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Executive Officer/Clerk of Court,
By S. Trinh, Deputy Clerk

Attorney for Plaintiff
SUE SHIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SUE SHIN, on behalf of herself, all
others similarly situated, and the general
public.
vs.
SANYO FOODS CORP. OF
AMERICA, TAKEO SATO, and DOES
1 through 10.
Defendants.

Case No. **23STCV27571**
CLASS ACTION FOR JURY TRIAL
(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
(6) FRAUDULENT
MISREPRESENTATION
(7) NEGLIGENT
MISREPRESENTATION
(8) BREACH OF EXPRESS
WARRANTY UNDER
CAL.COM.CODE §2313
(9) BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY UNDER
CAL.COM.CODE §2314(1)

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1. Plaintiff Sue Shin (“Plaintiff”), on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby sue Defendant SANYO FOODS CORP. OF AMERICA (“SANYO” or “Defendant”) and Defendant TAKEO SATO, and on the basis of personal knowledge, information and belief, and investigation of counsel, alleges as follows.

2. This action deals with packaged noodle products (“SAPPORO ICHIBAN Products”) manufactured and distributed by Defendant. From August 2018 to December 2019, Plaintiff bought the noodle products from convenient stores and grocery markets in Los Angeles, California.

3. The SAPPORO ICHIBAN Products contain “0g Trans Fat” claim on the front label of package, outside the Nutrition Facts Panel. The Nutrition Facts Panel is on the backside of package. (EXHIBIT 1.) Plaintiff was misled that the SAPPORO ICHIBAN Products do not contain trans fat at all.

4. Trans fat has become increasingly recognized as a dangerous substance and a leading cause of numerous serious ailments, including heart disease and diabetes.

5. If the product contained “less than 0.5 gram” trans fat and more than 0.0 gram, it is required to tell the consumer on the Nutrition Facts Panel that it contained 0 grams trans fat, even though it contained trans fat. (EXHIBIT 1.) The claim “0g Trans Fat” is not only permitted within the panel, but mandated.

6. However, a statement as to the amount of a nutrient mandated inside the Nutrition Facts Panel is not necessarily permitted by the FDCA elsewhere on the packaging. 21 C.F.R. § 101.13(c). The FDCA does not allow the same “0g Trans Fat” claim elsewhere on the label, rendering the product misbranded. It is unlawful to state “0g Trans Fat,” outside the Nutrition Facts Panel. Any commercial product with the claim “0g Trans Fat” outside the Nutrition Facts

1 Panel is considered misbranded by the FDCA and California Health and Safety
2 Code. It is prohibited to be sold in markets. The claim “0g Trans Fat” is false
3 because a reasonable consumer might infer that the product does not contain trans
4 fat. (See *Reid v. Johnson & Johnson*, 780 F.3d 952 (9th Cir. 2015); *Hawkins v.*
5 *Kroger*, 906 F.3d 763 (9th Cir. 2018); *Hawkins v. Kroger Company*, 512
6 F.Supp.3d 1079 (2021).)

7 7. The SAPPORO ICHIBAN Products make the claim “0g Trans Fat” outside
8 the Nutrition Facts Panel. The Products are misbranded because the Products
9 contain trans fat. It is unlawful for Defendant SANYO to sell the misbranded
10 products in the market. Plaintiff reasonably believed that the products were
11 legitimately sold. But, Plaintiff’s belief was wrong. Plaintiff bought the products
12 that were not marketable. Moreover, in making the purchases, Plaintiff relied on
13 the information contained on the face of the label that the product contained “0g
14 Trans Fat.” Plaintiff, as a reasonable consumer, was misled that the SAPPORO
15 ICHIBAN Products do not contain trans fat. Plaintiff suffered economic injury
16 because she purchased the products she otherwise would not have.

17 8. Plaintiff commences this class action and action for public injunctive relief
18 alleging nine state law claims for (1) VIOLATION OF CAL. BUS. & PROF.
19 CODE §17200 et seq. (“UCL”), Unlawful Conduct; (2) VIOLATION OF CAL.
20 BUS. & PROF. CODE §17200 et seq. (“UCL”), Unfair Conduct; (3) VIOLATION
21 OF CAL. BUS. & PROF. CODE §17500 et seq., False Advertising Law (“FAL”);
22 (4) VIOLATION OF CAL. CIVIL CODE §1750 et seq., Consumer Legal
23 Remedies Act (“CLRA”); (5) UNJUST ENRICHMENT/ BREACH OF QUASI
24 CONTRACT; (6) FRAUDULENT MISREPRESENTATION; (7) NEGLIGENT
25 MISREPRESENTATION; (8) BREACH OF EXPRESS WARRANTY UNDER
26 CAL.COM.CODE §2313; (9) BREACH OF IMPLIED WARRANTY OF
27 MERCHANTABILITY UNDER CAL.COM.CODE §2314(1).
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JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under California Code of Civil Procedure section 382.

10. The court has personal jurisdiction over Defendant because Defendant has purposely availed itself of the benefits and privileges of conducting business activities within California and consented to personal jurisdiction by registering to do business in California.

11. A claimant under California's central consumer protection statutes — the Consumers Legal Remedies Act (“CLRA”), Unfair Competition Law (“UCL”) and False Advertising Law (“FAL”) — may seek injunctive relief to correct whatever the defendant did that led to the lawsuit. The California Supreme Court defined “public injunctive relief” as relief whose “primary purpose and effect” is to “prohibit and enjoin conduct injurious to the general public,” and from which any benefit to the plaintiff is “only by virtue of being a member of the public.” A typical example of public injunctive relief would be an injunction against a public communication that the plaintiff already knows is deceptive.

12. This Court has jurisdiction over this action under the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specifically grant jurisdiction to any other court, and the issues are based solely on California statutes and law, including California Code of Civil Procedure, California Civil Code, California Health and Safety Code, and the California Business and Professions Code.

13. The California Superior Court has jurisdiction over Defendants, because they are citizens of California, have sufficient minimum contacts in California, and

1 otherwise intentionally avail themselves to the California market, including
2 establishing their principal place of business and transacting business in California.

3 14. Venue is proper in this Court because Plaintiff purchased the SAPPORO
4 ICHIBAN Products in this county, SANYO is authorized to conduct business in
5 this county, and Defendant has intentionally availed itself of the laws and markets
6 of this county through the promotion, marketing, distribution, and sale of the
7 SAPPORO ICHIBAN Products in this county, and is subject to personal
8 jurisdiction in this county.

9 **PARTIES**

10 15. Plaintiff Sue Shin is a resident of the state of California. Since August of
11 2018, she saw the label of Sapporo Ichiban Miso Ramen sold in grocery stores in
12 Los Angeles, California, including Mitsuwa Marketplace. Plaintiff purchased
13 Sapporo Ichiban Miso Ramen in reliance on the Defendant's misleading labels
14 with the icon of "0g Trans Fat." (Exhibit 1.)

15 16. On information and belief, Defendant SANYO FOODS CORP. OF
16 AMERICA ("SANYO") is a corporation with its principal place of business at
17 11955 Monarch St., Garden Grove, California 92841. Defendant TAKEO SATO
18 is the General Manager of Defendant SANYO. Defendant TAKEO SATO is held
19 personally liable for Defendant SANYO's violation of strict liability provision of
20 the Federal Food, Drug, and Cosmetic Act because Defendant TAKEO SATO has
21 a responsible share in furtherance of the transaction which the statute outlaws. 21
22 USC §§ 331(a) and 333(a).

23 17. The true names and capacities, whether individual, corporate, associate, or
24 otherwise, of defendants sued herein as DOES 1 through 10 are unknown to
25 Plaintiff, who therefore sues the DOE defendants by such fictitious names.
26 Plaintiff will amend this complaint to show true names and capacities when they
27 have been ascertained. Defendants will refer to SANYO FOODS CORP. OF
28 AMERICA and DOES 1 through 10.

1 18. Defendant SANYO deliberately cultivated the misleading statement of “0g
2 Trans Fat” through its marketing of the Defendants’ products.

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4 **FACTUAL BACKGROUND**

5 19. The front label of the Defendant’s noodle products has a prominent
6 statement of “0g Trans Fat.” (Exhibit 1.) In this Complaint, the products are
7 referred to as “SAPPORO ICHIBAN Products” including: “Sapporo Ichiban Hot
8 and Spicy Chicken,” “Sapporo Ichiban Miso Ramen,” “Sapporo Ichiban Shio
9 Ramen,” “Sapporo Ichiban Tonkotsu Ramen,” “Sapporo Ichiban Chow Mein,”
10 “Sapporo Ichiban Shoyu Bowl,” “Sapporo Ichiban Miso Bowl,” “Sapporo Ichiban
11 Shio Bowl.”

