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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NICOLE KRAUSE-PETTAI, SCOTT GRIMM, STEVE TABU LANIER, CHRISTY STEVENS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

UNILEVER UNITED STATES, INC., a corporation; and DOES 1-10, inclusive,

Defendants.

**CASE NO. '20CV1672 BEN BLM**

**CLASS ACTION COMPLAINT FOR:**

1. Violation of California Consumers Legal Remedies Act (CLRA)
2. Violation of California False Advertising Law (FAL)
3. Violation of California Unfair Competition Law (UCL)
4. Unjust Enrichment
5. Breach of Implied Warranty
6. Negligent Misrepresentation Civ. C. §§ 1709, 1710, 1711 & 1714
7. Fraud and Deceit

**JURY TRIAL DEMANDED**

Plaintiffs NICOLE KRAUSE-PETTAI, SCOTT GRIMM, STEVE TABU LANIER, and CHRISTY STEVENS (“Plaintiffs”), by and through their undersigned counsel, bring this action, on behalf of themselves in their individual capacity and a class of all other similarly situated consumers, against Defendants UNILEVER UNITED STATES, INC. and DOES 1-10, inclusive (“Defendants”), allege as follows:

**NATURE OF THE ACTION**

1  
2 1. Plaintiffs bring this action on behalf of themselves and on behalf of all others  
3 similarly situated. The class that Plaintiffs seek to represent is composed of all consumers in  
4 California during the relevant times set forth in this Complaint who purchased any solid stick  
5 style antiperspirant and/or deodorant product, whether marketed for men or women, and  
6 purchased from any source, whether retail, wholesale, mail order, Internet etc., under the brand  
7 names of Degree, Dove and Axe (the “Products”) and placed into the stream of commerce by  
8 Defendant Unilever United States, Inc. (“Defendant” or “Unilever”).

9 2. It is hereby alleged that the packaging containing the antiperspirant and/or  
10 deodorant was fraudulent and misleading because the packaging had a significant amount  
11 (approximately 40%) of “nonfunctional slack fill.” This slack fill was not perceptible to the  
12 consumer due to the opaque coloring of the packaging and because of the almost imperceptible  
13 labeling of the weight of the deodorant, each and/or both of which purposefully mislead  
14 consumers into believing they were getting much more volume of deodorant than the size of the  
15 package portrayed.

16 3. This misleading packaging was an inducement for consumers to buy these  
17 Products as compared to competitor’s products, and in fact, consumers relied upon the size of the  
18 packaging as a gauge to how much product they were receiving. The misleading packaging did  
19 induce Plaintiffs and the putative class members to purchase the Products because they believed  
20 they were getting more product than was actually in the package.

21 4. Defendant knew they were misleading consumers in this way and did it  
22 purposefully to mislead in order to gain a larger market share for the Products.

23 5. The general definition of non-functional slack fill is when a container that does  
24 not allow the consumer to fully view its contents shall be considered to be filled as to be  
25 misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual  
26 capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is  
27 the empty space in a package that is filled to less than its capacity.

28 6. “Slack filling . . . is an unlawful trade practice. For a seller to package goods in

1 containers which unknown to the consumer are appreciably oversized, or in containers so shaped  
2 as to create the optical illusion of being larger than conventionally shaped containers of equal or  
3 greater capacity, is as much a deceptive practice, and an unfair method of competition, as if the  
4 seller was to make an explicit false statement of the quantity or dimension of his goods. . . .”  
5 (*Hobby Industry Assc. v. Younger* (1980) 101 CA3d 358, 367 citing, *Papercraft Corp.* (1963) 63  
6 F.T.C. 1965, 1992; *Burry Biscuit Corp.* (1941) 33 F.T.C. 89; and *Marlborough Laboratories Inc.*  
7 (1941) 32 F.T.C. 1014.)

8 7. Plaintiffs bring this action, on behalf of themselves and all others similarly  
9 situated, allege violations of the FAL (*Cal. Bus. & Prof. Code* § 17500, et seq.) for injunctive  
10 relief to restore to any person in interest any money which was acquired in violation of FAL;  
11 violations of the UCL (*Cal. Bus. & Prof. Code* § 17200 et seq.) for disgorgement of profits  
12 restitution and injunctive relief to enjoin defendants from engaging in this unlawful marketing  
13 scheme; violations of the CLRA (*California Civil Code* § 1750, et seq.) for actual damages and  
14 punitive damages; Unjust Enrichment for restitution and/or disgorgement of profits; Breach of  
15 Implied Warranty for damages; Negligent Misrepresentation (*California Civil Code* §§ 1709,  
16 1710, 1711 & 1714) for damages; and Fraud & Deceit (*California Civil Code* §§ 1709, 1710,  
17 1711 & 1714) for damages and punitive damages.

18 **JURISDICTION**

19 8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness  
20 Act, 28 U.S.C. §§ 1332(d)(2) & (6), as the matter in controversy exceeds \$5,000,000.00, exclusive  
21 of interest and costs; as the action involves 100 or more class members; and at least one member  
22 of the Plaintiff class is a citizen of a State different from at least one Defendant.

23 9. This Court has personal jurisdiction over Unilever United States, Inc., because it  
24 purposefully availed itself of the privilege of conducting business activities within this District by  
25 placing in the stream of commerce the Products for sale within the State of California, and it has  
26 generally maintained systematic and continuous business contacts with California.

27 10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c) as many of  
28 the acts complained of herein occurred in this District and gave rise to the claims alleged and

1 Unilever United States, Inc. conducts business in this District. In addition, at least two of the  
2 individual and Class Representative Plaintiffs reside within this District and purchased products  
3 while residing in this District.

4 **PARTIES**

5 ***Plaintiffs***

6 11. Plaintiff Nicole Krause-Pettai is an individual consumer and a resident of San  
7 Diego County, California. On multiple times during the class period, Nicole Krause-Pettai  
8 purchased, for her personal use, Dove “Go Fresh” stick antiperspirant & deodorant from various  
9 retailers in San Diego County. Although she could not see how much product was contained in  
10 the package because the package was opaque, she always chose the Dove brand of stick deodorant  
11 because from the larger size of the Dove package it appeared that she was getting more product  
12 for a similar price as compared to other brands of stick deodorant which were in smaller packages  
13 she saw displayed in stores. As a result of seeing the larger package, she thought she was getting  
14 a better deal with the Dove product versus other brands. The illusion of a better deal induced her  
15 purchases of the Defendants’ product. Nicole Krause-Pettai’s most recent purchase of Dove “Go  
16 Fresh” stick antiperspirant & deodorant was made in late September 2017 from the retailer  
17 Walmart in San Diego for the price of approximately \$5.00 for a single unit.

