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9

10

**UNITED STATES DISTRICT COURT**

11

**CENTRAL DISTRICT OF CALIFORNIA**

12

DYNITA ZEARFOSS, and TRACY  
 13 SWAN on behalf of themselves and all  
 14 others similarly situated,

Case No.

15

Plaintiffs,

**CLASS ACTION**

16

v.

**COMPLAINT**

17

RUBBERMAID, INC., and NEWELL  
 18 BRANDS, INC.,

- 1. Breach of Express Warranty
- 2. Breach of Implied Warranty
- 3. Violation of Consumer Legal Remedies Act

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Defendant.

- 4. Violation of False Advertising Law

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- 5. Violation of Unlawful Prong of the Unfair Competition Law

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- 6. Violation of the Fraudulent Prong of the Unfair Competition Law

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- 7. Violation of the Unfair Prong of the Unfair Competition Law

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**JURY TRIAL DEMANDED**

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1 Plaintiffs Dynita Zearfoss and Tracy Swan (“Plaintiffs”) allege the following:

2 **NATURE OF ACTION**

3  
4 1. This is a prospective class action against Rubbermaid, Inc. and Newell  
5 Brand’s, Inc. f/k/a Newell Rubbermaid, Inc. (collectively, “Rubbermaid” or  
6 “Defendant”) for representing that FreshWorks Produce Saver products  
7 (“FreshWorks Produce Saver Products” or the “Products”) keep produce fresh up to  
8 80% longer than store packaging (the “Claim”). As alleged in the complaint, the  
9 Claim set forth on the product packaging is false and misleading.

10 2. Defendant’s dissemination of the Claim to California consumers  
11 constitutes violations of California’s False Advertising law (“FAL”), the unfair,  
12 unlawful and fraudulent prongs of the Unfair Competition Law (“UCL”), and  
13 Consumer Legal Remedies Act (“CLRA”), as well as breaches of express and  
14 implied warranties. The FreshWorks Produce Saver Products do not keep produce  
15 fresh up to 80% longer than store packaging.

16 3. As a result of Defendant’s false and misleading advertising claims and  
17 marketing practices, Plaintiffs and the class members were induced into purchasing  
18 and paid a substantial premium for the Products because they were deceived into  
19 believing that they were purchasing a product that would keep their produce fresh 80%  
20 longer than store packaging. As a result, Plaintiffs and the class members were injured  
21 in fact and suffered ascertainable and out-of-pocket losses.

22 **THE PARTIES**

23 4. Plaintiff Dynita Zearfoss is a resident of Los Angeles County. She  
24 purchased FreshWorks Produce Saver Products in approximately May 2017, at  
25 Target and Costco locations near her home. The Product packaging prominently  
26 displayed the up to 80% longer Claim. The Products did not keep her produce fresh  
27 appreciably longer as advertised. Plaintiff Zearfoss would not have purchased the  
28 product if she knew that the Claim was false and misleading.

1 5. Tracy Swan is a resident of Fresno County. She purchased a  
2 FreshWorks Produce Saver Product from a major retailer near her home. The  
3 Product packaging prominently displayed the Claim. The Product did not keep her  
4 produce fresh longer as advertised. Plaintiff Swann would not have purchased the  
5 product if she knew that the Claim was false and misleading.

6 6. Defendant Newell Brands, Inc., f/k/a Newell Rubbermaid, Inc.  
7 (“Newell”), is a Delaware corporation with its principal place of business in  
8 Hoboken, New Jersey.

9 7. Defendant Rubbermaid, Inc. is a Delaware corporation with its principal  
10 place of business in Atlanta, Georgia. It is a wholly owned subsidiary of Newell,  
11 Collectively, Newell and Rubbermaid, Inc. are hereafter referred to as  
12 (“Rubbermaid” or “Defendant”).

### 13 JURISDICTION AND VENUE

14 8. The Court has jurisdiction over this action pursuant to 28 U.S.C. §  
15 1332(d) because there are more than 100 Class Members, the aggregate amount in  
16 controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs.

17 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391.  
18

### 19 FACTUAL ALLEGATIONS

20 10. Defendant markets and sells a line of food storage containers called  
21 FreshWorks Produce Saver Products. The Product is individually and in multipacks  
22 of various sizes.

