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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 JENNIFER CARBINE, individually,  
16 and on behalf of all others similarly  
17 situated,

18 Plaintiff,

19 v.

20 TARGET CORPORATION,

21 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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**INTRODUCTION**

1  
2 1. Plaintiff Jennifer Carbine (“Plaintiff”) on behalf of herself, all others  
3 similarly situated, and the general public, by and through her undersigned counsel,  
4 hereby brings this action against Target Corporation (“Defendant” or “Target”),  
5 and upon information and belief and investigation of counsel, alleges as follows:

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

10 3. Defendant manufactures, distributes, advertises, markets, and sells  
11 Good and Gather Pasta Sauce products. The packaging prominently displays on  
12 the front of the label the claim that these Products<sup>1</sup> contain “**No Artificial Colors,**  
13 **Flavors, or Preservatives.**”

14 4. This statement is false. Each of the Products are made with citric  
15 acid— a preservative ingredient used in food products.

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

19 6. Plaintiff, who purchased the Products in California, was deceived by  
20 Defendant’s unlawful conduct and brings this action on her own behalf and on  
21 behalf of California consumers to remedy Defendant’s unlawful acts.  
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26 <sup>1</sup> “Products” means all Good and Gather Pasta Sauce products labeled as  
27 containing “No Artificial Colors, Flavors, or Preservatives” that include citric acid  
28 as an ingredient. The Products include, but are not limited to, Good and Gather  
Marinara, Good and Gather Traditional, Good and Gather Tomato and Basil, Good  
and Gather Garden Combo, Good and Gather Mushroom, and Good and Gather  
Organic Three Cheese.

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1 **JURISDICTION AND VENUE**

2 7. This Court has original jurisdiction over this action pursuant to 28  
3 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100  
4 members in the proposed class; (2) members of the proposed class have a different  
5 citizenship from Defendant; and (3) the claims of the proposed class members  
6 exceed \$5,000,000 in the aggregate, exclusive of interest and costs.

7 8. This Court has personal jurisdiction over Defendant because  
8 Defendant conducts and transacts business in the State of California, contracts to  
9 supply goods within the State of California, and supplies goods within the State of  
10 California. Defendant, on its own and through its agents, is responsible for the  
11 distribution, marketing, labeling, and sale of the Products in California,  
12 specifically in this judicial district. The marketing of the Products, including the  
13 decision of what to include and not include on the labels, emanates from  
14 Defendant. Thus, Defendant has intentionally availed itself of the markets within  
15 California through its advertising, marketing, and sale of the Products to  
16 consumers in California, including Plaintiff. The Court also has specific  
17 jurisdiction over Defendant as it has purposefully directed activities towards the  
18 forum state, Plaintiff's claims arise out of those activities, and it is reasonable for  
19 Defendant to defend this lawsuit because it has sold deceptively advertised  
20 Products to Plaintiff and members of the Class in California. By distributing and  
21 selling the Products in California, Defendant has intentionally and expressly aimed  
22 conduct at California which caused harm to Plaintiff and the Class that Defendant  
23 knows is likely to be suffered by Californians.

24 9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial  
25 part of the events or omissions giving rise to the claim occurred in this District.  
26 Plaintiff purchased the Products within this District.

27 **PARTIES**

28 10. Defendant Target Corporation is a Minnesota corporation that  
maintains its principal place of business at 1000 Nicollet Mall, Minneapolis,

1 Minnesota 55403. At all times during the class period, Defendant was the  
2 manufacturer, distributor, marketer, and seller of the Products.

3 11. Plaintiff Jennifer Carbine is a resident of California. Plaintiff  
4 purchased the Products during the class period in California. Plaintiff relied on  
5 Defendant’s deceptive advertising and labeling claims as set forth below.

