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10 UNITED STATES DISTRICT COURT FOR THE
11 NORTHERN DISTRICT OF CALIFORNIA

12 RAFAEL PASCHOAL, LISA CHONG, and
13 ADINA RINGLER as individuals, on behalf of
14 themselves, the general public and those
15 similarly situated,

16 Plaintiffs,

17 v.

18 CAMPBELL SOUP COMPANY and SUN-
19 MAID GROWERS OF CALIFORNIA,

20 Defendants.

CASE NO.

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES
ACT; FALSE ADVERTISING; FRAUD,
DECEIT, AND/OR
MISREPRESENTATION; UNFAIR
BUSINESS PRACTICES; AND
UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

INTRODUCTION

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2 1. Plaintiffs Rafael Paschoal, Lisa Chong, and Adina Ringler by and through their
3 counsel, bring this class action against Defendants Campbell Soup Company and Sun-Maid
4 Growers of California (collectively, “Defendants”), to seek redress for Defendants’ deceptive and
5 unlawful practices in labeling and marketing the Plum Organics brand baby and toddler food
6 products.

7 2. Parents are increasingly aware of the need to provide healthy food for their
8 children, especially at the critical age of less than 2 years old. To make healthy food choices for
9 their children, parents rely on nutritional information on food product labels.

10 3. Intending to profit from parents’ increasing desire to purchase healthy food for
11 their young children, Defendants misbrand their baby and toddler food products by making
12 nutrient content claims on the product packages that are strictly prohibited by the Food and Drug
13 Administration (“FDA”), and by misleading purchasers into believing that their products are
14 healthier than other products for children under two years of age in order to induce parents into
15 purchasing Defendants’ products.

16 4. Defendant’s misbranding caused Plaintiffs and members of the class to pay a price
17 premium for the products.

PARTIES

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19 5. Rafael Paschoal is, and at all times alleged in this Class Action Complaint was, an
20 individual and a resident of Berkeley, California.

21 6. Lisa Chong is, and at all times alleged in this Class Action Complaint was, an
22 individual and a resident of San Francisco, California.

23 7. Adina Ringler is, and at all times alleged in this Class Action Complaint was, an
24 individual and a resident of Los Angeles, California.

25 8. Defendant Sun-Maid Growers of California is a corporation existing under the
26 laws of the State of California, having its principal place of business in Fresno, California.

27 9. Defendant Campbell Soup Company is a corporation existing under the laws of the
28 State of New Jersey, having its principal place of business in Camden, New Jersey.

JURISDICTION AND VENUE

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2 10. This Court has jurisdiction over the subject matter of this action pursuant to
3 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of
4 interest and costs; and Plaintiffs and at least one Defendant are citizens of different states.

5 11. The injuries, damages and/or harm upon which this action is based, occurred or
6 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State
7 of California. Defendants regularly conduct and/or solicit business in, engage in other persistent
8 courses of conduct in, and/or derive substantial revenue from products provided to persons in the
9 State of California. Defendants have engaged, and continue to engage, in substantial and
10 continuous business practices in the State of California.

11 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
12 substantial part of the events or omissions giving rise to the claims occurred in the state of
13 California, including within this District.

14 13. In accordance with California Civil Code Section 1780(d), Plaintiffs concurrently
15 file herewith declarations establishing that, at various times throughout the class period, Mr.
16 Paschoal purchased Plum Organics products in and around Berkeley, California. Mr. Paschoal's
17 declaration is attached hereto as Exhibit B.

18 14. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

19 **SUBSTANTIVE ALLEGATIONS**

20 15. Defendants manufacture, distribute, market, advertise, and sell a variety of baby
21 and toddler food products under the brand name "Plum Organics."¹ Many of these products have
22 packaging that predominately, uniformly, and consistently make nutrient content claims on the
23 principal display panel of the product labels (the "Products"). A non-exhaustive list of the
24 Products and the express and implied nutrient content claims made on the product packages is
25 attached hereto as Exhibit A.

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27 ¹ Campbell Soup Company acquired the Plum Organics brand on or around May 2013. On or
28 around March 2021, Sun-Maid Growers of California acquired the Plum Organics brand from
Campbell Soup Company.

1 16. The Products are intended for children under the age of two. Many of the Products
2 are baby food “pouches.” These pouches contain pureed baby food that were introduced to the
3 market over a decade ago, and as of 2018, accounted for 25 percent of baby food sales in the
4 United States.²

5 17. FDA regulations explicitly prohibit certain nutrient content claims on foods
6 intended for children under the age of two. 21 C.F.R. § 101.13(b)(3).

7 18. An ever-growing industry, there is seemingly no limit to the combination of foods
8 that can go into baby food pouches, as evidenced by the wide array of flavors of the Products.
9 Looking for a way to differentiate itself in the growing market, Defendants have turned to making
10 nutrient content claims on the front of their Product labels.

11 19. For example, Defendants have a line of baby food pouches called “Mighty Protein
12 & Fiber,” that states on the front label “3g Protein;” “4g Fiber;” and “200mg Omega-3 ALA from
13 Chia.” An exemplar is shown below.



