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Heather Maxin

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

**HEATHER MAXIN;  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiff,

v.

**RHG & COMPANY, INC.,**

Defendant.

Case No.: '16CV2625 JLS BLM

**CLASS ACTION COMPLAINT  
FOR:**

- 1) **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750, ET SEQ.);**
- 2) **CALIFORNIA BUS. & PROF. §§ 17533.7 (CALIFORNIA FALSE "MADE IN U.S.A." CLAIM);**
- 3) **CALIFORNIA BUS. & PROF. §§ 17200 ET SEQ.**

**JURY TRIAL DEMANDED**

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INTRODUCTION

1  
2 1. HEATHER MAXIN (hereinafter “Plaintiff”) brings this Class Action  
3 Complaint for damages, injunctive relief, and any other available legal or  
4 equitable remedies, resulting from the illegal actions of RHG &  
5 COMPANY, INC. d/b/a Vital Nutrients (hereinafter “Defendant”) in  
6 unlawfully labeling and marketing of Defendant’s consumable consumer  
7 packaged goods, such as dietary supplements and over the counter  
8 pharmaceutical products, with the false designation and representation that  
9 the products are/were “Made in the U.S.A.” The unlawfully labeled and  
10 marketed products are sold via Defendant’s website, catalogue, and in  
11 various stores throughout the United States.<sup>1</sup> Plaintiff alleges as follows  
12 upon personal knowledge as to herself and her own acts and experiences,  
13 and, as to all other matters, upon information and belief, including  
14 investigation conducted by her attorneys.

15 2. As stated by the California Supreme Court in *Kwikset v. Superior Court*  
16 (January 27, 2011) 51 Cal4th 310, 328-29:

**Simply stated: labels matter.** The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities that may come to associate with a particular source...In particular, **to some consumers**, the “Made in U.S.A.” label matters. A range of motivations may fuel this preference, from the desire to support domestic jobs to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism. The Legislature has recognized the materiality of this representation by specifically outlawing deceptive and fraudulent “Made in America” representations. (Cal. Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code § 1770, subd. (a)(4) (prohibiting deceptive representations of geographic origin)). The object of section 17533.7 “is

27 <sup>1</sup> Plaintiff purchased Defendant’s mislabeled Vitamin D3 product, which in part is  
28 the subject matter of this lawsuit, from Pharmaca Integrative Pharmacy, located at 7650 Girard Ave., La Jolla, CA 92037.

1 to protect consumers from being misled when they  
 2 purchase products in the belief that they are advancing  
 the interest of the United States and its industries and  
 workers...”

- 3 3. The “Made in the USA” claim (or some derivative thereof) is prominently  
 4 printed on Defendant’s products, including the Vitamin D3 product  
 5 purchased by Plaintiff, and also appears on every webpage of Defendant’s  
 6 website.<sup>2</sup> Contrary to Defendant’s representation and in violation of  
 7 California law, Defendant’s Products (*see* footnote 2), including the specific  
 8 Vitamin D3 product purchased by Plaintiff, include foreign ingredients.
- 9 4. This nationwide sale and advertising of deceptively labeled and marketed  
 10 products constitutes violations of: (1) California’s Consumer Legal  
 11 Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 et seq.; (2) California’s  
 12 False Advertising Law (“FAL”), Bus. & Prof. Code § 17533.7; and, (3)  
 13 California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200  
 14 et seq. This conduct caused Plaintiff and other similarly situated damages,  
 15 and requires restitution and injunctive relief to remedy and prevent further  
 16 harm.
- 17 5. Unless otherwise indicated, the use of any Defendant’s name in this  
 18 Complaint includes all agents, employees, officers, members, directors,  
 19 heirs, successors, assigns, principals, trustees, sureties, subrogees,  
 20 representatives and insurers of the named Defendant.

