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**ATTORNEYS FOR PLAINTIFFS
AND THE PROPOSED CLASSES**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

**DENISE CLEVELAND AND LANNA
RAINWATER, on behalf of themselves and
all others similarly situated,**

Plaintiffs,

v.

**CAMPBELL SOUP COMPANY AND
PEPPERIDGE FARM, INC.,**

Defendants.

CASE NO.: RG21101115

CLASS ACTION COMPLAINT FOR:

- (1) Violation of California’s Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq.**
- (2) Violation of California’s False Advertising Law, Cal. Bus. Prof. Code §§ 17500, et seq.**
- (3) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.**

**FILED
ALAMEDA COUNTY**

MAY 26 2021

CLERK OF THE SUPERIOR COURT

By *Andreal Gospel*

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- (4) Violation of New York's General Business Law § 349**
- (5) Violation of New York's General Business Law § 350**
- (6) Restitution based on Quasi Contract/Unjust Enrichment**
- (7) Breach of Warranty**

1 Plaintiffs Denise Cleveland and Lanna Rainwater, by and through their attorneys, bring this
2 action against Defendants Campbell Soup Company and Pepperidge Farm, Inc. (collectively,
3 “Defendants”) and allege as follows based upon their personal experience as to their own acts and
4 status, and based upon the investigation of their counsel, and information and belief as to all other
5 matters:

6 I. NATURE OF THE CASE

7 1. This is a class action on behalf of persons who purchased various flavors of
8 Defendants’ Goldfish brand snack crackers¹ (“Goldfish”), which are prominently labeled as
9 containing “0g Sugars” or “0g Total Sugars” (hereinafter “0g Sugars”) on the products’ principal
10 display panel (“PDP”), without warning that they are “not a low calorie food,” “not a reduced calorie
11 food,” or “not for weight control.” The U.S. Food and Drug Administration (“FDA”), tasked with
12 ensuring that food labels are not misleading, determined after fact finding that when consumers read
13 a food label that states, “0g Sugars,” they reasonably expect the food to be low or significantly reduced
14 in calories. Thus, the law requires that when a food is labeled as having “0g Sugars,” but it *is not* low
15 calorie or significantly reduced in calories (as reasonably expected by consumers), it must include a
16 prominent, immediately-accompanying warning that the food is “not a low calorie food,” “not a
17 reduced calorie food,” or “not for weight control.” 21 C.F.R. § 101.60(c)(1)(iv); Cal. Health & Safety
18 Code § 110100 (adopting this and other federal food labeling regulations as the regulations in
19 California); N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI, sub. ch. § 259.1(a) (adopting this and other
20 federal food labeling regulations as the regulations in New York).

21 2. Despite the Goldfish being labeled as having “0g Sugars” and not being low calorie or
22 significantly reduced in calories, Defendants fail to include the prominent warning that the Goldfish

23
24 ¹ This action includes the following products, hereinafter referred to as (“Goldfish”): Cheddar Goldfish
25 (Exhibit 1), Organic Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan
26 Goldfish (Exhibit 4), Princess Goldfish (Exhibit 5), Whole Grain Cheddar Goldfish (Exhibit 6), Flavor
27 Blasted Cheesy Pizza Goldfish (Exhibit 7), Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8), Baby
28 Cheddar Goldfish (Exhibit 9), Mix Cheesy Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan
Goldfish (Exhibit 11), Whole Grain XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish
(Exhibit 13), Disney Mickey Mouse Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish
(Exhibit 15), and Flavor Blasted XTRA Cheddar Goldfish (Exhibit 16).

1 are not low or reduced calorie foods, or not for weight control, prominently accompanying the “0g
2 Sugars” claim. *See* Exhibits 1-16.

3 3. The claim on the Goldfish’s labels that they contain “0g Sugars” without warning that
4 the Goldfish are not low or reduced calorie foods, or not for weight control, is materially misleading
5 to Plaintiffs and other reasonable consumers, as set forth in the regulation itself: **“Consumers may
6 reasonably be expected to regard terms that represent that the food contains no sugars or
7 sweeteners e.g., ‘sugar free,’ or ‘no sugar,’ as indicating a product which is low in calories or
8 significantly reduced in calories.”** 21 C.F.R. § 101.60(c)(1) (emphasis added).

9 4. Defendants materially mislead consumers with their “0g Sugars” claim despite the
10 inclusion of the calorie content. The reason for this is simple. The average consumer cannot—and
11 should not be expected—to determine if a food is low calorie simply by looking at the calorie content.
12 This is exactly why the aforementioned language is required on labels stating they contain “0g Sugars.”

13 5. As food manufacturers, Defendants know that to be “low calorie,” the FDA requires
14 that a snack food, like Goldfish, must have 40 calories or less per the reference amount customarily
15 consumed (“RACC”) – a standard set by FDA regulation. The average consumer, however, has no
16 idea there is any such thing as a RACC, let alone what a RACC is or how to find it, how to calculate
17 how many calories per RACC a food has, or that 40 calories or less per RACC is the FDA’s low-
18 calorie threshold. Nor would the average consumer know that to be reduced calorie the food must be
19 at least 25% less in calories than an appropriate reference food, and that the differential in calories
20 between the two is measured based upon the calories of each at RACC – another standard set by FDA
21 regulation. Indeed, unbeknownst to consumers, the RACC is different for different types of foods,
22 and the serving size stated in the Nutrition Facts Panel (“NFP”) on the product label need not be the
23 RACC. Thus, merely reading the calorie statement on a label without knowing the RACC for the
24 product or the amount of calories the FDA considers to be low calorie at that RACC, the FDA standard
25 for a food to be reduced calorie or what the appropriate reference food is to determine if a food is
26 reduced calorie does not inform the average consumer whether any food is, in fact, low or reduced in
27 calories.

28

1 6. On the other hand, food manufacturers are in the perfect position to disclose necessary
2 information to consumers as they are required by law to know the facts about their products and the
3 requirements for food labeling. This is why the FDA in 21 C.F.R. § 101.60(c)(1) put the onus squarely
4 on the manufacturer (*i.e.*, Defendants), not consumers, to make these complicated calculations and to
5 disclose to consumers on the label when a food labeled 0g sugar is low or reduced calorie, or to state
6 that the product is not a low or reduced calorie food to avoid misleading consumers into thinking that
7 a food is low or reduced calorie when it is not. In choosing to label Goldfish as having “0g Sugars” on
8 their principal display panels, Defendants have subjected themselves to the regulatory requirements
9 related to such nutrition content claims and are therefore required to make these material disclosures
10 so that consumers can make informed choices about the food they eat. Yet, Defendants have failed to
11 do so.

12 7. Even worse, the Goldfish actually contain sugar. Indeed, 13 of 16 varieties of the
13 Goldfish, including the most popular “Cheddar” flavor of the Goldfish, list sugar or dextrose in their
14 ingredient lists.² Moreover, all varieties of Goldfish are made with wheat flour that contains small
15 amounts of sugar.³ Given that the Goldfish have sugar, the “0g Sugars” statement on the front label
16 is literally false. While FDA regulations authorize the rounding sugar content down to “0” if there is
17 0.5g or less of sugar, Defendants are only permitted to round down on a sugar content claim outside
18 the NFP if they otherwise comply with the “not a low calorie food,” “not a reduced calorie food” or
19 “not for weight control” warning requirements of 21 C.F.R. § 101.60(c)(1). This is because the
20 regulation authorizing the rounding down of sugar content to “0” outside the NFP is part of the very
21 same regulation, 21 C.F.R. § 101.60(c)(1), that requires the warning and compliance with each subpart
22 is mandated by the express language of that regulation. Having failed to comply with those FDA

23 ² The varieties of Goldfish listing sugar as an ingredient includes Cheddar Goldfish (Exhibit 1),
24 Organic Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan Goldfish
25 (Exhibit 4), Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8) Baby Cheddar Goldfish (Exhibit 9),
26 Mix Cheesy Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan Goldfish (Exhibit 11), Whole
27 Grain XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish (Exhibit 13), Disney Mickey
28 Mouse Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish (Exhibit 15), and Flavor Blasted
XTRA Cheddar Goldfish (Exhibit 16).

³ See <https://fdc.nal.usda.gov/fdc-app.html#/food-details/567626/nutrients>.

1 regulatory requirements, Defendants are not permitted to round down or otherwise make any claim on
2 the Goldfish's labels about the sugar content (*i.e.*, a nutrient content claim) outside the NFP. *See* 21
3 U.S.C. §§ 343(r)(1)(A) and (r)(2)(A)(i); *see also* Sherman Law 110670 (same for California); 21
4 C.F.R. § 101.13(b) (nutrient content claims cannot appear on a label unless made in accordance with
5 applicable regulations). In other words, Defendants simply cannot have it both ways.

6 8. Plaintiffs allege that Defendants' conduct violates the unlawful, unfair, and fraudulent
7 prongs of California's Business and Professions Code §§ 17200, et seq. (the "UCL"), California's
8 Business and Professions Code §§ 17500, et seq. (the "FAL"), the Consumers Legal Remedies Act of
9 the California Civil Code §§ 1750, et seq. (the "CLRA"), New York's General Business Law §§ 349
10 and 350, and gives rise to a breach of express warranty. Plaintiffs allege in the alternative that
11 Defendants' conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment.

12 9. Plaintiffs also seek injunctive and declaratory relief based upon Defendants' conduct
13 asserted in this Complaint. As of the date of this Complaint, retail stores in California, New York,
14 and throughout the United States are selling Goldfish labeled as having "0g Sugars" without warning
15 that they are not low calorie, not reduced calorie, or not for weight control, even though applicable
16 law requires such a warning and without the warning the Goldfish is misleadingly represented as being
17 low or significantly reduced in calorie. Moreover, even if Defendants elect to remove the "0g Sugars"
18 representation from the Goldfish's labels, Defendants are not presently enjoined from putting the "0g
19 Sugars" representation back on the Goldfish's labels at any time Defendants so decide, even if the
20 Goldfish are not also labeled as being not low calorie, not reduced calorie, or not for weight control.
21 Accordingly, Plaintiffs seek declaratory and injunctive relief to stop Defendants from selling Goldfish
22 products with the "0g Sugars" claim that are not low calorie or significantly reduced in calories as
23 long as these food products are not also prominently labeled as being "not low calorie," "not reduced
24 calorie," or "not for weight control."

25 10. Defendants' conduct alleged herein is unlawful, false and misleading in violation of the
26 Federal Food, Drug and Cosmetic Act ("FDCA") and the regulations promulgated thereunder by the
27 FDA, including 21 U.S.C. 403(f), (r)(1)(A) and (r)(2)(B), and 21 C.F.R. § 101.60(c)(1). Defendants'
28 identical conduct that violates the FDCA and the FDA regulations thereunder also violates both

1 California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), §§ 110670 110705, 110760,
2 110765, 110770 and 110100, N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI, sub. ch. § 259.1(a), N.Y.
3 Agric. & Mkts. Law § 201.1 and § 214-b, and other applicable state laws. This identical conduct
4 serves as the sole factual basis of each state law cause of action brought by this Complaint, and
5 Plaintiffs do not seek to enforce any of the state law claims raised herein to impose on Defendants any
6 standard of conduct that exceeds that which would violate the FDCA and regulations adopted pursuant
7 thereto. Thus, Plaintiffs' state law claims are not preempted by the FDCA because Plaintiffs' claims
8 for state law violations seek to enforce the same standard of conduct required for Defendants by federal
9 law and Plaintiffs' state law claims are based upon Defendants' breach of that standard of conduct.
10 For any of Plaintiffs' state law causes of action, the allegations supporting those causes of action and
11 any forms of relief sought for those state law causes of action, Plaintiffs expressly disclaim any attempt
12 to hold Defendants to a higher standard of conduct than what is required under federal law, and do not
13 seek any form of relief based on conduct exceeding that which is required for Defendants under federal
14 law. All state law causes of action asserted in this Complaint, the allegations supporting those state
15 law causes of action asserted herein and any forms of relief sought for those state law causes of action
16 asserted herein shall be read consistent with the limitations set forth in this paragraph.

17 **II. JURISDICTION AND VENUE**

18 11. This Court has jurisdiction and venue pursuant to Cal. Civ. Code §§ 395.5, 410.10 and
19 1780(d) over the claims raised in this Complaint for the following reasons: (i) Defendants regularly
20 sell, advertise, market and/or distribute the Goldfish in Alameda County and throughout the State of
21 California; (ii) a substantial portion of the underlying transactions and events complained of herein
22 occurred in Alameda County; and (iii) Plaintiff Rainwater purchased Goldfish in Alameda County.
23 Attached hereto as Exhibit 17 is a declaration in compliance with Cal. Civ. Code § 1780(d).

