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

ANGELA KENNARD, on behalf of herself,  
all others similarly situated, and the general  
public,

Plaintiff,

v.

KELLOGG SALES COMPANY,

Defendant.

Case No: 21-cv-7211

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF:**

**CAL. CIV. CODE §§ 1750 *ET SEQ.*;**

**CAL. BUS. & PROF. CODE §§17500 *ET SEQ.*;**

**CAL. BUS. & PROF. CODE §§17200 *ET SEQ.*; AND**

**FOR BREACH OF EXPRESS & IMPLIED  
WARRANTIES.**

DEMAND FOR JURY TRIAL

1 Plaintiff Angela Kennard, on behalf of herself, all others similarly situated, and the general public,  
2 by and through her undersigned counsel, brings this action against Kellogg Sales Company (“Kellogg”), and  
3 alleges the following upon her own personal knowledge or, where she lacks personal knowledge, upon  
4 information and belief, including the investigation of her counsel.

5 **SUMMARY OF CASE**

6 1. Kellogg is the manufacturer and seller of Morningstar Farms “VEGGIE” products, including  
7 different varieties of “VEGGIE BURGERS,” “VEGGIE DOGS,” “VEGGIE CHIK’N,” “VEGGIE MEAL  
8 STARTERS,” “VEGGITIZERS,” and “VEGGIE BREAKFAST” (the “Veggie Products”).

9 2. Kellogg prominently represents that the Veggie Products are “VEGGIE,” but this  
10 representation is false or at least highly misleading because the predominant non-water ingredient in all of  
11 the Veggie Products is not vegetables—or even vegetable-based—but instead, grain or oil.

12 3. Plaintiff brings this action to enjoin Kellogg from continuing to falsely advertise the Veggie  
13 Products in this manner, and to recover restitution and damages for herself and other purchasers.

14 **JURISDICTION & VENUE**

15 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class  
16 Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of  
17 interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from  
18 Kellogg. In addition, more than two-thirds of the members of the class reside in states other than the state in  
19 which Kellogg is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under  
20 28 U.S.C. § 1332(d) do not apply.

21 5. The Court has personal jurisdiction over Kellogg pursuant to Cal. Code Civ. P. § 410.10, as a  
22 result of Kellogg’s substantial, continuous and systematic contacts with the state and because Kellogg has  
23 purposely availed itself of the benefits and privileges of conducting business activities within the state.

24 6. Venue is proper in this Northern District of California pursuant to 28 U.S.C. § 1391(b) and  
25 (c), because Kellogg resides (*i.e.*, is subject to personal jurisdiction) in this district, and a substantial part of  
26 the events or omissions giving rise to the claims occurred in this district.

1 **INTRADISTRICT ASSIGNMENT**

2 7. This civil action arises out of acts and omissions of Kellogg that occurred in San Francisco  
3 County. Accordingly, pursuant to Civil Local Rule 3-2(c), (d), this action is correctly assigned to either the  
4 San Francisco or Oakland Division.

5 **PARTIES**

6 8. Plaintiff Angela Kennard is a resident of San Francisco, California.

7 9. Defendant Kellogg Sales Company is a Delaware corporation with its principal place of  
8 business in Battle Creek, Michigan.

9 **FACTS**

10 **I. The Veggie Products Bear Misleading “VEGGIE” Claims**

11 10. Over the last decade, as many consumers have reduced or ceased their meat consumption,  
12 food manufacturers have introduced a variety of plant-based, meat-alternative products to the market, which  
13 can be made from a variety of primary ingredients, such as beans (e.g., black-bean burger), tofu, grains, and  
14 vegetables.

15 11. Manufacturers of meat-alternative foods typically call out the primary ingredient to help  
16 consumers distinguish and choose among different options. Consumers understand ingredient call-outs in  
17 product names for meat-alternatives to comprise the product’s primary ingredient; for example, consumers  
18 understand a product marketed as a “bean-burger” to be made primarily from beans, and a “tofurkey” dog to  
19 be made primarily from tofu.

