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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>RYAN SCOTT BUNTING, BRANDON GRADY, TYLER UNDERWOOD and NICHOLAS HILLA, Individually And On Behalf Of All Others Similarly Situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MCCORMICK & COMPANY, INC.,</p> <p>Defendant.</p>	<p>Case No.: '15CV1648 BAS BGS</p> <p><u>CLASS ACTION</u></p> <p>COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF</p> <p>JURY TRIAL DEMANDED</p>
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INTRODUCTION

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2 1. RYAN SCOTT BUNTING, BRANDON GRADY, TYLER UNDERWOOD
3 and NICHOLAS HILLA (hereinafter “Plaintiffs”), individually and on behalf
4 of all others similarly situated, bring this Class Action Complaint for
5 damages, injunctive relief, and any other available legal or equitable
6 remedies, resulting from the unlawful and deceptive actions of
7 MCCORMICK & COMPANY, INC. (“Defendant” or “McCormick”) with
8 respect to the packaging of its ground black pepper. Plaintiffs allege as
9 follows upon personal knowledge as to themselves and their own acts and
10 experiences, and, as to all other matters, upon information and belief,
11 including investigation conducted by their attorneys.
- 12 2. McCormick is the market leader in sales of ground pepper in the United
13 States, packaged in its iconic red and white tins. For decades, McCormick
14 has sold its ground pepper in three tin sizes, which contained 2, 4 and 8
15 ounces of pepper, respectively (individually, “Product,” or collectively,
16 “Products”). In or about January or February of 2015, however, McCormick
17 reduced the volume of ground black pepper contained in its tins by 25%.
18 McCormick did not, however, make a corresponding reduction in the size of
19 the tins. Thus, the same size tins as consumers have purchased for decades
20 now contain 25% “empty” space, or slack-fill.
- 21 3. On information and belief, McCormick is relying upon the goodwill of its
22 brand, and consumer’s familiarity with the size and appearance of its opaque
23 tins, to deceptively mislead consumers into thinking that they are purchasing
24 the same quantity of pepper as was sold historically. While the tins do state
25 the net weight on the bottom of the tin in small print, consumers are not
26 otherwise informed of the reduction in the quantity of ground black pepper
27 contained therein. Moreover, because the tins are not transparent, there is no
28 way for a consumer to visually verify how much pepper is contained in the
package.

- 1 4. On information and belief, consumers who have purchased Defendant's
 2 Products have come to rely on the constancy of those Products. They do not
 3 specifically recall, for example, that the tins contain 2, 4 or 8 ounces of
 4 pepper. Rather, they recall the size, shape and color of the packaging, and the
 5 McCormick brand name, when they make a purchase. "Simply stated: labels
 6 matter. The marketing industry is based on the premise that labels matter, that
 7 consumers will choose one product over another similar product based on its
 8 label" *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328 (2011).
- 9 5. Plaintiffs purchased McCormick's ground pepper Products after February
 10 2015. Plaintiffs expected that they would be receiving a "full" tin of pepper.
 11 Plaintiffs were surprised and disappointed, however, when they discovered
 12 that the tins contained significant empty space, or slack-fill. Had Plaintiffs
 13 known about the slack-fill at the time of purchase, they would not have
 14 bought Defendant's Products.
- 15 6. Defendant's conduct violates Consumer protection and food labeling laws of
 16 the states of California, Minnesota, Michigan and Illinois.

17 JURISDICTION AND VENUE

- 18 7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,
 19 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in
 20 which a member of the putative class is a citizen of a different state than
 21 Defendant, and the amount in controversy exceeds the sum or value of
 22 \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).
- 23 8. The Court has jurisdiction over the state law claims because they form part of
 24 the same case or controversy under Article III of the United States
 25 Constitution.
- 26 9. Alternatively, the Court has jurisdiction over all claims alleged herein
 27 pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the
 28 sum or value of \$75,000 and is between citizens of different states.

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- 1 10. The Court has personal jurisdiction over Defendant because its ground pepper
2 Products are advertised, marketed, distributed and sold through the State of
3 California; Defendant engaged in the wrongdoing alleged in this Complaint
4 throughout the United States, including in the State of California; Defendant
5 is authorized to do business in the State of California; and Defendant has
6 sufficient minimum contacts with the State of California, rendering the
7 exercise of jurisdiction by the Court permissible under traditional notions of
8 fair play and substantial justice. Moreover, Defendant is engaged in
9 substantial activity with the State of California.
- 10 11. Venue is proper in the United States District Court for the Southern District of
11 California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the
12 events giving rise to the claims occurred within this judicial district,
13 Defendant has marketed and sold the Products at issue in this action in this
14 judicial district, and it conducts business within this judicial district. In
15 addition, Plaintiff Ryan Scott Bunting resides in this judicial district.

16 PARTIES

- 17 12. Plaintiff Ryan Scott Bunting (“Bunting”) is a citizen of the State of California
18 and resides in San Diego, California. Plaintiff Bunting purchased the Product
19 for personal consumption after February 2015 in San Diego, California.
20 Plaintiff Bunting purchased the Product in reliance on Defendant’s packaging
21 in containers made, formed or filled as to be misleading and containing non-
22 functional slack-fill. Had Plaintiff Bunting known the truth about Defendant’s
23 misrepresentations, he would not have purchased the premium priced Product.
- 24 13. Plaintiff Brandon Grady (“Grady”) is a citizen of the State of Minnesota and
25 resides in Minneapolis, Minnesota. Plaintiff Grady purchased the Product for
26 personal consumption after February 2015 in St. Paul, Minnesota. Plaintiff
27 Grady purchased the Product in reliance on Defendant’s packaging in
28 containers made, formed or filled as to be misleading and containing non-

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- 1 functional slack-fill. Had Plaintiff Grady known the truth about Defendant’s
2 misrepresentations, he would not have purchased the premium priced Product.
- 3 14. Plaintiff Tyler Underwood (“Underwood”) is a citizen of the State of
4 Michigan and resides in Detroit, Michigan. Plaintiff Underwood purchased
5 the Product for personal consumption after February 2015 in Detroit,
6 Michigan. Plaintiff Underwood purchased the Product in reliance on
7 Defendant’s packaging in containers made, formed or filled as to be
8 misleading and containing non-functional slack-fill. Had Plaintiff Underwood
9 known the truth about Defendant’s misrepresentations, he would not have
10 purchased the premium priced Product.
- 11 15. Plaintiff Nicholas Hilla (“Hilla”) is a citizen of the State of Illinois and resides
12 in Chicago, Illinois. Plaintiff Hilla purchased the Product for personal
13 consumption after February 2015 in Chicago, Illinois. Plaintiff Hilla
14 purchased the Product in reliance on Defendant’s packaging in containers
15 made, formed or filled as to be misleading and containing non-functional
16 slack-fill. Had Plaintiff Hilla known the truth about Defendant’s
17 misrepresentations, he would not have purchased the premium priced Product.
- 18 16. On information and belief, Defendant McCormick is a publicly-traded
19 Maryland corporation with its headquarters and principal place of business in
20 Sparks, Maryland. McCormick is one of the largest producers of spices and
21 herbs in the world and is the largest spice distributor in the United States. On
22 information and belief, McCormick’s ground black pepper is among its best
23 selling products and is sold in sales outlets throughout the United States,
24 including grocery stores, retail chains such as Walmart, and through online
25 retailers, including Amazon. Defendant is, and at all times mentioned herein
26 was, a “person” as defined by 47 U.S.C. § 153 (39).

