

1 PACIFIC TRIAL ATTORNEYS  
A Professional Corporation  
2 Scott J. Ferrell, Bar No. 202091  
sferrell@pacifictrialattorneys.com  
3 4100 Newport Place Drive, Ste. 800  
Newport Beach, CA 92660  
4 Tel: (949) 706-6464  
Fax: (949) 706-6469

5 Attorneys for Plaintiff  
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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 JAMES REIDER, individually and on  
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 IMMACULATE BAKING CO., a  
15 Delaware corporation; and DOES 1  
through 10, inclusive,

16 Defendants.  
17

Case No. 8:18-cv-1085

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMAND**

## INTRODUCTION

1  
2 1. The average consumer spends a mere 13 seconds making an in-store  
3 purchasing decision, or between 10 to 19 seconds for an online purchase.<sup>1</sup> That  
4 decision is heavily dependent on a product's packaging, and particularly the package  
5 dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even  
6 bother to look at any label information, no less the net weight . . . . Faced with a large  
7 box and a smaller box, both with the same amount of product inside . . . consumers are  
8 apt to choose the larger box because they think it's a better value."<sup>2</sup> This lawsuit  
9 charges Defendant with unlawfully and unfairly packaging its Cake Scratch Mix  
10 products in opaque containers that contain more than 50% empty space. Most  
11 consumers purchased the products without knowing that the containers were  
12 substantially empty.

13 2. James Reider ("Plaintiff"), individually and on behalf of all others  
14 similarly situated, brings this Class Action Complaint for damages, injunctive relief,  
15 and any other available legal or equitable remedies, resulting from the unlawful actions  
16 of Immaculate Baking Co. ("Defendant") with respect to the packaging of its Cake  
17 Scratch Mix products. Plaintiff alleges as follows upon personal knowledge as to  
18 himself and his own acts and experiences, and, as to all other matters, upon information  
19 and belief, including investigation conducted by his attorneys.

20 3. Plaintiff purchased Defendant's Yellow Cake Scratch Mix product in  
21 September 2017 in Fountain Valley, California. He purchased the product for the dual  
22 purpose of enjoying its contents and determining whether the container was lawfully  
23

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24 <sup>1</sup> [http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html)  
25 [20-second-window.html](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html) (citing the Ehrenberg-Bass Institute of Marketing Science's  
26 report "Shopping Takes Only Seconds...In-Store and Online").

27 <sup>2</sup>[http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/pro-](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm)  
28 [duct-packaging/overview/product-packaging-ov.htm](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm) (quoting Brian Wansink,  
professor and director of the Cornell Food and Brand Lab, who studies shopping  
behavior of consumers).

1 filled. Plaintiff was surprised when he opened the product that the container had **more**  
2 **than 50% empty space**, or slack-fill.

3 4. Defendant's conduct violates consumer protection and labeling laws.

#### 4 **JURISDICTION AND VENUE**

5 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,  
6 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a  
7 member of the putative class is a citizen of a different state than Defendant, and the  
8 amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and  
9 costs. See 28 U.S.C. § 1332(d)(2).

10 6. The Court has jurisdiction over the state law claims because they form part  
11 of the same case or controversy under Article III of the United States Constitution.

12 7. The Court has personal jurisdiction over Defendant because its Cake  
13 Scratch Mix products are advertised, marketed, distributed and sold through the State of  
14 California; Defendant engaged in the wrongdoing alleged in this Complaint throughout  
15 the United States, including in the State of California; Defendant is authorized to do  
16 business in the State of California; and Defendant has sufficient minimum contacts with  
17 the State of California, rendering the exercise of jurisdiction by the Court permissible  
18 under traditional notions of fair play and substantial justice. Moreover, Defendant is  
19 engaged in substantial activity with the State of California.

20 8. Venue is proper in the United States District Court for the Southern  
21 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the  
22 events giving rise to the claims occurred within this judicial district, Defendant has  
23 marketed and sold the Cake Scratch Mix products at issue in this action in this judicial  
24 district, and it conducts business within this judicial district.

#### 25 **PARTIES**

26 9. Plaintiff James Reider is a citizen of the State of California and resides in  
27 Fountain Valley, California. Plaintiff purchased Defendant's Yellow Cake Mix product  
28 for personal consumption during the last four years in Fountain Valley, California.



1 the contents and should facilitate value comparisons.” (California Business &  
2 Professions Code § 12601.)

