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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 KIMBERLY BIRBROWER, an
16 individual,

17 Plaintiff,

18 vs.

19 QUORN FOODS, INC., a Delaware
20 Corporation and DOES 1 through 100,
inclusive,

21 Defendant.
22
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24
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26
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CASE NO.:
2:16-cv-01346-DMG-AJW

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. **VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750 et seq.);**
2. **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200 et seq.);**
3. **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500 et seq.) and**
4. **FRAUD/FRAUDULENT CONCEALMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff individually and on behalf of all others similarly situated, alleges on
2 knowledge as to herself but otherwise on information and belief, as follows:

3
4 **I. OVERVIEW**

5 1. This class action arises out of the fraudulent, deceptive and misleading
6 conduct of Defendant Quorn Foods, Inc. (“Defendant” or “Quorn”), a company that
7 sells meat-substitute food products. Specifically, Quorn has been misrepresenting on
8 all of its product packaging that “mycoprotein” – the main ingredient in all of the
9 company’s products – is the same or substantially similar to a mushroom, truffle or
10 morel. In truth, “mycoprotein” is a term invented by Quorn to mislead consumers and
11 hide the fact that its products are actually made of mold.

12 2. As a result of Quorn’s unfair, unlawful, and deceptive practices, Quorn
13 (a) uniformly misled Plaintiff and other consumers into believing Quorn’s products
14 were made of an ingredient the same or similar to mushrooms, truffles or morels and
15 (b) induced Plaintiff and others consumers to purchase Quorn’s products. Had Quorn
16 disclosed the truth to Plaintiff and consumers – *i.e.*, that its products are actually made
17 of mold – Plaintiff and consumers would not have purchased Quorn’s products, and
18 certainly not at the price they paid.

19 **II. JURISDICTION AND VENUE**

20 3. This action was originally filed in the Superior Court of the State of
21 California, County of Los Angeles. Defendant removed this action pursuant to the
22 Class Action Fairness Act, contending there is minimal diversity and that total matter in
23 controversy exceeds \$5,000,000.

24 **III. PARTIES**

25 4. Plaintiff Kimberly Birbrower (“Plaintiff”), an individual, is a resident and
26 citizen of the County of Los Angeles, State of California.

1 5. Defendant Quorn Foods, Inc. is a Delaware Corporation, headquartered in
2 Illinois, and registered to do business in California. Quorn marketed, advertised, and/or
3 distributed its food products during the Class Period in Los Angeles County, California.

4 6. The true names and capacities of defendants DOES 1 through 100,
5 inclusive, whether individual, plural, corporate, partnership, associate or otherwise, are
6 not known to Plaintiff, who therefore sues said defendants by such fictitious names.
7 Plaintiff is informed and believes and thereon alleges that each of the defendants
8 designated herein as Doe are in some manner responsible for the acts and occurrences
9 set forth herein. Plaintiff will ask leave of court to amend this Complaint to show the
10 true names and capacities of defendants Doe 1 through 100, inclusive, as well as the
11 manner in which each Doe defendant is responsible, when the same have been
12 ascertained.

13 7. Plaintiff is informed and believes, and upon such basis alleges, that at all
14 times herein mentioned, each of the Defendants herein was an agent, servant, employee,
15 co-conspirator, partner, joint venturer, wholly owned and controlled subsidiary and/or
16 alter ego of each of the remaining Defendants, and was at all times acting within the
17 course and scope of said agency, service, employment, conspiracy, partnership and/or
18 joint venture.

19 8. Defendants, and each of them, aided and abetted, encouraged and
20 rendered substantial assistance in accomplishing the wrongful conduct and their
21 wrongful goals and other wrongdoing complained of herein. In taking action, as
22 particularized herein, to aid and abet and substantially assist the commission of these
23 wrongful acts and other wrongdoings complained of, each of the Defendants acted with
24 an awareness of its primary wrongdoing and realized that its conduct would
25 substantially assist the accomplishment of the wrongful conduct, wrongful goals, and
26 wrongdoing

1 **IV. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 9. Plaintiff purchased Quorn’s “Chik’n” products at Whole Foods Market in
3 Los Angeles County in 2012.