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² <https://www.nytimes.com/2018/06/19/well/rethinking-baby-food-pouches.html>

20. Another line of pouches called “Super Smoothie Nutrient-Dense Blend” states on the front label “Nutrient-Dense Blend,” “4g Fiber;” “100mg Omega-3 ALA from Chia;” and “7 Essential Nutrients.” The back of the pouch claims, “We developed the Super Smoothie to fuel your little one . . . with a nutritious blend of fruits and veggies,” and further states “Exposure to key nutrients in the first 1000 days is critical for a child’s development.” An exemplar of the front and back product labels is shown below.



21. As described in detail below, Defendants’ advertising and labeling of the Products with express and implied nutrient content claims is unlawful, misleading, deceptive, and intended to induce consumers to purchase the Products at a premium price. These claims deceive and mislead reasonable consumers into believing that the Products will provide more benefits than their competitors, and induces parents to purchase the Products despite a lack of evidence that an increased intake for the nutrients advertised are appropriate or recommended for infants and toddlers less than 2 years of age.

1 **Federal and State Regulations Governing Food Labeling**

2 22. The Food and Drug Administration regulates nutrition content labeling. According
3 to these regulations, “no nutrient content claims may be made on food intended specifically for
4 use by infants and children less than 2 years of age,” subject to certain exceptions not applicable
5 here. 21 C.F.R. § 101.13(b)(3).

6 23. According to the regulations, nutrient content claims can be expressed or implied.
7 21 C.F.R. § 101.13(b)(1), 21 C.F.R. § 101.13(b)(2).

8 24. An express nutrient content claim is “any direct statement about the level (or
9 range) of a nutrient in the food.” 21 C.F.R. § 101.13(b)(1). Further, where information that is
10 required or permitted to be “declared in nutrition labeling, and that appears as part of the nutrition
11 label . . . is declared elsewhere on the label or in labeling, it is a nutrient content claim and is
12 subject to the requirements for nutrient content claims.” 21 C.F.R. § 101.13(c).

13 25. An implied nutrient content claim “suggests that the food, because of its nutrient
14 content, may be useful in maintaining healthy dietary practices and is made in association with an
15 explicit claim or statement about a nutrient.” 21 C.F.R. 1013(b)(2)(ii).

16 26. Identical federal and California laws regulate the content of labels on packaged
17 food and require truthful, accurate information on the labels of packaged foods. The requirements
18 of the federal Food, Drug & Cosmetic Act (“FDCA”), and its labeling regulations, including
19 those set forth in 21 C.F.R. § 101, were adopted by the California legislature in the Sherman Food
20 Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code § 110100 (“All
21 food labeling regulations and any amendments to those regulations adopted pursuant to the
22 federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling
23 regulations of this state.”). The federal laws and regulations discussed herein are applicable
24 nationwide to all sales of packaged food products. Additionally, no state imposes different
25 requirements on labeling of packaged food for sale in the United States.

26 27. Under the FDCA, the term “misleading” covers labels that are technically true, but
27 are likely to deceive consumers. Under the FDCA, if any single representation on the labeling is
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1 misleading, the entire food is misbranded, and no other statement in the labeling can cure a
2 misleading statement.

3 28. Further in addition to its blanket adoption of federal labeling requirements,
4 California has also enacted a number of laws and regulations that adopt and incorporate specific
5 enumerated federal food laws and regulations. *See* California Health & Safety Code § 110660
6 (misbranded if label is misleading).

7 29. Under California law, a food product that is “misbranded” cannot legally be
8 manufactured, advertised, distributed, sold, or possessed. Misbranded products have no economic
9 value and are legally worthless.

10 30. Representing that the Products will provide certain health benefits by making
11 unlawful nutrient content claims as Defendants’ labels do is prohibited by the aforementioned
12 misbranding laws and regulations.

13 31. The regulations relating to nutrient content claims discussed herein are intended to
14 ensure that consumers are not misled as to the actual or relative levels of nutrients in food
15 products.

16 **Defendants’ Marketing and Labeling of the Products Violates State and Federal**
17 **Food Labeling Laws**

18 32. The Products are unlawful, misbranded, and violate the Sherman Law, California
19 Health & Safety Code § 110660, *et seq.*, because the Products are intended for children less than
20 2 years of age and the Products’ labels contain express and implied nutrient content claims.

21 33. The Products at issue in this case are intended for children 6 months and up.

22 34. According to Defendant Plum, Inc.’s website, its “food philosophy” is that “[f]rom
23 pregnancy on through the first two years, food helps spark baby’s growth, eating preferences and
24 overall development.”³

25 35. Some of the Products are labeled as being for children 6 months and up while
26 others are labeled “tots,” with no other indication of what age constitutes a “tot.” The Mighty
27 Morning Bar is labeled as “tots” and “15 months and up.” However, like many other parents,

28 ³ <https://www.plumorganics.com/resource-category/food-philosophy/>

1 Plaintiffs purchased the Products for their children when their children were approximately 6
2 months of age regardless of whether they were labeled for a 6-month-old or for a “tot.”

