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Attorneys for Plaintiffs
SHERRIE CLEVINGER, THERESA
REISFELT AND THE CLASS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

SHERRIE CLEVINGER AND THERESA
REISFELT on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

RIVIANA FOODS, INC., a Delaware
Corporation, d/b/a RONZONI; AND NEW
WORLD PASTA COMPANY, a Delaware
Corporation,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

07/11/2019 at 04:02:49 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

CASE NO.: 30-2019-01082583-CU-BT-CXC

CLASS ACTION COMPLAINT FOR:

1. Violation of Cal. Unfair Competition,
Cal. Business & Professions Code §17200,
et seq.;
2. Violation of Cal. Consumers Legal
Remedies Act §1750, *et seq.*;

Assigned: Judge William Claster

Dept: CX104

CLASS ACTION COMPLAINT

Exhibit A

1 Plaintiffs Sherrie Clevenger and Theresa Reisfelt ("Plaintiffs"), by and through their
 2 attorneys, DiVincenzo Schoenfield Stein and Lanza & Smith, PLC, bring this class action complaint
 3 on behalf of themselves and all others similarly situated (the "Class"), alleging facts related to their
 4 own purchases based on personal knowledge and all other facts based upon the investigation of
 5 counsel.

6 NATURE OF THE ACTION

7 1. This is a consumer protection class action arising from Riviana Foods, Inc. and New
 8 World Pasta Company ("Defendants"), doing business as Ronzoni®, engaging in the practice of
 9 "slack-filling" boxes of its specialty pastas. The practice of using oversized containers with
 10 significant, nonfunctional, empty space inside them is called "slack-fill" and is illegal under
 11 California and Federal law. Both Federal and California laws have long prohibited nonfunctional
 12 slack-fills for food containers, in large part because it misleads consumers to believe they are
 13 receiving a greater quantity of the food than is actual in the package, even if the quantity (e.g.,
 14 weight) is accurately displayed on the label. It is clear that the Ronzoni® specialty pasta products
 15 contained nonfunctional slack-fill, as Ronzoni® used the same size containers for both its specialty
 16 pastas and its traditional pastas -- but included 25% less of the specialty pasta in the same size box.
 17 For example, Ronzoni® put only 12 ounces of specialty spaghetti in the same size box in which it
 18 sells 16 ounces of traditional pasta. By violating the Federal and California slack-fill laws,
 19 Defendants have violated California's Unfair Competition Law (Bus & Prof. Code §17200 *et seq.*)
 20 ("UCL") and Consumer Legal Remedies Act (Civil Code §1750 *et seq.*) ("CLRA"). Plaintiffs assert
 21 claims for unlawful and unfair practices only, they do not assert claims for deceptive or fraudulent
 22 practices under either the UCL or the CLRA.

23 PARTIES

24 2. Plaintiff Sherrie Clevenger ("Clevenger") is, and at all relevant times was, an adult
 25 residing in Orange County, California. Clevenger has been diagnosed with a medical condition for
 26 which she requires a gluten free diet. Clevenger learned that Ronzoni® had added a gluten free line
 27 to their family of pasta products. Clevenger preferred the consistency of Defendants' gluten free to
 28 many of the other gluten free pastas available for sale. In her experience, Ronzoni® gluten free

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1 pastas tend to cook and serve more akin to traditional flour-based pastas than other competing
2 brands of gluten free pasta. As a result, Clevenger purchased Defendants' gluten free pasta products
3 on several occasions, including at least one of the following: Vons; Pavilions; Ralphs; and/or Target
4 stores located within Orange County, California. In making her purchase, Clevenger noticed the
5 packaging of the products was the same size as the box which Ronzoni® used for traditional flour-
6 based pastas. Clevenger was harmed as a result of Defendants' conduct as the boxes of pasta she
7 purchased were illegally slack-filled and contained about one-third less pasta than they should have
8 but for the illegal slack-fill.

9 3. Plaintiff Theresa Reisfelt ("Reisfelt") is, and at all relevant times was, an adult
10 residing in Orange County, California. Reisfelt similarly purchased Ronzoni® premium specialty
11 pastas on many occasions from at least one retail outlet in Orange County, California. Specifically,
12 she purchased the Ronzoni® Garden Delight specialty pasta product from Wal-Mart. In making her
13 purchase, Reisfelt noticed that the pasta came in the same size and shape box as Ronzoni®
14 traditional pastas. Reisfelt was harmed as a result of Defendants' conduct as the boxes of pasta she
15 purchased were illegally slack-filled and contained about one-third less pasta than they should have
16 but for the illegal slack-fill.

17 4. Defendant, New World Pasta Company ("New World"), is a Delaware corporation
18 with its headquarters located in Harrisburg, Pennsylvania. Defendant New World is one of the
19 largest manufacturers and sellers of dry pasta products in the United States. Ronzoni® is the flagship
20 brand of pasta sold by New World. Ronzoni® brand pasta has been sold in the United States since
21 1915 and is a leading brand name for dry pasta products. Upon information and belief, New World
22 ceased its sales of pasta products in California in 2017 or 2018.

23 5. Defendant, Riviana Foods Inc. ("Riviana"), is a Delaware corporation with its
24 headquarters located in Houston, Texas. Defendant Riviana is the second largest producer and
25 marketer of pasta products in the United States. Riviana is a wholly owned subsidiary of Ebro
26 Foods, a multinational food conglomerate that manufactures and sells rice, pasta and sauce products.
27 Upon information and belief, Riviana became the owner of the Ronzoni® brand of pastas in 2006
28 and effective January 1, 2017 Defendant New World was merged into Riviana.

JURISDICTION AND VENUE

6. This action is brought pursuant to the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*, and California's Unfair Competition Law, Business and Professions Code §17200, *et seq.* and seeks equitable relief, including restitution, plus monetary recovery.

7. Based on the conduct as alleged in this Complaint, Personal jurisdiction over defendants is proper pursuant to Cal. Code of Civil Procedure §410.10 because at all times relevant to this complaint, they conducted significant, continuous business in California. Defendants have marketed and sold millions of dollars of food goods to California residents for their consumption.

8. Venue is proper in this county under Business and Professions Code §17203 and Code of Civil Procedure §§395(a) and 395.5. Defendants transact business and receives substantial compensation from sales in Orange County. Defendant intentionally distributed its specialty pasta products for sale to consumers in Orange County retail stores. Each Plaintiff resides in Orange County and purchased Defendants' products in Orange County.