18 12. Plaintiff Scott Grimm is an individual consumer and a resident of Orange County,  
19 California. A few times during the class period, Scott Grimm purchased, for his personal use,  
20 Men Degree Motion Sense “Everest” and “Sport Defense” stick antiperspirant & deodorant from  
21 various retailers in Orange County. Although he could not see how much product was contained  
22 in the package because the package was opaque, he always chose the Degree brand of stick  
23 antiperspirant because from the larger size of the Degree package it appeared that he was getting  
24 more product for a similar price as compared to other brands of stick antiperspirant which were  
25 in smaller packages he saw displayed in stores. As a result of seeing the larger package, he  
26 thought he was getting a better deal with the Degree product versus other brands. The illusion of  
27 a better deal induced his purchases of the Defendants’ product. Scott Grimm’s most recent  
28 purchase of Men Degree stick antiperspirant was a 5-pack from the retailer Costco in Laguna

1 Niguel for the price of approximately \$14.00 and purchased in late August 2017.

2 13. Plaintiff Steve Tabu Lanier is an individual consumer and a resident of San Diego  
3 County, California. Several times during the class period, Steve Tabu Lanier purchased, for his  
4 personal use, Axe Antiperspirant Stick for Men, “Dark Temptation” from various retailers in San  
5 Diego County. Although he could not see how much product was contained in the package  
6 because the package was opaque, he always chose the Axe brand of stick antiperspirant because  
7 from the larger size of the Axe package it appeared that he was getting more product for a similar  
8 price as compared to other brands of stick antiperspirant which were in smaller packages he saw  
9 displayed in stores. As a result of seeing the larger package, he thought he was getting a better  
10 deal with the Axe product versus other brands. The illusion of a better deal induced his purchases  
11 of the Defendants’ product. Steve Tabu Lanier’s most recent purchase of Axe Antiperspirant  
12 Stick for Men, “Dark Temptation” was made in mid-June 2017 from the retailer Walmart in San  
13 Diego for the price of about \$4.00 for a single unit.

14 14. Plaintiff Christy Stevens is an individual consumer and a resident of Sacramento  
15 County, California. During the class period, on several occasions Christy Stevens purchased, for  
16 her personal use, Degree Women Antiperspirant Deodorant Stick “Shower Clean” from various  
17 retailers in Sacramento County. Although she could not see how much product was contained in  
18 the package because the package was opaque, she always chose the Degree brand of stick  
19 antiperspirant because from the larger size of the Degree package it appeared that she was getting  
20 more product for a similar price as compared to other brands of stick antiperspirant which were  
21 in smaller packages she saw displayed in stores. As a result of seeing the larger package, she  
22 thought she was getting a better deal with the Degree product versus other brands. The illusion  
23 of a better deal induced her purchases of the Defendants’ product. Christy Stevens’ most recent  
24 purchase of Degree Women Antiperspirant Deodorant Stick “Shower Clean” was made in late  
25 July 2017 from the retailer Walgreens in Sacramento for the price of about \$5.00 for a single unit.

26 ***Defendants***

27 15. Plaintiffs are informed and believe, and based thereon alleges, that Defendant  
28 Unilever United States, Inc. is part of an international company, the Unilever Group, which

1 consists of two parent companies, Unilever NV and Unilever PLC, together with their group  
2 companies, and operate as a single economic entity. NV and PLC and their group companies  
3 constitute a single reporting entity for the purposes of presenting consolidated accounts.  
4 Accordingly, the accounts of the Unilever Group are presented by both NV and PLC as their  
5 respective consolidated accounts.

6 16. Unilever NV is a public limited company registered in the Netherlands, which has  
7 listings of shares and depositary receipts for shares on Euronext Amsterdam and of New York  
8 Registry Shares on the New York Stock Exchange.

9 17. Unilever PLC is a public limited company registered in England and Wales which  
10 has shares listed on the London Stock Exchange and, as American Depositary Receipts, on the  
11 New York Stock Exchange.

12 18. The Unilever Group has company headquarters in Rotterdam, Netherlands,  
13 London, England and the United States. The portion of the Unilever Group in the United States  
14 is called Unilever United States, Inc., It is a corporation headquartered and located at 800 Sylvan  
15 Avenue, Englewood Cliffs, NJ 07632, incorporated within the State of Delaware with entity  
16 number 0842944, and registered with the New Jersey Secretary of State with entity number  
17 0100400419.

18 19. In the United States, Unilever places its products into the stream of commerce to  
19 be sold directly to consumers by various marketing channels including retail stores, big box stores  
20 (e.g. Costco), drug stores, Internet (e.g. Amazon), etc., in all fifty States.

21 20. In the financial year ended 31 December 2013, Unilever had worldwide sales of  
22 €49.797 billion (approximately \$68 billion) of which 36% was from Personal Care products.  
23 Unilever owns over 400 brands and its products are available in 190 countries.

24 21. In April 2011, Unilever was fined €104 million (approximately \$150 million) by  
25 the European Commission for establishing a price-fixing cartel in Europe.

26 22. The true names and capacities, whether individual, corporate, associate or  
27 otherwise of Defendant DOES 1 through 10, inclusive, are unknown to Plaintiffs at this time.  
28 Plaintiffs will amend this Complaint to show their true names and capacities once they are

1 ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of said  
2 fictitious defendants are responsible in some manner for the acts and occurrences set forth herein,  
3 and that the injuries and damages alleged herein were and are the direct and proximate result of  
4 the actions of these defendants. Plaintiffs make all allegations contained in this Complaint against  
5 Defendants, and each of them, including DOES 1 through 10, inclusive

6 23. The use of the term “Defendant” or “Defendants” in any of the allegations in this  
7 Complaint, unless specifically alleged otherwise, is intended to include and charge, both jointly  
8 and severally, not only the Defendants identified in this Complaint, but also all Defendants  
9 designated as DOES 1 through 10, inclusive, as though the term “Defendants” was followed in  
10 each and every instance throughout this Complaint with the phrase “and each of them jointly and  
11 severally,” including all named Defendants and Defendants included herein and sued under the  
12 fictitious names of DOES 1 through 10, inclusive.

13 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants, at  
14 all times herein mentioned, were the partners, joint venturers, subsidiaries, successors in interest,  
15 managing agent, merged entities, agents, alter egos, part of a jointly owned, managed, and/or  
16 operated business enterprise, and/or employees of each other Defendant and in doing the acts,  
17 omissions, and things alleged herein were acting as such and within the scope of their authority  
18 as such agents and employees and with the permission and consent of all other Defendants.  
19 Plaintiffs are informed and believe, and based thereon allege, that Defendants have, and at all  
20 times herein mentioned had, a joint economic and business interest, goal and purpose in the  
21 Unilever line of products that are the subject of this lawsuit.

22 **FACTUAL ALLEGATIONS**

23 25. Unilever is an International Company, with its United States Division  
24 headquartered and incorporated in the State of New Jersey. Unilever is organized into four main  
25 divisions: Personal Care; Foods; Refreshments; and Home Care. The Products subject to this  
26 Complaint are within the division of Personal Care. The Products subject to this Complaint are  
27 defined as any stick style antiperspirant and/or deodorant product, whether marketed for men or  
28 women, under the brand names of Degree, Dove and/or Axe and placed into the stream of



1 commerce by Defendant to be sold directly to consumers by various marketing channels including  
2 retail stores, big box stores (e.g. Costco), drug stores, Internet (e.g. Amazon), etc. in all and each  
3 of the fifty states of the United States.