4 10. Like all of Quorn’s products, the main ingredient in Quorn’s “Chik’n”
5 products is “mycoprotein” – which is a term invented by Quorn to hide the fact that the
6 product is actually made of mold.

7 11. Plaintiff was misled at the time of her purchases by the misleading
8 statements on Quorn’s product packaging related to the “mycoprotein” contained in the
9 products. Specifically, the Quorn products purchased by Plaintiff were packaged in a
10 box containing the same misleading representation about “mycoprotein” that is and has
11 been uniformly made on all Quorn product packaging:

12 Quorn [products] are made with mycoprotein (“myco” is
13 Greek for “fungi”) and are completely meatless and soy-
14 free. There are believed to be over 600,000 varieties of
15 fungi in the world, many of which are among the most
sought after foods like varieties of mushroom, truffles,
and morels.

16 A sample photo of a Quorn product package is attached hereto as Exhibit A.

17 12. The foregoing representation by Quorn was, at a minimum, deceptive and
18 misleading. At all times, this representation was designed to deceive members of the
19 public, just as it deceived Plaintiff. The representation, among other things, suggests
20 that Quorn products are made of (or similar to) mushrooms, truffles or morels. In
21 reality, the product is not a variety or type of mushroom, truffle or morel.
22 “Mycoprotein” is instead a brand name coined by Quorn for an ingredient that is
23 actually fermented soil mold with added vitamins and flavors. Quorn’s representations
24 on its boxes are clearly designed to deceive consumers into believing they are
25 purchasing a mushroom-based product, and not a mold-based product.

26 13. In addition to making false affirmative representations, Quorn had a duty
27 to disclose the fact that “mycoprotein” is actually mold. Quorn had such a duty because
28 (a) Quorn had exclusive or superior knowledge of that material fact and the material

1 fact was not reasonably known to Plaintiff and the Class; (b) Quorn actively concealed
2 the material fact from Plaintiff and the Class; and/or (c) Quorn’s statements on its
3 product packaging regarding “mycoprotein” were misleading without the disclosure of
4 the omitted material fact. Quorn violated its duty to disclose by failing to disclose and
5 actively concealing the fact that “mycoprotein” is actually fermented soil mold.

6 14. In or around 2015, after a number of customers became ill and, in at least
7 one instance, died after consuming a Quorn product, Quorn began adding a disclosure
8 in the “allergy” section of its product packaging stating as follows:

9 Allergic Consumers: There have been rare cases of adverse
10 reaction to Quorn, which contains mycoprotein, a member of
11 the fungi/mold family. Mycoprotein is high in protein and fiber
12 which may cause intolerance in some people.

13 This language was intentionally buried in the allergy section, so that it would not be
14 read by ordinary consumers. In fact, demonstrating its fraudulent intent, Quorn
15 continued to prominently feature the false and misleading statement at the top of every
16 package representing that “mycoprotein” is like a mushroom, truffle, or morel. Quorn’s
17 allergy disclosure actually continues this deception by, for example, first referring to
18 “mycoprotein” as a “fungi.” As a result, Quorn continued to deceive members of the
19 Class into believing that the products they were purchasing were like a “mushroom,
20 truffle, or morel” and not mold.

21 15. Quorn’s deceptive and misleading representations about “mycoprotein”
22 are intentionally designed to conceal the fact that the product is made of mold, and
23 mislead consumers into believing that the product is similar to a mushroom, truffle or
24 morel. This is “material” information, because reasonable consumers would consider
25 the fact that a food product is made of mold to be important information when deciding
26 whether to purchase an item that will be consumed by themselves and/or their family.
27 The fact that Quorn intentionally attempted to deceive consumers into believing that its
28

1 products are similar to a “mushroom, truffle or morel” demonstrates that Quorn knew
2 that the fact that the product is mold is “material” information.

3 16. Plaintiff justifiably relied on the statements and omissions on Quorn’s
4 product packaging regarding “mycoprotein” and believed she was buying a mushroom-
5 based protein product, not a mold-based product. But for the deceptive and misleading
6 representations and omissions on Quorn’s product packaging, Plaintiff and the Class
7 would not have purchased any of the Quorn products, and, at a minimum, certainly not
8 at the prices they paid. Plaintiff thus suffered injury in fact and lost money or property
9 because, in reliance on Quorn’s misrepresentations and failures to disclose, she
10 purchased products she otherwise would not have purchased, and certainly not at the
11 price she paid.

