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7
 8 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 9

10 HOWARD CLARK, on behalf of himself,
 all others similarly situated, and the general
 11 public,

12 Plaintiff,

13 v.

14 JUSTIN'S NUT BUTTER, LLC, a
 15 Delaware Limited Liability Company,

16 Defendant.

Case No:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. The average consumer spends a mere 13 seconds making an in-store purchasing decision,
3 or between 10 to 19 seconds for an online purchase.¹ That decision is heavily dependent on a product’s
4 packaging, and particularly the package dimensions: “Most of our studies show that 75 to 80 percent of
5 consumers don’t even bother to look at any label information, no less the net weight Faced with a
6 large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose
7 the larger box because they think it’s a better value.”² This lawsuit charges Defendant with intentionally
8 packaging its Justin’s Peanut Butter Cup product (the “Product”) in opaque containers that contain
9 approximately 40% empty space. Most consumers purchased the Product without knowing that the
10 containers were substantially empty.

11 2. Howard Clark (“Plaintiff”), individually and on behalf of all others similarly situated,
12 brings this Class Action Complaint for injunctive relief and any other available legal or equitable remedies,
13 resulting from the unlawful and deceptive actions of Justin’s Nut Butter, LLC (“Defendant” or “Justin’s”)
14 with respect to the packaging of the Product. Plaintiff alleges as follows upon personal knowledge as to
15 himself and his own acts and experiences, and, as to all other matters, upon information and belief,
16 including investigation conducted by his attorneys.

17 3. Plaintiff purchased the Product manufactured by Defendant once in October 2018 in San
18 Francisco, California. In particular, Plaintiff purchased the Product at a Target in San Francisco,
19 California. Plaintiff purchased the Product for the purpose of enjoying its contents by consuming (eating)
20 the food item. Plaintiff was surprised when he opened the item and saw that the container had **nearly**
21 **40% empty space**, or slack fill.

23 ¹ [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)
24 [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 report “Shopping
25 Takes Only Seconds... In-Store and Online”).

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

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

2 **JURISDICTION AND VENUE**

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

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

9 7. The Court has personal jurisdiction over Defendant because its Justin's Mini Peanut Butter
10 Cups Product is advertised, marketed, distributed and sold through the State of California; Defendant
11 engaged in the wrongdoing alleged in this Complaint throughout the United States, including in the State
12 of California; Defendant is authorized to do business in the State of California; and Defendant has
13 sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the
14 Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is
15 engaged in substantial activity with the State of California.

16 8. Venue is proper in the United States District Court for the Central District of California
17 pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred
18 within this judicial district, Defendant has marketed and sold the Justin's Product at issue in this action in
19 this judicial district, and it conducts business within this judicial district.

20 **PARTIES**

21 9. Plaintiff Howard Clark is a citizen of the State of California and resides in San Francisco,
22 California. Plaintiff purchased the Product once in October 2018 in San Francisco, California at the Target
23 located on 225 Bush Street #100, San Francisco, CA 94104.

24 10. Plaintiff is informed and believes, and upon such information and belief alleges, that
25 Defendant Justin's Nut Butter, LLC, is a Delaware corporation which has its principal place of business
26 located in Boulder, Colorado. Plaintiff is informed and believes, and upon such information and belief
27 alleges, that Defendant, at all times relevant, conducted business in the State of California and within the
28

1 County of San Francisco. Justin’s is registered with the California Secretary of State under entity number
2 201312110152.

3 **FACTUAL ALLEGATIONS**

4 **California Law Prohibits Non-functional Slack-Fill**

5 11. Many federal and state consumer protection and labeling laws prohibit deceptive packaging
6 and labeling of products and commodities. In California, the Fair Packaging and Labeling Act (“CFPLA”)
7 “is designed to protect purchasers of any commodity within its provisions against deception or
8 misrepresentation. Packages and their labels should enable consumers to obtain accurate information as
9 to the quantity of the contents and should facilitate value comparisons.” (California Business &
10 Professions Code § 12601.)

