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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LARRIEL WILLIAMS and
LALONIE WILLIAMS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

PEPSICO INC. d/b/a SPITZ
INTERNATIONAL, and DOES 1-10,
inclusive,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (4) Strict Liability (Violation of Federal Food Drug and Cosmetic Act, 21 U.S.C. § 342(a), and California's Sherman Food, Drug, and Cosmetic Laws, California Health and Safety Code §109875 *et seq.*)
- (5) Negligence and Negligence Per Se
- (6) Intentional Infliction of Emotional Distress

Jury Trial Demanded

1 Plaintiffs LARRIEL WILLIAMS and LALONIE WILLIAMS
2 (“Plaintiffs”), on behalf of themselves and all others similarly situated, allege as
3 follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiffs bring this class action Complaint against Defendant
6 PEPSICO INC. d/b/a SPITZ INTERNATIONAL (hereinafter “Defendant” or
7 “Spitz”) to stop Defendant’s practice of falsely advertising and selling its product,
8 Spitz Sunflower Seeds, (“the Product”) as an edible consumer good when the
9 Product in fact contains maggots and dirt that render the product inedible and
10 dangerous for consumption.

11 2. Plaintiffs bring this class action Complaint to obtain redress for a
12 nationwide class of consumers (“Class Members”) who purchased, within the
13 applicable statute of limitations period, one of the Products produced and sold by
14 Defendant.

15 3. Defendant is a North Carolina corporation, with its headquarters in
16 New York, that is engaged in the production, sale, and distribution of food
17 products nationwide.

18 4. Defendant represents that its Product is an edible food product that is
19 safe to consume.

20 5. Plaintiffs and others similarly situated purchased the Products with
21 the intent to consume them.

22 6. Defendant misrepresented and falsely advertised to Plaintiffs and
23 others similarly situated that the Product was an edible consumer good when the
24 Product in fact contained maggots and dirt that render the product inedible and
25 dangerous for consumption contrary to how they were advertised.

26 7. Upon information and belief, Defendant has been fully aware that the
27 Product contained such defects rendering it inedible.

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1 8. Defendant's misrepresentations to Plaintiffs and others similarly
2 situated caused them to purchase these Products, which Plaintiffs and others
3 similarly situated would not have purchased absent these misrepresentations by
4 Defendant and its employees. In so doing, Defendant has violated California
5 consumer protection statutes.

6 9. Plaintiff is informed and believes and based upon such information
7 and belief alleges that Defendant knew or should have known of the probable
8 dangerous consequences of rodent contamination from its conduct in producing
9 the Products in defective, unsafe, and dangerous conditions. Defendant is in the
10 business of manufacturing, distribution, and selling ready-to-consume beverages
11 for consumption by consumers with no further steps. By failing to adequately
12 supervise, control, or otherwise provide for the quality and standards of its
13 Products, Defendant willfully and negligently exposed Plaintiff to contamination
14 in its products through the presence of a rodent contained within the Product.

15 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

16 10. Consumers purchase Products with the intent of consuming them for
17 sustenance and enjoyment.

18 11. Consumers rely on the representations and advertisements of retailers
19 in order to know which products to purchase.

20 12. Defendant is a producer that is engaged in the producing, marketing,
21 supplying and distributing of Products advertised to be edible and safe sunflower
22 seeds, when in fact the Product contains maggots and dirt that render the product
23 inedible and dangerous for consumption.

24 13. Defendant profits from the sale of the Products advertised as edible
25 sunflower seeds. Without that advertisement, consumers would not have
26 purchased the Products because the purpose for purchasing the Products is to
27 consume and enjoy them, which they are unable to do due to the maggots and dirt.
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1 14. In actual fact, the Products contain maggots and dirt that render the
2 product inedible and dangerous for consumption contrary to how Defendant
3 advertises them.

4 15. Consumers are unable to ascertain that the Products will be inedible
5 and dangerous based on the advertising and representations of Defendant.

6 16. Defendant makes written representations to consumers which
7 contradict the actual nature of the Product, namely that it contains maggot and dirt
8 that renders it inedible.

9 17. The aforementioned written and oral representations are objectively
10 false, and constitute a false advertisement under Cal. Bus. & Prof. Code §§ 17500
11 et. seq., and an unlawful, unfair, or deceptive business practices under Cal. Bus.
12 & Prof. Code §§ 17200 et. seq.

13 18. Defendant's violations of the law include, but are not limited to, the
14 false advertising, marketing, representations, and sale of the defective Products to
15 consumers nationwide.

16 19. On behalf of the Class, Plaintiff seeks an injunction requiring
17 Defendant to cease advertising and selling the Products and an award of damages
18 to the Class Members, together with costs and reasonable attorneys' fees.

19 **JURISDICTION AND VENUE**

20 20. This class action is brought pursuant to Federal Rule of Civil
21 Procedure 23. All claims in this matter arise exclusively under California law.

