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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANGELA KENNARD, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

LAMB WESTON HOLDINGS, INC., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 3:18-cv-4665

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMAND

INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.¹ That decision is heavily dependent on a product's packaging, and particularly the package dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it's a better value."² This lawsuit charges Defendant with unlawfully and unfairly packaging its Alexia Sweet Potato fries products in opaque containers that contain more than 50% empty space. Most consumers purchased the products without knowing that the containers were substantially empty.

2. Angela Kennard ("Plaintiff"), individually and on behalf of all others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful actions of Lamb Weston Holdings, Inc. ("Defendant") with respect to the packaging of its Alexia Sweet Potato fries products. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

3. Plaintiff purchased Defendant's Alexia Sweet Potato fries with Sea Salt product several times during 2017 and 2018 in Daly City, California and elsewhere in the Northern District of California. She purchased the product for the dual purpose of enjoying its contents and determining whether the container was lawfully filled.

¹ <http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html> (citing the Ehrenberg-Bass Institute of Marketing Science's report "Shopping Takes Only Seconds...In-Store and Online").

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

1 Plaintiff was surprised when she opened the product that the container had **more than**
2 **50% empty space**, or slack-fill.

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

4 **JURISDICTION AND VENUE**

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

10 6. The Court has jurisdiction over the state law claim because it forms part of
11 the same case or controversy under Article III of the United States Constitution.

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

20 8. Venue is proper in the United States District Court for the Northern
21 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the
22 events giving rise to the claims occurred within this judicial district, Defendant has
23 marketed and sold the Alexia Sweet Potato fries products at issue in this action in this
24 judicial district, and it conducts business within this judicial district.

25 **PARTIES**

26 9. Plaintiff Angela Kennard is a citizen of the State of California and resides
27 in San Francisco, California. Plaintiff purchased Defendant's Alexia Sweet Potato fries
28

1 with Sea Salt product several times during 2017 and 2018 in Daly City, California and
2 elsewhere in the Northern District of California.

3 10. Plaintiff is informed and believes, and upon such information and belief
4 alleges, that Defendant Lamb Weston Holdings, Inc. is a Delaware corporation with its
5 principal place of business located in Eagle, Idaho. Plaintiff is informed and believes,
6 and upon such information and belief alleges, that Defendant, at all times relevant,
7 conducted business in the State of California and within the Northern District of
8 California.

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

15 12. At all relevant times, each and every Defendant was acting as an agent
16 and/or employee of each of the other Defendants and was acting within the course
17 and/or scope of said agency and/or employment with the full knowledge and consent of
18 each of the Defendants. Each of the acts and/or omissions complained of herein were
19 alleged and made known to, and ratified by, each of the other Defendants (Lamb
20 Weston Holdings, Inc. and DOE Defendants will hereafter collectively be referred to as
21 “Defendant”).

22 **FACTUAL ALLEGATIONS**

23 **California Law Prohibits Non-functional Slack-Fill**

24 13. Many federal and state consumer protection and labeling laws prohibit
25 deceptive packaging and labeling of products and commodities. In California, the Fair
26 Packaging and Labeling Act (“CFPLA”) “is designed to protect purchasers of any
27 commodity within its provisions against deception or misrepresentation. Packages and
28 their labels should enable consumers to obtain accurate information as to the quantity of

1 the contents and should facilitate value comparisons.” (California Business &
2 Professions Code § 12601.)

3 14. In this context, the CFPLA provides: “No food containers shall be made,
4 formed, or filled as to be misleading.” (California Business & Professions Code §
5 12606.2(b).) “A container that does not allow the consumer to fully view its contents
6 shall be considered to be filled as to be misleading if it contains nonfunctional slack
7 fill.” (California Business & Professions Code § 12606.2(c).) Section 12606.2(c)
8 defines “slack fill” as “the difference between the actual capacity of a container and the
9 volume of product contained therein.” Similarly, section 12606.2(c) defines
10 “nonfunctional slack fill” as “the empty space in a package that is filled to substantially
11 less than its capacity for reasons other than any one or more of the following:

12 (1) Protection of the contents of the package.

13 (2) The requirements of machines used for enclosing the contents of the package.

14 (3) Unavoidable product settling during shipping and handling.

15 (4) The need for the package to perform a specific function, such as where packaging
16 plays a role in the preparation or consumption of a food, if that function is inherent to
17 the nature of the food and is clearly communicated to consumers.

18 (5) The fact that the product consists of a food packaged in a reusable container where
19 the container is part of the presentation of the food and has value that is both significant
20 in proportion to the value of the product and independent of its function to hold the
21 food, such as a gift product consisting of a food or foods combined with a container that
22 is intended for further use after the food is consumed or durable commemorative or
23 promotional packages.

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

1 15. None of the above safe-harbor provisions applies to the Alexia Sweet
2 Potato fries products. Defendant intentionally incorporated non-functional slack-fill in
3 its packaging of the Alexia Sweet Potato fries products. As such, the packaging is per
4 se illegal, and reliance upon the packaging by absent class members is presumed.

5 **Defendant's Products Contain Non Functional Slack-Fill**

6 16. Defendant's Alexia Sweet Potato fries products are, and at all relevant
7 times were, sold in non-transparent containers. The containers have significant slack-
8 fill, as described below.

