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

CHAUNCEY LEROY WHITE,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

NATURE'S PATH FOODS USA, INC., a  
Wyoming corporation; NATURE'S PATH  
FOODS, INC., a Canadian corporation;  
and DOES 1 through 10, inclusive,

Defendants.

Case No. 8:18-cv-00013 AG (KESx)

**CLASS ACTION**

**FIRST AMENDED COMPLAINT**

1. VIOLATION OF CALIFORNIA'S  
CONSUMERS LEGAL REMEDIES  
ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF  
CALIFORNIA'S FALSE  
ADVERTISING LAW, BUSINESS  
AND PROFESSIONS CODE §  
17500, *et. seq.*
3. VIOLATION OF  
CALIFORNIA'S UNFAIR  
COMPETITION LAW, BUSINESS  
AND PROFESSIONS CODE §  
17200, *et. seq.*; and
4. UNJUST ENRICHMENT.

**DEMAND FOR JURY TRIAL**

1 Plaintiff Chauncey Leroy White (“Plaintiff”), by and through his attorneys of  
2 record, bring this action on behalf of himself and all others similarly situated and the  
3 general public against Defendants Nature’s Path Foods USA, Inc. and Nature’s Path  
4 Foods, Inc. (collectively referred to herein as “Defendants”) and Does 1 through 10,  
5 inclusive. Plaintiff alleges the following upon his own knowledge, or where there is no  
6 personal knowledge, upon information and belief and the investigation of his counsel:

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over this matter pursuant to the Class Action  
9 Fairness Act, 28 U.S.C. § 1332(d)(2). This is a class action lawsuit, as defined by 28  
10 U.S.C § 1332(d)(1)(B), in which Plaintiff and Defendants are citizens of different states,  
11 and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest  
12 and costs. *See* 28 U.S.C. § 1332(d)(2).

13 2. The Court has jurisdiction over the state law claims because they form part  
14 of the same case or controversy under Article III of the United States Constitution. *See*  
15 28 U.S.C. §1367.

16 3. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §  
17 1332(a)(1) because Plaintiff and the putative class are citizens of the State of California,  
18 Defendants reside in the state of Wyoming and the foreign state of Canada, and the  
19 amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and  
20 costs.

21 4. Personal jurisdiction is derived from the fact that Defendants are licensed to  
22 do business in California or otherwise conduct business within the State of California and  
23 within this judicial district. Nature’s Path Organic cereal products are advertised,  
24 marketed, distributed and sold throughout the State of California; Defendants engaged in  
25 the wrongdoing alleged in this Complaint throughout the United States, including in the  
26 State of California; Defendants are authorized to do business in the State of California;  
27 and Defendants have sufficient minimum contacts with the State of California, rendering  
28 the exercise of jurisdiction by the Court permissible under traditional notions of fair play

1 and substantial justice. Moreover, Defendants is engaged in substantial activity with the  
2 State of California. Because Defendants purposely avail themselves of the privilege of  
3 conducting activities within the State of California by continuously selling their cereal  
4 products in the State, it is fair and reasonable to expect them to defend an action in  
5 California, given their activities in that forum. See *Simon v. Steverson*, (2001) 88  
6 Cal.App. 4th 693, 710 (“Clearly, ‘a person who purposefully takes advantage of the  
7 benefits of doing business in the forum state fairly can be required to answer lawsuits  
8 that relate to his or his activities there....’”) (citing *Cornelison v. Chaney* (1976) 16 Cal.3d  
9 143, 148.)

10       5. The Court has personal jurisdiction over Defendants Nature’s Path Foods  
11 USA, Inc. because it is a United States manufacturing facility for Nature’s Path Foods,  
12 Inc. Defendants Nature’s Path Foods USA, Inc. was acting as an agent and/or employee  
13 of Defendants Nature’s Path Foods, Inc. and was acting within the course and/or scope  
14 of said agency and/or employment with the full knowledge and consent of the latter  
15 Defendants. Each of the acts and/or omissions complained of herein were alleged and  
16 made known to, and ratified by, each Defendant. Thus, Defendants Nature’s Path Foods  
17 USA, Inc. was made known that the slack-filled products it manufactured would be  
18 distributed throughout the United States and California. See *Ainsworth v. Moffett*  
19 *Engineering, Ltd.*, 716 F.3d 174, 177–178 (5th Cir. 2013) (“the minimum contacts  
20 requirement is met so long as the court ‘finds that the Defendants delivered the product  
21 into the stream of commerce with the expectation that it would be purchased by or used  
22 by consumers in the forum state.’”) (citing *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370,  
23 374 (5th Cir.1987).)

24       6. Venue is proper in in the United States District Court for the Central District  
25 of California pursuant to 28 U.S.C. § 1391(b) because unlawful practices are alleged to  
26 have been committed in this District, the property involved in Plaintiff’s claims is situated  
27 in this District, Plaintiff resides in this District, and Defendants regularly conduct  
28 business in this District. Additionally, Defendants:

- a. are authorized to conduct business in this district and have intentionally availed themselves of the laws and markets within this district through the promotion, marketing, distribution and sale of their products in this district;
- b. do substantial business in this district;
- c. advertise to consumers residing in this district; and
- d. are subject to personal jurisdiction in this district.

### SUMMARY OF THE ACTION

7. This is a consumer protection class action against Nature's Path Foods USA, Inc. and Nature's Path Foods, Inc., (collectively referred to as "Defendants") for misleading consumers about the quantity of product contained in the packages of its Nature's Path Organic cereal product line that is sold in various flavors and net weight.

8. Chauncey Leroy White ("Plaintiff") purchased a package of Defendants' Nature's Path Organic Flax Plus Red Berry Crunch cereal on December 8, 2017 from a Sprout's grocery store in Irvine, California. Plaintiff expected to receive a full container of the Nature's Path Organic cereal product, which is packaged in non-transparent boxes, as depicted below. Plaintiff was surprised and disappointed when he opened the Nature's Path Organic cereal product to discover that the container had **nearly 40% empty space**, or slack-fill.



