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 County of Alameda
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 Deputy Clerk

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

11 ISRAEL PELAYO individually, and on
 12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 CONAGRA BRANDS, INC.

16 Defendant.
 17

Case No. **23CV042562**

CLASS ACTION COMPLAINT FOR:

1. Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, and;
2. Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§17200, *et seq.*

JURY TRIAL DEMANDED

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INTRODUCTION

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2 1. Israel Pelayo (“Plaintiff”) on behalf of himself, all others similarly situated, and
3 the general public, by and through his undersigned counsel, hereby brings this action against
4 Defendant Conagra Brands, Inc. (“Defendant” or “Conagra”), and upon information and belief
5 and investigation of counsel, alleges as follows:

6 2. This is a California consumer class action for violations of the Consumers Legal
7 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”) and Unfair Competition Law, Cal.
8 Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

9 3. Defendant manufactures, distributes, advertises, markets, and sells a line of
10 canned food products under the Chef Boyardee brand. The Chef Boyardee Products at issue
11 include (1.) Chef Boyardee Beef Ravioli in Pasta Sauce; (2.) Chef Boyardee Mini Ravioli Beef
12 Ravioli in Pasta Sauce; (3.) Chef Boyardee Overstuffed Beef Ravioli in Pasta Sauce; (4.) Chef
13 Boyardee Beefaroni Pasta in Tomato and Meat Sauce; and, (5.) Chef Boyardee Lasagna Pasta in
14 Tomato Sauce Seasoned with Hearty Meat (collectively “the Products” or “Chef Boyardee
15 Products.”).

16 4. The labels for the Products prominently display, in a conspicuous advertising
17 panel at the top of the label, the claim that these Products include “**No Preservatives.**”

18 5. This statement is false. Each of the Products are made with citric acid— a well
19 known preservative used in food products.

20 6. Defendant’s packaging, labeling, and advertising scheme is intended to give
21 consumers the impression that they are buying a premium product that is free from preservatives.

22 7. Plaintiff, who purchased the Products in California, was deceived by Defendant’s
23 unlawful conduct and brings this action on his own behalf and on behalf of California consumers
24 to remedy Defendant’s unlawful acts.

JURISDICTION AND VENUE

25
26 8. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
27 Constitution and California Code of Civil Procedure § 410.10.
28

FACTUAL ALLEGATIONS

“NO PRESERVATIVES” IS PROMINENTLY DISPLAYED ON THE LABELS OF THE PRODUCTS

13. The labels for each of the Chef Boyardee Products prominently state that the Products contain “No Preservatives” thereby misleading reasonable consumers into believing that the Products are free from preservatives. However, each of the Products contain the preservative citric acid. The front and back labels for each of the Products are shown below.