24 **III. THE PARTIES**

25 12. Plaintiff Denise Cleveland is a citizen of the State of California and a resident of San
26 Bernardino County, California. From at least August 2017 and into February 2019, Ms. Cleveland
27 purchased at least the following Goldfish varieties for her grandchildren: Cheddar Goldfish, Princess
28 Goldfish, Colors Cheddar Goldfish and Baby Cheddar Goldfish. During this period of time, Ms.

1 Cleveland purchased the Princess Goldfish and Baby Cheddar Goldfish about once a month and
2 purchased the Cheddar Goldfish and Colors Goldfish only occasionally. Ms. Cleveland purchased
3 various sizes of these products from Albertsons, Walmart, Sam's Club, Ralph's, and Stater Bros. stores
4 in San Bernardino County, California, and usually paid somewhere between \$2.00 - \$8.50 for the
5 products. The Goldfish Ms. Cleveland purchased were each prominently labeled as containing "0g
6 Sugars," but did not prominently warn that the products were not a low calorie food, not a reduced
7 calorie food, or not for weight control. Ms. Cleveland purchased the Goldfish relying, in part, on the
8 labeled "0g Sugars" claim that caused her to believe they were lower in calories in comparison to other
9 similar products. Had the Goldfish that Ms. Cleveland purchased been labeled with the required
10 warnings for foods labeled as having "0g Sugars" that are not low or reduced in calories, this would
11 have affected Ms. Cleveland's purchasing decisions in that she would have purchased a lesser quantity
12 of the Goldfish, and/or would have purchased other snack products that were actually low or reduced
13 calorie. Indeed, since learning the Goldfish are not low or reduced calorie products, Ms. Cleveland
14 stopped purchasing the Princess Goldfish, Colors Cheddar Goldfish and Baby Cheddar Goldfish, and
15 only rarely purchases the Cheddar Goldfish.

16 13. From at least August 2017 and into April 2018, Plaintiff Lanna Rainwater was a citizen
17 of the State of California, and a resident of Alameda County, California. During the period of time
18 when she lived in Alameda County, California, Ms. Rainwater purchased Cheddar Goldfish
19 approximately twice a month from Safeway retail stores near her home in Alameda County, California,
20 including at least one purchase of the Cheddar Goldfish in April 2018. Since August 2019, Plaintiff
21 Lanna Rainwater has been a citizen of the State of New York, and a resident of Madison County, New
22 York. From August 2019 and into December 2019, Ms. Rainwater purchased Cheddar Goldfish
23 approximately twice a month from Tops retail stores near her home in Madison County, New York.
24 Ms. Rainwater usually purchased the 6.6-ounce bag of Cheddar Goldfish, which she believes usually
25 ranged in price between \$3.00 and \$5.00 per package. The Goldfish Ms. Rainwater purchased were
26 each prominently labeled as containing "0g Sugars," but did not prominently warn that the products
27 were not a low calorie food, not a reduced calorie food, or not for weight control. Ms. Rainwater
28 purchased these Goldfish products relying, in part, on the labeled "0g Sugars" claim that caused her

1 to believe they were lower in calories in comparison to other similar products. Had the Goldfish that
2 Ms. Rainwater purchased been labeled with the required warnings for foods labeled as having “0g
3 Sugars” that are not low or reduced in calories, this would have affected Ms. Rainwater’s purchasing
4 decisions in that she would not have purchased the Goldfish. Indeed, since learning the Goldfish are
5 not low or reduced calorie products, Ms. Rainwater has not purchased them.

6 14. Defendant Pepperidge Farm, Inc. (“Pepperidge Farm”) manufacturers, packages,
7 labels, advertises, markets, distributes and sells the Goldfish in California, New York and throughout
8 the United States. Pepperidge Farm is a Connecticut corporation with its headquarters and principal
9 place of business at 595 Westport Avenue, Norwalk, Connecticut 06851. Pepperidge Farm is
10 registered to do business in California as entity number C0403685. Pepperidge Farm has a direct-
11 store-delivery distribution model that uses independent contractor distributors throughout the United
12 States, including in California and New York.

13 15. Defendant Campbell Soup Company (“Campbell’s”), through its wholly-owned
14 subsidiary Pepperidge Farm, manufacturers, packages, labels, advertises, markets, distributes and sells
15 the Goldfish in California, New York and throughout the United States. Campbell’s is a New Jersey
16 corporation with its headquarters and principal place of business at 1 Campbell Place, Camden, New
17 Jersey 08103. Campbell’s is registered to do business in California as entity number C0206561.
18 Campbell’s noted in its 2019 SEC Form 10-K sales increases in its “snacks” portfolio, specifically due
19 to growth in sales of the Goldfish products in 2018 and 2019. Campbell’s also owns and controls the
20 trademark for the “Goldfish” brand, and responded on behalf of Pepperidge Farm to Ms. Cleveland’s
21 March 13, 2019 pre-litigation demand letter under the CLRA that was sent to Campbell’s and
22 Pepperidge Farm prior to commencing this action. Moreover, Campbell’s 2019 Annual Report touts
23 Pepperidge Farm as part of its “Snacks division” and Goldfish as a leading revenue generating brand
24 for Campbell’s.⁴ Campbell’s also controls the advertising of Goldfish. Campbell’s also directly
25 participated in the marketing strategy and advertising of Goldfish as further specified herein.

26 _____
27 ⁴ “In our Snacks division, we are focused on accelerating the growth of this unique and differentiated
28 portfolio. The combination of the Pepperidge Farm and Snyder’s-Lance brands provide us with a
world-class portfolio and seasoned snacks leadership team. The combined brands make Campbell the
No. 3* snacks company in the United States. We know how to win in snacks. Pepperidge Farm has

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IV. FACTUAL ALLEGATIONS

16. Goldfish are extremely popular snack crackers sold nationwide. The Goldfish are prominently labeled as containing “0g Sugars” on their PDP as shown in Exhibits 1-16, and illustrated below:



17. A claim that a food has “0g Sugars” is a nutrient content claim, which is defined as “[a] claim that expressly or implicitly characterizes the level of a nutrient of the type required to be in nutrition labeling under § 101.9 or under § 101.36.” 21 C.F.R. § 101.13(b). Packaged foods require specific “Nutrition labeling” that is located within the NFP on a food product’s packaging. See 21

grown net sales for 19 consecutive quarters and has experienced a nearly 3-percent compound annual growth rate (CAGR) over the last three years.... With leading brands like Goldfish, ... our Snacks division has critical scale and is poised for accelerated growth.” Annual Report, p. 11 (<https://investor.campbellsoupcompany.com/static-files/7fdd1232-f047-4121-ac8d-31f07c48b5d1>).

1 C.F.R. § 101.9. Sugars are nutrients subject to 21 C.F.R. § 101.13(b) as they are required in nutrition
 2 labeling. See 21 C.F.R. § 101.9(c)(6)(ii). “Information that is required or permitted by 101.9 or
 3 101.36, as applicable, to be declared in nutrition labeling, and that appears as part of the nutrition label,
 4 is not a nutrient content claim and is not subject to the requirements of this section. *If such*
 5 *information is declared elsewhere on the label or in labeling, it is a nutrient content claim and is*
 6 *subject to the requirements for nutrient content claims.”* See 21 C.F.R. § 101.13(c) (emphasis
 7 added). Thus, a “0g Sugars” statement on the PDP, like the one on the Products here, is a nutrient
 8 content claim subject to the requirements for nutrient content claims.

9 18. The FDCA prohibits all nutrient content claims on foods’ labels or labeling, except
 10 those expressly authorized by regulation by the U.S. Secretary of Health and Human Services (or
 11 which are otherwise exempted). 21 U.S.C. §§ 343(r)(1)(A) and (r)(2)(A)(i); *see also* Sherman Law
 12 110670 (same for California); 21 C.F.R. § 101.13(b) (nutrient content claims cannot appear on a label
 13 unless made in accordance with applicable regulations); N.Y. Comp. Codes R. & Regs. tit. 1, ch. VI,
 14 sub. ch. § 259.1(a) (adopting for New York). The FDCA specifically prohibits a statement of the
 15 absence of a nutrient except “as defined by the Secretary [of Health and Human Services] by
 16 regulation.” 21 U.S.C. § 343(r)(2)(A)(ii)(I).

17 19. 21 C.F.R. § 101.60(c)(1) defines the use of nutrient content claims for the absence of
 18 sugar as follows (emphasis added):

19 (1) Use of terms **such as** “sugar free,” “free of sugar,” “no sugar,” “zero sugar,” “without
 20 sugar,” “sugarless,” “trivial source of sugar,” “negligible source of sugar,” or “dietarily
 21 insignificant source of sugar.” **Consumers may reasonably be expected to regard terms**
 22 **that represent that the food contains no sugars or sweeteners e.g., “sugar free,” or**
 23 **“no sugar,” as indicating a product which is low in calories or significantly reduced**
 24 **in calories.** Consequently, except as provided in paragraph (c)(2) of this section, a food
 25 may not be labeled with such terms unless:

26 (i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference
 27 amount customarily consumed and per labeled serving or, in the case of a meal product or
 28 main dish product, less than 0.5 g of sugars per labeled serving; **and**

1 (ii) The food contains no ingredient that is a sugar or that is generally understood by
 2 consumers to contain sugars unless the listing of the ingredient in the ingredient statement
 3 is followed by an asterisk that refers to the statement below the list of ingredients, which
 4 states “adds a trivial amount of sugar,” “adds a negligible amount of sugar,” or “adds a
 5 dietarily insignificant amount of sugar;”⁵ **and**

6 (iii)(A) It is labeled “low calorie” or “reduced calorie” or bears a relative claim of special
 7 dietary usefulness labeled in compliance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of
 8 this section, or, if a dietary supplement, it meets the definition in paragraph (b)(2) of this
 9 section for “low calorie” but is prohibited by §§ 101.13(b)(5) and 101.60(a)(4) from
 10 bearing the claim; or

11 **(B) Such term is immediately accompanied, each time it is used, by either the**
 12 **statement “not a reduced calorie food,” “not a low calorie food,” or “not for weight**
 13 **control.”**

14 20. Based on the unambiguous plain language of 21 C.F.R. § 101.60(c)(1)(iii), a reasonable
 15 consumer can expect a food labeled with a nutrient content claim “0g Sugars” to be low or significantly
 16 reduced in calories. *Id.*, § 101.60(c)(1). Therefore, in order for consumers to not be misled by a “0g
 17 Sugars” nutrient content claim as suggesting the food is a low or significantly reduced calorie food,
 18 the food must contain a prominent, immediately accompanying warning that it is not a reduced calorie
 19 food, not a low calorie food, or not for weight control. *Id.* at 101.60(c)(1)(iii).

20 21. If a food labeled with a “0g Sugars” nutrient content claim does not comply with the
 21 requirements of 21 C.F.R. § 101.60(c)(1), it is misbranded. 21 U.S.C. § 343(r) (a food is misbranded
 22 if it bears a nutrient content claim unless it is used as defined by the secretary of Health and Human
 23 Services); Sherman Law § 110670 (same).

24 _____
 25 ⁵ In addition to failing to warn that the Goldfish are “not a low calorie food,” “not a reduced calorie
 26 food,” or “not for weight control” immediately adjacent to the “0g Sugars” claim, as explained above
 27 12 of 16 varieties of the Goldfish list sugar as an ingredient. Since these Goldfish have sugar, they
 28 are misbranded because the labeling does not contain the statement that the sugar “adds a trivial
 amount of sugar,” “adds a negligible amount of sugar,” or “adds a dietarily insignificant amount of
 sugar” regarding the sugar added to the products.

1 22. Further, a food is misbranded when a statement is required to be on a food's label, such
2 as the requirement to warn that a food is not a low calorie food, not a reduced calorie food, or not for
3 weight control, but such statement is not made prominently "with such conspicuousness (as compared
4 with other words, statements, designs, or devices, in the labeling) and in such terms as to render it
5 likely to be read and understood by the ordinary individual under customary conditions of purchase
6 and use." 21 U.S.C. § 343(f); Sherman Law §110705 (same).

7 23. Goldfish are not "low calorie" foods as set forth in 21 C.F.R. § 101.60(b)(2) and are
8 not labeled as being "low calorie." To be "low calorie," a food with a RACC⁶ of 30 grams must have
9 40 calories or less per RACC. 21 C.F.R. § 101.60(b)(2)(i)(B).

10 24. "Snacks: All varieties, chips, pretzels, popcorn, extruded snacks, fruit and vegetable-
11 based snacks (e.g., fruit chips), grain-based snack mixes" have a RACC of 30 grams. 21 C.F.R. §
12 101.12(b). Goldfish are a snack food that contain 140 calories per 30 gram serving, far greater than
13 the 40 calories per RACC needed to meet the requirement for a "low calorie" food. *See* Exhibits 1-
14 16.

