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13 **SUPERIOR COURT OF CALIFORNIA**  
14 **COUNTY OF ORANGE – CIVIL COMPLEX**

Judge Kim G. Dunning

15 **IRAJ DOWLATSHAHI;**  
16 **INDIVIDUALLY AND ON BEHALF**  
17 **OF ALL OTHERS SIMILARLY**  
18 **SITUATED,**

18 Plaintiff,

19 v.

21 **MCILHENNY COMPANY,**

22 Defendant.

**CLASS ACTION** 30-2017-00911222-CU-NP-CXC

**COMPLAINT FOR VIOLATION OF:**

- 1) **CONSUMERS LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750, ET SEQ.);**
- 2) **CALIFORNIA BUS. & PROF. §§ 17533.7 (CALIFORNIA FALSE “MADE IN U.S.A.” CLAIM);**
- 3) **CALIFORNIA BUS. & PROF. §§ 17200 ET SEQ.; AND**
- 4) **NEGLIGENT MISREPRESENTATION**

**JURY TRIAL DEMANDED**

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**03/24/2017** at 04:19:25 PM  
Clerk of the Superior Court  
By Georgina Ramirez, Deputy Clerk

1 INTRODUCTION

- 2 1. IRAJ DOWLATSHAHI (“Plaintiff”) brings this Class Action Complaint for damages,  
3 injunctive relief, and any other available legal or equitable remedies, resulting from the  
4 illegal actions of MCILHENNY COMPANY (“Defendant”) in unlawfully labeling  
5 Defendant’s consumable consumer packaged goods, such as condiments with the false  
6 designation and representation that the products are/were “MADE IN U.S.A.” The  
7 unlawfully labeled products are sold via Defendant’s website, catalogue, and in various  
8 stores throughout the United States.<sup>1</sup> Plaintiff alleges as follows upon personal  
9 knowledge as to himself and his own acts and experiences, and, as to all other matters,  
10 upon information and belief, including investigation conducted by his attorneys.
- 11 2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January 27,  
12 2011) 51 Cal.4th 310, 328-29:

13 **Simply stated: labels matter.** The marketing industry is based on  
14 the premise that labels matter, that consumers will choose one  
15 product over another similar product based on its label and various  
16 tangible and intangible qualities that may come to associate with a  
17 particular source...In particular, to some consumers, the “Made in  
18 U.S.A.” label matters. A range of motivations may fuel this  
19 preference, from the desire to support domestic jobs to beliefs  
20 about quality, to concerns about overseas environmental or labor  
21 conditions, to simple patriotism. The Legislature has recognized  
22 the materiality of this representation by specifically outlawing  
23 deceptive and fraudulent “Made in America” representations. (Cal.  
24 Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code §  
25 1770, subd. (a)(4) (prohibiting deceptive representations of  
26 geographic origin)). The object of section 17533.7 “is to protect  
27 consumers from being misled when they purchase products in the  
28 belief that they are advancing the interest of the United States and  
its industries and workers...”

- 3 The “MADE IN U.S.A.” claim (or some derivative thereof) is prominently printed on  
Defendant’s products, including the product purchased by Plaintiff. Contrary to

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26 <sup>1</sup> Plaintiff seeks class wide relief on behalf of all purchasers of any of Defendant’s products that  
27 are substantially similar to the consumable consumer packaged product purchased by Plaintiff  
28 and labeled as “MADE IN U.S.A.,” or some derivative thereof, that are foreign made or include  
foreign made components in violation of California law(s), not only the specific Tabasco Brand  
Pepper Sauce product (the “Product”) purchased by Plaintiff.

1 Defendant's representation and in violation of California law, Defendant's Class  
2 Products<sup>2</sup>, including the specific product purchased by Plaintiff, include foreign  
3 ingredients.

4 4. This nationwide sale and advertising of deceptively labeled products constitutes  
5 violations of: (1) California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code  
6 §§ 1750 et seq.; (2) California's False Advertising Law ("FAL"), Bus. & Prof. Code §  
7 17533.7; (3) California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200  
8 et seq.; and (4) negligent misrepresentation. This conduct caused Plaintiff, and others  
9 similarly situated, damages, and requires restitution and injunctive relief to remedy and  
10 prevent further harm.