21

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22 <sup>2</sup> Plaintiff seeks class wide relief on behalf of all purchasers of any of Defendant’s  
 23 consumable products that are substantially similar to the Vitamin D3 product  
 24 purchased by Plaintiff and labeled or otherwise represented as “Made In The  
 25 USA” (or some derivative thereof) and which are foreign-made or incorporates  
 26 foreign-made components (in violation of California law), not just the specific  
 27 product purchased by Plaintiff. Plaintiff alleges that this applies to all of  
 28 Defendant’s products. “Product(s)” means Defendant’s products that contained an  
 unqualified “Made in USA” label or were otherwise represented as being “Made  
 in USA.”

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**JURISDICTION AND VENUE**

- 6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2). The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.
- 7. The Court has personal jurisdiction over Defendant because its Products are advertised, marketed, distributed and sold through the State of California; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in the State of California; Defendant is authorized to do business in the State of California; and Defendant has sufficient minimum contacts with the State of California, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial activity with the State of California.
- 8. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the City of San Diego, County of San Diego, State of California, which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) many of the acts and transactions giving rise to this action occurred in this district because Defendant:
  - (a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district;
  - (b) does substantial business within this district;

- 1 (c) is subject to personal jurisdiction in this district because it has  
2 availed itself of the laws and markets within this district; and,  
3 (d) the harm to Plaintiff occurred within this district.

4 **PARTIES**

5 9. Plaintiff is an individual residing in the City of San Diego, County of San  
6 Diego, State of California.

7 10. Defendant is a corporation that is organized and exists under the laws of the  
8 State of Connecticut and doing business in the State of California as “Vital  
9 Nutrients.”

10 11. Defendant is an American “pharmaceutical grade and professional strength  
11 supplements” manufacturer that conducts business through Internet sales and  
12 mail orders, and at numerous pharmaceutical and supplement stores within  
13 the United States. One of the products sold by Defendant is the Vitamin D3  
14 product purchased by Plaintiff.<sup>3</sup>

15 **NATURE OF THE CASE**

16 12. At all times relevant, Defendant made, and continues to make, affirmative  
17 misrepresentations regarding its Products, including the Vitamin D3 product  
18 purchased by Plaintiff, it manufactures, markets and sells. Specifically,  
19 Defendant packaged, advertised, marketed, promoted, and sold its Products  
20 as “Made in the USA,” or some derivative thereof.

21 13. However, although Defendant represents that its Products are “Made in the  
22 USA” (or some derivate thereof), Defendant’s Products are wholly and/or  
23 substantially manufactured or produced with components that are  
24 manufactured, grown and/or sourced outside of the United States.

25  
26 \_\_\_\_\_  
27 <sup>3</sup> Plaintiff purchased the mislabeled Vitamin D3 supplement from, which in part is  
28 the subject matter of this lawsuit, from Pharmaca Integrative Pharmacy, but it is  
also available on Defendant’s website, at the following web address:  
<http://www.vitalnutrients.net/Products/Vitamin-D3-5000iu>.

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1 14. Each consumer, including Plaintiff, were exposed to virtually the same  
2 material misrepresentations, as the similar labels were prominently placed  
3 on all of the Defendant's Products that were sold, and are currently being  
4 sold, throughout the U.S. and the State of California.

5 15. As a consequence of Defendant's unfair and deceptive practices, Plaintiff  
6 and other similarly situated consumers have purchased Defendant's Products  
7 under the false impression that the products were actually made in the USA.

8 16. As a result of Defendant's misrepresentations, Plaintiff and other consumers  
9 similarly situated overpaid for the Defendant's Products, and/or purchased  
10 the Products under the false belief that the supplement they purchased was  
11 made in the USA. Had Plaintiff and other consumers similarly situated been  
12 made aware that Defendant's Products were not actually made in the USA,  
13 they would not have purchased the products.

14 17. As a result of Defendant's false and misleading statements and failure to  
15 disclose (or adequately disclose), as well as Defendant's other conduct  
16 described herein, Plaintiff and other similarly situated consumers purchased  
17 thousands, if not millions, of Defendant's Products and have suffered, and  
18 continue to suffer, injury in fact, including the loss of money and/or  
19 property.

20 18. Defendant's conduct as alleged herein violates several California laws, as  
21 more fully set forth herein.

