

ELECTRONICALLY FILED  
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County of Santa Barbara  
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF SANTA BARBARA**  
15 **ANACAPA DIVISION**

24CV03007

17 PEOPLE OF THE STATE OF CALIFORNIA,

Case No.:

18 Plaintiff,

19 vs.

COMPLAINT FOR INJUNCTION, CIVIL  
PENALTIES AND EQUITABLE RELIEF

20 THE KROGER CO., and DOES 1-50,

21 Defendants.

22  
23 Plaintiff, the People of the State of California, represented by John T. Savrnoch, District  
24 Attorney of Santa Barbara County, and Erik Nasarenko, District Attorney of Ventura County  
25 (herein, the “People”), are informed and believe and based thereon allege as follows:

26 **INTRODUCTION**

27 1. California consumers—particularly those on specialty diets—care about the  
28 nutrition content of the products they purchase. As a result, many companies, including THE

1 KROGER CO. (hereinafter “Kroger” or “Defendant”), have developed products specifically  
2 targeting diet-conscious consumers.

3 2. California consumers are entitled to rely on the nutrient information advertised  
4 on packaging when making decisions about what products to buy. Between approximately  
5 November 1, 2018, and the present, Defendant misled consumers and gained an unfair  
6 competitive advantage over its competitors by falsely representing the calorie content on  
7 multiple bread products advertised under the KROGER CARBMASTER name.

8 3. The People, acting to protect the public from unlawful and unfair business  
9 practices, bring this action pursuant to Business and Professions Code section 17200 *et seq.*,  
10 including sections 17203, 17204, and 17206; Business and Professions Code section 17500 *et*  
11 *seq.*; and Business and Professions Code sections 12015.5, 12024.6, and 12026. The People, by  
12 this action, seek to enjoin Defendant from engaging in false and deceptive advertising of  
13 KROGER CARBMASTER products, as further alleged herein. The People also seek civil  
14 penalties for Defendant’s violations of applicable statutes and regulations, and restitution of all  
15 monies wrongfully obtained from California customers.

16 **PARTIES AND VENUE**

17 4. The People may bring a civil action to enjoin any person who engages, or has  
18 engaged, or proposes to engage, in unfair competition as defined in Business and Professions  
19 Code section 17200 and may seek civil penalties for each act of unfair competition. The People  
20 bring this action without prejudice to any other action or claim the People may have based on  
21 separate, independent, and unrelated violations arising out of matters or allegations that are not  
22 set forth in this Complaint.

23 5. The actions of Defendant as hereinafter set forth are in violation of the laws and  
24 public policies of the State of California and as such are inimical to the health, safety, welfare,  
25 rights, and interests of the general public as consumers, competitors, and citizens.

26 6. This Court has jurisdiction pursuant to Article 6, section 10 of the California  
27 Constitution and section 393 of the Code of Civil Procedure. Venue is proper in this Court as the  
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1 violations alleged in this complaint occurred in the County of Santa Barbara, the County of  
2 Ventura, and throughout the State of California.

3 **DEFENDANTS**

4 7. Defendant Kroger is a publicly-traded, Ohio-based corporation with its corporate  
5 offices located in Cincinnati, Ohio.

6 8. At all times relevant to the allegations herein, Kroger owned and operated grocery  
7 distribution centers and at least 321 grocery and food retail stores in California.

8 9. Kroger operates in California with several different names and through  
9 subsidiaries, including “Ralph’s,” “Foods Co,” and “Food 4 Less.” A number of its brick-and-  
10 mortar retail locations are located in the Counties of Santa Barbara and Ventura, such as:

11 a. 100 W. Carrillo St., Santa Barbara, CA 93101 (“Ralph’s”)

12 b. 5170 Hollister Ave., Goleta, CA 93111 (“Ralph’s”)

13 c. 601 W. Central Ave., Lompoc, CA (“Foods Co”)

14 d. 1465 S. Broadway, Santa Maria, CA (“Foods Co”)