11 5. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all  
12 agents, employees, officers, members, directors, heirs, successors, assigns, principals,  
13 trustees, sureties, subrogees, representatives and insurers of Defendant.

#### 14 JURISDICTION AND VENUE

15 6. Jurisdiction is proper pursuant to this Court's general jurisdiction.

16 7. The Court has jurisdiction over Plaintiff's claims for damages, restitution, injunctive  
17 relief, and declaratory relief arising from Defendant's unlawful business practices under  
18 California's CLRA, FAL, and UCL; as well as negligent misrepresentation.

19 8. This Court has personal jurisdiction over Defendant because Defendant conducts  
20 substantial business in the State of California and County of Orange, has sufficient  
21 minimum contacts with this State and County, and otherwise purposefully avails itself of  
22 the markets in this State and County through the promotion, sale, and marketing of its  
23 services in this State, to render the exercise of jurisdiction by this Court permissible  
24 under traditional notions of fair play and substantial justice.

25 9. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
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27 <sup>2</sup> Defendant's Class Products include, but are not limited to, all sizes, flavors, configurations  
28 and/or other variations of Tabasco pepper sauce in addition to each and every product found at:  
<http://countrystore.tabasco.com/All-Products/products/77/0/7>.

1 395(a) because Plaintiff resides within this county and many of the acts and transactions  
2 giving rise to this action occurred in this district because Defendant:

- 3 a. is authorized to conduct business in this district and has intentionally availed  
4 itself of the laws and markets within this county;  
5 b. does substantial business within this county; and is subject to personal  
6 jurisdiction in this county;  
7 c. and is subject to personal jurisdiction in this county.

8 **PARTIES**

9 10. Plaintiff is an individual residing in the City of Anaheim Hills, County of Orange, State  
10 of California.

11 11. Defendant is a corporation that is organized and exists under the laws of the State of  
12 Maine, with its principal place of business in Louisiana, and which is doing business in  
13 the State of California and within this county.

14 12. Defendant is a leading manufacturer of pepper-sauce and pepper products in the food  
15 processing industry that conducts business through internet sales and mail orders, and at  
16 numerous grocery stores within the United States. One of the products sold by Defendant  
17 is the Tabasco Brand Pepper Sauce (the "Product") purchased by Plaintiff.

18 **NATURE OF THE CASE**

19 13. At all times relevant, Defendant made, and continues to make, affirmative  
20 misrepresentations regarding its Class Products, including the Product purchased by  
21 Plaintiff, it manufactures, markets and sells. Specifically, Defendant packaged,  
22 advertised, marketed, promoted, and sold its Class Products as "MADE IN U.S.A.," or  
23 some derivative thereof.

24 14. However, although Defendant represents that its Class Products are "MADE IN U.S.A."  
25 (or some derivate thereof), Defendant's Class Products are wholly and/or substantially  
26 manufactured or produced with components that are manufactured, grown and/or sourced  
27 outside of the United States.  
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1 15. Each consumer, including Plaintiff, was exposed to virtually the same material  
2 misrepresentations, as the similar labels were prominently placed on all of the  
3 Defendant's Class Products that were sold, and are currently being sold, throughout the  
4 United States and within the State of California.

5 16. As a consequence of Defendant's unfair and deceptive practices, Plaintiff and other  
6 similarly situated consumers have purchased Defendant's Class Products under the false  
7 impression that the products were actually made in the U.S.A.

8 17. As a result of Defendant's misrepresentations, Plaintiff and other consumers similarly  
9 situated overpaid for the Defendant's Class Products, and/or purchased the Class  
10 Products under the false belief that the product they purchased was made in the U.S.A.  
11 Had Plaintiff and other consumers similarly situated been made aware that Defendant's  
12 Class Products were not actually made in the U.S.A., they would not have purchased the  
13 products.

14 18. As a result of Defendant's false and misleading statements and failure to disclose (or  
15 adequately disclose), as well as Defendant's other conduct described herein, Plaintiff and  
16 other similarly situated consumers purchased thousands, if not millions, of Defendant's  
17 Class Products and have suffered, and continue to suffer, injury in fact, including the loss  
18 of money and/or property.

19 19. Defendant's conduct as alleged herein violates several California laws, as more fully set  
20 forth herein.

