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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**KAROLINA OCHOA, on behalf of
herself and all others similarly
situated,**

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

CASE NO.: 5:17-cv-2019
CLASS ACTION
**COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY,
AND INJUNCTIVE RELIEF**
DEMAND FOR JURY TRIAL

1 Plaintiff Karolina Ochoa (“Plaintiff”), individually and on behalf of herself and
2 all others similarly situated, brings this class action against Defendant Church &
3 Dwight Co., Inc. (“Defendant”), demanding a trial by jury, and alleges as follows:
4

5 INTRODUCTION

6 1. This is a proposed class action on behalf of a nationwide class (“Class”)
7 and a California sub-class (“Sub-class”) (together, “Classes”) of consumers seeking
8 redress for Defendant’s deceptive practices associated with the advertising, labeling
9 and sale of its Vitafusion PreNatal Multivitamin Gummy (“Product,” “Multivitamin,”
10 or “Gummies”) in violation of state consumer protection laws and common law.

11 2. Defendant Church & Dwight Co., Inc. (“Church”) is one of the biggest
12 manufacturers of household goods in America today. It is publicly traded and estimated
13 to be worth in excess of \$3.5 billion dollars. It manufactures hundreds of household
14 and personal care products ranging from cleaning agents to pregnancy tests and is
15 constantly acquiring new product lines to add to its portfolio. In the summer of 2012,
16 Church acquired Avid Health Inc., a manufacturer of gummy vitamins and supplements,
17 for \$650 million. Among the brands Church acquired in that transaction was Vitafusion,
18 self-lauded as the “#1 Adult Gummy Vitamin Brand.” Among its products, Vitafusion
19 makes a PreNatal Multivitamin Gummy specifically formulated for pregnant women.

20 3. It is axiomatic that a diet in which one receives sufficient vitamins and
21 minerals is critical to a healthy pregnancy. While the basic principles of healthy eating
22 remain the same during pregnancy, certain nutrients are particularly critical.

23 4. One of these critical vitamins is folate or folic acid¹ — a B vitamin that
24 helps prevent neural tube defects and serious abnormalities of the brain and spinal cord
25 during fetal development. Folic acid has also been shown to decrease the risk of
26 premature birth.

27 _____
28 ¹ The synthetic form of folate found in supplements and fortified foods is known as folic acid.

1 5. Pregnant women, and women considering pregnancy are routinely
2 encouraged to get sufficient amounts of folate or folic acid before conception and
3 throughout pregnancy. According to the Institute of Medicine (“IOM”) and the
4 National Institutes of Health (“NIH”), women who could become pregnant should
5 consume 400 micrograms (“mcg”) of folate daily, and women who are pregnant
6 should consume 600 mcg of folate daily.

7 6. Because of the importance of folate, many foods are fortified with folic
8 acid and pregnant women are encourage to take multivitamins containing increased
9 amounts of folic acid.

10 7. Although consumption of folic acid is critical, it is equally critical not to
11 consume too much. According to the National Institutes of Health, folate that is
12 naturally present in food is not harmful, but folic acid in supplements can be and
13 should not be consumed in amounts above the Upper Tolerable Intake Limit (“Upper
14 Limit”) established by the IOM.

15 8. For adult pregnant women, the Upper Limit for folic acid is 1000 mcg
16 daily. Exceeding this Upper Limit has severe consequences.

17 9. Vitafusion’s PreNatal Gummy Multivitamin claims to contain 800 mcg
18 of folic acid per serving—100% of the Recommended Daily Intake of that vitamin.

19 10. Contrary to its label, however, the Product routinely contains amounts of
20 folic acid materially in excess of the claimed 800 mcg and well in excess of the
21 tolerable Upper Limits.

22 11. By failing to label the folic content of its Product accurately, Defendant
23 violates state and federal laws for dietary supplements, state consumer protection
24 laws, and sells a Product that is potentially dangerous to both women and their unborn
25 children.

26 **JURISDICTION AND VENUE**

27 12. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2).
28 Diversity jurisdiction exists as Plaintiff Ochoa resides in Riverside County. Defendant

1 is incorporated in Delaware and maintains its principal place of business in Ewing,
2 New Jersey. The Sub-class consists of residents of California. The amount in
3 controversy exceeds \$5,000,000 for the Representative Plaintiff and members of the
4 Classes collectively, exclusive of interest and costs, by virtue of the combined
5 purchase prices paid by Plaintiff and the Classes, and the profits reaped by Defendant
6 from its transactions with Plaintiff and the Classes, as a direct and proximate result of
7 the wrongful conduct alleged herein, and by virtue of the injunctive and equitable
8 relief sought.

