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

Frank Ortega, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

Frito-Lay North America, Inc.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiff, Frank Ortega (“Plaintiff”), through his undersigned attorneys, Shub Law Firm LLC and Sheehan & Associates, P.C., brings this Class Action Complaint against Defendant Frito-Lay North America, Inc., individually and on behalf of all others similarly situated, and complains and alleges upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys:

NATURE OF THE ACTION

1. This is a civil class action brought individually by Plaintiff on behalf of consumers who purchased Defendant Frito-Lay North America, Inc.’s (“Defendant”) “Hint of Lime” tortilla chips under the Tostitos brand (“Product”). The product is promoted as containing a “Hint of Lime”, when in fact, the Product does not even contain that “hint” – it does not contain any lime at all.

2. Defendant manufactures, markets, and sells tortilla chips purporting to contain a

1 “Hint of Lime” under the Tostitos brand.

2 3. This case arises out of Defendant’s deceptive, unfair, and false advertising practices
3 regarding its “Hint of Lime” tortilla chips.

4 4. The front label representations include “HINT OF LIME,” a transparent cut-out of a
5 lime wedge with several drops representing lime juice, a green and yellow color pattern, and the
6 statement, “Here’s Another Hint – Squeeze in More Flavor With Some Salsa,” as seen below:



22 5. The representations mislead consumers about whether or not the Product actually
23 contains lime.

24 6. Plaintiff and reasonable consumers reasonably believe, define, and assume that
25 tortilla chips labeled as having a “HINT OF LIME” with the statement, “HERE’S ANOTHER HINT
26 – SQUEEZE IN MORE FLAVOR WITH SOME SALSA!” contain some quantity of actual lime.

27 7. In fact, the Product does not contain any lime at all.

28 8. Unbeknownst to Plaintiff and members of the Class at the time of their purchase,

1 and contrary to the express representations made on Defendant’s front label, the Product, which
2 claims to contain a “Hint of Lime”, actually contains no lime at all. As such, Defendant’s advertising
3 and marketing campaign is false, fraudulent, deceptive, and misleading.

4 9. Plaintiff and members of the class purchased the Product based on Defendant’s
5 misrepresentations, and paid a premium for Defendant’s Product over comparable products that
6 were not promoted with the same misrepresentations at issue here.

7 10. As a result of Defendant’s unlawful and highly deceptive conduct, Plaintiff and
8 members of the Class have been, and continue to be, harmed by purchasing the Product under false
9 pretenses and paying more for it than they otherwise would have, if they would have purchased it at
10 all.

11 11. Defendant’s representations concerning the Product are unfair, unlawful, and
12 fraudulent, and have the tendency or capacity to deceive or confuse reasonable consumers. As such,
13 Defendant’s practices violate California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et
14 seq. (“CLRA”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.
15 (“UCL”), and California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq. (“FAL”).
16 Plaintiff also brings claims for breach of express warranty and unjust enrichment.

17 **JURISDICTION AND VENUE**

18 12. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28
19 U.S.C. § 1332(d)(2)(A).

20 13. Plaintiff Frank Ortega is a resident and citizen of California.

21 14. Defendant Frito-Lay North America, Inc. is a Texas citizen because it has its
22 principal place of business in Texas.

23 15. The parties are citizens of different states.

24 16. Upon information and belief, sales of the Product and any available statutory and
25 other monetary damages, exceed the sum or value of \$5,000,000.00 during the applicable statutes
26 of limitations, exclusive of interest and costs.

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1 Plaintiff and members of the Class would not have purchased the Product had it been accurately
2 labeled.

3 27. Defendant Frito-Lay North America, Inc., is a Delaware corporation with its
4 principal place of business located in Plano, Collin County, Texas.

5 28. Defendant is the world’s leading seller of corn and potato chips.

6 29. The Tostitos brand is the best-selling brand of tortilla chips in the world.

7 30. Based on current projections, sales of tortilla chips are on track to eclipse sales of
8 potato chips in 2025.

9 31. The Product is sold in thousands of locations – grocery stores, drug stores, big box
10 stores, convenience stores, etc., and online, throughout California.

11 **FACTUAL ALLEGATIONS**

12 **I. CHANGING CONSUMER CONSUMPTION HABITS**

13 32. Consumers “are eating fewer meals, yet snacking more than ever.”¹

14 33. Indulgence is “now a regular part of consumers everyday lives.” Consumers may
15 seek snacks to engage in “healthy indulgence,” which is “a treat with all the flavor and taste desired,
16 without the guilt of eating something ‘bad’ for you,” due to the presence of ingredients associated
17 with positive health benefits.²

18 34. Companies are increasingly emphasizing their additions of actual fruit ingredients to
19 make up for what is not consumed through traditional meals.³

20 35. Limes are one of the fruits that consumers increasingly add to foods, and their
21 consumption has increased several hundred percent since 1990.

