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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

T.W. GARNER FOOD CO., a North
Carolina corporation,

Defendant.

Case No. 2:22-cv-06503

CLASS ACTION COMPLAINT

1. VIOLATION OF UNFAIR COMPETITION LAW (CAL BUS. & PROF. CODE § 17200, *et seq.*)
2. VIOLATION OF FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)
3. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *et seq.*)
4. BREACH OF WARRANTY
5. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

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1 **COMPLAINT**

2 1. Plaintiff Philip White (“**Plaintiff**”), individually and on behalf of all
3 others similarly situated, as more fully described herein (the “**Class**” and “**Class**
4 **Members**”) brings this class action complaint against Defendant T.W. Garner Food
5 Co. (“**Defendant**”), and alleges the following based upon investigation,
6 information, and belief, unless otherwise expressly stated as based on personal
7 knowledge.

8 **I. INTRODUCTION**

9 2. **Synopsis.** This class action lawsuit arises from Defendant’s failure to
10 act in accordance with a fundamental precept of truth in advertising and fair play in
11 the marketplace: the geographic origin of a product matters to consumers, and a
12 company is therefore prohibited from misrepresenting it.

13 3. By representing that its Texas Pete® brand hot sauce products
14 (“**Products**”) are Texas products, when they are not, Defendant has cheated its way
15 to a market-leading position in the \$3 billion-dollar hot-sauce industry at the
16 expense of law-abiding competitors and consumers nationwide who desire authentic
17 Texas hot sauce and reasonably, but incorrectly, believe that is what they are getting
18 when they purchase Texas Pete.

19 4. Although Defendant brands the Products “Texas Pete,” there is
20 surprisingly **nothing** Texas about them: unknown to consumers, the Products are
21 standard Louisiana-style hot sauces, made with ingredients sourced outside the state
22 of Texas, at a factory in North Carolina.

23 5. In furtherance of its deceptive labeling scheme, Defendant adorns the
24 packaging and labeling with distinctly Texan imagery: the famed white ‘lone’ star
25 from the Texan flag together with a ‘lassoing’ cowboy.

26 6. Defendant designed the misleading name and imagery to comprise the
27 entire front label, repeated the deception on the prominent product seal, and then
28 etched the Texan imagery into the glass on the front of the bottle.

1 7. A true and correct image of Defendant’s Texas Pete Original Hot Sauce
2 Product is depicted below. (**Exhibit 1-1**).



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22 8. Defendant concocted this false marketing and labeling scheme
23 specifically because it knows the state of Texas enjoys a certain mysticism and
24 appeal in the consumer marketplace and is known for its quality cuisine, spicy food,
25 and hot sauce in particular.

26 9. By way of its false marketing and labeling, Defendant knowingly and
27 intentionally capitalizes on consumers’ desire to partake in the culture and authentic
28 cuisine of one of the most prideful states in America.

1 10. As result of Defendant’s false labeling scheme, consumers seeking an
2 authentic Texas hot sauce, including Plaintiff, are misled into believing that is what
3 they are getting when they purchase the Products.

4 11. Consumers’ belief that Texas Pete is a Texas product is reasonable. As
5 one article aptly declares: “With a name like Texas Pete, one would think the famed
6 hot sauce is manufactured in the Lone Star state.”¹

7 12. Because there is nothing “Texas” about Texas Pete, Defendant’s
8 deceptive marketing and labeling scheme violates well-established federal and state
9 consumer protection laws aimed at preventing this exact type of fraudulent scheme.

10 13. Absent class relief, Defendant’s fraud will go unchecked to the
11 detriment of consumers who are harmed financially and otherwise deprived of the
12 ‘benefit of the bargain’ when they purchase an inauthentic product they otherwise
13 would not, and at a premium price.

14 14. Defendant’s illegal conduct will also continue to harm other law-abiding
15 brands, including smaller companies in Texas who similarly seek to leverage
16 consumer demand for authentic Texas hot sauce, but who play by the rules. This
17 stifles competition, reduces consumer choice, and leads to consumers paying higher
18 prices at the cash register for inferior goods.

19 15. **The Products.** The Products at issue consist of all “Texas Pete” hot
20 sauce products sold by Defendant, including, but not limited to (*See, Exhibit 1*):

- 21 A. Texas Pete Original Hot Sauce;
- 22 B. Texas Pete Hotter Hot Sauce; and
- 23 C. Texas Pete Roasted Garlic Hot Sauce.

24 16. **Primary Dual Objectives.** Plaintiff brings this action individually and
25 on behalf of those similarly situated to represent a National Class and a California

26 _____
27 ¹ Catherine Carlock, “How Texas Pete got its Name: The Legend of Texas Pete (sort
28 of),” TRIAD BUSINESS JOURNAL, <https://www.bizjournals.com/triad/print-edition/2014/05/02/how-texas-pete-got-its-name-the-legend-of-texas.html> (last visited Sep. 7, 2022).

1 Subclass of consumers who purchased the Products for dual primary objectives.
2 Plaintiff seeks, on Plaintiff’s individual behalf and on behalf of the Class, a
3 monetary recovery of the price premium consumers overpaid for the Products due to
4 the false and deceptive labeling, consistent with permissible law (including, for
5 example, damages, restitution, disgorgement, and any applicable penalties/punitive
6 damages, solely to the extent that those causes of action permit). More importantly,
7 Plaintiff seeks injunctive relief in the form of an order requiring Defendant to
8 change its unlawful advertising and labeling practices for the benefit of consumers,
9 including Plaintiff and the Class.

10 **II. JURISDICTION**

11 17. The Court has subject matter jurisdiction of this action pursuant to 28
12 U.S.C. §1332 of the Class Action Fairness Act of 2005 because there: (i) are 100 or
13 more class members, (ii) is an aggregate amount in controversy exceeding
14 \$5,000,000, exclusive of interest and costs, and (iii) is minimal diversity because at
15 least one Plaintiff and Defendant are citizens of different states. This Court has
16 supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. §1367.

17 18. Defendant is subject to personal jurisdiction in California based upon
18 sufficient minimum contacts which exist between Defendant and California.
19 Defendant is authorized to do and is doing business in California.

20 **III. VENUE**

21 19. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this
22 action because a substantial part of the events, omissions, and acts giving rise to the
23 claims herein occurred in Los Angeles County. Plaintiff is a citizen of California
24 who resides in Los Angeles County; Defendant made the challenged false
25 representations to Plaintiff in Los Angeles County; Plaintiff purchased the Product
26 in Los Angeles County; and Plaintiff consumed the Products within Los Angeles
27 County. Moreover, Defendant receives substantial compensation from sales in Los
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1 Angeles County, and Defendant made numerous misrepresentations in its labeling
2 and advertising that had a substantial effect in Los Angeles County.

3 **IV. PARTIES**

4 20. **Plaintiff.** Plaintiff Phillip White is, and at all relevant times hereto was,
5 an individual residing in Los Angeles, California. White purchased one bottle of the
6 Texas Pete Original Hot Sauce Product in California within the last four (4) years of
7 the filing of this Complaint. Specifically, White purchased the Product in or around
8 September 2021 at a Ralph's store in Los Angeles, CA for approximately \$3.00. In
9 making his purchase decision, White relied upon the language and images displayed
10 on the front label of the Product, and at the time of purchase understood the Product
11 to be a Texas product. These labels were prepared and approved by Defendant and
12 its agents and disseminated statewide and nationwide, as well as designed to
13 encourage consumers like Plaintiff to purchase the Product. Had White known the
14 Product was not made in Texas, he would not have purchased the Product, or would
15 have paid significantly less for it. White spent money to purchase a product that was
16 different than that which he expected, and White did not receive the benefit of his
17 bargain. White may want to purchase the Product again in the future if he could be
18 sure that the Product were compliant with California and federal consumer
19 protection and advertising laws.

20 21. **Defendant.** TW Garner Food Co. is a corporation headquartered in
21 Winston-Salem, North Carolina. Defendant maintains its principal place of business
22 at 614 W 4th Street, Winston-Salem, North Carolina. Defendant offers the Products
23 for sale at stores and retailers, as well as on the internet, throughout the nation,
24 including the State of California. Defendant, directly and through its agents, has
25 substantial contacts with and receives substantial benefits and income from and
26 through the State of California. Defendant is the owner and distributor of the
27 Products and is the company that created and/or authorized the false, misleading,
28 and deceptive advertisements and packaging for the Products.

1 22. In committing the wrongful acts alleged herein, Defendant planned,
2 participates in, and furthers a common scheme by means of false, misleading,
3 deceptive, and fraudulent representations to induce members of the public to
4 purchase the Products. Defendant participates in the making of such representations
5 in that it disseminates or causes to be disseminated said misrepresentations.

6 23. Defendant, upon becoming involved with the manufacture, distribution,
7 advertising, marketing, and sale of the Products, knew or should have known that
8 the claims about the Products and, in particular the claims suggesting that the
9 Products are “Texas” products, are fraudulent. Defendant affirmatively
10 misrepresents the nature and characteristics of the Products to convince the public to
11 purchase and consume the Products, resulting in significant profits to Defendant, all
12 to the damage and detriment of the consuming public.

13 **V. FACTUAL ALLEGATIONS**

14 **A. The Geographic Origin of a Product Is Important to Consumers**

15 24. Manufacturers and marketers use origin claims to distinguish their
16 products from other products, knowing consumers rely on the accuracy of those
17 claims in making their purchasing decisions. In fact, consumers are willing to pay
18 premium prices for Products that are authentically connected to a significant
19 geographical area. Some well-known examples of premium origin products are
20 authentic Mexican tortillas, Belgian Chocolate, and Napa, California wines.