12 20. As of November 2023, SANYO sells SAPPORO ICHIBAN Products at
13 amazon.com, walmart.com, ebay.com, vons.com, sanyofoodsamerica.com,
14 target.com, kroger.com, yamibuy.com, worldmarket.com, albertsons.com, and
15 many retailers in the United States.

16 21. Even if the third parties advertise falsely the SAPPORAO ICHIBAN
17 products, Defendant SANYO as well as the third parties violates the following
18 codes:

- 19 • California Health & Safety Code § 110395 (“It is unlawful for any person to
20 manufacture, sell, deliver, hold, or offer for sale any food . . . that is falsely
21 advertised.”);
- 22 • California Health & Safety Code § 110398 (“It is unlawful for any person to
23 advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”);
- 24 • California Health & Safety Code § 110400 (“It is unlawful for any person to
25 receive in commerce any food . . . that is falsely advertised or to deliver or proffer
26 for delivery any such food”)

27 22. Plaintiff commenced her individual action of 22STCV26723 (filed on
28 08/17/2022) alleging four state law claims for (1) VIOLATION OF CAL. BUS. &

1 PROF. CODE §17200 *et seq.* (“UCL”), Unlawful Conduct; (2) VIOLATION OF
2 CAL. BUS. & PROF. CODE §17200 *et seq.* (“UCL”), Unfair Conduct; (3)
3 VIOLATION OF CAL. BUS. & PROF. CODE §17500 *et seq.*, False Advertising
4 Law (“FAL”); (4) VIOLATION OF CAL. CIVIL CODE §1750 *et seq.*, Consumer
5 Legal Remedies Act (“CLRA”).

6 23. In November 2022, Plaintiff learned for the first time that Defendant
7 SANYO knew and should have known by the laboratory tests that the SAPPORO
8 ICHIBAN Products of SANYO contain Trans Fat above 0g per serving. SANYO
9 knew and should have known that the slogan of “0g Trans Fat” is false and
10 misleading. Despite of its knowledge, Defendant SANYO has kept the slogan of
11 “0g Trans Fat” to induce reasonable consumers to believe the SAPPORO
12 ICHIBAN Products do not contain trans fat at all.

13 24. Now in this Complaint, Plaintiff alleges claims for class action and action
14 for public injunctive relief alleging nine state law claims for (1) VIOLATION OF
15 CAL. BUS. & PROF. CODE §17200 *et seq.* (“UCL”), Unlawful Conduct; (2)
16 VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq.* (“UCL”), Unfair
17 Conduct; (3) VIOLATION OF CAL. BUS. & PROF. CODE §17500 *et seq.*, False
18 Advertising Law (“FAL”); (4) VIOLATION OF CAL. CIVIL CODE §1750 *et*
19 *seq.*, Consumer Legal Remedies Act (“CLRA”); (5) UNJUST ENRICHMENT/
20 BREACH OF QUASI CONTRACT; (6) FRAUDULENT
21 MISREPRESENTATION; (7) NEGLIGENT MISREPRESENTATION; (8)
22 BREACH OF EXPRESS WARRANTY UNDER CAL.COM.CODE §2313; (9)
23 BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER
24 CAL.COM.CODE §2314(1).

25 25. Plaintiff alleges that the SAPPORO ICHIBAN Products contain more than
26 0g and less than 0.5g of trans fat.
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1 26. The nutrition label in the “Nutrition Facts” panel contains the statement “0g
2 Trans Fat.” On the front of the packaging, the statement of “0g Trans Fat” is
3 displayed. (Exhibit 1.)

4 27. Defendant misleadingly and unlawfully advertises the SAPPORO ICHIBAN
5 Products as containing “0g Trans Fat” on the front of package when, in fact, the
6 products contain more than 0g but less than 0.5g Trans Fat. It is prohibited by the
7 FDCA to display “0g Trans Fat” on the front. (See *Reid v. Johnson & Johnson*,
8 780 F.3d 952 (9th Cir. 2015); *Hawkins v. Kroger*, 906 F.3d 763 (9th Cir. 2018);
9 *Hawkins v. Kroger Company*, 512 F.Supp.3d 1079 (2021).)

10 28. Even if foods contain an extremely low level or insignificant amount of
11 trans fat, it is prohibited by the FDCA to display “0g Trans Fat” or “No Trans Fat”
12 on the front label. (see *Reid v. Johnson & Johnson*, 780 F.3d 952, 957 (9th Cir.
13 2015))

14 29. “Outside the nutrition label, claimants may make nutrient content claims
15 such as ‘fat free,’ ‘no fat,’ ‘zero fat,’ or ‘negligible source of fat’ on labels where
16 the food contains less than 0.5 grams of fat per serving and certain other conditions
17 are met. *Id.* § 101.62(b). There is a parallel regulation permitting similar claims
18 about ‘saturated fat,’ see *id.* § 101.62(c), but not about ‘trans fat.’ The FDA
19 considered authorizing a ‘trans fat free’ claim but decided not to enact the
20 regulation in light of ‘insufficient scientific information.’ See Food Labeling:
21 Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, Health Claims,
22 68 Fed.Reg. 41,434, 41,464-65 (July 11, 2003).” (*Reid v. Johnson & Johnson*, 780
23 F.3d 952, 960 (9th Cir. 2015))

24 30. “The FDA has provided guidance about whether a ‘No Trans Fat’ nutrient
25 content claim is permissible for products containing small amounts of trans fat. In
26 one of its warning letters, the FDA indicated that ‘No Trans Fat’ is ‘an
27 unauthorized nutrient content claim ... which has not been defined by FDA.’ The
28 agency noted that the letter's recipient could ‘make a truthful statement on a

1 product's label that specifies the amount of trans fat per serving.’ See 21 C.F.R. §
2 101.13(i). In a second letter, the FDA similarly indicated that ‘trans fat-free’ is an
3 ‘**unauthorized nutrient content claim**.’ We defer to the FDA's interpretation of its
4 own rules, even if the product of an informal and non-final process, unless its
5 interpretation is clearly erroneous.” (*Reid v. Johnson & Johnson*, 780 F.3d 952,
6 962 (9th Cir. 2015))

7 31. “It is clear, however, that Benecol’s label prominently states that Benecol
8 contains "No Trans Fat." That statement is not true. Although Benecol may
9 contain **a relatively small amount of trans fat per serving**, the FDA found that the
10 existing scientific evidence was not sufficient for it to approve ‘No Trans Fat’
11 claims. Despite this finding, McNeil made such a claim. Given that the FDA has
12 indicated in warning letters that claims like ‘No Trans Fat’ are not authorized,
13 McNeil cannot shield itself from liability with the FDA's regulations.” (*Reid v.*
14 *Johnson & Johnson*, 780 F.3d 952, 967 (9th Cir. 2015) (Emphasis added.)

15 32. The ingredients of Sapporo Ichiban Miso Ramen contain trans fat. The
16 ingredients are: Enriched wheat flour (wheat flour, niacin, reduced iron, thiamine
17 mononitrate, riboflavin, folic acid), palm oil (TBHQ and citric acid added to
18 protect flavor), Tapioca starch, salt, soy sauce (water, wheat, soybeans, salt,
19 sodium benzoate [preservative]}, guar gum, sodium carbonate, tocopherols,
20 potassium carbonate, Miso powder (contains miso [soybeans, wheat, salt], salt
21 caramel color, agar, monosodium glutamate), salt, monosodium glutamate, sugar,
22 garlic powder, caramel color, dried leek, maltodextrin, spices, tricalcium
23 phosphate, yeast extract, natural ginger flavor, disodium guanylate, disodium
24 inosinate, fermented wheat protein (wheat protein, salt, maltodextrin), natural garlic
25 flavor, citric acid, disodium succinate, paprika (for color), riboflavin, and thiamine
26 mononitrate; Original Spice: Spices (chili pepper, orange peel, sesame seed, poppy
27 seed, sea lettuce, yuzu, Chinese pepper). May contain milk, eggs, fish, crustacean,
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1 tree nuts and peanut products. (Downloaded on August 9, 2022 from
2 <https://sanyofoodsamerica.com/products/sapporo-ichiban-miso-ramen>)

