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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
  
FEB 15 2017  
  
G. Griffin

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF RIVERSIDE**  
15 **UNLIMITED JURISDICTION**

17 NICHOLAS MILLER and JEFFREY )  
BORNEMAN, individually and on behalf of )  
18 all others similarly situated, )  
19 Plaintiffs, )  
20 v. )  
21 WISE COMPANY INC., and DOES 1 through )  
10, inclusive, )  
22 Defendant. )

Case No: **RIC 1702659**  
**CLASS ACTION**  
**CLASS ACTION COMPLAINT FOR**  
**DAMAGES, RESTITUTION,**  
**DECLARATORY AND INJUNCTIVE**  
**RELIEF**  
  
**JURY TRIAL DEMANDED**

By Fax

1 Plaintiffs, by their attorneys, bring this class action against Defendant Wise Company Inc.  
2 (“Defendant” or “Wise Company”), on their own behalf and on behalf of all others similarly  
3 situated, and allege as follows:

#### 4 **INTRODUCTION**

5 1. This is a class action filed by Plaintiffs on behalf of themselves and all others  
6 similarly situated who have suffered and will continue to suffer harm as a result of Wise  
7 Company’s unlawful, unfair, and deceptive advertising and business practices. It arises out of  
8 Wise Company’s material misrepresentations and omissions in connection with the marketing and  
9 sale of its long-term and emergency food kits, which it touts as disaster preparedness solutions.  
10 Specifically, Wise Company represents on its website, its packaging, and other marketing  
11 materials that these food kits will last for and healthily sustain consumers for the advertised  
12 periods of time. However, Wise Company fails to disclose that if the consumer in fact eats the  
13 number of prescribed servings each day necessary to make the food kits last for the advertised  
14 period of time, the consumer will effectively starve or suffer adverse health effects given that the  
15 food kits provide drastically fewer calories and nutrients than are needed to adequately sustain  
16 adults for the advertised periods of time.

17 2. Wise Company’s misrepresentations and omissions violate the Consumers Legal  
18 Remedies Act, Civil Code §§ 1750, *et seq.* (the “CLRA”) and the False Advertising Law,  
19 Business & Professions Code §§ 17500, *et seq.* (the “FAL”), and constitute unlawful, unfair, and  
20 fraudulent business practices that violate the Unfair Competition Law, Business & Professions  
21 Code §§ 17200, *et seq.* (the “UCL”). Plaintiffs seek actual damages, restitution, and injunctive  
22 and declaratory relief to redress Wise Company’s wrongful conduct. Plaintiffs are also entitled to  
23 attorneys’ fees and costs pursuant to Civil Code § 1780, subdivision (e) and Code of Civil  
24 Procedure § 1021.5.

#### 25 **PARTIES**

26 3. Plaintiff Nicholas Miller is a resident of Palm Desert, California. On October 21,  
27 2015, Mr. Miller purchased for his personal use Wise Company’s 56 serving “grab and go” entrée  
28 and breakfast pack for \$124.99 plus \$16.00 shipping and handling through Wise Company’s

1 website.

2 4. Plaintiff Jeffrey Borneman is a resident of Los Angeles, California. On June 14,  
3 2016, Mr. Borneman purchased for his personal use Wise Company's One-Month Emergency  
4 Food Box for One Person for \$79.99 through Wise Company's website.

5 5. Defendant Wise Company Inc. is a Utah corporation that is headquartered in Salt  
6 Lake City, Utah. Wise Company sells its products through its website, as well as in retail stores  
7 throughout California such as Walmart, Costco and Sam's Club.

8 6. Defendants Does 1 through 10 are individuals and entities whose names and  
9 identities are presently unknown to Plaintiffs, who therefore sue them by such fictitious names.  
10 Plaintiffs are informed and believe and on that basis allege that each of the fictitiously named  
11 Defendants participated in the wrongful conduct described herein, is responsible for the harm  
12 alleged, and is jointly and severally liable to Plaintiffs the class members. Plaintiffs will amend  
13 this Complaint to state the true names and identities of such fictitiously named Defendants if and  
14 when they are ascertained.