3 14. In this context, the CFPLA provides: “No food containers shall be made,  
4 formed, or filled as to be misleading.” (California Business & Professions Code §  
5 12606.2(b).) “A container that does not allow the consumer to fully view its contents  
6 shall be considered to be filled as to be misleading if it contains nonfunctional slack  
7 fill.” (California Business & Professions Code § 12606.2(c).) Section 12606.2(c)  
8 defines “slack fill” as “the difference between the actual capacity of a container and the  
9 volume of product contained therein.” Similarly, section 12606.2(c) defines  
10 “nonfunctional slack fill” as “the empty space in a package that is filled to substantially  
11 less than its capacity for reasons other than any one or more of the following:

12 (1) Protection of the contents of the package.

13 (2) The requirements of machines used for enclosing the contents of the package.

14 (3) Unavoidable product settling during shipping and handling.

15 (4) The need for the package to perform a specific function, such as where packaging  
16 plays a role in the preparation or consumption of a food, if that function is inherent to  
17 the nature of the food and is clearly communicated to consumers.

18 (5) The fact that the product consists of a food packaged in a reusable container where  
19 the container is part of the presentation of the food and has value that is both significant  
20 in proportion to the value of the product and independent of its function to hold the  
21 food, such as a gift product consisting of a food or foods combined with a container that  
22 is intended for further use after the food is consumed or durable commemorative or  
23 promotional packages.

24 (6) Inability to increase the level of fill or to further reduce the size of the package, such  
25 as where some minimum package size is necessary to accommodate required food  
26 labeling exclusive of any vignettes or other nonmandatory designs or label information,  
27 discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.”  
28 (California Business & Professions Code § 12606.2(c)(1)-(6).)

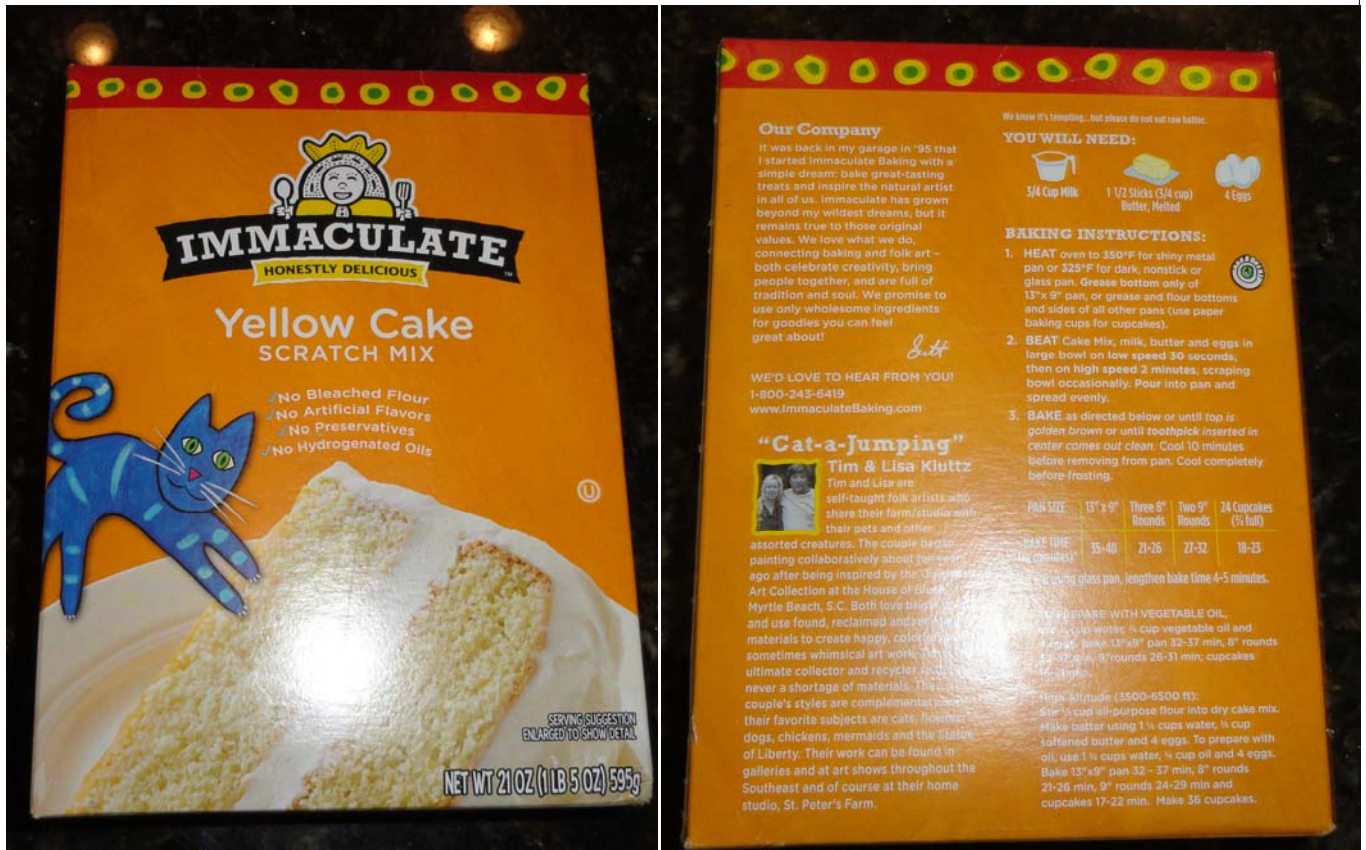
1 15. None of the above safe-harbor provisions applies to the Cake Scratch Mix  
2 products. Defendant intentionally incorporated non-functional slack-fill in its  
3 packaging of the Cake Scratch Mix products. As such, the packaging is per se illegal,  
4 and reliance upon the packaging by absent class members is presumed.