15 25. Goldfish are also not "reduced calorie" foods and are not labeled as being reduced
16 calorie foods. *See* Exhibits 1-16. To be "reduced calorie," the food must contain at least 25% fewer
17 calories per RACC than an appropriate reference food. *See* 21 C.F.R. § 101.60(b)(4)(i). Additionally,
18 a food's label or labeling may bear a "reduced calorie" nutrient content claim only if "[t]he identity of
19 the reference food and the percent (or fraction) that the calories differ between the two foods are
20 declared in immediate proximity to the most prominent such claim" and "[q]uantitative information
21 comparing the level of the nutrient per labeled serving size with that of the reference food that it
22 replaces . . . is declared adjacent to the most prominent claim or to the nutrition label." 21 C.F.R.
23 § 101.60(b)(4)(ii)(A)-(B). Goldfish's labels do not reference any other food that Goldfish replace that
24 have 25% more calories than Goldfish.

25
26 _____
27 ⁶ The RACC is not necessarily the serving size manufacturers use on their labels. Frequently,
28 manufacturers use differing serving sizes making comparing calories, sugar content, etc. between
brands difficult for consumers, especially at brick-and-mortar stores.

1 26. Indeed, competing flavored snack crackers that are not labeled as having “0g Sugars”
2 have comparable calories based on the RACC serving size. For example, Annie’s Organic Cheddar
3 Bunnies are made of similar ingredients as Goldfish and have a similar calorie content (*i.e.*, 140
4 calories) per RACC, not 25% more calories per RACC.⁷

5 27. Despite not being low calorie or significantly reduced calorie foods, Goldfish are
6 labeled as containing “0g Sugars,” but do not prominently warn that they “are not a low calorie food,”
7 “not a reduced calorie food,” or “not for weight control” in violation of 21 C.F.R. 101.60(c)(1)(iii)(B)
8 and Sherman Law § 110100 (adopting this FDA regulation as California law). *See* Exhibits 1-16
9 (showing the Goldfish’s labels all bearing the “0g Sugars” claim without the required warning).

10 28. Defendants’ labeling of Goldfish as having “0g Sugars” without prominently warning
11 that the Goldfish are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control”
12 is also misleading and renders the Goldfish misbranded.

13 29. Moreover, the Goldfish have sugar in them as an ingredient or have ingredients which
14 have sugars naturally in them.⁸ By using the “0g Sugars” claim on the PDP in violation of 21 C.F.R.
15 § 101.60(c)(1)(iii)(B), Defendants were not authorized to round down to “0g” on the PDP even if the
16 Products actually contain .5g or less sugar content. As such, the Goldfish “0g Sugars” claim on the
17 PDP is an unauthorized nutrient content claim that is also literally false. Alternatively, if the “0g
18 Sugars” claim on the Products is found to not be a defined nutrient content claim for the absence of
19 sugar so that 21 C.F.R. § 101.60(c)(1) would not apply, then the “0g Sugars” claim on the Goldfish
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22 ⁷ *See* <https://www.annies.com/product/organic-cheddar-bunnies/>.

23 ⁸ The Goldfish flavors that include sugar or dextrose, a simple sugar made from corn that is chemically
24 identical to glucose (*a/k/a* sugar), as an ingredient include: Cheddar Goldfish (Exhibit 1), Organic
25 Cheddar Goldfish (Exhibit 2), Organic Original Goldfish (Exhibit 3), Parmesan Goldfish (Exhibit 4),
26 Flavor Blasted Xplosive Pizza Goldfish (Exhibit 8), Baby Cheddar Goldfish (Exhibit 9), Mix Cheesy
27 Pizza + Parmesan Goldfish (Exhibit 10), Organic Parmesan Goldfish (Exhibit 11), Whole Grain
28 XTRA Cheddar Goldfish (Exhibit 12), Colors Cheddar Goldfish (Exhibit 13), Disney Mickey Mouse
Goldfish (Exhibit 14), Whole Grain Colors Cheddar Goldfish (Exhibit 15), and Flavor Blasted XTRA
Cheddar Goldfish (Exhibit 16). All of the products are made with wheat flour which naturally contains
small amounts of sugar.

1 still is literally false because the Goldfish have sugar in them as an ingredient or have ingredients
2 which have sugars naturally in them.

3 **A. DEFENDANTS' "0G SUGAR" NUTRIENT CLAIM IS MATERIALLY**
4 **MISLEADING TO CONSUMERS**

5 30. When the FDA promulgated its regulation for nutrient content claims for the absence
6 of sugar, the agency explained why labeling a food that is not low calorie or significantly reduced in
7 calories as having "0g Sugars" without warning that it is "not a low calorie food," "not a reduced
8 calorie food," or "not for weight control" is materially misleading to consumers. Specifically, the
9 FDA's regulation states: "Consumers may reasonably be expected to regard terms that represent that
10 the food contains no sugars or sweeteners, e.g., 'sugar free,' or 'no sugar,' as indicating a product
11 which is low in calories or significantly reduced in calories. Consequently . . . a food may not be
12 labeled with such terms unless ... [s]uch term is immediately accompanied, each time it is used, by
13 either a statement 'not a reduced calorie food,' 'not a low calorie food,' or 'not for weight control.'"
14 21 C.F.R. § 101.60(c)(1).

15 31. It is of significant consequence that the FDA included in the text of the regulation its
16 reasoning for the warning at issue in this action. FDA's research yielded the conclusion that consumers
17 reasonably expect foods which labels bear such claims to be low in calories or significantly reduced
18 in calories. *See* Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of
19 Terms, 56 Fed. Reg. 60421-01, 60437-38, 60648-49 (Nov. 27, 1991) (to be codified at 21 C.F.R. pts.
20 5, 101 & 105). Based on its research, the FDA concluded

21 *[C]onsumers may associate the absence of sugar with weight control claims and with*
22 *foods that are low calorie or that have been altered to reduce calories significantly.*
23 *The agency concluded that any food making a statement about the absence of sugar*
24 *would have to bear a statement that the food is not low calorie or calorie reduced, unless*
the food is a low or reduced calorie food. The agency stated that without this
disclosure, some consumers might think the food was offered for weight or calorie
control.

25 *Id.* (emphasis added).

26 32. The FDA's conclusion that consumers may associate the absence of sugar with foods
27 that are low calorie or that have been altered to reduce calories significantly is not a novel concept.
28 The FDA first determined based on findings of fact that consumers associate terms such as "no sugar"

1 and “sugar free” with weight control claims and foods that are low calorie or have been altered to
2 reduce calories significantly in 1977. See 42 Fed. Reg. 36898, 37170. Based on these findings, the
3 FDA has had a long-standing policy that a company making a “0g Sugars” claim is required to
4 affirmatively disclose that the food is not low calorie or calorie reduced, unless the food is a low or
5 reduced calorie food. *Id.*

6 33. Critically, the FDA also considered evidence that, absent the disclosure that a food is
7 not low calorie, not reduced calorie, or not for weight control, “0g Sugars” nutrient content claims can
8 mislead consumers “even though the nutrition labeling will list calorie content.” 56 Fed. Reg. at
9 60,436 (emphasis added). The reason for this should be obvious – consumers generally do not know
10 that there is such a thing as a RACC, let alone what the RACC for any given food is, and based simply
11 on the listing of the calories, whether it is a “low calorie food,” or is a “reduced calorie food” under
12 the standards established by the FDA that are specified in its regulations. Unsurprisingly, the FDA
13 referenced no comments challenging or criticizing this principle in its commentary accompanying the
14 final rule. See 58 Fed. Reg. 2302-01, 2326–28. Rather, it confirmed consumers reasonably expect
15 foods whose labels bear claims that a product contains no sugar to be low or significantly reduced in
16 calories, or superior to substitute products. 56 Fed. Reg. 60,421-01, 60,436–38.

17 34. In September 2007, FDA “highlight[ed] accurate claims about the absence of sugar as
18 a regulatory priority.” FDA Guidance for Industry and FDA: Dear Manufacturer Letter Regarding
19 Sugar Free Claims, Sept. 2007⁹ (last updated Nov. 8, 2017). FDA further indicated that it “is
20 concerned about the number of products we have seen that contain claims regarding the absence of
21 sugar, such as, ‘sugar free’ but that fail to bear the required disclaimer statement when these foods are
22 not ‘low’ or ‘reduced in’ calories or fail to bear the required disclaimer statement in the location or
23 with the conspicuousness required by regulation.” *Id.* Finally, it noted that, “[a]s part of our
24 continuing effort to reduce the incidence of obesity in the United States, FDA wants to ensure that
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27 ⁹ [https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-
28 and-fda-dear-manufacturer-letter-regarding-sugar-free-claims.](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims)

1 consumers are provided with the label information they need to make informed choices for
2 maintaining a healthy diet.” *Id.*

3 35. In addition to noting the importance for such disclosures, since 2007, FDA has sent
4 warning letters to food manufacturers stating that each manufacturer’s foods were misbranded for
5 failing to provide an immediately accompanying statement that the product is “not a reduced calorie
6 food,” “not a low calorie food” or “not for weight control”:

7 a. FDA Warning Letter to The South Bend Chocolate Co., Inc., June 5, 2009¹⁰;

8 b. FDA Warning Letter to Carmack Industries LLC, Aug. 12, 2013¹¹;

9 c. FDA Warning Letter to BestLife International, Inc., February 4, 2009¹²; and

10 d. FDA Warning Letter to Oberlander Baking Co., August 29, 2007¹³.

11 36. The FDA issues warning letters such as these “only for violations of regulatory
12 significance.”¹⁴

13 37. The foregoing regulatory materials and actions demonstrate that “0g Sugars” nutrient
14 content claims are material to consumers – a conclusion that FDA articulated at least as early as 1977
15 – and that claims about the absence of sugar that do not comply with applicable regulations have been,
16 and continue to be, a regulatory priority for FDA.

17
18 ¹⁰ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170112195609/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm)
19 [it.org/7993/20170112195609/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm)
20 [ucm170016.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm170016.htm).

21 ¹¹ [https://wayback.archive-](https://wayback.archive-it.org/7993/20170723015302/https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm)
22 [it.org/7993/20170723015302/https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013](https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm)
23 [/ucm365649.htm](https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm365649.htm).

24 ¹² [https://wayback.archive-](https://wayback.archive-it.org/7993/20170112195846/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm)
25 [it.org/7993/20170112195846/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm)
26 [ucm148648.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2009/ucm148648.htm).

27 ¹³ <https://www.fdalabelcompliance.com/letters/ucm076486>.

28 ¹⁴ 1. FDA, Regulatory Procedures Manual at p. 4-2 (Mar. 2017), available at <http://www.fda.gov/downloads/ICECI/ComplianceManuals/RegulatoryProceduresManual/UCM074330.pdf>. Warning letters are intended “to correct violations of the statutes or regulations” and “communicate[] the agency’s position on a matter.” *Id.* at 4-2 to 4.

1 38. The fact that Defendants' nutrient content claim on Goldfish states "0g Sugars," and
2 not "no sugar" or "sugar free," is irrelevant. The FDA's list of examples how to express a nutrient
3 content claim for the absence of sugar is not exclusive as evidenced by the FDA's choice of the phrase
4 "terms such as" before listing the examples in the regulation. *See* 21 C.F.R. § 101.60(c)(1). Moreover,
5 as recognized in a published opinion by the United States Court of Appeals for the Ninth Circuit, there
6 is no rational difference between "zero" and "0" for nutrient content claims in food labeling. *Hawkins*
7 *v. Kroger Co.*, 906 F.3d 763, 771 (9th Cir. 2018). "Spelling out the number does not change its
8 meaning. To hold otherwise would create an illogical rule" *Id.*

9 39. Critically, because Goldfish actually contain 0.5 g sugar or less and the ability to round
10 down to "0" outside the NFP is tied to providing the prominent warning under 21 C.F.R. §
11 101.60(c)(1), Goldfish was not permitted to round its sugar content down to "0" on its PDP since it
12 failed to provide the required warning, rendering Goldfish's "0g Sugar" claim on the PDP a literally
13 false nutrient content claim. Conversely, even if the "0g Sugars" statement on Goldfish's labeling was
14 somehow found not to be a defined nutrient content claim for the absence of sugar subject to 21 C.F.R.
15 § 101.60(c)(1), then the claim would be literally false (as well as misleading) and violates the law
16 given that all of the Goldfish contain sugar or an ingredient that contains sugar, including 13 of the 16
17 Goldfish that expressly list sugar in the ingredients list on the labels. 21 U.S.C. § 343(a) (a food is
18 misbranded if its labeling is false or misleading in any particular); 21 C.F.R. § 101.13(i)(3) (a statement
19 that expressly characterizes the level of a nutrient in food may not be false or misleading in any
20 respect).