15 **JURISDICTION AND VENUE**

16 7. Jurisdiction in this Court is proper because Plaintiffs are California residents and  
17 because Wise Company conducts business in California including in Riverside County. Wise  
18 Company contracts with affiliates in California such as Walmart, Costco, and Sam's Club that sell  
19 Wise Company's products to California consumers at retail locations throughout the state.  
20 Moreover, Wise Company has actively and directly marketed its products to California  
21 consumers, including but not limited to maintaining a blog on its website that highlights various  
22 impending disasters in California such as earthquakes, wildfires, and flooding and recommending  
23 Wise Company long-term and emergency food kits as a part of any California resident's disaster  
24 planning.<sup>1</sup> Plaintiffs are informed and believe, and on that basis allege, that a substantial portion  
25 of Wise Company's sales of long-term and emergency food kits are made to California residents.

26 \_\_\_\_\_  
27 <sup>1</sup> See, e.g., California & Oregon Wildfire Destroy Thousands of Acres This Summer (Nov. 30,  
28 2015), at <http://www.wisefoodstorage.com/blog/california-oregon-wildfire-destruction/> (last  
visited August 15, 2016); San Andreas Movie: Would You Be Ready for "The Big One"? (May  
29, 2015), at <http://www.wisefoodstorage.com/blog/san-andreas-movie-ready-big-one/> (last  
visited August 15, 2016).



1 U.S. population, which sets forth the minimum daily caloric needs of an average adult in the  
 2 United States:<sup>2</sup>

Activity level	Male			Female		
	Sedentary	Moderately active	Active	Sedentary	Moderately active	Active
<b>Age (years)</b>						
2	1,000	1,000	1,000	1,000	1,000	1,000
3	1,200	1,400	1,400	1,000	1,200	1,400
4	1,200	1,400	1,600	1,200	1,400	1,400
5	1,200	1,400	1,600	1,200	1,400	1,600
6	1,400	1,600	1,800	1,200	1,400	1,600
7	1,400	1,600	1,800	1,200	1,600	1,800
8	1,400	1,600	2,000	1,400	1,600	1,800
9	1,600	1,800	2,000	1,400	1,600	1,800
10	1,600	1,800	2,200	1,400	1,800	2,000
11	1,800	2,000	2,200	1,600	1,800	2,000
12	1,800	2,200	2,400	1,600	2,000	2,200
13	2,000	2,200	2,600	1,600	2,000	2,200
14	2,000	2,400	2,800	1,800	2,000	2,400
15	2,200	2,600	3,000	1,800	2,000	2,400
16	2,400	2,800	3,200	1,800	2,000	2,400
17	2,400	2,800	3,200	1,800	2,000	2,400
18	2,400	2,800	3,200	1,800	2,000	2,400
19	2,600	2,800	3,000	2,000	2,200	2,400
20	2,400	2,800	3,000	2,000	2,200	2,400
21	2,400	2,600	3,000	1,800	2,000	2,400
22	2,400	2,600	3,000	1,800	2,000	2,200
23	2,400	2,600	2,800	1,800	2,000	2,200
24	2,400	2,600	2,800	1,800	2,000	2,200
25	2,200	2,600	2,800	1,800	2,000	2,200
26	2,200	2,400	2,800	1,800	2,000	2,200
27	2,200	2,400	2,800	1,600	1,800	2,200
28	2,200	2,400	2,600	1,600	1,800	2,200
	2,000	2,400	2,600	1,600	1,800	2,000
	2,000	2,200	2,600	1,600	1,800	2,000
	2,000	2,200	2,400	1,600	1,800	2,000

22 According to the chart, an adult needs to consume from 1,600 to 3,200 calories per day. These  
 23 figures reflect the full range of caloric requirements of U.S. adults from an 18-year-old active  
 24 male to a sedentary female above the age of 76. The average minimum daily caloric for each of  
 25 these groups are 2,800 and 1,871, respectively.

