

New York Supreme Court
Rockland County

Deborah Rose,

Plaintiff,

- against -

Conagra Brands Inc.,

Defendant.

Index No.

Complaint

Jury Trial Demanded

Deborah Rose ("Plaintiff") through Counsel alleges upon information and belief except for allegations about Plaintiff which are based on personal knowledge and other allegations based on investigation and/or knowledge of Counsel: ...

1. The last decade has seen increased awareness of the relationship between the proliferation of plastics and environmental disruption.

2. As factories replaced farms in the late nineteenth century, the population of the United States shifted towards urban centers.

3. The inability to garden, hunt and/or harvest left them at the mercy of the distant manufacturer and canner.

4. In place of the "pure foods" produced on a small scale, Americans were forced to accept unsanitary and dangerous foods, chronicled in Upton Sinclair's 1905 serial "The Jungle: A Story of Chicago."

5. The corollary to production of such low quality foods, whether based on

vegetables, meats, grains or confections, was the need for specialized substances known as “additives.”

6. These non-food chemicals were made in laboratories, to fulfill technical as opposed to nutritive functions.

7. This included (i) facilitating processing (“processing aids”), (ii) improving appearance (“coal tar dyes,” rebranded as “colorants”), (iii) increasing bulk (“fillers” and “thickeners”), (iv) creating or enhancing taste (“flavorings”), (v) facilitating suspension of one liquid in another (“emulsifiers”), (vi) imparting the taste of sugar (“sweeteners”) and (vii) extending shelf-life, concealing inferiority and/or slowing deterioration (“preservatives”).

8. The newly created “preservatives” were particularly harmful.

9. Once limited to sugar, common salt, vinegar spices, oils extracted from spices and wood smoke, the packers and canners required more potent substances.¹

10. Their industrial chemists developed novel, Frankenstein-like compounds, with names like borax, salicylic acid and formaldehyde.

11. And these synthetic compounds went beyond direct antimicrobial effects, enabling industrialists to sell New Yorkers lower-quality and spoiled foods.

12. In part, for this reason, the Department of Agriculture and Markets

¹ 1 N.Y.C.R.R. § 259.1(a) (adopting definition of “chemical preservative” established by the Food and Drug Administration (“FDA”)).

(“Ag&Mkts”) defined a “chemical preservative”² as “any chemical that, when added to food, tends to prevent or retard deterioration.” 1 N.Y.C.R.R. § 259.1(a).³

13. And at the time, “chemical” was a synonym for “artificial.”

14. According to dictionary definitions and/or surveys, consumers understand “artificial” as the opposite of “natural” or something “made, produced, or done by people.”⁴

15. Public opposition to these artificial and synthetic compounds is just as strong today.

16. Since “It’s nearly impossible to keep up with which ingredients are safe to eat and which ones cause some kind of harm,” public health advocates encourage consumers to look for foods which promote the absence of these chemical additives.

² Consumers often understand claims and/or references to preservatives as referring to chemical, artificial and/or synthetic preservatives.

³ Article 16, Weights and Measures, Agriculture and Markets Law (“AGM”) § 176 *et seq.*, and AGM §§ 193, 194; Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; *see*, AGM § 3 (endorsing methods such as individual enterprise to encourage compliance with AGM), Title 1, Department of Agriculture and Markets, Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Part 221 (“Commodities”), Part 250 (“Definitions and Standards”) (adopting identical federal standards), 1 N.Y.C.R.R. § 250.1, and Part 259 (“Packaging and Labeling of Food”), 1 N.Y.C.R.R. § 259.1(a) (adopting identical federal regulations).

⁴ Merriam-Webster.

17. This “rule of thumb” serves several purposes.⁵

18. First, it recognizes their prospective harms and/or adverse effects.⁶

19. The International Food Information Council (“IFIC”) found that roughly thirty percent of purchasers consider chemical preservatives a top concern.⁷

20. More than eighty percent of the public believe these synthetic chemicals are potentially harmful.

21. In fact, many consider them a greater threat than foodborne illness.⁸

22. Research from Nielsen, Mintel and/or others indicates that close to ninety percent of Americans will pay more for healthier foods, understood, in part, as those without these potentially unsafe artificial substances.

23. Second, since preservatives, especially artificial preservatives, are often a “marker” for ultra processed foods (“UPF”), a main contributor to diet-related illnesses such as diabetes, their avoidance is consistent with promoting positive

⁵ Frank Giustra, You Might Be Surprised by What’s in Your Food, Modern Farmer, Feb. 8, 2021.

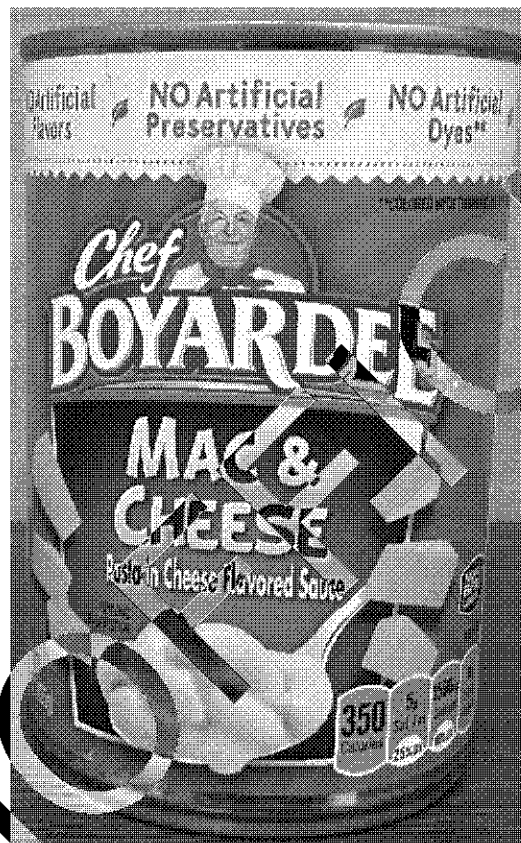
⁶ Bhavana Kunkalika, Processed Danger: Industrial Food Additives and the Health Risks to Children, News-Medical.net, May 23, 2023 (citing study in Journal of the Academy of Nutrition and Dietetics).