20 12. Accordingly, reasonable consumers understand and expect that products marketed as  
21 “veggie” are made from vegetables, rather than beans or other legumes, grains, tofu, oil, or anything else.<sup>1</sup>

22 13. Kellogg manufactures, markets, and sells the following MorningStar brand Veggie Products,  
23 which are the subject of this lawsuit:

24 MorningStar Farms Veggie Burgers:

- 25 • Grillers Prime Burgers  
26 • Grillers Originals

27 <sup>1</sup> Merriam-Webster defines a veggie burger as “a patty chiefly of vegetable-derived protein used as a meat  
28 substitute.” Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/dictionary/veggie%20burger>

- Meat Lovers
- Cheezeburger

MorningStar Farms Veggie Dogs:

- Corn Dogs
- Veggie Dogs

MorningStar Farms Veggie Chik'n:

- Chik'n Nuggets
- BBQ Chik'n Nuggets
- Zesty Ranch Chik'n Nuggets
- Sweet Mustard Chik'n Nugget
- Original Chik Patties
- Buffalo Chik Patties

MorningStar Farms Veggie Meal Starters:

- Italian Sausage Style Crumbles
- Meatballs

MorningStar Farms Veggie Breakfast:

- Bacon Strips
- Original Sausage Patties
- Sausage, Egg, & Cheese
- Sausage Links
- Hot & Spicy Sausage Patties
- Maple Flavored Sausage Patties

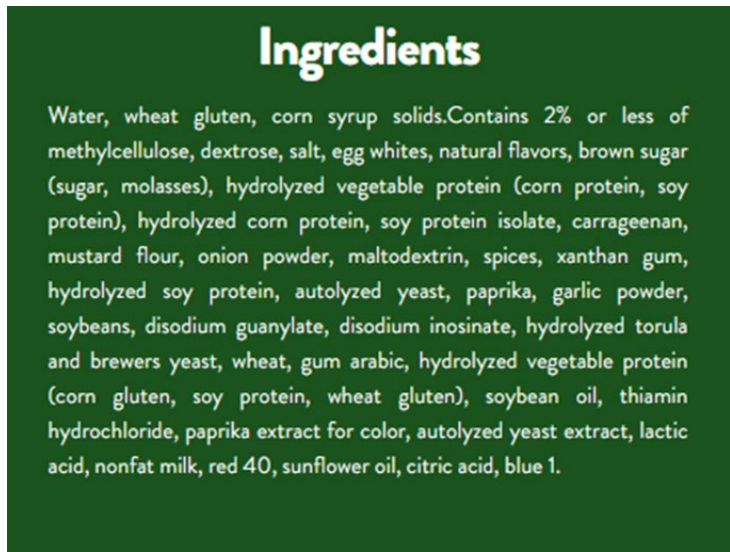
MorningStar Farms Veggitizers:

- Buffalo Wings
- Parmesan Garlic Wings
- Popcorn Chik'n
- Pepperoni Pizza Bites
- Sausage Pizza Bites
- Chorizo Nacho Bites
- Spicy Popcorn Chik'n.

14. The packaging of each of the Veggie Products prominently claims the product is “VEGGIE,” in a colorful banner across the front of the package, as shown in the examples below.



1 15. Contrary to their name and marketing, however—and discounting water—the Veggie  
 2 Products are primarily made from grain or oil. For example, the first three ingredients in Kellogg’s  
 3 MorningStar Farms’ “VEGGIE DOGS” are “Water, wheat gluten, [and] corn syrup solids”;<sup>2</sup> the product  
 4 “Contains 2% or less of” various other ingredients, only some of which are vegetable-based (like “hydrolyzed  
 5 vegetable protein”).



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15 16. Because the predominant ingredient in each of the Veggie Products is grain or oil, Kellogg’s  
 16 representation that the Veggie Products are “VEGGIE” is false or at least highly misleading to the reasonable  
 17 consumer.

18 **II. The Veggie Products’ Misleading Labeling Violates California & Federal Food Labeling Laws**

19 17. The Veggie Products’ “VEGGIE” labeling violates both federal food labeling laws, and  
 20 California Health and Safety Code §§109875, *et. seq.* (the “Sherman Law”), which has expressly adopted  
 21 the federal food labeling requirements as its own. *See, e.g., id.* §§ 110100, 110660.

