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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DIANE DAKIN, DEBORAH DESPAIN and MARILYN CURREN, individually, and on behalf of all others similarly situated, Plaintiffs, vs. HORMEL FOODS SALES, LLC, and HORMEL FOODS, LLC, Defendants.	Case No.: **CLASS ACTION COMPLAINT FOR VIOLATIONS OF:** **(1) CAL BUS. & PROF. CODE § 17200, *ET SEQ.*** **(2) BREACH OF EXPRESS WARRANTIES** **DEMAND FOR JURY TRIAL**

Diane Dakin, Deborah Despain, and Marilyn Curren (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, allege the following:

I. SUMMARY OF THE ACTION

1. Plaintiffs bring this action individually, and on behalf of all other persons who made a purchase of Hormel Black Label Center Cut Bacon ("Center Cut") within the State of California ("Class") at any time between the period from August 6 , 2017 to the present ("Class Period"). As alleged herein, Hormel Foods Sales, LLC and Hormel Foods, LLC (collectively "Hormel" or "Defendants") engaged in, and continue to engage in, unlawful business practices and deceptive acts in connection with the marketing of Center Cut bacon which have resulted in injury to Plaintiffs and the Class.

2. Hormel engaged in deceptive marketing practices to misrepresent Center Cut bacon through the nutritional claim "Contains 25% Less Fat Than Our Regular Bacon" ("Nutritional Claim") that is featured in the front panel of each Center Cut product.

3. This misleading claim has allowed Center Cut bacon to be sold to consumers at a price premium over other Hormel bacon products alongside which Center Cut is often placed in grocery store shelves.

4. The Nutritional Claim leads the typical consumer to think that Center Cut is a premium product that should command a higher per-pound price because it is 25% leaner than other Black Label bacon. However, Center Cut is not 25% leaner than any Black Label bacon product to which a consumer could reasonably be expected make the fat comparison, as well as any Black Label product Plaintiffs have been able to identify.

5. To justify its "contains 25% less fat" claim, Center Cut advertises the amount of fat contained in a smaller, 15 gram, serving of Center Cut bacon, compared to the amount of fat contained in significantly larger serving sizes of Hormel Original bacon ("Original").

6. Much of the fat savings being advertised on Center Cut bacon are due to a reduction in the serving size that Hormel uses for Center Cut bacon vis-à-vis Original bacon – not due to Center Cut bacon being 25% leaner than Original bacon.

7. Hormel's label asks consumers to eat less Center Cut bacon to consume less while paying a premium price for this privilege.

8. To further hide the confusing and misleading nature of the Nutritional Claim, Hormel refers to its "Regular Bacon", rather than the more precise and understandable term "Original Bacon".

9. As a result, consumers who purchase Center Cut bacon end up with a product that is not as lean as they were led to believe.

10. Some consumers expressed their disappointment on the web page Hormel maintains for Center Cut bacon with comments such as "The 'showcase' piece looked pretty good but the rest of the package was mainly fat! It was in no way 25% less fat than regular bacon", and "If this is 25% less fat than your normal bacon, your regular bacon must be nothing but fat!", and "…25% less fat? – once I removed the camouflage packaging it was mostly fat."[1]

11. The Nutritional Claim also confuses consumers into thinking the product that is being compared to Center Cut in the Nutritional Claim must not be Original bacon but some other Black Label product because it advertises a fat reduction that is inconsistent with what the nutritional labels of Center Cut bacon and Original bacon indicate.

12. Collectively, these violations deceive consumers and make it impossible to ascertain to which product Center Cut is being compared by using the information provided on the Center Cut package.

13. The confusing and misleading nature of Hormel's label declaring Center Cut contains 25% less fat than our Regular Bacon is illustrated by recent manipulations of the serving size and fat content of the Original Bacon, which is the actual product to which the term Regular Bacon refers. At some point in the first half of 2021, Hormel changed the serving size and fat content of its Original Bacon (the "Hormel Original Modification"). Prior to the Hormel Original Modification, the serving size of Original Bacon was 18g with a fat content of 7g. After the Hormel Original Modification, the serving size of Original Bacon was reduced to 15g,

[1] As of the date of filing this Complaint, these reviews were available at https://hormel.com/Brands/Bacon/Black-Label-Bacon/center-cut-bacon

but the relative fat content per gram was increased, so that each serving size still had 7g of fat. However, the labelling on the Center Cut package was not changed. Prior to and after the Hormel Original Modification, it proclaimed itself to be 25% less fat than Hormel's Regular Bacon, even though the Original had changed both its serving size and the ratio of fat to lean. Both before and after, consumers are confused and deceived by the 25% less fat label. As used in this Complaint, the references to Original Bacon refer to the version sold with 18g serving sizes, unless otherwise indicated.

14. Hormel's conduct, alleged herein, constitutes an unlawful and deceptive commercial practice in violation of Consumer Legal Remedies Act and of Cal. Bus. and Prof. Code Section 17200 through violations of several California and federal statutes including California's False Advertising Laws, the Sherman Food Law, and United States Code Title 21, Chapter 9, Section 343. Plaintiffs seek monetary damages.

II. PARTIES

A. Plaintiff Diane Dakin

15. Plaintiff Diane Dakin is a natural person residing in the City of Bodega Bay, California.

16. During the Class Period, Ms. Dakin purchased Hormel Center Cut bacon many times at the Grocery Outlet and Safeway stores she patronizes.

17. Ms. Dakin purchased Hormel Center Cut bacon in each of the years during the Class Period.

18. Most recently, she purchased Hormel Center Cut in January 2021, shortly before becoming aware that the product is not as lean as advertised.

19. Before selecting Center Cut during that purchase, Ms. Dakin viewed the "Contains 25% Less Fat Than Our Regular Bacon" claim on the Center Cut package.

20. The claim led Ms. Dakin to believe that Center Cut would be a "meatier bacon" containing less fat.

21. Ms. Dakin paid approximately $6.00 for this purchase. She selected Hormel Center Cut over other bacon products that were priced lower and/or contained more bacon for

the same retail price because the Nutritional Claim led her to believe Hormel Center Cut was 25% leaner than other Hormel bacon being sold.

22. Ms. Dakin's most recent Center Cut purchase in January 2021 was made through Safeway's online grocery ordering service.

23. Prior to filing this lawsuit, Ms. Dakin logged on to her Safeway account to check the exact price she paid for Center Cut bacon during that purchase, but this information was no longer available for her to view.

24. However, on information and belief, both the exact price Ms. Dakin paid for Center Cut bacon in that transaction and the sale prices of other bacon products that were available for purchase that day can be obtained from Safeway's corporate information systems during discovery.

25. Ms. Dakin does not recall the exact price she paid for each of her Center Cut purchases during the Class Period. However, on multiple occasions, she recalls selecting Center Cut over other bacon products that were priced lower and/or contained more bacon for the same retail price because the Nutritional Claim led her to believe Hormel Center Cut was 25% leaner than other Hormel bacon being sold.

B. Plaintiff Deborah Despain

26. Plaintiff Deborah Despain is a natural person residing in the City of Buena Park, California.

27. Ms. Despain purchases Hormel Black Label bacon exclusively.

28. Ms. Despain has a preference for leaner cuts of bacon containing less fat.

29. Ms. Despain has purchased Hormel Center Cut bacon from her local Albertsons Vons grocery store in Fullerton, California on numerous occasions.