FACTUAL ALLEGATIONS

9. Defendants packaged and distributed their specialty pasta products in the same sized boxes and packaging as their traditional flour-based pastas, but put substantially less of their specialty pastas in the box. These boxes appeared to be virtually identically sized to Defendants' and its competitors' traditional flour-based pasta products, even though Defendants' specialty pasta products contained at least 25% less pasta per box.

10. Defendants' specialty pasta products are sold in packaging, namely boxes, that are substantially under-filled and contain substantial amount of unnecessary empty space, *i.e.* non-functional slack-fill. Indeed, identically sized boxes of Defendants' traditional pasta products, with the same size noodles, contain one-third more pasta than Defendant's specialty pasta products, thus confirming that the empty space in the box is not necessary.

11. Defendants' pasta specialty products are packaged in a primarily opaque, colored cardboard box; accordingly, consumers cannot see the substantial amount of empty space contained in the product packaging, *i.e.* the non-functional slack-fill.

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12. Defendants' specialty pasta products have a small transparent window to see inside the box, placed in such a manner as to suggest to reasonable consumers that the entirety of the box is full of the product. Most of the transparent windows appear in the bottom portion of the packaging, where the product fully encompasses the transparent window, while a significant portion of the space above the window is empty space.

13. Both federal and California law prohibit nonfunctional slack-fill for food containers, which would include pasta boxes and packaging. As explained below, California has codified the federal law and regulations.

14. **The Slack-Fill Violates Federal Law.** Federal statutes and regulations prohibit nonfunctional slack fill. Pursuant to the Federal Food Drug and Cosmetic Act, 21 U.S.C. §403(d) and 21 C.F.R. §100.100 provides:

"In accordance with Section 403(d) of the [Food Drug and Cosmetic Act], a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or a durable commemorative or promotional packages; or
- (6) Inability to increase the level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to

1 accommodate required food labeling (excluding any vignettes or other
2 nonmandatory designs or label information), discourage pilfering,
3 facilitate handling, or accommodate tamper-resistant devices).

4 15. **The Slack-Fill Also Violated California Law.** California law expressly prohibits
5 nonfunctional slack-fill. California has adopted the federal regulations and codified them as the
6 California "Fair Packaging and Labeling Act" ("FPLA"). (Bus & Prof Code §12606, et seq.) The
7 FPLA states that it "applies to food containers subject to Section 403(d) of the Federal Food, Drug
8 and Cosmetic Act (21 U.S.C. Sec. 343(d)) and Section 100.100 of Title 21 of the Code of Federal
9 Regulations". (Bus & Prof. Code §12606.2(a)). The FPLA uses identical language, as is relevant
10 here, to 21 CFR §100.100. (Bus & Prof Code §12606.2(b) and (c)(1)-(6)). The text of FPLA
11 contains additional provisions which, based on the express language of the statute, are inoperative.¹

12 16. Defendants' specialty pasta products do not meet any of the six exemptions under
13 federal and California law.

14 17. The slack-fill does not protect the contents of the packages, namely the pasta. Rather,
15 the additional empty space in the packaging does the opposite and subjects the pasta to further
16 breakage during shipping. If the boxes were filled, *i.e.* the amount of pasta contained in each box
17 was commensurate with the size of the packaging, the pasta would have less room to move around
18 during shipping and would be less likely to break or sustain damage. (see 21 CFR §100.100(a)(1);
19 Cal. Bus & Prof. Code § 12606.2(a)(1))

20 18. The requirements of the packaging machines cannot justify or require the slack-fill.
21 The majority of Defendants' specialty pasta products are packaged in boxes which are sealed with
22 hot glue. As such, upon information and belief, the equipment used to manufacture and seal the
23 boxes does not breach the inside of the specialty pasta product containers during the packaging

24
25 ¹ Bus & Prof Code §§12606.2(c)(7)-(8) add additional requirements and exemptions which are not
26 included in the 21 C.F.R. 100.100 or otherwise imposed under 21 U.S.C. §343(d). As such, pursuant
27 to Bus & Prof Code §§12606.2(e) and (f) they are inoperative. To wit, Bus & Prof. §12606.2(f)
28 states "If the requirements of this section do not impose the same requirements as are imposed by
Section 403(d) of the Federal Food Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any
regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not
identical to the federal requirements, and for this purpose, those federal requirements are
incorporated into this section and shall apply as if they were set forth in this section."

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1 process. The hot glue is applied to an exterior flap of the box which is then sealed by a second
2 exterior flap that is folded down onto the glued surface. Neither the hot glue nor the sealing
3 equipment requires a substantial amount of slack-fill in the box during the manufacturing and
4 packaging processes. This is evidenced by Defendants' own traditional flour-based pasta products
5 which are sold containing an additional 4 ounces of product in the same sized boxes (12 oz. of the
6 specialty pasta products versus 16 oz. of the Defendants', and their competitors' traditional flour-
7 based pastas which are packaged and sold in identically sized boxes). (see 21 CFR §100.100(a)(2);
8 Cal. Bus & Prof. Code § 12606.2(a)(2))

9 19. The slack-fill is not caused by product settling during shipping and handling. Again,
10 this is confirmed by Defendants' traditional boxes containing one-third more pasta. Further, given
11 the specialty pasta products' density, shape, and composition, any settling occurs immediately at the
12 point of filling the box. No additional product settling occurs during subsequent shipping and
13 handling (see 21 CFR §100.100(a)(3); Cal. Bus & Prof. Code § 12606.2(a)(3))

14 20. The slack-fill space is not needed to perform a specific function such as preparing the
15 food. Defendants' dry specialty pasta products are removed from their packing for preparation and
16 consumption (e.g., spaghetti is not cooked or consumed in its cardboard packing box). (see 21 CFR
17 §100.100(a)(4); Cal. Bus & Prof. Code § 12606.2(a)(4))

18 21. Defendants' packaging itself lacks independent value from the food it contains. The
19 cardboard packaging is not a commemorative item nor is it a reusable container which is part of the
20 presentation of the food, nor is it intended for use after the food is consumed. (see 21 CFR
21 §100.100(a)(5); Cal. Bus & Prof. Code § 12606.2(a)(5))

22 22. The slack-filled package was not necessary to prevent pilfering and accommodate
23 required food labeling. Further, as confirmed by similarly packaged pasta products, Defendants
24 could easily increase the quantity of specialty pasta products contained in each box to the same
25 amount of Defendants' traditional pasta contained in the same size boxes. Alternatively, Defendants
26 could reduce the size of the containers to eliminate the nonfunctional slack-fill. (see 21 CFR
27 §100.100(a)(6); Cal. Bus & Prof. Code § 12606.2(a)(6))
28

23. There is no practical lawful reason for the substantial non-functional slack-fill contained in the Defendants' specialty pasta products. Such conduct allows Defendants to overcharge reasonable consumers, and in fact the Plaintiffs and Class, for a smaller amount of product than they reasonably expected to receive based upon the Defendants' deceptive packaging -- which was substantially larger than necessary to contain the pasta enclosed therein.