Chef Boyardee Beef Ravioli

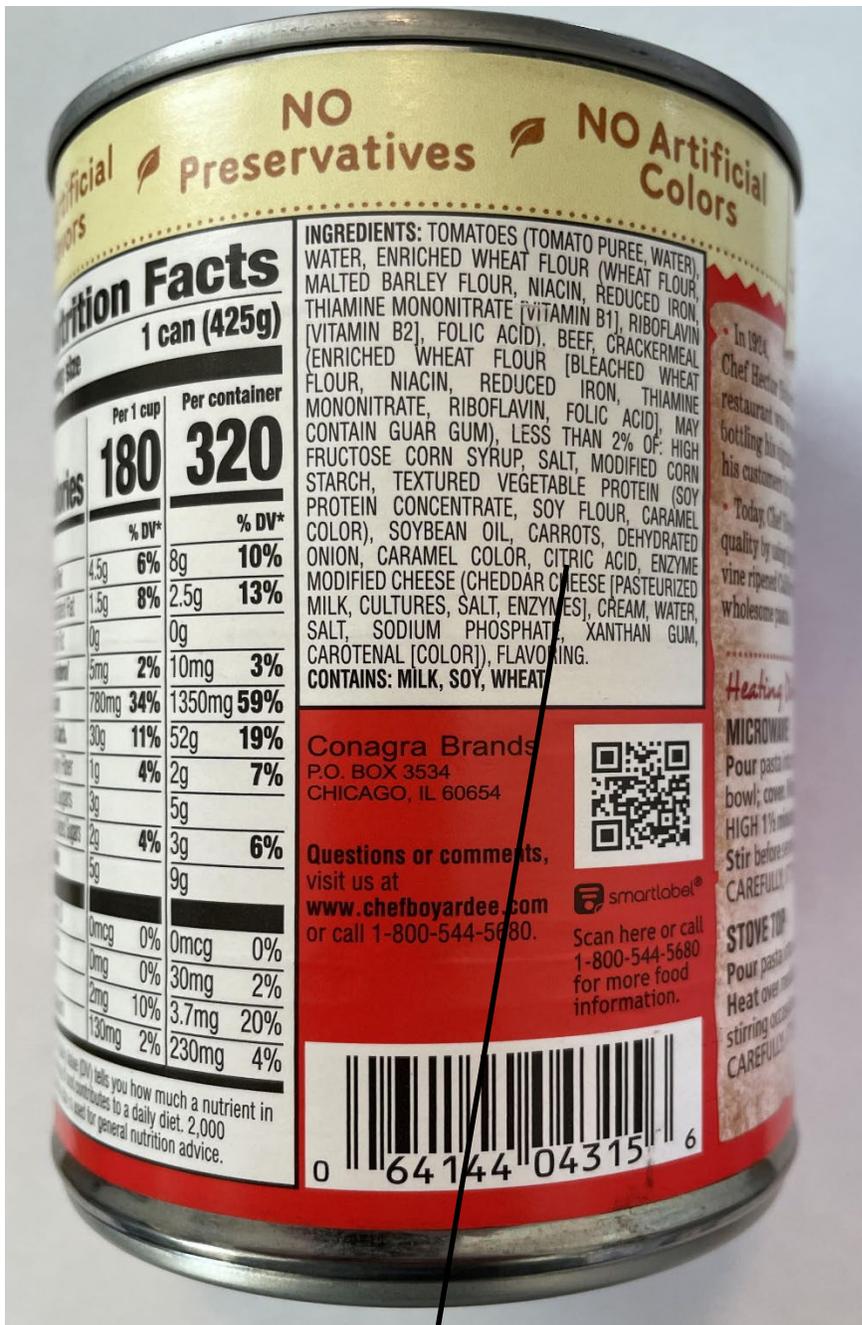


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“Citric Acid”

Chef Boyardee Mini Ravioli

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“Citric Acid”

Chef Boyardee Overstuffed Beef Ravioli

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Nutrition Facts		1 can (425g)	
	Per 1 cup	Per container	% DV*
	180	320	
	6%	8g	10%
	8%	2.5g	13%
	0g	0g	
	2%	10mg	3%
	34%	1350mg	59%
	11%	52g	19%
	4%	2g	7%
	4%	3g	6%
	0%	0mcg	0%
	0%	30mg	2%
	10%	3.7mg	20%
	2%	230mg	4%

INGREDIENTS: TOMATOES (TOMATO PUREE, WATER), WATER, ENRICHED WHEAT FLOUR (WHEAT FLOUR, MALTED BARLEY FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), BEEF, CRACKERMEAL (ENRICHED WHEAT FLOUR, BLEACHED WHEAT FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), MAY CONTAIN GUAR GUM, LESS THAN 2% OF: HIGH FRUCTOSE CORN SYRUP, SALT, MODIFIED CORN STARCH, SOYBEAN OIL, CARROTS, TEXTURED VEGETABLE PROTEIN (SOY FLOUR, SOY PROTEIN CONCENTRATE, CARAMEL COLOR), WHEAT GLUTEN, DEHYDRATED ONION, CARAMEL COLOR, CITRIC ACID, FLAVORING, ENZYME MODIFIED CHEESE (CHEDDAR CHEESE [PASTEURIZED MILK, CULTURES, SALT, ENZYMES], CREAM, WATER, SALT, SODIUM PHOSPHATE, XANTHAN GUM, CAROTENAL [COLOR]),
CONTAINS: MILK, SOY, WHEAT.

Conagra Brands
P.O. BOX 3534
CHICAGO, IL 60654



Questions or comments, visit us at www.chefboyardee.com or call 1-800-544-5680.

Scan here or call 1-800-544-5680 for more food information.