22 21. This matter is properly venued in the United States District Court for
23 the Central District of California, in that Plaintiffs purchased the Product at a
24 Chevron located at 20320 S. Avalon Boulevard, Carson CA 90746. Additionally,
25 Plaintiffs reside in the Central District of California and Defendant does business,
26 inter alia, in the Central District of California.

27 22. There is original federal subject matter jurisdiction over this matter
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1 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
2 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
3 original jurisdiction of federal courts in any class action in which at least 100
4 members are in the proposed plaintiff class, any member of the plaintiff class is a
5 citizen of a State different from the State of citizenship of any defendant, and the
6 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
7 costs.

8 23. In the case at bar, there are at least 100 members in the proposed
9 Class, the total claims of the proposed Class members are in excess of
10 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff and
11 the class are citizens of many different states.

12 **THE PARTIES**

13 24. Plaintiffs Larriel Williams and Lalonie Williams are each a citizen
14 and resident of the State of California, County of Los Angeles.

15 25. Defendant PEPSICO INC. d/b/a SPITZ INTERNATIONAL is a
16 corporation with its principal place of business and headquarters located in New
17 York. Defendant is a North Carolina Corporation. Defendant conducts a large
18 share of its business within California.

19 26. Plaintiffs are informed and believe, and thereon allege, that each and
20 all of the acts and omissions alleged herein were performed by, or is attributable
21 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,
22 each acting as the agent for the other, with legal authority to act on the other's
23 behalf. The acts of any and all of Defendant's employees, agents, and/or third
24 parties acting on its behalf, were in accordance with, and represent, the official
25 policy of Defendant.

26 27. Plaintiffs are informed and believes, and thereon alleges, that said
27 Defendant is in some manner intentionally, negligently, or otherwise responsible
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1 for the acts, omissions, occurrences, and transactions of each and all its employees,
2 agents, and/or third parties acting on its behalf, in proximately causing the
3 damages herein alleged.

4 28. At all relevant times, Defendant ratified each and every act or
5 omission complained of herein. At all relevant times, Defendant, aided and
6 abetted the acts and omissions as alleged herein.

7 **PLAINTIFF'S FACTS**

8 29. On or around February 2, 2016, Plaintiffs purchased the Product from
9 a Chevron located at 20320 S. Avalon Boulevard, Carson CA 90746.

10 30. For the Product, Plaintiffs paid more than valuable consideration.

11 31. Including taxes and fees, Plaintiffs paid over \$2.30.

12 32. Defendant advertised the Product as an edible food product that
13 would be enjoyable to consume.

14 33. Relying on the assurance that the Product would be edible, Plaintiffs
15 decided to purchase the Product, as they were in the process of shopping for food
16 items in the afternoon. Plaintiffs purchased the Product because of the assurance
17 that the Product was edible and enjoyable.

18 34. Upon attempting to eat the Product, Plaintiffs found that the Product
19 contained maggots and dirt that rendered it inedible and unfit for consumption.

20 35. Upon discovering this defect, Plaintiffs felt ripped off, cheated by,
21 and damaged by Defendant.

22 36. Plaintiffs returned to the Chevron location to complain, and upon
23 doing so, discovered by visual inspection that the other Products sold by
24 Defendant also contained maggots and dirt. The following is a picture of said
25 contaminated products:
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37. Such sales tactics as used by Defendant rely on falsities and have a tendency to mislead and deceive a reasonable consumer.

38. Defendant expressly represented to Plaintiffs, through written statements and advertising, that the Product would be edible and enjoyable.

39. Further, Defendant made no representations that the Product contained maggots and dirt.

40. Plaintiffs allege that such representations were part of a common scheme to mislead consumers and incentivize them to purchase Products in spite of the significant defects and problems with the nature of the Products.

41. Plaintiffs would not have purchased the Product if they knew that the above-referenced statements made by Defendant were false, and that it would contain maggots and dirt.

42. Had Defendant properly marketed, advertised, and represented the

1 Products as containing maggots and dirt, Plaintiffs would not have purchased the
2 Product.

3 43. Plaintiffs gave their money to Defendant because of the promised
4 edible and enjoyable nature of the Product. Defendant benefited from falsely
5 advertising the nature of the Product and failing to disclose its serious defects.
6 Plaintiffs received nothing for giving their money to Defendant for the Product,
7 and instead suffered severe disgust and damage instead. Defendant benefited on
8 the loss to Plaintiffs and provided nothing of benefit to Plaintiffs in exchange.

9 44. Had Defendant properly marketed, advertised, and represented the
10 Products as being inedible and containing maggots and dirt, no reasonable
11 consumer who purchased the Product would have believed that it was edible, the
12 sole purpose for purchasing the Product.

13 **CLASS ACTION ALLEGATIONS**

14 45. Plaintiffs brings this action, on behalf of themselves and all others
15 similarly situated, and thus, seeks class certification under Federal Rule of Civil
16 Procedure 23.

