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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CRYSTAL KAO, individually and on
behalf of herself and all others similarly
situated; and

NINA BARWICK, individually and on
behalf of herself and all others similarly
situated,

Plaintiffs,

v.

ABBOTT LABORATORIES INC., an
Illinois corporation d/b/a Abbott Nutrition,

Defendant.

Civil No.

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

1. Violations of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301
2. Violations of California Bus. & Prof. Code § 17200 *et seq.*
3. Violations of California Bus. & Prof. Code § 17500 *et seq.*
4. Violations of California Civil Code § 1750 *et seq.*
5. Breach of Express Warranty
6. Violation of Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 *et seq.*
7. Negligence
8. Negligent Misrepresentation
9. Common Counts and Unjust Enrichment
10. Violation of Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(b)

1 Plaintiffs (as defined below), individually and on behalf of all others similarly situated,
2 upon personal knowledge and information and belief, and based upon the investigation made by
3 their attorneys, which included a review of public statements and information disseminated by
4 Defendant Abbott Laboratories Inc. (“Abbott” or the “Defendant”) and others, as well as
5 independent testing lab results, hereby allege as follows:

6 **INTRODUCTION**

7 1. This consumer class action concerns deceptive and unfair business practices by
8 Defendant Abbott in the advertisement and sale of its Similac Advanced Non-GMO baby
9 formula (“Similac Non-GMO”). As set forth below, Defendant has wrongfully and unfairly
10 deceived the public and its customers by misrepresenting Similac Non-GMO as containing no
11 genetically modified organisms (“GMOs”). As independent testing lab results show at different
12 times and across several lots and geographic areas, Similac Non-GMO contains GMOs.

13 2. Abbott uniformly represented that Similac Non-GMO was free of GMOs and
14 places this representation prominently on the package label for all Similac Non-GMO products.
15 Abbott’s representation is and was false. Abbott misrepresented or failed to disclose material
16 facts about the content of Similac Non-GMO in that it contains GMOs.

17 3. Tests from across the country from different periods of time and from different
18 product lots show that Similac Non-GMO contains GMOs.

19 4. As Abbott had anticipated, consumers who look for and purchase GMO-free
20 products, especially products for babies and infants, care greatly about the lack of GMOs in their
21 food, and this is a material reason that customers choose Similac Non-GMO as opposed to other
22 Similac lines of products (including the organic and standard formulas).

23 5. As a result of Defendant’s misrepresentations, Plaintiffs and Class members who
24 purchased the Similac Non-GMO have suffered harm. This action seeks compensatory, statutory,
25 and punitive damages, as well as declaratory, injunctive, and all other relief allowed in equity and
26 law.

27 **PARTIES**

28 6. Plaintiff Crystal Kao (“Plaintiff Kao”) is and was at all relevant times, a resident

1 of San Francisco, California. During the Period of Contamination (defined below), Plaintiff Kao
2 purchased Similac Non-GMO at numerous retail outlets in California. Plaintiff Kao paid for
3 Similac Non-GMO and saw and noticed the marketing indicating that Similac Non-GMO was
4 marketed as containing no GMOs. Plaintiff Kao purchased Similac Non-GMO to feed her baby
5 and did so because she did not want to feed her baby formula containing GMOs.

6 7. Plaintiff Nina Barwick (“Plaintiff Barwick” and collectively with Plaintiff Kao,
7 the “Plaintiffs”) is and was at all relevant times, a resident of Nashville, Tennessee. During the
8 Period of Contamination (defined below), Plaintiff Barwick purchased Similac Non-GMO at
9 numerous retail outlets in Tennessee. Plaintiff Barwick paid for the Similac Non-GMO and saw
10 and noticed the marketing indicating that Similac Non-GMO was marketed as containing no
11 GMOs. Plaintiff Barwick purchased Similac Non-GMO because she thought it did not contain
12 GMOs. Plaintiff Barwick purchased Similac Non-GMO to feed her baby; she did not want to
13 feed her baby formula containing GMOs.