5 **Defendant's Products Contain Non Functional Slack-Fill**

6 16. Defendant's Cake Scratch Mix products are, and at all relevant times were,  
7 sold in non-transparent containers. The containers have significant slack-fill, as  
8 described below.

9 17. More than 50% of the interior of the Cake Scratch Mix product containers,  
10 which concern the Yellow Cake Scratch Mix product purchased by Plaintiff, is  
11 comprised of empty space, or non-functional slack fill.





18. The containers (1) do not allow consumers to fully view its contents; and (2) contains nonfunctional slack fill. As such, the packaging is per se illegal.

19. Defendant is selling and will continue to sell the Cake Scratch Mix products using these illegal slack-filled containers.

20. Defendant's packaging and advertising of the Cake Scratch Mix products violate the CFPLA, as set forth above.

21. Class Members did not know, and had no reason to know, that the Cake Scratch Mix products illegally contained non-functional slack-fill.

22. Defendant's product packaging is presumed to be a material factor in absent Class Members' decisions to purchase the Cake Scratch Mix products. Based on Defendant's illegal packaging, there is a presumption that product packaging, reasonable Class Members expected to receive more Cake Scratch Mix product than was actually being sold.

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1 23. There is no practical reason for the non-functional slack-fill used to  
2 package the Cake Scratch Mix products.

3 24. As a result of Defendant's illegal packaging, thousands of consumers  
4 purchased the Products and have been damaged by Defendant's illegal conduct.

5 **CLASS ACTION ALLEGATIONS**

6 25. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
7 Federal Rules of Civil Procedure on behalf of herself and the following class  
8 (collectively, the "Class" or "Classes"), defined as:

9 **All California residents who made retail purchases of Defendant's Cake**  
10 **Scratch Mix products with non-functional slack-fill, as defined by California**  
11 **Business & Professions Code § 12606.2, during the applicable limitations**  
12 **period up to and including final judgment in this action.**

13 26. The proposed Class excludes current and former officers and directors of  
14 Defendant, Members of the immediate families of the officers and directors of  
15 Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity  
16 in which it has or has had a controlling interest, and the judicial officer to whom this  
17 lawsuit is assigned.

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

20 28. The Cake Scratch Mix products sold by Defendant suffer from illegal  
21 product bottling, labeling and nonfunctional slack-fill.

22 29. Numerosity: This action has been brought and may properly be maintained  
23 as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal  
24 Rules of Civil Procedure. While the exact number and identities of other Class  
25 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that  
26 there are hundreds of thousands of Members in the Class. Based on sales of the Cake  
27 Scratch Mix products it is estimated that the Class is composed of more than 10,000  
28 persons. Furthermore, even if subclasses need to be created for these consumers, it is



1 estimated that each subclass would have thousands of Members. The Members of the  
2 Class are so numerous that joinder of all Members is impracticable and the disposition  
3 of their claims in a class action rather than in individual actions will benefit the parties  
4 and the courts.

5 30. Typicality: Plaintiff's claims are typical of the claims of the Members of  
6 the Class as all Members of the Class are similarly affected by Defendant's wrongful  
7 conduct, as detailed herein.

8 31. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
9 Members of the Class in that he has no interests antagonistic to those of the other  
10 Members of the Class. Plaintiff has retained experienced and competent counsel.