17 46. The class Plaintiffs seeks to represent (the “Class”) is defined as
18 follows:

19 All California Citizens who, between the applicable
20 statute of limitations and the present, purchased one or
21 more Class Products.

22 47. As used herein, the term “Class Members” shall mean and refer to the
23 members of the Class described above.

24 48. Excluded from the Class are Defendant, its affiliates, employees,
25 agents, and attorneys, and the Court.

26 49. Plaintiffs reserve the right to amend the Class, and to add additional
27 subclasses, if discovery and further investigation reveals such action is warranted.

28 50. Upon information and belief, the proposed class is composed of

1 thousands of persons. The members of the class are so numerous that joinder of
2 all members would be unfeasible and impractical.

3 51. No violations alleged in this complaint are contingent on any
4 individualized interaction of any kind between class members and Defendant.

5 52. Rather, all claims in this matter arise from the identical, false,
6 advertising that the Products were edible and enjoyable, when in fact, such
7 representations were false as the Products contained maggots and dirt.

8 53. There are common questions of law and fact as to the Class Members
9 that predominate over questions affecting only individual members, including but
10 not limited to:

- 11 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
12 business practices in selling Class Products to Plaintiffs and
13 other Class Members;
- 14 (b) Whether Defendant made misrepresentations with respect to
15 the Class Products sold to consumers;
- 16 (c) Whether Defendant profited from the sale of the Products;
- 17 (d) Whether Defendant violated California Bus. & Prof. Code §
18 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,
19 and California Civ. Code § 1750, *et seq.*;
- 20 (e) Whether Plaintiffs and Class Members are entitled to equitable
21 and/or injunctive relief;
- 22 (f) Whether Defendant's unlawful, unfair, and/or deceptive
23 practices harmed Plaintiffs and Class Members; and
- 24 (g) The method of calculation and extent of damages for Plaintiffs
25 and Class Members.

26 54. Plaintiffs are members of the class they seek to represent.

27 55. The claims of Plaintiffs are not only typical of all class members, they
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1 are identical.

2 56. All claims of Plaintiffs and the class are based on the exact same legal
3 theories.

4 57. Plaintiffs have no interest antagonistic to, or in conflict with, the
5 class.

6 58. Plaintiff are qualified to, and will, fairly and adequately protect the
7 interests of each Class Member, because Plaintiffs bought Class Products from
8 Defendant during the Class Period. Defendant's unlawful, unfair and/or
9 fraudulent actions concerns the same business practices described herein
10 irrespective of where they occurred or were experiences. Plaintiffs' claims are
11 typical of all Class Members as demonstrated herein.

12 59. Plaintiffs will thoroughly and adequately protect the interests of the
13 class, having retained qualified and competent legal counsel to represent himself
14 and the class.

15 60. Common questions will predominate, and there will be no unusual
16 manageability issues.

17 **FIRST CAUSE OF ACTION**

18 **Violation of the California False Advertising Act**

19 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

20 61. Plaintiffs incorporate by reference each allegation set forth above.

21 62. Pursuant to California Business and Professions Code section 17500,
22 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
23 which is known, or which by the exercise of reasonable care should be known, to
24 be untrue or misleading...or...to so make or disseminate or cause to be so made or
25 disseminated any such statement as part of a plan or scheme with the intent not to
26 sell that personal property or those services, professional or otherwise, so
27 advertised at the price stated therein, or as so advertised.”

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1 63. California Business and Professions Code section 17500, *et seq.*'s
2 prohibition against false advertising extends to the use of false or misleading
3 written statements.

4 64. Defendant misled consumers by making misrepresentations and
5 untrue statements about the Class Products, namely, Defendant sold the Spitz
6 Sunflower Seeds as an edible product that would be enjoyable to consume, when
7 in fact the Products contained maggots and dirt that rendered the Products inedible,
8 and made false representations to Plaintiff and other putative class members in
9 order to solicit these transactions.

10 65. Defendant knew that its representations and omissions were untrue
11 and misleading, and deliberately made the aforementioned representations and
12 omissions in order to deceive reasonable consumers like Plaintiffs and other Class
13 Members.

14 66. As a direct and proximate result of Defendant's misleading and false
15 advertising, Plaintiffs and the other Class Members have suffered injury in fact
16 and have lost money or property. Plaintiffs reasonably relied upon Defendant's
17 representations regarding the Class Products, namely that the Product would be
18 edible and enjoyable. In reasonable reliance on Defendant's false advertisements,
19 Plaintiffs and other Class Members purchased the Class Products. In turn Plaintiff
20 and other Class Members ended up with Products that contained maggots and dirt
21 rendering the product inedible, suffering significant disgust at the discovery after
22 having paid reasonable consideration for the Products, and therefore Plaintiff and
23 other Class Members have suffered injury in fact.