11 12. In this context, the CFPLA provides: “No food containers shall be made, formed, or filled
12 as to be misleading.” (California Business & Professions Code § 12606.2(b).) “A container that does not
13 allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it
14 contains nonfunctional slack fill.” (California Business & Professions Code § 12606.2(c).) Section
15 12606.2(c) defines “slack fill” as “the difference between the actual capacity of a container and the volume
16 of product contained therein.” Similarly, section 12606.2(c) defines “nonfunctional slack fill” as “the
17 empty space in a package that is filled to substantially less than its capacity for reasons other than any one
18 or more of the following:

- 19 (1) Protection of the contents of the package.
20 (2) The requirements of machines used for enclosing the contents of the package.
21 (3) Unavoidable product settling during shipping and handling.
22 (4) The need for the package to perform a specific function, such as where packaging plays a role in the
23 preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly
24 communicated to consumers.
25 (5) The fact that the product consists of a food packaged in a reusable container where the container is
26 part of the presentation of the food and has value that is both significant in proportion to the value of the
27 product and independent of its function to hold the food, such as a gift product consisting of a food or
28

1 foods combined with a container that is intended for further use after the food is consumed or durable
2 commemorative or promotional packages.

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

7 13. None of the above safe-harbor provisions applies to the Product. Defendant intentionally
8 incorporated non-functional slack-fill in its packaging of the Product. Given the materiality of the non-
9 functional slack fill to reasonable consumers, the packaging is per se illegal, and reliance upon the
10 misbranded packaging by absent class members is presumed.

11 **Defendant’s Product Contains Non-Functional Slack-Fill**

12 14. Defendant’s Product is, and at all relevant times was, sold in non-transparent containers.
13 The container has significant slack-fill, as shown below.



1 15. Nearly 40% of the interior of the Product's container is comprised of empty space, or non-
2 functional slack-fill.

3 16. Judging from the sizes of the container, a reasonable consumer would expect them to be
4 substantially filled with product. Consumers are misled into believing that they are purchasing
5 substantially more Justin's peanut butter cup product than they receive.

6 17. There is no functional reason for including so much slack-fill in the Justin's Product.

7 18. Plaintiff is informed and believes, and upon such information and belief alleges, that
8 consumers have relied upon, and are continuing to rely upon, the size of the Justin's Product container as
9 the basis for making purchasing decisions. Consumers believe that the Justin's Product container is
10 substantially full because they cannot see the actual contents within the nontransparent container.

11 19. Plaintiff is informed and believes, and upon such information and belief alleges, that
12 Defendant is selling and will continue to sell the Justin's Product using the blatantly deceptive and
13 misleading slack-filled container.

14 20. The container (1) does not allow consumers to fully view its contents; and (2) contains
15 nonfunctional slack fill. As such, the packaging is per se illegal.

16 21. Class Members did not know, and had no reason to know, that the Product illegally
17 contained non-functional slack-fill.

18 22. Defendant's Product's packaging size is a material factor in Plaintiff's and absent Class
19 Members' decisions to purchase the Product. Based on Defendant's illegal packaging, Plaintiff and Class
20 Members expected to receive more Product than was actually being sold.

21 23. As a result of Defendant's illegal packaging, thousands of consumers purchased the
22 Product and have been damaged by Defendant's illegal conduct.

23 24. Plaintiff and the Class Members will be unable to rely on the Product's advertising as long
24 as the Product's packaging continues to contain nonfunctional slack-fill, and so Plaintiff and the Class
25 Members will not purchase the Product in the future, although they would like to do so, unless and until
26 Defendant takes corrective action.

27 25. Defendant's packaging and advertising of the Justin's Product violates the CFPLA, as set
28 forth above.

1 **Plaintiff Relied on Defendant’s Misleading and Deceptive Conduct and Was Injured as a Result**

2 26. The types of misrepresentations made, as described herein, were considered by Plaintiff
3 and Class Members (as would be considered by a reasonable consumer) when deciding to purchase the
4 Justin’s Product. Reasonable consumers, including Plaintiff and Class Members, attached importance to
5 whether Defendant’s Justin’s Product was misbranded, i.e., not legally salable, or capable of legal
6 possession, and/or contain non-functional slack-fill.

7 27. Plaintiff and the Class Members did not know, and had no reason to know, that the Justin’s
8 Product contained non-functional slack-fill.

9 28. Defendant’s Product packaging was a material factor in Plaintiff’s and the Class Members’
10 decisions to purchase the Justin’s Product. Based on Defendant’s product packaging, Plaintiff and the
11 Class Members believed that they were getting more Justin’s Mini Peanut Butter Cups Product than was
12 actually being sold. Had Plaintiff known Defendant’s packaging was slack-filled, he would not have
13 bought the slack-filled Product.