CLASS ALLEGATIONS

24. Plaintiffs bring COUNT I (the UCL Cause of Action) as a class action pursuant to California Code of Civil Procedure §382 on behalf of a Class consisting of:

All persons who made retail purchases in the State of California of Ronzoni® "Garden Delight," "Gluten Free," "Smart Taste," or "Super Greens" pasta products from July 12, 2015, through the date a class is certified.

Excluded from the Class are defendants; the officers, directors, or employees of defendants; any entity in which the defendants have a controlling interest; and any affiliate, legal representative, heir or assign of defendants. Also excluded from the Class are the judge to whom this case is assigned and any member of the judge's immediate family.

25. The Class is so numerous that joinder of all members is impracticable. Plaintiffs believe the class consists of, at least, hundreds of thousands of members. As a result, individual joinder of all purchasers is impractical.

26. Plaintiffs' claims are typical of the claims of the other members of the Class, as Plaintiff and all other members of the Class sustained damages arising out of Defendants' conduct in violation of the UCL as alleged herein. The slack-filled containers were the same for all members of the class. Further, Plaintiffs are members of the Class they seek to represent.

27. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in complex class action litigation. Plaintiffs have no interests that are contrary to, or in conflict with, those of the other members of the Class. Plaintiffs and counsel are committed to the vigorous prosecution of this action on behalf of all Class members.

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28. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a) Whether Defendants' specialty pasta products contain non-functional slack-fill in violation of California Business and Professions Code §12606.2, *et seq.*;
- b) Whether Defendants' specialty pasta products contain non-functional slack-fill in violation of 21 U.S.C. §403(d) *et seq.* and 21 C.F.R. 100.100;
- c) Whether Defendants' conduct constitutes an unfair method of competition, or unfair act or practice, in violation of California Civil Code §1750, *et seq.*;
- d) Whether Defendants' conduct is an unfair business practice within the meaning of California Business and Professions Code §17200, *et seq.*;
- e) Whether Defendants' conduct is an unlawful business practice within the meaning of California Business and Professions Code §17200, *et seq.*;
- f) The appropriate measure of restitution and/or other relief; and
- g) Whether Defendants should be enjoined from continuing their unlawful practices.

29. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

30. Defendants have acted on grounds generally applicable to the entire Class, thereby making final relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class could create the risk of inconsistent or varying adjudications with respect to individual members of the Class that could establish incompatible standards of conduct for Defendants.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Further, the amount at stake for many of the Class members is small, meaning that few, if any Class members could afford

1 to maintain individual suits against Defendants. The expense and burden of individual litigation
2 would make it impracticable or impossible for the Class to prosecute their claims individually.

3 32. Without a class action, Defendants will likely retain the benefit of their wrongdoing
4 and could continue a course of action, which would result in further damages to the Class. Plaintiffs
5 envision no difficulty in the management of this action as a class action.

6 **FIRST CAUSE OF ACTION**
7 **(For Violation of California Unfair Competition Law,**
8 **Cal. Business & Professions Code §17200, *et seq* ("UCL"))**

9 33. Plaintiffs reallege the foregoing paragraphs and incorporate them as if fully set forth
10 herein.

11 34. At all relevant times, the UCL was in full force and effect.

12 35. The UCL prohibits the use of "any unlawful, unfair or fraudulent business act or
13 practice." (Bus & Prof. Code §17200)

14 36. Section 17203 of the UCL empowers the Court to enjoin any conduct that violates the
15 UCL and "make such orders or judgments, including the appointment of a receiver, as may be
16 necessary to prevent the use or employment by any person of any practice which constitutes unfair
17 competition, as defined in this chapter, or as may be necessary to restore to any person in interest
18 any money or property, real or personal, which may have been acquired by means of such unfair
19 competition."

20 37. Each Plaintiffs has "suffered injury in fact and has lost money or property as a result
21 of the unfair competition" as complained of herein. (Bus & Prof. Code §17204) Each Plaintiff has
22 paid money for Ronzoni® specialty products that contained nonfunctional slack-fill.

23 38. Defendants' conduct violated the unlawful prong of the UCL, as it violated the
24 California FPLA and the Federal Food Drug and Cosmetic Act (and regulations promulgated
25 thereunder), both of which prohibit nonfunctional slack-fill. It is not necessary for Plaintiffs to
26 establish that Defendants violated both laws. A violation of either law establishes a violation of the
27 UCL.

28 39. Defendants' conduct also violated the unfair practices prong of the UCL. Defendants'
conduct violates both California and federal public policy, as shown by their respective prohibitions

1 on nonfunctional slack-fill. The conduct is also anti-competitive and puts competitors who follow
 2 the law at a disadvantage. Defendants' conduct suppresses competition and has a negative impact on
 3 the marketplace, decreasing consumer choice. Further, Defendants' conduct causes significant
 4 aggregate harm to consumers, causing them to overpay for the specialty pastas and does not have
 5 any utility, as the increased empty space in the packages is nonfunctional slack-fill.

6 40. Defendants' violations of the UCL entitle Plaintiffs and the Class members to seek
 7 injunctive relief, including, but not limited to ordering Defendants to permanently cease their illegal
 8 conduct and provide full restitution to Plaintiffs and the Class members.

9
 10 **SECOND CAUSE OF ACTION**
 11 **(For Violation of California Consumers Legal Remedies Act,**
California Civil Code §1750, *et seq.*)

12 41. Plaintiffs reallege the foregoing paragraphs and incorporate them as if fully set forth
 13 herein.

14 42. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive
 15 acts or practices." Civil Code § 1770(a)(5) prohibits conduct which is unfair or unlawful because a
 16 person represents that goods have "characteristics" or "quantities" that they do not have. By
 17 including the nonfunctional slack-fill in violation of California and Federal law, as described above,
 18 Defendants have committed unfair and unlawful acts, practices, and methods of competition in
 19 violation of the CLRA.

