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**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ANDRE VITOSUS, DEBRA  
FOLEY, and RACHEL LUMBRA,  
on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

ALANI NUTRITION, LLC,  
  
Defendant.

Case No.: '21CV2048 MMAMDD

**CLASS ACTION COMPLAINT**

Plaintiffs Andres Vitiosus, Debra Foley, and Rachel Lumbra (collectively  
“Plaintiffs”), individually and on behalf of all others similarly situated, by and  
through their undersigned counsel, bring the following Class Action Complaint  
against Defendant Alani Nutrition, LLC (“Defendant”):

## **NATURE OF THE ACTION**

1  
2 1. This is a civil class action brought individually by Plaintiffs on behalf  
3 of consumers who purchased Defendant's FIT SNACKS Whey Protein Baked Bar  
4 products, including but not limited to, those in any of the following flavors:  
5 Chocolate Cake, Peanut Butter Cup, Peanut Butter Crisp, Cookies and Cream, and  
6 Munchies, Fruity Cereal, Confetti Cake, Blueberry Muffin, or any other limited,  
7 discontinued, or seasonal flavors (the "Products").

8 2. Defendant misleads consumers into thinking that its Products are  
9 "healthy", based on the synonymous name of the Products "FIT" Snacks, when in  
10 fact the Products typically contain 6 grams of fat, depending on flavor and size of  
11 the Products. The United States Food, Drug and Cosmetic Act, along with parallel  
12 state statutes, have found healthy claims to be misleading in high fat content products  
13 just like Defendant's.

14 3. As a purveyor in the highly lucrative protein bar market, Defendant  
15 knows that when it comes to labeling and marketing, words matter. This is why  
16 Defendant chose to name the Products "FIT" Snacks, and to emblazon the word  
17 "FIT" on the front and center of each Product label, in a bold all-capitalized font,  
18 where consumers cannot miss it.

19 4. Defendant chose to label the Products in this way to impact consumer  
20 choices and gain market dominance, as it is well aware that all consumers who  
21 purchased the Products were exposed to, and would be impacted by, the "FIT"  
22 representation and would reasonably believe from this representation that the  
23 Products are healthy. However, the Products are not "healthy" as they contain high  
24 levels of fat in violation of the United States Food, Drug and Cosmetic Act  
25 ("FDCA") and parallel state laws.

26 5. The FDCA was enacted, in part, to ensure companies accurately label  
27 and identify their products so consumers can choose more healthful diets. As part  
28

1 of this strategic plan, the FDCA, along with parallel state statutes, have found  
2 healthy claims to be misleading in high fat content products such as Defendant's  
3 Products at issue in this litigation. Defendant's labeling of the Products as "FIT",  
4 and in the manner described above, is in violation of the FDCA and parallel state  
5 laws and is deceptive and unlawful.

## 6 **PARTIES**

7  
8 6. Plaintiff Andres Vitiosus is a resident and citizen of Escondido,  
9 California in San Diego County.

10 7. Plaintiff Debra Foley is a resident and citizen of Palmdale, California  
11 in Los Angeles County.

12 8. Plaintiff Rachel Lumbra is a resident of Schenectady, New York in  
13 Schenectady County.

14 9. Defendant Alani Nutrition, LLC is a Kentucky Limited Liability  
15 Corporation with its principal place of business at 7201 intermodal Drive, Louisville,  
16 Kentucky, 40258.

17 10. Defendant designed, manufactured, warranted, advertised, and sold the  
18 Products throughout the United States, including the State of California, and  
19 continues to do so.

## 20 **JURISDICTION AND VENUE**

21  
22  
23 11. This Court has subject matter jurisdiction over this class action pursuant  
24 to 28 U.S.C. § 1332(d). The matter in controversy, exclusive of interest and costs,  
25 exceeds the sum or value of \$5,000,000 and is a class action in which some members  
26 of the Classes are citizens of states other the state in which Defendant is incorporated  
27 and has its principal place of business.

12. This Court has personal jurisdiction over Defendant because the acts and omissions giving rise to this action occurred in the state of California. This Court also has personal jurisdiction over Defendant because Defendant placed the Products in the stream of commerce directed at the State of California, Plaintiffs purchased the Products within California, and Defendant's fraud and misrepresentations occurred in California.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to at least one of Plaintiffs' claims occurred in this District. Specifically, Plaintiff Vitiosus purchased the Products within this District.

14. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

### **FACTUAL ALLEGATIONS**

15. At all relevant times, Defendant has marketed its Products in a consistent and uniform manner. Defendant sells the Products in all 50 states on its website and through various distributors and retailers across the United States.