21 20. This action seeks, among other things, equitable and injunctive relief; restitution of all  
22 amounts illegally retained by Defendant; and disgorgement of all ill-gotten profits from  
23 Defendant's wrongdoing alleged herein.

24 **FACTUAL ALLEGATIONS**

25 21. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
26 Complaint as though fully stated herein.  
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- 1 22. Defendant manufactures, markets and/or sells various consumable products that have  
2 been and are currently still represented as “MADE IN U.S.A.” Defendant makes these  
3 representations on the Class Products themselves and also on its website.
- 4 23. Contrary to the representation, Defendant’s Class Products are wholly and/or  
5 substantially manufactured or produced with components that are manufactured outside  
6 of the United States.
- 7 24. Based upon information and belief, the offending Product purchased by Plaintiff contains  
8 foreign ingredients not made in the U.S.A.
- 9 25. Based upon information and belief, the offending Product purchased by Plaintiff, and  
10 presumably all of Defendant’s Class Products that are substantially similar and contain  
11 foreign ingredients, are wholly or partially made of and/or manufactured with foreign  
12 materials, contrary to Defendant’s “MADE IN U.S.A.” (or similar words)  
13 representations.
- 14 26. Defendant markets, and continues to market, and represent to the general public via its  
15 Class Products’ labels and its website that the Class Products are “MADE IN U.S.A.” As  
16 such, Defendant has inaccurately stated the true country of origin of the offending  
17 products. Defendant possesses superior knowledge of the true facts that were not  
18 disclosed, thereby tolling the running of any applicable statute of limitations.
- 19 27. Most consumers possess limited knowledge of the likelihood that products, including the  
20 component products therein, claimed to be made in the United States are in fact  
21 manufactured in foreign countries. This is a material factor in many individuals’  
22 purchasing decisions, as they believe they are purchasing superior goods while  
23 supporting American companies and American jobs.
- 24 28. Consumers generally believe that “MADE IN U.S.A.” products are of higher quality than  
25 their foreign-manufactured counterparts.
- 26 29. On information and belief, Defendant charged excess monies for its Class Products in  
27 comparison to Defendant’s competitors during the entirety of the relevant four-year  
28 statutory time period, based on the false “MADE IN U.S.A.” designation (or some

1 derivative thereof). California laws are designed to protect consumers from such false  
2 representations and predatory conduct.

3 30. On or about August 27, 2015, Plaintiff purchased Defendant's Tabasco Brand Pepper  
4 Sauce at a Ralph's grocery store located in the City of Anaheim, California. At the time  
5 of Plaintiff's purchase, the description of the offending product described the sauce as  
6 "MADE IN U.S.A.," when the product actually was made and/or contained components  
7 made outside of the United States. Accordingly, Defendant is not entitled to lawfully  
8 make representations that the product was "MADE IN U.S.A."

9 31. In making the decision to purchase Defendant's Product, Plaintiff relied upon the  
10 advertising and/or other promotional materials prepared and approved by Defendant and  
11 its agents and disseminated through its Class Products' packaging containing the  
12 misrepresentations alleged herein. Had Plaintiff been made aware that the Product was  
13 not actually "MADE IN U.S.A.," he would not have purchased the Product. In other  
14 words, Plaintiff would not have purchased Defendant's Product, but for the "MADE IN  
15 U.S.A." representations on Defendant's Product's label.

16 32. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as  
17 a result of Defendant's false "MADE IN U.S.A." designation set forth on Defendant's  
18 Product and elsewhere.

19 33. In each case when Plaintiff and putative Class members purchased a Class Product, they  
20 relied upon Defendant's "MADE IN U.S.A." representation in their purchasing decision,  
21 which is typical of most U.S. consumers. Consequently, they were deceived as a result of  
22 Defendant's actions. Plaintiff believed at the time he purchased the Product that he was  
23 purchasing a superior quality product, supporting U.S. jobs and the U.S. economy, and  
24 also supporting ethical working conditions.

25 34. Component parts made in the U.S.A. are subject to strict regulatory requirements,  
26 including but not limited to environmental, labor, and safety standards. Foreign made  
27 component parts are not subject to the same U.S. standards and as a result can be  
28 potentially much more dangerous to consumers, especially when ingested like

1 Defendant's products. Further, foreign made component parts are also generally of lower  
2 quality than their U.S. made counterparts, and routinely less reliable and less durable than  
3 their U.S. made counterparts.

