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Attorneys for Defendants
Kellogg Company, Kellogg Sales Company,
Pringles LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BARRY ALLRED and MANDY C.
ALLRED, on behalf of themselves, all
others similarly situated, and the general
public,

Plaintiffs,

v.

KELLOGG COMPANY, a Delaware
corporation; KELLOGG SALES
COMPANY, a Delaware corporation; and
PRINGLES LLC, a Delaware limited
liability company.

Defendants.

Case No. '17CV1354 AJB BLM

**DEFENDANTS' NOTICE OF
REMOVAL**

[San Diego County Superior Court
Case No. 37-2017-00017301-CU-BC-CTL]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 SOUTHERN DISTRICT OF CALIFORNIA, ALL PARTIES, AND THEIR
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that Defendants Kellogg Company, Kellogg Sales
5 Company, and Pringles LLC (collectively, “Kellogg” or “Defendants”) effect the removal
6 of this action from the Superior Court of the State of California for the County of San Diego
7 (“San Diego County Superior Court”) to the United States District Court for the Southern
8 District of California. Removal is proper under the Class Action Fairness Act of 2005
9 (“CAFA”), 28 U.S.C. § 1332(d), because this case is a class action in which the putative
10 class exceeds 100 members, at least one plaintiff is diverse from at least one defendant, and
11 the amount in controversy exceeds \$5 million. Venue is proper in this Court because
12 Plaintiffs filed their complaint in San Diego County Superior Court. *See* 28 U.S.C. § 84(d)
13 (providing that San Diego County is part of the Southern District of California); 28 U.S.C.
14 § 1391 (describing where venue is proper).

15 **FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS**

16 1. Plaintiffs filed this lawsuit in San Diego County Superior Court on May 11,
17 2017. Kellogg accepted service on June 6, 2017. *See* Ex. A (State Court Complaint and
18 Summons); Ex. B (acceptance of service). No other documents have been filed.

19 2. Plaintiffs allege the packaging of Kellogg’s “Pringles Salt and Vinegar
20 Flavored Potato Crisps” falsely represents that the product is “flavored only with natural
21 ingredients, when in fact it contains undisclosed artificial flavors in violation of state and
22 federal law” and that it gives consumers the “impression they are buying a premium ‘all
23 natural’ product.” *See* Ex. A, ¶¶ 9, 10.

24 3. Plaintiffs allege six causes of action for violations of California’s Unfair
25 Competition Law, False Advertising Law, and Consumer Legal Remedies Act, as well as
26 for breach of express and implied warranties, against Kellogg Company, Kellogg Sales
27 Company, and Pringles LLC. *See* Ex. A, ¶¶ 98-179.

1 4. Plaintiffs seek compensatory damages, punitive damages, disgorgement,
2 restitution, injunctive relief, and attorneys' fees on behalf of themselves, the class of persons
3 who purchased Pringles Salt and Vinegar Flavored Potato Crisps in California at any time
4 during the period six years prior to the filing of the complaint, and the general public. *See*
5 Ex. A, ¶ 144, 153, 179; Prayer for Relief.

6 **REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(d)**

7 5. CAFA provides that federal courts have original jurisdiction over class actions
8 in which (i) any plaintiff is diverse from any defendant, (ii) there are at least 100 members
9 in the putative class, and (iii) the amount in controversy exceeds \$5 million, exclusive of
10 interest and costs. 28 U.S.C. § 1332(d). Under 28 U.S.C. § 1441(a), any such action may
11 be removed to the district court for the district and division embracing the place where the
12 action is pending.

13 **The Parties Are Sufficiently Numerous To Satisfy CAFA**

14 6. Plaintiffs bring this action on behalf of “[a]ll consumers who purchased the
15 Product from a retailer within the state of California for personal, family, or household
16 purposes, and not for resale, at any time during the period six (6) years prior to the filing of
17 this Complaint and continuing until the Class is certified (hereinafter the ‘Class Period’).”
18 Ex. A, ¶ 80.

19 7. Plaintiffs allege that “[t]he Class numbers, at a minimum, in the tens of
20 thousands.” Ex. A, ¶ 87. This satisfies CAFA’s numerosity requirement.

21 **The Parties Are Minimally Diverse**

22 8. CAFA’s minimal diversity standard is satisfied when “any member of a class
23 of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A);
24 *Bridewell-Sledge v. Blue Cross of California*, 798 F.3d 923, 928 (9th Cir. 2015) (“[U]nder
25 CAFA, complete diversity is not required; ‘minimal diversity’ suffices.”).

26 9. Plaintiffs are citizens and residents of California. *See* Ex. A, ¶ 13.

27 10. Kellogg Company, Kellogg Sales Company, and Pringles LLC are each
28

1 incorporated in Delaware and maintain their corporate headquarters in Battle Creek,
2 Michigan. *See* Ex. A, ¶ 14-16; *see also* Kellogg Company Form 10-K Annual Report for
3 2016, available at [https://www.sec.gov/Archives/edgar/data/55067/000162828017001510/](https://www.sec.gov/Archives/edgar/data/55067/000162828017001510/k-2016q410xk.htm)
4 [k-2016q410xk.htm](https://www.sec.gov/Archives/edgar/data/55067/000162828017001510/k-2016q410xk.htm). Accordingly, Defendants are citizens of Delaware and Michigan. *See*
5 28 U.S.C. § 1332(c)(1) (providing that a corporation is a “citizen of any State by which it
6 has been incorporated and of the State where it has its principal place of business”); *see*
7 *also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (providing that a corporation’s
8 principal place of business is the place where “a corporation’s officers direct, control, and
9 coordinate the corporation’s activities,” which is typically “the place where the corporation
10 maintains its headquarters”).

11 11. The minimal diversity requirement is satisfied here because named Plaintiffs
12 are not citizens of Delaware or Michigan. *See Aguilar v. Courtyard Mgmt. Corp.*, No. 13-
13 07181, 2014 WL 12597037, at *2 (C.D. Cal. Jan. 13, 2014) (CAFA minimal diversity
14 requirement satisfied where named plaintiff was “a citizen of California—a different state
15 than at least one defendant.”).

16 **There Is at Least \$5,000,000 in Controversy**

17 12. “In measuring the amount in controversy, a court must assume that the
18 allegations of the complaint are true and that a jury will return a verdict for the plaintiff on
19 all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,
20 1205 (E.D. Cal. 2008). It must then “add[] up the value of the claim of each person who
21 falls within the definition of [the] proposed class.” *Std. Fire Ins. Co. v. Knowles*, 133 S. Ct.
22 1345, 1348 (2013). In other words, “[t]he ultimate inquiry is what amount is put ‘in
23 controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn*,
24 536 F. Supp. 2d at 1205; *see also Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986
25 (S.D. Cal. 2005) (“It’s not a question as to what you would owe. It’s a question as to what
26 is in controversy.”).

27 13. “A defendant seeking removal of a putative class action must demonstrate, by
28

1 a preponderance of the evidence, that the aggregate amount in controversy exceeds the
2 jurisdictional minimum.” *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981
3 (9th Cir. 2013). The preponderance of the evidence standard is satisfied where “the
4 potential damages could exceed the jurisdictional amount.” *Rea v. Michaels Stores Inc.*,
5 742 F.3d 1234, 1239 (9th Cir. 2014) (quoting *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d
6 395, 397 (9th Cir. 2010)).

7 14. From 2013 through May 2017, gross sales of Pringles Salt and Vinegar Potato
8 Crisps to retailers and distributors totaled approximately \$108,400,000 nationwide. In their
9 Complaint, Plaintiffs assert that the relevant class period begins six years prior to the filing
10 of their complaint. Ex. A, ¶ 80. At this time, however, Defendants lack access to gross
11 sales data for Pringles Salt & Vinegar Potato Crisps prior to 2013. Ex. C, Decl. of Joseph
12 T. Kramer, Sr. ¶ 3.

13 15. Defendants are not able to track sales by state because, among other things,
14 they sell to distributors and retailers, who may sell the product in various states. Based on
15 population data from July 2016 population estimates from the U.S. Census Bureau,
16 Defendants estimate that approximately \$13,170,600 (or approximately 12.15%) of its
17 national gross sales from 2013 through May 2017 were sold in California. *See* Ex. C, Decl.
18 of Joseph T. Kramer, Sr. ¶¶ 4-6.