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FACTUAL ALLEGATIONS

Federal and State Laws Prohibit Non-functional Slack Fill

17. Under the Federal Food Drug and Cosmetic Act (“FDCA”), 21 U.S.C. § 343(d), a food shall be deemed to be misbranded if “(a) . . . (1) its labeling is false or misleading in any particular”; or “(d) If its container is so made, formed, or filled as to be misleading.”
18. Under the FDCA, the term “false” has its usual meaning of untruthful, while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951) (citations omitted). Under the FDCA, it is not necessary to prove that anyone was actually misled.
19. Pursuant to 21 C.F.R. §100.100, a food is misbranded if “its container is so made, formed or filled as to be misleading.” In addition, “(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:
- (1) Protection of the contents of the package;
 - (2) The requirements of the machines used for enclosing the contents in such package;
 - (3) Unavoidable product settling during shipping and handling;
 - (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where

1 such function is inherent to the nature of the food and is clearly
2 communicated to consumers;

3 (5) The fact that the product consists of a food packaged in a reusable
4 container where the container is part of the presentation of the food and has
5 value which is both significant in proportion to the value of the product and
6 independent of its function to hold the food, e.g., a gift product consisting of
7 a food or foods combined with a container that is intended for further use
8 after the food is consumed; or durable commemorative or promotional
9 packages; or

10 (6) Inability to increase level of fill or to further reduce the size of the
11 package”

12 20. None of the above safe-harbor provisions applies to the Products. Defendant
13 intentionally incorporated non-functional slack-fill in its packaging of the
14 Products in order to mislead the consumers, including Plaintiffs and Members
15 of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405
16 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a
17 product with slack-fill. *See* 21 C.F.R. § 100.100(a)(1-6).”).

18 21. Consumer protection and food labeling laws of the states of California,
19 Minnesota, Michigan and Illinois impose requirements which mirror the
20 federal law. California Business & Professions Code states, “[n]o container
21 shall be made, formed, or filled as to be misleading” and “[a] container that
22 does not allow the consumer to fully view its contents shall be considered to
23 be filled as to be misleading if it contains nonfunctional slack fill.” *See* Cal.
24 Bus. & Prof. Code § 12606 (incorporating the safe harbor provisions of the
25 CFR). *See also* Cal. Health and Safety Code § 110690 (“Any food is
26 misbranded if its container is so made, formed, or filled as to be
27 misleading.”); Minn. Stat. §§ 34A.03(a) (“Food is misbranded if: (1) its
28 labeling is false or misleading in any particular . . . (4) its container is so
made, formed, or filled as to be misleading”); Mich. Food Law §

1 289.1109(n) (“‘Misbranded’ means food to which any of the following
 2 apply: . . . (i) Its labeling is false or misleading in any particular (iv) Its
 3 container is so made, formed, or filled as to be misleading.”); 410 ILCS
 4 620/11 (“A food is misbranded - (a) If its labeling is false or misleading in
 5 any particular (d) If its container is so made, formed or filled as to be
 6 misleading.”).

7 **Defendant McCormick’s Products Contain Non-Functional Slack-Fill**

- 8 22. McCormick has processed and distributed ground black pepper for decades.
 9 McCormick sales of black pepper tins (both the McCormick brand as well as
 10 McCormick sales using retailer private labels) are estimated to be
 11 approximately 70% or more of total domestic black pepper tin sales.
- 12 23. McCormick has been recognized by the United States Federal Trade
 13 Commission (“FTC”) as the world’s largest spice company and a dominant
 14 seller in the marketplace.
- 15 24. McCormick is a sophisticated and experienced marketplace participant and
 16 has settled enforcement actions brought against it by the FTC.¹
- 17 25. On information and belief, for decades, McCormick has sold ground black
 18 pepper in metal tins that have become widely recognized by consumers.
 19 These non-transparent metal tins come in different sizes: (i) a small metal tin
 20 measuring approximately 3 1/16” tall, 1 5/16” deep, and 2 5/16” wide, which
 21 was previously substantially filled to capacity with 2 ounces of ground black
 22 pepper (the “Small Tin”); (ii) a medium metal tin measuring approximately 3
 23 10/16” tall, 1 9/16” deep, and 2 13/16” wide, which was previously
 24 substantially filled to capacity with 4 ounces of ground black pepper (the
 25 “Medium Tin”); and (iii) a large metal tin measuring approximately 4 10/16”
 26 tall, 2 4/16” deep, and 3 5/16” wide, which was previously substantially filled
 27 to capacity with 8 ounces of ground black pepper (the “Large Tin”).

28 ¹ <https://www.ftc.gov/public-statements/2000/06/distribution-law-developments-federal-trade-commission>.

- 1 26. On information and belief, these tin sizes and fills became widely used
2 throughout the industry and the marketplace. Many ground black pepper
3 manufacturers sell ground pepper in substantially the same size tins with the
4 same 2, 4 and 8 ounce fills that Defendant previously used in its Products.
- 5 27. On information and belief, as consumers became accustomed and conditioned
6 to the traditionally-sized tins and fills sold by McCormick and others, they
7 came to rely on the consistency of a known tin size and made purchasing
8 decisions based on the non-transparent tin sizes.
- 9 28. On information and belief, in or around January or February 2015,
10 McCormick intentionally began shipping tens of millions of tins of ground
11 black pepper that contained substantially less (25%) ground black pepper than
12 the traditional-sized tins had historically contained. However, rather than
13 change the size of the tin from the traditional size to a new size that reflected
14 the reduced fill, McCormick deceptively and misleadingly continued to use
15 the same traditional-sized tins that had been used for decades, giving the false
16 impression that nothing about the contents of the tin had changed.
- 17 29. McCormick's non-transparent tins of ground black pepper are now
18 approximately 25% empty, which constitutes nonfunctional slack-fill as
19 follows:

Tin Size	McCormick Traditional Fill	Current McCormick Fill
Small	2 ounces	1.5 ounces (25% slack-fill)
Medium	4 ounces	3 ounces (25% slack-fill)
Large	8 ounces	6 ounces (25% slack-fill)

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24 30. Photo A below shows the traditional McCormick Small Tin, which now
25 contains 1.5 ounces of ground pepper (on the left) and the traditional 2-ounce
26 fill (on the right). Although the tins note in small print the actual weight of
27 ground black pepper contained therein, consumers are not otherwise informed
28 of the decrease in ground black pepper from the traditional fill or that the tin
contains a significant void. On information and belief, consumers rely upon

1 the traditional size of the tins as the basis of making a purchasing decision
2 and believe the tins are effectively full, as they have been for decades. The
3 McCormick Small Tin with the 1.5-ounce-slack-fill (on the left) falsely
4 appears to contain the same amount of ground black pepper as the other with
5 2-ounce fill.

