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8
9 Attorney for Plaintiff
10 CONNIE CHONG

11 United States District Court
12 For the Central District of California

13 CONNIE CHONG, Individually and On) Case No. CV19-10944 JAK (PLAx)
14 Behalf of All Others Similarly Situated)

15 vs.)

16 HORMEL FOODS CORP., and DOES)
17 1 through 10.)

18 Defendants.)

CLASS ACTION

FIRST AMENDED COMPLAINT
FOR:

(1) VIOLATION OF CAL. BUS. &
PROF. CODE §17200: Unlawful
Conduct

(2) VIOLATION OF CAL. BUS. &
PROF. CODE §17200 Unfair Conduct

(3) VIOLATION OF CAL. BUS. &
PROF. CODE §17500 *et seq.*

(4) VIOLATION OF CAL. CIVIL
CODE §1750 *et seq.*

(5) UNJUST ENRICHMENT/
BREACH OF QUASI CONTRACT

FILED: DECEMBER 30, 2019

1 **INTRODUCTION**

2 1. Plaintiff Connie Chong (“Plaintiff”), individually and on behalf of all others
3 similarly situated, bring this Class Action Complaint against Hormel Foods Corp.
4 (“Defendant”), and on the basis of personal knowledge, information and belief, and
5 investigation of counsel, alleges as follows:

6 2. This action deals with two products by Defendant: SPAM 25% LESS
7 SODIUM, and SPAM LITE (“the SPAM Products”). At all relevant times,
8 Plaintiff bought the SPAM Products from grocery markets including the Hannam
9 Chain Market located at 2740 W. Olympic Blvd., Los Angeles, California.
10 Plaintiff paid about \$3 - 4 each.

11 3. “SPAM” is a canned meat and poultry line that Defendant manufactures,
12 markets, and sells.

13 4. Defendant labels the SPAM 25% LESS SODIUM with prominent claim,
14 “25% Less Sodium,” which consumers perceive to mean that the canned meats are
15 low in sodium and healthy. The product includes a mark stating: “US Inspected
16 and Passed By Department of Agriculture.” The nutrient facts indicate 16g of total
17 fat and 580mg of sodium. Defendant labels the SPAM LITE with prominent
18 claims, “50% Less Fat, 25% Less Sodium, and 33% Fewer Calories,” which
19 consumers perceive to mean that the SPAM LITE is low in sodium and fat to be
20 healthy. The product includes a mark stating: “US Inspected and Passed By
21 Department of Agriculture.” The nutrient facts indicate 8g of total fat and 580mg
22 of sodium.

23 5. The “Nutrition Facts” on the side panel shows that the SPAM Products
24 contain sodium at a higher level than the sodium content of 480 mg above which
25 the food is disqualified from making a health claim. The SPAM Products contain
26 sodium at 580 mg. The SPAM 25% LESS SODIUM and the SPAM LITE contain
27 total fat at 16g and 8g, respectively. The SPAM Products contain fat at a higher
28

1 level than the fat content of 3g above which the food is disqualified from making a
2 health claim.

3 6. The labels of the SPAM products do not expressly claim that the products
4 are healthy or healthful.

5 7. At all relevant times, the Defendant's website,
6 <http://www.spam.com/varieties/spam-lite>, includes advertising statements for
7 SPAM Lite that: "Heavy on the flavor, light on the other stuff. This variety offers
8 the scrumptiousness of SPAM® Classic with 33% less calories, 50% less fat and
9 25% less sodium, which means you can enjoy the taste you love more often. It's
10 the perfect SPAM® variety for swimsuit season." The plaintiff saw the statements
11 during the relevant times, randomly about three times per year. At all relevant
12 times, Plaintiff bought the SPAM Products about twice a month, 5-6 cans. The
13 advertising statements mislead reasonable consumers that the product is healthful.
14 Plaintiff was misled and suffered economic injury because she purchased the
15 products she otherwise would not have.

