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

VICTOR GUTTMANN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

NISSIN FOODS (U.S.A.) COMPANY,
INC.

Defendant.

Case No:
Pleading Type: Class Action

**COMPLAINT FOR INJUNCTIVE RELIEF, ABATEMENT OF
NUISANCE, VIOLATIONS OF THE UNFAIR
COMPETITION LAW, AND BREACH OF IMPLIED
WARRANTY**

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1 Plaintiff Victor Guttman, on behalf of himself, all others similarly situated, and the general
2 public, by and through his undersigned counsel, hereby sues Defendant Nissin Foods (U.S.A.)
3 Company, Inc. (“Nissin” or “Defendant”), and upon information and belief and investigation of counsel,
4 alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2) (The
7 Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000
8 exclusive of interest and costs and because more than two-thirds of the members of the class defined
9 herein reside in states other than the state of which Defendant resides.

10 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff resides in
11 and suffered injuries, as a result of Defendant’s acts, in this District, many of the acts and transactions
12 giving rise to this action occurred in this District, and Defendant: (1) is authorized to conduct business in
13 this District and has intentionally availed itself of the laws and markets of this District through the
14 distribution and sale of its products in this District; and (2) is subject to personal jurisdiction in this
15 District.

16 **II. INTRADISTRICT ASSIGNMENT**

17 3. This civil action arises out of the events and omissions of Defendant Nissin, which
18 occurred in Pleasanton, California, in Alameda County. Pursuant to Civil Local Rule 3-2(c), this action
19 should be assigned to the San Francisco or the Oakland Division.

20 **III. NATURE OF THE ACTION**

21 4. Defendant manufactures and sells a variety of instant noodle products (collectively “the
22 Trans Fat Noodles”) containing partially hydrogenated oil (“PHO”), a food additive banned in many
23 parts of the world because it is the only dietary source of artificial trans fat, a toxic carcinogen for which
24 there are many safe and commercially acceptable substitutes.

25 5. Plaintiff Victor Guttman repeatedly purchased and consumed the Trans Fat Noodles
26 during the Class Period defined herein.

27 6. Although there are safe, low-cost, and commercially acceptable alternatives to trans fat,
28 including those used in competing brands and even in a few Nissin instant noodle products, Defendant

1 unfairly elects *not* to use those substitutes in the Trans Fat Noodles in order to increase profit at the
2 expense of consumer health.

3 7. This action is brought to remedy Defendant's unfair and unlawful conduct. On behalf of
4 the class defined herein, Plaintiff seeks an order compelling Defendant to, *inter alia*: (1) cease using
5 artificial trans fat as an ingredient in the Trans Fat Noodles and (2) award Plaintiff and the Class
6 restitution.

7 **IV. PARTIES**

8 8. Defendant Nissin Foods (U.S.A.) Company, Inc. is a California corporation with its
9 principal place of business in California. Nissin owns, manufactures, and sells the Trans Fat Noodles,
10 more particularly identified in Appendix A hereto.

11 9. Plaintiff Victor Guttmann is a resident of Pleasanton, California who repeatedly
12 purchased the Trans Fat Noodles for personal and household consumption.

13 **V. NATURE OF TRANS FAT**

14 10. Artificial trans fat is manufactured via an industrial process called partial hydrogenation,
15 in which hydrogen atoms are added to normal vegetable oil by heating the oil to temperatures above
16 400°F in the presence of ion donor catalyst metals such as rhodium, ruthenium, and nickel.¹ The
17 resulting product is known as partially hydrogenated oil, or PHO, which is the main source of trans fat in
18 the American diet and used in dangerous quantities in the Trans Fat Noodles.

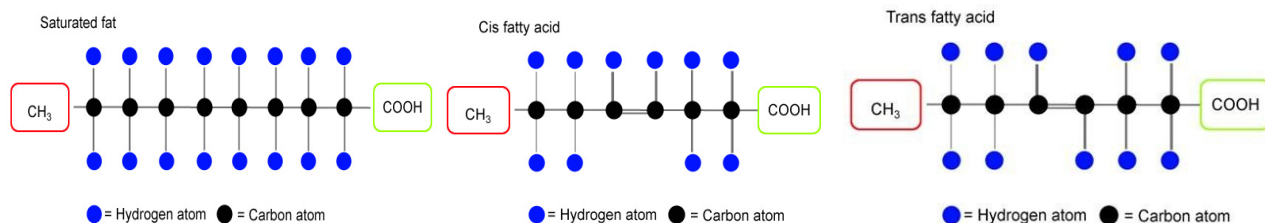
19 11. PHO was invented in 1901 and patented in 1902 by German chemist Wilhelm Normann.
20 PHO molecules chemically differ from the natural fat molecules in other food products.²

21 12. Natural fat, except the trace amounts of natural trans fat from ruminant animals, comes in
22 two varieties: (1) fats that lack carbon double bonds ("saturated fat") and (2) fats that have carbon
23 double bonds with the hydrogen atoms on the same side on the carbon chain ("cis fat"). Trans fat,
24

25 ¹ See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of Developing Cardiovascular Disease*, 95 *Circulation* 2588, 2588-90 (1997).