30. Most recently, she purchased Center Cut bacon from the same Albertsons Vons store in November, 2020 and paid a price between $6.99 and $8.99.

31. Before making a purchasing selection, Ms. Despain viewed the "Contains 25% Less Fat Than Our Regular Bacon" claim on the Center Cut product packaging.

32. During these purchases, the fat content claim on Center Cut bacon played a role in Ms. Despain's decisions to select Center Cut bacon over competing bacon products from Hormel,

33. Prior to becoming aware of the misleading nature of the fat content claims on Center Cut bacon, Ms. Despain had observed much of her Center Cut bacon seemed to "melt away" when she cooked the product and wondered whether Center Cut bacon was as lean as advertised.

34. Ms. Despain purchased Hormel Center Cut bacon in each of the years 2017 through 2020.

C. Plaintiff Marilyn Curren

35. Plaintiff Marilyn Curren is a natural person residing in the City of Fullerton, California.

36. Due to Ms. Curren's health condition, she makes an effort to reduce her fat intake when feasible.

37. As part of her efforts to consume less fat, Ms. Curren had been purchasing Center Cut bacon for a premium price under the belief that the product featured a leaner cut of meat than other Hormel bacon products.

38. Ms. Curren purchased Hormel Center Cut bacon in each of the years during the Class Period.

39. Her most recent purchase of Center Cut bacon was in or around January, 2021 at which time she paid approximately $8.00 for a package of Center Cut bacon.

40. Soon after this purchase, she became aware that Center Cut is not as lean as the Nutritional Claim suggests and stopped purchasing Center Cut bacon.

41. If not for the misleading Nutritional Claim, Ms. Curren would not have purchased Center Cut bacon at the prices she paid for the product.

D. Defendant Hormel Foods Sales, LLC

42. Defendant Hormel Foods Sales, LLC is a Delaware limited liability company.

43. Hormel Foods Sales, LLC is a 100% owned subsidiary of Hormel Foods Corporation.

44. Hormel Foods Sales, LLC advertises the corporate headquarters of Hormel Foods Corporation, 1 Hormel Place, Austin, MN 55912, as its address on Center Cut products.

45. On information and belief, Hormel Food Sales, LLC is directly controlled by Hormel Foods Corporation.

46. According to the information that is displayed on Center Cut bacon packages, Hormel Foods Sales LLC is the distributor of the Center Cut bacon product that the Plaintiffs purchased.

E. Defendant Hormel Foods, LLC

47. Defendant Hormel Foods, LLC is a Minnesota limited liability company.

48. Hormel Foods, LLC is a 100% owned subsidiary of Hormel Foods Corporation.

49. According to information displayed on Center Cut packaging, Hormel Foods, LLC holds the copyrights to the information that is displayed on Center Cut packaging, including the deceptive Nutritional Claim that is the subject of the allegations herein.

50. Hormel Foods, LLC also maintains the web site through which it markets Center Cut bacon using deceptive marketing claims as alleged herein.

III. JURISDICTION AND VENUE

51. This action is brought under diversity jurisdiction under the Class Action Fairness Act, 28 U.S.C. §1332(d), in that at least one named Plaintiff is a citizen of state different from at least one of the Defendants, and the aggregate amount in controversy for all Class members exceeds $5,000,000, exclusive of interest and costs. The number of Class members is greater than 100.

52. The Northern District of California has specific personal jurisdiction over Hormel with regard to the claims asserted in this action because Hormel's contacts with the state of California in which this Court is located are continuous, systematic, and purposeful, and the specific claims in this action arise from those particular contacts.

53. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(3) because Hormel is subject to this Court's personal jurisdiction with respect to this action.

IV. FACTUAL ALLEGATIONS

A. Allegations Related to Cal. Bus. & Prof. Code § 17500, *et seq.*, and Breach of Express Warranties Claims

54. Under its Black Label Bacon brand, Hormel manufactures and markets over 19 varieties of bacon products that are intended for sale to retail customers.

55. Hormel's Center Cut bacon is one of the bacon products Hormel markets under its Black Label Bacon brand.

1. Misleading and Confusing Claims Made on Center Cut Packaging

56. Center Cut bacon displays the Nutritional Claim "25% Less Fat Than Our Regular Bacon" on the front of each retail package.

57. The Nutritional Claim is prominently displayed on the front panel of the Center Cut package where consumers making purchase decisions can quickly notice it.

58. The Nutritional Claim is printed in a font size that is almost as large as the Black Label Center Cut brand label.

59. Not counting the brand label, it is by far the largest text featured on the Center Cut packaging.

60. The Nutritional Claim is intended to influence and does successfully influence the purchasing decisions of the consumers who view it.

61. With the statement "Contains 25% Less Fat Than Our Regular Bacon" the Nutritional Claim leads consumers into thinking that, ounce-for-ounce or gram-for-gram, Center Cut has a fat content that is 25% lower than the reference product identified as "Our Regular Bacon" in the Nutritional Claim. The Nutritional Claim leads consumers to think Center Cut bacon is 25% leaner that the product Hormel refers to as "Our Regular Bacon".

62. The Nutritional Claim is misleading because, ounce-for-ounce and gram-for-gram, Center Cut did not contain 25% less fat than any other Black Label bacon product.

63. Furthermore, Hormel makes it difficult for consumers to discover the misleading nature of the Nutritional Claim by failing to identify the Hormel bacon product it refers to with the phrase "Our Regular Bacon".

a. The Nutritional Claim Lacks Sufficient Information to Identify the Product Against Which Center Cut Is Being Compared

64. The Center Cut product packaging contains no information that would allow consumers to identify the reference product that is referenced by the phrase "Our Regular Bacon".

65. Hormel does not market a product called "Hormel Black Label Regular Bacon".

66. Hormel markets at least 19 versions of Black Label bacon products.

67. Consumers are left to decide for themselves whether Hormel's Regular Bacon is any of the numerous bacon products marketed by Hormel such as:

- HORMEL® BLACK LABEL® Bacon 1 Lb
- HORMEL® BLACK LABEL® Bacon 48 oz
- HORMEL® BLACK LABEL® Original 24oz Stack Pack
- HORMEL® BLACK LABEL® Original Thick Cut Bacon
- HORMEL® BLACK LABEL® Bacon Lower Sodium 48oz

- HORMEL® BLACK LABEL® Low Salt Bacon 12 oz
- HORMEL® BLACK LABEL® Brown Sugar
- HORMEL® BLACK LABEL® Brown Sugar Bacon 24oz Stack Pack
- HORMEL® BLACK LABEL® Premium Brown Sugar Thick Cut Bacon
- HORMEL® BLACK LABEL® Applewood Smoked Thick Sliced Bacon 12 oz
- HORMEL® BLACK LABEL® Premium Applewood Bacon
- HORMEL® BLACK LABEL® Cherrywood
- HORMEL® BLACK LABEL® Premium Cherrywood Thick Cut Bacon
- HORMEL® BLACK LABEL® Cherrywood 24oz Stack Pack
- HORMEL® BLACK LABEL® Jalapeno
- HORMEL® BLACK LABEL® Maple Black Pepper
- HORMEL® BLACK LABEL® Maple Flavor Bacon 1 lb
- HORMEL® BLACK LABEL® Premium Pecanwood Bacon
- HORMEL® BLACK LABEL® Pecanwood Bacon 24oz Stack Pack

68. The variations Hormel makes to the product weight for otherwise identical sounding products can have implications for the product's fat content. (For example, compare HORMEL® BLACK LABEL® Bacon 1 lb. containing 9 grams of fat per 24 grams to HORMEL® BLACK LABEL® Bacon 48 oz. containing 9 grams of fat in a smaller 21 gram serving.)

b. For Most of the Class Period, None of the Regularly Sold Hormel Black Label Products Had 25% Lower Fat Content Than Center Cut Bacon

69. It is not possible to identify from the information on the Center Cut package what Black Label product is referenced by the phrase "Our Regular Bacon" in the Nutritional Claim.

