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County of Alameda
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KAMILAH GALBRETH, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

THE KRAFT HEINZ COMPANY,

Defendant.

Case No. **23CV051576**

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.*
3. Breach of Express Warranty

DEMAND FOR JURY TRIAL

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INTRODUCTION

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2 1. Plaintiff Kamilah Galbreth (“Plaintiff”) on behalf of herself, all others similarly
3 situated, and the general public, by and through her undersigned counsel, hereby brings this
4 action against The Kraft Heinz Company (“Defendant” or “Kraft”), and upon information and
5 belief 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”), Unfair Competition Law, Cal. Bus.
8 & Prof. Code §§ 17200, *et seq.* (“UCL”), and for breach of express warranty.

9 3. Defendant manufactures, distributes, advertises, markets, and sells Kraft Mac &
10 Cheese products. The packaging prominently displays on the front of the label the claim that
11 these Products¹ contain “**No Artificial Flavors, Preservatives, or Dyes.**”

12 4. This statement is false. Each of the Products are made with citric acid— a well
13 known preservative used in food products.

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

16 6. Plaintiff, who purchased the Products in California, was deceived by Defendant’s
17 unlawful conduct and brings this action on her own behalf and on behalf of California consumers
18 to remedy Defendant’s unlawful acts.

JURISDICTION AND VENUE

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20 7. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
21 Constitution and California Code of Civil Procedure § 410.10.

22 8. This Court has personal jurisdiction over Defendant because Defendant conducts
23 and transacts business in the State of California, contracts to supply goods within the State of
24 California, and supplies goods within the State of California. Defendant, on its own and through
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27 ¹ “Products” means all Kraft Mac & Cheese products labeled as containing “No Artificial
28 Flavors, Preservatives, or Dyes” that include citric acid as an ingredient. The Products include,
but are not limited to, Kraft Mac & Cheese Original Flavor, Kraft Mac & Cheese Thick ‘n
Creamy, and Kraft Mac & Cheese Three Cheese.

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1 its agents, is responsible for the distribution, marketing, labeling, and sale of the Products in
 2 California, specifically in this county. The marketing of the Products, including the decision of
 3 what to include and not include on the labels, emanates from Defendant. Thus, Defendant has
 4 intentionally availed itself of the markets within California through its advertising, marketing,
 5 and sale of the Products to consumers in California, including Plaintiff. The Court also has
 6 specific jurisdiction over Defendant as it has purposefully directed activities towards the forum
 7 state, Plaintiff’s claims arise out of those activities, and it is reasonable for Defendant to defend
 8 this lawsuit because it has sold deceptively advertised Products to Plaintiff and members of the
 9 Class in California. By distributing and selling the Products in California, Defendant has
 10 intentionally and expressly aimed conduct at California which caused harm to Plaintiff and the
 11 Class that Defendant knows is likely to be suffered by Californians.

12 9. Venue is proper in this county pursuant to Cal. Civ Code. § 1780(c) because
 13 Defendant is doing business in this county as the Products are offered for sale in this county.

14 **PARTIES**

15 10. Defendant The Kraft Heinz Company is a Delaware corporation that maintains
 16 its principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15222. At all times
 17 during the class period, Defendant was the manufacturer, distributor, marketer, and seller of the
 18 Products.

19 11. Plaintiff Kamilah Galbreth is a resident of California. Plaintiff purchased the
 20 Products during the class period in California. Plaintiff relied on Defendant’s deceptive
 21 advertising and labeling claims as set forth below.