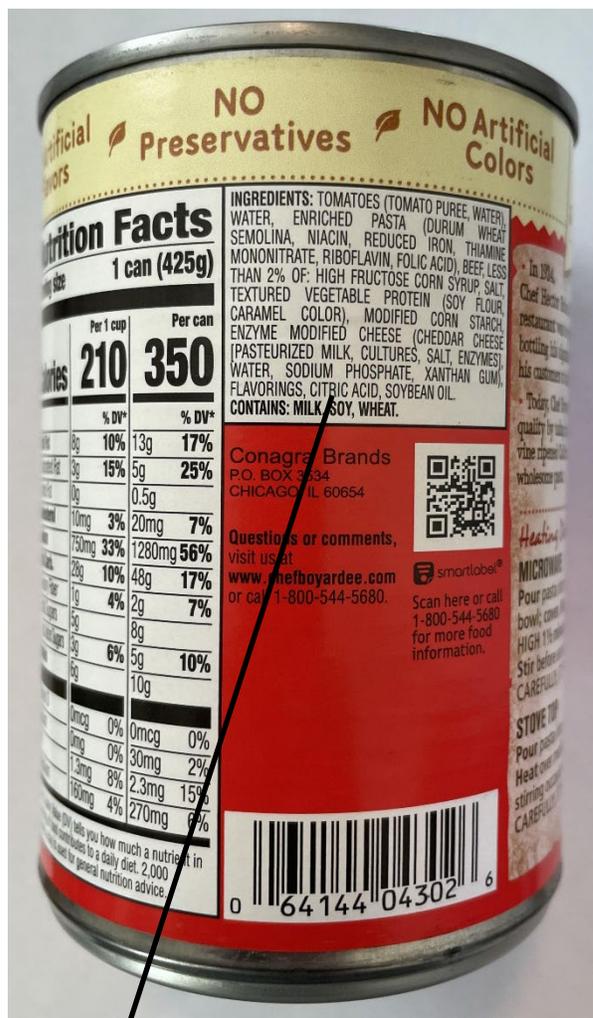


“Citric Acid”

Chef Boyardee Beefaroni

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“Citric Acid”

Chef Boyardee Lasagna

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Nutrition Facts
1 can (425g)

	Per 1 cup		Per can	
	150g	% DV*	425g	% DV*
Calories	160		270	
Total Fat	4.5g	6%	7g	9%
Sodium	750mg	33%	1280mg	56%
Total Sugar	25g	9%	43g	16%
Total Fiber	2g	7%	3g	11%
Total Protein	4g	8%	7g	14%
Vitamin A	0mcg	0%	0mcg	0%
Vitamin C	30mg	2%	60mg	4%
Iron	1mg	6%	1.8mg	10%
Calcium	150mg	4%	260mg	6%

INGREDIENTS: TOMATOES (TOMATO PUREE, WATER), WATER, ENRICHED PASTA (DURUM WHEAT SEMOLINA, GLYCEROL MONOSTEARATE, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), BEEF, DICED TOMATOES WITH JUICE, HIGH FRUCTOSE CORN SYRUP, LESS THAN 2% OF: SALT, TEXTURED VEGETABLE PROTEIN (SOY FLOUR, CARAMEL COLOR), MODIFIED CORN STARCH, ENZYME MODIFIED CHEESE (CHEDDAR CHEESE (PASTEURIZED MILK, CULTURES, SALT, ENZYMES), WATER, SODIUM PHOSPHATE, XANTHAN GUM), SPICES, CITRIC ACID, FLAVORINGS, SOYBEAN OIL.

CONTAINS: MILK, SOY, WHEAT.

Conagra Brands
P.O. BOX 7534
CHICAGO, IL 60654

Questions or comments, visit us at www.chefboyardee.com or call 1-800-544-5680.

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“Citric Acid”

CITRIC ACID IN THE PRODUCTS IS A PRESERVATIVE

14. The citric acid in the Products is a synthetic preservative. Commercial food manufactures like Defendant use a form of citric acid that is derived from heavy chemical processing.¹ Commercially produced citric acid is manufactured via microbial fermentation with a typically genetically modified type of black mold called *Aspergillus niger*.² The black mold is fed into a highly processed and/or genetically modified corn syrup to produce citric acid. Consumption of manufactured citric acid has been associated with adverse health events like joint pain with swelling and stiffness, muscular and stomach pain, as well as shortness of breath.³

15. Citric acid acts as a preservative when added to food products. The Food and Drug Administration (“FDA”) defines a preservative as “any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5). The FDA has listed citric acid as a preservative in its “Overview of Food Ingredients, Additives and Colors” as shown below:⁴

Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid, citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

¹ A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>

² *Id*; Pau Loke Show, et al., *Overview of citric acid production from Aspergillus niger*, FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available at <https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>

³ Iliana E. Sweis, et al., *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

⁴ *Overview of Food Ingredients, Additives & Colors*, FOOD AND DRUG ADMINISTRATION, available at <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>

1 16. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express,
2 Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and
3 Cosmetics Act because they “contain the *chemical preservatives ascorbic acid and citric acid*
4 but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R.
5 [§] 101.22” (emphasis added).⁵

6 17. The Encyclopedia Britannica also classifies citric acid as a preservative because it
7 has antioxidant properties, as shown below⁶:

8 Preservatives

9 Food preservatives are classified into two main groups: antioxidants and
10 antimicrobials. Antioxidants are compounds that delay or prevent the deterioration of
11 foods by oxidative mechanisms. Antimicrobial agents inhibit the growth of spoilage
12 and pathogenic microorganisms in food.