26 ² See Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 *New Eng. J. Med.* 94,
27 94-8 (1999). See also Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., *Questions &*
28 *Answers About Trans Fat Nutrition Labeling (Update 2006) (2003)*, available at <http://www.cfsan.fda.gov/%7Edms/qatrans2.html>.

1 however, has double bonds on opposite sides of its carbon chain.



7 13. PHO was initially a “wonder product” attractive to the packaged food industry because it
8 combines the low cost of unsaturated cis fat with the flexibility and long shelf life of saturated fat. Like
9 cis fat, PHO is manufactured from lower-cost vegetable and legume oils,³ while saturated fat is derived
10 from relatively expensive animal and tropical plant sources.⁴ Given its versatility, PHO was recently
11 used in 40 percent of processed packaged foods.⁵ Now, given its toxic properties, few food companies
12 continue to use PHO. Defendant, however, has decided not to follow its more responsible peers and
13 cease using PHO, instead placing its profits over the health of people like Plaintiff.

14 **A. There is a Scientific Consensus That Trans Fat is Extremely Harmful**

15 14. PHO causes cardiovascular heart disease, diabetes, cancer, Alzheimer’s disease, and
16 accelerates cognitive decline in diabetics.

17 15. There is “no safe level” of artificial trans fat intake.⁶

18 16. In addition, “trans fatty acids are not essential and provide no known benefit to human
19 health.”⁷ Thus, while “the [Institute of Medicine] sets tolerable upper intake levels (UL) for the highest
20 level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all
21 individuals in the general population[,] . . . the IOM does **not** set a UL for trans fatty acid because **any**

22 _____
23 ³ e.g., corn oil, soybean oil, and peanut oil.

24 ⁴ e.g., butter, cream, tallow, and coconut oil.

25 ⁵ Mary Carmichael, *The Skinny on Bad Fat*, Newsweek, Dec. 1, 2003, at 66. See also Kim Severson,
26 *Hidden Killer. It’s Trans Fat. It’s Dangerous. And It’s In Food You Eat Every Day*, S.F. Chron., Jan.
27 30, 2002.

28 ⁶ Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate, Fiber, Fat,
Fatty Acids, Cholesterol, Protein, and Amino Acids* (2005).

⁷ 75 Fed. Reg. at 76542 (Dec. 8, 2010).

1 incremental increase in trans fatty acid intake increases the risk of CHD.”⁸

2 17. Dariush Mozaffarian of Harvard Medical School writes in the New England Journal of
3 Medicine:

4 [T]rans fats from partially hydrogenated oils have no intrinsic health value above
5 their caloric value. Thus from a nutritional standpoint, the consumption of trans fatty
6 acids results in considerable potential harm but no apparent benefit. . . . Thus,
7 complete or near-complete avoidance of industrially produced trans fat—a
8 consumption of less than 0.5 percent of the total energy intake—may be necessary to
9 avoid adverse effects and would be prudent to minimize health risks.⁹

10 18. Today there is no question about the scientific consensus on trans fat. Dr. Julie Louise
11 Gerberding, former director of the Center for Disease Control, writes:

12 The scientific rationale for eliminating exposure to artificial trans fatty acids in foods
13 is rock solid. There is no evidence that they provide any health benefit, and they are
14 certainly harmful. These compounds adversely affect both low- and high-density
15 lipoprotein cholesterol levels and increase the risk for coronary heart disease, even at
16 relatively low levels of dietary intake. Gram for gram, trans fats are far more potent
17 than saturated fats in increasing the risk for heart disease, perhaps because they also
18 have pro-inflammatory properties and other adverse effects on vascular endothelium.
19 The strong evidence of harm motivated the Institute of Medicine to issue
20 recommendations that the intake of trans fats be minimized and prompted the [FDA]
21 to require the addition of information about trans fat content to food labels beginning
22 in 2006. Eliminating exposure to these dangerous fats could have a powerful
23 population impact—potentially protecting 30,000 to 100,000 Americans from death
24
25

26 ⁸ *Id.* (emphasis added).

27 ⁹ Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 N. Engl. J. Med. 1608-
28 09 (2006).

1 related to heart disease each year.¹⁰

2 19. Doctor Mozaffarian further writes:

3 Given the adverse effects of trans fatty acids on serum lipid levels, systemic
4 inflammation, and possibly other risk factors for cardiovascular disease and the
5 positive associations with the risk of CHD, sudden death from cardiac causes, and
6 possibly diabetes, the potential for harm is clear. The evidence and the magnitude of
7 adverse health effects of trans fatty acids are in fact far stronger on average than those
8 of food contaminants or pesticide residues, which have in some cases received
9 considerable attention. Furthermore, trans fats from partially hydrogenated oils have
10 no intrinsic health value above their caloric value. Thus, from a nutritional standpoint,
11 the consumption of trans fatty acids results in considerable potential harm but no
12 apparent benefit.¹¹

13 20. Given its nature as an artificial chemical not naturally found in any food and the
14 considerable harm it that causes to human health, Dr. Walter Willett, Professor of Medicine at Harvard
15 Medical School, finds the most direct analogue of trans fat to be not any natural fat but contaminants
16 such as pesticides. He states that the addition of artificial trans fat to food by companies like Nissan “is a
17 food safety issue . . . this is actually contamination.”¹²

18 **B. Artificial Trans Fat Is so Inherently Dangerous it Has Been Banned by an Increasing**
19 **Number of American and European Jurisdictions**

20 21. In 2008, California became the first state to ban all restaurant food with artificial trans
21 fat, a law affecting approximately 88,000 eating establishments. Trans fats now may not be served in
22 California’s schools or restaurants in an amount greater than half a gram per serving.¹³

24 ¹⁰ Julie Louise Gerberding, *Safer Fats for Healthier Hearts: The Case for Eliminating Dietary Artificial*
25 *Trans Fat Intake*, 151 *Ann. Intern. Med.*, 137-38 (2009).