20 43. Plaintiffs bring this cause of action pursuant to Civil Code §1750, *et seq.*, the CLRA,
 21 on their own behalf and on behalf of all other persons similarly situated pursuant to Cal. Civil Code
 22 §§1781(a) & (b).

23 44. The CLRA provides its own class certification standards, which makes class
 24 certification mandatory where the requirements are met. Section 1781 provides:

25 (b) the Court shall permit the suit to be maintained on behalf of all
 26 members of the represented class if all of the following conditions
 exist:

27 (1) It is impracticable to bring all members of the class before the
 28 court.

(2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.

(3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.

(4) The representative plaintiffs will fairly and adequately protect the interests of the class

45. For the reasons stated in paragraphs 24 to 32, all of the requirements of California Civil Code §1781(b) are met. Plaintiffs seek certification of a CLRA class defined as:

All persons who made retail purchases in the State of California of Ronzoni® "Garden Delight," "Gluten Free," "Smart Taste," or "Super Greens" pasta products from July 12, 2016, through the date a class is certified.

Excluded from the Class are defendants; the officers, directors, or employees of defendants; any entity in which the defendants have a controlling interest; and any affiliate, legal representative, heir or assign of defendants. Also excluded from the Class are the judge to whom this case is assigned and any member of the judge's immediate family.

46. Plaintiffs and the proposed class members have each been harmed by Defendants' violations of the CLRA in that they have paid for Ronzoni® specialty pastas that were packaged to contain significant nonfunctional slack-fill. Therefore, they have overpaid and/or been short-changed on the amount of pasta they received.

47. Pursuant to California Civil Code §1780(a), Plaintiffs, on behalf of themselves and the class, seek: (i) an order enjoining Defendants' wrongful conduct; (ii) an order of restitution; (iii) any and all other relief the Court deems proper. Plaintiffs reserve their right to amend this complaint to also seek actual damages, as permitted under Civil Code §§1780(a)(1) and 1782(e), after they have met the requirements of sending a demand under Civil Code §1782(a), if Defendants' fail to cure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the putative Class members, pray for the following relief:

A. For an order certifying this case as a class action under California Code of Civil Procedure §382, as alleged herein, and appointing Plaintiffs as Class Representatives and Plaintiffs' Counsel as Lead Class Counsel;

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1 B. For an order certifying this case as a class action under California Civil Code
2 §1781(b), as alleged herein, and appointing Plaintiffs as Class Representatives and Plaintiffs'
3 Counsel as Lead Class Counsel

4 C. For an order that Defendants have violated the statutes as alleged herein;

5 D. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants,
6 their officers, agents and those acting in concert with them, from committing in the future those
7 violations of law herein alleged;

8 E. For an order awarding Plaintiffs and Class members compensatory damages in an
9 amount to be determined at trial, along with pre-judgment and post-judgment interest at the
10 maximum rate allowable by law on any amounts awarded;

11 F. For an order awarding Plaintiffs and Class members restitution and/or disgorgement
12 in an amount to be determined at trial;

13 G. For an award of reasonable attorneys' fees and all costs of suit as provided for by the
14 California Civil Code §1780(e), California Code of Civil Procedure §1021.5, and/or all other
15 applicable law and/or equitable doctrines;

16 H. For such other relief as the Court deems just and proper.

17 Dated: July 11, 2019

18 DIVINCENZO SCHOENFIELD STEIN
19 and LANZA & SMITH, PLC

20 By: 
21

22 Robert J. Stein III (Lead Class Counsel)
23 Attorneys for Plaintiffs
24 SHERRIE CLEVENGER, THERESA
25 REISFELT AND THE CLASS
26
27
28



**Service of Process
Transmittal**

07/16/2019

CT Log Number 535872074

TO: Elizabeth B. Woodard
Riviana Foods Inc.
2777 Allen Parkway
Houston, TX 77019

RE: Process Served in Delaware

FOR: RIVIANA FOODS INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: SHERRIE CLEVINGER AND THERESA REISFELT, ETC., on behalf of themselves and all others similarly situated, PLTFS. vs. RIVIANA FOODS, INC., ET AL., DFTS.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Complaint

COURT/AGENCY: Orange County - Superior Court - Santa Ana, CA
Case # 30201901082583CUBTCXC

NATURE OF ACTION: Class Action - Practice of slack-filling

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 07/16/2019 at 15:18

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 30 calendar days after this summons and legal papers are served on you to file a written response at this court.

ATTORNEY(S) / SENDER(S): ROBERT J. STEIN, III
DiVincenzo Schoenfield Stein
3 Park Plaza, Suite 1650
Irvine, CA 92614
714-881-7002

REMARKS: New World Pasta Company merged into RIVIANA FOODS INC.

ACTION ITEMS: CT has retained the current log, Retain Date: 07/17/2019, Expected Purge Date: 07/22/2019
Image SOP
Email Notification, Elizabeth B. Woodard swoodard@riviana.com
Email Notification, Amy Martin amartin@riviana.com
Email Notification, MARY KURTZ mkurtz@riviana.com

SIGNED: The Corporation Trust Company
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120
TELEPHONE: 302-658-7581

Page 1 of 1 / AB

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit A

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert J. Stein, III (SBN 212495) DiVincenzo Schoenfeld Stein 3 Park Plaza, Suite 1650 Irvine, CA 92614 TELEPHONE NO.: (714) 881-7002 FAX NO.: (949) 221-0490 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 07/11/2019 at 04:02:49 PM Clerk of the Superior Court By Sarah Loose, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: Santa Ana, Ca 92701 CITY AND ZIP CODE: Civil Complex Center BRANCH NAME:			
CASE NAME: Sherrie Clevenger and Theresa Reisfelt, et al. v. Riviana Foods, Inc., et al			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NUMBER: 30-2019-01082583-CU-BT-CXC		JUDGE: Judge William Claster DEPT: CX104	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input checked="" type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
---	---

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Two

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 11, 2019

Robert J. Stein

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

RIVIANA FOODS, INC., a Delaware Corporation, d/b/a RONZONI;
AND NEW WORLD PASTA COMPANY, a Delaware Corporation,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SHERRIE CLEVENGER AND THERESA REISFELT on behalf of
themselves and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

07/11/2019 at 04:02:49 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
751 W. Santa Ana Blvd
Santa Ana, Ca 92701
Civil Complex Center