22 36. The use of limes is especially significant in consumption of Mexican foods, such as
23 tortilla chips.

24 **II. DEFENDANT FALSELY MARKETED THE PRODUCT AS CONTAINING A**
25 **“HINT” OF LIME**

26 37. Defendant produces, processes, markets, labels and distributes the Product

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28 ¹ Elizabeth Louise Hatt, [Snackin’ in the sun](#), Winsight Grocery Business, May 1, 2013.

² FONIA International, [Trend Insight: Indulgence](#), November 28, 2018.

³ Mondelez Global, [State of Snacking: 2020 Global Consumer Snacking Trends Study](#).

1 throughout the U.S., including in the state of California.

2 38. The Product is available in a variety of retail outlets, including stores such as Target
3 and supermarkets, like Kroger.

4 39. Defendant aggressively marketed the Product to consumers as containing a “Hint of
5 Lime”.

6 40. To ensure uniformity, Defendant represented on the front and center of each and
7 every one of the Product’s packaging that it contained “Hint of Lime”.

8 41. In fact, on the Product, Defendant made the “Hint of Lime” representation in large,
9 bold font on the front center of the Product that immediately catches the eye of the consumer,
10 including Plaintiff and all proposed Class members.



17 42. The other front label statement declares, “HERE’S ANOTHER HINT – SQUEEZE
18 IN MORE FLAVOR WITH SOME SALSA!”



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25 43. By stating, “Here’s Another Hint,” Plaintiff and all reasonable consumers expect that
26 the Product already contains a “Hint of Lime”.

27 44. The directive to “Squeeze In More Flavor [With Some Salsa!]" not only refers to the
28 method by which lime is added to a food (*i.e.*, squeezing the ends of a wedge to express the juice),

1 but implies that the Product already contains lime as constituting the main portion of its flavor
2 profile.

3 45. Indeed, the front packaging contains an icon of a lime wedge displaying tortilla chips
4 inside the wedge. It also showcases four droplets of apparent lime juice being “squeezed” from the
5 lime wedge (as seen below) – resembling the picture-perfect “Hint of Lime” Product.

6 **III. FRONT LABEL “DISCLAIMER” IS NOT VISIBLE AT POINT-OF-SALE**

7 46. The front label attempts a “disclaimer” in the lower left-hand corner, which states,
8 “FLAVORED TORTILLA CHIPS.”



21 47. Federal and state regulations require that the front label, or principal display panel
22 (“PDP”), contain a brief description of what a food is. *See* 21 C.F.R. § 101.3(b).

23 48. “FLAVORED TORTILLA CHIPS” is the Product’s statement of identity because it
24 is the common or usual name of the food. *See* 21 C.F.R. § 101.3(b)(2).

25 49. This is required to be “presented in bold type on the principal display panel, [and] in
26 a size reasonably related to the most prominent printed matter on such panel, and [shall be] in lines
27 generally parallel to the base on which the package rests as it is designed to be displayed.” *See* 21
28 C.F.R. § 101.3(d).

1 50. While “FLAVORED TORTILLA CHIPS” may be in bold type, it is not “in a size
2 reasonably related to the most prominent printed matter on such panel,” such as “HINT OF LIME,”
3 or “TOSTITOS.”

4 51. Plaintiff did not observe the statement, “Flavored Tortilla Chips,” because this was
5 not visible to him based on its minute size and placement at the bottom corner.

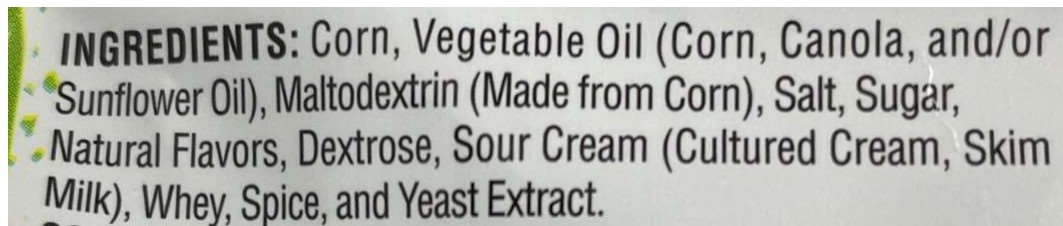
6 52. Moreover, even if Plaintiff had observed the statement, the language of the
7 disclaimer is unclear and ambiguous. It merely states, “Flavored” Tortilla Chips, instead of saying
8 “Lime Flavored” Tortilla Chips. This purported disclaimer does not clearly define the nature of
9 flavoring in the Product.