21 25. **Consumers Legal Remedies Act.** Due to the import consumers put on
22 origin advertising claims, the California state legislature has outlawed using
23 “deceptive representations or designations of geographic origin in connection with
24 goods or services.” Cal. Civ. Code § 1770(a)(4).

25 26. **FTC Guidelines.** The United States Federal Trade Commission
26 (“FTC”) similarly created standards regarding origin claims to help companies
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1 avoid making misleading and deceptive claims.² If a product is advertised as “Made
2 in USA,” then “all or virtually all” of the product must be made in the United
3 States.³ Specifically, the FTC stated:

4 In connection with promoting or offering for sale any good or service . . .
5 it is an unfair or deceptive act or practice . . . to label any product as
6 Made in the United States unless the final assembly or processing of the
7 product occurs in the United States, all significant processing that goes
8 into the product occurs in the United States, and all or virtually all
9 ingredients or components of the product are made and sourced in the
10 United States.

11 16 C.F.R. § 323.2.

12 27. **Case Law.** Courts around the country find cases involving false and
13 deceptive origin advertising claims meritorious. *See, e.g., De Dios Rodriguez v. Ole*
14 *Mexican Foods*, 2021 U.S. Dist. LEXIS 85725 (C.D. Cal. Apr. 22, 2021) ([Hon.
15 Jesus G. Bernal] denying defendant’s motion to dismiss because the plaintiff
16 plausibly alleged the statement “*A Taste of Mexico!*” and an image of a *Mexican*
17 *flag* may reasonably convey the products are made in Mexico) (emphasis added);
18 *Shalikaar v. Asahi Beer U.S.A.*, 2017 U.S. Dist. LEXIS 221388 (C.D. Cal. Oct. 16
19 2017) ([Judge John A. Kronstadt] denying defendant’s motion to dismiss because
20 plaintiff plausibly alleged that the “Asahi” brand name (Japanese word meaning
21 “morning sun”) combined with various Japanese letters and phrases “could give rise
22 to a reasonable inference or belief that the Product was produced in Japan,” even
23 though the product label does not directly state “Made in Japan.”); *Hesse v. Godiva*
24 *Chocolatier, Inc.*, 463 F. Supp. 3d 453 (S.D.N.Y. 2020) (denying defendant’s
25 motion to dismiss because the court could not conclude, as a matter of law, that no
26 reasonable consumer would view the “Belgium 1926” label to mean the chocolate
27 products were manufactured in Belgium); *Peacock v. Pabst Brewing Co., LLC*, 491

28 ² *See* Federal Trade Commission, *Complying with the MADE IN USA STANDARD*,
<https://www.ftc.gov/system/files/documents/plain-language/bus03-complying-made-usa-standard.pdf>. (last visited Sep. 7, 2022); *see also generally* 16 C.F.R. §
323.2—Made in USA Labeling; 62 FR 63756-01, 1997 WL 737641.

³ *Id.*

1 F. Supp. 3d 713 (E.D. Cal. Oct. 1, 2020) (holding defendant’s “*Olympia Beer*”
2 brand name, coupled with an image of a waterfall that looked “just like” a waterfall
3 from Olympia, Washington, could deceive reasonable consumers, even though the
4 packaging did not contain a map pinpointing the alleged misrepresentation or an
5 explicit statement regarding origin (emphasis added); “at this early stage, the Court
6 must take Plaintiff’s allegations as true and draw all reasonable inferences in his
7 favor. Although Olympia’s packaging does not contain a map pinpointing the
8 alleged misrepresentation or an explicit statement regarding origin, Plaintiff alleges
9 enough facts to draw a reasonable inference that a reasonable consumer would
10 believe Olympia Beer is brewed with water from the Olympia area of
11 Washington.”); *Broomfield v. Craft Brew Alliance, Inc.*, 2017 U.S. Dist. LEXIS
12 142572 (N.D. Cal. Sept. 1, 2017) (finding inexplicit packaging and labeling
13 statements and imagery that related to Hawaii, when taken in context, “amount to
14 specific and measurable representations that could deceive consumers into believing
15 that they were purchasing beer made in Kona, Hawaii,” where such marketing
16 claims included: a front label image of the Hawaiian island chain alongside the
17 phrase “*Liquid Aloha*” and packaging *imagery of hula dancers and nature*
18 associated with Hawaii (such as orchids, flowers, volcanoes, palm trees, surfers,
19 canoes, waterfalls); “*Hawaii is a state as well as a state of mind*”) (emphasis
20 added).

21 28. California law, FTC guidelines, and the overwhelming majority of case
22 law show that accurate origin claims are important to consumers and that consumers
23 are willing to pay a premium for products labeled as such.

24 **B. Consumer Demand for Authentic Texas Products and Hot Sauce**

25 29. **Hot Sauce Background.** Hot sauce is a \$3 billion industry worldwide,⁴

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27 ⁴ *Hot Sauce Market to Hit USD 4.72 Billion in 2029*, Fortune Business Insights,
28 <https://www.globenewswire.com/en/news-release/2022/05/19/2446546/0/en/Hot-Sauce-Market-to-Hit-USD-4-72-Billion-in-2029-Incising-Demand-for-Healthy-Appesement-to-Spur-Product-Sale.html> (last visited Sep. 12, 2022).

1 and a \$1.5 billion industry in the United States alone.⁵ The hot sauce industry is so
2 large, in part, because of the wide variety of hot sauces there are for consumers to
3 choose from.

4 30. Hot sauces often differ based on their particular style and geographic
5 influence. In the United States, the most common (and familiar) style of hot sauce is
6 the “Louisiana-style” hot sauce.⁶ Louisiana-style hot sauce is defined by its
7 combination of ingredients—vinegar, chiles, and salt—which are pureed and
8 fermented.⁷ Many of the most popular hot sauce brands are Louisiana-style hot
9 sauces: Tabasco®, Frank’s Red Hot®, and, notably, Texas Pete®.⁸

10 31. “Louisiana-style,” however, is purely a reference to the combination of
11 ingredients used to create a hot sauce; it does not indicate either (1) that the product
12 was made in Louisiana, or (2) the ingredients used in the product came from
13 Louisiana. For example, Mexican hot sauce brands, like Cholula® and Valentina®,
14 are often classified as Louisiana-style hot sauces because of their combination of
15 peppers, vinegar, and salt.⁹ So, a Mexican hot sauce may be Louisiana-style hot
16 sauce because of its general formula, but the flavor profile is uniquely Mexican
17 because of the source of peppers used to make the product (Mexico is home to many
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21 ⁵ *Hot Sauce Production in the US*, IBIS WORLD,
22 <https://www.ibisworld.com/industry-statistics/market-size/hot-sauce-production-unitedstates/#:~:text=The%20market%20size%2C%20measured%20by,decline%20%2D0.4%25%20in%202021> (last visited Sep. 7, 2022).

24 ⁶ Sammy Goldfien, *The Hot Sauce Field Guide*,
25 <https://www.foodandwine.com/lifestyle/hot-sauce-field-guide> (last visited Sep. 7, 2022).

26 ⁷ *Id.*

27 ⁸ *Id.*

28 ⁹ *Id.* See also Aaron Hutcherson, *A Hot Sauce Guide with Tips for how to use 8 Common Styles*, <https://www.washingtonpost.com/food/2021/06/18/hot-sauce-styles-guide/> (last visited Sep. 7, 2022).

1 native peppers),¹⁰ the ratio of the ingredients used, and the manufacturing location.¹¹
 2 To illustrate, Valentina® hot sauce is a Louisiana-style hot sauce (its four primary
 3 ingredients are water, chili peppers, vinegar, and salt),¹² but Valentina® is correctly
 4 labeled as a “Mexican Hot Sauce” because the product is made in Mexico.¹³

5 **32. Texas Hot Sauce and History.** A hot sauce is distinctly “Texas” if it is
 6 made in Texas, using Texas ingredients and flavor profiles. Texas hot sauce is not a
 7 “style” of hot sauce like Louisiana-style sauces. A hot sauce can be Louisiana-style
 8 without being made in Louisiana or containing Louisiana ingredients. Texas hot
 9 sauces, on the other hand, must be either made in Texas from ingredients sourced
 10 from Texas. A Texas hot sauce can be Louisiana-style, but it must have its own
 11 unique Texas influence and roots.¹⁴

12 **33.** Texas foods and flavors, like many other things in Texas, are unique to
 13 their geographic location and culture. For example, Texas’s hot, dry climate is ideal
 14 for pepper production.¹⁵ For this reason, the pepper has become the backbone for a
 15 great deal of Texas cuisine. To illustrate, the chiltepin pepper, the only wild chili
 16 that is native to the United States, was designated the official native pepper of Texas
 17 in 1997.¹⁶ Additionally, Texas declared the jalapeño its official state pepper in
 18

19 ¹⁰ Refining Fire Chiles, <https://www.superhotchiles.com/native-chiles/?v=7516fd43adaa>, (last visited Sep. 7, 2022).

20 ¹¹ Hutcherson, *supra* note 9 (Mexican hot sauces are slightly less acidic, and
 21 therefore have more flavor from the chiles and slightly less tang).

22 ¹² Valentina website: <https://www.salsavalentina.com> (last visited Sep. 7, 2022).

