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11
12 Attorneys for Defendant
CONAGRA BRANDS, INC.

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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**
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19 ISRAEL PELAYO, individually and on behalf of
20 all others similarly situated,

21 Plaintiff,

22 v.

23 CONAGRA BRANDS, INC.

24 Defendant.
25
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27
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Case No.: To Be Assigned

**DEFENDANT CONAGRA BRANDS, INC.’S
NOTICE OF REMOVAL OF CLASS ACTION
(28 U.S.C. §§ 1332, 1446, & 1453)**

[Filed concurrently with Declaration of Veronica Garcia]

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL INTERESTED**
2 **PARTIES:**

3 PLEASE TAKE NOTICE that Defendant Conagra Brands, Inc. (“Conagra”) hereby removes
4 to this Court, pursuant to 28 U.S.C. §§ 1332, 1446, and 1453, as amended in relevant part by the Class
5 Action Fairness Act of 2005 (“CAFA”), the action entitled *Pelayo v. Conagra Brands, Inc.*, originally
6 filed in the Superior Court of the State of California, County of Alameda and assigned Case No.
7 23CV402562 (the “State Court Action”). The grounds for removal are set forth herein:

8 **I. INTRODUCTION**

9 On or about August 31, 2023, Plaintiff Israel Pelayo (“Plaintiff”) commenced the State Court
10 Action, alleging causes of action on a representative basis for (1) violations of the Consumers Legal
11 Remedies Act, CALIFORNIA CIVIL CODE § 1750, *et seq.* (“CLRA”) and (2) violations of the Unfair
12 Competition Law, CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *et seq.* (“UCL”). Plaintiff
13 alleges that he and members of a California putative class purchased certain Chef Boyardee brand
14 pasta products, and that the products’ labeling allegedly included false and misleading representations
15 that they contain no preservatives when the products contain citric acid. The Complaint challenges
16 five Chef Boyardee branded products: (1) Chef Boyardee Beef Ravioli in Pasta Sauce; (2) Chef
17 Boyardee Mini Ravioli Beef Ravioli in Pasta Sauce; (3) Chef Boyardee Overstuffed Beef Ravioli in
18 Pasta Sauce; (4) Chef Boyardee Beefaroni Pasta in Tomato and Meat Sauce; and (5) Chef Boyardee
19 Lasagna Pasta in Tomato Sauce Seasoned with Hearty Meat (collectively, the “Chef Boyardee
20 Products”). A true and correct copy of the Complaint is attached hereto as **Exhibit A**. On October 12,
21 2023, Conagra executed a Notice and Acknowledgement of Receipt, acknowledging receipt of the
22 summons and Complaint pursuant to CALIFORNIA CODE CIVIL PROCEDURE § 415.30. A true and correct
23 copy of the Notice and Acknowledgment of Receipt is attached hereto as **Exhibit B**.

24 **II. THE COURT HAS JURISDICTION OF THIS ACTION UNDER CAFA**

25 Conagra removes the State Court Action pursuant to CAFA, codified at 28 U.S.C. § 1332(d).
26 CAFA provides the Court with original jurisdiction of this action and permits Conagra to remove the
27
28

1 State Court Action from the California superior court to this Court.¹

2 CAFA vests federal district courts with original jurisdiction over class actions when the
3 aggregate amount in controversy for all putative class members exceeds \$5 million (exclusive of
4 interest and costs), and when any member of the putative class of plaintiffs is a citizen of a state
5 different from any defendant. 28 U.S.C. § 1332(d)(2).

6 These requirements are satisfied here, as set forth below:

7 **A. Class Action.**

8 The State Court Action is a class action as defined by CAFA. According to CAFA:

9 [T]he term “class action” means any civil action filed under rule 23 of the Federal
10 Rules of Civil Procedure or similar State statute or rule of judicial procedure
11 authorizing an action to be brought by 1 or more representative persons as a class
action[.]

12 28 U.S.C. § 1332(d)(1)(B).

13 Plaintiff’s Complaint alleges a putative class action on behalf of himself and a proposed
14 California class defined as: “All persons who purchased the Chef Boyardee Products for personal use
15 in California within the applicable statute of limitations until the date class notice is disseminated.”
16 (See Exhibit A, ¶ 34).

17 **B. Removal Under CAFA.**

18 CAFA provides that a class action against a non-governmental entity may be removed if: (1)
19 the number of proposed class members is not less than 100; (2) any member of the proposed plaintiff
20 class is a citizen of a state different from any defendant; and (3) the aggregate amount in controversy
21 exceeds \$5 million, excluding interests and costs. 28 U.S.C. § 1332(d), (d)(5), and § 1453(b).

22 **1. The Number of Proposed Class Members Is At Least 100.**

23 While Plaintiff does not allege a specific number of potential putative class members in the
24 Complaint, he unequivocally alleges that “there are thousands of consumers who are Class Members”
25

26 ¹ While Conagra removes the State Court Action pursuant to CAFA, Conagra expressly reserves and
27 does not waive any personal jurisdiction defense. *Freeney v. Bank of Am. Corp.*, No.
28 CV1502376MMMPJWX, 2015 U.S. Dist. LEXIS 92848, at *63 (C.D. Cal. July 16, 2015) (collecting
cases and explaining that a defendant’s “election to remove a case to federal court does not waive a
personal jurisdiction defense.”).

1 such that “joinder of all members is impracticable.” (Exhibit A, ¶ 38).

2 As set forth in the concurrently-filed Declaration of Veronica Garcia (“Garcia Declaration”),
3 Associate Brand Manager for Conagra, Conagra has sold the Chef Boyardee Products across the state
4 of California during the times relevant to the Complaint. (Garcia Decl., ¶ 4).² More than one million
5 units of any one of the five Chef Boyardee Products was sold in California within the four-year period
6 prior to the filing of the Complaint. (Garcia Decl., ¶ 5). From August 2019 to August 2023, the total
7 dollar volume of sales in California for the Chef Boyardee Products referenced in the Complaint was
8 well in excess of \$5 million. (Garcia Decl., ¶¶ 6-7).

9 Thus, it is certain that the number of putative class members who purchased the Chef Boyardee
10 Products in the Complaint exceeds 100. (See Garcia Decl., ¶ 5; Exhibit A, ¶ 38).

11 **2. Diversity of Citizenship Under CAFA.**

12 Under CAFA, “complete diversity is not required; ‘minimal diversity’ suffices.” *Serrano v.*
13 *1800 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007). Furthermore, under CAFA’s minimal
14 diversity requirement, the citizenship of unnamed putative class members is also considered. 28 U.S.C.
15 § 1332(d)(1)(D)-(d)(2)(A). Accordingly, “minimal diversity” is met when “any member of a class of
16 plaintiffs is a citizen of a State different from any defendant.” *Id.* § 1332(d)(2)(A). That requirement
17 is satisfied here because Plaintiff is a citizen of California and Conagra is a citizen of states other than
18 California.

19 An individual is a citizen of the state where he or she resides. 28 U.S.C. § 1332(a)(1). Plaintiff
20 Israel Pelayo is an individual and resides in California; as such, he is deemed a citizen of the State of
21 California. (See Exhibit A, ¶ 12). Additionally, Plaintiff brings this action on behalf of a putative
22 California class, and members of the putative class therefore likely reside in and are citizens of the
23 state of California. 28 U.S.C. § 1332(d)(1)(D)-(d)(2)(A); (Exhibit A, ¶ 34).

24 Conagra is not a citizen of California. Ninth Circuit precedent affirms that for purposes of
25 diversity, a corporation is a citizen of its state of incorporation and the state where it maintains its
26 “principal place of business.” *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009)

27 _____
28 ² The statute of limitations for Plaintiff’s UCL claim is four years. See Cal. Bus. & Prof. Code § 17208.