16 8. At all relevant times, the Defendant's website,
17 <http://www.spam.com/varieties/spam-less-sodium>, includes advertising statements
18 for the 25% Less Sodium SPAM that: "Having to cut back on sodium can take a
19 lot of tasty things out of the equation. Fortunately, SPAM® Less Sodium is not
20 one of those things. It provides the same delicious SPAM® Classic flavor with
21 25% less sodium. There's no sacrifice with this meat treat!" The plaintiff saw the
22 statements during the relevant times, randomly about three times per year. At all
23 relevant times, Plaintiff bought the SPAM Products about twice a month, 5-6 cans.
24 The advertising statements mislead reasonable consumers that the product is
25 healthful. Plaintiff was misled and suffered economic injury because she
26 purchased the products she otherwise would not have.

27 9. When Plaintiff purchased the SPAM Products, she did not read the
28 "Nutrition Facts." Plaintiff would not have purchased the SPAM Products had she

1 known that the sodium and fat contents exceed the disqualifying levels.
2 Quantitative information comparing the levels of sodium and fat in the SPAM
3 Products per labeled serving size with that of the reference products that they
4 replace is not prominently placed thereon with such conspicuousness (as compared
5 with other words, statements, designs, or devices, in the labeling), and is not easily
6 legible.

7 10. Plaintiff's claim is essentially that, because defendant's labels did not
8 comply with state and/or federal requirements regarding the quantitative
9 information, she could not see or did not understand the quantitative information,
10 and therefore was misled by the unlawful packaging and purchased the product
11 based thereon. Plaintiff was misled as a result of the misbranding and suffered
12 economic injury because she purchased the products she otherwise would not have.

13 Plaintiff's claim is also that, because the advertising statements in the
14 websites mislead her during the relevant times that the product is healthful.
15 Plaintiff purchased the SPAM Products in reliance on the Defendant's misleading
16 labels and the advertisements. Plaintiff was misled and suffered economic injury
17 because she purchased the products she otherwise would not have.

18
19 11. She would purchase the products as long as Defendant repairs the labels
20 complying with state and/or federal requirements, or Defendant reduces the sodium
21 and fat contents below the disqualifying levels.

22 **NATURE OF THE ACTION**

23 12. Defendant ensnared Plaintiff and thousands of other consumers-victims
24 ("Class") in a misleading scheme nationwide to sell Defendant's canned meat and
25 poultry line, including SPAM LITE, and SPAM LESS 25% SODIUM ("SPAM
26 Products"). Plaintiff purchased the SPAM Products. Defendant uniformly misled
27 Plaintiff and the Class that they would buy the SPAM Products.

1 13. Plaintiff brings this class action on behalf of herself and all other similarly
2 situated consumers who purchased the SPAM Products asserting claims under
3 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*
4 (“UCL” or “§17200”); the Consumer Legal Remedies Act, Cal. Civ. Code §1750,
5 *et seq.* (“CLRA”); the False Advertising Law, Cal. Bus & Prof. Code §17500, *et*
6 *seq.* (“FAL” or “17500”); Unjust Enrichment/Breach of Quasi Contract.

7 14. Plaintiff seeks damages on behalf of herself and the Class, which relief
8 includes, but is not limited to, the following: their monetary damages; restitution;
9 refunding Plaintiff and class members the full amount paid for the SPAM
10 Products; punitive damages; costs and expenses, including attorneys’ and expert
11 fees; interest; and any additional relief that this Court determines to be necessary or
12 appropriate to provide complete relief to Plaintiff and the Class.

13
14 **JURISDICTION AND VENUE**

15 15. This Court also has original jurisdiction over this action under the Class
16 Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”), as to the named
17 Plaintiff and every Class Member, because the proposed Class contains more than
18 100 members, the aggregate amount in controversy exceeds \$5 million, and Class
19 Members reside across the United States and are therefore diverse from Defendant.

20 16. The Court has supplemental jurisdiction over Plaintiff’s state law claims
21 pursuant to 28 U.S.C. §1367(a). Plaintiff has filed affidavits showing that this
22 action has been commenced in a proper county pursuant to Cal. Civ. Code
23 §1780(d).

24 17. This Court has personal jurisdiction over Defendant because it has
25 significant minimum contacts with this State, and intentionally availed itself of the
26 laws of California by transacting a substantial amount of business throughout the
27 State and this District, including but not limited to, the promotion, marketing,
28 advertising, and sale of the SPAM Products throughout California and Los Angeles

1 County, and on the Internet to consumers located throughout California and Los
2 Angeles County.

3 18. Venue is proper under 18 U.S.C. § 1965(a), because Defendant is subject to
4 personal jurisdiction in this District as alleged above, and Defendant has agents
5 located in this District.