28 <sup>2</sup> [http://www.cnpp.usda.gov/sites/default/files/usda\\_food\\_patterns/EstimatedCalorieNeedsPerDayTable.pdf](http://www.cnpp.usda.gov/sites/default/files/usda_food_patterns/EstimatedCalorieNeedsPerDayTable.pdf)

1            12.      Unbeknownst to Plaintiffs and other consumers, Wise Company’s long-term and  
2 emergency food kits provide *less than half* the daily calories necessary for an average adult to  
3 survive. Consequently, a person who credits Wise Company’s representations and attempts to  
4 survive on one of its “Long-Term Food Kits” for the specified period of time faces serious  
5 physical and mental health risks, including dehydration, hypothermia, hypotension, impaired  
6 renal and liver function, depression, and impaired cognition. Wise Company, which holds itself  
7 out as an expert in survival preparedness, misrepresents that its Long-Term Food Kits will  
8 healthily sustain an adult for the advertised period of time, and never discloses to consumers that  
9 eating the number of servings necessary to make its food kits last for the advertised period of time  
10 will result in adverse consequences.

11    **FACTS SPECIFIC TO PLAINTIFF MILLER**

12            13.      On October 21, 2015 Plaintiff Miller visited the Wise Company website. After  
13 reviewing the representations on the website for the Long-Term Food Kits, Plaintiff Miller  
14 purchased the 56-serving entrée and breakfast pack. On the product web page,<sup>3</sup> Wise Company  
15 represented that the entrée and breakfast pack was “[e]nough to feed 1 person for 1 month or 4  
16 adults for 1 week at 2 servings per day.” This representation was reiterated graphically under the  
17 product description.

18    **Figure 1**

19    **How many people will this feed and for how long?**



24            14.      Based on the representation that the entrée and breakfast pack was enough to feed  
25 1 person for 1 month or 4 adults for 1 week at 2 servings per day, Mr. Miller decided to purchase  
26 that pack, paying \$124.99 for the pack plus \$16.00 shipping and handling.

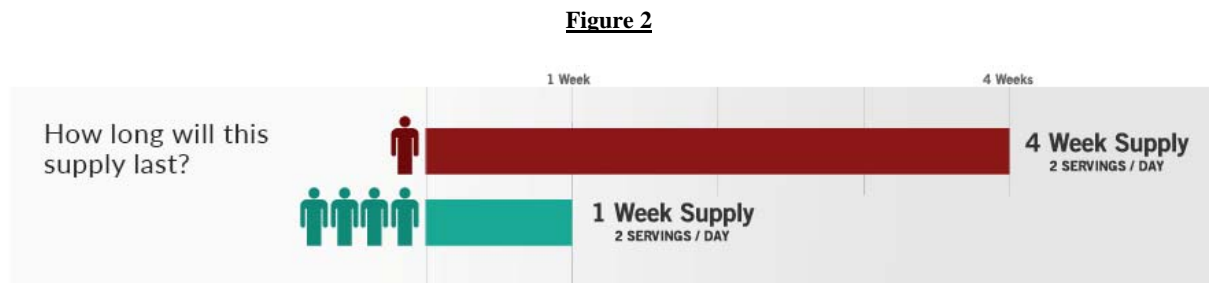
28            <sup>3</sup> A printout of the page as it existed in October 2015 is attached hereto as Exhibit A.

1 15. Despite the representation that the 56-serving entrée and breakfast pack contains  
2 enough food to feed one person for one month or four adults for one week, the pack contains only  
3 13,600 calories. This amounts to an average of only 453 calories per day over 30 days. An adult  
4 male, however, requires at least 2,000 calories a day according to the DGA, while an adult female  
5 requires at least 1,600 calories a day. The 56-serving pack, therefore, actually includes only  
6 enough to healthily feed one person for five to eight days or four adults for two to three days, not  
7 the 30 days represented. Not only are the calories insufficient to sustain the consumer for the  
8 advertised period of time, the nutrients provided are also insufficient to provide adequate  
9 nourishment, providing far less than 10% of the required vitamins and minerals deemed important  
10 for a healthy diet by the U.S. government. Wise Company, however, failed to disclose to Plaintiff  
11 Miller, and it continues to fail to disclose in any of its advertising, that portioning the 56-serving  
12 entrée and breakfast pack to last the promised one-month period would result in adverse health  
13 consequences.