15 e. 1776 S. Victoria Ave., Ventura CA 93003 (“Ralph’s”)

16 f. 250 W. Esplanade Dr., Oxnard CA 93036 (“Food 4 Less”)

17 10. The true names or capacities of Does 1 through 50, inclusive, are unknown to the  
18 People, who therefore sue such defendants by such fictitious names. The People will amend this  
19 complaint to show their true names and capacities when ascertained. The People are informed  
20 and believe, and on that basis allege, that each of the defendants named as a Doe is responsible  
21 in some manner for events and occurrences about which this complaint is filed and therefore is  
22 liable for the relief sought herein.

23 11. Whenever in this complaint reference is made to any act and omission of  
24 Defendant, such reference shall be deemed to mean that Kroger and Does 1 through 50 did the  
25 alleged acts and omissions through their directors, officers, employees, agents, and/or  
26 representatives while they were acting within the actual or ostensible scope of their authority.

**GENERAL ALLEGATIONS**

12. Defendant engaged in the acts and practices alleged in this Complaint on a regular basis since on or about November 1, 2018.

13. Under the generic brand-name “CARBMASTER,” Defendant markets various low-carb, low-sugar, and low-calorie products to consumers who shop at Defendant’s grocery stores. CARBMASTER products are marketed as a healthy alternative to the other brands of milks, yogurts, breads, and related food products.

14. Defendant sometimes places CARBMASTER products on shelves and in end-cap displays, which are more prominent than aisle shelves.

15. Defendant sold at least five varieties of low-calorie CARBMASTER bread items to consumers, including:

- a. CARBMASTER Wheat Bread;
- b. CARBMASTER White Bread;
- c. CARBMASTER Multi-seed Bread;
- d. CARBMASTER Hamburger Buns; and
- e. CARBMASTER Hotdog Buns.

16. Defendant prominently advertised the calorie content of these CARBMASTER bread products in bright, colorful, and large-print on the front, top, and sides of the packaging.

17. Beginning on or about November 1, 2018, Defendant falsely represented the caloric content of CARBMASTER products on *both* the consumer-facing portions of the packaging and on the FDA Nutrition Facts panel on the back of the packaging.

18. On a date uncertain, Defendant corrected the caloric information on the FDA Nutrition Facts panel of CARBMASTER products.

19. Defendant continued to advertise inaccurate and false nutritional information on the consumer-facing portions of the packaging. For example, Defendant sold CARBMASTER White Bread (pictured below), while prominently advertising that it contained only 30 calories per slice of bread:



20. California consumers purchased these CARBMASTER bread products, while Defendant concealed the true nutritional value of the product on the underside of the item, in the FDA-required nutritional paneling (pictured below):





21. In most instances, Defendant understated the calorie content of CARBMASTER bread and related products by 20% to 50%, misleading consumers to believe they were purchasing a product that was considerably healthier than it was.

22. For example, Defendant marketed both CARBMASTER Wheat Bread and CARBMASTER White Bread as containing only 30 calories per slice, when, in fact, the FDA panel on the rear of the package stated 50 calories per slice. Defendant’s CARBMASTER Multi-seed Bread was falsely advertised as containing only 40 calories per slice, while the FDA panel—hidden out of sight on the bottom of the product—stated that each slice contained at least 50 calories.

23. In a particularly egregious instance, Defendant marketed its CARBMASTER Hamburger Buns as having only 50 calories per bun, when in fact, the calorie count was *100 calories* per bun—double what was advertised—as depicted below:





1 24. Despite consumer complaints to Defendant regarding false advertising on the  
2 front of products, Defendant continued to falsely advertise the caloric content of its  
3 CARBMASTER breads on the front and sides of the packaging in California until at least 2022.