9. This lawsuit charges Defendants with intentionally packaging their Nature's Path Organic cereal products in opaque containers that contain approximately 40% empty space. Consumers, in reliance on the size of the containers, purchased the Nature's Path Organic cereal products, which they would not have purchased had they known that the containers were substantially empty. Plaintiff saw the size of the cereal box prior to and at the time of purchase, and relied on the size of the cereal box when making his purchase. Had Plaintiff been aware at the time of purchase that the containers of Defendants' product contained significantly less product than its deceptively oversized packaging led him to believe, he would not have purchased Defendants' product, or paid the same premium price for the product, as he only received the benefit of approximately 60% of what he actually paid for. As a result of Defendants' unlawful, unfair, deceptive, untrue and misleading practices, Plaintiff and other Class members were deprived of the value of the product that they purchased. As a result of Defendants' unlawful, unfair, deceptive, untrue and misleading packaging and labeling, Plaintiff suffered financial loss and injury.

10. Defendants market, advertise, sell, and/or distribute Nature's Path Organic cereal products in several flavors. The relevant Nature's Path Organic cereal products include: (1) Nature's Path Flax Plus Maple Pecan Crunch; (2) Nature's Path Flax Plus Multibran Flakes; (3) Nature's Path Flax Plus Pumpkin Raisin Crunch; (4) Nature's Path Flax Plus Red Berry Crunch; (5) Nature's Path Sunrise Crunchy Maple Cereal; (6) Nature's Path Sunrise Crunchy Vanilla Cereal; (7) Nature's Path Golden Turmeric Cereal; (8) Nature's Path Optimum Power Blueberry Cinnamon Flax Cereal; (9) Nature's Path Sunrise Crunchy Cinnamon Cereal; (10) Nature's Path Sunrise Crunchy Honey Cereal; (11) Nature's Path Flax Plus Raisin Bran Flakes; (12) Nature's Path Honey'd Corn Flakes; (13) Nature's Path Mesa Sunrise Flakes; (14) Nature's Path Whole O's Cereal; (15) Nature's Path Crispy Rice Cereal (collectively referred to as "Products").

11. Each of the Products are substantially similar to the Nature's Path Flax Plus Red Berry Crunch cereal box purchased by Plaintiff. Courts permit plaintiffs to bring claims on substantially similar products they did not purchase where "common

misrepresentations are the crux of Plaintiff's case." See *Hendricks v. StarKist Co.*, 30 F. Supp. 3d 917 (N.D. Cal. 2014) (quoting *Brown v. Hain Celestial Grp.*, 913 F. Supp. 2d 881, 892 (N.D. Cal. 2012)). Here, each Product is packaged in a substantially similar non-transparent 10.25" x 2" box. Additionally, the Products all contain non-functional slack-fill, as Defendants systematically left excessive non-functional slack-fill in each of the Products' packaging. Defendants sell the Products in similar boxes of lesser or more weight that suffer from the same misleading properties of the same proportion. The only differentiating factors between the Products are their name, flavor type, and net weight. However, the name, flavor, and weight of the Products do not affect the amount of slack-fill in the Products generated by Defendants. See *id.* ("different flavors of ice cream carried under different brand names sufficiently similar where same wrongful conduct applied.") (citing to *Astiana v Dreyer's Gran Ice Cream, Inc.*, C-11-2910 EMC, 2012 WL 2990766, at \*11 (N.D.Cal. July 20, 2012)); see also *Donohue v. Apple, Inc.*, 871 F.Supp.2d 913, 922 (N.D.Cal.2012) (Court allowed plaintiff to represent class of persons who purchased different but similar products reasoning that questions of whether common issues predominate are issues better resolved at the class certification stage."). Here, each and every Product contains nearly 40% empty space that is hidden from consumers due to the opaque packaging and deceptively large box size. Thus, common representations are the crux of Plaintiff's case.

12. Defendants package each Product box with less cereal than would be expected by a reasonable consumer – i.e. not an "adequate amount." The appearance of the box itself, not its label, is the misleading factor. See *Hendricks v. StarKist Co.*, 30 F. Supp. 3d 917, 932 (N.D. Cal. 2014) (inclusion of net weight and serving size on can of tuna irrelevant where Plaintiff alleged appearance of can of tuna itself, not its label, was misleading). Defendants mislead and shortchange consumers by falsely and deceptively misrepresenting the amount of cereal actually contained in each box of Products by uniformly under-filling the opaque boxes of Products by 40%. Every box is filled with



1 only 60% of cereal product. The 40% balance is empty headspace, or “slack-fill,” all of  
2 which serves no legitimate or lawful function.

3 13. Given the hidden features of Nature’s Path Organic cereal’s deceptive  
4 design, Plaintiff brings this action on his own behalf and on behalf of all California  
5 consumers who purchased Nature’s Path Organic cereal since the Products were first  
6 produced and sold (the “Class Period”). The lawsuit is brought under California  
7 Consumer Legal Remedies Act (“CLRA”), California Civil Code, §§ 1750, et seq.; and  
8 the California Unfair Competition Law (“UCL”), California Business and Professions  
9 Code §§ 17200, et. seq.; and for unjust enrichment.

### 10 **PARTIES**

11 14. Plaintiff is, and at all times relevant hereto was, a citizen of California  
12 residing in the county of Irvine. Plaintiff made a one-time purchase of a 10.6 oz. box of  
13 Nature’s Path Organic cereal product (specifically Nature’s Path Flax Plus® Red Berry  
14 Crunch cereal) for personal consumption on December 8, 2017 at a Sprout’s grocery store  
15 located in Irvine, California. In making his purchase, Plaintiff relied upon the opaque  
16 packaging of the product, including the size of the box, which was prepared and approved  
17 by Defendants and their agents and disseminated statewide, as well as designed to  
18 encourage consumers to purchase the Products. If Plaintiff had known that the box  
19 contained nonfunctional slack-fill, he would not have purchased the Product, let alone  
20 paid for cereal product he never received.

21 15. Defendant Nature’s Path Foods USA, Inc. is a Wyoming corporation with  
22 its principal places of business located in Richmond, British Columbia, Canada and  
23 Blaine, Washington. Defendant Nature’s Path Foods USA, Inc., directly and through its  
24 agents, has substantial contacts with and receives substantial benefits and income from  
25 and through the State of California. Nature’s Path Foods USA, Inc. is the manufacturer  
26 of the Products, and is the company that created and/or authorized the false, misleading,  
27 and deceptive packaging of the Products.