6
7 **PARTIES**

8 19. Plaintiff Connie Chong (“Plaintiff”) is a resident of the state of California.
9 At all relevant times since 2015, Plaintiff learned about the SPAM Products when
10 she saw the labels of the SPAM Products displayed in grocery stores in Los
11 Angeles, California, and the advertisements in SPAM website,
12 <https://www.spam.com>. Plaintiff purchased the SPAM Products in reliance on the
13 Defendant’s misleading labels and the advertisements. The plaintiff saw the
14 statements in the website during the relevant times, randomly about three times per
15 year. At all relevant times, Plaintiff bought the SPAM Products about twice a
16 month, 5-6 cans. The advertising statements mislead reasonable consumers that
17 the product is healthful.

18 20. Defendant Hormel Foods Corp. (“Defendant” or “Defendant Hormel” or
19 “Hormel”) is a Delaware corporation with its principal place of business in
20 Minnesota, 1 Hormel Place, Austin, MN 55912.

21 21. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of defendants sued herein as DOES 1 through 10 are unknown to
23 Plaintiff, who therefore sues the DOE defendants by such fictitious names.
24 Plaintiff will amend this complaint to show true names and capacities when they
25 have been ascertained. Defendants will refer to Hormel Foods Corp., and DOES 1
26 through 10.

27 22. Defendant deliberately cultivated the misleading statements through its
28 marketing of the SPAM Products.

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CLASS ACTION ALLEGATIONS

23. Additionally, pursuant to Rule 23(a) and (b)(3), Plaintiff brings this action individually and on behalf of a proposed class (the “Monetary Relief Class”) defined as follows:

The Nationwide Monetary Relief Class. All persons residing in the United States and its territories who purchased one or more of the SPAM Products for their own use, and not for resale, since January, 2016. Plaintiff asks the Court to adjudicate all remedies through Monetary Relief Class.

California Subclass for The Monetary Relief Class. All persons residing in the state of California who purchased one or more of the SPAM Products for their own use, and not for resale, since January, 2016. Plaintiff asks the Court to adjudicate all remedies through Monetary Relief Class.

24. Collectively, the Monetary Relief Class, and the California Subclass are the “Class.”

25. This action is properly brought as a class action for violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200 (“UCL”), California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750 (“CLRA”), California’s False Advertising Law, Cal. Civ. Code §17500 (“FAL”), and Unjust Enrichment/Breach of Quasi Contract, for the following reasons:

(a) the proposed Class is so numerous and geographically dispersed throughout the United States that the joinder of all class members is impracticable. While Plaintiff does not know the exact number and identity of all Class Members, Plaintiff is informed and believes that there are thousands. The precise number of

1 Class Members can be ascertained through discovery; (b) the disposition of
2 Plaintiff's and proposed Class Members' claims in a class action will provide
3 substantial benefits to both the parties and the Court; (c) the proposed Class is
4 ascertainable and there is a well-defined community of interest in the questions of
5 law or fact alleged herein since the rights of each proposed Class member were
6 infringed or violated in the same fashion; (d) there are questions of law and fact
7 common to the proposed class which predominate over any questions that may
8 affect particular Class Members. Such common questions of law and fact include,
9 but are not limited to:

- 10 (1) Whether Defendant's conduct was unlawful;
- 11 (2) Whether Defendant's conduct was unfair;
- 12 (3) Whether Defendant's advertising is likely to mislead the public;
- 13 (4) Whether Defendant's conduct was misleading;
- 14 (5) Whether Defendant violated California's Unfair Competition Law, Cal. Bus. &
15 Prof. Code §17200 ("UCL");
- 16 (6) Whether Defendant violated California's Consumers Legal Remedies Act, Cal.
17 Civ. Code §1750 ("CLRA");
- 18 (7) Whether Defendant violated California's False Advertising Law, Cal. Civ.
19 Code §17500 ("FAL");
- 20 (8) Whether Defendant received purchase monies from Plaintiff and class members
21 that they unjustly received;
- 22 (9) Whether Plaintiff and Class Members have been harmed and the proper
23 measure of relief;
- 24 (10) Whether Plaintiff and Class Members are entitled to an award of punitive
25 damages, attorneys' fees and expenses against Defendants; and
- 26 (e) Plaintiff's claims are typical of the claims of the members of the proposed
27 Class. Plaintiff and Class Members have been injured by the same wrongful
28 practices of Defendant. Plaintiff's claims arise from the same practices and