6 **Photo A**



21 31. Photo B shows the McCormick Medium Tins with the traditional 4-ounce fill
22 (on the left) and the 3-ounce slack-fill (on the right). The size of the
23 McCormick Medium Tin with the 3-ounce slack-fill (on the right) deceptively
24 and misleadingly appears to have the same amount of ground pepper as the
25 other tin with 4-ounce fill.
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Photo B



32. Photo C below shows the traditional McCormick Large Tins with the 8-ounce traditional fill and the 6-ounce slack-fill. The McCormick Large Tins with an 8-ounce fill (on the left) was marketed for decades. McCormick’s use of the same McCormick Large Tin with a 6-ounce fill with nonfunctional slack-fill (on the right) gives the deceptive and misleading impression that there is more ground pepper in the tin.

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Photo C



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33. On information and belief, consumers are misled into believing that they are buying a larger volume of ground black pepper than is contained in the McCormick slack-filled tins.
34. On information and belief, in many or most instances, McCormick intentionally maintained the price of its standard sized tins, notwithstanding the significant reduction in the amount of ground black pepper contained in the traditional tin, which had the effect of further adding to the perception that nothing had changed. It appears that millions, if not tens of millions, of these McCormick slack-filled tins have replaced traditional-fill tins in virtually every retailer throughout the United States that stocks McCormick products.
35. While in most instances it appears that the slack-filled tins have replaced the traditional-fill tins on retailer shelves (thereby precluding any notice to the consumer of the change), in at least one location, the same sized McCormick tins with different amounts of ground black pepper are or were selling for the

1 exact same price, further misleading the consumer. *See* Photo D below (photo
2 showing two McCormick's Small Tins, one containing the traditional fill of 2-
3 ounces and the other containing the new slack-filled amount of 1.5 ounces,
4 with a shelf label promoting one price).

5 **Photo D**



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18 36. On information and belief, consumers are also deprived of making fair
19 comparative shopping decisions. Side-by-side, McCormick Small Tins and
20 Medium Tins appear to be identical in size to the comparable competitor's
21 black pepper tins, leading consumers to the reasonable assumption (and
22 accurate until McCormick began slack-filling their traditionally sized tins)
23 that they contain the same quantity of pepper. *See* Photo E below (photo
24 showing McCormick pepper on the left containing 3-ounce fill, and
25 competitor product on the right with 4-ounce fill). In fact, the McCormick
26 slack-filled Small Tins and Medium Tins contain less ground pepper than the
27 competitor's tin. The blatant use of slack-fill is misleading and deceptive to
28 consumers.

Photo E

37. Based on sales data, it appears that McCormick has likely shipped and sold tens of millions of these deceptive and misleading slack-filled tins since January or February 2015, constituting tens of millions of dollars of ground black pepper sales.
38. On information and belief, consumers have relied upon, and are continuing to rely upon, the traditional size of the tins as the basis for making a purchasing decision and believe the tins contain the same traditional fill, rather than the reduced slack-fill that they cannot see in the non transparent tin.
39. On information and belief, McCormick is selling and will continue to sell ground black pepper using these blatantly deceptive and misleading slack-filled tins.

1 40. Defendant's packaging and advertising of the Products violate various state
2 laws against misbranding with requirements which mirror the FDCA, as
3 described herein.

4 **Plaintiffs Relied on Defendant's Misleading and Deceptive Conduct and Were**
5 **Injured as a Result**

6 41. The types of misrepresentations made, as described herein, were considered
7 by Plaintiffs and Class Members (as would be considered by a reasonable
8 consumer) when deciding to purchase the Products. Reasonable consumers,
9 including Plaintiffs and Class Members, attached importance to whether
10 Defendant's Products were misbranded, *i.e.*, not legally salable, or capable of
11 legal possession, and/or contain non-functional slack-fill.

12 42. Plaintiffs and Class Members did not know, and had no reason to know, that
13 the Products contained non-functional slack-fill.

14 43. Defendant's Product packaging was a material factor in Plaintiffs' and Class
15 Members' decisions to purchase the Products. Based on Defendant's Product
16 packaging, Plaintiffs and Class Members believed that they were getting more
17 of the Products than was actually being sold. Had Plaintiffs known
18 Defendant's packaging was slack-filled, they would not have bought the
19 slack-filled Products.

20 44. Plaintiffs and Class Members paid the full price of the Products and received
21 less Product than they expected due to the non-functional slack-fill in the
22 Products.

23 45. There is no practical reason for the non-functional slack-fill used to package
24 the Products other than to mislead consumers as to the actual volume of the
25 Products being purchased by consumers.

26 46. As a result of Defendant's misrepresentations, Plaintiffs and thousands of
27 others throughout the United States purchased the Products. Plaintiffs and the
28 Class (defined below) have been damaged by Defendant's deceptive and
unfair conduct.

CLASS ACTION ALLEGATIONS

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2 47. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal
3 Rules of Civil Procedure on behalf of the following classes (collectively, the
4 “Class” or “Classes”):

5 **The California Class**

6 48. Plaintiff Bunting seeks to represent a class consisting of the following
7 subclass (the “California Class”):

8 All California residents who made retail purchases of
9 McCormick ground black pepper Products in containers made,
10 formed or filled as to be misleading and with non-functional
11 slack-fill, during the applicable limitations period, and/or such
12 subclasses as the Court may deem appropriate.

13 **The Minnesota Class**

14 49. Plaintiff Grady seeks to represent a class consisting of the following subclass
15 (the “Minnesota Class”):

16 All Minnesota residents who made retail purchases of
17 McCormick ground black pepper Products in containers made,
18 formed or filled as to be misleading and with non-functional
19 slack-fill, during the applicable limitations period, and/or such
20 subclasses as the Court may deem appropriate.

21 **The Michigan Class**

22 50. Plaintiff Underwood seeks to represent a class consisting of the following
23 subclass (the “Michigan Class”):

24 All Michigan residents who made retail purchases of
25 McCormick ground black pepper Products in containers made,
26 formed or filled as to be misleading and with non-functional
27 slack-fill, during the applicable limitations period, and/or such
28 subclasses as the Court may deem appropriate.

The Illinois Class

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2 51. Plaintiff Hilla seeks to represent a class consisting of the following subclass
3 (the “Illinois Class”):

4 All Illinois residents who made retail purchases of McCormick
5 ground black pepper Products in containers made, formed or
6 filled as to be misleading and with non-functional slack-fill,
7 during the applicable limitations period, and/or such subclasses
8 as the Court may deem appropriate.

9 52. The proposed Classes exclude current and former officers and directors of
10 Defendant, Members of the immediate families of the officers and directors of
11 Defendant, Defendant’s legal representatives, heirs, successors, assigns, and
12 any entity in which it has or has had a controlling interest, and the judicial
13 officer to whom this lawsuit is assigned.

14 53. Plaintiffs reserve the right to revise the Class definitions based on facts
15 learned in the course of litigating this matter.