10 53. Simply put, consumers, like Plaintiff and class members cannot see the miniscule
11 disclaimer in the [grocery] aisle because it is abnormally smaller compared to the representations in
12 large, bold font regarding the presence of lime.

13 54. Given the prevalent “Lime” misrepresentation and the inconspicuous and ambiguous
14 tiny disclaimer at the bottom of the Product’s packaging, Defendant misleads consumers into
15 believing that the Product actually contains lime. Yet, the Product contains no lime at all.

16 **IV. INGREDIENTS LIST FAILS TO MENTION THE PRODUCT CONTAINS ANY**
17 **LIME AT ALL**

18 55. The ingredient list fails to offer clarity to consumers who expect tortilla chips with
19 an amount of lime greater than *de minimis*, because it lists a ambiguous “Natural Flavors,” In the
20 ingredients panel as shown below:



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25 **INGREDIENTS:** Corn, Vegetable Oil (Corn, Canola, and/or Sunflower Oil),
26 Maltodextrin (Made from Corn), Salt, Sugar, Natural Flavors, Dextrose, Sour
27 Cream (Cultured Cream, Skim Milk), Whey, Spice, and Yeast Extract.
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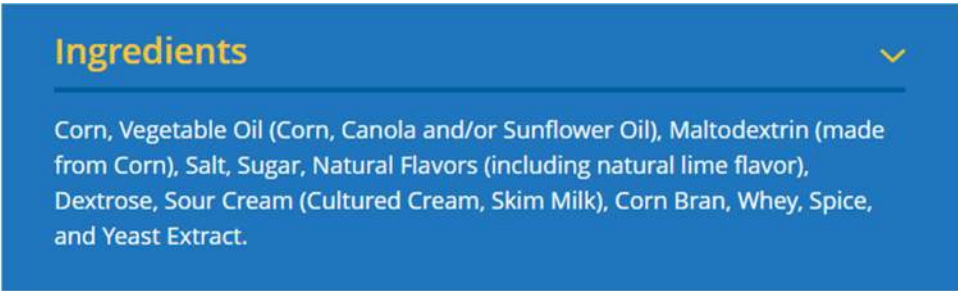
56. As seen above, there is no mention of the key component, *lime (nor lime juice, lime oil, or essence)*, anywhere in the ingredients list.

57. For example, lime juice or lime oil is considered food because they are a source of nutritive value.

58. Lime flavor is the concentrated, compounded, synthesized and stripped-down version of lime juice or lime oil, “whose significant function in food is flavoring rather than nutritional.” *See* 21 C.F.R. § 101.22(a)(3).

59. Because lime juice or lime oil is not a separately identified ingredient, it means that the presence of any real lime is as a flavoring and is a *de minimis* or a trace amount of the “Natural Flavors.”

60. Further, Defendant engaged in label changes on its website in relation to its Product. As seen below [and as not pictured on the Product above], Defendant added “(including natural lime flavor)”, which was not printed on or included within the ingredients list on the Product Plaintiff and the proposed Class members purchased. Upon information and belief, Defendant implemented this label change on its website after March 17, 2021, when Plaintiff sent and provided Defendant with notice letters of Defendant’s violations of the California Consumer Legal Remedies Act:



61. “Natural Flavors” is the term used where a mix of extractives and essences from various fruits, along with additives and solvents, are combined in a laboratory.

62. “Natural Flavors” fails to tell consumers that the Product has a negligible amount of lime and that its “lime taste” is actually from non-lime ingredients.

63. As such, Defendant knew or should have known that the “HINT OF LIME” and

1 “HERE’S ANOTHER HINT – SQUEEZE IN MORE FLAVOR WITH SOME SALSA!” claims
2 prominently featured on the front of the label of the tortilla chips were not accurate and that the
3 labeling, advertising and/or marketing was false and misleading.

4 64. Nevertheless, Defendant falsely and misleadingly marketed, advertised, packaged
5 and/or sold the tortilla chips to the general public as having a “HINT OF LIME”.

6 65. The only conceivable purpose for falsely and deceptively making these claims about
7 the tortilla chips is to stimulate sales and enhance Defendant’s profits.

8 66. Consumers are particularly vulnerable to these kinds of false and deceptive labeling
9 and marketing practices. Most consumers are unable to verify that products such as Defendant’s
10 tortilla chips are accurately labeled.

11 67. As set forth above, the decision to purchase a product that has a “HINT OF LIME”
12 is material to consumers.

13 68. The difference between the tortilla chips promised and the tortilla chips sold is
14 significant.

15 69. Federal and state regulations require that where a food has a “characterizing” flavor,
16 it must be disclosed so that consumers are not misled as to the source of that flavor. *See* 21 C.F.R.
17 § 101.22(i).

18 70. A careful reading of the regulations reveals that the word “FLAVORED TORTILLA
19 CHIPS” is an implicit admission that the Product does not contain a “Hint of Lime”.

