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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 KAVEH FASIH, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.
14

UNILEVER UNITED STATES, INC., a
15 Delaware corporation; and DOES 1
through 10, inclusive,

16 Defendants.
17

Case No. '18CV1032 BEN BLM

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMAND

INTRODUCTION

1
2 1. The average consumer spends a mere 13 seconds making an in-store
3 purchasing decision, or between 10 to 19 seconds for an online purchase.¹ That
4 decision is heavily dependent on a product’s packaging, and particularly the package
5 dimensions: “Most of our studies show that 75 to 80 percent of consumers don’t even
6 bother to look at any label information, no less the net weight Faced with a large
7 box and a smaller box, both with the same amount of product inside . . . consumers are
8 apt to choose the larger box because they think it’s a better value.”² This lawsuit
9 charges Defendant with intentionally packaging its Knorr Pasta Sides Alfredo products
10 in opaque containers that contain approximately 40% empty space. Consumers, in
11 reliance on the size of the containers, purchased the Knorr Pasta Sides Alfredo
12 products, which they would not have purchased had they known that the containers
13 were substantially empty.

14 2. Kaveh Fasih (“Plaintiff”), individually and on behalf of all others similarly
15 situated, brings this Class Action Complaint for damages, injunctive relief, and any
16 other available legal or equitable remedies, resulting from the unlawful and deceptive
17 actions of Unilever United States, Inc. (“Defendant”) with respect to the packaging of
18 its Knorr Pasta Sides products. Plaintiff alleges as follows upon personal knowledge as
19 to himself and his own acts and experiences, and, as to all other matters, upon
20 information and belief, including investigation conducted by his attorneys.

21 3. Plaintiff purchased Defendant’s Knorr Pasta Sides Alfredo product in the
22 January 2018 in San Diego, California. Plaintiff expected to receive a full container of
23

24 ¹ [http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-windowdown.html)
25 [20-second-windowdown.html](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-windowdown.html) (citing the Ehrenberg-Bass Institute of Marketing Science’s
26 report “Shopping Takes Only Seconds...In-Store and Online”).

27 ²[http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/pro-](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm)
28 [duct-packaging/overview/product-packaging-ov.htm](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm) (quoting Brian Wansink,
professor and director of the Cornell Food and Brand Lab, who studies shopping
behavior of consumers).

1 the Knorr Pasta Sides Alfredo product, which is packaged in non-transparent
2 containers, as depicted below. Plaintiff was surprised and disappointed when she
3 opened the Knorr Pasta Sides Alfredo product to discover that the container had **nearly**
4 **40% empty space**, or slack-fill. Had Plaintiff known about the slack-fill at the time of
5 purchase, he would not have bought Defendant's product.

6 4. Defendant's conduct violates consumer protection and labeling laws.

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,
9 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a
10 member of the putative class is a citizen of a different state than Defendant, and the
11 amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and
12 costs. See 28 U.S.C. § 1332(d)(2).

13 6. The Court has jurisdiction over the state law claims because they form part
14 of the same case or controversy under Article III of the United States Constitution.

15 7. The Court has personal jurisdiction over Defendant because its Knorr
16 Pasta Sides products are advertised, marketed, distributed and sold through the State of
17 California; Defendant engaged in the wrongdoing alleged in this Complaint throughout
18 the United States, including in the State of California; Defendant is authorized to do
19 business in the State of California; and Defendant has sufficient minimum contacts with
20 the State of California, rendering the exercise of jurisdiction by the Court permissible
21 under traditional notions of fair play and substantial justice. Moreover, Defendant is
22 engaged in substantial activity with the State of California.

23 8. Venue is proper in the United States District Court for the Southern
24 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the
25 events giving rise to the claims occurred within this judicial district, Defendant has
26 marketed and sold the Knorr Pasta Sides products at issue in this action in this judicial
27 district, and it conducts business within this judicial district.

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PARTIES

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2 9. Plaintiff Kaveh Fasih is a citizen of the State of California and resides in
3 San Diego, California. Plaintiff purchased a Knorr Pasta Sides Alfredo product for
4 personal consumption during the last four years in San Diego, California. Plaintiff
5 purchased the Product in reliance on Defendant’s packaging in containers made, formed
6 or filled as to be misleading and containing non-functional slack-fill. Had Plaintiff
7 known the truth about Defendant’s misrepresentations, he would not have purchased
8 the Knorr Pasta Sides Alfredo product.