24 67. Plaintiffs allege that these false and misleading written
25 representations made by Defendant constitute a "scheme with the intent not to sell
26 that personal property or those services, professional or otherwise, so advertised
27 at the price stated therein, or as so advertised."
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1 68. Defendant advertised to Plaintiffs and other putative class members,
2 through written representations and omissions made by Defendant and its
3 employees, that the Class Products would be edible and enjoyable.

4 69. Defendant knew that the Class Products in fact contained maggots
5 and dirt rendering the products unsafe to consume.

6 70. Thus, Defendant knowingly sold Class Products to Plaintiffs and
7 other putative class members that were not consumable, but instead could cause
8 significant harm if consumed.

9 71. The misleading and false advertising described herein presents a
10 continuing threat to Plaintiffs and the Class Members in that Defendant persists
11 and continues to engage in these practices, and will not cease doing so unless and
12 until forced to do so by this Court. Defendant's conduct will continue to cause
13 irreparable injury to consumers unless enjoined or restrained. Plaintiffs are
14 entitled to preliminary and permanent injunctive relief ordering Defendant to cease
15 their false advertising, as well as disgorgement and restitution to Plaintiffs and all
16 Class Members Defendant's revenues associated with their false advertising, or
17 such portion of those revenues as the Court may find equitable.

18 **SECOND CAUSE OF ACTION**

19 **Violation of Unfair Business Practices Act**

20 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

21 72. Plaintiffs incorporate by reference each allegation set forth above.

22 73. Actions for relief under the unfair competition law may be based on
23 any business act or practice that is within the broad definition of the UCL. Such
24 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
25 acts and practices. A plaintiff is required to provide evidence of a causal
26 connection between a defendant's business practices and the alleged harm--that is,
27 evidence that the defendant's conduct caused or was likely to cause substantial
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1 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
2 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
3 definition of unfair competition covers any single act of misconduct, as well as
4 ongoing misconduct.

5 UNFAIR

6 74. California Business & Professions Code § 17200 prohibits any
7 “unfair ... business act or practice.” Defendant’s acts, omissions,
8 misrepresentations, and practices as alleged herein also constitute “unfair”
9 business acts and practices within the meaning of the UCL in that its conduct is
10 substantially injurious to consumers, offends public policy, and is immoral,
11 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
12 any alleged benefits attributable to such conduct. There were reasonably available
13 alternatives to further Defendant’s legitimate business interests, other than the
14 conduct described herein. Plaintiffs reserve the right to allege further conduct
15 which constitutes other unfair business acts or practices. Such conduct is ongoing
16 and continues to this date.

17 75. In order to satisfy the “unfair” prong of the UCL, a consumer must
18 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
19 benefits to consumers or competition; and, (3) is not one that consumers
20 themselves could reasonably have avoided.

21 76. Here, Defendant’s conduct has caused and continues to cause
22 substantial injury to Plaintiffs and members of the Class. Plaintiffs and members
23 of the Class have suffered injury in fact due to Defendant’s decision to sell them
24 falsely described sunflower seeds (Class Products), which contained maggots and
25 dirt rendering them inedible and causing harm if consumed. Thus, Defendant’s
26 conduct has caused substantial injury to Plaintiffs and the members of the Class.

27 77. Moreover, Defendant’s conduct as alleged herein solely benefits
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1 Defendant while providing no benefit of any kind to any consumer. Such
2 deception utilized by Defendant convinced Plaintiffs and members of the Class
3 that the Class Products would be edible and enjoyable, in order to induce them to
4 spend money on said Class Products over other alternatives. In fact, knowing that
5 Class Products would be inedible to Plaintiffs and other putative Class Members’
6 devices, Defendant unfairly profited from their sale, in that Defendant knew that
7 the expected benefit that Plaintiffs would receive from the Product was non-
8 existent, when this is typically never the case in situations involving the sale of
9 products intended to provide a benefit. Thus, the injury suffered by Plaintiffs and
10 the members of the Class is not outweighed by any countervailing benefits to
11 consumers.

12 78. Finally, the injury suffered by Plaintiffs and members of the Class is
13 not an injury that these consumers could reasonably have avoided. After
14 Defendant falsely represented that Class Products were edible and enjoyable, these
15 consumers suffered injury in fact due to Defendant’s sale of Class Products to
16 them as the Products were inedible and could cause significant harm if consumed.
17 Defendant failed to take reasonable steps to inform Plaintiffs and class members
18 that the Class Products were inedible. As such, Defendant took advantage of
19 Defendant’s position of perceived power in order to deceive Plaintiffs and the
20 Class members to purchase sunflower seeds that were defective. Therefore, the
21 injury suffered by Plaintiffs and members of the Class is not an injury which these
22 consumers could reasonably have avoided.

23 79. Thus, Defendant’s conduct has violated the “unfair” prong of
24 California Business & Professions Code § 17200.