⁷ Cary Funk et al., Public Perspectives on Food Risks, Pew Research Center, Nov. 19, 2018.

⁸ Tom Neltner, Environmental Defense Fund, Chemicals Policy Director, Chemicals in Food Continue to be a Top Food Safety Concern Among Consumers, Food Navigator, Sept. 20, 2021.

dietary patterns.

24. Conagra Brands Inc. (“Defendant”) sells and/or sold cans of macaroni and cheese promising “No Artificial Preservatives” under its Chef Boyardee brand (“Product”).⁹



25. The Product is “misbranded”¹⁰ because despite promising “No Artificial

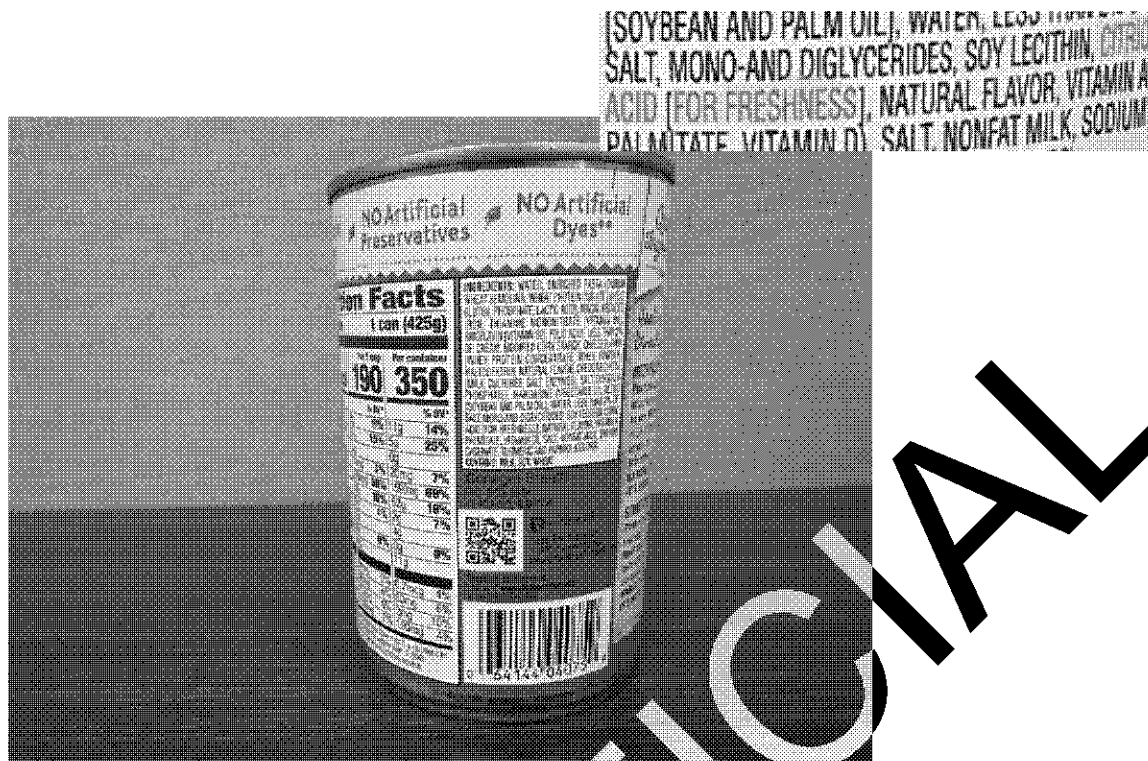
⁹ Representations include “Chef Boyardee,” “Mac & Cheese,” “Pasta in Cheese Flavored Sauce,” “No Artificial Flavors,” “No Artificial Preservatives,” “No Artificial Dyes” and “NET WT 15 OZ (425g).”

¹⁰ “Misbranded” and “adulterated” are statutory terms with the former applying to labeling that is false and/or misleading and the latter meaning to render something poorer in quality by adding another substance, typically an inferior one.

Preservatives” the ingredients¹¹ reveal “Citric Acid” used purportedly “For Freshness,” an artificial ingredient made and/or produced by people, chemists and engineers, which functions and/or tends to function as a preservative in this food and/or its components through methods including but not limited to antimicrobial effects. AGM § 201(1), *compare with*, 21 U.S.C. § 343(a).¹²

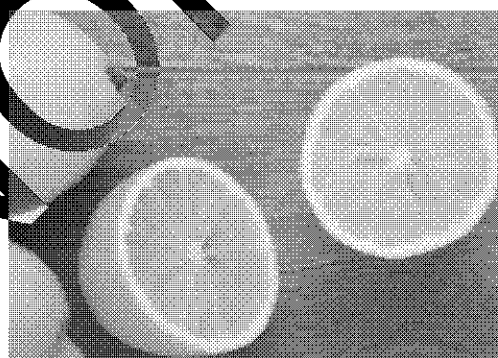
¹¹ **INGREDIENTS:** WATER, ENRICHED PASTA (DURUM WHEAT SEMOLINA, WHEAT PROTEIN ISOLATE [WHEAT GLUTEN, PHOSPHATE, LACTIC ACID], NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID], LESS THAN 2% OF: CREAM, MODIFIED CORN STARCH, CHEESE FLAVOR (WHEY PROTEIN CONCENTRATE, WHEY POWDER, MALTODEXTRIN, NATURAL FLAVOR, CHEDDAR CHEESE [MILK, CULTURES, SALT, ENZYMES], SALT, DISODIUM PHOSPHATE, MARGARINE (VEGETABLE OIL BLEND [SOYBEAN AND PALM OIL], WATER, LESS THAN 2% OF: SALT, MONO- AND DIGLYCERIDES, SOY LECITHIN, CITRIC ACID [FOR FRESHNESS], NATURAL FLAVOR, VITAMIN A PALMITATE, VITAMIN D], SALT, NONFAT MILK, SODIUM CASEINATE, TURMERIC AND PAPRIKA (COLORS).