3 36. Further, the Products are in the “Baby Food” grocery store aisles, alongside similar
4 pureed pouch products and “puffs” marketed for a baby’s first “finger foods.” Defendants
5 misbrand their Products by making nutrient content claims that are strictly prohibited by the FDA,
6 and by misleading purchasers into believing that their products are healthier in order to induce
7 parents into purchasing their products.

8 37. All the Product labels contain impermissible express nutrient content claims. As
9 shown in Exhibit A, the Product labels prominently state the grams of protein, grams of fiber,
10 and/or milligrams of omega-3s on the front of the package. The grams of protein and fiber appear
11 in the nutrition facts panel and are therefore nutrient content claims when stated elsewhere on the
12 label. 21 C.F.R. § 101.13(c). The statement of the presence of other nutrients are also express
13 nutrient content claims.

14 38. Some of the Product labels also contain impermissible implied nutrient content
15 claims. For example, the Super Smoothie Products also claim to be a “Nutrient-Dense Blend”
16 alongside express nutrient content claims such as “4g Fiber” and “100mg Omega-3 ALA from
17 Chia.”

18 39. Foods intended for children less than two are prohibited from making such nutrient
19 content claims. Therefore, the Products are accordingly misbranded.

20 40. Defendants’ marketing, advertising, and sale of the Products violates the false
21 advertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*),
22 including but not limited to:

- 23 a. Section 110390, which makes it unlawful to disseminate false or misleading food
24 advertisements that include statements on products and product packaging or
25 labeling or any other medium used to directly or indirectly induce the purchase of
26 a food product;
- 27 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold, or
28 offer to sell any falsely or misleadingly advertised food; and

- 1 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded
2 food or to deliver or proffer for delivery any food that has been falsely or
3 misleadingly advertised.

4 41. Defendants' marketing, advertising, and sale of the Products violates the
5 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et*.
6 *seq.*), including but not limited to:

- 7 a. Section 110665 (a food is misbranded if its labeling does not conform with the
8 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
9 b. Section 110760, which makes it unlawful for any person to manufacture, sell,
10 deliver, hold, or offer for sale any food that is misbranded;
11 c. Section 110765, which makes it unlawful for any person to misbrand any food;
12 and
13 d. Section 110770, which makes it unlawful for any person to receive in commerce
14 any food that is misbranded or to deliver or proffer for delivery any such food.

15 42. Defendants have violated 21 U.S.C. § 343(a), and the standards set by FDA
16 regulations, including but not limited to 21 C.F.R. §§ 101.13(b), 101.13(c), which have been
17 incorporated by reference in the Sherman Law, by including impermissible nutrient content
18 claims on the labels of foods intended for children less than 2 years of age.

19 43. A reasonable consumer would rely on the label claims to purchase the product. For
20 example, a reasonable consumer would believe that because the Defendants labeled their Products
21 as containing certain nutrients and as being nutritious, that the Products were superior to other
22 similar products that do not make the impermissible claims. A reasonable consumer would also
23 believe that the Product label's inclusion of the nutrient content claims means that an increased
24 intake of those nutrients would be beneficial for his or her child.

25 44. Defendants intend for and know that consumers will and do rely upon food
26 labeling statements in making their purchasing decisions. Label claims and other forms of
27 advertising and marketing drive product sales, particularly if placed prominently on the front of
28 product packaging, as Defendants have done on the Product labels.

1 45. Because consumers pay a price premium for Products that have a nutrient content
2 claim, by labeling their Products as providing nutritional value, Defendants are able to both
3 increase their sales and retain more profits.

4 46. Defendants engaged in the practices complained of herein to further their private
5 interests of: (i) increasing sales of their Products while decreasing the sales of competitors'
6 products that do not make unlawful nutrient content claims, and/or (ii) commanding a higher
7 price for their Products because consumers will pay more for the Products due to consumers'
8 demand for healthful products for their children.

9 47. The market for baby food pouch products continues to grow, and because
10 Defendants know consumers rely on the nutrient content claims on the Product labels, Defendants
11 have an incentive to continue to make such misleading and unlawful representations.

12 48. Defendants continue to launch new product lines with nutrient content claims to
13 maintain their competitive edge, making it likely that Defendants will continue to misleadingly
14 advertise its Products.

PLAINTIFFS' EXPERIENCE

Rafael Paschoal

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17 49. Mr. Paschoal purchased several Plum Organics baby food pouches for his chil-
18 dren starting when they were approximately 6 months of age, including each of the following
19 varieties: Plum Organics Mighty 4 Strawberry, Banana, Greek Yogurt, Kale, Amaranth and Oat
20 Baby Food Pouches; Plum Organics Mighty Veggie Spinach, Grape, Apple, and Amaranth
21 Baby Food Pouches; and Plum Organics Mighty Veggie Zucchini, Apple, Watermelon, and
22 Barley Baby Food Pouches. Mr. Paschoal purchased the products from Amazon and grocery
23 stores in Berkeley, California.