### ***FIT SNACKS***

16. Defendant states on its website about the FIT SNACKS: "We crafted our line of supplements for people who take their health and wellness seriously. From appropriate portions to balanced ingredients, Alani Nu supplements are designed to help you find your strength inside. Fill the gaps in your nutrition, find extra motivation, or even balance your hormones with supplements to assist in fitness and wellness goals."<sup>1</sup>

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<sup>1</sup> <https://www.alaninu.com/pages/benefits> (last visited 10/14/2021).

17. Defendant states on every box of the Products “SNACKS YOU WON’T FEEL GUILTY ABOUT, FLAVORS YOU’LL LOVE.”<sup>2</sup>

18. Defendant has a marketing campaign that promotes the Products as “Balanced nutrition & superior taste”, “You’ve found a protein bar that fits all your needs”, and “Care-free snacking just got better”.<sup>3</sup>

19. Defendant bases its marketing campaign on the claim that snacking on the Products is “without guilt”. It says on its website when purchasing the Products “indulge your cravings without the guilt. Smart snacking should be care-free and delicious which is why we’ve come up with a pretty awesome protein bar to fit all your needs. With our traditional flavors like Confetti Cake and Fruity Cereal, and new flavors like Blueberry Muffin & Chocolate Cake. Trust us, you’re going to want one of each.”<sup>4</sup>

20. As discussed in more detail below, however, Defendant intentionally misleads consumers into believing the Products are a healthy choice by naming and marketing the Product as “FIT” in order to increase its sale and maximize its profits.

21. Thus, Defendant’s consumers pay more for the FIT SNACKS, which contains significantly higher amounts of fat than consumers reasonably expect.

22. Plaintiffs would not have purchased or would have paid less for the Products had they known that the Products were deceptively labeled in violation of the FDCA and parallel state laws.

### *Labeling Requirements and Regulations*

23. The Products’ names “FIT SNACKS” and “FITBAR,” also referred to in the United States Food and Drug Administration (“FDA”) regulations as the

<sup>2</sup><https://www.amazon.com/Alani-Nu-Gluten-Free-Low-Sugar-Blueberry/dp/B087QX8CXV?th=1> (last visited 10/14/2021).

<sup>3</sup> *Id.*

<sup>4</sup> <https://www.alaninu.com/products/protein-bar-12pk> (last visited 10/14/2021).

1 “statement of identity,” are prominently stated on the “principal display panel,” or  
2 the front label, of the Products.

3 24. Under the applicable FDA regulation, the Product label’s statement of  
4 identity must be an appropriate descriptive name that is not misleading. 21 C.F.R. §  
5 101.3(b)(3).

6 25. Pursuant to 21 U.S.C. § 321(ff), Defendant’s Products are “foods”  
7 regulated by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.,  
8 (“FDCA”) and FDCA regulations.

9 26. Under section 403(r)(1)(A) of the FDCA (21 U.S.C. 343(r)(1)(A)), a  
10 food is mislabeled if it bears claims, either express or implied, that characterizes the  
11 level of a nutrient which is of a type required to be declared in nutrition labeling  
12 unless the claim is made in accordance with a regulatory definition established by  
13 FDA.

14 27. 21 CFR 101.65(d)(2) of the FDA provides:

15 You may use the term "healthy" or related terms (e.g., "health," "healthful,"  
16 "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and  
17 "healthiness") as an implied nutrient content claim on the label or in labeling  
18 of a food that is useful in creating a diet that is consistent with dietary  
19 recommendations if:

- 20  
21 (i) The food meets the following conditions for fat, saturated  
22 fat, cholesterol, and other nutrients:  
23  
24  
25  
26  
27  
28

<b>If the food is...</b>	<b>The fat level must be...</b>	<b>The saturated fat level must be...</b>	<b>The cholesterol level must be...</b>	<b>The food must contain...</b>
(A) A raw fruit or vegetable	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(B) A single-ingredient or a mixture of frozen or canned fruits and vegetables <sup>1</sup>	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(C) An enriched cereal-grain product that conforms to a standard of identity in part 136, 137 or 139 of this chapter	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(D) A raw, single-ingredient seafood or game meat	Less than 5 grams (g) total fat per RA <sup>2</sup> and per 100 g	Less than 2 g saturated fat per RA and per 100 g	Less than 95 mg cholesterol per RA and per 100 g	At least 10 percent of the RDI <sup>3</sup> or the DRV <sup>4</sup> per RA of one or more of vitamin A, vitamin C, calcium, iron, protein, or fiber
(E) A meal product as defined in § 101.13(l) or a main dish product as defined in § 101.13(m)	Low fat as defined in § 101.62(b)(3)	Low saturated fat as defined in § 101.62(c)(3)	90 mg or less cholesterol per LS <sup>5</sup>	At least 10 percent of the RDI or DRV per LS of two nutrients (for a main dish product) or of three nutrients (for a meal product) of: vitamin A, vitamin C, calcium, iron, protein, or fiber
(F) A food not specifically listed in this table	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	At least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber

28. Section 101.62(b)(2) defines low fat as: “contains 3 g or less of fat per reference amount customarily consumed[.]”

29. While the term “FIT” is not listed as an implied nutrient claim, the term “fit” is synonymous with the term “healthy.” Merriam-Webster defines “fit” as “sound physically and mentally : HEALTHY.”<sup>5</sup>

30. Further, the Federal Trade Commission has stated that synonyms of the statutorily defined terms for Nutrient Content Claims will also face enforcement action for being misleading.<sup>6</sup>

31. Specifically, in its latest statement, it specifically stated it was going to enforce misleading synonyms like the claims made by Defendant for FIT SNACKS:

The Commission will examine advertising to ensure that claims that characterize the level of a nutrient, including those using **synonyms that are not provided for in FDA's regulations, are consistent with FDA definitions**. Commission precedent establishes that **an advertisement that can reasonably be interpreted in a misleading way is deceptive, even though other, nonmisleading interpretations may be equally possible. Thus, when express or implied claims suggest that a food product meets the standard for use of an FDA-defined term, advertisers should ensure that the food actually meets the relevant FDA standard**. For example, depending on the context of an ad, use of the phrases "packed with" or "lots of" to describe the level of fiber in a food could convey to some reasonable consumers that the food is "high" in fiber. Because FDA's regulations define the terms "good source" and "high" with respect to fiber, consumers are likely to be misled if a "high fiber" claim is implied by an ad for a food that is only a "good source" of fiber.<sup>7</sup>

32. Both the FDA and FTC believe these types of claims, including their synonyms, to be misleading to consumers.

<sup>5</sup> See <https://www.merriam-webster.com/dictionary/fit> (Last visited Sept. 3, 2021).

<sup>6</sup> See <https://www.ftc.gov/public-statements/1994/05/enforcement-policy-statement-food-advertising#44> (last visited November 19, 2021).

<sup>7</sup> *Id.* (emphasis supplied).



1           33. Defendant intentionally named and marketed the Products with the  
2 term “Fit” to make the Products stand out to consumers. In doing so, consumers were  
3 misled into believing that the Products are healthy.

4           34. However, pursuant to the FDCA and parallel state statutes, the Products  
5 are not healthy. Therefore, Defendant’s Products are misleading under the FDCA,  
6 and parallel state statutes, because the Products contain well over 3 grams of fat.

7           35. Further, the FDA states in their Guidance for the Industry regarding  
8 “healthy” claims, that they intend to exercise enforcement discretion where the  
9 products: 1) are not low in fat, but have a fat profile makeup of predominately mono  
10 and polyunsaturated fats; or 2) contain at least ten percent of the Daily Value (DV)  
11 per reference amount customarily consumed (RACC) of potassium or Vitamin D”.<sup>8</sup>

12           36. The FIT SNACKS Munchies contains 4 grams of Saturated Fat and 6  
13 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label,  
14 but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats  
15 are clearly and factually not the “majority” of the fat content contained within the  
16 Munchies. Further, the Munchies contains 0% of the DV of Vitamin D and 2% of  
17 the DV of potassium. Therefore, the Munchies also have far below 10% the DV of  
18 potassium and Vitamin D required to be “healthy”.

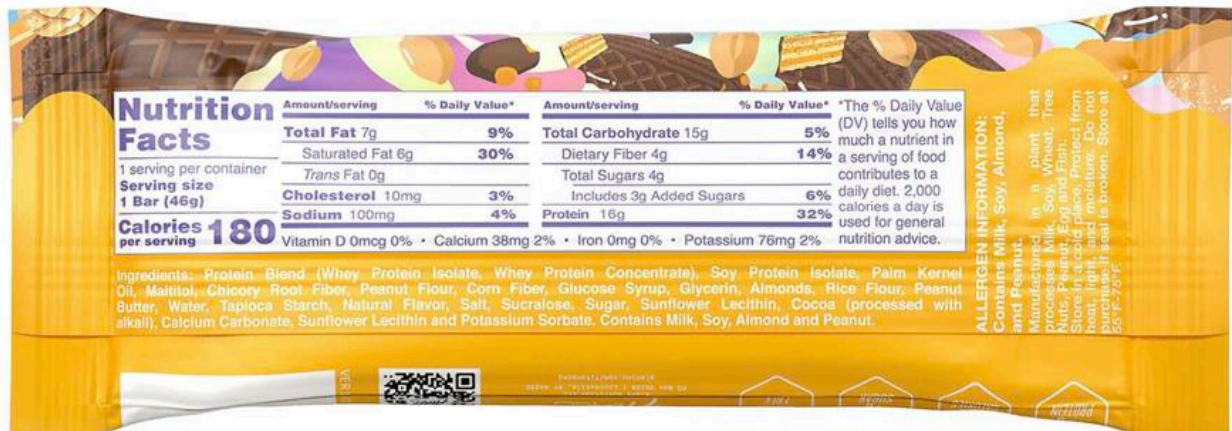
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<sup>8</sup> See <https://www.fda.gov/media/100520/download> (Last visited Sept. 4, 2021).