26 ¹¹ Dariush Mozaffarian et al., *Trans Fatty Acids and Cardiovascular Disease*, 354 *N. Engl. J. Med.*
27 1601-13 (2006).

28 ¹² Rebecca Coombes, *Trans fats: chasing a global ban*, 343 *British Med. J.* (2011).

¹³ Cal. Educ. Code § 49431.7; Cal. Health & Saf. Code § 114377.

1 22. New York City banned trans fat in its 20,000 food establishments in 2006. Similar laws
2 exist in Philadelphia; Baltimore; Stamford, Connecticut; and Montgomery County, Maryland.

3 23. A 2004 Danish law restricted all foods to under 2 percent of calories from artificial trans
4 fat. Switzerland made the same restriction in 2008.¹⁴

5 24. After conducting a surveillance study of Denmark's trans fat ban, researchers concluded
6 the change "did not appreciably affect the quality, cost or availability of food" and did not have "any
7 noticeable effect for the consumers."¹⁵

8 25. Similar bans have been introduced in Austria and Switzerland. Brazil, Argentina, Chile
9 and South Africa have all taken steps to reduce or eliminate trans fats from food.¹⁶

10 26. In 2006, a trans fat task force co-chaired by Health Canada and the Heart and Stroke
11 Foundation of Canada recommended capping trans fat content at 2 percent of calories for tub margarines
12 and spreads and 5 percent for all other foods. On September 30, 2009, British Columbia became the first
13 province to impose these rules on all restaurants, schools, hospitals, and special events.¹⁷

14 **C. The Artificial Trans Fat in the Trans Fat Noodles Causes Cardiovascular Disease**

15 27. Trans fat raises the risk of CHD more than any other known nutritive substance.¹⁸

16 28. Removing trans fat equivalent to 2% of total calories from the American diet "would
17 prevent approximately 30,000 premature coronary deaths per year, and epidemiologic evidence suggests
18 this number is closer to 100,000 premature deaths annually."¹⁹

19 29. "10 to 19 percent of CHD events in the United States could be averted by reducing the
20
21

22 ¹⁴ Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, The Independent (UK), June 10, 2008.

23 ¹⁵ Mozaffarian, 354 New Eng. J. Med. at 1610; *see also* Steen Stender, *High Levels of Industrially
24 Produced Trans Fat in Popular Fast Food*, 354 New Eng. J. Med. 1650, 1652 (2006).

25 ¹⁶ Coombes, *Trans fats: chasing a global ban*, 343 British Med. J. 5567 (2011).

26 ¹⁷ *Province Restricts Trans Fat in B.C.*, British Columbia Ministry of Healthy Living and Sport Press
27 Release (2009), *available at* <http://tinyurl.com/nissin14>.

28 ¹⁸ Mozaffarian, 354 New Eng. J. Med. at 1603.

¹⁹ Alberto Ascherio et al., *Trans Fatty Acids & Coronary Heart Disease*, 340 New Eng. J. Med. 94, 94-8
(1999).

1 intake of trans fat.”²⁰

2 30. By raising LDL levels and lowering HDL levels, trans fat causes a wide variety of
3 dangerous heart conditions, including low flow-mediated vasodilation, coronary artery disease, and
4 primary cardiac arrest.

5 31. In a joint Dietary Guidelines Advisory Committee Report, the Department of Health and
6 Human Services and the U.S. Department of Agriculture recognized “[t]he relationship between trans
7 fatty acid intake and LDL cholesterol is direct and progressive, increasing the risk of cardiovascular
8 disease.”²¹

9 32. The American Heart Association warns, “trans fats raise your bad (LDL) cholesterol
10 levels and lower your good (HDL) cholesterol levels. Eating trans fats increases your risk of developing
11 heart disease.”²²

12 33. After a review of literature on the connection between the consumption of artificial trans
13 fat and coronary heart disease, the FDA concluded:

14 [B]ased on the consistent results across a number of the most persuasive types of
15 study designs (i.e., intervention trials and prospective cohort studies) that were
16 conducted using a range of test conditions and across different geographical regions
17 and populations . . . the available evidence for an adverse relationship between trans
18 fat intake and CHD risk is strong.²³

19 34. The FDA further found “[t]o date, there have been no reports issued by authoritative
20 sources that provide a level of trans fat in the diet . . . below which there is no risk of [Coronary Heart
21
22

23 ²⁰ Mozaffarian, 354 New Eng. J. Med. at 1611.