22 **FACTUAL ALLEGATIONS**

23 **“NO ARTIFICIAL FLAVORS, PRESERVATIVES, OR DYES” IS PROMINENTLY DISPLAYED ON**
 24 **THE LABELS OF THE PRODUCTS**

25 12. The front labels for each of the Products prominently state that the Products
 26 contain “No Artificial Flavors, Preservatives, or Dyes” thereby misleading reasonable
 27 consumers into believing that the Products are free from preservatives. However, each of the
 28 Products contain the preservative citric acid. Below are examples of labels for the Products:

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Kraft Mac & Cheese Original Flavor



INGREDIENTS: ENRICHED MACARONI (WHEAT FLOUR, DURUM FLOUR, NIACIN, FERROUS SULFATE [IRON], THIAMIN MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), CHEESE SAUCE MIX (WHEY, MILKFAT, SALT, MILK PROTEIN CONCENTRATE, SODIUM TRIPHOSPHATE, CONTAINS LESS THAN 2% OF TAPIOCA FLOUR, CITRIC ACID, LACTIC ACID, SODIUM PHOSPHATE, CALCIUM PHOSPHATE, WITH PAPRIKA, TURMERIC, AND ANNATTO ADDED FOR COLOR, ENZYMES, CHEESE CULTURE).

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Kraft Mac & Cheese Three Cheese



INGREDIENTS: ENRICHED MACARONI PRODUCT (WHEAT FLOUR, NIACIN, FERROUS SULFATE [IRON], THIAMIN MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), CHEESE SAUCE MIX (WHEY, SKIM MILK, MILK, SALT, MILKFAT, MODIFIED FOOD STARCH, MILK PROTEIN CONCENTRATE, CONTAINS LESS THAN 2% OF BUTTERMILK SOLIDS, SODIUM PHOSPHATE, LACTIC ACID, CELLULOSE GEL, CELLULOSE GUM, CITRIC ACID, CHEESE CULTURE, ENZYMES, WITH PAPRIKA, TURMERIC, AND ANNATTO ADDED FOR COLOR).

CONTAINS: WHEAT, MILK.

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Kraft Mac & Cheese Thick N' Creamy



INGREDIENTS: ENRICHED MACARONI PRODUCT (WHEAT FLOUR, NIACIN, FERROUS SULFATE [IRON], THIAMIN MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), CHEESE SAUCE MIX (WHEY, MODIFIED FOOD STARCH, MILK FAT, NONFAT DRY MILK, SALT, MILK PROTEIN CONCENTRATE, CONTAINS LESS THAN 2% OF DISODIUM PHOSPHATE, CELLULOSE GEL, CELLULOSE GUM, DRIED BUTTERMILK, CITRIC ACID, LACTIC ACID, WITH PAPRIKA, ANNATTO, AND TURMERIC ADDED FOR COLOR, MILK, CHEESE CULTURE, ENZYMES).
CONTAINS: WHEAT, MILK

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CITRIC ACID IS A PRESERVATIVE

13. Many commercial food manufactures use a synthetic form of citric acid that is derived from heavy chemical processing.² Commercially produced citric acid is manufactured using a type of black mold called *Aspergillus niger*.³ 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.⁴ Defendant uses synthetic manufactured citric acid in the Products.

14. Citric acid acts as a preservative when added to food products, including the Products at issue. 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:⁵

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)

² 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/>

³ *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>

⁴ 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/>

⁵ *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 15. 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).⁶

6 16. The Encyclopedia Britanica also classifies citric acid as a preservative because it
7 has antioxidant properties, as shown below⁷:

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

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26 ⁶ See **Exhibit A** attached hereto.

27 ⁷ *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>
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1 17. The Agricultural Marketing Service of the United States Department of
2 Agriculture (“USDA”) has also recognized the use of citric acid as a preservative stating that
3 “Citric acid has a wide variety of uses, some of which can provide preservative functions,
4 primarily though lowering the pH of the food.”⁸

5 18. The USDA’s Food Safety Inspection Service’s “Guideline for Label Approval”
6 states that “[s]ome common chemical preservatives include BHA, BHT, calcium propionate,
7 citric acid, natamycin and sodium propionate.”⁹