9 13. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391
10 because a substantial portion of the underlying transactions and events complained of
11 occurred and affected persons and entities located in this judicial district, and
12 Defendant has received substantial compensation from such transactions and business
13 activity in this judicial district.

14 **PARTIES**
15

16 14. During the Class Period, Plaintiff was a resident of Riverside County,
17 California. Plaintiff purchased 3 bottles of Defendant's Multivitamins during her
18 pregnancy in 2016 from a Walmart located at 6250 Valley Springs Pkwy, Riverside,
19 CA 92507.

20 15. Defendant is a Delaware corporation with its principal place of business
21 in Ewing, New Jersey.

22 **GENERAL ALLEGATIONS**
23

24 16. Folate is a B-vitamin and an essential nutrient. It is naturally present in
25 many foods, and the synthetic form of the vitamin, folic acid, is used in dietary
26 supplements and fortified foods.

27 17. Folate is necessary for our bodies to make DNA and other genetic
28 material, and is necessary for our cells to divide. Because of its role in the synthesis of

1 DNA and other critical cell components, folate is especially important during phases
2 of rapid cell growth—which is why higher levels of folate are recommended for
3 pregnant women and their unborn babies.²

4 18. According to scientific authorities, “women with insufficient folate
5 intakes are at increased risk of giving birth to infants with neural tube defects,” and
6 are at increased risk of preterm delivery, fetal growth retardation, and infants with low
7 birth weight.³

8 19. Folate also plays a critical role in the formation of babies’ spines—and
9 folate deficiency increases the risk a child will suffer from spina bifida (a splayed
10 vertebral column).⁴

11 20. For these reasons, many doctors strongly recommend that pregnant
12 women take a prenatal vitamin with folic acid daily. Indeed, in the United States,
13 about two-thirds of pregnant women take supplements with folic acid.⁵

14 21. Although sufficient amounts of folate is necessary for women’s health,
15 too much folic acid can affect the health of both pregnant women and their unborn
16 children. Too much folate from food is not associated with health risks, but there is a
17 high risk of toxicity from folic acid found in dietary supplements and fortified foods.⁶

18 22. Exceeding the Upper Limit for folic acid established by the Institute of
19 Medicine is dangerous and can cause adverse health effects. Excess folic acid can
20 precipitate or exacerbate megaloblastic anemia and cognitive symptoms associated
21 with B12 deficiency. It might also “accelerate the progression of preneoplastic lesions,
22

23 _____
24 ² NIH Fact Sheet, <https://ods.od.nih.gov/factsheets/Folate-HealthProfessional/#h7>. Lamers Y (2011).
Folate recommendations for pregnancy, lactation, and infancy. *Ann Nutr Metab* 59(1): 32-37.

25 ³ NIH Fact Sheet, *available at* <https://ods.od.nih.gov/factsheets/Folate-HealthProfessional/>

26 ⁴ *Id.*

27 ⁵ C. Hoyo et al., *Folic Acid Supplementation Before and During Pregnancy in the Newborn*
Epigenetics Study (NEST), 11(1) *BMC Pub. Health* 1471 (Jan. 2011).

28 ⁶ <https://www.nap.edu/read/6015/chapter/5#47>

1 increasing the risk of colorectal and possibly other forms of cancer in certain
2 individuals.”⁷

3 23. Exceeding the Upper Limit for folic acid can also lead to digestive
4 problems, nausea, loss of appetite, bloating, gas, a bitter or unpleasant taste in the
5 mouth, sleep disturbances, depression, excessive excitement, irritability, and a zinc
6 deficiency.⁸

7 24. Pregnant women are advised to take supplements with folic acid for the
8 health of their babies. However, emerging science indicates that excess folic acid
9 supplementation can actually harm the health of unborn babies and increase the risk a
10 child will be born with autism.⁹

11 25. Researchers from the Johns Hopkins Bloomberg School of Public Health
12 examined data from the Boston Birth Cohort and checked the amount of folate in
13 women who recently had given birth. “The researchers found that if a new mother has
14 a very high level of folate right after giving birth . . . the risk that her child will
15 develop an autism spectrum disorder doubles.”¹⁰

16 26. Defendant engages in a widespread and uniform marketing and
17 advertising campaign to portray its Product as nutritious, healthful, and necessary for
18 pregnant or lactating women. Defendant engages in this campaign to sell its Product to
19 consumers and increase its profits.

20
21 ⁷ NIH Fact Sheet, *available at* <https://ods.od.nih.gov/factsheets/Folate-HealthProfessional/>; Cornelia
22 M. Ulrich et al., *Folate Supplementation: Too Much of a Good Thing?*, 15(2) *Cancer Epidemiol.*
Biomarkers Prev. 189 (2006).