24 ²¹ Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., 2005 Dietary Guidelines Advisory
25 Committee Report, Section 10 (2005).

26 ²² Am. Heart Ass’n., *Trans Fat Overview*, available at
27 [http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-
28 Fats_UCM_301120_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/FatsAndOils/Fats101/Trans-Fats_UCM_301120_Article.jsp).

²³ Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., Questions & Answers About
Trans Fat Nutrition Labeling.

1 Disease].”²⁴ Rather, there “is a positive linear trend between trans fatty acid intake and LDL cholesterol
 2 concentration, and therefore there is a positive relationship between trans fatty acid intake and the risk of
 3 CHD.”²⁵

4 35. A study investigating the impact of trans fatty acids on heart health provides evidence
 5 that:

6 [E]ven the lower estimates from the effects [of PHO] on blood lipids would suggest
 7 that more than 30,000 deaths per year may be due to the consumption of partially
 8 hydrogenated vegetable fat. Furthermore, the number of attributable cases of nonfatal
 9 coronary heart disease will be even larger.²⁶

10 36. By taking blood samples from 179 survivors of cardiac arrest and 285 randomly-selected
 11 control patients and comparing the top fifth with the bottom fifth of participants by trans fat intake,
 12 another study published in the American Heart Association’s *Circulation* found that the largest
 13 consumers of trans fat have three times the risk of suffering primary cardiac arrest, even after controlling
 14 for a variety of medical and lifestyle risk factors.²⁷

15 37. Australian researchers observed that heart attack patients possess elevated amounts of
 16 trans fat in their adipose tissue, strongly linking heart disease with long-term consumption of trans fat.²⁸

17 **D. The Artificial Trans Fat in the Trans Fat Noodles Causes Type-2 Diabetes**

18 38. Artificial trans fat causes type-2 diabetes.²⁹

19 39. In particular, trans fat disrupts the body’s glucose and insulin regulation system by
 20 incorporating itself into cell membranes, causing the insulin receptors on cell walls to malfunction, and
 21

22 ²⁴ 75 Fed. Reg. 76526, 76542 (Dec. 8, 2010).

23 ²⁵ *Id.*

24 ²⁶ W.C. Willett et al., *Trans Fatty Acids: Are the Effects only Marginal?* 84 Am. J. Pub. Health 722, 723 (1994).

25 ²⁷ Rozenn N. Lemaitre et al., *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac Arrest*, 105 *Circulation* 697, 697-701 (2002).

26 ²⁸ Peter M. Clifton et al., *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*. 134 J. NUTR. 874, 874-79 (2004).

27 ²⁹ Am. Heart Ass’n., *Trans Fat Overview*.

1 in turn elevating blood glucose levels and stimulating further release of insulin.

2 40. Researchers at Northwestern University’s medical school found mice show multiple
3 markers of type-2 diabetes after eating a high trans fat diet for only four weeks.³⁰

4 41. By the eighth week of the study, mice fed the diet high in trans fat showed a 500%
5 increase compared to the control group in hepatic interleukin-1 β gene expression, one such marker of
6 diabetes, indicating the extreme stress artificial trans fat places on the body.³¹

7 42. A 14-year study of 84,204 women found that for every 2 percent increase in energy
8 intake from artificial trans fat, the relative risk of type-2 diabetes was increased by 39 percent.³²

9 **E. The Artificial Trans Fat in the Trans Fat Noodles Causes Breast, Prostate, and**
10 **Colorectal Cancer**

11 43. Trans fat is a carcinogen which causes breast, prostate, and colorectal cancer.

12 44. A 13-year study of 19,934 French women showed 75 percent more women contracted
13 breast cancer in the highest quintile of trans fat consumption than did those in the lowest.³³

14 45. In a 25-year study of 14,916 U.S. physicians, the doctors in the highest quintile of trans
15 fat intake had more than double the risk of developing prostate cancer than the doctors in the lowest
16 quintile.³⁴

17 46. A study of 1,012 American males observing trans fat intake and the risk of prostate
18 cancer found “[c]ompared with the lowest quartile of total trans-fatty acid consumption, the higher
19 quartiles gave odds ratios (ORs) equal to 1.58,” meaning those in the highest quartile are 58% more
20

21 _____
22 ³⁰ Sean W. P. Koppe et al., *Trans fat feeding results in higher serum alanine aminotransferase and*
23 *increased insulin resistance compared with a standard murine high-fat diet*, 297 *Am. J. Physiol.*
24 *Gastrointest Liver Physiol.* 378 (2009).

24 ³¹ *Id.*

25 ³² Jorge Salmeron et al., *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 *Am. J. Clinical*
26 *Nutrition* 1019, 1023 (2001).

26 ³³ Véronique Chajès et al., *Association between Serum Trans-Monounsaturated Fatty Acids and Breast*
27 *Cancer Risk in the E3N-EPIC Study*. 167 *Am. J. Epidemiology* 1312, 1316 (2008).

27 ³⁴ Jorge Chavarro et al., *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of Prostate*
28 *Cancer.*, 47 *Proc. Am. Assoc. Cancer Research* 95, 99 (2006).