20 71. If the Product obtained its characterizing lime flavor only from its characterizing
21 ingredient of limes, it would say “Lime Tortilla Chips.” *See* 21 C.F.R. § 101.22(i)(1).

22 72. The naked term “flavored” tortilla chips listed inconspicuously on the lower right
23 corner of the Product in small lettering is ambiguous.

24 73. As such, Defendant’s labeling violates federal labeling regulations.

25 74. Defendant’s Lime Claims are intended to lead consumers into believing that the
26 Product truly contains a “HINT” of lime. Defendant directs these misrepresentations to consumers,
27 like Plaintiff and the members of the Class, and Defendant intends that Plaintiff and members of
28 the Class read and rely on its representations.

1 75. However, contrary to these representations, the Product does not contain lime,
2 leaving Plaintiff and members of the Class having paid a premium for a Product that failed to provide
3 the promised benefit.

4 **V. RELIANCE AND ECONOMIC INJURY**

5 76. Plaintiff saw and relied on the front label representations, which misleadingly states,
6 “HINT OF LIME” “Here’s Another Hint – Squeeze in More Flavor With Some Salsa,” and includes
7 a transparent cut-out of a lime wedge with several drops representing lime juice, and a green and
8 yellow color pattern.

9 77. Plaintiff sought to purchase a product with a materially greater amount of lime
10 ingredients than what he received (which was no lime at all).

11 78. Prior to each purchase of the Product, Plaintiff viewed the “HINT OF LIME” and
12 “HERE’S ANOTHER HINT – SQUEEZE IN MORE FLAVOR WITH SOME SALSA”
13 representations prominently featured on the Product’s front label.

14 79. Plaintiff expected that the tortilla chips would contain a “hint” of lime, which was
15 depicted on the front label.

16 80. Plaintiff did not expect there to be no lime at all.

17 81. Plaintiff chose to purchase this Product over cheaper alternatives because the Product
18 was prominently labeled and advertised as containing a “HINT OF LIME”.

19 82. Plaintiff would not have purchased the Product if he knew the representations were
20 false and misleading.

21 83. Plaintiff would not have purchased and consumed the Product had he known that it
22 did not contain a “HINT OF LIME” and instead contained no lime.

23 84. The Product costs more than similar products without misleading representations and
24 if it wasn’t for the misleading representations, the Product would have cost less.

25 85. Plaintiff paid more for the Product than he otherwise would have, and would only
26 have been willing to pay less, or unwilling to purchase it at all, absent the misleading representations.

27 86. As a result of the false and misleading labeling, the Product is sold at a premium
28 price, approximately \$3.99-\$4.29 for a 13 OZ (368.5g) bag, excluding tax, compared to other brands

1 of tortilla chips, for example, that are not falsely labeled and cost approximately \$2.99 or less.

2 87. Plaintiff is in the same Class as all other consumers who purchased Defendant’s
3 Product during the relevant time period. Plaintiff and the proposed Class Members were in fact
4 misled by Defendant’s misrepresentations with respect to its Product. Plaintiff and the proposed
5 Class Members would have purchased other tortilla chip products, if any at all, if they had not been
6 deceived by the misleading and deceptive labeling and advertising of this Product by Defendant.

7 **VII. DEFENDANT’S MARKETING AND SALE OF ITS PRODUCT VIOLATES**
8 **FEDERAL LAW**

9 88. Section 5(a) of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. § 45(a),
10 prohibits “unfair or deceptive acts or practices in or affecting commerce.”

11 89. Misrepresentations or deceptive omissions of material fact constitute deceptive acts
12 or practices prohibited by Section 5(a) of the FTC Act.

13 90. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false
14 advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce,
15 the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the
16 FTC Act, 15 U.S.C. § 52, the tortilla chips are either “foods” or “drugs” as defined in Section 15(b)
17 and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). Under these provisions, companies must have a
18 reasonable basis for making objective product claims.

19 91. As alleged herein, Defendant has represented the Product as containing a “HINT OF
20 LIME”. However, this representation is false, deceptive, and misleading as the Product does not
21 contain any amount(s) of lime [as shown on Defendant’s ingredients list/label]. The making of such
22 misrepresentations by Defendant constitutes a deceptive act or practice and the making of false
23 advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

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CLASS ACTION ALLEGATIONS

92. Plaintiff brings this action pursuant to Fed. R. Civ. P. Rule 23(a), (b)(2) and (b)(3).

93. Plaintiff seeks to represent All Persons residing in California who purchased the Product for personal, family or household purposes/consumption, and not for resale since June 24, 2015 (the “Class” or “California Class”).