23 11. Defendant maintains that the Product is capable of keeping produce  
24 fresh up to 80% longer than store packaging.

25 12. The outside packaging for the Product prominently states in large bold  
26 print “Keeps Produce Fresh Up To **80% LONGER**.\* Moreover, the product  
27 packaging features a photo of an assortment of produce including, a leafy green  
28 vegetable, blueberries and strawberries.

1           13. The Claim is prominently featured on the outside packaging of the  
2 Product. The packaging also includes the following fine print disclaimer in faint  
3 typeface on the label: “<sup>\*</sup>Based on strawberries in FreshWorks™ containers vs. store packaging.” Inserted below is  
4 photograph of the product packaging. The tiny disclaimer is located in the bottom  
5 center of the label.



21 *FreshWorks Large Size Container*

22           14. The Claim has been reinforced on Defendant’s website and in its  
23 marketing and advertising materials, where Defendant has stated: “The Rubbermaid  
24 FreshWorks Produce Saver is the key to preserving produce up to 80% longer.\*  
25 Revolutionary FreshVent technology regulates oxygen and carbon dioxide, while the  
26 CrispTray helps reduce moisture and spoilage. Produce stays fresher, longer;”  
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1 “FreshVent technology regulates flow of oxygen and carbon dioxide for the ideal  
2 produce environment.”  
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**fresh works™**  
-PRODUCE SAVER-

*How It Works:*

- 1 Patented membrane naturally regulates flow of O<sub>2</sub> and CO<sub>2</sub> and never requires replacement.
- 2 Fresh Vent™ technology allows excess CO<sub>2</sub> to escape, delaying produce spoilage.
- 3 Fresh Vent™ technology allows additional O<sub>2</sub> in, creating the optimal environment to maintain fresh produce.
- 4 Crisp Tray™ keep produce elevated above moisture to prevent premature spoiling.

**FRESH VENT™ TECHNOLOGY** keep produce fresh up to **80% LONGER\***

21 15. Defendant’s up to 80% longer Claim is bolstered by their statement that  
22 FreshWorks containers create an optimal environment for all produce. However, this  
23 statement is also false and misleading because there is no optimal environment for  
24 produce. Produce includes a large diverse group of plants including leafy greens,  
25 beans, root vegetables, fleshy vegetables, citrus fruits, berries and pome fruits (like  
26 apples and pears). Some produce stays fresher in ultra-high humidity conditions and  
27 others lower humidity environments. For instance, lettuce thrives in an extremely  
28 high humidity environment of 98-100%. Whereas other produce stays fresher longer

1 in lower humidity environments. Moreover, other variables such as ethylene gas  
2 production, storage temperature, and respiration rates, interact with the humidity to  
3 determine the rate at which a particular produce item will lose its freshness.

4 16. The Claim is false and misleading to reasonable consumers.

5 17. Plaintiffs used the product as directed. They observed that the Product  
6 did not keep their product fresh when used as directed under normal circumstances  
7 for up to 80% longer than store packaging.

8 18. Similarly, an independent consumer products organization which  
9 conducts unbiased product testing determined that the Product did not keep produce  
10 much fresher than the original containers. Under the organization's testing conditions  
11 raspberries stored in FreshWorks containers were moldy after only two weeks.

12 19. Moreover, the National Advertising Division of the Better Business  
13 Bureau raised substantial questions about Defendant's methodology when  
14 conducting its own clinical testing. For example, Defendant's testing methodology  
15 provided that a package would be determined to be "fresh" when any amount less  
16 than fifty percent of the produce in the package was spoiled. Moreover, the NAD  
17 noted that Defendant only tested strawberries and not other produce, which are  
18 known to have optimal humidity and other storage conditions that differ great from  
19 other product items. The NAD recommended that Defendant discontinue to the  
20 claim.

21 20. Defendant vowed to appeal the NAD decision and maintained that no  
22 reasonable consumer would expect the represented 80% longer benefit to apply in all  
23 situations.

