.

8 47. The factual and legal basis of Defendant's liability to Plaintiffs and to
9 Class members are the same, resulting in injury to the Plaintiffs and to all of the other
10 Class members as a result of the Defendant's conduct of falsely advertising and
11 mislabeling its products as containing maple. Plaintiffs and Class members have
12 suffered harm and damages as a result of the unlawful and wrongful conduct.

13 48. There are many questions of law and fact common to the claims of
14 Plaintiffs and the Class members, and those questions predominate over any
15 questions that may affect individual members of each Class. Common questions for
16 the Classes include but are not limited to the following:

- 17 (a) Whether Defendant's use of "maple" in the product names and/or
18 use of images of oatmeal sweetened with maple constitute an
19 express warranty that the products contain maple syrup and/or
20 maple sugar;
- 21 (b) Whether Defendant breached its express warranties with Plaintiffs
22 and class members;
- 23 (c) Whether Defendant's labeling is unlawful, unfair, deceptive, or
24 misleading to reasonable consumers under the UCL;
- 25 (d) Whether Defendant's conduct violates Cal. Bus. & Profs. Code §
26 17200, Cal. Civil Code §1750, and the Cal. Bus. & Profs. Code §
27 17500;
- 28 (e) Whether Defendant's products contain maple syrup or maple
sugar;
- (f) Whether a reasonable consumer would expect that products
containing "maple," in bold and large letters, in the product
names, would in fact contain maple syrup or maple sugar as an
ingredient;

- 1 (g) Whether, as a result of Defendant’s conduct, Plaintiffs and the
2 classes members are entitled to equitable relief and/or other relief,
and, if so, the nature of such relief; and
- 3 (h) The method of calculation and extent of damages for Plaintiffs
4 and members of the Classes.

5 **FIRST CLAIM FOR RELIEF**
6 **Fraudulent Inducement**
7 **(On behalf of Plaintiffs and the Nationwide Oatmeal Class and the**
8 **Nationwide Shredded Wheat Class)**

9 49. Plaintiffs repeat and reallege the allegations of the preceding paragraphs
10 as if fully set forth herein. This claim is made with respect to the Nationwide Oatmeal
11 Class and the Nationwide Shredded Wheat Class, collectively referred to as the
12 “Nationwide Classes.”

13 50. As described with particularity above, Defendant has used and continues
14 to use, marketing tactics it knows or reasonably should know are false and
15 misleading.

16 51. To induce Plaintiffs and the Nationwide Classes into purchasing their
17 products, Defendant affirmatively represented that the products contain maple syrup
18 and/or maple sugar.

19 52. Defendant’s affirmative representations are false. In particular, Trader
20 Joe’s Oatmeal Complete Maple and Brown Sugar and Trader Joe’s Frosted Maple
21 and Brown Sugar Shredded Bite Size Wheats do not contain maple sugar or maple
22 syrup.

23 53. The representations made by Defendant were material terms in the
24 transactions with Plaintiffs and the Nationwide Classes because they directly affected
25 choices to purchase the products.

26 54. Defendant, as the manufacturer and designer of the foods and their
27 packaging, knew or should have known, with the exercise of reasonable care, that the
28 products being offered to consumers do not contain any maple syrup or maple sugar

1 and that consumers would be misled into believing that the products contained those
2 ingredients.

3 55. Defendant knew or should have known that a number of groups in the
4 maple industry have jointly complained about this issue as negatively affecting
5 consumers' ability to make informed decisions and causing unfair competition.

6 56. Therefore, Defendant intentionally designed the public representations
7 to mislead consumers about the ingredients and quality of the products.

8 57. Defendant made these representations with the intent to induce Plaintiffs
9 and members of the Nationwide Classes to rely upon them by purchasing the
10 products.

11 58. Plaintiffs and members of the Nationwide Classes were misled by these
12 representations. They would not have purchased (or would have paid less) for the
13 products but for the misrepresentations alleged herein.

14 59. As a result of their reasonable reliance on Defendant's
15 misrepresentations, Plaintiffs and members of the Nationwide Classes have suffered
16 actual monetary damages in the form of the price paid for the products.

17 60. Plaintiffs therefore prays for relief in the amount of the price paid for the
18 products.

19 **SECOND CLAIM FOR RELIEF**
20 **Violation of the California Commercial Code, Section 2313,**
21 **Breach of Express Warranty**
22 **(On behalf of Plaintiff Stiles and the California Subclass)**

23 61. Plaintiff Stiles repeats and re-alleges the allegations of the preceding
24 paragraphs as if fully set forth herein.