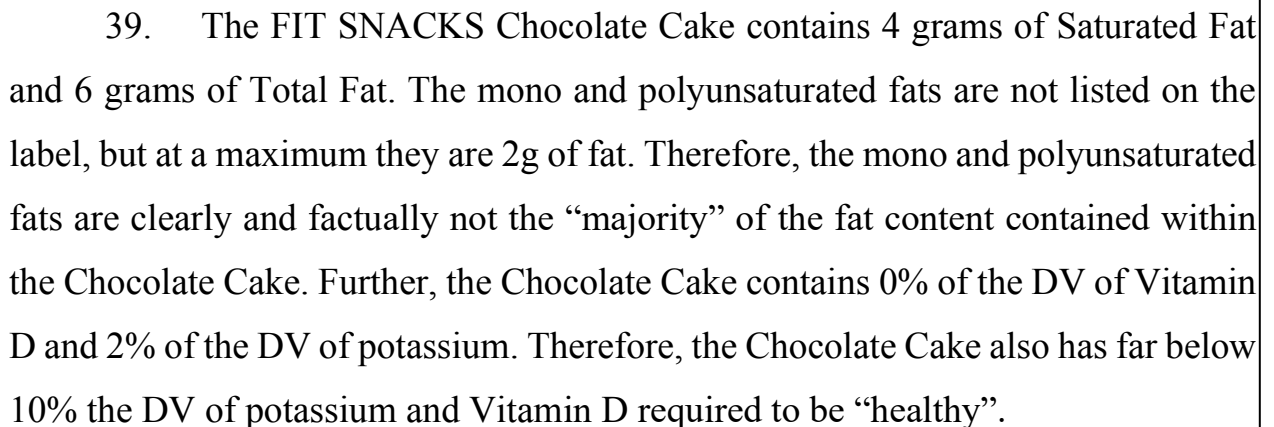


37. The FIT SNACKS Peanut Butter Crisp contains 6 grams of Saturated Fat and 7 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 1g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Peanut Butter Crisp. Further, the Peanut Butter Crisp contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Peanut Butter Crisp also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.



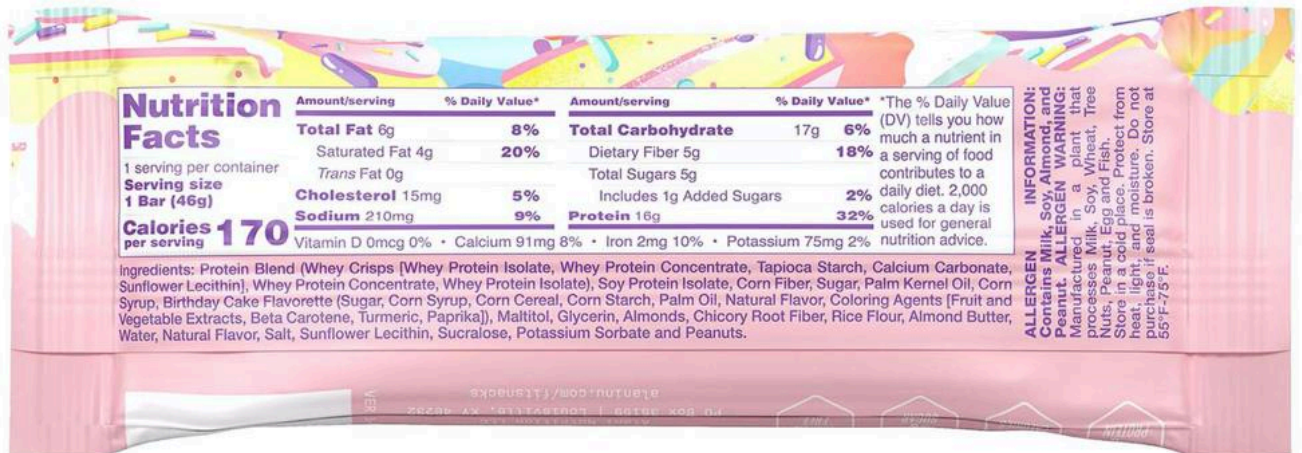
38. The FIT SNACKS Blueberry Muffin contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Blueberry Muffin. the Blueberry Muffin contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Blueberry Muffin also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.







