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15 and the Putative Class

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 **HOLLY MARSH**, as an individual, and
19 on behalf of all others similarly situated,

20 *Plaintiff,*

21 v.

22 **McCORMICK & CO., INC.**, a
23 Maryland corporation,

24 *Defendant.*

Case No.:

25 **CLASS ACTION COMPLAINT**

- 26 1. Violations of Cal. Bus. & Prof. C.
27 §§ 17200, *et seq.* (Unfair & Fraudulent
28 Business Practices);
2. Violations of Cal. Bus. & Prof. Code
§§ 17200, *et seq.* (Unlawful Business
Practices);
3. Violations of Cal. Civ. Code §§1750,
et seq.;
4. Fraudulent Concealment.

Jury Trial Requested

1 Plaintiff, HOLLY MARSH (“Plaintiff”), individually, and on behalf of all
2 others similarly situated, by and through undersigned counsel, files this Class
3 Action Complaint against Defendant, McCORMICK & CO., INC. (“McCormick”
4 or “Defendant”), and alleges the following:
5

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7 **I. Introduction**

8 1. McCormick owns, manufactures, packages, advertises, distributes,
9 and sells McCormick® Pure Ground Black Pepper.
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11 2. Upon information and belief, for decades, McCormick has sold its
12 ground black pepper in opaque metal tins, which had been substantially filled to
13 capacity and which had become the industry standard.

14 3. Upon information and belief, in January or February of 2015,
15 McCormick began filling at least three of its standard tin sizes with 25% less
16 ground black pepper, leaving the rest of the space in the tin empty.
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18 4. Specifically, McCormick’s small sized tin (“Small Tin”) measuring
19 approximately 3 1/16” tall, 1 5/16” deep, and 2 5/16” wide, currently holds 1.5
20 ounces of ground black pepper. Prior to early 2015, however, McCormick
21 substantially filled the Small Tin to capacity with 2 ounces of ground black pepper.
22 Although the amount of ground pepper has been reduced by 25% since early 2015,
23 the actual size of the Small Tin has, at all relevant times, remained the same.
24

25 5. Similarly, McCormick’s medium sized tin (“Medium Tin”),
26 measuring approximately 3 10/16” tall, 1 9/16” deep, and 2 13/16” wide, currently
27 holds 3 ounces of ground black pepper. Prior to early 2015, however, McCormick
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1 substantially filled the Medium Tin to capacity with 4 ounces of ground black
2 pepper. Although the amount of ground pepper has been reduced by 25% since
3 early 2015, the actual size of the Medium Tin has, at all relevant times, remained
4 the same.
5

6 6. Finally, McCormick's larger sized tin ("Large Tin"), measuring
7 approximately 4 10/16" tall, 2 4/16" deep, and 3 5/16" wide, currently holds 6
8 ounces of ground black pepper. Prior to early 2015, however, McCormick
9 substantially filled the Large Tin to capacity with 8 ounces of ground black pepper.
10 Again, although the amount of ground pepper has been reduced by 25% since early
11 2015, the actual size of the Large Tin has, at all relevant times, remained the same.
12

13 7. Ground black pepper sold in the Small Tin (holding 2 ounces),
14 Medium Tin (holding 4 ounces), and Large Tin (holding 8 ounces) prior to 2015
15 are collectively referred to as the "Full Products." Ground black pepper sold in the
16 same size Small Tin (now holding 1.5 ounces), Medium Tin (now holding 3
17 ounces), and Large Tin (now holding 6 ounces) sold after early 2015 are referred to
18 collectively as the "Reduced Products" or individually as a "Reduced Product."
19

20 8. Filling the Reduced Products with 25% less ground black pepper
21 without changing the size of the respective tins the ground pepper is sold in is
22 misleading and likely to deceive reasonable consumers. Furthermore, there is no
23 legal justification for Defendant's filling the Reduced Products with 25% less
24 ground black pepper than it has, for decades, filled the Full Products.
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2 9. Plaintiff brings this action on behalf of herself and a nationwide class
3 of consumers, as well as a sub-class of California consumers, to rectify the injuries
4 caused by McCormick's unlawful practices, and to enjoin McCormick's ongoing
5 deceptive representations concerning the Reduced Products.

6
7 **II. Jurisdiction and Venue**

8 10. This Court has jurisdiction over the subject-matter presented by this
9 Class Action Complaint because it is a class action arising under 28 U.S.C.
10 § 1332(d), which, under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L.
11 No. 109-2, 119 Stat. 4 (2005), explicitly provides for the original jurisdiction of the
12 Federal Courts of any class action in which any member of the plaintiff class is a
13 citizen of a state different from any defendant, and where the amount in
14 controversy exceeds the aggregate sum of \$5,000,000.00, exclusive of interest and
15 costs. Plaintiff alleges that the total claims of the individual members of the
16 Plaintiff Class in this action are in excess of \$5,000,000.00 in the aggregate,
17 exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2). Plaintiff is a
18 citizen of California and Defendant is a publicly traded Maryland corporation with
19 its principal place of business located in Sparks, Maryland; therefore, diversity of
20 citizenship exists under CAFA, as required by 28 U.S.C. § 1332(d)(2)(A).