14 8. Defendant Abbott Laboratories Inc. is a Delaware corporation and is
15 headquartered at 100 Abbott Park Rd., Abbott Park, IL 60064-3500 (“Abbott” or “Defendant”).
16 At all relevant times, Abbott was engaged in the business of marketing, distributing, and selling
17 consumer nutritional products, including Similac Non-GMO, in the States of California and
18 Tennessee and elsewhere. Upon information and belief, Abbott sells Similac Non-GMO and
19 other Similac products under the assumed name Abbott Nutrition. Abbott may be served via its
20 Registered Agent for service which is CT Corporation System, 818 W 7th St., Ste 930, Los
21 Angeles CA 90017.

22 9. Whenever this Complaint refers to any act or acts of Defendant, the reference
23 shall be deemed to mean that the directors, officers, employees, affiliates, or agents of the
24 responsible Defendant authorized such act while actively engaged in the management, direction,
25 or control of the affairs of Defendant, and each of them, and/or by persons who are the parents or
26 alter egos of the Defendant while acting within the scope of their agency, affiliation, or
27 employment.

28

JURISDICTION AND VENUE

1
2 10. **Jurisdiction.** This Court has jurisdiction over this action and the Defendant
3 pursuant to 28 U.S.C. § 1332 in that Plaintiffs are residents of California and Tennessee and
4 Defendant is a resident of Delaware and Illinois and the amount in controversy exceeds \$75,000.
5 This Court has additional jurisdiction over this case in that one or more of Plaintiffs’ causes of
6 action “aris[e] under the...laws...of the United States” as that term is used in 28 U.S.C. § 1331
7 and the Court may exercise supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’
8 remaining state law claims.

9 11. **Venue.** Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that a
10 substantial part of the events or omissions giving rise to the claims occurred in this jurisdiction.
11 Further, Abbott is authorized to do business in the State of California and maintains several
12 offices in this judicial district including the head offices of its Diabetes Care division (in
13 Alameda), its Abbott Diagnostics division (in Santa Clara), and its Vascular Devices division (in
14 Santa Clara).

15 12. **Intradistrict assignment.** Assignment is proper to the San Francisco Division
16 because Plaintiff Kao is, and was at all relevant times, a resident of San Francisco, California,
17 and purchased Similac Non-GMO many times in San Francisco.

CLASS ACTION ALLEGATIONS

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19 13. Plaintiffs bring this class action pursuant to Rule 23(a) and Rule 23(b)(3) and seek
20 certification of the class and subclasses identified below.

21 14. Plaintiffs bring this class action on behalf of the following national class (the
22 “National Class”):

23 All persons who purchased Similac Non-GMO from any retail outlet in the
24 United States or who resided in the United States at the time they made
25 online purchases of Similac Non-GMO. Excluded from the Class are the
26 Defendant, its officers and directors at all relevant times, members of
27 immediate families and their legal representatives, heirs, successors, or
28 assigns, and any entity in which the Defendant has or had a controlling
interest.

15 15. Plaintiff Kao brings her claims on her own behalf, and on behalf of the following

1 class (the “California Subclass”):

2 All persons who purchased Similac Non-GMO from any retail outlet in the
3 State of California or who resided in California at the time they made
4 online purchases of Similac Non-GMO. Excluded from the Class are the
5 Defendant, its officers and directors at all relevant times, members of
6 immediate families and their legal representatives, heirs, successors, or
7 assigns, and any entity in which the Defendant has or had a controlling
8 interest.