CASE NUMBER:
(Número del Caso):
30-2019-01082583-CU-BT-CXC

Judge William Claster

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robert J. Stein, III, DiVincenzo Schoenfield Stein, 3 Park Plaza, Ste. 1650, Irvine, CA 92614 (714) 881-7002

DATE:
(Fecha) 07/11/2019

DAVID H. YAMASAKI, Clerk of the Court
Clerk, by (Secretario) *Abuse*, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). Sarah Loose

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify) New World Pasta Company, a Delaware corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☒ by personal delivery on (date): 7/16/2019

Date Served: 7/16/19

Time Served:

Server: MT 3564025 Exhibit A

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10 Attorneys for Plaintiffs
11 SHERRIE CLEVINGER, THERESA
12 REISFELT AND THE CLASS

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ORANGE

15 SHERRIE CLEVINGER AND THERESA
16 REISFELT on behalf of themselves and all
17 others similarly situated,

18 Plaintiffs,

19 v.

20 RIVIANA FOODS, INC., a Delaware
Corporation, d/b/a RONZONI; AND NEW
21 WORLD PASTA COMPANY, a Delaware
Corporation,

22 Defendants.
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

07/11/2019 at 04:02:49 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

CASE NO.: 30-2019-01082583-CU-BT-CXC

CLASS ACTION COMPLAINT FOR:

1. Violation of Cal. Unfair Competition,
Cal. Business & Professions Code §17200,
et seq.;
2. Violation of Cal. Consumers Legal
Remedies Act §1750, *et seq.*;

Assigned: Judge William Claster

Dept: CX104

CLASS ACTION COMPLAINT

Exhibit A

1 Plaintiffs Sherrie Clevenger and Theresa Reisfelt ("Plaintiffs"), by and through their
 2 attorneys, DiVincenzo Schoenfield Stein and Lanza & Smith, PLC, bring this class action complaint
 3 on behalf of themselves and all others similarly situated (the "Class"), alleging facts related to their
 4 own purchases based on personal knowledge and all other facts based upon the investigation of
 5 counsel.

6 NATURE OF THE ACTION

7 1. This is a consumer protection class action arising from Riviana Foods, Inc. and New
 8 World Pasta Company ("Defendants"), doing business as Ronzoni®, engaging in the practice of
 9 "slack-filling" boxes of its specialty pastas. The practice of using oversized containers with
 10 significant, nonfunctional, empty space inside them is called "slack-fill" and is illegal under
 11 California and Federal law. Both Federal and California laws have long prohibited nonfunctional
 12 slack-fills for food containers, in large part because it misleads consumers to believe they are
 13 receiving a greater quantity of the food than is actual in the package, even if the quantity (e.g.,
 14 weight) is accurately displayed on the label. It is clear that the Ronzoni® specialty pasta products
 15 contained nonfunctional slack-fill, as Ronzoni® used the same size containers for both its specialty
 16 pastas and its traditional pastas -- but included 25% less of the specialty pasta in the same size box.
 17 For example, Ronzoni® put only 12 ounces of specialty spaghetti in the same size box in which it
 18 sells 16 ounces of traditional pasta. By violating the Federal and California slack-fill laws,
 19 Defendants have violated California's Unfair Competition Law (Bus & Prof. Code §17200 *et seq.*)
 20 ("UCL") and Consumer Legal Remedies Act (Civil Code §1750 *et seq.*) ("CLRA"). Plaintiffs assert
 21 claims for unlawful and unfair practices only, they do not assert claims for deceptive or fraudulent
 22 practices under either the UCL or the CLRA.

23 PARTIES

24 2. Plaintiff Sherrie Clevenger ("Clevenger") is, and at all relevant times was, an adult
 25 residing in Orange County, California. Clevenger has been diagnosed with a medical condition for
 26 which she requires a gluten free diet. Clevenger learned that Ronzoni® had added a gluten free line
 27 to their family of pasta products. Clevenger preferred the consistency of Defendants' gluten free to
 28 many of the other gluten free pastas available for sale. In her experience, Ronzoni® gluten free

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1 pastas tend to cook and serve more akin to traditional flour-based pastas than other competing
2 brands of gluten free pasta. As a result, Clevenger purchased Defendants' gluten free pasta products
3 on several occasions, including at least one of the following: Vons; Pavilions; Ralphs; and/or Target
4 stores located within Orange County, California. In making her purchase, Clevenger noticed the
5 packaging of the products was the same size as the box which Ronzoni® used for traditional flour-
6 based pastas. Clevenger was harmed as a result of Defendants' conduct as the boxes of pasta she
7 purchased were illegally slack-filled and contained about one-third less pasta than they should have
8 but for the illegal slack-fill.

9 3. Plaintiff Theresa Reisfelt ("Reisfelt") is, and at all relevant times was, an adult
10 residing in Orange County, California. Reisfelt similarly purchased Ronzoni® premium specialty
11 pastas on many occasions from at least one retail outlet in Orange County, California. Specifically,
12 she purchased the Ronzoni® Garden Delight specialty pasta product from Wal-Mart. In making her
13 purchase, Reisfelt noticed that the pasta came in the same size and shape box as Ronzoni®
14 traditional pastas. Reisfelt was harmed as a result of Defendants' conduct as the boxes of pasta she
15 purchased were illegally slack-filled and contained about one-third less pasta than they should have
16 but for the illegal slack-fill.

17 4. Defendant, New World Pasta Company ("New World"), is a Delaware corporation
18 with its headquarters located in Harrisburg, Pennsylvania. Defendant New World is one of the
19 largest manufacturers and sellers of dry pasta products in the United States. Ronzoni® is the flagship
20 brand of pasta sold by New World. Ronzoni® brand pasta has been sold in the United States since
21 1915 and is a leading brand name for dry pasta products. Upon information and belief, New World
22 ceased its sales of pasta products in California in 2017 or 2018.

23 5. Defendant, Riviana Foods Inc. ("Riviana"), is a Delaware corporation with its
24 headquarters located in Houston, Texas. Defendant Riviana is the second largest producer and
25 marketer of pasta products in the United States. Riviana is a wholly owned subsidiary of Ebro
26 Foods, a multinational food conglomerate that manufactures and sells rice, pasta and sauce products.
27 Upon information and belief, Riviana became the owner of the Ronzoni® brand of pastas in 2006
28 and effective January 1, 2017 Defendant New World was merged into Riviana.