24 21. With respect to "up to claims," like this, the Federal Trade Commission  
25 has observed that these statements can be misleading unless consumers are likely to  
26 achieve the maximum results under normal circumstances.

27 22. The Product fails to satisfy the Federal Trade Commission standard for  
28 up to claims or any standard that a reasonable consumer would apply to the Claim.

**CLASS ACTION ALLEGATIONS**

1  
2 23. Plaintiffs bring this action as a class action under Federal Rule of Civil  
3 Procedure 23 on behalf of a Class consisting of all persons in the United States who,  
4 within the relevant statute of limitations period, purchased FreshWorks Produce  
5 Saver Products.

6 24. Pursuant to L.R. 23-2.1, the case is maintainable as a class action  
7 pursuant to Fed. R. Civ. P. 23(b)(3).

8 25. Plaintiffs also seek to represent a subclass defined as all members of the  
9 Class who purchased FreshWorks Produce Saver Products in California (“the  
10 California Subclass”).

11 26. The Class is so numerous that joinder of all members is impractical.  
12 Although Plaintiffs do not yet know the exact size of the Class, the Product is sold in  
13 major retail stores across the State, including stores such as Target, Costco and Wal-  
14 Mart. On information and belief, the Class includes more than one hundred thousand  
15 members.

16 27. The Class is ascertainable because the Class Members can be identified  
17 by objective criteria – the purchase of FreshWorks Produce Saver Products during  
18 the Class Period. Individual notice can be provided to Class Members “who can be  
19 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

20 28. Pursuant L.R. 23-2.2, there are numerous questions of law and fact  
21 common to the Class which predominate over individual actions or issues, including  
22 but not limited to:

- 23 (a) Whether Defendant breached an express warranty made to  
24 Plaintiffs and the Class;
- 25 (b) Whether Defendant breached the implied warranty of fitness for a  
26 particular purpose;
- 27 (c) Whether Defendant’s product packaging and marketing of the  
28 Product is false, misleading, and/or deceptive;

- 1 (d) Whether Defendant's marketing of the Product is an unfair
- 2 business practice;
- 3 (e) Whether Defendant was unjustly enriched by its conduct;
- 4 (f) Whether Defendant violated the CLRA;
- 5 (g) Whether Defendant violated the UCL;
- 6 (h) Whether Defendant violated the FAL;
- 7 (i) Whether Class Members suffered an ascertainable loss as a result
- 8 of Defendant's misrepresentations; and
- 9 (j) Whether, as a result of Defendant's misconduct as alleged herein,
- 10 Plaintiffs and the Class Members are entitled to restitution,
- 11 injunctive and/or monetary relief and, if so, the amount and
- 12 nature of such relief.

13 29. Plaintiffs' claims are typical of the claims of other prospective Class  
14 member as all members of the Class are similarly affected by Defendant's wrongful  
15 conduct. Plaintiffs have no interests antagonistic to the interests of the other  
16 members of the Class. Plaintiffs and all members of the Class have sustained  
17 economic injury arising out of Defendant's violations of common and statutory law  
18 as alleged herein.

19 30. Plaintiffs are adequate representatives of the Class because their  
20 interests do not conflict with the interests of the Class Members they seek to  
21 represent, they have retained counsel competent and experienced in prosecuting class  
22 actions, and they intend to prosecute this action vigorously. The interests of the  
23 Class Members will be fairly and adequately protected by Plaintiffs and their  
24 counsel.

25 31. The class mechanism is superior to other available means for the fair  
26 and efficient adjudication of the claims of Plaintiffs and the Class Members.

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28



1 **First Cause of Action**

2 **Breach of Express Warranty**

3 **By All Class Members Against All Defendants**

4 32. Plaintiffs repeat the allegations contained in the paragraphs above as if  
5 fully set forth herein.

6 33. Plaintiffs bring this Count individually and on behalf of the members of  
7 the Class.

8 34. In connection with the sale of FreshWorks Produce Saver Products,  
9 Defendant issued express warranties including the warranty that FreshWorks  
10 Produce Saver Products would keep produce fresh up to 80% longer than store  
11 packaging.