9 16. Plaintiff Barwick brings her claims on her own behalf, and on behalf of the
10 following class (the “Tennessee Subclass,” and collectively with the California Subclass and the
11 National Class, the “Classes”):

12 All persons who purchased Similac Non-GMO from any retail outlet in the State
13 of Tennessee or who resided in Tennessee at the time they made online purchases
14 of Similac Non-GMO. Excluded from the Class are the Defendant, its officers and
15 directors at all relevant times, members of immediate families and their legal
16 representatives, heirs, successors, or assigns, and any entity in which the
17 Defendant has or had a controlling interest.

18 17. Plaintiffs reserve the right to amend or modify the National Class, the California
19 Subclass, or the Tennessee Subclass definition in connection with a Motion for Class
20 Certification or as the result of discovery.

21 18. This class action is properly brought as a class action for the following reasons.
22 The Class is so numerous that joinder of the individual members of the proposed Class (the
23 “Class Members”) is impracticable. At a minimum, the Classes include thousands of persons
24 geographically dispersed throughout the country, the State of California, and/or the State of
25 Tennessee. The number and identities of Class Members are unknown to Plaintiff, but can be
26 ascertained through discovery, including into retailers’ records of sales, and published notice.

27 19. Plaintiffs do not anticipate any difficulties in the management of this action as a
28 class action. The Classes are ascertainable and there is a well-defined community of interests in
the questions of law and fact alleged because the rights of each Class Member were infringed or
violated in similar fashion based upon Defendant’s misconduct. Notice can be provided through
records and publication, the cost of which is properly imposed upon the Defendant.

20. Questions of law or fact common to the Classes exist as to Plaintiffs and all Class

1 Members, and these common questions predominate over any questions affecting only individual
2 members of the Classes. Among the common questions of law and fact are the following:

- 3 a. Whether Similac Non-GMO contains GMOs;
- 4 b. Whether Defendant knew or should have known that Similac Non-GMO
5 contains GMOs;
- 6 c. Whether Defendant misrepresented that Similac Non-GMO had
7 characteristics, uses, or benefits that it does (did) not have;
- 8 d. Whether Defendant's representations about the ingredients of Similac
9 Non-GMO were false, misleading or likely to deceive;
- 10 e. Whether Defendant failed to disclose material facts about Similac Non-
11 GMO;
- 12 f. The scope of any express or implied warranties made by Defendant;
- 13 g. Whether Defendant was unjustly enriched by its sale of Similac Non-
14 GMO;
- 15 h. The appropriate nature of class-wide equitable relief; and
- 16 i. The amount of restitution and/or measure of damages to award to Plaintiffs
17 and the Classes.

18 21. Defendant engaged in a common course of conduct giving rise to the legal rights
19 sought to be enforced by Plaintiffs and the Class Members. Common questions of law and fact
20 predominate over any individual questions that may arise.

21 22. The injuries sustained by Plaintiffs and the Classes flow, in each instance, from a
22 common nucleus of operative facts – Defendant's misconduct in wrongfully and unfairly
23 deceiving the public and its customers by misrepresenting the ingredients of Similac Non-GMO
24 in Defendant's advertisement and sale of its Similac Non-GMO despite its knowledge that these
25 products contained GMOs.

26 23. Plaintiffs' claims are typical of the claims of the Classes they seek to represent.
27 Defendant's uniform, material misrepresentations and omissions and its use of unfair and
28 deceptive business practices in the marketing and sale of its Similac Non-GMO apply equally to

1 Plaintiffs and all Class Members. Moreover, the defenses, if any, that will be asserted against
2 Plaintiffs' claims are typical of the defenses, if any, that will be asserted against the Class
3 Members' claims.

4 24. Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs
5 have no interests adverse to the interests of the Classes and have retained counsel with significant
6 experience in the prosecution of class actions and complex litigation, including consumer
7 litigation, and who will vigorously prosecute this action.