11 32. Superiority: A class action is superior to other available methods for the  
12 fair and efficient adjudication of this controversy. Since the damages sustained by  
13 individual Class Members may be relatively small, the expense and burden of  
14 individual litigation makes it impracticable for the Members of the Class to individually  
15 seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of  
16 this controversy through a class action will avoid the potentially inconsistent and  
17 conflicting adjudications of the claims asserted herein. There will be no difficulty in the  
18 management of this action as a class action. If Class treatment of these claims were not  
19 available, Defendant would likely unfairly receive thousands of dollars or more in  
20 improper revenue.

21 33. Common Questions Predominate: Common questions of law and fact exist  
22 as to all Members of the Class and predominate over any questions solely affecting  
23 individual Members of the Class. Among the common questions of law and fact  
24 applicable to the Class are:

25 i. Whether Defendant labeled, packaged, marketed, advertised and/or  
26 sold Cake Scratch Mix products using illegal packaging and labeling;

27 ii. Whether Defendant's actions constitute violations of the CFPLA,  
28 California Business & Professions Code § 12606.2;

1           iii. Whether Defendant omitted and/or represented that its Cake Scratch  
2 Mix products have quantities that they do not have;

3           iv. Whether Defendant's labeling, packaging, marketing, advertising  
4 and/or selling of Cake Scratch Mix products constituted an unfair or unlawful  
5 practice;

6           v. Whether Defendant's packaging of the Cake Scratch Mix products  
7 constituted nonfunctional slack-fill;

8           vi. Whether, and to what extent, injunctive relief should be imposed on  
9 Defendant to prevent such conduct in the future;

10           vii. Whether the Members of the Class have sustained damages as a  
11 result of Defendant's wrongful conduct;

12           viii. The appropriate measure of damages and/or other relief; and

13           ix. Whether Defendant should be enjoined from continuing its unlawful  
14 practices.

15           34. The class is readily definable, and prosecution of this action as a Class  
16 action will reduce the possibility of repetitious litigation. Plaintiff knows of no  
17 difficulty which will be encountered in the management of this litigation which would  
18 preclude his maintenance of this matter as a Class action.

19           35. The prerequisites to maintaining a class action for injunctive relief or  
20 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to  
21 act on grounds generally applicable to the Class, thereby making appropriate final  
22 injunctive or equitable relief with respect to the Class as a whole.

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

28 ///

1 37. The prosecution of separate actions by Members of the Class would create  
2 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
3 Defendant. Additionally, individual actions may be dispositive of the interest of all  
4 Members of the Class, although certain Class Members are not parties to such actions.

5 38. Defendant's conduct is generally applicable to the Class as a whole and  
6 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As  
7 such, Defendant's systematic policies and practices make declaratory relief with respect  
8 to the Class as a whole appropriate.

9 **CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

11 **Cal. Civ. Code § 1750, et seq.**

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

14 40. Plaintiff brings this claim individually and on behalf of the Class for  
15 Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal.  
16 Civ. Code 1761(d).

17 41. Plaintiff and the Class Members are consumers who purchased the Cake  
18 Scratch Mix products for personal, family or household purposes. Plaintiff and the  
19 Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code  
20 § 1761(d).

21 42. The Cake Scratch Mix products that Plaintiff and other Class Members  
22 purchased from Defendant were "goods" within the meaning of Cal. Civ. Code §  
23 1761(a).

24 43. Defendant's actions, representations, and conduct have violated, and  
25 continue to violate the CLRA, because they extend to transactions that intended to  
26 result, or which have resulted in, the sale of goods to consumers.

27 44. Defendant violated California law because the Cake Scratch Mix products  
28 are packaged in containers made, formed or filled to contain non-functional slack-fill.

1 45. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),  
2 prohibits “Representing that goods or services have sponsorship, approval,  
3 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a  
4 person has a sponsorship, approval, status, affiliation, or connection which he or she  
5 does not have.” By engaging in the conduct set forth herein, Defendant violated and  
6 continues to violate Section 1770(a)(5) of the CLRA, because Defendant’s conduct  
7 constitutes illegal and unlawful competition.

8 46. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or  
9 services with intent not to sell them as advertised.” By engaging in the conduct set  
10 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because  
11 Defendant’s conduct constitutes illegal and unfair methods of competition.

12 47. Given the materiality of Defendant’s misrepresentations, absent Class  
13 Members are entitled to a presumption of reliance.

14 48. Plaintiff and the Class suffered injuries caused by Defendant because the  
15 Cake Scratch Mix product did not have the qualities as promised and were unlawfully  
16 packaged.