23 ⁸ *See, e.g.*, <http://www.mayoclinic.org/drugs-supplements/folate/safety/hrb-20059475>; XXX find
better cite.

24 ⁹ Johns Hopkins Bloomberg School of Public Health, *Too Much Folate in Pregnant Women*
25 *Increases Risk for Autism, Study Suggests* (May 11, 2016), [http://www.jhsph.edu/news/news-](http://www.jhsph.edu/news/news-releases/2016/too-much-folate-in-pregnant-women-increases-risk-for-autism-study-suggests.html)
[releases/2016/too-much-folate-in-pregnant-women-increases-risk-for-autism-study-suggests.html](http://www.jhsph.edu/news/news-releases/2016/too-much-folate-in-pregnant-women-increases-risk-for-autism-study-suggests.html)

26 ¹⁰ Johns Hopkins Bloomberg School of Public Health, Press Release: Too Much Folate in Pregnant
27 Women Increases Risk for Autism, Study Suggests (May 11, 2016), *available at*
[http://www.jhsph.edu/news/news-releases/2016/too-much-folate-in-pregnant-women-increases-risk-](http://www.jhsph.edu/news/news-releases/2016/too-much-folate-in-pregnant-women-increases-risk-for-autism-study-suggests.html)
28 [for-autism-study-suggests.html](http://www.jhsph.edu/news/news-releases/2016/too-much-folate-in-pregnant-women-increases-risk-for-autism-study-suggests.html)

Nutrition Facts Panel Vitafusion Dietary Supplement

Supplement Facts			
Serving Size 2 Gummy Vitamins Servings Per Bottle 45			
Amount Per Serving	% Daily Value for Pregnant & Lactating Women	Amount Per Serving	% Daily Value for Pregnant & Lactating Women
Calories	20	Folic acid	800 mcg 100%
Total Carbohydrate	4 g **	Vitamin B-12 (as cyanocobalamin)	8 mcg 100%
Sugars	3 g **	Zinc (as zinc chelate)	3.8 mg 25%
Vitamin A (as retinyl palmitate)	4000 IU 50%	Choline (as choline chloride)	10 mg **
Vitamin C (as ascorbic acid)	30 mg 50%	Omega-3 fatty acids (from fish oil)	65 mg **
Vitamin D (as cholecalciferol)	400 IU 100%	DHA (Docosahexaenoic acid)	50 mg **
Vitamin E (as d-alpha-tocopheryl acetate)	15 IU 50%	Other Omega-3 fatty acids	15 mg **
Niacin (as inositol niacinatate)	20 mg 100%		
Vitamin B-6 (as pyridoxine HCl)	2.5 mg 100%		

** Daily Value not established.

28. In truth, Vitafusion’s Multivitamin contains folic acid far in excess of its 800 mcg claim. Independent laboratory testing reveals that these Multivitamins routinely contain amounts of folic acid between 1,100 mcg and 2,047 mcg, which not only materially exceed the representation on the Product label and the maximum recommended daily amount, but also significantly exceed the tolerable Upper Limit for folic acid.¹¹

29. Plaintiff and other reasonable consumers relied on Defendant’s labeling, as Defendant intended. Plaintiff affirmatively believed that Defendant verified that the

¹¹ 21 U.S.C. §343(a)(1) states that a food shall be deemed to be misbranded when “its labeling is false or misleading in any particular...” California’s Sherman Food, Drug, and Cosmetic Act (“Sherman Law”), Cal. Health & Safety Code §§ 109875 et seq, explicitly adopts “all food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling regulations of this state.” Cal. Health & Safety Code § 110100; Cal. Health & Safety Code § 110765 (“ It is unlawful for any person to misbrand any food.”).

1 amount of vitamins and minerals listed for the Gummies were, in fact, the actual
2 amounts contained in the Gummies.

3 30. Plaintiff relied on the representations that the Gummies were healthful
4 and contained the amount of vitamins and nutrients represented on the labels. Plaintiff
5 trusted Defendant's labeling of the Gummies, and believing that the Gummies
6 contained safe amounts of vitamins and minerals was material to Plaintiff's decision
7 to purchase the Gummies.

8 31. Plaintiff did not know that the Gummies contained folic acid in excess of
9 the amounts represented on the Product label.

10 32. Plaintiff purchased the Gummies to protect her health and protect the
11 health of her unborn child. She, like other reasonable consumers, read the Gummies'
12 labels and relied on her belief that they were safe and healthy when she purchased
13 them. Had she known the truth about the dangers of the Gummies, she would not have
14 purchased them.