4 35. Consequently, Defendant's Class Products containing the foreign ingredients, including  
5 the Product purchased by Plaintiff, are of inferior quality, potentially more dangerous and  
6 less reliable, as Defendant falsely represented that these products are "MADE IN U.S.A."  
7 This results in lower overall customer satisfaction than if the products were truly "MADE  
8 IN U.S.A." and/or consisting of component parts made in the United States.

9 36. On information and belief, Defendant's products containing the foreign ingredients,  
10 including the Product purchased by Plaintiff, are not worth the purchase price paid by  
11 Plaintiff and putative Class members. The precise amount of damages will be proven at  
12 the time of trial,

13 37. Plaintiff and Class members were undoubtedly injured as a result of Defendant's false  
14 "MADE IN U.S.A." representations that are at issue in this matter.

#### 15 CLASS ACTION ALLEGATIONS

16 38. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
17 Complaint as though fully stated herein.

18 39. Plaintiff brings this action individually and on behalf of all others similarly situated  
19 against Defendant, pursuant to California Code of Civil Procedure Section 378.

20 40. Plaintiff represents, and is a member of the class, ("the Class") consisting of:

21 "All retail consumers who made purchases in California of any  
22 McIlhenny Company products, including but not limited to pepper  
23 sauces, condiments, jellies and giftware, over a period beginning  
24 four years prior to September 15, 2015 up to the date of Final  
25 Approval of the Class Settlement and Release Agreement.  
26 McIlhenny Company products includes but is not limited to products  
27 manufactured or sold by McIlhenny as well as products bearing its  
28 name that were manufactured for or under license from McIlhenny."



- 1 41. Excluded from the Class are Defendant and any of its officers, directors, and employees.
- 2 42. Plaintiff reserves the right to modify or amend the Class definition before the Court  
3 determines whether certification is appropriate.
- 4 43. The “Class Period” means four years prior to the filing of the Complaint in this action.
- 5 44. This action has been brought and may properly be maintained as a class action under the  
6 provisions of § 382 of the California Code of Civil Procedure because there is a well-  
7 defined community of interest in the litigation and the proposed Class is easily  
8 ascertainable.
- 9 45. **Ascertainability.** Plaintiff does not know the number of members in the Class, but  
10 Plaintiff currently believes that there are hundreds of thousands, if not more, members of  
11 the Class within the State of California. Because of the nature of Defendant’s products,  
12 Defendant and Defendant’s distributors must keep detailed and accurate records of  
13 distribution in order to accurately and effectively execute a recall if so ordered by the  
14 Food and Drug Administration or any other organization. Therefore, the members of the  
15 Class are ascertainable through Defendant’s records and/or Defendant’s agents’ records  
16 regarding retail and online sales, as well as through public notice. This matter should  
17 therefore be certified as a Class action to assist in the expeditious litigation of this matter.
- 18 46. **Numerosity.** The members of the Class are so numerous and geographically disbursed  
19 that joinder of all Class members is impractical, and the disposition of their claims in the  
20 Class action will provide substantial benefits both to the parties and to the court.
- 21 47. **Existence and Predominance of Common Questions of Law and Fact.** There is a  
22 well-defined community of interest in the questions of law and fact involved affecting the  
23 parties to be represented. Common questions of fact and law exist in this matter that  
24 predominate over questions that may affect individual Class members, including, but not  
25 limited to, the following:
- 26 a. Whether Defendant committed the wrongful conduct alleged herein;
- 27 b. Whether Defendant’s acts, transactions, or course of conduct constitute the  
28 violations of law alleged herein;

- 1 c. Whether Defendant, through its conduct, received money that, in equity and good  
2 conscience, belongs to Plaintiff and members of the Class;
- 3 d. Whether the members of the Class sustained and/or continue to sustain damages  
4 attributable to Defendant's conduct, and, if so, the proper measure and appropriate  
5 formula to be applied in determining such damages; and
- 6 e. Whether the members of the Class are entitled to injunctive and/or any other  
7 equitable relief

8 **48. Typicality.** As a person who purchased one or more of Defendant's products, that were  
9 advertised with a "MADE IN U.S.A." country of origin designation (or some derivative  
10 thereof), but contain foreign-made ingredients and/or composed of foreign-made  
11 component parts, Plaintiff is asserting claims that are typical of the Class. Plaintiff's  
12 claims involve the same violations of law by Defendant as other Class Members' claims.  
13 Plaintiff and members of the Class also sustained damages arising out of Defendant's  
14 common course of conduct complained herein.