12 35. Defendant's affirmations of fact and promises made to Plaintiffs and the  
13 Class on FreshWorks Produce Saver Products on the product packaging was  
14 bolstered by Defendant's advertising and public statements, became part of the basis  
15 of the bargain between Defendant on the one hand, and Plaintiffs and the Class  
16 Members on the other, thereby creating express warranties that FreshWorks Produce  
17 Saver Products would conform to Defendant's affirmations of fact, representations,  
18 promises, and descriptions.

19 36. Defendant breached its express warranties because FreshWorks Produce  
20 Saver Products do not keep produce fresh up to 80% longer than store packaging.

21 37. Plaintiffs and the Class Members were injured as a direct and proximate  
22 result of Defendant's breach because: (a) they would not have purchased  
23 FreshWorks Produce Saver Products if they had known the true facts; (b) they paid a  
24 premium for FreshWorks Produce Saver Products due to the mislabeling; and (c)  
25 FreshWorks Produce Saver Products did not have the quality, effectiveness, or value  
26 as promised.

1 **Second Cause of Action**

2 **Breach of Implied Warranty of Fitness for a Particular Purpose**

3 **By All Class Members Against All Defendants**

4 38. Plaintiffs repeat the allegations contained in the paragraphs above as if  
5 fully set forth herein.

6 39. Plaintiffs bring this Count individually and on behalf of the members of  
7 the Class.

8 40. Defendant marketed, distributed, and/or sold FreshWorks Produce  
9 Saver Products with implied warranties that they were fit for the particular purpose  
10 of keeping produce fresh up to 80% longer than store packaging.

11 41. In reliance on Defendant's skill and judgment and the implied  
12 warranties of fitness for the purpose of keeping produce fresh for up to 80% longer  
13 than store packaging, Plaintiffs and the Class Members purchased FreshWorks  
14 Produce Saver Products.

15 42. Plaintiffs and the Class Members were injured as a direct and proximate  
16 result of the breach because: (a) they would not have purchased FreshWorks Produce  
17 Saver Products if the true efficacy had been known; (b) they paid an increased price  
18 for FreshWorks Produce Saver Products based on Defendant's representations  
19 regarding the Products' properties and efficacy; and (c) Produce Saver Products did  
20 not have the characteristics, uses, or benefits as promised. As a result, Plaintiffs and  
21 the Class Members have been damaged.

22 **Third Cause of Action**

23 **Violation of the Consumer Legal Remedies Act**

24 **By California Subclass Against All Defendants**

25 43. Plaintiffs repeat the allegations contained in the paragraphs above as if  
26 fully set forth herein.  
27  
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1           44. Plaintiffs bring this Count individually and on behalf of the California  
2 Subclass.

3           45. Plaintiffs and the California Subclass Members are consumers who  
4 purchased FreshWorks Produce Saver Products for personal, family, or household  
5 purposes. Accordingly, Plaintiffs and the California Subclass Members are  
6 “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).  
7 Plaintiffs and the California Subclass Members are not sophisticated experts with  
8 independent knowledge of the alleged scientific principles behind or efficacy of  
9 FreshWorks Produce Saver Products.

10           46. At all relevant times, FreshWorks Produce Saver Products constituted a  
11 “good” as that term is defined in Cal. Civ. Code § 1761(a).

12           47. At all relevant times, Defendant was a “person” as that term is defined  
13 in Civ. Code § 1761(c).

14           48. At all relevant times, Plaintiffs’ purchase of FreshWorks Produce Saver  
15 Products, and the purchases of Freshworks Produce Saver Products by other Class  
16 Members, constituted “transactions” as that term is defined in Cal. Civ. Code  
17 § 1761(e). Defendant’s actions, representations, and conduct has violated, and  
18 continues to violate the CLRA, because they extend to transactions that intended to  
19 result, or which have resulted in, the sale of FreshWorks Produce Saver Products to  
20 consumers.

21           49. The policies, acts, and practices described in this Complaint were  
22 intended to and did result in the sale of FreshWorks Produce Saver Products to  
23 Plaintiffs and the Class. Defendant’s practices, acts, policies, and course of conduct  
24 violated the CLRA §1750 *et seq.* as described above.