23 ¹³ *Id.*

24 ¹⁴ *Hot Sauce*, TexasFood.com, <https://www.texasfood.com/Hot-Sauce/> (last visited
 25 Aug. 23, 2022) (“Hot sauces made in Texas are typically Louisiana style, vinegar
 26 based.”); *see also* Sammy Goldfien, *supra* note 6 (classifying the Products a
 27 “Louisiana-style” hot sauce).

28 ¹⁵ Joseph Masabni, *Peppers*, TEXAS A&M AGRILIFE EXTENSION,
<https://agrillifeextension.tamu.edu/library/gardening/peppers/> (last visited Sep. 7,
 2022).

¹⁶ *Chiltepin Pepper Guide: Heat, Flavor, Uses*,
<https://www.pepperscale.com/chiltepin-pepper/> (last visited Sep. 7, 2022);

1 1995.¹⁷ The only other U.S. state that has declared a pepper as a state symbol is
2 New Mexico.

3 34. Texas is also known for its unique “Tex-Mex” cuisine, a distinctly
4 Texan fusion of Spanish and Native American elements.¹⁸ Before Europeans arrived
5 in the 1500’s, the territory now known as Texas was inhabited by Native
6 Americans.¹⁹ When the Spanish settlers arrived, Texas became a part of a Spanish
7 colony known as “New Spain.”²⁰ When Texas officially won its independence and
8 became a U.S. state in 1845, it brought with it generations of blended Native
9 American and Spanish tradition.²¹ This tradition led to many Tex-Mex classics like
10 chili, nachos, enchiladas, and fajitas—foods that were originally considered
11 Mexican dishes but eventually gave way to American influence.²²

12 35. Hot sauce is closely associated with Tex-Mex cuisine. Since Tex-Mex
13 cuisine heavily relies on the use of chili peppers and spice, this cuisine lends itself
14 well to sauces made with similar flavor compositions.²³

15 36. After crafting a flavor profile that is uniquely Texas over several
16 hundred years, it is no surprise that Texas takes great pride in its hot sauce. Texas
17 holds many festivals dedicated to its hot sauce and peppers (e.g., Texas Hot Sauce
18 Festival, Hot Pepper Festival, Fredericksburg Hot Sauce Festival, and Zest Fest) to
19 exchange recipes, advertise new products, and convene in honor of a shared interest

20 _____
21 *Chiltepin, Texas State Native Pepper*, <https://statesymbolsusa.org/symbol-official-item/texas/state-food-agriculture-symbol/chiltepin> (last visited Sep. 7, 2022).

22 ¹⁷ *Jalapeño, Texas State Pepper*, <https://statesymbolsusa.org/symbol-official-item/texas/state-food-agriculture-symbol/jalapeño> (last visited Sep. 7, 2022).

23 ¹⁸ *Tracing the History of Tex-Mex*, <https://www.history.com/news/tracing-the-history-of-tex-mex> (last visited Sep. 7, 2022).

24 ¹⁹ *Id.*

25 ²⁰ *Id.*

26 ²¹ *Id.*

27 ²² *Id.*

28 ²³ *What is Tex-Mex Food—And What Makes This Style Iconic?*

<https://www.tasteofhome.com/article/what-is-tex-mex-food/> (last visited September 7, 2022).

1 of the condiment.²⁴

2 37. Given that the flavors of Texas are so iconic, it is easy to see why there
3 is consumer appeal for Texas-made products. Ultimately, Defendant trades on the
4 reputation and fascination of Texas by giving consumers the impression that its
5 Products are Texas-made, when the truth is, there is nothing “Texas” about them.

6 **C. The Products Are not Made in “Texas” or With Texas Ingredients**

7 38. Defendant’s labeling and advertising campaign is overloaded with
8 references to Texas. Through this false and deceptive labeling scheme, Defendant
9 intentionally and strategically misleads consumers into believing that the Products
10 are made in Texas.

11 39. **False and Deceptive Brand Name.** Defendant’s “Texas Pete” brand
12 name, which is featured in large, prominent, italicized font, front-and-center on each
13 of the Products’ front labels, misleads reasonable consumers to believe that the
14 Products are made in Texas from ingredients sourced from Texas.

15 40. **Other False and Deceptive Label Attributes.** Right above the “Texas
16 Pete” brand name/logo, Defendant prominently places a stereotypically white Texas
17 “lone star,” reminiscent of the Texas state flag. Texas is uniquely associated with
18 this single white star; indeed, the flag is commonly referred to as the “Lone Star
19 Flag” and it gave rise to the state’s equally renowned, official nickname: “The Lone
20 Star State.”

21 41. Defendant also prominently displays a notorious Texan cowboy
22 throwing a lasso on the front label of the Products. This cowboy logo is also etched
23 into the glass directly on the front of the bottle.

24 42. The cowboy and lone star symbols are famously and inexorably linked
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28 ²⁴ *World Calendar of Hot Sauce Festivals*, CRAFT HOT SAUCE (June 24, 2021),
<https://info.crafthotsauce.com/world-calendar-of-hot-sauce-festivals/>.

1 to the state of Texas,²⁵ especially when, viewed in context, they are featured
2 alongside a brand name as geographically specific as “Texas Pete.”

3 43. **North Carolina Manufacturing.** Defendant manufactures the Products
4 in Winston-Salem, North Carolina, and has since the inception of the brand.

5 44. **Non-Texas Ingredients.** Defendant uses ingredients that are not
6 sourced from Texas to manufacture the Products. In fact, on its website, Defendant
7 readily admits having no connection to Texas, while it is decidedly not forthcoming
8 about this on the Products or elsewhere at the point of purchase.

9 45. In short, despite advertising and labeling the Products as “Texas”
10 products, there is nothing Texas about the Products whatsoever.

11 46. Defendant continues to profit from its deceptive labeling and advertising
12 of the Products as hot sauces made in Texas at the expense of unsuspecting
13 consumers who pay a premium for authenticity.

14 **D. Defendant Knows Its Labeling and Advertising Are Misleading to**
15 **the Reasonable Consumer**

16 47. Consumers expect to receive truthfully labeled goods from a reliable,
17 well-known brand like Texas Pete. Defendant has been manufacturing and selling
18 the Products for nearly a century. Relying on this goodwill, Defendant intentionally

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20 ²⁵ See, e.g., *Authentic Texas Cowboy Experience*, LET’S TEXAS,
21 [https://www.traveltexas.com/things-to-do/western-experience/where-to-go-for-an-](https://www.traveltexas.com/things-to-do/western-experience/where-to-go-for-an-authentic-texas-cowboy-experience/)
22 [authentic-texas-cowboy-experience/](https://www.traveltexas.com/things-to-do/western-experience/where-to-go-for-an-authentic-texas-cowboy-experience/) (last visited Sep. 7, 2022) (“**cowboy culture in**
23 **Texas has a long and proud history.**”); *Cowboys Through History*, TEXAS
24 HIGHWAYS, [https://texashighways.com/travel-news/a-visual-history-of-cowboys-in-](https://texashighways.com/travel-news/a-visual-history-of-cowboys-in-texas/)
25 [texas/](https://texashighways.com/travel-news/a-visual-history-of-cowboys-in-texas/) (last visited Sep. 7, 2022); **TEXAS COWBOY HALL OF FAME**,
26 <https://www.tchhof.com/> (last visited September 7, 2022) (“Texas Cowboy Hall of
27 Fame honors those individuals who have shown excellence in competition, business
28 and support of rodeo and western lifestyle in Texas.”); *Cowboy Capital of the*
29 *World*, BANDERA COWBOY CAPITAL, <https://www.banderacowboycapital.com/> (last
30 visited Sep. 7, 2022); *Cowboys*, TEXAS PARKS & WILDLIFE,
31 [https://tpwd.texas.gov/education/resources/keep-texas-wild/vaqueros-and-](https://tpwd.texas.gov/education/resources/keep-texas-wild/vaqueros-and-cowboys/cowboys/)
32 [cowboys/cowboys](https://tpwd.texas.gov/education/resources/keep-texas-wild/vaqueros-and-cowboys/cowboys/) (last visited Sep. 7, 2022). Texas is also home to the world-
33 famous NFL franchise, the Dallas Cowboys.

1 misleads consumers in California and nationwide to believe that the Products are
2 Texas products.

3 48. **Defendant’s Website.** Defendant admits that its Products are advertised
4 as Texas Products. On the “About” tab on Defendant’s website, Defendant admits
5 that it knows (and has always known) its Product labeling is false and deceptive.
6 Defendant asks website visitors, “[s]o how is it that a tasty red pepper sauce made in
7 North Carolina happens to be named ‘Texas Pete’ anyway?” The answer is simple:
8 when trying to think of a name, Defendant’s founders chose Texas because it “had a
9 reputation for spicy cuisine.” In revealing the thought process behind its brand
10 name, Defendant admits that Texas’s reputation was one they were trying to mimic
11 and capitalize on when creating their brand. A true and correct image taken from
12 Defendant’s Website is depicted below.²⁶

The History of Texas Pete

Before the first drop of Texas Pete hot sauce was ever tasted, there was a dream in the great imaginations of the Garner family. Here’s their story.

THE YEAR WAS 1929.