¹² Article 16, Weights and Measures, Agriculture and Markets Law (“AGM”) § 176 *et seq.*, and AGM §§ 193, 194; Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; *see*, AGM § 3 (endorsing methods such as individual enterprise to encourage compliance with AGM), Title 1, Department of Agriculture and Markets, Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Part 221 (“Commodities”), Part 250 (“Definitions and Standards”) (adopting identical federal standards), 1 N.Y.C.R.R. § 250.1, and Part 259 (“Packaging and Labeling of Food”), 1 N.Y.C.R.R. § 259.1(a) (adopting identical federal regulations).



I. NOT NATURAL VERSION

26. Until the early twentieth century, citric acid or “sour salt” was obtained from citrus fruits like lemons.



27. For several reasons, almost none of the citric acid used in foods today is from lemons.

28. First, increased consumption of citrus fruits limited their use for other purposes.

29. Second, increased demand meant extraction from citrus fruits was no longer cost-effective.

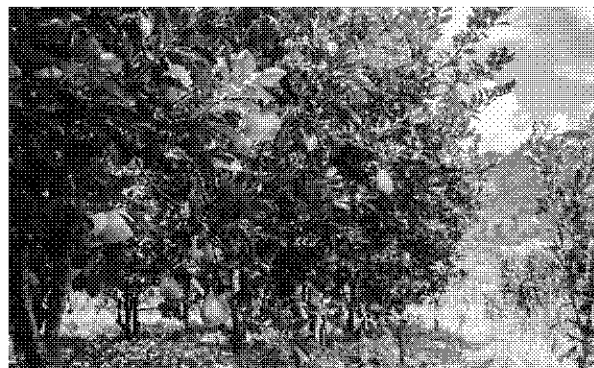
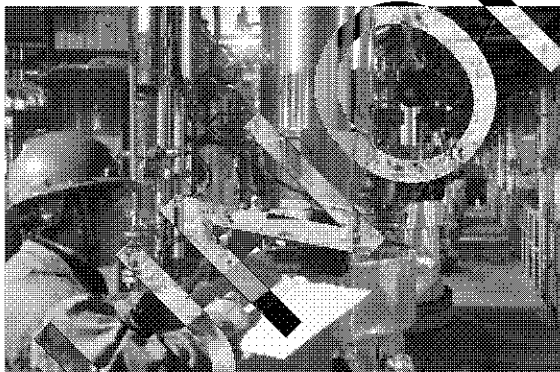
30. Third, chemical and industrial processes produce citric acid with a greater level of purity.

31. Finally, extraction of citric acid from citrus fruits is limited to a few small factories in Latin America and/or Africa.

32. This natural citric acid is used in niche industries such as the further extraction of citrus byproducts and/or the candle industry.

II. MADE SYNTHETICALLY

33. This citric acid is made through synthetic biology and chemical engineering, dissimilar to how lemons grow naturally in orchards.



i. D-Glucose

34. Citric acid begins from a carbohydrate feedstock.

35. This is often genetically modified (“GMO”) corn but may include molasses, beet pulp, cane sugar and/or even cassava.



36. The carbohydrate materials are steeped in solutions of sulfur dioxide, a chemical synthetic agent.

37. Pre-treatment or gelatinization transforms starch granules into a gel-like amorphous form.

38. In the subsequent liquefaction and saccharification steps, the starch is subjected to enzymatic hydrolysis, a chemical reaction.

39. The primary enzymes include genetically engineered alpha-amylase and glucoamylase.

40. Alpha-amylase enzyme randomly cleaves the bonds within the starch molecules, rapidly reducing the slurry's viscosity.

41. Then, glucoamylase cleaves single glucose units from the non-reducing ends of the dextrin chains, producing D-Glucose.

ii. Added Chemical Agents

42. To ensure a favorable environment for citric acid synthesis, D-glucose solution is supplemented with chemical agents such as ammonium nitrate, ammonium sulfate, potassium dihydrogen phosphate and trace ions like magnesium

sulfate.

43. Then, this nutrient medium is sterilized to prevent wild yeast or bacteria from competing with the production strains.

iii. Modified Fermentation

44. Using submerged fermentation, the fungus *Aspergillus niger*, a type of black mold, is introduced to the medium.

45. To maintain high levels of dissolved oxygen, the mixture is heavily aerated.

46. And synthetic agents ensure the pH remains acidic.

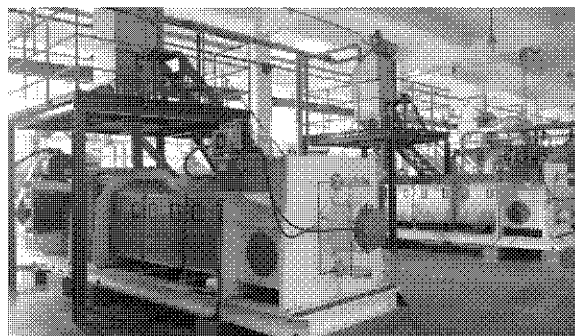
47. The fungus breaks down D-glucose via glycolysis into pyruvate and converts pyruvate into acetyl-CoA and oxaloacetate.

48. *A. niger* excretes citric acid directly into the liquid broth.