24 50. Mr. Paschoal made each of his purchases after reading the nutrient content claims
25 on the product labels, including, for example, "3g Protein," "2g Fiber," and "100mg Omega-3
26 ALA from Chia," on the front label of the Plum Organics Mighty 4, Strawberry, Banana, Greek
27 Yogurt, Kale, Amaranth and Oat baby food pouch. He purchased the Products instead of other
28 products, because he believed the Products to be superior in providing nutrition for his children.

1 51. As a result of Defendants' unlawful nutrient content claims, the Products have no,
2 or at a minimum, a much lower value to Mr. Paschoal.

3 52. Mr. Paschoal not only purchased the Products because the labels contained
4 nutrient content claims, but he also paid more money for the Products than he would have paid if
5 the Products did not contain nutrient content claims.

6 53. Had Defendants not unlawfully and misleadingly labeled their Products, Mr.
7 Paschoal would not have purchased them or, at a very minimum, he would have paid less for the
8 Products.

9 54. Mr. Paschoal continues to desire to purchase baby and toddler food products,
10 including those marketed and sold by Defendants. If the Products did not contain unlawful and
11 misleading labels, Plaintiffs would likely purchase the Products again in the future. Mr. Paschoal
12 regularly visits stores where the Products and other baby and toddler food products are sold.

13 **Lisa Chong**

14 55. Ms. Chong purchased several Plum Organics baby food pouches for her child
15 starting when he was approximately 6 months of age, including each of the following varieties:

- 16 • Stage 3 Carrot, Spinach, Turkey, Corn, Apple & Potato Baby Food Pouch
- 17 • Stage 3 Carrot, Sweet Potato, Corn, Pea, & Chicken Baby Food Pouch
- 18 • Super Puffs Strawberry & Beet
- 19 • Super Puffs Blueberry & Purple Sweet Potato
- 20 • Super Puffs Mango & Sweet Potato
- 21 • Mighty Protein & Fiber Banana, White Bean, Strawberry, & Chia Baby Food
22 Pouch
- 23 • Mighty Protein & Fiber Pear, White Bean, Blueberry, Date & Chia Baby Food
24 Pouch
- 25 • Mighty Protein & Fiber Banana, White Bean, Sunflower Seed Butter & Chia Baby
26 Food Pouch
- 27 • Mighty Veggie Sweet Potato, Apple, Banana, Carrot Baby Food Pouch
- 28 • Mighty Veggie Spinach, Grape, Apple & Amaranth Baby Food Pouch
- Mighty Veggie Carrot, Pear, Pomegranate & Oats Baby Food Pouch
- Mighty 4 Mango & Pineapple, White Bean, Butternut Squash, Oats Baby Food
Pouch
- Mighty 4 Sweet Potato, Bana & Passion Fruit, Greek Yogurt & Oats Baby Food
Pouch
- Mighty 4 Strawberry Banana, Greek Yogurt, Kale, Oat & Amaranth Baby Food
Pouch
- Mighty 4 Banana, Blueberry, Sweet Potato, Carrot, Greek Yogurt & Millet Baby
Food Pouch

- Mighty Morning Banana, Blueberry, Oat & Quinoa Baby Food Pouch
- Super Smoothie Nutrient-Dense Blend Pear, Sweet Potato, Spinach, Blueberry, Bean & Oat
- Super Smoothie Nutrition Blend Apple, Carrot & Spinach with Beans & Oats

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4 56. She purchased the Products from Safeway, Target, and Buy Buy Baby stores in
5 Daly City and Colma, California from approximately June 2019-June 2020 for her child who was
6 under the age of two years old.

7 57. Ms. Chong made each of her purchases after reading the nutrient content claims on
8 the product labels, including, for example, “3g Protein,” “4g Fiber,” and “200mg Omega-3 ALA
9 from Chia” on the Mighty Protein & Fiber Pear, White Bean, Blueberry, Date & Chia Baby Food
10 Pouch; “2g Protein,” “2g Fiber,” and “100mg Omega3 ALA from Chia,” on the Mighty 4
11 Banana, Blueberry, Sweet Potato, Carrot, Greek Yogurt & Millet Baby Food Pouch; and “2g
12 Protein,” and “2g Fiber,” on the Mighty Morning Banana, Blueberry, Oat, Quinoa Baby Food
13 Pouches. She purchased the Products instead of other products, because she believed the Products
14 to be superior in providing nutrition for her child.

15 58. As a result of Defendants’ unlawful nutrient content claims, the Products have no,
16 or at a minimum, a much lower value to Ms. Chong.

17 59. Ms. Chong not only purchased the Products because the labels contained nutrient
18 content claims, but she also paid more money for the Products than she would have paid for them
19 if they did not contain nutrient content claims.

20 60. Had Defendants not unlawfully and misleadingly labeled their Products, Ms.
21 Chong would not have purchased them or, at a very minimum, she would have paid less for the
22 Products.