8 25. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy, and individual joinder of all Class Members is impracticable, if
10 not impossible, because the massive number of Class Members are scattered throughout the
11 United States, California and/or Tennessee. Moreover, the cost to the court system of such
12 individualized litigation would be substantial. Individualized litigation would likewise present
13 the potential for inconsistent or contradictory judgments and would result in significant delay and
14 expense to all parties and courts hearing virtually identical lawsuits. By contrast, the conduct of
15 this action as a class action would present fewer management difficulties, conserve the resources
16 of the parties and the courts, and protect the rights of each Class Member and maximize recovery
17 to them.

18 26. Defendant has acted on grounds generally applicable to the entire Classes, thereby
19 making final injunctive relief or corresponding declaratory relief appropriate with respect to the
20 Classes as a whole.

21 **FACTUAL ALLEGATIONS**

22 **Abbott Develops And Markets Similac Non-GMO**

23 27. Abbott manufactures, markets, and sells several lines of infant formula. Its
24 flagship formula is Similac Advance. Similac Advance is the top commercial baby formula
25 brand in the United States, and Abbott claims it is "designed to be closer than ever to breast
26 milk." Consumers can purchase Similar Advance in its regular formulation, and its organic
27 formulation.

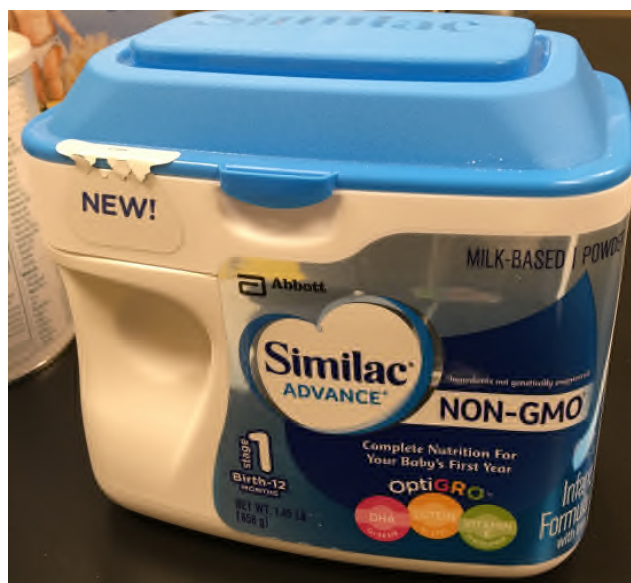
28 28. In or around May 2015, Defendant Abbott began marketing and selling Similac

1 Non-GMO. Prior to that, Abbott did not manufacture a non-GMO version of any of its baby
2 formulas. At the time of its launch, the general manager of Abbott’s pediatric nutrition business
3 stated: “We listen to moms and dads, and they’ve told us they want a non-GMO option. We
4 want to make sure we meet the desires of parents.” In accordance with this statement, Abbott
5 began marketing Similac Non-GMO formulation in or around May 2015.

6 29. A GMO is an organism whose genetic material has been altered in a way that does
7 not occur in nature, typically by scientists introducing new features to the organism that would
8 not naturally occur without scientific, genetic manipulation.

9 30. American, and specifically Californian, consumers increasingly and consciously
10 seek out non-GMO foods. Consumers value the “Non-GMO” or “No-GMO” food labels for a
11 myriad of reasons, including perceived benefits to health and well-being, helping the
12 environment, assisting local and family owned farms, and assisting factory workers who would
13 otherwise be exposed to synthetic and hazardous substances.

14 31. Abbott launched the Similac Non-GMO formulation of its popular Advanced
15 baby-formula to capture this market. Similac Non-GMO’s packaging prominently displays the
16 “NON-GMO” claim. On the face of this package Abbott represents that “Non-GMO” means:
17 “Ingredients not genetically engineered.” A picture of the Similac Non-GMO’s packaging for all
18 times relevant to the Complaint is as follows:



1 32. All customers who purchase Similac Non-GMO are exposed to these
2 representations, which is a material reason they purchase this product. Otherwise, customers
3 could choose the organic or regular formulations for Similac Advance. These other versions retail
4 for less than Similac Non-GMO.