40. The FIT SNACKS Confetti Cake contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Confetti Cake. Further, the Confetti Cake contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Confetti Cake also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.



41. The FIT SNACKS Fruity Cereal contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Fruity Cereal. Further, the Fruity Cereal contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Fruity Cereal also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.





42. Defendant's false, deceptive and misleading label statements violate 21 U.S.C. § 343(a)(1) and statutes adopted by many states deeming food misbranded when "its labeling is false or misleading in any particular."

43. Defendant's false, deceptive and misleading label statements are unlawful under State Unfair and Deceptive Acts and Practices Statutes and/or Consumer Protection Acts, which prohibit unfair, deceptive or unconscionable acts in the conduct of trade or commerce.

44. Further, as explained above, Defendant's claims are misleading to consumers in violation of 21 U.S.C. § 343, which states, "A food shall be deemed to

1 be misbranded—False or misleading label [i]f its labeling is false or misleading in  
2 any particular.”

3 45. The California Sherman Law explicitly incorporates by reference “[a]ll  
4 food labeling regulations and any amendments to those regulations adopted pursuant  
5 to the FDCA,” as the food labeling regulations of California Cal. Health & Saf.  
6 Code, § 110100, subd. (a). Thus, a violation of federal food labeling laws is an  
7 independent violation of California law and actionable as such.

8 46. The New York Food, Drug and Cosmetic Act, New York has expressly  
9 adopted the federal food labeling requirements and has stated “[a] food shall be  
10 deemed misbranded in accordance with the Federal Food, Drug and Cosmetic Act  
11 (21 U.S.C. §343)[.]” Public Health Law §71.05(d). Thus, a violation of federal food  
12 labeling laws is an independent violation of New York law and actionable as such.

13 47. Plaintiffs and Class members would not have purchased the Products  
14 or would have not paid as much for the products, had they known the truth about the  
15 mislabeled and falsely advertised products.

### 16 *Plaintiffs’ Purchases of The Products*

#### 17 **Andres Vitiosus**

18  
19  
20 48. Plaintiff Andres Vitiosus purchased the FIT SNACKS in 2018, 2019,  
21 2020 from a local Walmart and GNC.

22 49. After observing the word “FIT” on the label, Plaintiff Vitiosus  
23 purchased the Products believing it to be a healthy option and for the protein benefits.

24 50. Plaintiff Vitiosus paid approximately \$30 for the box of Products at  
25 each time of purchase.

26 51. If Plaintiff Vitiosus had been aware that the Products were not  
27 “healthy” or “fit” as defined by federal and state law they would not have purchased  
28 or paid significantly less for the Products.



1           52. As a result of Defendant's actions, Plaintiff Vitiosus has incurred  
2 damages, including economic damages.

3 **Debra Foley**

4  
5           53. Plaintiff Nancy Foley purchased FIT SNACKS Protein Bar on or  
6 around July 29, 2021.

7           54. After observing the word "FIT" on the label, Plaintiff purchased the  
8 Product believing it to be a healthy option that would help her lose weight.

9           55. Plaintiff paid \$6.98 for the Product.

10          56. If Plaintiff had been aware that the Products were not "healthy" or "fit"  
11 as defined by federal and state law they would not have purchased or paid  
12 significantly less for the Products.

13          57. As a result of Defendant's actions, Plaintiff has incurred damages,  
14 including economic damages.

15 **Rachel Lumbra**

16  
17          58. Plaintiff Rachel Lumbra purchased FIT SNACKS Fit Snacks in  
18 January, February, and May of 2021.

19          59. After observing the word "FIT" on the label, Plaintiff purchased the  
20 Product believing it to be a healthy option that would help her lose weight.

21          60. Plaintiff paid \$3.99 for the Product at each time of purchase.

22          61. If Plaintiff had been aware that the Products were not "healthy" or "fit"  
23 as defined by federal and state law they would not have purchased or paid  
24 significantly less for the Products.

25          62. As a result of Defendant's actions, Plaintiff has incurred damages,  
26 including economic damages.

## CLASS ACTION ALLEGATIONS

63. Plaintiffs bring this action individually and as representatives of all those similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the below-defined Classes:

**National Class:** During the fullest period allowed by law, all persons in the United States who purchased any of the Products for their personal use and not for resale within the United States.