12 17. Plaintiff did not discover that Quorn products were made of mold until
13 2015, and could not in the exercise of due diligence reasonably have discovered them
14 earlier.

15 V. CLASS ACTION ALLEGATIONS

16 18. Plaintiff brings her first through third causes of action (for violations of
17 California’s Consumer Legal Remedies Act, Unfair Competition Law and False
18 Advertising Law) on behalf of herself and a class of all California citizens who
19 purchased Quorn products within the State of California in the four years preceding the
20 filing of this Complaint (the “California class”). She brings her fourth cause of action
21 for common law fraud/fraudulent concealment on behalf of a class of all persons who
22 purchased Quorn products in the United States in the four year preceding the filing of
23 this Complaint. Plaintiff brings this class action pursuant to Federal Rule of Civil
24 Procedure 23 (the “Nationwide Class”). The California Class and the Nationwide Class
25 are referred to collectively herein as the “Class” and separately as “each Class.”

26 19. Excluded from the each Class is any person or entity in which any judge,
27 justice or judicial officer presiding over this matter and members of their immediate
28

1 families and judicial staff, have any controlling interest. Also excluded from each
2 Class is any partner or employee of Class Counsel.

3 20. Class certification is appropriate pursuant to Rule 23(b)(3) because
4 questions of law or fact common to each Class predominate over any questions
5 affecting only individual class members, and a class action is superior to other available
6 methods for fairly and efficiently adjudicating the controversy. Class certification is
7 appropriate pursuant to Rule 23(b)(2) because Defendants acted (or refused to act) on
8 grounds generally applicable to each Class thereby making appropriate injunctive relief
9 with respect to each Class as a whole.

10 21. Plaintiff reserves the right to modify the definition of each Class after
11 further discovery, and further reserves the right to only seek class certification for
12 injunctive relief and not to seek class certification for monetary damages.

13 22. Questions of law or fact common to Class Members predominate over any
14 questions affecting only individual Class Members, and a class action is superior to
15 other available methods for fairly and efficiently adjudicating the controversy.

16 23. Numerosity of the Class. The Class is so numerous that joinder of all
17 members in one action is impracticable. While the exact number and identities of Class
18 Members is unknown to Plaintiff at this time and can only be ascertained through
19 appropriate discovery directed at Defendants, Plaintiff believes and therefore alleges
20 that there are in excess of 50,000 members of the Class, and well in excess of 40
21 members in each Class.

22 24. Typicality of Claims. Plaintiff's claims are typical of those of other Class
23 Members, all of whom have suffered similar harm due to Defendant's course of
24 conduct as described herein.

25 25. Adequacy of Representation. Plaintiff is an adequate representative of the
26 Class and will fairly and adequately protect the interests of each Class and has retained
27 attorneys who are highly experienced in the handling of class actions, and Plaintiff and
28 her counsel intend to prosecute this action vigorously.

1 26. Predominance of Common Questions of Law or Fact. Common questions
2 of fact and law exist as to all Class Members that predominate over any questions
3 affecting only individual Class Members. These common legal and factual questions,
4 which do not vary among Class Members, and which may be determined without
5 reference to the individual circumstances of any Class member, include, but are not
6 limited to, the following:

7 • Whether Defendants’ uniform representations about “mycoprotein” on
8 their product packaging were likely to deceive a reasonable consumer into believing
9 that the products were mushroom-based products and not mold-based products;

10 • Whether the fact that Defendants’ products were made of mold would be
11 considered “material” information to a reasonable consumer of food products;

12 • Whether Defendants had a duty to disclose that their products were made
13 of mold;

14 • Whether Defendants’ alleged misrepresentations and non-disclosures
15 constitute a violation of California’s Consumer Legal Remedies Act, California *Civil*
16 *Code* section 1750 *et seq.* (the “CLRA”)

17 • Whether Defendants’ conduct was a “fraudulent” business practice within
18 the meaning of California’s Unfair Competition Laws, California *Business &*
19 *Profession Code* section 17200 *et seq.* (the “UCL”), in that it is and was likely to
20 mislead a reasonable consumer;