19 16. Plaintiffs seek “disgorgement and restitution of all monies from the sale of the
20 Product which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent
21 competition.” *See, e.g.*, Ex. A, ¶¶ 153, 179, Prayer for Relief. Because Plaintiffs assert that
22 the class period begins in 2011, this demand places into controversy more than \$13,170,600
23 (as noted above, Defendants do not have sales data prior to 2013, but the estimated gross
24 sales of Pringles Salt and Vinegar Potato Crisps from 2013 to May 2017 to retailers and
25
26
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1 distributors who sold the products in California was approximately \$13,170,600).¹

2 17. Plaintiffs also seek punitive damages, which are included in calculating the
 3 amount in controversy. Ex. A, ¶¶ 12, Prayer for Relief; *Bell-Sparrow v. Wiltz*, No. 12-2782,
 4 2014 WL 2927354, at *4-5 (N.D. Cal. June 27, 2014) (including punitive damages award
 5 with 5.5 multiplier in amount-in-controversy in light of plaintiff’s request for punitive
 6 damages in connection with claim for intentional misrepresentation); *Lee v. Equifax Info.*
 7 *Servs., LLC*, No. 13-4302, 2013 WL 6627755, at *4 (N.D. Cal. Dec. 16, 2013); *Hurd v. Am.*
 8 *Income Life Ins.*, No. 13-5205, 2013 WL 5575073, at *6-7 (C.D. Cal. Oct. 10, 2013);
 9 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1032 (N.D. Cal. 2002). As recognized in
 10 *Hurd*, punitive damages awards “can be substantial.” 2013 WL 5575073, at *6-7. Even
 11 “applying the ‘conservative’ estimate of a 1:1 ratio between compensatory damages and
 12 punitive damages” adds more than \$13,170,600 to the amount in controversy. *Tompkins v.*
 13 *Basic Research LL*, No. 08-244, 2008 WL 1808316, at *4 (E.D. Cal. Apr. 22, 2008)
 14 (including potential punitive damages in analyzing amount in controversy).

15 18. Plaintiffs also seek attorneys’ fees. *See, e.g.*, Ex. A, ¶¶ 12, 142, 153, Prayer
 16

17 ¹ Defendants believe that California law precludes Plaintiffs from seeking disgorgement and restitution of
 18 all revenue received by Defendants from the sale of Pringles Salt and Vinegar Potato Crisps because
 19 Plaintiffs derived significant value from the product and restitution would therefore amount to an
 20 unjustified windfall. *See Brazil v. Dole Packaged Foods, LLC*, 660 F. App’x 531, 534 (9th Cir. 2016)
 21 (explaining that damages in false advertising case were limited to “the difference between the prices
 22 customers paid and the value of the [product] they bought—in other words, the ‘price premium’ attributable
 23 to [the challenged] labels.”). For the purposes of removal, however, the “inquiry is what amount is put ‘in
 24 controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn*, 536 F. Supp. 2d
 25 at 1205; *see also Deutsche Bank Nat. Trust v. Heredia*, No. 12-04405, 2012 WL 4714539, at *2 (N.D. Cal.
 26 Sept. 14, 2012), report and recommendation adopted, No. 2012 WL 4747157 (N.D. Cal. Oct. 3, 2012)
 27 (“[I]n determining whether a challenged jurisdictional amount has been met, district courts are permitted
 28 only to assess the allegations in a complaint and not the validity of any asserted defenses[.]”) (internal
 quotations omitted); *Riggins v. Riggins*, 415 F.2d 1259, 1261-62 (9th Cir. 1969) (noting that statute of
 limitations defense that could bar portion of relief sought did not affect amount in controversy).
 Accordingly, the full amount of Defendants’ gross sales revenue during Plaintiffs’ proposed class period
 is properly included in the amount-in-controversy calculation. *See also Waller v. Hewlett-Packard Co.*,
 No. 11-454, 2011 WL 8601207, at *2 n.3 (S.D. Cal. May 10, 2011) (calculating amount in controversy
 based on the full purchase price even though plaintiff argued it would be “unrealistic” to expect the putative
 class members to receive a “100% reimbursement,” since the inquiry is based on “the relief a plaintiff
 seeks, not what the plaintiff may reasonably or ultimately obtain”).

1 for Relief. Attorneys' fees are properly considered as part of the amount in controversy for
2 the purposes of determining federal jurisdiction. *Bayol*, 2015 WL 4931756, at *7 ("The
3 amount in controversy can include...attorneys' fees[.]"); *see also Mejia v. Prologix*
4 *Distribution Servs. (W.), LLC*, No. 12-4840, 2012 WL 5522309, at *2 (N.D. Cal. Nov. 14,
5 2012) (explaining that "attorneys' fees are included in the calculation" of CAFA's amount
6 in controversy requirement); *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696,
7 700 (9th Cir. 2007). Fee requests in consumer class actions, such as this lawsuit, are
8 typically significant. *See, e.g., Wilson v. Airborne, Inc.*, No. 07-770, 2008 WL 3854963, at
9 *12 (C.D. Cal. Aug. 13, 2008) (awarding \$3,459,946 in attorneys' fees in deceptive
10 advertising class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 46 (2008) (awarding
11 attorneys' fees of \$2.04 million as part of the settlement of consumer class action); *In re*
12 *Sony SXR-D Rear Projection Television Class Action Litig.*, No. 06-5173, 2008 WL
13 1956267, at *16 (S.D.N.Y. May 1, 2008) (class counsel incurred \$1,279,405 in breach-of-
14 warranty class action).

15 19. When aggregated, the actual damages, restitution and disgorgement, punitive
16 damages demanded by Plaintiffs, and the amount of attorneys' fees that class counsel may
17 recover exceed CAFA's \$5 million threshold.

18 **REMOVAL IS TIMELY**

19 20. Under 28 U.S.C. § 1446(b), notice of removal of a civil action must be filed
20 within thirty (30) days of the defendant's receipt of service of the summons and the
21 Complaint. Kellogg Company accepted service on June 6, 2017. *See* Ex. A. This Notice
22 of Removal is accordingly timely.

23 **OTHER REQUIREMENTS FOR REMOVAL ARE MET**

24 21. Kellogg has not had any attorneys enter an appearance, file any responsive
25 pleadings, or file any papers responding to the Complaint in the state court.

26 22. Kellogg will promptly give written notice of the filing of this Notice of
27 Removal to all parties, and a copy of this Notice will be filed with the Clerk of San Diego
28

1 County Superior Court as required by 28 U.S.C. § 1446(d).

2 **CONCLUSION**

3 WHEREFORE, Notice is given that this action is removed from San Diego County
4 Superior Court to the United States District Court for the Southern District of California.

5
6 Dated: July 5, 2017

JENNER & BLOCK LLP

7 /s/ Kenneth K. Lee

8 Kenneth K. Lee

9
10 Attorneys for Defendants
11 Kellogg Company, Kellogg Sales
12 Company, Pringles LLC
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CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Barry Allred and Mandy C. Allred, on behalf of themselves, all others similarly situated, and the general public.

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

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

(see attachment)

DEFENDANTS

Kellogg Company, Kellogg Sales Company, and Pringles LLC.

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

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

Attorneys (If Known) Jenner & Block LLP 633 West 5th St., Suite 3600, Los Angeles, CA 90071 Tel: (213) 239-5100

'17CV1354 AJB BLM

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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 for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (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, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, 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(d)(2)

Brief description of cause:

Violations of Unfair Competition Law, False Advertising Law, Consumer Legal Remedies Act; Breach of Warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/05/2017

/s/Kenneth K. Lee

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 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.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment to Removal Defendants' Civil Case Coversheet

I.(c) Plaintiffs Attorneys

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Attorneys for Plaintiffs and the Putative Class

Exhibit A

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/11/2017 at 03:13:37 PM
Clerk of the Superior Court
By Laura Melles, Deputy Clerk

6 **LAW OFFICES OF**
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Facsimile: (619) 564-6665

13 *Attorneys for Plaintiffs and the Putative Class*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN DIEGO**

16
17 BARRY ALLRED and MANDY C.
18 ALLRED, on behalf of themselves,
19 all others similarly situated, and the
20 general public,

21 Plaintiffs,

22 v.

23 KELLOGG COMPANY, a
24 Delaware corporation; KELLOGG
25 SALES COMPANY, a Delaware
26 corporation; and PRINGLES LLC,
a Delaware limited liability
company;

27 Defendants.
28

Case No: 37-2017-00017301-CU-BC-CTL

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

1. **CONSUMERS LEGAL REMEDIES ACT,
CAL. CIV. CODE §§ 1750, et seq.;**
2. **UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§ 17200, et seq.
(unlawful prong);**
3. **UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§ 17200, et seq.
(unfair prong);**
4. **FALSE ADVERTISING LAW,
CAL. BUS. & PROF. CODE §§ 17500, et seq.;**
5. **BREACH OF EXPRESS WARRANTIES;**
6. **BREACH OF IMPLIED WARRANTIES**

DEMAND FOR JURY TRIAL

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IX. JURY DEMAND 27

1 Plaintiffs Barry Allred and Mandy C. Allred, a married couple (collectively,
2 “Plaintiffs”), on behalf of themselves, all others similarly situated, and the general
3 California public, by and through their undersigned counsel, hereby allege against
4 Defendants Kellogg Company, Kellogg Sales Company, and Pringles LLC (collectively,
5 “Defendants”), the following upon their own personal knowledge, or where there is no
6 personal knowledge, upon information and belief and investigation of counsel:

7 **I. JURISDICTION AND VENUE**

8 1. Plaintiffs bring this action pursuant to Cal. Civ. Proc. Code § 382 and Cal.
9 Civ. Code § 1781.

10 2. Pursuant to Cal. Civ. Proc. Code § 410.10 and Article VI, § 10 of the
11 California Constitution, this Court has subject matter jurisdiction over this action. The
12 amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the
13 minimum jurisdictional amount for this Court.