22 19. This action seeks, among other things, equitable and injunctive relief;  
23 restitution of all amounts illegally retained by Defendant; and disgorgement  
24 of all ill-gotten profits from Defendant's wrongdoing alleged herein.

25 **FACTUAL ALLEGATIONS**

26 20. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
27 of this Complaint as though fully stated herein.  
28

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1 21. Defendant manufactures, markets and/or sells various consumable products  
2 that have been and are currently still represented as “Made in the USA.”  
3 Defendant’s makes these representations on the Products themselves and  
4 also on its website.

5 22. Contrary to the representation, Defendant’s Products are wholly and/or  
6 substantially manufactured or produced with components that are  
7 manufactured outside of the United States.

8 23. Based upon information and belief, the offending Vitamin D3 product  
9 purchased by Plaintiff contains foreign ingredients.

10 24. Based upon information and belief, the offending Vitamin D3 product  
11 purchased by Plaintiff, and presumably all of Defendant’s Products that are  
12 substantially similar and contain foreign ingredients, are wholly or partially  
13 made of and/or manufactured with foreign materials, contrary to  
14 Defendant’s “Made In The USA” representations (or some derivative  
15 thereof).

16 25. Defendant markets, and continues to market, and represent to the general  
17 public via its website and its Products’ labels that the Products are “Made in  
18 the USA.” As such, Defendant fraudulently concealed the material facts at  
19 issue in this matter by misrepresenting to the general public the true country  
20 of origin of the offending products. Defendant possesses superior knowledge  
21 of the true facts that were not disclosed, thereby tolling the running of any  
22 applicable statute of limitations.

23 26. Consumers are particularly vulnerable to these deceptive and fraudulent  
24 practices. Most consumers possess limited knowledge of the likelihood that  
25 products, including the component products therein, claimed to be made in  
26 the United States are in fact manufactured in foreign countries. This is a  
27 material factor in many individuals’ purchasing decisions, as they believe  
28

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1 they are purchasing superior goods while supporting American companies  
2 and American jobs.

3 27. Consumers generally believe that “Made in the USA” products are of higher  
4 quality than their foreign-manufactured counterparts. Due to Defendant’s  
5 scheme to defraud the market, members of the general public were  
6 fraudulently induced to purchase Defendant’s products at inflated prices.

7 28. On information and belief, Defendant charged excess monies for its Products  
8 in comparison to Defendant’s competitors during the entirety of the relevant  
9 four-year statutory time period, based on the false “Made in the USA”  
10 designation (or some derivative thereof). California laws are designed to  
11 protect consumers from such false representations and predatory conduct.  
12 Defendant’s scheme to defraud consumers for its own self-interest and  
13 monetary gain is ongoing and will victimize consumers daily for the  
14 foreseeable future unless altered by judicial intervention.

15 29. On or about February 27, 2015, Plaintiff purchased Defendant’s Vitamin D3  
16 supplement from Pharmaca Integrative Pharmacy, located at 7650 Girard  
17 Ave., La Jolla, CA 92037. At the time of Plaintiff’s purchase, the description  
18 of the offending product described the supplement as “Made in the USA,”  
19 when the product actually was made and/or contained components made  
20 outside of the United States. As such, Defendant is not entitled to lawfully  
21 make representations that the product was “Made in the USA.”

22 30. In making the decision to purchase Defendant’s Product, Plaintiff relied  
23 upon the advertising and/or other promotional materials prepared and  
24 approved by Defendant and its agents, and disseminated through its  
25 Products’ packaging containing the misrepresentations alleged herein. Had  
26 Plaintiff been made aware that the Vitamin D3 product was not actually  
27 “Made in the USA,” she would not have purchased the Vitamin D3 product.  
28 In other words, Plaintiff would not have purchased Defendant’s product, but



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1 for the “Made in the USA” representations on Defendant’s Vitamin D3  
2 product’s label.

3 31. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by  
4 Defendant as a result of Defendant’s false “Made in the USA” designation  
5 set forth on Defendant’s website and on Defendant’s products.