9 10. Plaintiff is informed and believes, and upon such information and belief
10 alleges, that Defendant Unilever United States, Inc. is a Delaware corporation with its
11 principal place of business located in Englewood Cliffs, New Jersey. Plaintiff is
12 informed and believes, and upon such information and belief alleges, that Defendant, at
13 all times relevant, conducted business in the State of California and within the Southern
14 District of California.

15 11. The true names and capacities of the Defendants sued herein as DOES 1
16 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
17 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
18 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
19 Court to amend this Complaint to reflect the true names and capacities of the DOE
20 Defendants when such identities become known.

21 12. At all relevant times, each and every Defendant was acting as an agent
22 and/or employee of each of the other Defendants and was acting within the course
23 and/or scope of said agency and/or employment with the full knowledge and consent of
24 each of the Defendants. Each of the acts and/or omissions complained of herein were
25 alleged and made known to, and ratified by, each of the other Defendants (Unilever
26 United States, Inc. and DOE Defendants will hereafter collectively be referred to as
27 “Defendant”).

FACTUAL ALLEGATIONS

California Law Prohibits Non-functional Slack-Fill

13. Many federal and state consumer protection and labeling laws prohibit deceptive packaging and labeling of products and commodities. In California, the Fair Packaging and Labeling Act (“CFPLA”) “is designed to protect purchasers of any commodity within its provisions against deception or misrepresentation. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.” (California Business & Professions Code § 12601.)

14. In this context, the CFPLA provides: “No food containers shall be made, formed, or filled as to be misleading.” (California Business & Professions Code § 12606.2(b).) “A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill.” (California Business & Professions Code § 12606.2(c).) Section 12606.2(c) defines “slack fill” as “the difference between the actual capacity of a container and the volume of product contained therein.” Similarly, section 12606.2(c) defines “nonfunctional slack fill” as “the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of the following:

- (1) Protection of the contents of the package.
- (2) The requirements of machines used for enclosing the contents of the package.
- (3) Unavoidable product settling during shipping and handling.
- (4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that

1 is intended for further use after the food is consumed or durable commemorative or
2 promotional packages.

3 (6) Inability to increase the level of fill or to further reduce the size of the package, such
4 as where some minimum package size is necessary to accommodate required food
5 labeling exclusive of any vignettes or other nonmandatory designs or label information,
6 discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.”
7 (California Business & Professions Code § 12606.2(c)(1)-(6).)

8 15. None of the above safe-harbor provisions applies to the Knorr Pasta Sides
9 products. Defendant intentionally incorporated non-functional slack-fill in its
10 packaging of the Knorr Pasta Sides products in order to mislead consumers, including
11 Plaintiff and Members of the Class.

12 **Defendant’s Products Contain Non Functional Slack-Fill**

13 16. Defendant’s Knorr Pasta Sides products are sold in non-transparent
14 containers. The containers have significant slack-fill, as described below.

15 17. Nearly 40% of the interior of the Knorr Pasta Sides product containers,
16 which concern the Knorr Pasta Sides Alfredo product purchased by Plaintiff, is
17 comprised of empty space, or non-functional slack fill.





18. Judging from the sizes of the container, a reasonable consumer would expect them to be substantially filled with product. Consumers are misled into believing that they are purchasing substantially more Knorr Pasta Sides product than they receive.

19. There is no functional reason for including so much slack-fill in the Knorr Pasta Sides products.

20. Plaintiff is informed and believes, and upon such information and belief alleges, that consumers have relied upon, and are continuing to rely upon, the size of the Knorr Pasta Sides product containers as the basis for making purchasing decisions. Consumers believe that the Knorr Pasta Sides product containers are substantially full because they cannot see the actual contents within the nontransparent container.

21. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant is selling and will continue to sell the Knorr Pasta Sides products using these blatantly deceptive and misleading slack-filled containers.

1 22. Defendant’s packaging and advertising of the Knorr Pasta Sides products
2 violate the CFPLA, as set forth above.

3 **Plaintiff Relied on Defendant’s Misleading and Deceptive Conduct and Was**
4 **Injured as a Result**

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

11 24. Plaintiff and the Class Members did not know, and had no reason to know,
12 that the Knorr Pasta Sides products contained non-functional slack-fill.