14 3. This Court has personal jurisdiction over Defendants because all Defendants
15 have affirmatively established and maintained sufficient contacts with the State of
16 California; and because all Defendants conduct significant business in California and
17 otherwise intentionally avail themselves of the markets in California. Further, Defendant
18 Kellogg Sales Company, a wholly-owned subsidiary of Defendant Kellogg Company, is
19 registered to do business in California. Defendants and other out of state participants can
20 be brought before this Court pursuant to California’s “long-arm” jurisdictional statute,
21 Cal. Civ. Proc. Code § 410.10, as a result of Defendants’ substantial, continuous, and
22 systematic contacts with this State, and because Defendants have purposely and
23 sufficiently availed themselves, and continue to avail themselves, of the benefits, laws,
24 privileges, and markets of California through, *inter alia*, the promotion, sales, and
25 marketing of their products in this State so as to render the exercise of jurisdiction by this
26 Court reasonable and proper.

27 4. Venue is proper in this County pursuant to California Civil Code Section
28 1780(c) because Defendants conduct significant business here, engage in substantial

1 transactions in this County, and because many of the transactions and material acts
2 complained of herein occurred in this County—including, specifically, the transactions
3 between Plaintiffs and Defendants, and many of the transactions between Defendants and
4 the putative Class.

5 **II. NATURE OF THE ACTION**

6 5. This is a California consumer class action for violations of California
7 consumer protection laws.

8 6. Defendants manufacture, distribute, advertise, market, and sell a variety of
9 flavored and unflavored snack products that Defendants describe as “potato crisps.”¹

10 7. Defendants label and advertise one such snack product as “Salt and Vinegar
11 Flavored Potato Crisps” (the “Product”).

12 8. The Product’s packaging, labeling, and advertising is false and misleading,
13 and the Product itself is misbranded under California law. It is illegal to sell misbranded
14 products in California.

15 9. The Product is labeled as if it is flavored only with natural ingredients, when
16 in fact it contains undisclosed artificial flavors in violation of state and federal law.

17 10. Defendants’ packaging, labeling, and advertising scheme is intended to, and
18 does, give reasonable consumers the impression they are buying a premium “all natural”
19 product with natural flavoring ingredients, instead of an artificially flavored product.

20 11. Plaintiffs, who were deceived by Defendants’ unlawful conduct and
21 purchased the Product in California, bring this action on behalf of themselves and a
22 California Class of consumers to remedy Defendants’ unlawful and unfair acts.

23 12. On behalf of the putative Class, as defined herein, Plaintiffs seek an order
24 compelling Defendants to, *inter alia*: (1) cease packaging, distributing, advertising, and
25 selling the Product in violation of U.S. FDA regulations and California consumer
26

27 _____
28 ¹ After previous litigation by competitors, Defendants are not legally permitted to call the
Product a “potato chip.”

1 protection law; (2) re-label or recall all existing deceptively packaged Product; (3) conduct
2 a corrective advertising campaign to inform California consumers about the deceptive
3 advertising; (4) award Plaintiffs and other Class Members restitution, actual damages, and
4 punitive damages; and (5) pay all costs of suit, expenses, interest, and attorneys' fees.

5 **III. PARTIES**

6 13. Plaintiffs Barry Allred and Mandy C. Allred are citizens and residents of San
7 Diego County, California, and purchased the Product in San Diego, California for personal
8 and household consumption.

9 14. Defendant Kellogg Company is a Delaware corporation with its principal
10 place of business at One Kellogg Square, Battle Creek, Michigan.

11 15. Defendant Kellogg Sales Company is a Delaware corporation with its
12 principal place of business at One Kellogg Square, Battle Creek, Michigan, and is
13 registered with the California Secretary of State to do business in California (Cal. Entity
14 No.: C2667557). Upon information and belief, Kellogg Sales Company is a wholly-owned
15 subsidiary of Defendant Kellogg Company, registered to do business in California to
16 collect revenue on California sales for Kellogg brands, including the Product.

17 16. Defendant Pringles LLC is a Delaware limited liability company with its
18 principal place of business at One Kellogg Square, Battle Creek, Michigan. The Product
19 packaging identifies Pringles LLC as primarily responsible for labeling and distributing
20 the Product in commerce in the United States.

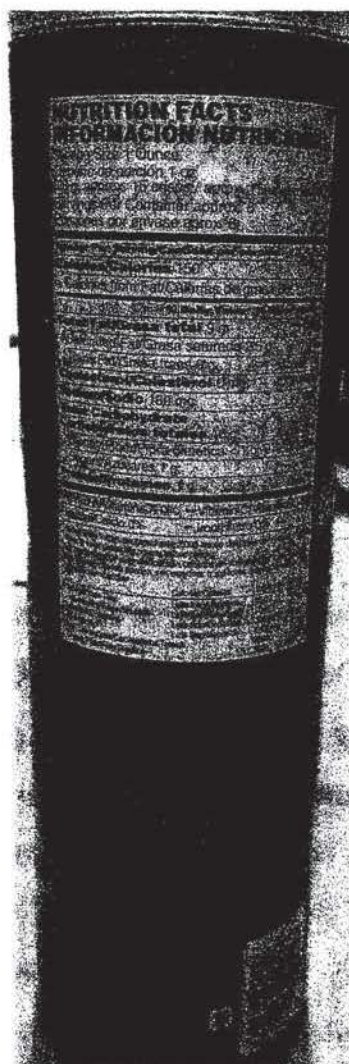
21 17. The official Kellogg Company website and other sources, including SEC
22 filings, identify the Pringles brand including the Product as owned by and belonging to
23 Kellogg's, rendering Kellogg's at a minimum the apparent or actual manufacturer.

24 **IV. FACTUAL ALLEGATIONS**

25 **Defendants Fail to Disclose That Their Product Is Artificially Flavored**

26 18. The Product's front-label center panel identifies it as "Pringles® Salt and
27 Vinegar Flavored" on a stylized representation of a blackboard resembling a neighborhood
28 restaurant or street-corner deli menu. At the bottom of the front-of-package label appears

1 the words, "Potato Crisps." The package's front label does not state whether the Product
2 is naturally or artificially flavored. Neither does the Product's rear label. The Product's
3 ingredient list, however, shows that ingredients include "sodium diacetate, dextrose, malic
4 acid, [and] vinegar. . ." A true and correct copy of the Product's front and back labeling
5 is provided below:



24
25 19. The Product does, in fact, contain actual vinegar - but in an amount too small
26 to flavor the Product.

27 20. Defendants instead add two artificial flavorings—sodium diacetate and malic
28 acid—to simulate and reinforce the Product's characteristic vinegar flavor.

1 21. The Product's label violates California law in at least three different regards.

2 22. First, because the Product contains additional flavoring ingredients that
3 overwhelm the flavor of the small amount of actual vinegar in the seasoning, the front
4 label is required by law to disclose those additional flavors rather than misleadingly claim
5 that the Product is "Vinegar" flavored. *See* Cal. Health & Safety Code §§ 109875, *et seq.*,
6 (Sherman Law), incorporating 21 CFR 101.22.²

7 23. Second, the Product ingredient list violates federal and state law because it
8 misleadingly identifies the malic acid flavoring ingredient only as a generic "malic acid"
9 instead of using the specific, non-generic name of the ingredient. *See* 21 CFR 101.4(a)(1).

10 24. Third, and far more deceptive to consumers, is that the Product's label
11 completely and unlawfully fails to disclose that the Product contains two artificial flavors.

12 25. The Product's ingredient list identifies two flavoring ingredients as sodium
13 diacetate and "malic acid."

14 26. The compound sodium diacetate, as a crystalline salt of acetic acid, may
15 occur in nature, but the sodium diacetate in Defendants' Product is a synthetic industrial
16 chemical manufactured in a chemical refinery from carbon monoxide and industrial
17 methanol using a metal-catalyzed carbonylation process.

18 27. California's Sherman Law, as it incorporates and identically mirrors the U.S.
19 FDA regulations promulgated pursuant to the U.S. Food, Drug, and Cosmetic Act
20 ("FDCA"), defines natural flavorings as only those derived from "a spice, fruit or fruit
21 juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant
22 material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof." *See*
23 Cal. Health & Safety Code §§ 109875, *et seq.* (21 CFR 101.22 (a)).

24 _____
25 ² California's Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§
26 109875, *et seq.*, incorporates into California law all regulations enacted pursuant to the
27 U.S. Food Drug and Cosmetic Act. An act or omission that would violate an FDCA
28 regulation necessarily therefore violates California's Sherman Law. *Id.* at § 110100.
Regulatory citations in the text are to California's Sherman Law and reference the
corresponding federal regulation for convenience.

1 28. Any flavoring material that does not meet the definition of a natural flavor is
2 an artificial flavor. *Id.*

3 29. Neither the methanol nor the carbon monoxide used to manufacture the
4 sodium diacetate flavoring ingredient is “a spice, fruit or fruit juice, vegetable or vegetable
5 juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry,
6 eggs, dairy products, or fermentation products thereof.” *See id.*³

7 30. The sodium diacetate is therefore an artificial flavor under California law.

