

# EXHIBIT 1

1 Robert J. Stein, III (CA Bar No. 212495)  
rob@DSS.law  
2 Anthony E. DiVincenzo (CA Bar No. 259714)  
aedivincenzo@dsschicagolaw.com  
3 DiVINCENZO SCHOENFIELD STEIN  
3 Park Plaza, Suite 1650  
4 Irvine, CA 92614  
Tel: (714) 881-7002

5  
6 Anthony Lanza (CA Bar No. 156703)  
tony@lanzasmith.com  
7 Ramin T. Montakab (CA Bar No. 297551)  
ramin@lanzasmith.com  
LANZA & SMITH, PLC  
8 3 Park Plaza, Suite 1650  
Irvine, CA 92614  
9 Tel: (949) 221-0490

10 Attorneys for Plaintiff  
DARREN CLEVINGER AND THE CLASS

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF ORANGE**  
14

15 DARREN CLEVINGER on behalf of himself  
and all others similarly situated,

16 Plaintiff,

17 v.

18 WELCH FOODS INC., A COOPERATIVE,  
19 and DOES 1 through 25, inclusive,

20 Defendants.  
21  
22  
23  
24

**CASE NO.:** 30-2020-01145532-CU-BT-CXC

**CLASS ACTION COMPLAINT FOR:**

1. **Violation of Cal. Unfair Competition, Cal. Business & Professions Code §17200, et seq.**
2. **Violation of Cal. Consumers Legal Remedies Act, Cal. Civil Code §1750, et seq.;**

25 Assigned for All Purposes  
26 Judge William Cluster

27 CX-104  
28

1 Plaintiff Darren Clevenger (“Plaintiff”), by and through his attorneys, DiVincenzo  
2 Schoenfield Stein and Lanza & Smith, PLC, brings this class action complaint on behalf of himself  
3 and all others similarly situated (the “Class”), alleging facts related to his own purchases based on  
4 personal knowledge and other facts based upon the investigation of counsel.

### 5 NATURE OF THE ACTION

6 1. This is a consumer protection class action arising from Welch Foods Inc., A  
7 Cooperative (“Defendant”) engaging in the practice of “slack-filling” boxes of its Welch’s®  
8 Reduced Sugar Fruit Snacks and Fruit ‘n Yogurt™ Snacks. The practice of using oversized  
9 containers with substantial, nonfunctional, empty space inside them is called “slack-fill” and is  
10 illegal under California and Federal law. Both Federal and California laws have long prohibited  
11 nonfunctional slack-fills for food containers. Although the legislative and administrative basis and  
12 policies behind the law are based, in part, on findings that this practice leads consumers to believe  
13 they are receiving a greater quantity of the food than is in the package (even if the quantity or weight  
14 is accurately displayed on the label), Plaintiff’s claims are based solely on the grounds that  
15 Defendant’s conduct is unlawful and unfair. Plaintiff does **not** assert any claims based on  
16 misrepresentation.

17 2. Welch’s® Fruit Snacks with Reduced Sugar and Welch’s® Fruit ‘n Yogurt™ boxes  
18 contain eight pouches of snacks, compared to ten pouches in other flavors of Welch’s® Fruit Snacks.  
19 The boxes Welch’s® Fruit Snacks with Reduced Sugar and Welch’s® Fruit ‘n Yogurt™ Snacks  
20 contain a significant amount of nonfunctional slack-fill compared to other flavors of Welch’s® Fruit  
21 Snacks. In those boxes, Welch’s® includes two more identically sized pouches and 33% more  
22 content by volume. By violating Federal and California slack-fill laws, Defendant’s products are  
23 deemed “misbranded” and cannot legally be sold in interstate commerce. Defendant’s abuses of state  
24 and federal laws violate the unlawful and unfair prongs of California’s Unfair Competition Law (Bus  
25 & Prof. Code §17200, *et seq.*) (“UCL”), for which Plaintiff asserts claims for unlawful and unfair  
26 practices only; he does *not* assert claims for deceptive or fraudulent practices under the UCL.  
27 Defendant’s conduct also violates California’s Consumer Legal Remedies Act, Section 1750 of the  
28 Cal. Civil Code, *et seq* (“CLRA”).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PARTIES**