70. Plaintiff Dakin sent Hormel an inquiry about the reference product mentioned in the Nutritional Claim and was told that the "statement on the package is comparing it to our original BLACK LABEL® Bacon."

71. As shown in the side-by-side comparison attached hereto as Exhibit 1, prior to the Hormel Original Modification, a package of Original bacon did not have 25% less fat than a similar size serving of Original bacon.

72. The nutritional panel on the back of a package of Hormel Original bacon purchased from a Safeway store in Corte Madera, California in February 2020 indicates that the product contained 7 grams of fat per serving and that the serving size was 18 grams. Thus, 1 gram of Original bacon would have contained 0.389 grams of fat.

73. In contrast, according to the nutritional panel on the back of Center Cut bacon, this product contains 5 grams of fat per serving. The serving size for Center Cut bacon is defined as 15 grams. Thus, 1 gram of Center Cut bacon contains 0.333 grams of fat.

74. At 0.333 grams of fat per gram of bacon, Center Cut bacon's fat content is 14% less than Original bacon's fat content of 0.389 grams of fat per gram of bacon.

75. Gram-for-gram, Center Cut bacon contains 14% less fat than Original bacon – not 25% less fat as the Nutritional Claim suggests. *See* Exhibit 1.

76. Hormel's business records would show when Hormel Original Modification took place and when the modified product has been sold to California consumers.

c. To the Extent the Nutritional Claim Refers to Original or Thick Cut Bacon as "Our Regular Bacon", Hormel Should Have Known Consumers Would Be Misled and Confused

77. The typical consumer would have been unable to discover the truth about Hormel's 25% less fat claim when purchasing Center Cut bacon at the store because the nutritional facts are buried in calculations.

78. Center Cut bacon's fat content calculations are based on a 15 gram serving whereas Original bacon's fat content calculations were based on the larger 18 gram serving size.

79. Therefore, the "25% less fat" claim in the Nutritional Claim was achieved in large part by making Center Cut bacon's serving size smaller – a simple accounting trick that did not boost the relative healthiness of Center Cut bacon.

80. Hormel's manipulated serving sizes would not have been discoverable by most consumers because to understand them, one would have to perform several calculations

involving division and multiplication of various nutritional facts from the nutritional panels of Center Cut and Original bacon products.

81. It is neither reasonable nor realistic to assume a typical consumer would engage in such a calculation at the grocery store aisle.

82. The typical consumer spends a few seconds when making a purchase decision and grabs one type of product before moving to the next purchase.

83. Even in their home after having purchased a Black Label product, the typical consumer would have had either the Center Cut, or the Original – not both and thus would still not be able to determine the truth of the 25% less fat calculation.

84. Hormel knows, or with the exercise of reasonable care, should have known that the Nutritional Claim is misleading.

d. Hormel Used the Nutritional Claim to Sell Center Cut Bacon at a Premium Price

85. At 12 ounces per package, Center Cut contains one-fourth less bacon than other Black Label Bacon products, which typically contain 16 ounces of bacon per package.

86. Despite containing less bacon, Center Cut typically retails for the same price as other Black Label Bacon products containing 16 ounces of bacon such as Original bacon and Thick Cut bacon.

87. Thus, ounce-for-ounce, Center Cut costs more than Black Label products containing 16 ounces of bacon.

88. Hormel's policy appears to be to price 12 ounce Center Cut packages similarly to other Black Label bacon products that contain 16 ounces of bacon, so that it retails for the same price per package as other Black Label bacon containing 16 ounces per package.

89. The confusing and misleading nature of the Nutritional Claim is a primary factor as to why consumers will purchase Center Cut bacon for the same retail price as other Black Label bacon products that contain more bacon per package.

90. The Nutritional Claim is vague because Hormel does not make clear on Center Cut packaging the reference product that the Nutritional Claim refers to with the phrase "Our Regular Bacon".

91. The Nutritional Claim is misleading because Center Cut was not 25% leaner than Original bacon or any other Black Label bacon consumers can be expected to associate with the phrase "Our Regular Bacon"

92. The Nutritional Claim is also misleading because Hormel varies the serving size of its various Hormel Black Label bacon products, thereby making it more difficult for consumers to determine how much leaner Center Cut is than other Black label bacon by comparing the nutritional information on different Black Label products.

93. The Nutritional Claim materially influenced each of the Plaintiffs to pay a premium price for Center Cut bacon based on the mistaken belief that they were purchasing a bacon product that was 25% leaner than other Black Label bacon.

94. Were it not for the unlawful nature of the Nutritional Claim, Plaintiffs and members of the Class would not have purchased Center Cut bacon at the premium price to other Hormel Black Label products, or they would have purchased a different bacon product.

95. Plaintiffs and members of the putative class of plaintiffs suffered losses as a result of being improperly induced to pay a higher price per pound for the Center Cut bacon during the Class Period.

e. Hormel Could Have Used Consistent Serving Sizes for Center Cut and the Reference Product to Make the Nutritional Claim Less Deceptive

96. For most of the Class Period, the nutritional panel on the back of the Original bacon packages defined one serving of Original bacon as consisting of 2 pan-fried slices weighing 18 grams. (Exhibit 1).

97. Then, sometime between February, 2020 and June, 2021, Hormel quietly changed the information in the Original bacon nutritional panel so that a serving now was defined as 2 pan-fried slices weighing 15 grams. (Exhibit 2).

98. However, even after this modification, Original bacon continued to have 7 grams of fat per serving – even though its serving size was now 17% smaller (at 15 grams rather than 18 grams).

99. The Hormel Original Modification made Original bacon fattier – because it now had the same amount of fat for a smaller serving size.

100. Perversely, the Hormel Original Modification brought no health benefits to Center Cut consumers because Center Cut bacon is no less fatty today than it was prior to this modification.

101. On the other hand, the modification continues to cause harm to consumers of Original bacon who are now being sold bacon with a higher fat content – probably without their knowledge.

102. The Hormel Original Modification demonstrates that Hormel has the ability to modify the serving sizes for its products at will. It could have made this modification when it first started making the Nutritional Claim to avoid misleading consumers about Center Cut bacon's fat content. It did not do so.