94. The Class consists of thousands of persons, and joinder is impracticable.

95. Common questions of law or fact predominate over any individual questions and include whether Defendant’s representations and omissions were and are misleading and if Plaintiff and Class Members are entitled to injunctive relief and damages.

96. Common questions of law and fact that affect Class members include, but are not limited to:

- a) Whether the Product, when used by consumers in a normal and customary manner and/or in accordance with Defendant’s suggested use, works as advertised, marketed, and conveyed to consumers;
- b) Whether, in the course of business, Defendant represented that the Product has characteristics, uses, benefits, or qualities that it does not have when used by consumers in a normal and customary manner and/or in accordance with Defendant’s suggested use;
- c) Whether the claims Defendant made and is making regarding the Product are unfair or deceptive; specifically, whether the Product was deceptively marketed as containing a “Hint of Lime” when it does not contain any actual lime;
- d) Whether Defendant knew at the time the consumer transactions took place that consumers would not receive the promised benefits of the Product that Defendant was claiming they would receive;
- e) Whether Defendant knowingly made misleading statements in connection with consumer transactions that reasonable consumers were likely to rely upon to their detriment;

- 1 f) Whether Defendant knew or should have known that the representations and
- 2 advertisements regarding the Product were unsubstantiated, false, and misleading;
- 3 g) Whether Defendant has breached express and implied warranties in the sale and
- 4 marketing of the Product;
- 5 h) Whether Defendant's conduct violated public policy;
- 6 i) Whether Defendant's acts and omissions violate California law;
- 7 j) Whether Defendant has been unjustly enriched by the sale of the Product to the
- 8 Plaintiff and the proposed Class Members;
- 9 k) Whether Plaintiff and the proposed Class Members did not receive the benefit of
- 10 their bargain when purchasing the Product;
- 11 l) Whether Plaintiff and the proposed Class Members suffered monetary damages, and,
- 12 if so, what is the measure of those damages; and
- 13 m) Whether Plaintiff and the proposed Class Members are entitled to an injunction,
- 14 damages, restitution, equitable relief, and other relief deemed appropriate, and, if so,
- 15 the amount and nature of such relief.

16 97. Plaintiff's claims and basis for relief are typical to other Class Members because all
17 were subjected to the same unfair and deceptive representations and omissions.

18 98. Plaintiff is an adequate representative because his interests do not conflict with other
19 members. Plaintiff will fairly and adequately protect the interests of Class Members. Plaintiff has
20 retained attorneys experienced in the prosecution of class actions, including food and beverage
21 misleading class actions, and Plaintiff intends to prosecute this action vigorously.

22 99. No individual inquiry is necessary since the focus is only on Defendant's practices
23 and the Class is definable and ascertainable.

24 100. Plaintiff and Class Members have all suffered harm and damages as a result of
25 Defendant's unlawful and wrongful conduct. A class action is superior to other available methods
26 for the fair and efficient adjudication of this controversy, since individual actions would risk
27 inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to
28 the scope of the harm. Absent a class action, Class Members would likely find the cost of litigating

1 their claims prohibitively high and would therefore have no effective remedy at law. Because of
2 the relatively small size of Class Members’ individual claims, it is likely that few Class Members
3 could afford to seek legal redress for Defendant’s misconduct. Absent a class action, Class Members
4 will continue to incur damages, and Defendant’s misconduct will continue without remedy. Class
5 treatment of common questions of law and fact would also be a superior method to multiple
6 individual actions or piecemeal litigation in that class treatment will conserve the resources of the
7 courts and the litigants and will promote consistency and efficiency of adjudication.

8 101. Plaintiff’s counsel is competent and experienced in complex class action litigation
9 and intends to protect Class Members’ interests adequately and fairly.

10 102. Plaintiff seeks certification of a Class for injunctive relief under Rule 23(b)(2)
11 because Defendant has acted or refused to act on grounds that apply generally to the Class.

12 103. Plaintiff seeks certification of a Class under Rule 23(b)(3) because common issues
13 predominate over questions affecting individual members and Defendant has acted or refused to act
14 on grounds that apply generally to the Class.

15 104. Plaintiff anticipates that this Court can direct notice to the Class, by publication in
16 major media outlets and the Internet.

17 **CAUSES OF ACTION**

18 **COUNT I**

19 **Violation of California Unfair Competition Law
Cal. Bus. & Prof. §§ 17200, *et seq.*
(On Behalf of the California Class)**

20 105. Plaintiff incorporates all preceding paragraphs.

21 106. Plaintiff brings this claim individually and on behalf of the Members of the proposed
22 California Class against Defendant.

23 107. California Business & Professions Code section 17200 (“UCL”) prohibits any
24 “unlawful, unfair or fraudulent business act or practice.”