“So how is it that a tasty red pepper sauce made in North Carolina happens to be named ‘Texas Pete’ anyway?” Legend has it that, when Sam Garner and his three sons, Thad, Ralph and Harold, were trying to come up with a brand name for this spicy new sauce they had created, a marketing advisor suggested the name “Mexican Joe” to connote the piquant flavor reminiscent of the favorite foods of our neighbors to the south. “Nope!” said the patriarch of the Garner family. “It’s got to have an American name!” Sam suggested they move across the border to Texas, which also had a reputation for spicy cuisine. Then he glanced at son Harold, whose nickname was “Pete” and the Texas Pete cowboy was born. Movie cowboys were very popular in the 1930’s, men like Tom Mix and Hopalong Cassidy, representing a sort of universal image of rugged independence and self-reliance, the perfect ideal for a family business trying to survive tough times. Actually, Texas Pete Hot Sauce was not the first product the Garner family made and sold. That distinction belonged to Garners’ Barbecue Sauce.

²⁶ <https://texaspete.com/about/>

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49. Another true and correct screenshot of Defendant’s website, which highlights an article featuring this admission, is reproduced below.²⁷ The article starts out, “[w]ith a name like Texas Pete, one would think the famed hot sauce is manufactured somewhere in the Lone Star state . . .”



50. **Reasonable Consumer’s Perception.** Defendant’s labeling and advertising deceives reasonable consumers, like Plaintiff, into believing that the Products are Texas products, i.e., their ingredients are sourced in Texas, and the finished Products are manufactured in Texas.

51. In fact, consumers are shocked when they discover the Products are not in fact made in Texas. One Tik Tok user exclaimed: “Stop! Texas Pete isn’t from Texas? You’re just making things up now . . . why isn’t it called [] Carolina Pete’s or something?”²⁸

²⁷ <https://texaspete.com/how-texas-pete-got-its-name-the-legend-of-texas-pete-sort-of-2013/>

²⁸ See @ncmuseumofhistory, Tik-Tok, https://www.tiktok.com/@ncmuseumhistory/video/7054985211725073711?is_from

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52. Similarly, another author stated that her “mind [was] blown” when she found out that the Products are not from Texas.²⁹

53. There is no indication on the Products’ front labels that they are manufactured outside of Texas, let alone in North Carolina.

54. Consumers do not view the back label of the Products when purchasing everyday food items such as hot sauce. The Product’s label and advertising indicates it is a Texas hot sauce manufactured in Texas with ingredients sourced from Texas. So, Plaintiff did not view the Product’s back label prior to purchasing the Product.

55. By falsely and deceptively labeling its Products, Defendant not only takes advantage of the Texas reputation, but it goes against honest industry practice

²⁹ [webapp=v1&item_id=7054985211725073711&web_id=6957459250235344390](https://www.wideopeneats.com/texas-pete-hot-sauce/) (last visited Sep. 7, 2022).

²⁹ See Erica Landis, *Texas Pete Hot Sauce Isn’t From The Lone Star State*, WIDE OPEN EATS, <https://www.wideopeneats.com/texas-pete-hot-sauce/> (last visited Sep. 12, 2022).

1 and unfairly competes with its lawfully acting competitors.

2 56. **Reliance.** During the course of its false, misleading, and deceptive
3 advertising campaign, Defendant has sold millions of the Products based upon its
4 misrepresentations. Plaintiff and the Class have suffered injury in fact and have lost
5 money as a result of Defendant's false representations.

6 57. Because of the history and popularity of Texas hot sauce, the Products'
7 false and deceptive labeling would lead the reasonable consumer to believe the
8 Products are in fact from Texas.

9 58. **No Legitimate Business Reason.** There is no practical reason for the
10 false or misleading labeling and advertising of the Products, other than to mislead
11 consumers as to the actual origin of the Products. Through such false and
12 misleading advertising, consumers purchase Texas Pete Products incorrectly
13 thinking they are of Texan origin, thus providing Defendant with a financial
14 windfall.

15 59. Even if a consumer conducted an extremely close review of the
16 Products' back labels, nothing would overcome the reasonable impression given by
17 the front label that the Products are indeed made in Texas. While the Product states
18 the name and location of TW Garner Food Co., it does not say "made in" or
19 "manufactured in" North Carolina anywhere on the label. Rather, it says "Product of
20 the U.S.A.," which merely conforms with the reasonable understanding that the
21 Product is made in Texas. A true and correct image of the Products' back label is
22 depicted below:



27 60. Defendant's own interpretation of the Products' labels as indicative of
28 Texas origin indicates a probability that a significant portion of the general

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1 consuming public, acting reasonably under the circumstances, would have the same
2 interpretation: that the Products are manufactured in Texas, using Texas ingredients.

3 61. At all relevant times, Defendant has packaged, advertised, marketed,
4 distributed, and sold the Products to consumers throughout California and the nation
5 based on the misrepresentation that the Products are made in Texas, when they
6 actually are not—Texas Pete Products are made in North Carolina.

7 **E. Defendant’s Conduct Unfairly Harms Competition**

8 62. The demand for Texas hot sauce is steadily increasing and the market is
9 poised for growth.

10 63. New companies, often with significantly fewer resources than
11 Defendant, are working hard to break into a market already heavily saturated with
12 competition.

13 64. Yet many of these companies have a hard time competing with major,
14 established companies like Defendant—since consumers are unaware what
15 distinguishes these “Texas” hot sauces.

16 65. Other hot sauce brands that advertise an association with Texas are, in
17 fact, made in Texas.

18 66. For example, Truly Texas hot sauces have a similar “Texas” brand name
19 and feature portions of the Texas state flag. But Truly Texas, true to its brand name,
20 are manufactured in Houston, Texas. A true and correct image of the Truly Texas,
21 Texas Fire Water product is depicted below.³⁰

22 //
23 //
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27 _____
28 ³⁰ <https://trulytexasfoods.com/product/texas-fire-water-hot-pepper-sauce/> (last visited Sep. 7, 2022).

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67. Similarly, Tears of Joy’s “August in Austin” hot sauce is another popular Texas hot sauce. This hot sauce contains even less Texas imagery on its front label than the Products, but Tears of Joy is actually made in Texas, as advertised. A true and correct image of the Tears of Joy’s August in Austin product is depicted below:³¹

³¹ <https://www.tearsofjoysauces.com/products/tears-of-joy-hot-sauce-shop-august-in-austin-hot-sauce?variant=25735899976> (last visited September 7, 2022).

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68. Makers of authentic Texas-made hot sauces are losing out on a large portion of the consumer market, because many people purchase the Products, instead of lawful competitor products, due to Defendant’s false and deceptive labeling.

69. This stifling impact on competition harms consumers and law-abiding brands who play by the rules and threatens market competition and growth. It also leaves consumers with *less choice*, making it *more likely* they will be duped into buying Texas Pete, reasonably, but incorrectly, thinking it is the authentic Texas hot sauce they desire. Less choice also causes consumers to pay higher prices at the cash register.

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1 **F. The Products are Substantially Similar**

2 70. As described herein, Plaintiff purchased the Texas Pete Original Hot
3 Sauce (the “Purchased Product”). The additional Products (collectively, the
4 “Unpurchased Products”) are substantially similar to the Purchased Product.

- 5 a. **Defendant.** All Products are manufactured, sold, marketed, advertised,
6 labeled, and packaged by Defendant.
- 7 b. **Brand.** All Products are sold under the same brand name: Texas Pete®.
- 8 c. **Purpose.** All Products are hot sauces used to provide flavoring to food
9 (Texas-style flavor).
- 10 d. **Deceptive Labeling.** All Products implement the same deceptive
11 labeling—including the brand name “Texas Pete,” the lone star image,
12 and the Texas cowboy image. But none of the Products are made in
13 Texas or with Texas ingredients.
- 14 e. **Misleading Effect.** The misleading effect of the labeling and marketing
15 on consumers is the same for all Products—consumers over-pay a
16 premium for authentic Texas products but receive Products that are not
17 made in Texas or using Texas ingredients in violation of well-
18 established state and federal law.

19 **G. No Adequate Remedy at Law.**

20 71. Plaintiff and members of the Class are entitled to equitable relief as no
21 adequate remedy at law exists.

- 22 a. **Broader Statutes of Limitations.** The statutes of limitations for
23 the causes of action pled herein vary. The limitations period is
24 four years for claims brought under the UCL, which is one year
25 longer than the statutes of limitations under the FAL and CLRA.
26 In addition, the statutes of limitations vary for certain states’ laws
27 for breach of warranty and unjust enrichment/restitution, between
28 approximately 2 and 6 years. Thus, California Subclass members

1 who purchased the Products more than 3 years prior to the filing
2 of the complaint will be barred from recovery if equitable relief
3 were not permitted under the UCL. Similarly, Nationwide Class
4 members who purchased the Products prior to the furthest reach-
5 back under the statute of limitations for breach of warranty, will
6 be barred from recovery if equitable relief were not permitted for
7 restitution/unjust enrichment.