25 62. Defendant produced, advertised, marketed, and distributed products with
26 the affirmation of fact, promise, and description on the packaging that the product
27 contained maple syrup or maple sugar.

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1 63. Plaintiff and members of the California Subclass relied on these
2 affirmations of fact, promises, and descriptions in that they were part of the basis of
3 the bargain under which Plaintiff and members of the California Subclass purchased
4 Defendant's products.

5 64. Defendant breached these express warranties by producing, distributing,
6 and marketing products to Plaintiff and California Subclass members that did not
7 conform to the affirmations of fact, promises, and/or descriptions made on the
8 packaging (i.e., that the product contained maple syrup or maple sugar).

9 65. Defendant has been on notice of the breach of these express warranties
10 as they manufactured the product and designed the labeling. Further, Defendant
11 knew or should have known that a number of groups in the maple industry have
12 jointly complained about this issue as negatively affecting consumers and the
13 industry alike.

14 66. As a proximate result of Defendant's breach of its express warranty,
15 Plaintiff and members of the California Subclass sustained damages, including but
16 not limited to the purchase price of the product and/or the premium paid for the
17 product.

18 67. Plaintiff, on behalf of himself and the California Subclass, is entitled to
19 damages and other legal and equitable relief including, a right of reimbursement, as
20 well as costs, expenses and attorneys' fees.

21 68. Plaintiff brings this action as a private attorney general, and to vindicate
22 and enforce an important right affecting the public interest. Plaintiff and the
23 California Subclass are therefore entitled to an award of attorneys' fees under Code
24 of Civil Procedure section 1021.5 for bringing this action.

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THIRD CLAIM FOR RELIEF
Violations of the Consumers Legal Remedies Act,
California Civil Code Section 1750, *et seq.*
(On behalf of Plaintiff Stiles and the California Subclass)

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69. Plaintiff Stiles repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

70. The California Consumer Legal Remedies Act, Section 1750 of the California Civil Code, protects consumers against fraud, unlawful practices, and unconscionable commercial practices in connection with the sale of any merchandise.

71. Plaintiff and members of the California Subclass are “consumers” as defined by Section 1761(d) of California Code because they sought or acquired Defendants’ goods for personal, family, or household purposes.

72. Defendant’s products are “goods” within the meaning of Section 1761(a) of the California Civil Code as they are tangible chattels bought for personal, family, or household purposes.

73. Defendant manufactured, distributed, marketed, and sold products as containing maple syrup or maple sugar when, in fact, they do not. Such conduct constitutes a violation of the California Consumer Legal Remedies Act as specified below.

74. Defendant’s conduct violated and continues to violate the Consumer Legal Remedies Act by engaging in the following practices proscribed by section 1770(a), subsections (2), (5), (7), and (9) of the California Civil Code, respectively, in transactions with Plaintiff and members of the Class, which were intended to result in, and did result in, the sale of the products in that Defendant: misrepresented the source, sponsorship, approval, or certification of goods or services; misrepresented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have; represented that goods or services are of a particular standard, quality, or grade...if they are of another; and advertised goods or services with intent not to sell them as advertised.

1 81. Defendant's use of statements and/or imagery on the product packaging
2 and name had the capacity, likelihood and tendency to deceive and confuse
3 consumers into believing that the product contained maple syrup and/or maple sugar.

4 82. Defendant, as the manufacturer and designer of the food and its
5 packaging, knew or should have known, with the exercise of reasonable care, that the
6 products it was offering to consumers do not contain any maple syrup or maple sugar
7 and that consumers would be misled into believing that the products contained those
8 ingredients. Therefore, Defendant knew or should have known that its statements
9 were untrue and misleading.

10 83. Plaintiff and members of the California Subclass were induced to
11 purchase and/or pay a premium for Defendant's product based on Defendant's untrue
12 and misleading statements.

13 84. Plaintiff and members of the California Subclass were aware of and
14 reasonably relied on Defendant's untrue and misleading statements.

15 85. Defendant disseminated untrue and misleading statements about the
16 ingredients and quality of its products with the intent not to sell them as advertised.

17 86. Pursuant to section 17535 of the California Business and Professions
18 Code, Plaintiff, on behalf of herself and the California Subclass seeks restitution and
19 a Court order enjoining Defendant from such future conduct and any other such
20 orders as may be necessary to rectify Defendant's mislabeling and false advertising,
21 including requiring Defendant to cease misrepresenting that its products contain
22 maple syrup or maple sugar.

