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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JENNIFER ZIZUMBO,
CHANDRA ZUNDEL, and
ADRIANNE ORDAZ, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

UNILEVER UNITED STATES, INC., a
Delaware corporation,

Defendant.

No. **RG18925345**

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Jennifer Zizumbo, Chandra Zundel, and Adrienne Ordaz bring this action on
2 behalf of themselves and all others similarly situated against Unilever United States, Inc.
3 (“Unilever” or “Defendant”). Plaintiffs’ allegations against Defendant is based upon information
4 and belief and upon investigation of Plaintiffs’ counsel, except for allegations specifically
5 pertaining to Plaintiffs, which are based upon Plaintiffs’ personal knowledge.

6 7 **I. OVERVIEW**

8 1. Defendants engage in false, unfair and deceptive practices in advertising, marketing,
9 and selling I Can’t Believe It’s Not Butter! Spray (“ICBINB Spray”). Defendants label, market,
10 and sell ICBINB Spray as containing “0 calories” and “0g fat” when in fact ICBINB Spray
11 contains 1160 calories and 124 grams of fat per 12-ounce bottle. As part of their scheme to deceive
12 consumers, and in violation of California’s Sherman Food, Drug, and Cosmetic Act, which
13 incorporates the Food and Drug Administration’s regulations, Defendants use unreasonably small
14 “serving sizes” that fail to account for the manner in which consumers actually use ICBINB Spray
15 and failed to incorporate a statement of identity disclosing in simple and direct terms that ICBINB
16 is 40% vegetable oil. Consumers, who are increasingly health conscious and interested in calorie-
17 free and fat-free food alternatives for themselves and their families, are deceived by Defendants’
18 practices.

19 20 **II. PARTIES**

21 2. Plaintiff Jennifer Zizumbo is, and was at all relevant times, and individual and
22 resident of California. Ms. Zizumbo currently resides in San Diego, California.

23 3. Plaintiff Chandra Zundel is, and was at all relevant times, and individual who has
24 resided in several states since 2004. Ms. Zundel has resided in Escondido, California since 2010.

25 4. Plaintiff Adrienne Ordaz is, and was at all relevant times, and individual and
26 resident of California. Ms. Ordaz currently resides in Altadena, California.

27 5. Defendant Unilever is a for-profit, Delaware corporation with its principal place of
28 business in Englewood Cliffs, New Jersey. Until at least July 2018, when it sold its spreads

1 business to Defendant Upfield, Unilever manufactured and marketed ICBINB throughout the
2 nation, including California. Unilever continues to distribute ICBINB Spray throughout the United
3 States, including California.

4 6. The true names and capacities of Defendants sued as Does 1 through 50, inclusive,
5 are unknown to Plaintiffs. Plaintiffs will seek leave of Court to amend this Class Action Complaint
6 when said true names and capacities have been ascertained.

7 7. The Parties identified in paragraphs 5 and 6 of this Class Action Complaint are
8 collectively referred to hereafter as "Defendants."

9 8. At all times herein mentioned, Defendants, and each of them, were members of, and
10 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
11 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

12 9. At all times herein mentioned, the acts and omissions of Defendants, and each of
13 them, concurred and contributed to the various acts and omissions of each and all of the other
14 Defendants in proximately causing the injuries and damages as herein alleged.

15 10. At all times herein mentioned, Defendants, and each of them, ratified each and
16 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
17 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in
18 proximately causing the damages, and other injuries, as herein alleged.

19 III. JURISDICTION AND VENUE

20
21 11. This Court has personal jurisdiction over Plaintiffs because they each submit to the
22 Court's jurisdiction. This Court has personal jurisdiction over each Defendant because it conducts
23 substantial business in the District and thus has sufficient minimum contacts with Alameda County
24 and California.

25 12. Venue is proper in Alameda County because Unilever conducts substantial business
26 in this county, including maintaining a sales office in Pleasanton, California.

IV. FACTUAL ALLEGATIONS

A. Defendants Market I Can't Believe It's Not Butter Spray as a Butter Substitute.

13. I Can't Believe It's Not Butter! is the second largest margarine/spreads brand in the U.S., with annual retail sales in excess of \$300 million dollars.¹ Defendants sell various versions of ICBINB, including versions packaged in plastic tub containers, "all-purpose sticks" that look like sticks of butter, and the ICBINB Spray, which is contained in pump-action squirt bottles.

Defendants have manufactured and distributed ICBINB Spray since 1994.

14. Defendants understand that consumers are concerned about their health and appearance, and therefore are willing to pay more for products with reduced fat and calories.

15. Accordingly, Defendants have embarked on a long term advertising campaign to trick the public into believing that the various I Can't Believe It's Not Butter! products (including ICBINB Spray) are a healthier alternative to butter. For example, the ICBINB website, icantbelieveitsnotbutter.com,² states that the ICBINB products have "the delicious, rich and creamy unbelievable taste you love. And with 0g trans fat per serving, no cholesterol and no partially hydrogenated vegetable oils, you know that taste is rooted in goodness."³

16. As part of their long term advertising campaign, Defendants have encourage consumers to use ICBINB Spray as fat-free, calorie-free butter substitute since its launch over two decades ago. The name of the product itself—"I Can't Believe It's Not Butter"—suggests to the consumer that the product is intended to be a diet version or substitute for butter and margarine products (including other products in the I Can't Believe It's Not Butter line), albeit one without any fat and calories. And since its launch and continuing through the class period, Defendants have

¹ I Can't Believe It's Not Butter!, <http://www.unileverusa.com/brands-in-action/detail/I-Can-t-Believe-It-s-Not-Butter--/285856/?WT.contenttype=view%20brands> (last visited August 7, 2013); <https://web.archive.org/web/20150413084248/http://www.unileverusa.com:80/brands-in-action/detail/I-Can-t-Believe-It-s-Not-Butter--/295856/?WT.contenttype=view%20brands> (last visited September 17, 2018); *see also* <https://www.nytimes.com/2005/07/26/business/i-cant-believe-its-not-a-tv-ad.html> (\$243M brand sales in 2005).

² The website is currently operated by the Upfield Defendants. However, the website was created by Unilever and was operated by Unilever until July 2, 2018. Accordingly, on information and belief, each Defendant is responsible for the statements on the website.

³ <http://www.icantbelieveitsnotbutter.com/campaigns/our-story/> (last visited September 17, 2018).

utilized words and imagery to inspire consumers to replace their butter and margarine with a substitute that is purportedly lower in calories and fat, while still getting the taste of butter. For example, on some packages, Defendants have stated that ICBINB Spray has “Delicious Butter Taste” and on others, they have stated “America’s Favorite Buttery Spray.” Another states “Spray on Delicious Butter Taste!” Similarly, the older version of the product’s label depicts ICBINB Spray being used as a topping for corn on the cob—a role traditionally reserved for butter.

17. Some examples of the product’s front labels in use during the class period are featured below:



18. Notably, for years, Defendants have often advertised that ICBINB Spray can be used for “topping” and “cooking.” To that end, Defendants have for many years used the ICBINB website to feature various recipes that call for the use of ICBINB, including ICBINB Spray, instead of butter. For example, the ICBINB website encourages consumers to use ICBINB Spray instead of

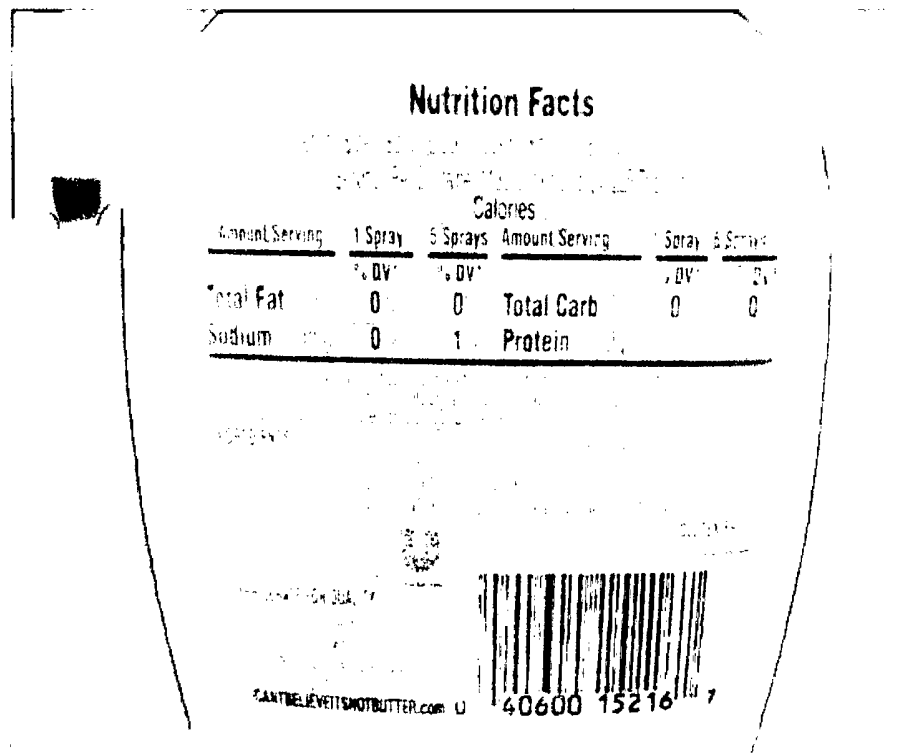
1 butter for grilled vegetables, as topping for popcorn and as a spread for muffins and toasted bread.