- 8 b. **Broader Scope of Conduct.** In addition, the scope of actionable
9 misconduct under the unfair prong of the UCL is broader than the
10 other causes of action asserted herein. It includes, for example,
11 Defendant's overall unfair marketing scheme to promote and
12 brand the Products as Texas products, across a multitude of media
13 platforms, including the Products' labels and packaging, over a
14 long period of time, in order to gain an unfair advantage over
15 competitor products and to take advantage of consumers' desire
16 for products that comport with the labeling and advertising. The
17 UCL also creates a cause of action for violations of law (such as
18 statutory or regulatory requirements and court orders related to
19 similar representations and omissions made on the type of
20 products at issue). Thus, Plaintiff and Class members may be
21 entitled to restitution under the UCL, while not entitled to
22 damages under other causes of action asserted herein (e.g., the
23 FAL requires actual or constructive knowledge of the falsity; the
24 CLRA is limited to certain types of plaintiffs (an individual who
25 seeks or acquires, by purchase or lease, any goods or services for
26 personal, family, or household purposes) and other statutorily
27 enumerated conduct). Similarly, unjust enrichment/restitution is
28 broader than breach of warranty. For example, in some states,

1 breach of warranty may require privity of contract or pre-lawsuit
2 notice, which are not typically required to establish unjust
3 enrichment/restitution. Thus, Plaintiff and Class members may be
4 entitled to recover under unjust enrichment/restitution, while not
5 entitled to damages under breach of warranty, because they
6 purchased the products from third-party retailers or did not
7 provide adequate notice of a breach prior to the commencement
8 of this action.

9 c. **Injunctive Relief to Cease Misconduct and Dispel**

10 **Misperception.** Injunctive relief is appropriate on behalf of
11 Plaintiff and members of the Class because Defendant continues
12 to misrepresent the Products as alleged herein. Injunctive relief is
13 necessary to prevent Defendant from continuing to engage in the
14 unfair, fraudulent, and/or unlawful conduct described herein and
15 to prevent future harm—none of which can be achieved through
16 available legal remedies (such as monetary damages to
17 compensate past harm). Further, injunctive relief, in the form of
18 affirmative disclosures is necessary to dispel the public
19 misperception about the Products that has resulted from years of
20 Defendant’s unfair, fraudulent, and unlawful marketing efforts.
21 Such disclosures would include, but are not limited to, publicly
22 disseminated statements that the Products labeling and advertising
23 is not true and providing accurate information about the Products’
24 true nature; and/or requiring prominent qualifications and/or
25 disclaimers on the Products’ front label concerning the Products’
26 true nature. An injunction requiring affirmative disclosures to
27 dispel the public’s misperception, and prevent the ongoing
28 deception and repeat purchases based thereon, is also not

1 available through a legal remedy (such as monetary damages). In
2 addition, Plaintiff is *currently* unable to accurately quantify the
3 damages caused by Defendant’s future harm, because discovery
4 and Plaintiff’s investigation has not yet completed, rendering
5 injunctive relief all the more necessary. For example, because the
6 court has not yet certified any class, the following remains
7 unknown: the scope of the class, the identities of its members,
8 their respective purchasing practices, prices of past/future Product
9 sales, and quantities of past/future Product sales.

- 10 d. **Public Injunction.** Further, because a “public injunction” is
11 available under the UCL, damages will not adequately “benefit
12 the general public” in a manner equivalent to an injunction.
- 13 e. **California vs. Nationwide Class Claims.** Violation of the UCL,
14 FAL, and CLRA are claims asserted on behalf of Plaintiff and the
15 California Subclass against Defendant, while breach of warranty
16 and unjust enrichment/restitution are asserted on behalf of
17 Plaintiff and the Nationwide Class. Dismissal of farther-reaching
18 claims, such as restitution, would bar recovery for non-California
19 members of the Class. In other words, legal remedies available or
20 adequate under the California-specific causes of action (such as
21 the UCL, FAL, and CLRA) have no impact on this Court’s
22 jurisdiction to award equitable relief under the remaining causes
23 of action asserted on behalf of non-California putative class
24 members.
- 25 f. **Procedural Posture—Incomplete Discovery & Pre-**
26 **Certification.** Lastly, this is an initial pleading in this action and
27 discovery has not yet commenced and/or is at its initial stages. No
28 class has been certified yet. No expert discovery has commenced

1 and/or completed. The completion of fact/non-expert and expert
 2 discovery, as well as the certification of this case as a class action,
 3 are necessary to finalize and determine the adequacy and
 4 availability of all remedies, including legal and equitable, for
 5 Plaintiff's individual claims and any certified class or subclass.
 6 Plaintiff therefore reserves his right to amend this complaint
 7 and/or assert additional facts that demonstrate this Court's
 8 jurisdiction to order equitable remedies where no adequate legal
 9 remedies are available for either Plaintiff and/or any certified
 10 class or subclass. Such proof, to the extent necessary, will be
 11 presented prior to the trial of any equitable claims for relief and/or
 12 the entry of an order granting equitable relief.

13 **VI. CLASS ACTION ALLEGATIONS**

14 72. **Class Definition.** Plaintiff brings this action as a class action pursuant to
 15 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all
 16 others similarly situated, and as members of the Classes defined as follows:

17 All residents of the United States who, within the applicable statute of
 18 limitations periods, purchased the Products for purposes other than resale
 19 ("**Nationwide Class**"); and

20 All residents of California who, within four years prior to the filing of this
 21 Complaint, purchased the Products for purposes other than resale ("**California
 22 Subclass**").

23 ("**Nationwide Class**" and "**California Subclass**," collectively, "**Class**").

24 73. **Class Definition Exclusions.** Excluded from the Class are: (i)
 25 Defendant, its assigns, successors, and legal representatives; (ii) any entities in
 26 which Defendant has controlling interests; (iii) federal, state, and/or local
 27 governments, including, but not limited to, their departments, agencies, divisions,
 28 bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any

1 judicial officer presiding over this matter and person within the third degree of
2 consanguinity to such judicial officer.

3 **74. Reservation of Rights to Amend the Class Definition.** Plaintiff
4 reserves the right to amend or otherwise alter the class definition presented to the
5 Court at the appropriate time in response to facts learned through discovery, legal
6 arguments advanced by Defendant, or otherwise.

7 **75. Numerosity.** The Class is comprised of many thousands of persons
8 throughout the State of California and nationwide. The Class is so numerous that
9 joinder of all members is impracticable and the disposition of their claims in a class
10 action will benefit the parties and the Court.

11 **76. Common Questions Predominate.** There are numerous and substantial
12 questions of law or fact common to all members of the Class that predominate over
13 any individual issues. Included within the common questions of law or fact are:

- 14 a. Whether Defendant engaged in unlawful, unfair, or deceptive business
15 practices by advertising and selling the Products as alleged herein;
- 16 b. Whether Defendant’s conduct of advertising and selling the Products as
17 Texan when they are not made in Texas constitutes an unfair method of
18 competition, or unfair or deceptive act or practice, in violation of Civil
19 Code section 1750, *et seq*;
- 20 c. Whether Defendant used deceptive representations in connection with
21 the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- 22 d. Whether Defendant represented that the Products have characteristics or
23 quantities that they do not have in violation of Civil Code section 1750,
24 *et seq.*;
- 25 e. Whether Defendant advertised the Products with intent not to sell them
26 as advertised in violation of Civil Code section 1750, *et seq.*

- 1 f. Whether Defendant’s labeling and advertising of the Products are untrue
- 2 or misleading in violation of Business and Professions Code section
- 3 17500, *et seq.*;
- 4 g. Whether Defendant knew or by the exercise of reasonable care should
- 5 have known its labeling and advertising was and is untrue or misleading
- 6 in violation of Business and Professions Code section 17500, *et seq.*;
- 7 h. Whether Defendant’s conduct is an unfair business practice within the
- 8 meaning of Business and Professions Code section 17200, *et seq.*;
- 9 i. Whether Defendant’s conduct is an unlawful business practice within
- 10 the meaning of Business and Professions Code section 17200, *et seq.*;
- 11 j. Whether Defendant’s conduct is a fraudulent business practice within
- 12 the meaning of Business and Professions Code section 17200, *et seq.*;
- 13 k. Whether Plaintiff and the Class paid more money for the Products than
- 14 they actually received;
- 15 l. How much more money Plaintiff and the Class paid for the Products
- 16 than they actually received;
- 17 m. Whether Defendant’s conduct constitutes breach of warranty;
- 18 n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- 19 o. Whether Defendant was unjustly enriched by their unlawful conduct.

20 77. **Typicality.** Plaintiff’s claims are typical of the claims of the proposed
21 Class, as the representations and omissions made by Defendant are uniform and
22 consistent and are contained in advertisements and on packaging that was seen and
23 relied on by Plaintiff and members of the class. Plaintiff’s and Class Members’
24 claims arise from the same practices and course of conduct and are based on the
25 same legal theories.

26 78. **Adequacy.** Plaintiff is an adequate representative of the Class he seeks
27 to represent because his interests do not conflict with the interests of the Class
28 Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect

1 Class Members' interests and has retained counsel experienced and competent in the
2 prosecution of complex class actions, including complex questions that arise in
3 consumer protection litigation.

4 79. **Superiority and Substantial Benefit:** A class action is superior to other
5 methods for the fair and efficient adjudication of this controversy, since individual
6 joinder of all members of the Class is impracticable and no other group method of
7 adjudication of all claims asserted herein is more efficient and manageable for at
8 least the following reasons:

- 9 a. The claims presented in this case predominate over any questions of law
10 or fact, if any exist at all, affecting any individual member of the Class;
- 11 b. Absent a Class, the members of the Class will continue to suffer damage
12 and Defendant's unlawful conduct will continue without remedy while
13 Defendant profits from and enjoy its ill-gotten gains;
- 14 c. Given the size of individual Class Members' claims, few, if any, Class
15 Members could afford to or would seek legal redress individually for the
16 wrongs Defendant committed against them, and absent Class Members
17 have no substantial interest in individually controlling the prosecution of
18 individual actions;
- 19 d. When the liability of Defendant has been adjudicated, claims of all
20 members of the Class can be administered efficiently and/or determined
21 uniformly by the Court; and
- 22 e. This action presents no difficulty that would impede its management by
23 the Court as a class action, which is the best available means by which
24 Plaintiff and Class Members can seek redress for the harm caused to
25 them by Defendant.