103. Hormel carried out the Hormel Original Modification very recently – more than three years into the Class Period.

104. Therefore, prior to the date of the Hormel Original Modification, the Nutritional Claim could not have accurately represented that Center Cut was 25% leaner than Original bacon.

2. Misleading Claims Made On Hormel's Web Site

105. Defendant Hormel Foods, LLC maintains the web site www.hormel.com on which various Hormel Black Label products including Center Cut bacon are marketed.

106. The web site contains a marketing page dedicated to Center Cut bacon, that is located at the URL https://hormel.com/Brands/Bacon/Black-Label-Bacon/center-cut-bacon ("Center Cut Web Site").

107. The Center Cut Web Site displays a picture of the Center Cut bacon packaging displaying the deceptive Nutritional Label "Contains 25% Less Fat Than Our Regular Bacon" along with the description ("Center Cut Web Site Claim"):

> Our center cut bacon comes from the center of the pork belly. This area of the pork belly has 25% less fat, which means less fat in your belly. It's [sic] taste makes it the center of attention.

108. Thus, center cut bacon should contain 25% less fat ounce-per-ounce than regular bacon, or to put it differently, center cut bacon should offer a cut of meat that is 25% leaner than regular bacon.

109. The side-by-side positioning of the Nutritional Claim and the Center Cut Web Site Description, along with their similarly worded messages which respectively describe Center Cut bacon and cuts from the center of the pork belly as having "25% less fat" in slightly different contexts leads the typical consumer to believe Center Cut bacon is 25% leaner than other Hormel Black Label Bacon products.

110. Until the Hormel Original Modification, Center Cut bacon was not 25% leaner than other Black Label bacon because a comparable sized serving of Center Cut bacon does not contain 25% less fat, or even 15% less fat, than other Black Label bacon products.

111. Exhibit 3 contains true and correct representation of the Center Cut Web Site as of March 25, 2021 in the form of a screenshot that was taken on that date.

112. According to the footer that is displayed at the bottom of the Center Cut Web Site, the copyrights for the contents of the Center Cut Web Site belong to Hormel Foods, LLC.

113. The Center Cut Web Site Claim serves to reinforce the misleading consumer perceptions that Nutritional Claim promotes about Center Cut bacon's fat content.

B. Allegations Related to 21 CFR 101.13 and Cal. Health & Safety Code § 109875, *et seq.*

1. The Nutritional Claim Is a "Relative Claim" under 21 CFR 101.13(j)

114. The Nutritional Claim fails to satisfy the requirements for permissive nutritional claims a manufacturer may include in the product panel under federal food labeling laws and regulations.

115. The Nutritional Claim is a "relative claim" under 21 CFR 101.13(j) because it "compares the level of a nutrient in the food with the level of a nutrient in a reference food".

2. Hormel Fails to Identify the Reference Food Mentioned in Nutritional Claim

116. However, the Nutritional Claim does not comply with the 21 CFR 101.13(j) requirement that foods bearing relative claims "state the identity of the reference food" at a location "immediately adjacent to the most prominent claim". 21 CFR 101.13(j)(2)(ii).

117. The Nutritional Claim is the most prominent claim that is made on the Center Cut bacon packaging.

118. The Nutritional Claim identifies the reference food in the claim as "Our Regular Bacon" without providing any explanation as to what Hormel Black Label bacon product is referenced by the words "Our Regular Bacon".

119. This information does not help consumers identity the reference food because it could be referring to any of Hormel's many Black Label products.

120. The only other information that can be discerned about the referenced product from the Center Cut packaging is the statement "Fat Content Has Been Reduced From 7g to 5g Per Serving" which is found in back panel of the product.

121. This additional information is similarly insufficient to identify the reference food as discussed below.

3. Hormel Changes Serving Sizes Across Its Bacon Products Thereby Increasing Consumer Confusion

122. Had Hormel's numerous Black Label bacon products contained similar amounts of fat per similar size servings of food, Hormel's failure to properly identify the reference product would have been immaterial because the fat reduction advertised in the Nutritional Claim could have applied to most Hormel Black Label products. That is not the case.

123. Hormel's Black Label bacon products show great variance in their fat content both in terms of how much fat they contain ounce-for-ounce and in terms of how much fat they contain per recommended serving. (The two are not the same because Hormel uses vastly different serving sizes for different Black Label bacon products.)

124. A comparison of the nutritional labels of various Black Label bacon products shows that a serving of Black Label can contain as little as 5 grams of fat and as much as 9

grams – almost twice the amount. (*E.g.*, compare Center Cut bacon containing 5 grams of fat in each 15 gram serving to Thick Cut bacon containing 9 grams of fat in each 24 gram serving).

125. Hormel further adds to this confusion by using different serving sizes for its various bacon products as it sees fit.

126. For example, the nutritional label for the Black Label Thick Cut bacon that is sold in 16 ounce packages displays a fat content of 9 grams per each 24 gram serving of bacon. Exhibit 4. In contrast, according to Hormel's web site, the seemingly identical Black Label Thick Cut that is sold in a 48 ounce package uses a smaller, 21 gram serving size despite having the same amount (9 grams) of fat per serving. Exhibit 5.

127. Thus, identically named Black Label products can contain different ratios of fat to protein – or have varying degrees of leanness.

128. Because of all this variation, it is not possible for consumer to know from the Nutritional Claim and from the Center Cut packaging statement "Fat Content Has Been Reduced from 7g to 5g Per Serving", which Hormel product is being referred to in the Nutritional Claim.

129. For example, "Fat Content Has Been Reduced from 7g to 5g Per Serving", could be referring to the Black Label Jalapeno Thick Cut Bacon containing 7 grams of fat per 20 gram serving (Exhibit 6) or to Black Label Original bacon containing 7 grams of fat per 18 gram serving (Exhibit 7).

130. Whether the comparison being made in the Nutritional Claim is to Jalapeno Thick Cut Bacon or to Original Black Label is not a trivial one.

131. Even though both of the aforementioned products contain 7 grams of fat per serving, they are not equally lean.

132. The different serving sizes being used for these two products means that the Jalapeno Thick Cut Bacon contains 10% less fat than a similar sized serving of Original bacon.

133. Therefore, a 25% fat reduction, as advertised in the Nutritional Claim, would result in a significantly leaner product in Center Cut bacon, if the reference product were Jalapeno Thick Cut Bacon rather than Original bacon.

134. Because Hormel leaves out the information necessary to identify the reference product from the Center Cut packaging and because Hormel is in the practice of selling a large number of bacon products that vary in fat content and serving size, the Nutritional Claim is likely to cause consumer confusion.

135. The recent Hormel Original Modification, which altered the fat content of Original bacon without making any changes to Center Cut bacon packaging, has further contributed to consumer confusion.

136. Since the Nutritional Claim uses Original bacon as the reference product, and since Original bacon's fat content has been modified, consumers now have no way of knowing whether the Nutritional Claim might have been referring to the Original bacon product which contained 7 grams of fat per 18 gram serving (as was the case before the modification) or to the Original bacon product which contained 7 grams of fat per 15 grams of serving (as is the case today).

137. Thus, the Hormel Original Modification makes the Nutritional Claim even more confusing for consumers.

138. Varying what constitutes a serving across Black Label bacon products as Hormel does is inconsistent with what FDA intended when it formulated its rules for nutritional tables. "FDA sought to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform reference amount." 21 CFR § 101.12(a)(9). (Emphasis added.)