17 49. On or about September 6, 2017, prior to filing this action, Plaintiff sent a  
18 CLRA notice letter to Defendant which complies with California Civil Code 1782(a).  
19 Plaintiff sent Immaculate Baking Co., individually and on behalf of the proposed Class,  
20 a letter via Certified Mail, advising Defendant that it is in violation of the CLRA and  
21 demanding that it cease and desist from such violations and make full restitution by  
22 refunding the monies received therefrom. A true and correct copy of the letter is  
23 attached hereto as Exhibit 1.

24 50. Wherefore, Plaintiff seeks injunctive relief for these violations of the  
25 CLRA.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as  
28 follows:

1 (A) For an Order certifying the Class pursuant to Federal Rule of Civil  
2 Procedure 23, appointing Plaintiff as class representatives, and designating  
3 Plaintiff's counsel as counsel for the Class;

4 (B) For an Order declaring that Defendant's conduct violated the CLRA,  
5 Cal. Civ. Code § 1750, *et seq.*;

6 (C) For injunctive relief as pleaded or as the Court may deem proper;

7 (D) For an order of restitution and all other forms of equitable monetary  
8 relief, as pleaded;

9 (E) For compensatory damages in amounts to be determined by the Court  
10 and/or jury;

11 (F) For punitive damages;

12 (G) For prejudgment interest on all amounts awarded;

13 (H) For an Order awarding Plaintiff and the Class their reasonable  
14 attorneys' fees and expenses and costs of suit as pleaded pursuant to, *inter alia*,  
15 Cal. Civ. Code § 1780(e) and Cal. Civ. Proc. Code § 1021.5; and

16 (I) For such other and further relief as the Court deems just and proper.  
17

18 Date: June 19, 2018

Respectfully submitted,

19 PACIFIC TRIAL ATTORNEYS  
20 A Professional Corporation

21 By: /s/Scott J. Ferrell  
22 Scott J. Ferrell  
23 Attorneys for Plaintiff  
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**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: June 19, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS  
A Professional Corporation

By: /s/Scott J. Ferrell  
Scott J. Ferrell  
Attorneys for Plaintiff

# EXHIBIT 1



September 6, 2017

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Immaculate Baking Co.  
9010 Plymouth Avenue North  
Golden Valley, MN 55427  
**Attention: Legal Department**

***Re: Violations of California Civil Code § 1782 et seq.***

Ladies and Gentlemen:

This law firm has been retained to prosecute a class action lawsuit against you for violation of the Consumers Legal Remedies Act, California Civil 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.

As shown below, 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 substantial monetary damages. This letter serves as notice and demand for corrective action within thirty (30) days as further described below.

**1. My Client Purchased A Product Containing Non-Functional Slack-Fill.**

My client recently purchased Yellow Cake Scratch Mix packaged in a large, opaque cardboard box. Upon opening, my client learned that the package contained significant empty space or “slack-fill”; indeed, the pouch was over fifty percent empty.<sup>1</sup> It appears that you have intentionally packaged this product in non-transparent containers with non-functional slack fill; this allows you to increase sales, charge a premium price, and unfairly capture market share.

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<sup>1</sup> Upon reasonable request, we will provide you with photographic evidence of the disparity.



Immaculate Baking Co.  
September 6, 2017  
Page 2



**2. My Client and Each Class Member Are Entitled to Statutory Minimum Damages of \$1,000.00 Per Violation From You.**

“The CLRA allows for restitutionary and injunctive relief, as well as compensatory and punitive damages and attorney fees.” *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 923–924, 90 Cal. Rptr. 3d 225 (2009). Under the CLRA, “in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).” Cal. Civ. Code § 1780(a)(1). Thus, if you are found liable for violations of the CLRA, at a minimum, the class would be entitled to damages of \$1,000 for each violation. See *Pickman v. American Exp. Co.*, No. C 11-05326 WHA, 2012 WL 258842, at \*2 (N.D. Cal. Jan. 27, 2012).

**3. Conclusion**

We respectfully request on behalf of our client and the class that you (1) cease and desist from continued sale any products containing non-functional slack-fill; (2) initiate corrective action; and (3) refund the purchase price of all products. If you decline we intend to file a class action lawsuit upon expiration of the aforesaid thirty (30) day period. If you believe that any of the assertions in this letter are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott Ferrell'.

Scott J. Ferrell, Esq.  
For Pacific Trial Attorneys  
A National Litigation Firm

SJF/mkj

# EXHIBIT 2

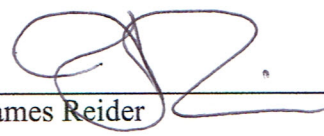
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I, James Reider, declare as follows:

1. I am a Plaintiff in this action, and am a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that Orange County is a county in which Defendants are doing business.

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

  
James Reider