14 16. Had Wise Company fully and truthfully disclosed that its 56-serving emergency  
15 food supply pack is not sufficient to healthily feed one adult for a month (or four adults for one  
16 week), Plaintiff Miller would not have purchased the pack. Alternatively, he would have paid a  
17 lower amount commensurate with the amount of time the food supply would actually last.

18 **FACTS SPECIFIC TO PLAINTIFF BORNEMAN**

19 17. On June 14, 2016, Plaintiff Borneman visited the Wise Company website. After  
20 reviewing the representations on the website, including the “One Month Emergency Food Box for  
21 1 Person,” Plaintiff Borneman purchased the box. On the product web page, Wise Company  
22 represented that (as implied in its name) the box would feed one person for one month. This  
23 representation is reiterated graphically in the product description on the product webpage:







1 class members are ascertainable as their names and addresses can be identified from Wise  
2 Company's and its affiliates' business, sales and shipping records. Plaintiffs do not anticipate any  
3 difficulties in the management of the action as a class action.

4 21. There is a well-defined community of interest in the questions of law and fact  
5 affecting the parties represented in this action. Common questions of law and fact exist as to all  
6 members of the class that predominate over questions affecting only individual class members.

7 The common legal and factual questions include, but are not limited to, the following:

- 8 a. Whether Wise Company represented that its Long-Term and  
9 Emergency Food Kits contained enough food to sustain an adult  
10 for the advertised periods of time, and whether those  
11 representations were untrue;
- 12 b. Whether Wise Company failed to disclose that eating the number  
13 of servings necessary to make its Long-Term and Emergency  
14 Food Kits last for the advertised periods of time would result in  
15 adverse health consequences;
- 16 c. Whether Wise Company's omissions and false representations  
17 violate the CLRA;
- 18 d. Whether Wise Company's false representations and omissions  
19 were likely to deceive the public in violation of the FAL;
- 20 e. Whether Wise Company engaged in unlawful, unfair, and/or  
21 fraudulent business practices in violation of the UCL; and
- 22 f. The appropriate measure of damages, restitutionary disgorgement  
23 and/or restitution.

24 22. Plaintiffs' claims are typical of the claims of the members of the class because of  
25 the similarity, uniformity, and common purpose of Wise Company's conduct. Each class member  
26 has sustained, and will continue to sustain economic injuries in the same manner as a result of  
27 Wise Company's conduct. Plaintiffs are advancing the same claims and legal theories on behalf of  
28 themselves and all members of the class. Plaintiffs were consumers who purchased a Wise

1 Company Long-Term or Emergency Food Kit that Wise Company represented contained enough  
2 food to feed an adult for the advertised period of time but which did not in fact contain enough  
3 food to last for that period of time. The Wise Company’s website and marketing materials were  
4 disbursed generally to all potential customers, and Wise Company misrepresented each of its  
5 Long-Term and Emergency Food Kits in the same way. Plaintiffs, therefore, are no different in  
6 any material respect from any other class member who purchased the same or similar products,  
7 and the relief sought is common to the class.

8 23. Plaintiffs are adequate representatives because their interests do not conflict with  
9 the interests of the members of the class they seek to represent. Plaintiffs have retained counsel  
10 competent and experienced in conducting complex class action litigation such as the present  
11 action. Plaintiffs and their counsel can and will adequately protect the interests of the class.

12 24. A class action is superior to other available means for the fair and efficient  
13 adjudication of this controversy. The damages suffered by each class member are relatively small,  
14 especially given the relatively small cost of the food kits at issue in comparison to the burden and  
15 expense of individual prosecution of the complex litigation necessitated by Wise Company’s  
16 conduct. Thus, it would be virtually impossible for members of the class individually to  
17 effectively redress the wrongs done to them. Moreover, even if members of the class could afford  
18 individual actions, it would still not be preferable to class-wide litigation. Individualized actions  
19 present the potential for inconsistent or contradictory judgments. By contrast, a class action  
20 presents far fewer management difficulties and provides the benefits of a single adjudication,  
21 economies of scale, consistent treatment, and comprehensive supervision by a single court.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of the Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*)**

24 25. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

25 26. Plaintiffs and each member of the proposed class are “consumers” within the  
26 meaning of Civil Code § 1761, subdivision (d).