1 (reversing district court’s order remanding putative class action to state court) (citing 28 U.S.C. §
2 1332(c)(1)). A corporation’s “principal place of business” refers “to the place where a corporation’s
3 officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S.
4 77, 92-93 (2010). In practice, this is the place “where the corporation maintains its headquarters.” *Id.*
5 at 93.

6 Conagra is a Delaware corporation with its principal place of business in Illinois. (Exhibit A,
7 ¶ 11, Garcia Decl., ¶ 2). Because at least one member of the proposed class is a citizen of a state
8 different from Conagra, within the meaning of 28 U.S.C. § 1332(d)(2)(A), CAFA’s diversity of
9 citizenship requirement is satisfied.

10 The diversity that exists in this action not only satisfies the minimal diversity of citizenship
11 requirement under CAFA, but also precludes the applicability of exceptions in 28 U.S.C. § 1332(d)(3)
12 and (d)(4)(A)-(B) because there is no “local” defendant at home in California. *See, e.g., Taylor v.*
13 *FedEx Freight, Inc.*, No. 10-cv-02118-LHK, 2010 U.S. Dist. LEXIS 119907, at *7 (N.D. Cal. Oct. 26,
14 2010) (“[T]he Court has no basis to find that the local controversy exception applies, as there is no
15 defendant with California citizenship.”).

16 **3. Amount in Controversy.**

17 CAFA’s third requirement—that the aggregate amount in controversy, exclusive of interest
18 and costs, exceed \$5 million—is also satisfied. 28 U.S.C. § 1332(d)(2). Although Conagra asserts that
19 the allegations in the Complaint are without merit and that neither Plaintiff nor the putative class
20 members can state a viable claim for relief, the amount in controversy here exceeds \$5 million.
21 Plaintiff’s lawsuit seeks restitution, injunctive relief, damages, and attorneys’ fees, which, in the
22 aggregate, well exceed CAFA’s \$5 million threshold. *See* Exhibit A, Request for Relief.

23 When removal is sought under CAFA, the amount in controversy requirement “should be
24 interpreted broadly with a ‘strong preference’ for class actions to be heard in federal court.” *Gamarro*
25 *v. Walgreen Pharm. Servs. Midwest, LLC*, No. 5:22-cv-01811 MEMF (SPx), 2023 U.S. Dist. LEXIS
26 57217, at *9 (C.D. Cal. Mar. 30, 2023) (quoting *Jauregui v. Roadrunner Transp. Servs., Inc.*, 28 F.4th
27 989, 993 (9th Cir. 2022)); *see also Yeroushalmi v. Blockbuster, Inc.*, No. CV 05-2550 AHM (RCx),
28 2005 U.S. Dist. LEXIS 39331, at *10 (C.D. Cal. July 11, 2005) (observing that the amount in

1 controversy provisions under CAFA should be “interpreted expansively” in favor of removal) (quoting
2 S. Rep. No. 109-14, at 42 (2005)). “In measuring the amount in controversy, a court must assume that
3 the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all
4 claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D.
5 Cal. 2008). If the court is uncertain whether the amount in controversy exceeds \$5 million, the “*court*
6 *should err in favor of exercising jurisdiction over the case.*” *Yeroushalmi*, 2005 U.S. Dist. LEXIS
7 39331, at *10 (emphasis in original) (citing S. Rep. No. 109-14, at 42). If a plaintiff fails to plead an
8 amount in controversy in a class action complaint, as is the case here, a defendant seeking removal
9 need only prove by “a preponderance of the evidence” that the amount in controversy is satisfied.
10 *Lowdermilk v. U.S. Bank N.A.*, 479 F.3d 994, 998 (9th Cir. 2007), *overruled on other grounds*
11 *by Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588 (2013); *Abrego v. Dow Chem. Co.*, 443 F.3d 676,
12 683 (9th Cir. 2006) (confirming the removing defendant need only establish that it is more likely than
13 not that the amount in controversy has been met). Conagra has done so here.

14 Plaintiff seeks restitution and damages from Conagra’s sale of the Chef Boyardee Products.
15 *See* (Exhibit A, Request for Relief).³ From August 2019 to August 2023, sales of the Chef Boyardee
16 Products referenced in the Complaint in California substantially exceeded \$5 million. (*See Garcia*
17 *Decl.*, ¶¶ 5-7). This alone is sufficient to establish the amount in controversy. *See Watkins v. Vital*
18 *Pharms., Inc.*, 720 F.3d 1179, 1181-82 (9th Cir. 2013) (*per curiam*) (holding that a declaration stating
19 that the total sales of the product at issue exceeded \$5 million during the putative class period was
20 sufficient to meet CAFA’s amount in controversy requirement). Moreover, the sales for three of these
21 Products in California during the relevant time frame exceeded \$5 million, as did the sales of the
22 Products across any single year during the putative class period. (*Garcia Decl.*, ¶¶ 6-7). As other courts
23 have found in similar circumstances, the Court may easily conclude that the amount in controversy
24

25 ³ Plaintiff’s own allegations further support Conagra’s calculation of the amount in controversy for
26 purposes of removal. Plaintiff alleges that he “believes that there are *thousands of consumers who are*
27 *[c]lass [m]embers.*” (Exhibit A, ¶ 38 (emphasis added)). He asserts that he and “putative class
28 members *spent money that, absent Defendant’s actions, they would not have spent.*” (*Id.* ¶ 27
(emphasis added)). When considered together with Plaintiff’s request for restitution, injunctive relief,
and attorneys’ fees—as well as Conagra’s declaration establishing that the sales at issue and relief
sought each exceed \$5 million—it is clear that the CAFA amount in controversy requirement is met.

1 requirement is satisfied. *See, e.g., Clay v. Chobani LLC*, No. 14cv2258 (BEN) (DBH), 2015 U.S. Dist.
2 LEXIS 105433, at *12-13 (S.D. Cal. Aug. 10, 2015) (holding that the amount of controversy was met
3 where declaration affirmed that the defendant’s over the class period were “substantially in excess of
4 \$5 million” and that one year of sales exceeded \$5,000,000); *Rossetti v. Stearn’s Products*, No. CV
5 16-1875-GW(SSx), 2016 U.S. Dist. LEXIS 74163, at *6-7 (C.D. Cal. June 6, 2016) (concluding that
6 the amount in controversy was satisfied where the complaint alleged that there were “hundreds of
7 thousands of potential class members just within California”).

8 Plaintiff also seeks to recover his attorneys’ fees, which additionally contributes to the
9 alleged amount in controversy. Exhibit A, Request for Relief; *see, e.g., Lowdermilk*, 479 F.3d at 1000
10 (including attorneys’ fees in amount in controversy calculation); *Kroske v. U.S. Bank Corp.*, 432 F.3d
11 976, 980 (9th Cir. 2005) (observing that attorneys’ fees are included in determining the
12 amount in controversy).

13 Finally, the Court must also consider “the potential cost to the defendant of complying with
14 [an] injunction” when determining the amount in controversy for CAFA purposes. *Harris v. CVS*
15 *Pharm., Inc.*, No. ED CV 13-02329-AB (AGRx), 2015 U.S. Dist. LEXIS 104101, at *19 (C.D. Cal.
16 Aug. 6, 2015); *Bayol v. ZipCar, Inc.*, No. 14-cv-02483-TEH, 2015 U.S. Dist. LEXIS 109027, at *27
17 (N.D. Cal. Aug. 18, 2015) (“[A] defendant’s aggregate cost of compliance with an injunction is
18 appropriately counted toward the amount in controversy.”).

19 In short, Plaintiff requests relief that, if granted, would cost Conagra in excess of \$5 million.
20 (*See Garcia Decl.*, ¶¶ 5-7; Exhibit A, Request for Relief). Accordingly, while Conagra rejects
21 Plaintiff’s allegations as meritless, CAFA’s requirement that the aggregate amount in controversy
22 exceeds \$5 million is satisfied.