6 **FACTUAL ALLEGATIONS**

7 **“NO ARTIFICIAL COLORS, FLAVORS, OR PRESERVATIVES” IS PROMINENTLY**  
8 **DISPLAYED ON THE LABELS OF THE PRODUCTS**

9 12. The front labels for each of the Products prominently state that the  
10 Products contain “No Artificial Colors, Flavors, or Preservatives” thereby  
11 misleading reasonable consumers into believing that the Products are free from  
12 artificial preservatives. However, each of the Products contain the artificial  
13 preservative citric acid. Below are examples of labels for the Products:  
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15 **Good and Gather Marinara**



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INGREDIENTS: TOMATO PUREE (WATER, TOMATO PASTE), DICED TOMATOES IN TOMATO JUICE, CANOLA OIL, CONTAINS LESS THAN 1% OF: SALT, DEHYDRATED ONIONS, DEHYDRATED GARLIC, SPICE, CITRIC ACID, DEHYDRATED PARSLEY.

Good and Gather Traditional



INGREDIENTS: TOMATO PUREE (WATER, TOMATO PASTE), DICED TOMATOES IN TOMATO JUICE, SUGAR, VEGETABLE OIL (COTTONSEED OIL AND/OR CANOLA OIL), CONTAINS LESS THAN 1% OF: SALT, DEHYDRATED GARLIC, ONIONS, DEHYDRATED GARLIC, SPICE, CITRIC ACID, DEHYDRATED PARSLEY.

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Good and Gather Tomato and Basil



INGREDIENTS: TOMATO PUREE (WATER, TOMATO PASTE), DICED TOMATOES IN TOMATO JUICE, VEGETABLE OIL (COTTONSEED AND/OR CANOLA AND/OR SOYBEAN), CONTAINS LESS THAN 1% OF: SUGAR, SALT, DEHYDRATED GARLIC, DEHYDRATED PARSLEY SPICES (BASIL, SPICE), CITRIC ACID, NATURAL FLAVOR.

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Good and Gather Garden Combo



INGREDIENTS: TOMATO PUREE (WATER, TOMATO PASTE), DICED TOMATOES IN TOMATO JUICE, ONIONS, ZUCCHINI, GREEN PEPPERS, CELERY, SUGAR, VEGETABLE OIL (COTTON SEED AND/OR CANOLA AND/OR SOYBEAN), CARROTS, CONTAINS LESS THAN 1% OF SALT, SPICE, CITRIC ACID, NATURAL FLAVOR.

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Good and Gather Mushroom



INGREDIENTS: TOMATO PUREE (WATER, TOMATO PASTE), DICED TOMATOES IN TOMATO PASTE, MUSHROOMS, SUGAR, VEGETABLE OIL (COTTONSEED AND/OR CANOLA OIL), BEAN), CONTAINS LESS THAN 1% OF: SALT, DEHYDRATED GARLIC, ONION POWDER, CITRIC ACID, DEHYDRATED PARSLEY.



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Good and Gather Organic Three Cheese



**INGREDIENTS:** ORGANIC TOMATO PUREE (WATER, ORGANIC TOMATO PASTE, CITRIC ACID), ORGANIC EXTRA VIRGIN OLIVE OIL, ORGANIC PARMESAN CHEESE (ORGANIC MILK, CHEESE CULTURES, SALT, ENZYMES), SEA SALT, ORGANIC ROMANO CHEESE MADE FROM COW'S MILK (ORGANIC MILK, SALT, CHEESE CULTURES, ENZYMES), ORGANIC SUGAR, ORGANIC RICOTTA CHEESE (ORGANIC MILK, ORGANIC VINEGAR, SEA SALT), ORGANIC DRIED GARLIC, ORGANIC DRIED ONIONS, ORGANIC SPICES, CITRIC ACID.

1           **THE CITRIC ACID IN THE PRODUCTS IS AN ARTIFICIAL PRESERVATIVE**

2           13. Defendant uses a synthetic form of citric acid that is derived from  
3 heavy chemical processing.<sup>2</sup> The citric acid used in the Products is commercially  
4 produced and is manufactured using a type of black mold called *Aspergillus niger*.<sup>3</sup>  
5 Chemical solvents such as n-octyl alcohol and synthetic isoparaffinic petroleum  
6 hydrocarbons are used to extract the citric acid that Defendant uses in the  
7 Products from *aspergillus niger* fermentation liquor. See 21 C.F.R § 173.280. The  
8 citric acid that Defendant uses in the Products is produced through chemical  
9 solvent extraction and contains residues of those chemical solvents.