4 26. Representative Plaintiff Grimm has purchased Defendant's Products from  
5 different sources (Costco, drug stores etc.) for a couple of years. The specific product purchased  
6 by Plaintiff was the stick antiperspirant & deodorant "Degree" for men. At the time of his  
7 purchases, although he could not see how much product was contained in the package due to the  
8 opaque color of the package, Plaintiff Grimm always believed that the size of the packaging of  
9 Defendant's product was full of the deodorant and thus represented the quantity or volume of the  
10 product he was purchasing. Because of the opaque coloring of the packaging containing the  
11 deodorant, Plaintiff was never aware at the time of purchase that there was empty space at the  
12 bottom of the package known as nonfunctional slack-fill. Plaintiff's most recent purchase of  
13 Defendant's product was made at Costco in March 2017.

14 27. When shopping for stick antiperspirant, Plaintiff Grimm noticed that the  
15 competitors' stick antiperspirant, of similar pricing, were in smaller packages, with the same twist  
16 bottom delivery system. The competitors' packaging was not opaque and thus he was able to see  
17 that the package was completely full of product. Because of the larger packaging with the Degree  
18 product, Plaintiff Grimm concluded that he was getting more product for a similar price as  
19 compared to the competitors' products, and it was this larger packaging, which induced him to  
20 purchase the Degree product versus the competitors.

21 28. Then, later in 2017 Plaintiff Grimm removed from his cabinet a new and unopened  
22 stick deodorant of Degree for Men (Everest), and when he did this, it was late afternoon and the  
23 sun was shining through the window while he removed the top and the sun was shining on the  
24 packaging of the product. It was at this time, Plaintiff noticed something he never noticed before,  
25 which was at the bottom of the packaging an odd and off color. That being odd, and since the  
26 new package felt top heavy, he started to examine the package more closely, which resulted in  
27 Plaintiff Grimm shining intense light onto the product in order to attempt to see through the mostly  
28 opaque off white coloring.



1           29.     What Plaintiff Grimm discovered was that from the bottom of the packaging  
2 (which started above the twisting device), until he reached the plunger (which was required to  
3 push the deodorant up through the packaging for delivery), there was a significant amount of  
4 empty space. This empty space was not present in the competitors packaging when he looked at  
5 them in the store. Plaintiff then examined the top cover and found that there was some  
6 nonfunctional empty space at the top of the packaging too. Plaintiff then measured the packaging  
7 (not including the twisting device at the bottom required for functionality), which should only be  
8 representative of what contained the product, and that measured at 5 inches. Then he measured  
9 the amount of product (deodorant) filled within the package (including the plunger which is  
10 required for functionality) and that measured 3 inches. Thus, the nonfunctional slack-fill  
11 represented about 40% of the size of the packaging. He then concluded that there was no practical  
12 reason for the empty space other than for deceptive marketing practices.

13           30.     Plaintiff Grimm, now being curious, followed up on his finding and examined  
14 another, but different, new Degree deodorant package (Sport Defense). The black opaque  
15 coloring of this package made it impossible to be able to see the contents on the inside no matter  
16 how much light was shown upon it, so he decided to cut it open and found the same empty space  
17 at the bottom. The other thing he noticed about the labeling on the Degree product was that it  
18 was very difficult for him to find the net weight of the product. On one product (Everest) the  
19 print was extremely small and on a different Degree product (Sport Defense) the net weight was  
20 incorporated as part of the graphic design of the label making finding the information very  
21 difficult.

22           31.     Continuing his curiosity, Plaintiff Grimm decided to go to a local drug store and  
23 more closely compare competitors' products. First, Plaintiff noticed in the competitors' products  
24 that the net weight labeling, although small, was in a larger font size than Defendants and much  
25 more easily readable and easily found on the label. Next Plaintiff noticed that the average size of  
26 the competitor's packaging (just the portion containing the deodorant) was smaller; in that  
27 Defendant's package was 5 inches while the competitors were 3 ½ to 4 inches. The next thing  
28 Plaintiff noticed was that in these smaller packages of the competitors, the weight of the product

1 was 2.7 oz., (for the 3 ½ inch size package) to 3 oz., (for the 4 inch size package), whereas  
2 Defendant's was 2.7 oz. (in the 5 inch size package). Lastly, Plaintiff picked up packaging of two  
3 competitors (Gillette and Right Guard), both with the same delivery mechanisms as in  
4 Defendant's packaging, and both of these packages were clear, allowing him to easily see how  
5 much product was in the packaging and there was no slack-fill at the bottoms of the packages  
6 demonstrating to him there was no functional reason to have empty space at the bottom of the  
7 Defendant's packaging and he felt Defendant's packaging deceived him into thinking he was  
8 getting more product than he was, as compared the Defendant's competitors, and thus induced  
9 him into buying Defendant's products instead of the competitors.

10 32. Representative Plaintiffs Krause-Pettai, Tabu Lanier, and Stevens have purchased  
11 Defendant's Products from different retail sources for a couple of years. The specific products  
12 purchased by Plaintiffs were the stick antiperspirant & deodorant "Dove" "Degree" and "Axe."  
13 At the time of their purchases, although they could not see how much product was contained in  
14 the package due to the opaque color of the package, Plaintiffs Krause-Pettai, Tabu Lanier, and  
15 Stevens believed that the size of the packaging of Defendant's product was full of the deodorant  
16 and thus represented the quantity or volume of the product they were purchasing. Because of the  
17 opaque coloring of the packaging containing the antiperspirant & deodorant, Plaintiffs were never  
18 aware at the time of purchase that there was empty space at the bottom of the package known as  
19 nonfunctional slack-fill. Plaintiffs' most recent purchases of Defendant's product were made  
20 2017.

21 33. When shopping for stick antiperspirant & deodorant, Plaintiffs Krause-Pettai,  
22 Tabu Lanier, and Stevens noticed that the competitors' stick antiperspirant, of similar pricing,  
23 were in smaller packages, with the same twist bottom delivery system, and that the packaging  
24 was not opaque, allowing them to see that the product filled the entire container. Because of the  
25 larger packaging with the Dove, Degree and Axe products, Plaintiffs concluded that they were  
26 getting more product for a similar price as compared to the competitors' products, and it was this  
27 larger packaging, which induced them to purchase the Defendant's products versus the  
28 competitors.