15 **49. Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect  
16 the interests of other members of the Class in that Plaintiff has no interests antagonistic to  
17 any member of the Class. Further, Plaintiff has retained counsel experienced in handling  
18 class action claims and claims involving violations of the consumer laws, and specifically  
19 violations of the California Business and Professions Code.

20 **50. Superiority.** A class action is superior to all other available means for the fair and  
21 efficient adjudication of this controversy. Individualized litigation would create the  
22 danger of inconsistent and/or contradictory judgments arising from the same set of facts.  
23 Individualized litigation would also increase the delay and expense to all parties and  
24 court system and the issues raised by this action. The damages or other financial  
25 detriment suffered by individual Class members may be relatively small compared to the  
26 burden and expense that would be entailed by individual litigation of the claims against  
27 the Defendant. The injury suffered by each individual member of the proposed class is  
28 relatively small in comparison to the burden and expense of individual prosecution of the

1 complex and extensive litigation necessitated by Defendant's conduct. It would be  
2 virtually impossible for members of the proposed Class to individually redress effectively  
3 the wrongs to them. Even if the members of the proposed Class could afford such  
4 litigation, the court system could not. Individualized litigation increases the delay and  
5 expense to all parties, and to the court system, presented by the complex legal and factual  
6 issues of the case. By contrast, the class action device presents far fewer management  
7 difficulties, and provides the benefits of single adjudication, economy of scale, and  
8 comprehensive supervision by a single court.

9 51. Unless the Class is certified, Defendant will retain monies received as a result of  
10 Defendant's unlawful and deceptive conduct alleged herein. Unless a class-wide  
11 injunction is issued, Defendant will also likely continue to, or allow its resellers to,  
12 advertise, market, promote and package Defendant's Class Products in an unlawful and  
13 misleading manner, and members of the Class will continue to be misled, harmed, and  
14 denied their rights under California law.

15 52. Further, Defendant has acted or refused to act on grounds that are generally applicable to  
16 the class so that declaratory and injunctive relief is appropriate to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

19 **CAL. CIV. CODE SECTION 1750, ET SEQ.**

20 53. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
21 Complaint as though fully stated herein.

22 54. California Civil Code Section 1750 et seq., entitled the Consumers Legal Remedies Act  
23 (hereinafter "CLRA"), provides a list of "unfair or deceptive" practices in a "transaction"  
24 relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in  
25 promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter*  
26 *alia*, that its terms are to be:

27 Construed liberally and applied to promote its underlying  
28 purposes, which are to protect consumers against unfair and

1           deceptive business practices and to provide efficient and  
2           economical procedures to secure such protection.

3           55. Defendant's products constitute "goods" as defined pursuant to Civil Code Section  
4           1761(a).

5           56. Plaintiff, and the Class members, are each a "consumer" as defined pursuant to Civil  
6           Code Section 1761(d).

7           57. Each of Plaintiff's and the Class members' purchases of Defendant's products constituted  
8           a "Transaction" as defined pursuant to Civil Code Section 1761(e).

9           58. Civil Code Section 1770(a)(2), (4), (5), (7) and (9) provides that:

10           The following unfair methods of competition and unfair or  
11           deceptive acts or practices undertaken by any person in a  
12           transaction intended to result or which results in the sale or lease of  
13           goods or services to any consumer are unlawful:

14           (2) [m]isrepresenting the source, sponsorship, approval, or  
15           certification of goods or services;

16           (4) [u]sing deceptive representations or designations of geographic  
17           origin in connection with goods or services;

18           (5) [r]epresenting that goods or services have sponsorship,  
19           approval, characteristics, ingredients, uses, benefits, or quantities  
20           which they do not have or that a person has a sponsorship,  
21           approval, status, affiliation, or connection which he or she does not  
22           have;

23           (7) [r]epresenting that goods or services are of a particular  
24           standard, quality, or grade...; [and]

25           (9) [a]dvertising goods or services with intent not to sell them as  
26           advertised."