22 18. First, the challenged “VEGGIE” claims are false and misleading for the reasons described  
 23 herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food whose “label is false or  
 24 misleading in any particular.”

25 19. Second, “[t]he labeling of a food which contains two or more ingredients may be misleading  
 26 by reason (among other reasons) of the designation of such food in such labeling by a name which includes

27  
28 <sup>2</sup> Corn syrup solids is a dry version of corn-syrup—which is a glucose-based sweetener and does not constitute a vegetable or a vegetable product because it is actually sugar.

1 or suggests the name of one or more but not all such ingredients, even though the names of all such  
2 ingredients are stated elsewhere in the labeling.” 21 C.F.R. § 101.18(b). Kellogg violates this provision in  
3 that it designates the Products as “VEGGIE,” i.e., vegetable, despite that they are primarily composed of  
4 non-vegetable ingredients, like wheat gluten and oil.

5 20. Third, Kellogg violates 21 C.F.R. § 102.5(b) by using product names that include the term  
6 “VEGGIE” while failing to disclose the percentage of vegetables in the products, which have a material  
7 bearing on the price and consumer acceptance of the Veggie Products. Specifically, 21 C.F.R. § 102.5(b)  
8 requires that a food product’s name “include the percentage(s) of any characterizing ingredient(s) or  
9 component(s) when the proportion of such ingredient(s) or component(s) in the food has a material bearing  
10 on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an  
11 erroneous impression that such ingredient(s) or component(s) is present in an amount greater than is actually  
12 the case.” 21 C.F.R. § 102.5(b). Kellogg violates 21 C.F.R. § 102.5(b) by failing to include the percentage  
13 of vegetables in the Veggie Products because its use of “VEGGIE” in the product names gives the erroneous  
14 impression that vegetables are present in a greater amount than is actually the case.

15 **PLAINTIFF’S PURCHASE, RELIANCE, AND INJURY**

16 21. During the Class Period, Plaintiff Angela Kennard purchased various Veggie Products,  
17 including Morning Star Veggie Burger Products, Veggie Breakfast Products, and Veggie Chik’n Products  
18 from local stores, including Trader Joe’s locations in San Francisco.

19 22. In purchasing the Veggie Products, Plaintiff read and relied on Kellogg’s description of the  
20 Products as “VEGGIE.” Those representations, however, were false or at least highly misleading, and had  
21 the capacity, tendency, and likelihood to confuse or confound Plaintiff and other consumers acting reasonably  
22 because, as described herein, the Veggie Products’ predominant ingredients are not vegetables or vegetable-  
23 based, but grain- or oil-based.

24 23. The Veggie Products cost more than similar products without misleading labeling, and would  
25 have cost less absent the false and misleading statements complained of herein.

26 24. Absent the false and misleading labeling complained of herein, Plaintiff and other Class  
27 members would only have been willing to pay less for the Veggie Products or would not have purchased  
28 them at all.



1 34. Questions of law and fact common to Plaintiff and the Class include:

2 a. Whether labeling the Veggie Products as “VEGGIE” is material;

3 b. Whether labeling the Veggie Products as “VEGGIE” is false or misleading to the  
4 reasonable consumer;

5 c. Whether labeling the Veggie Products as “VEGGIE” violates public policy;

6 d. Whether labeling the Veggie Products as “VEGGIE” violates state or federal food  
7 statutes or regulations;

8 e. The proper amount of damages, including punitive damages;

9 f. The proper amount of restitution;

10 g. The proper scope of injunctive relief; and

11 h. The proper amount of attorneys’ fees.

12 35. These common questions of law and fact predominate over questions that affect only  
13 individual Class members.

14 36. Plaintiff’s claims are typical of Class members’ claims because they are based on the same  
15 underlying facts, events, and circumstances relating to Kellogg’s conduct. Specifically, all Class members,  
16 including Plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the  
17 Veggie Products, and suffered economic injury because they paid more for the Veggie Products that were  
18 misrepresented in the same manner. Absent Kellogg’s practice of deceptively and unlawfully labeling the  
19 Veggie Products as “VEGGIE,” Plaintiff and other Class members would have paid less for the Veggie  
20 Products.