13 25. Defendant’s product packaging was a material factor in Plaintiff’s and the
14 Class Members’ decisions to purchase the Knorr Pasta Sides products. Based on
15 Defendant’s product packaging, Plaintiff and the Class Members believed that they
16 were getting more Knorr Pasta Sides product than was actually being sold. Had Plaintiff
17 known Defendant’s packaging was slack-filled, he would not have bought the slack-
18 filled Knorr Pasta Sides Alfredo product.

19 26. Plaintiff and the Class Members paid the full price of the Knorr Pasta
20 Sides products and received less Knorr Pasta Sides product than they expected due to
21 the non-functional slack-fill in the Knorr Pasta Sides products.

22 27. There is no practical reason for the non-functional slack-fill used to
23 package the Knorr Pasta Sides products other than to mislead consumers as to the actual
24 volume of the Knorr Pasta Sides products being purchased by consumers.

25 28. As a result of Defendant’s misrepresentations, Plaintiff and thousands of
26 others throughout California purchased the Products. Plaintiff and the Class (defined
27 below) have been damaged by Defendant’s deceptive and unfair conduct.

28 ///

1 **CLASS ACTION ALLEGATIONS**

2 29. Plaintiff brings this action as a class action pursuant to Rule 23 of the
3 Federal Rules of Civil Procedure on behalf of himself and the following class
4 (collectively, the “Class” or “Classes”), defined as:

5 **All California residents who made retail purchases of Knorr Pasta Sides**
6 **products in with non-functional slack-fill, as defined by California Business**
7 **& Professions Code § 12606.2, during the applicable limitations period up to**
8 **and including final judgment in this action.**

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

14 31. Plaintiff reserves the right to revise the Class definition based on facts
15 learned in the course of litigating this matter.

16 32. The Knorr Pasta Sides products sold by Defendant suffer from virtually the
17 same misleading product labeling and nonfunctional slack-fill.

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

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

4 35. Adequacy: Plaintiff will fairly and adequately protect the interests of the
5 Members of the Class in that he has no interests antagonistic to those of the other
6 Members of the Class. Plaintiff has retained experienced and competent counsel.

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

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

21 i. Whether Defendant labeled, packaged, marketed, advertised and/or
22 sold Knorr Pasta Sides products to Plaintiff, and those similarly situated, using
23 false, misleading and/or deceptive packaging and labeling;

24 ii. Whether Defendant's actions constitute violations of the CFPLA,
25 California Business & Professions Code § 12606.2;

26 iii. Whether Defendant omitted and/or misrepresented material facts in
27 connection with the labeling, packaging, marketing, advertising and/or sale of its
28 Knorr Pasta Sides products;

1 iv. Whether Defendant’s labeling, packaging, marketing, advertising
2 and/or selling of Knorr Pasta Sides products constituted an unfair, unlawful or
3 fraudulent practice;

4 v. Whether Defendant’s packaging of the Knorr Pasta Sides products
5 constituted nonfunctional slack-fill;

6 vi. Whether, and to what extent, injunctive relief should be imposed on
7 Defendant to prevent such conduct in the future;

8 vii. Whether the Members of the Class have sustained damages as a
9 result of Defendant’s wrongful conduct;

10 viii. The appropriate measure of damages and/or other relief; and

11 ix. Whether Defendant should be enjoined from continuing its unlawful
12 practices.

13 38. The class is readily definable, and prosecution of this action as a Class
14 action will reduce the possibility of repetitious litigation. Plaintiff knows of no
15 difficulty which will be encountered in the management of this litigation which would
16 preclude his maintenance of this matter as a Class action.

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

21 40. The prerequisites to maintaining a class action for injunctive relief or
22 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common
23 to the Class predominate over any questions affecting only individual Members; and a
24 class action is superior to other available methods for fairly and efficiently adjudicating
25 the controversy.

26 41. The prosecution of separate actions by Members of the Class would create
27 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
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1 Defendant. Additionally, individual actions may be dispositive of the interest of all
2 Members of the Class, although certain Class Members are not parties to such actions.

3 42. Defendant's conduct is generally applicable to the Class as a whole and
4 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As
5 such, Defendant's systematic policies and practices make declaratory relief with respect
6 to the Class as a whole appropriate.

7 **CAUSE OF ACTION**

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

9 **Cal. Civ. Code § 1750, et seq.**

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

12 44. Plaintiff brings this claim individually and on behalf of the Class for
13 Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal.
14 Civ. Code 1761(d).