1 conduct that give rise to the claims of all Class Members and are based on the
2 same legal theories;

3
4 (f) Plaintiff will fairly and adequately protect the interests of the Class in that she
5 has no interests antagonistic to those of the other Class Members, and Plaintiff has
6 retained attorneys experienced in consumer class actions and complex litigation as
7 counsel;

8
9 (g) A class action is superior to other available methods for the fair and efficient
10 adjudication of this controversy for at least the following reasons: (i) Given the
11 size of individual Class Member's claims and the expense of litigating those
12 claims, few, if any, Class Members could afford to or would seek legal redress
13 individually for the wrongs Defendant committed against them and absent Class
14 Members have no substantial interest in individually controlling the prosecution of
15 individual actions; (ii) This action will promote an orderly and expeditious
16 administration and adjudication of the proposed Class claims, economies of time,
17 effort and resources will be fostered and uniformity of decisions will be insured;
18 (iii) Without a class action, Class Members will continue to suffer damages, and
19 Defendant's violations of law will proceed without remedy while Defendant
20 continues to reap and retain the proceeds of their wrongful conduct; and (iv)
21 Plaintiff knows of no difficulty that will be encountered in the management of this
22 litigation which would preclude class certification.

23 26. Address information for the Class Members may be used for the purpose of
24 providing notice of the class action.

25 27. Plaintiff seeks damages and equitable relief on behalf of the Class on
26 grounds generally applicable to the entire proposed Class.

27 **STATEMENT OF LAW**

1
2 **FEDERAL MEAT INSPECTION ACT (FMIA) and POULTRY PRODUCTS**
3 **INSPECTION ACT (PPIA)**
4

5 28. The United States Department of Agriculture (USDA) is responsible for
6 regulating the safety of meat and poultry products. The USDA regulates the label
7 statements at issue in this case for the SPAM 25% LESS SODIUM product, and
8 the SPAM LITE product. A mark of “US Inspected and Approved by Department
9 of Agriculture” is printed on their labels.

10 29. Congress enacted the Poultry Products Inspection Act (“PPIA”) and the
11 Federal Meat Inspection Act (“FMIA”) to ensure, among other things, that poultry
12 and meat products are properly labeled. 21 U.S.C. § 602, § 451. Under the PPIA
13 and the FMIA, meat and poultry products cannot be sold if the product has labeling
14 that is false or misleading. U.S.C. § 457(c), § 607(d); 9 C.F.R. § 381.129(a), §
15 317.8(a). In regulating the labeling of meat and poultry products, Congress has
16 stated that labeling requirements “in addition to, or different than,” those set forth
17 under the PPIA and the FMIA may not be imposed by any state. 21 U.S.C. § 467e,
18 § 678. However, Congress provided that states may, consistent with the
19 requirements set forth under the PPIA and the FMIA, exercise concurrent
20 jurisdiction with the United States Department of Agriculture (“USDA”) to prevent
21 the distribution of poultry and meat products that have labeling that is false or
22 misleading. 21 U.S.C. § 453(h)(1), 601(n)(1). The states’ concurrent jurisdiction
23 has been interpreted to mean that states can impose sanctions for violations of state
24 requirements that are equivalent to the FMIA and the PPIA’s requirements.

25 30. The PPIA’s and FMIA’s preemption clauses preclude states from enacting
26 different or additional marking, labelling, packaging, or ingredient requirements
27 but do not expressly preclude state laws regulating false or misleading advertising
28 of products covered under the PPIA and FMIA.