13 Food preservatives	
14 chemical agent	15 mechanism of action
16 Antioxidants	
17 ascorbic acid	oxygen scavenger
18 butylated hydroxyanisole (BHA)	free radical scavenger
19 butylated hydroxytoluene (BHT)	free radical scavenger
20 citric acid	enzyme inhibitor/metal chelator
21 sulfites	enzyme inhibitor/oxygen scavenger
22 tertiary butylhydroquinone (TBHQ)	free radical scavenger
23 tocopherols	free radical scavenger

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26 ⁵ See Exhibit A attached hereto.

27 ⁶ *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>
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1 18. The Agricultural Marketing Service of the United States Department of
2 Agriculture has also recognized the use of citric acid as a preservative stating that “Citric acid
3 has a wide variety of uses, some of which can provide preservative functions, primarily though
4 lowering the pH of the food.”⁷

5 19. Several academic journals also note the use of citric acid as a preservative.⁸
6 Indeed, “Citric acid acts as a preservative in many processed foods, keeping them fresh. It does
7 this by slowing or helping prevent the formation of bacteria, mold, yeast, and fungus.”⁹ “Today,
8 citric acid is one of the most common and widely-used preservatives in the world[.]”¹⁰

9 20. Citric acid acts as a preservative even when present at low levels. It will delay
10 bacterial spoilage, delay changes in color, flavor, and texture of the product. Citric Acid acts to
11 preserve the Products throughout the shelf-life of the Products.¹¹ Because citric acid lowers the
12 pH of the Products, it functions as a preservative by preventing (or significantly delaying)
13 microorganisms such as mold, bacteria, fungi, and yeast from developing in the Products. Citric
14 acid’s antioxidant properties also assist in preservation by sequestering unwanted compounds

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18 ⁷ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at
<https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

19 ⁸ K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND EDITION) (2011),
20 available at
<https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>;
21 K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S POULTRY SCIENCE JOURNAL VOL.
22 68, ISSUE 1 (Feb. 21, 2012), available at [https://www.cambridge.org/core/journals/world-s-
23 poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-
24 diets/DA15C2C1F90667525BF2414DF3BFF646](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646) (“Citric Acid (CA) is a weak organic acid
25 which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

26 ⁹ *What is citric acid, and what is it used for?*, MEDICAL NEWS TODAY (July 23, 2021), available
27 at <https://www.medicalnewstoday.com/articles/citric-acid>

28 ¹⁰ *Citric Acid: One of the Most Important Preservatives in The World*, FBC INDUSTRIES, INC.
(Feb. 5, 2019), available at [https://fbcindustries.com/citric-acid-one-of-the-most-important-
preservatives-in-the-world/](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)

¹¹ The Products have a shelf life of approximately two years. See e.g.,
<https://www.conagrafoodservice.com/products/chef-boyardee-beef-ravioli-15-oz>

1 like metal ions from the Products.¹² A basic principle of food preservation is to impose numerous
 2 “hurdles” to prevent and delay degradation of the food product.¹³ Here, the citric acid in the
 3 Products does just that—it acts as a hurdle to unwanted spoilation along with the canning design
 4 of the packaging and any heat processing of the Products.

5 21. Citric acid functions as a preservative in the Chef Boyardee Products because it
 6 is added to the Products and prevents and/or delays deterioration of the Products. *See* 21 C.F.R.
 7 §101.22(a)(5) (defining preservatives as “any chemical that, when added to food, *tends to*
 8 prevent or retard deterioration”) (emphasis added); *see also* Merriam-Webster’s Dictionary
 9 (defining “preservative” as “something that preserves or *has the power of preserving.*”)
 10 (emphasis added).¹⁴

11 **DEFENDANT’S COMPETITOR’S DO NOT USE THE “NO PRESERVATIVES” REPRESENTATION**

12 22. Defendant’s competitors that include the use of citric acid do not use the
 13 deceptive “No Preservatives” labeling claim.