27           59. Defendant violated Civil Code Section 1770(a)(2), (4), (5), (7) and (9) by marketing and  
28           representing that its Class Products are "Made in USA" when they actually contain  
29           foreign-made or manufactured ingredients.

30           60. Pursuant to section 1782(d), by letter dated September 15, 2015, Plaintiff notified  
31           Defendant in writing by certified mail of the particular violations of section 1770 and  
32           demanded that Defendant rectify the problems associated with the actions detailed  
33           above and give notice to all affected consumers of Defendant's intent to so act.<sup>3</sup>  
34           Defendant failed to rectify or agree to rectify the problems associated with the actions

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38           <sup>3</sup> A true and correct copy of Plaintiff's letter dated September 15, 2015 is attached hereto as  
39           Exhibit A.

1 detailed above and give notice to all affected consumers within thirty days of the date  
2 of written notice pursuant to section 1782. Therefore, Plaintiff and the Class further  
3 seek actual, punitive, and statutory damages, as deemed appropriate.

4 61. On information and belief, Defendant's violations of the CLRA set forth herein were  
5 done with awareness of the fact that the conduct alleged was wrongful and was motivated  
6 solely for Defendant's self-interest, monetary gain and increased profit. Plaintiff further  
7 alleges that Defendant committed these acts knowing the harm that would result to  
8 Plaintiff and Defendant engaged in such unfair and deceptive conduct notwithstanding  
9 such knowledge.

10 62. Plaintiff further alleges that Defendant committed these acts knowing the harm that  
11 would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct  
12 notwithstanding such knowledge.

13 63. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as  
14 a result of Defendant's false "MADE IN U.S.A." representations set forth on Defendant's  
15 website and actual products.

16 64. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff and  
17 members of the Class are entitled to a declaration that Defendant violated the Consumer  
18 Legal Remedies Act.

19 65. Plaintiff, on behalf of himself and the Class demands judgment against Defendant  
20 for damages, restitution, punitive damages, statutory damages, pre- and post-judgment  
21 interest, attorneys' fees, injunctive and declaratory relief prohibiting such conduct in the  
22 future, costs incurred in bringing this action, and any other relief as this Court deems just  
23 and proper.

24 66. Pursuant to section 1780(e) of the California Civil Code, Plaintiff and the Class make  
25 claims for damages and attorneys' fees and costs.

26 67. In prosecuting this action for the enforcement of important rights affecting the public  
27 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing  
28 plaintiff in class action cases such as this matter.

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**SECOND CAUSE OF ACTION**

**VIOLATION OF BUSINESS & PROFESSIONS CODE**

**BUS. & PROF. CODE, SECTION 17533.7**

68. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

69. Business & Professions Code § 17533.7 provides:

It is unlawful for any person, firm, corporation or association to sell or offer for sale in this State any merchandise on which merchandise or on its container there appears the words "Made in U.S.A.," "Made in America," "U.S.A.," or similar words when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

70. Defendant violated Bus. & Prof. Code § 17533.7 by selling and offering to sell products in the State of California with the "MADE IN U.S.A." country of origin designation as fully set forth herein. The Class Products at issue in this matter are wholly manufactured outside of the United States and/or contain ingredients that are manufactured outside of the United States in violation of California law.

71. On information and belief, Defendant's violations of Bus. & Prof. Code § 17533.7 as set forth herein were done with awareness of the fact that the conduct alleged was wrongful and was motivated solely for Defendant's self-interest, monetary gain and increased profit. Plaintiff further alleges that Defendant committed these acts knowing the harm that would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct notwithstanding such knowledge.

72. As a direct and proximate result of Defendant's violations of Bus. & Prof. Code § 17533.7, Plaintiff and the Class are entitled to restitution of excess monies paid to Defendant by Plaintiff and the Class relating to the false "MADE IN U.S.A." representations set forth on the Defendant's website and on Defendant's actual products' labels and/or packaging.