10           14. An article published in the *Toxicology Reports Journal* explains that  
11 citric acid produced through *aspergillus niger* fermentation is artificial:

12           Citric acid naturally exists in fruits and vegetables. However, it  
13 is ***not*** the naturally occurring citric acid, but the  
14 **manufactured citric acid (MCA) that is used extensively as a**  
15 **food and beverage additive.** Approximately 99% of the world's  
16 production of MCA is carried out using the fungus *Aspergillus*  
17 *niger* since 1919. *Aspergillus niger* is a known allergen.<sup>4</sup>

22           <sup>2</sup> A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production*  
23 *by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020),  
24 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/> (emphasis  
25 added).

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

28           <sup>4</sup> 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/>

1           15. Consumption of manufactured citric acid has been associated with  
 2 adverse health events like joint pain with swelling and stiffness, muscular and  
 3 stomach pain, as well as shortness of breath.<sup>5</sup> The *Toxicology Reports Journal*  
 4 article explains that “the potential presence of impurities or fragments from the  
 5 *Aspergillus niger* in [manufactured citric acid] is a significant difference that may  
 6 trigger deleterious effects when ingested.”<sup>6</sup> The article further explains:

7           Given the thermotolerance of *A. niger*, there is great potential that  
 8 byproducts of *A. niger* remain in the final [manufactured citric acid]  
 9 product. Furthermore, given the pro-inflammatory nature of *A. niger*  
 10 even when heat-killed, repetitive ingestion of [manufactured citric acid]  
 11 may trigger sensitivity or allergic reactions in susceptible individuals.  
 12 Over the last two decades, there has been a significant rise in the  
 13 incidence of food allergies.<sup>7</sup>

14           16. The Food and Drug Administration (“FDA”) has also sent warning  
 15 letters to companies stating that certain products labeled as “natural” are  
 16 misbranded because they contain artificial citric acid as an ingredient. For  
 17 example, on August 29, 2001, the FDA sent Hirzel Canning Company (“Hirzel”)  
 18 a warning letter regarding its canned tomato products.<sup>8</sup> With respect to Hirzel’s  
 19 Chopped Tomatoes Onions & Garlic and Chopped Mexican Tomatoes &  
 20 Jalapenos, the FDA stated that these products could not bear the “All Natural”  
 21 claim on the label because the products contained a synthetic ingredient, citric  
 22 acid.<sup>9</sup>

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 25 <sup>5</sup> *Id.*

26 <sup>6</sup> *Id.*

27 <sup>7</sup> *Id.*

28 <sup>8</sup> See **Exhibit 1** attached hereto.

<sup>9</sup> *Id.*

1           17. Similarly, on August 16, 2001, the FDA sent Oak Tree Dairy Farm,  
2 Inc. (“Oak Tree”) a warning letter regarding its “Oaktree Real Brewed Iced Tea,”  
3 “Oaktree Fruit Punch,” and “Oaktree All Natural Lemonade” products.<sup>10</sup> With  
4 respect to Oak Tree’s “Oaktree Real Brewed Iced Tea,” the FDA stated that this  
5 product could not bear the “100% Natural” and “All Natural” claims on the label  
6 because the product contained a synthetic ingredient, citric acid.<sup>11</sup>

7           18. Dictionary definitions define “artificial” as something made by man.  
8 For example, “artificial” is defined as “made by human skill; produced by humans  
9 ...”<sup>12</sup> Merriam-Webster’s online dictionary states that “artificial” means “humanly  
10 contrived ...”<sup>13</sup> Cambridge Dictionary states that “artificial” means “made by  
11 people, often as a copy of something natural.”<sup>14</sup>

12           19. Below are images of the chemical process used to create citric acid  
13 for use in food – a process that is visibly artificial:  
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22 <sup>10</sup> See **Exhibit 2** attached hereto.