1 likely to contract prostate cancer than those in the lowest.³⁵

2 47. A 600-person study found an 86 percent greater risk of colorectal cancer in the highest
3 trans fat consumption quartile.³⁶

4 48. A 2,910-person study found “trans-monounsaturated fatty acids . . . were dose-
5 dependently associated with colorectal cancer risk,” which showed “the importance of type of fat in the
6 etiology and prevention of colorectal cancer.”³⁷

7 **F. The Artificial Trans Fat in the Trans Fat Noodles Causes Alzheimer’s Disease and**
8 **Cognitive Decline**

9 49. Trans fat causes Alzheimer’s Disease and cognitive decline.

10 50. In a study examining 815 Chicago area seniors, researchers found “increased risk of
11 incident Alzheimer disease among persons with high intakes of . . . trans-unsaturated fats.”³⁸

12 51. The study “observed a strong increased risk of Alzheimer disease with consumption of
13 trans-unsaturated fat.”³⁹

14 52. In a study of 1,486 women with type 2 diabetes, researchers found “[h]igher intakes of . .
15 . trans fat since midlife . . . were [] highly associated with worse cognitive decline”⁴⁰

16 53. The study cautioned “[d]ietary fat intake can alter glucose and lipid metabolism and is
17 related to cardiovascular disease risk in individuals with type 2 diabetes. Because insulin, cholesterol,
18 and vascular disease all appear to play important roles in brain aging and cognitive impairments, dietary
19 fat modification may be a particularly effective strategy for preventing cognitive decline, especially in
20

21 ³⁵ Xin Liu et al., *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer:*
22 *Modification by RNASEL R462Q Variant*, 28 *Carcinogenesis* 1232, 1232 (2007).

23 ³⁶ L.C. Vinikoor et al., *Consumption of Trans-Fatty Acid and its Association with Colorectal Adenomas*,
23 168 *Am. J. Epidemiology* 289, 294 (2008).

24 ³⁷ Evropi Theodoratou et al., *Dietary Fatty Acids and Colorectal Cancer: A Case-Control Study*, 166
24 *Am. J. Epidemiology* 181 (2007).

25 ³⁸ Martha Clare Morris et al., *Dietary Fats and the Risk of Incident Alzheimer Disease*, 60 *Arch. Neurol.*
26 194, 198-99 (2003).

26 ³⁹ *Id.*

27 ⁴⁰ Elizabeth E. Devore et al., *Dietary Fat Intake and Cognitive Decline in Women with Type 2 Diabetes*,
28 32 *Diabetes Care* 635 (2009).

1 individuals with diabetes.”⁴¹ (citations omitted).

2 **G. The Artificial Trans Fat in the Trans Fat Noodles Causes Organ Damage**

3 54. Artificial trans fat damages vital organs, including the heart, by causing chronic systemic
4 inflammation, where the immune system becomes persistently overactive, damages cells, and causes
5 organ dysfunction.⁴²

6 **VI. PLAINTIFF’S PURCHASES OF THE TRANS FAT NOODLES**

7 55. Plaintiff Victor Guttman repeatedly purchased the Trans Fat Noodles during the Class
8 Period.

9 56. Mr. Guttman purchased the Trans Fat Noodles dozens of times over the past three years.

10 57. The most frequent of Mr. Guttman’s purchases of the Trans Fat Noodles were at the
11 Walmart located at 4501 Rosewood Dr., Pleasanton, CA 94588 and the Safeway located at 1701 Santa
12 Rita Rd., Pleasanton, CA 94566.

13 **VII. THE TRANS FAT NOODLES UNNECESSARILY CONTAIN PHO AND ARTIFICIAL**
14 **TRANS FAT**

15 58. Defendant’s use of PHO in the Trans Fat Noodles is unnecessary. There are several safe
16 substitutes for PHO and artificial trans fat. In fact, Defendant manufactures and distributes other instant
17 noodle products with alternative formulations that do not contain artificial trans fat. For example, Nissin
18 also manufactures and sells “Big Cup Noodles (All Flavors),” “Bowl Noodles (All Flavors),” “Ramen
19 Bowl (All Flavors),” and other varieties of Nissin instant noodle products which are not made with
20 artificial trans fat.

21 59. Similarly, several manufacturers of competing instant noodle products have responsibly
22

23 ⁴¹ *Id.*

24 ⁴² See Lopez-Garcia et al., *Consumption of Trans Fat is Related to Plasma Markers of Inflammation and*
25 *Endothelial Dysfunction*, 135 J. Nutr. 562-66 (2005); see also Baer et al., *Dietary fatty acids affect*
26 *plasma markers of inflammation in healthy men fed controlled diets; a randomized crossover study*, 79
27 *Am. J. Clin. Nutr.* 969-73 (2004); Mozaffarian & Clarke, *Quantitative effects on cardiovascular risk*
28 *factors and coronary heart disease risk of replacing partially hydrogenated vegetable oils with other fats*
and oils, 63 Euro. J. of Clin. Nutr. S22-S33 (2009); Mozaffarian et al., *Trans Fatty acids and systemic*
inflammation in heart failure, 80 Am. J. Clin. Nutr. 1521-25 (2004).