1 73. In prosecuting this action for the enforcement of important rights affecting the public  
2 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing  
3 plaintiff in class action cases such as this matter.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE**

6 **BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

7 74. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9 75. Plaintiff and Defendant are each "person[s]" as defined by California Business &  
10 Professions Code § 17201. California Business & Professions Code § 17204 authorizes a  
11 private right of action on both an individual and representative basis.

12 76. "Unfair competition" is defined by Business and Professions Code Section § 17200 as  
13 encompassing several types of business "wrongs," four of which are at issue here: (1) an  
14 "unlawful" business act or practice, (2) an "unfair" business act or practice, (3) a  
15 "fraudulent" business act or practice, and (4) "unfair, deceptive, untrue or misleading  
16 advertising." The definitions in § 17200 are drafted in the disjunctive, meaning that each  
17 of these "wrongs" operates independently from the others.

18 77. By and through Defendant's conduct alleged in further detail above and herein,  
19 Defendant engaged in conduct which constitutes unlawful, unfair, and/or fraudulent  
20 business practices prohibited by Bus. & Prof. Code § 17200 et seq.

21 **A. "Unlawful" Prong**

22 78. Beginning at a date currently unknown through the time of this Complaint, Defendant has  
23 committed acts of unfair competition, including those described above, by engaging in a  
24 pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code §  
25 17200 et seq. by manufacturing, distributing, and/or marketing Defendant's Class  
26 Products with a false country of origin designation, in violation of California's CLRA,  
27 Civil Code § 1750, et seq., California's False Made In the USA statute, Bus. & Prof.  
28 Code §§ 17533.7 by falsely representing that the products referenced herein are "MADE

1 IN U.S.A.” when Defendant’s products are in fact foreign-made and/or composed of  
2 component parts manufactured and/or grown outside of the United States.

3 **B. “Unfair” Prong**

4 79. Beginning at a date currently unknown and continuing up through the time of this  
5 Complaint, Defendant has committed acts of unfair competition that are prohibited by  
6 Bus. & Prof. Code section 17200 et seq. Defendant engaged in a pattern of “unfair”  
7 business practices that violate the wording and intent of the statutes by engaging conduct  
8 and practices that threaten an incipient violation of law/s or violate the policy or spirit of  
9 law/s by manufacturing, distributing, and/or marketing Defendant’s products with a false  
10 country of origin designation, in violation of California’s CLRA, Civil Code § 1750, et  
11 seq. and California’s False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by  
12 falsely representing that the products referenced herein are “MADE IN U.S.A.” when  
13 Defendant’s products are in fact foreign-made and/or composed of component parts  
14 manufactured and/or grown outside of the United States.

15 80. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate  
16 the wording and intent of the abovementioned statute/s by engaging in practices that are  
17 immoral, unethical, oppressive or unscrupulous, the utility of such conduct, if any, being  
18 far outweighed by the harm done to consumers and against public policy by  
19 manufacturing, distributing, and/or marketing Defendant’s Class Products with a false  
20 country of origin designation, in violation of California’s CLRA, Civil Code § 1750, et  
21 seq. and California’s False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by  
22 falsely representing that the products referenced herein are “MADE IN U.S.A.” when  
23 Defendant’s products are in fact foreign-made and/or composed of component parts  
24 manufactured and/or grown outside of the United States.

25 81. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate  
26 the wording and intent of the abovementioned statute/s by engaging in practices,  
27 including manufacturing, distributing, marketing, and/or advertising Defendant’s  
28 products with a false country of origin designation, wherein: (1) the injury to the



1 consumer was substantial; (2) the injury was not outweighed by any countervailing  
2 benefits to consumers or competition; and (3) the injury was not of the kind that  
3 consumers themselves could not have reasonably avoided.

4 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

5 82. Defendant’s advertising is unfair, deceptive, untrue or misleading in that consumers are  
6 led to believe that Defendant’s Class Products are made in the USA, when Defendant’s  
7 products are in fact foreign-made and/or composed of component parts manufactured  
8 and/or grown outside of the United States.

9 83. Plaintiff, a reasonable consumer, and the public would likely be, and, in fact were,  
10 deceived and misled by Defendant’s advertising as they would, and did, interpret the  
11 representation in accord with its ordinary usage, that the products are actually made in the  
12 USA.