21 40. The NFP states that the Goldfish have 0g total sugar by virtue of the FDA's rounding
22 rule because they presumably have less than 0.5g sugar per RACC. 21 C.F.R. § 101.9(c)(6)(ii). This
23 rounding rule applies only to the declaration of total sugars made within the NFP. *See* 21 C.F.R. §
24 101.13(j)(3) (an express nutrient content claim made outside the NFP may not be false or misleading).
25 For absence of sugar content statements outside the NFP, 21 C.F.R. § 101.60(c)(1)(i) controls
26 rounding. However, as noted, 13 of 16 varieties of the Goldfish contain sugar or a sugar known as
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1 dextrose as reflected in the Goldfish's ingredients lists.¹⁵ Moreover, each Goldfish variety is made
2 with wheat flour which itself contains a small amount of sugar naturally.¹⁶ Thus, if 21 C.F.R. §
3 101.60(c)(1) and its rounding down provision does not apply to the Goldfish's "0g Sugars" claim
4 despite it being a claim about the absence of sugar, then the "0g Sugars" claim outside the NFP is
5 literally false because all of the Goldfish contain sugar and there is no applicable rule permitting
6 rounding down to zero. Yet, Defendants try to take advantage of the allowance to round sugar down
7 to zero in 21 C.F.R. § 101.60(c)(1), but without giving consumers the warning required by the same
8 regulation that the Products are not low calorie, not reduced calorie, or not for weight control.
9 Defendants may not take the benefit of part of the regulation without complying with all the
10 requirements of the regulation.

11 **B. DEFENDANTS MISLEADINGLY SUGGEST GOLDFISH ARE SUPERIOR**
12 **TO THEIR COMPETITORS' PRODUCTS**

13 41. Defendants market the Goldfish to children and parents and use the "0g Sugar" claim
14 on the Goldfish to get an advantage over competing products by suggest that the Goldfish are a
15 healthful snack for children. In Campbell's "Commitment Concerning Advertising to Children"
16 (CCAC), Campbell's acknowledges that "Schedule A identifies the products we will advertise to
17 children and includes ingredient statements and nutrition facts for those products." CCAC, p. 1.¹⁷
18 Schedule A is entitled "Campbell Soup Company – Product List Effective as of April 1, 2016" and
19 goes on to identify in that list each of the Goldfish and their corresponding NFPs.¹⁸ Campbell's in the
20 CCAC applicable to Goldfish also acknowledges that, "[m]ost marketing campaigns are interactive.
21 To the extent those campaigns engage with children, we believe it is important that they contain or
22 model healthy lifestyle messages, such as those in support of efforts to reduce obesity among children.

23 ¹⁵ See Exhibits 1-4, and 8-16.

24 ¹⁶ <https://fdc.nal.usda.gov/fdc-app.html#/food-details/168944/nutrients> (whole grain wheat flour).

25 ¹⁷ [https://www.campbellsoupcompany.com/wp-](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf)
26 [content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/CPB_CommitmentConcerningAdvertisingtoChildrenUS.pdf).

27 ¹⁸ Schedule A [https://www.campbellsoupcompany.com/wp-](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/ScheduleA.pdf)
28 [content/uploads/sites/31/2019/05/ScheduleA.pdf](https://www.campbellsoupcompany.com/wp-content/uploads/sites/31/2019/05/ScheduleA.pdf).

1 We will continue to provide healthy lifestyle messages in some part of our advertising to children.
2 Advertising supports a healthy lifestyle when it addresses a recognized need of children, either (a) to
3 control caloric intake or increase activity level to help achieve a healthy weight or (b) with respect to
4 positive emotional, social, or physical development.” CCAC, p. 2. Campbell’s further acknowledges
5 that such advertising is directed “to both children and adults.” CCAC, p. 3.

6 42. Campbell’s express purpose of advertising Goldfish “to control caloric intake” or “to
7 help achieve a healthy weight” is precisely why the FDA concluded claims such as “0g Sugar” must
8 include the “not a low calorie food,” “not a reduced calorie food” or “not for weight control” disclosure
9 required by 21 C.F.R. § 101.60(c)(1)(B). Indeed, “[t]he agency stated that without this disclosure,
10 *some consumers might think the food was offered for weight or calorie control.*” See Food Labeling:
11 Nutrient Content Claims, General Principles, Petitions, Definition of Terms, 56 Fed. Reg. 60421-01,
12 60437–38, 60648–49 (Nov. 27, 1991) (to be codified at 21 C.F.R. pts. 5, 101 & 105) (emphasis added).

13 43. In targeting the advertising of their Goldfish to children and parents, Defendants use
14 the “0g Sugar” claim to gain a competitive advantage over its competitors’ products. For example,
15 cheddar flavor Goldfish list sugar as an ingredient and are made with wheat flour which contains innate
16 sugar but is labeled with a “0g Sugar” claim on the PDP without being low or reduced in calories and
17 without the required warning. Yet, Annie’s Cheddar Bunnies snack crackers, which are also made
18 with wheat flour but do not list sugar an ingredient, are not labeled as having “0g Sugar” on the
19 product’s PDP despite being labeled as having 0g sugar in the products’ NFP.

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CERTIFIED ORGANIC

Annie's

HOME GROWN

Organic

Cheddar Bunnies™

Baked Snack Crackers

Made with Goodness!
 ✓ No Artificial Flavors
 ✓ No Synthetic Colors
 ✓ Made with Real Cheese

USDA
ORGANIC

Organic
non-GMO

BAKED WITH
REAL
CHEESE

NET WT 7.5 OZ (213g)

Nutrition Facts

7 servings per container
Serving size **51 crackers**
(30g)

Amount per serving
Calories 140

% Daily Value*

Total Fat 6g	8%
Saturated Fat 1g	4%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 250mg	11%
Total Carbohydrate 19g	7%
Dietary Fiber less than 1g	2%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 3g	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	0%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Best Ingredients:
 Organic Wheat Flour, Organic Expeller-Pressed Sunflower Oil, Salt, Organic Cheddar Cheese (pasteurized organic milk, cheese cultures, sea salt, non-animal enzymes), Baking Soda, Organic Yeast, Organic Paprika, Monocalcium Phosphate, Cultured Organic Milk, Organic Nonfat Dry Milk, Organic Annatto (for color), Organic Onion Powder, Organic Galaxy Seed Powder, Non-Animal Enzymes.

CONTAINS WHEAT AND MILK; MAY CONTAIN SOY INGREDIENTS.

MANUFACTURED FOR ANNIE'S, INC.
 1610 5TH STREET, BERKELEY, CA 94710
 © ANNIE'S, INC.
 Certified Organic by Oregon Tilth

We work with trusted suppliers to source only non-GMO ingredients.

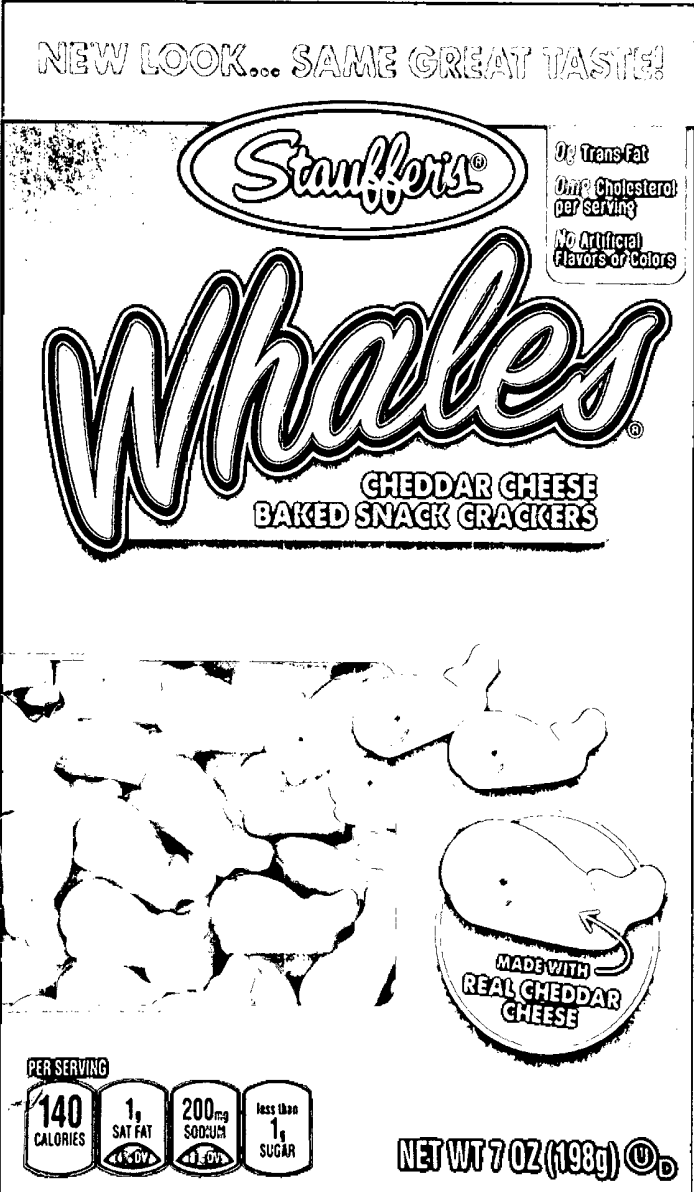
We Love to Hear Your Feedback!
 Contact Us at Annie's.com or
 1-800-285-1081 and reference the "Best If Used By" date.
 Store in a Cool, Dry Place.

44. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as Annie's Cheddar Bunnies for the same serving size (30g).

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1 45. Stauffer's cheddar cheese Whales, which are made with wheat flour wheat flour and
 2 contain sugar as an ingredient just like Goldfish, are truthfully labeled as having "less than 1g sugar"
 3 on the product's PDP, and not 0g Sugar as shown below.

5 NEW LOOK... SAME GREAT TASTE!



6 **Stauffer's**
 7 **Whales**
 8 **CHEDDAR CHEESE**
 9 **BAKED SNACK CRACKERS**

10 **0g Trans Fat**
 11 **0mg Cholesterol**
 12 **per serving**
 13 **No Artificial**
 14 **Flavors or Colors**

15 **PER SERVING**
 16 **140** CALORIES
 17 **1g** SAT FAT
 18 **200mg** SODIUM
 19 **less than 1g** SUGAR

20 **NET WT 7 OZ (198g) ©**

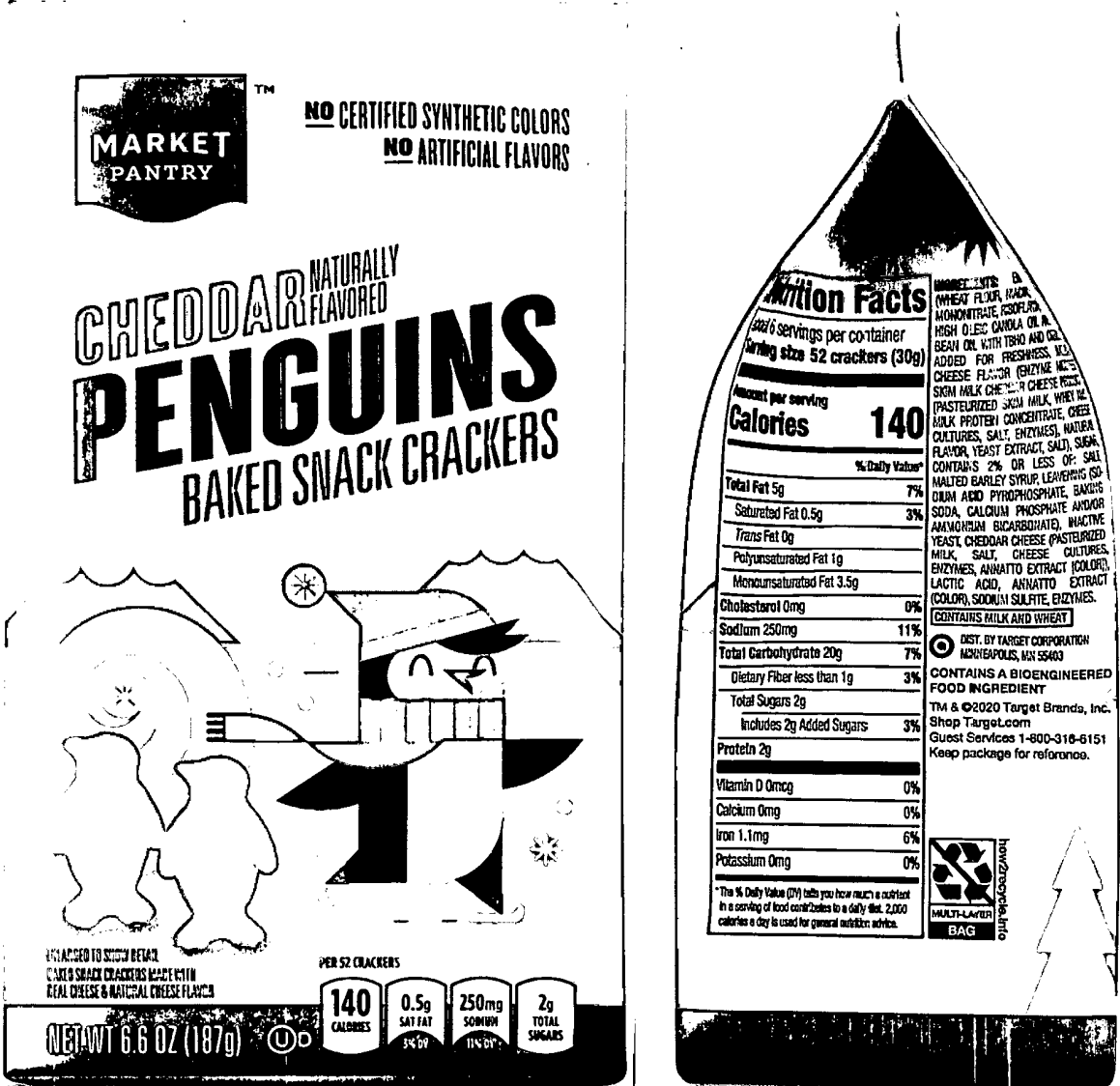
Nutrition Facts
 Serving Size 33 crackers (30g/1.1oz)
 Servings Per Container about 6