25 108. Defendant’s representations and omissions are “unlawful” because they violate the
26 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing regulations, including:

- 27 1. 21 U.S.C. § 343, which deems food misbranded when the label contains a statement
28 that is “false or misleading in any particular,” with “misleading” defined to “take[]

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into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material”;

- 2. 21 U.S.C. § 321(n), which states the nature of a false and misleading advertisement;
- 3. 21 C.F.R. § 101.18(b), which prohibits true statements about food ingredients and descriptions that are misleading in light of the presence of other ingredients;
- 4. 21 C.F.R. § 101.22, which provides requirements to truthfully identify and disclose the source of a food or beverage’s characterizing flavor; and
- 5. 21 C.F.R. § 102.5, which prohibits misleading common or usual names.

109. Defendant’s conduct is “unlawful” because it violates the California False Advertising Law (“FAL”) and the Consumer Legal Remedies Act (“CLRA”).

110. Defendant’s conduct violates the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code section 109875, et seq. (“Sherman Law”), including:

- 1. Section 110100 (adopting all FDA regulations as state regulations);
- 2. Section 110290 (“In determining whether the labeling or advertisement of a food ... is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these, shall be taken into account. The extent that the labeling or advertising fails to reveal facts concerning the food ... or consequences of customary use of the food ... shall also be considered.”);
- 3. Section 110390 (“It is unlawful for any person to disseminate any false advertisement of any food.... An advertisement is false if it is false or misleading in any particular.”);
- 4. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food ... that is falsely advertised.”);
- 5. Section 110398 (“It is unlawful for any person to advertise any food, drug, device,

1 or cosmetic that is adulterated or misbranded.”);

2 6. Section 110400 (“It is unlawful for any person to receive in commerce any food ...
3 that is falsely advertised or to deliver or proffer for delivery any such food...”); and

4 7. Section 110660 (“Any food is misbranded if its labeling is false or misleading in any
5 particular.”).

6
7 111. Each of the challenged statements made and actions taken by Defendant violates the
8 FFDCFA, FAL, and Sherman Law, and therefore violates the “unlawful” prong of the UCL.

9 112. The false and misleading representations of the Product constitutes “unfair” business
10 acts and practices because it is immoral, unscrupulous, and offends public policy.

11 113. The gravity of the conduct outweighs any conceivable benefit.

12 114. A statement or practice is “fraudulent” under the UCL if it is likely to mislead or
13 deceive the public, applying an objective reasonable consumer test. As set forth herein, Defendant’s
14 labeling and Product representations were false and likely to mislead or deceive the public.

15 115. The representations and omissions constitute “fraudulent” business acts and practices
16 because they are false and misleading to Plaintiff and Class Members.

17 116. Defendant’s representations and omissions are likely to deceive Plaintiff and Class
18 Members about the presence of lime in its Product.

19 117. Defendant knew or reasonably should have known that its statements and omissions
20 concerning the Product were likely to deceive consumers

21 118. Defendant profited from the sale of its falsely, deceptively, and unlawfully advertised
22 and packaged “Hint of Lime” tortilla chips to unwary consumers.

23 119. Defendant leveraged its deception to induce Plaintiff and Class Members to purchase
24 a product that was of lesser value and quality than what was advertised and promised.

25 120. Defendant’s deceptive advertising caused Plaintiff and Class Members to suffer
26 injury-in-fact and to lose money or property.

27 121. Defendant’s actions denied Plaintiff and Class Members the benefit of the bargain
28 when they decided to purchase the Product instead of other products that are less expensive and

1 actually contain lime.

2 122. Had Plaintiff and Class Members been aware of Defendant’s false and misleading
3 advertising, they would not have purchased the Product at all, or would have paid less than what
4 they did.

5 123. In accordance with California Business & Professions Code section 17203, Plaintiff
6 seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair,
7 and/or fraudulent acts and practices and to commence a corrective advertising campaign.

8 124. Plaintiff seeks an order for the disgorgement and restitution of all monies from the
9 sale of the Product that was unjustly acquired through such acts of unlawful, unfair and/or fraudulent
10 competition.

11 **COUNT II**
12 **California False Advertising Law**
13 **Cal. Bus. & Prof. Code § 17500 (“FAL”)**
14 **(On Behalf of the California Class)**

15 125. Plaintiff incorporates all preceding paragraphs.

16 126. Plaintiff brings this claim individually and on behalf of the Members of the proposed
17 California Class against Defendant.

18 127. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
19 association, or any employee thereof with intent directly or indirectly to dispose of real or personal
20 property or to perform services” to disseminate any statement “which is untrue or misleading, and
21 which is known, or which by the exercise of reasonable care should be known, to be untrue or
22 misleading.” Cal. Bus. & Prof. Code § 17500.

23 128. California False Advertising Law (Cal. Business & Professions Code sections 17500
24 and 17508) prohibits “mak[ing] any false or misleading advertising claim.”