23 <sup>11</sup> *Id.*

24 <sup>12</sup> *Artificial*, DICTIONARY.COM, available at  
25 <https://www.dictionary.com/browse/artificial>

26 <sup>13</sup> *Artificial*, MERRIAM-WEBSTER’S DICTIONARY, available at  
27 <https://www.merriam-webster.com/dictionary/artificial>

28 <sup>14</sup> *Artificial*, CAMBRIDGE DICTIONARY, available at  
<https://dictionary.cambridge.org/us/dictionary/english/artificial>

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20. Citric acid also acts as a preservative when added to food products, including the Products at issue. The 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:<sup>15</sup>

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, <b>citric acid</b> , sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

<sup>15</sup> *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>

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

22. The Encyclopedia Britannica also classifies citric acid as a preservative because it has antioxidant properties, as shown below<sup>17</sup>:

## Preservatives

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

Food preservatives	
chemical agent	mechanism of action
<b>Antioxidants</b>	
ascorbic acid	oxygen scavenger
butylated hydroxyanisole (BHA)	free radical scavenger
butylated hydroxytoluene (BHT)	free radical scavenger
citric acid	enzyme inhibitor/metal chelator
sulfites	enzyme inhibitor/oxygen scavenger
tertiary butylhydroquinone (TBHQ)	free radical scavenger
tocopherols	free radical scavenger

<sup>16</sup> See **Exhibit 3** attached hereto.

<sup>17</sup> *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>

1           23. The Agricultural Marketing Service of the United States Department  
2 of Agriculture (“USDA”) has also recognized the use of citric acid as a  
3 preservative stating that “Citric acid has a wide variety of uses, some of which can  
4 provide preservative functions, primarily though lowering the pH of the food.”<sup>18</sup>

5           24. The USDA’s Food Safety Inspection Service’s “Guideline for Label  
6 Approval” states that “[s]ome common chemical preservatives include BHA,  
7 BHT, calcium propionate, citric acid, natamycin and sodium propionate.”<sup>19</sup>

8           25. Several academic journals also note the use of citric acid as a  
9 preservative.<sup>20</sup> Indeed, “Citric acid acts as a preservative in many processed foods,  
10 keeping them fresh. It does this by slowing or helping prevent the formation of  
11 bacteria, mold, yeast, and fungus.”<sup>21</sup> “Today, citric acid is one of the most common  
12 and widely-used preservatives in the world[.]”<sup>22</sup>

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16 <sup>18</sup> *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE,  
17 *available at* <https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%20015.pdf>.

18 <sup>19</sup> FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF  
19 AGRICULTURE, *available at* [https://www.fsis.usda.gov/sites/default/files/media\\_file/documents/FSIS-GD-2023-0001.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf)

20 <sup>20</sup> K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND  
21 EDITION) (2011), *available at* [https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?](https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub)  
22 [via%3Dihub](https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub); K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S  
23 POULTRY SCIENCE JOURNAL VOL. 68, ISSUE 1 (Feb. 21, 2012), *available at* [https://www.cambridge.org/core/journals/world-s-poultry-science-](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2CIF90667525BF2414DF3BFF646)  
24 [journal/article/abs/use-of-citric-acid-in-broiler-](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2CIF90667525BF2414DF3BFF646)  
25 [diets/DA15C2CIF90667525BF2414DF3BFF646](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2CIF90667525BF2414DF3BFF646) (“Citric Acid (CA) is a weak  
26 organic acid which is a natural preservative and can add an acidic or sour taste to  
27 foods and soft drinks.”).