15 33. Plaintiff consumed the Gummies as directed, and only stopped taking the
16 Gummies after giving birth, and after discovering that the Gummies contained
17 dangerous amounts of folic acid.

18 34. In the future, if Plaintiff knew that she could trust the amount of folic
19 acid represented on the Gummies' labels was accurate, she would purchase the
20 Gummies again.

21 35. Defendant's marketing and labeling led Plaintiff and other reasonable
22 consumers to believe that the Gummies were safe, would contribute to their health and
23 that of their unborn babies, and contained safe levels of folic acid. Instead, the
24 Gummies contained materially excess amounts of folic acid and accordingly were
25 misbranded, deceptive, and dangerous.

26 36. Because Defendant's Gummies contain an amount of folic acid that is
27 deceptive and dangerous, the Product is worthless to Plaintiff and other reasonable
28 consumers.

1 37. As a result of Defendant's unlawful and deceptive conduct, Plaintiff and
2 members of the Classes have been harmed.

3 38. Plaintiff alleges that Defendant's conduct violates California state
4 consumer protection laws, is a breach of express and implied warranties and its
5 otherwise grounds for restitution on the basis of unjust enrichment.

6 39. Plaintiff also seeks injunctive and declaratory relief based on Defendant's
7 conduct asserted in this Complaint. As of the date of this Complaint, upon information
8 and belief, Defendant continues to advertise and sell its Vitafusion Gummies as
9 containing 800 mcg of folic acid. Even if Defendant elected to remove the offending
10 labels, it is not presently enjoined from putting the false representations back on its
11 Product labels at will and continuing to mislead the consuming public. Accordingly,
12 Plaintiff seeks declaratory and injunctive relief to ensure that Defendant truthfully
13 labels the amount of folic acid in the Gummies and refrains from manufacturing and
14 selling prenatal supplements with amounts of folic acid in excess of tolerable Upper
15 Limits.

16 CLASS ACTION ALLEGATIONS

17 40. Plaintiff brings this action on behalf of herself and on behalf of all others
18 similarly situated defined as follows:

- 19 a. **National:** All persons in the United States who purchased the
20 Product in the United States during the Class Period.
21 b. **California** All persons in California who purchased the Product in
22 California during the Class Period.
23 c. **Class Period** is the maximum time allowable as determined by the
24 statute of limitation periods accompanying each cause of action.

25 41. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure
26 23(a), and 23(b)(1), 23(b)(2) and 23(b)(3).

1 42. Excluded from the Classes are: (i) Defendant and its employees,
2 principals, affiliated entities, legal representatives, successors and assigns; and (ii) the
3 judges to whom this action is assigned.

4 43. Upon information and belief, there are tens of thousands of members of
5 the Classes. Therefore, individual joinder of all members of the Classes would be
6 impracticable.

7 44. There is a well-defined community of interest in the questions of law and
8 fact affecting the parties represented in this action.

9 45. Common questions of law or fact exist as to all members of the Classes.
10 These questions predominate over the questions affecting only individual Class
11 members. These common legal or factual questions include but are not limited to:

- 12 a. Whether Defendant marketed, packaged, or sold the Product
13 to Plaintiff and those similarly situated using false,
14 misleading, or deceptive statements or representations,
15 including statements or representations concerning the
16 amount of folic acid in the Product;
- 17 b. Whether Defendant omitted or misrepresented material facts
18 in connection with the sales of its Product;
- 19 c. Whether Defendant participated in and pursued the common
20 course of conduct complained of herein;
- 21 d. Whether Defendant representing the Products were healthful,
22 safe, and contained the amounts of vitamins and minerals
23 listed in the Supplements Facts Panel constitutes consumer
24 fraud or an unfair or deceptive business practice;
- 25 e. Whether Defendant has been unjustly enriched as a result of
26 its unlawful business practice;
- 27 f. Whether Defendant's actions as described above violate the
28 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,

1 et seq. (the “UCL”);

2 g. Whether those representations violate the False Advertising
3 Law, Cal. Bus. & Prof. Code §§ 17500, et seq. (the “FAL”);

4 h. Whether those representations violate the Consumers Legal
5 Remedies Act, Cal. Civ. Code §§ 1750, et seq. (the
6 “CLRA”);

7 i. Whether Defendant’s actions as described above constitute a
8 breach of express or implied warranties;

9 j. Whether Defendant should be enjoined from continuing the
10 above-described practices;

11 k. Whether Plaintiff and members of the Classes are entitled to
12 declaratory relief; and

13 l. Whether Defendant should be required to make restitution,
14 disgorge profits, reimburse losses, and pay damages as a
15 result of the above-described practices.