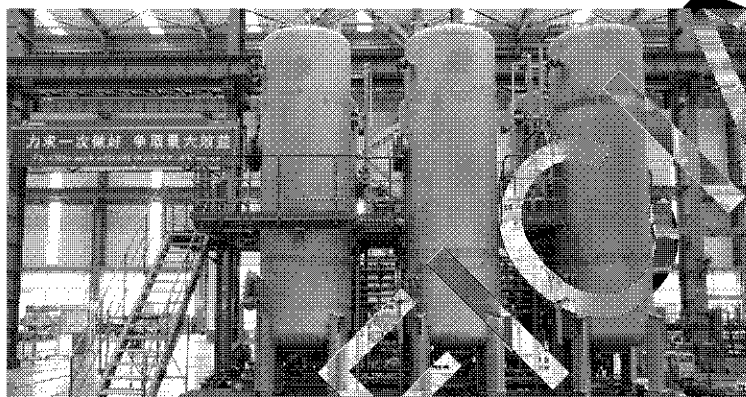
iv. Downstream Steps

49. Separating citric acid requires the filtrate be treated with lime or calcium carbonate.

50. This chemical reaction forms tri-calcium citrate tetra hydrate, treated with sulfuric acid in acidolysis reactors.



51. Then, it's purified through charcoal columns and/or ion exchangers.



52. Obtaining citric acid from the fermentation liquor relies on chemical solvents, such as n-octyl alcohol and isoparaffinic petroleum hydrocarbons.

53. Finally, it is dried and milled into a fine powder.



III. CITRIC ACID IS NON-NATURAL

54. While textbook oxidation and fermentation are non-chemical processes,

chemical reactions, synthetic solvents and genetic engineering renders them inconsistent with natural methods.

55. The alpha amylase enzymes and *A. niger* strains have little to nothing in common with their natural counterparts.

56. According to clinical nutritionist Serge Gregoire, industrially used strains of *Aspergillus niger* are the result of various genetic modifications.

57. First, using protoplast fusion or somatic hybridization, exogenous DNA for these mutant strains can be provided in an episomal vector like a plasmid.

58. The transposon carries a screenable marker gene cloned into a plasmid which cannot replicate.

59. The plasmid is introduced and the transformants are screened for the presence of marker genes.

60. Naked protoplasts are fused together using chemicals like polyethylene glycol or electric fields.

61. This forms highly productive and biotechnologically-derived mutant strains.

62. Second, by simulating evolution in artificial conditions, Adaptive Laboratory Evolution (“ALE”) skirts direct gene alterations associated with the stigma and label of genetically modified organisms (“GMOs”).

63. Instead, molecular biologists manipulate the laboratory environment

through high temperatures, toxic chemicals and/or high salinity.

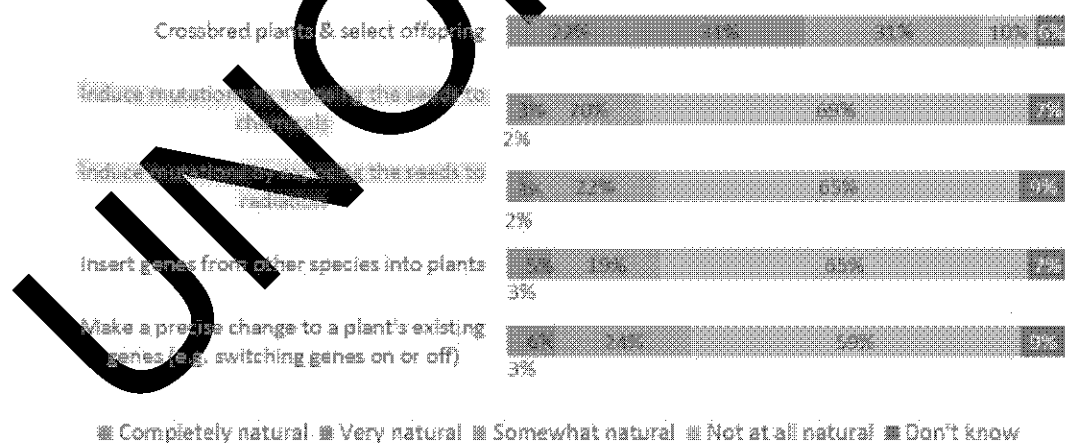
64. These man-made stressors accelerate the rate of change and directly create random beneficial mutations.

65. Third, random mutagenesis, through application of physical mutagens such as UV light, heavy ion beams and chemical agents generate vast libraries of mutant strains.

66. These steps are necessary because genetically engineered *A. niger* reduces fermentation time and maximizes excretion of citric acid.

67. Further, the standard *A. niger* strain is unable to produce citric acid in the quantities required.

68. This application of synthetic biology is not considered “natural” by roughly two-thirds of the public.



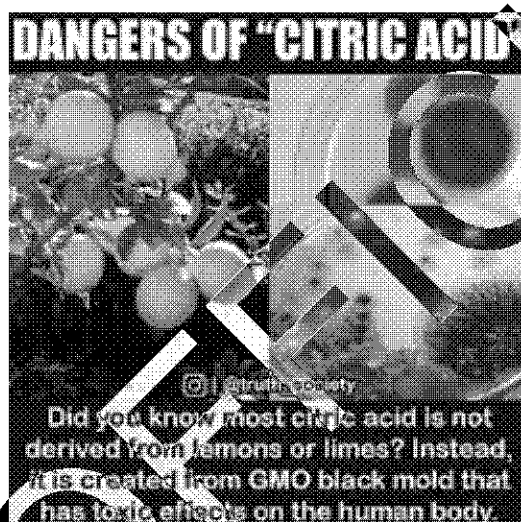
69. Based on the how citric acid is made, including the substances and methods used, the Department of Agriculture and Markets (“Ag&Mkts”), Food and Drug Administration (“FDA”) and United States Department of Agriculture

(“USDA”) consider it a synthetic ingredient

IV. SUBSTANCE OF CONCERN

70. While synthetic citric acid may be chemically identical to its natural counterpart, watchdogs have highlighted its potential harms.

71. This is in part because “black mold [] has toxic effects on the human body.”



72. According to the Toxicology Reports Journal, the potential presence of impurities or fragments from *Aspergillus niger* in manufactured citric acid may even trigger deleterious effects when consumed.

73. Beyond its use of black mold, its production often leaves behind chemical solvent residues.

74. Other studies describe a range of adverse health events linked to manufactured citric acid.

75. These include joint pain with swelling and stiffness, muscular and

stomach pain and shortness of breath.