27 <sup>21</sup> *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>

28 <sup>22</sup> *Citric Acid: One of the Most Important Preservatives in The World*, FBC  
INDUSTRIES, INC. (Feb. 5, 2019), *available at* [https://fbcindustries.com/citric-](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)  
[acid-one-of-the-most-important-preservatives-in-the-world/](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)

1           26. Citric acid functions as a preservative in the Products regardless of  
2 whether Defendant intended to use citric acid as a preservative. Citric acid  
3 functions as a preservative even if it is also added to the Products for some other  
4 use. *See* 21 C.F.R. §101.22(a)(5) (defining preservatives as “any chemical that,  
5 when added to food, *tends to prevent or retard deterioration*”) (emphasis added);  
6 *see also* Merriam-Webster’s Dictionary (defining “preservative” as “something  
7 that preserves or *has the power of preserving.*”) (emphasis added).<sup>23</sup>

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

10           27. Consumers, like Plaintiff, relied on Defendant’s “No Artificial  
11 Colors, Flavors, or Preservatives” labeling statement. The “No Artificial Colors,  
12 Flavors, or Preservatives” statement on the labels of the Products is material to  
13 reasonable consumers. “[F]oods bearing ‘free-from’ claims are increasingly  
14 relevant to Americans, as they perceive the products as closely tied to health ... 84  
15 percent of American consumers buy free-from foods because they are seeking out  
16 more natural or less processed foods. In fact, 43 percent of consumers agree that  
17 free-from foods are healthier than foods without a free-from claim, while another  
18 three in five believe the fewer ingredients a product has, the healthier it is (59  
19 percent). Among the top claims free-from consumers deem most important are  
20 trans-fat-free (78 percent) and preservative-free (71 percent).”<sup>24</sup>

21           28. Plaintiff and the putative class members suffered economic injury as  
22 a result of Defendant’s actions. Plaintiff and putative class members spent money  
23 that, absent Defendant’s actions, they would not have spent. Plaintiff and putative  
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25 <sup>23</sup> *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at  
26 [https://www.merriam-](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)  
27 [webster.com/dictionary/preservative?utm\\_campaign=sd&utm\\_medium=serp&utm](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)  
[m\\_source=jsonld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)

28 <sup>24</sup> *84% of Americans buy “free-from” foods because they believe them to be more natural or less processed*, Mintel (Sept. 3, 2015), available at  
<https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/>



1 class members are entitled to damages and restitution for the purchase price of the  
2 Products that were falsely labeled and advertised. Consumers, including Plaintiff,  
3 would not have purchased Defendant's Products, or would have paid less for the  
4 Products, if they had known the Products actually contain an artificial preservative  
5 ingredient.

#### 6 **PLAINTIFF'S PURCHASE OF THE PRODUCTS**

7 29. Plaintiff Jennifer Carbine has purchased Good and Gather Products,  
8 including Good and Gather Marinara, Good and Gather Tomato Basil, and Good  
9 and Gather Organic Three Cheese, with the "No Artificial Colors, Flavors, or  
10 Preservatives" label claim during the class period. Plaintiff's last purchase of the  
11 Products was in approximately June of 2023 from a Target store located in or  
12 around Long Beach, California.

13 30. Plaintiff saw and relied on the "No Artificial Colors, Flavors, or  
14 Preservatives" claim on the labels of the Products. Plaintiff would not have  
15 purchased the Products, or would have paid less for the Products, had she known  
16 that the products actually contain an artificial preservative ingredient. As a result,  
17 Plaintiff suffered injury in fact when she spent money to purchase the Products she  
18 would not have purchased, or would have paid less for, absent Defendant's  
19 misconduct. Plaintiff desires to purchase the Products again if the labels of the  
20 products were accurate and if the products actually contained "No Artificial  
21 Colors, Flavors, or Preservatives" However, as a result of Defendant's ongoing  
22 misrepresentations, Plaintiff is unable to rely on the Products' advertising and  
23 labeling when deciding in the future whether to purchase the Products.

#### 24 **NO ADEQUATE REMEDY AT LAW**

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

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

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

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

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

18 **CLASS ACTION ALLEGATIONS**

19 35. Plaintiff brings this action as a class action pursuant to Federal Rules  
20 of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following Class:

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

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

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1           37. Plaintiff reserves the right to amend or otherwise alter the class  
2 definition presented to the Court at the appropriate time, or to propose or eliminate  
3 subclasses, in response to facts learned through discovery, legal arguments  
4 advanced by Defendant, or otherwise.