2 19. Since the launch of the product, and at all times during the class period, Defendants
3 have advertised on the front of the ICBINB Spray package that product has "0 Calories" and "0g
4 Trans Fat." See Paragraph 17.

5 20. Throughout the class period and until approximately mid-2018, the ICBINB Spray
6 front label states that the product has "0 CALORIES PER 1 SPRAY," and "0g Trans Fat Per
7 Serving*," with the asterisk pointing to text stating either "SEE NUTRITION INFORMATION
8 FOR FAT, SODIUM AND SERVING SIZE" or "SEE NUTRITION INFORMATION FOR FAT
9 CONTENT AND SERVING SIZE." See Paragraphs 17, 22.

10 21. Defendants know that consumers are unlikely to see the asterisk, much less follow it
11 to the back of the package. But to further confuse those that do, for years, and throughout the class
12 period, Defendants have used a confusing back of the package format to obscure the fact that the
13 product does actually have fat and calories.

14 22. Examples of the back of the ICBINB Spray in use by Defendants can be found here:



Nutrition Facts

Serving Size 1 Spray (0.20g) Cooking Spray 5 Sprays (1g) Topping

Servings Per Container 1130 Cooking Spray, 226 Topping

Calories 0

| Amount/Serving | 1 Spray | 5 Sprays | Amount/Serving | 1 Spray | 5 Sprays |
|----------------------------------|---------|----------|----------------------|---------|----------|
| | % DV* | % DV* | | % DV* | % DV* |
| Total Fat [†] 0g | 0% | 0% | Total Carb 0g | 0% | 0% |
| Sodium 0mg | 0% | 1% | Protein 0g | | |

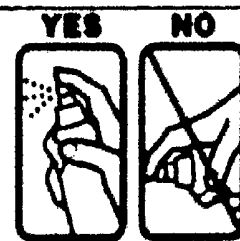
[†] Amount in 1 spray. Not a significant source of fat cal, sat fat, trans fat, polyunsat fat, monounsat fat, cholest, fiber, sugars, vitamin A, vitamin C, calcium and iron. 5 sprays contribute an additional 15mg of sodium.

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

INGREDIENTS: WATER, SOYBEAN OIL*, SALT, SWEET CREAM BUTTERMILK**, XANTHAN GUM, SOY LECITHIN, POLYSORBATE 60, LACTIC ACID, POTASSIUM SORBATE, CALCIUM DISODIUM EDTA, USED TO PROTECT QUALITY, NATURAL AND ARTIFICIAL FLAVOR, VITAMIN A PALMITATE, BETA CAROTENE (COLOR).

* ADDS A DIETARILY INSIGNIFICANT AMOUNT OF FAT

** ADDS A DIETARILY INSIGNIFICANT AMOUNT OF CHOLESTEROL



23. Defendants purport to intend to alert consumers to a disclaimer on the back of the package which states “*ADDS A DIETARILY INSIGNIFICANT AMOUNT OF FAT.” This statement does not cure the deception, but rather reinforces the confusion, because it does not disclose that when used at a standard serving size of one tablespoon, the product does contain a significant amount of fat.

24. Of course, few consumers will notice the asterisk, much less scan through lots of small print to figure out what it means. Defendants know this, and utilize a deceptive nutrition panel to further mislead even those consumers who check the back of the package to see if it comports with the representations on the front. In particular, for years and until mid-2018, Defendants listed nutritional information for two different “serving sizes”: (1) one spray, or .20 grams, which Defendants described as the “Cooking Spray” serving size and (2) five sprays, or 1 gram, which Defendants describe as the “Topping” serving size.

25. For years, and throughout the class period, Defendants have represented that both “serving sizes” contain zero calories, and zero grams of fat, and that the amount of fat and calories makes up “0%” of one’s daily value, regardless of whether the product is used as a cooking spray

1 or a topping.

2 26. ICBINB is sold in refrigerated sections of grocery stores beside butter and other
3 buttery flavored toppings (e.g., ICBINB spread), rather than on unrefrigerated shelves with cooking
4 sprays such as Pam. The label for the 8 oz. bottle states “refrigerate for quality.”

5 27. The ICBINB Website makes the same claims about there being no fat or calories per
6 serving:

7 **- 0g fat per serving**

8 **- 0 calories per serving**

9 **- 0g trans fat per serving**

10
11 ***I Can't Believe It's Not Butter!® Spray contains**
12 **0g fat, 0g trans fat and 0 calories per 5 sprays.**

13 ****When used as a topping, the amount of**
14 **sodium per serving is 15mg, 1% of the daily**
15 **value of sodium (less than 2400mg).**

16 (http://www.icantbelieveitsnotbutter.com/product/detail/129811/original-butter-spray, last accessed
17 on August 17, 2018.)

18 28. Defendants' representations on the ICBINB Spray labels and on the ICBINB
19 website are designed to trick consumers into believing that they can use ICBINB Spray as a butter
20 substitute and not ingest any calorie or fat. But that is not the case. In reality, ICBINB Spray
21 contains 1160 calories and 124 grams of fat per 12-ounce bottle, and 773 calories and 81.3 grams
22 of fat per 8-ounce bottle.

23 **B. Defendants' Chosen Serving Sizes Violate FDA Regulations.**

24 29. In an attempt to justify their false 0-calories and 0-fat representations, Defendants
25 chose to use unreasonably small serving sizes for ICBINB Spray. Specifically, the back labels of
26 the 12-oz bottle provide two serving sizes: (i) “1 spray” (when used as a “cooking spray”); and (ii)
27 “5 sprays” (when used as a “topping”). Because ICBINB is 40% fat, each “spray” contains 0.8
28 calories and 0.08 grams of fat, 5 sprays contains 4 calories and 0.4 grams of fat. With respect to

both serving sizes, Defendants nevertheless rounded the calories and fat down to zero for the purposes of the ICBINB Spray label and ICBINB Spray marketing.

1. Overview of the Food and Drug Administration's Serving Size Regulations

30. The Food Drug and Cosmetic Act ("FDCA") regulates the proper labeling of food. 21 U.S.C. §§ 301 *et seq.* It also vests the Food and Drug Administration ("FDA") with the authority to "protect the public health by ensuring that foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A). The FDCA has been independently adopted as part of the Sherman Food, Drug and Cosmetic Law, California Health and Safety Code ("Cal. Health & Saf. Code") § 109875, *et. seq.* See Cal. Health & Saf. Code §§ 110100(a), 110380, 110505 (adopting FDA standards).

31. Pursuant to this authority, the FDA has promulgated a comprehensive set of regulations pertaining to labeling requirements. 21 C.F.R. §101.1 *et seq.* These regulations require a manufacturer to disclose the total number of calories and fat per serving on the labeling of a food product. 21 C.F.R. §101.9(c).

32. 21 U.S.C. §343(q) governs the disclosure of nutrition information on a product label. It deems a food misbranded unless its label or labeling discloses the total number of calories per serving and the amount of fat per serving. See also 21 C.F.R. §101.9(c)(1-2).

33. Manufacturers are not permitted to select a serving size at random. Rather, the FDA has detailed regulations about how they must be chosen. In particular, the FDA has prescribed serving sizes for 131 product categories "to assure that nutrition labels on similar types of foods are consistent, so that consumers will be able to easily and readily make comparisons of nutrient content among products." 55 F.R. 29517. The FDA's 131 product categories are set forth at 21 C.F.R. § 101.12, Table 2 ("Serving Size Table"). For each product category set forth in the Serving Size Table, the FDA has designated a standard serving size that manufacturers are to use.

34. To further ensure uniformity and make it so customers can easily compare the nutritional information across like products, the FDA requires all food manufacturers to choose one "reference" category from the Serving Size Table and use the corresponding serving size to use for determining the per-serving nutritional information. That reference category must be based upon

the product's major intended use. 21 C.F.R. §101.12(a)(7). And the regulations define a "serving" as the amount of food "customarily consumed" per eating occasion, which must be "based on consumption data under actual conditions of use." 21 C.F.R. §101.9(b)(1). Moreover, the FDA regulations further state that substitute products, such as a "low calorie" version, have to use the same serving size "as the food for which it is offered as a substitute." 21 C.F.R. 101.12(d).

35. Finally, the FDA instructs that manufacturers may not select whatever reference category they want, but rather, they must choose the one that best fits the product, based on its major intended use. *See* 21 C.F.R. §101.12(h); 58 F.R. 2273. If a manufacturer is unable to select any of the reference categories from the Serving Size Table, it must contact the FDA with evidence to support its serving size to have its serving size approved.