4 25. The People’s investigator visited a Ralph’s store, located at 100 West Carrillo  
5 Street, Santa Barbara, on approximately June 28, 2022. At that time, the People discovered  
6 CARBMASTER White Bread displayed on the shelf in a manner which would conceal the FDA  
7 paneling from consumers, while displaying the false advertisement that such bread only  
8 contained 30 calories per slice. The investigator took several photos, including the example  
9 below:



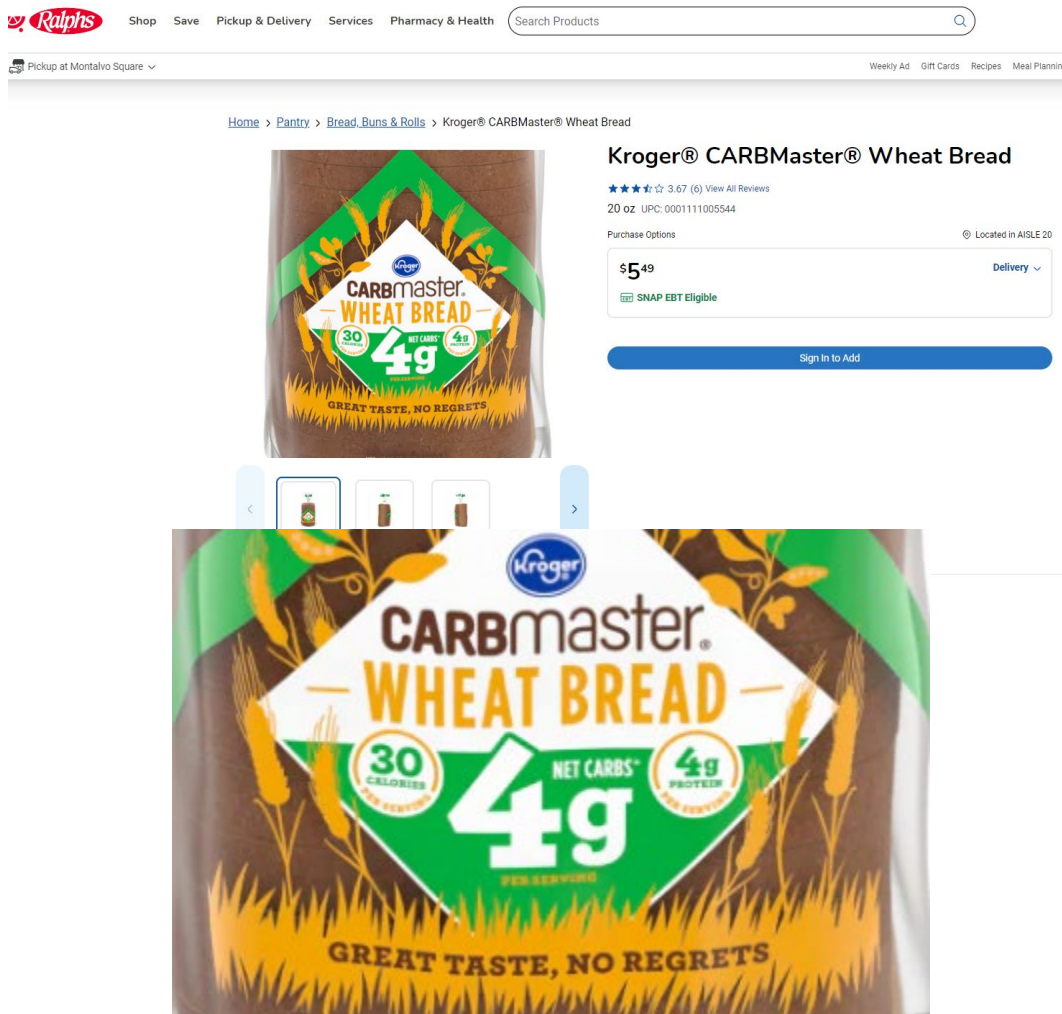
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22 26. Visible in the photo, Defendant prominently placed its CARBMASTER White  
23 Bread next to several competing products such as “Dave’s Killer Bread” and “Oroweat Keto  
24 Bread.” Of note, “Dave’s Killer Bread” advertises a much higher (i.e., accurate) calorie  
25 calculation than the inaccurate information on the CARBMASTER White Bread.