1        16. Defendant Nature's Path Foods, Inc. is Canadian corporation with its  
 2 principal place of business located in Richmond, British Columbia, Canada. Defendant  
 3 Nature's Path Foods, Inc., directly and through its agents, has substantial contacts with  
 4 and receives substantial benefits and income from and through the State of California.  
 5 Nature's Path Foods, Inc. is in the business of labeling, packaging, marketing,  
 6 advertising, and/or selling the Products, and is the company that created and/or  
 7 authorized the false, misleading, and deceptive packaging for the Products.

8        17. The true names and capacities, whether individual, corporate, associate, or  
 9 otherwise of certain manufacturers, distributors, and/or their alter egos sued herein as  
 10 DOES 1 through 10 inclusive are presently unknown to Plaintiff who therefore sues these  
 11 individuals and/or entities by fictitious names. Plaintiff will seek leave of this Court to  
 12 amend the Complaint to show their true names and capacities when the same have been  
 13 ascertained. Plaintiff is informed and believes and based thereon alleges that DOES 1  
 14 through 10 were authorized to do and did business in the State of California. Plaintiff is  
 15 further informed and believes and based thereon alleges that DOES 1 through 10 were  
 16 and/or are, in some manner or way, responsible for and liable to Plaintiff for the events,  
 17 happenings, and damages hereinafter set forth below.

18        18. At all relevant times, each and every Defendant was acting as an agent  
 19 and/or employee of each of the other Defendants and was acting within the course and/or  
 20 scope of said agency and/or employment with the full knowledge and consent of each of  
 21 the Defendants. Each of the acts and/or omissions complained of herein were alleged  
 22 and made known to, and ratified by, each of the other Defendants.

### 23        **FACTUAL ALLEGATIONS**

24        15. The average consumer spends a mere 13 seconds making an in-store  
 25 purchasing decision, or between 10 to 19 seconds for an online purchase.<sup>1</sup> That decision

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26  
 27 <sup>1</sup>[http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html)  
 28 [second-window.html](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html) (citing the Ehrenberg-Bass Institute of Marketing Science's report  
 "Shopping Takes Only Seconds ... In-Store and Online").



1 is heavily dependent on a product's packaging, and particularly the package dimensions:  
2 "Shoppers make decisions heuristically – based on shortcuts using inferences and  
3 incomplete data," "[p]eople assume the larger box is a better value."<sup>2</sup> This lawsuit  
4 charges Defendants with intentionally packaging its cereal products in large opaque  
5 containers that contain approximately 40% empty space. Consumers, in reliance on the  
6 size of the containers, purchased the Products, which they would not have purchased had  
7 they known that the containers were substantially empty.

8 16. Slack-fill is the difference between the actual capacity of a container and the  
9 volume of product contained therein. Nonfunctional slack-fill is the empty space in a  
10 package that is filled to less than its capacity for reasons which are illegitimate or  
11 unlawful.

12 17. Defendants package the Products in an opaque rectangular box. The  
13 dimensions of boxes of Nature's Path Organic cereal are 10.25" x 2".

14 18. The size of the box in and of itself is a representation by Defendants as to  
15 the amount of cereal product contained in the box. Plaintiff and other consumers of the  
16 Products detrimentally and reasonably relied on this representation of quantity when they  
17 purchased the Products.

18 19. Plaintiff and other consumers of the Products made their purchase decisions  
19 based upon a visual observation of the Products' packaging on the shelves of grocery and  
20 retail stores.

21 20. Plaintiff Chauncey Leroy White made a one-time purchase of a 10.6 oz. box  
22 of Nature's Path Organic cereal (specifically Nature's Path Flax Plus® Red Berry Crunch  
23 cereal) for personal consumption on December 8, 2017 at a Sprout's grocery store located  
24 in Irvine, California. Plaintiff White paid approximately \$4.29 for his purchase of the  
25 product. Plaintiff White purchased the product in reasonable and detrimental reliance on  
26 the size of the box as a representation by Defendants of the amount of cereal product  
27

28 <sup>2</sup><http://www.consumerreports.org/cro/magazine/2015/09/packaging-downsizing-less-is-not-more/index.htm> (quoting Mark Lang, Ph.D., professor of food marketing at Saint Joseph's University).

1 contained in the Products' containers. Plaintiff White expected to receive a full container  
2 of the Nature's Path Organic cereal product, which is packaged in non-transparent boxes,  
3 as depicted below. Plaintiff White was surprised and disappointed when he opened the  
4 Nature's Path Organic cereal product to discover that the container had **nearly 40%**  
5 **empty space**, or slack-fill. Plaintiff White would not have purchased the Product at all,  
6 or would have paid less for the product, had he known that the Product contained slack-  
7 fill which serves no functional purpose.

8         21. The Products' non-transparent packaging prevents a consumer from  
9 observing the contents before opening. Even if a reasonable consumer were to "shake"  
10 the Products before opening the box, the reasonable consumer would not be able to  
11 discern the presence of any nonfunctional slack-fill, let alone 40% nonfunctional slack-  
12 fill.

13         22. The other information that Defendants provide about the quantity of cereal  
14 product on the front and back label of the Product does not enable a consumer to form  
15 any meaningful understanding about how to gauge the quantity of contents of the Product  
16 as compared to the size of the box itself.

17         23. The front label of the Products indicate a net weight range of 10.6 to 14  
18 ounces.

19         24. Disclosures of net weight in a measurement of ounces does not allow the  
20 reasonable California consumer to make any meaningful conclusion about the quantity  
21 of cereal product contained in the Products' boxes that would be different from the  
22 reasonable consumer's expectation that the quantity of cereal product is commensurate  
23 with the size of the box.

24         25. The net weight did not allow Plaintiff to make—and Plaintiff therefore did  
25 not make—any meaningful conclusion about the quantity of cereal product contained in  
26 the Products' boxes that was different than Plaintiff's expectation that the quantity of  
27 cereal product would be commensurate with the size of the box.

26. During Plaintiff's investigation, Plaintiff confirmed that Defendants uniformly under-fill the Products' boxes, rendering approximately 40% of each box slack-fill, none of which serves a functional or lawful purpose. A true and accurate representation is set forth in images below:









1        27. The Products are made, formed and filled as to be misleading. The Products  
2 therefore are misbranded.