2. Defendants Were Required by the FDA to Select a 1 Tablespoon Serving Size.

36. Here, Defendants ignored these FDA regulations and intentionally selected the wrong serving size.

37. The relevant section of the Serving Size Table is below:

| | | |
|---|--------|-----------------------------|
| Fats and Oils: | | |
| Butter, margarine, oil, shortening | 1 tbsp | 1 tbsp (_g); 1 tbsp (15 mL) |
| Butter replacement, powder | 2 g | _tsp(s) (_g) |
| Dressings for salads | 30 g | _tbsp (_g); _tbsp (_mL) |
| Mayonnaise, sandwich spreads, mayonnaise-type dressings | 15 g | _tbsp (_g) |
| Spray types | 0.25 g | About _seconds spray (_g) |

38. As the table illustrates, within the "Fats and Oils" reference category, there are various subcategories, including the default, "Butter, margarine, oil and shortening." Manufacturers must use the defaulted serving size of one tablespoon for any "Fat and Oil" unless the product fits within a more specific subcategory. Moreover, the FDA has provided guidance on what these categories mean. In Attachment 26 to the Guide to Nutrition Labeling and Education Act Requirements, published in August 1994, the FDA explains what each of these categories means. "Butter, margarine, oil, shortening" is defined as "All types of butter and margarine

(regular, diet, liquid, and whipped); spreads; oils; and shortenings.” *See* https://www.fda.gov/ICECI/Inspections/InspectionGuides/ucm114704.htm#ATTACHMENT_26 (last accessed September 30, 2018). “Spray types” are defined as “Nonstick cooking sprays (e.g., Pam).” *Id.*

39. Under the regulations, ICBINB Spray clearly fits under the “Butter, margarine, oil, and shortening” category. As explained in Paragraphs 16, 18, and 44-45, it is marketed to consumers to use like butter and consumers do indeed use it to top vegetables, toast, and other foods as they would with butter. It is marketed as a “substitute” product and diet version for butter and margarine generally. Notably tubs and bars of other I Can’t Believe It’s Not Butter products all use a 1 tablespoon serving size.

40. Under FDA regulations, the proper minimum serving size for such products is one tablespoon, which is equivalent to 40 sprays. *See* 21 C.F.R. 101.12, Table 2. Because each tablespoon of ICBINB Spray contains approximately 27.3 calories and 2.9 grams of fat, a proper label would state that the product contains a 1160 calories and 124 grams of fat for the bottle as a whole, and 32 calories and 3.2 grams of fat per serving.⁴

3. Defendants Cannot Classify the Product as a Cooking Spray.

41. With respect to Defendants’ attempt to classify ICBINB as a cooking spray and list the serving size as 1 Spray, this decision is not permitted by the FDA for several reasons. First, “cooking spray” is inconsistent with ICBINB Spray’s “actual conditions of use,” and is not the product’s major intended use. *See* 21 C.F.R. §101.9(b)(1), §101.12(a)(7). Consumers do not typically use ICBINB Spray to coat pans for cooking like they do with PAM, and even if they did, such usage is not the major use of the product, which is intended to be a topping and substitute for butter, margarine, and other ICBINB products.

42. Second, ICBINB Spray cannot provide a non-stick cooking surface because it contains mostly water, which does not create a non-stick cooking surface the way a cooking spray should. Moreover, the water evaporates when exposed to heat, leaving approximately 0.08 grams of the .2 gram “spray” to act as a cooking surface. In contrast, Pam and other nonstick sprays

⁴ There are roughly 40 “sprays” of ICBINB per tablespoon (i.e., one tablespoon = 40 sprays).

1 contain no water.

2 43. Third, the FDA regulations explain that “spray type” oils are to be expressed as a
3 serving size “0.25 g [or] *About [] seconds spray.*” 21 CFR 101.12 Table 2 (emphasis added).
4 ICBINB Spray’s serving size cannot be (and is not) expressed in this manner, because it is a pump
5 spray, not a pressurized spray like Pam that is dispensed by pressing down for a period of time.
6 Accordingly, Defendants cannot lawfully use the “spray-types” subcategory for ICBINB Spray.

7 44. Fourth, cooking spray is not intended to impart flavor on a food. Companies that
8 market cooking spray typically emphasize characteristics like the product’s ability to prevent food
9 from sticking to pans or make clean up easier. Defendants have never touted such characteristics of
10 ICBINB Spray as they are not true of the product, nor do Defendants intend for consumers to rely
11 on such claims. On the other hand, Defendants have consistently advertised the product as being a
12 butter substitute and imparting butter flavor, because Defendants intend for consumers to use it on
13 food in the same way they use butter.

14 45. In fact, the ICBINB website shows that even Defendants recognize that ICBINB
15 Spray is not an appropriate choice for nonstick coating. Several recipes on the ICBINB website
16 instruct the consumer to use a “nonstick cooking spray” (like Pam) to provide a nonstick coating
17 for baking. Those recipes do *not* direct the consumer to use ICBINB Spray for those purposes,
18 because ICBINB Spray is not a cooking spray like Pam, and is not suited for those purposes.

19 **4. Defendants Are Not Insulated By Their Use Of A “Secondary” Usage Of A 5-**
20 **Spray “Topping” Serving Size.**

21 46. Defendants’ decision to list a secondary serving size of 5 Sprays for most of the
22 class period as a “topping” does not excuse them from their violation of the FDA regulations.

23 47. The FDA requires that where a product is promoted for a use that differs from the
24 reference category chosen, and standard usage “differs in quantity by twofold or greater from the
25 use upon which the reference amount in § 101.12(b) was based,” the manufacturer must provide a
26 second column of nutrition information “based on the amount customarily consumed in the
27 promoted use, *in addition to the nutrition information per serving derived from the reference*
28 *amount in 101.12(b)....*” 21 C.F.R. § 101.9(b)(11) (emphasis added). Because Defendants have

1 not provided information for a serving size of one tablespoon as required by section 101.12(b) as
2 explained *supra*, their inclusion of the “secondary” information of a serving size of five sprays is
3 not exculpatory. Further, as explained *supra* in paragraph 49, Defendants did not even choose the
4 five spray serving because it was the amount customarily consumed, but instead because it was the
5 largest number of sprays they could select to keep the number of calories and fat below 5 and 0.5
6 grams, respectively, so that they could then “round down” to zero.

7 48. 21 C.F.R. § 101.9(b)(11) notes the requirement to provide a secondary serving size
8 column does not apply to “nondiscrete bulk products that are used primarily as ingredients (e.g.,
9 flour, sweeteners, shortenings, oils), or traditionally used for multipurposes (e.g., eggs, butter,
10 margarine), and multipurpose baking mixes....” This exemption does not help Defendants because
11 at best it would relieve them of the obligation to provide the *secondary* serving size based on
12 customary usage, but not the obligation to provide the *primary* serving size information as required
13 by section 101.12(b), which they did not do for the reasons stated above.

14 49. Moreover, Defendants never filed a petition to request a new serving size be
15 created, nor would such a petition be granted. Such a petition requires data that demonstrates that
16 the new subcategory would be consumed in amounts different enough from the reference amounts
17 for other products in the category, as required by 21 C.F.R. § 101.12(f) (13). Defendants do not
18 have any such data. Defendants selected their serving size based not on reasonable evidence of
19 consumer usage, but instead, because it is the largest possible serving size that Defendants could
20 hold out as having no fat or calories. Five sprays of the product contain 4 calories and 0.4 grams of
21 fat; the FDA permits food marketers to round down to zero when a product contains less than 5
22 calories or a half gram of fat. 21 C.F.R. §§ 101.60(b)(1)(i), 101.62(b)(1)(i). Defendants know that
23 five sprays is not a customary serving as they recommend larger serving sizes of the product when
24 it is being used as a topping, as described in the next paragraph.

25 50. In fact, Defendants know that consumers customarily use more than 5 sprays per
26 serving when using it as a topping. For example, in Defendants’ recipe for summertime grilled
27 vegetables directs the consumer to use *thirty* sprays for a recipe that serves four people—or 8.5
28 sprays per serving a serving size that is **35% larger** than claimed on the package, and which would

provide 7 calories and 1 gram of fat.⁵

Ingredients

3 lbs. your favorite vegetables (such as red onions, zucchini, asparagus, and/or bell peppers), sliced or cut into chunks
30 sprays I Can't Believe It's Not Butter® Spray Original

Directions

1. Alternately thread vegetables on skewers*. Grill or broil vegetables until tender. Arrange vegetables on serving platter. Spray with I Can't Believe It's Not Butter® Spray Original.

The same is true for Defendants' recipe for savory balsamic asparagus.⁶

51. Defendants also are aware that it is common for consumers to open the spray top of the bottle and simply pour the ingredients onto items such as baked potatoes, popcorn, vegetables, and other items, because consumers have been misled into believing that the product is entirely fat-free and calorie-free. *See* Paragraph 55.

5. Defendants' Scheme Thwarts the Purpose of the FDA Regulations.

52. As the FDA has explained, "the agency is proposing these standard serving sizes to assure that nutrition labels on similar types of foods are consistent, so that consumers will be able to easily and readily make comparisons of nutrient content among products. In addition, FDA expects that standard serving sizes will eliminate some of the problems that occur when manufacturers manipulate serving sizes to make a product appear, for example, lower in calories . . . than it would if a more objective serving size were used." 55 F.R. 29517 (July 19, 1990). *See also* 56 F.R. 60394, 60397 (Nov. 27, 1991) ("The agency believes that by grouping foods that have similar dietary usage into one category, a reasonable and appropriate serving size for all food within a category can be established . . . a consistent serving size for similar products enables consumers to compare the nutritional value of foods that are used interchangeably in the diet.").

53. In March of 2004, the FDA issued a guidance letter to the food industry that indicated the FDA was concerned about the use of improper serving sizes. The letter stated:

Dear Food Manufacturer:

As you are aware, the Food and Drug Administration (FDA) is

⁵ *See* <http://www.icantbelieveitsnotbutter.com/recipes/detail/31944/1/summertime-grilled-vegetables> (last accessed August 17, 2018).