23 87. Plaintiff brings this action as a private attorney general, and to vindicate
24 and enforce an important right affecting the public interest. Plaintiff and members of
25 the California Subclass are therefore entitled to an award of attorneys' fees under
26 Code of Civil Procedure section 1021.5 for bringing this action.

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FIFTH CLAIM FOR RELIEF
Violations of California Business & Professions Code,
Section 17200, *et seq.*, Unlawful, Unfair and
Fraudulent Business Acts and Practices
(On behalf of Plaintiff Stiles and the California Subclass)

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4 88. Plaintiff Stiles repeats and re-alleges the allegations of the preceding
5 paragraphs as if fully set forth herein.

6 89. Defendant's acts and practices as detailed herein constitute acts of unfair
7 competition. Defendant has engaged in unlawful, unfair or fraudulent business acts
8 and/or practices within the meaning of California Business & Professions Code,
9 section 17200, *et seq.* Defendant need only violate one of the three prongs to be held
10 strictly liable.

11 90. Defendant has engaged in "unlawful" business acts and practices by
12 manufacturing, promoting, distributing, and selling products as containing maple
13 syrup or maple sugars, when, in fact, none of those ingredients are in the products.
14 Defendant's business acts and practices violate the California Business and
15 Professions Code, section 17500, *et seq.* and the California Consumer Legal
16 Remedies Act, California Civil Code, Section 1750, *et seq.*, as alleged herein.

17 91. Defendant's acts and practices are further "unlawful" because they
18 violate the Federal Food, Drug, and Cosmetic Act ("FDCA"). The FDCA states that a
19 food product is misbranded if: "its labeling is false or misleading in any particular;"
20 or "if it is an imitation of another food, unless its label bears, in type of uniform size
21 and prominence, the word 'imitation' and immediately thereafter, the name of the
22 food imitated." 28 U.S.C. § 343(a) and (c).

23 92. Defendant declares "maple" on its packaging as a characterizing
24 ingredient even where maple syrup (as defined in 21 CFR § 168.140(a)) is not
25 actually present in the product. Maple is a substance derived from the heat treatment
26 of sap from the maple tree. None of the ingredients in Defendant's products qualify
27 as maple under this definition.

1 93. The products are therefore misbranded under § 343(a) because the
2 packaging is false and misleading in that it conveys the message that maple syrup or
3 maple sugar is contained in the product.

4 94. The product is also misbranded under § 343(c) because it is “an
5 imitation of another food,” i.e., a food containing maple syrup or maple sugar, but
6 does not contain the word “imitation” on its labeling.

7 95. In addition, Defendant’s mislabeling violates the following
8 implementing FDCA regulations: 21 C.F.R. § 101.14 requiring claims to be
9 “complete, truthful, and not misleading,” and which “enables the public to
10 comprehend the information and 21 CFR § 102.5, which governs “characterizing
11 properties or ingredients,” and requires that “the common or usual name of a food
12 shall include the percentage(s) of any characterizing ingredient(s) or component(s)
13 when the proportion of such ingredient(s) or component(s) in the food has a material
14 bearing on price or consumer acceptance or when the labeling or the appearance of
15 the food may otherwise create an erroneous impression that such ingredient(s) or
16 component(s) is present in an amount greater than is actually the case.”

17 96. Maple, a premium ingredient, has a material bearing on the price and/or
18 consumer acceptance of food products that contain it, which is why it is frequently an
19 ingredient named in the title of foods or displayed on its packaging. Thus, if a product
20 name includes “maple,” or its packaging emphasizes the presence of maple (e.g.,
21 through images of maple), but the product does not actually contain any maple syrup
22 or maple sugar, it is unlawfully misbranded under the FDA’s regulations.

23 97. Defendant’s conduct further violates the California Sherman Food,
24 Drug, and Cosmetic Law (“Sherman Law”), Cal. Health & Safety Code § 110660,
25 which deems food products “misbranded” if the product’s labeling is “false or
26 misleading in any particular,” and Health & Safety Code § 110395, which adopts all
27 FDA food labeling regulations as state regulations.

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1 98. All of the challenged advertisements and statements made by Defendant
2 thus constitute violations of the Sherman Law and the FDCA, and as such, violate the
3 “unlawful” prong of the UCL.