21 11. Venue in this judicial district is proper pursuant to 28 U.S.C.
22 § 1391(a) because, as set forth below, Defendant conducts business in, and may be
23 found in, this district, and Plaintiff purchased both the Full Products and the
24 Reduced Products in this judicial district. Specifically, Plaintiff purchased the Full
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1 Products and Reduced Products in Sacramento County, California. *See* the
2 Declaration of Plaintiff, HOLLY MARSH, Pursuant to Civil Code § 1780(d) of the
3 Consumer Legal Remedies Act, Civil Code §§ 1750 *et seq.* regarding venue under
4 the California Legal Remedies Action (“CLRA”), which is attached.
5

6 **III. Parties**

7
8 12. Plaintiff, HOLLY MARSH, is, and at all times relevant was, an
9 individual residing in and a citizen of the State of California. Plaintiff has
10 purchased the Full Products for personal use on multiple occasions throughout the
11 last 20 years. Plaintiff has become accustomed to purchasing the Full Products
12 because of their consistent and uniform size and the consistent and uniform amount
13 of ground black pepper contained in the tins. However, in May, 2015, Plaintiff
14 purchased the Medium Tin, Reduced Product for personal use, believing that it
15 contained 4 ounces of ground black pepper, as all Medium Tin Full Products
16 contained that Plaintiff had purchased in the past. Subsequent to purchasing the
17 Reduced Product, however, Plaintiff learned that Defendant had provided 25% less
18 ground black pepper in it because of unlawful, unjustified slack-filling. Plaintiff
19 would not have purchased the Reduced Product had she known that it contained
20 25% less ground black pepper than Full Products she purchased previously;
21 alternatively, Plaintiff would not have paid what she did for the Reduced Product.
22 Plaintiff might be interested, however, in purchasing the product in the future if its
23 misleading packaging were corrected so that she could make a true comparison
24 between products for sale.
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2 13. Upon information and belief, Defendant is a Maryland corporation,
3 with its principal place of business located in Sparks, Maryland. Defendant
4 promoted and marketed the Full Products and the Reduced Products at issue in this
5 jurisdiction and in this venue. Defendant is the largest distributor of spices in the
6 United States, where it sells approximately 70% of the more than \$425 million in
7 black pepper sales.
8

9 14. The unfair, unlawful packaging of the Reduced Products was prepared
10 and/or approved by Defendant and its agents, and was disseminated by Defendant
11 and its agents through unlawfully packaging the Reduced Products.
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13 15. At all times relevant, Defendant and its subsidiaries, affiliates, and
14 other related entities, as well as their respective employees, were the agents,
15 servants, and employees of Defendant, and at all times relevant, each were acting
16 within the purpose and scope of that agency and employment. Plaintiff further
17 alleges, on information and belief, that at all times relevant, the distributors and
18 retailers who delivered and sold the Reduced Products, as well as their respective
19 employees, were also Defendant's agents, servants, and employees, and at all times
20 relevant, each were acting within the purpose and scope of that agency and
21 employment.
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23 16. Additionally, Plaintiff alleges that, in committing the wrongful acts
24 alleged, Defendant, in concert with its subsidiaries, affiliates, and/or other related
25 entities and their respective employees, planned, participated in, and furthered a
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1 common scheme to induce members of the public to purchase the Reduced
2 Products.
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4 17. Whenever reference in this Complaint is made to any act by
5 Defendant or its subsidiaries, affiliates, distributors, retailers, and other related
6 entities, such allegation shall be deemed to mean that the principals, officers,
7 directors, employees, agents, and/or representatives of Defendant committed, knew
8 of, performed, authorized, ratified, and/or directed such act or transaction on behalf
9 of Defendant while actively engaged in the scope of their duties.
10

11 **IV. Facts**

12 18. Defendant currently sells ground black pepper in tins that are the same
13 size as tins previously sold by Defendant for years, but now those same tins
14 contain 25% less ground black pepper. This action has deceived reasonable
15 consumers, such as Plaintiff and the members of the putative Class, because
16 reasonable consumers expect that the tins will contain the same amount of ground
17 pepper as they had in years past.
18

19 19. When Plaintiff purchased the Reduced Product in May 2015, she
20 thought it contained the same amount of pepper as had been in the Full Products
21 because the tin was the same size it had been in the past.
22