25 **FRAUDULENT**

26 80. California Business & Professions Code § 17200 prohibits any
27 “fraudulent ... business act or practice.” In order to prevail under the “fraudulent”
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1 prong of the UCL, a consumer must allege that the fraudulent business practice
2 was likely to deceive members of the public.

3 81. The test for “fraud” as contemplated by California Business and
4 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
5 common law fraud, a § 17200 violation can be established even if no one was
6 actually deceived, relied upon the fraudulent practice, or sustained any damage.

7 82. Here, not only were Plaintiffs and the Class members likely to be
8 deceived, but these consumers were actually deceived by Defendant. Such
9 deception is evidenced by the fact that Plaintiffs agreed to purchase Class Products
10 under the basic assumption that it would be edible, even though the Product
11 actually contained maggots and dirt that rendered it inedible. Plaintiffs’ reliance
12 upon Defendant’s deceptive statements is reasonable due to the unequal
13 bargaining powers of Defendant and Plaintiffs. For the same reason, it is likely
14 that Defendant’s fraudulent business practice would deceive other members of the
15 public.

16 83. As explained above, Defendant deceived Plaintiffs and other Class
17 Members by representing the Class Products as being edible and enjoyable when
18 they actually were inedible and could cause significant harm if consumed.

19 84. Thus, Defendant’s conduct has violated the “fraudulent” prong of
20 California Business & Professions Code § 17200.

21 **UNLAWFUL**

22 85. California Business and Professions Code Section 17200, et seq.
23 prohibits “any unlawful...business act or practice.”

24 86. As explained above, Defendant deceived Plaintiffs and other Class
25 Members by representing the Class Products as being edible when they actually
26 contained maggots and dirt that rendered them inedible and unsafe to consume.

27 87. Defendant used false advertising, marketing, and misrepresentations
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1 to induce Plaintiffs and Class Members to purchase the Class Products, in violation
2 of California Business and Professions Code Section 17500, et seq. Had
3 Defendant not falsely advertised, marketed or misrepresented the Class Products,
4 Plaintiffs and Class Members would not have purchased the Class Products.
5 Defendant's conduct therefore caused and continues to cause economic harm to
6 Plaintiffs and Class Members.

7 88. These representations by Defendant are therefore an "unlawful"
8 business practice or act under Business and Professions Code Section 17200 *et*
9 *seq.*

10 89. Further, Defendant's practices violated the Consumer Legal
11 Remedies Act, as noted below, which also makes its practices unlawful.

12 90. Defendant has thus engaged in unlawful, unfair, and fraudulent
13 business acts entitling Plaintiffs and Class Members to judgment and equitable
14 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
15 pursuant to Business and Professions Code section 17203, Plaintiffs and Class
16 Members seek an order requiring Defendant to immediately cease such acts of
17 unlawful, unfair, and fraudulent business practices and requiring Defendant to
18 correct its actions.

19 **THIRD CAUSE OF ACTION**

20 **Violation of Consumer Legal Remedies Act**

21 **(Cal. Civ. Code § 1750 *et seq.*)**

22 **On Behalf Of The Class**

23 91. Plaintiffs incorporate by reference each allegation set forth above
24 herein.

25 92. Defendant's actions as detailed above constitute a violation of the
26 Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant
27 violated the following provisions of the CLRA:
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- 1 a. Representing that goods or services have sponsorship, approval,
2 characteristics, ingredients, uses, benefits, or quantities which they do
3 not have or that a person has a sponsorship, approval, status, affiliation,
4 or connection which he or she does not have. Cal. Civ. Code § 1770(5);
- 5 b. Representing that goods or services are of a particular standard,
6 quality, or grade, or that goods are of a particular style or model, if they
7 are of another. Cal. Civ. Code § 1770(7);
- 8 c. Advertising goods or services with intent not to sell them as advertised;
9 *Cal. Civ. Code* §1770(9);
- 10 d. Representing that a transaction confers or involves rights, remedies, or
11 obligations which it does not have or involve, or which are prohibited
12 by law; *Cal. Civ. Code* §1770(14); and
- 13 e. Representing that the subject of a transaction has been supplied in
14 accordance with a previous representation when it has not; *Cal. Civ.*
15 *Code* §1770(16);

16 93. On or about August 22, 2016, through their Counsel of record, using
17 certified mail with a return receipt requested, Plaintiffs served Defendant with
18 notice of its violations of the CLRA, and asked that Defendant correct, repair,
19 replace or otherwise rectify the goods and services alleged to be in violation of the
20 CLRA; this correspondence advised Defendants that they must take such action
21 within thirty (30) calendar days, and pointed Defendant to the provisions of the
22 CLRA that Plaintiffs believe to have been violated by Defendants. A true and
23 correct copy of Plaintiffs' CLRA notice letter is attached hereto as Exhibit D.

24 94. Defendant has not replied to this correspondence, and have thereby
25 refused to timely correct, repair, replace or otherwise rectify the issues raised
26 therein. Plaintiffs have additionally filed the required Venue Affidavit as Exhibit
27 B to this Complaint.