1 decided to refrain from adding artificial trans fat to their products. Such brands sold in the United States
2 include Maruchan, Sapporo Ichiban, Dr. McDougall’s Asian Noodles, A Taste of Thai, Thai Kitchen,
3 Simply Asia, Annie Chun’s Soup Bowls, Nongshim Bowl Noodle Soup, and The Spice Hunter, among
4 others. A list of such products including specific varieties is identified in Appendix B hereto.

5 60. Although alternative formulations and substitutes for PHO were and are available,
6 Defendant elects not to use them in the Trans Fat Noodles in order to increase its profits.

7 **VIII. DEFENDANT’S PRACTICES ARE “UNFAIR” WITHIN THE MEANING OF THE**
8 **CALIFORNIA UNFAIR COMPETITION LAW**

9 61. Defendant’s practices as described herein are “unfair” within the meaning of the
10 California Unfair Competition Law because its conduct is immoral, unethical, unscrupulous, or
11 substantially injurious to consumers, and the utility of the conduct, if any, does not outweigh the gravity
12 of the harm to Defendant’s victims.

13 62. In particular, while Defendant’s use of PHO in the Trans Fat Noodles may have some
14 utility in that it allows Defendant to realize higher profit margins than if they used certain safer PHO
15 substitutes, this utility is small and far outweighed by the gravity of the serious health harm imposed
16 upon consumers.

17 63. Nissin’s conduct injures competing manufacturers of instant noodles that do not engage
18 in its unfair, immoral behavior, especially given Defendant’s large market share and the limited retail
19 shelf space.

20 64. Further, Defendant’s practices violate public policy as declared by specific constitutional,
21 statutory, or regulatory provisions, including the California Health and Safety Code § 114377 and
22 California Education Code § 49431.7.

23 65. Nissin’s actions also violate public policy by causing the United States, California, and
24 every other state to pay—via Medicare, Medicaid, Veterans Health Administration, public employee and
25 retiree health insurance, and other programs—for treatment of trans fat-related illnesses.

26 66. Further, the injury to consumers from Defendant’s practices is substantial, not
27 outweighed by benefits to consumers or competition, and not one consumers themselves could
28 reasonably have avoided.

1 **IX. INJURY**

2 67. Plaintiff also lost money as a result of Defendant’s conduct described herein in that he
3 purchased products that, because they were detrimental to his health, were unfairly offered for sale in
4 violation of California law. Had Defendant not violated the law, Plaintiff would not have been able to
5 purchase the Trans Fat Noodles, or would have only been able to purchase Nissin instant noodle
6 varieties containing safe alternatives to PHO and trans fat.

7 68. Plaintiff suffered physical injury when he repeatedly consumed Defendant’s Trans Fat
8 Noodles, because consuming artificial trans fat in any quantity causes inflammation and damage to vital
9 organs and an increased risk of heart disease, diabetes, cancer, and death.

10 69. Plaintiff first discovered Defendant’s unlawful acts described herein in September 2014,
11 when he learned that the Trans Fat Noodles contained artificial trans fat and caused heart disease,
12 diabetes, cancer, and death, while competing products used safe and commercially acceptable substitutes
13 for PHO.

14 70. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
15 Defendant’s unlawful acts described herein because the dangers of artificial trans fats were known to
16 Defendant, but not to Plaintiff, throughout the Class Period defined herein. Plaintiff is not a nutritionist,
17 food expert, or food scientist, but rather a lay consumer who does not have the specialized knowledge
18 that Defendant has, which otherwise would have enabled him to associate partially hydrogenated oil
19 with artificial trans fat, and artificial trans fat with disease. Even today the nature and extensive
20 utilization of artificial trans fats – including that they necessarily exist where partially hydrogenated oil
21 is used as an ingredient in a food product – is largely unknown to the average consumer.⁴³

22 71. Plaintiff bought the Trans Fat Noodles seeking instant noodles that were safe for him to
23 consume, not ones containing an artificial laboratory-produced fat that causes heart disease and cancer,
24 among other ailments.

25
26 ⁴³ John Kozup et al., *The Provision of Trans Fat Information and Its Interaction with Consumer*
27 *Knowledge*, 40 J. CONSUMER AFFAIRS 1. 163-176 (2006)

1 **X. CLASS ACTION ALLEGATIONS**

2 72. Plaintiff brings this action on behalf of himself and all others similarly situated (the
3 “Class”), excluding Defendant’s officers, directors, and employees, and the Court, its officers and their
4 families. The Class is defined as:

5 All persons who purchased in the United States, on or after January 1, 2008 (the
6 “Class Period”), for household or personal use, Nissin instant noodle varieties
7 manufactured or distributed by Nissin Foods (U.S.A.) Company, Inc. containing
8 partially hydrogenated oil.