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JURISDICTION AND VENUE

6. This action is brought pursuant to the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*, and California's Unfair Competition Law, Business and Professions Code §17200, *et seq.* and seeks equitable relief, including restitution, plus monetary recovery.

7. Based on the conduct as alleged in this Complaint, Personal jurisdiction over defendants is proper pursuant to Cal. Code of Civil Procedure §410.10 because at all times relevant to this complaint, they conducted significant, continuous business in California. Defendants have marketed and sold millions of dollars of food goods to California residents for their consumption.

8. Venue is proper in this county under Business and Professions Code §17203 and Code of Civil Procedure §§395(a) and 395.5. Defendants transact business and receives substantial compensation from sales in Orange County. Defendant intentionally distributed its specialty pasta products for sale to consumers in Orange County retail stores. Each Plaintiff resides in Orange County and purchased Defendants' products in Orange County.

FACTUAL ALLEGATIONS

9. Defendants packaged and distributed their specialty pasta products in the same sized boxes and packaging as their traditional flour-based pastas, but put substantially less of their specialty pastas in the box. These boxes appeared to be virtually identically sized to Defendants' and its competitors' traditional flour-based pasta products, even though Defendants' specialty pasta products contained at least 25% less pasta per box.

10. Defendants' specialty pasta products are sold in packaging, namely boxes, that are substantially under-filled and contain substantial amount of unnecessary empty space, *i.e.* non-functional slack-fill. Indeed, identically sized boxes of Defendants' traditional pasta products, with the same size noodles, contain one-third more pasta than Defendant's specialty pasta products, thus confirming that the empty space in the box is not necessary.

11. Defendants' pasta specialty products are packaged in a primarily opaque, colored cardboard box; accordingly, consumers cannot see the substantial amount of empty space contained in the product packaging, *i.e.* the non-functional slack-fill.

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12. Defendants' specialty pasta products have a small transparent window to see inside the box, placed in such a manner as to suggest to reasonable consumers that the entirety of the box is full of the product. Most of the transparent windows appear in the bottom portion of the packaging, where the product fully encompasses the transparent window, while a significant portion of the space above the window is empty space.

13. Both federal and California law prohibit nonfunctional slack-fill for food containers, which would include pasta boxes and packaging. As explained below, California has codified the federal law and regulations.

14. **The Slack-Fill Violates Federal Law.** Federal statutes and regulations prohibit nonfunctional slack fill. Pursuant to the Federal Food Drug and Cosmetic Act, 21 U.S.C. §403(d) and 21 C.F.R. §100.100 provides:

"In accordance with Section 403(d) of the [Food Drug and Cosmetic Act], a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

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

(6) Inability to increase the level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to

1 accommodate required food labeling (excluding any vignettes or other
2 nonmandatory designs or label information), discourage pilfering,
3 facilitate handling, or accommodate tamper-resistant devices).

4 15. **The Slack-Fill Also Violated California Law.** California law expressly prohibits
5 nonfunctional slack-fill. California has adopted the federal regulations and codified them as the
6 California "Fair Packaging and Labeling Act" ("FPLA"). (Bus & Prof Code §12606, et seq.) The
7 FPLA states that it "applies to food containers subject to Section 403(d) of the Federal Food, Drug
8 and Cosmetic Act (21 U.S.C. Sec. 343(d)) and Section 100.100 of Title 21 of the Code of Federal
9 Regulations". (Bus & Prof. Code §12606.2(a)). The FPLA uses identical language, as is relevant
10 here, to 21 CFR §100.100. (Bus & Prof Code §12606.2(b) and (c)(1)-(6)). The text of FPLA
11 contains additional provisions which, based on the express language of the statute, are inoperative.¹

12 16. Defendants' specialty pasta products do not meet any of the six exemptions under
13 federal and California law.

14 17. The slack-fill does not protect the contents of the packages, namely the pasta. Rather,
15 the additional empty space in the packaging does the opposite and subjects the pasta to further
16 breakage during shipping. If the boxes were filled, *i.e.* the amount of pasta contained in each box
17 was commensurate with the size of the packaging, the pasta would have less room to move around
18 during shipping and would be less likely to break or sustain damage. (see 21 CFR §100.100(a)(1);
19 Cal. Bus & Prof. Code § 12606.2(a)(1))

20 18. The requirements of the packaging machines cannot justify or require the slack-fill.
21 The majority of Defendants' specialty pasta products are packaged in boxes which are sealed with
22 hot glue. As such, upon information and belief, the equipment used to manufacture and seal the
23 boxes does not breach the inside of the specialty pasta product containers during the packaging

24
25 ¹ Bus & Prof Code §§12606.2(c)(7)-(8) add additional requirements and exemptions which are not
26 included in the 21 C.F.R. 100.100 or otherwise imposed under 21 U.S.C. §343(d). As such, pursuant
27 to Bus & Prof Code §§12606.2(e) and (f) they are inoperative. To wit, Bus & Prof. §12606.2(f)
28 states "If the requirements of this section do not impose the same requirements as are imposed by
Section 403(d) of the Federal Food Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any
regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not
identical to the federal requirements, and for this purpose, those federal requirements are
incorporated into this section and shall apply as if they were set forth in this section."

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1 process. The hot glue is applied to an exterior flap of the box which is then sealed by a second
2 exterior flap that is folded down onto the glued surface. Neither the hot glue nor the sealing
3 equipment requires a substantial amount of slack-fill in the box during the manufacturing and
4 packaging processes. This is evidenced by Defendants' own traditional flour-based pasta products
5 which are sold containing an additional 4 ounces of product in the same sized boxes (12 oz. of the
6 specialty pasta products versus 16 oz. of the Defendants', and their competitors' traditional flour-
7 based pastas which are packaged and sold in identically sized boxes). (see 21 CFR §100.100(a)(2);
8 Cal. Bus & Prof. Code § 12606.2(a)(2))

9 19. The slack-fill is not caused by product settling during shipping and handling. Again,
10 this is confirmed by Defendants' traditional boxes containing one-third more pasta. Further, given
11 the specialty pasta products' density, shape, and composition, any settling occurs immediately at the
12 point of filling the box. No additional product settling occurs during subsequent shipping and
13 handling (see 21 CFR §100.100(a)(3); Cal. Bus & Prof. Code § 12606.2(a)(3))