21 37. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no  
22 interests incompatible with the interests of the Class, and has retained counsel competent and experienced in  
23 class action litigation, and specifically in litigation involving false and misleading advertising of food  
24 products.

25 38. Class treatment is superior to other options for resolution of the controversy because the relief  
26 sought for each Class member is small, such that, absent representative litigation, it would be infeasible for  
27 Class members to redress the wrongs done to them.



1 39. Kellogg has acted on grounds applicable to the Class, thereby making appropriate final  
2 injunctive and declaratory relief concerning the Class as a whole.

3 40. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a),  
4 23(b)(2), and 23(b)(3). In addition, it may be appropriate, pursuant to Fed. R. Civ. P. 23(c)(4), to maintain  
5 this action as a class action with respect to particular issues.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***

9 41. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth  
10 fully herein.

11 42. The CLRA prohibits deceptive practices in connection with the conduct of a business that  
12 provides goods, property, or services primarily for personal, family, or household purposes.

13 43. Kellogg's false and misleading labeling and other policies, acts, and practices described herein  
14 were designed to, and did, induce the purchase and use of Kellogg's Veggie Products for personal, family,  
15 or household purposes by Plaintiff and other Class members, and violated and continue to violate at least the  
16 following sections of the CLRA:

17 a. § 1770(a)(5): Representing that goods or services have characteristics, ingredients,  
18 uses, benefits, or quantities which they do not have;

19 b. § 1770(a)(7): Representing that goods or services are of a particular standard, quality,  
20 or grade, or that goods are of a particular style or model, if they are of another;

21 c. § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and

22 d. § 1770(a)(16): Representing the subject of a transaction has been supplied in  
23 accordance with a previous representation when it has not.

24 44. Kellogg profited from its sales of the falsely, deceptively, and unlawfully advertised Veggie  
25 Products to unwary consumers.

26 45. Kellogg's wrongful business practices regarding the Veggie Products constituted, and  
27 constitute, a continuing course of conduct in violation of the CLRA.

1 46. In compliance with Cal. Civ. Code § 1782, Plaintiff sent written notice to Kellogg of her  
2 claims, but Kellogg has failed, after 30 days, to satisfy Plaintiff’s demand or to rectify the behavior.  
3 Accordingly, Plaintiff, on behalf of herself and the Class, seeks injunctive relief, restitution, statutory  
4 damages, compensatory damages, punitive damages, and reasonable attorneys’ fees and costs.

5 47. In compliance with Cal. Civ. Code § 1782(d), an affidavit of venue is filed concurrently  
6 herewith.

7 48. Because these claims are subject to a three-year statute of limitations, while Plaintiff’s claims  
8 for restitution under the UCL are subject to a four-year statute of limitations, and because Plaintiff’s claims  
9 under the UCL’s “unfair” and “unlawful” prongs are subject to different elements and standards, Plaintiff’s  
10 legal remedies under the CLRA are inadequate to fully compensate Plaintiff and other Class Members for all  
11 of Kellogg’s challenged behavior.

12 **SECOND CAUSE OF ACTION**

13 **Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.***

14 49. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth  
15 fully herein.

16 50. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any  
17 employee thereof with intent directly or indirectly to dispose of real or personal property or to perform  
18 services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the  
19 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

20 51. As alleged herein, the advertisements, labeling, policies, acts, and practices of Kellogg  
21 relating to its marketing the Veggie Products as “VEGGIE” was and is likely to mislead consumers acting  
22 reasonably as to the nature of the predominant ingredient in the Veggie Products.

23 52. Plaintiff suffered injury in fact as a result of Kellogg’s actions as set forth herein because  
24 Plaintiff purchased Veggie Products in reliance on Kellogg’s false and misleading “VEGGIE” claims.

25 53. Kellogg’s business practices as alleged herein constitute unfair, deceptive, untrue, and  
26 misleading advertising pursuant to the FAL because Kellogg has advertised the Veggie Products in a manner  
27 that is untrue and misleading, which Kellogg knew or reasonably should have known.  
28

1 54. Kellogg profited from its sales of the falsely and deceptively advertised Veggie Products to  
2 unwary consumers.

3 55. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and the Class are entitled  
4 to injunctive and equitable relief and restitution.