V. PRESERVATIVE FUNCTIONS

76. Citric acid performs or tends to perform multiple functions when added to the Product and/or its components which prevent or tend to prevent deterioration.

77. While cheese components of macaroni and cheese mixes may have little moisture and/or low water activity, they are still subject to deterioration and/or spoilage.

78.

79. This may result from growth of yeasts, molds, spores and/or bacteria.

80. In fact, the Tanaka Guidelines for cheese products were developed to prevent risks from *Clostridium botulinum*, salmonella and/or toxins.

81. Beyond safety from potential food poisoning, exposure to oxygen, light, and/or time/temperature abuse and/or ingredient handling can cause significant deterioration.¹³

82. To minimize these risks, maintain freshness and extend shelf life, the “commonly used preservative” of citric acid is added.¹⁴

¹³ Microbiological Sampling in the Dry Foods Processing Environment, Food Safety Magazine.

¹⁴ M.S. Rahman (Ed.), Handbook of Food Preservation. (Third Edition ed.) (2020) CRC Press, Boca Raton, FL.

TABLE 21.6
Commonly Used Preservatives

Preservatives	Classification	U.S. FDA 21 CFR #
Acetic acid	GRAS, curing or pickling agent, or in food at levels not to exceed GMP	184.1065
Benzoic acid	GRAS, antimicrobial agent	184.1021
Calcium disodium EDTA	Preservative, color retention	172.120
Citric acid	GRAS, GMP	184.103
Dehydroacetic acid	Preservative for cut or peeled squash	172.130
Fumaric acid	Nutritional additive	172.350
Lactic acid	GRAS, antimicrobial agent	184.1061
Methylparaben	GRAS, antimicrobial agent	184.1495
Nisamycin	Mold inhibitor for sliced cheeses	172.155
Potassium sorbate	GRAS, GMP	182.3640
Propionic acid	GRAS, antimicrobial agent	184.1061
Propylparaben	GRAS, antimicrobial agent	184.1670
Sodium benzoate	GRAS, antimicrobial agent	184.1735
Sodium nitrite	Preservative, color fixative for fish and meat	172.170
Sodium nitrite	Preservative, color fixative for fish and meat	172.175
Sorbic acid	GRAS, GMP	182.3080

Note: GRAS = generally recognized as safe by the U.S. Food and Drug Administration; GMP = good manufacturing practices.

83. Based on its ability to tend to retard deterioration, Ag&Mkts, the FDA and USDA consider citric acid a chemical preservative.

84. Added citric acid fulfills preservative functions in multiple ways.

i. Acidulant

85. Through its action as a buffering agent, sodium phosphate helps in maintaining an equilibrium pH below 4.6.

86. Despite their relatively acidic nature, cheese components contain non-de minimis amounts of sugar from lactose, having a pH close to 7.

87. To ensure microbial stability, citric acid, a well-known acidulant, is added.

88. Having a pH of approximately 1.5, citric acid releases hydrogen ions, reducing the pH of the cheese component.

89. In fact, one company identifies citric acid as an “acidulant” in their Canadian version of its shelf-stable macaroni and cheese.

90. The direct result of adding citric acid is less susceptibility to harmful microorganisms.

91. A lower pH environment inhibits microbial spoilage from bacteria, yeasts and/or molds.

92. Citric acid’s effect on pH helps ward off *Salmonella*, a constant risk with dairy products like cheese powders.

93. By lowering the pH and/or increasing acidity, bacteria like *Salmonella* are a decreased risk.

ii. Buffering Agent

94. Buffering in cheese preparations is important in maintaining an equilibrium pH below 4.6 for a food’s entire shelf life.

95. Since citric acid has three pKa values, 3.13, 4.76, and 6.40, the Product can maintain stability over a wide pH range, roughly from 2 to 8.

96. Scholarly publications confirm citric acid is used in these types of cheese preparations for “pH adjustment,” a synonym for a buffering agent.¹⁵

¹⁵ Some may refer to a buffering agent as an “acidulant.”

Table 18.9. Ingredients and their roles in cheese powder and seasoning formulation.

Ingredient used	Functionality
Cheeses	Flavor quality and intensity
Salt	Taste and adhesion of seasoning to snack
Corn starch	Adhesion of seasoning
Spices: onion, garlic, pepper, mustard	Variety of flavors
Citrates/phosphates	Cheese-emulsifying salts, slurring agents
Lactic acid	Acid flavor
Enzyme-modified cheese and enzyme-modified butter oil	Flavor booster/rounded flavor
Maltodextrins	Carrier, no-flavor impact/flow agent
Corn syrup solids	Sweet rounded flavor/carrier/flow agent
Whey/whey products/lactose	Filler/flow carriers, dairy flavor, cost control, effective coating
Vegetable oil	Adhesion/filler
Monosodium glutamate/autolyzed yeast extract	Flavor booster
Citric acid/sodium citrate	pH adjustment
Color	Appearance improvement
Tomato powder	Color and flavor
Sodium silicoaluminate/silica dioxide/magnesium carbonate	Flow agents (anti-caking)
Propylene glycol/wetting agent	Antidust agent

97. This usage is consistent with practical applications.

98. A patent for cheese compositions identifies citric acid as a pH-modifying agent.¹⁶

99. This is because it not only thickens a cheese slurry but reduces its pH.

100. The result is that added citric acid limits undesired shifts in acidity which have a detrimental impact on microbial stability.

101. In this respect, the added citric acid helps, or can help, these types of cheese preparations adhere to the Tanaka Guidelines, which have established thresholds for microbiological activity which may pose a risk to health and safety,

¹⁶ See, i.e., Low-cost, shelf-stable cheese sauce, Patent Application, US 20090186129A1, General Mills, Inc.

like *Clostridium botulinum* and other toxins.¹⁷

102. Resisting significant changes in pH improves the stability of the cheese component and/or the food to which it is added over longer periods.

iii. Antimicrobial Agent

103. Though not its primary function, citric acid has broad antimicrobial effects.

104. This is through its ability to penetrate the walls of spoilage microorganisms which cause rapid degradation.

iv. Antioxidant

105. While not a direct and/or primary antioxidant the added citric acid has antioxidant effects.

106. This is based on how cheese preparations and/or the foods to which they are added may be stored for long periods prior to consumption.