16 54. Numerosity: This action has been brought and may properly be maintained as
17 a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the
18 Federal Rules of Civil Procedure. While the exact number and identities of
19 other Class Members are unknown to Plaintiffs at this time, Plaintiffs are
20 informed and believe that there are hundreds of thousands of Members in the
21 Class. Based on sales of the Products, it is estimated that each Class is
22 composed of more than 10,000 persons. Furthermore, even if subclasses need
23 to be created for these consumers, it is estimated that each subclass would
24 have thousands of Members. The Members of the Class are so numerous that
25 joinder of all Members is impracticable and the disposition of their claims in a
26 class action rather than in individual actions will benefit the parties and the
27 courts.
28

1 55. Typicality: Plaintiffs' claims are typical of the claims of the Members of the
2 Class as all Members of the Class are similarly affected by Defendant's
3 wrongful conduct, as detailed herein.

4 56. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
5 Members of the Class in that they have no interests antagonistic to those of
6 the other Members of the Class. Plaintiffs have retained experienced and
7 competent counsel.

8 57. Superiority: A class action is superior to other available methods for the fair
9 and efficient adjudication of this controversy. Since the damages sustained by
10 individual Class Members may be relatively small, the expense and burden of
11 individual litigation make it impracticable for the Members of the Class to
12 individually seek redress for the wrongful conduct alleged herein.
13 Furthermore, the adjudication of this controversy through a class action will
14 avoid the potentially inconsistent and conflicting adjudications of the claims
15 asserted herein. There will be no difficulty in the management of this action
16 as a class action. If Class treatment of these claims were not available,
17 Defendant would likely unfairly receive thousands of dollars or more in
18 improper charges.

19 58. Common Questions Predominate: Common questions of law and fact exist as
20 to all Members of the Class and predominate over any questions solely
21 affecting individual Members of the Class. Among the common questions of
22 law and fact applicable to the Class are:

- 23 i. Whether Defendant labeled, packaged, marketed, advertised and/or sold
24 ground black pepper Products to Plaintiffs, and those similarly situated,
25 using false, misleading and/or deceptive packaging and labeling;
26 ii. Whether Defendant's actions constitute violations of 21 C.F.R. 100, *et*
27 *seq.*;
28 iii. Whether Defendant's actions constitute violations of food labeling laws of
the states of California, Minnesota, Michigan and Illinois;

- 1 iv. Whether Defendant's actions constitute violations of consumer protection
- 2 laws of the states of California, Minnesota, Michigan and Illinois;
- 3 v. Whether Defendant omitted and/or misrepresented material facts in
- 4 connection with the labeling, packaging, marketing, advertising and/or sale
- 5 of its ground black pepper Products;
- 6 vi. Whether Defendant's labeling, packaging, marketing, advertising and/or
- 7 selling of ground black pepper Products constituted an unfair, unlawful or
- 8 fraudulent practice;
- 9 vii. Whether Defendant's packaging of the ground black pepper Products
- 10 constituted nonfunctional slack-fill;
- 11 viii. Whether, and to what extent, injunctive relief should be imposed on
- 12 Defendant to prevent such conduct in the future;
- 13 ix. Whether the Members of the Class have sustained damages as a result of
- 14 Defendant's wrongful conduct;
- 15 x. The appropriate measure of damages and/or other relief; and
- 16 xi. Whether Defendant should be enjoined from continuing its unlawful
- 17 practices.

18 59. The class is readily definable, and prosecution of this action as a Class action
19 will reduce the possibility of repetitious litigation. Plaintiffs know of no
20 difficulty which will be encountered in the management of this litigation
21 which would preclude its maintenance as a Class action.

22 60. The prerequisites to maintaining a class action for injunctive relief or
23 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or
24 refused to act on grounds generally applicable to the Class, thereby making
25 appropriate final injunctive or equitable relief with respect to the Class as a
26 whole.

27 61. The prerequisites to maintaining a class action for injunctive relief or
28 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact
common to the Class predominate over any questions affecting only

1 individual Members; and a class action is superior to other available methods
2 for fairly and efficiently adjudicating the controversy.

3 62. The prosecution of separate actions by Members of the Class would create a
4 risk of establishing inconsistent rulings and/or incompatible standards of
5 conduct for Defendant. Additionally, individual actions may be dispositive of
6 the interest of all Members of the Class, although certain Class Members are
7 not parties to such actions.

8 63. Defendant's conduct is generally applicable to the Class as a whole and
9 Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a
10 whole. As such, Defendant's systematic policies and practices make
11 declaratory relief with respect to the Class as a whole appropriate.

12 **CAUSES OF ACTION**

13 **COUNT I**

14 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

15 **Cal. Civ. Code § 1750, et seq.**

16 **(On behalf of California consumers only)**

17 64. Plaintiff Bunting realleges and incorporates herein by reference the
18 allegations contained in all preceding paragraphs, and further alleges as
19 follows:

20 65. Plaintiff Bunting brings this claim individually and on behalf of the other
21 Members of the California Class for Defendant's violations of California's
22 Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code 1761(d).

23 66. Plaintiff Bunting and California Class Members are consumers who
24 purchased the Products for personal, family or household purposes. Plaintiff
25 Bunting and the California Class Members are "consumers" as that term is
26 defined by the CLRA in Cal. Civ. Code 1761(d). Plaintiff Bunting and the
27 California Class Members are not sophisticated experts with independent
28 knowledge of corporate branding, labeling and packaging practices.

67. Products that Plaintiff Bunting and other California Class Members purchased
from Defendant were "goods" within the meaning of Cal. Civ. Code 1761(a).

- 1 68. Defendant’s actions, representations, and conduct have violated, and continue
2 to violate the CLRA, because they extend to transactions that intended to
3 result, or which have resulted in, the sale of goods to consumers.
- 4 69. Defendant violated federal and California law because the Products are
5 packaged in containers made, formed or filled as to be misleading and which
6 contain non-functional slack-fill, and because they are intentionally packaged
7 to prevent the consumer from being able to fully see their contents.
- 8 70. California’s Consumers Legal Remedies Act, Cal. Civ. Code 1770(a)(5),
9 prohibits “Misrepresenting that goods or services have sponsorship, approval,
10 characteristics, ingredients, uses, benefits, or quantities which they do not
11 have or that a person has a sponsorship, approval, status, affiliation, or
12 connection which he or she does not have.” By engaging in the conduct set
13 forth herein, Defendant violated and continues to violate Section 1770(a)(5)
14 of the CLRA, because Defendant’s conduct constitutes unfair methods of
15 competition and unfair or fraudulent acts or practices, in that it misrepresents
16 that the Products have quantities they do not have.
- 17 71. Cal. Civ. Code 1770(a)(9) further prohibits “[a]dvertising goods or services
18 with intent not to sell them as advertised.” By engaging in the conduct set
19 forth herein, Defendant violated and continues to violate Section 1770(a)(9),
20 because Defendant’s conduct constitutes unfair methods of competition and
21 unfair or fraudulent acts or practices, in that it advertises goods as containing
22 more product than they in fact contain.
- 23 72. Plaintiff Bunting and the California Class Members are not sophisticated
24 experts about the corporate branding, labeling and packaging practices.
25 Plaintiff Bunting and the California Class acted reasonably when they
26 purchased the Products based on their belief that Defendant’s representations
27 were true and lawful.
- 28 73. Plaintiff Bunting and the California Class suffered injuries caused by
Defendant because (a) they would not have purchased the Products on the

1 same terms absent Defendant's illegal and misleading conduct as set forth
2 herein; (b) they paid a price premium for the Products due to Defendant's
3 misrepresentations and deceptive packaging in containers made, formed or
4 filled as to be misleading and containing non-functional slack-fill; and (c) the
5 Products did not have the quantities as promised.