⁶ *See* <http://www.icantbelieveitsnotbutter.com/recipes/detail/33249/1/savory-balsamic-asparagus> (last accessed August 17, 2018).

involved in an initiative to give consumers helpful information that will enable them to make more informed choices about their diets and lifestyle in an effort to reduce the incidence of overweight and obesity in the United States. A key component in providing nutrient information to consumers is the "Nutrition Facts" panel on food packages. In order for this nutrition information to be useful to consumers, it must be accurate and based on a meaningful amount of food. After the Nutrition Labeling and Education Act was enacted, thereby mandating nutrition labeling, FDA promulgated regulations that specify how serving size must be derived from an appropriate reference amount for the food commodity in question. . . . Therefore, we are taking this opportunity to remind the food industry about the rules for determining an appropriate serving size. Manufacturers must use the information provided in Title 21 of the Code of Federal Regulations (CFR) sections 101.9(b) and 101.12 to determine a specific serving size for their products. . . .

FDA encourages the food industry to review their nutrition information and assure that the serving size declared is appropriate for the commodity in question. FDA also encourages manufacturers to refer to our guidance documents at www.cfsan.fda.gov for additional information on serving sizes.⁷

54. Defendants have known that ICBINB Spray was mislabeled and that it confused consumers for years. Defendants were sued in 2013 for falsely advertising the fat and calorie content of ICBINB Spray, a case that is still pending. *See Pardini, et. al v. Unilever United States, Inc.* Case No. 13-cv-1675 (N.D.Cal.). As the plaintiffs in that case noted, the Internet is replete with complaints echoing those of the named Plaintiffs here. For example, a contributor to the website "sparkpeople.com" writes:

I agree that most nutritional info can be misleading, but the butter spray takes the cake! Based on their logic, Doritos could advertise their chips as being 0 cal and 0 fat if they dropped the serving size down to half a chip. They should not legally be allowed to advertise a product with such a small serving size. Not to mention it's next to impossible to measure. Nor is it a valid form of measurement. A more realistic approach would be to base the nutrition info on a tsp. of spray.⁸

⁷ Letter to Food Manufacturers about Accurate Serving Size Declaration on Food Products, March 12, 2004, available at: <https://web.archive.org/web/20140208203103/http://www.fda.gov:80/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/ucm329756.htm> (last accessed September 17, 2018).

⁸ (See TooZluv, Comment to *I Can't Believe It's Not Butter Spray Full of Fat!*, SparkPeople (July 8, 2013), <http://www.sparkpeople.com/myspark/messageboard.asp?imboard=1&imparent=31440612.>)

1 55. As one consumer commented, “[t]his issue makes me furious – so often products
2 that are full of fat, and even trans fats, designate completely ridiculous serving sizes, then ‘round’
3 the fat down to zero. Often, they won’t even have on the label anywhere what the actual fat content
4 is. So people think there’s no fat when there’s a ton.”⁹ Another contributor, commenting on spray
5 buttery toppings generally, stated: “Well that’s just stupid... [I’ve] never used ONE spray.”¹⁰ Some
6 consumers use so much of the product at a time that they bypass the spray mechanism altogether
7 and pour the product. For instance, one consumer commented: “A while back, I thought I had
8 discovered a gold mine! I can’t believe it’s not butter spray! For a butter substitute! 0 calories,
9 yada, yada. But after a bit, I began unscrewing the cap and pouring it on my potato, my oatmeal,
10 etc. Just now, I googled it to see if it’s bad for me (I was so sure it wasn’t, ha) and dang it, it is.”¹¹

11 56. Defendants ignored these consumer complaints and the FDA’s guidance and
12 continued to use their deceptive and misleading product labels.

13 57. Defendants continue to market the ICBINB Spray using baseless serving sizes
14 because they profit enormously from it. In particular, the ICBINB Spray costs more than similar
15 products without misleading advertisements and misrepresentations, and—as can be demonstrated
16 using econometric or statistical techniques such as hedonic regression or conjoint analysis—would
17 have cost less absent the false and misleading statements.

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23 ⁹ Crabby McSlacker, Comment to *I Can’t Believe It’s Not Butter Spray Is Full of Fat – Buyer*
24 *Beware, That’s Fit* (June 1, 2007),
<https://web.archive.org/web/20130730181438/http://www.thatsfit.com:80/2007/06/01/i-cant-believe-its-not-butter-spray-is-full-of-fat-buyer-be> (last visited September 17, 2018).

25 ¹⁰ Elizabethberg, Comment to *The Truth About “0” Calorie Parkay Butter Spray*, Calorie
26 Count (April 10, 2008),
<https://web.archive.org/web/20130514064306/http://caloriecount.about.com/forums/foods/truth-calorie-parkay-butter-spray> (visited September 17, 2018).

27 ¹¹ MaryBBrown, Comment to *I Can’t Believe It’s Not Butter-Spray*, MyFitnessPal (April 14,
28 2011), <http://www.myfitnesspal.com/topics/show/217304-i-can-t-believe-it-s-not-butter-spray-i-think-it-s-bad-fo> (last accessed September 17, 2018).

1
2 **C. Defendants include fat and calorie content claims on the front label of ICBINBN**
3 **Spray in violation of federal regulations.**

4 58. To perpetuate the belief among consumers that ICBINB Spray is actually free of fat
5 and calories and to otherwise obscure its true nutritional profile, Defendants also failed to disclosed
6 that ICBINB Spray is actually “40% vegetable oil,” as required by law.

7 **1. Overview of the Food and Drug Administration’s Nutrient Content Claim**
8 **Regulations.**

9 59. In addition to regulations that require a manufacturer to disclose the total number of
10 calories and fat per serving in the nutritional label (see paragraphs ¶¶ 30-32), the FDA has
11 promulgated regulations governing the product’s identity and related nutrient content claims. *See*
12 21 C.F.R. §101.13, “Nutrient content claims –general principles.”

13 60. These regulations impose requirements on manufacturers that wish to make claims
14 about the nutrient contents, including fat and calorie content, on the packaging, outside of the
15 nutritional facts panel. 21 C.F.R. §§101.13(b); 101.9(c)(1-2); 101.13(c).

16 61. In particular, the regulations prohibit manufacturers from including a nutrient
17 content claim about fat or calories unless they also include a statement of identity on the front
18 label. 21 C.F.R. §101.13(f). The statement of identity is the common or usual name of the food or
19 in the absence thereof an appropriately descriptive term. 21 C.F.R. §101.3(b). It tells the
20 consumer – in as simple and direct terms as possible – the basic nature of the food or its
21 characterizing properties or ingredients. 21 C.F.R. §102.5(a).

22 62. Furthermore, when the presence of an ingredient is material to the consumer,
23 manufacturers are required to include the percentage of that material ingredient in easily legible
24 boldface print or type, in distinct contrast to other printed or graphic material and in a height not
25 less than one-eighth inch. 21 C.F.R. §102.5(b). And when consumers may otherwise be misled
26 about the presence or absence of an ingredient or component, the statement of identity must include
27 a statement denoting the presence or absence of that ingredient or component, e.g., “containing (or
28 contains) ____”. 21 C.F.R. §102.5(c).

63. Finally, in addition to being required to print a statement of identity on the front of the label, the nutrient content claims cannot be more than twice the size of the statement of identity and cannot be in an unusual type style relative to the statement of identity. 21 C.F.R. §§101.13(f); 101.3(d).

2. Defendants Failed to Inform Consumers That ICBINB Spray Contains 40% Vegetable Oil as Required.

64. Defendants ignored the nutrient content regulations and made express claims regarding the calorie and transfat content of ICBINB Spray on its front label without providing a statement of identity or the material ingredient on the label.

65. Even though Defendants represented that ICBINB Spray was “0 g trans fat per serving” “0 calories per serving” “0 calories per 1 spray,” *see* Paragraph 20, throughout the class period and until approximately mid-2018, ICBINB Spray did not, however, include a statement of identity – telling consumers that ICBINB Spray is actually 40% vegetable oil.

66. Defendants’ statement that the product is a “buttery spray” does not satisfy the regulations because it does not accurately describe the basic nature of the food or the characterizing properties or ingredients, as required by 21 C.F.R. 102.5(a). Moreover, it does not actually contain any information about the presence of any characterizing ingredient, which is required when consumers might be misled about the presence or absence of ingredients or components. *Id.* Butter is not an ingredient in the product, and consumers are likely to be misled as to the presence of oil in a product that supposedly has no calories.

67. Furthermore, “buttery spray” is also a problematic statement of identity because it differs from how similar products are advertised, and the regulations require that it be “uniform among all identical or similar products.” 21 C.F.R. 102.5(a). Defendants’ competitors all disclose on the front of the package the percentage of vegetable oil contained in the product. For example, Parkay Spray advertises itself as a butter-flavored, zero calorie spray, discloses on the front label that the product is “44% vegetable oil spread.” Similarly, other butter substitute companies routinely print on the front of the packages a statement about the oil content of the product. For

1 example, on packages of Bummel & Brown, a butter substitute made from yogurt, the company
2 prints “35% vegetable oil spread, 10% nonfat yogurt.” And while Defendant has characterized this
3 product as a “spray” akin to cooking sprays, even those sprays disclose their oil content on the
4 front. For example, on the front of PAM canisters, it states “100% Canola Oil.”

5 68. Defendants’ failure to inform consumers that ICBINB Spray is actually 40%
6 vegetable oil perpetuated the belief among consumers that ICBINB Spray contained a negligible
7 amount of fat and calories on a percentage basis.

8 69. This failure also rendered the “0 transfat” and “0 calories” claims on ICBINB’s
9 front label unlawful and in violation of FDA regulations.