23 **III. CONAGRA TIMELY FILED ITS NOTICE OF REMOVAL AND SATISFIED ALL**
24 **PROCEDURAL REQUIREMENTS**

25 **A. This Notice of Removal is Timely Filed.**

26 This notice of removal is timely pursuant to 28 U.S.C. §§ 1446(b) and 1453(b), because it is
27 filed within thirty (30) days after service of the Complaint on Conagra. Here, Conagra executed a
28 Notice and Acknowledgement of Receipt on October 12, 2023, acknowledging receipt of the summons

1 and Complaint pursuant to CAL. CODE CIV. P. § 415.30. (Exhibit B). Therefore, notice is timely
2 pursuant to 28 U.S.C. § 1446(b).

3 **B. Conagra Has Satisfied all Procedural Requirements.**

4 Venue is proper. Plaintiff filed this action in the Superior Court of the State of California,
5 County of Alameda. Accordingly, this action is properly removed to this Court, which embraces
6 Alameda County within its jurisdiction. 28 U.S.C. §§ 1441(a), 1446(a); *see* Local Rule 3-2(d).

7 Finally, Conagra provided adequate notice. Section 1446(a) requires a removing party to
8 provide this Court with a copy of all “process, pleadings and orders” served on it in the State Court
9 Action. True and correct copies of these documents are attached to this Notice of Removal:

- 10 • Complaint (Exhibit A);
- 11 • Notice and Acknowledgement of Receipt executed by Conagra (Exhibit B);
- 12 • Civil Case Cover Sheet for the Complaint (a true and correct copy of which is
13 attached hereto as **Exhibit C**);
- 14 • Summons to Conagra (a true and correct copy of which is attached hereto as
15 **Exhibit D**); and
- 16 • Notice of Case Management Conference in the State Court Action (a true and
17 correct copy of which is attached hereto as **Exhibit E**).

18 Pursuant to 28 U.S.C. § 1446(d), Conagra is filing a copy of this Notice of Removal with the
19 Clerk of Alameda County Superior Court and serving Plaintiff with the same. A true and correct copy
20 of the Notice to the Superior Court (which is being served on Plaintiff), without exhibits, is attached
21 hereto as **Exhibit F**.

22 **IV. CONCLUSION**

23 WHEREFORE, Conagra respectfully submits that: (1) CAFA applies to this action because
24 the proposed class contains at least 100 members; (2) at least one member of the proposed class is a
25 citizen of a state different than Conagra’s state of citizenship and no CAFA exceptions apply; (3) the
26 aggregate amount in controversy exceeds \$5 million; and (4) the procedural requirements under
27 28 U.S.C. § 1446 are met. For these reasons, this action is properly removed to this Court.

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DATED: November 13, 2023

RACHEL E. K. LOWE
ALSTON & BIRD LLP

/s/ Rachel E.K. Lowe

Rachel E. K. Lowe
Attorneys for Defendant
CONAGRA BRANDS, INC.

Exhibit A

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ELECTRONICALLY FILED
 Superior Court of California,
 County of Alameda
08/31/2023 at 03:11:15 PM
 By: Milagros Cortez,
 Deputy Clerk

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

11 ISRAEL PELAYO individually, and on
 12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 CONAGRA BRANDS, INC.

16 Defendant.
 17

Case No. **23CV042562**

CLASS ACTION COMPLAINT FOR:

1. Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, and;
2. Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§17200, *et seq.*

JURY TRIAL DEMANDED

CROSNER LEGAL, P.C.

INTRODUCTION

1
2 1. Israel Pelayo (“Plaintiff”) on behalf of himself, all others similarly situated, and
3 the general public, by and through his undersigned counsel, hereby brings this action against
4 Defendant Conagra Brands, Inc. (“Defendant” or “Conagra”), and upon information and belief
5 and investigation of counsel, alleges as follows:

6 2. This is a California consumer class action for violations of the Consumers Legal
7 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”) and Unfair Competition Law, Cal.
8 Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

9 3. Defendant manufactures, distributes, advertises, markets, and sells a line of
10 canned food products under the Chef Boyardee brand. The Chef Boyardee Products at issue
11 include (1.) Chef Boyardee Beef Ravioli in Pasta Sauce; (2.) Chef Boyardee Mini Ravioli Beef
12 Ravioli in Pasta Sauce; (3.) Chef Boyardee Overstuffed Beef Ravioli in Pasta Sauce; (4.) Chef
13 Boyardee Beefaroni Pasta in Tomato and Meat Sauce; and, (5.) Chef Boyardee Lasagna Pasta in
14 Tomato Sauce Seasoned with Hearty Meat (collectively “the Products” or “Chef Boyardee
15 Products.”).

16 4. The labels for the Products prominently display, in a conspicuous advertising
17 panel at the top of the label, the claim that these Products include “**No Preservatives.**”

18 5. This statement is false. Each of the Products are made with citric acid— a well
19 known preservative used in food products.

20 6. Defendant’s packaging, labeling, and advertising scheme is intended to give
21 consumers the impression that they are buying a premium product that is free from preservatives.

22 7. Plaintiff, who purchased the Products in California, was deceived by Defendant’s
23 unlawful conduct and brings this action on his own behalf and on behalf of California consumers
24 to remedy Defendant’s unlawful acts.

JURISDICTION AND VENUE

25
26 8. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
27 Constitution and California Code of Civil Procedure § 410.10.
28

FACTUAL ALLEGATIONS

“NO PRESERVATIVES” IS PROMINENTLY DISPLAYED ON THE LABELS OF THE PRODUCTS

13. The labels for each of the Chef Boyardee Products prominently state that the Products contain “No Preservatives” thereby misleading reasonable consumers into believing that the Products are free from preservatives. However, each of the Products contain the preservative citric acid. The front and back labels for each of the Products are shown below.