9 17. More than 50% of the interior of the Alexia Sweet Potato fries product
10 containers, which concern the Alexia Sweet Potato fries with Sea Salt product
11 purchased by Plaintiff, is comprised of empty space, or non-functional slack fill.



22. Defendant's product packaging is presumed to be a material factor in absent Class Members' decisions to purchase the Alexia Sweet Potato fries products. Based on Defendant's illegal packaging, there is a presumption that product packaging, reasonable Class Members expected to receive more Alexia Sweet Potato fries product than was actually being sold.

CLASS ACTION COMPLAINT

23. There is no practical reason for the non-functional slack-fill used to package the Alexia Sweet Potato fries products.

24. As a result of Defendant's illegal packaging, thousands of consumers purchased the Products and have been damaged by Defendant's illegal conduct.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and the following class (collectively, the "Class" or "Classes"), defined as:

All California residents who made retail purchases of Defendant's Alexia Sweet Potato fries products with non-functional slack-fill, as defined by California Business & Professions Code § 12606.2, during the applicable limitations period up to and including final judgment in this action.

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

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

28. The Alexia Sweet Potato fries products sold by Defendant suffer from illegal product bottling, labeling and nonfunctional slack-fill.

29. Numerosity: This action has been brought and may properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the Class. Based on sales of the Alexia Sweet Potato fries products it is estimated that the Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers,

1 it is estimated that each subclass would have thousands of Members. The Members of
2 the Class are so numerous that joinder of all Members is impracticable and the
3 disposition of their claims in a class action rather than in individual actions will benefit
4 the parties and the courts.

5 30. Typicality: Plaintiff's claims are typical of the claims of the Members of
6 the Class as all Members of the Class are similarly affected by Defendant's wrongful
7 conduct, as detailed herein.

8 31. Adequacy: Plaintiff will fairly and adequately protect the interests of the
9 Members of the Class in that she has no interests antagonistic to those of the other
10 Members of the Class. Plaintiff has retained experienced and competent counsel.

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

21 33. Common Questions Predominate: Common questions of law and fact exist
22 as to all Members of the Class and predominate over any questions solely affecting
23 individual Members of the Class. Among the common questions of law and fact
24 applicable to the Class are:

25 i. Whether Defendant labeled, packaged, marketed, advertised and/or
26 sold Alexia Sweet Potato fries products using illegal packaging and labeling;

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

1 iii. Whether Defendant omitted and/or represented that its Alexia Sweet
2 Potato fries products have quantities that they do not have;

3 iv. Whether Defendant's labeling, packaging, marketing, advertising
4 and/or selling of Alexia Sweet Potato fries products constituted an unfair or
5 unlawful practice;

6 v. Whether Defendant's packaging of the Alexia Sweet Potato fries
7 products constituted nonfunctional slack-fill;

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

10 vii. Whether the Members of the Class have sustained damages as a
11 result of Defendant's wrongful conduct;

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

13 ix. Whether Defendant should be enjoined from continuing its unlawful
14 practices.

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

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

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

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

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

CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,

Cal. Civ. Code § 1750, *et seq.*

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

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

41. Plaintiff and the Class Members are consumers who purchased the Alexia Sweet Potato fries products for personal, family or household purposes. Plaintiff and the Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

42. The Alexia Sweet Potato fries products that Plaintiff and other Class Members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

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

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1 44. Defendant violated California law because the Alexia Sweet Potato fries
2 products are packaged in containers made, formed or filled to contain non-functional
3 slack-fill.

4 45. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
5 prohibits "Representing that goods or services have sponsorship, approval,
6 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a
7 person has a sponsorship, approval, status, affiliation, or connection which he or she
8 does not have." By engaging in the conduct set forth herein, Defendant violated and
9 continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct
10 constitutes illegal and unlawful competition.

11 46. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or
12 services with intent not to sell them as advertised." By engaging in the conduct set
13 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because
14 Defendant's conduct constitutes illegal and unfair methods of competition.

15 47. Given the materiality of Defendant's misrepresentations, absent Class
16 Members are entitled to a presumption of reliance.

17 48. Plaintiff and the Class suffered injuries caused by Defendant because the
18 Alexia Sweet Potato fries product did not have the qualities as promised and were
19 unlawfully packaged.

20 49. On or about June 21, 2018, prior to filing this action, Plaintiff sent a CLRA
21 notice letter to Defendant which complies with California Civil Code 1782(a). Plaintiff
22 sent Lamb Weston Holdings, Inc., individually and on behalf of the proposed Class, a
23 letter via Certified Mail, advising Defendant that it is in violation of the CLRA and
24 demanding that it cease and desist from such violations and make full restitution by
25 refunding the monies received therefrom. A true and correct copy of the letter is
26 attached hereto as Exhibit 1.

27 50. Wherefore, Plaintiff seeks injunctive relief for these violations of the
28 CLRA.

PRAYER FOR RELIEF

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

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

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

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

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

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

(F) For punitive damages;

(G) For prejudgment interest on all amounts awarded;

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

(I) For such other and further relief as the Court deems just and proper.

Date: August 2, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: /s/Scott J. Ferrell
Scott J. Ferrell
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

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

Date: August 2, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: /s/Scott J. Ferrell
Scott J. Ferrell
Attorneys for Plaintiff

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Lamb Weston Holdings' Alexia Sweet Potato Fries Packaged with 'More Than 50% Empty Space'](#)