8 19. Several academic journals also note the use of citric acid as a preservative.¹⁰
9 Indeed, “Citric acid acts as a preservative in many processed foods, keeping them fresh. It does
10 this by slowing or helping prevent the formation of bacteria, mold, yeast, and fungus.”¹¹ “Today,
11 citric acid is one of the most common and widely-used preservatives in the world[.]”¹²

12 20. Citric acid functions as a preservative in the Products regardless of whether
13 Defendant intended to use citric acid as a preservative. Citric acid functions as a preservative
14 even if it is also added to the Products for some other use. *See* 21 C.F.R. §101.22(a)(5) (defining
15 preservatives as “any chemical that, when added to food, *tends to* prevent or retard
16 deterioration”) (emphasis added); *see also* Merriam-Webster’s Dictionary (defining

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18 ⁸ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at
19 <https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

20 ⁹ FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF AGRICULTURE, available
21 at https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf

22 ¹⁰ K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND EDITION)
23 (2011), available at
24 <https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>;
25 K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S POULTRY SCIENCE JOURNAL VOL.
26 68, ISSUE 1 (Feb. 21, 2012), available at <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
27 which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

28 ¹¹ *What is citric acid, and what is it used for?*, MEDICAL NEWS TODAY (July 23, 2021), available
at <https://www.medicalnewstoday.com/articles/citric-acid>

¹² *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/>

1 “preservative” as “something that preserves or *has the power of preserving.*”) (emphasis
2 added).¹³

3 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S FALSE LABELING STATEMENT**
4 **AND SUFFERED ECONOMIC INJURY**

5 21. Consumers, like Plaintiff, relied on Defendant’s “No Artificial Flavors,
6 Preservatives, or Dyes” labeling statement. The “No Artificial Flavors, Preservatives, or Dyes”
7 statement on the labels of the Products is material to reasonable consumers. “[F]oods bearing
8 ‘free-from’ claims are increasingly relevant to Americans, as they perceive the products as
9 closely tied to health ... 84 percent of American consumers buy free-from foods because they
10 are seeking out more natural or less processed foods. In fact, 43 percent of consumers agree that
11 free-from foods are healthier than foods without a free-from claim, while another three in five
12 believe the fewer ingredients a product has, the healthier it is (59 percent). Among the top claims
13 free-from consumers deem most important are trans-fat-free (78 percent) and preservative-free
14 (71 percent).”¹⁴

15 22. Plaintiff and the putative class members suffered economic injury as a result of
16 Defendant’s actions. Plaintiff and putative class members spent money that, absent Defendant’s
17 actions, they would not have spent. Plaintiff and putative class members are entitled to damages
18 and restitution for the purchase price of the Products that were falsely labeled and advertised.
19 Consumers, including Plaintiff, would not have purchased Defendant’s Products, or would have
20 paid less for the Products, if they had known the Products actually contain a preservative
21 ingredient.

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25 ¹³ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at [https://www.merriam-
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)
26 [nld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)

27 ¹⁴ *84% of Americans buy “free-from” foods because they believe them to be more natural or*
28 *less processed*, Mintel (Sept. 3, 2015), available at [https://www.mintel.com/press-centre/84-of-
americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-
processed/](https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/)

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PLAINTIFF’S PURCHASE OF THE PRODUCTS

23. Plaintiff Kamilah Galbreth has purchased Kraft Mac & Cheese Products, including the Kraft Mac & Cheese Original Flavor, with the “No Artificial Flavors, Preservatives, or Dyes” label claim during the class period. Plaintiff’s last purchase of the Products was in approximately October of 2023 from a Food 4 Less store located in California.

24. Plaintiff saw and relied on the “No Artificial Flavors, Preservatives, or Dyes” claim on the labels of the Products. Plaintiff would not have purchased the Products, or would have paid less for the Products, had she known that the products actually contain a preservative ingredient. As a result, Plaintiff suffered injury in fact when she spent money to purchase the Products she would not have purchased, or would have paid less for, absent Defendant’s misconduct. Plaintiff desires to purchase the Products again if the labels of the products were accurate and if the products actually contained “No Artificial Flavors, Preservatives, or Dyes.” However, as a result of Defendant’s ongoing misrepresentations, Plaintiff is unable to rely on the Products’ advertising and labeling when deciding in the future whether to purchase the Products.