23 20. On information and belief, retailers and consumers are misled into
24 believing that they are buying a larger volume of ground black pepper than is
25 contained in the McCormick Reduced Products.
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2 21. On information and belief, in many or most instances, McCormick
3 intentionally maintained the price of its standard sized tins, notwithstanding the
4 significant reduction in the amount of ground black pepper contained in the
5 traditional tin, which had the effect of further adding to the perception that nothing
6 had changed. It appears that millions, if not tens of millions, of these McCormick
7 Reduced Products have replaced Full Products in virtually every retailer
8 throughout the United States that stocks McCormick products.
9

10 22. On information and belief, McCormick intentionally kept the tin the
11 same size, with the same price, notwithstanding the 25% decrease in ground black
12 pepper fill, in a manner that misleads retailers and consumers. Although the tins
13 note in small print the actual weight of ground black pepper contained in the slack-
14 filled tins, consumers are not otherwise told of the decrease in ground black pepper
15 from the traditional fill or that the tin contains a significant void. Consumers rely
16 upon the traditional size of the tins as the basis of making a purchasing decision
17 and believe the tins are effectively full, as they have been for decades.
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20 23. Regardless, the Reduced Products are unlawful under both federal and
21 state law.

22 **Both State and Federal Laws Prohibit Slack-Filling**

23 24. Food manufacturers are required to comply with state and federal
24 statutes and regulations pertaining to food containers. First and foremost among
25 these laws is the federal Food, Drug and Cosmetic Act (“FDCA”), 21 U.S.C.
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1 § 343, and its regulations regarding filling, including those set forth in 21 C.F.R.
2 100.100.
3

4 25. Specifically, section 403 (d) of the FDCA, 21 U.S.C. § 343(d) states
5 that a food container is misbranded if the “container is so made, formed, or filled
6 as to be misleading.”
7

8 26. Section 403(d) of the FDCA is further expounded on by 21 C.F.R.
9 § 100.100, which prohibits nonfunctional “slack-filling.”

10 27. Specifically, 21 C.F.R. § 100.100 states:

11 In accordance with section 403(d) of the act, a food shall
12 be deemed to be misbranded if its container is so made,
13 formed, or filled as to be misleading.

14 (a) A container that does not allow the consumer to fully
15 view its contents shall be considered to be filled as to be
16 misleading if it contains nonfunctional slack-fill. Slack-
17 fill is the difference between the actual capacity of a
18 container and the volume of product contained therein.
19 Nonfunctional slack-fill is the empty space in a package
20 that is filled to less than its capacity for reasons other than:

21 (1) Protection of the contents of the package;

22 (2) The requirements of the machines used for enclosing
23 the contents in such package;

24 (3) Unavoidable product settling during shipping and
25 handling;

26 (4) The need for the package to perform a specific
27 function (e.g., where packaging plays a role in the
28 preparation or consumption of a food), where such
function is inherent to the nature of the food and is clearly
communicated to consumers;

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

10 (6) Inability to increase level of fill or to further reduce
11 the size of the package (e.g., where some minimum
12 package size is necessary to accommodate required food
13 labeling (excluding any vignettes or other nonmandatory
14 designs or label information), discourage pilfering,
15 facilitate handling, or accommodate tamper-resistant
16 devices).

17 28. The California Fair Packaging and Labeling Act, Cal Bus. & Prof.
18 Code § 12606.2 similarly prohibits slack-filling in the same manner as 21 C.F.R.
19 § 100.100.
20

21 29. Furthermore, Cal. Bus. & Prof. Code § 12606.2(e) expressly states:

22 This section shall be interpreted consistent with the
23 comments by the United States Food and Drug
24 Administration on the regulations contained in Section
25 100.100 of Title 21 of the Code of Federal Regulations,
26 interpreting Section 403(d) of the Federal Food, Drug, and
27 Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments
28 are reported on pages 64123 to 64137, inclusive, of
Volume 58 of the Federal Register.

30. Federal and California law are identical regarding slack-filling opaque
containers, such as those at issue.

1 31. Under both federal and California law, McCormick lacks any lawful
2 justification for reducing the amount of pepper and leaving empty space in the
3 Reduced Products.
4

5 32. Each of the fifty states has statutes that prohibit deceptive business
6 practices directed at consumers. Defendant's actions violate each of these statutes.
7

8 **Defendant's Material Misrepresentations**

9 33. Upon information and belief, for decades, and up until early 2015,
10 Defendant substantially filled its Small Tins, Medium Tins, and Large Tins to
11 capacity (*i.e.*, the Full Products).
12

13 34. That changed in early 2015, when Defendant began filling its Small
14 Tins, Medium Tins, and Large Tins with 75% of the ground black pepper it had
15 included in those containers for decades (*i.e.*, the Reduced Products).
16

17 35. A reasonable consumer would not expect the Reduced Products to
18 contain 25% less ground black pepper than the Full Products because the Reduced
19 Products and the Full Products are the same size and both sets of containers are
20 opaque.
21

22 36. A reasonable consumer would expect the Reduced Products to contain
23 the same amount of ground black pepper as the Full Products and there is no legal
24 justification for the Products not containing such amount.
25

26 37. Whether the Reduced Products actually contain the same amount of
27 pepper as the Full Products is important to Plaintiff and other reasonable
28 consumers.