26 80. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of
27 the Class, the prosecution of separate actions by individual members would create a
28

1 risk of inconsistent or varying adjudications with respect to individual members of
2 the Class, which would establish incompatible standards of conduct for Defendant.

3 81. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class
4 action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met
5 as Defendant has acted or refused to act on grounds generally applicable to the
6 Class, thereby making appropriate final injunctive or equitable relief with respect to
7 the Class as a whole.

8 82. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any
9 difficulties that are likely to be encountered in the management of this action that
10 would preclude its maintenance as a class action.

11 **COUNT ONE**

12 **Violation of California Unfair Competition Law**

13 **(Cal. Bus. & Prof. Code §§ 17200, et seq.)**

14 **(On Behalf of the California Subclass)**

15 83. **Incorporation by Reference.** Plaintiff repeats and re-alleges the
16 allegations set forth in the preceding paragraphs and incorporates the same as if set
17 forth herein at length.

18 84. **California Subclass.** Plaintiff brings this cause of action pursuant to
19 Business and Professions Code Section 17200, *et seq.*, on his own behalf and a
20 California Subclass who purchased the Products within the applicable statute of
21 limitations.

22 85. **The UCL.** California Business & Professions Code, sections 17200, *et*
23 *seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that
24 “unfair competition shall mean and include unlawful, unfair or fraudulent business
25 practices and unfair, deceptive, untrue or misleading advertising.”

26 86. **False Advertising Claims.** Defendant in its advertising and packaging
27 of the Products makes false and misleading statements regarding the quality and
28 characteristics of the Products, particularly marketing and representing the Products

1 as Texan-made hot sauce. Such claims appear on the label, packaging, and
2 advertising of the Products, which are sold at retailers in the State of California and
3 across the nation, as well as on Defendant's official website.

4 87. **Deliberately False and Misleading.** Defendant does not have any
5 reasonable basis for its claims about the Products because the Products are not made
6 in Texas. Defendant knew and knows that the Products are not truly or
7 manufactured in Texas, yet Defendant intentionally advertised and marketed the
8 Products to deceive reasonable consumers into believing that Products are made in
9 Texas.

10 88. **False Advertising Claims Cause Purchase of Products.** Defendant's
11 labeling and advertising of the Products led to, and continues to lead to, reasonable
12 consumers, including Plaintiff, believing that the Products are made in Texas.

13 89. **Injury in Fact.** Plaintiff and the California Subclass have suffered
14 injury in fact and have lost money or property as a result of and in reliance upon
15 Defendant's False Advertising Claims—namely Plaintiff and the California
16 Subclass lost the purchase price for the Products they bought from the Defendant.

17 90. **Conduct Violates the UCL.** Defendant's conduct, as alleged herein,
18 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.
19 The UCL prohibits unfair competition and provides, in pertinent part, that "unfair
20 competition shall mean and include unlawful, unfair or fraudulent business practices
21 and unfair, deceptive, untrue or misleading advertising." Cal. Bus & Prof. Code §
22 17200. In addition, Defendant's use of various forms of advertising media to
23 advertise, call attention to, or give publicity to the sale of goods or merchandise that
24 are not as represented in any manner constitutes unfair competition, unfair,
25 deceptive, untrue or misleading advertising, and an unlawful business practice
26 within the meaning of Business and Professions Code Sections 17200 and 17531,
27 which advertisements have deceived and are likely to deceive the consuming public,
28 in violation of Business and Professions Code Section 17200.

1 **91. No Reasonably Available Alternatives/Legitimate Business**

2 **Interests.** Defendant failed to avail themselves of reasonably available, lawful
3 alternatives to further their legitimate business interests.

4 **92. Business Practice.** All of the conduct alleged herein occurred and
5 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of
6 a pattern, practice and/or generalized course of conduct, which will continue on a
7 daily basis until Defendant voluntarily alters its conduct or Defendant is otherwise
8 ordered to do so.

9 **93. Injunction.** Pursuant to Business and Professions Code Sections 17203
10 and 17535, Plaintiff and the members of the California Subclass seek an order of
11 this Court enjoining Defendant from continuing to engage, use, or employ its
12 practice of labeling and advertising the sale and use of the Products. Likewise,
13 Plaintiff and the members of the California Subclass seek an order requiring
14 Defendant to disclose such misrepresentations, and to preclude Defendant’s failure
15 to disclose the existence and significance of said misrepresentations.

16 **94. Causation/Damages.** As a direct and proximate result of Defendant’s
17 misconduct in violation of the UCL, Plaintiff and members of the California
18 Subclass were harmed in the amount of the purchase price they paid for the
19 Products. Further, Plaintiff and members of the California Subclass have suffered
20 and continue to suffer economic losses and other damages including, but not limited
21 to, the amounts paid for the Products, and any interest that would have accrued on
22 those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a
23 monetary award for violation of the UCL in damages, restitution, and/or
24 disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass
25 for said monies, as well as injunctive relief to enjoin Defendant’s misconduct to
26 prevent ongoing and future harm that will result.

27 **95. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
28 cause of action for violation of the UCL on behalf of Plaintiff and the California

1 Subclass. Defendant’s unfair, fraudulent, and unlawful conduct described herein
2 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
3 punitive damages as permitted by law. Defendant’s misconduct is malicious as
4 Defendant acted with the intent to cause Plaintiff and consumers to pay for Products
5 that they were not, in fact, receiving. Defendant willfully and knowingly
6 disregarded the rights of Plaintiff and consumers as Defendant was, at all times,
7 aware of the probable dangerous consequences of its conduct and deliberately failed
8 to avoid misleading consumers, including Plaintiff. Defendant’s misconduct is
9 oppressive as, at all relevant times, said conduct was so vile, base, and/or
10 contemptible that reasonable people would look down upon it and/or otherwise
11 would despise such corporate misconduct. Said misconduct subjected Plaintiff and
12 consumers to cruel and unjust hardship in knowing disregard of their rights.
13 Defendant’s misconduct is fraudulent as Defendant intentionally misrepresented
14 and/or concealed material facts with the intent to deceive Plaintiff and consumers.
15 The wrongful conduct constituting malice, oppression, and/or fraud was committed,
16 authorized, adopted, approved, and/or ratified by officers, directors, and/or
17 managing agents of Defendant.

18 A. “Unfair” Prong

19 96. **Unfair Standard.** Under California’s False Advertising Law, Cal. Bus.
20 & Prof. Code Section 17200, *et seq.*, a challenged activity is “unfair” when “any
21 injury it causes outweighs any benefits provided to consumers and the injury is one
22 that the consumers themselves could not reasonably avoid.” *Camacho v. Auto Club*
23 *of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

24 97. **Injury.** Defendant’s action of labeling and advertising the Products as if
25 they were made in Texas when they were not does not confer any benefit to
26 consumers. Defendant’s action of labeling and advertising the Products as if they
27 were made in Texas when they were not causes injuries to consumers who do not
28 receive Products they reasonably expected.

1 98. **Balancing Test.** Some courts conduct a balancing test to decide if a
2 challenged activity amounts to unfair conduct under California Business and
3 Professions Code Section 17200. In so doing, they “weigh the utility of the
4 Defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v.*
5 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

6 99. **No Utility.** Here, Defendant’s conduct of labeling the Products as
7 alleged herein when the Products are not made or manufactured in Texas has no
8 utility and financially harms purchasers. Thus, the utility of Defendant’s conduct is
9 vastly outweighed by the gravity of harm.

10 100. **Legislative Declared Policy.** Some courts hold that “unfairness must be
11 tethered to some legislative declared policy or proof of some actual or threatened
12 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735
13 (9th Cir. 2007).

14 101. The California Legislature has outlawed making misleading claims of
15 origin in connection with consumer good. Cal. Civ. Code § 1770(a)(4). Therefore,
16 Defendant’s unfair conduct is tethered to the legislative declared policy regarding
17 misleading claims of geographic origin.

18 102. **Unfair Conduct.** Defendant’s labeling and advertising of the Products,
19 as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes
20 unfair conduct. Defendant knew or should have known of its unfair conduct.
21 Defendant’s misrepresentations constitute an unfair business practice within the
22 meaning of California Business and Professions Code Section 17200.

23 103. **Reasonably Available Alternatives.** There existed reasonably available
24 alternatives to further Defendant’s legitimate business interests, other than the
25 conduct described herein. Defendant could have refrained from labeling the
26 Products as alleged herein.

27 104. **Defendant’s Wrongful Conduct.** All of the conduct alleged herein
28 occurs and continues to occur in Defendant’s business. Defendant’s wrongful

1 conduct is part of a pattern or generalized course of conduct repeated on thousands
2 of occasions daily.

3 105. **Injunction.** Pursuant to Business and Professions Code Sections 17203,
4 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant
5 from continuing to engage, use, or employ its practices of labeling the Products as
6 alleged herein.