1 31. The SPAM Products contain sodium at 580mg, are not healthy because they
2 contain sodium at the level higher than 480mg. 9 CFR § 381.463. Reasonable
3 consumers are misled that the SPAM Products are healthy.
4

5 **9 CFR § 317.361 and § 381.461 Nutrient Content Claims for Sodium Content**
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7 32. The terms “reduced sodium,” “reduced in sodium,” “sodium reduced,”
8 “less sodium,” “lower sodium,” or “lower in sodium” may be used on the label
9 or in labeling of products, provided that: (i) The product contains at least 25
10 percent less sodium per reference amount customarily consumed than an
11 appropriate reference product as described in § 317.313(j)(1) and § 381.413(j)(1);
12 and (ii) As required in § 317.313(j)(2) and § 381.413(j)(2) for relative claims: (A)
13 The identity of the reference product and the percent (or fraction) that the sodium
14 differs between the two products are declared in immediate proximity to the most
15 prominent such claim (e.g., “reduced sodium ‘product’, 50 percent less sodium
16 than regular ‘product’ ”); and (B) Quantitative information comparing the level of
17 sodium in the product per labeled serving size with that of the reference product
18 that it replaces is declared adjacent to the most prominent claim or to the nutrition
19 information (e.g., “sodium content has been lowered from 300 to 150 mg per
20 serving”). The SPAM Products present (A) and (B) above in not easily legible
21 boldface print in violation of 9 CFR § 381.413(j)(2).
22

23 **9 CFR § 317.362 and § 381.462 Nutrient Content Claims for Fat Content**
24

25 33. The terms “reduced fat,” “reduced in fat,” “fat reduced,” “less fat,”
26 “lower fat,” or “lower in fat” may be used on the label or in labeling of products,
27 provided that: (i) The product contains at least 25 percent less fat per reference
28 amount customarily consumed than an appropriate reference product as described

1 in § 317.313(j)(1) and § 381.413(j)(1); and (ii). As required in § 317.313(j)(2) and
2 § 381.413(j)(2) for relative claims: (A) The identity of the reference product and
3 the percent (or fraction) that the fat differs between the two products are declared
4 in immediate proximity to the most prominent such claim (e.g., “reduced fat—50
5 percent less fat than our regular ‘product’ ”); and (B) Quantitative information
6 comparing the level of fat in the product per labeled serving size with that of the
7 reference product that it replaces is declared adjacent to the most prominent claim
8 or to the nutrition information (e.g., “fat content has been reduced from 8 g to 4 g
9 per serving”).

10
11 **9 CFR § 317.313(j)(2), § 381.413(j)(2), and 21 U.S.C. § 601(n)(6): Legible**
12 **Boldface Print and Conspicuousness**

13
14 34. For products bearing relative claims: (i) the label or labeling must state the
15 identity of the reference product and the percent (or fraction) of the amount of the
16 nutrient in the reference product by which the nutrient has been modified, (e.g.,
17 “50 percent less fat than ‘reference product’ ” or “1/3 fewer calories than
18 ‘reference product’ ”); and (ii) This information shall be immediately adjacent to
19 the most prominent claim in easily legible boldface print or type, in distinct
20 contrast to other printed or graphic matter. 21 U.S.C § 601(n)(6) provides that:
21 “The term “misbranded” shall apply to any carcass, part thereof, meat or meat food
22 product under one or more of the following circumstances:” “(6) if any word,
23 statement, or other information required by or under authority of this chapter to
24 appear on the label or other labeling is not prominently placed thereon with such
25 conspicuousness (as compared with other words, statements, designs, or devices, in
26 the labeling) and in such terms as to render it likely to be read and understood by
27 the ordinary individual under customary conditions of purchase and use;”
28

9 CFR § 317.363 and § 381.463 Nutrient Content Claims for “healthy”

35. The term “healthy,” or any other derivative of the term “health,” may not be used on the labeling of any meat (poultry) or meat (poultry) food product, provided that “the product shall not contain more than 480 mg of sodium per reference amount customarily consumed, per labeled serving size,” “The product has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons (tbsp) and contains 3 g or less of fat per reference amount customarily consumed.”

36. Even if the labels of the SPAM products did not use the terms of “health, healthy, healthful,” reasonable consumers would think the SPAM products are healthful. But, they are not healthful.

First Cause of Action

Violation of California’s Unfair Competition Law, California Business and Professions Code § 17200 et seq. Unlawful Conduct Prong
(By Plaintiff Connie Chong, on Behalf of the Class)

37. Plaintiff re-alleges and incorporates by reference the above allegations contained in the paragraphs above as if fully set forth herein.