1           34.     After some time of use, Plaintiffs Krause-Pettai, Tabu Lanier, and Stevens all  
2 noticed that even when the Defendant’s product was brand new and supposedly filled to capacity,  
3 that the products were top-heavy and easily toppled over when placed upon the bathroom counter  
4 in a similar manner as when the products were almost depleted. As a result, they all concluded  
5 this could only be the result of there being empty space at the bottom of the packages. Thereafter,  
6 Plaintiffs made note of the net weight of the product (which they eventually found in small print)  
7 and compared this net weight, to the net weight of the competitors’ products in the smaller  
8 packaging with the same delivery system, and found that the net weight was the same. Plaintiffs  
9 then concluded that Defendant’s packaging deceived them into thinking they were getting more  
10 product than they were.

11           35.     All of the Defendants’ Products (being stick antiperspirant & deodorant under the  
12 brand names of Degree, Dove and Axe, under all sub-brand names for both men and women)  
13 contain significant hidden nonfunctional slack fill and are deceptively labeled.

14           36.     Because there is no functional reason for the empty space at the bottom of  
15 Defendant’s product packaging and that they knowingly hid this empty space from the consumer  
16 utilizing opaque packaging, Defendant was well aware that they were putting these products into  
17 the stream of commerce with illegal slack fill.

18           37.     Given that Defendant’s filing with the United States SEC stated that they  
19 acknowledged they were subject to all of the laws of the United States and of the individual States  
20 in which they marketed all of their products, Defendants were well aware that such packaging,  
21 for the “products” subject to the Complaint was fraudulent, a deceptive business practice and false  
22 advertising.

23           38.     Defendant knew and were well aware that if they marketed their “products” in a  
24 package much larger than necessary for functionality, that the consumer would think at the time  
25 of purchase they were getting more volume of deodorant than they really purchased, and thus not  
26 only deceiving the consumer, but also getting a market edge on their competitors.

27           39.     By Defendant knowingly and purposefully obscuring from the consumer just how  
28 much deodorant they were purchasing by providing non-functional slack fill in their opaque

1 packaging and by obscuring the label listing the weight of the product, Defendant was knowingly  
2 and purposefully misleading and defrauding consumers into thinking they were purchasing more  
3 volume of deodorant than was actually the truth, and Plaintiffs and the putative class of consumers  
4 relied upon these misleading, fraudulent representations as an inducement to purchase  
5 Defendant's products.

6 40. Because of the deceptions used by Defendant, (slack fill, opaque packaging and  
7 blurred labeling), Plaintiffs and all other consumers were deceived into making the purchases they  
8 did, and they relied upon the Defendant's deceptive packaging to make their choices as to what  
9 product to purchase.

10 41. Both State of California law and Federal law have declared this type of advertising,  
11 for non-food products, described in this Complaint, which Defendant has engaged in concerning  
12 the marketing of its "products," as false advertising, a fraudulent business practice, misleading  
13 and deceptive to consumers.

14 42. First, *California Business and Professions Code* § 12606 states in pertinent part,  
15 “, (a) No container wherein commodities are packed shall have a false bottom, false sidewalls,  
16 false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate  
17 the perpetration of deception or fraud. (b) No container shall be made, formed, or filled as to be  
18 misleading. A container that does not allow the consumer to fully view its contents shall be  
19 considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the  
20 difference between the actual capacity of a container and the volume of product contained therein.  
21 Nonfunctional slack fill is the empty space in a package that is filled to substantially less than its  
22 capacity.<sup>1</sup>” *California Health & Safety Code* §110375 states the same thing as *Business and*  
23 *Professions Code* § 12606, for among other things for all “foods, drugs, devices, or cosmetics.”  
24 Furthermore, *California Health & Safety Code* § 110290 & 110295 specifically provide that the  
25 weight of the product must be legible on a label.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> This code then goes on to list several exceptions which if proven by a defendant could then  
declassify the slack fill from nonfunctional to functional. However, under the facts contained  
herein this Complaint, Defendants do not qualify for any of the exceptions.

1           43.     And second, Federal law also states this is a fraudulent practice for marketing non-  
 2 food products at 15 USC 1454. First, section (a) provides the scope, which includes Defendants'  
 3 "products" herein and states, "(a) The authority to promulgate regulations under this chapter is  
 4 vested in (A) the Secretary of Health and Human Services (referred to hereinafter as the  
 5 "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic,  
 6 as each such term is defined by section 321 of title 21; and (B) the Federal Trade Commission  
 7 (referred to hereinafter as the "Commission") with respect to any other consumer commodity.  
 8 Next, section (c)(4), specifically forbids slack fill and this section states, "prevent the  
 9 nonfunctional-slack-fill of packages containing consumer commodities. For purposes of  
 10 paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if  
 11 it is filled to substantially less than its capacity for reasons other than (A) protection of the contents  
 12 of such package or (B) the requirements of machines used for enclosing the contents in such  
 13 package." In addition, 15 USC 1453 proscribes that the weight of the product shown on the label  
 14 be conspicuous and legible, with a sufficient size type font.

15           44.     Under California law, nonfunctional slack fill is a deceptive business practice  
 16 under the UCL and considered false advertising under the FAL and the CLRA. *Hobby Industry*  
 17 *Assc. v. Younger* (1980) 101 CA3d 358.

18           45.     "Slack filling . . . is an unlawful trade practice. For a seller to package goods in  
 19 containers which unknown to the consumer are appreciably oversized, or in containers so shaped  
 20 as to create the optical illusion of being larger than conventionally shaped containers of equal or  
 21 greater capacity, is as much a deceptive practice, and an unfair method of competition, as if the  
 22 seller was to make an explicit false statement of the quantity or dimension of his goods. . . ."  
 23 (*Hobby Industry Assc. v. Younger* (1980) 101 CA3d 358, 367 citing, *Papercraft Corp.* (1963) 63  
 24 F.T.C. 1965, 1992; *Burry Biscuit Corp.* (1941) 33 F.T.C. 89; and *Marlborough Laboratories Inc.*  
 25 (1941) 32 F.T.C. 1014.)

### CLASS ACTION ALLEGATIONS

26  
 27           46.     Plaintiffs bring this lawsuit, both individually and on behalf of similarly situated  
 28 purchasers of the Products, pursuant to Rule 23. Subject to additional information obtained

1 through further investigation and/or discovery, the foregoing definition of the Classes may be  
2 expanded or narrowed. The proposed Classe is defined as follows:

3 All individual consumer residents of California who purchased Defendants’ “products”  
4 (whereas “products” is defined within paragraph 30 of this Complaint) within the  
5 applicable statutory limitations period, including the period following the filing of the date  
6 of this action.

7 Specifically excluded from this Class is Defendant; the officers, directors, or employees of  
8 Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal  
9 representative, heir, or assign of Defendant. Also excluded are any federal, state, or local  
10 governmental entities, any judicial officer presiding over this action and the members of his or  
11 her immediate family and judicial staff, and any juror assigned to this action.