27 27. The purchases of the Wise Company’s Long-Term and Emergency Food Kits by  
28 consumers constitute “transactions” within the meaning of Civil Code § 1761, subdivision (e) and

1 the food kits constitute “goods” within the meaning of Civil Code § 1761, subdivision (a).

2 28. Wise Company has violated, and continues to violate, the CLRA in at least the  
3 following respects:

- 4 a. Wise Company has represented that the transactions had characteristics which  
5 they did not have, in violation of Civil Code § 1770, subdivision (a)(5);  
6 b. Wise Company has represented that its Long-Term and Emergency Food Kits  
7 were of a particular standard, quality or grade, which they were not, in  
8 violation of Civil Code § 1770, subdivision (a)(7); and  
9 c. Wise Company has advertised its Long-Term and Emergency Food Kits with  
10 the intent not to provide what it advertised, in violation of Civil Code § 1770,  
11 subdivision (a)(9).

12 29. Wise Company knew, or should have known, that its representations as described  
13 herein violate consumer protection laws, and that these statements would be relied upon by  
14 consumers, including Plaintiffs and the members of the class. Wise Company, as a purveyor of  
15 disaster preparedness and survival products, including Long-Term and Emergency Food Kits,  
16 intended and had reason to know that consumers would rely on its expertise, skill and judgment to  
17 design and furnish goods that were suitable for the purposes for which they were advertised.  
18 Notwithstanding that knowledge, Wise Company intentionally named, advertised, marketed, and  
19 sold its Long-Term and Emergency Food Kits as lasting for specific periods of time when they  
20 clearly would not.

21 30. At all times, Wise Company had a duty to disclose that the calories and nutritional  
22 values provided in its Long-Term and Emergency Food Kits were inadequate to last for the  
23 advertised periods of time. As compared to Plaintiffs and the average consumer, Wise Company  
24 had superior knowledge regarding nutrition generally, what was required to healthily sustain a  
25 person in the event of a disaster or emergency, and the caloric and nutritional value of its own  
26 food products. Moreover, Wise Company made partial representations regarding the Long-Term  
27 and Emergency Food Kits while suppressing other material facts, namely that the food kits did  
28 not in fact contain enough food to last for the advertised periods, and that portioning them out to

1 do so would result in adverse health effects.

2 31. The above representations and failures to disclose were made to Plaintiffs and all  
3 members of the class. As set forth above, Plaintiffs reasonably relied on Wise Company's  
4 representation that its Long-Term and Emergency Food Kits would last the period of time  
5 advertised in the name of the product, and contained food to healthily feed an adult for the  
6 advertised periods of time. Such representations would be material to a reasonable consumer in  
7 the market for long-term and emergency food kits. Given the materiality of the representations,  
8 reliance may be presumed or inferred for all members of the class. As a result, Plaintiffs and  
9 members of the class have suffered damages based on the difference in value between the Long-  
10 Term and Emergency Food Kits as represented, and the lower value they in fact had, and have  
11 also suffered other damages in an amount to be proven at trial.

12 32. Plaintiffs request that this Court enjoin Wise Company from continuing to engage  
13 in the unlawful and deceptive methods, acts and practices alleged above, pursuant to California  
14 Civil Code § 1780, subdivision (a)(2). Unless Wise Company is permanently enjoined from  
15 continuing to engage in such violations of the CLRA, future consumers of Wise Company's food  
16 products will be damaged by its acts and practices in the same way as have Plaintiffs and the  
17 members of the class.

18 33. On January 12, 2016, Plaintiff Miller, through his counsel and pursuant to Civil  
19 Code § 1782, sent Wise Company via certified mail a letter notifying Wise Company of its  
20 violations of the CLRA and demanding that Wise Company repair, or otherwise rectify, problems  
21 associated with its illegal behavior which are in violation of the CLRA. Wise Company never  
22 responded.