8 31. The ingredient identified on the Product label as “malic acid” is similarly an
9 artificial flavor under California law.

10 32. There is a compound found in nature that is sometimes referred to informally
11 as malic acid.

12 33. That, however, is not the compound that Defendants put in the Product.

13 34. The natural form of malic acid is correctly and specifically identified as “l-
14 malic acid.” L-malic acid occurs naturally in various types of fruits and vegetables.

15 35. Defendants, however, instead flavor the Product with an industrial chemical
16 called d-l-malic acid,⁴ in the form of a racemic mixture of d- and l-isomers. This kind of
17 ‘malic acid’ is not naturally-occurring; it is manufactured in petrochemical plants from
18 benzene or butane—components of gasoline and lighter fluid, respectively—through a
19 series of chemical reactions, some of which involve highly toxic chemical precursors and
20 byproducts.

21 36. Currently, under the Generally Recognized as Safe (“GRAS”) regulations,
22 either type of malic acid can be used as a flavoring agent in food products. Both provide
23 a tart or sour “fruity” flavor. According to The Chemical Company, an industrial malic
24 acid supplier, d-l-malic acid is added to food products to deliver a “persistent sour” flavor.⁵

25
26 ³ Until the 1920s, methanol was produced by the fermentation of wood; it is currently
27 produced from synthesis gases in chemical refineries.

28 ⁴ D-malic acid is also called (R)-(+)-2-Hydroxysuccinic acid or d-hydroxybutanedioic acid.

⁵ <https://thechemco.com/chemical/malic-acid/> (last visited April 12, 2017).

1 37. Although the malic acid that is placed in the Product to simulate the sour
2 flavor of vinegar is the d-l-malic acid—the artificial petrochemical—Defendants pretend
3 otherwise, conflating the natural and artificial flavorings, misbranding the Product, and
4 deceiving consumers.

5 38. Because the Product contains artificial flavors, California law requires it to
6 display both front- and back-label disclosures to inform consumers that the Product is
7 artificially flavored. Cal. Health & Safety Code §§ 109875, *et seq.* (21 CFR 101.22).

8 39. Defendants’ Product has neither.

9 40. California law, incorporating U.S. FDA regulations by reference, requires
10 that a food label accurately describe the nature of the food product and the ingredients that
11 create its characterizing flavors. *Id.* (21 C.F.R. 102.5(a)).

12 41. If the front label of a food product identifies a recognizable primary flavor,
13 that flavor is referred to as a “characterizing flavor” of the product.

14 42. FDA regulations and California law establish that if “the label, labeling, or
15 advertising of a food makes any direct or indirect representations with respect to the
16 primary recognizable flavor(s), by word, vignette, e.g., depiction of a fruit, or other
17 means” then “such flavor shall be considered the characterizing flavor”. Cal. Health &
18 Safety Code §§ 109875, *et seq.* (21 C.F.R. 101.22(i)).

19 43. “Vinegar” is a primary recognizable flavor identified on the Product’s front
20 label and is therefore a characterizing flavor for the Product.

21 44. If a food product’s characterizing flavors are not created exclusively by the
22 ingredients identified on the label, the product’s front label must state that the product’s
23 flavor was simulated or reinforced with additional flavorings, either natural or artificial.
24 If any artificial flavor is present which “simulates, resembles or reinforces” the
25 characterizing flavor, the food must be labeled “artificially flavored.” *Id.* (21 C.F.R.
26 101.22(i)(3)-(4)).

27 45. A food product’s label also must include a statement of the “presence or
28 absence of any characterizing ingredient(s) or component(s) . . . when the presence or

1 absence of such ingredient(s) or component(s) in the food has a material bearing on price
2 or consumer acceptance . . . and consumers may otherwise be misled about the presence
3 or absence of the ingredient(s) or component(s) in the food.” *Id.* (21 C.F.R. 102.5(c)).

4 46. Such statement must be in boldface print on the front display panel and of
5 sufficient size for an average consumer to notice. *Id.*

6 47. Defendants’ conduct also violates California law as it incorporates 21 C.F.R.
7 101.22(c), which requires all foods containing artificial flavoring to include:

8 A statement of artificial flavoring . . . [which] shall be placed on the food or
9 on its container or wrapper, or on any two or all three of these, as may be
10 necessary to render such a statement likely to be read by the ordinary person
11 under customary conditions of purchase and use of such food.

12 48. Specific California statutes require the same.

13 49. California’s Health & Safety Code states that “[a]ny food is misbranded if it
14 bears or contains any artificial flavoring, artificial coloring, or chemical preservative,
15 unless its labeling states that fact.” Cal. Health & Safety Code § 110740.

16 50. California law therefore requires Defendants to include on the Product’s
17 labeling a notice to alert California consumers that the Product is artificially flavored.

18 51. Defendants failed to do so.

19 52. Accordingly, Defendants’ Product is misbranded and illegal to distribute or
20 sell in California. *See* Cal. Health & Safety Code §§ 110740; 110760; 110765

21 53. Because Defendants concealed this fact, Plaintiffs and the putative Class were
22 unaware that the Product contained artificial flavoring when they purchased it, and that it
23 was illegal for Defendants to sell the Product in California.

24 54. When purchasing the Product, Plaintiffs were seeking a product of particular
25 qualities—one that was flavored only with the natural ingredients claimed on the label and
26 which did not contain artificial flavoring.

27 55. Plaintiffs are not alone in these purchasing preferences. As reported in *Forbes*
28 *Magazine*, 88% of consumers recently polled indicated they would pay more for foods
perceived as natural or healthy. “All demographics [of consumers]—from Generation Z to

1 Baby Boomers—say they would pay more” for such products, specifically including foods
2 with no artificial flavors.⁶

3 56. Other authorities in the snack food business confirm this. The CEO of
4 Pepsico—Defendants’ leading competitor in salty snack foods—informed investors at the
5 Morgan Stanley Consumer & Retail Conference as much, stating: “We have talked
6 extensively to consumers about this idea, and they come back and tell us the number one
7 motivation for purchase is products that claim to be all natural.”⁷

8 57. Defendants were aware that consumers like Plaintiffs and the Class prefer
9 natural food products to those that are artificially flavored.

10 58. Defendants deceived Plaintiffs and the Class into purchasing the Product by
11 unlawfully concealing that it was artificially flavored.

12 59. Plaintiffs lost money as a result. Plaintiffs would not have purchased the
13 Product in the absence of Defendants’ misrepresentations and omissions. Had Defendants
14 not violated California law, Plaintiffs would not have been injured.

15 60. Because the Product is illegal to sell in California, it is valueless. Even if it
16 had been legal to sell, the Product was worth less than what Plaintiffs paid for it. Plaintiffs
17 and putative Class Members would not have paid as much as they had for the Product
18 absent Defendants’ false and misleading statements and omissions.

19 **Defendants’ Competitors Label Their Products Lawfully**

20 61. Defendants not only deceive consumers, but also gain an unfair commercial
21 advantage in the marketplace by labeling the Product deceptively.

22 62. Manufacturers of competing snack products label their products lawfully.

23 63. Wise Potato Chips, for example, accurately labels its flavored “Salt &
24

25 ⁶ *Consumers Want Healthy Foods—And Will Pay More For Them*, FORBES MAGAZINE,
26 February 15, 2015, available at

27 [https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-
27 foods-and-will-pay-more-for-them/#4b8a6b4b75c5](https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-
28 foods-and-will-pay-more-for-them/#4b8a6b4b75c5) (last visited April 7, 2017).

28 ⁷ <https://seekingalpha.com/article/238261-pepsico-all-natural-growth> (last visited April
16, 2017).

1 Vinegar” chips as “Artificially Flavored.”

2 64. Other competing manufacturers, offering products whose labels suggest just
3 as Defendants do that their products are naturally flavored, truly are flavored only with
4 natural ingredients.

5 65. Defendants, however, conceal their use of artificial flavoring, deceiving
6 consumers, illegally cutting costs, unjustly increasing profits, and competing unfairly and
7 unlawfully in the marketplace, thereby injuring their law-abiding competitors as well as
8 consumers.

9 66. Defendants’ conduct injures competing manufacturers that do not engage in
10 the same illegal behavior. These manufacturers compete for market share and limited shelf
11 space, as well as for consumers’ buying preferences and dollars. Defendants’ competitors
12 do so lawfully. Defendants do not.

13 **Plaintiffs’ Purchases of the Product**

14 67. Plaintiffs Barry Allred and Mandy C. Allred purchased the Product in
15 California during the Class Period defined herein.

16 68. Plaintiffs purchased the Product multiple times annually since at least 2012
17 or earlier, including during 2016, most recently at the Vons grocery located at 5555 Balboa
18 Ave., San Diego, California 92111. Plaintiffs purchased the Product at the advertised retail
19 price, or from time to time at offered promotional prices, for example: “Two for \$5.00.”

20 69. The average U.S. retail price for the Product in 2016 was \$2.46 per package,⁸
21 including multiple-unit sales at discount retail outlets such as Walmart and Costco.

22 70. Plaintiffs first discovered Defendants’ unlawful acts described herein in late
23 December 2016, when they learned the Product’s characterizing flavor was deceptively
24 created or reinforced using artificial flavoring, even though Defendants failed to disclose
25 that fact on the Product’s label.