Amount Per Serving	
Calories 140	Calories from Fat 45
% Daily Value*	
Total Fat 5g	8%
Saturated Fat 1g	4%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 200mg	8%
Total Carbohydrate 20g	7%
Dietary Fiber less than 1g	3%
Sugars less than 1g	
Protein 3g	

INGREDIENTS: ENRICHED FLOUR (WHEAT FLOUR, MALTED BARLEY FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), VEGETABLE OILS (SUNFLOWER, CANOLA AND/OR SOYBEAN), CHEDDAR CHEESE BLEND (CHEDDAR CHEESE [PASTEURIZED MILK, CHEESE CULTURES, SALT, ENZYMES, CALCIUM CHLORIDE], MALTODEXTRIN, SALT, WHEY, CORN SYRUP SOLIDS, DISODIUM PHOSPHATE, SOUR CREAM POWDER [CREAM, CULTURES, LACTIC ACID, CULTURED NONFAT DRY MILK, CITRIC ACID], NATURAL FLAVORS, YEAST EXTRACT, SOYBEAN OIL, LACTIC ACID, CITRIC ACID), YEAST EXTRACT, NATURAL COLOR (ANNATTO AND OLEORESIN PAPRIKA), SUGAR, SALT, CITRIC ACID, BAKING SODA (LEAVENING), PAPRIKA, TURMERIC, GARLIC POWDER, ONION POWDER, SPICE, TRICALCIUM PHOSPHATE.
CONTAINS: WHEAT, MILK
 Made in a Bakery that uses Peanuts and Tree Nuts.

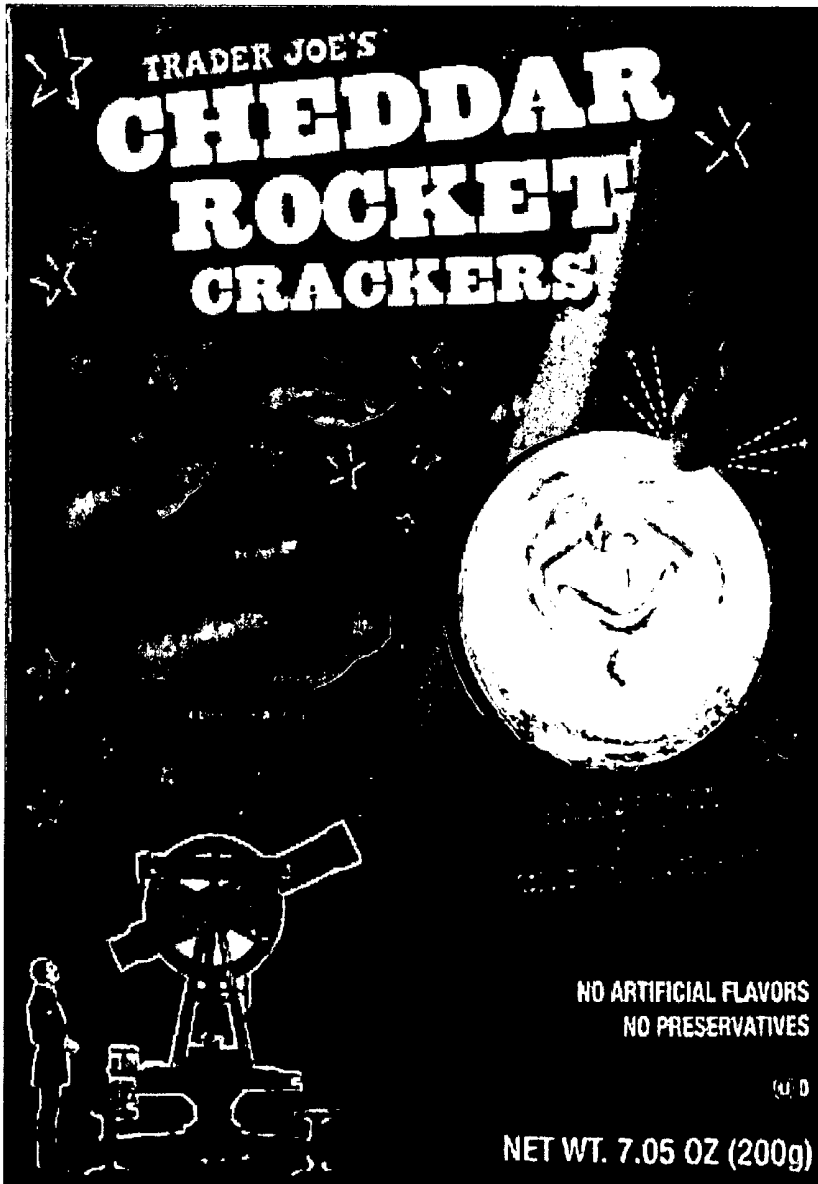
23 46. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low
 24 calorie or significantly reduced in calorie compared to similar products, it contains the same number
 25 of calories (140) as Stauffer's Whales for the same serving size (30g).
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47. Target's Market Pantry brand Cheddar Penguins snack crackers are made with wheat flour and have sugar as an ingredient, and are labeled as having "2g Total Sugar" on the product's PDP as shown below.



48. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as the Market Pantry cheddar Penguins for the same serving size (30g), despite the Market Pantry product having 2g of sugar listed in the NFP.

49. Trader Joe's Cheddar Rocket Crackers are similarly made with wheat flour and, like cheddar Goldfish, have less than 2% of sugar listed as an ingredient as shown below.



Nutrition Facts	
7 servings per container	
Serving size 46 crackers (30g)	
Amount per serving	
Calories	140
% Daily Value*	
Total Fat 5g	6%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Cholesterol 5mg	2%
Sodium 280mg	12%
Total Carbohydrate 19g	7%
Dietary Fiber 1g	4%
Total Sugars 1g	
Includes <1g Added Sugars	2%
Protein 4g	
Vitamin D 0mcg	0%
Calcium 110mg	8%
Iron 0.9mg	6%
Potassium 50mg	2%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: UNBLEACHED ENRICHED FLOUR (WHEAT FLOUR, NIACIN, CALCIUM CARBONATE, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), CHEDDAR CHEESE (CULTURED MILK, SALT, MICROBIAL ENZYME), SUNFLOWER OIL, SALT, CONTAINS 2% OR LESS OF EACH OF THE FOLLOWING: SUGAR, LEAVENING (AMMONIUM BICARBONATE, BAKING SODA), NATURAL CHEESE FLAVOR (CHEDDAR CHEESE (MILK CULTURES, SALT, ENZYMES), WATER, DISODIUM PHOSPHATE, ENZYMES), ANIHATTO (FOR COLOR), SPICES (CAYENNE PEPPER, PAPRIKA (FOR COLOR)), ONION POWDER, ENZYMES, SOY LECITHIN (AN EMULSIFIER).

CONTAINS WHEAT, MILK, SOY.
 DIST. & SOLD EXCLUSIVELY BY:
 TRADER JOE'S, MONROVIA, CA 91016
 PRODUCT OF CANADA
 SKU#99083

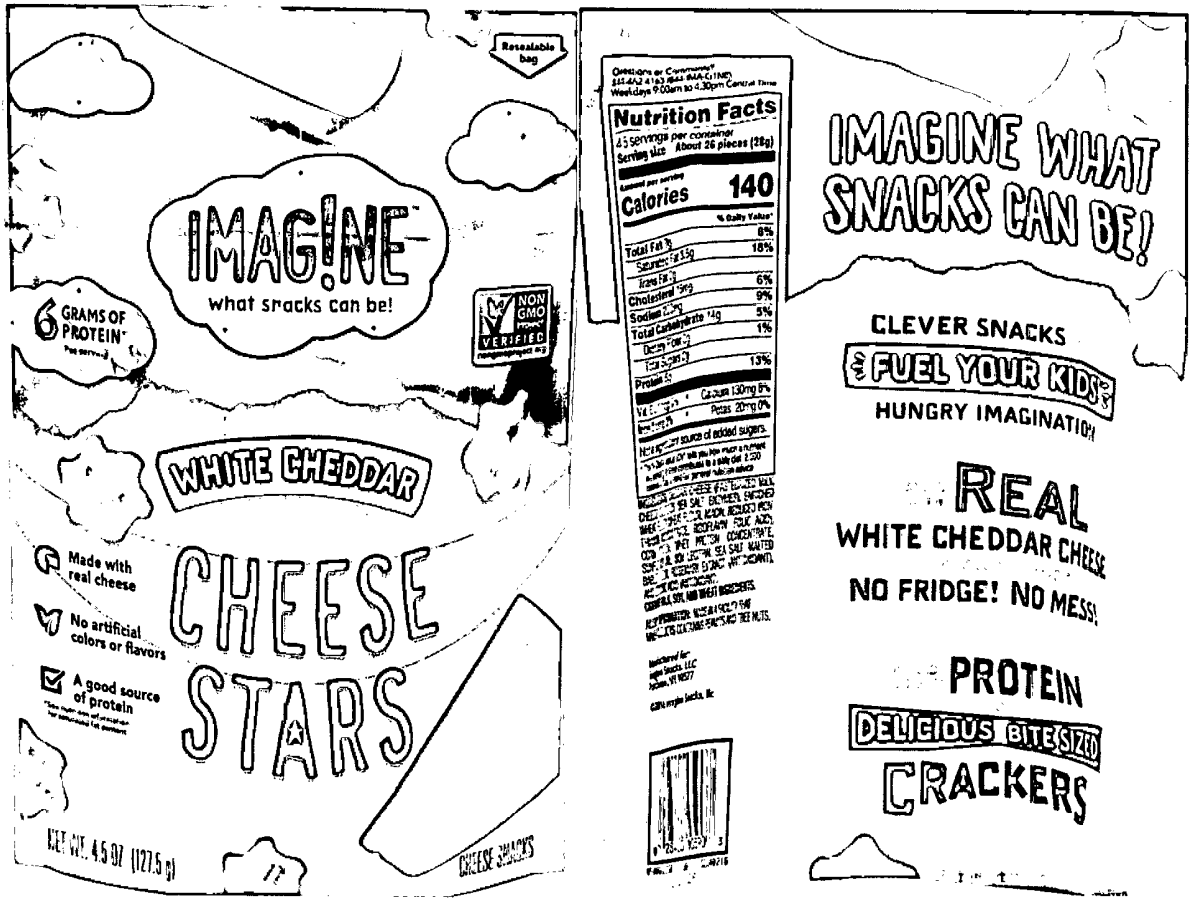


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50. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as the Trader Joe's Cheddar Rocket crackers for the same serving size (30g), despite Trader Joe's listing less than 1g sugar in the NFP.

51. Similarly, Imagine brand white cheddar cheese Stars are made with wheat flour but are not labeled as containing "0g Sugar" on their PDP as shown below.