3        28. The slack-fill contained in the Products does not serve a legitimate or lawful  
4 purpose. The slack-fill contained in the Product does not protect the contents of the  
5 packages. In fact, the greater the slack-fill, the more room the contents have to bounce  
6 around during shipping and handling, and the more likely the contents are to break and  
7 sustain damage. If, on the other hand, the amount of cereal product contained in each box  
8 were commensurate with the size of the box as consumers expect, then the cereal product  
9 would have less room to move around during shipping and handling, and would be less  
10 likely to sustain damage. As such, the slack-fill present in the Products makes the cereal  
11 product more susceptible to damage, and in fact causes the cereal product to often sustain  
12 damage.

13        29. A simple review of the Product's packaging establishes that the Products do  
14 not use packaging that is part of a reusable container with any significant value to the  
15 Products independent of its function to hold the cereal product. For example, the  
16 Products' containers are not commemorative items. The Products' containers are boxes  
17 intended to be discarded into the recycling bin immediately after the contents have been  
18 completely consumed.

19        30. Defendants can easily increase the quantity of cereal product contained in  
20 each box (or, alternatively, decrease the size of the containers).

21        31. Each cereal box is sold in identical packaging, i.e. opaque boxes of identical  
22 size, physical dimensions, shape, and material.

23        32. Defendants' packaging evidences that the slack-fill present in the Products  
24 is nonfunctional and, at a minimum, in the lower net weight version of the Products, is  
25 not necessary to protect and in fact does not protect the contents of the Products.  
26 Defendants' packaging also evidences that the slack-fill present in the Products, and at a  
27 minimum in the lower net weight version of the Products, is not a requirement of the  
28 machines used for enclosing the contents of the Products. Additionally, the packaging



1 evidences that the slack-fill present in the Products is not a result of unavoidable product  
2 settling during shipping and handling. Further, Defendants' packaging evidences that the  
3 slack-fill present in the Products, and at a minimum in the lower net weight version of  
4 the Products, is not needed to perform a specific function, nor is it part of a legitimate  
5 reusable container.

6 33. The varying quantities of cereal product in identical packaging evidences  
7 that Defendants have reasonable alternative designs available to package their Products.

8 34. Plaintiff did not expect that the Product he purchased would contain  
9 nonfunctional slack-fill, especially given that nonfunctional slack-fill, as opposed to  
10 functional slack-fill, is prohibited by federal law and California law. Defendants'  
11 packaging and advertising of the Products violate California law against misbranding,  
12 which contains requirements that mirror the FDCA, as described herein.

13 35. Defendants' conduct threatens California consumers by using intentionally  
14 deceptive and misleading slack-filled containers. Defendants' conduct also threatens  
15 other companies, large and small, who "play by the rules." Defendants' conduct stifles  
16 competition and has a negative impact on the marketplace, and reduces consumer choice.

17 36. There is no practical reason for the nonfunctional slack-fill present in the  
18 Products other than to mislead consumers as to the actual volume of the Products being  
19 purchased by consumers while simultaneously providing Defendants with a financial  
20 windfall as a result of money saved from lower supply costs.

21 37. Plaintiff and the Class have suffered injury in fact and have lost money as a  
22 result of Defendants' false representations. Plaintiff purchased the Product under the false  
23 belief that the Product contained an amount of cereal product commensurate with the size  
24 of the box. Plaintiff relied on Defendants' packaging and would not have purchased the  
25 Product if he had known that the Product contained nonfunctional slack-fill.

26 38. Plaintiff is informed and believes, and upon such information and belief  
27 alleges, that Defendants are selling and will continue to sell the Nature's Path Organic  
28 cereal products using these blatantly deceptive and misleading slack-filled containers.

## **CLASS ALLEGATIONS**

39. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated (collectively, the “Class” or “Classes”). Plaintiff seeks to represent a Class consisting of:

**All California residents who made retail purchases of Nature’s Path Organic cereal products with non-functional slack-fill, as defined by California Business & Professions Code § 12606.2, during the applicable limitations period up to and including final judgment in this action.**

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

41. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

42. Numerosity: The Class is so numerous that their individual joinder herein is impracticable. On information and belief, the Class numbers in the hundreds of thousands or more throughout California.

43. Typicality: Plaintiff’s claims are typical of the claims of the Members of the Class as all Members of the Class are similarly affected by Defendants’ wrongful conduct, as detailed herein. Plaintiff’s claims are typical of those of the Class because Plaintiff, like all members of the Class, purchased Defendants’ Nature’s Path Organic cereal products in a typical consumer setting during the Class period and sustained damages from Defendants’ wrongful conduct. Plaintiff purchased Nature’s Path Organic cereal in a box that was falsely, misleadingly and deceptively packaged to indicate that it contained more product than it actually did. Defendants also sell the product in similar boxes of lesser or more net weight that suffer from the same misleading properties of the same proportion. Plaintiff’s claims rest on the same legal theories as those of the Class;

1 namely, proof that the Nature's Path Organic cereal came in a box which was only filled  
2 about 60%, with the rest being empty space; that the boxes in which the Products are  
3 marketed are oversized, giving the impression that they contain far more product than is  
4 actually in the box; that 40% of the product is not accessible due to the nonfunctional  
5 slack-fill created by the tube mechanism; and that these false, misleading and deceptive  
6 practices violate the CLRA, UCL, FAL and unjustly enriched Defendants. The effort that  
7 Plaintiff undertakes to pursue his own claim will significantly benefit the Class members  
8 because of the identical nature of the issues involved.

9 44. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
10 Members of the Class in that he has standing and no interests antagonistic to those of the  
11 other Members of the Class. Plaintiff has retained adequate and competent counsel who  
12 are experienced in consumer protection class actions and have no conflicts.