15 45. Plaintiff and the Class Members are consumers who purchased the Knorr
16 Pasta Sides products for personal, family or household purposes. Plaintiff and the Class
17 Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §
18 1761(d). Plaintiff and the Class Members are not sophisticated experts with
19 independent knowledge of corporate branding, labeling and packaging practices.

20 46. The Knorr Pasta Sides products that Plaintiff and other Class Members
21 purchased from Defendant were "goods" within the meaning of Cal. Civ. Code §
22 1761(a).

23 47. Defendant's actions, representations, and conduct have violated, and
24 continue to violate the CLRA, because they extend to transactions that intended to
25 result, or which have resulted in, the sale of goods to consumers.

26 48. Defendant violated California law because the Knorr Pasta Sides products
27 are packaged in containers made, formed or filled as to be misleading and which
28

1 contain non-functional slack-fill, and because they are intentionally packaged to
2 prevent the consumer from being able to fully see their contents.

3 49. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
4 prohibits "Misrepresenting that goods or services have sponsorship, approval,
5 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a
6 person has a sponsorship, approval, status, affiliation, or connection which he or she
7 does not have." By engaging in the conduct set forth herein, Defendant violated and
8 continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct
9 constitutes unfair methods of competition and unfair or fraudulent acts or practices, in
10 that it misrepresents that the Knorr Pasta Sides products have quantities they do not
11 have.

12 50. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or
13 services with intent not to sell them as advertised." By engaging in the conduct set
14 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because
15 Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent
16 acts or practices, in that it advertises goods as containing more product than they in fact
17 contain.

18 51. Plaintiff and the Class Members are not sophisticated experts about
19 corporate branding, labeling and packaging practices. Plaintiff and the Class acted
20 reasonably when they purchased the Knorr Pasta Sides products based on their belief
21 that Defendant's representations were true and lawful.

22 52. Given the materiality of Defendant's misrepresentations, Plaintiff and the
23 Class Members are entitled to a presumption of reliance.

24 53. Plaintiff and the Class suffered injuries caused by Defendant because (a)
25 they would not have purchased the Knorr Pasta Sides products on the same terms
26 absent Defendant's illegal and misleading conduct as set forth herein; (b) they
27 purchased the Knorr Pasta Sides products due to Defendant's misrepresentations and
28 deceptive packaging in containers made, formed or filled as to be misleading and

1 containing non-functional slack-fill; and (c) the Knorr Pasta Sides products did not have
2 the quantities as promised.

3 54. On or about March 6, 2018, prior to filing this action, Plaintiff sent a
4 CLRA notice letter to Defendant which complies with California Civil Code 1782(a).
5 Plaintiff sent Unilever US (Unilever United States, Inc.), individually and on behalf of
6 the proposed Class, a letter via Certified Mail, advising Defendant that it is in violation
7 of the CLRA and demanding that it cease and desist from such violations and make full
8 restitution by refunding the monies received therefrom. A true and correct copy of the
9 letter is attached hereto as Exhibit 1.

10 55. Wherefore, Plaintiff seeks injunctive relief for these violations of the
11 CLRA.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as
14 follows:

15 (A) For an Order certifying the Class pursuant to Federal Rule of Civil
16 Procedure 23, appointing Plaintiff as class representatives, and designating
17 Plaintiff's counsel as counsel for the Class;

18 (B) For an Order declaring that Defendant's conduct violated the CLRA,
19 Cal. Civ. Code § 1750, et seq.;

20 (C) For injunctive relief as pleaded or as the Court may deem proper;

21 (D) For an order of restitution and all other forms of equitable monetary
22 relief, as pleaded;

23 (E) For compensatory damages in amounts to be determined by the Court
24 and/or jury;

25 (F) For punitive damages;

26 (G) For prejudgment interest on all amounts awarded;

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1 (H) For an Order awarding Plaintiff and the Class their reasonable
2 attorneys' fees and expenses and costs of suit as pleaded pursuant to, *inter alia*,
3 Cal. Civ. Code § 1780(e) and Cal. Civ. Proc. Code § 1021.5; and

4 (I) For such other and further relief as the Court deems just and proper.
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6 Date: May 23, 2018

Respectfully submitted,

7 PACIFIC TRIAL ATTORNEYS
8 A Professional Corporation

9 By: /s/Scott J. Ferrell
10 Scott J. Ferrell
11 Attorneys for Plaintiff
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DEMAND FOR TRIAL BY JURY

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Date: May 23, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: /s/Scott J. Ferrell
Scott J. Ferrell

Attorneys for Plaintiff