6 74. On or about July 9, 2015, prior to filing this action, a CLRA notice letter was
7 served on Defendant which complies with California Civil Code 1782(a).
8 Plaintiff Bunting sent McCormick and Company, Incorporated, individually
9 and on behalf of the proposed Class, a letter via Federal Express, Direct
10 Signature Required and personal service, advising Defendant that it is in
11 violation of the CLRA and demanding that it cease and desist from such
12 violations and make full restitution by refunding the monies received
13 therefrom. A true and correct copy of Plaintiff Bunting's letter is attached
14 hereto as EXHIBIT 1.

15 75. Wherefore, Plaintiff Bunting seeks injunctive relief for these violations of the
16 CLRA.

COUNT II

**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,
California Business & Professions Code § 17200, et seq.
(On behalf of California Consumers Only)**

17
18
19 76. Plaintiff Bunting realleges and incorporates herein by reference the
20 allegations contained in all preceding paragraphs, and further alleges as
21 follows:

22 77. Plaintiff Bunting brings this claim individually and on behalf of the Members
23 of the proposed California Class for Defendant's violations of California's
24 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

25 78. The UCL provides, in pertinent part: "Unfair competition shall mean and
26 include unlawful, unfair or fraudulent business practices and unfair,
27 deceptive, untrue or misleading advertising..."
28

1 79. Defendant violated federal and California law because the Products are
2 packaged in containers made, formed or filled as to be misleading and that
3 contain non-functional slack-fill and because they are intentionally packaged
4 to prevent the consumer from being able to fully see their contents.

5 **A. “Unlawful” Prong**

6 80. Defendant’s business practices, described herein, violated the “unlawful”
7 prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and
8 Cosmetic Act, 21 U.S.C. 343(d), the CLRA, Cal. Bus. & Prof. Code § 12606,
9 California Health & Safety Code §§ 110690, and other applicable law as
10 described herein.

11 81. Defendant violated section 12606 of the Business and Professions Code, in
12 that Defendant packaged its Products in non-conforming type containers.
13 Said non-conforming packages contained extra space by volume in the
14 interior of the container. The extra space provided no benefit to the contents
15 of the packaging and misled consumers. In addition, Defendant packaged its
16 Products in containers made, formed, or filled as to be misleading to a
17 potential customer as to the actual size and filling of the package with
18 Defendant’s Products.

19 **B. “Unfair” Prong**

20 82. Defendant’s business practices, described herein, violated the “unfair” prong
21 of the UCL in that its conduct is substantially injurious to consumers, offends
22 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the
23 gravity of the conduct outweighs any alleged benefits. Defendant’s
24 advertising is of no benefit to consumers, and its failure to comply with the
25 FDCA, the CFR and parallel California labeling requirements and deceptive
26 advertising concerning the quantity of the Products offends the public policy
27 advanced by the FDCA to ensure that “foods are safe, wholesome, sanitary,
28 and properly labeled.” 21 U.S.C. §§ 393(b)(2)(A).

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C. “Fraudulent” Prong

83. Defendant violated the “fraudulent” prong of the UCL by misleading Plaintiff Bunting and the California Class to believe that the Products contained more content than they actually do and that such packaging and labeling practices were lawful, true and not intended to deceive or mislead consumers.

84. Plaintiff Bunting and the California Class Members are not sophisticated experts about the corporate branding, labeling, and packaging practices of the Products. Plaintiff Bunting and the California Class acted reasonably when they purchased the Products based on their belief that Defendant’s representations were true and lawful.

85. Plaintiff Bunting and the California Class lost money or property as a result of Defendant’s UCL violations because (a) they would not have purchased the Products on the same terms absent Defendant’s illegal conduct as set forth herein, or if the true facts were known concerning Defendant’s representations; (b) they paid a price premium for the Products due to Defendant’s misrepresentations; and (c) the Products did not have the quantities as represented.

86. The conduct of Defendant as set forth above demonstrates the necessity for granting injunctive relief restraining such and similar acts of unfair competition pursuant to California Business and Professions Code. Unless enjoined and restrained by order of the court, Defendant will retain the ability to, and may engage in, said acts of unfair competition, and misleading advertising. As a result, Plaintiffs are entitled to injunctive and monetary relief.

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COUNT III
VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,
California Business & Professions Code § 17500, *et seq.*
(On behalf of California Consumers Only)

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3
4 87. Plaintiff Bunting realleges and incorporates herein by reference the
5 allegations contained in all preceding paragraphs, and further alleges as
6 follows:

7 88. Plaintiff Bunting brings this claim individually and on behalf of the Members
8 of the proposed California Class for Defendant’s violations of California’s
9 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

10 89. Under the FAL, the State of California makes it “unlawful for any person to
11 make or disseminate or cause to be made or disseminated before the public in
12 this state in any advertising device . . . or in any other manner or means
13 whatever, including over the Internet, any statement, concerning . . . personal
14 property or services, professional or otherwise, or performance or disposition
15 thereof, which is untrue or misleading and which is known, or which by the
16 exercise of reasonable care should be known, to be untrue or misleading.”

17 90. Defendant engaged in a scheme of offering misbranded Products for sale to
18 Plaintiff Bunting and the California Class Members by way of packaging the
19 Products in containers made, formed or filled as to be misleading and which
20 contain non-functional slack-fill. Such practice misrepresented the content
21 and quantity of the misbranded Products. Defendant’s advertisements were
22 made in California and come within the definition of advertising as contained
23 in Bus. & Prof Code §§ 17500, *et seq.* in that the product packaging was
24 intended as inducements to purchase Defendant’s Products. Defendant knew
25 its conduct was unauthorized, inaccurate, and misleading.

26 91. Defendant violated federal and California law because the Products are
27 packaged in containers made, formed or filled as to be misleading and which
28 contain non-functional slack-fill and because they are intentionally packaged
to prevent the consumer from being able to fully see their contents.

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1 92. Defendant violated 17500, *et seq.* by misleading Plaintiff Bunting and the
2 California Class to believe that the Product packaging contains more ground
3 black pepper than it in fact contains, as described herein.

4 93. Defendant knew or should have known, through the exercise of reasonable
5 care that the Products were and continue to be misbranded, and that its
6 representations about the quantities of the Products were untrue and
7 misleading.

8 94. Plaintiff Bunting and the California Class lost money or property as a result of
9 Defendant's FAL violations because (a) they would not have purchased the
10 Products on the same terms absent Defendant's illegal conduct as set forth
11 herein, or if the true facts were known concerning Defendant's
12 representations; (b) they paid a price premium for the Products due to
13 Defendant's misrepresentations; and (c) the Products did not have the benefits,
14 or quantities as promised, and as a result the class is entitled to monetary and
15 injunctive relief.