3. Plaintiff is, and at all relevant times was, an adult residing in Orange County, California. Clevenger purchased Defendant’s Welch’s® Fruit Snacks for some time from various stores, including but not limited to, Walmart and Albertson’s in Orange County, California. Clevenger noticed that the Welch’s® Fruit Snacks with Reduced Sugar contained significant amounts of empty space. Specifically, he realized that Welch’s® boxes of Fruit Snacks with Reduced Sugar contained two less pouches per box than other non-premium varieties of Welch’s® Fruit Snacks (“Regular Welch’s® Fruit Snacks”). He also noticed that Welch’s® Fruit ‘n Yogurt™ Snacks he had purchased also only contained eight pouches despite the box being the exact same size as Regular Welch’s® Fruit Snacks boxes with ten pouches. Clevenger suffered injury in fact as a result of Defendant’s conduct because the boxes were illegally slack-filled -- containing at least two less pouches of snacks than they should have but for the illegal slack-fill. Therefore, the products were misbranded and could not legally be sold.

4. Defendant Welch Foods Inc. is a cooperative based and headquartered in Concord, Massachusetts, and incorporated in Michigan. Welch's products include grape juices, jams, fruit snacks, and jellies, which are sold internationally.

5. In addition to the Defendant named in this action, upon information and belief, there are other parties, known and unknown, who participated in the conduct as alleged herein. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants named herein as DOES 1 through 25, inclusive, are presently unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Each of these fictitiously named defendants is responsible for the events and occurrences alleged herein which were legally and proximately cause by their conduct. Plaintiff will seek leave to amend this pleading to state the true names and capacities of such fictitiously names defendants if ascertained.

///  
///

**JURISDICTION AND VENUE**

1  
2           6.       This action is brought pursuant to the CLRA, Civil Code §1750, et seq., and  
3 California’s UCL, Business and Professions Code §17200, et seq., and seeks equitable relief,  
4 including restitution, plus monetary recovery.

5           7.       The Superior Court has Personal jurisdiction over Defendant pursuant to Cal. Code of  
6 Civil Procedure §410.10 because at all times relevant to this complaint, it conducted significant,  
7 continuous business in California. Based on information and belief, Defendant has marketed and  
8 sold millions of dollars of food goods to California residents for their consumption.

9           8.       Venue is proper in this county under Business and Professions Code §17203 and  
10 Code of Civil Procedure §§395(a) and 395.5. Defendant transacts business and receives substantial  
11 compensation from sales in Orange County. Defendant intentionally distributed its products for sale  
12 to consumers in Orange County. Plaintiff resides in Orange County and purchased Defendant’s  
13 products in Orange County.

14  
**FACTUAL ALLEGATIONS**

15           9.       Welch's® Reduced Sugar Fruit Snacks and Fruit ‘n Yogurt™ Snacks were packaged  
16 in boxes that were substantially under-filled and contained a substantial amount of unnecessary  
17 empty space, *i.e.* non-functional slack-fill. This is apparent because Defendant only included eight  
18 pouches of snacks in these flavors, but included ten pouches in identically sized boxes of other  
19 flavors. The boxes with ten pouches have a net weight of 9 oz, whereas the box with eight pouches  
20 have a net weight of 6.4 oz. As such, the eight pouch boxes are at least 20% under-filled by quantity  
21 and at least 30% under-filled by weight.

22           10.      Defendant’s Fruit Snacks and Fruit ‘n Yogurt™ Snacks are individually plastic  
23 wrapped and packaged in colored cardboard boxes. Consumers cannot see the empty space  
24 contained in the product packaging, *i.e.* the non-functional slack-fill. These boxes are substantially  
25 under-filled and contain substantial amount of unnecessary space, *i.e.* non-functional slack-fill.  
26  
27  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.