23 61. Ms. Chong continues to desire to purchase baby and toddler food products,
24 including those marketed and sold by Defendants. If the Products did not contain deceptive and
25 misleading labels, Plaintiffs would likely purchase the Products again in the future. Ms. Chong
26 regularly visits stores where the Products and other baby and toddler food products are sold.
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1 **Adina Ringler**

2 62. Ms. Ringler purchased several Plum Organics baby food pouches for her child
3 starting when her child was approximately 6 months of age, including each of the following va-
4 rieties: Mighty Protein & Fiber Pear White Bean Blueberry Date & Chia Baby Food Pouch;
5 Mighty 4 Organic Banana Blueberry Sweet Potato Carrot Greek Yogurt & Millet Baby Food
6 Pouch; and Mighty Morning Banana Blueberry Oat Quinoa Baby Food Pouch. She purchased the
7 products from Walmart in Porter Ranch, CA; Target in Granada Hills, CA; and Walmart and Tar-
8 get in Los Angeles, CA.

9 63. Ms. Ringler made each of her purchases after reading the nutrient content claims
10 on the product labels, including, for example, “3g Protein,” “4g Fiber,” and “200mg Omega-3
11 ALA from Chia” on the Mighty Protein & Fiber Pear, White Bean, Blueberry, Date & Chia Baby
12 Food Pouch; “2g Protein,” “2g Fiber,” and “100mg Omega3 ALA from Chia,” on the Mighty 4
13 Banana, Blueberry, Sweet Potato, Carrot, Greek Yogurt & Millet Baby Food Pouch; and “2g
14 Protein,” and “2g Fiber,” on the Mighty Morning Banana, Blueberry, Oat, Quinoa Baby Food
15 Pouches. She purchased the Products instead of other products, because she believed the Products
16 to be superior in providing nutrition for her child.

17 64. As a result of Defendants’ unlawful nutrient content claims, the Products have no,
18 or at a minimum, a much lower value to Ms. Ringler.

19 65. Ms. Ringler not only purchased the Products because the labels contained nutrient
20 content claims, but she also paid more money for the Products than she would have paid for them
21 if they did not contain nutrient content claims.

22 66. Had Defendants not unlawfully and misleadingly labeled their Products, Ms.
23 Ringler would not have purchased them or, at a very minimum, she would have paid less for the
24 Products.

25 67. Ms. Ringler continues to desire to purchase pouch products, including those
26 marketed and sold by Defendants. If the Products did not contain deceptive and misleading labels,
27 Plaintiffs would likely purchase the Products again in the future. Ms. Ringler regularly visits
28 stores where the Products and other baby food pouch products are sold.

1 68. Plaintiffs and members of the Class have been economically damaged by their
2 purchase of the Products because the advertising for the Products was and is misleading under
3 California law and the products are misbranded; therefore, the Products are worth less than what
4 Plaintiffs and members of the Class paid for them.

5 **CLASS ALLEGATIONS**

6 69. Plaintiffs bring this class action lawsuit on behalf of themselves and a proposed
7 class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of
8 Civil Procedure. Plaintiffs seek to represent the following group of similarly situated persons,
9 defined as follows:

10 Nationwide Class: All persons in the United States who purchased the Products
11 between May 27, 2017 and the present.

12 California Subclass: All persons in the State of California who purchased the
13 Products between May 27, 2017 and the present.

14 70. This action has been brought and may properly be maintained as a class action
15 against Defendants because there is a well-defined community of interest in the litigation and the
16 proposed class is easily ascertainable.

17 71. Numerosity: Plaintiffs do not know the exact size the Class, but they estimate that
18 it is composed of more than 100 persons. The persons in the Class are so numerous that the
19 joinder of all such persons is impracticable and the disposition of their claims in a class action
20 rather than in individual actions will benefit the parties and the courts.

21 72. Common Questions Predominate: This action involves common questions of law
22 and fact to the Class because each class member's claim derives from the deceptive, unlawful
23 and/or unfair statements and omissions that led them to rely on the unlawful nutrient content
24 claims on the Product labels. The common questions of law and fact predominate over individual
25 questions, as proof of a common or single set of facts will establish the right of each member of
26 the Class to recover. The questions of law and fact common to the Class are:

- 27 a. Whether the marketing, advertising, packaging, labeling, and other promotional
28 materials for the Products are deceptive and/or unlawful;
- b. Whether Defendants' actions violate Federal and California laws invoked herein;

- 1 c. Whether labeling the Products with unlawful nutrient content claims causes the
- 2 Products to command a price premium in the market as compared with similar
- 3 products that do not make such unlawful claims;
- 4 d. Whether Defendants' advertising and marketing regarding the Products was likely
- 5 to deceive reasonable consumers;
- 6 e. Whether representations regarding the nutrient content of the Products are material
- 7 to a reasonable consumer;
- 8 f. Whether Defendants engaged in the behavior knowingly, recklessly, or
- 9 negligently;
- 10 g. The amount of profits and revenues earned by Defendants as a result of the
- 11 conduct;
- 12 h. Whether class members are entitled to restitution, injunctive and other equitable
- 13 relief and, if so, what is the nature (and amount) of such relief; and
- 14 i. Whether class members are entitled to payment of actual, incidental,
- 15 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
- 16 what is the nature of such relief.

17 73. Typicality: Plaintiffs' claims are typical of the claims of the other members of the
18 Class because, among other things, all such claims arise out of the same wrongful course of
19 conduct engaged in by Defendants in violation of law as complained of herein. Further, the
20 damages of each member of the Class were caused directly by Defendants' wrongful conduct in
21 violation of the law as alleged herein.