26 71. Plaintiffs were deceived by, and justifiably relied upon, the Product’s
27

28 ⁸ www.globalbrandprices.com/rankings/Pringles/ (last visited April 24, 2017).

1 deceptive labeling, and specifically the omission of the fact that it contained artificial
2 flavorings. Plaintiffs purchased the Product believing it was naturally-flavored, based on
3 the Product's deceptive labeling and failure to disclose that it was artificially flavored.

4 72. Plaintiffs, as reasonable consumers, are not required to subject consumer
5 food products to laboratory analysis, to scrutinize the back of a label to discover that the
6 product's front label is false and misleading, or to search the label for information that
7 federal regulations require be displayed prominently on the front—and, in fact, under state
8 law are entitled to rely on statements that Defendants deliberately place on the Product's
9 labeling. Defendants, but not Plaintiffs, knew or should have known that this labeling was
10 in violation of federal regulations and state law.

11 73. Because Plaintiffs reasonably assumed the Product to be free of artificial
12 flavoring based on its label, when it was not, they did not receive the benefit of their
13 purchases. Instead of receiving the benefit of products free of artificial flavoring, each
14 received a Product that was unlawfully labeled so as to deceive consumers into believing
15 that it is exclusively naturally flavored and contains no artificial flavoring, in violation of
16 federal and state labeling regulations.

17 74. Plaintiffs intend to, desire to, and will purchase the Product again when they
18 can do so with the assurance that the Product's label, which indicates that the Product is
19 naturally-flavored, is lawful and consistent with the Product's ingredients.

20 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

21 **Delayed Discovery**

22 75. Plaintiffs did not discover that Defendants' labeling of the Product was false
23 and misleading until December 2016, when they learned the Product contained artificial
24 flavoring.

25 76. Plaintiffs are reasonably diligent consumers who exercised reasonable
26 diligence in their purchase and consumption of the Product. Nevertheless, they would not
27 have been able to discover Defendants' deceptive practices and lacked the means to
28 discover them given that, like nearly all consumers, they rely on and are entitled to rely on

1 the manufacturer’s obligation to label its products in compliance with federal regulations
2 and state law. Furthermore, Defendants’ labeling practices and non-disclosures—in
3 particular, failing to identify the artificial flavor in the ingredient list, or to disclose that the
4 Product contains artificial flavoring, or to accurately identify the kind of malic acid that
5 Defendants put in the Product—impeded Plaintiffs’ and Class Members’ abilities to
6 discover the deceptive and unlawful labeling of the Product throughout the Class Period.
7 Thus, the delayed discovery exception postpones accrual of the limitations period for
8 Plaintiffs and all members of the putative Class.

9 **Fraudulent Concealment**

10 77. Additionally, or in the alternative, Defendants were constructively and
11 actually aware that the Product contains artificial flavoring. Nevertheless, Defendants
12 continued to sell the Product without informing consumers of such artificial flavoring on
13 the Product’s labeling. Therefore, at all relevant times, Defendants had a duty to inform
14 consumers that the Product contains artificial flavoring, but still knowingly concealed that
15 fact from Plaintiffs and members of the putative Class. Because Defendants actively
16 concealed their illegal conduct, preventing Plaintiffs and the putative Class from
17 discovering their violations of state law, the fraudulent concealment exception tolls the
18 statute of limitations on all claims herein.

19 **Continuing Violation**

20 78. Additionally, or in the alternative, because Defendants’ misrepresentations
21 and deception continues up to the present, the continuing violation exception tolls all
22 applicable statutes of limitations for Plaintiffs and all members of the putative Class until
23 Defendants’ unlawful advertising and labeling is corrected.

24 **VI. CLASS ACTION ALLEGATIONS**

25 79. Plaintiffs bring this action on behalf of themselves, all others similarly
26 situated, and the general public pursuant to Cal. Civ. Proc. Code § 382, Cal. Civ. Code §
27 1781, and Cal. Bus. & Prof. Code § 17203.

1 80. The proposed Class is currently defined as:

2 All consumers who purchased the Product from a retailer within the state of
3 California for personal, family, or household purposes, and not for resale, at
4 any time during the period six (6) years prior to the filing of this Complaint
and continuing until the Class is certified (hereinafter the “Class Period”).

5 81. Excluded from the Class are governmental entities; Defendants; any entity in
6 which Defendants have a controlling interest; Defendants’ agents, employees, officers,
7 directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries
8 or affiliated companies, including all parent companies, and their employees; and the
9 Court, judicial officers, and their immediate family members and court staff assigned to
10 this case.

11 82. To the extent the Court finds that further delayed discovery or equitable
12 tolling is appropriate to toll the Class’ claims further, the Class Period will be adjusted
13 accordingly.

14 83. Plaintiffs and the Class reserve their right to amend or modify the Class
15 definition with greater specificity or further division into subclasses or limitation to
16 particular issues as discovery and the orders of this Court warrant.

17 84. The terms “consumer” and “member of the public” have their ordinary
18 meaning as used in California’s Civil Code and Business and Professions Code.

19 85. During the Class Period, the Product unlawfully contained undisclosed
20 artificial flavors—including d-malic acid or d-l-malic acid and sodium diacetate—and was
21 otherwise improperly labeled. Defendants failed to label the Product as required by
22 California law.

23 86. The proposed Class meets all criteria for a class action, including numerosity,
24 typicality, superiority, and adequacy of representation.

25 87. The proposed Class satisfies numerosity. The Product is offered for sale at
26 over two thousand supermarkets in California. The Class numbers, at a minimum, in the
27 tens of thousands. Individual joinder of the Class Members in this action is impractical.
28 Addressing Class Members’ claims through a class action will benefit Class Members, the

1 parties, and the courts.

2 88. The proposed Class satisfies typicality. Plaintiffs' claims are typical of, and
3 are not antagonistic to, the claims of other Class Members. Plaintiffs and Class Members
4 all purchased the Product at retail locations, after being exposed to the false, misleading,
5 and unlawful Product labeling at the point of purchase, were deceived by the false and
6 deceptive labeling, and lost money as a result.

7 89. The proposed Class satisfies superiority. A class action is superior to any
8 other means for adjudication of the Class Members' claims because each Class Member's
9 claim is modest, based on the Product's retail purchase price which is generally under
10 \$5.00. It would be impractical for individual Class Members to bring individual lawsuits
11 to vindicate their claims.

12 90. Because Defendants' misrepresentations were made on the label of the
13 Product itself, all Class Members, including Plaintiffs, were exposed to, and continue to
14 be exposed to, the omissions and affirmative misrepresentations. If this action is not
15 brought as a class action, Defendants could continue to deceive consumers and violate
16 California law with impunity.

17 91. The proposed Class Representatives—Plaintiffs Barry and Mandy Allred—
18 satisfy the adequacy of representation requirement. Each Plaintiff is an adequate
19 representative of the Class, as each seeks relief for the Class, their interests do not conflict
20 with the interests of the Class, and each has no interest antagonistic to those of other Class
21 Members. Plaintiffs have retained counsel who are competent in the prosecution of
22 complex consumer fraud and class action litigation. Plaintiffs and their counsel are
23 committed to vigorously prosecuting this action on behalf of the Class, and have the
24 financial resources to do so.

25 92. There is a well-defined community of interest in questions of law and fact
26 common to the Class, and these predominate over any individual questions affecting
27 individual Class Members' claims in this action.

28

1 93. Questions of law and fact common to Plaintiffs and the Class include, but are
2 not limited to:

- 3 a. Whether Defendants failed to disclose the presence of the
4 artificial flavoring ingredient d-l-malic acid in the Product;
- 5 b. Whether Defendants failed to disclose the presence of the
6 artificial flavoring ingredient sodium diacetate in the Product;
- 7 c. Whether the Product was misbranded under California law;
- 8 d. Whether Defendants' labeling omissions and representations
9 constituted false advertising under California law;
- 10 e. Whether Defendants' conduct constituted a violation of
11 California's Unfair Competition Law;
- 12 f. Whether Defendants' conduct constituted a violation of
13 California's Consumers Legal Remedies Act;
- 14 g. Whether Defendants' conduct constitutes a breach of express
15 and/or implied warranties under California's Commercial Code;
- 16 h. Whether the statute of limitations should be tolled on behalf of
17 the Class;
- 18 i. Whether the Class is entitled to restitution, rescission, actual
19 damages, punitive damages, attorney fees and costs of suit,
20 and/or injunctive relief; and
- 21 j. Whether Class Members are entitled to any such further relief as
22 the Court deems appropriate.

23 94. Thus, common questions predominate.

24 95. Further, Defendants have acted on grounds applicable to the entire Class,
25 making final injunctive relief or equitable or declaratory relief appropriate for the Class
26 as a whole.

27 96. Plaintiffs will fairly and adequately protect the interests of the Class, have no
28 interests that are incompatible with the interests of the Class, and have retained counsel

1 competent and experienced in complex class action litigation.

2 97. Class treatment is therefore appropriate for this action.