3 33. The top four vegetable oils consumed in the United States are soybean,
4 canola, palm, and corn oil. These are referred to as refined, bleached, deodorized
5 oils – or RBD for short – because this describes the process by which they are
6 manufactured. (Ask the Expert: Concerns about canola oil | The Nutrition Source |
7 Harvard T.H. Chan School of Public Health
8 [https://www.hsph.harvard.edu/nutritionsource/2015/04/13/ask-the-expert-
9 concerns-about-canola-oil/](https://www.hsph.harvard.edu/nutritionsource/2015/04/13/ask-the-expert-concerns-about-canola-oil/))

10 34. Plaintiff does not need to test herself that Sapporo Ichiban Miso Ramen she
11 purchased contained trans fat. (See Journal of Oil Palm Research DOI:
12 <https://doi.org/10.21894/jopr.2021.0029>, Assessment of Trans Fatty Acid Level in
13 Refined Palm-Based Oils and Commercial Vegetable Oils in the Malaysian
14 Market.) Federal Register Vol. 80, No. 116 / Wednesday, June 17, 2015/ 34650
15 provides that: “As explained in the tentative determination (78 FR 67169), ***all***
16 ***refined edible oils*** contain some trans fat as an unintentional byproduct of their
17 manufacturing process; however, unlike other edible oils, trans fats are an integral
18 component of PHOs and are purposely produced in these oils to affect the
19 properties of the oils and the characteristics of the food to which they are added. In
20 addition, the trans fat content of PHOs is significantly greater than the amount in
21 other edible oils. Non-hydrogenated refined oils may contain trans fatty acids as a
22 result of high temperature processing, at levels typically below 2 percent (Ref. 2).
23 Low levels (below 2 percent) may also be found in fully hydrogenated oils (FHOs)
24 due to incomplete hydrogenation (Ref. 3). Small amounts (typically around 3
25 percent) may be found in the fat component of dairy and meat products from
26 ruminant animals (Ref. 4).” (Emphasis added.)

27 35. Small amount of trans fats are naturally present in milk and fat of cow and
28 sheep. Food products made with these ingredients usually only contain low level

1 of trans fats, but not “0g Trans Fat” or “No Trans Fat.” Like most natural seed
2 oils, palm oil contains very little amounts of trans fats (<1 percent). Corn oil has
3 0.25 g trans fat/100g. (Azizian, H., and Kramer, J. K. G., A Rapid Method for the
4 Quantification of Fatty Acids in Fats and Oil with Emphasis on trans Fatty Acids
5 Using Fourier Transform Near Infrared Spectroscopy (FT-NIR), *Lipids*, 2005;
6 40:855-867.; Hénon, G., Kemény, Zs., Recseg, K., Zwobada, F., and Kovari, K.,
7 Deodorization of Vegetable Oils. Part I: Modeling the Geometrical Isomerization
8 of Polyunsaturated Fatty Acids, *J Am Oil Chem Soc* 1999; 76:73-81.; Food
9 Control 44 (2014) 191-197, The analysis of trans fatty acid profiles in deep frying
10 palm oil and chicken fillets with an improved gas chromatography method; *Journal*
11 *of Oil Palm Research* DOI: <https://doi.org/10.21894/jopr.2021.0029>, Assessment
12 of Trans Fatty Acid Level in Refined Palm-Based Oils and Commercial Vegetable
13 Oils in the Malaysian Market.)

14 36. The icons of “0g Trans Fat” on the front label of the SAPPORO ICHIBAN
15 Products are false. The SAPPORO ICHIBAN Products contain trans fats more
16 than 0g. The SAPPORO ICHIBAN Products are misbranded.

17 37. Defendant’s claim of “0g Trans Fat” is not authorized by FDA, Defendant
18 cannot shield itself from liability with the FDA's regulations. (See *Reid v. Johnson*
19 *& Johnson*, 780 F.3d 952, 967 (9th Cir. 2015))

20 38. During the time period from August of 2018 to December of 2019, Plaintiff
21 purchased Sapporo Ichiban Miso Ramen. However, it was not until around
22 December of 2019 when she first learned that the SAPPORO ICHIBAN Products
23 contain more than 0g but less than 0.5g of trans fat.

24 39. Defendant’s representation of “0g Trans Fat” on the front of packages
25 violates both the Federal Food, Drug and Cosmetics Act (“FDCA”), 21 U.S.C.
26 §§348, 342 and the California Sherman Food, Drug, and Cosmetic Law (“Sherman
27 Law”), Health & Safety Code §§ 110100, 110290, 110390, 110395, 110398,
28 110400, 110670, 110680, 110705, 110760, 110765, 110770.

1 40. Defendant’s misrepresentation of “0g Trans Fat” on the packages of
2 SAPPORO ICHIBAN Products violates the FDCA and the Sherman Law.
3 Defendant violates the illegal prong of the UCL by violating 21 U.S.C. §343(a)
4 (food is misbranded when the label contains false and misleading statements) and
5 numerous provisions of the Sherman law related to misbranded food products;
6 Health & Safety Code §§ 110100, 110290, 110390, 110395, 110398, 110400,
7 110670, 110680, 110705, 110760, 110765, 110770.

8 41. The statement of “0g Trans Fat” appears at two different places on the
9 packaging: the “Nutrition Facts” box, or nutrition label, and the front of the
10 package. (EXHIBIT 1.)

11 42. The statement of “0g Trans Fat” listed on the nutrition label is a mandated
12 disclosure when the product contains less than 0.5 grams of Trans Fat. 21 CFR
13 §101.9(c)(2)(ii). While the nutrition label contains the mandated disclosure, the
14 claims are not considered “nutrient content claims” for purposes of FDA
15 regulations. 21 CFR §101.13(c).

16 43. The statement “0g Trans Fat,” made outside the nutrition label, is not
17 preempted because it does not impermissibly conflict with federal law.

18 44. The statement “0g Trans Fat,” made outside the nutrition label, is not
19 allowed by the FDCA and constitutes a misleading advertisement and unfair
20 business practice. Under 21 USC §§ 331(a) and 333(a) and California Health
21 Safety Code § 110395, the SAPPORO ICHIBAN Products are unmarketable. The
22 false or misleading advertising and unfair business practices claim are evaluated
23 from the vantage of a reasonable consumer. A reasonable consumer could likely
24 be deceived by the statement of “0g Trans Fat” on the front of packages. This
25 statement is construed to misleadingly convey to a reasonable consumer that the
26 product does not contain trans fat.

27 45. Plaintiff seeks public injunctive relief that has the primary purpose and
28 effect of prohibiting unlawful acts that threaten future injury to the general public.

1 Class certification is not required for “public” injunctive relief under the UCL,
2 FAL, and CLRA. (see *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).)

3
4 **Plaintiff’s Reliance on Defendant’s Unlawful, False, and Misleading**
5 **Statements in the Front Label of Package of the SAPPORO ICHIBAN**
6 **Products.**

7 46. Plaintiff read and relied on the misleading statement of the SAPPORO
8 ICHIBAN Products: “0g Trans Fat.”

9 47. Based on this reliance, Plaintiff believed the SAPPORO ICHIBAN Products
10 do not contain trans fat.

11 48. Plaintiff would not have purchased the SAPPORO ICHIBAN Products
12 absent the misrepresentation on the front label.

13 49. In fact, Plaintiff bought the SAPPORO ICHIBAN Products which were
14 prohibited from introduction into commerce because they were misbranded.
15 Plaintiff suffered damages in an amount to equal to the amounts she paid for the
16 SAPPORO ICHIBAN Products she purchased.

17 50. Defendant knows that the label of the SAPPORO ICHIBAN Products it
18 markets is material to consumer’s decision to purchase the SAPPORO ICHIBAN
19 Products.

20 51. Defendant deliberately cultivated the misrepresentations through its
21 marketing of the SAPPORO ICHIBAN Products.

22 52. Plaintiff’s claim is essentially that, because defendant’s label on the
23 SAPPORO ICHIBAN Products did not comply with state and/or federal labeling
24 requirements regarding the Nutrient Content Claims, she believed that the
25 SAPPORO ICHIBAN Products did not contain trans fat. She was misled by
26 unlawful misbranding by Defendant and purchased the SAPPORO ICHIBAN
27 Products based thereon. Defendant’s SAPPORO ICHIBAN Products are
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1 misbranded and unmarketable. Plaintiff suffered economic injury because she
2 purchased the products she otherwise would not have.