5 33. Abbott also promotes Similac Non-GMO on its website. Abbott claims that
6 Similac Non-GMO is a “non-GMO option for your baby’s first year” and that Similac Advance
7 is the “first leading infant formula brand labeled non-GMO with the nourishment that you’ve
8 come to expect from Similac.” On this same website Abbott represents that “non-GMO” means:
9 “Ingredients not genetically engineered.”

10 34. On its packaging and on its website Abbott represents the following regarding
11 Similac Non-GMO:

Contains milk and soy ingredients.

Nonfat Milk, Lactose, Whey Protein Concentrate, High Oleic Safflower Oil, Soy Oil, Coconut Oil, Galactooligosaccharides. Less than 2% of: C. Cohnii Oil, M. Alpina Oil, Beta-Carotene, Lutein, Lycopene, Potassium Citrate, Calcium Carbonate, Ascorbic Acid, Soy Lecithin, Potassium Chloride, Magnesium Chloride, Ferrous Sulfate, Choline Bitartrate, Choline Chloride, Ascorbyl Palmitate, Salt, Taurine, m-Inositol, Zinc Sulfate, Mixed Tocopherols, d-Alpha-Tocopheryl Acetate, Niacinamide, Calcium Pantothenate, L-Carnitine, Vitamin A Palmitate, Cupric Sulfate, Thiamine Chloride Hydrochloride, Riboflavin, Pyridoxine Hydrochloride, Folic Acid, Manganese Sulfate, Phylloquinone, Biotin, Sodium Selenate, Vitamin D3, Cyanocobalamin, Calcium Phosphate, Potassium Phosphate, Potassium Hydroxide, and Nucleotides (Adenosine 5’-Monophosphate, Cytidine 5’-Monophosphate, Disodium Guanosine 5’-Monophosphate, Disodium Uridine 5’-Monophosphate).

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22 35. Abbott sold and sells Similac Non-GMO in retail stores throughout the country,
23 and it can be purchased online through popular websites like Amazon.com, Walmart.com, and
24 Target.com.

25 36. Abbott’s conduct in marketing Similac Non-GMO as containing ingredients that
26 are not genetically engineered deceived and/or was likely to deceive the public, and Plaintiff Kao
27 and Plaintiff Barwick. Abbott deceived consumers into believing that the listed ingredients were
28 not genetically engineered.

1 **Similac Non-GMO Contains GMOs**

2 37. Testing of Similac Non-GMO has shown the presence of genetically modified
3 soy, specifically the presence of GTS-40-3-2 Soy, in different lots purchased in different
4 locations, including in California and Tennessee, at different times. According to the Center for
5 Environmental Risk Assessment’s database, GTS-40-3-2 Soy is a genetically engineered version
6 of soy developed by Monsanto that has been altered to be glyphosate herbicide tolerant, and the
7 specific trait introduced was a microparticle bombardment of plant cells or tissue. In plain terms,
8 GTS-40-3-2 is a soybean line developed to allow for the use of Monsanto’s Roundup® herbicide.
9 In other words, GTS-40-30-2 is a GMO. Testing results are attached as Exhibit 1.

10 38. On information and belief, no significant process changes, vendor changes, or
11 supply-chain changes occurred in the production of Similac GMO from the inception of the
12 product to the market through the present. Therefore, it can be assumed that all formulations of
13 Similac Non-GMO contain this same presence of GTS-40-3-2 Soy, and the period of
14 contamination is from product launch through the present (the “Period of Contamination”)

15 39. Plaintiff Kao purchased Similac Non-GMO during the Period of Contamination.
16 One batch of Similac Non-GMO that Plaintiff Kao purchased was tested in March 2017. Testing
17 revealed the presence of GTS 40-3-2 Soy.