16 46. Plaintiff’s claims are typical of the claims of the Classes, in that Plaintiff
17 was a consumer who purchased the Product that Defendant represented contained
18 significantly lower levels of folic acid than it actually contained. Plaintiff, therefore, is
19 no different in any relevant respect from any other Class Member who purchased the
20 Product, and the relief sought is common to the Classes.

21 47. Plaintiff is an adequate representative of the Classes because her interests
22 do not conflict with the interests of the members of the Classes she seeks to represent,
23 and she has retained counsel competent and experienced in conducting complex class
24 action litigation. Plaintiff and her counsel will adequately protect the interests of the
25 Classes.

26 48. A class action is superior to other available means for the fair and
27 efficient adjudication of this dispute. The damages suffered by each individual Class
28 Member likely will be relatively small, especially given the relatively small cost of the

1 [products] at issue and the burden and expense of individual prosecution of the
2 complex litigation necessitated by Defendant's conduct. Thus, it would be virtually
3 impossible for members of the Classes individually to effectively redress the wrongs
4 done to them. Moreover, even if members of the Classes could afford individual
5 actions, it would still not be preferable to class-wide litigation. Individualized actions
6 present the potential for inconsistent or contradictory judgments. By contrast, a class
7 action presents far fewer management difficulties and provides the benefits of single
8 adjudication, economies of scale, and comprehensive supervision by a single court.

9 49. In the alternative, the Classes may be certified because Defendant has
10 acted or refused to act on grounds generally applicable to the Classes, thereby making
11 appropriate preliminary and final equitable relief with respect to each Class.

12
13 **FIRST CAUSE OF ACTION**
14 **(Breach of Express Warranty, Cal. Com. Code § 2313)**

15 50. Defendant made express warranties to Plaintiff and members of the Class
16 that the Gummies they were purchasing had 800 mcg of folic acid, no less and certainly
17 no more.

18 51. The express warranties of the amount of folic acid made to Plaintiff and
19 the Class appear on every label of the Gummies. This warranty regarding the nature of
20 the Gummies marketed by Defendant specifically relates to the goods being purchased
21 and became the basis of the bargain.

22 52. Plaintiff and the Class purchased the Gummies in the belief that they
23 conformed to the express warranties that were made on the Gummies' labels.

24 53. Defendant breached the express warranties made to Plaintiff and members
25 of the Class by failing to supply goods that conformed to the warranties it made. As a
26 result, Plaintiff and members of the Class suffered injury and deserve to be compensated
27 for the damages they suffered.

1 54. Plaintiff and the members of the Class paid money for the Gummies.
2 However, Plaintiff and the members of the Class did not obtain the full value of the
3 advertised Gummies. If Plaintiff and other members of the Class had known of the true
4 nature of the Gummies, they would not have purchased them. Accordingly, Plaintiff
5 and members of the Class have suffered injury in fact and lost money or property as a
6 result of Defendant's wrongful conduct.

7 55. Plaintiff and the Class are therefore entitled to recover damages, punitive
8 damages, equitable relief such as restitution and disgorgement of profits, and
9 declaratory and injunctive relief.

10 56. Defendant made express warranties to Plaintiff and members of the
11 Classes that the Product contained the amount of folic acid represented on the Product's
12 Supplement Facts Panel. Instead, the Product contained an amount of folic acid that
13 materially exceeded its represented amounts and was in excess of tolerable Upper
14 Limits.

15 57. These express warranties appear on every label of the Product. This
16 promise regarding the nature of the Product marketed by Defendant specifically relates
17 to the goods being purchased and became the basis of the bargain.

18 58. Plaintiff and the Classes purchased the Product in the belief that they
19 conformed to the express warranties that were made on the labels.

20 59. Defendant breached the express warranties made to Plaintiff and
21 members of the Classes by failing to supply goods that conformed to the warranties it
22 made. As a result, Plaintiff and members of the Classes suffered injury and deserve to
23 be compensated for the damages they suffered.

24 60. Plaintiff and the members of the Classes paid money for the Product.
25 However, Plaintiff and the members of the Classes did not obtain the full value of the
26 advertised Product. If Plaintiff and other members of the Classes had known of the
27 true nature of the Product, they would not have purchased it. Accordingly, Plaintiff
28

1 and members of the Classes have suffered injury in fact and lost money or property as
2 a result of Defendant's wrongful conduct.

3 61. Plaintiff and the Classes are therefore entitled to recover damages,
4 punitive damages, equitable relief such as restitution and disgorgement of profits, and
5 declaratory and injunctive relief.