**California Subclass:** During the fullest period allowed by law, all persons in the State of California who purchased any of the Products for personal use and not for resale in the State of California.

**New York Subclass:** During the fullest period allowed by law, all persons in the State of New York who purchased any of the Products for personal use and not for resale in the State of New York.

64. Members of the classes described are referred to as “Class Members” or members of the “Classes.”

65. The following are excluded from the Classes: (1) any Judge presiding over this action and members of his or her family; (2) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parent has a controlling interest (as well as current or former employees, officers, and directors); (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

66. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

1           67. Plaintiffs reserve the right to amend the definitions of the Classes if  
2 discovery or further investigation reveals that the Classes should be expanded or  
3 otherwise modified.

4           68. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The  
5 members of the Classes are so numerous that individual joinder of all Class Members  
6 is impracticable. On information and belief, Class Members number in the thousands  
7 to millions. The precise number or identification of members of the Classes are  
8 presently unknown to Plaintiffs but may be ascertained from Defendant's books and  
9 records. Class Members may be notified of the pendency of this action by  
10 recognized, Court-approved notice dissemination methods, which may include U.S.  
11 mail, electronic mail, Internet postings, and/or published notice.

12           69. **Commonality and Predominance – Federal Rule of Civil Procedure**  
13 **23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all members of  
14 the Classes, which predominate over any questions affecting individual members of  
15 the Classes. These common questions of law or fact include, but are not limited to,  
16 the following:

- 17           a) Whether Defendant made false and/or misleading statements to the  
18           consuming public concerning the use of the word "FIT" to market,  
19           advertise, package, label, promote and sell the Products;
- 20           b) Whether the marketing, advertising, packaging, labeling, and other  
21           promotional materials for the Products are deceptive and conform with  
22           the requirements of the FDCA;
- 23           c) Whether Defendant's representations concerning the Products were  
24           likely to deceive a reasonable consumer;
- 25           d) Whether Defendant's representations caused injury to Plaintiffs and  
26           Class and Subclass Members; and
- 27           e) Whether Plaintiffs and Class and Subclass Members are entitled to  
28           damages.

70. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of themselves and the other Class Members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

71. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other Class Members because, among other things, all such claims arise out of the same wrongful course of conduct engaged in by Defendant in violation of law as complained of herein. Plaintiffs share the aforementioned facts and legal claims or questions with Class Members, and Plaintiffs and all Class Members have been similarly affected by Defendant's common course of conduct as alleged herein. Plaintiffs and all Class Members sustained monetary and economic injuries including, but not limited to, ascertainable loss arising out of Defendant's wrongful conduct.

72. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate representatives of the Classes because they are members of the Classes and her interests do not conflict with the interests of the Class Members she seeks to represent. Plaintiffs have also retained counsel competent and experienced in complex commercial and class action litigation. Plaintiffs and their counsel intend to prosecute this action vigorously for the benefit of all Class Members. Accordingly, the interests of the Class Members will be fairly and adequately protected by Plaintiffs and their counsel.

73. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a class action, Class Members will continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well

as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated consumers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendant. Accordingly, the proposed Classes satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

74. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to Plaintiffs and all Class Members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Classes as a whole.

75. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available methods for the fair and efficient adjudication of the present controversy for at least the following reasons:

- The damages suffered by each individual putative Class Member do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct;
- Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
- The claims presented in this case predominate over any questions of law or fact affecting individual Class Members;
- Individual joinder of all putative Class Members is impracticable;
- Absent a class action, Plaintiffs and putative Class Members will continue to suffer harm as a result of Defendant's unlawful conduct; and

- This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and putative Class Members can seek redress for the harm caused by Defendant.

76. In the alternative, the Classes may be certified for the following reasons:

- The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudication with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant;
- Adjudications of individual Class and Members' claims against Defendant would, as a practical matter, be dispositive of the interests of other putative Class Members who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests; and
- Defendant has acted or refused to act on grounds generally applicable to the putative Classes, thereby making appropriate final and injunctive relief with respect to the putative Classes as a whole.

## **CLAIMS ALLEGED**

### **COUNT I**

#### **Violation of California's Unfair Competition Law ("UCL")**

#### **California Business and Professions Code §17200, *et seq.***

#### **(On Behalf of Plaintiffs Vitiosus and Foley**

#### **and the California Subclass)**

#### **CLASS ACTION COMPLAINT**

1           77. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the  
2 allegations above as if set forth herein.