18 40. Plaintiff Barwick purchased Similac Non-GMO during the Period of
19 Contamination. One batch of Similac Non-GMO that Plaintiff Barwick purchased was tested in
20 November 2016. Testing revealed the presence of GTS 40-3-2 Soy.

21 41. All conditions precedent to the maintenance of this action have been satisfied.

22 **FIRST CAUSE OF ACTION**

23 **Violations of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Asserted by Plaintiffs**
24 **Individually and On Behalf Of The National Class and/or Alternatively By Plaintiff Kao**
25 **On Behalf Of The California Subclass and Plaintiff Barwick On Behalf Of The Tennessee**
26 **Subclass**

27 42. Plaintiffs incorporate by reference all of the above allegations as if set forth
28 herein.

43. Plaintiffs and all Class Members are consumers as defined in 15 U.S.C. § 2301(3).

1 44. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

2 45. Similac Non-GMO is a consumer product as defined in 15 U.S.C. § 2301(6).

3 46. Defendant's claims that Similac Non-GMO contains "ingredients not genetically
4 engineered" is a Written warranty as that term is used in 15 U.S.C. § 2301(6), and by selling
5 Plaintiffs and Class Members Similac Non-GMO that contains GMOs, Defendant breached this
6 written warranty.

7 47. The Plaintiffs have given Abbott notice of their intent to file suit on behalf of a
8 cognizable class. A copy of this pre-suit notice letter is attached as Exhibit 2.

9 48. In its response, Abbott denied the claims in this notice, denied that Similac Non-
10 GMO contains GMOs, and did not agree to take any action to correct or replace Plaintiffs'
11 defective products or inform members of the Classes of the defect.

12 49. By reason of Defendant's breach of its written warranty, Defendants have violated
13 statutory rights due Plaintiffs and the Classes pursuant to the Magnuson-Moss Warranty Act, 15
14 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiffs and the Class.

15 **SECOND CAUSE OF ACTION**

16 **Violations of California Bus. & Prof. Code §§ 17200 *et seq.* Asserted by Plaintiff Kao**
17 **Individually and On Behalf Of The California Subclass Against Defendant Abbott**

18 50. Plaintiff Kao incorporates by reference all of the above allegations as if set forth
19 herein.

20 51. Abbott's practices as alleged in this Complaint constitute unlawful and unfair
21 business acts and practices under California's Unfair Competition Law ("UCL"), Bus. & Prof.
22 Code §§ 17200 *et seq.*

23 52. Abbott violated, and continues to violate, California Business and Professions
24 Code §§ 17200 *et seq.*, by misrepresenting that the ingredients in Similac Non-GMO are not
25 genetically engineered when the product contains genetically engineered ingredients.

26 53. By engaging in the above-described acts and practices, Defendant has committed
27 one or more acts of unfair competition within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*

28 54. Defendant committed "unlawful" business acts and practices by:

- 1 (a) Engaging in conduct that violated California’s Bus. & Prof. Code
- 2 §§ 17500 *et seq.*;
- 3 (b) Engaging in conduct that violates California’s Consumer Legal
- 4 Remedies Act, Civil Code §§ 1750 *et seq.*;
- 5 (c) Engaging in conduct that violates California’s Song-Beverly
- 6 Consumer Warranty Act, Civil Code §§ 1792 *et seq.*;
- 7 (d) Engaging in conduct that violates California’s Sherman Food,
- 8 Drug, and Cosmetic Law, Health & Safety Code § 109875 *et seq.*;
- 9 (e) Breaching express warranties; and
- 10 (f) Engaging in negligent conduct and misrepresentations.

11 55. Defendant committed “unfair” business acts and practices by:

- 12 (a) Engaging in conduct where the utility of such conduct, if any, is
- 13 outweighed by the gravity of the consequences to Plaintiff Kao and to
- 14 other Class Members;
- 15 (b) Engaging in conduct that is immoral, unethical, oppressive,
- 16 unscrupulous, or substantially injurious to Plaintiff Kao and to other Class
- 17 Members; and
- 18 (c) Engaging in conduct that undermines or violates the spirit or intent
- 19 of the consumer protection laws detailed herein.