14 23. The popular Campbell’s Spaghettios® contains citric acid. The label does not use
 15 the deceptive “No Preservatives” claim.¹⁵

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 22 ¹² B.C. Behera, et al. *Microbial citric acid: Production, properties, application, and future*
perspectives, FOOD FRONTIERS VOL. 2, 62-76 (Jan. 7, 2021), available at
 23 <https://onlinelibrary.wiley.com/doi/pdf/10.1002/fft2.66>

24 ¹³ L. Leistner, *Basic aspects of food preservation by hurdle technology*, INTERNATIONAL
 25 JOURNAL OF FOOD MICROBIOLOGY, VOL. 55, 181-186 (2000), available at
 26 [http://envismadrasuniv.org/Physiology/pdf/Basic%20aspects%20of%20food%20preservation.
 27 pdf](http://envismadrasuniv.org/Physiology/pdf/Basic%20aspects%20of%20food%20preservation.pdf)

28 ¹⁴ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at [https://www.merriam-
 29 webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
 30 [nld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)

¹⁵ *See* <https://www.target.com/p/spaghettios-original-canned-pasta-15-8oz/-/A-17482486?>

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INGREDIENTS: WATER, TOMATO PUREE (WATER, TOMATO PASTE), ENRICHED PASTA WITH NIACIN, FERROUS SULFATE, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID, HIGH FRUCTOSE CORN SYRUP, CONTAINS LESS THAN 2% OF: SALT, ENZYME MODIFIED CHEDDAR CHEESE [CULTURED MILK, SALT, ENZYMES, CALCIUM CHLORIDE], WATER, DISOUMPHATE, ENZYMES), VEGETABLE OIL (CORN, CANOLA, AND/OR SOYBEAN), ENZYME MODIFIED CAROTENE FOR COLOR, CITRIC ACID, PAPRIKA EXTRACT, SKIM MILK, NATURAL FLAVOR. **CONTAINS: WHEAT, MILK.**

24. Progresso® Lasagna-Style Soup contains citric acid. The label does not use the deceptive “No Preservatives” claim:¹⁶



Ingredients: Tomato Puree (water, tomato paste), Water, Beef Broth, Tomatoes, Cooked Italian Sausage (pork, spices, mustard seed, salt, paprika, garlic powder, sugar, natural flavors, extractives of paprika, water), Enriched Mafalda Pasta (semolina wheat, egg white, niacin, ferrous sulfate, thiamin mononitrate, riboflavin, folic acid), Contains less than 2% of: Sugar, Cream, Spinach, Soybean Oil, Salt, Bleached Wheat Flour, Parmesan Cheese (milk, cheese cultures, salt, enzymes)*, Modified Food Starch, Spice, Potassium Chloride, Soy Protein Concentrate, Flavoring, Garlic Powder, Beef Fat, Butter, Beef Extract, Sodium Phosphate, Parsley*, Whey Protein Concentrate, Onion Powder, Citric Acid, Calcium Chloride. *Dried

¹⁶ See <https://www.walmart.com/ip/Progresso-Rich-Hearty-Lasagna-Style-Soup-With-Italian-Sausage-Canned-Soup-18-5-oz/529754669?>

1 25. Annie’s Bernie O’s™ contains citric acid. The label does not use the deceptive
 2 “No Preservatives” claim:¹⁷



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**REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S FALSE “NO PRESERVATIVES”
 LABELING STATEMENT AND SUFFERED ECONOMIC INJURY**

14 26. Consumers, like Plaintiff, relied on Defendant’s “No Preservatives” labeling
 15 statement. The “No Preservatives” statement on the labels of the Products is material to
 16 reasonable consumers. “[F]oods bearing ‘free-from’ claims are increasingly relevant to
 17 Americans, as they perceive the products as closely tied to health ... 84 percent of American
 18 consumers buy free-from foods because they are seeking out more natural or less processed
 19 foods. In fact, 43 percent of consumers agree that free-from foods are healthier than foods
 20 without a free-from claim, while another three in five believe the fewer ingredients a product
 21 has, the healthier it is (59 percent). Among the top claims free-from consumers deem most
 22 important are trans-fat-free (78 percent) and preservative-free (71 percent).”¹⁸
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 27 ¹⁷ See <https://www.walmart.com/ip/Annie-s-Organic-Bernie-O-s-Canned-Pasta-in-Tomato-Cheese-Sauce-15-oz/10790932?>

28 ¹⁸ 84% of Americans buy “free-from” foods because they believe them to be more natural or less processed, Mintel (Sept. 3, 2015), available at <https://www.mintel.com/press-centre/84-of->

NO ADEQUATE REMEDY AT LAW

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2 30. Plaintiff and members of the class are entitled to equitable relief as no adequate
3 remedy at law exists. The statutes of limitations for the causes of action pled herein vary. Class
4 members who purchased the Products more than three years prior to the filing of the complaint
5 will be barred from recovery if equitable relief were not permitted under the UCL.