NO ADEQUATE REMEDY AT LAW

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

26. The scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes Defendant’s overall unfair marketing scheme to promote and brand the Products, across a multitude of media platforms, including the product labels, packaging, and online advertisements, over a long period of time, in order to gain an unfair advantage over competitor products. Plaintiff and class members may also be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or

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1 acquires, by purchase or lease, any goods or services for personal, family, or household
2 purposes) and other statutorily enumerated conduct).

3 27. A primary litigation objective in this litigation is to obtain injunctive relief.
4 Injunctive relief is appropriate on behalf of Plaintiff and members of the class because Defendant
5 continues to misrepresent the Products as containing “No Artificial Flavors, Preservatives, or
6 Dyes” when the Products actually contain the preservative ingredient citric acid. Injunctive relief
7 is necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or
8 unlawful conduct described herein and to prevent future harm—none of which can be achieved
9 through available legal remedies (such as monetary damages to compensate past harm).
10 Injunctive relief, in the form of affirmative disclosures or halting the sale of unlawful sold
11 products is necessary to dispel the public misperception about the Products that has resulted
12 from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such disclosures
13 would include, but are not limited to, publicly disseminated statements stating that the Products
14 actually contain a preservative. An injunction requiring affirmative disclosures to dispel the
15 public’s misperception, and prevent the ongoing deception and repeat purchases, is also not
16 available through a legal remedy (such as monetary damages). In addition, Plaintiff is currently
17 unable to accurately quantify the damages caused by Defendant’s future harm, because
18 discovery and Plaintiff’s investigation has not yet completed, rendering injunctive relief
19 necessary. Further, because a public injunction is available under the UCL, and damages will
20 not adequately benefit the general public in a manner equivalent to an injunction.

21 28. It is premature to determine whether an adequate remedy at law exists. This is an
22 initial pleading and discovery has not yet commenced and/or is at its initial stages. No class has
23 been certified yet. No expert discovery has commenced and/or completed. The completion of
24 fact/non-expert and expert discovery, as well as the certification of this case as a class action,
25 are necessary to finalize and determine the adequacy and availability of all remedies, including
26 legal and equitable, for Plaintiff’s individual claims and any certified class or subclass. Plaintiff
27 therefore reserves her right to amend this complaint and/or assert additional facts that
28 demonstrate this Court’s jurisdiction to order equitable remedies where no adequate legal

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1 remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to
2 the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or
3 the entry of an order granting equitable relief.

4 **CLASS ACTION ALLEGATIONS**

5 29. Plaintiff brings this action as a class action pursuant to Cal. Code. Civ. Proc. §
6 382 on behalf of the following Class:

7 All persons who purchased the Products for personal use in California within the
8 applicable statute of limitations until the date class notice is disseminated.

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

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

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

19 33. Numerosity: Class Members are so numerous that joinder of all members is
20 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
21 described above who have been damaged by Defendant's deceptive and misleading practices.

22 34. Commonality: There is a well-defined community of interest in the common
23 questions of law and fact affecting all Class Members. The questions of law and fact common
24 to the Class Members which predominate over any questions which may affect individual Class
25 Members include, but are not limited to:

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

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

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

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

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

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

13 36. Adequacy: Plaintiff is an adequate Class representative because Plaintiff’s
14 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the
15 consumer fraud claims are common to all other members of the Class, and Plaintiff has a strong
16 interest in vindicating the rights of the class; Plaintiff has retained counsel competent and
17 experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this
18 action. Plaintiff has no interests which conflict with those of the Class. The Class Members’
19 interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel.
20 Defendant has acted in a manner generally applicable to the Class, making relief appropriate
21 with respect to Plaintiff and the Class Members. The prosecution of separate actions by
22 individual Class Members would create a risk of inconsistent and varying adjudications.