21 • Whether Defendants’ conduct was an “unfair practice” within the meaning
22 of the UCL, in that it offends established public policy and is immoral, unethical,
23 oppressive, unscrupulous or substantially injurious to consumers;

24 • Whether Defendants’ conduct constituted false advertising in violation of
25 California’s False Advertising Law, California *Business & Professions Code* section
26 17500 *et seq.* (the “FAL”);

1 • Whether Defendants’ conduct was an “unlawful” practice within the
2 meaning of the UCL, in that it violates *inter alia* the CLRA, the FAL, and other
3 California civil statutes and common law prohibiting fraud and deceit;

4 • Whether Defendants’ conduct caused harm to the Class;

5 • Whether the market value of Defendants’ products would be less than
6 prices paid by the Class if Defendants had correctly and clearly disclosed that their
7 products were made of mold, such that the members of the Class suffered out-of-pocket
8 loss as a result of Defendants’ misrepresentations and non-disclosures;

9 • Whether the members of the Class are entitled to restitution; and

10 • Whether injunctive relief is appropriate and necessary in order to cure the
11 harm caused by Defendants continuing misleading statements and non-disclosures
12 regarding “mycoprotein.”

13 27. Superiority. A class action is superior to other available methods for the
14 fair and efficient adjudication of this controversy, because individual litigation of the
15 claims of all Class Members is impracticable. Requiring each individual class member
16 to file an individual lawsuit would unreasonably consume the amounts that may be
17 recovered. Even if every Class Member could afford individual litigation, the
18 adjudication of more than a million identical claims would be unduly burdensome to
19 the courts. Individualized litigation would also present the potential for varying,
20 inconsistent, or contradictory judgments and would magnify the delay and expense to
21 all parties and to the court system resulting from multiple trials of the same factual
22 issues. By contrast, the conduct of this action as a class action, with respect to some or
23 all of the issues presented herein, presents no management difficulties, conserves the
24 resources of the parties and of the court system, and protects the rights of the Class
25 Members. Plaintiff anticipates no difficulty in the management of this action as a class
26 action. The prosecution of separate actions by individual Class Members may create a
27 risk of adjudications with respect to them that would, as a practical matter, be
28 dispositive of the interests of the other Class Members not parties to such adjudications

1 or that would substantially impair or impede the ability of such non-party Class
2 Members to protect their interests.

3 **FIRST CAUSE OF ACTION FOR**
4 **VIOLATIONS OF CONSUMERS LEGAL REMEDIES ACT**
5 **(CALIFORNIA CIVIL CODE § 1750 et seq.)**

6 28. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 27
7 as if fully set forth herein.

8 29. Plaintiff and the California Class are “consumers” as defined by the
9 CLRA, *Civil Code* § 1761(d). Defendants’ products are “goods” as defined by the
10 CLRA, *Civil Code* § 1761(a). Defendants’ sale of those products to Plaintiff and the
11 California Class constitute consumer “transactions” covered by the CLRA.

12 30. On all of its product packaging, and other sales materials (such as website
13 pages), Defendants uniformly represented to Plaintiff and the California Class as
14 follows:

15 Quorn [products] are made with mycoprotein (“myco” is Greek
16 for “fungi”) and are completely meatless and soy-free. There
17 are believed to be over 600,000 varieties of fungi in the world,
18 many of which are among the most sought after foods like
19 varieties of mushroom, truffles, and morels.

20 (Exhibit A). This representation is false and misleading, and misstates the qualities,
21 characteristics and ingredients of Quorn products, in that “mycoprotein” is not the same
22 or similar to mushrooms, truffles or morels, but is instead fermented soil mold.

23 31. Defendants also had a duty to disclose that “mycoprotein” is fermented
24 soil mold because this is material information to a reasonable consumer of food
25 products and:

26 (a) Defendants had exclusive and superior knowledge of this material fact and
27 understood that this material fact was not reasonably known to and could
28 not have been reasonably discovered by Plaintiff and the California Class;

1 (b) Defendants actively concealed this material fact from Plaintiff and the
2 California Class; and/or

3 (c) The aforementioned statement on Quorn product packaging regarding
4 “mycoprotein” was misleading without the disclosure of the omitted
5 material fact.