1 38. The packaging for the Reduced Products was designed to encourage
2 consumers to purchase the Reduced Products with the belief that the Reduced
3 Products contain the same amount of ground black pepper as the Full Products.
4

5 39. Reasonable consumers are likely to be deceived by the Reduced
6 Products because although the Reduced Products are the same size as the Full
7 Products, the Reduced Products actually contain 25% less ground pepper than the
8 Full Products, but the consumer cannot see into either the Full Products or the
9 Reduced Products because both sets of containers are opaque.
10

11 40. As a result, Plaintiff purchased the Reduced Products instead of other
12 similar products that are not unlawfully slack-filled.
13

14 41. Plaintiff paid a price premium for the Reduced Products over other
15 similar products that are not unlawfully slack-filled.
16

17 42. Plaintiff and members of the Class relied upon Defendant's
18 representations that the Reduced Products contain the same amount of black
19 pepper as the Full Products because for decades Defendant had substantially filled
20 the Full Products to capacity, creating the industry standard.
21

22 43. Plaintiff and members of the Class would not have purchased the
23 Reduced Products if they had known the Reduced Products were unlawfully slack-
24 filled, or would not have paid what they did for the Reduced Products.
25

26 44. Side-by-side, McCormick Small Tins and Medium Tins appear to be
27 identical in size to the comparable tins made by other manufacturers, leading
28 consumers to the reasonable assumption (and accurate until McCormick began

1
2 slack-filling its full tins) that they contain the same quantity of pepper. In fact, the
3 McCormick Reduced Products contain less ground pepper than the comparable tins
4 made by other manufacturers. For instance, the McCormick Large Tin appears to
5 contain more than the Watkins 6-ounce tin, when in fact they both contain 6
6 ounces of ground black pepper.
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9 **Plaintiff's Purchase of the Products**

10 45. Plaintiff purchased the Full Products on multiple occasions during the
11 last 20 years and specifically, during the Class Period. Plaintiff purchased the
12 Reduced Product from a Raley's grocery store located in Folsom, California.
13

14 46. In purchasing the Reduced Products, Plaintiff saw, perceived, and
15 relied on the packaging for them, namely, that the Reduced Products are the
16 identical size of the Full Products and are opaque.
17

18 47. Plaintiff and members of the putative Class would not have purchased
19 the Reduced Products, or would have paid less for them if they had known that the
20 Reduced Products contain 25% ground black pepper than the Full Products.
21

22 48. Consequently, the Reduced Products are worth less than what Plaintiff
23 paid for and/or Plaintiff did not receive what she reasonably believed she was
24 buying.
25

26 49. McCormick was able to command a price for the Reduced Products
27 higher than a fair market price by deceiving consumers into believing the Reduced
28 Products contained 25% more ground black pepper than they actually do or did.

1 55. This action is maintainable as a class action under Rules 23(a), (b)(1),
2 (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.
3

4 56. **Numerosity:** The Class comprises many thousands of persons
5 throughout the nation. The class is so numerous that joinder of all members is
6 impracticable, and the disposition of their claims in a single Class Action will
7 benefit the parties and the court system.
8

9 57. **Commonality:** The questions of law and fact common to the Class
10 have the capacity to generate common answers that will drive resolution of the
11 action. Common questions of law and fact include, but are not limited to, the
12 following:
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- 14 a. Whether Defendant's practices related to the amount of pepper in the
15 Reduced Products were unfair, deceptive, and/or unlawful in any
16 respect, thereby violating 21 C.F.R. § 100.100, Cal. Bus. & Prof.
17 Code §§ 17200, *et seq.*, Cal. Bus. & Prof. Code § 12606.2 and the
18 corresponding statutes of each of the other states as referenced above:
19
- 20 b. Whether Defendant's practices and representations related to the sales
21 of the Reduced Products were unfair, deceptive, and/or unlawful in
22 any respect, thereby violating 21 C.F.R. § 100.100, Cal. Bus. & Prof.
23 Code §§ 12606.2, and the corresponding statutes of each of the other
24 states as referenced above:
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- c. Whether Defendant's practices and representations related to the filling, marketing, and sales of the Reduced Products constituted fraudulent or misleading concealment;
 - d. Whether Defendant's practices and representations related to the filling, marketing, and sales of the Reduced Products constituted a breach of warranty for merchantability;
 - e. Whether Defendant's practices and representations related to the filling, marketing, and sales of the Reduced Products constituted a breach of express warranty;
 - f. Whether Defendant violated 21 C.F.R. § 100.100, Cal. Civ. Code. §§ 1750, *et seq.*, with its practices and representations related to the sales of the Reduced Products within California; and
 - g. Whether Defendant's conduct, as set forth above, injured consumers, and if so, the extent of the injury.