6 32. In each case when Plaintiff and putative Class members purchased a  
7 Product, they relied upon Defendant’s “Made in the USA” representation in  
8 their purchasing decision, which is typical of most U.S. consumers.  
9 Consequently, they were deceived as a result of Defendant’s actions.  
10 Plaintiff believed at the time she purchased the Vitamin D3 product that she  
11 was purchasing a superior quality product, supporting U.S. jobs and the U.S.  
12 economy, and also supporting ethical working conditions.

13 33. Component parts made in the U.S.A. are subject to strict regulatory  
14 requirements, including but not limited to environmental, labor, and safety  
15 standards. Foreign made component parts are not subject to the same U.S.  
16 standards and as a result can be potentially much more dangerous to  
17 consumers, especially when ingested like Defendant’s products. Further,  
18 foreign made component parts are also generally of lower quality than their  
19 U.S. made counterparts, and routinely less reliable and less durable than  
20 their U.S. made counterparts.

21 34. Consequently, Defendant Products containing the foreign ingredients,  
22 including Defendant’s Vitamin D3 product, are of inferior quality,  
23 potentially more dangerous and less reliable, as Defendant falsely  
24 represented that these products are “Made in the USA.” This results in lower  
25 overall customer satisfaction than if the product was truly “Made in the  
26 USA” and/or consisting of component parts made in the United States.

27 35. On information and belief, Defendant’s Products containing the foreign  
28 ingredients, including the Vitamin D3 products, are not worth the purchase

1 price paid by Plaintiff and putative Class members. The precise amount of  
2 damages will be proven at the time of trial, in large part, by expert  
3 testimony.

4 36.Plaintiff and Class members were undoubtedly injured as a result of  
5 Defendant’s false “Made in the USA” representations that are at issue in this  
6 matter.

7 **CLASS ACTION ALLEGATIONS**

8 37.Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
9 of this Complaint as though fully stated herein.

10 38.Plaintiff brings this action individually and on behalf of all others similarly  
11 situated against Defendant, pursuant to Federal Rules of Civil Procedure,  
12 Rules 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).

13 39.Plaintiff represents, and is a member of the class, (“the Class”) consisting  
14 of:

15 “All persons who purchased one or more of the Products  
16 in the United States within the Class Period, excluding  
17 (1) RHG & Co., Inc., its officers, directors, employees,  
18 and their immediate family members, and (2) any judicial  
officer hearing this litigation, as well as their immediate  
family members and employees.”

19  
20 40.Plaintiff reserves the right to modify or amend the Class definition before  
21 the Court determines whether certification is appropriate.

22 41.The “Class Period” means four years means the period between: (1) August  
23 1, 2012, and (2) the date the Court issues the Preliminary Approval Order.

24 42.Ascertainability. Plaintiff does not know the number of members in the  
25 Class, but Plaintiff currently believes that there are hundreds of thousands, if  
26 not more, members of the Class within the State of California. Because of  
27 the nature of Defendant’s products, Defendant and Defendant’s distributors  
28 must keep detailed and accurate records of distribution in order to accurately

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1 and effectively execute a recall if so ordered by the Food and Drug  
 2 Administration or any other organization. Therefore, the members of the  
 3 Class are ascertainable through Defendant's records and/or Defendant's  
 4 agents' records regarding retail and online sales, as well as through public  
 5 notice. This matter should therefore be certified as a Class action to assist in  
 6 the expeditious litigation of this matter.

7 43. Numerosity. The numerosity requirement of Fed. R. Civ. P. Rule 23(a)(1) is  
 8 satisfied for the aforementioned Class because the members of the Class are  
 9 so numerous and geographically disbursed that joinder of all Class members  
 10 is impractical, and the disposition of their claims in the Class action will  
 11 provide substantial benefits both to the parties and to the court.