6 31. The scope of actionable misconduct under the unfair prong of the UCL is broader
7 than the other causes of action asserted herein. It includes Defendant’s overall unfair marketing
8 scheme to promote and brand the Products, across a multitude of media platforms, including the
9 product labels, packaging, and online advertisements, over a long period of time, in order to gain
10 an unfair advantage over competitor products. Plaintiff and class members may also be entitled
11 to restitution under the UCL, while not entitled to damages under other causes of action asserted
12 herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or
13 acquires, by purchase or lease, any goods or services for personal, family, or household
14 purposes) and other statutorily enumerated conduct).

15 32. A primary litigation objective in this litigation is to obtain injunctive relief.
16 Injunctive relief is appropriate on behalf of Plaintiff and members of the class because Defendant
17 continues to misrepresent the Products as containing “No Preservatives” when the Products
18 actually contain the preservative ingredient citric acid. Injunctive relief is necessary to prevent
19 Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct
20 described herein and to prevent future harm—none of which can be achieved through available
21 legal remedies (such as monetary damages to compensate past harm). Injunctive relief, in the
22 form of affirmative disclosures or halting the sale of unlawful sold products is necessary to dispel
23 the public misperception about the Products that has resulted from years of Defendant’s unfair,
24 fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited
25 to, publicly disseminated statements stating that the Products actually contain a preservative. An
26 injunction requiring affirmative disclosures to dispel the public’s misperception, and prevent the
27 ongoing deception and repeat purchases, is also not available through a legal remedy (such as
28 monetary damages). In addition, Plaintiff is currently unable to accurately quantify the damages

1 caused by Defendant's future harm, because discovery and Plaintiff's investigation has not yet
2 completed, rendering injunctive relief necessary. Further, because a public injunction is
3 available under the UCL, and damages will not adequately benefit the general public in a manner
4 equivalent to an injunction.

5 33. It is premature to determine whether an adequate remedy at law exists. This is an
6 initial pleading and discovery has not yet commenced and/or is at its initial stages. No class has
7 been certified yet. No expert discovery has commenced and/or completed. The completion of
8 fact/non-expert and expert discovery, as well as the certification of this case as a class action,
9 are necessary to finalize and determine the adequacy and availability of all remedies, including
10 legal and equitable, for Plaintiff's individual claims and any certified class or subclass. Plaintiff
11 therefore reserves her right to amend this complaint and/or assert additional facts that
12 demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal
13 remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to
14 the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or
15 the entry of an order granting equitable relief.

16 CLASS ACTION ALLEGATIONS

17 34. Plaintiff brings this action as a class action pursuant to Cal. Code. Civ. Proc. §
18 382 on behalf of the following Class:

19 All persons who purchased the Chef Boyardee Products for personal use in
20 California within the applicable statute of limitations until the date class notice is
21 disseminated.

22 35. Excluded from the class are: (i) Defendant and its officers, directors, and
23 employees; (ii) any person who files a valid and timely request for exclusion; (iii) judicial
24 officers and their immediate family members and associated court staff assigned to the case; (iv)
25 individuals who received a full refund of the Products from Defendant.

26 36. Plaintiff reserves the right to amend or otherwise alter the class definition
27 presented to the Court at the appropriate time, or to propose or eliminate subclasses, in response
28 to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

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1 37. The Class is appropriate for certification because Plaintiff can prove the elements
2 of the claims on a classwide basis using the same evidence as would be used to prove those
3 elements in individual actions alleging the same claims.

4 38. Numerosity: Class Members are so numerous that joinder of all members is
5 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
6 described above who have been damaged by Defendant’s deceptive and misleading practices.

7 39. Commonality: There is a well-defined community of interest in the common
8 questions of law and fact affecting all Class Members. The questions of law and fact common
9 to the Class Members which predominate over any questions which may affect individual Class
10 Members include, but are not limited to:

11 a. Whether Defendant is responsible for the conduct alleged herein which was
12 uniformly directed at all consumers who purchased the Products;

13 b. Whether Defendant’s misconduct set forth in this Complaint demonstrates that
14 Defendant engaged in unfair, fraudulent, or unlawful business practices with respect to the
15 advertising, marketing, and sale of the Products;

16 c. Whether Defendant made misrepresentations concerning the Products that were
17 likely to deceive the public;

18 d. Whether Plaintiff and the Class are entitled to injunctive relief;

19 e. Whether Plaintiff and the Class are entitled to money damages and/or restitution
20 under the same causes of action as the other Class Members.