6 **SECOND CAUSE OF ACTION**
7 **(Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314)**

8 62. Plaintiff and other Class members purchased the Product, which
9 Defendant promoted, marketed, advertised, packaged and labeled using promises or
10 affirmations of fact on the labels. Defendant impliedly warranted that the Product it
11 sold conformed to these promises or affirmations when they did not. Defendant
12 impliedly warranted that Product as of a particular kind and quality when it as not.

13 63. Plaintiff and those similarly situated purchased the Product, relied on
14 Defendant's representations that the Product was safe, healthful, and contained the
15 amount of vitamins and minerals listed in the Supplement Facts Panel.

16 64. Defendant breached the warranties implied at the time of sale in that
17 Plaintiff and those similarly situated did not receive goods that they bargained for.
18 Accordingly, the goods were not merchantable as conforming with the promises or
19 affirmations of fact made on their labels, and were not merchantable as the kind and
20 quality Defendant represented them to be.

21 65. As a proximate result of these breaches of warranty by Defendant,
22 Plaintiff and those similarly situated have suffered damages in an amount to be
23 determined at trial in that, among other things, they purchased and paid for products
24 that did not conform with the promises or affirmations of fact made on their labels,
25 and were not of the kind and quality Defendant represented. They were deprived of
26 the benefit of their bargain and spent money on products that did not have any value,
27 had less value than warranted, or that they would not have purchased and used had
28 they known the true facts about them.

THIRD CAUSE OF ACTION
(“Unlawful” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)

1
2
3 66. The UCL defines unfair business competition to include any “unlawful,
4 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
5 misleading” advertising. Cal. Bus. Prof. Code § 17200.

6 67. A business act or practice is “unlawful” if it violates any established state
7 or federal law.

8 68. California's Sherman Food, Drug, and Cosmetic Law (“Sherman Law”),
9 Cal. Health & Safety Code § 109875 *et seq.*, broadly prohibits the misbranding of food.
10 Cal. Health & Safety Code § 110765; See, also Cal. Health & Safety Code § 110660
11 (“Any food is misbranded if its labeling is false or misleading in any particular.”). The
12 Sherman Law incorporates all food labeling regulations and any amendments to those
13 regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 (“FDCA”)
14 as the food labeling regulations of California. Cal. Health & Safety Code § 110100(a);
15 *see also* Cal. Health & Safety Code §§ 110665, 110670.

16 69. As described in detail above, by representing its Product contains 800 mcg
17 of folic acid when in truth it contains a materially significant amount in excess,
18 Defendant violates at a minimum 21 U.S.C. 343(a)(1) (“a food shall be deemed to be
19 misbranded if its labeling is false or misleading in any particular”) as incorporated by
20 the California Sherman Law. Independently, by mislabeling the folic content of its
21 Gummies, Defendant also violates Cal. Health & Safety Code § 110660 (“any food is
22 misbranded if its labeling is false or misleading in any particular.”)

23 70. Defendant violated and continues to violate the Sherman Law, Article 6,
24 Section 110660 and hence has also violated and continues to violate the “unlawful”
25 prong of the UCL through the false labeling of its Product. Defendant’s identical
26 conduct that violates the Sherman Law, also violates FDCA § 403(a)(1), 21 U.S.C. §
27 343(a)(1), which declares food misbranded under federal law if its “labeling is false and
28

1 misleading in any particular.” This identical conduct serves as the sole factual basis of
2 each cause of action brought by this Complaint, and Plaintiff does not seek to enforce
3 any of the state law claims to impose any standard of conduct that exceeds that which
4 would violate FDCA § 403(a)(1).

5 71. By committing the unlawful acts and practices alleged above, Defendant
6 has engaged, and continues to be engaged, in unlawful business practices within the
7 meaning of California Business and Professions Code §§ 17200, *et seq.*

8 72. Through its unlawful acts and practices, Defendant has obtained, and
9 continues to unfairly obtain, money from members of the Class. As such, Plaintiff
10 requests that this Court cause Defendant to restore this money to Plaintiff and all
11 members of the Class, to disgorge the profits Defendant made on these transactions,
12 and to enjoin Defendant from continuing to violate the Unfair Competition Law or
13 violating it in the same fashion in the future. Otherwise, the Class may be irreparably
14 harmed and denied an effective and complete remedy if such an order is not granted.

15 **FOURTH CAUSE OF ACTION**
16 **(“Unfair” Business Practices in Violation of**
17 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

18 73. The UCL defines unfair business competition to include any “unlawful,
19 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
20 misleading” advertising. Cal. Bus. Prof. Code § 17200.

21 74. A business act or practice is “unfair” under the Unfair Competition Law if
22 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the
23 gravity of the harm to the alleged victims.