28 **FOURTH CAUSE OF ACTION**

STRICT LIABILITY

(Violation of Federal Food Drug and Cosmetic Act, 21 U.S.C. § 342(a), and

1 California's Sherman Food, Drug, and Cosmetic Laws, California Health and
2 Safety Code §109875 *et. seq.*)

3 **INDIVIDUALLY**

4 95. Plaintiffs incorporates by reference all other paragraphs of this
5 Complaint as if fully set forth herein.

6 96. Defendant is in the business of manufacturing or selling food
7 products or food ingredients, and is in the chain of distribution for the Product.
8 As a result of being the manufacturer of the Products, Defendant is a participant
9 in the enterprise responsible for placing the Product in the stream of commerce
10 and, thus, subject to strict liability under the laws of California.

11 97. The Product that Plaintiffs purchased and consumed was a ready-to-
12 eat product, intended for consumption without further preparation, cooking, or
13 other step.

14 98. A ready-to-eat product that is contaminated is adulterated within the
15 meaning of Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 342(a), and
16 implementing regulations, and California's Sherman Food, Drug, and Cosmetic
17 Act, Cal. Health & Safety Code § 110545. In addition, a ready-to-eat product
18 that is contaminated is defective, unreasonably dangerous, and not fit for human
19 consumption. The subject product was adulterated, as well as being defective,
20 unreasonably dangerous, and not fit for human consumption.

21 99. The Product was expected by Defendant to reach all consumers, and
22 to be consumed by them, without any substantial change, and the Product did in
23 fact reach the Plaintiffs without any substantial change in the product.

24 100. Plaintiffs consumed the Product, having received the same without
25 any substantial change occurring, and they consumed the Product in the manner
26 expected and intended, including when they consumed it.

27 101. Plaintiffs became seriously ill as a result of consuming the defective
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1 and unreasonably dangerous Product. Further, Plaintiffs suffered severe injury
2 as alleged above, as a direct and proximate result of the consumption of the
3 Product. Accordingly, the Defendant is strictly liable to Plaintiffs for all
4 damages proximately caused by the manufacture and sale of a defective and
5 unreasonably dangerous food product or food product ingredient.

6 **FIFTH CAUSE OF ACTION**
7 **NEGLIGENCE & NEGLIGENCE PER SE**
8 **INDIVIDUALLY**

9 102. Plaintiffs repeat and reallege the preceding paragraphs as though
10 fully set forth herein.

11 103. Defendant was negligent in the manufacture, sale, or distribution of
12 the Product, thus causing the subject illness, and thus causing Plaintiffs' injuries.

13 104. More specifically, Defendant owed a duty to properly supervise,
14 train, and monitor employees, or the employees of its agents or subcontractors, in
15 the preparation of the product or product-ingredients it sold, doing so to ensure
16 compliance with Defendant's own specifications and performance standards, as
17 well as to ensure compliance with all applicable health regulations, including the
18 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 342(a), implementing
19 regulations, 21 C.F.R. § 109.3(c) & (d), FDA Good Manufacturing Practices
20 regulations, 21 C.F.R. Part 110, Subparts (A)-(G), and California's Sherman
21 Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a),
22 which bans the manufacture, sale and distribution of any "adulterated" food, and
23 California's Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety C. §
24 110545, which imposes an identical ban on such adulteration.

25 105. Under both federal and applicable state law, food is adulterated if it
26 contains a "poisonous or deleterious substance, which may render it injurious to
27 health." Foreign contaminants such as maggots is such a substance. Thus, by
28

1 either manufacture, distribution, storage, or sale of the Product, Defendant
2 breached its statutory and regulatory duties, and the Plaintiffs were injured as a
3 direct and proximate result of such breach.

4 106. Defendant's negligent acts and omissions included, but were not
5 limited to:

- 6 a. Failure to prevent the contamination of the product by
7 maggots, including the failure to implement or non-
8 negligently perform inspection and monitoring of the
9 product such that its adulterated condition would be
10 discovered prior to its sale or distribution to the public
11 for human consumption.
- 12 b. Failure to properly supervise, train, and monitor its
13 employees, or the employees of its agents or
14 subcontractors, on how to ensure the manufacture,
15 distribution or sale of food free from adulteration by
16 potentially dangerous pathogens.

17 107. The federal and state food safety regulations applicable here, and as
18 set forth above, establish a positive and definite standard of care in the import,
19 manufacture, distribution and sale of food, and the violation of these regulations
20 constitutes negligence *per se*.

21 108. Plaintiffs are in the class of persons intended to be protected by
22 these statutes and regulations, and are injured as the direct and proximate result
23 of Defendant's violation of applicable federal, state and local food safety
24 regulations.

25 109. Defendant breached the aforementioned duties as alleged above,
26 which the breach of constituted the proximate cause of injury to the Plaintiffs.

27 **SIXTH CAUSE OF ACTION**

1 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
2 **INDIVIDUALLY**

3 110. Plaintiffs repeat and reallege the preceding paragraphs as though
4 fully set forth herein.

5 111. Defendant knew or should have known that its failure to exercise
6 due care in the performance of its duties would cause Plaintiffs severe emotional
7 distress.

8 112. As a proximate result of Defendant’s acts as alleged above,
9 Plaintiffs suffered severe emotional distress and mental suffering all to their
10 detriment.

11 113. In committing the acts alleged in this Complaint, Defendant knew or
12 should have known of the defective, unsafe, and dangerous conditions of the
13 Products that it manufactured and sold to Plaintiffs. In committing the acts
14 described in this Complaint, Defendant acted in conscious disregard of the rights
15 and safety of Plaintiffs and are guilty of malice, oppression, and/or fraud thereby
16 warranting an assessment of punitive damages in an amount appropriate to
17 punish the Defendant and deter others from engaging in similar wrongful
18 conduct.

19 **MISCELLANEOUS**

20 114. Plaintiffs and Class Members allege that they have fully complied
21 with all contractual and other legal obligations and fully complied with all
22 conditions precedent to bringing this action or all such obligations or conditions
23 are excused.

24 **REQUEST FOR JURY TRIAL**

25 115. Plaintiffs requests a trial by jury as to all claims so triable.

26 **PRAYER FOR RELIEF**

27 116. Plaintiffs, on behalf of herself and the Class, requests the following
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relief:

- (a) An order certifying the Class and appointing Plaintiffs as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring PEPSICO INC., at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring PEPSICO INC. to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiffs and Class Members as applicable or full restitution of all funds acquired from Plaintiffs and Class Members from the sale of misbranded Class Products during the relevant class period;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All actual damages suffered by Plaintiffs;
- (i) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (j) Pre- and post-judgment interest; and
- (k) All other relief, general or special, legal and equitable, to which Plaintiffs and Class Members may be justly entitled as deemed by the Court.

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Dated: October 11, 2016

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s Todd. M. Friedman

TODD M. FRIEDMAN, ESQ.
Attorney for Plaintiffs Larriel Williams
and Lalonie Williams

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EXHIBIT A
CLRA NOTICE LETTER

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

ATTORNEYS FOR CONSUMERS

324 S. BEVERLY DR., #725

BEVERLY HILLS, CA 90212

877-206-4741 TOLL FREE

866-633-0228 FACSIMILE

CALIFORNIA OFFICE

WWW.ATTORNEYSFORCONSUMERS.COM

E-MAIL: TFRIEDMAN@ATTORNEYSFORCONSUMERS.COM

WRITER LICENSED IN:

CALIFORNIA

PENNSYLVANIA

ILLINOIS

August 22, 2016

Via U.S. Certified Mail to:

PEPSICO INC.

700 Anderson Hill Road,

Purchase, New York 10577-1444

Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)

Re: *Larriel Williams & Lalonie Williams v. Pepisco Inc. d/b/a Spitz International*

To Whom It May Concern:

Please be advised that our office represents Larriel Williams and Lalonie Williams (“Plaintiffs”) in pursuing legal claims against Pepsico, Inc. (“Pepsico” or “Defendant”) for violations of the Consumer Legal Remedies Act (“CLRA”), and California Business and Professions Code §17200 (“UCL”) and § 17500 (“FAL”).

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

The purpose of this letter is to advise your company of its violations and to quickly resolve the matter of my client’s right to compensation for the same, without resorting to expensive and unnecessary litigation. Before additional damages accrue, including needless attorney fees, we should work together expeditiously to correct the inequity that occurred in connection with your company’s handling of the matters detailed below. Thus, please accept this correspondence as notice pursuant to the CLRA, of Defendant’s violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Please review the violations set forth below and contact our offices immediately, to discuss settlement.

Facts

On or around February 2, 2016, Plaintiffs purchased a package of Spitz Sunflower Seeds (“the Product”) from a Chevron Gas Station located at 2032 S. Avalon Boulevard, Carson CA 90746. Relying on the assurance that the Product would be edible, Plaintiffs purchased the Product and attempted to consume it. At this point, Plaintiffs discovered that the Product contained maggots and dirt rendering the product inedible. Upon returning to the Chevron location to complaint, Plaintiffs discovered that the other Products sold by Defendant also contained maggots and dirt.

Defendant advertised that the Product would be edible and enjoyable, when in reality it contained defects rendering it unsafe for consumption. Defendant failed to properly market, advertise, and represent the Products such that a reasonable consumer would be on notice of this defect.

CLRA (Cal. Civ. Code §17500 et seq.) Violations

Among other things, the CLRA prohibits the following “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction to result or which results in the sale or lease of goods or services” to a consumer:

1. Representing 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. Cal. Civ. Code § 1770(5);
2. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Cal. Civ. Code § 1770(7);
3. Advertising goods or services with intent not to sell them as advertised; Cal. Civ. Code §1770(9);
4. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; Cal. Civ. Code §1770(14); and
5. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; Cal. Civ. Code §1770(16);

Further, under the CLRA, a consumer may recover actual damages, an order enjoining any such practices that are prohibited by the CLRA, restitution of property, punitive damages and reasonably attorney’s fees and costs. *Cal. Civ. Code* §1788 (a) and (d).

By engaging in the conduct detailed above and representing its Product as edible when in fact it contained maggots and dirt rendering it inedible, Defendant violated subsections (5), (7), (9), (14), and (16) of the CLRA, thereby entitling Plaintiffs to the recovery of actual damages, punitive damages, attorney’s fees and costs.

Unfair Competition Law (Cal. Bus. Prof. Code §17200)

The Unfair Competition Law, Cal. Bus. Prof. C. §17200 prohibits unlawful, unfair or fraudulent business acts or practices, and subjects anyone engaging in such conduct to a civil penalty of \$2,500 for each violation thereof. *Cal. Bus. Prof. Code* §17200 and §17206. Further, any person may bring an action to enjoin or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Mophie engaged in fraudulent, unfair and unlawful business practices through its conduct and violated the UCL. Mophie made representations to Plaintiff that its Product would increase the battery life of his device when in reality it significantly damaged the internal battery of Plaintiff's device and decreased its battery life, and this amounts to fraudulent and unfair business practices. Further, as noted above, Defendant's conduct violates numerous provisions of the CLRA, and thus said conduct constitutes unlawful business practices. Defendant's conduct entitles Plaintiff to statutory penalties of \$2500 per violation, as well as actual damages, and attorney's fees and costs.

False Advertising Law (Cal. Bus. Prof. Code §17500)


The False Advertising Law, Cal. Bus. Prof. C. §17500 prohibits engaging in advertising "which is untrue or misleading, and which is known, or which by exercise of reasonable care should be known, to be untrue or misleading", and subjects anyone engaging in such conduct to a civil penalty of \$2,500 for each violation thereof. *Cal. Bus. Prof. Code* §17206. Further, any person may bring an action to enjoin or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Defendant engaged in making untrue and misleading statements that violated the FAL. Defendant made misrepresentations as to the nature of the Product it was selling, in particular that it was edible and able to be consumed safely, when in fact it contained defects rendering it inedible. Defendant's conduct entitles Plaintiffs to statutory penalties of \$2500 per violation, as well as actual damages, and attorney's fees and costs.

Demand

Please contact our offices within twenty (21) days of your receipt of this correspondence, to discuss settlement. Also, please be aware of the CLRA notice provided herein.

Best regards,


Todd M. Friedman
Attorney at Law

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EXHIBIT B
CLRA VENUE AFFIDAVIT

1 Todd M. Friedman (SBN 216752)
 2 Adrian R. Bacon (SBN 280332)
 3 Meghan E. George (SBN 274525)
 4 Thomas E. Wheeler (SBN 308789)
 5 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 6 21550 Oxnard St. Suite 780,
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 10 tfriedman@attorneysforconsumers.com
 11 abacon@attorneysforconsumers.com
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 13 twheeler@toddflaw.com
 14 *Attorneys for Plaintiffs, Larriel Williams and Lalonie Williams*

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 LARRIEL WILLIAMS and
 14 LALONIE WILLIAMS, on behalf
 15 of themselves and all others
 16 similarly situated,

16 Plaintiffs,

17 vs.

18 PEPSICO INC. d/b/a SPITZ
 19 INTERNATIONAL, and DOES 1-
 20 10, inclusive,

21 Defendant.

Case No.:

**CONSUMER LEGAL
 REMEDIES ACT VENUE
 AFFIDAVIT; CCP § 1780**

22 I, Lalonie Williams, declare and state as follows:

- 23
- 24 1. I am the plaintiff in this matter, and specifically have brought a claim for
 - 25 Violations of the Consumer Legal Remedies Act.
 - 26
 - 27 2. The defendant to this cause of action, PEPSICO INC., was doing business
 - 28 in Los Angeles County California, namely, by advertising and selling its

1 products in retail establishments, including the Chevron store located at
2 20320 S. Avalon Boulevard, Carson CA 90746, which is where I and my
3 sister purchased the Spitz Sunflower Seeds that is the subject of this cause
4 of action.
5

6
7 3. The transactions which are the subject of the cause of action as set forth in
8 paragraphs 29 through 60 of the Complaint, occurred in Los Angeles
9 County.
10

11 4. I am a citizen and resident of the State of California, County of Los
12 Angeles.
13

14 I declare under penalty of perjury under the laws of the State of California that
15 the foregoing is true and correct.
16

17 Executed this 10th day of October, 2016, at Carson, California.
18
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21 _____
Lalonie Williams
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