10 **D. Defendants’ Intend to Continue to Market Products as Having Zero Calories and Fat.**
11

12 70. Because Defendants know consumers rely on representations about the fat and
13 calorie contents in grocery store items, Defendants have an incentive to continue to make false
14 representations.

15 71. In the summer of 2018, Defendants rolled out new packaging for the ICBINB
16 Spray. The packaging still represents on the front of the label that the product contains zero
17 calories and no transfat. But on the back, Defendants have omitted the second made-up five spray
18 “topping” category from nutritional information, noting only that the product contains no fat and
19 calories per one spray. Thus, despite being sued in 2013 and fighting the lawsuit for over five
20 years, Defendants have chosen to modify their packaging to provide even less information for
21 those consumers who wish to read the entire label.

22 72. To capitalize on the market for low fat, low calorie foods, Defendants may not only
23 continue to misleadingly advertise their ICBINB Spray, but they could seek to replicate the
24 misrepresentation in other ways. For example, Defendants own other brands of margarine and low
25 fat butter-like spreads, such as Country Crock, Bummel & Brown, and Promise. While Defendants
26 do not currently advertise these brands as having any calorie and fat free options, Defendants have
27 an incentive to replicate the successful misrepresentation on those products.

28 73. Defendants have also begun working with Upfield, a consumer packaged goods

1 company, which has purchased the ICBINB brand and has licensed the product line back to
2 Defendants to manufacture and sell. To ensure they can keep profiting from their false advertising,
3 Defendants may work with Upfield to sell the same product formulation under a different brand. In
4 fact, last year, Defendants changed the name of “I Can’t Believe It’s Not Butter” to “I Can’t
5 Believe Its So Good” in various European countries and began utilizing different packaging there.
6 Thus, consumers may be tricked into purchasing the product here.

7 74. As consumers are not food scientists, and cannot test products to determine their
8 calorie count or fat products, consumers cannot possibly determine if the product they are
9 purchasing is actually zero fat and zero calories.

10 **E. Plaintiffs’ Experiences**

11
12 75. Plaintiffs are reasonably diligent consumers, and when they purchased ICBINB
13 Spray, they were looking for calorie-free and fat-free alternatives to butter.

14 **1. Jennifer Zizumbo**

15 76. While shopping in grocery stores in and around her home in San Diego, California,
16 Plaintiff Zizumbo encountered ICBINB Spray in the refrigerated section of grocery stores. She
17 noted that the product appeared next to butter and margarine—products for which ICBINB Spray
18 was promoted as a calorie-free and fat-free alternative.

19 77. Ms. Zizumbo first purchased the ICBINB Spray approximately ten years ago. She
20 recalls reading the representation on the front label that ICBINB Spray is “0 calories,” each time
21 she purchased it. She also recalls seeing that the ICBINB Spray is “great for topping & cooking.”
22 She began regularly buying the product, typically purchasing it approximately every other month.
23 She usually bought the product at Von’s, but occasionally bought it at Stater Brothers. She usually
24 paid a couple dollars a bottle.

25 78. Before deciding to purchase ICBINB Spray for the first time, Ms. Zizumbo
26 inspected the nutritional panel and ingredient list on the back of the bottle. Specifically, she saw
27 and read representations that ICBINB Spray contains “Calories 0,” and “Total Fat 0g.” She noted
28 that these statements were consistent with Defendants’ claims on the front label. Notably, she did

1 not see any disclosure or other indication on the nutritional panel that ICBINB Spray actually
2 contains fats and calories, or that it was 40% vegetable oil.

3 79. Over the years, Zizumbo regularly reviewed the fat and calorie information on the
4 package when purchasing the product to confirm that it still had zero fat and zero calories. Ms.
5 Zizumbo relied on Defendants' representations that the ICBINB Spray was fat and calorie free in
6 deciding to purchase ICBINB Spray each time she purchased the product.

7 80. Ms. Zizumbo was unaware that ICBINB Spray contains approximately 51.1 calories
8 and 5.5 grams of fat, per tablespoon. Ms. Zizumbo was also unaware that a single 12-ounce bottle
9 of ICBINB Spray contains 1,160 calories and 124 grams of fat.

10 81. Had Mrs. Zizumbo known that ICBINB Spray contains calories, she
11 would not have purchased the product, or would have paid less for it.

12 82. Had Mrs. Zizumbo known that ICBINB Spray contains fat, she would not have
13 purchased the product, or would have paid less for it.

14 83. Had Mrs. Zizumbo known that ICBINB Spray was 40% vegetable oil, she would
15 not have purchased the product, or would have paid less for it.

16 84. Mrs. Zizumbo has never used ICBINB Spray as a cooking spray, nor has she ever
17 believed that ICBINB Spray is intended to be used as a cooking spray.

18 85. Mrs. Zizumbo routinely used more than five sprays when using ICBINB Spray on
19 her food.

20 **2. Chandra Zundel**

21 86. While shopping in grocery stores in and around her home in San Diego County,
22 California and prior to that, in Florida, Plaintiff Zundel encountered ICBINB Spray in the
23 refrigerated section of grocery stores. She noted that the product appeared next to butter and
24 margarine—products for which ICBINB Spray was promoted as a calorie-free and fat-free
25 alternative.

26 87. Ms. Zundel has been purchasing the ICBINB Spray since approximately 2004 or
27 2005. While there may have been minor label variations over the years, she recalls reading the
28 representation on the front label that ICBINB Spray is "0 calories," each time she purchased it. She

1 also recalls seeing that the ICBINB Spray is “great for topping & cooking.” Since approximately
2 2010, she typically purchased the product at the military base commissary where she resided,
3 including at the Miramar Marine Corps Air Station in San Diego County, California, and Marine
4 Corps Base Camp Pendleton in San Diego County, California.

5 88. Before deciding to purchase ICBINB Spray for the first time and at various other
6 times, Ms. Zundel inspected the nutritional panel and ingredient list on the back of the bottle.
7 Specifically, she saw and read representations that ICBINB Spray contains “Calories 0,” and
8 “Total Fat 0g.” She noted that these statements were consistent with Defendants’ claims on the
9 front label. Notably, she did not see any disclosure or other indication on the nutritional panel that
10 ICBINB Spray actually contains fat and calories, or that it was 40% vegetable oil.

11 89. Ms. Zundel relied on Defendants’ representations that the ICBINB Spray was fat
12 and calorie free in deciding to purchase ICBINB Spray each time she purchased the product.

13 90. Ms. Zundel was unaware that ICBINB Spray contains approximately 51.1 calories
14 and 5.5 grams of fat, per tablespoon. Ms. Zundel was also unaware that a single 12-ounce bottle of
15 ICBINB Spray contains 1160 calories and 124 grams of fat.

16 91. Had Ms. Zundel known that ICBINB Spray contains calories, she would not have
17 purchased the product, or would have paid less for it.

18 92. Had Ms. Zundel known that ICBINB Spray contains fat, she would not have
19 purchased the product, or would have paid less for it.

20 93. Had Ms. Zundel known that ICBINB Spray was 40% vegetable oil, she would not
21 have purchased the product, or would have paid less for it.

22 94. Ms. Zundel has never used ICBINB Spray as a cooking spray, nor has she ever
23 believed that ICBINB Spray is intended to be used as a cooking spray.

24 95. Ms. Zundel has almost never used ICBINB Spray in any application for fewer than
25 ten sprays.

26 **3. Adrienne Ordaz**

27 96. While shopping in grocery stores in and around her home in Altadena, California,
28 Plaintiff Ordaz encountered ICBINB Spray in the refrigerated section of grocery stores. She noted

1 that the product appeared next to butter and margarine—products for which ICBINB Spray was
2 promoted as a fat-free and calorie-free alternative.

3 97. Ms. Ordaz has been purchasing the ICBINB Spray since for almost ten years. While
4 there may have been minor label variations over the years, she recalls reading the representation on
5 the front label that ICBINB Spray is “0 calories,” regularly over the ten years she purchased it. She
6 bought the product a couple times a year, typically at Von’s supermarket, but occasionally at
7 Ralph’s and other grocery stores in her area.

8 98. Before deciding to purchase ICBINB Spray, Ms. Ordaz inspected the nutritional
9 panel and ingredient list on the back of the bottle. Specifically, she saw and read representations
10 that ICBINB Spray contains “Calories 0,” and “Total Fat 0g.” Notably, she did not see any
11 disclosure or other indication on the nutritional panel that ICBINB Spray actually contains fats and
12 calories, or that it was 40% vegetable oil.

13 99. Ms. Ordaz relied on Defendants’ representations that the ICBINB Spray was fat and
14 calorie free in deciding to purchase ICBINB Spray each time she purchased the product.

15 100. Ms. Ordaz was unaware that ICBINB Spray contains approximately 51.1 calories
16 and 5.5 grams of fat, per tablespoon. Ms. Ordaz was also unaware that a single 12-ounce bottle of
17 ICBINB Spray contains 124 grams of fat and 1160 calories.

18 101. Had Ms. Ordaz known that ICBINB Spray contains calories, she would not have
19 purchased the product, or would have paid less for it.

20 102. Had Ms. Ordaz known that ICBINB Spray contains fat, she would not have
21 purchased the product, or would have paid less for it.

22 103. Had Ms. Ordaz known that ICBINB Spray was 40% vegetable oil, she would not
23 have purchased the product, or would have paid less for it.

24 104. Ms. Ordaz has never used ICBINB Spray as a cooking spray, nor has she ever
25 believed that ICBINB Spray is intended to be used as a cooking spray.