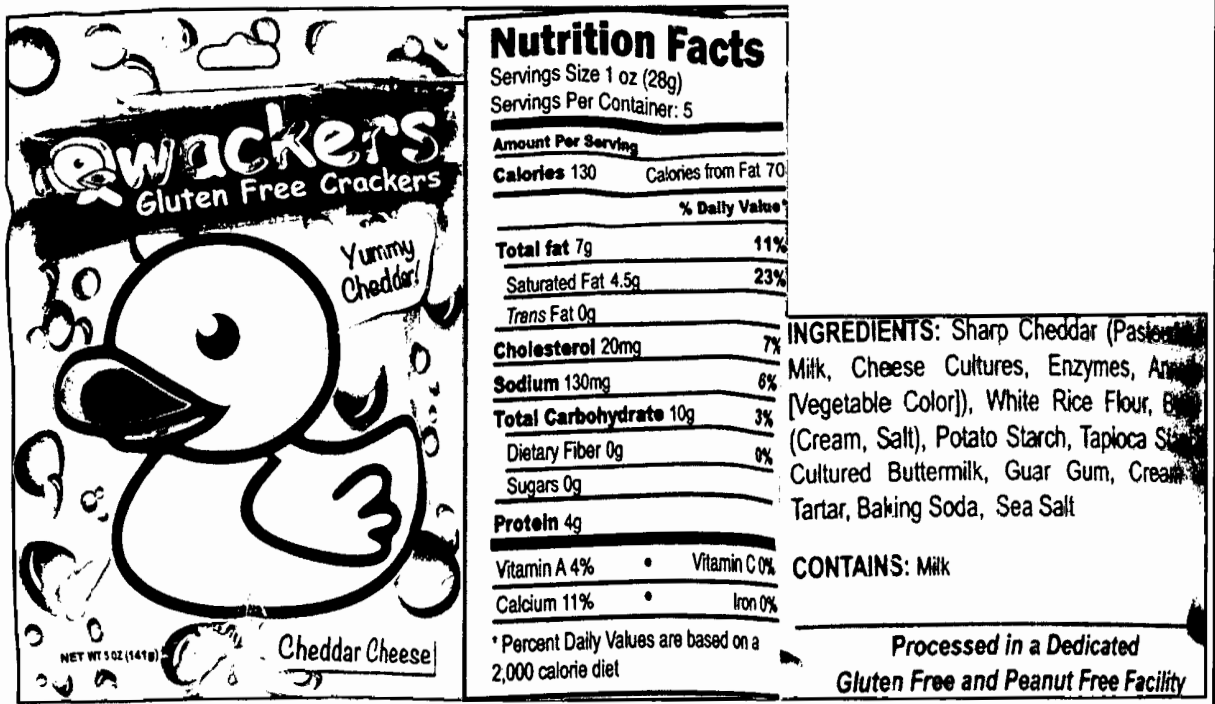
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52. Even though Goldfish's unqualified "0g Sugar" claim suggests that it might be low calorie or significantly reduced in calorie compared to similar products, it contains the same number of calories (140) as the Imag!ne crackers, even though the two have slightly different serving sizes.

53. Qwackers gluten free cheddar cheese crackers, made with rice flour rather than wheat flour and listing 0g Sugars in the NFP, does not advertise having "0g Sugar" on the product's PDP as Goldfish does. However, Qwackers has fewer calories than cheddar goldfish (130 vs. 140) for a slightly lower serving size (28g vs. 30g).

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54. Defendants’ “0g Sugar” claim on the PDP without warning they are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control” as required by 21 C.F.R. § 101.60(c)(1)(iii) misleadingly suggests to consumers that their Goldfish are somehow superior to their competitors’ materially similar products that made no “0g Sugar” claim outside the NFP. The misleading suggestion to consumers from the “0g Sugar” claim with no warning that Goldfish are superior to competitors by being low or reduced in calories or for weight control fits precisely with Campbell’s express goal of advertising its Goldfish “to control caloric intake” or “to help achieve a healthy weight”. CCAC, p. 2. By misleading consumers in this fashion, Defendants have gained an unfair competitive advantage over their competitors from which they profited by their sales to unwitting consumers.

C. DEFENDANTS REFUSED TO CEASE THEIR WRONGDOING

55. On March 3, 2019, Plaintiff Cleveland, through her counsel and pursuant to the CLRA and New York law, sent Defendants a certified letter, return receipt requested, notifying Defendants of the particular violations of Civil Code § 1770, and demanding that Defendants correct, repair or otherwise rectify the problems associated with its unlawful behavior which are in violation of Civil Code § 1770 (“CLRA Letter”).

1 56. In a letter dated April 15, 2019, Defendant Campbell's, on behalf of Defendant
2 Pepperidge Farm, responded to the CLRA Letter and declined to cure the practices identified in
3 Plaintiffs' CLRA Letter.

4 57. On July 16, 2020, Plaintiff Rainwater, through her counsel and pursuant to New York's
5 Uniform Commercial Code, N.Y. U.C.C. §§ 2-313 & 2-314 ("NY UCC") and the CLRA, sent
6 Defendants a certified letter notifying Defendants of the particular violations of the NY UCC and of
7 Civil Code § 1770, and demanding that Defendants correct, repair or otherwise rectify the problems
8 associated with its unlawful behavior which are in violation of NY UCC and Civil Code § 1770 ("NY
9 UCC Letter").

10 58. As of the filing of this Complaint, Defendants have not cured the practices identified
11 in Plaintiffs CLRA Letter or NY UCC Letter for all of the Goldfish at issue in this action.

12 **D. CLASS ACTION ALLEGATIONS**

13 59. Plaintiffs seek to bring this action as a class action, under Cal. Civ. Proc. Code § 382,
14 individually and on behalf of all others similarly situated. Plaintiffs seek to represent the Nationwide
15 Class and California Class as defined below, and Plaintiff Rainwater seeks to represent the New York
16 Class as defined below:

17 (1) The Nationwide Class: All persons who purchased Goldfish labeled as having 0g Sugar
18 outside the Nutrition Fact Panel in the United States within the applicable statute of limitations
19 ("Nationwide Class");

20 (2) The California Class: All persons who purchased Goldfish labeled as having 0g Sugar
21 outside the Nutrition Fact Panel in California within the applicable statute of limitations ("California
22 Class"); and

23 (3) The New York Class: All persons who purchased Goldfish labeled as having 0g Sugar
24 outside the Nutrition Fact Panel in New York within the applicable statute of limitations ("New York
25 Class") (collectively, the "Classes").

26 60. Excluded from the Classes are: (i) Campbell's Soup Company, including any entity in
27 which, Campbell's Soup Company has a controlling interest, is a parent or subsidiary, or which is
28 controlled by Campbell's Soup Company, as well as its officers, directors, affiliates, legal

1 representatives, heirs, predecessors, successors, and assigns; (ii) Pepperidge Farm, Inc., including any
2 entity in which, Pepperidge Farm, Inc. has a controlling interest, is a parent or subsidiary, or which is
3 controlled by Pepperidge Farm, Inc., as well as its officers, directors, affiliates, legal representatives,
4 heirs, predecessors, successors, and assigns; (iii) the judges to whom this action is assigned and any
5 members of their immediate families; and (iv) purchases made outside the applicable statutes of
6 limitations period.

7 61. Plaintiffs reserve the right to re-define the Classes prior to class certification, or to seek
8 certification of one or more multi-state classes.

9 **A. Numerosity**

10 62. The members of the Classes are so numerous that joinder of all members of the Classes
11 is impracticable. Although the precise number of class members is unknown to Plaintiffs at this time,
12 on information and belief, the proposed Classes contain thousands of purchasers of Goldfish who have
13 been damaged by the conduct alleged herein.

14 **B. There is a Well-Defined Community of Interest**

15 63. In order to determine if there is a well-defined community of interests such that the
16 question is one of a common or general interests, a court should consider: (1) whether common
17 questions of law and facts predominate; (2) whether the class representatives' claims or defenses are
18 typical of the Classes; and (3) whether the class representatives can adequately represent the Classes.

19 **i. Common Questions of Law and Fact Predominate**

20 64. Common questions of law or fact exist as to all members of the Nationwide Class, the
21 California Class, and the New York Class which predominate over any questions affecting only
22 individual members of those Classes. These common legal or factual questions include:

- 23 a. Whether the Goldfish as described herein were labeled as having "0g Sugars";
24 b. Whether the Goldfish labeling complies with the FDA's requirements for 0g sugar
25 nutrient content claims;
26 c. Whether the Goldfish's labels as described herein are unlawful;
27 d. Whether the Goldfish contains sugar rendering the "0g Sugars" claim literally false;
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- 1 e. Whether Defendants' misrepresentations and omissions were material to reasonable
- 2 consumers;
- 3 f. Whether Defendants' labeling, marketing, and sale of Goldfish constitutes false
- 4 advertising;
- 5 g. Whether Defendants' "0g Sugars" labeling of Goldfish is an express warranty that
- 6 Defendants' breached;
- 7 h. Whether Defendants' conduct injured Plaintiffs and the Classes, and, if so, the nature
- 8 and extent of the appropriate damages and/or restitution; and
- 9 i. The appropriate injunctive relief to prevent Defendants from selling Goldfish with
- 10 labels that fail to comply with the FDA's requirements for 0g sugar nutrient content
- 11 claims.

12 65. All questions as to the labeling, representations and publicly disseminated
13 advertisements and statements attributable to Defendants at issue herein are similarly common. A
14 determination of Defendants' knowledge as to the misleading and deceptive nature of the statements
15 and omissions made on each and every label of the Goldfish will be applicable to all members of the
16 Classes. Further, whether Defendants violated any applicable state laws and pursued the course of
17 conduct complained of herein, whether Defendants acted intentionally or recklessly in engaging in the
18 conduct described herein, and the extent or form of the appropriate injunctive relief, declaratory relief,
19 damages, and/or restitutionary relief are common questions to the Classes.

20 **ii. Plaintiffs' Claims are Typical of the Classes**

21 66. Plaintiffs' claims are typical of the Classes because Defendants injured all members of
22 the Classes through the uniform misconduct described herein; all members of the Classes were subject
23 to Defendants' false, misleading, and unfair marketing practices and representations, including the
24 misleading claim the Goldfish products contain "0g Sugars" without warning they are "not a reduced
25 calorie food," "not a low calorie food," or "not for weight control." Plaintiffs are no different in any
26 material respect from any other member of the Classes they seek to represent, and the relief sought by
27 Plaintiffs is common to the relief sought by the Classes.

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iii. Adequacy of Representation

67. Plaintiffs are fair and adequate representatives of the Classes they seek to represent because Plaintiffs' interests do not conflict with the interests of the members of the Classes. Plaintiffs will prosecute this action vigorously and are highly motivated to seek redress against Defendants. Further, Plaintiffs have selected competent counsel that are experienced in class action and other complex litigation. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the resources to do so.

C. A Class Action Is Superior to All Other Available Methods for the Fair and Efficient Adjudication of Plaintiffs' and Class Members' Claims

68. A class action is superior to other available means for the fair and efficient adjudication of this dispute. It would be virtually impossible for members of the Classes individually to obtain the relief sought in this Complaint. The damages suffered by each individual member of the Classes will likely be relatively small, especially given the relatively small cost of the Goldfish at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' misconduct.

69. Even if members of the Classes could afford individual actions, a multitude of such individual actions still would not be preferable to class-wide litigation. Individual actions also present the potential for inconsistent or contradictory judgments, which would be dispositive of at least some of the issues and hence interests of the other members not party to the individual actions, would substantially impair or impede their ability to protect their interests, and would establish incompatible standards of conduct for the party opposing the Classes.

70. A class action presents far fewer litigation management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

71. The Class may also be certified because Defendants acted or refused to act on grounds generally applicable to the Classes, thereby making preliminary and final injunctive relief and corresponding declaratory relief appropriate.

72. Also, in the alternative, the Classes may be certified with respect to particular issues.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Consumers Legal Remedies Act (CLRA)

Cal. Civ. Code §§ 1750, *et seq.*

(On behalf of Plaintiffs and the California Class)

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4 73. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
5 forth herein.

6 74. Plaintiffs and the California Class have standing to pursue this claim as they purchased
7 the Goldfish for personal use and have suffered injury in fact and lost money as a result of Defendants'
8 actions, as set forth herein.

9 75. At all times relevant hereto, each Defendant was and is a "person," as defined in Cal.
10 Civ. Code § 1761(d).

11 76. At all times relevant hereto, the Goldfish are a "good," as defined in Cal. Civ. Code §
12 1761(d).

13 77. At all times relevant hereto, Plaintiffs and the California Class members' purchases of
14 the Goldfish constitute "transactions," as defined in Cal. Civ. Code § 1761(e).

15 78. The following subsections of the CLRA prohibit the following unfair methods of
16 competition and unfair or deceptive acts or practices undertaken by any person in a transaction is
17 intended to result or which results in the sale or lease of goods or services to any consumer:

18 79. Cal. Civ. Code § 1770(a)(5): Representing that goods or services have sponsorship,
19 approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a
20 person has a sponsorship, approval, status, affiliation, or connection which they do not have;

21 80. Cal Civ. Code § 1770(a)(7): Representing that goods or services are of a particular
22 standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

23 81. Cal. Civ. Code § 1770(a)(9): Advertising goods or services with intent not to sell them
24 as advertised; and,

25 82. Cal. Civ. Code § 1770(a)(16): Representing that the subject of a transaction has been
26 supplied in accordance with a previous representation when it has not.