3 **VII. CAUSES OF ACTION**

4 **First Cause of Action**

5 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**

6 **Cal. Civ. Code §§ 1750, *et seq.* (Equitable relief only)**

7 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

8 98. Plaintiffs reallege and incorporate by reference the allegations made
9 elsewhere in the Complaint as if set forth in full herein, and further allege as follows:

10 99. This cause of action is brought pursuant to the Consumers Legal Remedies
11 Act, California Civil Code §§ 1750, *et seq.* (the “CLRA”).

12 100. The California Consumers Legal Remedies Act prohibits any unfair,
13 deceptive, and/or unlawful practices, as well as unconscionable commercial practices in
14 connection with the sale of any goods or services to consumers. *See* Cal. Civ. Code § 1770.

15 101. The CLRA “shall be liberally construed and applied to promote its
16 underlying purposes, which are to protect consumers against unfair and deceptive business
17 practices and to provide efficient economical procedures to secure such protection.” Cal.
18 Civ. Code § 1760.

19 102. Defendants are “persons” under the CLRA. Cal. Civ. Code § 1761(c).

20 103. Plaintiffs and putative Class Members are “consumers” under the CLRA.
21 Cal. Civ. Code § 1761(d).

22 104. The Product is a “good” under the CLRA. Cal. Civ. Code § 1761(a).

23 105. Plaintiffs and putative Class Members’ purchases of the Product within the
24 Class Period constitute “transactions” under the CLRA. Cal. Civ. Code § 1761(e).

25 106. Defendants’ actions and conduct described herein constitute transactions that
26 have resulted in the sale of goods to consumers.

27 107. Defendants’ failure to label the Product in accordance with California
28 labeling requirements, omitting required information that the Product contains artificial
flavoring, is an unfair, deceptive, unlawful, and unconscionable commercial practice.

1 108. Defendants' conduct violates several provisions of the CLRA, including, but
2 not limited to:

3 1770(a)(5): Representing that goods or services have sponsorship, approval,
4 characteristics, ingredients, uses, benefits, or quantities which they do not have or
5 that a person has a sponsorship, approval, status, affiliation, or connection which he
6 or she does not have.

7 1770(a)(7): Representing that goods or services are of a particular standard, quality,
8 or grade, or that goods are of a particular style or model, if they are of another.

9 1770(a)(9): Advertising goods or services with intent not to sell them as advertised.

10 1770(a)(16): Representing that the subject of a transaction has been supplied in
11 accordance with a previous representation when it has not.

12 109. As a result of Defendant's violations, Plaintiffs and the Class suffered, and
13 continue to suffer, ascertainable losses in the form of the purchase price they paid for the
14 unlawfully labeled and marketed Product, which they would not have paid had the Product
15 been labeled correctly, or in the form of the reduced value of the Product relative to the
16 Product as advertised and the retail price they paid.

17 110. In accordance with Cal. Civ. Code § 1780(d), Plaintiffs have attached a
18 "venue affidavit" to this Complaint, showing that this action has been commenced in the
19 proper county.

20 111. Pursuant to § 1782 of the CLRA, Plaintiffs notified Defendants in writing of
21 the particular violations of §1770 of the CLRA, and demanded Defendants rectify the
22 actions described above by providing monetary relief, agreeing to be bound by their legal
23 obligations, and to give notice to all affected customers of their intent to do so. Plaintiffs
24 sent this notice by certified mail, return receipt requested, to Defendants' principal places
25 of business and to Defendants' registered agents for service of process.

26 112. If Defendants fail to remedy the violations alleged herein within 30 days of
27 receipt of Plaintiffs' notice, Plaintiffs will amend this Complaint to add claims for actual,
28 exemplary, and statutory damages pursuant to the CLRA. Plaintiffs do not seek damages

1 under the CLRA at this time, but only injunctive or other equitable relief as set forth
2 herein.

3 **Second Cause of Action**
4 **Violation of California’s Unfair Competition Law (“UCL”)**
5 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Prong**
6 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

7 113. Plaintiffs reallege and incorporate by reference each and every allegation
8 contained elsewhere in this Complaint, as if fully set forth herein, and further allege as
9 follows:

10 114. Section 17200 of the California Business & Professions Code, known as the
11 Unfair Competition Law (“UCL”), prohibits any “unlawful, unfair or fraudulent business
12 act or and unfair, deceptive, untrue or misleading advertising . . .” Section 17200
13 specifically prohibits any “unlawful . . . business act or practice.”

14 115. The UCL borrows violations of other laws and statutes and considers those
15 violations also to constitute violations of California law.

16 116. Defendants’ practices, as described herein, were at all times during the Class
17 Period, and continue to be, unlawful under, *inter alia*, FDA regulations and California’s
18 Sherman Law.

19 117. Among other violations, Defendants’ conduct in unlawfully packaging,
20 labeling, and distributing the Product in commerce in California violated U.S. FDA
21 packaging and labeling regulations.

22 118. The Product’s label fails to disclose that it contains a synthetic artificial
23 flavoring in violation of 21 CFR 101.22 and California’s Sherman Law.

24 119. The Product contains d-l-malic acid and sodium diacetate but does not
25 identify either of these compounds as an artificial flavoring, on either the Product’s front-
26 or back-label.

27 120. The d-l-malic acid is a flavoring material included in the Product to create,
28 simulate or reinforce the characterizing “Salt & Vinegar” flavor.

121. The d-l-malic acid in the Product is not derived from a natural material as

1 defined in 21 CFR 101.22, and is therefore an artificial flavor under California law.

2 122. The sodium diacetate is a flavoring material included in the Product to create,
3 simulate, or reinforce the characterizing “Salt & Vinegar” flavor.

4 123. The sodium diacetate in the Product is not derived from a natural material as
5 defined in 21 CFR 101.22, and is therefore an artificial flavor under California law.

6 124. Defendants fail to inform consumers of the presence of either artificial flavor
7 in the Product as required by California law.

8 125. Such conduct is ongoing and continues to this date.

9 126. Defendants’ practices are therefore unlawful as defined in Section 17200 of
10 the California Civil Code.

11 127. Plaintiffs and the Class reserve the right to allege other violations of law that
12 constitute other unlawful business acts or practices.

13 **Third Cause of Action**

14 **Violation of California’s Unfair Competition Law (“UCL”)**

15 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unfair Prong**

16 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

17 128. Plaintiffs reallege and incorporate by reference each and every allegation
18 contained elsewhere in this Complaint as if fully set forth herein, and further allege as
19 follows:

20 129. Section 17200 of the California Business & Professions Code, the UCL,
21 prohibits any “unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue
22 or misleading advertising . . .” Section 17200 specifically prohibits any “unfair . . .
23 business act or practice.” Defendants’ practices violate the UCL’s “unfair” prong as well.

24 130. A business act or practice is “unfair” under the UCL if the reasons,
25 justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the
26 harm to the alleged victims. A business act or practice is also “unfair” under the UCL if a
27 defendant’s conduct is immoral, unethical, oppressive, unscrupulous, or substantially
28 injurious to consumers. A business act or practice is also “unfair” under the UCL where
the consumer injury is substantial, the injury is not outweighed by any countervailing

1 benefits to consumers or competition, and the injury is one that consumers themselves
2 could not reasonably have avoided considering the available alternatives.

3 131. Defendants' conduct, as detailed herein, constitutes unfair business practices.

4 132. Defendants' practices, as described herein, are "unfair" within the meaning
5 of the UCL because the conduct is unethical and injurious to California residents, and the
6 utility of the conduct to Defendants does not outweigh the gravity of the harm to
7 consumers, including Plaintiffs and Class Members.

8 133. While Defendants' decision to label the Product deceptively and in violation
9 of California law may have some utility to them in that it allows Defendants to sell the
10 Product to consumers who otherwise would not purchase an artificially-flavored food
11 product at the retail price or at all if it were labeled correctly, and to realize higher profit
12 margins than if they formulated or labeled the Product lawfully, this utility is small and
13 far outweighed by the gravity of the harm Defendants inflicts upon California consumers,
14 including Plaintiffs and Class Members.

15 134. Defendants' conduct also injures competing food product manufacturers,
16 distributors, and sellers that do not engage in the same unfair and unethical conduct.

17 135. Moreover, Defendants' practices violate public policy expressed by specific
18 constitutional, statutory, and/or regulatory provisions, including, but not limited to,
19 California's Sherman Law, California's False Advertising Law, and the federal FDA
20 regulations cited herein.

21 136. Plaintiffs' and the Class Members' purchases of the Product all took place in
22 California.

23 137. Defendants consciously failed, and continue to fail, to disclose material facts
24 to Plaintiffs and the Class in Defendants' advertising and marketing of the Product.

25 138. Defendants' conduct is "unconscionable" because it violates, *inter alia*, 21
26 C.F.R. 101.22(c), which requires all food products for which artificial flavoring provides
27 a characterizing flavor to disclose this fact prominently on the product's front label.

28 139. Defendants intended that Plaintiffs and the Class rely on Defendants' acts of

1 omissions so that Plaintiffs and other Class Members would purchase the Product.