25           50. Defendant represented that Freshworks Produce Saver Products had  
26 sponsorship, approval, characteristics, uses, and benefits which it did not have in  
27 violation of Cal. Civ. Code § 1770(a)(5).  
28

1 51. Defendant represented that FreshWorks Produce Saver Products was of  
2 a particular standard, quality, and grade, when it was another, in violation of  
3 California Civil Code § 1770(a)(7).

4 52. Defendant violated California Civil Code §§ 1770(a)(5) and (a)(7) by  
5 representing that FreshWorks Produce Saver Products keep produce fresh up to 80%  
6 longer than store packaging, when they did and do not.

7 53. Defendant advertised FreshWorks Produce Saver Products with the  
8 intent not to sell them as advertised in violation of § 1770(a)(9) of the CLRA since  
9 the FreshWorks Produce Saver Products do not keep produce fresh up to 80% longer  
10 than store packaging.

11 54. Plaintiffs and the Class Members suffered injuries caused by  
12 Defendant's misrepresentations because: (a) Plaintiffs and the Class Members would  
13 not have purchased FreshWorks Produce Saver Products if they had known the true  
14 facts; (b) Plaintiffs and the Class paid an increased price for FreshWorks Produce  
15 Saver Products due to the mislabeling of FreshWorks Produce Saver Products; and  
16 (c) FreshWorks Produce Saver Products did not have the level of quality,  
17 effectiveness, or value as promised.

18 55. Prior to the filing of this Complaint, a CLRA notice letter was served on  
19 Defendant which complies in all respects with California Civil Code § 1782(a).

20 56. Wherefore, Plaintiffs seek damages, restitution, and injunctive relief for  
21 this violation of the CLRA.

22  
23 **Fourth Cause of Action**

24 **Violation of the False Advertising Law**

25 **By California Subclass Against All Defendants**

26 57. Plaintiffs repeat the allegations contained in the paragraphs above as if  
27 fully set forth herein.  
28

1           58. Plaintiffs bring this Count individually and on behalf of the California  
2 Subclass.

3           59. California’s FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it  
4 “unlawful for any person to make or disseminate or cause to be made or  
5 disseminated before the public in this state, . . . in any advertising device . . . or in  
6 any other manner or means whatever, including over the Internet, any statement,  
7 concerning . . . personal property or services, professional or otherwise, or  
8 performance or disposition thereof, which is untrue or misleading and which is  
9 known, or which by the exercise of reasonable care should be known, to be untrue or  
10 misleading.”

11           60. Throughout the Class Period, Defendant committed acts of false  
12 advertising, as defined by the FAL, by using false and misleading statements to  
13 promote the sale of FreshWorks Produce Saver Products, as described above, and  
14 including, but not limited to, representing that FreshWorks Produce Saver Products  
15 keep produce fresh up to 80% longer than store packaging.

16           61. Defendant knew or should have known, through the exercise of  
17 reasonable care, that their statements were untrue and misleading.

18           62. Defendant’s actions in violation of the FAL were false and misleading  
19 such that the general public is and was likely to be deceived.

20           63. As a direct and proximate result of these acts, consumers have been and  
21 are being harmed. Plaintiffs and members of the Class have suffered injury and  
22 actual out-of-pocket losses as a result of Defendant’s FAL violation because: (a)  
23 Plaintiffs and the Class would not have purchased FreshWorks Produce Saver  
24 Products if they had known the true facts regarding the effectiveness of FreshWorks  
25 Produce Saver Products; (b) Plaintiffs and the Class paid an increased price due to  
26 the misrepresentations about FreshWorks Produce Saver Products; and (c)  
27 FreshWorks Produce Saver Products did not have the promised quality,  
28 effectiveness, or value.

1           64. Plaintiffs bring this action pursuant to Bus. & Prof. Code § 17535 for  
 2 injunctive relief to enjoin the practices described herein and to require Defendant to  
 3 issue corrective disclosures to consumers. Plaintiffs and the California Subclass are  
 4 therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair  
 5 competition alleged herein; (b) full restitution of all monies paid to Defendant as a  
 6 result of their deceptive practices; (c) interest at the highest rate allowable by law;  
 7 and (d) the payment of Plaintiffs’ attorneys’ fees and costs pursuant to, *inter alia*,  
 8 California Code of Civil Procedure §1021.5.