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

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

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

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

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

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

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

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

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

16 38. Additionally or in the alternative, the Class also may be certified because
17 Defendant has acted or refused to act on grounds generally applicable to the Class thereby
18 making final declaratory and/or injunctive relief with respect to the members of the Class as a
19 whole, appropriate.

20 39. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
21 behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent
22 Defendant from engaging in the acts described, and to require Defendant to provide full
23 restitution to Plaintiff and the Class members.

24 40. Unless the Class is certified, Defendant will retain monies that were taken from
25 Plaintiff and Class members as a result of Defendant’s wrongful conduct. Unless a classwide
26 injunction is issued, Defendant will continue to commit the violations alleged and the members
27 of the Class and the general public will continue to be misled.

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FIRST CLAIM FOR RELIEF

Violation of California’s Consumers Legal Remedies Act

Cal. Civ. Code § 1750 *et seq.*

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4 41. Plaintiff realleges and incorporates by reference all allegations contained in this
5 complaint, as though fully set forth herein.

6 42. Plaintiff brings this claim under the CLRA individually and on behalf of the Class
7 against Defendant.

8 43. At all times relevant hereto, Plaintiff and the members of the Class were
9 “consumer[s],” as defined in California Civil Code section 1761(d).

10 44. At all relevant times, Defendant was a “person,” as defined in California Civil
11 Code section 1761(c).

12 45. At all relevant times, the Products manufactured, marketed, advertised, and sold
13 by Defendant constituted “goods,” as defined in California Civil Code section 1761(a).

14 46. The purchases of the Products by Plaintiff and the members of the Class were
15 and are “transactions” within the meaning of California Civil Code section 1761(e).

16 47. Defendant disseminated, or caused to be disseminated, through its advertising,
17 false and misleading representations, including the Products’ labeling that the Products contain
18 “No Artificial Flavors, Preservatives, or Dyes.” Defendant failed to disclose that the Products
19 contain a preservative ingredient called citric acid. This is a material misrepresentation and
20 omission as reasonable consumer would find the fact that the Products contain a preservative to
21 be important to their decision in purchasing the Products. Defendant’s representations violate
22 the CLRA in the following ways:

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

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

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

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

3 48. Defendant violated the CLRA because the Products were prominently advertised
4 as containing “No Artificial Flavors, Preservatives, or Dyes,” but, in reality, the Products
5 contain a preservative ingredient called citric acid. Defendant knew or should have known that
6 consumers would want to know that the Products contain a preservative.

7 49. Defendant’s actions as described herein were done with conscious disregard of
8 Plaintiff’s and the Class members’ rights and were wanton and malicious.

9 50. Defendant’s wrongful business practices constituted, and constitute, a continuing
10 course of conduct in violation of the CLRA, since Defendant is still representing that the
11 Products have characteristics which they do not have.

12 51. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of
13 the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices
14 alleged herein.

15 52. Pursuant to California Civil Code section 1782, Plaintiff will notify Defendant in
16 writing by certified mail of the alleged violations of the CLRA and will demand that Defendant
17 rectify the problems associated with the actions detailed above and give notice to all affected
18 consumers of their intent to so act. If Defendant fails to rectify or agree to rectify the problems
19 associated with the actions detailed herein and give notice to all affected consumers within 30
20 days of the date of written notice pursuant to section 1782 of the CLRA, then Plaintiff will
21 amend her complaint to seek damages.

22 53. Pursuant to section 1780(d) of the CLRA, attached hereto is an affidavit showing
23 that this action was commenced in a proper forum.

24 **SECOND CLAIM FOR RELIEF**

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

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

27 54. Plaintiff realleges and incorporates by reference all allegations contained in this
28 complaint, as though fully set forth herein.

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1 55. Plaintiff brings this claim under the UCL individually and on behalf of the Class
2 against Defendant.