26 105. When using ICBINB Spray, Ms. Ordaz typically uses many sprays – far more than
27 five per serving.

28 106. Plaintiffs are not nutritionists, food experts, or food scientists; Plaintiffs are lay

1 consumers who did not possess Defendant's specialized knowledge or food testing capabilities
2 which would have otherwise enabled them to see through Defendant's deceptive marketing and
3 advertising.

4 107. All Plaintiffs continue to desire to purchase fat free, calorie free butter substitutes
5 from Defendants. they regularly visits stores where Defendants' ICBINB Spray, as well as other
6 butter substitutes, such as Country Crock and Bummel & Brown, are sold. Without purchasing and
7 having the products professionally tested, Plaintiffs will be unable to determine if the ICBINB
8 Spray truly is fat and calorie free. Plaintiff understands that the formulation of the ICBINB Spray
9 may change over time or Defendants may respond to pressure from government agencies or
10 litigation. But as long as Defendants may use inaccurate serving sizes to describe products as zero
11 calories and zero fat, then when presented with Defendants' packaging, Plaintiffs continue to have
12 no way of determining whether the representations regarding the fat and calorie content is in fact
13 true. Thus, Plaintiffs is likely to be repeatedly presented with false or misleading information when
14 shopping and unable to make informed decisions about whether to purchase the ICBINB Spray.
15 Moreover, because Defendants now work with third parties, such as Upfield, and have begun
16 rebranding their ICBINB line in other countries, Defendants may try to introduce new products or
17 major branding changes here in the United States, which may cause further confusion and
18 uncertainty at the grocery store. Thus, they are likely to further be repeatedly misled by
19 Defendants' conduct, unless and until Defendants are compelled to utilize accurate serving sizes
20 and present accurate nutritional information on their packaging.

21 V. CLASS ALLEGATIONS

22
23 108. In addition to their individual claims, Plaintiffs bring this action pursuant to Rule 23
24 of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following groups of
25 similarly situated persons, defined as follows:

26
27 All persons who, between October 15, 2014 and the present, purchased, in the
United States, any size bottle ICBINB Spray (the "Class");

28 All members of the Class who made a ICBINB Spray purchase in California

(the "California Subclass").

109. Excluded from the Class are Defendants, their affiliates, successors and assigns, officers and directors, and members of their immediate families.

110. The proposed Class is so numerous that joinder of all members is impracticable. The precise number of members in the Class is not yet known to Plaintiffs, but they estimate that it is well in excess of 1,000 people.

111. There are questions of law and fact that are common to the Class, including, but not limited to, the following:

- whether Defendants misrepresented or omitted material facts in connection with the promotion, marketing, advertising, packaging, labeling and sale of ICBINB Spray;
- whether Defendants represented that ICBINB Spray has characteristics, benefits, uses or qualities that it does not have;
- whether Defendants misled class members by representing that ICBINB Spray has no fat;
- whether Defendants misled class members by representing that ICBINB Spray has no calories;
- whether Defendants were required to use a serving size of one tablespoon for ICBINB Spray;
- whether Defendants were required to include a statement of identity on the front label of ICBINB Spray;
- whether Defendants were allowed to make claims about the fat and calorie content of ICBINB Spray on the front label without also declaring on the front label that ICBINB Spray is, by nature, 40% vegetable oil;
- whether Defendants were allowed to make claims about the fat and calorie content of ICBINB Spray on the front label without also declaring on the front label that ICBINB Spray contains vegetable oil;
- whether Defendants' nondisclosures and misrepresentations would be material to a reasonable consumer;
- whether the nondisclosures and misrepresentations were likely to deceive a reasonable

1 consumer in violation of the consumer protection statutes of California;

- 2 • whether the nondisclosures and misrepresentations are unlawful and violate California's
- 3 Sherman Food, Drug, and Cosmetic Act;
- 4 • whether Defendants breached an express warranty made to Plaintiffs and the Class;
- 5 • whether Defendants were unjustly enriched;
- 6 • whether Defendants intentionally misrepresented that ICBINB Spray is "0g fat" and "0
- 7 calories";
- 8 • whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiffs and the
- 9 members of the Class;
- 10 • whether Plaintiffs and the members of the Class are entitled to damages, restitution, and/or
- 11 equitable or injunctive relief;
- 12 • whether Defendants breached their obligations to the Class;
- 13 • whether Defendants engaged in the alleged conduct knowingly, recklessly, or negligently;
- 14 • the amount of revenues and profits Defendants received and/or the amount of monies or
- 15 other obligations lost by class members as a result of such wrongdoing;
- 16 • whether class members are entitled to injunctive relief and other equitable relief and, if so,
- 17 what is the nature of such relief; and
- 18 • whether class members are entitled to payment of actual, incidental, consequential,
- 19 exemplary, and/or statutory damages plus interest, and if so, what is the nature of such
- 20 relief.

21 112. Plaintiffs' claims against Defendants are typical of the claims of the Class because
22 Plaintiffs and all other members of the class purchased ICBINB Spray with the same attendant
23 advertising, warranties, and representations. With respect to the class allegations, Plaintiffs were
24 subject to the exact same business practices and representations.

25 113. Plaintiffs will fairly and adequately protect the interests of the Class.

26 114. Plaintiffs have demonstrated their commitment to the case, has diligently educated
27 themselves as to the issues involved, and to the best of their knowledge does not have any interests
28 adverse to the proposed class.

115. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members.

116. A class action is superior to other available methods for a fair and efficient adjudication of this controversy as many members of the proposed Class have damages arising from Defendants' wrongful course of conduct which would not be susceptible to individualized litigation of this kind, including, but not limited to, the costs of experts and resources that may be required to examine the business practices in question.

117. Given the relative size of damages sustained by the individual members of the Class, the diffuse impact of the damages, and homogeneity of the issues, the interests of members of the Class individually controlling the prosecution of separate actions is minimal.

118. There is no litigation already commenced for these class representatives, nor is there anticipated to be subsequent litigation commenced by other members of the Class concerning Defendants' alleged conduct. A different set of class representative filed a similar action in the N.D. California. See *Kym Pardini and Carrie Wood v. Unilever United States*, 4:13-cv-01675-JSW (N.D. Cal. 2013). Consequently, concerns with respect to the maintenance of a class action regarding the extent and nature of any litigation already commenced by members of the Class are non-existent.

119. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this Class Action Complaint that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

120. Plaintiffs do not plead, and hereby disclaim, causes of action under the Food Drug and Cosmetic Act (“FDCA”) and regulations promulgated thereunder by the FDA. Plaintiffs relies on these regulations only to the extent such laws and regulations have been separately enacted as state law or regulations or provide a predicate basis of liability under the state and common laws cited in the following causes of action.

Plaintiffs' First Cause of Action
(Fraud, Deceit, and/or Misrepresentation)
On Behalf of Themselves and the California Subclass

121. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this complaint as if fully set forth herein.

122. As set forth above (inter alia, see supra, ¶¶ 29-57), Defendants chose to use the incorrect serving sizes of one spray and five sprays to calculate the amount of calories and fat to use on the ICBINB Spray label. Instead of using the one-tablespoon serving size required by FDA regulations, Defendants chose to use serving sizes of one spray and five sprays for the ICBINB Spray label. Defendants failed to use the proper FDA subcategory for ICBINB Spray—"Butter, margarine, oil and shortening." In doing so, Defendants not only violated FDA regulations, but also ignored the fact that when consumers use ICBINB Spray, they use many sprays (typically, 10-40 sprays). As made possible by their decision to use the incorrect serving size, Defendants falsely represented to Plaintiffs and those similarly situated that ICBINB Spray contains no fat and no calories.

123. As set forth above (inter alia, see supra, ¶¶ 65-70), Defendants made "0 calories" and "0 transfat" representations on the front label of ICIBNB Spray\without disclosing that ICBINB Spray is actually 40% vegetable oil. In doing so, Defendants not only violated FDA regulations, but also created the firm impression that ICBINB Spray is a fat and calorie free alternative to butter that contains an insignificant amount of fat on a percentage basis. As made possible by their decision to include unauthorized fat and calorie content claims on the front label of ICBINB Spray, Defendants falsely represented to Plaintiffs and those similarly situated that ICBINB Spray has no fat and no calories.

124. Defendants further concealed, suppressed, and omitted material facts that would have revealed that ICBINB Spray contains significant amounts of calories and fat.

125. In addition, Defendants represented to all retailers of ICBINB Spray, including online retailers and brick-and-mortar retailers, that ICBINB Spray contains no calories and no fat. Defendants made these representations by providing to such retailers labels, packaging, and nutrition information pertaining to ICBINB Spray, stating that the product does not have calories or

1 fat.

2 126. Defendants made these representations to retailers with the knowledge and intent
3 that the retailers would represent to Plaintiffs, and others similarly situated, that ICBINB Spray has
4 no calories and no fat.

5 127. Defendants' representations—both those made directly to consumers on
6 Defendants' website and on the product, and those made indirectly to consumers through retailers
7 and on the product labels—were false, and Defendants knew that the representations were false
8 when they made them. In particular, as described above (supra, ¶¶ 32-57), Defendants knew (i) that
9 consumers use ICBINB Spray as a topping; (ii) consumers habitually use between 10-40 sprays
10 when topping food, not 5; (iii) that consumers do not use ICBINB Spray as a cooking spray; (iv)
11 that ICBINB Spray is ill-suited for use as a cooking spray; and (v) that the FDA regulations
12 pertaining to cooking sprays were referring to non-stick cooking sprays like Pam, which are
13 fundamentally different from ICBINB Spray because they are not water-based sprays.
14 Accordingly, Defendants knew that the proper FDA category for ICBINB Spray was the default
15 subcategory, "Butter, margarine, oil and shortening."