6 32. Defendants violated their duty to disclose by failing to inform Plaintiff
7 and the California Class that “mycoprotein” is fermented soil mold.

8 33. Defendants’ conduct by way of their affirmative representations and non-
9 disclosures are and were likely to mislead a reasonable consumer.

10 34. Defendants’ conduct constitutes a violation of the CLRA, including but
11 not limited to subdivisions (5), (7), (9), and (16) of the California *Civil Code* §1770(a).
12 See, e.g., Outboard Marine Corp. v. Sup. Ct. (1975) 52 Cal. App. 3d 30, 36.

13 35. Plaintiff and the California Class suffered harm as a result of Defendants’
14 violations of the CLRA in that they purchased Quorn products that they would not have
15 purchased had they known they were made of mold, and certainly not at the prices they
16 paid.

17 36. If Defendants had accurately disclosed that Quorn products were made of
18 mold, and were not mushroom-based products, the market value of those products
19 would be substantially less than the prices paid by Plaintiff and the California Class.
20 Consequently, Plaintiff and the California Class uniformly suffered “out of pocket” loss
21 as a result of Defendants’ violations of the CLRA.

22 37. On or about August 11, 2015, more than thirty (30) days prior to the
23 commencement of this action and in conformance with her obligations under *Civil*
24 *Code* § 1782 of the CLRA, Plaintiff, on behalf of herself and the California Class,
25 served a CLRA Notice of Violation Letter by certified registered mail, return receipt
26 requested on Quorn. A copy of the letter is attached as Exhibit B. The letter notified
27 Defendants of its violations of the CLRA, among other laws, and requested various
28

1 corrections and remedies. (*See* Exhibit B). Defendants failed to make the requested
2 corrections and/or offer the requested remedies.

3 38. Accordingly, pursuant to *Civil Code* §§ 1780 and 1782 of the CLRA,
4 Plaintiff, on behalf of herself and the California Class, is seeking actual damages in an
5 amount to be determined at trial but not less than one thousand dollars (\$1000.00) per
6 California Class member as provide by *Civil Code* § 1780(a)(1).

7 39. Plaintiff, on behalf of herself and the California Class, is further seeking
8 an order enjoining Defendants’ violations of the CLRA, including, but not limited to, an
9 order:

- 10 (a) Requiring Defendants to immediately remove from all packages of
11 Quorn products sold in California any statements suggesting that the
12 product is the same or similar to a mushroom, truffle or morel. This
13 includes deleting the following statement: “[T]here are believed to
14 be over 600,000 varieties of fungi in the world, many of which are
15 among the most sought after varieties of mushroom, truffles, and
16 morels.”
- 17 (b) Requiring Defendants to prominently disclose on the front of its
18 product packaging in bold print and large font that “**THIS**
19 **PRODUCT CONTAINS MOLD**” in order to cure the false
20 advertising Defendants have been disseminating for years.
- 21 (c) Requiring Defendants to prominently disclose on the back of its
22 product packaging in California, and on the homepage of its website
23 the following statement: “**THE ‘MYCROPROTEIN’**
24 **INGREDIENT IN QUORN PRODUCTS IS FERMENTED**
25 **SOIL MOLD; IT IS NOT A MUSHROOM, TRUFFLE OR**
26 **MOREL.**”

27 40. Plaintiff, on behalf of herself and the California Class, is further seeking
28 restitution of all sums wrongfully obtained by Defendants as result of their violations of

1 the CLRA, including, but not limited to, the difference between what the market value
2 of Quorn products would have been had Defendants prominently disclosed that the
3 product contained mold and the sales price paid by Plaintiff and the California Class.

4 41. Plaintiff, on behalf of herself and the California Class, is further seeking
5 punitive damages in an amount to sufficient to deter such violations of the CLRA in the
6 future. Defendants' violations of the CLRA were carried out with malice, oppression
7 and fraud and extreme indifference to the rights of Plaintiff and the California Class.
8 They constitute intentional misrepresentations, deceit and concealment of material facts
9 known to Defendants with the intention on the part of Defendants of thereby depriving
10 Plaintiff and the California Class of their property and otherwise causing injury.