26 27. The People contacted Defendants regarding the false and misleading packaging  
27 on its CARBMASTER products on October 4, 2022. The People informed Defendants that the  
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1 product was being advertised inaccurately in Defendant’s physical stores. On December 5,  
2 2023, the People informed Defendants that at least one CARBMASTER product was still being  
3 advertised with inaccurate calorie information online.

4 28. Despite this notice, Defendant continues to this day to market at least one  
5 CARBMASTER product on its website to California consumers with “30 calories per slice”  
6 still displayed on the packaging:



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24 [Website retrieved May 20, 2024, from: [www.ralphs.com/p/kroger-carbmaster-wheat-](http://www.ralphs.com/p/kroger-carbmaster-wheat-bread/0001111005544?searchType=default_search)  
25 [bread/0001111005544?searchType=default\\_search](http://www.ralphs.com/p/kroger-carbmaster-wheat-bread/0001111005544?searchType=default_search)]

1 **FIRST CAUSE OF ACTION**

2 **(False Advertising – Bus. & Prof. Code § 17500)**

3 **(Outside of FDA Panel)**

4 29. The People restate and incorporate all allegations of the preceding paragraphs.

5 30. In pertinent part, Business and Professions Code section 17500 provides that it is  
6 unlawful for any person “with the intent directly or indirectly to dispose of ... personal  
7 property . . . to make or disseminate or cause to be made . . . any statement, concerning that ...  
8 personal property . . . which is untrue or misleading, and which is known, or which by the  
9 exercise of reasonable care should be known, to be untrue or misleading.”

10 31. Business and Professions Code section 17535 authorizes “any district attorney”  
11 to seek an injunction to prevent such untrue or misleading statements and to provide restitution  
12 for victims of such statements.

13 32. Business and Professions Code section 17536 provides that any person violating  
14 section 17500 “shall be liable for a civil penalty not to exceed two thousand five hundred  
15 dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action  
16 brought in the name of the people of the State of California . . . by any district attorney[.]”

17 33. Beginning on or about November 1, 2018, if not earlier, and continuing to the  
18 present, Defendant has violated and continues to violate Business and Professions Code section  
19 17500 by making or disseminating untrue or misleading statements, or causing untrue or  
20 misleading statements to be made, in the Counties of Ventura and Santa Barbara, and  
21 throughout California, with the intent to directly or indirectly dispose of bread products, when  
22 they knew or by the exercise of reasonable care should have known the statements were untrue  
23 or misleading. Defendant’s untrue or misleading representations include, but are not limited to,  
24 falsely representing the caloric content of CARBMASTER Bread products on consumer-facing  
25 portions of the packaging outside of the FDA Nutrition Facts panel, as described in the  
26 allegations above.

27 34. Unless enjoined by this Court, Defendant will continue to make false and/or  
28 misleading statements in violation of Business and Professions Code section 17500.







1 financially, and to unwittingly consume a product materially different from what defendant  
2 represented the consumer to be purchasing.

3 50. Pursuant to Business & Professions Code section 12012.1, the Court should  
4 enjoin Defendant from violating section 12024.6 because Defendant has violated or threatened  
5 to violate section 12024.6.

6 51. Pursuant to Business & Professions Code section 12015.5, Defendant is liable to  
7 pay the reasonable costs incurred in investigating this action because Defendant is civilly liable  
8 for violating section 12024.6.

9 **FIFTH CAUSE OF ACTION**

10 **(Unfair Competition – Bus. & Prof. Code § 17200)**

11 **(Unlawful Acts or Practices: FAL Outside of FDA Panel)**

12 52. The People restate and incorporate the allegations of the preceding paragraphs.

