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15 Alfredo Ramirez and the Proposed Class

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 ALFREDO RAMIREZ, an individual on  
19 behalf of himself and all others similarly  
20 situated,

21 Plaintiff

22 v.

23 DOLE PACKAGED FOODS, LLC; and  
24 DOES 1 through 25, inclusive.

25 Defendants.

Case No. 8:16-cv-2260

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 COMES NOW PLAINTIFF, ALFREDO RAMIREZ, WHO HEREBY  
2 ALLEGES THE FOLLOWING:

3 Plaintiff, Alfredo Ramirez (“Plaintiff”) brings this action on behalf of himself and  
4 all others similarly situated against Defendant, Dole Packaged Foods, LLC.

5 The allegations in this Complaint, stated on information and belief, have  
6 evidentiary support or are likely to have evidentiary support after a reasonable  
7 opportunity for further investigation and discovery.

8  
9 **NATURE OF ACTION**

10 1. Plaintiff files this class action lawsuit on behalf of himself and all similarly  
11 situated persons who purchased Dole Packaged Foods, LLC (hereinafter referred to as  
12 “DPF”).

13 2. Plaintiff brings this action on behalf of himself and a California and  
14 Nationwide proposed class of purchasers of DPF products for violations of California  
15 Consumer Legal Remedies Act, California False Advertising Law, breach of express  
16 warranty, breach of the implied warranty of merchantability, fraud, negligent  
17 misrepresentation, and California Unfair Competition Law. Plaintiff has purchased the  
18 Products (as defined below) products within the last year and/or prior to that period of  
19 time. DPF misrepresents health and wellness claims as it relates to the Products as  
20 alleged herein because the Products greatly increase the risks of heart disease, diabetes,  
21 liver disease, and other diseases.

22  
23 **PARTIES**

24 3. Plaintiff, Alfredo Ramirez (“Plaintiff”), is a citizen of California, who  
25 resides in the county of Orange. Plaintiff purchased DPF Fruit & Oatmeal, DPF Parfait,  
26

1 and DPF Mixations on a number of occasions in Orange County and Los Angeles County  
2 relying on DPF's health-related statements and representations, on which he relied in  
3 making his purchase of the Products.

4 4. Plaintiff altered his position in an amount equal to the amount he paid for the  
5 DPF products. Plaintiff would continue to purchase the Products if he could be assured  
6 that any health and wellness labeling on the Products complied with the law and were  
7 truthful, honest, accurate and not misleading.

8 5. Defendant, Dole Packaged Foods, LLC ("Defendant" or "DPF"), is a limited  
9 liability company with its principal place of business in Westlake Village, County of Los  
10 Angeles. DPF's products are sold in supermarket chains and other retail stores  
11 throughout the United States. DPF's Fruit & Oatmeal, Parfait, and Mixations (hereinafter  
12 the "Products") are the subject of the instant lawsuit. DPF is the owner, manufacturer,  
13 packager, and distributor of the Products, and is the company that created and/or  
14 authorized the false, misleading, and deceptive advertisements and/or packaging and  
15 labeling for the Products. DPF has leveraged its false and misleading health and wellness  
16 claims regarding the Products to produce increased sales while charging premium prices  
17 at the expense of the health of its consumers.

18 6. The true names and capacities, whether individual, corporate, associate or  
19 otherwise of each of the defendants designated herein as a DOE are unknown to Plaintiff  
20 at this time, who therefore, sue said defendants by fictitious names, and will ask leave of  
21 this Court for permission to amend this Complaint to show their names and capacities  
22 when the same have been ascertained. Plaintiff is informed and believes and thereon  
23 alleges that each of the defendants designated as a DOE is legally responsible in some  
24 manner for the events and happenings herein referred to, and caused injuries and  
25 damages thereby to these Plaintiffs as alleged herein.



1 Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. §  
2 1367.

3 11. Plaintiff is a citizen of California and Defendant's principal place of  
4 business located in this District. Pursuant to 28 U.S.C. §1391, this Court is the proper  
5 venue since the Defendant's principal place of business is located in this District.  
6

7 **FACTUAL BACKGROUND**

8 12. Dole Food Company, Inc. ("DFC") is an American agricultural  
9 multinational corporation headquartered in Westlake Village, California.

10 13. DFC is the largest producer of fruits and vegetables in the world, operating  
11 with 74,300 full-time and seasonal employees who are responsible for over 300 products  
12 in 90 countries. DFC markets such food items as bananas, pineapples, grapes,  
13 strawberries, salads, and other fresh and frozen fruits and juices.

14 14. DFC's Chairman founded the Dole Nutrition Institute, a nutritional research  
15 and education foundation. David H. Murdock founded Dole Nutrition Research in 2003  
16 with the stated purpose of promoting health and longevity.