7 106. **Causation/Damages.** Plaintiff and the California Subclass have
8 suffered injury in fact and have lost money as a result of Defendant's unfair
9 conduct. Plaintiff and the California Subclass paid an unwarranted premium for
10 these Products. Specifically, Plaintiff and the California Subclass paid for Texas
11 Pete Products that are not made in Texas. Plaintiff and the California Subclass
12 would not have purchased the Products, or would have paid substantially less for the
13 Products, if they had known that the Products' advertising and labeling were
14 deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of
15 ill-gotten gains pursuant to the UCL.

16 **B. "Fraudulent" Prong**

17 107. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits
18 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*
19 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

20 108. **Fraudulent & Material Challenged Representations.** Defendant
21 labeled and advertised the Products as alleged herein with the intent to sell the
22 Products to consumers, including Plaintiff and the California Subclass. The labeling
23 and advertising as alleged herein is false and Defendant knew or should have known
24 of its falsity. The labeling and advertising is likely to deceive consumers into
25 purchasing the Products because they are material to the average, ordinary, and
26 reasonable consumer.

1 actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D.
2 Cal. 2008).

3 116. **Violations of CLRA and FAL.** Defendant’s labeling of the Products,
4 as alleged herein, violates California Civil Code sections 1750, *et seq.* (the
5 “CLRA”) and California Business and Professions Code sections 17500, *et seq.* (the
6 “FAL”) as set forth below in the sections regarding those causes of action.

7 117. **Additional Violations.** Defendant’s conduct in making the false
8 representations described herein constitutes a knowing failure to adopt policies in
9 accordance with and/or adherence to applicable laws, as set forth herein, all of
10 which are binding upon and burdensome to their competitors. This conduct
11 engenders an unfair competitive advantage for Defendant, thereby constituting an
12 unfair, fraudulent and/or unlawful business practice under California Business &
13 Professions Code sections 17200-17208. Additionally, Defendant’s
14 misrepresentations of material facts, as set forth herein, violate California Civil
15 Code sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the common law.

16 118. **Unlawful Conduct.** Defendant’s packaging, labeling, and advertising of
17 the Products, as alleged herein, are false, deceptive, misleading, and unreasonable,
18 and constitute unlawful conduct. Defendant knew or should have known of its
19 unlawful conduct.

20 119. **Reasonably Available Alternatives.** Defendant had reasonably
21 available alternatives to further its legitimate business interests, other than the
22 conduct described herein. Defendant could have refrained from labeling the
23 Products as alleged herein.

24 120. **Business Practice.** All of the conduct alleged herein occurs and
25 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of
26 a pattern or generalized course of conduct.

27 121. **Injunction.** Pursuant to Business and Professions Code Section 17203,
28 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant

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1 from continuing to engage, use, or employ its practice of false and deceptive
2 advertising of the Products.

3 122. **Causation/Damages.** Plaintiff and the California Subclass have
4 suffered injury in fact and have lost money as a result of Defendant’s unlawful
5 conduct. Plaintiff and the California Subclass paid an unwarranted premium for the
6 Products. Plaintiff and the California Subclass would not have purchased the
7 Products if they had known that Defendant’s purposely deceived consumers into
8 believing that the Texas Pete Products are truly authentic Texan hot sauce.
9 Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten
10 gains pursuant to the UCL.

11 **COUNT TWO**

12 **Violation of California False Advertising Law**

13 **(Cal. Bus. & Prof. Code §§ 17500, et seq.)**

14 ***(On Behalf of the California Subclass)***

15 123. **Incorporation by reference.** Plaintiff repeats and re-alleges the
16 allegations set forth in the preceding paragraphs and incorporates the same as if set
17 forth herein at length.

18 124. **California Subclass.** Plaintiff brings this claim individually and on
19 behalf of the California Subclass who purchased the Products within the applicable
20 statute of limitations.

21 125. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. &
22 Prof. Code section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading
23 advertising[.]”

24 126. **False & Material Labeling and Advertising Disseminated to Public.**
25 Defendant violated section 17500 when it advertised and marketed the Products
26 through the unfair, deceptive, untrue, and misleading Texan origin representation
27 disseminated to the public through the Products’ labeling, packaging, and
28 advertising. These representations were false because the Products do not conform

1 to them. The representations were material because they are likely to mislead a
2 reasonable consumer into purchasing the Products.

3 127. **Knowledge.** In making and disseminating the representations alleged
4 herein, Defendant knew or should have known that the representations were untrue
5 or misleading, and acted in violation of § 17500.

6 128. **Intent to sell.** Defendant's labeling and advertising was specifically
7 designed to induce reasonable consumers, like Plaintiff and the California Subclass,
8 to purchase the Products.

9 129. **Causation/Damages.** As a direct and proximate result of Defendant's
10 misconduct in violation of the FAL, Plaintiff and members of the California
11 Subclass were harmed in the amount of the purchase price they paid for the
12 Products. Further, Plaintiff and members of the Class have suffered and continue to
13 suffer economic losses and other damages including, but not limited to, the amounts
14 paid for the Products, and any interest that would have accrued on those monies, in
15 an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for
16 violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains
17 to compensate Plaintiff and the California Subclass for said monies, as well as
18 injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future
19 harm that will result.

20 130. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful
21 conduct described herein constitutes malicious, oppressive, and/or fraudulent
22 conduct warranting an award of punitive damages as permitted by
23 law. Defendant's misconduct is malicious as Defendant acted with the intent to
24 cause Plaintiff and consumers to pay for Products that they were not, in fact,
25 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and
26 consumers as Defendant was aware of the probable dangerous consequences of its
27 conduct and deliberately failed to avoid misleading consumers, including
28 Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said

1 conduct was so vile, base, and/or contemptible that reasonable people would look
2 down upon it and/or otherwise would despise such corporate misconduct. Said
3 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in
4 knowing disregard of their rights. Defendant’s misconduct is fraudulent as
5 Defendant, at all relevant times, intentionally misrepresented and/or concealed
6 material facts with the intent to deceive Plaintiff and consumers. The wrongful
7 conduct constituting malice, oppression, and/or fraud was committed, authorized,
8 adopted, approved, and/or ratified by officers, directors, and/or managing agents of
9 Defendant.

10 **COUNT THREE**

11 **Violation of California Consumers Legal Remedies Act**

12 **(Cal. Civ. Code §§ 1750, et seq.)**

13 ***(On Behalf of the California Subclass)***

14 131. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
15 reference all allegations contained in this complaint, as though fully set forth herein.

16 132. **California Subclass.** Plaintiff brings this claim individually and on
17 behalf of the California Subclass who purchased the Products within the applicable
18 statute of limitations.

19 133. **CLRA Standard.** The CLRA provides that “unfair methods of
20 competition and unfair or deceptive acts or practices undertaken by any person in a
21 transaction intended to result or which results in the sale or lease of goods or
22 services to any consumer are unlawful.”

23 134. **Goods/Services.** The Products are “goods,” as defined by the CLRA in
24 California Civil Code §1761(a).

25 135. **Defendant.** Defendant is a “person,” as defined by the CLRA in
26 California Civil Code §1761(c).

27 136. **Consumers.** Plaintiff and members of the California Subclass are
28 “consumers,” as defined by the CLRA in California Civil Code §1761(d).

1 137. **Transactions.** The purchase of the Products by Plaintiff and members
2 of the California Subclass are “transactions” as defined by the CLRA under
3 California Civil Code section 1761(e).

4 138. **Violations of the CLRA.** Defendant violated the CLRA by selling the
5 Products to Plaintiff and the California Subclass through the false, misleading,
6 deceptive, and fraudulent labeling and advertising alleged herein: Section
7 1770(a)(4) by “[u]sing deceptive representations or designations of geographic
8 origin in connection with” the Products.

9 139. **Knowledge.** Defendant’s uniform and material representations and
10 omissions regarding the Products were likely to deceive, and Defendant knew or
11 should have known that its representations and omissions were untrue and
12 misleading.

13 140. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in
14 that Defendant intentionally misled and withheld material information from
15 consumers, including Plaintiff, to increase the sale of the Products.

16 141. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of
17 the California Subclass could not have reasonably avoided such injury. Plaintiff and
18 members of the California Subclass were unaware of the existence of the facts that
19 Defendant suppressed and failed to disclose, and Plaintiff and members of the
20 California Subclass would not have purchased the Products and/or would have
21 purchased them on different terms had they known the truth.

22 142. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass
23 suffered harm as a result of Defendant’s violations of the CLRA because they relied
24 on the labeling and advertising in deciding to purchase the Products. The labeling
25 and advertising was a substantial factor. The labeling and advertising was material
26 because a reasonable consumer would consider it important in deciding whether to
27 purchase the Products.
28

1 143. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California
2 Civil Code, section 1782, more than thirty days prior to the filing of this complaint,
3 on or about February 2, 2022 Plaintiff’s counsel, acting on behalf of Plaintiff White
4 and all members of the Class, mailed a Demand Letter, via U.S. certified mail,
5 return receipt requested, addressed to Defendant T.W. Garner Food Co. at its
6 headquarters and principal place of business (614 West 14th Street, Winston-Salem,
7 NC 27101) and its registered agent for service of process (Ann Garner Riddle, 4045
8 Indiana Avenue, Winston-Salem, NC 27101), which were delivered to those
9 addresses on or about February 14, 2022 and February 18, 2022, respectively. *See*
10 **Exhibit 2** [Pre-Lit Demand Letter].