14 20. The slack-fill space is not needed to perform a specific function such as preparing the
15 food. Defendants' dry specialty pasta products are removed from their packing for preparation and
16 consumption (e.g., spaghetti is not cooked or consumed in its cardboard packing box). (see 21 CFR
17 §100.100(a)(4); Cal. Bus & Prof. Code § 12606.2(a)(4))

18 21. Defendants' packaging itself lacks independent value from the food it contains. The
19 cardboard packaging is not a commemorative item nor is it a reusable container which is part of the
20 presentation of the food, nor is it intended for use after the food is consumed. (see 21 CFR
21 §100.100(a)(5); Cal. Bus & Prof. Code § 12606.2(a)(5))

22 22. The slack-filled package was not necessary to prevent pilfering and accommodate
23 required food labeling. Further, as confirmed by similarly packaged pasta products, Defendants
24 could easily increase the quantity of specialty pasta products contained in each box to the same
25 amount of Defendants' traditional pasta contained in the same size boxes. Alternatively, Defendants
26 could reduce the size of the containers to eliminate the nonfunctional slack-fill. (see 21 CFR
27 §100.100(a)(6); Cal. Bus & Prof. Code § 12606.2(a)(6))
28

23. There is no practical lawful reason for the substantial non-functional slack-fill contained in the Defendants' specialty pasta products. Such conduct allows Defendants to overcharge reasonable consumers, and in fact the Plaintiffs and Class, for a smaller amount of product than they reasonably expected to receive based upon the Defendants' deceptive packaging -- which was substantially larger than necessary to contain the pasta enclosed therein.

CLASS ALLEGATIONS

24. Plaintiffs bring COUNT I (the UCL Cause of Action) as a class action pursuant to California Code of Civil Procedure §382 on behalf of a Class consisting of:

All persons who made retail purchases in the State of California of Ronzoni® "Garden Delight," "Gluten Free," "Smart Taste," or "Super Greens" pasta products from July 12, 2015, through the date a class is certified.

Excluded from the Class are defendants; the officers, directors, or employees of defendants; any entity in which the defendants have a controlling interest; and any affiliate, legal representative, heir or assign of defendants. Also excluded from the Class are the judge to whom this case is assigned and any member of the judge's immediate family.

25. The Class is so numerous that joinder of all members is impracticable. Plaintiffs believe the class consists of, at least, hundreds of thousands of members. As a result, individual joinder of all purchasers is impractical.

26. Plaintiffs' claims are typical of the claims of the other members of the Class, as Plaintiff and all other members of the Class sustained damages arising out of Defendants' conduct in violation of the UCL as alleged herein. The slack-filled containers were the same for all members of the class. Further, Plaintiffs are members of the Class they seek to represent.

27. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in complex class action litigation. Plaintiffs have no interests that are contrary to, or in conflict with, those of the other members of the Class. Plaintiffs and counsel are committed to the vigorous prosecution of this action on behalf of all Class members.

DI VINCENZO SCHOENFIELD STEIN
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28. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a) Whether Defendants' specialty pasta products contain non-functional slack-fill in violation of California Business and Professions Code §12606.2, *et seq.*;
- b) Whether Defendants' specialty pasta products contain non-functional slack-fill in violation of 21 U.S.C. §403(d) *et seq.* and 21 C.F.R. 100.100;
- c) Whether Defendants' conduct constitutes an unfair method of competition, or unfair act or practice, in violation of California Civil Code §1750, *et seq.*;
- d) Whether Defendants' conduct is an unfair business practice within the meaning of California Business and Professions Code §17200, *et seq.*;
- e) Whether Defendants' conduct is an unlawful business practice within the meaning of California Business and Professions Code §17200, *et seq.*;
- f) The appropriate measure of restitution and/or other relief; and
- g) Whether Defendants should be enjoined from continuing their unlawful practices.

29. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

30. Defendants have acted on grounds generally applicable to the entire Class, thereby making final relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class could create the risk of inconsistent or varying adjudications with respect to individual members of the Class that could establish incompatible standards of conduct for Defendants.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Further, the amount at stake for many of the Class members is small, meaning that few, if any Class members could afford

1 to maintain individual suits against Defendants. The expense and burden of individual litigation
2 would make it impracticable or impossible for the Class to prosecute their claims individually.

3 32. Without a class action, Defendants will likely retain the benefit of their wrongdoing
4 and could continue a course of action, which would result in further damages to the Class. Plaintiffs
5 envision no difficulty in the management of this action as a class action.

6 **FIRST CAUSE OF ACTION**
7 **(For Violation of California Unfair Competition Law,**
8 **Cal. Business & Professions Code §17200, *et seq* ("UCL"))**

9 33. Plaintiffs reallege the foregoing paragraphs and incorporate them as if fully set forth
10 herein.

11 34. At all relevant times, the UCL was in full force and effect.

12 35. The UCL prohibits the use of "any unlawful, unfair or fraudulent business act or
13 practice." (Bus & Prof. Code §17200)

14 36. Section 17203 of the UCL empowers the Court to enjoin any conduct that violates the
15 UCL and "make such orders or judgments, including the appointment of a receiver, as may be
16 necessary to prevent the use or employment by any person of any practice which constitutes unfair
17 competition, as defined in this chapter, or as may be necessary to restore to any person in interest
18 any money or property, real or personal, which may have been acquired by means of such unfair
19 competition."

20 37. Each Plaintiffs has "suffered injury in fact and has lost money or property as a result
21 of the unfair competition" as complained of herein. (Bus & Prof. Code §17204) Each Plaintiff has
22 paid money for Ronzoni® specialty products that contained nonfunctional slack-fill.

23 38. Defendants' conduct violated the unlawful prong of the UCL, as it violated the
24 California FPLA and the Federal Food Drug and Cosmetic Act (and regulations promulgated
25 thereunder), both of which prohibit nonfunctional slack-fill. It is not necessary for Plaintiffs to
26 establish that Defendants violated both laws. A violation of either law establishes a violation of the
27 UCL.

28 39. Defendants' conduct also violated the unfair practices prong of the UCL. Defendants'
conduct violates both California and federal public policy, as shown by their respective prohibitions

1 on nonfunctional slack-fill. The conduct is also anti-competitive and puts competitors who follow
 2 the law at a disadvantage. Defendants' conduct suppresses competition and has a negative impact on
 3 the marketplace, decreasing consumer choice. Further, Defendants' conduct causes significant
 4 aggregate harm to consumers, causing them to overpay for the specialty pastas and does not have
 5 any utility, as the increased empty space in the packages is nonfunctional slack-fill.