13 53. Business and Professions Code section 17200 defines “unfair competition” to  
14 “mean and include any unlawful, unfair or fraudulent business act or practice and unfair,  
15 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing  
16 with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. [emphasis  
17 added]”

18 54. Business and Professions Code section 17203 provides that “(a)ny person  
19 performing or proposing to perform an act of unfair competition within this state may be  
20 enjoined in any court of competent jurisdiction.” Section 17203 also permits recovery of any  
21 “interest in money or property, real or personal” acquired by a violation of the Unfair  
22 Competition Law.

23 55. Business and Professions Code section 17206, subdivision (a), provides that any  
24 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand  
25 five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil  
26 action brought in the name of the people of the State of California . . . by any district  
27 attorney[.]”



1 **SEVENTH CAUSE OF ACTION**

2 **(Unfair Competition – Bus. & Prof. Code § 17200)**

3 **(Unlawful Acts or Practices: False Advertising by Enticement Outside of FDA Panel)**

4 67. The People restate and incorporate the allegations of the preceding paragraphs.

5 68. Defendant committed acts of unfair competition by committing the following  
6 unlawful acts: committing false advertising by enticement, as alleged in the Third Cause of  
7 Action.

8 69. Unless enjoined by the Court, Defendant will continue its wrongful practices.

9 70. Pursuant to Business and Professions Code section 17203 and the Court’s  
10 equitable powers, the Court should issue a permanent injunction and such other orders as may  
11 be necessary to prevent future acts of unfair competition by Defendant.

12 71. Pursuant to Business and Professions Code section 17206, the Court must assess  
13 a civil penalty of up to \$2,500 for each act of unfair competition.

14 **EIGHTH CAUSE OF ACTION**

15 **(Unfair Competition – Bus. & Prof. Code § 17200)**

16 **(Unlawful Acts or Practices: False Advertising by Enticement Within FDA Panel)**

17 72. The People restate and incorporate the allegations of the preceding paragraphs.

18 73. Defendant committed acts of unfair competition by committing the following  
19 unlawful acts: committing false advertising by enticement, as alleged in the Fourth Cause of  
20 Action.

21 74. Unless enjoined by the Court, Defendant will continue its wrongful practices.

22 75. Pursuant to Business and Professions Code section 17203 and the Court’s  
23 equitable powers, the Court should issue a permanent injunction and such other orders as may  
24 be necessary to prevent future acts of unfair competition by Defendant.

25 76. Pursuant to Business and Professions Code section 17206, the Court must assess  
26 a civil penalty of up to \$2,500 for each act of unfair competition.





1 85. Defendant committed acts of unfair competition by committing the following  
2 unlawful acts: misbranding food in violation of Health and Safety Code section 110660 by  
3 falsely labeling or mislabeling the caloric content within the FDA Nutrition Facts panel.

4 86. Health and Safety Code section 110660 states: “[a]ny food is misbranded if its  
5 labeling is false or misleading in any particular.”

6 87. Unless enjoined by the Court, Defendant will continue its wrongful practices.

7 88. Pursuant to Business and Professions Code section 17203 and the Court’s  
8 equitable powers, the Court should issue a permanent injunction and such other orders as may  
9 be necessary to prevent future acts of unfair competition by Defendant.

10 89. Pursuant to Business and Professions Code section 17206, the Court must assess  
11 a civil penalty of up to \$2,500 for each act of unfair competition.

12 **ELEVENTH CAUSE OF ACTION**

13 **(Unfair Competition – Bus. & Prof. Code § 17200)**

14 **(Untrue or Misleading Advertising)**

15 **(Outside of FDA Panel)**

16 90. The People restate and incorporate the allegations of the preceding paragraphs.