11 144. **Causation/Damages.** As a direct and proximate result of Defendant’s
12 misconduct in violation of the CLRA, Plaintiff and members of the California
13 Subclass were harmed in the amount of the purchase price they paid for the
14 Products. Further, Plaintiff and members of the Class have suffered and continue to
15 suffer economic losses and other damages including, but not limited to, the amounts
16 paid for the Products, and any interest that would have accrued on those monies, in
17 an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for
18 violation of this Act in the form of damages, restitution, disgorgement of ill-gotten
19 gains to compensate Plaintiff and the California Subclass for said monies.

20 145. **Injunction.** Given that Defendant’s conduct violated California Civil
21 Code section 1780, Plaintiff and members of the California Subclass are entitled to
22 seek, and do hereby seek, injunctive relief to put an end to Defendant’s violations of
23 the CLRA and to dispel the public misperception generated, facilitated, and fostered
24 by Defendant’s false advertising campaign. Plaintiff has no adequate remedy at law.
25 Without equitable relief, Defendant’s unfair and deceptive practices will continue to
26 harm Plaintiff and the California Subclass. Accordingly, Plaintiff seeks an
27 injunction to enjoin Defendant from continuing to employ the unlawful methods,
28 acts, and practices alleged herein pursuant to section 1780(a)(2), and otherwise

1 require Defendant to take corrective action necessary to dispel the public
2 misperception engendered, fostered, and facilitated through Defendant’s deceptive
3 labeling of the Products as alleged herein.

4 146. **Punitive Damages.** Defendant’s unfair, fraudulent, and unlawful
5 conduct described herein constitutes malicious, oppressive, and/or fraudulent
6 conduct warranting an award of punitive damages as permitted by law. Defendant’s
7 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and
8 consumers to pay for Products that were not, in fact, receiving. Defendant willfully
9 and knowingly disregarded the rights of Plaintiff and consumers as Defendant were,
10 at all times, aware of the probable dangerous consequences of their conduct and
11 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant’s
12 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
13 and/or contemptible that reasonable people would look down upon it and/or
14 otherwise would despise such corporate misconduct. Said misconduct subjected
15 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their
16 rights. Defendant’s misconduct is fraudulent as Defendant, at all relevant times,
17 intentionally misrepresented and/or concealed material facts with the intent to
18 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
19 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
20 ratified by officers, directors, and/or managing agents of Defendant. Accordingly,
21 Plaintiff seeks an award of punitive damages against Defendant.

22 **COUNT FOUR**

23 **Breach of Warranty**

24 *(On Behalf of the Nationwide Class and California Subclass)*

25 147. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
26 reference all allegations contained in this complaint, as though fully set forth herein.
27
28

1 148. **Nationwide Class & California Subclass.** Plaintiff brings this claim
2 individually and on behalf of the Nationwide Class and California Subclass (the
3 Class) who purchased the Products within the applicable statute of limitations.

4 149. **Express Warranty.** By advertising and selling the Products at issue,
5 Defendant made promises and affirmations of fact on the Products’ packaging and
6 labeling, and through its marketing and advertising, as described herein. This
7 labeling and advertising constitute express warranties and became part of the basis
8 of the bargain between Plaintiff and members of the Class and Defendant.
9 Defendant purports, through the Products’ labeling and advertising, to create
10 express warranties that the Products, among other things, conform to the labeling
11 and advertising.

12 150. **Implied Warranty of Merchantability.** By advertising and selling the
13 Products at issue, Defendant, a merchant of goods, made promises and affirmations
14 of fact that the Products are merchantable and conform to the promises or
15 affirmations of fact made on the Products’ packaging and labeling, and through its
16 marketing and advertising, as described herein. This labeling and advertising,
17 combined with the implied warranty of merchantability, constitute warranties that
18 became part of the basis of the bargain between Plaintiff and members of the Class
19 and Defendant---to wit, that the Products, among other things, conform to the
20 labeling and advertising.

21 151. **Breach of Warranty.** Contrary to Defendant’s warranties, the Products
22 do not conform to the labeling and advertising and, therefore, Defendant breached
23 its warranties about the Products and their qualities.

24 152. **Causation/Remedies.** As a direct and proximate result of Defendant’s
25 breach of warranty, Plaintiff and members of the Class were harmed in the amount
26 of the purchase price they paid for the Products. Further, Plaintiff and members of
27 the Class have suffered and continue to suffer economic losses and other damages
28 including, but not limited to, the amounts paid for the Products, and any interest that

1 would have accrued on those monies, in an amount to be proven at trial.
2 Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of
3 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff
4 and the Class for said monies, as well as injunctive relief to
5 enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

6 **COUNT FIVE**

7 **Unjust Enrichment/Restitution**

8 *(On Behalf of the Nationwide Class and California Subclass)*

9 **153. Incorporation by Reference.** Plaintiff re-alleges and incorporates by
10 reference all allegations contained in this complaint, as though fully set forth herein.

11 **154. Nationwide Class & California Subclass.** Plaintiff brings this claim
12 individually and on behalf of the Nationwide Class and California Subclass (the
13 Class) who purchased the Products within the applicable statute of limitations.

14 **155. Plaintiff/Class Conferred a Benefit.** By purchasing the Products,
15 Plaintiff and members of the Class conferred a benefit on Defendant in the form of
16 the purchase price of the Products.

17 **156. Defendant's Knowledge of Conferred Benefit.** Defendant had
18 knowledge of such benefit and Defendant appreciated the benefit because, were
19 consumers not to purchase the Products, Defendant would not generate revenue
20 from the sales of the Products.

21 **157. Defendant's Unjust Receipt Through Deception.** Defendant's
22 knowing acceptance and retention of the benefit is inequitable and unjust because
23 the benefit was obtained by Defendant's fraudulent, misleading, and deceptive
24 representations and omissions.

25 **158. Causation/Damages.** As a direct and proximate result of Defendant's
26 unjust enrichment, Plaintiff and members of the Class were harmed in the amount of
27 the purchase price they paid for the Products. Further, Plaintiff and members of the
28 Class have suffered and continue to suffer economic losses and other damages

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1 including, but not limited to, the amounts paid for the Products, and any interest that
2 would have accrued on those monies, in an amount to be proven at trial.

3 Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages,
4 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
5 Class for said monies, as well as injunctive relief to enjoin Defendant’s misconduct
6 to prevent ongoing and future harm that will result.

7 **159. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
8 cause of action for unjust enrichment on behalf of Plaintiff and the Class.
9 Defendant’s unfair, fraudulent, and unlawful conduct described herein constitutes
10 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
11 damages as permitted by law. Defendant’s misconduct is malicious as Defendant
12 acted with the intent to cause Plaintiff and consumers to pay for Products that they
13 were not, in fact, receiving. Defendant willfully and knowingly disregarded the
14 rights of Plaintiff and consumers as Defendant was aware of the probable dangerous
15 consequences of its conduct and deliberately failed to avoid misleading consumers,
16 including Plaintiff. Defendant’s misconduct is oppressive as, at all relevant times,
17 said conduct was so vile, base, and/or contemptible that reasonable people would
18 look down upon it and/or otherwise would despise such corporate misconduct. Said
19 misconduct subjected Plaintiff and consumers to cruel and unjust hardship in
20 knowing disregard of their rights. Defendant’s misconduct is fraudulent as
21 Defendant, at all relevant times, intentionally misrepresented and/or concealed
22 material facts with the intent to deceive Plaintiff and consumers. The wrongful
23 conduct constituting malice, oppression, and/or fraud was committed, authorized,
24 adopted, approved, and/or ratified by officers, directors, and/or managing agents of
25 Defendant.

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1 **VII. PRAYER FOR RELIEF**

2 160. WHEREFORE, Plaintiff, individually and on behalf of all others
3 similarly situated, prays for judgment against Defendant as follows:

- 4 a. **Certification:** For an order certifying this action as a class action,
5 appointing Plaintiff as the Class Representative, and appointing
6 Plaintiff’s Counsel as Class Counsel;
- 7 b. **Declaratory Relief:** For an order declaring that Defendant’s
8 conduct violates the statutes and laws referenced herein;
- 9 c. **Injunction:** For an order requiring Defendant to immediately
10 cease and desist from selling the unlawful Products in violation of
11 law; enjoining Defendant from continuing to market, advertise,
12 distribute, and sell the Products in the unlawful manner described
13 herein; requiring Defendant to engage in an affirmative
14 advertising campaign to dispel the public misperception of the
15 Products resulting from Defendant’s unlawful conduct; and
16 requiring all further and just corrective action, consistent with
17 permissible law and pursuant to only those causes of action so
18 permitted;
- 19 d. **Damages/Restitution/Disgorgement:** For an order awarding
20 monetary compensation in the form of damages, restitution,
21 and/or disgorgement to Plaintiff and the Class, consistent with
22 permissible law and pursuant to only those causes of action so
23 permitted;
- 24 e. **Punitive Damages/Penalties:** For an order awarding punitive
25 damages, statutory penalties, and/or monetary fines, consistent
26 with permissible law and pursuant to only those causes of action
27 so permitted;
- 28 f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees
and costs, consistent with permissible law and pursuant to only
those causes of action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-
judgment and post-judgment interest, consistent with permissible
law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the
Court deems just and proper.

1 **VIII. JURY TRIAL DEMANDED**

2 Plaintiff demands a jury trial on all triable issues.

3
4
5 Dated: September 12, 2022

CLARKSON LAW FIRM, P.C.

6 By: /s/ Zachary T. Chrzan

7 Ryan J. Clarkson, Esq.

8 Zachary T. Chrzan, Esq.

9 *Attorneys for Plaintiff*

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