14 29. Plaintiff and the Class Members paid the full price of the Justin’s Product and received less
15 Product than they anticipated and expected due to the non-functional slack-fill in the Product.

16 30. There is no practical reason for the non-functional slack-fill used to package the Justin’s
17 Product other than to mislead consumers as to the actual volume of the Justin’s Product being purchased
18 by consumers.

19 31. Because of Defendant’s misrepresentations, Plaintiff and thousands of others throughout
20 California purchased the Product. Plaintiff and the Class (defined below) have been damaged by
21 Defendant’s deceptive and unfair conduct.

22 **CLASS ACTION ALLEGATIONS**

23 32. Plaintiff brings this action as a class action on behalf of himself and all others similarly
24 situated (the “Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

25 33. The nationwide Class is defined as follows:

26 All U.S. citizens who made retail purchases of Justin’s Mini Peanut Butter Cup Product
27 during the applicable limitations period up to and including final judgment in this action.

28 34. The California sub-Class is defined as follows:

1 All California citizens who made retail purchases of Justin's Mini Peanut Butter Cup
2 Product during the applicable limitations period up to and including final judgment in this
3 action.

4 35. The proposed Class excludes current and former officers and directors of Defendant,
5 Members of the immediate families of the officers and directors of Defendant, Defendant's legal
6 representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest,
7 and the judicial officer to whom this lawsuit is assigned.

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

10 37. The Product sold by Defendant suffer from illegal product bottling, labeling and
11 nonfunctional slack-fill.

12 38. This action has been brought and may properly be maintained as a class action against
13 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiff at this
14 time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the Class.
15 Based on sales of the Product it is estimated that the Class is composed of more than 10,000 persons.
16 Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass
17 would have thousands of Members. The Members of the Class are so numerous that joinder of all Members
18 is impracticable and the disposition of their claims in a class action rather than in individual actions will
19 benefit the parties and the courts.

20 39. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
21 members of the Class as all Members of the Class are similarly affected by Defendant's wrongful conduct,
22 as detailed herein.

23 40. Plaintiff will fairly and adequately protect the interests of the Members of the Class in that
24 he has no interests antagonistic to those of the other Members of the Class. Plaintiff has retained
25 experienced and competent counsel.

26 41. A class action is superior to other available methods for the fair and efficient adjudication
27 of this controversy. Since the damages sustained by individual Class Members may be relatively small,
28 the expense and burden of individual litigation makes it impracticable for the Members of the Class to

1 individually seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of this
2 controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of
3 the claims asserted herein. There will be no difficulty in the management of this action as a class action.
4 If Class treatment of these claims were not available, Defendant would likely unfairly receive thousands
5 of dollars or more in improper revenue.

6 42. Common questions of law and fact exist as to all Members of the Class and predominate
7 over any questions solely affecting individual Members of the Class. Among the common questions of
8 law and fact applicable to the Class are:

- 9 i. Whether Defendant labeled, packaged, marketed, advertised and/or sold the
10 Product using illegal packaging and labeling;
- 11 ii. Whether Defendant's actions constitute violations of the CFPLA, California
12 Business & Professions Code § 12606.2;
- 13 iii. Whether Defendant omitted and/or represented that its Product has quantities that
14 they do not have;
- 15 iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of
16 the Product constituted a fraudulent, unfair, or unlawful business act or practice and whether
17 Defendant engaged in unfair, deceptive, untrue or misleading advertising;
- 18 v. Whether Defendant's packaging of the Product constituted nonfunctional slack-fill;
- 19 vi. Whether, and to what extent, injunctive relief should be imposed on Defendant to
20 prevent such conduct in the future;
- 21 vii. Whether the Members of the Class have sustained damages as a result of
22 Defendant's wrongful conduct;
- 23 viii. The appropriate measure of damages and/or other relief; and
- 24 ix. Whether Defendant should be enjoined from continuing its unlawful practices.

25 43. The class is readily definable, and prosecution of this action as a Class action will reduce
26 the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the
27 management of this litigation which would preclude his maintenance of this matter as a Class action.
28

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

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

8 46. The conduct of this action as a class action conserves the resources of the parties and of
9 the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a
10 class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

11 **FIRST CAUSE OF ACTION**

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

13 **(Cal. Civ. Code §§ 1750, *et seq.*)**

14 47. Plaintiff realleges and incorporates herein by reference the allegations contained in all
15 preceding paragraphs, and further alleges as follows:

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

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

21 50. The Product that Plaintiff and other Class Members purchased from Defendant is amongst
22 the "goods" within the meaning of Cal. Civ. Code § 1761(a).