23 34. Pursuant to Civil Code section 1780, subdivision (a), Plaintiffs and members of the  
24 class are entitled to an award of actual damages as well as an injunction prohibiting Wise  
25 Company from continuing to deceptively market the long-term and emergency food kits.  
26 Plaintiffs are also entitled to an award of their reasonable attorneys' fees and costs pursuant to  
27 Civil Code § 1780, subdivision (e).

28 //

1 **SECOND CAUSE OF ACTION**

2 **(False Advertising in Violation of Cal. Business & Professions Code §§ 17500, *et seq.*)**

3 35. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

4 36. Wise Company uses advertising on its website and on the packaging of its Long-  
5 Term and Emergency Food Kits to sell these food kits.

6 37. The advertising disseminated by Wise Company is deceptive, untrue, and/or  
7 misleading within the meaning of California Business & Professions Code §§ 17500, *et seq.*  
8 because it misrepresents the truth, omits material information, and is likely to deceive members of  
9 the general public.

10 38. In making and disseminating the false advertising alleged herein, Wise Company  
11 knew or should have known that the statements were untrue and/or misleading, and it acted in  
12 violation of California Business & Professions Code §§ 17500, *et seq.*

13 39. The misrepresentations and omissions by Wise Company of the material facts  
14 detailed above constitute false and misleading advertising and therefore constitute a violation of  
15 California Business & Professions Code §§ 17500, *et seq.*

16 40. Through its deceptive acts and practices, Wise Company has improperly and  
17 illegally obtained money from Plaintiffs and members of the class, and has been unjustly  
18 enriched. Plaintiffs are entitled to restitution of all such money as well as an injunction  
19 prohibiting Wise Company from continuing to violate the FAL, as discussed above. Otherwise,  
20 Plaintiffs and those similarly situated will continue to be harmed by Wise Company's false and/or  
21 misleading advertising.

22 41. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an  
23 order directing Wise Company to reform its advertising so as fully to disclose the true facts.  
24 Plaintiffs additionally request an order requiring Wise Company to disgorge its ill-gotten gains  
25 and/or award full restitution of all monies wrongfully acquired by Wise Company by means of  
26 such acts of false advertising, plus interest, which ill-gotten gains are still retained by Wise  
27 Company. Members of the class and the general public may be irreparably harmed, and Plaintiffs  
28

1 and class members will be denied an effective and complete remedy if such an order is not  
2 granted.

3 42. A successful outcome in this action will result in the enforcement of important  
4 rights affecting the public interest by protecting the general public from unlawful and unfair  
5 practices and adverse health effects, promoting honest and fair competition, and maintaining the  
6 integrity of other vendors who sell long-term and emergency food kits in this state, who might  
7 otherwise be tempted to engage in unlawful and unfair practices. This action will result in a  
8 significant public benefit through the issuance of an injunction against unlawful and unfair  
9 business practices. Unless this complaint is prosecuted, Wise Company's activities will go un-  
10 remedied and will continue, and California consumers will continue to be victimized by Wise  
11 Company' unlawful and unfair business practices. Plaintiffs are, accordingly, entitled to an award  
12 of attorneys' fees and costs in prosecuting this action under Code of Civil Procedure § 1021.5, as  
13 well as to the other relief prayed for herein.

14 **THIRD CAUSE OF ACTION**

15 **(“Unlawful” Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

16 43. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

17 44. The UCL defines unfair business competition to include any “unlawful, unfair or  
18 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.  
19 Cal. Bus. Prof. Code § 17200.

20 45. A business act or practice is “unlawful” if it violates any established state or  
21 federal law.

22 46. By committing the unlawful acts and practices alleged above, Wise Company has  
23 violated the Consumers Legal Remedies Act and the False Advertising Law and therefore has  
24 engaged, and continues to engage, in unlawful business practices within the meaning of California  
25 Business and Professions Code §§ 17200, *et seq.*

26 47. Through its unlawful acts and practices, Wise Company has obtained, and  
27 continues to obtain, money from members of the class. Plaintiffs and class members are entitled  
28 to restitution of all such money as well as an injunction prohibiting Wise Company from

1 continuing to violate the UCL or violating it in the same fashion in the future as discussed herein.  
2 Otherwise, members of the class and the general public may be irreparably harmed and/or denied  
3 an effective and complete remedy if such an order is not granted.