17 91. Business and Professions Code section 17200 defines “unfair competition” to  
18 “mean and include any unlawful, unfair or fraudulent business act or practice and unfair,  
19 deceptive, **untrue or misleading advertising** and any act prohibited by Chapter 1 (commencing  
20 with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. [emphasis  
21 added]”

22 92. Defendant committed acts of unfair competition by engaging in untrue or  
23 misleading advertising, by advertising the nutritional information of its CARBMASTER Bread  
24 products in an untrue and/or misleading manner on consumer-facing portions of the packaging  
25 outside of the FDA Nutrition Facts panel

26 93. Unless enjoined by the Court, Defendant will continue its wrongful practices.  
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1 94. Pursuant to Business and Professions Code section 17203 and the Court's  
2 equitable powers, the Court should issue a permanent injunction and such other orders as may  
3 be necessary to prevent future acts of unfair competition by Defendant.

4 95. Pursuant to Business and Professions Code section 17203 and the Court's  
5 equitable powers, the Court may make such orders as may be necessary to restore to any person  
6 any interest in money which may have been acquired through Defendant's unfair competition.

7 96. Pursuant to Business and Professions Code section 17206, the Court must assess  
8 a civil penalty of up to \$2,500 for each act of unfair competition.

9 97. Pursuant to Business and Professions Code section 17206, the Court must assess  
10 a civil penalty of up to \$2,500 for each act of unfair competition.

11 **TWELFTH CAUSE OF ACTION**

12 **(Unfair Competition – Bus. & Prof. Code § 17200)**

13 **(Untrue or Misleading Advertising)**

14 **(Within FDA Panel)**

15 98. The People restate and incorporate the allegations of the preceding paragraphs.

16 99. Defendant committed acts of unfair competition by engaging in untrue or  
17 misleading advertising, by advertising the nutritional information of its CARBMASTER Bread  
18 products in an untrue and/or misleading manner within the FDA Nutrition Facts panel.

19 100. Unless enjoined by the Court, Defendant will continue its wrongful practices.

20 101. Pursuant to Business and Professions Code section 17203 and the Court's  
21 equitable powers, the Court should issue a permanent injunction and such other orders as may  
22 be necessary to prevent future acts of unfair competition by Defendant.

23 102. Pursuant to Business and Professions Code section 17206, the Court must assess  
24 a civil penalty of up to \$2,500 for each act of unfair competition.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the People pray for judgment as follows:

27 1. Pursuant to Business and Professions Code section 17203 and the Court's  
28 inherent equitable powers, Defendant and its subsidiaries, their successors and the assigns; their

1 directors, officers, employees, agents, and representatives of each of them; and all persons and  
2 entities acting in concert or in participation with Defendant, be permanently restrained and  
3 enjoined from engaging in any acts of unfair competition, in violation of Business and  
4 Professions Code section 17200, including but not limited to the unlawful business acts and  
5 practices alleged in the First through Twelfth Causes of Action of this Complaint.

6           2. Pursuant to Business and Professions Code section 17206, Defendant be ordered  
7 to pay a civil penalty of \$2,500 for each violation of the Unfair Competition Law, Business and  
8 Professions Code section 17200, according to proof.

9           3. Pursuant to Business and Professions Code section 17536, Defendant be ordered  
10 to pay a civil penalty of \$2,500 for each violation of the False Advertising Law, Business and  
11 Professions Code section 17500, according to proof.

12           4. Restitution of all monies wrongfully obtained from California customers.

13           5. Pursuant to Business & Professions Code section 12015.5, reasonable costs  
14 incurred in investigating this action.

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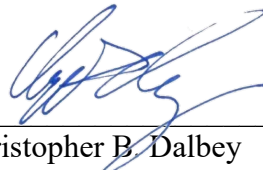
6. Costs of suit.

7. Such other and further relief as the Court deems appropriate.

Respectfully Requested,

Dated: May 29, 2024

John T. Savrnoch  
Santa Barbara County District Attorney

By:   
Christopher B. Dalbey  
Senior Deputy District Attorney

By: /s/ Morgan S. Lucas  
Morgan S. Lucas  
Senior Deputy District Attorney

Dated: May 29, 2024

Erik Nasarenko  
Ventura County District Attorney

By: /s/ Andrew J. Reid  
Andrew J. Reid  
Senior Deputy District Attorney