2 140. Had Defendants disclosed all material information regarding the Product in
3 its advertising and marketing, Plaintiffs and the Class would not have purchased the
4 Product, or would have paid less for the Product.

5 141. Plaintiffs suffered injury in fact and lost money or property as a result of
6 Defendants' deceptive advertising: they were denied the benefit of the bargain when they
7 decided to purchase the Product based on Defendants' violations of applicable laws and
8 regulations, or to purchase the Product in favor of competitors' products, which are less
9 expensive, contain no artificial flavoring, and/or are lawfully labeled.

10 142. Plaintiffs suffered an ascertainable loss of money. The acts, omissions, and
11 practices of Defendants detailed herein actually and proximately caused Plaintiffs and
12 other Class Members to suffer an ascertainable loss in the form of, *inter alia*, monies spent
13 to purchase the Product they otherwise would not have, and they are entitled to recover
14 such damages, together with appropriate penalties, including restitution, damages,
15 attorneys' fees, and costs of suit.

16 143. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading
17 advertising." For the reasons set forth above, Defendants engaged in unfair, deceptive,
18 untrue, and misleading advertising in violation of California Business & Professions Code
19 § 17200, the UCL.

20 144. Pursuant to California Business & Professions Code § 17203, Plaintiffs seek
21 an order requiring Defendants to immediately cease such acts of unlawful, unfair, and/or
22 fraudulent business practices, and requiring Defendants to return the full amount of money
23 improperly collected to all those who purchased the Product.

24 **Fourth Cause of Action**

25 **Violation of California's False Advertising Law ("FAL")**

26 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

27 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

28 145. Plaintiffs reallege and incorporate by reference each and every allegation
contained elsewhere in this Complaint as if fully set forth herein, and further allege as

1 follows:

2 146. Defendants made and distributed, in California and in interstate commerce, a
3 Product that unlawfully fails to disclose artificial flavoring on its labeling and packaging
4 as required by federal food labeling regulations.

5 147. The Product’s labeling and advertising in California falsely describes the
6 Product as if it were naturally-flavored.

7 148. Under California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code
8 §§ 17500, *et seq*:

9 “It is unlawful for any person, firm, corporation or association, or any employee
10 thereof with intent directly or indirectly to dispose of real or personal property
11 . . . to make or disseminate or cause to be made or disseminated before the
12 public in this state, or to make or disseminate or cause to be made or
13 disseminated from this state before the public in any state, in any newspaper or
14 other publication, or any advertising device . . . any statement, concerning that
15 real or personal property . . . which is untrue or misleading, and which is known,
16 or which by the exercise of reasonable care should be known, to be untrue or
17 misleading. . . .”

18 Cal. Bus. & Prof. Code § 17500.

19 149. Defendants’ business practices as alleged herein constitute unfair, deceptive,
20 untrue, and misleading advertising pursuant to California’s FAL because Defendants
21 advertised the Product in a manner that is untrue and misleading, and that is known or
22 reasonably should have been known to Defendants to be untrue or misleading.

23 150. Defendants’ labeling and advertising statements, omitting legally-required
24 label statements and thereby communicating to consumers that the Product contained no
25 artificial flavors, and concealing the fact that it contained synthetic artificial flavors, were
26 untrue and misleading, and Defendants, at a minimum by the exercise of reasonable care,
27 should have known those actions were false or misleading. Thus, Defendants’ conduct
28 violated California’s False Advertising Law.

151. Defendants’ wrongful business practices have caused injury to Plaintiff and
the Class.

1 152. Pursuant to section 17535 of the California Business and Professions Code,
2 Plaintiffs and the Class seek an order of this Court enjoining Defendants from continuing
3 to engage in deceptive business practices, false advertising, and any other act prohibited
4 by law, including those set forth in the Complaint.

5 153. Plaintiffs also seek an order for the disgorgement and restitution of all monies
6 from the sale of the Product which were unjustly acquired through acts of unlawful, unfair,
7 and/or fraudulent competition, and attorneys' fees and costs.

8 **Fifth Cause of Action**
9 **Breach of Express Warranty**
10 **Cal. Comm. Code § 2313**

11 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

12 154. Plaintiffs reallege and incorporate by reference the allegations found
13 elsewhere in the Complaint as if set forth in full herein, and further allege as follows:

14 155. The Product's front label misleadingly claims by operation of law that the
15 Product is flavored only with salt and vinegar.

16 156. These written promises became part of the basis of the bargain between the
17 parties and thus constituted an express warranty, which Defendants breached; the Product
18 is artificially flavored. *See* Cal. Comm. Code § 2313.

19 157. These representations had an influence on consumers' decisions in
20 purchasing the Product. Defendants made the above representations to induce Plaintiffs
21 and the Class to purchase the Product. Plaintiffs and Class Members justifiably relied on
22 the representations when purchasing Defendants' Product.

23 158. The Products does not conform to Defendants' express warranties because
24 the express warranties are false and misleading.

25 159. Defendants sold the goods to Plaintiffs and other consumers who bought the
26 goods from Defendants relying on Defendants' express warranties.

27 160. As a result, Plaintiffs and other Class Members did not receive goods as
28 warranted by Defendants. As an actual and proximate result of this breach of warranty by
Defendants, Plaintiffs and other Class Members have been, and continue to be, damaged

1 in amounts to be determined at trial.

2 161. Within a reasonable amount of time after Plaintiffs discovered that the
3 Product contained synthetic ingredients, Plaintiffs notified Defendants of such breach.

4 **Sixth Cause of Action**
5 **Breach of Implied Warranties**
6 **Cal. Comm. Code § 2314**

7 **(On behalf of all Plaintiffs and Class Members Against all Defendants)**

8 162. Plaintiffs reallege and incorporates the allegations elsewhere in the
9 Complaint as if set forth in full herein, and further allege as follows:

10 163. Defendants' label representations created implied warranties that the Product
11 is suitable for a particular purpose, specifically as a naturally-flavored food product.
12 Defendants breached this implied warranty.

13 164. The Product's front label misleadingly implies that it is flavored with the
14 natural ingredients comprising the characterizing flavors.

15 165. As alleged in detail above, at the time of purchase, Defendants had reason to
16 know that Plaintiffs, as well as members of the Class, intended to use the Product as a
17 naturally-flavored food product. Defendants were aware of market research so concluding.

18 166. This became part of the basis of the bargain between the parties.

19 167. These representations had an influence on consumers' decisions in
20 purchasing the Product. Defendants made the above representations to induce Plaintiffs
21 and the Class to purchase the Product. Plaintiffs and Class Members justifiably relied on
22 the representations when purchasing Defendants' Product.

23 168. Based on that implied warranty, Defendants sold the goods to Plaintiffs and
24 other Class Members who bought the goods from Defendants.

25 169. At the time of purchase, Defendants knew or had reason to know that
26 Plaintiffs and Class Members were relying on Defendants' skill and judgment to select or
27 furnish a Product that was suitable for this particular purpose, and Plaintiffs justifiably
28 relied on Defendants' skill and judgment.

170. The Product was not suitable for this purpose.

1 171. Plaintiffs purchased the Product believing it had the qualities Plaintiffs
2 sought, based on the deceptive advertising and labeling, but the Product was actually
3 unsatisfactory to Plaintiffs for the reasons described herein.

4 172. The Product was not merchantable in California, as it was not of the same
5 quality as other products in the naturally-flavored food category generally acceptable in
6 the trade, as it actually contained undisclosed artificial flavors. *See* Cal. Comm. Code §
7 2314(1).

8 173. The Product would not pass without objection in the trade when packaged
9 with its existing label, because the Product was misbranded and illegal to sell in California.
10 Cal. Comm. Code § 2314(2)(a).

11 174. The Product also was not acceptable commercially and breached its implied
12 warranty because it was not adequately packaged and labeled as required. Cal. Comm.
13 Code § 2314(2)(e).

14 175. The Product also was not acceptable commercially and breached its implied
15 warranty because it did not conform to the promises or affirmations of fact made on the
16 container or label, Cal. Comm. Code § 2314(2)(f), and other grounds as set forth in
17 Commercial Code, section 2314(2).

18 176. By offering the Product for sale and distributing the Product in California,
19 Defendants also warranted that the Product was not misbranded and was legal to sell in
20 California. Because the Product was misbranded in several regards and was therefore
21 illegal to sell or offer for sale in California, Defendants breached this warranty as well.

22 177. As a result of this breach, Plaintiffs and other Class Members did not receive
23 goods as impliedly warranted by Defendants. As an actual and proximate result of this
24 breach of warranty, Plaintiffs and other Class Members have been damaged in amounts to
25 be determined at trial.

26 178. Within a reasonable amount of time after the Plaintiffs discovered that the
27 Product contained artificial ingredients, Plaintiffs notified Defendants of such breaches.
28

1 179. As a result, Plaintiffs, the Class, and the general public are entitled to
2 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
3 by which Defendants were unjustly enriched.