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4 **DEFENDANT SANYO'S VIOLATIONS OF FEDERAL AND CALIFORNIA**
5 **STATUTES AND REGULATIONS**

6 53. 21 U.S.C. § 343 provides that a “food shall be deemed misbranded” if, *inter*
7 *alia*, it contains a “false or misleading label,” § 343(a); if information required on
8 the label is “not prominently placed” on the label in comparison with other words,
9 § 343(f).

10 54. **NUTRIENT CONTENT CLAIMS AND DISCLOSURE STATEMENT:**

11 The misbranded products are in violation of section 403 of the Federal Food, Drug,
12 and Cosmetic Act (the Act) [21 U.S.C. § 343] and its implementing regulations
13 found in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101).

14 55. Under section 403(r)(1)(A) of the Act, a claim that characterizes the level of
15 a nutrient which is of the type required to be in the labeling of the food must be
16 made in accordance with a regulation authorizing the use of such a claim.

17 56. Characterizing the level of a nutrient on the food labeling of a product
18 without complying with the specific requirements pertaining to nutrient content
19 claims for that nutrient misbrands the product under section 403(r)(1)(A) of the
20 Act.

21 57. A nutrient content claim (NCC) is a claim on a food product that directly or
22 by implication characterizes the level of a nutrient in the food (e.g., "low fat,"
23 "high in oat bran," or "contains 100 calories"). 21 CFR 101.13(b), 21 CFR
24 101.13(a)

25 58. If a NCC is not included in FDA’s regulations, it cannot be used on a label.
26 (21 CFR 101.13(b)) NCCs are specifically defined in 21 CFR 101.13, Subpart D of
27 part 101, and parts 105 and 107. 21 CFR 101.13(b). Defendant’s claim of “0g
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1 Trans Fat” is not an authorized NCC because it is not included in FDA’s
2 regulations.

3 59. A disclosure statement is a statement that calls the consumer’s attention to
4 one or more nutrients in the food that may increase the risk of a disease or health-
5 related condition that is diet related. The disclosure statement is required when a
6 nutrient content claim is made and when a nutrient in that food exceeds certain
7 prescribed levels. The disclosure statement identifies that nutrient (e.g. “See
8 nutrition information for sodium content”). 21 CFR 101.13(h)(1)

9 60. Disqualifying nutrient levels means the levels of total fat, saturated fat,
10 cholesterol, or sodium in a food above which the food will be disqualified from
11 making a health claim. These levels are 13.0 grams (g) of fat, 4.0 g of saturated fat,
12 60 milligrams (mg) of cholesterol, or 480 mg of sodium, per reference amount
13 customarily consumed, per label serving size, and, only for foods with reference
14 amounts customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g.
15 21 CFR 101.14 (a)(4)

16 61. Under 21 CFR 101.13(h), if a food bears a nutrient content claim and also
17 contains more than 13.0 grams of fat, 4.0 grams of saturated fat, 60 milligrams
18 cholesterol, and 480 milligrams of sodium per reference amount customarily
19 consumed (RACC), per labeled serving (or for a food with a RACC of 30 grams or
20 less or 2 tablespoons or less, per 50 grams), then the food must bear a statement
21 disclosing that the nutrient exceeding the specified level is present in the food as
22 follows: “See nutrition information for _____ content” with the blank replaced
23 with the identity of the nutrient exceeding the specified level.

24 62. The disclosure statement must be in legible boldface type, in distinct
25 contrast to other printed or graphic matter, and generally in a type size at least as
26 large as the net quantity of contents declaration. It must also be placed immediately
27 adjacent to the claim. 21 CFR 101.13(h)(4)(i)-(ii)

28

1 63. Sapporo Ichiban Miso Ramen which Plaintiff purchased contains 17 g of
2 total fat per serving, 8 g of saturated fat per serving, and 1,640 mg of sodium per
3 serving, exceeding the disqualifying levels. The front label does not bear a
4 statement: “See nutrient information for total fat, saturated fat, and sodium
5 contents” in violation of 21 CFR 101.13(h). Defendant’s product is misbranded
6 and therefore illegal to sell, lacking economic value, and legally worthless.
7 Plaintiff would not have purchased Sapporo Ichiban Miso Ramen had Defendant
8 included on the front of the package the “See nutrition information for total fat,
9 saturated fat, and sodium contents” disclosure required by the U.S. Food and Drug
10 Administration. See 21 C.F.R. §§101.13(h). Plaintiff relied on the absence of the
11 disclosure in purchasing the product.

12 64. Even if the third parties advertise falsely the SAPPORO ICHIBAN products,
13 Defendant SANYO as well as the third parties violates the following codes:

- 14 • California Health & Safety Code § 110395 (“It is unlawful for any person to
15 manufacture, sell, deliver, hold, or offer for sale any food . . . that is falsely
16 advertised.”);
- 17 • California Health & Safety Code § 110398 (“It is unlawful for any person to
18 advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”);
- 19 • California Health & Safety Code § 110400 (“It is unlawful for any person to
20 receive in commerce any food . . . that is falsely advertised or to deliver or proffer
21 for delivery any such food”)

22 **Non-Purchased Products Are “Substantially Similar.”**

23 65. Defendant’s seven varieties of packaged noodle products: Sapporo Ichiban
24 Hot and Spicy Chicken, Sapporo Ichiban Shio Ramen, Sapporo Ichiban Tonkotsu
25 Ramen, Sapporo Ichiban Chow Mein, Sapporo Ichiban Shoyu Bowl, Sapporo
26 Ichiban Miso Bowl, and Sapporo Ichiban Shio Bowl are substantially similar to the
27 purchased product of Sapporo Ichiban Miso Ramen for which Plaintiff has
28

1 standing. The eight products including the purchased product are of the same kind
 2 of noodle ramen. They are comprised of largely the same ingredients. Each of the
 3 eight products bears the same unauthorized mislabeling, “0g Trans Fat.” Each of
 4 the eight products contains refined palm oil, and milk. Each violates 21 CFR
 5 101.13(h), without the disclosure statement. Total fat, saturated fat, and/or sodium
 6 of each of the eight products exceed the disqualifying levels.

7 66. The eight products are substantially similar. Accordingly, Plaintiff has
 8 standing to bring claims as to unpurchased products which the general public have
 9 purchased. Plaintiff brings this lawsuit on behalf of the purchasers of the seven
 10 products. (See *Anderson v. Jamba Juice Company*, 888 F.Supp.2d 1000, 1006
 11 (2012).)

Sapporo Ichiban	Total Fat, g **	Saturated Fat, g **	Sodium, mg **
Hot and Spicy Chicken	21	10	1,290
Miso Ramen	19	9	1,800
Shio Ramen	18	8	2,140
Tonkotsu Ramen	20	9	1,530
Chow Mein	21	10	870
Shoyu Bowl	12*	6	2,170
Miso Bowl	12*	6	2,100
Shio Bowl	13	6	2,210

21 * Total Fat does not exceed the disqualifying level of 13g per serving.

22 ** per serving.

23 67. Each of the eight products contains refined palm oil. Each of the products
 24 unquestionably contains trans fat. (See Federal Register Vol. 80, No. 116 /
 25 Wednesday, June 17, 2015/ 34650 [“As explained in the tentative determination
 26 (78 FR 67169), ***all refined edible oils contain some trans fat.***].) Therefore,
 27 Plaintiff does not demand Defendant to substantiate that each of the eight products
 28 does not contain trans fat. California law does not provide for a private cause of

1 action to enforce the substantiation requirements of California's unfair competition
2 and consumer protection laws. (See *Kwan v. Sanmedica International*, 854 F.3d
3 1088 (2017).) With respect to the term “zero,” *Lee v. Conagra Brands, Inc.* 958 F.
4 3d 70, 78 (1st Circuit, 2020) provides that:

5
6 “Lee has alleged that Conagra's representation that the product was
7 “100% Natural” suggested to her that Wesson Oil was GMO-free, and
8 that she was thereby deceived. In its reference to the draft guidance
9 mentioned above, Conagra skips relevant context; the FDA also
suggested that labels indicating GMOs’ absence might be misleading:

10 [T]he term “[GMO] free” may be difficult to use without
11 being false or misleading. **If it implies “zero,” it may be**
12 **very difficult to substantiate. The adventitious presence**
13 **of bioengineered material may make a “zero” claim**
14 **inaccurate.** Further, these terms would be misleading if
15 they imply that the food is superior because the food is
16 not bioengineered. Draft Guidance for Industry:
17 Voluntary Labeling Indicating Whether Foods Have or
Have Not Been Developed Using Bioengineering;
Availability, 66 Fed. Reg. 4,839, 4,840 (Jan. 18, 2001).”
(Emphasis added.)