Chef Boyardee Beef Ravioli

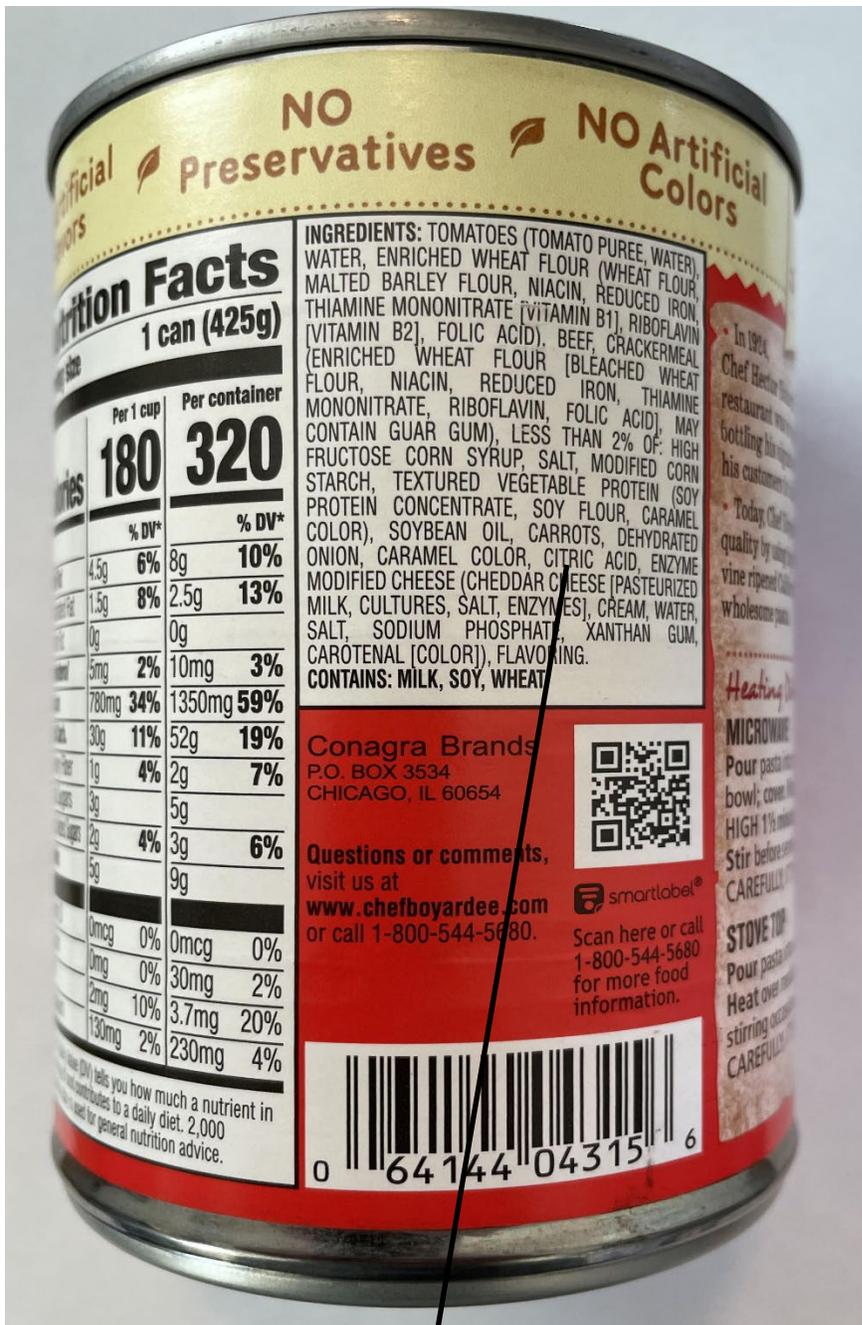


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“Citric Acid”

Chef Boyardee Mini Ravioli

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“Citric Acid”

Chef Boyardee Overstuffed Beef Ravioli

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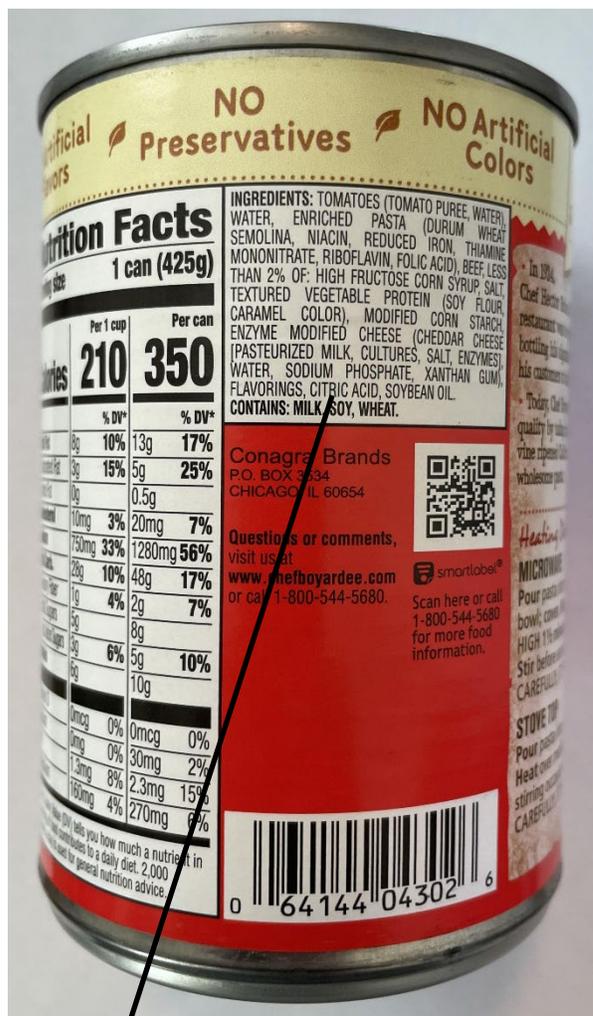


“Citric Acid”

Chef Boyardee Beefaroni

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Ingredients: TOMATOES (TOMATO PUREE, WATER), WATER, ENRICHED PASTA (DURUM WHEAT SEMOLINA, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), BEEF, LESS THAN 2% OF: HIGH FRUCTOSE CORN SYRUP, SALT, TEXTURED VEGETABLE PROTEIN (SOY FLOUR, CARAMEL COLOR), MODIFIED CORN STARCH, ENZYME MODIFIED CHEESE (CHEDDAR CHEESE [PASTEURIZED MILK, CULTURES, SALT, ENZYMES], WATER, SODIUM PHOSPHATE, XANTHAN GUM), FLAVORINGS, CITRIC ACID, SOYBEAN OIL.
CONTAINS: MILK, SOY, WHEAT.

Nutrition Facts
1 can (425g)

	Per 1 cup	Per can
Calories	210	350
	% DV*	% DV*
Total Fat	13g	17%
Sodium	5g	25%
Total Crap	0.5g	
Total Sugar	10mg	3%
Total Protein	20mg	7%
Total Fat	1750mg	33%
Total Sodium	28g	10%
Total Crap	1g	4%
Total Protein	2g	7%
Total Fat	5g	6%
Total Sodium	10g	10%
Total Crap	0mg	0%
Total Protein	0mg	0%
Total Fat	30mg	2%
Total Sodium	1.3mg	8%
Total Crap	2.3mg	15%
Total Protein	1650mg	4%
Total Sodium	270mg	6%

“Citric Acid”

Chef Boyardee Lasagna

CROSNER LEGAL, P.C.

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Nutrition Facts
1 can (425g)

	Per 1 cup	Per can
Calories	160	270
	% DV*	% DV*
Total Fat	4.5g 6%	7g 9%
Sodium	2g 10%	3g 15%
Total Crap	0g	0g
Cholesterol	5mg 2%	10mg 3%
Total Sugar	750mg 33%	1280mg 56%
Total Protein	25g 9%	43g 16%
Fiber	2g 7%	3g 11%
Total Fat	6g	10g
Total Crap	4g 8%	7g 14%
Total Protein	5g	8g
Total Fat	0mcg 0%	0mcg 0%
Total Sugar	30mg 2%	60mg 4%
Total Protein	1mg 6%	1.8mg 10%
Total Crap	150mg 4%	260mg 6%

INGREDIENTS: TOMATOES (TOMATO PUREE, WATER), WATER, ENRICHED PASTA (DURUM WHEAT SEMOLINA, GLYCEROL MONOSTEARATE, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), BEEF, DICED TOMATOES WITH JUICE, HIGH FRUCTOSE CORN SYRUP, LESS THAN 2% OF: SALT, TEXTURED VEGETABLE PROTEIN (SOY FLOUR, CARAMEL COLOR), MODIFIED CORN STARCH, ENZYME MODIFIED CHEESE (CHEDDAR CHEESE (PASTEURIZED MILK, CULTURES, SALT, ENZYMES), WATER, SODIUM PHOSPHATE, XANTHAN GUM), SPICES, CITRIC ACID, FLAVORINGS, SOYBEAN OIL.

CONTAINS: MILK, SOY, WHEAT.

Conagra Brands
P.O. BOX 7534
CHICAGO, IL 60654

Questions or comments, visit us at www.chefboyardee.com or call 1-800-544-5680.