5 56. Because the Court has broad discretion to award restitution under the FAL and could, when  
6 assessing restitution under the FAL, apply a standard different than that applied to assessing damages under  
7 the CLRA or commercial code (for Plaintiff's breach of warranty claims), and because restitution is not  
8 limited to returning to Plaintiff and Class members monies in which they have an interest, but more broadly  
9 serves to deter the offender and others from future violations, the legal remedies available under the CLRA  
10 and commercial code are more limited than the equitable remedies available under the FAL, and are therefore  
11 inadequate.

12 **THIRD CAUSE OF ACTION**

13 **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.***

14 57. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth  
15 fully herein.

16 58. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. &  
17 Prof. Code § 17200.

18 59. The acts, omissions, misrepresentations, practices, and non-disclosures of Kellogg as alleged  
19 herein constitute business acts and practices.

20 **Fraudulent**

21 60. A statement or practice is fraudulent under the UCL if it is likely to deceive the public,  
22 applying a reasonable consumer test.

23 61. As set forth herein, the Kellogg's "VEGGIE" labeling claims on the Veggie Products are  
24 likely to deceive reasonable consumers and the public.

25 **Unlawful**

26 62. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following  
27 laws:  
28

1 a. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* (including 21  
2 C.F.R. §§ 102.5(b) and 101.18(b));

3 b. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code  
4 §§ 110100 *et seq.*;

5 c. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and

6 d. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*

7 63. Because Plaintiff's claims under the "unlawful" prong of the UCL sweep more broadly than  
8 her claims under the FAL, CLRA, or UCL's "fraudulent" prong, Plaintiff's legal remedies are inadequate to  
9 fully compensate Plaintiff for all of Kellogg's challenged behavior.

10 **Unfair**

11 64. Kellogg's conduct with respect to the manufacturing, labeling, advertising, and sale of the  
12 Veggie Products is unfair because Kellogg's conduct was immoral, unethical, unscrupulous, or substantially  
13 injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its  
14 victims.

15 65. Kellogg's conduct with respect to the manufacturing, labeling, advertising, and sale of the  
16 Veggie Products was also unfair because it violated public policy as declared by specific constitutional,  
17 statutory or regulatory provisions, including but not limited to the Federal Food, Drug, and Cosmetic Act,  
18 and the California False Advertising Law.

19 66. Kellogg's conduct with respect to the manufacturing, labeling, advertising, and sale of the  
20 Veggie Products was also unfair because the consumer injury was substantial, not outweighed by benefits to  
21 consumers or competition, and not one consumers themselves could reasonably have avoided.

22 67. Because Plaintiff's claims under the "unfair" prong of the UCL sweep more broadly than her  
23 claims under the FAL, CLRA, or UCL's "fraudulent" prong, Plaintiff's legal remedies are inadequate to fully  
24 compensate Plaintiff for all of Kellogg's challenged behavior.

25 68. Kellogg profited from its sale of the falsely, deceptively, and unlawfully advertised Veggie  
26 Products to unwary consumers.





- 1 c. An Order enjoining Kellogg from engaging in the unfair, unlawful, and deceptive  
2 business practices and false advertising complained of herein;
- 3 d. An Order compelling Kellogg to conduct a corrective advertising campaign;
- 4 e. An Order compelling Kellogg to recall and destroy all misleading and deceptive  
5 advertising materials and product labels;
- 6 f. An Order requiring Kellogg to disgorge all monies, revenues, and profits obtained by  
7 means of any wrongful act or practice;
- 8 g. An Order requiring Kellogg to pay restitution to restore all funds acquired by means  
9 of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or  
10 practice, untrue or misleading advertising, plus pre-and post-judgment interest thereon;
- 11 h. An Order requiring Kellogg to pay all actual, statutory, compensatory, and punitive  
12 damages permitted under the causes of action alleged herein;
- 13 i. Pre- and post-judgment interest;
- 14 j. An award of attorneys' fees and costs; and
- 15 k. Any other and further relief that Court deems necessary, just, or proper.

16 **JURY DEMAND**

17 Plaintiff hereby demands a trial by jury on all issues so triable.

18  
19 Dated: September 17, 2021

/s/ Paul K. Joseph

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