16 **COUNT IV**
17 **VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD**
18 **ACT**

19 **Minn. Stat. §§ 325F.68, *et seq.***
20 **(On behalf of Minnesota Consumers Only)**

21 95. Plaintiff Grady realleges and incorporates herein by reference the allegations
22 contained in all preceding paragraphs, and further alleges as follows:

23 96. Plaintiff Grady brings this claim individually and on behalf of the Members of
24 the proposed Minnesota Class for Defendant's violations of Minnesota's
25 Unlawful Practices Act, Minn. Stat. §§ 325F.68, *et seq.*

26 97. The Act provides, in pertinent part: "The act, use, or employment by any
27 person of any fraud, false pretense, false promise, misrepresentation,
28 misleading statement or deceptive practice, with the intent that others rely
thereon in connection with the sale of any merchandise, whether or not any

1 person has in fact been misled, deceived, or damaged thereby, is
2 enjoined”

3 98. Defendant violated federal and Minnesota law because the Products are
4 packaged in containers made, formed or filled as to be misleading and that
5 contain non-functional slack-fill. In addition, as described herein, Defendant
6 intended that consumers rely on the misleading and opaque packaging, which
7 is the same size as the previous, traditional tins. Defendant packaged its
8 Products in containers made, formed, or filled as to be false and misleading to
9 a potential customer as to the actual size and filling of the package with
10 Defendant’s Products.

11 99. Defendant violated federal and Minnesota law because the Products are
12 misbranded and misrepresented, as described herein. Specifically, the
13 containers are formed, or filled as to be misleading in violation of the Act,
14 which prohibits misleading and deceptive practices in connection with the
15 sale of any merchandise.

16 100. Plaintiff Grady and the Minnesota Class Members are not sophisticated
17 experts about the corporate branding, labeling, and packaging practices of the
18 Products. Plaintiff Grady and the Minnesota Class acted reasonably when
19 they purchased the Products based on their belief that Defendant’s
20 representations were true and lawful.

21 101. Plaintiff Grady and the Minnesota Class lost money or property as a result of
22 Defendant’s violations because (a) they would not have purchased the
23 Products on the same terms absent Defendant’s illegal conduct as set forth
24 herein, or if the true facts were known concerning Defendant’s
25 representations; (b) they paid a price premium for the Products due to
26 Defendant’s misrepresentations; and (c) the Products did not have the
27 quantities as promised. Plaintiff Grady and the Class are entitled to monetary
28 relief.

1 102. The conduct of Defendant as set forth above demonstrates the necessity for
2 granting injunctive relief restraining such and similar fraudulent acts. Unless
3 enjoined and restrained by order of the court, Defendant will retain the ability
4 to, and may engage in, said acts of misrepresentation.

5
6 **COUNT V**
7 **VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE**
8 **PRACTICES ACT**

9 **Minn. Stat. §§ 325D.43, *et seq.***
10 **(On behalf of Minnesota Consumers Only)**

11 103. Plaintiff Grady realleges and incorporates herein by reference the allegations
12 contained in all preceding paragraphs, and further alleges as follows:

13 104. Plaintiff Grady brings this claim individually and on behalf of the Members of
14 the proposed Minnesota Class for Defendant's violations of Minnesota's
15 Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43, *et seq.*

16 105. The Act provides, in pertinent part: "A person engages in a deceptive trade
17 practice when, in the course of business, vocation, or occupation, the
18 person (5) represents that goods or services have sponsorship, approval,
19 characteristics, ingredients, uses, benefits, or quantities that they do not
20 have"

21 106. Defendant engaged in unfair, unconscionable and deceptive acts by offering
22 misbranded Products for sale to Plaintiff Grady and the Minnesota Class
23 Members by way of packaging the Products in containers made, formed or
24 filled as to be misleading and which contain non-functional slack-fill. Such
25 practice misrepresented the characteristics and quantity of the misbranded
26 Products.

27 107. Furthermore, as described herein, Defendant failed to reveal to consumers the
28 material fact that it had decreased the quantity of Product contained in its
traditional size tins. Defendant relied on consumers' familiarity with its
Product packaging to intentionally mislead and deceive Minnesota

1 consumers. Moreover, based on Defendant's conduct, such consumers could
2 not reasonably know about the slack-filled containers.

3 108. Defendant violated federal and Minnesota law because the Products are
4 packaged in containers made, formed or filled as to be misleading and which
5 contain non-functional slack-fill and because they are intentionally packaged
6 to prevent the consumer from being able to fully see their contents.

7 109. Plaintiff Grady and the Minnesota Class lost money or property as a result of
8 Defendant's violations of the Minnesota Trade Practices Act because (a) they
9 would not have purchased the Products on the same terms absent Defendant's
10 unlawful conduct as set forth herein, or if the true facts were known
11 concerning Defendant's representations; (b) they paid a price premium for the
12 Products due to Defendant's misrepresentations; and (c) the Products did not
13 have the benefits, or quantities as promised. Plaintiff Grady and the Class are
14 entitled to monetary relief.

15 110. The conduct of Defendant as set forth above demonstrates the necessity for
16 granting injunctive relief restraining such and similar deceptive trade
17 practices.

18 **COUNT VI**
19 **VIOLATION OF MICHIGAN CONSUMER PROTECTION ACT**
20 **MCL §§ 445.901, *et seq.***
21 **(On behalf of Michigan Consumers Only)**

22 111. Plaintiff Underwood realleges and incorporates herein by reference the
23 allegations contained in all preceding paragraphs, and further alleges as
24 follows:

25 112. Plaintiff Underwood brings this claim individually and on behalf of the
26 Members of the proposed Michigan Class for Defendant's violations of
27 Michigan's Consumer Protection Act, MCL §§ 445.901, *et seq.*

28 113. Michigan's Consumer Protection Act states that "(1) Unfair, unconscionable,
or deceptive methods, acts, or practices in the conduct of trade or commerce
are unlawful and are defined as follows . . . (c) Representing that goods or

1 services have sponsorship, approval, characteristics, ingredients, uses,
2 benefits, or quantities that they do not have . . . (s) Failing to reveal a material
3 fact, the omission of which tends to mislead or deceive the consumer, and
4 which fact could not reasonably be known by the consumer.”

5 114. Defendant engaged in unfair, unconscionable and deceptive acts by offering
6 misbranded Products for sale to Plaintiff Underwood and the Michigan Class
7 Members by way of packaging the Products in containers made, formed or
8 filled as to be misleading and which contain non-functional slack-fill. Such
9 practice misrepresented the content, characteristics and quantity of the
10 misbranded Products.

11 115. Furthermore, as described herein, Defendant failed to reveal to consumers the
12 material fact that it had decreased the quantity of Product contained in its
13 traditional size tins. Defendant relied on consumers’ familiarity with its
14 Product packaging to intentionally mislead and deceive Michigan consumers.
15 Moreover, based on Defendant’s conduct, such consumers could not
16 reasonably know about the slack-filled containers.

17 116. Defendant violated federal and Michigan law because the Products are
18 packaged in containers made, formed or filled as to be misleading and which
19 contain non-functional slack-fill and because they are intentionally packaged
20 to prevent the consumer from being able to fully see their contents.

21 117. Defendant violated MCL §§ 445.901, *et seq.* by misleading Plaintiff
22 Underwood and the Michigan Class to believe that the Product packaging
23 contains more ground black pepper than it in fact contains, as described
24 herein.