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“Citric Acid”

CITRIC ACID IN THE PRODUCTS IS A PRESERVATIVE

14. The citric acid in the Products is a synthetic preservative. Commercial food manufactures like Defendant use a form of citric acid that is derived from heavy chemical processing.¹ Commercially produced citric acid is manufactured via microbial fermentation with a typically genetically modified type of black mold called *Aspergillus niger*.² The black mold is fed into a highly processed and/or genetically modified corn syrup to produce citric acid. Consumption of manufactured citric acid has been associated with adverse health events like joint pain with swelling and stiffness, muscular and stomach pain, as well as shortness of breath.³

15. Citric acid acts as a preservative when added to food products. The Food and Drug Administration (“FDA”) defines a preservative as “any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5). The FDA has listed citric acid as a preservative in its “Overview of Food Ingredients, Additives and Colors” as shown below:⁴

Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid, citric acid , sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

¹ A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>

² *Id*; Pau Loke Show, et al., *Overview of citric acid production from Aspergillus niger*, FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available at <https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>

³ Iliana E. Sweis, et al., *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

⁴ *Overview of Food Ingredients, Additives & Colors*, FOOD AND DRUG ADMINISTRATION, available at <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>

1 16. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express,
2 Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and
3 Cosmetics Act because they “contain the *chemical preservatives ascorbic acid and citric acid*
4 but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R.
5 [§] 101.22” (emphasis added).⁵

6 17. The Encyclopedia Britannica also classifies citric acid as a preservative because it
7 has antioxidant properties, as shown below⁶:

8 Preservatives

9 Food preservatives are classified into two main groups: antioxidants and
10 antimicrobials. Antioxidants are compounds that delay or prevent the deterioration of
11 foods by oxidative mechanisms. Antimicrobial agents inhibit the growth of spoilage
12 and pathogenic microorganisms in food.

13 Food preservatives	
14 chemical agent	15 mechanism of action
16 Antioxidants	
17 ascorbic acid	oxygen scavenger
18 butylated hydroxyanisole (BHA)	free radical scavenger
19 butylated hydroxytoluene (BHT)	free radical scavenger
20 citric acid	enzyme inhibitor/metal chelator
21 sulfites	enzyme inhibitor/oxygen scavenger
22 tertiary butylhydroquinone (TBHQ)	free radical scavenger
23 tocopherols	free radical scavenger

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26 ⁵ See Exhibit A attached hereto.

27 ⁶ *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>
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1 18. The Agricultural Marketing Service of the United States Department of
2 Agriculture has also recognized the use of citric acid as a preservative stating that “Citric acid
3 has a wide variety of uses, some of which can provide preservative functions, primarily though
4 lowering the pH of the food.”⁷

5 19. Several academic journals also note the use of citric acid as a preservative.⁸
6 Indeed, “Citric acid acts as a preservative in many processed foods, keeping them fresh. It does
7 this by slowing or helping prevent the formation of bacteria, mold, yeast, and fungus.”⁹ “Today,
8 citric acid is one of the most common and widely-used preservatives in the world[.]”¹⁰

9 20. Citric acid acts as a preservative even when present at low levels. It will delay
10 bacterial spoilage, delay changes in color, flavor, and texture of the product. Citric Acid acts to
11 preserve the Products throughout the shelf-life of the Products.¹¹ Because citric acid lowers the
12 pH of the Products, it functions as a preservative by preventing (or significantly delaying)
13 microorganisms such as mold, bacteria, fungi, and yeast from developing in the Products. Citric
14 acid’s antioxidant properties also assist in preservation by sequestering unwanted compounds
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18 ⁷ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at
<https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

19 ⁸ K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND EDITION) (2011),
20 available at
<https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>;
21 K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S POULTRY SCIENCE JOURNAL VOL.
22 68, ISSUE 1 (Feb. 21, 2012), available at [https://www.cambridge.org/core/journals/world-s-
23 poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-
24 diets/DA15C2C1F90667525BF2414DF3BFF646](https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler-diets/DA15C2C1F90667525BF2414DF3BFF646) (“Citric Acid (CA) is a weak organic acid
25 which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

26 ⁹ *What is citric acid, and what is it used for?*, MEDICAL NEWS TODAY (July 23, 2021), available
27 at <https://www.medicalnewstoday.com/articles/citric-acid>

28 ¹⁰ *Citric Acid: One of the Most Important Preservatives in The World*, FBC INDUSTRIES, INC.
(Feb. 5, 2019), available at [https://fbcindustries.com/citric-acid-one-of-the-most-important-
preservatives-in-the-world/](https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/)

¹¹ The Products have a shelf life of approximately two years. See e.g.,
<https://www.conagrafoodservice.com/products/chef-boyardee-beef-ravioli-15-oz>

1 like metal ions from the Products.¹² A basic principle of food preservation is to impose numerous
 2 “hurdles” to prevent and delay degradation of the food product.¹³ Here, the citric acid in the
 3 Products does just that—it acts as a hurdle to unwanted spoilation along with the canning design
 4 of the packaging and any heat processing of the Products.

5 21. Citric acid functions as a preservative in the Chef Boyardee Products because it
 6 is added to the Products and prevents and/or delays deterioration of the Products. *See* 21 C.F.R.
 7 §101.22(a)(5) (defining preservatives as “any chemical that, when added to food, *tends to*
 8 prevent or retard deterioration”) (emphasis added); *see also* Merriam-Webster’s Dictionary
 9 (defining “preservative” as “something that preserves or *has the power of preserving.*”)
 10 (emphasis added).¹⁴

11 **DEFENDANT’S COMPETITOR’S DO NOT USE THE “NO PRESERVATIVES” REPRESENTATION**

12 22. Defendant’s competitors that include the use of citric acid do not use the
 13 deceptive “No Preservatives” labeling claim.

14 23. The popular Campbell’s Spaghettios® contains citric acid. The label does not use
 15 the deceptive “No Preservatives” claim.¹⁵

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21 _____
 22 ¹² B.C. Behera, et al. *Microbial citric acid: Production, properties, application, and future*
perspectives, FOOD FRONTIERS VOL. 2, 62-76 (Jan. 7, 2021), available at
 23 <https://onlinelibrary.wiley.com/doi/pdf/10.1002/fft2.66>

24 ¹³ L. Leistner, *Basic aspects of food preservation by hurdle technology*, INTERNATIONAL
 25 JOURNAL OF FOOD MICROBIOLOGY, VOL. 55, 181-186 (2000), available at
 26 <http://envismadrasuniv.org/Physiology/pdf/Basic%20aspects%20of%20food%20preservation.pdf>

27 ¹⁴ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at [https://www.merriam-](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
 28 [webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
[nld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)

¹⁵ *See* <https://www.target.com/p/spaghettios-original-canned-pasta-15-8oz/-/A-17482486?>

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INGREDIENTS: WATER, TOMATO PUREE (WATER, TOMATO PASTE), ENRICHED PASTA WITH NIACIN, FERROUS SULFATE, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID, HIGH FRUCTOSE CORN SYRUP, CONTAINS LESS THAN 2% OF: SALT, ENZYME MODIFIED CHEDDAR CHEESE [CULTURED MILK, SALT, ENZYMES, CALCIUM CHLORIDE], WATER, DISOXYMETHYLENE DIMANGANESE ENZYMES), VEGETABLE OIL (CORN, CANOLA, AND/OR SOYBEAN), ENZYME MODIFIED CAROTENE FOR COLOR, CITRIC ACID, PAPRIKA EXTRACT, SKIM MILK, NATURAL FLAVOR. **CONTAINS: WHEAT, MILK.**

24. Progresso® Lasagna-Style Soup contains citric acid. The label does not use the deceptive “No Preservatives” claim:¹⁶



Ingredients: Tomato Puree (water, tomato paste), Water, Beef Broth, Tomatoes, Cooked Italian Sausage (pork, spices, mustard seed, salt, paprika, garlic powder, sugar, natural flavors, extractives of paprika, water), Enriched Mafalda Pasta (semolina wheat, egg white, niacin, ferrous sulfate, thiamin mononitrate, riboflavin, folic acid), Contains less than 2% of: Sugar, Cream, Spinach, Soybean Oil, Salt, Bleached Wheat Flour, Parmesan Cheese (milk, cheese cultures, salt, enzymes)*, Modified Food Starch, Spice, Potassium Chloride, Soy Protein Concentrate, Flavoring, Garlic Powder, Beef Fat, Butter, Beef Extract, Sodium Phosphate, Parsley*, Whey Protein Concentrate, Onion Powder, Citric Acid, Calcium Chloride. *Dried

¹⁶ See <https://www.walmart.com/ip/Progresso-Rich-Hearty-Lasagna-Style-Soup-With-Italian-Sausage-Canned-Soup-18-5-oz/529754669?>