38. Defendant violated Cal. Bus. & Prof. Code §17200’s prohibition against engaging in an “unlawful” business act or practice by selling the SPAM products. Defendant misleadingly advertises the SPAM Products in its website. Defendant violated Cal. Bus. & Prof. Code §17200’s prohibition against engaging in an “unlawful” business act or practice by, *inter alia*, making the material misrepresentations regarding the SPAM Products as set forth more fully elsewhere in this Complaint; 1750 et seq. (the CLRA); Cal. Bus. & Prof. Code §17500 (false advertising).

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Second Cause of Action

Violation of California’s Unfair Competition Law, California Business and Professions Code § 17200 et seq. Unfair Conduct Prongs
(By Plaintiff Connie Chong, on Behalf of the Class)

39. Plaintiff re-alleges and incorporates by reference the above allegations contained in the paragraphs above as if fully set forth herein.

40. The foregoing conduct also constitutes “unfair” business acts and practices within the meaning of Cal. Bus. & Prof. Code §17200. Defendant’s practices offend public policy and are unethical, oppressive, unscrupulous and violate the laws stated. Defendant’s conduct caused and continues to cause substantial injury to Plaintiff and Class Members.

41. Defendant’s advertising of the SPAM Products is likely to mislead reasonable consumers about the total amount of sodium in the SPAM Products.

42. Defendant either knew or reasonably should have known that the claims on the statements in the website for the SPAM Products were likely to mislead reasonable consumers.

43. In accordance with California Business & Professions Code section 17203, Plaintiff seeks an order enjoining Defendant from continuing to sell the SPAM Products through unlawful, and unfair acts and practices and to commence a corrective advertising campaign.

Third Cause of Action

Violation of California’s False and Misleading Advertising Law, California Business and Professions Code § 17500 et seq.
(By Plaintiff Connie Chong, on Behalf of the Class)

1 44. Plaintiff re-alleges and incorporates by reference the above allegations
2 contained in the paragraphs above as if fully set forth herein.

3 45. California Business & Professions Code §17500 prohibits various deceptive
4 practices in connection with the dissemination in any manner of representations
5 which are likely to deceive and/or mislead members of the public to purchase
6 products and services such as the SPAM Products.

7 46. Defendant disseminated, through common advertising, misleading
8 statements about the SPAM Products and Defendant knew or should have known
9 that the SPAM Products' label did not conform to the advertisements or
10 representations regarding the SPAM Products. Plaintiff and the Class relied upon
11 the advertisements and misrepresentations to their detriment.

12 47. As alleged herein, Defendant, in its advertising of the SPAM Products,
13 makes misleading advertising claim, as it mislead consumers as to the total amount
14 of sodium in the SPAM Products.

15 48. In reliance on these misleading advertising claims, Plaintiff and the members
16 of the Nationwide Subclass and the California Subclass purchased and used the
17 SPAM Products without the knowledge that the products contain a substantial
18 amount of total sodium.

19 49. Defendant knew or should have known that marketing of the SPAM
20 Products was likely to mislead consumers.

21 **Fourth Cause of Action**

22 **Violation of California's Consumers Legal Remedies Act, California Civil**

23 **Code § 1750 et seq.**

24 **(By Plaintiff Connie Chong, on Behalf of the Class)**

25
26 50. Plaintiff re-alleges and incorporates by reference the above allegations
27 contained in the paragraphs above as if fully set forth herein.

1 51. This cause of action arises under the Consumers Legal Remedies Act
2 (“CLRA”), Cal. Civ. Code §1750, *et seq.* Plaintiff is a consumer as defined by
3 Cal. Civ. Code §1761(d). Defendant’s SPAM Products constitute “products” as
4 defined by Cal. Civ. Code §1761(a) and (b). At all times relevant hereto,
5 Defendant constituted “persons” as that term is defined in Cal. Civ. Code §1761(c),
6 and Plaintiff’s and Class Members’ purchases of the SPAM Products constitute
7 “transactions,” as that term is defined in Cal. Civ. Code §1761(e).

8 52. Defendant violated and continues to violate the CLRA by engaging in the
9 following deceptive practices specifically proscribed by Cal. Civ. Code §1770(a),
10 in transactions with Plaintiff and Class Members that were intended to result or
11 which resulted in the sale of the SPAM Products to consumers:

12 (a) In violation of Cal. Civ. Code §1770(a)(5), Defendant’s acts and practices
13 constitute misrepresentations that the SPAM Products in question have
14 characteristics, benefits or uses which they do not have;

15 (b) In violation of Cal. Civ. Code §1770(a)(7), Defendant misrepresented
16 that the SPAM Products are of particular standard, quality and/or grade, when they
17 are of another; and

18 (c) In violation of Cal. Civ. Code §1770(a)(9), Defendant advertised the SPAM
19 Products with the intent not to sell them as advertised or represented.