18 68. The misbranded products are in violation of section 403 of the Federal Food,
19 Drug, and Cosmetic Act (the Act) [21 U.S.C. § 343] and its implementing
20 regulations found in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101).

21 69. 21 U.S.C. 331(a) prohibits the introduction or delivery for introduction into
22 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is
23 adulterated or misbranded.

24 70. No state or political subdivision of a State may directly or indirectly
25 establish under any authority or continue in effect as to any food in interstate
26 commerce: “any requirement respecting any claim of the type described in section
27
28

1 343(r)(1) of this title, made in the label or labeling of food *that is not identical to*
2 the requirement of section 343(r) of this title” (21 U.S.C. § 343-1(a) (5))

3 71. By manufacturing, advertising, distributing, and selling misbranded
4 products, the SAPPORO ICHIBAN Products, Defendant SANYO has violated
5 California Health & Safety Code §§ 110100, 110290, 110390, 110395, 110398,
6 110400, 110670, 110680, 110705, 110760, 110765, 110770.

7 72. In addition, Defendant has violated the standards set by 21 U.S.C. § 343 and
8 its implementing regulations found in Title 21, Code of Federal Regulations, Part
9 101 (21 CFR 101), all of which have been adopted by reference into the Sherman
10 Law, California Health and Safety Code.

11 73. California’s Sherman Laws adopt the federal labeling requirements as the
12 food labeling requirements of the state. Cal. Health & Safety Code § 110100 (“All
13 food labeling regulations and any amendments to those regulations adopted
14 pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that
15 date shall be the food regulations of this state.”): Any food is misbranded if its
16 labeling is false or misleading in any particular, Cal. Health & Safety Code §
17 110660.

18 74. California Health and Safety Code § 110390 states that: “It is unlawful for
19 any person to disseminate any false advertisement or any food An
20 advertisement is false if it is false or misleading in any particular.”

21 75. California Health and Safety Code § 110395 states that: “It is unlawful for
22 any person to manufacture, sell, deliver, hold, or offer for sale any food that is
23 falsely advertised.”

24 76. California Health and Safety Code § 110398 states that: “It is unlawful for
25 any person to advertise any food, drug, device, or cosmetic that is adulterated or
26 misbranded.”

27 **CLASS ACTION ALLEGATIONS**

1 77. Plaintiff seeks certification of the following Classes (or alternative Classes
2 or Subclasses), for the time period from November 2019 until the date notice is
3 disseminated to the class (“Class Period”), as defined as follows:
4

5 **The Nationwide Class is defined as follows:**

6 All U.S. citizens who purchased the SAPPORO ICHIBAN Product in their
7 respective state of citizenship for personal and household use and not for resale
8 during the Class Period.
9

10
11 **The California sub-class is defined as follows:**

12 All California citizens who purchased the SAPPORO ICHIBAN Product in
13 California for personal and household use and not for resale during the Class
14 Period.
15

16 78. The Class and Subclass described in this complaint will jointly be referred to
17 as the “Class” or the “Classes” unless otherwise stated, and the proposed members
18 of the Class and Subclass will jointly be referred to as “Class Members.”

19 79. Plaintiff and the Class reserve their right to amend or modify the Class
20 definitions with greater specificity or further division into subclasses or limitation
21 to particular issues as discovery and the orders of this Court warrant.

22 80. Excluded from the Class are governmental entities, Defendant, any entity in
23 which Defendant has a controlling interest, Defendant’s employees, officers,
24 directors, legal representatives, heirs, successors and wholly or partly owned
25 subsidiaries or affiliated companies, including all parent companies, and their
26 employees; and the judicial officers, their immediate family members and court
27 staff assigned to this case.
28

1 81. The members in the proposed Class are so numerous that individual joinder
2 of all members is impracticable. Due to the nature of the trade and commerce
3 involved, however, Plaintiff believe the total number of Class members is at least
4 in the hundreds and members of the Classes are numerous. While the exact
5 number and identities of the Class members are unknown at this time, such
6 information can be ascertained through appropriate investigation and discovery.
7 The disposition of the claims of the Class members in a single class action will
8 provide substantial benefits to all parties and to the Court.

9 82. Defendant has acted or refused to act on grounds generally applicable to the
10 Classes, thereby making final injunctive relief or corresponding declaratory relief
11 and damages as to the Product appropriate with respect to the Classes as a whole.
12 In particular, Defendant has failed to disclose the true nature of the Product being
13 marketed as described herein.

14 83. There is a well-defined community of interest in the questions of law and
15 fact involved, affecting the Plaintiff and the Classes and these common questions
16 of fact and law include, but are not limited to, the following:

- 17 a. Whether Defendant engaged, and continues to engage, in unfair or deceptive
18 acts and practices in connection with the marketing, advertising, and sales of the
19 SAPPORO ICHIBAN Products;
- 20 b. Whether Defendant violated other consumer protection statutes, false
21 advertising statutes, or state deceptive business practices statutes;
- 22 c. Whether Defendant's conduct violates public policy; whether Defendant's
23 conduct violates state and federal food statutes or regulations;
- 24 d. Whether the Product is misbranded;
- 25 e. Whether the relief requested are common for the proper amount of
26 restitution, and punitive damages; the proper injunctive relief, including a
27 corrective advertising campaign; and the proper amount of attorneys' fees and
28 costs.

1 84. These common questions of law and fact predominate over questions that
2 affect only individual Class Members.

3 85. Plaintiff's claims are typical of Class Members' claims because they are
4 based on the same underlying facts, events, and circumstances relating to
5 Defendant's conduct. Specifically, all Class Members, including Plaintiff, were
6 subjected to the same misleading and deceptive conduct when they purchased the
7 SAPPORO ICHIBAN Product, and suffered economic injury because the Product
8 was and still is misrepresented. Absent Defendant's business practice of
9 deceptively and unlawfully labeling the SAPPORO ICHIBAN Product, Plaintiff
10 and Class Members would not have purchased the SAPPORO ICHIBAN Product.

11 86. Plaintiff will fairly and adequately represent and protect the interests of the
12 Classes, have no interests incompatible with the interests of the Classes, and have
13 retained counsel with substantial experience in handling complex class action
14 litigation in general and scientific claims specifically, including for foods and
15 dietary supplements. Plaintiff and her counsel are committed to vigorously
16 prosecuting this action on behalf of the Classes and have the financial resources to
17 do so.

18 87. Plaintiff and the members of the Classes suffered, and will continue to suffer
19 harm as a result of the Defendant's unlawful and wrongful conduct. A class action
20 is superior to other available methods for the fair and efficient adjudication of the
21 present controversy. Individual joinder of all members of the Classes is
22 impracticable. Even if individual Class member had the resources to pursue
23 individual litigation, it would be unduly burdensome to the courts in which the
24 individual litigation would proceed. Individual litigation magnifies the delay and
25 expense to all parties in the court system of resolving the controversies engendered
26 by Defendant's common course of conduct. The class action device allows a
27 single court to provide the benefits of unitary adjudication, judicial economy, and
28 the fair and efficient handling of all Class members' claims in a single forum. The

1 conduct of this action as a class action conserves the resources of the parties and of
2 the judicial system and protects the rights of the class members. Furthermore, for
3 many, if not most, a class action is the only feasible mechanism that allows an
4 opportunity for legal redress and justice.

5 88. Adjudication of individual Class member’s claims with respect to Defendant
6 would, as a practical matter, be dispositive of the interests of other members not
7 parties to the adjudication, and could substantially impair or impede the ability of
8 other class members to protect their interests.

9 89. Defendant has acted on grounds applicable to the Class, thereby making
10 appropriate final public injunctive and declaratory relief concerning the Class as a
11 whole.

12 90. As a result of the foregoing, class treatment is appropriate under CCP 382.