12 47. Plaintiffs propose that this case should be maintained as a class action under Fed.  
13 R.Civ.P. 23 because it meets the requirements of Fed. R.Civ.P. 23(a) and also satisfies Fed.  
14 R.Civ.P. 23(b)(3). Plaintiffs also believe this case could be certified under Fed. R.Civ.P. 23(b)(1),  
15 23(b)(2), and 23(c)(4). Without prejudice to raising alternative arguments for certification under  
16 either Fed. R.Civ.P. 23(b)(1), 23(b)(2) and 23(c)(4), the following facts, amongst others,  
17 demonstrate that this case is entitled to be maintained under Fed. R.Civ.P. 23(a) and 23(b)(3).

18 48. **Numerosity**: The members of the Class are so numerous that joinder of all  
19 members would be unfeasible and not practicable. The total membership of the Class is unknown  
20 to Plaintiffs at this time; however, it is estimated that the there are more than one thousand (1,000)  
21 individuals in the Class. The identity of such membership is readily ascertainable via inspection  
22 of Defendants’ books and records or other approved methods. Similarly, Class members may be  
23 notified of the pendency of this action by mail, email, internet postings, and/or publication.

24 49. **Commonality**: Common questions of law and fact exist as to all members of the  
25 Class. These common questions predominate over any questions affecting only individual Class  
26 Members. These common legal and factual questions include, but are not limited to:

27 a) Whether Defendants included non-functional slack fill within their  
28 product packaging;

1                   b)     Whether Defendants’ labeling made it difficult for consumers to  
2 determine the net weight of the product;

3                   c)     Whether Defendants’ practices are deceptive or likely to deceive  
4 reasonable consumers;

5                   d)     Whether Defendants’ conduct is unethical, oppressive, unscrupulous,  
6 and/or substantially injurious to consumers;

7                   e)     Whether Defendants’ acts and practices in connection with the  
8 promotion, marketing, advertising, packaging, labeling, distribution, and sale of the Products  
9 violated the laws alleged herein;

10                  f)     Whether Plaintiffs and Class are entitled to injunctive and other equitable  
11 relief;

12                  g)     Whether Defendants were unjustly enriched by their conduct; and

13                  h)     Whether Plaintiffs and the Class have sustained monetary loss and the  
14 proper measure of that loss.

15           50.     **Typicality:** Plaintiffs’ claims are typical of the claims of the other members of the  
16 Class because, amongst other things, Plaintiffs and all Class members were comparably injured  
17 through Defendants’ misconduct at issue herein. As alleged herein, Plaintiffs, like the members  
18 of the Class, purchased Products with non-functional slack fill. Plaintiffs’ claims are thereby  
19 representative of and co-extensive with the claims of the Class.

20           51.     **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests  
21 of the members of the Class. Plaintiffs have no interests that are antagonistic to or in conflict  
22 with the interests of other putative Class members and are subject to no unique defenses. Plaintiffs  
23 are similarly situated in interest to all members of the putative Class and are committed to the  
24 vigorous prosecution of this action and have retained competent counsel, experienced in complex  
25 class action litigation. Moreover, putative Class Counsel are experienced consumer class action  
26 litigators who have brought and successfully resolved and/or tried numerous consumer class  
27 actions on behalf of California and nation-wide classes in state and federal courts.

28           52.     **Predominance of Common Questions:** Defendants have acted, and/or refused to



1 act, on grounds generally applicable to the Class. The common questions of law set forth above  
2 are numerous and substantial and stem from Defendants' practices applicable to each individual  
3 Class Member. As such, these common questions predominate over individual questions  
4 concerning each individual Class member.

5 53. **Superiority:** A class action is superior to all other available methods for the fair  
6 and efficient adjudication of this controversy given that joinder of all members is impracticable.  
7 The injury suffered by each individual Class member is relatively small in comparison to the  
8 burden and expense of individual prosecution of the complex and extensive litigation necessitated  
9 by Defendants' deceptive conduct. It would be virtually impossible for members of the Class  
10 individually to redress effectively the wrongs done to them. Class action treatment will allow  
11 those similarly situated persons to litigate their claims in the manner that is most efficient and  
12 economical for those parties and the judicial system.

13 54. **Injunctive Relief Appropriate:** Injunctive relief under Rule 23(b) is necessary and  
14 appropriate to require Defendants to: (a) discontinue the practice of including non-functional  
15 slack fill and or obscure product weight labeling; (b) undertake an immediate public information  
16 campaign to inform members of the putative Classes as to their prior practices; and (c) to correct  
17 any erroneous impression consumers may have derived concerning the amount of product they  
18 were purchasing, including without limitation, the placement of corrective advertising and  
19 providing written notice to the public.

20 **FIRST CAUSE OF ACTION**

21 **Violation of the Consumers Legal Remedies Act**

22 **[Cal. Civ. Code §§ 1750, et seq.]**

23 55. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
24 fully set forth herein.

25 56. The Consumers Legal Remedies Act, Civil Code §§ 1750, et seq., was designed  
26 and enacted to protect consumers from unfair and deceptive business practices. To this end, the  
27 CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code § 1770.

28 57. Plaintiffs have standing to pursue these claims because they have suffered injury

1 in fact and a loss of money and/or property as a result of the wrongful conduct alleged herein.  
2 Plaintiffs would not have purchased the products or paid as much for it, if they had known the  
3 truth.

4 58. Plaintiffs suffered injury in fact and a loss of money and property with each  
5 purchase because they were deceived into purchasing Defendant's products as described in the  
6 "Parties" paragraphs numbered 14 through 17 and the "Factual Allegation" paragraphs numbered  
7 30 through 50.

8 59. Plaintiffs suffered injury in fact and a loss of money and property with each  
9 purchase because they lost the opportunity to purchase and consume products that were not tied  
10 to false and deceptive practices of Defendant as described in the "Parties" paragraphs numbered  
11 14 through 17 and the "Factual Allegation" paragraphs numbered 30 through 50.

12 60. Plaintiff and the members of the Class are "consumers" as that term is defined by  
13 Cal. Civil Code § 1761(d).

14 61. The Products marketed and sold by Defendant are "Goods" as that term is defined  
15 by Cal. Civil Code § 1761(a).

16 62. Defendant is a "person" as that term is defined by Cal. Civil Code § 1761(c).

17 63. The transactions described herein are "transactions" as that term is defined by  
18 Cal. Civil Code § 1761(e).

19 64. The policies, acts, and practices described in this Complaint were intended to  
20 induce consumers to purchase the Products.

21 65. Defendant made representations and material omissions regarding the nature of  
22 their products that they knew, or should have known, were deceptive and likely to cause  
23 consumers to buy their products in reliance upon said representations.

24 66. Defendant had a duty not to mislead consumers about the amount of product they  
25 were purchasing via deceptive methods as nonfunctional slack fill and obscure labeling.

26 67. Defendant's misrepresentation regarding their product packaging was material, in  
27 that a reasonable person would have considered it important in deciding whether or not to  
28 purchase the Products.

1           68. Defendant’s concealment, omissions, misrepresentations, and deceptive practices,  
2 in violation of the CLRA, were designed to induce Plaintiffs and Class Members to purchase the  
3 Products and to conceal the true value of the Products.