20 (d) In violation of Cal. Civ. Code §1770(a)(16), Defendant represented that “the
21 subject of a transaction has been supplied in accordance with a previous
22 representation when it has not.”

23 53. Defendant’s representations misleading and in violation of the CLRA.

24 54. In addition, pursuant to Civil Code §1780(a)(2), Plaintiff is entitled to, and
25 therefore seek, a Court order enjoining the above-described wrongful acts and
26 practices that violate Cal. Civ. Code §1770:

27 (1) enjoining Defendant from continuing to engage in the deceptive practices
28 described above;

1 (2) requiring Defendant to provide public notice of the true nature of the SPAM
2 Products; and

3 (3) enjoining Defendant from such deceptive business practices in the future.
4

5 55. Plaintiff and the Class are also entitled to recover attorneys' fees, costs,
6 expenses and disbursements pursuant to Cal. Civ. Code §§1780 and 1781.

7 56. Pursuant to section 1782 of the CLRA, Plaintiff is hereby notifying
8 Defendant in writing of its particular violations of section 1770 of the CLRA and is
9 demanding, among other actions, that Defendant cease marketing the SPAM
10 Products as set forth in detail above and correct, repair, replace, or otherwise
11 rectify the SPAM Products that are in violation of section 1770 as set forth in detail
12 above. (Exhibit 1.) Defendant failed to respond to Plaintiff's demand within 30
13 days of this notice. Plaintiff requests, in addition to the above relief, statutory
14 damages, actual damages, punitive damages, interest, and attorneys' fees, pursuant
15 to sections 1780 and 1781.
16

17 **Fifth Cause of Action**

18 **Unjust Enrichment**

19 **(By Plaintiff, on Behalf of the Class)**

20
21 57. Plaintiff re-alleges and incorporates by reference the above allegations
22 contained in the paragraphs above as if fully set forth herein.

23 58. Plaintiff brings this claim for unjust enrichment on behalf of the Class.

24 59. As a direct and proximate result of Defendant's acts set forth herein,
25 Defendant has been unjustly enriched.

26 60. As a result of Defendant's misleading advertising, marketing, and sales of
27 the SPAM Products, Defendant unjustly enriched itself at the expense of Plaintiff
28

1 and the Class members, through Plaintiff's and the Class members' payment of the
2 purchase price for the products.

3 61. Under the circumstances, it would be against equity and good conscience to
4 permit Defendant to retain the ill-gotten benefits it received from Plaintiff and the
5 Class members, in light of the fact that the SPAM Products that Plaintiff and the
6 Class members purchased were not what Defendant purported them to be. Thus, it
7 would be unjust or inequitable for Defendant to retain the benefit without
8 restitution to Plaintiff and the Class members for the monies paid to Defendant for
9 the SPAM Products.

10 62. Plaintiff and the Class members seek restitution of, disgorgement of, and/or
11 the imposition of a constructive trust upon all profits, benefits, and compensation
12 Defendant obtained from its improper conduct alleged herein.

13
14 **PRAYER FOR RELIEF**

15
16 WHEREFORE, Plaintiff prays this Court enter a judgment against
17 Defendant that:

- 18 1. This action be certified and maintained as a class action under Rule 23(b)(3)
19 of the Federal Rules of Civil Procedure and certify the proposed Class as defined,
20 appointing Plaintiff as representatives of the Class, and appointing the attorneys
21 and law firms representing Plaintiff as counsel for the Class;
22 2. Awards compensatory, statutory and/or punitive damages.
23 3. Awards Plaintiff and Class Members the costs of this action, including
24 reasonable attorneys' fees and expenses;
25 4. Awards pre-judgment and post-judgment interest at the legal rate; and
26 5. Such further legal as this Court may deem just and proper.

27 **JURY TRIAL REQUESTED**

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Plaintiff demands a trial by jury on all issues so triable.

DATED: April 27, 2021

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