9  
 10   **Fifth Cause of Action**

11                         **Violation of the “Unlawful Prong” of the Unfair Competition Law**

12   **By California Subclass Against All Defendants**

13           65. Plaintiffs repeat the allegations contained in the paragraphs above as if  
 14 fully set forth herein.

15           66. Plaintiffs bring this Count on behalf of the California Subclass.

16           67. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent  
 17 part: “Unfair competition shall mean and include unlawful, unfair or fraudulent  
 18 business practices and unfair, deceptive, untrue or misleading advertising ....” The  
 19 UCL also provides for injunctive relief and restitution for UCL violations.

20           68. “By proscribing any unlawful business practice, section 17200 borrows  
 21 violations of other laws and treats them as unlawful practices that the UCL makes  
 22 independently actionable.” *Cel-Tech Communications, Inc. v. Los Angeles Cellular*  
 23 *Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations and internal quotation marks  
 24 omitted).

25           69. Virtually any law or regulation – federal or state, statutory, or common  
 26 law – can serve as a predicate for an UCL “unlawful” violation. *Klein v. Chevron*  
 27 *U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383 (2012).  
 28

1 70. Defendant violated the “unlawful prong” by violating the CLRA, and  
2 the FAL, as well as by breaching express and implied warranties as described herein.

3 71. As a direct and proximate result of these acts, consumers have been and  
4 are being harmed. Plaintiffs and members of the Class have suffered injury and  
5 actual out-of-pocket losses as a result of Defendant’s UCL “unlawful prong”  
6 violation because: (a) Plaintiffs and the Class would not have purchased FreshWorks  
7 Produce Saver Products if they had known the true facts regarding the effectiveness  
8 and contents of FreshWorks Produce Saver Products; (b) Plaintiffs and the Class  
9 paid an increased price due to the misrepresentations about FreshWorks Produce  
10 Saver Products; and (c) FreshWorks Produce Saver Products did not have the  
11 promised quality, effectiveness, or value.

12 72. Pursuant to Bus. & Prof. Code §17203, Plaintiffs and the California  
13 Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts  
14 of unfair competition alleged herein; (b) full restitution of all monies paid to  
15 Defendant as a result of their deceptive practices; (c) interest at the highest rate  
16 allowable by law; and (d) attorneys’ fees and costs pursuant to Code of Civil  
17 Procedure §1021.5.

18  
19 **Sixth Cause of Action**

20 **Violation of the “Fraudulent Prong” of the Unfair Competition Law**  
21 **By California Subclass Against All Defendants**

22 73. Plaintiffs repeat the allegations contained in the paragraphs above as if  
23 fully set forth herein.

24 74. Plaintiffs bring this Count on behalf of the California Subclass.

25 75. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent  
26 part: “Unfair competition shall mean and include unlawful, unfair or fraudulent  
27 business practices and unfair, deceptive, untrue or misleading advertising ....”  
28

1           76. Defendant’s conduct, described herein, violated the “fraudulent” prong  
2 of the UCL because Defendant expressly and impliedly represented that FreshWorks  
3 Produce Saver Products keep produce fresh up to 80% longer than store packaging.  
4 Plaintiffs and the California Subclass Members are not sophisticated experts with  
5 independent knowledge of the formulation or efficacy of FreshWorks Produce Saver  
6 Products, and they acted reasonably when they purchased FreshWorks Produce  
7 Saver Products based on their belief that Defendant’s express and implied  
8 representations were true.

9           77. Defendant knew or should have known, through the exercise of  
10 reasonable care, that their representations about FreshWorks Produce Saver Products  
11 were untrue and misleading.

12           78. As a direct and proximate result of these acts, consumers have been and  
13 are being harmed. Plaintiffs and members of the Class have suffered injury and  
14 actual out-of-pocket losses as a result of Defendant’s UCL “fraudulent prong”  
15 violation because: (a) Plaintiffs and the Class would not have purchased FreshWorks  
16 Produce Saver Products if they had known the true facts regarding the effectiveness  
17 of FreshWorks Produce Saver Products; (b) Plaintiffs and the Class paid an increased  
18 price due to the misrepresentations about Freshworks Produce Saver Products; and  
19 (c) FreshWorks Produce Saver Products did not have the promised quality,  
20 effectiveness, or value.