21 40. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to represent.
22 Plaintiff’s claims are typical of the claims of each Class Member in that every member of the
23 Class was susceptible to the same deceptive, misleading conduct and purchased the Products.
24 Plaintiff is entitled to relief under the same causes of action as the other Class Members.

25 41. Adequacy: Plaintiff is an adequate Class representative because Plaintiff’s
26 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the
27 consumer fraud claims are common to all other members of the Class, and Plaintiff has a strong
28 interest in vindicating the rights of the class; Plaintiff has retained counsel competent and

1 experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this
2 action. Plaintiff has no interests which conflict with those of the Class. The Class Members'
3 interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel.
4 Defendant has acted in a manner generally applicable to the Class, making relief appropriate
5 with respect to Plaintiff and the Class Members. The prosecution of separate actions by
6 individual Class Members would create a risk of inconsistent and varying adjudications.

7 42. The Class is properly brought and should be maintained as a class action because
8 a class action is superior to traditional litigation of this controversy. A class action is superior to
9 the other available methods for the fair and efficient adjudication of this controversy because:

10 a. The joinder of hundreds of individual Class Members is impracticable,
11 cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

12 b. The individual claims of the Class Members may be relatively modest compared
13 with the expense of litigating the claim, thereby making it impracticable, unduly burdensome,
14 and expensive to justify individual actions;

15 c. When Defendant's liability has been adjudicated, all Class Members' claims can
16 be determined by the Court and administered efficiently in a manner far less burdensome and
17 expensive than if it were attempted through filing, discovery, and trial of all individual cases;

18 d. This class action will promote orderly, efficient, expeditious, and appropriate
19 adjudication and administration of Class claims;

20 e. Plaintiff knows of no difficulty to be encountered in the management of this
21 action that would preclude its maintenance as a class action;

22 f. This class action will assure uniformity of decisions among Class Members;

23 g. The Class is readily definable and prosecution of this action as a class action will
24 eliminate the possibility of repetitious litigation; and

25 h. Class Members' interests in individually controlling the prosecution of separate
26 actions is outweighed by their interest in efficient resolution by single class action;

27 43. Additionally or in the alternative, the Class also may be certified because
28 Defendant has acted or refused to act on grounds generally applicable to the Class thereby

1 making final declaratory and/or injunctive relief with respect to the members of the Class as a
2 whole, appropriate.

3 44. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
4 behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent
5 Defendant from engaging in the acts described, and to require Defendant to provide full
6 restitution to Plaintiff and the Class members.

7 45. Unless the Class is certified, Defendant will retain monies that were taken from
8 Plaintiff and Class members as a result of Defendant's wrongful conduct. Unless a classwide
9 injunction is issued, Defendant will continue to commit the violations alleged and the members
10 of the Class and the general public will continue to be misled.

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of California's Consumers Legal Remedies Act**

13 **Cal. Civ. Code § 1750 *et seq.***

14 46. Plaintiff realleges and incorporates by reference all allegations contained in this
15 complaint, as though fully set forth herein.

16 47. Plaintiff brings this claim under the CLRA individually and on behalf of the Class
17 against Defendant.

18 48. At all times relevant hereto, Plaintiff and the members of the Class were
19 "consumer[s]," as defined in California Civil Code section 1761(d).

20 49. At all relevant times, Defendant was a "person," as defined in California Civil
21 Code section 1761(c).

22 50. At all relevant times, the Products manufactured, marketed, advertised, and sold
23 by Defendant constituted "goods," as defined in California Civil Code section 1761(a).

24 51. The purchases of the Products by Plaintiff and the members of the Class were
25 and are "transactions" within the meaning of California Civil Code section 1761(e).

26 52. Defendant disseminated, or caused to be disseminated, through its advertising,
27 false and misleading representations, including the Products' labeling that the Products contain
28 "No Preservatives." Defendant failed to disclose that the Products contain a preservative

1 ingredient called citric acid.. This is a material misrepresentation and omission as reasonable
2 consumer would find the fact that the Products contain a preservative to be important to their
3 decision in purchasing the Products. Defendant's representations violate the CLRA in the
4 following ways:

5 a) Defendant represented that the Products have characteristics, ingredients, uses,
6 and benefits which they do not have (Cal. Civ. Code § 1770(a)(5));

7 b) Defendant represented that the Products are of a particular standard, quality, or
8 grade, which they are not (Cal. Civ. Code § 1770(a)(7));

9 c) Defendant advertised the Products with an intent not to sell the Products as
10 advertised (Cal. Civ. Code § 1770(a)(9)); and

11 d) Defendant represented that the subject of a transaction has been supplied in
12 accordance with a previous representation when it has not (Cal. Civ. Code § 1770(a)(16)).