4           69. The business acts and practices of Defendant are unlawful, unfair and deceptive  
5 within the meaning of the CLRA, because, Defendant’s actions as described in the “Parties”  
6 paragraphs numbered 14 through 17 and the “Factual Allegation” paragraphs numbered 30  
7 through 50 violated *California Civil Code* § 1770 (a)(4) & (5), which states, “(a) The following  
8 unfair methods of competition and unfair or deceptive acts or practices undertaken by any person  
9 in a transaction intended to result or which results in the sale or lease of goods or services to any  
10 consumer are unlawful:... (4) Using deceptive representations ... in connection with goods or  
11 services.... (5) Representing that goods or services have... quantities which they do not have.”

12           70. Defendant’s acts and practices, undertaken in transactions intended to result and  
13 which did result in the purchase of their Products by consumers, violate Civil Code § 1770 and  
14 caused harm to Plaintiffs and Class Members who would not have purchased (or paid as much  
15 for) the products had they known the truth about the nonfunctional slack fill.

16           71. To this day, Defendant continues to engage in this conduct of using nonfunctional  
17 slack fill in its products and expand its use.

18           72. In accordance with Civil Code § 1780(a), Plaintiffs and the Class and California  
19 Subclass seek injunctive and equitable relief for violations of the CLRA, including restitution and  
20 disgorgement.

21           73. Venue is proper pursuant to Civil Code § 1780(c) because Defendant does business  
22 in the county where this action was originally filed.

23           74. On August 26, 2020, Plaintiffs mailed Defendant notice of its violations of Cal.  
24 Civil Code § 1770 in accordance with Cal. Civil Code § 1782. If Defendant fails to make the  
25 demanded corrections within thirty (30) days of receipt of Plaintiffs’ notice, Plaintiffs will seek  
26 leave to amend the Complaint to claim damages under the CLRA

27           75. Plaintiffs and the Class further request actual damages and punitive damages,  
28 pursuant to Civil Code § 1780(a); costs and attorneys’ fees pursuant to Civil Code § 1780(e) and

1 Civil Code § 1021.5; and such other relief as the Court deems necessary and proper.

2 **SECOND CAUSE OF ACTION**

3 **False and Misleading Advertising**

4 **[Bus. & Prof. Code §§ 17500 et seq.]**

5 76. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
6 fully set forth herein.

7 77. By committing the acts alleged in this Complaint, Defendants have violated Bus.  
8 & Prof. Code § 17500, et seq. (FAL) Plaintiffs have standing to pursue these claims because,  
9 inter alia, they have suffered injury in fact and a loss of money and/or property as a result of the  
10 wrongful conduct alleged herein. Plaintiffs would not have purchased the products or paid as  
11 much for them if they had known the truth. Plaintiffs did not receive the value they expected for  
12 the price they paid because, due to the nonfunctional slack fill and obscure labeling, they were  
13 deceived into believing they were getting more product than they actually received.

14 78. As a direct and proximate result of Defendant’s conduct, as described in the  
15 “Parties” paragraphs numbered 14 through 17 and the “Factual Allegation” paragraphs numbered  
16 30 through 50, Plaintiffs have suffered injury in fact.

17 79. Pursuant to Bus. & Prof. Code § 17535, Plaintiffs and the Class seek an order of  
18 the Court enjoining Defendants from continuing to make and disseminate illegal, misleading  
19 and/or untrue statements in their pricing practices and to order Defendants to disclose such  
20 misrepresentations and inform the public accordingly. Plaintiffs, the Class and the public will be  
21 irreparably harmed if such an order is not granted.

22 80. Pursuant to Bus. & Prof. Code §§ 17203 and 17535 Plaintiffs and the Class seek  
23 restitution and/or disgorgement under Bus. & Prof. Code § 17500, et seq. necessary to restore to  
24 any person in interest any money or property, real or personal, which may have been acquired by  
25 means of any practice under Bus. & Prof. Code § 17500 declared to be unlawful.

26 81. Plaintiffs and the Class also seek an order requiring Defendants to pay attorneys’  
27 fees pursuant to Civ. Code § 1021.5.

28 ///

**THIRD CAUSE OF ACTION**

**Violation of the California Unfair Competition Law**

**[Bus. & Prof. Code §§ 17200 et seq.]**

1  
2  
3  
4 82. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
5 fully set forth herein.

6 83. California Bus. & Prof. Code §§ 17200, et seq. (UCL) prohibits acts of unfair  
7 competition, which include any “unlawful, unfair or fraudulent business practice.” The conduct  
8 escribed herein is ongoing and constitutes unfair, unlawful, fraudulent business acts and practices  
9 within the meaning of Bus. & Prof. Code §§ 17200, et seq.

10 84. Plaintiffs have standing to pursue these claims because, inter alia, they have  
11 suffered injury in fact and a loss of money and/or property as a result of the wrongful conduct  
12 alleged herein. Plaintiffs would not have purchased the product(s) and/or paid as much for them  
13 if they had known the truth. Plaintiffs did not receive the value they expected for the price they  
14 paid as described in the “Parties” paragraphs numbered 14 through 17 and the “Factual  
15 Allegation” paragraphs numbered 30 through 50.

16 85. Defendants’ conduct is unlawful because it is in violation of California Bus. &  
17 Prof. Code §§ 12606, 17200, and 17500; California Civil Code §§ 1750, et seq., California Health  
18 & Safety Code §§ 110290, 110295 and 110375; and Federal 15 USC 1453, and 15 USC 1454, in  
19 addition to potentially other statutory violations that will be added.

20 86. By committing the acts alleged in this Complaint, Defendant has engaged in unfair  
21 business practices, in violation of the Unfair Practices Act, Bus. & Prof. Code §§ 17200, et seq.  
22 Defendant’s conduct is unfair because, among other things, it is immoral, unethical, oppressive,  
23 unscrupulous or substantially injurious to consumers and/or any utility of such practices is  
24 outweighed by the harm caused to consumers, including to Plaintiffs, the Class and the public.

25 87. By committing the acts alleged in this Complaint, Defendant has engaged in  
26 fraudulent business practices, in violation of the Unfair Practices Act, Bus. & Prof. Code  
27 §§ 17200, et seq. Defendant’s practices constitute fraudulent business practices because, among  
28 other things, they are likely to deceive reasonable consumers, including Plaintiffs and the Class,

1 and Defendants failed to disclose material facts.

2 88. Reasonable consumers had no way of knowing that Defendant was engaging in  
3 false, deceptive, misleading practices, and therefore could not have reasonably avoided the  
4 injuries they suffered.

5 89. Defendant's wrongful conduct complained of herein is ongoing and part of a  
6 generalized pattern or course of conduct repeated on thousands of occasions daily. Defendant's  
7 representations and omissions were made with knowledge or reckless disregard of the laws of  
8 California, as well as the reasonable expectations of public consumers.