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58. **Typicality:** Plaintiff's claims, and Defendant's defenses, are typical of the claims of the Class, because the Reduced Products made by Defendant are consistent and uniform in size and every member of the Class was necessarily exposed to the same in purchasing the Reduced Products that all contained 25% less ground black pepper than the Full Products contained, even though the Full Products are the same size as the Reduced Products. Additionally, all Members of the Class have the same or similar injury (loss of purchase price) based on Defendant's false and misleading marketing and advertising.

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59. **Adequacy:** Plaintiff does not have any conflicts with any other Members of the Class, and will fairly and adequately represent and protect the interests of the Members of the Plaintiff Class and any subclass. Plaintiff has retained counsel competent and experienced in consumer protection and class action litigation, trials and appeals.

60. **Predominance:** As set forth in detail, common issues of fact and law predominate because all of Plaintiff's UCL, CLRA, and common law claims are based on a uniform and consistent unlawful, unjustified slack-filling, which all Class Members necessarily were exposed to in purchasing the Reduced Products, namely the packaging of the Reduced Products being the same size as the Full Products, even though the Reduced Products contain 25% less ground black pepper than the Full Products.

61. **Superiority:** A class action is superior to other available methods for fair and efficient adjudication of this controversy. The expense and burden of the individual litigation would make it impracticable or impossible for the Class Members to prosecute their claims individually. Absent a class action, Defendant likely will retain the benefits of its wrongdoing. Because of the small size of the individual Class Members' claims, few, if any, Class Members could afford to seek legal redress for these wrongs. Absent a representative action, the Class Members will continue to suffer losses and Defendant will be allowed to continue these violations of law and to retain the proceeds of its ill-gotten gains. The trial and litigation of Plaintiff's claims are manageable. Individual litigation of the legal

1 and factual issues raised by Defendant's conduct would increase delay and expense
2 to all parties and the court system. The class action device presents far fewer
3 management difficulties and provides the benefits of a single, uniform court
4 judgment. Thus, the benefits of proceeding as a class action outweigh the
5 difficulties.
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9 **VI. First Count**
10 **Unfair Business Practices in Violation of**
11 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
12 **(By Plaintiff and the Nationwide Putative Class against Defendant)**

13 62. Plaintiff incorporates by reference the allegations set forth above.

14 63. Plaintiff brings this claim individually and on behalf of a Class and
15 the General Public against Defendant.

16 64. Defendant's wrongful conduct alleged is part of a pattern or
17 generalized course of conduct that occurs and continues to occur in the ordinary
18 course of McCormick's business. Thus, Defendant's conduct impacts the public
19 interest.

20 65. Defendant's Reduced Products, like its Full Products are opaque,
21 standard sized containers that consumers cannot see into. Defendant exploited the
22 fact that the reasonable consumer could not see into the Reduced Products by
23 including 25% less ground pepper than it had included in the Full Products for
24 decades, which are the same size as the Reduced Products.

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26 66. Because the tins are opaque, Plaintiff was unable to tell that they are
27 now at least 25% empty.
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2 67. Defendant's unjustified slack-filling the Reduced Products is a
3 material fact and constitutes an unfair business practice within the meaning of
4 California Business & Professions Code § 17200, *et seq.*

5 68. Defendant's business practices, as alleged, are unfair because: (1) the
6 injury to the consumer is substantial; (2) the injury is not outweighed by any
7 countervailing benefits to consumers or competition; and (3) consumers could not
8 reasonably have avoided the information because Defendant intentionally misled
9 the consuming public by means of the claims made with respect to the Reduced
10 Products as set forth herein.
11

12 69. Defendant's business practices as alleged are misleading because they
13 are likely to deceive customers into believing that the Reduced Products provide
14 more ground black pepper than they actually do.
15

16 70. Additionally, Defendant's use of various forms of advertising media
17 to market, call attention to, or give publicity to the sale of goods or merchandise,
18 which are not as represented in any manner, constitutes unfair competition, unfair,
19 deceptive, untrue, or misleading advertising, and an unlawful business practice
20 within the meaning of Bus. & Prof. Code §§ 17200, *et seq.*
21

