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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE

19 ANKUSH PURI, individually, and on behalf of
20 those similarly situated,

21 Plaintiff,

22 v.

23 COSTCO WHOLESALE COPORATION,

24 Defendant.

Case No. 5:21-CV-01202-EJD

**DEFENDANT COSTCO WHOLESALE
CORPORATION'S NOTICE OF MOTION
AND MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Date: August 5, 2021
Time: 9:00 a.m.
Courtroom: 4 (San Jose Courthouse)
Judge: Hon. Edward J. Davila

1 **PLEASE TAKE NOTICE** that on August 5, 2021, at 9:00 a.m., or as soon thereafter as
2 the matter may be heard, in Courtroom 4 of the above-entitled Court, located at 280 South 1st
3 Street, San Jose, CA 95113, Defendant Costco Wholesale Corporation (“Defendant”) will and
4 hereby does move this Court for an Order dismissing Plaintiff’s Complaint (“Complaint”) filed
5 by Plaintiff Ankush Puri (“Plaintiff”) in the above-captioned action, in its entirety with prejudice.

6 This Motion is made pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
7 Defendant seeks dismissal of the Complaint, with prejudice, on the grounds that the Complaint
8 fails to state a claim upon which relief can be granted.

9 This Motion is based upon the accompanying Memorandum of Points and Authorities,
10 the files and evidence in this case, and any such evidence and arguments that may be proffered at
11 the hearing of this Motion.

12
13 DATED: April 26, 2021

Respectfully submitted,

14 By: /s/ Philip C. Swain
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STATEMENT OF ISSUES TO BE DECIDED

1. Does Plaintiff fail to plausibly allege that a reasonable consumer would be deceived by Defendant's packaging to believe that it contains less vegetable oil than it does, such that Plaintiff fails to state a claim for relief under the California consumer protection statutes?

2. Are Plaintiff's claims preempted by the Food, Drug and Cosmetics Act?

3. Does Plaintiff fail to plausibly allege that the Product does not comply with relevant federal and state food laws and regulations?

4. Does Plaintiff lack standing to seek injunctive relief because he fails to plausibly allege a future injury?

5. Should Plaintiff's claim for unjust enrichment be dismissed?

6. Should Plaintiff's claims for breach of express and implied warranty be dismissed?

7. Should Plaintiff's claim for breach of the Magnuson-Moss Warranty Act claim be dismissed?

8. Should Plaintiff's CLRA claims for monetary damages be dismissed?

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