9 90. Pursuant to California Business and Professions Code § 17203, Plaintiffs and the  
10 consumers that they seek to represent are therefore entitled to: (a) an order requiring Defendants  
11 to cease the acts of unfair competition alleged herein; (b) restitution and/or disgorgement;  
12 (c) interest; and (d) attorneys' fees and costs pursuant to Cal. Code of Civil Procedure § 1021.5.

13 **FOURTH CAUSE OF ACTION**

14 **Unjust Enrichment**

15 91. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
16 fully set forth herein.

17 92. Plaintiffs bring this claim in the alternative and on a quasi-contract basis.

18 93. Plaintiffs and the Class conferred a tangible economic benefit upon Defendant by  
19 purchasing their Products.

20 94. Defendants had an appreciation or knowledge of the benefit conferred by Plaintiffs  
21 and the members of the Class.

22 95. Plaintiffs and Class members would have expected remuneration from Defendants  
23 at the time this benefit was conferred had they known that they overpaid for Defendant's Products,  
24 in that their purchases did not genuinely contain the full amount of Products as was represented  
25 by Defendant in an oversized package which was partially filled with the labeling of the net  
26 weight of the product obscured in small print or in a label graphic design.

27 96. As a direct and proximate result of Defendant's misconduct as set forth above,  
28 Defendant has been unjustly enriched at the expense of Plaintiffs and the Class members.

1 97. It would be inequitable for Defendant to retain the benefits obtained by their  
2 wrongful conduct in the marketing and selling of these Products.

3 98. Plaintiffs, on behalf of themselves and Class members, seek (a) restitution from  
4 Defendant and/or an order of disgorgement from the Court, (b) attorneys' fees pursuant to Cal.  
5 Code of Civil Procedure § 1021.5, (c) interest, in addition to any other relief that the Court may  
6 deem just and proper.

7 **FIFTH CAUSE OF ACTION**

8 **Breach of Implied Warranty of Merchantability and/or of a Particular Purpose**

9 99. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
10 fully set forth herein.

11 100. Plaintiffs bring this claim in the alternative and on a quasi-contract basis.

12 101. Defendant, as the designer, manufacturer, marketer, and distributor implied  
13 warranted that the Degree, Dove and Axe brands of stick antiperspirant/deodorant contained an  
14 adequate amount of product to sufficiently fill the packaging delivery system they proffered,  
15 without a significant amount of nonfunctional empty space which was concealed from the  
16 consumer via opaque packaging and obscure net weight labeling, thereby misleading the  
17 consumer into thinking they were getting more product than really existed.

18 102. Defendant breached the implied warranty in quasi contract for the sale of the  
19 Degree, Dove and Axe brands of stick antiperspirant/deodorant because it could not pass without  
20 objection in the trade under the contract description, the goods were not of fair average quality  
21 within the description, and the good were unfit for their intended and ordinary purpose because  
22 Unilever substantially under-filled the packaging containers. As a result, Plaintiffs and the Class  
23 members did not receive the goods as implied warranted by the Defendant to be merchantable  
24 and/or for a particular purpose.

25 103. Plaintiffs and Class members purchased the Degree, Dove and Axe brands of stick  
26 antiperspirant/deodorant in reliance upon Defendant's skill and judgment and the implied  
27 warranties of merchantability and/or for a particular purpose.

28 104. The Degree, Dove and Axe brands of stick antiperspirant/deodorant were not



1 altered by the Plaintiffs or the Class members.

2 105. The Degree, Dove and Axe brands of stick antiperspirant/deodorant were defective  
3 when they left the exclusive control of the Defendant.

4 106. Defendant knew that the Degree, Dove and Axe brands of stick  
5 antiperspirant/deodorant would be purchased without additional testing at the point of sale by  
6 Plaintiffs and the Class members.

7 107. The product packaging for the Degree, Dove and Axe brands of stick  
8 antiperspirant/deodorant was defectively designed and unfit for its intended purpose and Plaintiffs  
9 and the Class members did not receive the goods as warranted.

10 108. As a direct and proximate result of Defendant's breach of implied warranty,  
11 Plaintiff and Class members have been injured and harmed because: (a) they would not have  
12 purchased the Degree, Dove and Axe brands of stick antiperspirant/deodorant on the same terms  
13 if the true facts were known concerning the quantity of product supplied; (b) they paid a price  
14 premium for Defendant's product because of Defendant's advertising the illusion that they were  
15 purchasing more product than they actually were, and (c) Defendant did not have the  
16 characteristics, benefits or quantities as promised.

17 109. Plaintiffs, on behalf of themselves and Class members, seek (a) damages,  
18 (b) attorneys' fees pursuant to Cal. Code of Civil Procedure § 1021.5, (c) interest, in addition to  
19 any other relief that the Court may deem just and proper.

20 **SIXTH CAUSE OF ACTION**

21 **Negligent Misrepresentation**

22 **Cal. Civil Code §§ 1709, 1710, 1711 & 1714**

23 110. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
24 fully set forth herein.

25 111. As described in the "Parties" paragraphs numbered 14 through 17 and the "Factual  
26 Allegation" paragraphs numbered 30 through 50 Defendant misrepresented that the Degree, Dove  
27 and Axe brands of stick antiperspirant/deodorant contained an adequate amount of product to  
28 sufficiently fill the packaging delivery system they proffered, without a significant amount of

1 nonfunctional empty space which was concealed from the consumer via opaque packaging and  
2 obscure net weight labeling, thereby misleading the consumer into thinking they were getting  
3 more product than really existed.

4 112. At the time Defendant proffered these misrepresentations, Defendant knew or  
5 should have known that these representations were false or made them without knowledge of their  
6 truth or veracity.

7 113. At an absolute minimum, Defendant negligently misrepresented and/or  
8 negligently omitted material facts about the Degree, Dove and Axe brands of stick  
9 antiperspirant/deodorant.

10 114. The negligent misrepresentations and omissions made by Defendant, upon which  
11 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and  
12 actually induced Plaintiffs and Class members to purchase these products.

13 115. Plaintiffs and Class members would not have purchased these products if the true  
14 facts had been known to them, and thus the actions of Defendant caused damages to Plaintiffs  
15 and Class members.

16 116. Plaintiffs, on behalf of themselves and Class members, seek (a) damages,  
17 (b) attorneys' fees pursuant to Cal. Code of Civil Procedure § 1021.5, (c) interest, in addition to  
18 any other relief that the Court may deem just and proper.

19 **SEVENTH CAUSE OF ACTION**

20 **Fraud & Deceit**

21 **Cal. Civil Code §§ 1709, 1710, 1711 & 1714**

22 117. Plaintiffs hereby incorporate all preceding and succeeding paragraphs as though  
23 fully set forth herein.