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

6           79. A business act or practice is “unfair” under the UCL if it offends an  
7 established public policy or is immoral, unethical, oppressive, unscrupulous or  
8 substantially injurious to consumers, and that unfairness is determined by weighing  
9 the reasons, justifications and motives of the practice against the gravity of the harm  
10 to the alleged victims.

11           80. Defendant’s actions constitute “unfair” business practices because, as  
12 alleged above, Defendant engaged in misleading and deceptive advertising and  
13 labeling that represented that the Products were “fit,” or in other words, “healthy.”  
14 This use of the word “fit” misleads consumers into believing the Products are  
15 “healthy” or “fit” as defined by federal and state law. Defendant’s acts and practices  
16 offend an established public policy of accurate labeling, and is immoral, unethical,  
17 oppressive, and substantially injurious to consumers.

18           81. The harm to Plaintiffs and the California Subclass outweighs the utility  
19 of Defendant’s practices. There were reasonably available alternatives to further  
20 Defendant’s legitimate business interests other than the misleading and deceptive  
21 conduct described herein.

22           82. A business act or practice is “fraudulent” under the UCL if it is likely  
23 to deceive members of the consuming public.

24           83. Defendant’s acts and practices alleged above constitute fraudulent  
25 business acts or practices as they have deceived Plaintiffs is highly likely to deceive  
26 members of the consuming public. Defendant intended that Plaintiffs and each of  
27 the other members of the California Subclass would rely upon their deceptive  
28



1 conduct and false advertising, and a reasonable person would in fact be misled by  
2 this deceptive conduct.

3 84. A business act or practice is “unlawful” under the UCL if it violates  
4 any other law or regulation.

5 85. Defendant’s acts and practices alleged above constitute unlawful  
6 business acts or practices as they have violated state and federal law. Defendant’s  
7 false, deceptive, and misleading label statements violate 21 U.S.C. § 343(a)(1),  
8 which states, “[a] food shall be deemed to be misbranded—If (1) its labeling is false  
9 or misleading in any particular[.]”

10 86. In addition, California law expressly prohibits false advertising. See  
11 Cal. Bus. & Prof. Code 17500. Moreover, the Consumer Legal Remedies Act, Cal.  
12 Civ. Code § 1770(a)(9), (“CLRA”) also prohibits a business from “[a]dvertising  
13 goods or services with intent not to sell them as advertised[.]”

14 87. The violation of any law constitutes an “unlawful” business practice  
15 under the UCL.

16 88. As detailed herein, the acts and practices alleged were intended to or  
17 did result in violations of the FTCA, the FAL, and the CLRA.

18 89. Defendant’s practices, as set forth above, have misled Plaintiffs, the  
19 California Subclass, and the public in the past and will continue to mislead in the  
20 future. Consequently, Defendant’s practices constitute an unlawful, fraudulent, and  
21 unfair business practice within the meaning of the UCL.

22 90. Defendant’s violation of the UCL, through its unlawful, unfair, and  
23 fraudulent business practices, are ongoing and present a continuing threat that  
24 Plaintiffs and the members of the California Subclass and the public will be deceived  
25 into purchasing products based on misrepresentations and suffer economic damages  
26 to be proven at trial.

27 91. Pursuant to the UCL, Plaintiffs and the California Subclass are entitled  
28 to preliminary and permanent injunctive relief and order Defendant to cease this



1 unfair competition, as well as disgorgement and restitution to Plaintiffs and the  
 2 California Subclass of all Defendant's revenues associated with its unfair  
 3 competition, or such portion of those revenues as the Court may find equitable.

4  
 5 **COUNT II**  
 6 **Violation of California's Consumer Legal Remedies Act ("CLRA")**  
 7 **California Civil Code §1750, *et seq.***  
 8 **(On Behalf of Plaintiffs Vitiosus and Foley**  
 9 **and the California Subclass)**

10 92. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the  
 11 allegations above as if set forth herein.

12 93. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code  
 13 § 1750, *et seq.* Plaintiffs and the California Subclass are "consumers" as defined by  
 14 Cal. Civ. Code § 1761(d). Defendant's sale of the Products in retail stores and online  
 15 to Plaintiffs and the California Subclass were "transactions" within the meaning of  
 16 Cal. Civ. Code § 1761(e). The Products are "goods" within the meaning of Cal. Civ.  
 17 Code § 1761(a).