4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated in
6 California, and the general public, pray for judgment against Defendants as follows:

- 7 A. An order confirming that this action is properly maintainable as a class action
8 as defined above, appointing Plaintiffs and their undersigned counsel to
9 represent the Class, and requiring Defendants to bear the cost of class notice;
- 10 B. An order declaring that the conduct complained of herein violates the CLRA;
- 11 C. An order declaring that the conduct complained of herein violates the UCL;
- 12 D. An order declaring that the conduct complained of herein violates the FAL;
- 13 E. An order declaring that the conduct complained of herein breached express
14 warranties, implied warranties, or both;
- 15 F. An order requiring Defendants to disgorge any benefits received from
16 Plaintiffs and any unjust enrichment realized as a result of the improper and
17 misleading labeling, advertising, and marketing of the Product;
- 18 G. An order requiring Defendants to restore to Plaintiffs and the Class equitable
19 restitution in amounts as permitted in equity;
- 20 H. An order requiring Defendants to pay damages to Plaintiffs and Class
21 Members so that they may be restored any money which was acquired by
22 means of any unfair, deceptive, unconscionable, and/or negligent acts;
- 23 I. An award of punitive damages in an amount to be proven at trial;
- 24 J. An order enjoining Defendants' deceptive and unfair practices;
- 25 K. An order requiring Defendants to conduct corrective advertising;
- 26 L. An award of pre-judgment and post-judgment interest;
- 27 M. An award of attorneys' fees and costs pursuant to, *inter alia*, the CLRA, Cal.
28 Civ. Proc. Code § 1021.5, the Private Attorney General Act statute, and

substantial benefit doctrines; and

N. Such other and further relief as this Court may deem just, equitable, or proper.

IX. JURY DEMAND

Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not seek a jury trial for claims sounding in equity.

DATED: May 10, 2017

Respectfully Submitted,

/s/ David Elliot

THE ELLIOT LAW FIRM
DAVID ELLIOT (270381)
davidelliott@elliottlawfirm.com
3200 Fourth Avenue, Suite 207
San Diego, CA 92103
Telephone: (619) 468-4865

LAW OFFICES OF
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Facsimile: (619) 564-6665

Counsel for Plaintiffs and the Putative Class

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Venue Affidavit

I, Barry Allen, declare as follows:

- 1. I am a Plaintiff in this action. I make this affidavit pursuant to California Civil Code Section 1780(d).
- 2. The Complaint in this action is filed in a proper place for the trial of this action because at least one named Defendant is doing business in this county and one or more of the transactions that form the basis of the action occurred in this county.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

Dated: May 5, 2017



Exhibit B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Elliot, SBN 270381 The Elliot Law Firm 3200 Fourth Avenue, Ste. 207 San Diego, CA 92103 TELEPHONE NO.: 619-468-4865 FAX NO. (Optional): E-MAIL ADDRESS (Optional): davidelliot@elliottlawfirm.com ATTORNEY FOR (Name): Plaintiffs Barry Allred and Mandy Allred	FOR COURT USE ONLY CASE NUMBER: 37-2017-00017301-CU-BC-CTL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Barry Allred, et al. DEFENDANT/RESPONDENT: Kellogg Company; et al.	
<p align="center">NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</p>	

TO (insert name of party being served): Kellogg Company

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: May 17, 2017

Andrea Vasquez

(TYPE OR PRINT NAME)



(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- A copy of the summons and of the complaint.
- Other (specify):
Civil Case Cover Sheet; Notice of Assignment; Notice of Litigants; Stipulation to ADR

(To be completed by recipient):

Date this form is signed: June 6, 2017

DEAN N. PANOS on behalf of Kellogg Company

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)



(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Elliot, SBN 270381) The Elliot Law Firm 3200 Fourth Avenue, Ste. 207 San Diego, CA 92103 TELEPHONE NO.: 619-468-4865 FAX NO. (Optional): E-MAIL ADDRESS (Optional): davidelliott@elliottlawfirm.com ATTORNEY FOR (Name): Plaintiffs Barry Allred and Mandy Allred	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Barry Allred, et al. DEFENDANT/RESPONDENT: Kellogg Company; et al.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 37-2017-00017301-CU-BC-CTL

TO (insert name of party being served): Kellogg Sales Company

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: May 17, 2017

Andrea Vasquez

(TYPE OR PRINT NAME)



(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other (specify):
 Civil Case Cover Sheet; Notice of Assignment; Notice of Litigants; Stipulation to ADR

(To be completed by recipient):

Date this form is signed: June 6, 2017

DEAN M. PAVOS on behalf of Kellogg Sales Co

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)



(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

June 6, 2017

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Elliot, SBN 270381) The Elliot Law Firm 3200 Fourth Avenue, Ste. 207 San Diego, CA 92103 TELEPHONE NO.: 619-468-4865 FAX NO. (Optional): E-MAIL ADDRESS (Optional): davidelliott@elliottlawfirm.com ATTORNEY FOR (Name): Plaintiffs Barry Allred and Mandy Allred</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central</p>	
<p>PLAINTIFF/PETITIONER: Barry Allred, et al. DEFENDANT/RESPONDENT: Kellogg Company; et al.</p>	
<p style="text-align: center;">NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</p> <p style="text-align: right;">CASE NUMBER: 37-2017-00017301-CU-BC-CTL</p>	

TO (insert name of party being served): Pringles LLC

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: May 17, 2017

Andrea Vasquez

(TYPE OR PRINT NAME)



(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other (specify):
Civil Case Cover Sheet; Notice of Assignment; Notice of Litigants; Stipulation to ADR

(To be completed by recipient):

Date this form is signed: June 6, 2017

Dean M. Anos on behalf of Pringles LLC

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)



(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

Exhibit C

1 **JENNER & BLOCK LLP**

2 Kenneth K. Lee (Cal. Bar No. 264296)
3 klee@jenner.com
4 Benjamin J. Brysacz (Cal. Bar. No. 297886)
5 bbrysacz@jenner.com
6 633 West 5th Street, Suite 3600
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7 **JENNER & BLOCK LLP**

8 Dean N. Panos (applying *pro hac vice*)
9 dpanos@jenner.com
10 353 N. Clark Street
11 Chicago, IL 60654-3456
12 Telephone: (312) 222-9350
13 Facsimile: (312) 527-0484

12 Attorneys for Defendants
13 Kellogg Company, Kellogg Sales Company,
14 Pringles LLC

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
17

18 BARRY ALLRED and MANDY C.
19 ALLRED, on behalf of themselves, all
20 others similarly situated, and the general
21 public,

21 Plaintiffs,

22 v.

23 KELLOGG COMPANY, a Delaware
24 corporation; KELLOGG SALES
25 COMPANY, a Delaware corporation; and
26 PRINGLES LLC, a Delaware limited
27 liability company.

27 Defendants.

Case No.

**DECLARATION OF JOSEPH T.
KRAMER, SR.**

[San Diego County Superior Court
Case No. 37-2017-00017301-CU-BC-CTL]

DECLARATION OF JOSEPH T. KRAMER, SR.

1
2 1. I am Joseph T. Kramer, Sr. and am Senior Brand Manager – Kellogg Salty
3 Snacks at the Kellogg Company. I have personal knowledge of the facts set forth herein,
4 and I could and would testify competently thereto if called as a witness.

5 2. I have personal knowledge of, among other things, the marketing of Pringles
6 Salt and Vinegar Potato Crisps. I also have access to Defendants’ financial information,
7 including revenue from the sales of Pringles Salt and Vinegar Potato Crisps.

8 3. Kellogg’s financial records show that between 2013 and May 2017, gross
9 sales of Pringles Salt and Vinegar Potato Crisps to retailers and distributors totaled
10 approximately \$108,400,000 nationwide. Kellogg currently lacks access to gross sales
11 data for Pringles Salt and Vinegar Potato Crisps prior to 2013.

12 4. Kellogg does not track sales of their products by state because, among other
13 things, it sells directly to distributors and retailers, who may distribute the products to
14 various states.

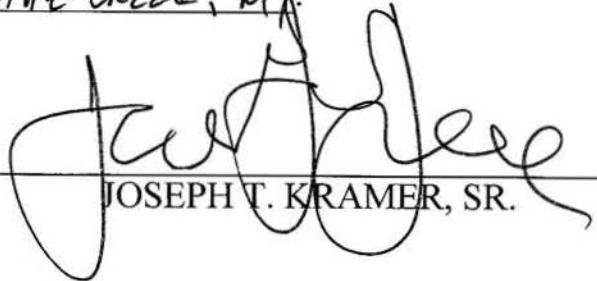
15 5. According to July 2016 population estimates from the U.S. Census Bureau,
16 available online at www.census.gov, on July 1, 2016, the population of California was
17 39,250,017, and the population of the United States was 323,127,513. *See*
18 <https://www.census.gov/quickfacts/fact/table/CA,US/PST045216>.

19 6. Based on these population statistics, I estimate that approximately
20 \$13,170,600 (or approximately 12.15%) of nationwide sales of Pringles Salt and Vinegar
21 Potato Crisps were sold in California. These figures reflect Kellogg’s sales to distributors
22 and retailers; the sales figure for the amount paid by consumers will be higher because
23 distributors and retailers will typically sell Pringles Salt and Vinegar Potato Crisps to
24 consumers with a price mark-up.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29 day of June, 2017, in Battle Creek, MI.



JOSEPH T. KRAMER, SR.