139. Hormel's nutritional labeling practices render its reference to "Our Regular Bacon" in the Nutritional Claim devoid of any useful meaning.

140. Faced with this mind-numbing variation of serving sizes and fat contents across numerous Black Label products, a consumer has no way of knowing what reference product Hormel might be referring to as "Our Regular Product" in the Nutritional Claim.

4. The Information Provided in the Nutritional Claim Is Internally Inconsistent with Information Shown in the Nutritional Panel

141. The Nutritional Claim also violates other requirements of 21 CFR 101.13(j) by misstating the relative fat content of Center Cut bacon in the Nutritional Claim.

142. The representation, "Contains 25% Less Fat Than Our Regular Bacon" is not a statement that is mathematically consistent with the nutritional values shown in the Center Cut bacon and the values shown in the nutritional label of Original bacon, the reference product that Hormel has identified upon inquiry.

143. According to the nutritional labeling displayed on Original bacon, a serving of Original bacon contains 7 grams of fat.

144. In contrast, according to the nutritional labeling displayed on Center Cut bacon, a serving of Center Cut bacon contains 5 grams of fat.

145. A reduction from 7 grams to 5 grams of fat as shown in the respective nutritional panels of the two products amounts to a 28.6% reduction.

146. However a fat reduction of 28.6% is not the same as a fat reduction of 25% as advertised in the Nutritional Claim.

147. Therefore, the fat comparisons that can be derived from the respective nutritional panels of Center Cut bacon and Original bacon are inconsistent with the fat comparison advertised in the Nutritional Claim.

148. This inconsistency removes a level of detail that a consumer comparing the nutritional panels of the two products would need in order to piece together that Original bacon is the reference product mentioned in the Nutritional Claim.

149. The inconsistency makes such a comparison impossible by creating confusion. It provides the consumer with contradictory fat content comparisons even when the consumer bases the comparison on the differing serving sizes Hormel has selected for each respective bacon product.

150. Upon seeing that the Nutritional Claim refers to a product with 25% less fat, but the nutritional labels of Original and Center Cut bacon indicate a 28.6% fat reduction per serving, most consumers will likely conclude the product referenced in the Nutritional Claim must not be Original bacon because, otherwise, the numbers in the Nutritional Claim would have matched those from the nutritional panels.

151. Given the many variations in the serving size and fat contents of various Black Label bacon products, the internally inconsistent fat reduction claim made in the Nutritional Label further hinders consumers' ability to identify the reference product mentioned in the Nutritional Claim.

V. CLASS ALLEGATIONS

152. Plaintiffs bring this action on behalf of themselves and the members of the proposed Class under Rule 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure. The proposed Class consists of the following:

> All California residents who made retail purchases of Hormel Center Cut bacon at anytime from August 6, 2017 to the present within the State of California.

153. Excluded from this Class are Hormel, its subsidiaries, affiliates, officers and directors, any entity in which Hormel has a controlling interest, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

154. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so numerous that joinder is impractical. While the precise number is unknown, the Class consists of tens of thousands of individual consumers.

155. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are numerous questions of law and fact common to the Class that predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the Nutritional Claim misleads the typical consumer into believing Center Cut bacon is 25% leaner than other Hormel Black Label Bacon products;

(b) Whether Center Cut bacon is 25% leaner than the product that is referred to as "Our Regular Bacon" in the Nutritional Claim;

(c) Whether the Nutritional Claim refers to Hormel Black Label Original Bacon, Hormel Thick Cut Bacon, or some other product by the phrase "Our Regular Bacon";

(d) Whether the Nutritional Claim conforms to the requirements set forth in 21 CFR 101.13;

(e) Whether the Nutritional Claim constitutes an advertisement for the purposes of Cal. Bus. & Prof. Code § 17500, *et seq.*;

(f) Whether the use of the Nutritional Claim is intended to result in the sale of Center Cut bacon;

(g) Whether Center Cut contains 25% less fat than the Hormel product referenced in the Nutritional Claim by the phrase "Our Regular Bacon";

(h) Whether Hormel breached the express warranties it made under the Nutritional Claim;

(i) Whether Class members are entitled to restitution, and in what amount;

156. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims of the members of the Class and, like all members of the Class, Plaintiffs purchased Center Cut bacon under the mistaken belief that it was 25% leaner than other Black Label Bacon products. Plaintiffs have no interests antagonistic to the interests of any other member of the Class.

157. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs are each a representative who will fairly and adequately assert and protect the interests of the Class and have retained counsel experienced in prosecuting class actions. Accordingly, each Plaintiff is an adequate representative, who will fairly protect the interests of the Class.

158. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Hormel's wrongful conduct are relatively small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is thus remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

159. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings or incompatible standards of conduct for Hormel. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

VI. COUNTS

COUNT I

Unlawful Business Practices

(California Business & Professions Code § 17200, *et seq.*)

160. Plaintiffs incorporate and reallege by reference each and every allegation above as if fully set forth herein.

1. Cal. Bus. & Prof. Code § 17500 Violations

False Advertising Law Violations

161. Cal. Bus. & Prof. Code § 17500 states it is "unlawful for any person, firm, corporation or association, … with intent directly or indirectly to dispose of real or personal property … to make or disseminate or cause to be made or disseminated before the public in this state… in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading…"

162. Hormel disseminates its Nutritional Claim to California consumers by means of placing it on each Center Cut bacon package that is sold in California grocery stores and by making claims on its web site suggestive of the fact that Center Cut bacon is 25% leaner than its "Regular" bacon.

163. The Nutritional Claim is placed prominently on the front of each Center Cut package in order to be viewed and read by consumers who are in the process of making purchasing decisions and to induce such consumers to purchase Center Cut bacon.

164. The Nutritional Claim contains information about the Center Cut bacon product because it compares the fat content of Center Cut bacon to another Hormel bacon product.

165. The Nutritional Claim leads the consumer to believe Center Cut bacon is 25% leaner than Hormel's "Regular Bacon" because the typical consumer would have no reason to suspect that the Nutritional Claim is highlighting benefits that come, in part, from the manipulation of serving sizes across Center Cut bacon and the other Hormel bacon product being compared.

166. Claims that advertise reduced fat content on the premise that consumers eat less of the referenced food are misleading because such claims do not inform the consumer about the inherent nature of the product being advertised. Instead, they advertise a benefit that is premised on mathematical manipulation and could be achieved by consumers without paying a premium price for the advertised product if they simply reduced their intake of the reference product in the manner that the Nutritional Claim seems to be suggesting.

167. The Nutritional Claim is misleading because it leaves the typical consumer under the impression that Center Cut bacon is 25% leaner than Hormel's regular bacon product even though that is not the case.

168. Hormel knows or should know with reasonable care that the Nutritional Claim is misleading.

2. Cal. Bus. & Prof. Code § 17508 Violations

169. Cal. Bus. & Prof. Code § 17508(a) states it is "unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact."

170. The Nutritional Claim constitutes an advertisement because it is featured on the face of the Center Cut packages where it can be easily read by consumers who might use the information featured in the Nutritional Claim to inform their purchasing decisions.