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

8           39. Numerosity: Class Members are so numerous that joinder of all  
9 members is impracticable. Plaintiff believes that there are thousands of consumers  
10 who are Class Members described above who have been damaged by Defendant’s  
11 deceptive and misleading practices.

12           40. Commonality: There is a well-defined community of interest in the  
13 common questions of law and fact affecting all Class Members. The questions of  
14 law and fact common to the Class Members which predominate over any questions  
15 which may affect individual Class Members include, but are not limited to:

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

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

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

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

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

26           41. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to  
27 represent. Plaintiff’s claims are typical of the claims of each Class Member in that  
28 every member of the Class was susceptible to the same deceptive, misleading

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1 conduct and purchased the Products. Plaintiff is entitled to relief under the same  
2 causes of action as the other Class Members.

3 42. Adequacy: Plaintiff is an adequate Class representative because  
4 Plaintiff's interests do not conflict with the interests of the Class Members Plaintiff  
5 seeks to represent; the consumer fraud claims are common to all other members of  
6 the Class, and Plaintiff has a strong interest in vindicating the rights of the class;  
7 Plaintiff has retained counsel competent and experienced in complex class action  
8 litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no  
9 interests which conflict with those of the Class. The Class Members' interests will  
10 be fairly and adequately protected by Plaintiff and proposed Class Counsel.  
11 Defendant has acted in a manner generally applicable to the Class, making relief  
12 appropriate with respect to Plaintiff and the Class Members. The prosecution of  
13 separate actions by individual Class Members would create a risk of inconsistent  
14 and varying adjudications.

15 43. The Class is properly brought and should be maintained as a class  
16 action because a class action is superior to traditional litigation of this controversy.  
17 A class action is superior to the other available methods for the fair and efficient  
18 adjudication of this controversy because:

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

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

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

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

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

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

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

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

12 44. Additionally or in the alternative, the Class also may be certified  
13 because Defendant has acted or refused to act on grounds generally applicable to  
14 the Class thereby making final declaratory and/or injunctive relief with respect to  
15 the members of the Class as a whole, appropriate.

16 45. Plaintiff seeks preliminary and permanent injunctive and equitable  
17 relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin  
18 and prevent Defendant from engaging in the acts described, and to require  
19 Defendant to provide full restitution to Plaintiff and the Class members.

20 46. Unless the Class is certified, Defendant will retain monies that were  
21 taken from Plaintiff and Class members as a result of Defendant's wrongful  
22 conduct. Unless a classwide injunction is issued, Defendant will continue to  
23 commit the violations alleged and the members of the Class and the general public  
24 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.***

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

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

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

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

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

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

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

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

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

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

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

8           54. Defendant violated the CLRA because the Products were prominently  
9 advertised as containing “No Artificial Colors, Flavors, or Preservatives,” but, in  
10 reality, the Products contain an artificial preservative ingredient called citric acid.  
11 Defendant knew or should have known that consumers would want to know that  
12 the Products contain an artificial preservative.

13           55. Defendant’s actions as described herein were done with conscious  
14 disregard of Plaintiff’s and the Class members’ rights and were wanton and  
15 malicious.

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

19           57. Pursuant to California Civil Code section 1782(d), Plaintiff and the  
20 members of the Class seek an order enjoining Defendant from engaging in the  
21 methods, acts, and practices alleged herein, actual damages, and attorneys’ fees  
22 and costs.

23           58. Pursuant to California Civil Code section 1782, Plaintiff notified  
24 Defendant in writing by certified mail of the alleged violations of the CLRA and  
25 demanded that Defendant rectify the problems associated with the actions detailed  
26 above and give notice to all affected consumers of their intent to so act. More than  
27 30 days have passed since the Defendant’s receipt of Plaintiff’s written notice and  
28 Defendant has failed to rectify or agree to rectify the problems associated with the  
actions detailed herein and give notice to all affected consumers. Accordingly,



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1 Plaintiff seeks actual damages, injunctive relief, and attorneys’ fees and costs for  
2 Defendant’s violations of the CLRA.