9 73. Questions of law and fact common to Plaintiff and the Class include:

10 a. Whether Defendant’s conduct constitutes a violation of the unfair prong of
11 California’s Unfair Competition Law;

12 b. Whether Defendant’s conduct is a nuisance as defined by Cal. Civ. Code §§ 3479-
13 3493;

14 c. Whether Defendant’s conduct constitutes a violation of the unlawful prong of
15 California’s Unfair Competition Law;

16 d. Whether Defendant’s conduct was immoral, unethical, unscrupulous, or
17 substantially injurious to consumers;

18 e. Whether the slight utility Defendant realizes as a result of its conduct outweighs
19 the gravity of the harm the conduct causes to their victims;

20 f. Whether Defendant’s conduct violates public policy as declared by specific
21 constitutional, statutory, or regulatory provisions;

22 g. Whether the injury to consumers from Defendant’s practices is substantial;

23 h. Whether the injury to consumers from Defendant’s practices is outweighed by
24 benefits to consumers or competition;

25 i. Whether the injury to consumers from Defendant’s practices is one consumers
26 themselves could reasonably have avoided;

27 j. Whether Class members are entitled to restitution and, if so, the correct measure of
28 restitution;

1 k. Whether Class members are entitled to an injunction and, if so, its terms; and

2 l. Whether Class members are entitled to any further relief.

3 74. By purchasing and/or using the Trans Fat Noodles, all Class members were subjected to
4 the same wrongful conduct.

5 75. Plaintiff's claims are typical of the Class' claims. Plaintiff will fairly and adequately
6 protect the interests of the Class, has no interests that are incompatible with the interests of the Class,
7 and has retained counsel competent and experienced in class litigation.

8 76. The Class is sufficiently numerous, as it includes hundreds of thousands of individuals
9 who purchased the Trans Fat Noodles throughout the United States during the Class Period.

10 77. Class representation is superior to other options for the resolution of the controversy. The
11 relief sought for each Class member is small, as little as one dollar for some Class members. Absent the
12 availability of class action procedures, it would be infeasible for Class members to redress the wrongs
13 done to them.

14 78. Defendant has acted on grounds applicable to the Class, thereby making final injunctive
15 relief or declaratory relief appropriate concerning the Class as a whole.

16 79. Questions of law and fact common to the Class predominate over any questions affecting
17 only individual members.

18 80. Class treatment is appropriate under Fed. R. Civ. P. 23(a) and both Fed. R. Civ. P.
19 23(b)(2) and 23(b)(3). Plaintiff does not contemplate class notice if the class is certified under Fed. R.
20 Civ. P. 23(b)(2), which does not require notice. Plaintiff contemplates notice via publication if the class
21 is certified under Fed. R. Civ. P. 23(b)(3) or if the Court determines class notice is required
22 notwithstanding that notice is not required under Fed. R. Civ. P. 23(b)(2). Plaintiff will, if notice is
23 required, confer with Defendant and seek to present the Court with a stipulation and proposed order on
24 the details of a class notice plan.

XII. CAUSES OF ACTION

A. First Cause of Action

California Unfair Competition Law, Unfair Prong

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

81. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

82. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

83. The business practices and omissions of Defendant as alleged herein constitute “unfair” business acts and practices in that their conduct is immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to Defendant’s victims.

84. Further, Defendant’s practices are unfair because they violate public policy as declared by specific constitutional, statutory, or regulatory provisions, including the California Health and Safety Code and California Education Code.

85. Further, Defendant’s practices are unfair because the injury to consumers from Defendant’s practices is substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

86. In accordance with Cal. Bus. & Prof Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unfair acts and practices and to commence a corrective advertising campaign.

87. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Trans Fat Noodles, which were acquired through acts of unfair competition.

B. Second Cause of Action

Nuisance

Cal. Civ. Code §§ 3479-3493

88. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

1 89. The Public has a common right to a safe food supply and a common interest in ensuring
2 that only safe foods are allowed for sale.

3 90. Trans fat is a dangerous ingredient that is harmful when consumed by humans in any
4 amount. Defendant actively promotes and sells its Trans Fat Noodles, which contain dangerous amounts
5 of Trans Fat. Defendant sells its Trans Fat Noodles to the public at large.

6 91. Defendant’s actions complained of herein have created a harmful condition that is
7 injurious to the health of the public and affects a substantial number of people. These acts substantially
8 and unreasonably interfere with the public’s interests in having only safe foods available for purchase,
9 cause an unreasonable inconvenience to avoid the condition, and are a menace to the public health and
10 to the safety of children, and constitute a public nuisance.

11 92. Defendant is liable in public nuisance because by promoting and selling its Trans Fat
12 Noodles that contain dangerous amounts of trans fat, they have created and/or contributed to the creation
13 of a dangerous condition that interferes with the public interest.

14 93. Plaintiff suffered specific physical and emotional harm from Defendant’s conduct when
15 he consumed Defendant’s Trans Fat Noodles. Plaintiff continues to suffer emotional harm from knowing
16 that he injured himself with Defendant’s Trans Fat Noodles.

17 94. In accordance with Cal. Civ. Code § 3491, Plaintiff seeks an order abating Defendant’s
18 injurious practices, and enjoining further acts.

19 **C. Third Cause of Action**

20 **Breach of Implied Warranty of Merchantability**

21 95. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
22 forth in full herein.

23 96. Defendant is a merchant with respect to goods of this kind, which were sold to Plaintiff
24 and other consumers, and there was in the sale to Plaintiff and other consumers an implied warranty that
25 those goods were merchantable.

26 97. However, Defendant breached that warranty implied in the contract for the sale of goods
27 in that the Trans Fat Noodles are not safe for human consumption as set forth in detail herein above.