22 71. Defendant's wrongful business practices constituted, and constitute, a
23 continuing course of conduct of unfair competition because Defendant is
24 marketing and selling the Reduced Products in a manner likely to deceive the
25 public.
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1 72. Defendant has peddled, and continues to peddle, throughout the State
2 of California and the United States in general its unlawful, unjustified slacked
3 filled Reduced Products.
4

5 73. There were reasonably available alternatives to further Defendant's
6 legitimate business interests, other than the conduct described.
7

8 74. As alleged above, Plaintiff has suffered economic injury-in-fact and
9 has lost money or property as a result of Defendant's reducing the amount of
10 ground black pepper contained in the Reduced Products by 25% relative to the Full
11 Products, even though the Full Products and the Reduced Products are the same
12 size and are both opaque.
13

14 75. There is no lawful justification under either federal or California law
15 for Defendant's slack-filling the Reduced Products.
16

17 76. Plaintiff purchased the Reduced Products and, as a result, Plaintiff and
18 the Class suffered economic injury.
19

20 77. Plaintiff and the putative Class Members were misled into purchasing
21 the Reduced Products by Defendant's unfair and misleading conduct.
22

23 78. The Reduced Products are identical in size to their corresponding Full
24 Products and yet the Reduced Products contain 25% less ground black pepper than
25 the Full Products. These representations are uniform and material to each Reduced
26 Product.
27

28 79. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and Members of the
Class seek an order of this Court enjoining Defendant from continuing to engage,

1 use, or employ its unfair and misleading practice of advertising the sale of the
2 Products as described above. Likewise, Plaintiff and Members of the Class seek an
3 order requiring Defendant to cease slack-filling its Reduced Products. Plaintiff
4 also requests an order awarding Plaintiff and the Class restitution of the money
5 wrongfully acquired by Defendant by means of responsibility attached to
6 Defendant's false and misleading representations.
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10 **VII. Second Count**
11 **Unlawful Business Practices in Violation of**
12 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
13 **(By Plaintiff and the Nationwide Putative Class against Defendant)**

14 80. Plaintiff re-alleges and incorporates by reference the allegations set
15 forth above in the paragraphs 1 through 61 above as if set forth herein verbatim.

16 81. This cause of action is brought on behalf of Plaintiff individually and
17 on behalf of the Class and members of the General Public.

18 82. California's Unfair Competition Law, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.*, prohibits any "unlawful, unfair, or fraudulent business act or
20 practice." This statute is to be construed liberally in order to protect the public.

21 83. Under California law, a food product that is misbranded cannot
22 legally be manufactured, advertised, distributed, held, or sold.
23

24 84. A misbranded product that cannot be legally sold or possessed has no
25 economic value and is legally worthless.

26 85. Defendant's business practices, as alleged, are unlawful because:
27 (1) it is violating Cal. Bus. & Prof. Code § 12606.2, and (2) §§ 1770(a)(5),
28

1 1770(a)(7), 1770(a)(9), 1770(14) and 1770(a)(16) of the CLRA, California Civil
2 Code § 1750, *et seq.*, 21 U.S.C. § 343(d), and 21 C.F.R. § 100.100.
3

4 86. Plaintiff purchased the Reduced Products that are unlawfully slack
5 filled. Consequently, Plaintiff and the Class suffered economic injury.

6 87. The Reduced Products' identical size to their corresponding Full
7 Products, but contain 25% less ground black pepper than the Full Products, and
8 are, thus, unlawfully slack-filled.
9

10 88. Plaintiff and the putative Class Members were misled into purchasing
11 Defendant's Reduced Products by Defendant's unlawful conduct.

12 89. Defendant's slack-filling the Reduced Products is uniform to each
13 respective Reduced Product and is material and constitutes an unlawful business
14 practice.
15

16 90. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and Members of the
17 Class seek an order of this Court enjoining Defendant from continuing to engage,
18 use, or employ its practice of advertising the sale and use of the Reduced Products
19 as described above. Plaintiff also requests an order awarding Plaintiff and the
20 Class restitution of the money wrongfully acquired by Defendant by means of
21 responsibility attached to Defendant's failure to disclose the existence and
22 significance of said misrepresentations.
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VIII. Third Count
For Violations of Cal. Civ. Code § 1750, *et seq.*
(By Plaintiff and the California Putative Sub-Class against Defendant)

91. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 61 above as if set forth herein verbatim.

92. Plaintiff brings this cause of action pursuant to Cal. Civ. Code §§ 1750 *et seq.*, on behalf of herself and the California Class.

93. Plaintiff is an individual who purchased the Full Products for years and for personal, family, or household purposes.

94. Plaintiff purchased a Reduced Product in May, 2015, believing that it contained the same amount of ground black pepper than the Full Products that she had purchased before had contained.

95. The purchase of the Reduced Products by Plaintiff and California purchasers of the Reduced Products were and are “transactions” within the meaning of Civil Code § 1761(e).