22 74. Adequacy of Representation: Plaintiffs will fairly and adequately protect the
23 interests of all class members because it is in their best interests to prosecute the claims alleged
24 herein to obtain full compensation due to them for the unfair and illegal conduct of which they
25 complain. Plaintiffs also have no interests that are in conflict with, or antagonistic to, the interests
26 of class members. Plaintiffs have retained highly competent and experienced class action
27 attorneys to represent her interests and that of the class. By prevailing on their own claims,
28 Plaintiffs will establish Defendants' liability to all class members. Plaintiffs and their counsel

1 have the necessary financial resources to adequately and vigorously litigate this class action, and
2 Plaintiffs and counsel are aware of their fiduciary responsibilities to the class members and are
3 determined to diligently discharge those duties by vigorously seeking the maximum possible
4 recovery for class members.

5 75. Superiority: There is no plain, speedy, or adequate remedy other than by
6 maintenance of this class action. The prosecution of individual remedies by members of the
7 classes will tend to establish inconsistent standards of conduct for Defendants and result in the
8 impairment of class members' rights and the disposition of their interests through actions to
9 which they were not parties. Class action treatment will permit a large number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
11 and without the unnecessary duplication of effort and expense that numerous individual actions
12 would engender. Furthermore, as the damages suffered by each individual member of the classes
13 may be relatively small, the expenses and burden of individual litigation would make it difficult
14 or impossible for individual members of the class to redress the wrongs done to them, while an
15 important public interest will be served by addressing the matter as a class action.

16 76. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 **CAUSES OF ACTION**

19 Plaintiffs do not plead, and hereby disclaims, causes of action under the FDCA and
20 regulations promulgated thereunder by the FDA. Plaintiffs rely on the FDCA and FDA
21 regulations only to the extent such laws and regulations have been separately enacted as state law
22 or regulation or provide a predicate basis of liability under the state and common laws cited in the
23 following causes of action.

24 **PLAINTIFFS' FIRST CAUSE OF ACTION**

25 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil
Code § 1750, *et seq.*)**

26 **On Behalf of Plaintiffs and the California Subclass**

27 77. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint
28 as if set forth herein.

1 78. Defendants' actions, representations and conduct have violated, and continue to
2 violate the CLRA, because they extend to transactions that are intended to result, or which have
3 resulted, in the sale or lease of goods or services to consumers.

4 79. Plaintiffs and other subclass members are "consumers" as that term is defined by
5 the CLRA in California Civil Code § 1761(d).

6 80. The Products that Plaintiffs (and other similarly situated subclass members)
7 purchased from Defendants were "goods" within the meaning of California Civil Code § 1761(a).

8 81. Defendants' acts and practices, set forth in this Class Action Complaint, led
9 customers to falsely believe that the Products were superior to other products and would provide
10 increased nutritional value for their babies. By engaging in the actions, representations and
11 conduct set forth in this Class Action Complaint, Defendants have violated, and continue to
12 violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7), and § 1770(a)(8) of the CLRA. In violation of
13 California Civil Code §1770(a)(2), Defendants' acts and practices constitute improper
14 representations regarding the source, sponsorship, approval, or certification of the goods they
15 sold. In violation of California Civil Code §1770(a)(5), Defendants' acts and practices constitute
16 improper representations that the goods they sell have sponsorship, approval, characteristics,
17 ingredients, uses, benefits, or quantities, which they do not have. In violation of California Civil
18 Code §1770(a)(7), Defendants' acts and practices constitute improper representations that the
19 goods it sells are of a particular standard, quality, or grade, when they are of another. In violation
20 of California Civil Code §1770(a)(8), Defendants have disparaged the goods, services, or
21 business of another by false or misleading representation of fact.

22 82. Plaintiffs request that this Court enjoin Defendants from continuing to employ the
23 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
24 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
25 future, Plaintiffs and the other members of the subclass will continue to suffer harm. Plaintiffs
26 and those similarly situated have no adequate remedy at law to stop Defendants' continuing
27 practices.

28 83. Plaintiffs provided Defendants with notice and demand that Defendants correct,

1 repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices
2 complained of herein. Despite receiving the aforementioned notice and demand, Defendants
3 failed to do so in that, among other things, they failed to identify similarly situated customers,
4 notify them of their right to correction, repair, replacement or other remedy, and/or to provide that
5 remedy. Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of
6 themselves and those similarly situated class members, compensatory damages, punitive damages
7 and restitution of any ill-gotten gains due to Defendants' acts and practices.

8 84. Plaintiffs also request that this Court award their costs and reasonable attorneys'
9 fees pursuant to California Civil Code § 1780(d).

10 **PLAINTIFFS' SECOND CAUSE OF ACTION**
11 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
12 **On Behalf of Plaintiffs and the California Subclass**

13 85. Plaintiffs realleges and incorporates by reference the paragraphs of this Class
14 Action Complaint as if set forth herein.

15 86. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
16 preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive
17 and/or misleading statements in connection with the advertising and marketing of the Products.