20 56. Specifically, Abbott engaged in “unfair” business acts and practices by

21 misrepresenting the actual ingredients of its Similac Non-GMO.

22 57. Abbott’s misrepresentation of the ingredients of its Similac Non-GMO

23 formulation was likely to deceive the public and wrongfully constituted a fraudulent business

24 practice.

25 58. Plaintiff Kao and California Class Members have suffered injury in fact and have

26 lost money and property as a result of Defendant’s unlawful, unfair, and fraudulent practices, in

27 that, among other things:

- 28 (a) Defendant’s misrepresentations are a material reason they

1 purchased Similac Non-GMO and paid the price that they did; and

2 (b) Plaintiff Kao and Class Members were denied their right to receive
3 property free from defect.

4 59. The unlawful, unfair, and fraudulent conduct described herein is ongoing and
5 continues to this date. Plaintiff Kao and California Class Members seek declaratory and
6 injunctive relief, restitution, and disgorgement of all profits obtained by Defendant from the
7 misrepresentations alleged herein and other relief as appropriate.

8 **THIRD CAUSE OF ACTION**

9 **Violations of California Bus. & Prof. Code §§ 17500 *et seq.* Asserted by Plaintiff Kao**
10 **Individually and On Behalf Of The California Subclass Against Defendant Abbott**

11 60. Plaintiff Kao incorporates by reference all of the above allegations as if set forth
12 herein.

13 61. Defendant's acts and practices as described herein have deceived and are likely to
14 deceive members of the Class and the public. Abbott has spent millions of dollars to advertise
15 Abbott's Similac Non-GMO. Abbott uniformly advertises Similac Non-GMO as containing
16 "ingredients not genetically engineered" when this product actually contains ingredients that are
17 genetically engineered.

18 62. By its actions, Abbott is disseminating uniform advertising concerning its
19 products and services, which advertising, by its nature, is unfair, deceptive, untrue, or misleading,
20 within the meaning of California Business & Professions Code §§ 17500 *et seq.* Such
21 advertisements are likely to deceive, and continue to deceive, the consuming public for the
22 reasons detailed above.

23 63. The above-described false, misleading, and deceptive advertising Abbott
24 disseminated continues to have a likelihood to deceive in that Abbott has failed to disclose the
25 true and actual ingredients of the Similac Non-GMO. Abbott has failed to conduct a public
26 information campaign to alert consumers of these deficiencies, which continues to create a
27 misleading perception of Similac Non-GMO as not containing ingredients that are genetically
28 engineered.

1 assemble, inspect, distribute, market, package, prepare for use, or sell, Similac Non-GMO to
2 function as advertised.

3 98. Defendant placed the defective Similac Non-GMO into the stream of commerce,
4 knowing the product was to be purchased and used without inspection for defects by Plaintiff
5 Kao and Class Members.

6 99. Abbott took no steps to warn consumers that Similac Non-GMO contained
7 ingredients that are genetically engineered.

8 100. Plaintiff Kao and the Class used Similac Non-GMO without inspection.

9 101. Plaintiff Kao and the Class were not aware of the defect at any time prior to their
10 purchase of Similac Non-GMO.

11 102. As a proximate result of Defendant's negligence, Plaintiff Kao and the Class
12 suffered separate economic damages and loss from the purchase and use of Similac Non-GMO.

13 **EIGHTH CAUSE OF ACTION**

14 **Negligent Misrepresentation Asserted by Plaintiff Kao Individually and On Behalf Of The**
15 **California Subclass Against Defendant Abbott**

16 103. Plaintiff Kao incorporates by reference all of the above allegations as if set forth
17 herein.

18 104. Abbott advertised Similac Non-GMO as containing "Ingredients not genetically
19 engineered."