171. The Nutritional Claim makes a statement comparing the fat content of Center Cut bacon to that of another Hormel Black Label product.

172. Fat is a nutritional component found in food. The nutrient contents of foods are always determined using factual evidence in the form of chemical analyses.

173. Therefore, the Nutritional Claim purports to be based on factual evidence.

174. Moreover, the Nutritional Claim's "Contains 25% Less Fat" claim makes a numerical comparison of the fat contents of Center Cut Bacon and another Hormel Black Label Bacon product.

175. Numerical comparisons are always objective assertions.

176. Therefore, the Nutritional Claim makes an advertising claim that purports to be based on objective evidence as well.

177. The Nutritional Claim leads the consumer to believe Center Cut bacon is 25% leaner than Hormel's "Regular Bacon" because the typical consumer would have no reason to suspect that the Nutritional Claim is highlighting benefits that come, in part, from the manipulation of serving sizes across Center Cut bacon and the other Hormel bacon product being compared.

178. Claims that advertise reduced fat content on the premise that consumers eat less of the referenced food are misleading because such claims do not inform the consumer about the inherent nature of the product being advertised. Instead, they advertise a benefit that is premised on mathematical manipulation and could be achieved by consumers without paying a premium price for the advertised product if they simply reduced their intake of the reference product in the manner that the Nutritional Claim seems to be suggesting.

3. Federal Food, Drug, and Cosmetic Act Violations

179. United States Code, Title 21, Chapter 9 ("FDCA") states that a food "shall be deemed misbranded [i]f (1) its labeling is false or misleading in any particular§ 343(a).

180. As alleged herein, the Nutritional Claim's comparison of Center Cut bacon to Original bacon violates FDCA because it is misleading.

a. Fat Is a Nutrient Subject to Regulation under FDCA

181. Section 343 of the FDCA grants the Secretary of Health and Human Services authority to regulate certain nutritional information that must be provided on a food label in order to "assist consumers in maintaining healthy dietary practices." § 343(q)(2)(A).

182. The legislative intent to regulate food labeling with the purpose of assisting consumers maintain healthy dietary practices and the linkage between a person's fat intake and health is repeated numerous times in the FDCA and in the federal food code regulations published by the Department of Health and Human Services ("HHS"). "A healthful diet low in saturated fat, total fat, and cholesterol, as part of a healthy lifestyle, may lower blood cholesterol levels and may reduce the risk of heart disease". 21 CFR § 101.75(e)(3). "You may use the term 'health' or related terms… as an implied nutrient content claim on the label or in labeling of a food that is useful in creating a diet that is consistent with dietary recommendations if [t]he food meets the following conditions for fat". 21 CFR § 101.65(d)(2).

183. Consistent with Congress's intent to assist consumers in making healthy dietary decisions through the enactment of federal food labeling laws, HHS has published a set of regulations under Title 21, Chapter I, Subchapter B, Part 101of the Code of Federal Regulations ("C.F.R.") to regulate the information that goes on a food label.

184. The C.F.R. is a list of technical requirements that regulate what information must be provided on a food label and what information food manufacturers may provide on a food label at their discretion.

185. The C.F.R. is very specific about the different requirements it imposes on manufacturers for the various statements they must and may make on different parts of the food label.

186. The various requirements of the C.F.R. intricately complement each other to provide consumers with protection from deceptive food claims while giving manufacturers the freedom to distinguish their product through food labeling.

187. Courts have recognized HHS's expertise in balancing these competing goals by deferring to the precise language of the C.F.R. when various sections of the C.F.R. are found to

be imposing contradictory requirements on different parts of a food label. (*See Hawkins v. Kroger Co.*, 906 F.3d 763 (9th Cir. 2018) holding that the fat content disclosure that a manufacturer was required to place on the nutritional panel of a food label pursuant to 21 C.F.R. §101.13(c) nonetheless violated other sections of the C.F.R. when it was also placed on the front of the label of the same product because product labeling outside of the Nutritional Facts Panel "was subject to the rules governing nutrition content claims, including that the claim not be 'false or misleading in any way.' 21 C.F.R. § 101.13(i)(3)." *Id.* at 771.)

188. Hormel's Nutritional Claim violates both technical requirements of numerous sections of the CFR and the FDCA's overriding policy goal to "assist consumers in maintaining healthy dietary practices" because it combines misleading fat content claims with internally inconsistent statements that create consumer confusion about how lean Center Cut bacon really is.

189. The FDCA deems a food to be misbranded if the food label contains claims about the nutrient level of any nutrient that is required to be in the nutritional information panel as per §343(q)(1)(D), unless such claims are made using only the "terms which are defined in regulations of the Secretary[2]." § 343(r)(2)A)(i).

190. The requirements of § 343(r)(2)A)(i) apply to the Nutritional Claim because fat is one of the nutrients that is required to be in the nutritional information panel as per §343(q)(1)(D).

191. Therefore, Center Cut bacon would be a misbranded food unless the Nutritional Claim is made using only the terms defined in the C.F.R. regulations released by the Secretary of HHS.

b. Nutritional Claim Constitutes a "Relative Claim" Under CFR

192. Under the applicable regulations issued by the Secretary of HHS, "[a] food may bear a statement that compares the level of a nutrient in the food with the level of a nutrient in a

[2] The regulation uses the term "Secretary" to refer to the Secretary of Health and Human Services.

reference food. These statements shall be known as 'relative claims' and include 'light,' 'reduced,' 'less' (or 'fewer'), and 'more' claims." 21 CFR 101.13(j).

193. The Nutritional Claim constitutes a "relative claim" under 21 CFR 101.13(j) because it compares the fat content of Center Cut bacon to the fact content of another food with its "contains less fat" claim.

194. "For foods bearing relative claims: (i) The label or labeling must state the identity of the reference food and the percentage (or fraction) of the amount of the nutrient in the reference food by which the nutrient in the labeled food differs…" 21 CFR 101.13 (j)(2)(i).

c. Nutritional Claim Violates 21 CFR 101.13 (j)(2)(i) By Failing to Properly Identify the Reference Food

195. The Nutritional Claim does not comply with 21 CFR 101.13 (j)(2)(i) because it fails to identify the reference food, but rather makes reference to Hormel's "Regular Bacon" which is not a product that is marketed as such.

d. Nutritional Claim Violates 21 CFR 101.13(j)(2)(iv) Because It Fails To Provide Clear Quantitative Information About Its Fat Content

196. In addition, the Nutritional Claim does not comply with the 21 CFR 101.13(j)(2)(iv) requirement that a label featuring a relative claim bear "[c]lear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food." 21 CFR 101.13(j)(2)(iv)(A).

197. The Center Cut label violates this requirement because the only quantitative information it provides about the Nutritional Claim's fat comparison is the statement "Fat Content Has Been Reduced From 7g to 5g Per Serving" that is shown in the back panel of the Center Cut package.

198. That statement is far from clear about the fat content that is being compared in the relative claim.

199. The statement fails to identify the reference food and the serving size of the compared food. The omission of such relevant information leaves consumers without a context for evaluating the Nutritional Claim's "Contains 25% Less Fat" assertion in an informed manner.