13
14 **First Cause of Action**

15 **Violation of California’s Unfair Competition Law, California Business and**
16 **Professions Code § 17200 et seq. Unlawful Conduct Prong**

17 **(By Plaintiff Sue Shin, on behalf of herself, all other similarly situated, and the**
18 **general public against Defendant SANYO and Defendant TAKEO SATO)**

19
20 91. Plaintiff re-alleges and incorporates by reference the above allegations
21 contained in the paragraphs above as if fully set forth herein.

22 92. **FIRST UNLAWFUL BUSINESS ACT:** Defendant violated Cal. Bus. &
23 Prof. Code §17200’s prohibition against engaging in an “*unlawful*” business act or
24 practice by selling the SAPPORO ICHIBAN Products. The SAPPORO ICHIBAN
25 Products make the claim of “0g Trans Fat” on their label. These claims are
26 prohibited to use for SAPPORO ICHIBAN Products. The products are
27 misbranded. It is unlawful for Defendants to sell the misbranded products in the
28 market. 21 USC §§ 331(a) and 333(a). Defendants violated California Health &

1 Safety Code §§ 110100, 110290, 110390, 110395, 110398, 110400, 110670,
 2 110680, 110705, 110760, 110765, 110770. *Bruton v. Gerber Prods. Co.*, 703 Fed.
 3 App'x 468, 471-72 (9th Cir. 2017) held “[t]he best reading of California precedent
 4 is that the **reasonable consumer test** is a requirement under the UCL’s unlawful
 5 prong only when it is an element of the predicate violation.” (See *Hadley v.*
 6 *Kellogg Sales Co.*, 273 F.Supp.3d 1052 (2017); *Hadley v. Kellogg Sales Co.*, Case
 7 No. 16-CV-04955-LHK, 2019 WL 3804661, at *23 (N.D. Cal. Aug. 13, 2019);
 8 *Silver v. BA Sports Nutrition, LLC*, Case No. 20-cv-00633-SI, 2020 WL 2992873,
 9 at *4 (N.D. Cal. June 4, 2020).) **The reasonable consumer test does not apply to**
 10 **this claim under the unlawful prong of the UCL** because the reasonable consumer
 11 test is not an element of a violation of 21 C.F.R. §§101.62(a)(2) or 101.13(i)(3).
 12 (see *Hawkins v. Kroger Company*, 512 F.Supp.3d 1079 (2021) (United States
 13 District Court, S.D. California. January 11, 2021)

14 An actual reliance requirement does not apply to this UCL action that is not
 15 based upon a fraud theory. Defendant’s violation of 21 C.F.R. §§101.62(a)(2) or
 16 101.13(i)(3) caused in the loss of money. (*Medraza v. Honda of North Hollywood*,
 17 205 Cal.App.4th 1, 12 (2012).)

18 93. **SECOND UNLAWFUL BUSINESS ACT:**

19 Defendant’s seven varieties of packaged noodle products: Sapporo Ichiban Hot and
 20 Spicy Chicken, Sapporo Ichiban Shio Ramen, Sapporo Ichiban Tonkotsu Ramen,
 21 Sapporo Ichiban Chow Mein, Sapporo Ichiban Shoyu Bowl, Sapporo Ichiban Miso
 22 Bowl, and Sapporo Ichiban Shio Bowl are substantially similar to the purchased
 23 product of Sapporo Ichiban Miso Ramen for which Plaintiff has standing. Each of
 24 the eight products contains refined palm oil, and milk. Each violates 21 CFR
 25 101.13(h), without the disclosure statement. Total fat, saturated fat, and/or sodium
 of each of the eight products exceed the disqualifying levels.

26 *Bruton v. Gerber Prods. Co.*, 703 Fed. App'x 468, 471-72 (9th Cir. 2017) held
 27 “[t]he best reading of California precedent is that the **reasonable consumer test** is a
 28

1 requirement under the UCL’s unlawful prong only when it is an element of the
2 predicate violation.” (See *Hadley v. Kellogg Sales Co.*, 273 F.Supp.3d 1052
3 (2017); *Hadley v. Kellogg Sales Co.*, Case No. 16-CV-04955-LHK, 2019 WL
4 3804661, at *23 (N.D. Cal. Aug. 13, 2019); *Silver v. BA Sports Nutrition, LLC*,
5 Case No. 20-cv-00633-SI, 2020 WL 2992873, at *4 (N.D. Cal. June 4, 2020).)
6 **The reasonable consumer test does not apply to this claim under the unlawful**
7 **prong of the UCL** because the reasonable consumer test is not an element of a
8 violation of 21 CFR 101.13(h) and California Health & Safety Code §§ 110100,
9 110290, 110390, 110395, 110398, 110400, 110670, 110680, 110705, 110760,
10 110765, 110770. (see *Hawkins v. Kroger Company*, 512 F.Supp.3d 1079 (2021)
11 (United States District Court, S.D. California. January 11, 2021)

12 An actual reliance requirement does not apply to this UCL action that is not
13 based upon a fraud theory. Defendant’s violation of 21 CFR 101.13(h) caused in
14 the loss of money. (*Medraza v. Honda of North Hollywood*, 205 Cal.App.4th 1, 12
15 (2012).) Each of the eight products violates 21 CFR 101.13(h), without the
16 disclosure statement. Total fat, saturated fat, and/or sodium of each of the eight
17 products exceed the disqualifying levels. Plaintiff would not have purchased
18 Sapporo Ichiban Miso Ramen had Defendant included on the front of the package
19 the “See nutrition information for total fat, saturated fat, and sodium contents”
20 disclosure required by the U.S. Food and Drug Administration. See 21 C.F.R.
21 §§101.13(h). (*Bishop v. 7-Eleven, Inc.*, 651 Fed.Appx. 657 (9th Cir. 2016).)
22 Alternatively speaking, Plaintiff relied on the absence of the disclosure in
23 purchasing the product.

24 94. **THIRD UNLAWFUL BUSINESS ACT:** Defendant misleadingly
25 advertises the SAPPORO ICHIBAN Products in their label. Defendant violated
26 Cal. Bus. & Prof. Code §17200’s prohibition against engaging in an “unlawful”
27 business act or practice by, *inter alia*, making the material misrepresentations
28 regarding the SAPPORO ICHIBAN Products under 1750 *et seq.* (the CLRA) and

1 Cal. Bus. & Prof. Code §17500 (FAL). Reasonable consumers are misled that the
2 SAPPORO ICHIBAN Products do not contain trans fat because the products claim
3 “0g Trans Fat.” Reasonable consumers do not believe that the products contain
4 “some” trans fat. (*Hawkins v. Kroger Company*, 512 F.Supp.3d 1079, 1090
5 (2021).)

6 95. Plaintiff also seeks public injunctive relief that has the primary purpose and
7 effect of prohibiting unlawful acts that threaten future injury to the general public.
8 Class certification is not required for “public” injunctive relief under the UCL,
9 FAL, and CLRA. (see *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).) Plaintiff
10 requests this Court to enter a judgment against Defendant that: orders Defendant to
11 immediately cease its wrongful conduct as set forth above; enjoins Defendant from
12 continuing to falsely market and advertise, conceal material information, and
13 conduct business via the unlawful and unfair business acts and practices
14 complained of herein; orders Defendant to engage in a corrective notice campaign.
15 Plaintiff seeks restitution under the UCL.

16 **Second Cause of Action**

17 **Violation of California’s Unfair Competition Law, California Business and**
18 **Professions Code § 17200 et seq. Unfair Conduct Prong**
19 **(By Plaintiff Sue Shin, on behalf of herself, all other similarly situated, and the**
20 **general public against Defendant SANYO and Defendant TAKEO SATO)**

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

23 97. The foregoing conduct also constitutes “*unfair*” business acts and practices
24 within the meaning of Cal. Bus. & Prof. Code §17200. Defendant’s practices
25 offend public policy and are unethical, oppressive, unscrupulous and violate the
26 laws stated. Defendant’s conduct caused and continues to cause substantial injury
27 to Plaintiff.
28

1 98. Defendant’s labeling and advertising of the SAPPORO ICHIBAN Products
2 are likely to mislead reasonable consumers that the products do not contain trans
3 fat.

4 99. Defendant either knew or reasonably should have known that the claims on
5 the labels of the SAPPORO ICHIBAN Products were likely to mislead reasonable
6 consumers.

7 100. In accordance with California Business & Professions Code section 17203,
8 Plaintiff seeks an order enjoining Defendant from continuing to sell the SAPPORO
9 ICHIBAN Products through unlawful, and unfair acts and practices and to
10 commence a corrective advertising and labeling campaign.