13 45. Superiority: A class action is superior to other available methods for fair and  
14 efficient adjudication of this controversy. The expense and burden of individual litigation  
15 would make it impracticable or impossible for the Class to prosecute their claims  
16 individually. The trial and litigation of Plaintiff's claims are manageable. Individual  
17 litigation of the legal and factual issues raised by Defendants' conduct would increase  
18 delay and expense to all parties and the court system. The class action device presents far  
19 fewer management difficulties and provides the benefits of a single, uniform  
20 adjudication, economies of scale, and comprehensive supervision by a single court.  
21 Defendants has acted on grounds generally applicable to the entire Class, thereby making  
22 final injunctive relief and/or corresponding declaratory relief appropriate with respect to  
23 the Class as a whole. The prosecution of separate actions by individual Class members  
24 would create the risk of inconsistent or varying adjudications with respect to individual  
25 Class members that would establish incompatible standards of conduct for Defendants.  
26 Absent a class action, Defendants will likely retain the benefits of their wrongdoing.  
27 Because of the small size of the individual Class members' claims, few, if any, Class  
28 members could afford to seek legal redress for the wrongs complained of herein. Absent

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

4 46. Common Questions Predominate: The questions of law and fact common to  
 5 the Class predominate over questions which may affect individual Class members.  
 6 Common questions of law and fact include, but are not limited to, the following:

- 7 i. Whether Defendants labeled, packaged, marketed, advertised and/or sold  
 8 Nature's Path Organic cereal products to Plaintiff, and those similarly  
 9 situated, using false, misleading and/or deceptive packaging and labeling;
- 10 ii. Whether Defendants' actions constitute violations of the CFPLA, California  
 11 Business & Professions Code § 12606.2;
- 12 iii. Whether Defendants omitted and/or misrepresented material facts in  
 13 connection with the labeling, packaging, marketing, advertising and/or sale of  
 14 their Nature's Path Organic cereal products;
- 15 iv. Whether Defendants' labeling, packaging, marketing, advertising and/or  
 16 selling of Nature's Path Organic cereal products constituted an unfair,  
 17 unlawful or fraudulent practice;
- 18 v. Whether Defendants' packaging of the Nature's Path Organic cereal products  
 19 constituted nonfunctional slack-fill;
- 20 vi. Whether, and to what extent, injunctive relief should be imposed on  
 21 Defendants to prevent such conduct in the future;
- 22 vii. Whether the Members of the Class have sustained damages as a result of  
 23 Defendants' wrongful conduct;
- 24 viii. The appropriate measure of damages and/or other relief; and
- 25 ix. Whether Defendants should be enjoined from continuing their unlawful  
 26 practices.

27 47. The class is readily definable, and prosecution of this action as a Class action  
 28 will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which

1 will be encountered in the management of this litigation which would preclude his  
2 maintenance of this matter as a Class action.

3 48. The prerequisites to maintaining a class action for injunctive relief or  
4 equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to  
5 act on grounds generally applicable to the Class, thereby making appropriate final  
6 injunctive or equitable relief with respect to the Class as a whole.

7 49. The prerequisites to maintaining a class action for injunctive relief or  
8 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to  
9 the Class predominate over any questions affecting only individual Members; and a class  
10 action is superior to other available methods for fairly and efficiently adjudicating the  
11 controversy.

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

16 51. Defendants' conduct is generally applicable to the Class as a whole and  
17 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As  
18 such, Defendants' systematic policies and practices make declaratory relief with respect  
19 to the Class as a whole appropriate.

## 20 **CAUSES OF ACTION**

### 21 **FIRST CAUSE OF ACTION:**

#### 22 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

#### 23 **Cal. Civ. Code § 1750, *et seq.***

24 52. Plaintiff and the Class members incorporate by reference and re-allege each  
25 and every allegation set forth above as though fully set forth herein.

26 53. Plaintiff brings this cause of action pursuant to Civil Code Section 1750, *et*  
27 *seq.*, the Consumers Legal Remedies Act ("CLRA"), on his own behalf and on behalf of  
28 all other persons similarly situated. Plaintiff seeks to represent a Class consisting of "All

1 California residents who made retail purchases of Nature’s Path Organic cereal products  
2 with non-functional slack-fill, as defined by California Business & Professions Code §  
3 12606.2, during the applicable limitations period up to and including final judgment in  
4 this action.”

5 54. The CLRA prohibits certain “unfair methods of competition and unfair or  
6 deceptive acts or practices” in connection with a sale of goods.

7 55. The cereal products that Plaintiff and other Class Members purchased from  
8 Defendants were “goods” within the meaning of Cal. Civ. Code § 1761(a).

9 56. Defendants’ actions, representations, and conduct have violated, and  
10 continue to violate the CLRA, because they extend to transactions that intended to result,  
11 or which have resulted in, the sale of goods to consumers.

12 57. Defendants violated California law because the cereal products (1) are  
13 packaged in containers made, formed or filled as to be misleading, (2) contain non-  
14 functional slack-fill, and (3) are intentionally packaged to prevent the consumer from  
15 being able to fully see their contents.

16 58. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),  
17 prohibits “Misrepresenting that goods or services have sponsorship, approval,  
18 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a  
19 person has a sponsorship, approval, status, affiliation, or connection which he or she does  
20 not have.” By engaging in the conduct set forth herein, Defendants violated and continue  
21 to violate Section 1770(a)(5) of the CLRA, because Defendants’ conduct constitutes  
22 unfair methods of competition and unfair or fraudulent acts or practices, in that it  
23 misrepresents that its cereal products have quantities they do not have.

24 59. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or  
25 services with intent not to sell them as advertised.” By engaging in the conduct set forth  
26 herein, Defendants violated and continue to violate Section 1770(a)(9), because  
27 Defendants’ conduct constitutes unfair methods of competition and unfair or fraudulent  
28



1 acts or practices, in that it advertises goods as containing more product than they in fact  
2 contain.

3 60. Defendants made material misrepresentations to fraudulently deceive  
4 Plaintiff and the Class by packaging the Products in boxes which contain 40%  
5 nonfunctional slack-fill.

6 61. Defendants fraudulently deceived Plaintiff and the Class by misrepresenting  
7 the Products as having characteristics and quantities which they do not have, e.g., that  
8 the Products are free of nonfunctional slack-fill when they are not. Additionally,  
9 Defendants packaged and advertised the Products with the intent not to sell them as  
10 advertised, by intentionally under-filling the Products' containers and instead replacing  
11 cereal product with nonfunctional slack-fill. In doing so, Defendants intentionally  
12 misrepresented and concealed material facts from Plaintiff and the Class.

13 62. Further, Defendants fraudulently deceived Plaintiff and the Class by  
14 representing that the Products were supplied in accordance with an accurate  
15 representation as to the quantity of cereal product contained therein when they were not.  
16 Defendants presented the physical dimensions of the Products' packaging to Plaintiff and  
17 the Class before the point of purchase and gave Plaintiff and the Class a reasonable  
18 expectation that the quantity of cereal product contained therein was commensurate with  
19 the size of packaging. In doing so, Defendants intentionally misrepresented and  
20 concealed material facts from Plaintiff and the Class. Said misrepresentations and  
21 concealment were done with the intention of deceiving Plaintiff and the Class and  
22 depriving them of their legal rights and money.