21           79. Pursuant to Bus. & Prof. Code §17203, Plaintiffs and the California  
22 Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts  
23 of unfair competition alleged herein; (b) full restitution of all monies paid to  
24 Defendant as a result of their deceptive practices; (c) interest at the highest rate  
25 allowable by law; and (d) the payment of Plaintiffs’ attorneys’ fees and costs  
26 pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.  
27  
28



1 **Seventh Cause of Action**

2 **Violation of the “Unfair Prong” of the Unfair Competition Law**

3 **By California Subclass Against All Defendants**

4 80. Plaintiffs repeats the allegations contained in the paragraphs above as if  
5 fully set forth herein.

6 81. Plaintiffs bring this Count on behalf of the California Subclass.

7 82. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent  
8 part: “Unfair competition shall mean and include unlawful, unfair or fraudulent  
9 business practices and unfair, deceptive, untrue or misleading advertising ....”

10 83. Defendant’s misrepresentations and other conduct, described herein,  
11 violated the “unfair” prong of the UCL in that their conduct is substantially injurious  
12 to consumers, offends public policy, and is immoral, unethical, oppressive, and  
13 unscrupulous, as the gravity of the conduct outweighs any alleged benefits.  
14 Defendant’s conduct is unfair in that the harm to Plaintiffs and the Class arising from  
15 Defendant’s conduct outweighs the utility, if any, of those practices.

16 84. Defendant’s practices as described herein are of no benefit to consumers  
17 who are tricked into believing FreshWorks Produce Saver Products keep produce  
18 fresh up to 80% longer than store packaging.

19 85. As a direct and proximate result of these acts, consumers have been and  
20 are being harmed. Plaintiffs and members of the Class have suffered injury and  
21 actual out-of-pocket losses as a result of Defendant’s UCL “unfair prong” violation  
22 because: (a) Plaintiffs and the Class would not have purchased FreshWorks Produce  
23 Saver Products if they had known the true facts regarding the effectiveness and  
24 contents of FreshWorks Produce Saver Products; (b) Plaintiffs and the Class paid an  
25 increased price due to the misrepresentations about FreshWorks Produce Saver  
26 Products; and (c) FreshWorks Produce Saver Products did not have the promised  
27 quality, effectiveness, or value.  
28

1           86. Pursuant to Bus. & Prof. Code §17203, Plaintiffs, and the California  
2 Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts  
3 of unfair competition alleged herein; (b) full restitution of all monies paid to  
4 Defendant as a result of their deceptive practices; (c) interest at the highest rate  
5 allowable by law; and (d) the payment of Plaintiffs' attorneys' fees and costs  
6 pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.

7           **WHEREFORE**, Plaintiffs pray for relief and judgment, as follows:

8           A. Determining that this action is a proper class action;

9           B. For an order declaring that the Defendant's conduct violates the statutes  
10 referenced herein;

11           C. Awarding compensatory and punitive damages in favor of Plaintiffs,  
12 members of the Class, and the California Subclass against Defendant for all damages  
13 sustained as a result of the Defendant's wrongdoing, in an amount to be proven at  
14 trial, including interest thereon;

15           D. Awarding injunctive relief against Defendant to prevent continuing  
16 their ongoing unfair, unconscionable, and/or deceptive acts and practices;

17           E. For an order of restitution and/or disgorgement and all other forms of  
18 equitable monetary relief;

19           F. Awarding Plaintiffs and members the Class their reasonable costs and  
20 expenses incurred in this action, including counsel fees and expert fees; and

21           G. Such other and further relief as the Court may deem just and proper.  
22

23                           **JURY DEMAND**

24           Plaintiffs hereby demand a trial by jury on all claims so triable in this action.  
25

26           Dated: July 22, 2018

FRONTIER LAW CENTER

27                           /s/ Robert L. Starr

Robert L. Starr (183052)

Adam Rose (210880)  
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