12 44. Existence and Predominance of Common Questions of Law and Fact. There  
 13 is a well-defined community of interest in the questions of law and fact  
 14 involved affecting the parties to be represented. Common questions of fact  
 15 and law exist in this matter that predominate over questions that may affect  
 16 individual Class members, satisfying the requirement of Fed. R. Civ. P.,  
 17 Rule 23(a)(2), including, but not limited to, the following:

- 18 a. Whether Defendant committed the wrongful conduct alleged herein;
- 19 b. Whether Defendant's acts, transactions, or course of conduct
- 20 constitute the violations of law alleged herein;
- 21 c. Whether Defendant, through its conduct, received money that, in
- 22 equity and good conscience, belongs to Plaintiff and members of the
- 23 Class;
- 24 d. Whether the members of the Class sustained and/or continue to
- 25 sustain damages attributable to Defendant's conduct, and, if so, the
- 26 proper measure and appropriate formula to be applied in determining
- 27 such damages; and
- 28

1 e. Whether the members of the Class are entitled to injunctive and/or  
2 any other equitable relief

3 45. Typicality. As a person who purchased one or more of Defendant’s products,  
4 that were advertised with a “Made in the USA” country of origin designation  
5 (or some derivative thereof), but contain foreign-made ingredients and/or  
6 composed of foreign-made component parts, Plaintiff is asserting claims that  
7 are typical of the Class. Plaintiff’s claims involve the same violations of law  
8 by Defendant as other Class members’ claims. Plaintiff and members of the  
9 Class also sustained damages arising out of Defendant’s common course of  
10 conduct complained herein. Accordingly, Plaintiff satisfies the “typicality”  
11 requirement of Fed. R. Civ. P., Rule 23(a)(3) with respect to the Class.

12 46. Adequacy of Representation. Plaintiff will fairly and adequately represent  
13 and protect the interests of other members of the Class in that Plaintiff has  
14 no interests antagonistic to any member of the Class. Further, Plaintiff has  
15 retained counsel experienced in handling class action claims and claims  
16 involving violations of the consumer laws, and specifically violations of the  
17 California Business and Professions Code. Thus, Fed. R. Civ. P., Rule  
18 23(a)(4) is satisfied.

19 47. Superiority. A class action is superior to all other available means for the fair  
20 and efficient adjudication of this controversy. Individualized litigation would  
21 create the danger of inconsistent and/or contradictory judgments arising  
22 from the same set of facts. Individualized litigation would also increase the  
23 delay and expense to all parties and court system and the issues raised by  
24 this action. The damages or other financial detriment suffered by individual  
25 Class members may be relatively small compared to the burden and expense  
26 that would be entailed by individual litigation of the claims against the  
27 Defendant. The injury suffered by each individual member of the proposed  
28 class is relatively small in comparison to the burden and expense of

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1 individual prosecution of the complex and extensive litigation necessitated  
 2 by Defendant's conduct. It would be virtually impossible for members of the  
 3 proposed Class to individually redress effectively the wrongs to them. Even  
 4 if the members of the proposed Class could afford such litigation, the court  
 5 system could not. Individualized litigation increases the delay and expense  
 6 to all parties, and to the court system, presented by the complex legal and  
 7 factual issues of the case. By contrast, the class action device presents far  
 8 fewer management difficulties, and provides the benefits of single  
 9 adjudication, economy of scale, and comprehensive supervision by a single  
 10 court. Therefore, a class action is maintainable pursuant to Fed. R. Civ. P.  
 11 23(b)(3).

12 48. Unless the Class is certified, Defendant will retain monies received as a  
 13 result of Defendant's unlawful and deceptive conduct alleged herein. Unless  
 14 a class-wide injunction is issued, Defendant will also likely continue to, or  
 15 allow its resellers to, advertise, market, promote and package Defendant's  
 16 Products in an unlawful and misleading manner, and members of the Class  
 17 will continue to be misled, harmed, and denied their rights under California  
 18 law.

19 49. Further, Defendant has acted or refused to act on grounds that are generally  
 20 applicable to the class so that declaratory and injunctive relief is appropriate  
 21 to the Class as a whole, making class certification appropriate pursuant to  
 22 Fed. R. Civ. P. 23(b)(2).