24 75. Defendant has violated, and continues to violate, the “unfair” prong of the
25 UCL through its misleading description of the Gummies as possessing an amount of
26 folic acid that it did not possess. The gravity of the harm to members of the Class
27 resulting from such unfair acts and practices outweighs any conceivable reasons,
28 justifications, or motives of Defendant for engaging in such deceptive acts and

1 practices. By committing the acts and practices alleged above, Defendant has engaged,
2 and continues to engage, in unfair business practices within the meaning of California
3 Business and Professions Code §§ 17200, *et seq.*

4 76. Through its unfair acts and practices, Defendant has obtained, and
5 continues to unfairly obtain, money from members of the Class. As such, Plaintiff has
6 been injured and requests that this Court cause Defendant to restore this money to
7 Plaintiff and the members of the Class, to disgorge the profits Defendant has made on
8 the Gummies, and to enjoin Defendant from continuing to violate the Unfair
9 Competition Law or violating it in the same fashion in the future. Otherwise the Class
10 may be irreparably harmed and denied an effective and complete remedy if such an
11 Order is not granted.

12 **FIFTH CAUSE OF ACTION**
13 **(“Fraudulent” Business Practices in Violation of**
14 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

15 77. The UCL defines unfair business competition to include any “unlawful,
16 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
17 misleading” advertising. Cal. Bus. & Prof. Code §17200.

18 78. A business act or practice is “fraudulent” under the Unfair Competition
19 Law if it actually deceives or is likely to deceive members of the consuming public.

20 79. Defendant’s acts and practices of mislabeling its Gummies as containing
21 800 mcg of folic acid despite the fact that the Products contained amounts materially in
22 excess of 800 mcg and in excess of its tolerable Upper Limit.

23 80. As a result of the conduct described above, Defendant has been, and will
24 continue to be, unjustly enriched at the expense of Plaintiff and members of the
25 proposed Class. Specifically, Defendant has been unjustly enriched by the profits it has
26 obtained from Plaintiff and the Class from the purchases of its Gummies.

27 81. Through its unfair acts and practices, Defendant has improperly obtained,
28 and continues to improperly obtain, money from members of the Class. As such,

1 Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and
2 the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from
3 continuing to violate the Unfair Competition Law or violating it in the same fashion in
4 the future. Otherwise, the Class may be irreparably harmed and denied an effective and
5 complete remedy if such an Order is not granted.

6 **SIXTH CAUSE OF ACTION**
7 **(False Advertising in Violation of**
8 **California Business & Professions Code §§ 17500, *et seq.*)**

9 82. Defendant uses advertising and packaging to sell its Gummies. Defendant
10 is disseminating advertising regarding its Gummies which by its very nature is
11 deceptive, untrue, or misleading within the meaning of California Business &
12 Professions Code §§17500, *et seq.* because those advertising statements contained on
13 the labels are misleading and likely to deceive, and continue to deceive, members of the
14 putative Class and the general public.

15 83. In making and disseminating the statements alleged herein, Defendant
16 knew or should have known that the statements were untrue or misleading, and acted in
17 violation of California Business & Professions Code §§17500, *et seq.*

18 84. The misrepresentations and non-disclosures by Defendant of the material
19 facts detailed above constitute false and misleading advertising and therefore constitute
20 a violation of California Business & Professions Code §§17500, *et seq.*

21 85. Through its deceptive acts and practices, Defendant has improperly and
22 illegally obtained money from Plaintiff and the members of the Class. As such, Plaintiff
23 requests that this Court cause Defendant to restore this money to Plaintiff and the
24 members of the Class, and to enjoin Defendant from continuing to violate California
25 Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise, Plaintiff
26 and those similarly situated will continue to be harmed by Defendant's false and/or
27 misleading advertising.

1 86. Pursuant to California Business & Professions Code §17535, Plaintiff
2 seeks an Order of this Court ordering Defendant to fully disclose the true nature of its
3 misrepresentations. Plaintiff additionally requests an Order (1) requiring Defendant to
4 disgorge its ill-gotten gains, (2) award full restitution of all monies wrongfully acquired
5 by Defendant and (3), interest and attorneys’ fees. Plaintiff and the Class may be
6 irreparably harmed and denied an effective and complete remedy if such an Order is not
7 granted.

8 **SEVENTH CAUSE OF ACTION**
9 **(Violation of the Consumers Legal Remedies Act,**
10 **California Civil Code §§ 1750, et seq.)**

11 87. This cause of action is brought pursuant to the Consumers Legal Remedies
12 Act, California Civil Code §§ 1750, et seq. (the “CLRA”).

13 88. Plaintiff and each member of the proposed Class are “consumers” within
14 the meaning of Civil Code § 1761(d).