6 40. Defendants' violations of the UCL entitle Plaintiffs and the Class members to seek
 7 injunctive relief, including, but not limited to ordering Defendants to permanently cease their illegal
 8 conduct and provide full restitution to Plaintiffs and the Class members.

9
 10 **SECOND CAUSE OF ACTION**
 11 **(For Violation of California Consumers Legal Remedies Act,**
 12 **California Civil Code §1750, *et seq.*)**

13 41. Plaintiffs reallege the foregoing paragraphs and incorporate them as if fully set forth
 14 herein.

15 42. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive
 16 acts or practices." Civil Code § 1770(a)(5) prohibits conduct which is unfair or unlawful because a
 17 person represents that goods have "characteristics" or "quantities" that they do not have. By
 18 including the nonfunctional slack-fill in violation of California and Federal law, as described above,
 19 Defendants have committed unfair and unlawful acts, practices, and methods of competition in
 20 violation of the CLRA.

21 43. Plaintiffs bring this cause of action pursuant to Civil Code §1750, *et seq.*, the CLRA,
 22 on their own behalf and on behalf of all other persons similarly situated pursuant to Cal. Civil Code
 23 §§1781(a) & (b).

24 44. The CLRA provides its own class certification standards, which makes class
 25 certification mandatory where the requirements are met. Section 1781 provides:

26 (b) the Court shall permit the suit to be maintained on behalf of all
 27 members of the represented class if all of the following conditions
 28 exist:

(1) It is impracticable to bring all members of the class before the
 court.

(2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.

(3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.

(4) The representative plaintiffs will fairly and adequately protect the interests of the class

45. For the reasons stated in paragraphs 24 to 32, all of the requirements of California Civil Code §1781(b) are met. Plaintiffs seek certification of a CLRA class defined as:

All persons who made retail purchases in the State of California of Ronzoni® "Garden Delight," "Gluten Free," "Smart Taste," or "Super Greens" pasta products from July 12, 2016, through the date a class is certified.

Excluded from the Class are defendants; the officers, directors, or employees of defendants; any entity in which the defendants have a controlling interest; and any affiliate, legal representative, heir or assign of defendants. Also excluded from the Class are the judge to whom this case is assigned and any member of the judge's immediate family.

46. Plaintiffs and the proposed class members have each been harmed by Defendants' violations of the CLRA in that they have paid for Ronzoni® specialty pastas that were packaged to contain significant nonfunctional slack-fill. Therefore, they have overpaid and/or been short-changed on the amount of pasta they received.

47. Pursuant to California Civil Code §1780(a), Plaintiffs, on behalf of themselves and the class, seek: (i) an order enjoining Defendants' wrongful conduct; (ii) an order of restitution; (iii) any and all other relief the Court deems proper. Plaintiffs reserve their right to amend this complaint to also seek actual damages, as permitted under Civil Code §§1780(a)(1) and 1782(e), after they have met the requirements of sending a demand under Civil Code §1782(a), if Defendants' fail to cure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the putative Class members, pray for the following relief:

A. For an order certifying this case as a class action under California Code of Civil Procedure §382, as alleged herein, and appointing Plaintiffs as Class Representatives and Plaintiffs' Counsel as Lead Class Counsel;

DIVINCENZO SCHOENFIELD STEIN
3 PARK PLAZA, SUITE 1650
IRVINE, CA 92614

1 B. For an order certifying this case as a class action under California Civil Code
2 §1781(b), as alleged herein, and appointing Plaintiffs as Class Representatives and Plaintiffs'
3 Counsel as Lead Class Counsel

4 C. For an order that Defendants have violated the statutes as alleged herein;

5 D. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants,
6 their officers, agents and those acting in concert with them, from committing in the future those
7 violations of law herein alleged;

8 E. For an order awarding Plaintiffs and Class members compensatory damages in an
9 amount to be determined at trial, along with pre-judgment and post-judgment interest at the
10 maximum rate allowable by law on any amounts awarded;

11 F. For an order awarding Plaintiffs and Class members restitution and/or disgorgement
12 in an amount to be determined at trial;

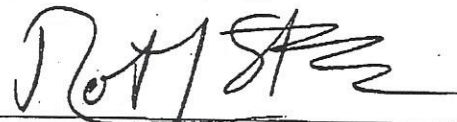
13 G. For an award of reasonable attorneys' fees and all costs of suit as provided for by the
14 California Civil Code §1780(e), California Code of Civil Procedure §1021.5, and/or all other
15 applicable law and/or equitable doctrines;

16 H. For such other relief as the Court deems just and proper.

17 Dated: July 11, 2019

DIVINCENZO SCHOENFIELD STEIN
and LANZA & SMITH, PLC

19
20
21 By:



Robert J. Stein III (Lead Class Counsel)
Attorneys for Plaintiffs
SHERRIE CLEVENGER, THERESA
REISFELT AND THE CLASS



**Service of Process
Transmittal**

07/16/2019

CT Log Number 535872074

TO: Elizabeth B. Woodard
Riviana Foods Inc.
2777 Allen Parkway
Houston, TX 77019

RE: Process Served in Delaware

FOR: RIVIANA FOODS INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: SHERRIE CLEVINGER AND THERESA REISFELT, ETC., on behalf of themselves and all others similarly situated, PLTFS. vs. RIVIANA FOODS, INC., ET AL., DFTS.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Complaint

COURT/AGENCY: Orange County - Superior Court - Santa Ana, CA
Case # 30201901082583CUBTCXC

NATURE OF ACTION: Class Action - Practice of slack-filling

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 07/16/2019 at 15:18

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 30 calendar days after this summons and legal papers are served on you to file a written response at this court.

ATTORNEY(S) / SENDER(S): ROBERT J. STEIN, III
DiVincenzo Schoenfield Stein
3 Park Plaza, Suite 1650
Irvine, CA 92614
714-881-7002

REMARKS: New World Pasta Company merged into RIVIANA FOODS INC.

ACTION ITEMS: CT has retained the current log, Retain Date: 07/17/2019, Expected Purge Date: 07/22/2019
Image SOP
Email Notification, Elizabeth B. Woodard swoodard@riviana.com
Email Notification, Amy Martin amartin@riviana.com
Email Notification, MARY KURTZ mkurtz@riviana.com

SIGNED: The Corporation Trust Company
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120
TELEPHONE: 302-658-7581

Page 1 of 1 / AB

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit A