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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MATTHEW SINATRO and PHILLIP
WHITE, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

MRS. GOOCH’S NATURAL FOOD
MARKETS, INC., a California corporation
and WHOLE FOODS MARKET
CALIFORNIA, INC., a California
corporation,

Defendants.

Case No.

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS & PROFESSIONS CODE § 17500, *et seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS & PROFESSIONS CODE § 17200, *et seq.*
4. UNJUST ENRICHMENT
5. COMMON LAW FRAUD
6. INTENTIONAL MISREPRESENTATION
7. NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

Plaintiffs Matthew Sinatro and Phillip White, individually and on behalf of all others similarly situated, bring this class action complaint against Mrs. Gooch’s Natural Food Markets, Inc. and Whole Foods Market California, Inc. (collectively referred to herein as “Defendants”) and allege as follows:



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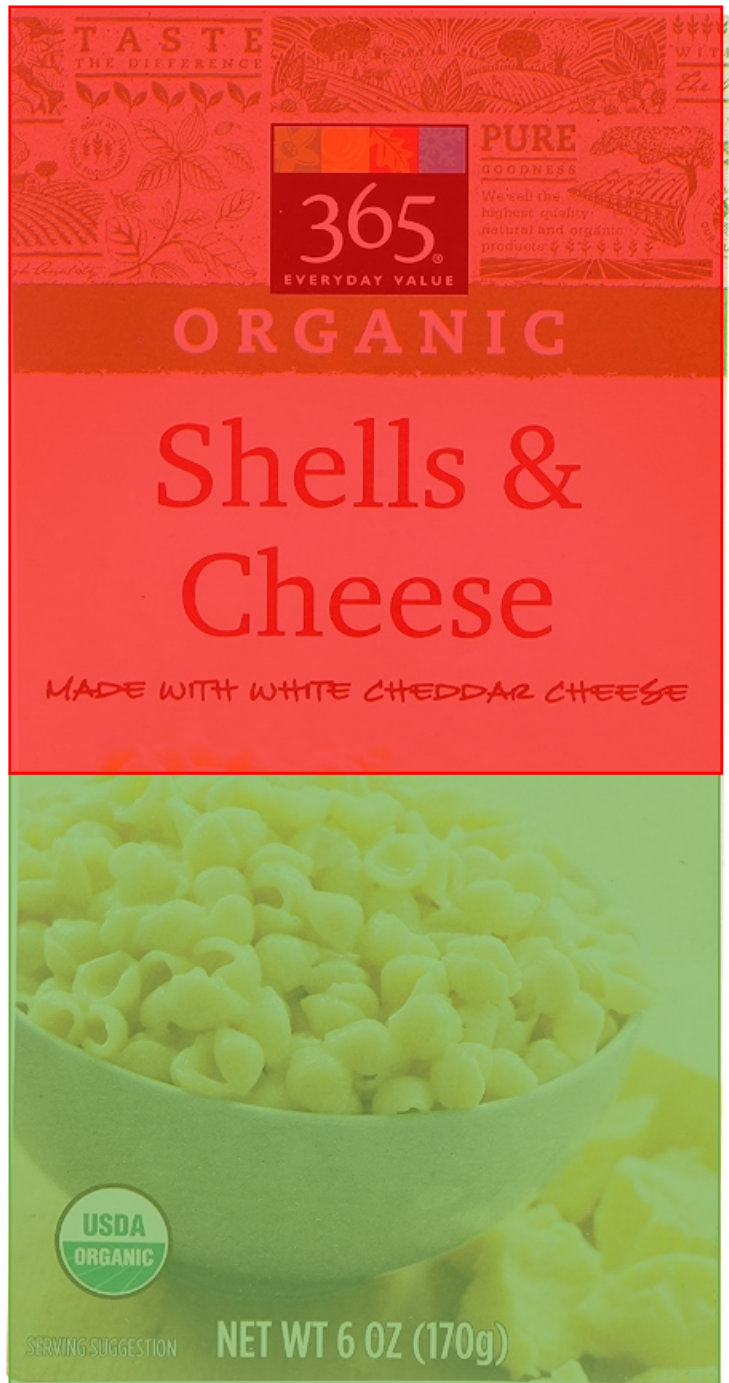
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SUMMARY OF THE ACTION

1. To increase profits at the expense of consumers and fair competition, Defendants sell their popular macaroni and cheese products in oversized, opaque boxes that do not reasonably inform consumers that they are half empty. Defendants’ scam dupes unsuspecting consumers across California and America to pay for empty space at premium prices and undercuts fair competition. See **Figure 1**. The green shading represents the product fill. The remainder is nonfunctional empty space, or “slack-fill.”

Figure 1.

 Empty Space (Slack Fill)
 Macaroni & Cheese Product



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1 2. Defendants fail to comply with consumer protection and packaging statutes designed
2 to prevent this scam, instead relying on their brand name and goodwill to further their deceptive
3 practices. This class action aims to remedy Defendants’ unfair business practice by (1) enjoining
4 Defendant’s use of nonfunctional slack-fill; and (2) providing injured consumers money lost as a
5 result of Defendants’ deceptive packaging. The Products at issue are Whole Foods 365 Organic
6 Shells & Cheese and Whole Foods 365 Organic Macaroni & Cheese (Defendants’ “Organic
7 Products”), Whole Foods 365 Shells & Cheese and Whole Foods 365 Macaroni & Cheese
8 (Defendants’ “Conventional Products”), and all other macaroni and cheese products sold in
9 opaque boxes by Defendants (collectively, the “Products”) sold in California and the United
10 States.

11 3. Defendants market the Products in a systematically misleading manner by
12 representing them as adequately filled when, in fact, they contain an unlawful amount of slack-fill.
13 Defendants underfill the Products for no lawful reason. The purposes of this practice are (1) to
14 save money (by using less product per box); and (2) to deceive consumers into purchasing
15 Defendants’ Products over their competitors’ products. Defendants’ slack-fill scheme not only
16 harms tens of thousands of consumers, it also harms law-abiding competitors. Accordingly,
17 Defendants have violated the California Consumers Legal Remedies Act, particularly California
18 Civil Code Sections 1770(a)(2), 1770(a)(5), 1770(a)(7), and 1770(a)(9). As such, Defendants have
19 committed *per se* violations of Business and Professions Code Section 17200, *et seq.* and Business
20 and Professions Code Section 17500, *et seq.* and Civil Code Section 1750, *et seq.*

21 4. Plaintiffs and the Class Members have accordingly suffered injury in fact caused by
22 the false, fraudulent, unfair, deceptive, unlawful, and misleading practices set forth herein, and
23 seek injunctive relief and restitution.

24 **CALIFORNIA STATE AND FEDERAL COURTS FIND SLACK-FILL VIOLATIONS**

25 **MERITORIOUS AND APPROPRIATE FOR CLASS TREATMENT**

26 5. Several state and federal courts have found that cases involving nearly identical
27 claims are meritorious and appropriate for class treatment. *See Padilla v. Whitewave Foods Co.*,
28 Case No. LA CV18-09327 JAK (JCx) (C.D. Cal. July 26, 2019) (defendant’s FRCP 12(b)(6)

1 motion to dismiss slack-filled supplement container claims denied); *Matic v. United States*
2 *Nutrition, Inc.*, Case No. CV 18-9592 PSG (AFMx) (C.D. Cal. Mar. 27, 2019) (defendant's FRCP
3 12(b)(6) motion to dismiss slack-filled supplement container claims denied); *Merry v. Int'l Coffee*
4 *& Tea, LLC*, Cal. Super. Case No. CIVDS1920749 (San Bernardino Cty. Jan. 27, 2020)
5 (defendant's demurrer to slack-filled powder container claims overruled); *Iglesias v. Ferrara*
6 *Candy Co.*, Case No. 3:17-cv-00849-VC (N.D. Cal. July 25, 2017) (defendant's FRCP 12(b)(6)
7 motion to dismiss slack-filled Jujufruits® and Lemonhead® candy box claims denied, and
8 nationwide settlement class certified) (cert. granted Oct. 31, 2018); *Tsuchiyama v. Taste of Nature,*
9 *Inc.*, Cal. Super. Case No. BC651252 (L.A. Cty. Feb. 28, 2018) (defendant's motion for judgment
10 on the pleadings involving slack-filled Cookie Dough Bites® candy box claims denied, and
11 nationwide settlement subsequently certified through Missouri court); *Gordon v. Tootsie Roll*
12 *Indus.*, Case No. CV 17-2664 DSF (MRWx) (C.D. Cal. Oct. 4, 2017) (defendant's FRCP 12(b)(6)
13 motion to dismiss slack-filled Junior Mints® and Sugar Babies® candy box claims denied);
14 *Escobar v. Just Born, Inc.*, Case No. 2:17-cv-01826-BRO-PJW (C.D. Cal. June 12, 2017)
15 (defendant's FRCP 12(b)(6) motion to dismiss slack-filled Mike N' Ike® and Hot Tamales®
16 candy box claims denied, and California class action certified) (cert. granted Mar. 25, 2019);
17 *Thomas v. Nestle USA, Inc.*, Cal. Super. Case No. BC649863 (L.A. Cty. Apr. 29, 2020) (certifying
18 as a class action slack-fill claims brought under California consumer protection laws).

19 JURISDICTION

20 6. This Court has subject matter jurisdiction over this action pursuant to the Class
21 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because: (i) there are 100 or more class
22 members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of
23 interest and costs, and (iii) there is minimal diversity because at least one plaintiff and defendant
24 are citizens of different states. This Court has supplemental jurisdiction over any state law claims
25 pursuant to 28 U.S.C. § 1367.

26 7. Defendants are subject to personal jurisdiction in California based upon sufficient
27 minimum contacts that exist between Defendants and California. Defendants are authorized to do
28 and are doing business in California.

1 **VENUE**

2 8. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial
3 part of the events and omissions giving rise to Plaintiff's claims occurred in this District. Plaintiffs
4 reside in this District, Plaintiffs purchased the Product in this District, and Defendants made the
5 challenged false representations in this District. Moreover, Defendants receive substantial
6 compensation from sales in this District, and Defendants made numerous misrepresentations that
7 had a substantial effect in this District, including but not limited to, labeling and packaging
8 advertisements.

9 **PARTIES**

10 9. Plaintiff Sinatro is, and at all times relevant hereto was, a citizen of California,
11 residing in the county of San Francisco. Plaintiff Sinatro purchased Whole Foods 365 Shells &
12 Cheese (one of Defendants' Conventional Products) at a Whole Foods store in San Francisco,
13 California in 2020. In making this purchase, Plaintiff Sinatro relied upon the opaque packaging,
14 including the size of the box. The size of the box was prepared and approved by Defendants and
15 disseminated statewide and nationwide, as well as designed to encourage consumers to purchase
16 the Products. If Plaintiff Sinatro had known that the Conventional Product box contained
17 nonfunctional slack-fill, he would not have purchased the Product, let alone paid for macaroni and
18 cheese product he never received. In early 2021, Plaintiff Sinatro noticed that Defendants had
19 changed the labeling and packaging of their Conventional Product. The new packaging was a box
20 of a similar size, but with a different front label design. Believing that one of the changes
21 accompanying the new labeling and packaging was a reduction in slack-fill, Plaintiff Sinatro
22 purchased the newly named Whole Foods 365 Macaroni & Cheese conventional Product
23 (Defendants' other Conventional Product). In making this purchase, Plaintiff Sinatro relied upon
24 the opaque packaging, including the size of the box. The new packaging and the appearance of
25 changes to the Conventional Product were prepared and approved by Defendants and disseminated
26 statewide and nationwide, as well as designed to encourage consumers to purchase the Products. If
27 Plaintiff Sinatro had known that the Conventional Product's new box contained a similar amount
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1 of nonfunctional slack-fill to the old box, he would not have purchased the Conventional Product,
2 let alone paid for macaroni and cheese product he never received.

3 10. Plaintiff White is, and at all times relevant hereto was, a citizen of California
4 residing in the county of Santa Clara. Plaintiff White purchased the Whole Foods 365 Organic
5 Shells & Cheese (one of Defendants' Organic Products) at a Whole Foods store in Santa Clara,
6 California in 2020. In making his purchase, Plaintiff White relied upon the opaque packaging,
7 including the size of the box. The box and its label were prepared and approved by Defendants
8 and disseminated statewide and nationwide, as well as designed to encourage consumers to
9 purchase the Products. If Plaintiff White had known that the Organic Product box contained
10 nonfunctional slack-fill, he would not have purchased the Organic Product, let alone paid for
11 macaroni and cheese product he never received. In early 2021, Plaintiff White noticed that
12 Defendants had changed the labeling and packaging of their Organic Product. The new packaging
13 was a box of a similar size, but with a different front label design. Believing that one of the
14 changes accompanying the new labeling and packaging was a reduction in slack-fill, Plaintiff
15 White purchased the newly named Whole Foods 365 Organic Macaroni & Cheese Product
16 (Defendants' other Organic Product). In making this purchase, Plaintiff White relied upon the
17 opaque packaging, including the size of the box. The new packaging and label of the Organic
18 Product were prepared and approved by Defendants and disseminated statewide and nationwide,
19 as well as designed to encourage consumers to purchase the Products. If Plaintiff White had
20 known that the Organic Product's new box contained a similar amount of nonfunctional slack-fill
21 to the old box, he would not have purchased the newly labeled Organic Product, let alone paid for
22 macaroni and cheese product he never received.

23 11. Whole Foods Market California, Inc. is a California corporation. Whole Foods
24 Market California, Inc. maintains its principal place of business at 6401 Hollis Street, Suite 150,
25 Emeryville, CA 94608. Mrs. Gooch's Natural Food Markets, Inc. is a California corporation. Mrs.
26 Gooch's Natural Food Markets, Inc. maintains its principal place of business at 207 Goode
27 Avenue, 7th Floor, Glendale, CA 91203. Defendants, directly and through their agents, conduct
28 business nationwide. Defendants have substantial contacts with and receive substantial benefits

1 and income from and through the State of California. Defendants are the owners, manufacturers,
2 and distributors of the Products, and are the companies that created and/or authorized the false,
3 misleading, and deceptive packaging for the Products.

4 **FACTUAL ALLEGATIONS**

5 12. The amount of product inside any product packaging is material to any consumer
6 seeking to purchase that product. The average consumer spends only 13 seconds deciding whether
7 to make an in-store purchase;¹ this decision is heavily dependent on a product's packaging,
8 including the package dimensions. Research has demonstrated that packages that seem larger are
9 more likely to be purchased because consumers expect package size to accurately represent the
10 quantity of the good being purchased.²

11 13. Accordingly, Defendants chose a certain size box for their Products to convey to
12 consumers that they are receiving a certain and substantial amount of macaroni and cheese,
13 commensurate with the size of the box. Such representations constitute an express warranty
14 regarding the Products' contents.

15 14. Slack-fill is the difference between the actual capacity of a container and the volume
16 of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled
17 to less than its capacity for illegitimate or unlawful reasons.

18 15. Defendants falsely represent the quantity of macaroni and cheese in each of the
19 Products' opaque boxes through their packaging. The size of each box leads the reasonable
20 consumer to believe he or she is purchasing a box full of product when, in reality, what he or she
21 actually receives is one-half of what is represented by the size of the box.

22 16. Even if Plaintiffs and other reasonable consumers of the Products had a reasonable
23 opportunity to review, prior to the point of sale, other representations of quantity, such as net
24 weight or serving disclosures, they did not and would not have reasonably understood or expected
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26 _____
27 ¹ Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN, Jan. 13, 2015,
28 <https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-window/>.

² P. Raghurib & A. Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*, 36 J. MARKETING RESEARCH 313-326 (1999).

1 such representations to translate to a quantity of macaroni and cheese product meaningfully
2 different from their expectation of a quantity of product commensurate with the size of the box.

3 17. Prior to the point of sale, the Products' packaging does not allow for a visual or
4 audial confirmation of the contents of the Products. The Products' opaque packaging prevents a
5 consumer from observing the contents before opening. Even if a reasonable consumer were to
6 "shake" the Products before opening the box, the reasonable consumer would not be able to
7 discern the presence of any nonfunctional slack fill, let alone the approximate 48-56%
8 nonfunctional slack-fill that is present in the Products, depending on the variety.

9 18. The other information that Defendants provide about the quantity of product on the
10 front and back labels of the Products does not enable reasonable consumers to form any
11 meaningful understanding about how to gauge the quantity of contents of the Products as
12 compared to the size of the box itself. For instance, the Products' packaging does not have any
13 information that would provide Plaintiffs with any meaningful insight as to the amount of product
14 to be expected, such as a fill line.

15 19. Disclosures of net weight and serving sizes in ounces or grams do not allow the
16 reasonable consumer to make any meaningful conclusions about the quantity of macaroni and
17 cheese contained in the Products' boxes that would be different from the reasonable consumer's
18 expectation that the quantity of product is commensurate with the size of the box.

19 20. Plaintiffs would not have purchased the Products had they known that the Products
20 contained slack-fill that serves no functional or lawful purpose.

21 21. As pictured *supra*, Defendants uniformly underfill the Products' boxes, rendering
22 about 48-56% of each box, depending on the variety, slack-fill, none of which serves a functional
23 or lawful purpose.

24 **None of the Slack-Fill Statutory Exceptions Apply to the Products**

25 22. Pursuant to 21 C.F.R. § 100.100, "a food shall be deemed to be misbranded if its
26 container is so made, formed, or filled as to be misleading." Opaque containers "shall be
27 considered to be filled as to be misleading if it contains nonfunctional slack-fill." *Id.*

28

1 Nonfunctional slack-fill is empty space within packaging that is filled to less than its capacity for
2 reasons other than provided for in the six enumerated slack-fill exceptions.

3 **A. 21 C.F.R. § 100.100(a)(1) – Protection of the Contents**

4 23. The slack-fill contained in the Products’ packaging does not protect the contents of
5 the package. In fact, the greater the amount of slack-fill, the more room the contents have to
6 bounce around during shipping and handling, making it more likely that the contents will break or
7 sustain damage. As such, the slack-fill present in the Products’ packaging makes the macaroni and
8 cheese product more, not less, susceptible to damage.

9 **B. 21 C.F.R. § 100.100(a)(2) – Requirements of the Machines**

10 24. The machines used to package the Products would not be affected if there was more
11 macaroni and cheese added. At most, a simple recalibration of the machines would be required.
12 Upon information and belief, adjusting these machines is rather simple.

13 25. Because the Organic Products are only filled to approximately 52% of their
14 capacity, and the Conventional Products are only filled to approximately 44% of their capacity,
15 Defendants can increase the Products’ fill level significantly without affecting how the boxes are
16 sealed, or they can disclose the fill-level on the outside labeling to inform consumers of the
17 amount of macaroni and cheese actually in the box, consistent with the law.

18 **C. 21 C.F.R. § 100.100(a)(3) – Settling During Shipping and Handling**

19 26. The slack-fill present in the Products’ containers is not a result of the macaroni and
20 cheese product settling during shipping and handling. Given the Products’ density, shape, and
21 composition, any settling occurs immediately at the point of fill. No measurable product settling
22 occurs during subsequent shipping and handling.

23 27. The contents of the Products are of a great enough density that any slack-fill present
24 at the point of sale was present at the time of filling the containers and packaging the contents.

25 **D. 21 C.F.R. § 100.100(a)(4) – Specific Function of Package**

26 28. The packages do not perform a specific function that necessitates the slack-fill. This
27 safe harbor would only apply if a specific function is “inherent to the nature of the food and is
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1 clearly communicated to consumers.” The packages do not perform a function that is inherent to
2 the nature of the food. Defendants do not communicate any such function to consumers.

3 **E. 21 C.F.R. § 100.100(a)(5) – Reusable Container**

4 29. The Products’ packaging is not reusable or of any significant value to the Products
5 independent of their function to hold the macaroni and cheese product. The Products’ containers
6 are paperboard boxes, intended to be discarded immediately after the macaroni and cheese is
7 eaten.

8 **F. 21 C.F.R. § 100.100(a)(6) – Inability to Increase Fill or Decrease Box Size**

9 30. The slack-fill present in the Products’ containers does not accommodate required
10 labeling, discourage pilfering, facilitate handling, or prevent tampering.

11 31. Defendants can easily increase the quantity of macaroni and cheese product
12 contained in each box (or, alternatively, decrease the size of the containers) by approximately 56%
13 (for the Conventional Products) to 48% (for the Organic Products) more volume.

14 32. Because none of the safe harbor provisions apply to the Products’ packaging, the
15 packages contain nonfunctional slack-fill in violation of 21 C.F.R. § 100.100 and are, therefore,
16 filled as to be misleading. Plaintiffs shall proffer definitive expert testimony to establish these
17 facts once this case reaches the merits.

18 **The Conventional Product Demonstrates that the Organic Product is Particularly**
19 **Deceptive**

20 33. The Organic Product is sold in boxes of identical size and shape as the Conventional
21 Products, with virtually identical pasta and powder ingredients. Said another way, the ingredients
22 in the Organic Products take up no more and no less room than ingredients in the Conventional
23 Products.

24 34. Despite the near-identical nature of the ingredients in the Conventional and Organic
25 Products, the Organic Products are substantially less full than their conventional counterparts.

26 35. Defendants are intentionally underfilling the boxes of the Organic Products, hoping
27 to surreptitiously pass off the increase in ingredient price to consumers without their knowledge or
28 consent.

36. Reasonable consumers do not spend several minutes analyzing product details to confirm whether companies are secretly passing off price premiums of more expensive, organic ingredients. Rather, consumers reasonably assume the size of the box is a proxy for the amount of product contained therein.

37. True and correct representations of Defendants' Organic and Conventional Products are provided below. See **Figure 2**. The green shading represents product fill, and the red shading represents empty space, or slack-fill.

Figure 2.



Empty Space (Slack Fill)



Macaroni & Cheese Product

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1 38. Defendants’ Conventional Products are sold in identical packaging to that of the
2 Organic Products, i.e., opaque boxes of identical size, shape, volume, and material. Defendants’
3 Conventional Product is packaged using nearly identical fill and heated glue enclosing machines
4 to those of the Organic Products.

5 39. Defendants’ Conventional Products are of similar size, shape, and density as that of
6 the Organic Products. While the Conventional Products still contain unlawful amounts of slack-
7 fill, the Organic Product contains approximately 8% more slack-fill than the Conventional
8 Product.

9 40. Defendants’ Conventional packaging provides additional evidence that the slack-fill
10 present in the Organic Products’ packaging is nonfunctional to the tune of 52%.

11 41. Defendants’ Conventional Product packaging provides evidence that Defendants
12 have reasonable alternative designs available to them in their packaging of the Organic Products.

13 42. Plaintiffs did not expect that the Products would contain nonfunctional slack-fill,
14 especially given that nonfunctional slack-fill, as opposed to functional slack-fill, is prohibited by
15 federal law and California law.

16 43. The Products are made, formed, and filled so as to be misleading. The Products are,
17 therefore, misbranded.

18 44. The slack-fill contained in the Products does not serve a legitimate or lawful
19 purpose.

20 45. Defendants’ false, deceptive, and misleading label statements are unlawful under
21 state and federal consumer protection and packaging laws.

22 46. Defendants intended for Plaintiffs and the Class members to be misled.

23 47. Defendants’ misleading and deceptive practices proximately caused harm to
24 Plaintiffs and the Class.

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CLASS ALLEGATIONS

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2 48. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
3 Procedure 23(b)(2) and 23(b)(3) on behalf of themselves and all others similarly situated, and as
4 members of Classes defined as follows:

5 All residents of the United States who, within the relevant statute of limitations
6 periods, purchased the Products (“Nationwide Class”); and

7 All residents of California who, within four years prior to the filing of this Complaint,
8 purchased the Products (“California Subclass”).

9 (“Nationwide Class” and “California Subclass,” collectively, “Class”).

10 49. Excluded from the Class are: (i) Defendants, their assigns, successors, and legal
11 representatives; (ii) any entities in which Defendants have controlling interests; (iii) federal, state,
12 and/or local governments, including, but not limited to, their departments, agencies, divisions,
13 bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons presently in
14 bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (v)
15 any judicial officer presiding over this matter and person within the third degree of consanguinity
16 to such judicial officer.

17 50. Plaintiffs reserve the right to amend or otherwise alter the class definitions presented
18 to the Court at the appropriate time in response to facts learned through discovery, legal arguments
19 advanced by Defendants, or otherwise.

20 51. **Numerosity:** Members of the Class are so numerous that joinder of all members is
21 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of
22 purchasers (if not more) dispersed throughout the United States, and the California Subclass
23 likewise consists of thousands of purchasers (if not more) dispersed throughout the State of
24 California. Accordingly, it would be impracticable to join all members of the Class before the
25 Court.

26 52. **Common Questions Predominate:** There is a well-defined community of interest
27 in the questions of law and fact involved affecting the parties to be represented. The questions of
28 law and fact common to the Class predominate over questions which may affect individual Class
members. Common questions of law and fact include, but are not limited to, the following:

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- 1 a. The true nature and amount of product contained in each Products' packaging;
- 2 b. Whether the marketing, advertising, packaging, labeling, and other promotional
- 3 materials for the Products are deceptive;
- 4 c. Whether Defendants misrepresented the approval of the FDA, United States
- 5 Congress, and California Legislature that the Products' packaging complied with
- 6 federal and California slack-fill regulations and statutes;
- 7 d. Whether the Products contain nonfunctional slack-fill in violation of 21 C.F.R. §
- 8 100.100, *et seq.*;
- 9 e. Whether the Products contain nonfunctional slack-fill in violation of California
- 10 Business and Professions Code Section 12606.2, *et seq.*;
- 11 f. Whether Defendants' conduct is an unlawful business act or practice within the
- 12 meaning of Business and Professions Code Section 17200, *et seq.*;
- 13 g. Whether Defendants' conduct is a fraudulent business act or practice within the
- 14 meaning of Business and Professions Code Section 17200, *et seq.*;
- 15 h. Whether Defendants' conduct is an unfair business act or practice within the
- 16 meaning of Business and Professions Code Section 17200, *et seq.*;
- 17 i. Whether Defendants' advertising is untrue or misleading within the meaning of
- 18 Business and Professions Code Section 17500, *et seq.*;
- 19 j. Whether Defendants made false and misleading representations in their advertising
- 20 and labeling of the Products;
- 21 k. Whether Defendants knew or should have known that the misrepresentations alleged
- 22 herein were false;
- 23 l. Whether Plaintiffs and the Class paid more money for the Products than they
- 24 actually received;
- 25 m. How much more money Plaintiffs and the Class paid for the Products than they
- 26 actually received;
- 27 n. Whether Defendants committed common law fraud; and
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1 o. Whether Defendants were unjustly enriched at the expense of Plaintiffs and the
2 Class members;

3 53. **Typicality:** Plaintiffs' claims are typical of the claims of the proposed Class, as the
4 representations and omissions made by Defendants are uniform and consistent and are contained
5 in advertisements and on packaging that was seen and relied on by Plaintiffs and members of the
6 Class.

7 54. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests of
8 the proposed Class. Plaintiffs have retained competent and experienced counsel in class action and
9 other complex litigation. Plaintiffs' Counsel prosecuted the largest slack-fill nationwide class
10 action settlement to date in 2021. *Thomas v. Nestle USA, Inc.*, Cal. Super. Case No. BC649863
11 (L.A. Cty. Apr. 29, 2020).

12 55. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
13 of Defendants' false, deceptive, and misleading representations. Plaintiffs purchased the Products
14 because of the size of the box and the product label, which they believed to be indicative of the
15 amount of product contained therein as commensurate with the size of the box. Plaintiffs relied on
16 Defendants' representations and would not have purchased the Products if they had known that the
17 packaging, labeling, and advertising as described herein was false and misleading.

18 56. The Class is identifiable and readily ascertainable. Notice can be provided to such
19 purchasers using techniques and a form of notice similar to those customarily used in class actions
20 and by internet publication, radio, newspapers, and magazines.

21 57. **Superiority and Substantial Benefit:** A class action is superior to other methods
22 for the fair and efficient adjudication of this controversy, since individual joinder of all members
23 of the Class is impracticable and no other group method of adjudication of all claims asserted
24 herein is more efficient and manageable for at least the following reasons:

- 25 a. The claims presented in this case predominate over any questions of law or fact, if
26 any exist at all, affecting any individual member of the Class;
- 27 b. Absent a Class, the members of the Class will continue to suffer damage and
28 Defendants' unlawful conduct will continue without remedy while Defendants profit
 from and enjoy their ill-gotten gains;

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- c. Given the size of individual Class Members’ claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendants has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and Class Members can seek redress for the harm caused to them by Defendants.

58. Because Plaintiffs seek relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

59. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

60. Plaintiffs and Plaintiffs’ counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT ONE

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW,
CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, et seq.**

61. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs and incorporate the same as if set forth herein at length.

62. Plaintiffs bring their claims individually and on behalf of the Class.

63. Congress passed the Federal Food, Drug, and Cosmetic Act (“FDCA”), and in so doing, established the Federal Food and Drug Administration (“FDA”) to “promote the public health” by ensuring that “foods are safe, wholesome, sanitary, and properly labeled.” 21 U.S.C. § 393.

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1 64. The FDA has implemented regulations to achieve this objective. *See, e.g.*, 21 C.F.R.
2 § 101.1 *et seq.*

3 65. The legislature of California has incorporated 21 C.F.R. § 100.100, which prohibits
4 nonfunctional slack-fill, into the State’s Business and Professions Code at Section 12606.2 *et seq.*

5 66. The FDA enforces the FDCA and accompanying regulations; “[t]here is no private
6 right of action under the FDCA.” *Ivie v. Kraft Foods Global, Inc.*, 961 F. Supp. 2d 1033, 1037
7 (N.D. Cal. 2013) (internal citations omitted).

8 67. In 1990, Congress passed an amendment to the FDCA, the Nutrition Labeling and
9 Education Act (“NLEA”), which imposed a number of requirements specifically governing food
10 nutritional content labeling. *See, e.g.*, 21 U.S.C. § 343 *et seq.*

11 68. Plaintiffs are not suing under the FDCA, but under California state law.

12 69. The California Sherman Food, Drug, and Cosmetic Act (“Sherman Law”), Health
13 and Safety Code Section 109875 *et seq.*, has adopted wholesale the food labeling requirements of
14 the FDCA and NLEA as the food regulations of California. Cal. Health & Safety Code § 110100.

15 70. The Sherman Law declares any food to be misbranded if it is false or misleading in
16 any particular, if the labeling does not conform with the requirements for nutrition labeling set
17 forth in certain provisions of the NLEA. Cal. Health & Safety Code §§ 110660, 110665, 110670.

18 71. The Unfair Competition Law (“UCL”) prohibits “any unlawful, unfair . . . or
19 fraudulent business act or practice.” Cal. Bus & Prof. Code § 17200.

20 **A. “Unfair Prong”**

21 72. Under the UCL, California Business and Professions Code Section 17200, *et seq.*, a
22 challenged activity is “unfair” when “any injury it causes outweighs any benefits provided to
23 consumers and the injury is one that the consumers themselves could not reasonably avoid.”
24 *Camacho v. Auto Club of S. Cal.*, 142 Cal. App. 4th 1394, 1403 (2006).

25 73. Defendants’ action of leaving 44% (Conventional Products) to 52% (Organic
26 Products) nonfunctional slack-fill in their Products does not confer any benefit to consumers.

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1 74. Defendants’ action of leaving 44% (Conventional Products) to 52% (Organic
2 Products) nonfunctional slack-fill in their Products causes injuries to consumers, who do not
3 receive a quantity of macaroni and cheese commensurate with their reasonable expectations.

4 75. Defendants’ action of leaving 44% (Conventional Products) to 52% (Organic
5 Products) nonfunctional slack-fill in their Products causes injuries to consumers, who do not
6 receive a level of hunger satiety commensurate with their reasonable expectations.

7 76. Defendants’ action of leaving 44% (Conventional Products) to 52% (Organic
8 Products) nonfunctional slack-fill in their Products causes injuries to consumers, who end up
9 overpaying for the Products and receiving a quantity of macaroni and cheese less than what they
10 reasonably expected to receive.

11 77. Consumers cannot avoid any of the injuries caused by the 44% (Conventional
12 Products) to 52% (Organic Products) nonfunctional slack-fill in Defendants’ Products.

13 78. Accordingly, the injuries caused by Defendants’ inclusion of 44% (Conventional
14 Products) to 52% (Organic Products) nonfunctional slack-fill in the Products outweigh any
15 benefits.

16 79. Some courts conduct a balancing test to decide if a challenged activity amounts to
17 unfair conduct under California Business and Professions Code Section 17200. They “weigh the
18 utility of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v.*
19 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

20 80. Here, Defendants’ conduct of including 44% (Conventional Products) to 52%
21 (Organic Products) nonfunctional slack-fill in the Products’ packaging has no utility and
22 financially harms purchasers. Thus, the utility of Defendants’ conduct is vastly outweighed by the
23 gravity of harm.

24 81. Some courts require that “unfairness must be tethered to some legislative declared
25 policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless*
26 *Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007) (internal citations omitted).

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1 82. The California legislature maintains a declared policy of prohibiting nonfunctional
2 slack-fill in consumer goods, as reflected in the State’s Business and Professions Code Section
3 12606.2 and Health and Safety Code Section 110100.

4 83. The 44% (Conventional Products) to 52% (Organic Products) of nonfunctional
5 slack-fill contained in the Products is tethered to a legislative policy declared in California
6 according to the State’s Business and Professions Code Section 12606.2 and Health and Safety
7 Code Section 110100.

8 84. Defendants’ packaging of the Products, as alleged in the preceding paragraphs, is
9 false, deceptive, misleading, and unreasonable, and constitutes unfair conduct.

10 85. Defendants knew or should have known of their unfair conduct.

11 86. As alleged in the preceding paragraphs, the misrepresentations by Defendants
12 detailed above constitute an unfair business practice within the meaning of California Business
13 and Professions Code Section 17200.

14 87. There existed reasonably available alternatives to further Defendants’ legitimate
15 business interests, other than the conduct described herein. Defendants could have used packaging
16 appropriate for the amount of macaroni and cheese product contained within the Products.

17 88. All of the conduct alleged herein occurs and continues to occur in Defendants’
18 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct
19 repeated on thousands of occasions daily.

20 89. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
21 of Defendants’ unfair conduct. Plaintiffs paid an unwarranted premium for this product.
22 Specifically, Plaintiffs paid for 44% (Conventional Products) to 52% (Organic Products) of
23 macaroni and cheese product they never received. Plaintiffs would not have purchased the
24 Products if they had known that the Products’ packaging contained nonfunctional slack-fill.

25 **B. “Fraudulent” Prong**

26 90. California Business and Professions Code Section 17200, et seq., considers conduct
27 fraudulent and prohibits said conduct if it is likely to deceive members of the public. *Bank of the*
28 *West v. Super. Ct.*, 2 Cal. 4th 1254, 1267 (1992).

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1 91. Defendants’ conduct of packaging the Products with 44% (Conventional Products)
2 to 52% (Organic Products) nonfunctional slack-fill is likely to deceive members of the public.

3 92. Defendants’ packaging of the Products, as alleged in the preceding paragraphs, is
4 false, deceptive, misleading, and unreasonable, and constitutes fraudulent conduct.

5 93. Defendants knew or should have known of their fraudulent conduct.

6 94. As alleged in the preceding paragraphs, the misrepresentations by Defendants
7 detailed above constitute a fraudulent business practice in violation of California Business and
8 Professions Code Section 17200.

9 95. Defendants had reasonably available alternatives to further their legitimate business
10 interests, other than the conduct described herein. Defendants could have used packaging
11 appropriate for the proportion of product contained therein.

12 96. All of the conduct alleged herein occurs and continues to occur in Defendants’
13 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct
14 repeated on thousands of occasions daily.

15 97. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
16 of Defendants’ fraudulent conduct. Plaintiffs paid an unwarranted premium for these products.
17 Specifically, Plaintiffs paid for 44% (Conventional Products) to 52% (Organic Products) of
18 macaroni and cheese product they never received. Plaintiffs would not have purchased the
19 Products if they had known that the boxes contained nonfunctional slack-fill.

20 **C. “Unlawful” Prong**

21 98. California Business and Professions Code Section 17200, *et seq.*, identifies
22 violations of other laws as “unlawful practices that the unfair competition law makes
23 independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D.
24 Cal. 2008).

25 99. Defendants’ packaging of the Products, as alleged in the preceding paragraphs,
26 violates California Civil Code Section 1750, *et seq.*, California Business and Professions Code
27 Section 17500, *et seq.*, and 21 C.F.R § 100.100.

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1 100. Defendants’ packaging of the Products, as alleged in the preceding paragraphs, is
2 false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct.

3 101. Defendants knew or should have known of their unlawful conduct.

4 102. As alleged in the preceding paragraphs, the misrepresentations by Defendants
5 alleged herein constitute an unlawful business practice within the meaning of California Business
6 and Professions Code Section 17200.

7 103. There were reasonably available alternatives to further Defendants’ legitimate
8 business interests, other than the conduct described herein. Defendants could have used packaging
9 appropriate for the amount of macaroni and cheese product contained therein.

10 104. All of the conduct alleged herein occurred and continues to occur in Defendants’
11 business. Defendants’ unlawful conduct is part of a pattern or generalized course of conduct
12 repeated on thousands of occasions daily.

13 105. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
14 of Defendants’ unlawful conduct. Plaintiffs paid an unwarranted premium for this product.
15 Specifically, Plaintiffs paid for 44% (Conventional Products) to 52% (Organic Products) of
16 macaroni and cheese product they never received. Plaintiffs would not have purchased the Product
17 if they had known that the packaging contained nonfunctional slack-fill.

18 106. As a result of the business acts and practices described herein, Plaintiffs and
19 members of the Class, pursuant to Business and Professions Code Section 17203, are entitled to an
20 order enjoining such future wrongful conduct on the part of Defendants and such other orders and
21 judgments that may be necessary to disgorge Defendants’ ill-gotten gains and to restore to any
22 person in interest any money paid for the Products as a result of the wrongful conduct of
23 Defendants.

24 a. Plaintiffs and members of the Class are entitled to equitable relief, as no adequate
25 remedy at law exists.

26 (1) The applicable limitations period is four years for claims brought under the
27 UCL, which is one year longer than the applicable statute of limitations under
28 the False Advertising Law (“FAL”) and Consumers Legal Remedies Act

1 (“CLRA”). Thus, Class members who purchased the Products between 3 and 4
2 years prior to the filing of the complaint will be barred from the Class if
3 equitable relief were not granted under the UCL.

4 (2) The scope of actionable misconduct under the unfair prong of the UCL is
5 broader than the other causes of action asserted herein to include, for example,
6 the overall unfair marketing scheme of underfilling the Products’ packaging.
7 Thus, Plaintiffs and Class members may be entitled to restitution under the
8 UCL, while not entitled to damages under other causes of action asserted herein
9 (e.g., the FAL requires actual or constructive knowledge of the falsity; the
10 CLRA is limited to certain types of plaintiffs (an individual who seeks or
11 acquires, by purchase or lease, any goods or services for personal, family, or
12 household purposes) and other statutorily enumerated conduct).

13 (3) Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class
14 because Defendants continue to deceptively underfill the Products’ packaging.
15 Injunctive relief is necessary to prevent Defendants from continuing to engage
16 in this unfair, fraudulent, and/or unlawful conduct described herein and to
17 prevent future harm—none of which can be achieved through available legal
18 remedies. Further, injunctive relief, in the form of packaging or label
19 modifications, is necessary to dispel public misperception about the Products
20 that has resulted from years of Defendants’ unlawful marketing efforts. Such
21 modifications could include, but are not limited to, shrinking the packaging,
22 adding more macaroni and cheese to the packaging, or adding a yield chart to
23 the side or back label. Such relief is not available through a legal remedy, as
24 monetary damages may be awarded to remedy past harm (i.e., purchasers who
25 have been misled), while injunctive relief is necessary to remedy future harm
26 (i.e., prevent future purchasers from being misled), under the current
27 circumstances where the dollar amount of future damages is not reasonably
28 ascertainable at this time. Plaintiffs are currently unable to accurately quantify

1 the damages caused by Defendants’ future harm (i.e., the dollar amount that
2 Plaintiffs and Class members will pay for the underfilled Products), rendering
3 injunctive relief a necessary remedy.

4 107. Pursuant to Civil Code Section 3287(a), Plaintiffs and the Class are further entitled
5 to pre-judgment interest as a direct and proximate result of Defendants’ unfair and fraudulent
6 business conduct. The amount on which interest is to be calculated is a sum certain and capable of
7 calculation, and Plaintiffs and the Class are entitled to interest in an amount according to proof.

8 **COUNT TWO**

9 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF**
10 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, *et seq.***

11 108. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs
12 and incorporate the same as if set forth herein at length.

13 109. California’s False Advertising Law, Business and Professions Code Section 17500,
14 *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be made or
15 disseminated before the public in this state, in any advertising device or in any other manner or
16 means whatever, including over the Internet, any statement, concerning personal property or
17 services, professional or otherwise, or performance or disposition thereof, which is untrue or
18 misleading and which is known, or which by the exercise of reasonable care should be known, to
19 be untrue or misleading.”

20 110. Defendants knowingly manipulated the physical dimensions of the Products’ box, or
21 stated another way, under-filled the amount of macaroni and cheese product in Products, by
22 including 44% (Conventional Products) to 52% (Organic Products) nonfunctional slack-fill as a
23 means to mislead the public about the amount of macaroni and cheese product contained in each
24 package.

25 111. Defendants controlled the packaging of the Products. They knew or should have
26 known, through the exercise of reasonable care, that their representations about the quantity of
27 macaroni and cheese product contained in the Products were untrue and misleading.

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1 112. Defendants’ action of packaging the Products with 44% (Conventional Products) to
2 52% (Organic Products) nonfunctional slack-fill instead of including more macaroni and cheese
3 content in the box, or decreasing the size of the box, is likely to deceive the general public.

4 113. Defendants’ actions were false and misleading, such that the general public is and
5 was likely to be deceived, in violation of Section 17500.

6 114. As a direct and proximate result of Defendants’ conduct alleged herein in violation
7 of the FAL, Plaintiffs and members of the Class, pursuant to Section 17535, are entitled to an
8 order of this Court enjoining such future wrongful conduct on the part of Defendants and requiring
9 Defendants to disclose the true nature of their misrepresentations.

10 a. Plaintiffs and members of the Class are entitled to equitable relief, as no adequate
11 remedy at law exists.

12 (1) The scope of permissible plaintiffs under the FAL is broader than the CLRA to
13 include, for example, individuals or entities who purchased the Products for
14 non-personal, non-family, and non-household purposes. Thus, Plaintiffs and
15 Class members may be entitled to restitution under the FAL, while not entitled
16 to damages under the CLRA.

17 (2) Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class
18 because Defendants continue to deceptively underfill the Products’ packaging.
19 Injunctive relief is necessary to prevent Defendants from continuing to engage
20 in the unlawful conduct described herein and to prevent future harm—none of
21 which can be achieved through available legal remedies. Further, injunctive
22 relief, in the form of packaging or label modifications, is necessary to dispel
23 public misperception about the Products that has resulted from years of
24 Defendants’ unfair, fraudulent, and unlawful marketing efforts. Such
25 modifications would include, but are not limited to, shrinking the packaging,
26 adding more macaroni and cheese to the packaging, or adding a yield chart to
27 the side or back label. Such relief is also not available through a legal remedy as
28 monetary damages may be awarded to remedy past harm (i.e., purchasers who

1 have been misled), while injunctive relief is necessary to remedy future harm
2 (i.e., prevent future purchasers from being misled), under the current
3 circumstances where the dollar amount of future damages is not reasonably
4 ascertainable at this time. Plaintiffs are currently unable to accurately quantify
5 the damages caused by Defendants' future harm (i.e., the dollar amount that
6 Plaintiffs and Class members overpay for the underfilled Products), rendering
7 injunctive relief a necessary remedy.

8 115. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
9 of Defendants' false representations. Plaintiffs purchased the Products in reliance upon the claims
10 by Defendants that the Products were of the quantity represented by Defendants' packaging and
11 advertising. Plaintiffs would not have purchased the Products if they had known that the claims
12 and advertising as described herein were false.

13 116. Plaintiffs and members of the Class also request an order requiring Defendants to
14 disgorge their ill-gotten gains and/or award full restitution of all monies wrongfully acquired by
15 Defendants by means of such acts of false advertising, plus interests and attorneys' fees.

16 **COUNT THREE**

17 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,** 18 **CALIFORNIA CIVIL CODE § 1750, *et seq.***

19 117. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs
20 and incorporate the same as if set forth herein at length.

21 118. Plaintiffs brings their claims individually and on behalf of the Class.

22 119. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive
23 acts or practices" in connection with a sale of goods.

24 120. The practices described herein, specifically Defendants' packaging, advertising, and
25 sale of the Products, were intended to result and did result in the sale of the Products to the
26 consuming public and violated and continue to violate Sections 1770(a)(2), 1770(a)(5),
27 1770(a)(7), and 1770(a)(9) of the CLRA by (1) misrepresenting the approval of the Products as
28 compliant with 21 C.F.R § 100.100, California Business and Professions Code Section 12606.2,

1 and the Sherman Law; (2) representing the Products have characteristics and quantities that they
2 do not have; (3) advertising and packaging the Products with intent not to sell them as advertised
3 and packaged; and (4) representing that the Products have been supplied in accordance with a
4 previous representation as to the quantity of macaroni and cheese product contained within each
5 box, when they have not.

6 121. Defendants fraudulently deceived Plaintiffs and the Class by representing that the
7 Products' packaging, which includes 44% (Conventional Products) to 52% (Organic Products)
8 nonfunctional slack-fill, conforms to federal and California slack-fill regulations and statutes
9 including the Sherman Law, California Business and Professions Code Section 12606.2, and 21
10 C.F.R. § 100.100.

11 122. Defendants packaged the Products in boxes that contain 44% (Conventional
12 Products) to 52% (Organic Products) nonfunctional slack-fill and made material
13 misrepresentations to fraudulently deceive Plaintiffs and the Class.

14 123. Defendants fraudulently deceived Plaintiffs and the Class by misrepresenting the
15 Products as having characteristics and quantities which they do not have, i.e., that the Products are
16 free of nonfunctional slack-fill when they are not. In doing so, Defendants intentionally
17 misrepresented and concealed material facts from Plaintiffs and the Class. Said misrepresentations
18 and concealment were done with the intention of deceiving Plaintiffs and the Class and depriving
19 them of their legal rights and money.

20 124. Defendants fraudulently deceived Plaintiffs and the Class by packaging and
21 advertising the Products with intent not to sell them as advertised and by intentionally under-
22 filling the Products' boxes and replacing macaroni and cheese product with nonfunctional slack-
23 fill. In doing so, Defendants intentionally misrepresented and concealed material facts from
24 Plaintiffs and the Class. Said misrepresentations and concealment were done with the intention of
25 deceiving Plaintiffs and the Class and depriving them of their legal rights and money.

26 125. Defendants fraudulently deceived Plaintiffs and the Class by representing that the
27 Products were supplied in accordance with an accurate representation as to the quantity of
28 macaroni and cheese product contained therein when they were not. Defendants presented the

1 physical dimensions of the Products' packaging to Plaintiffs and the Class before the point of
2 purchase and gave Plaintiffs and the Class a reasonable expectation that the quantity of product
3 contained therein would be commensurate with the size of packaging. In doing so, Defendants
4 intentionally misrepresented and concealed material facts from Plaintiffs and the Class. Said
5 misrepresentations and concealment were done with the intention of deceiving Plaintiffs and the
6 Class and depriving them of their legal rights and money.

7 126. Defendants knew or should have known, through the exercise of reasonable care,
8 that the Products' packaging was misleading.

9 127. Defendants' actions as described herein were done with conscious disregard of
10 Plaintiffs' rights, and Defendants were wanton and malicious in their concealment of the same.

11 128. Defendants' packaging of the Products was a material factor in Plaintiffs' and the
12 Class's decisions to purchase the Products. Based on Defendants' packaging of the Products,
13 Plaintiffs and the Class reasonably believed that they were getting more product than they actually
14 received. Had they known the truth of the matter, Plaintiffs and the Class would not have
15 purchased the Products.

16 129. Plaintiffs and the Class have suffered injury in fact and have lost money as a result
17 of Defendants' unfair, unlawful, and fraudulent conduct. Specifically, Plaintiffs paid for macaroni
18 and cheese product they never received. Plaintiffs would not have purchased the Products had they
19 known the boxes contained nonfunctional slack-fill.

20 130. Plaintiffs respectfully request that the Court enjoin Defendants from continuing to
21 employ the unlawful methods, acts, and practices alleged herein pursuant to Section 1780(a)(2). In
22 addition, Defendants should be compelled to provide restitution and damages to consumers who
23 paid for Products that are not what they expected to receive due to Defendants'
24 misrepresentations.

25 a. Plaintiffs and members of the Class are entitled to equitable relief, as no adequate
26 remedy at law exists.

27 (1) Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class
28 because Defendants continue to deceptively underfill the Products' packaging.

1 Injunctive relief is necessary to prevent Defendants from continuing to engage
 2 in the unlawful conduct described herein and to prevent future harm—none of
 3 which can be achieved through available legal remedies. Further, injunctive
 4 relief, in the form of packaging or label modifications, is necessary to dispel
 5 public misperception about the Products that has resulted from years of
 6 Defendants’ unfair, fraudulent, and unlawful marketing efforts. Such
 7 modifications would include, but are not limited to, shrinking the packaging,
 8 adding more macaroni and cheese to the packaging, or adding a yield chart to
 9 the side or back label. Such relief is also not available through a legal remedy as
 10 monetary damages may be awarded to remedy past harm (i.e., purchasers who
 11 have been misled), while injunctive relief is necessary to remedy future harm
 12 (i.e., prevent future purchasers from being misled), under the current
 13 circumstances where the dollar amount of future damages is not reasonably
 14 ascertainable at this time. Plaintiffs are currently unable to accurately quantify
 15 the damages caused by Defendants’ future harm (i.e., the dollar amount that
 16 Plaintiffs and Class members overpay pay for the underfilled Products),
 17 rendering injunctive relief a necessary remedy.

18 131. By letters dated March 9, 2020, and June 17, 2022, Defendants were notified of their
 19 false and misleading claims pursuant to California Civil Code Section 1782(a).

20 **COUNT FOUR**

21 **RESTITUTION BASED ON QUASI-CONTRACT/UNJUST ENRICHMENT**

22 132. Plaintiffs repeat and reallege the allegations set forth above and incorporate the same
 23 as if set forth herein at length.

24 133. Plaintiffs bring this cause of action individually and on behalf of the members of the
 25 Class against Defendants.

26 134. By means of Defendants’ wrongful conduct alleged herein, Defendants knowingly
 27 sold the Products to Plaintiffs and members of the Class in a manner that was unfair,
 28 unconscionable, and oppressive.

1 135. Defendants knowingly received and retained wrongful benefits and funds from
2 Plaintiffs and members of the Class. In so doing, Defendants acted with conscious disregard for
3 the rights of Plaintiffs and members of the Class.

4 136. As a result of Defendants' wrongful conduct as alleged herein, Defendants have
5 been unjustly enriched at the expense of, and to the detriment of, Plaintiffs and members of the
6 Class.

7 137. Defendants' unjust enrichment is traceable to, and resulted directly and proximately
8 from, the false, deceptive, and misleading conduct alleged herein.

9 138. Under the common law doctrine of unjust enrichment, it is inequitable for
10 Defendants to be permitted to retain the benefits they received, without justification, from selling
11 the Products to Plaintiffs and members of the class in an unfair, unconscionable, and oppressive
12 manner. Defendants' retention of such funds under such circumstances constitutes unjust
13 enrichment.

14 139. The financial benefits derived by Defendants rightfully belong to Plaintiffs and
15 members of the Class. Defendants should be compelled to return in a common fund for the benefit
16 of Plaintiffs and members of the Class all wrongful or inequitable proceeds received by
17 Defendants.

18 140. Plaintiffs and members of the Class have no adequate remedy at law.

19 **COUNT FIVE**

20 **COMMON LAW FRAUD**

21 141. Plaintiffs repeat and reallege all of the allegations contained in the preceding
22 paragraphs and incorporate the same as if set forth herein at length.

23 142. Plaintiffs bring this cause of action individually and on behalf of the members of the
24 Class against Defendants.

25 143. Defendants have willfully, falsely, and knowingly filled and packaged the Products
26 in a manner indicating that the Products are sufficiently filled with an amount of macaroni and
27 cheese product commensurate with the size of the container. However, the Products contain 44%
28 (Conventional Products) to 52% (Organic Products) nonfunctional and unlawful slack-fill.

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1 Defendants have misrepresented the quantity of macaroni and cheese product contained in the
2 Products.

3 144. Defendants' misrepresentations are and were material (i.e., the type of
4 misrepresentations to which a reasonable person would attach importance and would be induced
5 to act thereon in making his or her purchase decision), because they relate to the quantity of
6 macaroni and cheese product contained in the Products.

7 145. Defendants knew of, or showed reckless disregard for, the fact that the Products
8 contained a substantial amount of nonfunctional slack-fill.

9 146. Defendants intended for Plaintiffs and the Class to rely on these representations, as
10 evidenced by Defendants' manufacturing of packaging that is substantially larger than necessary
11 to hold the volume of the contents contained therein.

12 147. Plaintiffs and the Class have reasonably and detrimentally relied on Defendants'
13 misrepresentations when purchasing the Products and, had they known the truth, they would not
14 have purchased the Products or would have paid significantly less for the Products.

15 148. Therefore, as a direct and proximate result of Defendants' fraud, Plaintiffs and
16 members of the Class have suffered injury in fact.

17 **COUNT SIX**

18 **INTENTIONAL MISREPRESENTATION**

19 149. Plaintiffs repeat and reallege all of the allegations contained in the preceding
20 paragraphs and incorporate the same as if set forth herein at length.

21 150. Plaintiffs bring this cause of action individually and on behalf of all members of the
22 Class against Defendants.

23 151. Defendants have filled and packaged the Products in a manner indicating that the
24 Products are adequately filled with macaroni and cheese product. However, the Products contain
25 44% (Conventional Products) to 52% (Organic Products) nonfunctional and unlawful slack-fill.
26 Defendants misrepresented the quantity of macaroni and cheese product contained within the
27 Products' packaging.

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1 152. Defendants' misrepresentations regarding the Products are material to a reasonable
2 consumer, as they relate to the quantity of product received by consumers. A reasonable consumer
3 would attach importance to such representations and would be induced to act thereon in making
4 his or her purchase decision.

5 153. At all relevant times when such misrepresentations were made, Defendants knew or
6 should have known that the representations were misleading.

7 154. Defendants intended for Plaintiffs and the Class to rely on the size and style of the
8 Products' packaging, as evidenced by Defendants' intentional manufacturing, marketing, and
9 selling of packaging that is significantly larger than is necessary to contain the volume of the
10 contents within them.

11 155. Plaintiffs and members of the Class reasonably and justifiably relied on Defendants'
12 intentional misrepresentations when purchasing the Products, and had they known the truth, they
13 would not have purchased the Products or would have purchased them at significantly lower
14 prices.

15 156. As a direct and proximate result of Defendants' intentional misrepresentations,
16 Plaintiffs and members of the Class have suffered injury in fact.

17 **COUNT SEVEN**

18 **NEGLIGENT MISREPRESENTATION**

19 157. Plaintiffs repeat and reallege all of the allegations contained above and incorporate
20 the same as if set forth herein at length.

21 158. Plaintiffs bring this cause of action individually and on behalf of the Class against
22 Defendants.

23 159. Defendants have filled and packaged the Products in a manner indicating that the
24 Products are adequately filled with macaroni and cheese product. However, the Products contain
25 44% (Conventional Products) to 52% (Organic Products) less macaroni and cheese product than
26 required and instead contain a substantial amount of nonfunctional slack-fill. Therefore,
27 Defendants have misrepresented the amount of macaroni and cheese product contained in the
28 Products.

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1 160. Defendants’ misrepresentations regarding the Products are material to a reasonable
2 consumer, as they relate to the quantity of product received by the consumer. A reasonable
3 consumer would attach importance to such representations and would be induced to act thereon in
4 making his or her purchase decision.

5 161. At all relevant times when such misrepresentations were made, Defendants knew or
6 should have known that the Products were not adequately filled with macaroni and cheese, but
7 instead contained substantial amounts of nonfunctional slack-fill.

8 162. Defendants intended for Plaintiffs and the Class to rely on the size and style of the
9 Products’ packaging, as evidenced by Defendants’ packaging that is significantly larger than is
10 necessary to contain the volume of the macaroni and cheese product therein.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray
13 for judgment and relief on all causes of action as follows:

- 14 A. An order enjoining Defendants from continuing to label, package, and/or
- 15 advertise the Products as challenged herein so as to dispel consumer
- 16 deception;
- 17 B. Damages against Defendants in an amount to be determined at trial, together
- 18 with pre- and post- judgement interest at the maximum rate allowable by
- 19 law on any amounts awarded;
- 20 C. Restitution and/or disgorgement in an amount to be determined at trial;
- 21 D. Reasonable attorneys’ fees and costs; and
- 22 E. Granting such other and further as may be just and proper.

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CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

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JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all triable issues.

DATED: June 17, 2022

CLARKSON LAW FIRM, P.C.

/s/ Zachary Chrzan
Ryan J. Clarkson, Esq.
Zachary Chrzan, Esq.

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MATTHEW SINATRO and PHILLIP WHITE

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Zachardy T. Chrzan, Ryan J. Clarkson, Clarkson Law Firm, P.C. 22525 Pacific Coast Highway, Malibu, CA 90265

DEFENDANTS

MRS. GOOCH'S NATURAL FOOD MARKETS, INC. and WHOLE FOODS MARKET CALIFORNIA, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause:

Violations of Class Action Fairness Act ("CAFA"); consumer protection/false advertising/unfair competition state-law based claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,001.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 06/17/2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Zachary T. Chrzan

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.