107. Having relatively high fat contents, cheese preparations are vulnerable to lipid oxidation and/or rancidity.

108. One result is the generation of hydroperoxides, which may cause malodor, off-flavors, and/or decrease in key volatile flavor compounds.

109. Beyond sensory attributes, lipid oxidation may contribute to greater

¹⁷ Townes et al., 1996.

susceptibility to oiling-off and free fat formation.

110. According to Kosikowski, storage of cheese preparations can result in nonenzymatic browning.

111. This occurs because they contain lactose, a reducing sugar that can interact with amino acids.

112. The added citric acid helps to limit the negative effects of oxidation.

v. Chelating Agent

113. Ingredients used in these types of cheese preparations have free copper and iron ions.

114. These cause harmful oxidative reactions generating free radicals which spoil fats or lipids in cheese components.

115. However, the added citric acid chelates or bind with these ions and/or donates electrons to reactive oxygen species.

116. This prevents them from causing oxidation and/or being available for bacterial growth.

117. The result is that added citric acid helps limit fat spoilage, rancidity and/or off-flavors

VI. CONCLUSION

118. Citric acid is an artificially produced chemical that retards or tends to retard deterioration of the Product and/or its components.

119. The above-identified functions indicate how, when used in the Product and/or its components, tocopherols can, tend to and/or do prevent and/or retard deterioration, in other words, preservative effects, through methods which may include direct antimicrobial effects, which include the ability to (i) neutralize free radicals and break the chain reaction of lipid oxidation, (ii) prevent rapid quality decline such as malodor, off-flavor, diminishment in nutrient value and/or negative effects on appearance and/or (iii) prevent and/or limit spoilage

120. This is because citric acid is a non-natural artificial chemical, produced and made by people, that, when added to the Product and/or its components, tends to prevent or retard deterioration. 1 N.Y.C.R.R. § 259.1(a).

121. As a result of the false and/or misleading representations and/or omissions, the Product is sold at an elevated or higher price, approximately \$1.99 compared to how much the Product would and/or could be sold for if it were represented in a truthful and/or non-misleading way.

122. This will and/or can be determined through methods carried out by experts in accordance with requirements of the CPLR and/or any case scheduling orders, using methodologies such as conjoint analysis, choice analysis, choice-based ranking, choice-based conjoint analysis, hedonic regression, hedonic pricing and/or other similar methods, which evaluate a product's attributes and/or features.

123. By determining the willingness to pay of consumers for products,

including the Product at issue, with and/or without the challenged claims, statements, images and/or omissions, the value of the challenged claims, statements, images and/or omissions can be reduced to a monetary value.

124. The challenged representations and/or omissions enable Defendant to sell it at a higher price than it could be sold for if it did not promote the Product in the manner described.

JURISDICTION

125. Plaintiff Rose is a citizen of New York.

126. Plaintiff Rose is a resident of Rockland County, New York.

127. The Court has jurisdiction over Defendant because it transacts business within New York and/or sells and/or or sold the Product to consumers within New York to citizens of New York.

VENUE

128. Venue is in this Court because the residence of Plaintiff Rose is in Rockland County.

PARTIES

129. Plaintiff is a consumer, not merchant, business, re-seller or competitor.

130. Plaintiff is a citizen of New York.

131. Plaintiff is a resident of Rockland County.

132. Defendant Conagra Brands Inc. is a Delaware corporation with a

principal place of business in Illinois.

133. Plaintiff is like many consumers, accustomed by common knowledge and/or shared experiences and/or who may look to labeling and/or packaging to quickly see what they are buying and/or to learn basic information, including, where applicable, how much it contains, how many it contains, what it does, what it does not do, how long it will last, what it contains and/or what it does not contain and/or such attributes are and/or may be some of the factors in purchasing decisions.

134. Plaintiff is like many consumers, accustomed by common knowledge and/or shared experiences to labeling and/or packaging telling them about positive or negative characteristics, origins, environmental attributes, side effects, nutrients, flavoring, the source of any flavoring, quantity, net quantity, servings, attributes, qualities, ingredients and/or features which are and/or may be factors in purchasing decisions.

135. Based on the Product's labeling and/or packaging including "No Artificial Preservatives" consumers like and/or including Plaintiff expected, would expect and/or was caused to pay more money for, based on the representations and/or omissions that it did not contain ingredients, including artificial ingredients, understood consistent with dictionary definitions as something "made, produced, or done by people," the opposite of "natural," such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no

connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve, served, could serve and/or tends to prevent or retard deterioration in the Product and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation, (4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or pathogens such as E. coli, Salmonella and harmful bacteria, especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions.

136. Based on the Product's labeling and/or packaging including "No Artificial Preservatives" Defendant is and/or was able to and can and/or could charge a higher price for the Product to consumers like and/or including Plaintiff, who then

pay more money for the Product than they otherwise would have paid.

137. Plaintiff read, was exposed to, was aware of, relied on and/or was caused to pay more money as a result of the labeling “No Artificial Preservatives”. ...

138. Plaintiff was caused to pay more money as a result of the labeling “No Artificial Preservatives” than would have been paid in the absence of these representations, images and/or omissions.

139. The labeling and/or packaging including “No Artificial Preservatives” enabled Defendant to charge Plaintiff a higher price for the Product than it could otherwise charge in the absence of these representations and/or omissions.

140. Plaintiff bought the Product with the labeling and/or packaging identified here at or around the above-referenced price. ...

141. Plaintiff purchased and/or paid money towards the Product within three years of the filing of this Complaint.

142. Plaintiff purchased and/or paid money towards the Product at relevant stores that sell the Product in New York. ...

143. Plaintiff used, consumed, disposed of in the directed or expected manner, exhausted and/or applied the Product in New York.

144. Plaintiff was injured by reason of Defendant’s violations of GBL §§ 349 and/or 350 through the labeling and/or packaging, which included “No Artificial Preservatives” because these statements, images and/or omissions enabled it to

charge an artificially inflated and/or higher price for the Product, which Plaintiff paid and/or paid money towards.

145. Plaintiff was caused to pay more for the Product than Plaintiff would have paid had the labeling and/or packaging conspicuously disclosed it contained ingredients, including artificial ingredients, understood consistent with dictionary definitions as something “made, produced, or done by people,” the opposite of “natural,” such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve, served, could serve and/or tends to prevent or retard deterioration in the Product and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation, (4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or

pathogens such as E. coli, Salmonella and harmful bacteria, especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions as Plaintiff would have been able to pay less because Defendant would not be able to charge as much. ...

146. The Product was not “worthless” to Plaintiff but worth less than what Plaintiff paid and/or Plaintiff would not have paid as much absent Defendant’s false and/or misleading statements and/or omissions.

147. Plaintiff obtained value from the Product because it provided utility, value, etc., but seeks the cost difference between the Product as presented and as delivered.

148. The Product’s features and/or attributes, including “No Artificial Preservatives” enabled Defendant to charge a higher or greater price to all purchasers.

149. The Product’s features and/or attributes are when taken together and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, choice-based conjoint analysis, regression, hedonic pricing and/or other similar methods, impacted Plaintiff’s purchasing choice, the price paid and/or the ability of Defendant to sell more of the Product at a higher price, compared to if it did not have

the challenged representations and/or omissions.

150. The Product's features and/or attributes can be isolated for the purpose of conjoint analysis, choice analysis, choice-based ranking, choice-based conjoint analysis, regression, hedonic regression, hedonic pricing and/or other similar complicated methods, with a monetary value attributed to the challenged representations and/or omissions.

FUTURE CONSIDERED CLASS ALLEGATIONS

151. Plaintiff may seek to represent only other consumers, not merchants, resellers, competitors or any form of business entity including non-profit organizations, in the class identified below, against a business: —

Only citizens of New York who purchased the Product for personal, familial and/or household consumption, application and/or use in New York during the statutes of limitations.

152. Excluded from the Class are or would be (i) Defendant, Defendant's board members, executive-level officers, members, attorneys and immediate family, (ii) governmental entities, (iii) the Court, the Court's immediate family and Court staff, (iv) persons that timely and properly exclude himself, herself or themselves, from the Class, (v) non-citizens of New York, (vi) persons who bought the Product outside New York, (vii) persons who used, applied and/or consumed the Product outside New York, (viii) persons who are citizens of more than one State, (ix)

businesses and non-profit organizations and (x) persons who would otherwise be eligible to be a part of the Class, but seek to pursue statutory penalties, as opposed to actual damages.

153. Common questions of issues, law and fact do and/or would predominate and include whether Defendant's representations were and/or are misleading and/or if Plaintiff and class members are and/or would be entitled to actual damages.

154. Plaintiff's claims and/or basis for relief are and/or would be typical to other members because all were subjected to the same unfair, misleading and/or deceptive representations, omissions and/or actions.

155. Plaintiff is or would be an adequate representative, because Plaintiff's interests would not and/or do not conflict with other members.

156. No individual inquiry is or would be necessary, since the focus is or would be only on Defendant's practices and the class is definable and ascertainable.

157. Individual actions could and/or would risk inconsistent results, be repetitive and/or are, could or would be impractical to justify, as the claims are and/or would be modest relative to the scope of the harm.

158. The class is or would be sufficiently numerous, because the Product is and/or has been sold throughout the State, with the representations, omissions, packaging and/or labeling identified here to citizens of this State.

159. Consistent with what the CPLR would require in the event relief for a

class may be requested, Plaintiff does not and/or would not seek any penalty as a measure of damages.

160. To the extent required by the CPLR, Plaintiff waives, will waive or would waive recovery of any penalty as a measure of damages, intends to seek actual damages and in the event persons wish to seek such penalties, they may opt-out of any proposed class.

161. Plaintiff's Counsel is competent and experienced in consumer actions and intends to protect class members' interests adequately and fairly.

CAUSES OF ACTION

COUNT I

New York General Business Law ("GBL") §§ 349 and 350

162. To the extent required, this section incorporates by reference other paragraphs as necessary.

163. Plaintiff's claims are based upon New York's General Business Law ("GBL") §§ 349 and 350, passed by the New York Legislature to protect the New York public and unsophisticated New York consumers against businesses.

164. The purpose of the GBL is to protect New York consumers against unfair and/or deceptive practices.

165. The GBL considers false advertising, unfair acts and/or deceptive practices in the sale of consumer products to be unlawful.

166. Violations of the GBL can be based on (i) other laws and standards

related to consumer deception, (ii) public policy, established through statutes, laws or regulations, (iii) principles of other jurisdictions, (iv) decisions with respect to those principles, (v) rules promulgated pursuant to acts designed to prevent deception and/or (vi) standards of unfairness and/or deception set forth and interpreted by other agencies, entities, tribunals and/or bodies.

167. Defendant's false, misleading and/or deceptive representations and/or omissions with respect to the Product's contents, effects, side-effects, components, origins, nutrient values, servings, ingredients, environmental attributes, composition, flavoring, taste, type, functionality, amount, quantity and/or quality were material in that they were likely to influence consumer purchasing decisions.

168. The packaging, representations and/or labeling of the Product violated the GBL, because the representations, omissions, design, markings and/or other elements, including "No Artificial Preservatives" caused purchasers including Plaintiff to expect it did not contain ingredients, including artificial ingredients, understood consistent with dictionary definitions as something "made, produced, or done by people," the opposite of "natural," such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve,

served, could serve and/or tends to prevent or retard deterioration in the Product and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation, (4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or pathogens such as E. coli, Salmonella and harmful bacteria, especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions, which was unfair and/or deceptive to consumers.