1 25. Annie's Bernie O's™ contains citric acid. The label does not use the deceptive
2 "No Preservatives" claim:¹⁷



13
14 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT'S FALSE "NO PRESERVATIVES"**
15 **LABELING STATEMENT AND SUFFERED ECONOMIC INJURY**

16 26. Consumers, like Plaintiff, relied on Defendant's "No Preservatives" labeling
17 statement. The "No Preservatives" statement on the labels of the Products is material to
18 reasonable consumers. "[F]oods bearing 'free-from' claims are increasingly relevant to
19 Americans, as they perceive the products as closely tied to health ... 84 percent of American
20 consumers buy free-from foods because they are seeking out more natural or less processed
21 foods. In fact, 43 percent of consumers agree that free-from foods are healthier than foods
22 without a free-from claim, while another three in five believe the fewer ingredients a product
23 has, the healthier it is (59 percent). Among the top claims free-from consumers deem most
24 important are trans-fat-free (78 percent) and preservative-free (71 percent)."¹⁸

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¹⁷ See <https://www.walmart.com/ip/Annie-s-Organic-Bernie-O-s-Canned-Pasta-in-Tomato-Cheese-Sauce-15-oz/10790932?>

¹⁸ 84% of Americans buy "free-from" foods because they believe them to be more natural or less processed, Mintel (Sept. 3, 2015), available at <https://www.mintel.com/press-centre/84-of->

NO ADEQUATE REMEDY AT LAW

1
2 30. Plaintiff and members of the class are entitled to equitable relief as no adequate
3 remedy at law exists. The statutes of limitations for the causes of action pled herein vary. Class
4 members who purchased the Products more than three years prior to the filing of the complaint
5 will be barred from recovery if equitable relief were not permitted under the UCL.

6 31. The scope of actionable misconduct under the unfair prong of the UCL is broader
7 than the other causes of action asserted herein. It includes Defendant’s overall unfair marketing
8 scheme to promote and brand the Products, across a multitude of media platforms, including the
9 product labels, packaging, and online advertisements, over a long period of time, in order to gain
10 an unfair advantage over competitor products. Plaintiff and class members may also be entitled
11 to restitution under the UCL, while not entitled to damages under other causes of action asserted
12 herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or
13 acquires, by purchase or lease, any goods or services for personal, family, or household
14 purposes) and other statutorily enumerated conduct).

15 32. A primary litigation objective in this litigation is to obtain injunctive relief.
16 Injunctive relief is appropriate on behalf of Plaintiff and members of the class because Defendant
17 continues to misrepresent the Products as containing “No Preservatives” when the Products
18 actually contain the preservative ingredient citric acid. Injunctive relief is necessary to prevent
19 Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct
20 described herein and to prevent future harm—none of which can be achieved through available
21 legal remedies (such as monetary damages to compensate past harm). Injunctive relief, in the
22 form of affirmative disclosures or halting the sale of unlawful sold products is necessary to dispel
23 the public misperception about the Products that has resulted from years of Defendant’s unfair,
24 fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited
25 to, publicly disseminated statements stating that the Products actually contain a preservative. An
26 injunction requiring affirmative disclosures to dispel the public’s misperception, and prevent the
27 ongoing deception and repeat purchases, is also not available through a legal remedy (such as
28 monetary damages). In addition, Plaintiff is currently unable to accurately quantify the damages

1 caused by Defendant's future harm, because discovery and Plaintiff's investigation has not yet
2 completed, rendering injunctive relief necessary. Further, because a public injunction is
3 available under the UCL, and damages will not adequately benefit the general public in a manner
4 equivalent to an injunction.

5 33. It is premature to determine whether an adequate remedy at law exists. This is an
6 initial pleading and discovery has not yet commenced and/or is at its initial stages. No class has
7 been certified yet. No expert discovery has commenced and/or completed. The completion of
8 fact/non-expert and expert discovery, as well as the certification of this case as a class action,
9 are necessary to finalize and determine the adequacy and availability of all remedies, including
10 legal and equitable, for Plaintiff's individual claims and any certified class or subclass. Plaintiff
11 therefore reserves her right to amend this complaint and/or assert additional facts that
12 demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal
13 remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to
14 the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or
15 the entry of an order granting equitable relief.

16 CLASS ACTION ALLEGATIONS

17 34. Plaintiff brings this action as a class action pursuant to Cal. Code. Civ. Proc. §
18 382 on behalf of the following Class:

19 All persons who purchased the Chef Boyardee Products for personal use in
20 California within the applicable statute of limitations until the date class notice is
21 disseminated.

22 35. Excluded from the class are: (i) Defendant and its officers, directors, and
23 employees; (ii) any person who files a valid and timely request for exclusion; (iii) judicial
24 officers and their immediate family members and associated court staff assigned to the case; (iv)
25 individuals who received a full refund of the Products from Defendant.

26 36. Plaintiff reserves the right to amend or otherwise alter the class definition
27 presented to the Court at the appropriate time, or to propose or eliminate subclasses, in response
28 to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

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1 37. The Class is appropriate for certification because Plaintiff can prove the elements
2 of the claims on a classwide basis using the same evidence as would be used to prove those
3 elements in individual actions alleging the same claims.

4 38. Numerosity: Class Members are so numerous that joinder of all members is
5 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
6 described above who have been damaged by Defendant’s deceptive and misleading practices.

7 39. Commonality: There is a well-defined community of interest in the common
8 questions of law and fact affecting all Class Members. The questions of law and fact common
9 to the Class Members which predominate over any questions which may affect individual Class
10 Members include, but are not limited to:

11 a. Whether Defendant is responsible for the conduct alleged herein which was
12 uniformly directed at all consumers who purchased the Products;

13 b. Whether Defendant’s misconduct set forth in this Complaint demonstrates that
14 Defendant engaged in unfair, fraudulent, or unlawful business practices with respect to the
15 advertising, marketing, and sale of the Products;

16 c. Whether Defendant made misrepresentations concerning the Products that were
17 likely to deceive the public;

18 d. Whether Plaintiff and the Class are entitled to injunctive relief;

19 e. Whether Plaintiff and the Class are entitled to money damages and/or restitution
20 under the same causes of action as the other Class Members.

21 40. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to represent.
22 Plaintiff’s claims are typical of the claims of each Class Member in that every member of the
23 Class was susceptible to the same deceptive, misleading conduct and purchased the Products.
24 Plaintiff is entitled to relief under the same causes of action as the other Class Members.

25 41. Adequacy: Plaintiff is an adequate Class representative because Plaintiff’s
26 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the
27 consumer fraud claims are common to all other members of the Class, and Plaintiff has a strong
28 interest in vindicating the rights of the class; Plaintiff has retained counsel competent and

1 experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this
2 action. Plaintiff has no interests which conflict with those of the Class. The Class Members'
3 interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel.
4 Defendant has acted in a manner generally applicable to the Class, making relief appropriate
5 with respect to Plaintiff and the Class Members. The prosecution of separate actions by
6 individual Class Members would create a risk of inconsistent and varying adjudications.

7 42. The Class is properly brought and should be maintained as a class action because
8 a class action is superior to traditional litigation of this controversy. A class action is superior to
9 the other available methods for the fair and efficient adjudication of this controversy because:

10 a. The joinder of hundreds of individual Class Members is impracticable,
11 cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

12 b. The individual claims of the Class Members may be relatively modest compared
13 with the expense of litigating the claim, thereby making it impracticable, unduly burdensome,
14 and expensive to justify individual actions;

15 c. When Defendant's liability has been adjudicated, all Class Members' claims can
16 be determined by the Court and administered efficiently in a manner far less burdensome and
17 expensive than if it were attempted through filing, discovery, and trial of all individual cases;

18 d. This class action will promote orderly, efficient, expeditious, and appropriate
19 adjudication and administration of Class claims;

20 e. Plaintiff knows of no difficulty to be encountered in the management of this
21 action that would preclude its maintenance as a class action;

22 f. This class action will assure uniformity of decisions among Class Members;

23 g. The Class is readily definable and prosecution of this action as a class action will
24 eliminate the possibility of repetitious litigation; and

25 h. Class Members' interests in individually controlling the prosecution of separate
26 actions is outweighed by their interest in efficient resolution by single class action;

27 43. Additionally or in the alternative, the Class also may be certified because
28 Defendant has acted or refused to act on grounds generally applicable to the Class thereby

1 making final declaratory and/or injunctive relief with respect to the members of the Class as a
2 whole, appropriate.