96. Defendant’s marketing, packaging, advertising, and sale of the Reduced Products through unlawful, unjustified slack-filling violated the CLRA in at least the following respects as set forth in detail above:

- a. In violation of Civil Code § 1770(a)(5), Defendant represented that the Reduced Products have characteristics, ingredients, uses, and benefits which they do not have;

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- b. In violation of Civil Code § 1770(a)(7), Defendant represented that the Reduced Products are of a particular standard, quality, or grade, which they are not;
 - c. In violation of Civil Code § 1770(a)(9), Defendant advertised the Reduced Products with an intent not to sell the Reduced Products as advertised;
 - d. In violation of Civil Code § 1770(a)(14), Defendant represented the purchase of the Reduced Product confers, or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and
 - e. In violation of Civil Code § 1770(a)(16), Defendant represented that the subject of the sale of the Reduced Products has been supplied in accordance with a previous representation when it has not.

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97. Defendant's actions as described were done with conscious disregard of Plaintiff's rights, and Defendant was wanton and malicious in its concealment of same.

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98. Defendant's wrongful business practices constituted, and constitute a continuing course of conduct in violation of the CLRA because Defendant is still representing that the Reduced Products have characteristics and abilities which they do not have; thus Plaintiff and the Class have been injured.

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99. Plaintiff and Members of the Putative Class have suffered injury-in-fact and have lost money as a result of Defendant's false representations.

1
2 100. Plaintiff purchased the Reduced Products that contained 25% less
3 ground black pepper in them than the identically sized Full Products because the
4 Reduced Products are unlawfully slack-filled, without justification and, as a result,
5 Plaintiff and the Class suffered economic injury.

6 101. Plaintiff and the putative Class Members were misled into purchasing
7 the Reduced Products by Defendant's deceptive conduct. The Reduced Products
8 are reduced and the same is uniform to each Reduced Product and is material.
9

10 102. Pursuant to Civil Code § 1782, Plaintiff has notified Defendant in
11 writing of the particular violations of section 1770 of the CLRA (the "CLRA Notice
12 Letter") and demanded, among other things, that Defendant cease from making the
13 misrepresentations alleged and provide restitution to Members of the Class.
14 Defendant received Plaintiff's CLRA Notice Letter via U.S. Mail, return receipt
15 requested, on June 22, 2015. Defendant failed to respond to Plaintiff's Demand
16 within 30 days of receipt of the CLRA Notice Letter.
17

18 103. Also pursuant to section 1782, Defendant did not "correct or
19 otherwise rectify" its illegal acts within 30 days of receipt of the CLRA Notice
20 Letter.
21

22 104. Plaintiff and Members of the Class seek an order of this Court
23 enjoining Defendant from continuing to engage, use, or employ its practices of
24 advertising the sale and use of the Reduced Products as described above. Plaintiff
25 also requests an order awarding Plaintiff and the Class restitution of the money
26 wrongfully acquired by Defendant by means of responsibility attached to
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1 Defendant's unlawful, unjustified slack-filling the Reduced Products, as well as
2 actual and punitive damages for the conduct described above.
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5 **IX. Fourth Count**
6 **For Fraudulent Concealment**
7 **(By Plaintiff and the Nationwide Putative Class against Defendant)**

8 105. Plaintiff re-alleges and incorporates by reference the allegations set
9 forth in paragraphs 1 through 61 above as if set forth herein verbatim.

10 106. Defendant has manufactured, marketed, and, and sold the Full
11 Products for decades, and was so successful that Defendant's Full Products have
12 become the industry standard.

13 107. Consumers have become accustomed to Defendant's standardized
14 Full Products' sizes and have relied and continue to rely on Defendant supplying a
15 certain, predictable amount of ground black pepper in each such container.
16

17 108. However, in early 2015, Defendant began filling its standardized,
18 opaque containers with 25% less ground black pepper, in violation of federal and
19 state law prohibiting unjustified slack-filling.
20

21 109. Reasonable consumers, such as Plaintiff and members of the Class,
22 are misled into believing that the Reduced Products contain 25% more ground
23 black pepper than they currently do because the Reduced Products' containers are
24 the same size as the Full Products' containers, and both are opaque.
25

26 110. The Reduced Products' containers were not only intentionally made to
27 be the same size as the Full Products' containers but they, like their Full Products
28 counterparts, were made to be opaque, such that reasonable consumers cannot see

1 inside them; thus, Defendant was able to surreptitiously provide 25% less ground
2 black pepper to the consuming public without the knowledge of Plaintiff or
3 members of the Class, and at a substantial windfall for Defendant.
4

5 111. Consequently, Plaintiff and members of the Class were injured as a
6 result of Defendant concealing that it provided 25% less ground black pepper to
7 them without reducing the price proportionately.
8