25 129. Defendant makes “false [and] misleading advertising claim[s],” by deceiving
26 consumers as to the absolute and relative amounts of lime included in its Product.

27 130. It is also unlawful under the FAL to disseminate statements concerning property or
28 services that are “untrue or misleading, and which is known, or which by the exercise of reasonable
care should be known, to be untrue or misleading.” *Id.*

131. As alleged herein, the advertisements, labeling, policies, acts, and practices of

1 Defendant relating to the ingredient supply, product manufacturing, and oversight of its Product
2 misled consumers acting reasonably, as stated above.

3 132. In reliance on the false and misleading advertising, Plaintiff and Class Members
4 purchased and consumed the Product without the knowledge it contained no lime.

5 133. Defendant knew or should have known that its representations and omissions were
6 likely to deceive consumers.

7 134. Defendant's business practices as alleged herein constitute deceptive, untrue, and
8 misleading advertising pursuant to the FAL because Defendant has advertised the Product in a
9 manner that is untrue and misleading, which Defendant knew or reasonably should have known,
10 and omitted material information from its advertising.

11 135. Defendant profited from the sale of its falsely and deceptively advertised "Hint of
12 Lime" tortilla chips to unwary consumers.

13 136. As a result, Plaintiff and Class Members are entitled to injunctive and equitable relief,
14 restitution, and seek an order for the disgorgement of the funds by which Defendant was unjustly
15 enriched.

16 **COUNT III**
17 **Breach Of Express Warranty**
18 **(On Behalf of the California Class)**

19 137. Plaintiff incorporates all preceding paragraphs.

20 138. Plaintiff brings this claim individually and on behalf of the Members of the proposed
21 California Class against Defendant.

22 139. Defendant sold and Plaintiff and the proposed Class Members purchased "Hint of
23 Lime" tortilla chips under the Tostitos brand.

24 140. Defendant represented in its marketing, advertising, and promotion of the Product
25 that it contained a "Hint of Lime".

26 141. Defendant made such representations to induce Plaintiff and the proposed Class
27 Members to purchase its food.

28 142. The representations that the tortilla chips contain a "Hint of Lime" was a part of the
basis of the bargain between Defendant and Plaintiff.

1 143. Defendant’s Product did not conform to Defendant’s representations and warranties
2 because it contained no lime.

3 144. Within a reasonable time after Plaintiff and other similarly situated consumers knew
4 or should have known of such failure to conform, Plaintiff’s counsel sent a demand letter to
5 Defendant on March 17, 2021, which was received by Defendant shortly thereafter, respectively.
6 The demand letter outlined Defendant’s misconduct, including that Defendant misrepresented the
7 contents of the Product regarding its lime composition. Such conduct constitutes a breach of
8 Defendant’s express warranty. Defendant failed to provide the relief demanded in Plaintiff’s letter.

9 145. As a direct and proximate result of Defendant’s breaches of its express warranty and
10 failure of Defendant’s tortilla chips to conform to its representations as warranted, Plaintiff and the
11 proposed Class Members have been damaged in that they did not receive the Product as specifically
12 warranted and/or would not have purchased (or paid a premium) for Defendant’s Product that did
13 not conform to Defendant’s warranties.

14 **COUNT IV**
15 **Breach Of Implied Warranty Of Merchantability**
16 **(On Behalf of the California Class)**

17 146. Plaintiff incorporates all preceding paragraphs.

18 147. Plaintiff brings this claim individually and on behalf of the Members of the proposed
19 California Class against Defendant.

20 148. Defendant sold and Plaintiff and the proposed Class members purchased “Hint of
21 Lime” tortilla chips under the Tostitos brand.

22 149. When sold by Defendant, the Product was not merchantable, did not pass without
23 objection in the trade under the label description, was not of adequate quality within that description,
24 was not fit for the ordinary purposes for which such goods are used, and did not conform to the
25 promises or affirmations of fact made on its bag or label.

26 150. Within a reasonable time after Plaintiff and other similarly situated consumers knew
27 or should have known of such failure to conform, Plaintiff’s counsel sent a demand letter to
28 Defendant on March 17, 2021, which was received by Defendant shortly thereafter, as stated in their
reply letter dated April 19, 2021. The demand letter outlined Defendant’s misconduct, including that

1 Defendant misrepresented the contents of its Product regarding its lime composition. Defendant
2 failed to provide the relief demanded in Plaintiff’s letter.

3 151. Such conduct as described in the notice letter (and as alleged in this Complaint)
4 constitutes a breach of Defendant’s implied warranty.

5 152. Because the Product contains no lime, it could not have been classified as having a
6 “hint of lime”.