11 **SECOND CAUSE OF ACTION FOR**
12 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW (CAL.**
13 **BUS. & PROF. CODE §17200 ET SEQ.)**

14 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41
15 as if fully set forth herein.

16 43. The UCL prohibits acts of "unfair competition," including any unlawful,
17 unfair, fraudulent, or deceptive business act or practice as well as "unfair, deceptive,
18 untrue or misleading advertising."

19 **DEFENDANTS' ACTS ARE FRAUDULENT AND/OR DECEPTIVE**

20 44. Defendants' acts, conduct and business practices as alleged above are
21 fraudulent and/or deceptive.

22 **DEFENDANTS' ACTS ARE UNFAIR**

23 45. Defendants' acts, conduct and practices as alleged above are unfair.
24 Defendants, through deceptive and misleading advertising and representations, induced
25 Plaintiff and the California Class to purchase Quorn food products they otherwise
26 would not have purchased. This injury is not outweighed by any countervailing
27 benefits to consumers or competition.

DEFENDANTS' ACTS ARE UNLAWFUL

1
2 46. By engaging in the false, deceptive, and misleading conduct alleged
3 above, Defendants have engaged in unlawful business acts and practices in violation of
4 the UCL by violating other laws, including at a minimum the CLRA, the FAL, and
5 other California civil statutes and common law prohibiting fraud and deceit.

6 47. As a direct and proximate result of Defendants' unlawful, unfair and
7 fraudulent business practices, Plaintiff and the California Class have been injured in
8 fact and suffered lost money or property. Plaintiff and the California Class purchased
9 food products in justifiable reliance on Defendants' false and misleading
10 representations regarding the nature of their "mycoprotein" food products, and
11 Plaintiffs and the California Class would not have purchased any Quorn food products
12 containing "mycoprotein" had Defendants adequately and prominently disclosed that
13 the product contained mold, and certainly not at the prices they paid.

14 48. Defendants' unlawful, unfair, deceptive and fraudulent business practices
15 as alleged above present a continuing threat to Plaintiff, the California Class and
16 members of the public because Defendants persist and continue to engage in such
17 practices, and will not cease doing so unless enjoined or restrained by this Court.

18 49. Under California *Business & Profession Code* § 17203, Plaintiff, on
19 behalf of herself, California Class Members and members of the general public, seeks
20 an order from this Court enjoining Defendants' continuing violations of the UCL,
21 including, but not limited to, an order:

- 22 (a) Requiring Defendants to immediately remove from all packages of
23 Quorn products sold in California any statements suggesting that the
24 product is the same or similar to a mushroom, truffle or morel. This
25 includes deleting the following statement: "[T]here are believed to
26 be over 600,000 varieties of fungi in the world, many of which are
27 among the most sought after varieties of mushroom, truffles, and
28 morels."

1 (b) Requiring Defendants to prominently disclose on the front of its
2 product packaging in bold print and large font that “**THIS**
3 **PRODUCT CONTAINS MOLD**” in order to cure the false
4 advertising Defendants have been disseminating for years.

5 (c) Requiring Defendants to prominently disclose on the back of its
6 product packaging in California, and on the homepage of its website
7 the following statement: “**THE ‘MYCROPROTEIN’**
8 **INGREDIENT IN QUORN PRODUCTS IS FERMENTED**
9 **SOIL MOLD; IT IS NOT A MUSHROOM, TRUFFLE OR**
10 **MOREL.”**

11 50. Plaintiff, on behalf of herself and the California Class, is further seeking
12 restitution of all sums wrongfully obtained by Defendants as result of their violations of
13 the UCL, including, but not limited to, the difference between what the market value of
14 Quorn products would have been had Defendants prominently disclosed that the
15 product contained mold and the sales price paid by Plaintiff and the California Class.

16 **THIRD CAUSE OF ACTION FOR**
17 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW**
18 **(CAL. BUS. & PROF. CODE §17500 et seq.)**

19 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50,
20 as if fully set forth herein.

21 52. As alleged herein, Defendants disseminated or caused to be disseminated
22 to the general public via product packaging (at a minimum) misleading, deceptive,
23 inadequate, and false advertising regarding “mycoprotein.” This constitutes a violation
24 of the FAL.