16 128. Defendants' misrepresentations and omissions were material at the time they were
17 made. They concerned material facts that were essential to the analysis undertaken by Plaintiffs
18 and those similarly situated as to whether to purchase ICBINB Spray.

19 129. Plaintiffs and those similarly situated reasonably relied to their detriment on
20 Defendants' representations—both those that Defendants made directly to them, and those that
21 Defendants made indirectly to them through retailers. Specifically, Plaintiff and those similarly
22 situated purchased ICBINB Spray because they believed that it had no fat and no calories. This
23 reliance was reasonable because Plaintiffs reasonably expected that Defendants would have
24 complied with FDA labeling regulations. Plaintiffs had no reason to doubt that established food
25 manufacturers and distributors such as Defendants would comply with basic FDA regulations
26 regarding serving sizes and claims regarding transfat and calorie content on the front label.

27 130. Had Plaintiffs and those similarly situated been adequately informed and not
28 intentionally deceived by Defendants, they would have acted differently by, without limitation, not

1 purchasing (or paying less for) ICBINB Spray.

2 131. Defendants had a duty to inform members of the California Subclass at the time of
3 their purchase that ICBINB Spray contains calories and fat. In making their representations and
4 omissions, Defendants breached their duty to subclass members. Defendants also gained
5 financially from, and as a result of, their breach.

6 132. By and through such fraud, deceit, misrepresentations and/or omissions, Defendants
7 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.
8 Specifically, Defendants fraudulently and deceptively induced Plaintiffs and those similarly
9 situated to, without limitation, to purchase ICBINB Spray.

10 133. As a direct and proximate result of Defendants' misrepresentations and omissions,
11 Plaintiffs and those similarly situated have suffered damages. In particular, Plaintiffs seek to
12 recover on behalf of themselves and those similarly situated the amount of the price premium they
13 paid (i.e., the difference between the price consumers paid for ICBINB Spray and the price they
14 would have paid but for Defendants' misrepresentations), in an amount to be proven at trial using
15 econometric or statistical techniques such as hedonic regression or conjoint analysis.

16 134. Defendants' conduct as described herein was willful and malicious and was
17 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
18 and harm to Plaintiffs and those similarly situated.

19
20 **Plaintiffs' Second Cause of Action**
21 **(Violation of the Consumers Legal Remedies Act,**
California Civil Code § 1750, et seq.)
22 **On Behalf of Themselves and the California Subclass**

23 135. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
24 Complaint as if set forth herein.

25 136. This cause of action is brought pursuant to the California Consumers Legal
26 Remedies Act, California Civil Code § 1750, et seq. ("CLRA").

27 137. Defendants' actions, representations and conduct have violated, and continue to
28 violate the CLRA, because they extend to transactions that are intended to result, or which have

1 resulted, in the sale of goods to consumers.

2 138. Plaintiffs and other members of the California Subclass are “consumers” as that
3 term is defined by the CLRA in California Civil Code § 1761(d).

4 139. The products that Plaintiffs and similarly situated members of the California
5 Subclass purchased from HP are “goods” within the meaning of California Civil Code § 1761.

6 140. By engaging in the actions, representations, and conduct set forth in this Class
7 Action Complaint, Defendants have violated, and continue to violate, §§ 1770(a)(5), 1770(a)(7),
8 and 1770(a)(9) of the CLRA. In violation of California Civil Code §1770(a)(5), Defendants
9 represented that goods have approval, characteristics, uses, benefits, and qualities that they do not
10 have. In violation of California Civil Code §1770(a)(7), Defendants’ acts and practices constitute
11 improper representations that the goods and/or services it sells are of a particular standard, quality,
12 or grade, when they are of another. In violation of California Civil Code §1770(a)(9), Defendants
13 advertised goods with intent not to sell them as advertised.

14 141. Specifically, Defendants’ acts and practices lead consumers to believe that ICBINB
15 Spray has no calories and fat. To the contrary, ICBINB Spray contains significant calories and fat.

16 142. Plaintiff requests that this Court enjoin Defendants from continuing to employ the
17 unlawful methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2).
18 If Defendants are not restrained from engaging in these types of practices in the future, Plaintiff
19 and the other members of the California Subclass will continue to suffer harm.

20 143. CLRA § 1782 NOTICE. Irrespective of any representations to the contrary in this
21 Class Action Complaint, Plaintiffs specifically disclaim, at this time, any request for damages
22 under any provision of the CLRA. Plaintiffs, however, hereby provide Defendants with notice and
23 demand that within thirty (30) days from that date, Defendants correct, repair, replace or otherwise
24 rectify the unlawful, unfair, false and/or deceptive practices complained of herein. Defendants’
25 failure to do so will result in Plaintiffs amending this Class Action Complaint to seek, pursuant to
26 California Civil Code § 1780(a)(3), on behalf of themselves and those similarly situated members
27 of the California Subclass, compensatory damages, punitive damages and restitution of any ill-
28 gotten gains due to Defendants’ acts and practices.

1 144. Plaintiffs also request that this Court award them costs and reasonable attorneys'
2 fees pursuant to California Civil Code § 1780(d).

3
4 **Plaintiffs' Third Cause of Action**
5 **(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**
6 **On Behalf of Themselves and the California Subclass**

7 145. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
8 Complaint as if set forth herein.

9 146. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
10 preceding the filing of the Class Action Complaint, Defendants have made untrue, false, deceptive
11 and/or misleading statements in connection with the advertising and marketing of ICBINB Spray.

12 147. Defendants have made representations and statements (by omission and
13 commission) that lead reasonable consumers to believe that ICBINB Spray has no calories.
14 Defendants, however, deceptively failed to inform consumers that ICBINB Spray contains
15 significant calories.

16 148. Defendants have made representations and statements (by omission and
17 commission) that lead reasonable consumers to believe that ICBINB Spray has no fat. Defendants,
18 however, deceptively failed to inform consumers that ICBINB Spray contains a significant amount
19 of fat.

20 149. Plaintiffs and those similarly situated relied to their detriment on Defendants' false,
21 misleading and deceptive advertising and marketing practices. Had Plaintiffs and those similarly
22 situated been adequately informed and not intentionally deceived by Defendants, they would have
23 acted differently by, without limitation, paying less for ICBINB Spray.

24 150. Defendants' acts and omissions are likely to deceive the general public.

25 151. Defendants engaged in these false, misleading and deceptive advertising and
26 marketing practices to increase its profits. Accordingly, Defendants have engaged in false
27 advertising, as defined and prohibited by section 17500, et seq. of the California Business and
28 Professions Code.

 152. The aforementioned practices, which Defendants have used, and continue to use, to

1 their significant financial gain, also constitute unlawful competition and provide an unlawful
2 advantage over Defendants' competitors as well as injury to the general public.

3 153. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
4 of monies, as necessary and according to proof, to restore any and all monies acquired by
5 Defendants from Plaintiffs, the general public, or those similarly situated by means of the false,
6 misleading and deceptive advertising and marketing practices complained of herein, plus interest
7 thereon.

8 154. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit
9 Defendants from continuing to engage in the false, misleading and deceptive advertising and
10 marketing practices complained of herein. The acts complained of herein occurred, at least in part,
11 within three (3) years preceding the filing of this Class Action Complaint.

12 155. Plaintiffs and those similarly situated are further entitled to and do seek both a
13 declaration that the above-described practices constitute false, misleading and deceptive
14 advertising, and injunctive relief restraining Defendants from engaging in any such advertising and
15 marketing practices in the future. Such misconduct by Defendants, unless and until enjoined and
16 restrained by order of this Court, will continue to cause injury in fact to the general public and the
17 loss of money and property in that Defendants will continue to violate the laws of California,
18 unless specifically ordered to comply with the same. This expectation of future violations will
19 require current and future customers to repeatedly and continuously seek legal redress in order to
20 recover monies paid to Defendants to which Defendants are not entitled. Plaintiffs, those similarly
21 situated and/or other consumers nationwide have no other adequate remedy at law to ensure future
22 compliance with the California Business and Professions Code alleged to have been violated
23 herein.

24 156. As a direct and proximate result of such actions, Defendants and the other members
25 of the California Subclass have suffered, and continue to suffer, injury in fact and have lost money
26 and/or property as a result of such false, deceptive and misleading advertising in an amount which
27 will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
28

Plaintiffs' Fourth Cause of Action
(Negligent Misrepresentation)
On Behalf of Themselves and the California Subclass

157. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action Complaint as if set forth herein.

158. In marketing and selling ICBINB Spray to consumers, Defendants made false and misleading statements that ICBINB Spray has no calories. Defendants, however, deceptively failed to inform consumers that ICBINB Spray has significant calories.

159. In marketing and selling ICBINB Spray to consumers, Defendants made false and misleading statements that ICBINB Spray has no fat. Defendants, however, deceptively failed to inform consumers that ICBINB Spray contains a significant amount of fat.

160. These representations were material at the time they were made. They concerned material facts that were essential to the decision of Plaintiffs and those similarly situated regarding how much to pay for ICBINB Spray.

161. Defendants made identical misrepresentations and omissions to members of the California Subclass regarding ICBINB Spray.

162. Defendants should have known their representations to be false, and had no reasonable grounds for believing them to be true when they were made.