18 87. Defendants made representations and statements (by omission and commission)
19 that led reasonable customers to believe that the Products that they were purchasing were superior
20 to competitor products that did not contain unlawful nutrient content claims. Defendants'
21 representations similarly led reasonable consumers to believe that the Product provided nutrients
22 at levels that would be beneficial for their children.

23 88. Plaintiffs and those similarly situated relied to their detriment on Defendants'
24 misleading and deceptive advertising and marketing practices, including each of the unlawful
25 claims set forth above. Had Plaintiffs and those similarly situated been adequately informed and
26 not intentionally deceived by Defendants, they would have acted differently by, without
27 limitation, refraining from purchasing the Products or paying less for them.

28 89. Defendants' acts and omissions are likely to deceive the general public.

90. Defendants engaged in these false, misleading and deceptive advertising and

1 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
2 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
3 Professions Code.

4 91. The aforementioned practices, which Defendants used, and continue to use, to
5 their significant financial gain, also constitute unlawful competition and provide an unlawful
6 advantage over Defendants' competitors as well as injury to the general public.

7 92. As a direct and proximate result of such actions, Plaintiffs and the other subclass
8 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
9 as a result of such false, deceptive and misleading advertising in an amount which will be proven
10 at trial, but which is in excess of the jurisdictional minimum of this Court.

11 93. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
12 of monies, as necessary and according to proof, to restore any and all monies acquired by
13 Defendants from Plaintiffs, the general public, or those similarly situated by means of the false,
14 misleading and deceptive advertising and marketing practices complained of herein, plus interest
15 thereon. Plaintiffs and those similarly situated lack any adequate remedy at law to obtain this
16 restitution.

17 94. Plaintiffs seek, on behalf of themselves and those similarly situated, a declaration
18 that the above-described practices constitute false, misleading and deceptive advertising.

19 95. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction
20 to prohibit Defendants from continuing to engage in the false, misleading and deceptive
21 advertising and marketing practices complained of herein. Such misconduct by Defendants,
22 unless and until enjoined and restrained by order of this Court, will continue to cause injury in
23 fact to the general public and the loss of money and property in that Defendants will continue to
24 violate the laws of California, unless specifically ordered to comply with the same. This
25 expectation of future violations will require current and future consumers to repeatedly and
26 continuously seek legal redress in order to recover monies paid to Defendants to which they are
27 not entitled. Plaintiffs, those similarly situated and/or other California consumers have no other
28 adequate remedy at law to ensure future compliance with the California Business and Professions

1 Code alleged to have been violated herein.

2 **PLAINTIFFS' THIRD CAUSE OF ACTION**
3 **(Common Law Fraud, Deceit and/or Misrepresentation)**
4 **On Behalf of Plaintiffs and the Class**

5 96. Plaintiffs realleges and incorporates by reference the paragraphs of this Class
6 Action Complaint as if set forth herein.

7 97. Defendants have fraudulently and deceptively included unlawful nutrient content
8 claims on the Product labels.

9 98. The unlawfulness of the claims were known exclusively to, and actively concealed
10 by, Defendants, not reasonably known to Plaintiffs, and material at the time they were made.
11 Defendants' unlawful statements concerned material facts that were essential to the analysis
12 undertaken by Plaintiffs as to whether to purchase the Products. In misleading Plaintiffs and not
13 so informing them, Defendants breached their duty to Plaintiffs. Defendants also gained
14 financially from, and as a result of, their breach.

15 99. Plaintiffs and those similarly situated relied to their detriment on Defendants'
16 unlawful representations. Had Plaintiffs and those similarly situated been adequately informed
17 and not intentionally deceived by Defendants, they would have acted differently by, without
18 limitation: (i) declining to purchase the Products, (ii) purchasing less of them, or (iii) paying less
19 for the Products.

20 100. By and through such fraud, deceit, and unlawful representations, Defendants
21 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.
22 Specifically, Defendants fraudulently and deceptively induced Plaintiffs and those similarly
23 situated to, without limitation, purchase the Products.

24 101. Plaintiffs and those similarly situated justifiably and reasonably relied on
25 Defendants' unlawful representations, and, accordingly, were damaged by Defendants.

26 102. As a direct and proximate result of Defendants' unlawful representations, Plaintiffs
27 and those similarly situated have suffered damages, including, without limitation, the amount they
28 paid for the Products.

103. Defendants' conduct as described herein was wilful and malicious and was

1 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
2 and harm to Plaintiffs and those similarly situated.

3 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
4 **(Unlawful, unfair, and fraudulent trade practices violation of Business and**
5 **Professions Code § 17200, et seq.)**
6 **On Behalf of Plaintiffs and the California Subclass**

7 104. Plaintiffs realleges and incorporates by reference the paragraphs of this Class
8 Action Complaint as if set forth herein.

9 105. Within four (4) years preceding the filing of this lawsuit, and at all times
10 mentioned herein, Defendants have engaged, and continue to engage, in unlawful, unfair, and
11 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
12 business practices outlined in this complaint.