25 53. Defendants continue to disseminate or cause to be disseminated via
26 product packaging (at a minimum) such misleading, deceptive, inadequate and false
27 advertising.
28

1 54. Defendants’ misleading, deceptive, inadequate and false advertising
2 regarding “mycoprotein” deceived Plaintiff and is and was likely to deceive the
3 consuming public.

4 55. Defendants knew or should have known that the statements were
5 misleading, deceptive, inadequate and false.

6 56. As a direct and proximate result of Defendants’ violations of the FAL,
7 Plaintiff and the California Class have been injured in fact and suffered lost money or
8 property. Plaintiff and the California Class purchased food products in justifiable
9 reliance on Defendants’ false and misleading representations regarding the nature of
10 their “mycoprotein” food products, and they would not have purchased any Quorn food
11 products containing “mycoprotein” had Defendants adequately and prominently
12 disclosed that the product contained mold, and certainly not at the prices they paid.

13 57. Defendants’ violations of the FAL present a continuing threat to Plaintiff,
14 the California Class and members of the public because Defendants persist and
15 continue to engage in such practices, and will not cease doing so unless enjoined or
16 restrained by this Court. Accordingly, Plaintiff, on behalf of herself, California Class
17 Members and members of the general public, seeks an order from this Court enjoining
18 Defendants’ continuing violations of the FAL, including, but not limited to, an order:

19 (a) Requiring Defendants to immediately remove from all packages of
20 Quorn products sold in California any statements suggesting that the
21 product is the same or similar to a mushroom, truffle or morel. This
22 includes deleting the following statement: “[T]here are believed to
23 be over 600,000 varieties of fungi in the world, many of which are
24 among the most sought after varieties of mushroom, truffles, and
25 morels.”

26 (b) Requiring Defendants to prominently disclose on the front of its
27 product packaging in bold print and large font that “**THIS**
28

1 **PRODUCT CONTAINS MOLD**” in order to cure the false
2 advertising Defendants have been disseminating for years.

3 (c) Requiring Defendants to prominently disclose on the back of its
4 product packaging in California, and on the homepage of its website
5 the following statement: **“THE ‘MYCROPROTEIN’**
6 **INGREDIENT IN QUORN PRODUCTS IS FERMENTED**
7 **SOIL MOLD; IT IS NOT A MUSHROOM, TRUFFLE OR**
8 **MOREL.”**

9 58. Plaintiff, on behalf of herself and the California Class, is further seeking
10 restitution of all sums wrongfully obtained by Defendants as result of their violations of
11 the FAL, including, but not limited to, the difference between what the market value of
12 Quorn products would have been had Defendants prominently disclosed that the
13 product contained mold and the sales price paid by Plaintiff and the California Class.

14 **FOURTH CAUSE OF ACTION FOR FRAUD/FRAUDULENT**
15 **CONCEALMENT**

16 59. Plaintiff restates and re-alleges paragraphs 1 through 58 as if fully set
17 forth herein.

18 60. On all of its product packaging, and other sales materials (such as website
19 pages), Defendants uniformly represented to Plaintiff and the Nationwide Class as
20 follows:

21 Quorn [products] are made with mycoprotein (“myco” is Greek
22 for “fungi”) and are completely meatless and soy-free. There
23 are believed to be over 600,000 varieties of fungi in the world,
24 many of which are among the most sought after foods like
25 varieties of mushroom, truffles, and morels.

26 (Exhibit A). This representation is false and misleading, and misstates the qualities,
27 characteristics and ingredients of Quorn products, in that “mycoprotein” is not the same
28 or similar to mushrooms, truffles or morels, but is instead fermented soil mold.

1 61. Defendants also had a duty to disclose that “mycoprotein” is fermented
2 soil mold because this is material information to a reasonable consumer of food
3 products and:

4 (a) Defendants had exclusive and superior knowledge of this material fact and
5 understood that this material fact was not reasonably known to and could
6 not have been reasonably discovered by Plaintiff and the Nationwide
7 Class;

8 (b) Defendants actively concealed this material fact from Plaintiff and the
9 Nationwide Class; and/or

10 (c) The aforementioned statement on Quorn product packaging regarding
11 “mycoprotein” was misleading without the disclosure of the omitted
12 material fact.