11 101. Plaintiff also seeks public injunctive relief that has the primary purpose and
12 effect of prohibiting unlawful acts that threaten future injury to the general public.
13 Class certification is not required for “public” injunctive relief under the UCL,
14 FAL, and CLRA. (see *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).) Plaintiff
15 requests this Court to enter a judgment against Defendant that: orders Defendant to
16 immediately cease its wrongful conduct as set forth above; enjoins Defendant from
17 continuing to falsely market and advertise, conceal material information, and
18 conduct business via the unlawful and unfair business acts and practices
19 complained of herein; orders Defendant to engage in a corrective notice campaign.

20
21 **Third Cause of Action**

22 **Violation of California’s False and Misleading Advertising Law, California**

23 **Business and Professions Code § 17500 et seq.**

24 **(By Plaintiff Sue Shin, on behalf of herself, all other similarly situated, and the**
25 **general public against Defendant SANYO and Defendant TAKEO SATO)**

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

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

5 104. Defendant disseminated, through common advertising, misleading
6 statements about the SAPPORO ICHIBAN Products and Defendant knew or
7 should have known that the SAPPORO ICHIBAN Products' labels did not
8 conform to the advertisements or representations regarding the SAPPORO
9 ICHIBAN Products. Plaintiff saw and relied upon the advertisements and
10 misrepresentations.

11 105. As alleged herein, Defendant, in its labeling and advertising of the
12 SAPPORO ICHIBAN Products, makes misleading advertising claim, as it mislead
13 consumers that the SAPPORO ICHIBAN Products do not contain trans fat.

14 106. In reliance on these misleading advertising claims, Plaintiff purchased and
15 used the SAPPORO ICHIBAN Products without the knowledge that the product
16 contains trans fat.

17 107. Defendant knew or should have known that the labeling and marketing of
18 the SAPPORO ICHIBAN Products was likely to mislead consumers.

19 108. Plaintiff also seeks public injunctive relief that has the primary purpose and
20 effect of prohibiting unlawful acts that threaten future injury to the general public.
21 Class certification is not required for "public" injunctive relief under the UCL,
22 FAL, and CLRA. (see *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).) Plaintiff
23 requests this Court to enter a judgment against Defendant that: orders Defendant to
24 immediately cease its wrongful conduct as set forth above; enjoins Defendant from
25 continuing to falsely market and advertise, conceal material information, and
26 conduct business via the unlawful and unfair business acts and practices
27 complained of herein; orders Defendant to engage in a corrective notice campaign.
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Fourth Cause of Action
Violation of California’s Consumers Legal Remedies Act, California Civil
Code § 1750 et seq.
(By Plaintiff Sue Shin, on behalf of herself, all other similarly situated, and the
general public against Defendant SANYO and Defendant TAKEO SATO)

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

110. This cause of action arises under the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §1750, *et seq.* Plaintiff is a consumer as defined by Cal. Civ. Code §1761(d). Defendant’s SAPPORO ICHIBAN Products constitutes “product” as defined by Cal. Civ. Code §1761(a) and (b). At all times relevant hereto, Defendant constituted “persons” as that term is defined in Cal. Civ. Code §1761(c), and Plaintiff’s purchases of the SAPPORO ICHIBAN Products constitute “transactions,” as that term is defined in Cal. Civ. Code §1761(e).

111. Defendant violated and continues to violate the CLRA by engaging in the following deceptive practices specifically proscribed by Cal. Civ. Code §1770(a), in transactions with Plaintiff that were intended to result or which resulted in the sale of the SAPPORO ICHIBAN Products to consumers:

- (i) In violation of Cal. Civ. Code §1770(a)(5), Defendant’s acts and practices constitute misrepresentations that the SAPPORO ICHIBAN Products in question have characteristics, benefits or uses which they do not have;
- (ii) In violation of Cal. Civ. Code §1770(a)(7), Defendant misrepresented that the SAPPORO ICHIBAN Products are of particular standard, quality and/or grade, when they are of another; and
- (iii) In violation of Cal. Civ. Code §1770(a)(9), Defendant advertised the SAPPORO ICHIBAN Products with the intent not to sell them as advertised or represented.

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

4 112. Defendant’s representations are misleading and in violation of the CLRA.

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

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

10 (2) requiring Defendant to provide public notice of the true nature of the
11 SAPPORO ICHIBAN Products; and

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

13 114. Plaintiff also seeks public injunctive relief that has the primary purpose and
14 effect of prohibiting unlawful acts that threaten future injury to the general public.
15 Class certification is not required for “public” injunctive relief under the UCL,
16 FAL, and CLRA. (see *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017).)

17 115. Plaintiff is entitled to recover attorneys’ fees, and costs. Plaintiff seeks
18 restitution under the CLRA. Plaintiff is a senior citizen over the age of 65. The
19 CLRA allows an award of up to \$5,000 in damages to be tacked on by the court.

20
21 **Fifth Cause of Action: Unjust Enrichment**

22 **(By Plaintiff Sue Shin, on behalf of herself, all others similarly situated, and**
23 **the general public against Defendant SANYO and Defendant TAKEO SATO)**

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

26 117. Plaintiff brings this claim for unjust enrichment on behalf of the Class.
27
28

1 118. As a direct and proximate result of Defendant's acts set forth herein,
2 Defendant has been unjustly enriched.

3 119. As a result of Defendant's misleading labeling, advertising, marketing, and
4 sales of the SAPPORO ICHIBAN Product, Defendant unjustly enriched itself at
5 the expense of Plaintiff and the Class members, through Plaintiff's and the Class
6 members' payment of the purchase price for the products.

7 120. Under the circumstances, it would be against equity and good conscience to
8 permit Defendant to retain the ill-gotten benefits it received from Plaintiff and the
9 Class members, in light of the fact that the SAPPORO ICHIBAN Product that
10 Plaintiff and the Class members purchased were not what Defendant purported
11 them to be. Thus, it would be unjust or inequitable for Defendant to retain the
12 benefit without restitution to Plaintiff and the Class members for the monies paid
13 to Defendant for the SAPPORO ICHIBAN Product.

14 121. Plaintiff and the Class members seek restitution of, disgorgement of, and/or
15 the imposition of a constructive trust upon all profits, benefits, and compensation
16 Defendant obtained from its improper conduct alleged herein.

17 122. Plaintiff contends that the deception is the false and misleading label, and
18 the injury is the purchase price.

19 123. In November 2022, Plaintiff learned for the first time that Defendant
20 SANYO knew and should have known that the SAPPORO ICHIBAN Products of
21 SANYO contain Trans Fat above 0g per serving. SANYO knew and should have
22 known that the slogan of "0g Trans Fat" is false and misleading. Despite of its
23 knowledge, Defendant SANYO has kept the slogan of "0g Trans Fat" to induce
24 reasonable consumers to believe the SAPPORO ICHIBAN Products do not contain
25 trans fat at all.

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Sixth Cause of Action for Fraudulent Misrepresentation
(By Plaintiff Sue Shin, on behalf of herself, all others similarly situated, and
the general public against Defendant SANYO and Defendant TAKEO SATO)

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

125. Defendant made representations to Plaintiff and the Classes in advertising the SAPPORO ICHIBAN Products, with the slogan of “0g Trans Fat. Defendant made representations in their advertisements.

126. As heretofore alleged, the representations made by Defendant were in fact false.

127. When Defendant made these misrepresentations, it knew them to be false and made these misrepresentations with the intention to deceive and defraud Plaintiff and members of the Classes and to induce Plaintiff and members of the Classes to act in reliance on these misrepresentations in the manner heretofore and hereafter alleged, or with the expectation that Plaintiff and members of the Classes would so act. Plaintiff and members of the Classes, at the time these representations were made by Defendant, were ignorant of the falsity of Defendant’ representations and believed them to be true. In reliance on these representations, Plaintiff and members of the Classes were induced to and did purchase the SAPPORO ICHIBAN Products. Plaintiff’s reliance on Defendant’ representations was reasonable in light of the knowledge and experience of Plaintiff and members of the Classes.

128. In November 2022, Plaintiff learned for the first time that Defendant SANYO knew and should have known that the SAPPORO ICHIBAN Products of SANYO contain Trans Fat above 0g per serving. SANYO knew and should have known that the slogan of “0g Trans Fat” is false and misleading. Despite of its knowledge, Defendant SANYO has kept the slogan of “0g Trans Fat” to induce

1 reasonable consumers to believe the SAPPORO ICHIBAN Products do not contain
2 trans fat at all.