20 105. Defendant had no reasonable grounds for believing that its representations were
21 true because Abbott failed to consistently ensure it was able to produce Similac Non-GMO as
22 free of GMOs, as advertised.

23 106. In making these representations to Plaintiff Kao and the Class, Abbott intended to
24 induce Plaintiff and Class Members to purchase Similac Non-GMO.

25 107. At all times herein, Plaintiff Kao and Class Members were unaware of the falsity
26 of Defendant's statements.

27 108. Plaintiff Kao and Class Members reasonably acted in response to the statements
28 made by Defendant when they purchased Similac Non-GMO.

1 **TENTH CAUSE OF ACTION**

2 **Violation of Tenn. Code Ann. § 47-18-104 Asserted by Plaintiff Barwick**
3 **Against Defendant Abbott**

4 114. Plaintiff Barwick incorporates by reference all of the above allegations as if set
5 forth herein.

6 115. Defendant's acts and practices as described herein have deceived and/or are likely
7 to deceive Plaintiff Barwick. Abbott has spent millions of dollars to advertise Abbott's Similac
8 Non-GMO. Abbott uniformly advertises Similac Non-GMO as containing "ingredients not
9 genetically engineered" when this product actually contains ingredients that are genetically
10 engineered. The promotional materials and representations disseminated by Abbott, which
11 falsely claim that Similac Non-GMO does not contain GMOs, constitute deceptive trade or
12 business practices, and the contents therein have knowingly caused, or are reasonably expected to
13 cause, confusion or misunderstanding as to the contents of Similac Non-GMO.

14 116. By its actions, Abbott is disseminating uniform advertising concerning its
15 products and services, which advertising by its nature is unfair, deceptive, untrue, or misleading
16 by:

- 17 a. Representing that goods or services have sponsorship, approval,
18 characteristics, ingredients, uses, benefits or quantities that they do not
19 have or that a person has a sponsorship approval, status, affiliation or
20 connection that such person does not have;
- 21 b. Representing that goods or services are of a particular standard, quality or
22 grade, or that goods are of a particular style or model, if they are of
23 another; and
- 24 c. Advertising goods or services with intent not to sell them as advertised;

25 117. The above-described false, misleading, and deceptive advertising was relied upon
26 by Plaintiff Barwick when she purchased Similac Non-GMO. Plaintiff Barwick was exposed to
27 and subject to this tortious conduct and it caused Plaintiff Barwick harm. Abbott has failed to
28 conduct a public information campaign to alert consumers of these deficiencies, which continues

1 to create a misleading perception of Similac Non-GMO as not containing ingredients that are
2 genetically engineered. Abbott's conduct in fraudulently marketing Similac Non-GMO was a
3 willful and knowing violation of the Tennessee Consumer Protection Act.

4 118. Pursuant to Tenn. Code Ann. § 47-18-104(b) and 109, Plaintiff Barwick is entitled
5 to and makes a claim for actual damages, incidental and consequential damages, punitive or
6 treble damages, and attorney's fees and costs as a result of Abbott's unfair and deceptive conduct
7 in falsely marketing its Similac Non-GMO.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs and all Class Members pray that the Court:

- 11 A. Certify this action as a class action;
12 B. Award all actual, direct, incidental, statutory, consequential, punitive and
13 exemplary damages to be determined at trial;
14 C. Grant appropriate injunctive and/or declaratory relief;
15 D. Award pre- and post-judgment interest;
16 E. Award attorney fees and costs of suit; and
17 F. For such other and further relief the Court deems appropriate.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs demand a trial by jury on all issues so triable.
20

21 Dated: May 15, 2017

22 By: /s/ Jonathan Weissglass
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26 J. Gerard Stranch, IV (BPR#023045, *pro hac vice*
27 *application forthcoming*)
Benjamin A. Gastel (BPR#028699, *pro hac vice*
28 *application forthcoming*)

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