13 62. Defendants violated their duty to disclose by failing to inform Plaintiff
14 and the Nationwide Class that “mycoprotein” is fermented soil mold.

15 63. Defendants’ representations and omissions regarding “mycoprotein” are
16 and were material in that a reasonable person would attach importance to its existence
17 or nonexistence in determining his choice of action in the transaction in question.

18 64. Defendants’ misstatements of fact and failures to disclose were
19 intentional.

20 65. Plaintiff and the Nationwide Class justifiably relied on the statements and
21 non-disclosures on Quorn’s product packaging regarding “mycoprotein.” But for the
22 deceptive and misleading representations and omissions on Quorn’s product packaging,
23 Plaintiff and the Nationwide Class would not have purchased any of the Quorn
24 products, and at a minimum certainly not at the prices they paid.

25 66. As a direct and proximate result of Defendants’ non-disclosure and
26 concealment, Plaintiff and the Nationwide Class have suffered actual damages in an
27 amount to be proven at trial.

28

1 67. Plaintiff and the Nationwide Class further seek a constructive trust to
2 prevent unjust enrichment and to compel the restoration of property (money) to Plaintiff
3 and the Nationwide Class which Defendants acquired through fraud.

4 68. The actions of Defendants were carried out with malice, oppression and
5 fraud and extreme indifference to the rights of Plaintiff and the Nationwide Class.
6 They constitute intentional misrepresentations, deceit and concealment of material facts
7 known to Defendants with the intention on the part of Defendants of thereby depriving
8 Plaintiff and the Nationwide Class of their property and otherwise causing injury. They
9 justify an award of punitive damages in an amount sufficient to deter such wrongful
10 conduct in the future.

11 69. Plaintiffs also seek injunctive relief including, but not limited to, an order:

- 12 (a) Requiring Defendants to immediately remove from all packages of
13 Quorn products sold in the United States any statements suggesting
14 that the product is the same or similar to a mushroom, truffle or
15 morel. This includes deleting the following statement: “[T]here are
16 believed to be over 600,000 varieties of fungi in the world, many of
17 which are among the most sought after varieties of mushroom,
18 truffles, and morels.”
- 19 (b) Requiring Defendants to prominently disclose on the front of its
20 product packaging in bold print and large font that “**THIS**
21 **PRODUCT CONTAINS MOLD**” in order to cure the false
22 advertising Defendants have been disseminating for years.
- 23 (c) Requiring Defendants to prominently disclose on the back of its
24 product packaging in United States, and on the homepage of its
25 website the following statement: “**THE ‘MYCROPROTEIN’**
26 **INGREDIENT IN QUORN PRODUCTS IS FERMENTED**
27 **SOIL MOLD; IT IS NOT A MUSHROOM, TRUFFLE OR**
28 **MOREL.**”

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of herself and on behalf of the California Class and
3 Nationwide Class, respectfully prays for judgment against Defendants as follows:

4 **On the First Cause of Action:**

5 1. That the Court determine that the relevant claims in this complaint may be
6 maintained as a class action;

7 2. For injunctive relief including, but not limited to, an order:

8 (a) Requiring Defendants to immediately remove from all packages of
9 Quorn products sold in California any statements suggesting that the
10 product is the same or similar to a mushroom, truffle or morel. This
11 includes deleting the following statement: “[T]here are believed to
12 be over 600,000 varieties of fungi in the world, many of which are
13 among the most sought after varieties of mushroom, truffles, and
14 morels.”

15 (b) Requiring Defendants to prominently disclose on the front of its
16 product packaging in bold print and large font that “**THIS**
17 **PRODUCT CONTAINS MOLD**” in order to cure the false
18 advertising Defendants have been disseminating for years.

19 (c) Requiring Defendants to prominently disclose on the back of its
20 product packaging in California, and on the homepage of its website
21 the following statement: “**THE ‘MYCROPROTEIN’**
22 **INGREDIENT IN QUORN PRODUCTS IS FERMENTED**
23 **SOIL MOLD; IT IS NOT A MUSHROOM, TRUFFLE OR**
24 **MOREL.**”

25 3. For actual damages in an amount to be determined at trial but not less than
26 one thousand dollars (\$1000.00) per California Class member as provided by Civil
27 Code § 1780(a)(1).
28