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

25 **CAL. CIV. CODE SECTION 1750, ET SEQ.**

26 50. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
 27 of this Complaint as though fully stated herein.  
 28

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1 51. California Civil Code Section 1750 et seq., entitled the Consumers Legal  
2 Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive”  
3 practices in a “transaction” relating to the sale of “goods” or “services” to a  
4 “consumer.” The Legislature’s intent in promulgating the CLRA is  
5 expressed in Civil Code Section 1760, which provides, *inter alia*, that its  
6 terms are to be:

7       Construed liberally and applied to promote its underlying  
8       purposes, which are to protect consumers against unfair  
9       and deceptive business practices and to provide efficient  
10       and economical procedures to secure such protection.

11 52. Defendant’s products constitute “goods” as defined pursuant to Civil Code  
12 Section 1761(a).

13 53. Plaintiff, and the Class members, are each a “consumer” as defined pursuant  
14 to Civil Code Section 1761(d).

15 54. Each of Plaintiff’s and the Class members’ purchases of Defendant’s  
16 products constituted a “Transaction” as defined pursuant to Civil Code  
17 Section 1761(e).

18 55. Civil Code Section 1770(a)(2), (4), (5), (7) and (9) provides that:

19       The following unfair methods of competition and unfair  
20       or deceptive acts or practices undertaken by any person  
21       in a transaction intended to result or which results in the  
22       sale or lease of goods or services to any consumer are  
23       unlawful:

24       (2) [m]isrepresenting the source, sponsorship, approval,  
25       or certification of goods or services;

26       (4) [u]sing deceptive representations or designations of  
27       geographic origin in connection with goods or services;

28       (5) [r]epresenting that goods or services have  
      sponsorship, approval, characteristics, ingredients, uses,  
      benefits, or quantities which they do not have or that a  
      person has a sponsorship, approval, status, affiliation, or  
      connection which he or she does not have;

      (7) [r]epresenting that goods or services are of a  
      particular standard, quality, or grade...; [and]

      (9) [a]dvertising goods or services with intent not to sell  
      them as advertised.”

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1 56. Defendant violated Civil Code Section 1770(a)(2), (4), (5), (7) and (9) by  
2 marketing and representing that its Products are “Made in the USA” when  
3 they actually contain foreign-made or manufactured ingredients.

4 57. On information and belief, Defendant’s violations of the CLRA set forth  
5 herein were done with awareness of the fact that the conduct alleged was  
6 wrongful and was motivated solely for Defendant’s self-interest, monetary  
7 gain and increased profit. Plaintiff further alleges that Defendant committed  
8 these acts knowing the harm that would result to Plaintiff and Defendant  
9 engaged in such unfair and deceptive conduct notwithstanding such  
10 knowledge.

11 58. Plaintiff further alleges that Defendant committed these acts knowing the  
12 harm that would result to Plaintiff and Defendant engaged in such unfair and  
13 deceptive conduct notwithstanding such knowledge.

14 59. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by  
15 Defendant as a result of Defendant’s false “Made in the USA”  
16 representations set forth on Defendant’s website and actual products.

17 60. As a direct and proximate result of Defendant’s violations of the CLRA,  
18 Plaintiff and members of the Class are entitled to a declaration that  
19 Defendant violated the Consumer Legal Remedies Act.

20 61. Plaintiff and the Class are also entitled to and seek injunctive relief  
21 prohibiting such conduct in the future.

22 62. In prosecuting this action for the enforcement of important rights affecting  
23 the public interest, Plaintiff seeks the recovery of attorneys’ fees, which is  
24 available to a prevailing plaintiff in class action cases such as this matter.

25 **SECOND CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS & PROFESSIONS CODE**

27 **BUS. & PROF. CODE, SECTION 17533.7**

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1 63. Plaintiff re-alleges and incorporates by reference all of the above paragraphs  
2 of this Complaint as though fully stated herein.

3 64. Business & Professions Code § 17533.7 provides:

4 It is unlawful for any person, firm, corporation or  
5 association to sell or offer for sale in this State any  
6 merchandise on which merchandise or on its container  
7 there appears the words “Made in U.S.A.,” “Made in  
8 America,” “ U.S.A.,” or similar words when the  
9 merchandise or any article, unit, or part thereof, has been  
10 entirely or substantially made, manufactured, or  
11 produced outside of the United States.