200. Without such context, Hormel's Nutritional Claim cannot be considered to provide clear information about whether and how much Center Cut's fat content has really been reduced.

201. For example, prior to the Hormel Original Modification, a dieter who was in the habit of consuming 18 grams of Original bacon and had seen the Nutritional Claim and switched to Center Cut bacon and continued to consume the same quantity of bacon as before, would not have reduced his fat intake by 25% as the Nutritional Claim suggests. Instead, his fat intake would have been reduced only by 14%.

202. Nothing in Center Cut's packaging provides such a consumer with the information necessary to reduce his or her fat intake by 25% through the consumption of Center Cut bacon because highly relevant comparative serving size information has been left out by Hormel.

e. Nutritional Claim Violates 21 CFR 101.13(j)(1)(ii)(B) Because the Fat Content Advertised in Nutritional Claim Is Inconsistent with the Compared Products' Nutritional Labels

203. The C.F.R. requires that "[t]he nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting label is internally consistent to (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause consumer confusion when compared)…" 21 CFR 101.13(j)(1)(ii)(B).

204. The Nutritional Claim violates multiple requirements imposed by 21 CFR 101.13(j)(1)(ii)(B) because (i) its "Contains 25% Less Fat" claim cannot be reconciled with the nutritional labeling or actual nutrient values of Original bacon (which Hormel has identified upon Plaintiffs' inquiry as the reference product); and (ii) its use creates consumer confusion by stating different fat reduction numbers than suggested on the nutritional panels of Center Cut and Original bacon packages.

205. According to the nutritional panels provided on Center Cut bacon and Original bacon products, these two products contain 5 grams and 7 grams of fat per serving respectively.

206. However, a reduction of fat from 7 grams to 5 grams constitutes a 28.6% reduction, not a 25% reduction as the Nutritional Claim advertises. Therefore, a consumer who is trying to identify what reference product is referenced in the Nutritional Panel by the term "Our Regular Bacon" by comparing the fat contents per serving that are shown in the nutritional panels of various Black Label bacon products would not know that the Nutritional Panel is making a comparison to Original Bacon.

207. Instead, the consumer could conclude that the product referenced in the Nutritional Claim must be a Black Label product other than Original bacon because Center Cut has a 28.6% reduction per serving vis-à-vis Original bacon – not a 25% reduction.

208. If Hormel is using the information from the nutritional panels of Original bacon and Center Cut bacon to make the Nutritional Claim, objective mathematical facts demonstrate a violation of CFR 101.13(j)(1)(ii)(B) because 28.6% is not the same as 25% and conflating these two numbers creates inconstant mathematical results. This violation also creates consumer confusion by making it difficult for the consumer to identify the reference product which Hormel has failed to name on its Center Cut product label.

209. Alternatively, if Hormel used the actual nutrient values of Center Cut and Original bacon to determine the Nutritional Claim, these values would differ from what Hormel advertises in the Nutritional Claim.

210. For the foregoing reasons, the Nutritional Claim violates CFR 101.13(j)(1)(ii)(B) because its determination is not based on a calculation that is permitted under this code.

f. Nutritional Claim Violates 21 CFR 101.13(j)(1)(ii)(B) Because It Causes Consumer Confusion When Compared

211. The Nutritional Claim does not comply with the 21 CFR 101.13(j)(1)(ii)(B) requirement that the "nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product" must result in a label that is internally consistent such that "the values stated in the nutrition information, the nutrient values in the accompanying

information and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause consumer confusion when compared".

212. Given the considerable variation in the serving sizes and fat contents per serving for various Black Label bacon products, changes to the fat content of the reference product, and the internally inconsistent fat reduction claims alleged herein do cause consumer confusion when compared because consumers have no way to understand how much Center Cut's fat content has been reduced.

4. California Sherman Food, Drug, and Cosmetic Laws Violations

213. California's Sherman Food Law governing the labeling of foods sold in this state ("Sherman Food Law") adopts "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to [federal statutes governing food labeling] in effect on January 1, 1993, or adopted on or after that date" as the food regulations of the State of California. Cal. Health & Safety Code § 110100.

214. Sherman Food Law has adopted CFR 101.13 by operation of law because the latter is a regulation that was adopted pursuant to federal statutes governing food labeling in effect on January 1, 1993.

215. Because the Nutritional Claim violates several sections of CFR 101.13 as alleged herein, it violates the Sherman Food Law as well.

5. The Nutritional Claim is Unlawful Because It Violates Multiple Laws and Regulations

216. A business act or practice is "unlawful" under Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL") if it violates any other law or regulation.

217. The Nutritional Claim violates multiple sections of California's False Advertising Laws, the FDCA, and the Sherman Food Law.

218. Because of these violations, Plaintiffs have been misled into paying a price for Center Cut bacon that they would not have otherwise paid.

219. As a result, they have suffered losses in the form of monies they overpaid when purchasing Center Cut bacon.

220. Plaintiffs request that this Court cause Hormel to restore the monies that Plaintiffs and all Class Members overpaid as a result of Hormel's unlawful practices. Otherwise, Plaintiffs, the respective Class they seek to represent, and members of the general public may be irreparably harmed or denied an effective and complete remedy if such an order is not granted.

221. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to California Code of Civil Procedure, section 1021.5.

COUNT II

Breach of Express Warranties

222. Plaintiffs incorporate and reallege by reference each and every allegation above as if fully set forth herein.

223. "Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description." Cal. U. Com. Code § 2313(1)(b).

224. By misrepresenting Center Cut bacon as containing 25% less fat than Hormel's "Regular Bacon" without disclosing the details of how the Nutritional Claim justified this number, Hormel created an express warranty that the consumer is purchasing a bacon product that is 25% leaner than the typical Hormel Black Label bacon.

225. Because Center Cut bacon does not live up to this promise, Hormel has breached and continues to breach its express warranty to Plaintiffs and Class members who do not receive the product that was promised to them.

226. Hormel's breaches of the express warranty that is made in the Nutritional Claim is willful because, as the manufacturer of both Center Cut and other Hormel Black Label Bacon products, it knows the fat contents of all products mentioned in the Nutritional Claim.

227. As a result of Hormel's willful breaches of its express warranty, Plaintiffs and all Class Members have suffered economic losses.

228. Plaintiffs request that this Court cause Hormel to provide restitution to Plaintiffs and all Class Members in the amount of the damages they sustained as a result of

Hormel's breach of its express warranties as well as civil penalties pursuant to Cal. Civ. Code § 1794(c).

229. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to Cal. Civ. Code § 1794(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class demand judgment against Hormel as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed Class Counsel;

B. A judgment awarding Plaintiffs and all members of the Class for damages, restitution or other equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment that Hormel obtained from Plaintiffs and the Class as a result of the unlawful, unfair and fraudulent business practices described herein;

C. A judgment awarding Plaintiffs the costs of suit, including reasonable attorneys' fees, and pre and post-judgment interest; and

D. Such other and further relief as may be deemed necessary or appropriate.

JURY DEMAND

Plaintiffs demand trial by jury on all claims so triable.

DATED: August 6, 2021

GREEN & NOBLIN, P.C.