17 15. Dole Packaged Foods, LLC ("DPF"), a subsidiary of DFC, sells a variety of  
18 packaged foods products with the Dole brand label. DPF markets and sells various snack  
19 foods including DPF Fruit & Oatmeal, DPF Parfait, DPF Mixations, and other DPF  
20 products that are represented to the public by DPF to be "healthy" even though they  
21 contain substantial quantities of harmful sugars.

22 16. DPF Fruit & Oatmeal is available in three flavors: 1) Blueberries & Cream,  
23 2) Peaches & Vanilla Walnut, and 3) Apple & Brown Sugar.

24 17. DPF Fruit & Oatmeal Apples & Brown Sugar Oatmeal is sweetened with  
25 sugar and contains 170 calories and 16g of sugar per serving. Thus, one 92g serving  
26

1 contains 17.39% sugar by weight, accounting for 37.6% of the product’s calories. At 16g  
2 of sugar, one DPF Fruit & Oatmeal Apples & Brown Sugar cup provides 44.4% of the  
3 American Heart Association’s recommendation for men’s daily sugar intake of 36g and  
4 66.7% of women’s recommended daily intake of 24g.

5 18. DPF Fruit & Oatmeal Blueberries & Cream is sweetened with sugar and  
6 contains 170 calories and 16.3g of sugar per serving. Thus, one 92g serving contains  
7 17.4% sugar by weight, accounting for 35.2% of the product’s calories. At 16.3g of  
8 sugar, one DPF Fruit & Oatmeal Blueberries & Cream cup provides 45.2% of the  
9 American Heart Association’s recommendation for men’s daily sugar intake of 36g and  
10 67.9% of women’s recommended daily intake of 24g.

11 19. DPF Fruit & Oatmeal Peaches & Vanilla Walnut is sweetened with sugar  
12 and contains 180 calories and 14g of sugar per serving. Thus, one 92g serving contains  
13 15.2% sugar by weight, accounting for 31.1% of the product’s calories. At 14g of sugar,  
14 one DPF Fruit & Oatmeal Peaches & Vanilla Walnut cup provides 38.8% of the  
15 American Heart Association’s recommendation for men’s daily sugar intake of 36g and  
16 58.3% of women’s recommended daily intake of 24g.

17 20. DPF representations that DPF Fruit & Oatmeal is: “It’s a healthy, satisfying  
18 breakfast you can enjoy anywhere”, “real fruit!”, “No Trans Fat”, and “No Cholesterol”  
19 are false and at a minimum are highly misleading statements given the substantial added  
20 sugar to the DPF Fruit & Oatmeal products. DPF’s Products negatively impacts the lives  
21 of children throughout the United States in the same manner as men and women since the  
22 AHA’s recommended daily consumption of sugar for children is 24g. Most often, DPF’s  
23 Products contribute to more than 50% of the daily recommended consumption of sugar  
24 for children with only one (1) serving of any of the DPF’ Products.

1 21. DPF Parfait is available in three distinct flavors, of which, each are one  
2 serving: 1) Apples & Crème; 2) Pineapple & Crème; and 3) Peaches & Crème.

3 22. In an effort to brand itself, DPF uses health related wellness claims such as  
4 “Live Well” and “Feel revitalized with the fresh taste of sun-ripened DPF all natural fruit.  
5 Rich in nutrients, fruit gives you healthy energy so you can feel refreshed and ready to  
6 shine.”

7 23. DPF’s website for DPF Parfait further states, “you can feel good about  
8 enjoying one any time you crave something...”

9 24. DPF’s Parfait Pineapple & Crème is sweetened with sugar and contains 110  
10 calories and 21g of sugar per 123g serving. Thus, one serving contains 17.1% sugar by  
11 weight, accounting for 76.4% of the product’s calories. At 21g of sugar, one DPF Parfait  
12 Pineapple & Crème cup provides 58.3% of the American Heart Association’s  
13 recommendation for men’s daily sugar intake of 36g and 87.5% of women’s  
14 recommended daily sugar intake of 24g.

15 25. DPF’s Parfait Apples & Crème is sweetened with sugar and contains 130  
16 calories and 20g of sugar per 123g serving. Thus, one serving contains 16.2% sugar by  
17 weight, accounting for 61.5% of the product’s calories. At 20g of sugar, one DPF Parfait  
18 Pineapple & Crème cup provides 55.5% of the AHA’s recommendation for men’s daily  
19 sugar intake of 36g and 83.3% of women’s recommended daily sugar intake of 24g.

20 26. DPF’s Parfait Pineapple & Crème is sweetened with sugar and contains 110  
21 calories and 19g of sugar per 123g serving. Thus, one serving contains 15.4% sugar by  
22 weight, accounting for 69.1% of the product’s calories. At 19g of sugar, one DPF Parfait  
23 Pineapple & Crème cup provides 52.7% of the AHA’s recommendation for men’s daily  
24 sugar intake of 36g and 79.1% of women’s recommended daily sugar intake of 24g.