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

26 52. Defendant violated California law because the Product is packaged in containers made,
27 formed or filled to contain non-functional slack-fill.

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

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

11 55. Plaintiff and the Class relied upon the size of the Product’s packaging in making their
12 purchases of the Product. In addition, given the materiality of Defendant’s misrepresentations, absent
13 Class Members are entitled to a presumption of reliance.

14 56. Plaintiff and the Class lost money as a result of Defendant’s actions because: (a) they would
15 not have purchased the Product on the same terms absent Defendant’s illegal conduct as set forth herein,
16 or if the true facts were known concerning Defendant’s representations; (b) they paid a higher price for
17 the Defendant’s Product due to Defendant’s misrepresentations; and (c) Defendant’s Product did not have
18 the quantities as represented.

19 57. On or about October 10, 2018, prior to filing this action, Plaintiff sent a CLRA notice letter
20 to Defendant which complies with California Civil Code 1782(a). Plaintiff sent Justin’s Nut Butter, LLC,
21 individually and on behalf of the proposed Class, a letter via Certified Mail, advising Defendant that it is
22 in violation of the CLRA and demanding that it cease and desist from such violations and make full
23 restitution by refunding the monies received therefrom.

24 58. Wherefore, Plaintiff seeks injunctive relief for Defendant’s violations of the CLRA. If
25 Defendant fails to take the corrective action detailed in Plaintiff’s CLRA letter within thirty days of the
26 date of the letter, then Plaintiff will seek leave to amend his complaint to add a claim for damages under
27 the CLRA.

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF THE UNFAIR COMPETITION LAW**

3 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

4 59. The foregoing paragraphs are alleged herein and are incorporated herein by reference.

5 60. Plaintiff brings this claim individually and on behalf of the Members of the Class for
6 Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
7 (the "UCL").

8 61. The UCL provides, in pertinent part: "[U]nfair competition shall mean and include
9 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
10 advertising"

11 62. Defendant violated California law because the Product is packaged in containers made,
12 formed or filled as to be misleading and that contain non-functional slack-fill and because they are
13 intentionally packaged to prevent the consumer from being able to fully see their contents.

14 **"Unlawful" Prong**

15 63. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL
16 by violating the CFPLA, California Business & Professions Code § 12601 *et seq.*

17 64. Specifically, Defendant violated section 12606.2(b) and (c) of the Business and Professions
18 Code by packaging the Product in nonconforming type containers. Said non-conforming packages
19 contained extra space by volume, in the interior of the container. The extra space provided no benefit to
20 the contents of the packaging and misled consumers. In addition, Defendant packaged the Product in
21 containers made, formed, or filled as to be misleading to a potential customer as to the actual size and
22 filling of the package with Defendant's Product.

23 **"Unfair" Prong**

24 65. Defendant's business practices, described herein, violated the "unfair" prong of the UCL
25 in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical,
26 oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's
27 advertising is of no benefit to consumers. The public policy is tethered to a specific statutory provision.
28 *See* Cal. Bus. & Prof. Code §§ 12606.2(b) and (c).

1 **“Fraudulent” Prong**

2 66. Defendant violated the “fraudulent” prong of the UCL, by misleading Plaintiff and the
3 Class to believe that the Product contained more content than it actually contained and that such packaging
4 and labeling practices were lawful, accurate, true, and not intended to deceive or mislead consumers.

5 67. Plaintiff and the Class Members are not sophisticated experts about the corporate branding,
6 labeling, and packaging practices of the Product. Plaintiff and the Class acted reasonably when they
7 purchased the Product based on their belief that Defendant’s representations were true and lawful.

8 68. Plaintiff and the Class lost money as a result of Defendant’s UCL violations because: (a)
9 they would not have purchased the Product on the same terms absent Defendant’s illegal conduct as set
10 forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a higher
11 price for the Defendant’s Product due to Defendant’s misrepresentations; and (c) Defendant’s Product did
12 not have the quantities as represented.

13 69. The conduct of Defendant as set forth above demonstrates the necessity for granting
14 injunctive relief restraining such and similar acts of unfair competition pursuant to California Business
15 and Professions Code. Unless enjoined and restrained by order of the court, Defendant will retain the
16 ability to, and may engage in, said acts of unfair competition, and misleading “advertising.” As a result,
17 Plaintiff and the Class are entitled to injunctive and monetary relief in the form of restitution under Cal.
18 Bus. & Prof. Code § 17203.