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1 83. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(5) by
2 representing that the Goldfish have sponsorship, approval, characteristics, ingredients, benefits or
3 quantities which they do not have.

4 84. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(7) by
5 representing that the Goldfish are of a particular standard, quality or grade, which they are not.

6 85. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(9) by
7 advertising the Goldfish with the intent not to sell them as advertised.

8 86. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(16) by
9 representing the Goldfish have been supplied in accordance with previous representations when they
10 have not.

11 87. Defendants have violated and continues to violate Cal. Civ. Code § 1770(a)(5), (a)(7),
12 (a)(9) and (a)(16) as Defendants knew or should have known that the “0g Sugars” representation,
13 without warning that the Goldfish were “not a low calorie food,” “not a reduced calorie food,” or “not
14 for weight control” violated the FDCA, FDA regulations, the Sherman Law and the CLRA, that such
15 a statement was material and that it would be relied upon by consumers including Plaintiffs. Moreover,
16 Defendants’ labeling Goldfish as containing “0g Sugars” when they have sugar in them also violated
17 and continues to violate these sections of the CLRA.

18 88. Indeed, Plaintiffs and the California Class relied on the Goldfish’s packaging and
19 marketing prior to purchase. Moreover, such reliance is implicit from the very nature of the false and
20 misleading “0g Sugars” claim as described herein. These representations and omissions were
21 uniformly made and would be important to a reasonable consumer in deciding whether to purchase
22 the Goldfish. Had consumers known the Goldfish were misleadingly labeled and marketed as
23 described herein, it would have affected reasonable consumers’ purchasing decisions, such as they
24 would not have purchased the Goldfish, would have purchased a lesser quantity of the Goldfish, or
25 insisted on paying a lower price for the Goldfish. Instead, Plaintiffs and the California Class paid a
26 premium for the Goldfish as a result of the false and misleading “0g Sugars” claim described herein.

27 89. Defendants’ misrepresentations and omissions were done with the intent to deceive
28 Plaintiffs and the members of the California Class and to deprive them of their legal rights and money.

1 90. Defendants knew that the “0g Sugars” labeling would deceive and confuse consumers
2 into believing that the Goldfish are a low or reduced calorie food, and Defendants deceptively
3 advertised or intentionally omitted the required disclaimer from the packaging.

4 91. Plaintiffs are concurrently filing the declaration of venue required by Cal. Civ. Code §
5 1780(d).

6 92. The policies, acts, and practices herein described were intended to result in the sale of
7 Goldfish to the consuming public, particularly to parents with children, and violated and continue to
8 violate Cal. Civ. Code § 1770(a)(5) by representing that the Goldfish have characteristics, benefits,
9 uses, or quantities which they do not have.

10 93. Defendants’ actions as described herein were done with conscious disregard of
11 Plaintiffs’ and the California Class’s rights, and Defendants have acted wantonly and maliciously in
12 their concealment of the same.

13 94. Defendants’ wrongful business practices constituted, and constitute, a continuing
14 course of conduct in violation of the CLRA as Defendants continue to make the same
15 misrepresentations and omit material information regarding the Goldfish.

16 95. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs, and the California Class, seek an order
17 enjoining Defendants from engaging in the methods, acts and practices alleged herein, and court costs
18 and attorneys’ fees.

19 96. As described in ¶¶ 55 and 57, pursuant to § 1782 of the Act, Plaintiffs notified
20 Defendants in writing of their violations of § 1770 described above and demanded that they correct
21 the problems associated with the actions detailed above and give notice to all affected consumers of
22 Defendants’ intent to so act. Defendants refused to repair or otherwise rectify the problems with their
23 unlawful acts.

24 97. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs, and the California Class, seek
25 damages, restitution, and an order enjoining Defendants from engaging in the methods, acts and
26 practices alleged herein, and any other relief deemed proper by the Court. Accordingly, Plaintiffs
27 hereby request damages from Defendants as provided for in Civil Code § 1780, including:

28 a. Actual damages;

- 1 b. Statutory damages allowable under Civil Code § 1780;
- 2 c. Punitive damages;
- 3 d. Any other relief which the Court deems proper; and
- 4 e. Court costs and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California's False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, *et seq.*
(On behalf of Plaintiffs and the California Class)

8 98. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
9 forth herein.

10 99. At all times relevant hereto, each Defendant was and is a "person," as defined in Cal.
11 Bus. & Prof. Code § 17506.

12 100. In marketing, advertising and labeling the Goldfish, Defendants made, and continue to
13 make, false and misleading statements in order to induce consumers into purchasing the Goldfish on
14 a false premise.

15 101. In marketing, advertising and labeling the Goldfish, Defendants failed, and continue to
16 fail, to make material disclosures, including the disclosure that the Goldfish are "not a low calorie
17 food," "not a reduced calorie food," or "not for weight control."

18 102. Defendants are aware that the claims it makes about the Goldfish confuse and deceive
19 reasonable consumers.

20 103. Defendants engaged in the deceptive conduct alleged above in order to induce the
21 consuming public to purchase Goldfish.

22 104. In marketing, advertising, and labeling the Goldfish described above, Defendants knew
23 or should have known that the "0g Sugars" statements regarding the Goldfish were false and
24 misleading.

25 105. Defendants' misrepresentations of the material facts detailed above constitute unfair
26 and fraudulent business practices, as defined by Cal. Bus. & Prof. Code § 17500.

27 106. Defendants had reasonably available alternatives to further their legitimate business
28 interests, other than the conduct described herein.

1 for their own personal household use. In so doing, Plaintiffs relied on Defendants' misrepresentations
2 and omissions of material facts, as alleged in detail above. As described in greater detail herein,
3 Defendants' Goldfish labeled as containing "0g Sugars" are not low calorie or significantly reduced
4 calorie foods, and do not have the required prominent warning adjacent to the "0g Sugars" claim that
5 they are "not a low calorie food," or "not a reduced calorie food," or "not for weight control."
6 Moreover, Defendants' "0g Sugar" claim on the PDP is false because the Goldfish contain sugar and
7 Defendants are not permitted to round its sugar content to "0g" on the PDP without the benefit of and
8 full compliance with 21 C.F.R. § 101.60(c)(1).

9 114. Defendants' misrepresentations and omissions of material fact as alleged herein
10 constitute unlawful, unfair, and fraudulent business practices in that they deceived Plaintiffs and the
11 California Class into purchasing and paying for a product or paying more for a product than they
12 would have had they known the truth.

13 115. Sherman Law § 110765 prohibits misbranding any food.

14 116. Sherman Law § 110760 prohibits manufacturing, selling, delivering, holding or
15 offering for sale any misbranded food.

16 117. Sherman Law § 110770 prohibits delivering or proffering for delivery misbranded
17 food.

18 118. Under California and identical Federal laws, a food is misbranded if any word,
19 statement, or other information required to be on a food's label or labeling is not prominently placed
20 thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in
21 the labeling, and in such terms as to render it likely to be read and understood by the ordinary
22 individual under customary conditions of purchase and use. Sherman Law § 110705; FDCA § 403(f).

23 119. Under California and identical Federal laws, a food is misbranded if its label bears a
24 claim that characterizes the level of any nutrient unless it is used as defined by the U.S. Secretary of
25 Health and Human Services. Sherman Law § 110670; FDCA §§ 403(r)(1) and (2)(A).

26 120. As described in greater detail herein, Defendants' Goldfish labeled as containing "0g
27 Sugars" are not low calorie or significantly reduced calorie foods, and do not have the required
28 prominent warning adjacent to the "0g Sugars" claim that they are "not a low calorie food," or "not a

1 reduced calorie food,” or “not for weight control” in violation of 21 C.F.R. § 101.60(c)(1)(iii) and
2 Sherman Law §§ 110670 and 110100 (adopting food regulations adopted pursuant to the FDCA as the
3 food labeling regulations of California). Moreover, Defendants’ Goldfish contain sugar and make a
4 “0g Sugar” claim on the PDP, but Defendants are not permitted to round its .5g or less sugar content
5 to “0g” on the PDP without full compliance with 21 C.F.R. § 101.60(c)(1) and Sherman Law §§
6 110670 and 110100. Thus, the Goldfish are “misbranded” under California and identical Federal laws
7 as the labeling fails to comply with Sherman Law §§ 110705 and 110670, and FDCA §§ 403(f),
8 (r)(1)(A) and (2).

9 121. Defendants violated and continue to violate Sherman Law § 110765, and hence also
10 violated and continues to violate the “unlawful” prong of the UCL, by misbranding the Goldfish.

11 122. Defendants violated and continue to violate Sherman Law § 110760, and hence also
12 violated and continues to violate the “unlawful” prong of the UCL, by manufacturing, selling,
13 delivering, holding or offering for sale the Goldfish which are misbranded.

14 123. Defendants violated and continue to violate Sherman Law § 110770, and hence also
15 violated and continues to violate the “unlawful” prong of the UCL, by delivering or proffering for
16 delivery the Goldfish which are misbranded.

17 124. Defendants’ identical conduct that violates the Sherman Law also violates FDCA §§
18 403(f), (r)(1)(A) and (r)(2)(B,) and 21 C.F.R. § 101.60(c)(1). This identical conduct serves as the sole
19 factual basis of each cause of action brought by this Complaint, and Plaintiffs do not seek to enforce
20 any of the state law claims raised herein to impose any standard of conduct that exceeds that which
21 would violate the FDCA and applicable FDA regulations.

22 125. Additionally, Defendants’ conduct constitutes an “unlawful” business practice within
23 the meaning of the UCL because it violates the CLRA and FAL.

24 126. Defendants’ actions as described herein constitute unfair competition within the
25 meaning of California’s UCL, insofar as the UCL prohibits “any unlawful, unfair or fraudulent
26 business act or practice” or “unfair, deceptive, untrue or misleading advertising.”

27 127. Defendants have and continue to violate the “unfair” prong of the UCL through their
28 misleading “0g Sugars” claim without warning Goldfish are “not a low calorie food,” “not a reduced

1 calorie food,” or “not for weight reduction.” Additionally, Defendants have and continue to violate
2 the “unfair” prong of the UCL through their misleading “0g Sugars” claim when, in fact Goldfish have
3 sugar in them. The gravity of the harm to members of the California Class resulting from such unfair
4 acts and practices outweighs any conceivable reasons, justifications and/or motives of Defendants for
5 engaging in such deceptive acts and practices. By committing the acts and practices alleged above,
6 Defendants have engaged, and continue to engage in unfair business practices within the meaning of
7 California Business and Professions Code §§ 17200, *et seq.*

8 128. Plaintiffs and the California Class were misled because the misrepresentations and
9 omissions were uniform and material.

10 129. Defendants’ conduct constitutes a “fraudulent” business practice within the meaning of
11 the UCL insofar as Defendants’ misrepresentations and omissions are likely to deceive members of
12 the public.

13 130. Defendants acts and practices of labeling Goldfish as containing “0g Sugars” without
14 a prominent, adjacent warning that they are “not a low calorie food,” “not a reduced calorie food,” or
15 “not for weight control” has the effect of misleading consumers into believing the Goldfish are low
16 calorie or significantly reduced calorie foods when they are not. Additionally, labeling Goldfish as
17 containing “0g Sugars” when they have sugar in them has the effect of misleading consumers into
18 believing the Goldfish have absolutely no sugar, when they actually contain some sugar.

19 131. As a direct and proximate result of Defendants’ wrongful business practices in violation
20 of the UCL, Plaintiffs and the California Class have suffered injury in fact and lost money or property
21 as a result of purchasing the Goldfish. Plaintiffs and California Class members would not have
22 purchased or paid as much for the Goldfish had they known the truth.

23 132. Defendants’ wrongful business practices constitute a continuing course of conduct of
24 unfair competition since Defendants are labeling, marketing, and selling the Goldfish in a manner
25 likely to deceive the public.

26 133. Defendants’ wrongful business practices also violates the UCL by giving them an
27 unfair competitive advantage. Specifically, Defendants’ “0g Sugar” claim on the PDP without
28 warning they are “not a low calorie food,” “not a reduced calorie food,” or “not for weight control” as

1 required by 21 C.F.R. § 101.60(c)(1)(iii) misleadingly suggests to consumers that their Goldfish are
2 somehow superior to their competitors' materially similar products that made no "0g Sugar" claim
3 outside the NFP. By misleading consumers in this fashion, Defendants have gained an unfair
4 competitive advantage over their competitors from which they profited by their sales to unwitting
5 consumers.