3 44. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
4 behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent
5 Defendant from engaging in the acts described, and to require Defendant to provide full
6 restitution to Plaintiff and the Class members.

7 45. Unless the Class is certified, Defendant will retain monies that were taken from
8 Plaintiff and Class members as a result of Defendant's wrongful conduct. Unless a classwide
9 injunction is issued, Defendant will continue to commit the violations alleged and the members
10 of the Class and the general public will continue to be misled.

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of California's Consumers Legal Remedies Act**

13 **Cal. Civ. Code § 1750 *et seq.***

14 46. Plaintiff realleges and incorporates by reference all allegations contained in this
15 complaint, as though fully set forth herein.

16 47. Plaintiff brings this claim under the CLRA individually and on behalf of the Class
17 against Defendant.

18 48. At all times relevant hereto, Plaintiff and the members of the Class were
19 "consumer[s]," as defined in California Civil Code section 1761(d).

20 49. At all relevant times, Defendant was a "person," as defined in California Civil
21 Code section 1761(c).

22 50. At all relevant times, the Products manufactured, marketed, advertised, and sold
23 by Defendant constituted "goods," as defined in California Civil Code section 1761(a).

24 51. The purchases of the Products by Plaintiff and the members of the Class were
25 and are "transactions" within the meaning of California Civil Code section 1761(e).

26 52. Defendant disseminated, or caused to be disseminated, through its advertising,
27 false and misleading representations, including the Products' labeling that the Products contain
28 "No Preservatives." Defendant failed to disclose that the Products contain a preservative

1 ingredient called citric acid.. This is a material misrepresentation and omission as reasonable
2 consumer would find the fact that the Products contain a preservative to be important to their
3 decision in purchasing the Products. Defendant’s representations violate the CLRA in the
4 following ways:

5 a) Defendant represented that the Products have characteristics, ingredients, uses,
6 and benefits which they do not have (Cal. Civ. Code § 1770(a)(5));

7 b) Defendant represented that the Products are of a particular standard, quality, or
8 grade, which they are not (Cal. Civ. Code § 1770(a)(7));

9 c) Defendant advertised the Products with an intent not to sell the Products as
10 advertised (Cal. Civ. Code § 1770(a)(9)); and

11 d) Defendant represented that the subject of a transaction has been supplied in
12 accordance with a previous representation when it has not (Cal. Civ. Code § 1770(a)(16)).

13 53. Defendant violated the CLRA because the Products were prominently advertised
14 as containing “No Preservatives,” but, in reality, the Products contain a preservative ingredient
15 called citric acid. Defendant knew or should have known that consumers would want to know
16 that the Products contain a preservative.

17 54. Defendant’s actions as described herein were done with conscious disregard of
18 Plaintiff’s and the Class members’ rights and were wanton and malicious.

19 55. Defendant’s wrongful business practices constituted, and constitute, a continuing
20 course of conduct in violation of the CLRA, since Defendant is still representing that the
21 Products have characteristics which they do not have.

22 56. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of
23 the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices
24 alleged herein.

25 57. Pursuant to California Civil Code section 1782, Plaintiff notify Defendant in
26 writing by certified mail of the alleged violations of the CLRA and will demand that Defendant
27 rectify the problems associated with the actions detailed above and give notice to all affected
28 consumers of their intent to so act. If Defendant fails to rectify or agree to rectify the problems

1 associated with the actions detailed herein and give notice to all affected consumers within 30
 2 days of the date of written notice pursuant to section 1782 of the CLRA, then Plaintiff will
 3 amend his complaint to seek damages.

4 58. Pursuant to section 1780(d) of the CLRA, an affidavit showing that this action
 5 was commenced in a proper forum is provided at the end of this complaint.

6 **SECOND CLAIM FOR RELIEF**

7 **Violation of California's Unfair Competition Law**

8 **Cal. Bus. & Prof. Code § 17200 *et seq.***

9 59. Plaintiff realleges and incorporates by reference all allegations contained in this
 10 complaint, as though fully set forth herein.

11 60. Plaintiff brings this claim under the UCL individually and on behalf of the Class
 12 against Defendant.

13 61. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or
 14 practice and any false or misleading advertising.

15 62. Defendant committed unlawful business acts or practices by making the
 16 representations and omitted material facts (which constitutes advertising within the meaning of
 17 California Business & Professions Code section 17200), as set forth more fully herein, and by
 18 violating California's Consumers Legal Remedies Act, Cal. Civ. Code §§17500, *et seq.*,
 19 California's False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by
 20 breaching express and implied warranties. Plaintiff, individually and on behalf of the other Class
 21 members, reserves the right to allege other violations of law, which constitute other unlawful
 22 business acts or practices. Such conduct is ongoing and continues to this date.

23 63. Defendant committed "unfair" business acts or practices by: (1) engaging in
 24 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
 25 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
 26 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct
 27 that undermines or violates the intent of the consumer protection laws alleged herein. There is
 28 no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a

1 Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material
2 fact (that the Products contain a preservative) of which they had exclusive knowledge. While
3 Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by its false
4 misrepresentations and material omissions. As a result, Defendant's conduct is "unfair," as it
5 offended an established public policy. There were reasonably available alternatives to further
6 Defendant's legitimate business interests, other than the conduct described herein.

7 64. Defendant committed "fraudulent" business acts or practices by making the
8 representations of material fact regarding the Products set forth herein. Defendant's business
9 practices as alleged are "fraudulent" under the UCL because they are likely to deceive customers
10 into believing the Products actually contain no preservatives.

11 65. Plaintiff and the other members of the Class have in fact been deceived as a result
12 of their reliance on Defendant's material representations and omissions. This reliance has caused
13 harm to Plaintiff and the other members of the Class, each of whom purchased Defendant's
14 Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a
15 result of purchasing the Products and Defendant's unlawful, unfair, and fraudulent practices.

16 66. Defendant's wrongful business practices and violations of the UCL are ongoing.

17 67. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result
18 of Defendant's unfair and fraudulent business conduct. The amount on which interest is to be
19 calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest
20 in an amount according to proof.

21 68. Unless restrained and enjoined, Defendant will continue to engage in the above-
22 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
23 & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seek (1)
24 restitution from Defendant of all money obtained from Plaintiff and the other Class members as
25 a result of unfair competition; (2) an injunction prohibiting Defendant from continuing such
26 practices in the State of California that do not comply with California law; and (3) all other relief
27 this Court deems appropriate, consistent with California Business & Professions Code section
28 17203.

CROSNER LEGAL, P.C.

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REQUEST FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, request for relief pursuant to each claim set forth in this complaint, as follows:

a. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel as Class Counsel;

b. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of Defendant’s unlawful, unfair, and fraudulent business practices;

c. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

d. Ordering damages in amount which is different than that calculated for restitution for Plaintiff and the Class;

e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff and the other members of the Class;

f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

g. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all claims in this Complaint so triable.

Dated: August 31, 2023

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin
MICHAEL T. HOUCHIN

9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637

Fax: (310) 510-6429
mhouchin@crosnerlegal.com

Attorneys for Plaintiff and the Proposed Class

CROSNER LEGAL, P.C.