19 70. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
20 specified herein by suing on behalf of herself and other similarly-situated Class Members. Plaintiff’s
21 success in this action will enforce important rights affecting the public interest. Plaintiff will incur a
22 financial burden in pursuing this action in the public interest. An award of reasonable attorneys’ fees to
23 Plaintiff is thus appropriate pursuant to California Code of Civil Procedure § 1021.5.

24 **THIRD CAUSE OF ACTION**

25 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW**

26 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

27 71. The foregoing paragraphs are alleged herein and are incorporated herein by reference.
28

1 72. Plaintiff brings this claim individually and on behalf of the Members of the Class for
2 Defendant's violations of California's False Advertising Competition Law, Cal. Bus. & Prof. Code §
3 17500, *et seq.* (the "FAL").

4 73. Under the FAL, the State of California makes it "unlawful for any person to make or
5 disseminate or cause to be made or disseminated before the public in this state . . . in any advertising
6 device . . . or in any other manner or means whatever, including over the Internet, any statement,
7 concerning . . . personal property or services, professional or otherwise, or performance or disposition
8 thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care
9 should be known, to be untrue or misleading."

10 74. Defendant engaged in a scheme of offering the Product misbranded for sale to Plaintiff and
11 the Class Members by way of packaging the Product in containers made, formed or filled as to be
12 misleading and which contain nonfunctional slack-fill. Such practice misrepresented the content and
13 quantity of the misbranded Product. Defendant's advertisements were made in California and come within
14 the definition of advertising as contained in Bus. & Prof Code §§ 17500, *et seq.* in that the product
15 packaging was intended as inducements to purchase Defendant's Product. Defendant knew its conduct
16 was unauthorized, inaccurate, and misleading.

17 75. Defendant violated California law because the Product is packaged in containers made,
18 formed or filled as to be misleading and which contain non-functional slack-fill and because they are
19 intentionally packaged to prevent the consumer from being able to fully see their contents.

20 76. Defendant violated Section 17500, *et seq.* by misleading Plaintiff and the Class to believe
21 that the Product's packaging contains more product than it, in fact, contains, as described herein.

22 77. Defendant knew or should have known, through the exercise of reasonable care that the
23 Product was and continues to be misbranded, and that its representations about the quantities of the
24 Product was untrue and misleading.

25 78. Plaintiff and the Class Members lost money as a result of Defendant's FAL violations
26 because: (a) they would not have purchased the Product on the same terms absent Defendant's illegal
27 conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b)
28 they paid a higher price for the Product due to Defendant's misrepresentations; and (c) the Product did not

1 have the benefits, or quantities as promised, and as a result the Class is entitled to monetary and injunctive
2 relief.

3 **PRAYER FOR RELIEF**

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

5 (A) For an Order determining that this action may be maintained as a class action, and
6 certifying the Class as requested herein;

7 (B) For an Order declaring that Defendant's conduct violated the CLRA, Cal. Civ. Code §
8 1750, *et seq.*, and awarding (i) injunctive relief, (ii) actual damages, (iii) punitive damages, (iv)
9 costs of suit, and (iii) reasonable attorneys' fees;

10 (C) For an Order declaring that Defendant's conduct violated the UCL, Cal. Bus. & Prof.
11 Code § 17200 *et seq.*, and FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*, and awarding (i) injunctive
12 relief, (ii) restitution, (iii) prejudgment and post judgment interest; (iv) exemplary and/or punitive
13 damages pursuant to Cal. Civ. Code § 3294, (v) costs of suit, and (iv) reasonable attorneys' fees
14 pursuant to, *inter alia*, Cal. Code Civ. Proc § 1021.5;

15 (D) For injunctive relief as pleaded or as the Court may deem proper;

16 (E) For an order of restitution and all other forms of equitable monetary relief, as pleaded;

17 (F) For compensatory damages in amounts to be determined by the Court and/or jury;

18 (G) For punitive damages;

19 (H) For prejudgment interest on all amounts awarded;

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

23 (J) For such other and further relief as the Court deems just and proper.

24 **VIII. JURY DEMAND**

25 Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a jury trial for
26 claims sounding in equity.
27
28

1 DATED: October 10, 2018

Respectfully Submitted,

2
3 /s/ Ronald A. Marron

4 Ronald A. Marron

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.