3 56. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
4 practice and any false or misleading advertising.

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

13 58. Defendant committed “unfair” business acts or practices by: (1) engaging in
14 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
15 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
16 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct
17 that undermines or violates the intent of the consumer protection laws alleged herein. There is
18 no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a
19 Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material
20 fact (that the Products contain a preservative) of which they had exclusive knowledge. While
21 Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by its false
22 misrepresentations and material omissions. As a result, Defendant’s conduct is “unfair,” as it
23 offended an established public policy. There were reasonably available alternatives to further
24 Defendant’s legitimate business interests, other than the conduct described herein.

25 59. Defendant committed “fraudulent” business acts or practices by making the
26 representations of material fact regarding the Products set forth herein. Defendant’s business
27 practices as alleged are “fraudulent” under the UCL because they are likely to deceive customers
28 into believing the Products actually contain no preservatives.

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1 60. Plaintiff and the other members of the Class have in fact been deceived as a result
2 of their reliance on Defendant’s material representations and omissions. This reliance has caused
3 harm to Plaintiff and the other members of the Class, each of whom purchased Defendant’s
4 Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a
5 result of purchasing the Products and Defendant’s unlawful, unfair, and fraudulent practices.

6 61. Defendant’s wrongful business practices and violations of the UCL are ongoing.

7 62. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result
8 of Defendant’s unfair and fraudulent business conduct. The amount on which interest is to be
9 calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest
10 in an amount according to proof.

11 63. Unless restrained and enjoined, Defendant will continue to engage in the above-
12 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
13 & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seeks (1)
14 restitution from Defendant of all money obtained from Plaintiff and the other Class members as
15 a result of unfair competition; (2) an injunction prohibiting Defendant from continuing such
16 practices in the State of California that do not comply with California law; and (3) all other relief
17 this Court deems appropriate, consistent with California Business & Professions Code section
18 17203.

19 **THIRD CLAIM FOR RELIEF**

20 **Breach of Express Warranty**

21 64. Plaintiff realleges and incorporates by reference all allegations contained in this
22 complaint, as though fully set forth herein.

23 65. Plaintiff brings this claim for breach of express warranty individually and on
24 behalf of the Class against Defendant.

25 66. As the manufacturer, marketer, distributor, and seller of the Products, Defendant
26 issued an express warranty by representing to consumers at the point of purchase that the
27 Products contain “No Artificial Flavors, Preservatives, or Dyes”
28

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1 67. Plaintiff and the Class reasonably relied on Defendant’s misrepresentations,
2 descriptions and specifications regarding the Products, including the representation that the
3 Products contain “No Artificial Flavors, Preservatives, or Dyes”

4 68. Defendant’s representations were part of the description of the goods and the
5 bargain upon which the goods were offered for sale and purchased by Plaintiff and Members of
6 the Class.

7 69. In fact, the Products do not conform to Defendant’s representations because the
8 Products contain a preservative ingredient called citric acid. By falsely representing the Products
9 in this way, Defendant breached express warranties.

10 70. Plaintiff relied on Defendant’s (the manufacturer) representations on the
11 Products’ labels and advertising materials which provide the basis for an express warranty under
12 California law.

13 71. As a direct and proximate result of Defendant’s breach, Plaintiff and Members
14 of the Class were injured because they: (1) paid money for the Products that were not what
15 Defendant represented; (2) were deprived of the benefit of the bargain because the Products
16 they purchased were different than Defendant advertised; and (3) were deprived of the benefit
17 of the bargain because the Products they purchased had less value than if Defendant’s
18 representations about the characteristics of the Products were truthful. Had Defendant not
19 breached the express warranty by making the false representations alleged herein, Plaintiff and
20 Class Members would not have purchased the Products or would not have paid as much as they
21 did for them.

22 **REQUEST FOR RELIEF**

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

25 a. Declaring that this action is a proper class action, certifying the Class as requested
26 herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel
27 as Class Counsel;
28