By: *s/ Robert S. Green*
Robert S. Green

James Robert Noblin
Emrah M. Sumer
2200 Larkspur Landing Circle, Ste. 101
Larkspur, CA 94939
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

Attorneys for Plaintiffs

EXHIBIT 1

Nutrition Facts

Serving Size 2 Pan-Fried Slices (15g)
Servings Per Container about 8

Amount Per Serving	
Calories 70	Calories from Fat 45
	% Daily Value*
Total Fat 5g	8%
Saturated Fat 2g	10%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 300mg	13%
Total Carbohydrate 0g	0%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 5g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 0%

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

Nutrition Facts

Serving Size 2 Pan-Fried Slices (18g)
Servings Per Container about 8

Amount Per Serving	
Calories 90	Calories from Fat 60
	% Daily Value*
Total Fat 7g	11%
Saturated Fat 2.5g	13%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 400mg	17%
Total Carbohydrate 0g	0%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 6g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 0%

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

Even When Comparing the Labels Side-by-Site, Further Calculations Are Needed to Make Sense of Center Cut Bacon's "25% Less Fat" Nutritional Claim

Serving size	15 g	18 g
Fat per serving	5 g	7 g
Fat Content per 1 Gram of Bacon	0.33 g	0.39 g
Fat Content per 10 Grams of Bacon	3.33 g	3.89 g

14.3% reduction in fat from Original

EXHIBIT 2

Nutrition Facts

About 8 Servings Per Container

Serving size **2 Pan-Fried Slices (15g)**

Amount Per Serving

Calories **80**

	% Daily Value*
Total Fat 7g	**9%**
Saturated Fat 2.5g	**13%**
Trans Fat 0g	
Cholesterol 20mg	**7%**
Sodium 330mg	**14%**
Total Carbohydrate 0g	**0%**
Dietary Fiber 0g	**0%**
Total Sugars 0g	
Incl. 0g Added Sugars	**0%**
Protein 4g	

Vit. D 0mcg 0%	• Calcium 0mg 0%
Iron 0mg 0%	• Potas. 0mg 0%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

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PRODUCTS MAY CON...
OR COOKED IMPROPERLY. FOR

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OTHER FOODS. WASH
(INCLUDING CUT
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EXHIBIT 3

HORMEL® BLACK LABEL® Center Cut Bacon

Our center cut bacon comes from the center of the pork belly. This area of the pork belly has 25% less fat, which means less fat in your belly. It's taste makes it the center of attention.

Buy Now

4.6 112 Reviews Write a Review

Nutritional Information >

Promotions, product information and packaging are subject to change. Please refer to the packaging on store shelves for the most up-to-date information.

Review Snapshot by PowerReviews

4.6

112 Reviews

Write a Review

5 Stars		91
4 Stars		12
3 Stars		0

EXHIBIT 4

Nutrition Facts

Serving Size 2 Pan-Fried Slices (24g)
Servings Per Container about 6

Amount Per Serving	
Calories 110 Calories from Fat 80	
	% Daily Value*
Total Fat 9g	**14%**
Saturated Fat 3.5g	**18%**
Trans Fat 0g	
Cholesterol 25mg	**8%**
Sodium 530mg	**22%**
Total Carbohydrate 0g	**0%**
Dietary Fiber 0g	**0%**
Sugars 0g	
Protein 8g	
Vitamin A 0% • Vitamin C 0%	
Calcium 2% • Iron 0%	

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

S0037529-08 G18246 572814

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COOK DIREC

BAKE: Heat
Separate slices a
shallow baking pa
minutes or to desi
No turning is neces

PAN FRY: Plac
in skillet. Cook over
heat, turning freque
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SAFE HANDLING INSTRUCTIONS

THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR POU
PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT
OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING

KEEP REFRIGERATED OR FROZEN.
THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES. (INCLUDING CUTTING BOARDS, UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

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EXHIBIT 5

DESCRIPTION NUTRITION FACTS

Serving Size: 21.0g

Servings per Container: varies

Amount Per Serving

Calories:	110.0
Total Fat:	9.0g
Saturated Fat:	3.5g
Cholesterol:	20.0mg
Sodium:	460.0mg
Total Carbs:	0.0g
Fiber:	0.0g
Sugars:	0.0g
Protein:	7.0g

INGREDIENTS

Cured With Water, Salt, Sugar, Dextrose, Sodium Erythorbate, Sodium Nitrite.

No Allergens present.

EXHIBIT 6

DESCRIPTION NUTRITION FACTS

Serving Size: 20.0g

Servings per Container: varies

Amount Per Serving

Calories:	90.0
Total Fat:	7.0g
Saturated Fat:	2.5g
Cholesterol:	20.0mg
Sodium:	370.0mg
Total Carbs:	1.0g
Fiber:	0.0g
Sugars:	1.0g
Protein:	6.0g

INGREDIENTS

Smoke Flavoring Added Cured with Water, Salt, Sugar, Smoke Flavoring, Flavoring, Sodium Erythorbate, Sodium Nitrite. +++Seasoning Ingredients: Chili Pepper, Salt, Spices, Dehydrated Garlic, Hydrolyzed Corn Protein, Dehydrated Onion, Sugar, Lime Juice Powder (Corn Syrup Solids, Lime Juice Solids, Lime Oil,

EXHIBIT 7

Nutrition Facts

Serving Size 2 Pan-Fried Slices (18g)
Servings Per Container about 8

Amount Per Serving	
Calories 90	Calories from Fat 60
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 2.5g	**13%**
Trans Fat	
Cholesterol 20mg	**7%**
Sodium 400mg	**17%**
Total Carbohydrate 0g	**0%**
Dietary Fiber 0g	**0%**
Sugars 0g	
Protein 6g	
Vitamin A 0% • Vitamin C 0%	
Calcium 0% • Iron 0%	

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

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Separate slices
shallow baking
minutes or to d
No turning is n

PAN FRY:
in skillet. Cook
heat, turning fre
crispness. Drain

SAFE HANDLING INSTRUCTIONS

THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR
PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PROD
OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDL

KEEP REFRIGERATED OR FROZEN.
THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES. (INCLUDING CUTTING BOARDS, UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Diane Dakin, Deborah Despain and Marilyn Curren, individually, and on behalf of all others similarly situated

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

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

Robert S. Green, Green & Noblin, P.C., 2200 Larkspur Landing Circle, Suite 101, Larkspur, CA 94939; (415) 477-6700

DEFENDANTS

Hormel Foods Sales, LLC, and Hormel Foods, LLC.

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

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

Attorneys *(If Known)*

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

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

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

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☒ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent—Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
the Class Action Fairness Act, 28 U.S.C. §1332(d)

Brief description of cause:
Misleading and deceptive labels on packages of bacon alleged to violate Cal. Sec. 17200 and other statutes

VII. REQUESTED IN COMPLAINT:

✓ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

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

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

JUDGE DOCKET NUMBER

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

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

DATE 08/06/2021 **SIGNATURE OF ATTORNEY OF RECORD** s/ Robert S. Green

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

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

I. a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."

II. Jurisdiction. The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

(1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.

(2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

(3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

(4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

(1) Original Proceedings. Cases originating in the United States district courts.

(2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.

(3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

(4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

(5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

(6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.

(8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.