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

5 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

24 64. Defendant committed “unfair” business acts or practices by: (1)  
25 engaging in conduct where the utility of such conduct is outweighed by the harm  
26 to Plaintiff and the members of the a Class; (2) engaging in conduct that is  
27 immoral, unethical, oppressive, unscrupulous, or substantially injurious to  
28 Plaintiff and the members of the Class; and (3) engaging in conduct that  
undermines or violates the intent of the consumer protection laws alleged herein.

1 There is no societal benefit from deceptive advertising. Plaintiff and the other  
2 Class members paid for a Product that is not as advertised by Defendant. Further,  
3 Defendant failed to disclose a material fact (that the Products contain an artificial  
4 preservative) of which they had exclusive knowledge. While Plaintiff and the other  
5 Class members were harmed, Defendant was unjustly enriched by its false  
6 misrepresentations and material omissions. As a result, Defendant's conduct is  
7 "unfair," as it offended an established public policy. There were reasonably  
8 available alternatives to further Defendant's legitimate business interests, other  
9 than the conduct described herein.

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

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

21 67. Defendant's wrongful business practices and violations of the UCL  
22 are ongoing.

23 68. Plaintiff and the Class seek pre-judgment interest as a direct and  
24 proximate result of Defendant's unfair and fraudulent business conduct. The  
25 amount on which interest is to be calculated is a sum certain and capable of  
26 calculation, and Plaintiff and the Class seek interest in an amount according to  
27 proof.

28 69. Unless restrained and enjoined, Defendant will continue to engage in  
the above-described conduct. Accordingly, injunctive relief is appropriate.

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1 Pursuant to California Business & Professions Code section 17203, Plaintiff,  
2 individually and on behalf of the Class, seeks (1) restitution from Defendant of all  
3 money obtained from Plaintiff and the other Class members as a result of unfair  
4 competition; (2) an injunction prohibiting Defendant from continuing such  
5 practices in the State of California that do not comply with California law; and (3)  
6 all other relief this Court deems appropriate, consistent with California Business  
7 & Professions Code section 17203.

8 **THIRD CLAIM FOR RELIEF**

9 **Breach of Express Warranty**

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

12 71. Plaintiff brings this claim for breach of express warranty individually  
13 and on behalf of the Class against Defendant.

14 72. As the manufacturer, marketer, distributor, and seller of the Products,  
15 Defendant issued an express warranty by representing to consumers at the point of  
16 purchase that the Products contain “No Artificial Colors, Flavors, or  
17 Preservatives.”

18 73. Plaintiff and the Class reasonably relied on Defendant’s  
19 misrepresentations, descriptions and specifications regarding the Products,  
20 including the representation that the Products contain “No Artificial Colors,  
21 Flavors, or Preservatives.”

22 74. Defendant’s representations were part of the description of the goods  
23 and the bargain upon which the goods were offered for sale and purchased by  
24 Plaintiff and Members of the Class.

25 75. In fact, the Products do not conform to Defendant’s representations  
26 because the Products contain an artificial preservative ingredient called citric acid.  
27 By falsely representing the Products in this way, Defendant breached express  
28 warranties.

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1 76. Plaintiff relied on Defendant’s (the manufacturer) representations on  
2 the Products’ labels and advertising materials which provide the basis for an  
3 express warranty under California law.

4 77. As a direct and proximate result of Defendant’s breach, Plaintiff and  
5 Members of the Class were injured because they: (1) paid money for the Products  
6 that were not what Defendant represented; (2) were deprived of the benefit of the  
7 bargain because the Products they purchased were different than Defendant  
8 advertised; and (3) were deprived of the benefit of the bargain because the  
9 Products they purchased had less value than if Defendant’s representations about  
10 the characteristics of the Products were truthful. Had Defendant not breached the  
11 express warranty by making the false representations alleged herein, Plaintiff and  
12 Class Members would not have purchased the Products or would not have paid as  
13 much as they did for them.

14 **REQUEST FOR RELIEF**

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

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

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

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

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

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

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

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

4 **JURY DEMAND**

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

7  
8 Dated: May 3, 2024

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9  
10 By: /s/ Michael T. Houchin

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17 *Class*

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