15 89. The purchases of the Gummies by consumers constitute “transactions”
16 within the meaning of Civil Code § 1761(e) and the Gummies constitute “goods” within
17 the meaning of Civil Code § 1761(a).

18 90. Defendant has violated, and continues to violate, the CLRA in at least the
19 following respects:

- 20 a. in violation of Civil Code § 1770(a)(5), Defendant represented that
the transaction had characteristics which it did not have;
- 21 b. in violation of Civil Code § 1770(a)(7), Defendant represented that
22 its goods were of a particular standard, quality or grade, which they
were not; and
- 23 c. in violation of Civil Code § 1770(a)(9), Defendant advertised its
24 goods (*i.e.*, the Defendant Products) with the intent not to provide
what it advertised.

25 91. Defendant knew, or should have known, that the labeling of its Gummies
26 violated consumer protection laws, and that these statements would be relied upon by
27 Plaintiff and the members of the Class.

1 92. The representations were made to Plaintiff and all members of the Class.
2 Plaintiff relied on the accuracy of the representations on Defendant's labels which
3 formed a material basis for her decision to purchase the Gummies. Moreover, based on
4 the very materiality of Defendant's misrepresentations uniformly made on or omitted
5 from its Gummies labels, reliance may be presumed or inferred for all members of the
6 Class.

7 93. Defendant carried out the scheme set forth in this Complaint willfully,
8 wantonly, and with reckless disregard for the interests of Plaintiff and the Class, and as
9 a result, Plaintiff and the Class have suffered an ascertainable loss of money or property.

10 94. Plaintiff and the members of the Class request that this Court enjoin
11 Defendant from continuing to engage in the unlawful and deceptive methods, acts and
12 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless
13 Defendant is permanently enjoined from continuing to engage in such violations of the
14 CLRA, future consumers of Defendant's Gummies will be damaged by its acts and
15 practices in the same way as have Plaintiff and the members of the proposed Class.

16 95. Concurrent with this filing Plaintiff transmitted, pursuant to Civil Code §
17 1782, a certified letter notifying Defendant of the conduct described herein and that
18 such conduct was in violation of particular provisions of Civil Code § 1770. If
19 Defendant does not respond, or otherwise provides a deficient response, Plaintiff will
20 amend this complaint as a matter of right to seek damages as provided for in Civil Code
21 § 1780.

22 **EIGHTH CAUSE OF ACTION**
23 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

24 96. Defendant's conduct in enticing Plaintiff and the Class to purchase is
25 Gummies with false and misleading packaging is unlawful because the statements
26 contained on the Defendant Gummies Products' labels are untrue. Defendant took
27 monies from Plaintiff and the Class for products promised to contain a specific amount
28 of folic acid which it did not. Defendant has been unjustly enriched at the expense of

1 Plaintiff and the Class as result of its unlawful conduct alleged herein, thereby creating
2 a quasi-contractual obligation on Defendant to restore these ill-gotten gains to Plaintiff
3 and the Class.

4 97. As a direct and proximate result of Defendant's unjust enrichment,
5 Plaintiff and the Class are entitled to restitution or restitutionary disgorgement in an
6 amount to be proved at trial.

7
8 **PRAYER FOR RELIEF**

9 THEREFORE, Plaintiff, on behalf of herself and on behalf of the other
10 members of the Class and for the Counts so applicable on behalf of the general public
11 request an award and relief as follows:

12 A. An order certifying that this action is properly brought and may be
13 maintained as a class action, that Plaintiff be appointed Class Representative, and
14 Plaintiff's counsel be appointed Lead Counsel for the Class.

15 B. Restitution in such amount that Plaintiff and all members of the Class
16 paid to purchase Defendant's Product or restitutionary disgorgement of the profits
17 Defendant obtained from those transactions, for Causes of Action for which they are
18 available.

19 C. Compensatory damages for Causes of Action for which they are
20 available.

21 D. Other statutory penalties for Causes of Action for which they are
22 available.

23 E. Punitive Damages for Causes of Action for which they are available.

24 F. A declaration and Order enjoining Defendant from marketing and
25 labeling its Product deceptively, in violation of laws and regulations as specified in
26 this Complaint.

27 G. An Order awarding Plaintiff her costs of suit, including reasonable
28 attorneys' fees and pre- and post-judgment interest.

1 H. An Order requiring an accounting for, and imposition of, a constructive
2 trust upon all monies received by Defendant as a result of the unfair, misleading,
3 fraudulent and unlawful conduct alleged herein.

4 I. Such other and further relief as may be deemed necessary or appropriate.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a trial by jury on all causes of action or issues so triable.
7

8
9 DATED: October 3, 2017

Respectfully submitted,

10
11 

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