23 63. Defendants knew or should have known, through the exercise of reasonable  
24 care, that the Products' packaging was misleading. Defendants' actions as described  
25 herein were done with conscious disregard of Plaintiff's rights, and Defendants were  
26 wanton and malicious in their concealment of the same.

27 64. Defendants' Product packaging was a material factor in Plaintiff's and the  
28 Class's decision to purchase the Products. Based on Defendants' Product packaging,

1 Plaintiff and the Class reasonably believed that they were getting more cereal product  
2 than they actually received. Had they known the truth of the matter, Plaintiff and the  
3 Class would not have purchased the Products.

4 65. Plaintiff and the Class have suffered injury in fact and have lost money as a  
5 result of Defendants' unfair, unlawful, and fraudulent conduct. Specifically, Plaintiff paid  
6 for cereal product he never received. Plaintiff would not have purchased the Product had  
7 he known the boxes contained nonfunctional slack-fill.

8 66. Defendants' false and misleading packaging should be enjoined due to the  
9 false, misleading, and/or deceptive nature of Defendants' packaging. In addition,  
10 Defendants should be compelled to provide restitution and damages to consumers who  
11 paid for cereal products they never received due to Defendants' representation that it  
12 contained a commensurate amount of cereal product for a box of its size.

13 67. On or about January 5, 2018, prior to filing this action, Plaintiff sent a CLRA  
14 notice letter to Defendant Nature's Path Foods USA, Inc. which complies with California  
15 Civil Code 1782(a). Plaintiff sent Nature's Path Foods USA, Inc., individually and on  
16 behalf of the proposed Class, a letter via Certified Mail, advising Defendant that it is in  
17 violation of the CLRA and demanding that it cease and desist from such violations and  
18 make full restitution by refunding the monies received therefrom. A true and correct copy  
19 of the letter is attached hereto as Exhibit 1.

20 **SECOND CAUSE OF ACTION**

21 **Violation of California False Advertising Law,**  
22 **Business and Professions Code §17500, *et. seq.***

23 68. Plaintiff and the Class members incorporate by reference and re-allege each  
24 and every allegation set forth above as though fully set forth herein.

25 69. Plaintiff brings this cause of action pursuant to Business and Professions  
26 Code Section 17500, *et seq.*, on his own behalf and on behalf of all other persons similarly  
27 situated. Plaintiff seeks to represent a Class consisting of "All California residents who  
28 made retail purchases of Nature's Path Organic cereal products with non-functional

1 slack-fill, as defined by California Business & Professions Code § 12606.2, during the  
2 applicable limitations period up to and including final judgment in this action.”

3 70. California’s False Advertising Law, California Business and Professions  
4 Code Section 17500, *et seq.*, makes it “unlawful for any person to make or  
5 disseminate or cause to be made or disseminated before the public in this state, in any  
6 advertising device or in any other manner or means whatever, including over the internet,  
7 any statement, concerning personal property or services, professional or otherwise, or  
8 performance or disposition thereof, which is untrue or misleading and which is known,  
9 or which by the exercise of reasonable care should be known, to be untrue or misleading.”

10 71. Defendants controlled the packaging of the Products. They knew or should  
11 have known, through the exercise of reasonable care that their representations about the  
12 quantity of cereal product contained in the Products were untrue and misleading.  
13 Nevertheless, Defendants knowingly under-filled the amount of cereal product in each of  
14 the Products, by including 40% nonfunctional slack-fill as a means to mislead the public  
15 about the amount of cereal product contained in each package.

16 72. Defendants’ conduct of packaging the Products with 40% nonfunctional  
17 slack-fill instead of including more cereal product or smaller boxes is likely deceive the  
18 general public. The general public bases its purchasing decisions on the dimensions of a  
19 product’s packaging. Consumers generally do not look at any label information, such as  
20 net weight or serving disclosures. Instead, the general public chooses a larger box because  
21 it leads them to believe they are receiving a better value. Defendants’ actions in  
22 violation of Section 17500 were false and misleading such that the general public is and  
23 was likely to be deceived.

24 73. Pursuant to Business and Professions Code Sections 17535, Plaintiff and the  
25 Class seek an order of this Court enjoining Defendants from continuing to engage, use,  
26 or employ their practice of under-filling the Products’ containers. Likewise, Plaintiff and  
27 the Class seek an order requiring Defendants to disclose such misrepresentations, and  
28 additionally request an order awarding Plaintiff and the Class restitution of the money

1 wrongfully acquired by Defendants by means of responsibility attached to Defendants'  
2 failure to disclose the existence and significance of said misrepresentations in an amount  
3 to be determined at trial.

4 74. Plaintiff and the Class have suffered injury in fact and have lost money as  
5 a result of Defendants' false representations. Plaintiff purchased the Product in reliance  
6 upon the claims by Defendants that the Product was of the quantity represented by  
7 Defendants' packaging and advertising. Plaintiff would not have purchased the Product  
8 if he had known that the claims and advertising as described herein were false.

9 **THIRD CAUSE OF ACTION**

10 **Violations of California Unfair Competition Law,**

11 **Business and Professions Code § 17200, *et seq.***

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

14 76. Plaintiff brings this cause of action pursuant to Business and Professions  
15 Code Section 17200, *et seq.*, on his own behalf and on behalf of all other persons similarly  
16 situated. Plaintiff seeks to represent a Class consisting of "All California residents who  
17 made retail purchases of Nature's Path Organic cereal products with non-functional  
18 slack-fill, as defined by California Business & Professions Code § 12606.2, during the  
19 applicable limitations period up to and including final judgment in this action."

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

23 78. Defendants violated California law because the Nature's Path Organic  
24 cereal products are (1) packaged in containers made, formed or filled as to be misleading,  
25 (2) contain nonfunctional slack-fill, and (3) are intentionally packaged to prevent the  
26 consumer from being able to fully see their contents.

**A. “Unfair” Prong**

79. Under California’s False Advertising Law, Cal. Bus. & Prof. Code Section 17200, *et seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

80. Defendants’ action of leaving 40% nonfunctional slack-fill in their Products does not confer any benefit to consumers and instead causes injuries to consumers because they: (1) do not receive a quantity of cereal commensurate with their reasonable expectation, (2) do not receive a level of hunger satiety commensurate with their reasonable expectation, and (3) end up overpaying for the Products and receiving a quantity of cereal less than what they expected to receive.

81. Consumers cannot avoid any of the injuries caused by the 40% nonfunctional slack-fill in Defendants’ Products. Accordingly, the injuries caused by Defendants’ activity of including 40% nonfunctional slack-fill in the Products outweighs any benefits.

82. The California legislature maintains a declared policy of prohibiting nonfunctional slack-fill in consumer goods, as reflected in California Health and Safety Code Section 110100.

83. Defendants’ packaging of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendants knew or should have known of their unfair conduct. Moreover, there were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein. Defendants could have used packaging appropriate for the amount of cereal product contained within the Products.

84. All of the conduct alleged herein occurs and continues to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

85. Pursuant to Business and Professions Code Sections 17203, Plaintiff and the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of under-filling the Products' boxes. Likewise, Plaintiff and the Class seek an order requiring Defendants to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility attached to Defendants' failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

86. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' unfair conduct. Plaintiff paid an unwarranted premium for these products. Specifically, Plaintiff paid for 40% of cereal product he never received. Plaintiff would not have purchased the Product if he had known that the Product's packaging contained nonfunctional slack-fill.

#### **B. "Fraudulent" Prong**

87. California Business and Professions Code Section 17200, *et seq.*, considers conduct fraudulent and therefore prohibits said conduct if it is likely to deceive members of the public. *Bank of W v. Superior Court*, 2 Cal. 4th 1254, 553 (1992).

88. Defendants' conduct of packaging the Products with 40% nonfunctional slack-fill is likely to deceive members of the public.

89. Defendants' packaging of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendants knew or should have known of their unfair conduct. Moreover, there were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein. Defendants could have used packaging appropriate for the amount of cereal product contained within the Products.

90. All of the conduct alleged herein occurs and continues to occur in Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.



91. Pursuant to Business and Professions Code Sections 17203, Plaintiff and the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of under-filling the Products' containers. Likewise, Plaintiff and the Class seek an order requiring Defendants to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility attached to Defendants' failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

92. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' fraudulent conduct. Plaintiff paid an unwarranted premium for these products. Specifically, Plaintiff paid for 40% of cereal product he never received. Plaintiff would not have purchased the Product if he had known that the boxes contained nonfunctional slack-fill.

### C. "Unlawful" Prong

93. California Business and Professions Code Section 17200, *et seq.*, identifies violations of other laws as "unlawful practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

94. Defendants' conduct is "unlawful" because it violates the (1.) CFPLA, California Business & Professions Code § 12606.2; (2.) the CLRA; (3.) the FAL; and (4.) the UCL.

95. All of the conduct alleged herein occurred and continues to occur in Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

96. Pursuant to Business and Professions Code Sections 17203, Plaintiff and the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of under-filling the Products' boxes. Likewise, Plaintiff and the Class seek an order requiring Defendants to disclose such misrepresentations, and

1 additionally request an order awarding Plaintiff restitution of the money wrongfully  
2 acquired by Defendants by means of responsibility attached to Defendants' failure to  
3 disclose the existence and significance of said misrepresentations in an amount to be  
4 determined at trial.

5 97. Plaintiff and the Class have suffered injury in fact and have lost money as  
6 a result of Defendants' unlawful conduct. Plaintiff paid an unwarranted premium for  
7 these products. Specifically, Plaintiff paid for 40% of cereal product he never received.  
8 Plaintiff would not have purchased the Product if he had known that the Products  
9 contained nonfunctional slack-fill.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **Unjust Enrichment**

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

14 99. Plaintiff and the Class members conferred a benefit on Defendants by  
15 purchasing the Products.

16 100. Defendants have been unjustly enriched in retaining the revenues derived  
17 from Class members' purchases of the Products, which retention under these  
18 circumstances is unjust and inequitable because Defendants' Products contain  
19 approximately 40% non-functional slack fill in violation of California law and caused  
20 Plaintiffs and the Class to lose money as a result thereof.

21 101. Plaintiff and the Class members were injured as a direct and proximate result  
22 of Defendants' breach because they would not have purchased the Products if the true  
23 facts had been known. Because Defendants' retention of the non-gratuitous benefit  
24 conferred on them by Plaintiff and the Class members is unjust and inequitable,  
25 Defendants must pay restitution to Plaintiff and the Class members for their unjust  
26 enrichment, as ordered by the Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- (A) For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as class representatives, and designating Plaintiff's counsel as counsel for the Class;
- (B) For an Order declaring that Defendants' conduct violated the CLRA, Cal. Civ. Code § 1750, et seq.; and the California Unfair Competition Law ("UCL"), California Business and Professions Code §§ 17200, et. seq.
- (C) For injunctive relief as pleaded or as the Court may deem proper;
- (D) For an order enjoining Defendants' unlawful and deceptive acts and practices pursuant to California Business & Professions Code sections 17203, 17535 and California Civil Code section 1780;
- (E) For an order of restitution and all other forms of equitable monetary relief, as pleaded;
- (F) For compensatory damages in amounts to be determined by the Court and/or jury;
- (G) For actual damages under the CLRA;
- (H) For punitive damages;
- (I) For prejudgment interest on all amounts awarded;
- (J) For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit as pleaded pursuant to, *inter alia*, Cal. Civ. Code § 1780(e) and Cal. Civ. Proc. Code § 1021.5; and
- (K) For such other and further relief as the Court deems just and proper.