6 134. Pursuant to section 17203 of the UCL, Plaintiffs and the California Class seek an order
7 of this Court enjoining Defendants from engaging in the unlawful, unfair and fraudulent business
8 practices alleged herein, in connection with the sale of the Goldfish.

9 135. Additionally, Plaintiffs and the California Class seek an order awarding restitution of
10 the money wrongfully acquired by Defendants by means of the unlawful, unfair and fraudulent
11 business practices alleged herein.

12
13 **FOURTH CAUSE OF ACTION**

14 **Deceptive Acts or Practices**

15 **Violation of New York Gen. Bus. Law § 349**

16 **(On Behalf of Plaintiff Rainwater and the New York Class)**

17 136. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
18 forth herein.

19 137. This cause of action is brought by Plaintiff Rainwater on behalf of herself and the New
20 York Class.

21 138. New York General Business Law Section 349 ("GBL § 349") declares unlawful
22 "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing
23 of any service in this state"

24 139. The conduct of Defendants alleged herein constitutes recurring, "unlawful" deceptive
25 acts and practices in violation of GBL § 349, and as such, Plaintiff Rainwater and the New York
26 Subclass Members seek monetary damages and the entry of injunctive relief against Defendants,
27 enjoining them from inaccurately describing, labeling, marketing, and promoting the Products.

28 140. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts
and practices by labeling the Goldfish as containing "0g Sugars" without a prominent accompanying
warning that the Goldfish are "not a low calorie food," "not a reduced calorie food," or "not for weight

1 control.” Additionally, Defendants committed unfair or deceptive acts and practices by labeling the
2 Goldfish as containing “0g Sugars” when they contain sugar as described herein.

3 141. The foregoing deceptive acts and practices are consumer oriented, were directed at
4 consumers, including Plaintiff Rainwater and the New York Class, and have had a broad impact on
5 consumers in New York.

6 142. The foregoing deceptive acts and practices are misleading in a material way because
7 they suggest the Goldfish are low or significantly reduced in calories and do not contain sugar to
8 induce consumers to purchase the Goldfish.

9 143. Plaintiff Rainwater and the New York Class paid a premium for the Goldfish insofar
10 as they purchased products that promised to be of a certain quality and induced a higher payment than
11 would have reasonably been paid otherwise.

12 144. Plaintiff Rainwater and members of the New York Class were injured because they
13 paid for Goldfish labeled “0g Sugars,” which they would not have done had they known the truth that
14 the Goldfish were not low or significantly reduced calorie foods, and that the Goldfish contained sugar.

15 145. Plaintiff Rainwater, on behalf of herself and other members of the New York Class,
16 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$50.00,
17 whichever is greater, three times actual damages, and reasonable attorneys’ fees and costs.

18
19 **FIFTH CAUSE OF ACTION**
20 **False Advertising Law**
Violation of New York Gen. Bus. Law § 350
(On Behalf of Plaintiff Rainwater and the New York Class)

21 146. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
22 forth herein.

23 147. By the acts and conduct alleged herein, Defendants have engaged in consumer-oriented
24 conduct that is deceptive or misleading in a material way which constitutes false advertising in
25 violation of Section 350 of the New York General Business Law.

26 148. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

27 False advertising in the conduct of any business, trade or commerce or in
28 the furnishing of any service in this state is hereby declared unlawful.

1 149. N.Y. Gen. Bus. Law § 350a(1) provides, in part, as follows:

2 The...term ‘false advertising, including labeling, of a commodity, or of the kind,
3 character, terms or conditions of any employment opportunity if such advertising is
4 misleading in a material respect. In determining whether any advertising is misleading,
5 there shall be taken into account (among other things) not only representations made by
6 statement, word, design, device, sound or any combination thereof, but also the extent to
7 which the advertising fails to reveal facts material in the light of such representations with
8 respect to the commodity or employment to which the advertising relates under the
9 conditions proscribed in said advertisement, or under such conditions as are customary or
10 usual

11 150. Defendants’ Goldfish labeled as containing “0g Sugars” without a prominent
12 immediately accompanying warning that the Goldfish are “not a low calorie food,” “not a reduced
13 calorie food,” or “not for weight control” were misleading and deceptive statements and
14 representations of fact that were directed to consumers. Additionally, Defendants also made false,
15 misleading and deceptive statements and representations of fact that were directed to consumers by
16 labeling Goldfish as containing “0g Sugars” when they contain sugar as described herein.

17 151. As a result of Goldfish’s false, misleading and deceptive “0g Sugars” statements and
18 representations of fact, Plaintiff Rainwater has suffered and continues to suffer economic injury.

19 152. Plaintiff Rainwater and members of the New York Class were injured because they
20 paid a premium for Goldfish labeled “0g Sugars,” which they would not have done had they known
21 the truth that the Goldfish were not low or significantly reduced calorie foods, and that the Goldfish
22 contained sugar.

23 153. Plaintiff Rainwater, on behalf of herself and other members of the New York Class
24 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$500.00,
25 whichever is greater, three times actual damages, and reasonable attorneys’ fees and costs.

26 **SIXTH CAUSE OF ACTION**
27 **Restitution Based on Quasi-Contract/Unjust Enrichment**
28 **(On Behalf of Plaintiffs and the Classes)**

154. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
forth herein. Plaintiffs plead this Count in the alternative.

155. Defendants’ conduct in enticing Plaintiffs and the Classes to purchase Goldfish through
the use of false and misleading “0g Sugars” labeling as described throughout this Complaint is
unlawful because the statements contained on Goldfish are misleading and untrue. Defendants took

1 monies from Plaintiffs and the Classes for products labeled as containing “0g Sugars,” suggesting they
2 are low calorie or significantly reduced in calories, without warning that the Goldfish are “not a low
3 calorie food,” “not a reduced calorie food,” or “not for weight control,” and without warning that they
4 actually contained sugar. Moreover, Defendants took monies from Plaintiffs and the Classes for
5 products falsely labeled as containing “0g Sugars,” when they contain sugar. Defendants have been
6 unjustly enriched at the expense of Plaintiffs and the Classes as result of their unlawful conduct alleged
7 herein, thereby unjustly enriching Defendants and creating a quasi-contractual obligation on
8 Defendants to restore these ill-gotten gains to Plaintiffs and the Classes.

9 156. As a direct and proximate result of Defendants’ unjust enrichment, Plaintiffs and the
10 Classes are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

11 **SEVENTH CAUSE OF ACTION**
12 **Breach of Express Warranty**
(On Behalf of Plaintiffs and the Classes)

13 157. Plaintiffs hereby incorporate the allegations in the foregoing paragraphs as if fully set
14 forth herein.

15 158. Defendants made express warranties to Plaintiffs and members of the Classes that the
16 Goldfish they were purchasing contained absolutely zero sugar by virtue of its “0g Sugars” statement
17 on the front label of the Goldfish.

18 159. The “0g Sugars” express warranty made to Plaintiffs and members of the Classes
19 appears on the PDP of every package of the Goldfish labeled “0g Sugars.” This promise regarding
20 the Goldfish specifically relates to the goods being purchased and became the basis of the bargain.

21 160. Plaintiffs and members of the Classes purchased the Goldfish in the belief that they
22 conformed to the express warranty that was made on the Goldfish packaging.

23 161. Despite expressly warranting that the Goldfish have “0g Sugars,” all of the Goldfish
24 contain more than absolutely zero sugar, as they list sugar as an ingredient or contain ingredients with
25 inherent sugars. Each of these products has more than absolutely no sugar, or 0g sugar.

26 162. As explained above, if, and only if, 21 C.F.R. § 101.60(c)(1) applies to Defendants’
27 “0g Sugars” claim and Defendants comply with all the requirements of that regulation could
28 Defendants have lawfully rounded down a small amount of sugar (.5g or less) to 0g on the Goldfish

1 labels outside the NFP as part of any nutrient content claim for the absence of sugar. 21 C.F.R. §
2 101.60(c)(1)(i). Defendants' Goldfish failed to comply with all the requirements of that regulation as
3 detailed throughout this Complaint and, as such, could not round down to state "0g Sugars" for the
4 Goldfish as they all contain sugar (including an ingredient with inherent sugar).

5 163. If the court finds that 21 C.F.R. § 101.60(c)(1) does not apply to Defendants' "0g
6 Sugars" claim on the Goldfish, then the "0g Sugars" claim is still a nutrient content claim subject to
7 21 C.F.R. § 101.13(i)(3) which requires any express claim about the amount or percentage of a nutrient
8 not be false or misleading in any respect.

9 164. In either event, the Goldfish have some amount of sugar greater than absolutely 0g of
10 sugar, so the "0g Sugars" statement is literally false.

11 165. Accordingly, Defendants breached the express warranty made to Plaintiffs and
12 members of the Classes by failing to supply goods that conformed to the "0g Sugar" warranty they
13 made on the PDP. As a result, Plaintiffs and members of the Classes suffered injury by virtue of the
14 value of the Goldfish with sugar that were delivered being less than the value of the "0g Sugars"
15 products expressly warranted, and deserve to be compensated for the damages they suffered.

16 166. Plaintiffs and members of the Classes paid money for the Goldfish. However, Plaintiffs
17 and members of the Classes did not obtain the full value of the products that were warranted.
18 Accordingly, Plaintiffs and members of the Classes have suffered injury in fact and lost money or
19 property as a result of Defendants' wrongful conduct.

20 167. On March 3, 2019, a reasonable time after she knew or should have known of such
21 breach, Plaintiff Cleveland, on behalf of herself and the other members of the Classes, sent a notice
22 letter to Defendants which provided notice of Defendants' breach and demanded that Defendants
23 correct, repair, replace, or otherwise rectify the breach complained of herein. Defendants received the
24 letter on March 18, 2019. The letter also stated that if Defendants refused to cure the breach, a
25 complaint would be filed seeking damages. Defendants failed to comply with the letter.

26 168. On July 16, 2020, a reasonable time after she knew or should have known of such
27 breach, Plaintiff Rainwater, on behalf of herself and the other members of the Classes, sent a notice
28 letter to Defendants which provided notice of Defendants' breach and demanded that Defendants

1 correct, repair, replace, or otherwise rectify the breach complained of herein. Defendants received the
2 letter on July 17, 2020. The letter also stated that if Defendants refused to cure the breach within 7
3 days of the receipt of the letter, a complaint would be filed seeking damages. Defendants failed to
4 comply with the letter.

5 169. As a direct and proximate cause of Defendants' breach of express warranties, Plaintiffs
6 and Class members have sustained damages, an economic loss equal to the total purchase price of
7 these unfit products, or the difference in value between the Goldfish as warranted and the Goldfish as
8 actually sold, as well as consequential and incidental damages, in the aggregate, in excess of \$50,000.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the
11 Classes and for the Counts so applicable on behalf of the general public request an award and relief as
12 follows:

13 A. An order certifying that this action is properly brought and may be maintained as a
14 class action, that Plaintiffs be appointed Nationwide Class Representatives and appointed California
15 Class Representatives, Plaintiff Rainwater be appointed New York Class Representative, and the
16 undersigned counsel be appointed Co-Lead Counsel for the Classes.

17 B. Restitution in such amount that Plaintiffs and all members of the Classes paid to
18 purchase Defendants' Goldfish or paid as a premium over alternatives, or restitutionary disgorgement
19 of the profits Defendants obtained from those transactions, for Causes of Action for which they are
20 available.

21 C. Compensatory damages for Causes of Action for which they are available.

22 D. Statutory damages for Causes of Action for which they are available.

23 E. Other statutory penalties for Causes of Action for which they are available.

24 F. Punitive Damages for Causes of Action for which they are available.

25 G. A declaration and Order enjoining Defendants from labeling and advertising the
26 Goldfish misleadingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other
27 applicable laws and regulations as specified in this Complaint.

28

1 H. An Order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
2 and pre- and post-judgment interest, and, to the extent available, awarding Plaintiffs' counsel
3 reasonable attorneys' fees and costs.

4 I. An Order requiring an accounting for, and imposition of, a constructive trust upon all
5 monies received by Defendants as a result of the unfair, misleading, fraudulent and unlawful conduct
6 alleged herein.

7 J. Such other and further relief as may be deemed necessary or appropriate.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs demand a trial by jury on all issues so triable.

10 DATED: May 24, 2021

FEINSTEIN DOYLE PAYNE & KRAVEC, LLC
JOSEPH N. KRAVEC, JR.
WYATT A. LISON

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12
13 By: 
WYATT A. LISON

14
15 **PEARSON, SIMON & WARSHAW, LLP**
DANIEL L. WARSHAW
MELISSA S. WEINER

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17 **ATTORNEYS FOR PLAINTIFFS AND THE
PROPOSED CLASSES**

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