25 27. DPF’s Products negatively impacts the lives of children throughout the  
26

1 United States in the same manner as men and women since the AHA’s recommended  
2 daily consumption of sugar for children is 24g. Most often, DPF’s Products contribute to  
3 more than 50% of the daily recommended consumption of sugar for children with only  
4 one (1) serving of any of the DPF’ Products.

5 28. DPF’s representations that DPF Parfait is “Rich in nutrients,” “gives you  
6 healthy energy” and that you will “Live Well” and “feel revitalized” by eating the  
7 products are false or misleading as a result of the amounts of sugar added to the DPF  
8 Parfait products. Consumption of DPF Parfait products is likely to contribute to excess  
9 sugar consumption that in turn is linked to chronic morbidity, reasonable consumers are  
10 likely to be misled by DPF’s claims that DPF Parfait is “Rich in nutrients” and “gives  
11 you healthy energy” and that you will “Live well” and “Feel revitalized” as result of  
12 eating DPF Parfait.

13 29. DPF Mixations is available in four distinct flavors, of which, each are one  
14 serving: 1) Apple & Raspberry; 2) Pineapple & Mango; 3) Apple & Strawberry; and 4)  
15 Pineapple Peach & Apple.

16 30. DPF’s Mixations Apples & Raspberry is sweetened with sugar (the third  
17 ingredient after the fruit and water) and glucose syrup and contains 70 calories and 14 g  
18 of sugar per 113 g serving. Thus, one serving contains 49.5% sugar by weight,  
19 accounting for 80% of the product’s calories. At 14g of sugar, one DPF Mixations Apple  
20 & Raspberry provides 38.9% of the AHA’s recommendation for men’s daily sugar intake  
21 of 36 grams, 58.3% of women’s recommended daily intake of 24 g.

22 31. DPF’s Mixations Apples & Strawberry is sweetened with sugar (the third  
23 ingredient after the fruit and water) and glucose syrup and contains 70 calories and 14 g  
24 of sugar per 113 g serving. Thus, one serving contains 49.5% sugar by weight,  
25 accounting for 80% of the product’s calories. At 14g of sugar, one DPF Mixations Apple  
26



1 & Raspberry provides 38.9% of the AHA’s recommendation for men’s daily sugar intake  
2 of 36 grams, 58.3% of women’s recommended daily intake of 24 g.

3 32. DPF’s Mixations Pineapple & Mango is sweetened with sugar (the third  
4 ingredient after the fruit and water) and glucose syrup and contains 80 calories and 15 g  
5 of sugar per 113 g serving. Thus, one serving contains 53.0% sugar by weight,  
6 accounting for 75% of the product’s calories. At 15g of sugar, one DPF Mixations Apple  
7 & Raspberry provides 41.6% of the AHA’s recommendation for men’s daily sugar intake  
8 of 36 grams, 62.5% of women’s recommended daily intake of 24 g.

9 33. DPF’s Mixations Pineapple Peach & Apple is sweetened with sugar (the  
10 third ingredient after the fruit and water) and glucose syrup and contains 80 calories and  
11 15 g of sugar per 113 g serving. Thus, one serving contains 53.0% sugar by weight,  
12 accounting for 75% of the product’s calories. At 15g of sugar, one DPF Mixations Apple  
13 & Raspberry provides 41.6% of the AHA’s recommendation for men’s daily sugar intake  
14 of 36 grams, 62.5% of women’s recommended daily intake of 24 g.

15 34. DPF’s representations that DPF Mixations is “Live Well” by eating the  
16 products are false or misleading as a result of the amounts of sugar added to DPF  
17 Mixations.

18 35. Because regular consumption of DPF Mixations products is likely to  
19 contribute to excess sugar consumption that in turn is linked to chronic morbidity,  
20 reasonable consumers are likely to be misled by DPF’s claims that DPF Mixations causes  
21 you to “Live well”. DPF’s Products negatively impacts the lives of children throughout  
22 the United States in the same manner as men and women since the AHA’s recommended  
23 daily consumption for children is 24g. Most often, DPF’s Products contribute to more  
24 than 50% of the daily recommended consumption for children with only one (1) serving  
25 of any of the DPF’ Products.  
26



1 impracticable, and the disposition of their claims in a class action will benefit the parties  
2 and the Court. The Class is sufficiently numerous because millions dollars in units of the  
3 Product have been sold in the United States and State of California during the time period  
4 December 7, 2012, through the present (the “Class Period”).

5 40. There is a well-defined community of interest in this litigation and the Class  
6 is easily ascertainable:

- 7 a. Numerosity: The members of the class are so numerous that any form of  
8 joinder of all members would be unfeasible and impractical. On information  
9 and belief, Plaintiff believes the Class and Sub-Class exceed thousands of  
10 members.
- 11 b. Typicality: Plaintiffs are qualified to and will fairly and adequately protects the  
12 interests of each member of the class with whom they have a well-defined  
13 community of interest and the claims (or defenses, if any), are typical of all  
14 members of the class.
- 15 c. Adequacy: Plaintiff does not have a conflict with the class and is qualified to,  
16 and will fairly and adequately protect the interests of each member of the class  
17 with whom they have a well- defined community of interest and typicality of  
18 claims, as alleged herein. Plaintiff acknowledges that he have an obligation to  
19 the Court to make known any relationship, conflict, or differences with any  
20 member. Plaintiffs’ attorneys and proposed class counsel are well versed in the  
21 rules governing class action and complex litigation regarding discovery,  
22 certification, and settlement.
- 23 d. Superiority: The nature of this action makes the use of class action adjudication  
24 superior to other methods. Class action will achieve economies of time, effort,  
25 and expense as compared with separate lawsuits, and will avoid inconsistent  
26

1 outcomes because the same issues can be adjudicated in the same manner and at  
2 the same time for the entire class.

3 41. There exist common questions of law and fact that predominate over  
4 questions that may affect individual Class members. Common questions of law and fact  
5 include, but are not limited to, the following:

- 6
- 7 a. Whether Defendants' conduct constitutes an unlawful, unfair, fraudulent business  
8 act or practice within the meaning of Business and Professions Code section  
9 17200, *et seq.*;
  - 10 b. Whether Defendants' advertising is untrue or misleading within the meaning of  
11 Business and Professions Code section 17500, *et seq.*;
  - 12 c. Whether Defendants made false and misleading representations in their advertising  
13 and packaging of the Products to consumers;
  - 14 d. Whether Defendants knew or should have known that the representations  
15 concerning DPF Products were false or untrue;
  - 16 e. Whether Defendants represented that the DPF Products has characteristics,  
17 benefits, uses, or quantities which the DPF Product does not have;
  - 18 f. Whether Defendants warranted that the Products have certain health and wellness  
19 claims which they do not;
  - 20 g. Whether Defendants warranted that the DPF Products promoted consumers health  
21 and wellness;
  - 22 h. Whether Defendants deceived consumers into purchasing DPF Products; and
  - 23 i. Whether Defendants committed statutory and common law fraud or negligently  
24 misrepresented the DPF Products to consumers.

25 42. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will  
26 fairly and adequately represent and protect the interests of the Class. Plaintiff has retained  
27 competent and experienced counsel in class action and other complex litigation.  
28

1           43. Plaintiff and the Class have suffered injury in fact and have lost money as a  
2 result of Defendants' false representations. Indeed, Plaintiff purchased the Products under  
3 the belief that Defendant's health and wellness claims were true. Plaintiff relied on  
4 Defendants' packaging and would not have purchased the Products (and/or in the  
5 quantities purchased) if he had known that the Products did not have the characteristics,  
6 ingredients, uses, benefits, or quantities as represented.

7  
8           44. A class action is superior to other available methods for fair and efficient  
9 adjudication of this controversy. The expense and burden of individual litigation would  
10 make it impracticable or impossible for Class members to prosecute their claims  
11 individually.

12           45. The trial and litigation of Plaintiff's claims are manageable. Individual  
13 litigation of the legal and factual issues raised by Defendants' conduct would increase  
14 delay and expense to all parties and the court system. The class action device presents far  
15 fewer management difficulties and provides the benefits of a single, uniform  
16 adjudication, economies of scale, and comprehensive supervision by a single court.

17           46. Defendants have acted on grounds generally applicable to the entire Class,  
18 thereby making final injunctive relief and/or corresponding declaratory relief appropriate  
19 with respect to the Class as a whole. The prosecution of separate actions by individual  
20 Class members would create the risk of inconsistent or varying adjudications with respect  
21 to individual members of the Class that would establish incompatible standards of  
22 conduct for Defendants.

23  
24           47. Absent a class action, Defendants will likely retain the benefits of their  
25 wrongdoing. Because of the small size of the individual Class members' claims, few, if  
26 any, Class members could afford to seek legal redress for the wrongs complained of

1 herein. Absent a representative action, the Class members will continue to suffer losses  
2 and Defendants will be allowed to continue these violations of law and to retain the  
3 proceeds of their ill-gotten gains.

4 48. Excluded from the class are Defendants in this action, any entity in which  
5 Defendants have a controlling interest, including, but not limited to officers, directors,  
6 shareholders, current employees and any and all legal representatives, heirs, successors,  
7 and assigns of Defendants.

8 49. Were it not for this class action, most class members would find the cost  
9 associated with litigating claims extremely prohibitive, which would result in no remedy.

10 50. This class action would serve to preserve judicial resources, the respective  
11 parties' resources, and present fewer issues with the overall management of claims, while  
12 at the same time ensuring a consistent result as to each class member.

13  
14 **FIRST CAUSE OF ACTION**

15 Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq.

16 By Plaintiff and Proposed California Class against Defendant

17 (Injunctive Relief Only with Reservation)

18 51. Plaintiff hereby incorporates by reference the allegations contained in all  
19 preceding paragraphs of this complaint.

20 52. Plaintiff and Class are “consumers” as defined by Cal. Civ. Code § 1761(d)  
21 and the Products are each a “good” as defined by Cal.Civ.Code § 1761(a).

22 53. The California’s Consumers Legal Remedies Act, Cal. Civ. Code §  
23 1770(a)(5), expressly prohibits “representing that goods or services have sponsorship,  
24 approval, characteristics, ingredients, uses, benefits, or quantities which they do not have  
25 or that a person has a sponsorship, approval, status, affiliation, or connection which he or  
26 he does not have.” DPF’s Products contain health and wellness claims that are

1 misleading based on the amounts of sugar contained in the Products, which violates the  
2 CLRA.

3 54. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9),  
4 expressly prohibits “[a]dvertising goods or services with intent not to sell them as  
5 advertised”, which is advertised by Defendant in light of great risks presented by the  
6 added sugar, including, but not limited to increasing heart disease, diabetes, and liver  
7 disease.

8 55. Defendant’s ongoing deliberate manipulation of violates the following  
9 subsections of Cal. Civ. Code §1770(a) in these respects:

10 a. Defendant’s acts and practices constitute misrepresentations concerning  
11 characteristics, benefits or uses, which it does not have;

12 b. Defendant misrepresented that is of a particular standard, quality and/or  
13 grade, when they are of another;

14 c. Defendant’s acts and practices described herein constitute the advertisement  
15 of DPF’s Products without the intent to sell them as advertised;

16 d. Defendant’s acts and practices constitute representations that DPF Products  
17 have been supplied in accordance with previous representations when it has not.

18 56. Plaintiff and the proposed Sub-Class of California class members suffered  
19 injuries caused by Defendant because they would not have purchased DPF Products if the  
20 true facts were known concerning its false and misleading health and wellness statements  
21 and representations.

22 57. On or before December 20, 2016, prior to filing this action, a notice of  
23 violations letter was served on Defendant. Plaintiff served the letter on Defendant  
24 advising DPF that it is in violation of the CLRA.

25 58. Plaintiff seeks injunctive relief only for this violation of the CLRA, but  
26

1 reserves it right to amend this complaint to include allegations for the recovery of  
2 damages under the CLRA. In compliance with Cal. Civ. Code 1782(d), Plaintiff has filed  
3 the affidavit of venue, which is filed concurrently herewith.

4  
5 **SECOND CAUSE OF ACTION**

6 **Violation Of California Business & Professions Code §§17500, et seq.**  
7 **Plaintiff and Proposed California Class against Defendant**

8 59. Plaintiff hereby incorporates by reference the allegations contained in all  
9 preceding paragraphs of this complaint.

10 60. Pursuant to California Business & Professions Code §§ 17500, et seq., it is  
11 “unlawful for any person to make or disseminate or cause to be made or disseminated  
12 before the public in this state, ... in any advertising device ... or in any other manner or  
13 means whatever, including over the Internet, any statement, concerning ... personal  
14 property or services, professional or otherwise, or performance or disposition thereof,  
15 which is untrue or misleading and which is known, or which by the exercise of  
16 reasonable care should be known, to be untrue or misleading.”

17 61. Defendant committed acts of false advertising, as defined by §17500, by  
18 making health and wellness claims regarding the Products, which are misleading based  
19 on the amounts of sugar added to the Products increasing the risk of heart disease,  
20 diabetes, liver disease, and other forms of morbidity, and therefore violate the CLRA.

21 62. Defendant knew or should have known, through the exercise of reasonable  
22 care that DPF’s health and wellness representations about its Products were false, untrue  
23 and misleading to Plaintiff and class members.

24 63. Defendant’s actions in violation of § 17500 were false and misleading such  
25 that the general public is and was likely to be deceived.





1 Products did not have the characteristics, ingredients, uses, benefits, or quantities as  
2 promised.

3 71. As a proximate result of this breach of warranty by DPF, Plaintiff and the  
4 Class have suffered damages in an amount to be determined at trial.

5  
6 **FOURTH CAUSE OF ACTION**

7 **Violations of California Commercial Code § 2313**  
8 **By Plaintiff and Proposed California Class against Defendant**

9 72. Plaintiff hereby incorporates by reference the allegations contained in all  
10 preceding paragraphs of this complaint.

11 73. DPF made statements, representations, and affirmations of fact or promises,  
12 or descriptions of goods carrying health and wellness claims regarding the Products.  
13 Plaintiff and other Class members reasonably relied on Defendant's statements and  
14 representations regarding the Product at the time of purchasing the Products. California  
15 Commercial Code § 2313(1).

16 74. DPF breached its express warranties by selling products and goods that are  
17 not healthy and contain excessive amounts of added sugar the consumption of which  
18 increases the risk of heart disease, diabetes, and liver disease.

19 75. Defendant's breached was the actual and proximate cause of the injury to  
20 Plaintiff and Class members in the form of money that was paid in exchange for the  
21 Products.

22 76. Plaintiff seeks damages on behalf of himself and other Class members as a  
23 result of DPF's breaches of express warranty.

**FIFTH CAUSE OF ACTION**

**Breach Of The Implied Warranty Of Merchantability  
Plaintiff and Proposed Nationwide Class against Defendant**

1  
2  
3  
4 77. Plaintiff hereby incorporates by reference the allegations contained in all  
5 preceding paragraphs of this complaint.

6 78. Plaintiffs and the Class purchased DPF Products, which, as stated above,  
7 bore promises or affirmations of fact on their containers or labels with respect to  
8 Defendant's health and wellness claims. Defendant breached the implied warranty of  
9 merchantability accompanying such transactions, because Plaintiffs and the Class  
10 members did not receive goods that conformed to the promises or affirmations of fact on  
11 their containers or labels.

12 79. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
13 seller, impliedly warranted the health and wellness of DPF's Products.

14 80. Defendant breached the warranty implied in the contract for the sale of DPF  
15 Products because it could not pass without objection in the trade under the contract  
16 description, the goods were not of fair average quality within the description, and the  
17 goods were unfit for their intended and ordinary purpose. As a result, Plaintiff and Class  
18 members did not receive the goods as impliedly warranted by Defendant to be  
19 merchantable.

20 81. Plaintiff and Proposed Nationwide Class members purchased DPF's  
21 Products in reliance upon Defendant's skill and judgment and the implied warranties of  
22 fitness for the purpose. The Products were neither altered by Plaintiff nor by the Proposed  
23 Nationwide Class members were defective when it left the exclusive control of  
24 Defendant. Defendant knew that DPF Products would be purchased and used based on  
25 the statements, representations, and promises made to Plaintiff and the Class members.

1 82. DPF's Products was defectively designed and unfit for its intended purpose,  
2 and Plaintiff and Class members did not receive the goods as warranted.

3 83. Defendant's breach of the implied warranty is the direct and proximate cause  
4 of Plaintiff and Proposed Nationwide Class members have been injured and harmed,  
5 because they would not have purchased DPF's Products on the same terms if the true  
6 facts were known concerning its misleading and false health and wellness claims since  
7 DPF Products did not have the characteristics, ingredients, uses, benefits, or quantities as  
8 promised.

9 84. As a proximate result of this breach of warranty by DPF, Plaintiffs and the  
10 Class have suffered damages in an amount to be determined at trial.

11  
12 **SIXTH CAUSE OF ACTION**

13 Violations of California Commercial Code § 2314  
14 By Plaintiff and Proposed California Class against Defendant

15 85. Plaintiff hereby incorporates by reference the allegations contained in all  
16 preceding paragraphs of this complaint.

17 86. Defendant is a "merchant" as to the products within the meaning of  
18 California Commercial Code § 2104. It manufactured, distributed and marketed DPF  
19 Products which are "goods" within the meaning of California Commercial Code § 2105.  
20 Consequently, pursuant to California Commercial Code § 2314, DFP impliedly warranted  
21 that DPF's Products were merchantable, including that it would conform to the promises  
22 or affirmations of fact made on containers or labels regarding its health and wellness  
23 claims.

24 87. Plaintiff and the Class purchased DPF Products, which, as stated above, bore  
25 promises or affirmations of fact on their containers or labels with respect to the stated  
26 quantities. As also stated above, Defendant breached the implied warranty of

1 merchantability accompanying such transactions, because Plaintiff and the Class  
2 members did not receive goods that conformed to the promises or affirmations of fact on  
3 their containers or labels. Cal. Com. Code § 2314(1) and (2)(f).

4 88. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
5 seller, impliedly warranted that DPF Products provided health and wellness benefits.

6 89. Defendant breached the warranty implied in the contract for the sale of DPF,  
7 because it could not pass without objection in the trade under the contract description, the  
8 goods were not of fair average quality within the description, and the goods were unfit for  
9 their intended and ordinary purpose. As a result, Plaintiff and Class members did not  
10 receive the goods as impliedly warranted by Defendant to be merchantable.

11 90. Plaintiff and Proposed California Class members purchased DPF Products in  
12 reliance upon Defendant's skill and judgment and the implied warranties of fitness for the  
13 purpose. DPF Products were defective when it left the exclusive control of Defendant.  
14 Defendant knew that DPF Products would be purchased and used by Plaintiff and Class  
15 Members.

16 91. DPF Products was defectively designed and unfit for its intended purpose,  
17 and Plaintiff and Class members did not receive the goods as warranted.

18 92. Defendant's breach of the implied warranty is the direct and proximate cause  
19 of Plaintiff and Proposed Nationwide Class members have been injured and harmed,  
20 because they would not have purchased DPF Products on the same terms if the true facts  
21 were known concerning its health and wellness claims and did not have the  
22 characteristics, ingredients, uses, benefits, or quantities as promised.

23 93. As a proximate result of this breach of warranty by DPF Plaintiff and the  
24 Class members have suffered damages in an amount to be determined at trial.

25 /

**SEVENTH CAUSE OF ACTION**

**Fraud**

**Plaintiff and Proposed Nationwide Class against Defendant**

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4 94. Plaintiff hereby incorporates by reference the allegations contained in all  
5 preceding paragraphs of this complaint.

6 95. Plaintiff brings this claim individually and on behalf of the proposed Class  
7 against Defendant.

8 96. As discussed above, Defendant provided Plaintiff and Class members with  
9 false or misleading material information and failed to disclose material facts about DPF  
10 Products.

11 97. Defendant misrepresented the health and wellness claims related to the  
12 Products. DPF's use of deceptive health and wellness claims is based on the fact that  
13 DPF's website includes an article created by "DPF Nutrition Institute" specifically  
14 making mention of the fact that "added sugar intake doubles heart disease death".

15 98. These misrepresentations and omissions were made with knowledge of their  
16 falsehood.

17 99. The misrepresentations and/or omissions made by Defendant, upon which  
18 Plaintiff and Class members reasonably and justifiably relied, were intended to induce  
19 and actually induced Plaintiff and Class members to purchase DPF's Products.

20 100. The fraudulent actions of Defendant caused damage to Plaintiff and Class  
21 members, who are entitled to damages, punitive damages, and other legal and equitable  
22 relief as a result.

**EIGHTH CAUSE OF ACTION**

**Negligent Misrepresentation**

**Plaintiff and Proposed Nationwide Class against Defendant**

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4 101. Plaintiff hereby incorporates by reference the allegations contained in all  
5 preceding paragraphs of this complaint.

6 102. Plaintiff brings this claim individually and on behalf of the proposed Class  
7 against Defendant.

8 103. Defendant misrepresented the nature of the Products. Defendant had a duty  
9 to disclose this information.

10 104. At the time Defendant made these representations, Defendant knew or  
11 should have known that these representations were false or made them without  
12 knowledge of their truth or veracity.

13 105. Defendant negligently misrepresented and omitted material facts about the  
14 Products. Plaintiff and the Class relied upon the negligent statements or omissions.

15 106. The negligent misrepresentations and/or omissions made by Defendant,  
16 upon which Plaintiff and Class members reasonably and justifiably relied, were intended  
17 to induce and actually induced Plaintiff and Class members to purchase DPF Products.

18 107. Plaintiff and Class members would not have purchased Safeway Tuna if the  
19 true facts had been known.

20 108. The negligent actions of Defendant caused damage to Plaintiff and Class  
21 members, who are entitled to damages and other legal and equitable relief as a result.  
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**NINTH CAUSE OF ACTION**

Violation California Business & Professions Code §§ 17200, et seq.  
By Plaintiff and Proposed California Class against Defendant

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4 109. Plaintiff hereby incorporates by reference the allegations contained in all  
5 preceding paragraphs of this complaint.

6 110. Plaintiff brings this claim individually and on behalf of the proposed Sub-  
7 Class against Defendant.

8 111. Defendant is subject to California’s Unfair Competition Law, Cal. Bus. &  
9 Prof. Code §§ 17200, et seq. The UCL provides, in pertinent part: “Unfair competition  
10 shall mean and include unlawful, unfair or fraudulent business practices and unfair,  
11 deceptive, untrue or misleading advertising ....”

12 112. DPF’s use of deceptive health and wellness claims is based on the fact that  
13 DPF’s website includes an article created by “DPF Nutrition Institute” specifically  
14 making mention of the fact that “added sugar intake doubles heart disease death”. DPF  
15 has knowledge that it health and wellness claims are false or misleading as a result of the  
16 high added sugar in its Products which greatly increases the risks of heart disease,  
17 diabetes, liver disease, and other diseases.

18 113. As a result of violating federal food labeling regulations, such as 21 C.F.R.  
19 sections 101.13, DPF also violated the California Sherman Food & Drug and Cosmetic  
20 Act, Cal. Health & Safety Code Sections 110100(a), 110765, 109875, and 110670.

21 114. In addition, DPF violated the same Acts as a result of violating False  
22 Advertising Law, California Business and Professions Code §§17500, et seq., The  
23 Consumers Legal Remedy Act Cal. Civ. Code §§1750, et seq., California Commercial  
24 Code §§2313 and 2314, and Violations of the Federal Food, Drug, and Cosmetic Act 21  
25 U.S.C. §§301, et seq.



1           115. Defendant’s misrepresentations and other conduct, described herein, violated  
2 the “unlawful” prong of the UCL by violating the California Consumer’s Legal Remedy  
3 Act, California’s False Advertising Act, and express and implied warranty law, including,  
4 but not limited to the California Commercial Code in addition to other state and federal  
5 laws.

6           116. Defendant’s misrepresentations and other conduct, described herein, violated  
7 the “unfair” prong of the UCL in that its conduct is substantially injurious to consumers,  
8 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the  
9 gravity of the conduct outweighs any alleged benefits. DPF conduct constitutes a unfair  
10 violation because DPF conduct is unethical, unscrupulous, and injurious to consumers  
11 given the false and misleading labeling. The harm is substantial given significant given  
12 the numerous health problems that exist such as obesity, diabetes, cardiovascular disease,  
13 coronary artery disease, other diseases related to metabolic syndrome. Defendant has  
14 specific knowledge that its health and wellness claims are false and misleading, but  
15 continued to market the DFC Products with the intent of making substantial profits.

16           117. DPF’s conduct is also unfair given the huge profits derived from the sale of  
17 the DPF Products at the expense of consumers as a result of the false and misleading  
18 health and wellness advertising claims.

19           118. Defendant violated the “fraudulent” prong of the UCL by making false  
20 statements, untruths, and misrepresentations about health and wellness claims relating to  
21 its Products, as described herein this complaint, which are likely to deceive reasonable  
22 consumers and the public.

23           119. Plaintiff, the Nationwide and California Class, lost money or property as a  
24 result of Defendant’s UCL violations because: (a) they would not have purchased DPF  
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1 Products (in the amounts purchased) if the true facts were known concerning its false and  
2 misleading health and wellness claims.

3 120. Defendant's business practices, as detailed above, are unethical, oppressive  
4 and unscrupulous, and they violate fundamental policies of this state. Further, any  
5 justification for Defendant's wrongful conduct is outweighed by the adverse effects of  
6 such conduct on Plaintiff and the Class.

7 121. Plaintiff, the Nationwide Class, and California Class members could not  
8 reasonably avoid the harm caused by Defendant's wrongful practices. Assuming,  
9 arguendo, that Defendant's practices are not express violations of the laws set forth  
10 above, those practices fall within the penumbra of such laws and a finding of unfairness  
11 can properly be-tethered to the public policies expressed therein. Thus, Defendant  
12 engaged in unfair business practices prohibited by California Business & Professions  
13 Code § 17200 et seq.

14 122. Plaintiff, the Class, and the Sub-Class are entitled to restitution and  
15 injunctive relief.

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17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,  
19 seeks judgment against Defendant, as follows:

- 20 a. For an order certifying the Nationwide Class and California Class under Rule 23 of  
21 the Federal Rules of Civil Procedure  
22 b. Plaintiff as the representative of the Nationwide Class and California Class and  
23 Plaintiff's attorneys as Class Counsel to represent members of the Class  
24 Nationwide Class and California Class;

- 1 c. For an order declaring the Defendant’s conduct violates the statutes and laws
- 2 referenced herein;
- 3 d. For an order finding in favor of Plaintiff, the Nationwide Class, and the California
- 4 Class on all counts asserted herein;
- 5 e. For compensatory and punitive damages in amounts to be determined by the Court
- 6 and/or jury;
- 7 f. For prejudgment interest on all amounts awarded;
- 8 g. For an order of restitution and all other forms of equitable monetary relief;
- 9 h. For injunctive relief as pleaded or as the Court may deem proper; and
- 10 i. For an order awarding Plaintiff, the Nationwide Class, and the California Class
- 11 their reasonable attorneys’ fees and expenses and costs of suit.
- 12

**DEMAND FOR TRIAL BY JURY**

14 Plaintiff demands a trial by jury of all issues so triable.

16 Respectfully submitted,

17 Dated: December 23, 2016

**NATHAN & ASSOCIATES, APC**

18 By: /s/ Reuben D. Nathan  
19 Reuben D. Nathan, Attorney for Plaintiff,  
20 ALFREDO RAMIREZ

22 Dated: December 23, 2016

**LAW OFFICES OF ROSS CORNELL, APC**

23 By: /s/ Ross Cornell  
24 Ross Cornell, Attorney for Plaintiff,  
25 ALFREDO RAMIREZ

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