9 **X. Prayer for Relief**

10 **WHEREFORE**, Plaintiff, HOLLY MARSH, individually, and on behalf of
11 all others similarly situated, prays for relief pursuant to each cause of action set
12 forth, as follows:
13

- 14 1. For an order certifying that the action may be maintained as a class
15 action, and appointing Plaintiff and her attorneys to represent the
16 Class;
- 17 2. For an order enjoining Defendant from engaging in the practices set
18 forth;
- 19 3. For an order compelling Defendant to conduct a corrective advertising
20 campaign;
- 21 4. For an order requiring Defendant to disgorge or return all money,
22 revenue, and profits obtained by means of any wrongful act or
23 practice alleged;
- 24 5. For an order requiring Defendant to pay restitution to restore all funds
25 acquired by means of any act or practice declared by this Court to be
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1 an unfair business act or practice, untrue, or misleading advertising, or
2 unjust enrichment, or violation of the UCL, the CLRA, or the
3 common law;

- 4
- 5 6. For an order awarding Plaintiff and the California Sub-Class punitive
6 damages pursuant to the CLRA;
- 7
- 8 7. For an award of attorney's fees pursuant to California Code of Civil
9 Procedure §§ 1021.5, 1780, and costs and expenses;
- 10
- 11 8. For an award of pre- and post-judgment interest on any amounts
12 awarded; and
- 13
- 14 9. Any other and further relief as the Court deems necessary, just, or
15 proper.

16 **XI. Demand For Jury Trial**

17
18 Plaintiff demands a jury trial on all triable issues.

19
20 Dated this 29th July, 2015.

21 By: /s/ Michael T. Fraser

22 Michael T. Fraser
23 **THE FRASER LAW FIRM, P.C.**
24 Michael T. Fraser (SBN 275185)
25 4120 Douglas Blvd., Suite 306-262
26 Granite Bay, California 95746
27 (888) 557-5115
28 (866) 212-8434 (fax)
mfraser@thefraserlawfirm.net

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THE ESTES LAW GROUP
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(415) 376-9726

*Attorneys for Plaintiff HOLLY MARSH
and Putative Class*

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11 1005 Northgate Dr., PMB #504
12 San Rafael, CA 94903
13 (415) 376-9726

14 Attorneys for Plaintiff, HOLLY MARSH,
15 and the Putative Class

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 **HOLLY MARSH, as an individual, and**
19 **on behalf of all others similarly situated,**

20 *Plaintiff,*

21 v.

22 **McCORMICK & CO., INC., a**
23 **Maryland corporation,**

24 *Defendant.*

Case No.:

DECLARATION OF PLAINTIFF
HOLLY MARSH REGARDING
VENUE
(Civil Code § 1780(d))

25 I, Holly Marsh, hereby declare:

26 1. I am the named-plaintiff in the above-entitled action.

27 2. I have personal knowledge of the facts stated herein and could competently testify thereto

28 if called upon to do so.

CLASS ACTION COMPLAINT - 1

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3. My complaint filed in this matter contains a cause of action for violations of the California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.* against Defendant McCORMICK & CO., INC., a Maryland corporation doing business nationwide, including within Sacramento County, California.

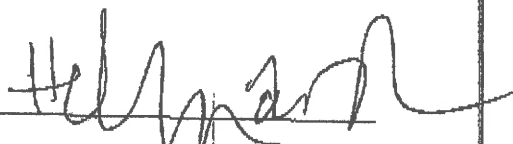
4. The said cause of action arises out of my purchase of Defendant's ground black pepper product that was unlawfully and unjustifiably slack-filled in contravention to California and federal law.

5. I purchased the unlawfully, unjustifiably slack filled product of Defendant from a Raley's grocery store located in Folsom, Sacramento County, California.

6. Civil Code § 1780(c) provides that a plaintiff seeking to bring a claim under Section 1780(a) of the California Consumer Legal Remedies Act, such as in the above-entitled action, may commence that action "in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred."

7. Accordingly, the Complaint filed in the above-entitled action, is filed in the proper venue pursuant to Civil Code § 1780(d).

I declare under the penalty of perjury under laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed Wednesday, July 29, 2015, in Folsom, California.


Holly Marsh, Plaintiff

CLASS ACTION COMPLAINT - 2

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
Holly Marsh

DEFENDANTS
McCormick & Co., Inc.

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

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

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

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
The Fraser Law Firm, 4120 Douglas Blvd., Ste. 306-262, Granite Bay, CA 95746, (888)557-5115; Estes Law Group, 1005 Northgate Dr. PMB 504, San Rafael, CA 94903, (415)376-9726

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause: Defendant unlawfully slack-filled tins containing its ground black pepper.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/29/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael T. Fraser

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.