24 118. As described in the "Parties" paragraphs numbered 14 through 17 and the "Factual  
25 Allegation" paragraphs numbered 30 through 50 Defendant misrepresented that the Degree, Dove  
26 and Axe brands of stick antiperspirant/deodorant contained an adequate amount of product to  
27 sufficiently fill the packaging delivery system they proffered, without a significant amount of  
28 nonfunctional empty space which was concealed from the consumer via opaque packaging and

1 obscure net weight labeling, thereby misleading the consumer into thinking they were getting  
2 more product than really existed.

3 119. The misrepresentations and omissions made by Defendant were made with  
4 knowledge of their falsehood, upon which Plaintiffs and Class members reasonably and  
5 justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to  
6 purchase these products.

7 120. The fraudulent and deceitful actions of Defendant caused damages to Plaintiffs  
8 and the Class members.

9 121. Plaintiffs, on behalf of themselves and Class members, seek (a) actual damages,  
10 (b) punitive damages, (c) attorneys' fees pursuant to Cal. Code of Civil Procedure § 1021.5,  
11 (d) interest, in addition to any other relief that the Court may deem just and proper.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated  
14 individuals, pray for judgment as follows:

15 A. Certification of the Class and/or Classes under Fed. Rule of Civil Procedure 23,  
16 and appointment of Plaintiffs as representatives of the Class and/or Classes, and their counsel as  
17 Class Counsel;

18 B. Declaration that Defendants' conduct is deceptive and/or has a likelihood to  
19 deceive consumers and/or harm the general public;

20 C. A temporary, preliminary and/or permanent order for injunctive relief requiring  
21 Defendants to: (1) discontinue providing non-functional slack fill within their products packaging  
22 and to provide clear labeling of the products' net weight; (2) undertake an immediate public  
23 information campaign to inform consumers, the general public, and members of the putative Class  
24 and/or Classes about Defendants' prior practices; and (3) to correct any erroneous impression  
25 consumers or the general public may have derived regarding the value of the Products including  
26 without limitation, the placement of corrective advertising and providing written notice to the  
27 public;

28 D. An order requiring imposition of a constructive trust and/or disgorgement of

1 Defendants' ill-gotten gains and to pay restitution to Plaintiffs and all members of the Classes and  
2 to restore to Plaintiffs and members of the Class and/or Classes all funds acquired by means of  
3 any act or practice declared by this Court to be unlawful, fraudulent or unfair business act or  
4 practice, a violation of law, statutes or regulations, or constituting unfair competition or false  
5 advertising;

6 E. Distribution of any money recovered on behalf of members of the Class and/or  
7 Classes via fluid recovery or *cy pres* recovery, disgorgement of profits where necessary and as  
8 applicable, to prevent Defendants from retaining the benefits of their wrongful conduct;

9 F. Compensatory, punitive, and other damages for economic and non-economic  
10 damages identified herein, including all damages allowed by governing statutes and/or common  
11 law theories;

12 G. Statutory and pre-judgment and post-judgment interest on any amounts;

13 H. Reasonable attorneys' fees as may be allowable under applicable law;

14 I. Costs of this suit; and

15 J. Such other and further relief as the Court may deem just and proper.

16

17 DATED: August 26, 2020

**MARLIN & SALTZMAN, LLP  
LAW OFFICE OF W. HANSULT**

18

By: s/ Stanley D. Saltzman  
Stanley D. Saltzman, Esq.  
Attorneys for Plaintiffs

19

20

21

22

**JURY DEMAND**

23

Plaintiffs demand a trial by jury on all causes of action so triable.

24

25 DATED: August 26, 2020

**MARLIN & SALTZMAN, LLP  
LAW OFFICE OF W. HANSULT**

26

By: s/ Stanley D. Saltzman  
Stanley D. Saltzman, Esq.  
Attorneys for Plaintiffs

27

28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

20CV1672 BEN BLM

I. (a) PLAINTIFFS NICOLE KRAUSE-PETTAI, SCOTT GRIMM, STEVE TABU LANIER, CHRISTY STEVENS, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stanley D. Saltzman (SBN 90058), MARLIN & SALTZMAN, LLP 29800 Agoura Rd., #210, Agoura Hills, CA 91301; (818) 991-8080

DEFENDANTS

UNILEVER UNITED STATES, INC., a corporation; and DOES 1-10, Inclusive

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332(d)(2),(6) and 1391(b),(c); Civ Code 1709-11, 1714; Bus & Prof Code 17200, et seq., 1750, et seq. Brief description of cause: Violations of CLRA, FAL, UCL; unjust enrichment, breach of implied warranty, negligent misrepresentation

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/25/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Stanley D. Saltzman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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8 Attorneys for Plaintiffs  
9

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 NICOLE KRAUSE- PETTAI, SCOTT  
13 GRIMM, STEVE TABU LANIER,  
CHRISTY STEVENS, individually and on  
14 behalf of and all others similarly situated,

15 Plaintiffs,

16 v.

17 UNILEVER UNITED STATES INC., a  
18 corporation; and DOES 1-10, inclusive,

19 Defendants.

**CASE NO. '20CV1672 BEN BLM**

**CLASS ACTION**

**DECLARATION OF NICOLE KRAUSE-  
PETTAI RE: PROPER COUNTY FOR  
COMMENCEMENT AND TRIAL OF A  
CLAIM UNDER THE CONSUMERS  
LEGAL REMEDIES ACT**

[California Civil Code § 1780(d)]

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NICOLE KRAUSE- PETTAI, SCOTT  
GRIMM, STEVE TABU LANIER,  
CHRISTY STEVENS, individually and on  
behalf of and all others similarly situated,

Plaintiffs,

v.

UNILEVER UNITED STATES INC., a  
corporation; and DOES 1-10, inclusive,

Defendants.

CASE NO.

CLASS ACTION

**DECLARATION OF NICOLE KRAUSE-  
PETTAI RE: PROPER COUNTY FOR  
COMMENCEMENT AND TRIAL OF A  
CLAIM UNDER THE CONSUMERS  
LEGAL REMEDIES ACT**

[California Civil Code § 1780(d)]

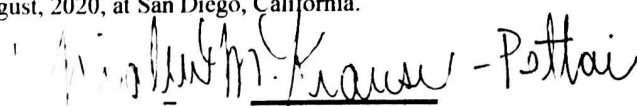
I, Nicole Krause-Pettai, declare as follows:

1. I have personal knowledge of the matters stated herein except as to those matters stated on information and belief, which I believe to be true.
2. If called and sworn as a witness, I could and would testify truthfully and competently to the matters stated herein.
3. I am a named Plaintiff in the above-captioned action and submit this Declaration pursuant to California Civil Code section 1780(d).
4. I currently reside in San Diego, California, located in San Diego County, California.
5. San Diego County is within the jurisdiction of the U.S. District Court for the Southern District of California. Accordingly, the U.S. District for the Southern District of California is the proper place for the trial of this action under California Civil Code section 1780(d), and this action is properly commenced in that Court.

I declare under penalty of perjury, under the laws of the State of California and the United

States of America, that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of August, 2020, at San Diego, California.



Nicole Krause-Pettai