13 106. In particular, Defendants have engaged, and continue to engage, in unlawful
14 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
15 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
16 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
17 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
18 6), including without limitation, California Health & Safety Code §§ 110665, 110760, 110765,
19 and 110770; and (v) and federal laws regulating the advertising and branding of food in 21 U.S.C.
20 § 343, et seq. and FDA regulations, including but not limited to 21 C.F.R. 21 C.F.R. §§
21 101.13(b), which are incorporated into the Sherman Law (California Health & Safety Code §§
22 110100(a), 110380, and 110505).

23 107. In particular, Defendants have engaged, and continue to engage, in unfair and
24 fraudulent practices by, without limitation, the following: including unlawful nutrient content
25 claims on the Product labels and thereby selling Products that were not capable of being sold or
26 held legally and which were legally worthless.

27 108. Plaintiffs and those similarly situated relied to their detriment on Defendants'
28 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated
been adequately informed and not deceived by Defendants, they would have acted differently by,

1 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or
2 (iii) paying less for the Products.

3 109. Defendants' acts and omissions are likely to deceive the general public.

4 110. Defendants engaged in these deceptive and unlawful practices to increase their
5 profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and
6 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

7 111. The aforementioned practices, which Defendants have used to their significant
8 financial gain, also constitute unlawful competition and provide an unlawful advantage over
9 Defendants' competitors as well as injury to the general public.

10 112. As a direct and proximate result of such actions, Plaintiffs and the other subclass
11 members, have suffered and continue to suffer injury in fact and have lost money and/or property
12 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
13 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
14 Among other things, Plaintiffs and the subclass members lost the amount they paid for the
15 Products.

16 113. As a direct and proximate result of such actions, Defendants have enjoyed, and
17 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which
18 is in excess of the jurisdictional minimum of this Court.

19 114. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
20 of monies, as necessary and according to proof, to restore any and all monies acquired by
21 Defendants from Plaintiffs, the general public, or those similarly situated by means of the
22 deceptive and/or unlawful trade practices complained of herein, plus interest thereon. Plaintiffs
23 and those similarly situated lack any adequate remedy at law to obtain this restitution.

24 115. Plaintiffs seek, on behalf of themselves and those similarly situated, a declaration
25 that the above-described trade practices are fraudulent, unfair, and/or unlawful.

26 116. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction
27 to prohibit Defendants from continuing to engage in the deceptive and/or unlawful trade practices
28 complained of herein. Such misconduct by Defendants, unless and until enjoined and restrained

1 by order of this Court, will continue to cause injury in fact to the general public and the loss of
2 money and property in that Defendants will continue to violate the laws of California, unless
3 specifically ordered to comply with the same. This expectation of future violations will require
4 current and future consumers to repeatedly and continuously seek legal redress in order to recover
5 monies paid to Defendants to which they were not entitled. Plaintiffs, those similarly situated
6 and/or other consumers nationwide have no other adequate remedy at law to ensure future
7 compliance with the California Business and Professions Code alleged to have been violated
8 herein.

9 **PLAINTIFFS' FIFTH CAUSE OF ACTION**
10 **(Unjust Enrichment)**
11 **On Behalf of Plaintiffs and the Class**

12 117. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein

13 118. Plaintiffs and members of the Class members conferred a benefit on the
14 Defendants by purchasing the Products

15 119. Defendants have been unjustly enriched in retaining the revenues from Plaintiffs'
16 and Class Members' purchases of the Products, which retention is unjust and inequitable, because
17 Defendants sold Products that were not capable of being sold or held legally and which were
18 legally worthless. Plaintiffs paid a premium price for the Products.

19 120. Because Defendants' retention of the non-gratuitous benefit conferred on them by
20 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to
21 Plaintiffs and the Class members for its unjust enrichment, as ordered by the Court. Plaintiffs and
22 those similarly situated have no adequate remedy at law to obtain this restitution.

23 121. Plaintiffs, therefore, seek an order requiring Defendants to make restitution to
24 them and other members of the Class.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,
27 respectfully request that the Court enter judgement against Defendants as follows:

28 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as
class counsel;

- 1 B. An order temporarily and permanently enjoining Defendants from continuing the
- 2 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Com-
- 3 plaint;
- 4 C. An award of compensatory damages in an amount to be determined at trial, except
- 5 as to those causes of action where compensatory damages are not available as a
- 6 matter of law;
- 7 D. An award of statutory damages in an amount to be determined at trial, except as to
- 8 those causes of action where statutory damages are not available as a matter of
- 9 law;
- 10 E. An award of punitive damages in an amount to be determined at trial, except as to
- 11 those causes of action where punitive damages are not available as a matter of law;
- 12 F. An award of treble damages, except as to those causes of action where treble
- 13 damages are not available as a matter of law;
- 14 G. An award of restitution in an amount to be determined at trial;
- 15 H. An order requiring Defendants to pay both pre- and post-judgment interest on any
- 16 amounts awarded;
- 17 I. For reasonable attorney's fees and the costs of suit incurred; and
- 18 J. For such further relief as this Court may deem just and proper.

19
20 **JURY TRIAL DEMANDED**

21 Plaintiffs hereby demand a trial by jury.

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Dated: September 10, 2021

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