3 129. As a proximate result of the fraudulent conduct of Defendant in this
4 complaint, Plaintiff and members of the Classes were induced to spend money in
5 the purchase of the SAPPORO ICHIBAN Products without knowing the true
6 nature of the SAPPORO ICHIBAN Products.

7 130. As a consequence of Defendant's fraudulent misrepresentations, Plaintiff
8 and the members of the Classes have been injured and are entitled to damages.

9 131. The conduct of Defendant was an intentional misrepresentation, deceit, or
10 concealment of a material fact known to Defendant with the intention on the part
11 of Defendant of thereby depriving Plaintiff and members of the Classes of property
12 or legal rights causing injury. Defendant's conduct constitutes despicable conduct
13 which was carried on by Defendant with a willful and conscious disregard of the
14 rights of Plaintiff and members of the Classes, so as to justify an award of
15 exemplary or punitive damages.

16 132. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting
17 these actions against Defendant under California's Code of Civil Procedure §
18 1021.5 and other applicable law in part because:

- 19 (a) a successful outcome in these actions will result in the enforcement of
20 important rights affecting the public interest by maintaining the integrity of
21 representations made concerning the SAPPORO ICHIBAN Products;
22 (b) these actions will result in a significant benefit to the general public by bringing
23 to a halt unlawful, unfair, deceptive, and misleading activity and by causing the
24 return of ill-gotten gains obtained by Defendant;
25 (c) unless these actions are prosecuted, members of the general public will not
26 recover those monies, and many consumers would not be aware that they were
27 victimized by Defendant's wrongful acts and practices;
28

1 (d) unless these actions are prosecuted, Defendant will continue to mislead
2 consumers about the true nature of the SAPPORO ICHIBAN Products; and
3 (e) an award of attorneys' fees and costs is necessary for the prosecution of these
4 actions and will result in a benefit to each members of the Classes, and consumers
5 in general.

6
7 **Seventh Cause of Action for Negligent Misrepresentation**

8 **(By Plaintiff Sue Shin, on behalf of herself, all others similarly situated, and**
9 **the general public against Defendant SANYO and Defendant TAKEO SATO)**

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

13 134. As heretofore alleged, Defendant made representations to Plaintiff and the
14 Classes in advertising the SAPPORO ICHIBAN Products with the slogan of "0g
15 Trans Fat.

16 135. As heretofore alleged, the representation made by Defendant was in fact
17 false and misleading.

18 136. When Defendant made these misrepresentations, Defendant had no
19 reasonable ground for believing them to be true as set forth herein.

20 137. Defendant made these representations with the intention of inducing Plaintiff
21 and members of the Classes to act in reliance on these representations in the
22 manner hereafter alleged, or with the expectation that they would so act.

23 138. Plaintiff and members of the Classes, at the time these representations were
24 made by Defendant, were ignorant of the falsity of Defendant' representations and
25 believed them to be true. In reliance on these representations, Plaintiff and
26 members of the Classes were induced to and did purchase the SAPPORO
27 ICHIBAN Products. Plaintiff's reliance on Defendant' representations was
28

1 reasonable in light of the knowledge and experience of Plaintiff and members of
2 the Classes.

3 139. As a proximate result of the fraudulent conduct of Defendant, Plaintiff and
4 members of the Classes were induced to spend money in the purchase of the
5 SAPPORO ICHIBAN Products without knowing the true nature the SAPPORO
6 ICHIBAN Products.

7 140. As a consequence of Defendant's negligent misrepresentations, Plaintiff and
8 the members of the Classes have been injured and are entitled to damages.

9 141. In November 2022, Plaintiff learned for the first time that Defendant
10 SANYO knew and should have known that the SAPPORO ICHIBAN Products of
11 SANYO contain Trans Fat above 0g per serving. SANYO knew and should have
12 known that the slogan of "0g Trans Fat" is false and misleading. Despite of its
13 knowledge, Defendant SANYO has kept the slogan of "0g Trans Fat" to induce
14 reasonable consumers to believe the SAPPORO ICHIBAN Products do not contain
15 trans fat at all.

16
17 **Eighth Cause of Action: Breach of Express Warranty**

18 **(CAL.COM.CODE § 2313.)**

19 **(By Plaintiff Sue Shin, on behalf of herself, all others similarly situated, and**
20 **the general public against Defendant SANYO and Defendant TAKEO SATO)**

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

23 143. Defendant SAPPORO ICHIBAN made an affirmation of fact or promise or
24 provided a description of its SAPPORO ICHIBAN Products by including the
25 slogan of "0g Trans Fat."

26 144. The promise or description of "0g Trans Fat" formed part of the basis of the
27 bargain.
28

1 145. Defendant SAPPORO ICHIBAN sold the SAPPORO ICHIBAN Products to
2 Plaintiff and the Class Members.

3 146. Defendant SAPPORO ICHIBAN breached the express warranty.

4 147. Plaintiff and the Class members did not receive the SAPPORO ICHIBAN
5 Products as warranted by defendant SAPPORO ICHIBAN.

6 148. The breach caused economic injury to Plaintiff and the Class members in an
7 amount to be determined at trial.

8 149. In November 2022, Plaintiff learned for the first time that Defendant
9 SANYO knew and should have known that the SAPPORO ICHIBAN Products of
10 SANYO contain Trans Fat above 0g per serving. SANYO knew and should have
11 known that the slogan of “0g Trans Fat” is false and misleading. Despite of its
12 knowledge, Defendant SANYO has kept the slogan of “0g Trans Fat” to induce
13 reasonable consumers to believe the SAPPORO ICHIBAN Products do not contain
14 trans fat at all.

15 **Ninth Cause of Action**

16 **Breach of Implied Warranty of Merchantability**

17 **Under Cal. Com. Code 2314(1)**

18 **(By Plaintiff Sue Shin, on behalf of herself, all others similarly situated, and**
19 **the general public against Defendant SANYO and Defendant TAKEO SATO)**

20 150. Plaintiff incorporates by reference all preceding paragraphs.

21 151. The Product was manufactured, labeled and sold by defendant SAPPORO
22 ICHIBAN or at its express directions and instructions, and warranted to plaintiff
23 and class members that they possessed substantive, quality, compositional and/or
24 environmental which they did not.

25 152. Defendant had a duty to disclose and/or provide non-deceptive descriptions
26 and marketing of the Product.
27
28

1 153. The SAPPORO ICHIBAN Product did not conform to its affirmations of
2 fact and promises due to Defendant's actions and were not merchantable.

3 154. Plaintiff and class members would not have purchased the Product or paid as
4 much if the true facts had been known, suffering damages.

5 155. In November 2022, Plaintiff learned for the first time that Defendant
6 SANYO knew and should have known that the SAPPORO ICHIBAN Products of
7 SANYO contain Trans Fat above 0g per serving. SANYO knew and should have
8 known that the slogan of "0g Trans Fat" is false and misleading. Despite of its
9 knowledge, Defendant SANYO has kept the slogan of "0g Trans Fat" to induce
10 reasonable consumers to believe the SAPPORO ICHIBAN Products do not contain
11 trans fat at all.

12
13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and
15 the general public, pray for judgment against Defendant SANYO and Defendant
16 TAKEO SATO as to each and every cause of action, including:

- 17 a. An order certifying this action as a class action;
18 b. An order maintaining this action as a class action and/or an order
19 maintaining a particular issue class action;
20 c. An order appointing Plaintiff as the class representative and the Law
21 Office of Juan Hong as Class Counsel;
22 d. An order compelling Defendants to conduct a corrective advertising
23 campaign;
24 e. An order compelling Defendants to destroy all misleading and deceptive
25 advertising materials and product labels, and to recall all offending SAPPORO
26 ICHIBAN Products;
27 f. An order awarding restitution in the amount of the purchase price paid by
28 the class members for the Product;

- 1 g. An award for punitive damages;
2 h. An award of attorneys' fees and costs pursuant to Code of Civil Procedure
3 Section 1021.5 and CLRA; and
4 i. An order providing for all other such further relief as may be just and proper.
5 Plaintiff hereby demand a trial by jury on all issues so triable.

6 **JURY TRIAL REQUESTED**

7 Plaintiff is entitled to a trial by jury for her claims.
8

9 DATED: November 10, 2023

LAW OFFICE OF JUAN HONG

10 /s/ Juan Hong

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