13 53. Defendant violated the CLRA because the Products were prominently advertised
14 as containing "No Preservatives," but, in reality, the Products contain a preservative ingredient
15 called citric acid. Defendant knew or should have known that consumers would want to know
16 that the Products contain a preservative.

17 54. Defendant's actions as described herein were done with conscious disregard of
18 Plaintiff's and the Class members' rights and were wanton and malicious.

19 55. Defendant's wrongful business practices constituted, and constitute, a continuing
20 course of conduct in violation of the CLRA, since Defendant is still representing that the
21 Products have characteristics which they do not have.

22 56. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of
23 the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices
24 alleged herein.

25 57. Pursuant to California Civil Code section 1782, Plaintiff notify Defendant in
26 writing by certified mail of the alleged violations of the CLRA and will demand that Defendant
27 rectify the problems associated with the actions detailed above and give notice to all affected
28 consumers of their intent to so act. If Defendant fails to rectify or agree to rectify the problems

1 associated with the actions detailed herein and give notice to all affected consumers within 30
2 days of the date of written notice pursuant to section 1782 of the CLRA, then Plaintiff will
3 amend his complaint to seek damages.

4 58. Pursuant to section 1780(d) of the CLRA, an affidavit showing that this action
5 was commenced in a proper forum is provided at the end of this complaint.

6 **SECOND CLAIM FOR RELIEF**

7 **Violation of California’s Unfair Competition Law**

8 **Cal. Bus. & Prof. Code § 17200 *et seq.***

9 59. Plaintiff realleges and incorporates by reference all allegations contained in this
10 complaint, as though fully set forth herein.

11 60. Plaintiff brings this claim under the UCL individually and on behalf of the Class
12 against Defendant.

13 61. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
14 practice and any false or misleading advertising.

15 62. Defendant committed unlawful business acts or practices by making the
16 representations and omitted material facts (which constitutes advertising within the meaning of
17 California Business & Professions Code section 17200), as set forth more fully herein, and by
18 violating California’s Consumers Legal Remedies Act, Cal. Civ. Code §§17500, *et seq.*,
19 California’s False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by
20 breaching express and implied warranties. Plaintiff, individually and on behalf of the other Class
21 members, reserves the right to allege other violations of law, which constitute other unlawful
22 business acts or practices. Such conduct is ongoing and continues to this date.

23 63. Defendant committed “unfair” business acts or practices by: (1) engaging in
24 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
25 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
26 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct
27 that undermines or violates the intent of the consumer protection laws alleged herein. There is
28 no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a

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1 Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material
2 fact (that the Products contain a preservative) of which they had exclusive knowledge. While
3 Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by its false
4 misrepresentations and material omissions. As a result, Defendant's conduct is "unfair," as it
5 offended an established public policy. There were reasonably available alternatives to further
6 Defendant's legitimate business interests, other than the conduct described herein.

7 64. Defendant committed "fraudulent" business acts or practices by making the
8 representations of material fact regarding the Products set forth herein. Defendant's business
9 practices as alleged are "fraudulent" under the UCL because they are likely to deceive customers
10 into believing the Products actually contain no preservatives.

11 65. Plaintiff and the other members of the Class have in fact been deceived as a result
12 of their reliance on Defendant's material representations and omissions. This reliance has caused
13 harm to Plaintiff and the other members of the Class, each of whom purchased Defendant's
14 Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a
15 result of purchasing the Products and Defendant's unlawful, unfair, and fraudulent practices.

16 66. Defendant's wrongful business practices and violations of the UCL are ongoing.

17 67. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result
18 of Defendant's unfair and fraudulent business conduct. The amount on which interest is to be
19 calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest
20 in an amount according to proof.

21 68. Unless restrained and enjoined, Defendant will continue to engage in the above-
22 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
23 & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seek (1)
24 restitution from Defendant of all money obtained from Plaintiff and the other Class members as
25 a result of unfair competition; (2) an injunction prohibiting Defendant from continuing such
26 practices in the State of California that do not comply with California law; and (3) all other relief
27 this Court deems appropriate, consistent with California Business & Professions Code section
28 17203.

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REQUEST FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, request for relief pursuant to each claim set forth in this complaint, as follows:

a. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel as Class Counsel;

b. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of Defendant’s unlawful, unfair, and fraudulent business practices;

c. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

d. Ordering damages in amount which is different than that calculated for restitution for Plaintiff and the Class;

e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff and the other members of the Class;

f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

g. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all claims in this Complaint so triable.

Dated: August 31, 2023

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin
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Attorneys for Plaintiff and the Proposed Class

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