12 65. Defendant violated Bus. & Prof. Code § 17533.7 by selling and offering to  
13 sell products in the State of California with the “Made in the USA” country  
14 of origin designation as fully set forth herein. The Products at issue in this  
15 matter are wholly manufactured outside of the United States and/or contain  
16 ingredients that are manufactured outside of the United States in violation of  
17 California law.

18 66. On information and belief, Defendant’s violations of Bus. & Prof. Code §  
19 17533.7 as set forth herein were done with awareness of the fact that the  
20 conduct alleged was wrongful and was motivated solely for Defendant’s  
21 self-interest, monetary gain and increased profit. Plaintiff further alleges that  
22 Defendant committed these acts knowing the harm that would result to  
23 Plaintiff and Defendant engaged in such unfair and deceptive conduct  
24 notwithstanding such knowledge.

25 67. As a direct and proximate result of Defendant’s violations of Bus. & Prof.  
26 Code § 17533.7, Plaintiff and the Class are entitled to restitution of excess  
27 monies paid to Defendant by Plaintiff and the Class relating to the false  
28 “Made in the USA” representations set forth on the Defendant’s website and  
on Defendant’s actual products.

68. In prosecuting this action for the enforcement of important rights affecting  
the public interest, Plaintiff seeks the recovery of attorneys’ fees, which is  
available to a prevailing plaintiff in class action cases such as this matter.



**THIRD CAUSE OF ACTION**  
**VIOLATION OF BUSINESS & PROFESSIONS CODE**  
**BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

69. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

70. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions Code § 17201. California Business & Professions Code § 17204 authorizes a private right of action on both an individual and representative basis.

71. “Unfair competition” is defined by Business and Professions Code Section § 17200 as encompassing several types of business “wrongs,” four of which are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

72. By and through Defendant’s conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes unlawful, unfair, and/or fraudulent business practices prohibited by Bus. & Prof. Code § 17200 et seq.

**A. “Unlawful” Prong**

73. Beginning at a date currently unknown through the time of this Complaint, Defendant has committed acts of unfair competition, including those described above, by engaging in a pattern of “unlawful” business practices, within the meaning of Bus. & Prof. Code § 17200 et seq. by manufacturing, distributing, and/or marketing Defendant’s Products with a false country of origin designation, in violation of California’s CLRA, Civil Code § 1750, et

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1 seq., and California’s False Made In the USA statute, Bus. & Prof. Code §§  
 2 17533.7, by falsely representing that the products referenced herein are  
 3 “Made in the USA” when Defendant’s products are in fact foreign-made  
 4 and/or composed of component parts manufactured and/or grown outside of  
 5 the United States.

### 6 **B. “Unfair” Prong**

7  
 8 74. Beginning at a date currently unknown and continuing up through the time  
 9 of this Complaint, Defendant has committed acts of unfair competition that  
 10 are prohibited by Bus. & Prof. Code section 17200 et seq. Defendant  
 11 engaged in a pattern of “unfair” business practices that violate the wording  
 12 and intent of the statutes by engaging conduct and practices that threaten an  
 13 incipient violation of law/s or violate the policy or spirit of law/s by  
 14 manufacturing, distributing, and/or marketing Defendant’s products with a  
 15 false country of origin designation, of in violation of California’s CLRA,  
 16 Civil Code § 1750, et seq., and California’s False Made In the USA statute,  
 17 Bus. & Prof. Code §§ 17533.7 by falsely representing that the products  
 18 referenced herein are “Made in the USA” when Defendant’s products are in  
 19 fact foreign-made and/or composed of component parts manufactured and/or  
 20 grown outside of the United States.

21 75. Alternatively, Defendant engaged in a pattern of “unfair” business practices  
 22 that violate the wording and intent of the abovementioned statutes by  
 23 engaging in practices that are immoral, unethical, oppressive or  
 24 unscrupulous, the utility of such conduct, if any, being far outweighed by the  
 25 harm done to consumers and against public policy by manufacturing,  
 26 distributing, and/or marketing Defendant’s Products with a false country of  
 27 origin designation, in violation of California’s CLRA, Civil Code § 1750, et  
 28 seq., and California’s False Made In the USA statute, Bus. & Prof. Code §§

1 17533.7, by falsely representing that the products referenced herein are  
 2 “Made in the USA” when Defendant’s products are in fact foreign-made  
 3 and/or composed of component parts manufactured and/or grown outside of  
 4 the United States.