163. By and through such negligent misrepresentations, Defendants intended to induce Plaintiffs and those similarly situated to alter their position to their detriment. Specifically, Defendants negligently induced Plaintiffs and those similarly situated, without limitation, to purchase ICBINB Spray at the price they paid.

164. Plaintiffs and those similarly situated reasonably relied on Defendants' representations. Specifically, Plaintiffs and those similarly situated paid as much as they did for ICBINB Spray, because Defendants had represented that ICBINB Spray contains no calories and no fat.

165. Because they reasonably relied on Defendants' false representations, Plaintiffs and those similarly situated were harmed in the amount of the price premium they paid (i.e., the difference between the price consumers paid for ICBINB Spray and the price they would have paid

1 but for Defendants' misrepresentations), in an amount to be proven at trial using econometric or
2 statistical techniques such as hedonic regression or conjoint analysis.

3
4 **Plaintiffs' Fifth Cause of Action**
5 **(Unfair, Unlawful and Deceptive Trade Practices,**
6 **Business and Professions Code § 17200, et seq.)**
7 **On Behalf of Themselves and the California Subclass**

8
9 166. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
10 Complaint as if set forth herein.

11 167. Within four (4) years preceding the filing of this Class Action Complaint, and at all
12 times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and
13 deceptive trade practices in California by carrying out the unfair, deceptive and unlawful business
14 practices outlined in this Class Action Complaint. In particular, Defendants have engaged, and
15 continue to engage, in unfair, unlawful and deceptive trade practices by, without limitation, the
16 following:

- 17 a. choosing to use the incorrect serving sizes of one spray and five sprays to calculate the
18 amount of fat and calories to use on the ICBINB Spray label;
- 19 b. failing to use the one-tablespoon serving size required by FDA regulations for the
20 ICBINB Spray label;
- 21 c. failing to use the proper FDA subcategory for ICBINB Spray—"Butter, margarine, oil
22 and shortening."
- 23 d. ignoring the fact that when consumers use ICBINB Spray, they use many sprays
24 (typically, 10-40 sprays);
- 25 e. choosing to make claims regarding the transfat and calorie content of ICBINB Spray on
26 the front label without also including a statement of identity identifying vegetable oil as
27 ICBINB Spray's characterizing ingredient;
- 28 f. failing to disclose in simple and direct terms the basic nature of ICBINB Spray;
- g. failing to include the percentage of vegetable oil on the front label of ICBINB Spray in
conspicuous print and in distinct contrast to other printed or graphic material;

- h. failing to include a statement denoting the presence of vegetable oil as a characterizing ingredient of ICBINB Spray;
- e. falsely representing to Plaintiffs and those similarly situated that ICBINB Spray contains no calories;
- f. falsely representing to Plaintiffs and those similarly situated that ICBINB Spray contains no fat;
- g. failing to inform Plaintiffs and those similarly situated that ICBINB Spray contains significant calories; and
- h. failing to inform Plaintiffs and those similarly situated that ICBINB Spray contains significant fat.
- i. engaging in misrepresentation as described herein;
- j. violating 21 C.F.R. part 101, including §§ 101.9, 101.12, 101.13, and 101.3.
- k. violating 21 C.F.R. part 102, including § 102.5
- k. violating the Sherman Food, Drug and Cosmetic Act, Cal. Health & Saf. Code,
- l. violating the CLRA as described herein; and
- m. violating the FAL as described herein.

168. Plaintiffs and those similarly situated relied to their detriment on Defendants' unfair, deceptive and unlawful business practices. Had Plaintiffs and those similarly situated been adequately informed and not deceived by Defendants, they would have acted differently by, without limitation, paying less for ICBINB Spray.

169. Defendants' acts and omissions are likely to deceive the general public.

170. Defendants engaged in these unfair practices to increase their profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200, et seq. of the California Business and Professions Code.

171. The aforementioned practices, which Defendants have used to their significant financial gain, also constitute unlawful competition and provides an unlawful advantage over Defendants' competitors as well as injury to the general public.

172. As a direct and proximate result of such actions, Plaintiffs and the other members of

1 the California Subclass have suffered and continue to suffer injury in fact and have lost money
2 and/or property as a result of such deceptive, unfair and/or unlawful trade practices and unfair
3 competition in an amount which will be proven at trial, but which is in excess of the jurisdictional
4 minimum of this Court. Among other things, Plaintiff and the class lost the amount of the price
5 premium they paid (i.e., the difference between the price consumers paid for ICBINB Spray and
6 the price they would have paid but for Defendants' misrepresentations), in an amount to be proven
7 at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis;

8 173. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-
9 described trade practices are fraudulent and unlawful.

10 174. Plaintiffs seeks, on behalf of those similarly situated, an injunction to prohibit
11 Defendants from offering ICBINB Spray within a reasonable time after entry of judgment, unless
12 the Defendant modifies its website and other marketing materials to remove the misrepresentations
13 and to disclose the omitted facts. Such misconduct by Defendants, unless and until enjoined and
14 restrained by order of this Court, will continue to cause injury in fact to the general public and the
15 loss of money and property in that Defendants will continue to violate the laws of California,
16 unless specifically ordered to comply with the same. This expectation of future violations will
17 require current and future consumers to repeatedly and continuously seek legal redress in order to
18 recover monies paid to Defendants to which Defendants were not entitled. Plaintiffs, those
19 similarly situated and/or other consumers have no other adequate remedy at law to ensure future
20 compliance with the California Business and Professions Code alleged to have been violated
21 herein.

22 **Plaintiffs' Sixth Cause of Action**
23 **(Unjust Enrichment)**
On Behalf of Themselves and the Class

24 175. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
25 Complaint as if set forth herein.

26 176. Plaintiffs and the Class members conferred a benefit on the Defendants by
27 purchasing ICBINB Spray.

28 177. Defendants have been unjustly enriched in retaining the revenues from Class

1 members' purchases of ICBINB Spray, which retention under these circumstances is unjust and
2 inequitable because Defendants falsely represented that ICBINB Spray had no calories and no fat,
3 which caused injuries to Plaintiffs and Class members because they paid a price premium due to
4 the mislabeling of ICBINB Spray.

5 178. Because Defendants' retention of the non-gratuitous benefit conferred on them by
6 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
7 and the Class members for their unjust enrichment, as ordered by the Court.

8 179. Plaintiffs, therefore, seek an order requiring Defendants to make restitution to them
9 and other members of the Class.

10 **VII. PRAYER FOR RELIEF**

11
12 WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated,
13 respectfully requests that this Court enter a judgment against Defendants and in favor of Plaintiffs,
14 and grant the following relief:

15 A. Determine that this action may be maintained as a Class action with respect to the
16 Class identified herein and certify it as such under Rules 23(b)(2) and 23(b)(3), or alternatively
17 certify all issues and claims that are appropriately certified, and designate and appoint Plaintiffs as
18 Class Representatives and their counsel as Class Counsel;

19 B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be
20 unlawful, unfair and/or deceptive;

21 C. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
22 division, trade name, or other device, in connection with the manufacturing, labeling, packaging,
23 advertising, promotion, offering for sale, sale, or distribution of any margarine or butter substitute,
24 from omitting a statement of identity that complies with 21 C.F.R 102.5 where Defendants also
25 make a claim regarding the nutritional contents of the product.

26 D. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
27 division, trade name, or other device, in connection with the manufacturing, labeling, packaging,
28 advertising, promotion, offering for sale, sale, or distribution of any margarine or butter substitute,

1 from making a claim that the product has zero calories and/or zero fat unless such measurement
2 comports with the serving size requirements for butter or margarine products set forth in 21 C.F.R.
3 § 101.12(b) and/or, at the time the representation is made, Defendants possess and rely upon
4 competent and reliable evidence, that, when considered in light of the entire body of relevant and
5 reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the
6 relevant fields to substantiate that the serving size is of an amount customarily used by consumers
7 of the product in question. For the purposes of this paragraph, "competent and reliable evidence"
8 means tests, analyses, research, studies, or other evidence based on the expertise of professionals in
9 the relevant area, that have been conducted and evaluated in an objective manner by qualified
10 persons, using procedures generally accepted in the profession to yield accurate and reliable
11 results.

12 E. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
13 division, or other device, in connection with the manufacturing, labeling, packaging, advertising,
14 promotion, offering for sale, sale, or distribution of any margarine or butter substitute, to not
15 provide to others the means and instrumentalities with which to make any representation prohibited
16 by Paragraphs C and D above. For the purposes of this paragraph, "means and instrumentalities"
17 means any information, including, but not necessarily limited to, any advertising, labeling, or
18 promotional, sales training, or purported substantiation materials, for use by trade customers in
19 their marketing of such product or service.

20 F. Award Plaintiffs and the Class actual, compensatory damages, as proven at trial;

21 G. Award Plaintiffs and the Class restitution of all monies paid to Defendants as a
22 result of unlawful, deceptive, and unfair business practices;

23 H. Award Plaintiffs and the Class exemplary damages in such amount as proven at
24 trial;

25 I. Award Plaintiffs and the Class reasonable attorneys' fees, costs, and pre- and post-
26 judgment interest; and

27 J. Award Plaintiffs and the Class such other further and different relief as the nature of
28 the case may require or as may be determined to be just, equitable, and proper by this Court.

1
2
3 **VIII. JURY TRIAL DEMAND**

4 Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth herein.

5
6 DATED: October 18, 2018

GUTRIDE SAFIER LLP

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