169. The packaging and labeling of the Product violated laws, statutes, rules, regulations and/or norms which prohibit unfair, deceptive and/or unconscionable conduct against New Yorkers.

170. The packaging and/or labeling of the Product violated the GBL because the representations, omissions, design, markings and/or other elements including “No Artificial Preservatives” was contrary to statutes and/or regulations which

prohibit consumer deception of New Yorkers by companies in the labeling of products. —

171. Plaintiff paid more for the Product and/or would not have paid as much if the labeling disclosed that it contained ingredients, including artificial ingredients, understood consistent with dictionary definitions as something “made, produced, or done by people,” the opposite of “natural,” such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve, served, could serve and/or tends to prevent or retard deterioration in the Product and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation, (4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or pathogens such as E. coli, Salmonella and harmful bacteria,

especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions. ...

172. Plaintiff seeks to recover for economic injury and/or loss sustained based on the misleading labeling and/or packaging of the Product, a deceptive practice under the GBL.

173. Plaintiff may, can and/or will, if required, produce evidence including expert evidence in accordance with the CPLR and/or any case scheduling orders, showing how Plaintiff paid more than Plaintiff would have paid for the Product, based on Defendant's representations, images, omissions, packaging and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, choice-based ranking, choice-based conjoint analysis and/or other complicated methodologies.

174. Based on the labeling and/or packaging including "No Artificial Preservatives" Defendant can, may, did and/or does charge a higher price for the Product, compared to if it did not have these representations and/or omissions.

175. This higher price was paid by Plaintiff, causing Plaintiff economic or financial injury, which will, may and/or can be demonstrated through expert evidence.

176. Damages will or can be based on the value attributed to the challenged claims, statements, representations, practices and/or omissions, determined by expert evidence in accordance with the CPLR and any case scheduling orders, a percentage of the total price paid instead of the Product's total price.

177. This is the difference between what was paid based on the Product's labeling, packaging, representations, statements, omissions and/or marketing and how much it would and/or could have been sold for, without the misleading labeling, packaging, representations, statements, omissions and/or marketing identified here.

178. This difference may be a fraction or percentage of the Product's total price, such as a few cents, i.e., \$0.20 per unit, instead of the total price.

179. This will, may and/or can be demonstrated based on evidence including expert evidence.

180. The misrepresentations, images, statements and/or omissions including "No Artificial Preservatives" caused and/or contributed to an inflated or higher price to be paid for the Product.

181. Plaintiff was economically injured and/or caused to suffer economic and/or financial damages by payment of the above-identified extra amount, price premium and/or higher price for the Product, the amount of which will and/or can be determined by experts in accordance with the CPLR.

182. As a result of Defendant's misrepresentations, images, statements and/or

omissions, Plaintiff was economically injured and/or caused to suffer economic or financial damages by payment of the above-identified price premium or higher price for the Product.

COUNT II

Agriculture and Markets Law ("AGM")

183. The AGM authorizes purchasers to assert violations of its provisions.

184. The AGM endorses methods such as individual enterprise to encourage compliance with its provisions. AGM § 3.

185. The Product violates AGM § 201(1) because despite the labeling of "No Artificial Preservatives" it contained ingredients, including artificial ingredients, understood consistent with dictionary definitions as something "made, produced, or done by people," the opposite of "natural," such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve, served, could serve and/or tends to prevent or retard deterioration in the Product and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation,

(4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or pathogens such as E. coli, Salmonella and harmful bacteria, especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions, rendering such claim false and/or deceptive based on the use of chemical preservatives, causing it to be misbranded. AGM § 201(1) *compare with*, 21 U.S.C. § 343(a).

186. The Product violates AGM § 201(11) because it was required to bear labeling which disclosed it contained ingredients, including artificial ingredients, understood consistent with dictionary definitions as something “made, produced, or done by people,” the opposite of “natural,” such as citric acid, considered by regulatory agencies to be inconsistent with non-synthetic materials, having no connection to the citric acid from citrus fruits like lemons, with its production requiring, among other things (i) chemical reactions, (ii) artificial compounds and/or (iii) synthetic biology, transforming one distinct substance to another, which serve, served, could serve and/or tends to prevent or retard deterioration in the Product

and/or its components, through (1) its action as an acidulant which reduces pH, thereby limiting exposure to harmful spoilage microorganisms which cause rapid quality decline, (2) its action as a buffering agent which prevents significant changes to pH, (3) its role as an antioxidant, limiting the quality decline caused by oxidation, (4) its chelating ability, by binding to metal ions which would otherwise catalyze oxidation, enzymatic reactions and chemical reactions, causing negative changes in color, texture, flavor and/or safety, (5) its indirect antimicrobial effects by lowering the pH, contributing to an acidic environment preventing survival of undesirable microbes and/or pathogens such as E. coli, Salmonella and harmful bacteria, especially Gram-negative bacteria and/or (6) its direct antimicrobial effects by penetrating the cell walls of harmful microorganisms, damaging their structure, interrupting enzymatic activities and/or disrupting metabolic reactions, in other words, preservative functions, in other words, chemical preservatives, and not only does it not bear the required labeling stating this fact, it promotes that it has “No Artificial Preservatives” causing it to be misbranded. AGM § 201(11) *compare with*, 21 U.S.C. § 343(k).

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

Wherefore, Plaintiff seeks and/or may seek:

1. Actual damages permitted by the CPLR but neither (i) a penalty, nor minimum

measure of recovery created or imposed by statute, which are or may be prohibited by the CPLR, (ii) full value damages nor (iii) punitive damages.

2. Discretionary attorneys' fees upon Court approval; and/or
3. To declare this, should Plaintiff elect and seek, a class action, appointing Plaintiff representative and the undersigned as Counsel for the Class. ¹⁹

September 16, 2026

Respectfully submitted,

/s/ Spencer Sheehan

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