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AFFIDAVIT PURSUANT TO CALIFORNIA CIVIL CODE § 1780(D)

I declare as follows: I am an attorney duly licensed to practice before all of the courts of the State of California. I am an attorney at the law firm of Crosner Legal, P.C., one of the counsel of record for plaintiff in the above-entitled action. Defendant has done, and is doing, business in California, including in this County. Such business includes the marketing, promotion, distribution, and sale of its Products at issue.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed August 31, 2023, at San Diego, California.

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin
MICHAEL T. HOUCHIN

CROSNER LEGAL, P.C.

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EXHIBIT A

1/23/2015

Warning Letters > Fresh Express Incorporated 10/6/10

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Fresh Express Incorporated 10/6/10

Department of Health and Human Services

Public Health Service
 Food and Drug Administration
 San Francisco District
 1431 Harbor Bay Parkway
 Alameda, CA 94502-7070
 Telephone: 510/337-6700

WARNING LETTER**Via UPS**

October 6, 2010

Fernando Aguirre, President and CEO
 Chiquita Brands International, Inc. and Fresh Express, Incorporated
 250 East Fifth Street
 Cincinnati, OR 45202

Dear Mr. Aguirre:

Starting on May 21, 2010 and ending on June 10, 2010, the Food and Drug Administration (FDA) inspected your food manufacturing facility located at 900 E. Blanco Road, Salinas, California. During this inspection, FDA investigators collected labels for your products and reviewed their labeling at

<http://www.chiquita.com>¹. Based on our review, we have concluded that your Chiquita brand "Pineapple Bites with Coconut" and "Pineapple Bites" products are misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the Act) and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101). You can find the Act and FDA regulations through links at FDA's Internet home page at <http://www.fda.gov>².

Specifically, your "Pineapple Bites with Coconut" product is misbranded within the meaning of Section 403(a) of the Act [21 U.S.C. § 343(a)] in that its statement of identity, "Pineapple Bites with Coconut", is false and misleading. The ingredient statement for this product states that it is made with coconut; however, our investigation determined that this product is made with a coconut flavor spray. The characterizing flavor of your Pineapple with Coconut product must be identified in accordance with 21 CFR 101.22(i)(1)(iii) (for example, "coconut flavor").

Your "Pineapple Bites" and "Pineapple Bites with Coconut" products are misbranded within the meaning of Section 403(r)(1)(A) of the Act [21 U.S.C. § 343(r)(1)(A)] because their labeling bears nutrient content claims but the products do not meet the requirements for the claims.

Specifically, their labeling includes the claim "Plus ... Antioxidants." However, this claim does not include the names of the nutrients that are the subject of the claim or, alternatively, link the term "antioxidants" by a symbol (e.g., an asterisk) that refers to the same symbol that appears elsewhere on the same panel of the product label, followed by the name or names of the nutrients with recognized antioxidant activity. 21 CFR 101.54(g)(4). Your use of this antioxidant claim therefore misbrands your products under section 403(r)(2)(A)(i) of the Act [21 U.S.C. § 343(r)(2)(A)(i)].

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Warning Letters > Fresh Express Incorporated 10/6/10

Your "Pineapple Bites" and "Pineapple Bites with Coconut" products also bear the claim "Plus Phytonutrients." "Phytonutrients" are not nutrients for which a recommended daily intake (RDI) or daily recommended value (DRV) has been established. Therefore, nutrient content claims regarding "phytonutrients" are not authorized and further misbrand your products under section 403(r)(2)(A)(i) of the Act [21 U.S.C. § 343(r)(2)(A)(i)]. To the extent phytonutrients are intended to be the basis for an antioxidant nutrient content claim, that use would violate FDA regulations for the same reason and because phytonutrients are not recognized as having antioxidant activity. 21 CFR 101.54(g)(1) and (2).

Both your "Pineapple Bites" and "Pineapple Bites with Coconut" products also bear the statement "Only 40 Calories." This statement implies that the products are "low calorie" foods. A "low calorie" claim may be made if a food with a reference amount customarily consumed (RACC) greater than 30 grams (g) or greater than 2 tablespoons does not provide more than 40 calories per RACC. 21 CFR 101.60(b)(2)(i)(A). The RACC established for pineapple is 140 g. See 21 CFR 101.12(b) (Table 2, Fruits and Fruit Juices, All other fruits fresh, canned, or frozen).

The nutrition information for both products states that there are 40 calories per 1 piece (80 g) of product; this equals about 70 calories per RACC. Therefore, under 21 CFR 101.13(i)(2), the products are required to carry a disclaimer adjacent to the claim, e.g., "Only 40 calories per serving, not a low calorie food". Because your products fail to bear the required disclaimer, they are misbranded within the meaning of section 403(r)(1)(A) of the Act.

The "Pineapple Bites" and "Pineapple Bites with Coconut" products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions. 21 CFR 101.22. Further, the ingredients ascorbic acid and citric acid must be declared by their common or usual names. 21 CFR 101.4(a).

This letter is not intended to be an all-inclusive review of your firm's products and processes. It is your responsibility to ensure that your firm and your products comply with the Act and FDA, regulations. You should take prompt action to correct the violations. Failure to promptly correct these violations may result in regulatory action without further notice. For instance, we may take further action to seize your product or enjoin your firm from operating.

We also note that, FDA (through its contractor) obtained two samples of Fresh Express Hearts of Romaine the testing of which yielded human pathogens. One sample was found to contain *Salmonella Anatum*; another sample was found to contain *E. coli O157:H7*. We acknowledge that you issued letters to your customers in an effort to recall affected products. However, FDA recommends that you review your firm's criteria for receipt of raw product, your procedures for ensuring that wash, flume and processing water do not contaminate your products and any other conditions and practices that may relate to the cause of the contamination.

We further acknowledge your June 25, 2010 response to the Good Manufacturing Practices violations cited in the FDA Form 483 regarding this inspection. In your response, you committed to:

- Retrain employees to replace or sanitize their gloves after contacting unsanitized surfaces;
- Include the dryer hoist controls and the equipment control panels that involve direct employee contact in your daily wash and sanitation procedures;
- Create a new storage system for aprons, gloves, and sleeve guards for times during manufacturing when they are not in use; and
- Modify your cutting surface inspection and replacement program so that cutting surfaces will be changed after every **(b)(4)** of use.

However, you did not provide documentation to demonstrate that these corrections have been made. You also did not address the observation that your technician improperly read the free chlorine indicator tests in the flume water. Please provide this information and documentation in your response to this Warning Letter.

In addition to the labeling issues identified above, we note that the available labeling space is at least 6" in height; therefore, the size of the nutrition information declared on these packages is not appropriate and does not meet the formatting requirements under 21 CFR 101.9(d), including hairline and footnote requirements. We note that since some of the nutrients are at insignificant levels, a shortened version of the Nutrition Facts panel may be used, e.g., the statement "Not a significant source of dietary fiber", at the bottom of the table of nutrient values as allowed under 21 CFR 101.9(c).

Please notify this office in writing within fifteen (15) working days from the date you receive this letter of

1/23/2015

Warning Letters > Fresh Express Incorporated 10/6/10

the specific steps you have taken to correct the noted violations, including an explanation of how you plan to prevent these violations, or similar violations, from occurring again. Please include documentation of the corrective actions you have taken. If your planned corrections will occur over time, please include a timetable for implementation of those corrections. If corrective action cannot be completed within 15 working days, state the reason for the delay and the time within which the corrections will be completed.

Your response should be sent to:

Darlene B. Almogela
Director of Compliance
United States Food and Drug Administration
1431 Harbor Bay Parkway
Alameda, CA 94502

If you have any questions about the content of this letter please contact Sergio Chavez, Compliance Officer, at 510-337-6886.

/s/

Barbara Cassens
District Director

Page Last Updated: 10/08/2010

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U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
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 U.S. Department of Health & Human Services

Links on this page:

1. <http://www.chiquita.com/>
2. <http://www.fda.gov>

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Chef Boyardee Lawsuit Claims Beef Ravioli, Lasagna Falsely Advertised as Containing 'No Preservatives'](#)