1 Date: March 23, 2018

Respectfully submitted,

4 By: /s/ Ronald A. Marron

Ronald A. Marron

**LAW OFFICES OF RONALD A MARRON**

RONALD A. MARRON

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MICHAEL T. HOUCHIN

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651 Arroyo Drive

San Diego, CA 92103

Tel: (619) 696-9006

Fax: (619) 564-6665

***Attorneys for Plaintiff and the Proposed Class***

**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Date: March 23, 2018

Respectfully submitted,

By: /s/ Ronald A. Marron  
Ronald A. Marron

**LAW OFFICES OF RONALD A MARRON**  
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Tel: (619) 696-9006  
Fax: (619) 564-6665  
*Attorneys for Plaintiff and the Proposed Class*

# **EXHIBIT 1**



LAW OFFICES OF  
**RONALD A. MARRON**

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive  
San Diego, California 92103

Tel: 619.696.9006  
Fax: 619.564.6665

January 5, 2018

**Via: Certified Mail, (receipt acknowledgment with signature requested)**

**Nature's Path Foods USA Inc.**  
Hirst Applegate Registered Agent Services, Inc.  
1720 Carey Ave Ste 400  
Cheyenne, WY 82001 USA

***RE: NOTICE: Violations of California's Consumer Protection Laws and Duty to Preserve Evidence***

Dear Sir or Madam:

**PLEASE TAKE NOTICE** that this law firm represents Chauncey Leroy White, a purchaser of Nature's Path Organic Cereal Products. All further communications intended for our client must be directed through this office. This notice and demand letter provides **Nature's Path Foods USA, Inc.** ("Nature's Path" or "YOU") with notice and demand for corrective action arising from YOUR violation of the California Consumer Legal Remedies Act, CAL. CIV. CODE §§ 1750 *et seq.* ("CLRA"). As relevant here, the CLRA prohibits unfair and unlawful methods of competition and unfair business practices. This includes packaging products in containers containing non-functional slack-fill or empty space. Mr. White provides notice of YOUR alleged CLRA violations on behalf of himself and all other similarly situated consumers.

YOU have packaged your products in containers containing non-functional slack-fill or empty space. This amounts to a clear, ongoing, and unequivocal violation of the CLRA. Accordingly, you are liable to my client and to the putative class for monetary damages and injunctive relief. This letter serves as notice and demand for corrective action by YOU pursuant to the California Civil Code § 1782. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

**1. Mr. White Purchased Your Product Containing Non-Functional Slack-Fill.**

Mr. White recently purchased a Nature's Path Organic Cereal Product ("Product") on December 8, 2017 that is packaged in an opaque container. Mr. White purchased the product from a Sprout's grocery store located in Irvine, California. Mr. White paid approximately \$4.29 for his purchase of the Product. Upon opening the package, my client learned that Product contained significant empty space or "slack-fill." Upon information and belief, Nature's Path Cereal Products are approximately forty percent (40%) empty, as shown below:



Upon information and belief, Nature's Path intentionally packed its cereal products in non-transparent containers with non-functional slack-fill, which constitutes an unfair and unlawful business practice that must be stopped. This conduct allows Nature's Path to increase its sales, charge a premium price for its cereal products, and capture market share from its competitors. The California Fair Packaging and Labeling Act ("CFPLA") prohibits the use of non-functional slack-fill packaging. *See* Cal. Bus. & Prof. Code § 12601, *et seq.*

YOUR material misrepresentations and omissions are deceiving customers into overpaying for Nature's Path Cereal products. YOU mislead consumers into believing that they are receiving full container of Product when in fact they are actually paying an inflated price as a direct and proximate result of YOUR deceptive packaging. Please be advised that the alleged unfair or deceptive acts or practices are in violation of the California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9): Advertising goods or services with intent not to sell them as advertised.

**2. Notice of Violations of the Consumers Legal Remedies Act and Demand for Corrective Action**

We respectfully request on behalf of our client and the class that, within thirty (30) days, YOU: (1) cease and desist from continued sale of all Nature's Path Products containing non-functional slack-fill; (2) initiate corrective action; and (3) refund the purchase price of all misrepresented Nature's Path Cereal Products purchased by the class, plus reimbursement for interest. Please comply with this demand within thirty (30) days from receipt of this letter.

YOUR failure to comply with this request within a reasonable time— or thirty (30) days for violations of the CLRA— may subject you to the following remedies, available for violations of the CLRA as well as other consumer warranty and consumer protection statutes, which will be requested in a class action complaint on behalf of our client and all other similarly situated consumers:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property;
- (4) Disgorgement of profits;
- (4) Punitive damages;
- (5) Court costs and attorneys' fees;
- (6) Costs of class action notice and administration; and
- (7) Any other relief which the court deems proper.

### **3. Duty to Preserve Evidence**

Lastly, this letter serves as notice to Nature's Path of its duty to preserve and retain all documents, tangible items, and electronically stored information that is potentially relevant to this matter. We remind you of your legal duty to preserve all records relevant to such litigation. *See, e.g., Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216-18 (S.D.N.Y 2003) ("Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents."). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and other records that are related to the marketing, advertising, and promotion of YOUR Nature's Path Cereal Products will be sought in the forthcoming discovery process. YOU must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies) to preserve all such relevant information.

YOU are directed to immediately initiate a litigation hold for potentially relevant Electronically Stored Information ("ESI"), documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. YOU are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs.

This firm expects that YOU will act swiftly to preserve data on office workstations and servers. YOU should also determine if any home or portable systems may contain potentially relevant data. To the extent that YOU have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, YOU must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks and the user's smart phone, voice mailbox or other forms of ESI storage.). Similarly, if YOU used online or browser-based email accounts or services (e.g., Gmail,

Yahoo Mail, AOL) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

Please confirm that you have taken the steps outlined in this letter to preserve ESI and tangible documents that are potentially relevant to this action. If YOU have not undertaken the steps outlined above, or have taken other actions, please describe what YOU have done to preserve potentially relevant evidence.

If you believe that any of the assertions in this letter are inaccurate or would like to discuss a confidential resolution of this matter, I urge you to retain counsel and contact the Law Offices of Ronald A. Marron immediately. Mr. Marron can be reached by telephone in the office at (619) 696-9006 or by email at [ron@consumersadvocates.com](mailto:ron@consumersadvocates.com). I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

**THE LAW OFFICES OF RONALD A. MARRON**

/s/ Ronald A. Marron

RONALD A. MARRON

*Attorney for Chauncey Leroy White and the Proposed Class*

7015 0920 0002 4021 8360

U.S. Postal Service <sup>TM</sup> CERTIFIED MAIL <sup>®</sup> RECEIPT Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> .	
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Return Receipt Fee (Endorsement Required)	
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<div style="text-align: right;">  </div>	
Sent To: Nature's Path Foods USA Inc. Street & Apt. No., or PO Box No. 1720 Carey Ave, Ste. 400 City, State, ZIP+4 Cheyenne, WY 82001	
PS Form 3800, July 2014 See Reverse for Instructions	