25 118. Plaintiff Underwood and the Michigan Class lost money or property as a
26 result of Defendant’s violations of the Michigan Consumer Protection Act
27 because (a) they would not have purchased the Products on the same terms
28 absent Defendant’s unlawful conduct as set forth herein, or if the true facts
were known concerning Defendant’s representations; (b) they paid a price

1 premium for the Products due to Defendant's misrepresentations; and (c) the
2 Products did not have the benefits, or quantities as promised, and as a result
3 the class is entitled to monetary and injunctive relief.

4 119. The conduct described herein constitutes an unlawful method, act or practice
5 in trade or commerce, and is appropriate for treatment on a classwide basis.

6
7 **COUNT VII**
8 **VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE**
9 **BUSINESS PRACTICES ACT**

10 **815 ILCS § 505, et seq.**

11 **(On behalf of Illinois Consumers Only)**

12 120. Plaintiff Hilla realleges and incorporates herein by reference the allegations
13 contained in all preceding paragraphs, and further alleges as follows:

14 121. Plaintiff Hilla brings this claim individually and on behalf of the Members of
15 the proposed Illinois Class for Defendant's violations of the Illinois Consumer
16 Fraud and Deceptive Business Practices Act, 815 ILCS § 505, et seq.

17 122. The Illinois Law states that unfair methods of competition and unfair or
18 deceptive acts and practices include "the use or employment of any deception
19 fraud, false pretense, false promise, misrepresentation or the concealment,
20 suppression or omission of any material fact, with intent that others rely upon
21 the concealment, suppression or omission of such material fact"

22 123. Defendant engaged in unfair competition and deceptive acts by offering
23 misbranded Products for sale to Plaintiff Hilla and the Illinois Class Members
24 by way of packaging the Products in containers made, formed or filled as to
25 be misleading and which contain non-functional slack-fill. Such practice
26 misrepresented the characteristics and quantity of the misbranded Products.

27 124. Furthermore, as described herein, Defendant failed to reveal to consumers the
28 material fact that it had decreased the quantity of Product contained in its
traditional size tins. Defendant relied on consumers' familiarity with its
Product packaging to intentionally mislead and deceive Illinois consumers.

1 Moreover, based on Defendant's conduct, such consumers could not
2 reasonably know about the slack-filled containers.

3 125. Defendant violated federal and Illinois law because the Products are packaged
4 in containers made, formed or filled as to be misleading and which contain
5 non-functional slack-fill and because they are intentionally packaged to
6 prevent the consumer from being able to fully see their contents.

7 126. Defendant's deceptive acts and practices occurred in the course of trade or
8 commerce because they occurred during the advertising, offering for sale, sale
9 or distribution of the Products. *See* 815 ILCS § 505/1(f).

10 127. Plaintiff Hilla and the Illinois Class lost money or property as a result of
11 Defendant's violations of the Minnesota Trade Practices Act because (a) they
12 would not have purchased the Products on the same terms absent Defendant's
13 unlawful conduct as set forth herein, or if the true facts were known
14 concerning Defendant's representations; (b) they paid a price premium for the
15 Products due to Defendant's misrepresentations; and (c) the Products did not
16 have the benefits, or quantities as promised, and as a result the class is entitled
17 to monetary and injunctive relief.

18 **COUNT VIII**

19 **NEGLIGENT MISREPRESENTATION**

20 **(On Behalf of the Consumers in California, Minnesota, Michigan and Illinois)**

21 128. Plaintiffs repeat and reallege each and every allegation contained above as if
22 fully set forth herein, and further allege as follows:

23 129. Defendant, directly or through its agents and employees, made false
24 representations, concealments and non disclosures to Plaintiffs and Members
25 of the Class.

26 130. Defendant as the manufacturer, packager, labeler and initial seller of the
27 Products purchased by Plaintiffs and Class Members had a duty to disclose
28 the true quantity of the Products and to refrain from selling them in containers
made, formed or filled as to be misleading and which contain non-functional
slack-fill. Defendant had exclusive knowledge of material facts not known or

1 reasonably accessible to Plaintiffs and Class Members; Defendant actively
2 concealed material facts from Plaintiffs and Class Members and Defendant
3 made partial representations that are misleading because some other material
4 fact has not been disclosed. Defendant's failure to disclose the information it
5 had a duty to disclose constitutes material misrepresentations and materially
6 misleading omissions which misled Plaintiffs and Class Members, who relied
7 on Defendant in this regard to disclose all material facts accurately, truthfully
8 and fully.

9 131. Plaintiffs and Members of the Class reasonably relied on Defendant's
10 representation that the Products contain more pepper than actually packaged.

11 132. In making the representations of fact to Plaintiffs and Members of the Class
12 described herein, Defendant has failed to fulfill its duties to disclose the
13 material facts set forth above. The direct and proximate cause of this failure
14 to disclose was Defendant's negligence and carelessness.

15 133. Defendant, in making the misrepresentations and omissions, and in engaging
16 in the acts alleged above, knew or reasonably should have known that the
17 representations were not true. Defendant made and intended the
18 misrepresentations to induce the reliance of Plaintiffs and Members of the
19 Class.

20 134. As the manufacturer of its Products, Defendant is in the unique position of
21 being able to provide accurate information about those Products. Therefore
22 there is a special and privity-like relationship between Defendant and
23 Plaintiffs and other consumers.

24 135. Defendant has a duty to correct the misinformation it disseminated through its
25 advertising of the Products. By not informing Plaintiffs and Members of the
26 Class, Defendant breached its duty. Defendant also gained financially from
27 and as a result of this breach.

28 136. By and through such deceit, misrepresentations and/or omissions, Defendant
intended to induce Plaintiffs and Members of the Class to alter their position

1 to their detriment. Plaintiffs and Members of the Class relied upon these false
2 representations when purchasing ground black pepper Products in over sized
3 tin packages, which reliance was justified and reasonably foreseeable.

4 137. As a direct and proximate result of Defendant's wrongful conduct,
5 Plaintiffs and Members of the Class have suffered and continue to suffer
6 economic losses and other general and specific damages, including but not
7 limited to the amounts paid for ground black pepper Products, and any
8 interest that would have been accrued on all those monies, all in an amount to
9 be determined according to proof at time of trial.

10 138. Defendant acted with intent to defraud, or with reckless or negligent disregard
11 of the rights of Plaintiffs and Members of the Class.