5 76. Alternatively, Defendant engaged in a pattern of “unfair” business practices  
 6 that violate the wording and intent of the abovementioned statutes by  
 7 engaging in practices, including manufacturing, distributing, marketing,  
 8 and/or advertising Defendant’s products with a false country of origin  
 9 designation, wherein: (1) the injury to the consumer was substantial; (2) the  
 10 injury was not outweighed by any countervailing benefits to consumers or  
 11 competition; and (3) the injury was not of the kind that consumers  
 12 themselves could not have reasonably avoided.

### 13 C. “Fraudulent” Prong

14 77. Beginning at a date currently unknown and continuing up through the time  
 15 of this Complaint, Defendant engaged in acts of unfair competition,  
 16 including those described above and herein, prohibited and in violation of  
 17 Bus. & Prof. Code § 17200 et seq., by engaging in a pattern of “fraudulent”  
 18 business practices within the meaning of Bus. & Prof. Code § 17200 et seq,  
 19 by manufacturing, distributing, and/or marketing Defendant’s Products in  
 20 violation of California’s CLRA, Civil Code § 1750, et seq., and California’s  
 21 False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by falsely  
 22 representing that the products referenced herein are “Made in the USA”  
 23 when Defendant’s products are in fact foreign-made and/or composed of  
 24 component parts manufactured and/or grown outside of the United States.

25 78. Plaintiff reserves the right to allege further conduct that constitutes other  
 26 fraudulent business acts or practices.  
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1 79. Defendant engaged in these unlawful, unfair, and fraudulent business  
2 practices motivated solely by Defendant's self-interest with the primary  
3 purpose of collecting unlawful and unauthorized monies from Plaintiff and  
4 all others similarly situated; thereby unjustly enriching Defendant.

5 80. Such acts and omissions by Defendant are unlawful and/or unfair and/or  
6 fraudulent and constitute a violation of Business & Professions Code section  
7 17200 et seq. Plaintiff reserves the right to identify additional violations by  
8 Defendant as may be established through discovery.

9 81. As a direct and proximate result of the aforementioned acts and  
10 representations described above and herein, Defendant received and  
11 continues to receive unearned commercial benefits at the expense of their  
12 competitors and the public.

13 82. As a direct and proximate result of Defendant's unlawful, unfair and  
14 fraudulent conduct described herein, Defendant has been and will continue  
15 to be unjustly enriched by the receipt of ill-gotten gains from customers,  
16 including Plaintiff, who unwittingly provided money to Defendant based on  
17 Defendant's fraudulent representations.

18 83. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by  
19 Defendant as a result of Defendant's false representations set forth on the  
20 Defendant's Products.

21 84. In prosecuting this action for the enforcement of important rights affecting  
22 the public interest, Plaintiff seeks the recovery of attorneys' fees, which is  
23 available to a prevailing plaintiff in class action cases such as this matter.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and  
26 the Class members the following relief against Defendant:

- 27 • That the Court determine that this action may be maintained as a Class  
28 Action by certifying this case as a Class Action;

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- That the Court certify Plaintiff to serve as the Class representative in this matter;
- That Defendant’s wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection statutory claims asserted herein;
- That Plaintiff and each of the other members of the Class recover the amounts by which Defendant has been unjustly enriched;
- That Defendant be enjoined from continuing the wrongful conduct alleged herein and required to comply with all applicable laws;
- That Plaintiff and each of the other members of the class recover their costs of suit, including reasonable attorneys’ fees and expenses as provided by law; and
- That Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

**TRIAL BY JURY**

85. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled, and demands, a trial by jury.

Dated: October 21, 2016

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By:           /s/ ABBAS KAZEROUNIAN            
ABBAS KAZEROUNIAN, ESQ.  
ANDREI ARMAS, ESQ.  
ATTORNEYS FOR PLAINTIFF