13 84. Defendant’s unlawful, unfair, and fraudulent business practices and unfair, deceptive,  
14 untrue or misleading advertising presents a continuing threat to the public in that  
15 Defendant continues to engage in unlawful conduct resulting in harm to consumers.

16 85. Defendant engaged in these unlawful, unfair, and fraudulent business practices motivated  
17 solely by Defendant’s self-interest with the primary purpose of collecting unlawful and  
18 unauthorized monies from Plaintiff and all others similarly situated; thereby unjustly  
19 enriching Defendant.

20 86. Such acts and omissions by Defendant are unlawful and/or unfair and/or fraudulent and  
21 constitute a violation of Business & Professions Code §§ 17200, et seq. Plaintiff reserves  
22 the right to identify additional violations by Defendant as may be established through  
23 discovery.

24 87. As a direct and proximate result of the aforementioned acts and representations described  
25 above and herein, Defendant received and continues to receive unearned commercial  
26 benefits at the expense of their competitors and the public.

27 88. As a direct and proximate result of Defendant’s unlawful, unfair and fraudulent conduct  
28 described herein, Defendant has been and will continue to be unjustly enriched by the

1 receipt of ill-gotten gains from customers, including Plaintiff, who unwittingly provided  
2 money to Defendant based on Defendant's representations.

3 89. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as  
4 a result of Defendant's false representations set forth on the Defendant's Products.

5 90. In prosecuting this action for the enforcement of important rights affecting the public  
6 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing  
7 plaintiff in class action cases such as this matter.

8 **FOURTH CAUSE OF ACTION FOR**  
9 **NEGLIGENT MISREPRESENTATION**

10 91. Plaintiff repeats, re-alleges and incorporates by reference the above allegations as if fully  
11 stated herein.

12 92. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this  
13 action, and as set forth above, Defendant represented to the public, including Plaintiff, by  
14 packaging and other means, that Defendant's Class Products are made in the USA, when  
15 Defendant's products are in fact foreign-made and/or composed of component parts  
16 manufactured and/or grown outside of the United States.

17 93. Defendant made the representations herein alleged with the intention of inducing the  
18 public, including Plaintiff and putative class members, to purchase Defendant's Class  
19 Products.

20 94. Plaintiff and other similarly situated persons in California saw, believed, and relied upon  
21 Defendant's advertising representations and, in reliance on them, purchased the Class  
22 Products, as described herein.

23 95. At all times relevant, Defendant made the misrepresentations herein alleged when  
24 Defendant should have known these representations to be untrue, and Defendant had no  
25 reasonable basis for believing the representations to be true.

26 96. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other  
27 consumers similarly situated were induced to purchase, purchase more of, or pay more  
28

1 for Defendant's Class Products, due to the unlawful acts of Defendant, in an amount to be  
2 determined at trial, during the Class Period.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and the Class  
5 members the following relief against Defendant:

- 6 • That the Court determine that this action may be maintained as a Class Action by  
7 certifying this case as a Class Action;
- 8 • That the Court appoint Plaintiff to serve as the Class representative in this matter;
- 9 • That the Court appoint Plaintiff's Counsel as Class Counsel in this matter;
- 10 • That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate  
11 the consumer protection statutory claims asserted herein;
- 12 • That Plaintiff and each of the other members of the Class recover the amounts by  
13 which Defendant has been unjustly enriched;
- 14 • That Defendant be enjoined from continuing the wrongful conduct alleged herein and  
15 required to comply with all applicable laws;
- 16 • That Plaintiff and each of the other members of the class recover their costs of suit,  
17 including reasonable attorneys' fees and expenses as provided by law; and
- 18 • That Plaintiff and the members of the Class be granted any other relief the Court may  
19 deem just and proper.

20 **TRIAL BY JURY**

21 97. Pursuant to the Seventh Amendment to the Constitution of the United States of America,  
22 Plaintiff is entitled, and demands, a trial by jury.

23  
24 Dated: March 24, 2017

Respectfully submitted,

25 **KAZEROUNI LAW GROUP, APC**

26  
27 By: 

ABBAS KAZEROUNIAN, ESQ.

MONA AMINI, ESQ.

ATTORNEYS FOR PLAINTIFF