28 98. As a result of Defendant’s conduct, Plaintiff and other consumers did not receive goods

1 as impliedly warranted by Defendant to be merchantable.

2 99. As a proximate result of this breach of warranty by Defendant, Plaintiff and other
3 consumers have been damaged in an amount to be determined at trial.

4 **XIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
6 public, prays for judgment against Defendant as follows:

- 7 A. An order confirming that this class action is properly maintainable as a nationwide class
8 action as defined above, appointing Plaintiff Victor Guttman and his undersigned
9 counsel to represent the Class, and requiring Defendant to bear the cost of class notice;
- 10 B. An order requiring Defendant to pay restitution to Plaintiff and the Class so that they may
11 be restored any money which may have been acquired by means of any unfair practice;
- 12 C. An order requiring Defendant to disgorge any benefits received from Plaintiff and/or
13 unjust enrichment realized as a result of unfair practices;
- 14 D. An order declaring the conduct complained of herein violates the Unfair Competition
15 Law;
- 16 E. An order requiring Defendant to cease and desist its unfair practices;
- 17 F. An order requiring Defendant to engage in a corrective advertising campaign;
- 18 G. An order abating Defendant's injurious practices;
- 19 H. An award of prejudgment and post-judgment interest;
- 20 I. An award of attorneys' fees and costs; and
- 21 J. Such other and further relief as this Court may deem just, equitable, or proper.
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1 DATED: February 5, 2015

Respectfully Submitted,

2 /s/ Gregory S. Weston

3 **THE WESTON FIRM**

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XIV. Appendix A- List of Nissin Trans Fat Noodles

- Souper Meal with Shrimp Tomato & Garlic
- Chow Noodles Tomato & Basil
- Chow Noodles Alfredo
- Chow Noodles Cheddar Cheese Flavor
- Chow Mein Spicy Teriyaki Beef Flavor
- Chow Mein Teriyaki Beef Flavor
- Chow Mein Thai Peanut Flavor
- Chow Mein Kung Pao Chicken Flavor
- Chow Mein Teriyaki Chicken Flavor
- Cup Noodles Beef Flavor
- Cup Noodles Creamy Chicken Flavor
- Cup Noodles Hearty Chicken Flavor

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1 **XV. Appendix B List of Competing Noodles that Do Not Contain Trans Fat**

2 Maruchan Instant Lunch distributed by Maruchan, Inc. including all of the following varieties:

- 3 • Chicken Flavor
- 4 • Hot & Spicy Chicken Flavor
- 5 • Beef Flavor
- 6 • Tomato Flavor with Vegetable
- 7 • Pork Flavor
- 8 • Instant Wonton Chicken Flavor
- 9 • Shrimp with Chili Piquin
- Lime Chili Chicken Flavor
- Lime Flavor with Shrimp
- Lime Chili Flavor with Shrimp
- Creamy Alfredo Flavor
- Cheddar Cheese Flavor

10 Maruchan Yakisoba distributed by Maruchan, Inc. including all of the following varieties:

- 11 • Yakisoba Chicken Flavor
- 12 • Yakisoba Spicy Chicken Flavor
- 13 • Yakisoba Roast Chicken Flavor
- Yakisoba Teriyaki Beef Flavor

14 Sapporo Ichiban manufactured by Sanyo Foods Corp. of America including all of the following varieties:

- 15 • Original Flavor
- 16 • Chicken Flavor
- Beef Flavor
- Shrimp Flavor

17 Dr. McDougall's Asian Noodles distributed by Dr. McDougall's Right Foods including all of the
18 following varieties:

- 19 • Pad Thai
- 20 • Thai Peanut
- Spicy Kung Pao Noodle
- Teriyaki Noodle
- Spicy Szechuan Noodle
- Soy Ginger Noodle

23 A Taste of Thai distributed by Andre Prost, Inc., including all of the following varieties:

- 24 • Peanut Noodles
- 25 • Pad Thai Noodles

26 Thai Kitchen distributed by Simply Asia Foods, LLC., including all of the following varieties:

- 27 • Pad Thai
- Thai Peanut
- Spicy Thai Basil

1 Simply Asia distributed by Simply Asia Foods, LLC including the following variety:

- 2 • Singapore Street Noodles: Sesame Ginger
- 3 • Singapore Street Noodles: Garlic Basil
- 4 • Spicy Kung Pao Noodle Bowl
- 5 • Spring Vegetable Rice Noodle Soup Bowl
- 6 • Sesame Chicken Rice Noodle Soup Bowl

7 Annie Chun's Soup Bowls distributed by Annie Chun's, Inc. including all of the following varieties:

- 8 • Vietnamese Pho
- 9 • Hot & Sour
- 10 • Miso
- 11 • Udon
- 12 • Chinese Chicken
- 13 • Korean Kimchi
- 14 • Thai Tom Yum

15 Nongshim Bowl Noodle Soup distributed by Nongshim America, Inc. including all of the following varieties:

- 16 • Spicy Kimchi Flavor
- 17 • Hot & Spicy Flavor

18 The Spice Hunter distributed by The Spice Hunter, Inc. including the following variety:

- 19 • Chicken Noodle All Natural Soup