7 153. As a direct result of the Product being unfit for its intended purpose and/or otherwise
8 not merchantable, Plaintiff and the proposed Class members were damaged because they would not
9 have purchased (or paid a premium) for Defendant’s Product had they known the true facts regarding
10 the ingredients.

11 **COUNT V**
12 **Unjust Enrichment**
13 **(On Behalf of the California Class)**

14 154. Plaintiff incorporates all preceding paragraphs.

15 155. Plaintiff brings this claim individually and on behalf of the Members of the proposed
16 California Class against Defendant.

17 156. Plaintiff and Class Members conferred benefits on Defendant by purchasing its “Hint
18 of Lime” tortilla chips at a premium price.

19 157. Defendant has knowledge of such benefits.

20 158. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff
21 and Class Members purchasing “Hint of Lime” tortilla chips. Defendant retaining this money under
22 these circumstances is unjust and inequitable because Defendant falsely and misleadingly omitted
23 the Product’s lime ingredients. Such omissions and misrepresentations caused injuries to Plaintiff
24 and Class Members because they would not have purchased (or paid a premium) for Defendant’s
25 “Hint of Lime” tortilla chips had they known the true facts regarding the relative amount and
26 quantity of lime ingredients.

27 159. Defendant obtained benefits and monies because the Product was not as represented
28 and expected, to the detriment and impoverishment of Plaintiff and Class Members, who seek
restitution and disgorgement of inequitably obtained profits.

1 160. Because Defendant’s retention of the non-gratuitous benefits conferred on it by
2 Plaintiff and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiff
3 and Class Members for unjust enrichment, as ordered by the Court.

4 **COUNT VI**
5 **California Consumers Legal Remedies Act**
6 **Cal. Civ. Code § 1750, *et seq.* (“CLRA”)**
7 **(On Behalf of the California Class)**

8 161. Plaintiff incorporates all preceding paragraphs.

9 162. Plaintiff brings this claim individually and on behalf of the Members of the proposed
10 California Class against Defendant.

11 163. Defendant has violated, and continues to violate, the California Consumers Legal
12 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”) in at least the following respects:

13 164. a. in violation of Section 1770(a)(4), Defendant has used deceptive
14 representations with respect to the Product;

15 165. b. in violation of Section 1770(a)(5), Defendant has represented that the Product
16 has characteristics and benefits it does not have;

17 166. c. in violation of Section 1770(a)(7), Defendant has represented that the
18 Product is of a particular standard when it is not; and

19 167. d. in violation of Section 1770(a)(9), Defendant has advertised the Product
20 with an intent not to sell it as advertised.

21 168. Plaintiff and the California Class suffered economic injury as a direct and proximate
22 result Defendant’s violation because (a) they would not have purchased the Product on the same
23 terms if they knew that the Product had been falsely labeled as alleged herein and (b) the Product
24 did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

25 169. Defendant profited from the sale of the falsely, deceptively, and unlawfully
26 advertised Product to unwary consumers.

27 170. Defendant’s wrongful business practices constituted, and constitute, a continuing
28 course of conduct in violation of the CLRA.

171. On or about March 17, 2021, prior to filing this action, a CLRA notice letter was

1 served on Defendant that complies in all respects with California Civil Code § 1782(a). Plaintiff
2 Ortega sent Defendant a letter via UPS mail advising Defendant that it is in violation of the CLRA
3 and demanding that Defendant ceases and desists from such violations and makes full restitution by
4 refunding the monies received therefrom. Defendant failed to provide the relief demanded in
5 Plaintiff's letter.

6 172. On behalf of himself and other Members of the California Class, Plaintiff seeks to
7 enjoin the unlawful acts and practices described herein and to recover actual damages, restitution,
8 and reasonable attorneys' fees.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself and Members of the proposed Class, seeks a
11 judgment against Defendant as follows:

- 12 A. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
13 procedure and naming Plaintiff as representative of the Class, and designating
14 Plaintiff's counsel as Class Counsel to represent the Class Members;
- 15 B. For an order declaring that Defendant's conduct violated the statutes referenced
16 herein;
- 17 C. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- 18 D. For compensatory, statutory, and punitive damages in amounts to be determined by
19 the Court and/or jury;
- 20 E. For prejudgment interest on all amounts awarded;
- 21 F. For an order of restitution and all other forms of equitable monetary relief; and
- 22 G. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and
23 expenses and costs of suit.

24 **JURY TRIAL DEMANDED**

25 Plaintiff demands a trial by jury on all claims so triable.
26
27
28

1 Dated: August 25, 2021

Respectfully submitted,

2 /s/ Jonathan Shub

3 Jonathan Shub (CA Bar No. 237708)

4 Kevin Laukaitis*

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12 **Pro Hac Vice* Application Granted,
13 Pending or Forthcoming