4 99. Plaintiff reserves the right to identify additional provisions of the law
5 violated by Defendant as further investigation and discovery warrants.

6 100. Defendant’s failure to comply with the above statutes and regulations
7 constitute an unlawful business act or practice.

8 101. Section 17200 of the California Business & Professional Code also
9 prohibits any “unfair business act or practice.” As described above, Defendant has
10 engaged in “unfair” business acts or practices in that they falsely labeled products as
11 containing maple syrup or maple sugar, when, in fact, those products do not contain
12 any of those ingredients.

13 102. The gravity of the harm to Plaintiff and members of the California
14 Subclass outweighs any arguable utility of Defendant’s conduct. Plaintiff’s injury is
15 substantial, is not outweighed by any countervailing benefit to consumers or
16 competition, and is not one that consumers could have reasonably avoided.

17 103. Defendant’s conduct offends California public policy tethered to the
18 California Consumer Legal Remedies Act, the California False Advertising Law, the
19 California Sherman Law, and the FDCA, which are intended to preserve fair
20 competition, to protect consumers from market distortions, and to allow consumers to
21 make informed choices in their purchasing food products.

22 104. Defendant’s actions are immoral, unethical, unscrupulous, and offend
23 established public policy, and have injured Plaintiff and other members of the
24 California Subclass.

25 105. Section 17200 also prohibits any “fraudulent business act or practice.”
26 Defendants’ conduct constituted “fraudulent” business acts or practices in that their
27 conduct had a tendency and likelihood to deceive persons to whom such conduct was
28

1 and is targeted by falsely labeling products as containing maple syrup or maple sugar,
2 when, in fact, they do not.

3 106. Plaintiff and members of the California Subclass were deceived by
4 Defendant's representations as to whether the products contained maple syrup or
5 maple sugar.

6 107. Plaintiff and members of the Class reasonably relied on Defendant's
7 representations. As the California Supreme Court has explained, "Simply stated:
8 labels matter. The marketing industry is based on the premise that labels matter, that
9 consumers will choose one product over another similar product based on its label
10 and various tangible and intangible qualities they may come to associate with a
11 particular source." *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

12 108. Plaintiff and members of the California Subclass have suffered injuries
13 as a direct and proximate result of the unlawful, unfair, and fraudulent business
14 practices of Defendant in that they purchased products that they would not have
15 purchased, or they would have paid less for the products, had they known that the
16 products did not contain any maple syrup or maple sugars.

17 109. Pursuant to section 17203 of the California Business and Professions
18 Code, Plaintiff, on his own behalf and on behalf of the California Subclass, seeks
19 restitution and a Court order enjoining Defendant from such future conduct and any
20 other such orders that may be necessary to rectify the unlawful, unfair, and fraudulent
21 business practices of Defendant, including requiring Defendant to cease mislabeling
22 its products as containing maple syrup and maple sugars.

23 110. Plaintiff brings this action as a private attorney general, and to vindicate
24 and enforce an important right affecting the public interest. Plaintiff and members of
25 the California Subclass are therefore entitled to an award of attorneys' fees under
26 Code of Civil Procedure section 1021.5 for bringing this action.

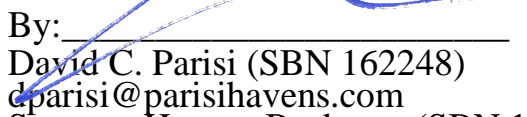
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1 WHEREFORE, Plaintiffs Michael Stiles and Alexander Vuckovic, on behalf of
2 themselves and members of the Classes, prays for the following relief:

- 3 a. An order certifying each Class as defined above;
- 4 b. An award of actual damages;
- 5 c. An injunction requiring Defendant to cease misrepresenting that the
6 products contain maple syrup and/or maple sugar and requiring
7 Defendant to provide a notice to consumers who already purchased the
8 products;
- 9 d. For any and all other relief available under Business and Professions
10 Code sections 17200, *et. seq.*, including but not limited to disgorgement
11 of profits received through Defendant’s unfair business practices and
12 restitution;
- 13 e. An award of reasonable attorneys’ fees and costs;
- 14 f. For pre-judgment interest on the sums owing; and
- 15 g. For such other and further relief as the Court deems just and proper.

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17 Dated: June 16, 2016

Respectfully submitted,

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JURY DEMAND

Plaintiff demands a trial by jury of all causes of action and matters so triable.

Dated: June 16, 2016

Respectfully submitted,

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