12 139. Plaintiffs and Members of the Class are entitled to relief in an amount to be
13 proven at trial, and injunctive relief.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- 16 (A) For an Order certifying the California Class, appointing Plaintiff Bunting
17 representative of the California Class, and designating his counsel as counsel
18 for the California Class;
- 19 (B) For an Order certifying the Minnesota Class, appointing Plaintiff Grady
20 representative of the Minnesota Class, and designating his counsel as counsel
21 for the Minnesota Class;
- 22 (C) For an Order certifying the Michigan Class, appointing Plaintiff Underwood
23 representative of the Michigan Class, and designating his counsel as counsel
24 for the Michigan Class;
- 25 (D) For an Order certifying the Illinois Class, appointing Plaintiff Hilla
26 representative of the Illinois Class, and designating his counsel as counsel for
27 the Illinois Class;
- 28 (E) For an Order declaring that Defendant's conduct violated the CLRA, Cal.
Civ. Code § 1750, *et seq.*, and awarding injunctive relief;

- 1 (F) For an Order declaring that Defendant's conduct violated California's Unfair
2 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, and California's
3 False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*, and
4 awarding (i) injunctive relief, (ii) actual damages, (iii) prejudgment and post
5 judgment interest, (iv) exemplary and/or punitive damages pursuant to Cal.
6 Civ. Code § 3294, (v) costs of suit, and (iv) reasonable attorneys' fees
7 pursuant to, *inter alia*, Cal. Code of Civ. Proc § 1021.5;
- 8 (G) For an Order declaring that Defendant's conduct violated the Minnesota
9 Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.* and the
10 Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43,
11 *et seq.*, and awarding (i) injunctive relief, (ii) damages, (iii) disbursements,
12 (iv) costs of suit, and (v) reasonable attorneys' fees pursuant to, *inter alia*,
13 Minn. Stat. 8.31;
- 14 (H) For an Order declaring that Defendant's conduct violated Michigan's
15 Consumer Protection Act, MCL §§ 445.901, *et seq.*, and awarding (i)
16 injunctive relief, (ii) actual damages, (iii) prejudgment and post judgment
17 interest, (iv) costs of class notice, as appropriate, and (v) other appropriate
18 relief;
- 19 (I) For an Order declaring that Defendant's conduct violated the Illinois
20 Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505, *et*
21 *seq.*, and awarding (i) actual damages, and (ii) other relief that the Court
22 deems proper;
- 23 (J) For an Order finding that Defendant made Negligent Misrepresentations in
24 each of the states of California, Minnesota, Michigan and Illinois, and
25 awarding special, general, and compensatory damages to Plaintiffs and the
26 California Class, Minnesota Class, Michigan Class and Illinois Class;
- 27 (K) For compensatory damages in amounts to be determined by the Court and/or
28 jury;
- (L) For prejudgment interest on all amounts awarded;

- 1 (M) For an order of restitution and all other forms of equitable monetary relief, as
2 pleaded;
- 3 (N) For injunctive relief as pleaded or as the Court may deem proper;
- 4 (O) For an Order awarding Plaintiffs and the Class their reasonable attorneys'
5 fees and expenses and costs of suit as pleaded; and
- 6 (P) For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiffs, individually and on behalf of all others similarly situated, hereby
9 demand a jury trial on all claims so triable.

10 Dated: July 23, 2015

Respectfully submitted,

11 **KAZEROUNI LAW GROUP, APC**

12 By: /s/ Abbas Kazerounian

13 Abbas Kazerounian

14 ATTORNEYS FOR PLAINTIFFS

15 **GOTTLIEB & ASSOCIATES**

16 Jeffrey M. Gottlieb, Esq. (JG-7905)

17 Dana L. Gottlieb, Esq. (DG-6151)

18 Pro hac vice to be filed

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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

Ryan Scott Bunting, Brandon Grady, Tyler Underwood, and Nicholas Hilla, Individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. (249203); Gouya Ranekouhi, Esq. (288267) Kazerouni Law Group, APC (800) 400-6808 245 Fischer Avenue, Suite D1, Costa Mesa, CA 92626

DEFENDANTS

McCormick & Company, Inc.

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

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

Attorneys (If Known)

'15CV1648 BAS BGS

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/23/2015 SIGNATURE OF ATTORNEY OF RECORD s/Abbas Kazerounian

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.

PLAINTIFFS' EXHIBIT 1

Plaintiff Bunting's Letter to McCormick & Company, Inc.

In The Case Of

Ryan Scott Bunting, et al,

v.

McCormick & Company, Inc.

KAZEROUNI LAW GROUP, APC

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Mona Amini, – Associate
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Matthew Kennedy, Esq. - Associate
Joshua Swigart, Esq. – Of Counsel
Robert Hyde, Esq. – Of Counsel
Andrei Armas, Esq. – Of Counsel

July 8, 2015

**SENT BY CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

McCormick & Company, Inc.
c/o CSC – Lawyers Incorporating Service (Agent for Service)
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

RE: Demand Letter Pursuant to California Civil Code § 1782

Dear Sir or Madam:

This letter serves as notice and demand for corrective action by McCormick & Company, Inc. (“McCormick”) pursuant to the Consumers Legal Remedies Act, California Civil Code § 1782 (“CLRA”). This letter is sent on behalf of our client, Ryan Bunting,¹ a purchaser of McCormick Pure Ground Black Pepper in the state of California, and all other persons similarly situated. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

As of about January or February of 2015, McCormick reduced the volume of ground black pepper sold in its traditional tins by approximately 25%. McCormick did not, however, make a corresponding reduction in the size of the tins. Thus, the same size tins as consumers have purchased for decades now contain 25% “empty” space, or slack-fill. This is true for each of the small, medium and large tins containing McCormick black ground pepper. Although those tins previously contained 2, 4 and 8 ounces of product, respectively, they now contain 1.5, 3 and 6 ounces of product. Consumers rely on the traditional size of the tins as the basis for making purchasing decisions and believe the tins are effectively full, as they have been for decades. Consumers are surprised and disappointed, however, when they purchase the black pepper and discover that the tins contain 25% slack fill.

¹ This firm represents Mr. Bunting. Please refrain from contacting Mr. Bunting directly. Please direct any and all communications to this office.

The above-described representations are false and misleading and constitute unlawful, unfair, or fraudulent acts or practices and unfair methods of competition in violation of the CLRA, including but not limited to §§ 1770(a)(5) and (9). The representations also violate California's Unfair Competition Law and False Advertising Law, California Business & Professions Code §§ 17200, *et seq.*, and 17500, *et seq.* McCormick has and continues to mislead consumers into believing that the tins containing its ground black pepper are full, when in fact they contain substantial slack-fill. These misrepresentations allow McCormick to increase its sales, charge a premium price for its product, and capture market share from its competitors.

If our client had known about the slack-fill contained in McCormick's ground black pepper, he would not have purchased the product. Our client is a citizen of the State of California and is a consumer as defined in California Civil Code § 1761(d) because he purchased McCormick ground black pepper for personal, family, or household purposes. Among other things, our client relied on the size of the McCormick black pepper tin, and his prior experience in purchasing that product. As a result, our client suffered loss of money.

We hereby demand on behalf of our client and all other similarly situated that McCormick immediately: (1) cease and desist from continued sale of all McCormick black pepper products containing slack-fill; (2) initiate corrective action; and (3) offer to refund the purchase price of all misrepresented McCormick ground black pepper products purchased by our client, plus reimbursement for interest. Please comply with this demand within thirty (30) days from receipt of this letter. Additionally, this letter also serves as notice to McCormick of its duty to preserve and retain all documents, tangible items, and electronically stored information that is potentially relevant to this matter.

If McCormick wishes to enter into discussions to resolve the demands asserted in this letter, please contact me immediately. Your cooperation in this matter would be greatly appreciated.

Yours truly,

/s/ Abbas Kazerounian

Abbas Kazerounian, Esq.
Direct Line: 800-400-6808 Ext: 2
Email: ak@kazlg.com

cc: Joshua B. Swigart, Esq.