4 48. A successful outcome in this action will result in the enforcement of important  
5 rights affecting the public interest by protecting the general public from unlawful and unfair  
6 practices, promoting honest and fair competition, and maintaining the integrity of other vendors  
7 who sell long-term and emergency food kits in this state who might otherwise be tempted to  
8 engage in unlawful and unfair practices. This action will result in a significant public benefit  
9 through the issuance of an injunction against unlawful and unfair business practices. Unless this  
10 complaint is prosecuted, Wise Company's activities will go un-remedied and will continue, and  
11 California consumers will continue to be victimized by Wise Company' unlawful and unfair  
12 business practices. Plaintiffs are, accordingly, entitled to an award of attorneys' fees and costs in  
13 prosecuting this action under Code of Civil Procedure § 1021.5, as well as to the other relief  
14 prayed for herein.

15 **FOURTH CAUSE OF ACTION**

16 **(“Fraudulent” Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

17 49. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

18 50. The UCL defines unfair business competition to include any “unlawful, unfair or  
19 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.  
20 Cal. Bus. & Prof. Code §17200.

21 51. A business act or practice is “fraudulent” under the UCL if it actually deceives or  
22 is likely to deceive members of the public.

23 52. Wise Company's acts and practices of advertising, promoting and labeling its  
24 Long-Term and Emergency Food Kits has the effect of misleading consumers into believing the  
25 products are something they are not.

26 53. As a result of the conduct described above, Wise Company has been, and will  
27 continue to be, unjustly enriched at the expense of Plaintiffs and members of the class.  
28 Specifically, Wise Company has been unjustly enriched by the profits it has obtained from

1 Plaintiffs and members of the class from the purchases of the Wise Company’s long-term and  
2 emergency food kits.

3 54. Through its unfair acts and practices, Wise Company has improperly obtained, and  
4 continues to obtain, money from Plaintiffs and members of the class. Plaintiffs are entitled to  
5 restitution of all such money as well as an injunction prohibiting Wise Company from continuing  
6 to violate the UCL or violating it in the same fashion in the future as discussed herein. Otherwise,  
7 members of the class and the public may be irreparably harmed and Plaintiffs and class members  
8 will be denied an effective and complete remedy if such an Order is not granted.

9 55. A successful outcome in this action will result in the enforcement of important  
10 rights affecting the public interest by protecting the general public from unlawful and unfair  
11 practices, promoting honest and fair competition, and maintaining the integrity of other vendors  
12 who sell long-term and emergency food kits in this state who might otherwise be tempted to  
13 engage in unlawful and unfair practices. This action will result in a significant public benefit  
14 through the issuance of an injunction against unlawful and unfair business practices. Unless this  
15 complaint is prosecuted, Wise Company’s activities will go un-remedied and will continue, and  
16 California consumers will continue to be victimized by Wise Company’ unlawful and unfair  
17 business practices. Plaintiffs are, accordingly, entitled to an award of attorneys’ fees and costs in  
18 prosecuting this action under Code of Civil Procedure § 1021.5, as well as to the other relief  
19 prayed for herein.

20 **FOURTH CAUSE OF ACTION**

21 **(“Unfair” Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

22 56. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

23 57. The UCL defines unfair business competition to include any “unlawful, unfair or  
24 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.  
25 Cal. Bus. Prof. Code § 17200.

26 58. A business act or practice is “unfair” under the UCL if the reasons, justifications  
27 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged  
28 victims.







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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all causes of action and/or issues so triable.

Respectfully submitted,

Dated: February 15, 2017

CHAVEZ & GERTLER LLP  
BRAUN LAW GROUP, P.C.  
LAW OFFICES OF ANDREW KIERSTEAD

By:   
Nance F. Becker

*Attorneys for Plaintiffs and the Proposed Class*