18 94. Defendant violated and continues to violate the CLRA by engaging in  
 19 at least the following practices proscribed by Cal. Civ. Code § 1770(a) in  
 20 transactions with Plaintiffs and the California Subclass that were intended to result  
 21 in, and did result in, the sale of the Products:

22 95. "Advertising goods or services with intent not to sell them as  
 23 advertised" (Cal. Civ. Code § 1770(a)(9));

24 96. Representing that the Products "have sponsorship, approval,  
 25 characteristics, ingredients, uses, benefits, or quantities that they do not have" (Cal.  
 26 Civ. Code § 1770(a)(5));

27 97. Representing that the Products "are of a particular standard, quality, or  
 28 grade, or that goods are of a particular style or model, if they are of another" (Cal.  
 Civ. Code § 1770(a)(7)).

1           98. Defendant profited from the sale of the falsely, deceptively, and  
2 unlawfully advertised the Products to unwary consumers.

3           99. Defendant's wrongful business practices constituted, and constitute, a  
4 continuing course of conduct in violation of the CLRA.

5           100. Defendant's wrongful business practices were a direct and proximate  
6 cause of actual harm to Plaintiffs and California Subclass Members.

7           101. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on October 8,  
8 2021, Plaintiff Foley and California Subclass Members sent the required notice to  
9 Defendant regarding its unlawful conduct and violation of the CLRA.

10           102. After receiving notice regarding its unlawful conduct and violation of  
11 the CLRA, Defendant did not meet the demands enumerated in Plaintiff Foley's  
12 notice letter within 30 days. Hence, Plaintiff Foley now seeks to recover actual  
13 damages from Defendant pursuant to the CLRA.

14           103. Pursuant to California Civil Code § 1780, Plaintiffs seek injunctive  
15 relief, reasonable attorneys' fees and costs, and any other relief that the Court deems  
16 proper on behalf of the California Subclass.

17  
18                                   **COUNT III**  
19                           **Violation of California's False Advertising Law ("FAL")**  
20                           **California Business & Professions Code §17500, *et seq.***  
21                           **(On behalf of Plaintiffs Vitiosus and Foley**  
22                           **and the California Subclass)**

23           104. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the  
24 allegations above as if set forth herein.

25           105. Cal. Bus. & Prof. Code § 17500 provides:

26                   It is unlawful for any...corporation...with intent...to dispose  
27 of...personal property...to induce the public to enter into any  
28 obligation relating thereto, to make or disseminate or cause to be  
made or disseminated...from this state before the public in any  
state, in any newspaper or other publication, or any advertising

1 device, or by public outcry or proclamation, or in any other  
 2 manner or means whatever, including over the Internet, any  
 3 statement...which is untrue or misleading, and which is known,  
 4 or which by the exercise of reasonable care should be known, to  
 be untrue or misleading...

5 106. The “intent” required by Section 17500 is the intent to dispose of  
 6 property, and not the intent to mislead the public in the disposition of such property.

7 107. Defendant’s advertising and labeling that represented misrepresented  
 8 the amount of protein in the Products was an unfair, untrue, and misleading practice.  
 9 This deceptive marketing practice gave consumers the false impression of the  
 10 amount of protein in the Products.

11 108. As a direct and proximate result of Defendant’s misleading and false  
 12 advertisements, Plaintiffs and the California Subclass have suffered injury in fact  
 13 and have lost money. As such, Plaintiffs request that this Court order Defendant to  
 14 restore this money to Plaintiffs and all members of the California Subclass, and to  
 15 enjoin Defendant from continuing these unfair practices in violation of the FAL in  
 16 the future. Otherwise, Plaintiffs, the California Subclass, and the broader public will  
 17 be irreparably harmed and/or denied an effective and complete remedy.

18  
 19 **COUNT IV**  
 20 **Violation of New York General Business Law § 349**  
**(On Behalf of Plaintiff Lumbra and the New York Subclass)**

21 109. Plaintiff Rachel Lumbra repeats and re-alleges the allegations above as  
 22 if set forth herein.

23 110. New York Business Law §349 prohibits “[d]eceptive acts or practices  
 24 in the conduct of any business, trade or commerce or in the furnishing of any  
 25 service[.]” N.Y. GEN. BUS. LAW § 349.

26 111. Defendant’s actions occurred in the conduct of business, trade or  
 27 commerce.  
 28

1 112. Defendant's foregoing acts and practices, including its omissions, were  
2 directed at consumers.

3 113. Defendant's foregoing deceptive acts and practices, including its  
4 omissions, were material, in part, because they concerned an essential part of the  
5 Products ingredients and functionality.

6 114. Defendant's conduct, as described in this Complaint, constitutes  
7 "deceptive acts or practices" within the meaning of the New York GBL. All of  
8 Defendant's deceptive acts and practices, which were intended to mislead consumers  
9 in a material way in the process of purchasing Defendant's Products, constitute  
10 conduct directed at consumers.

11 115. As purveyors in the highly lucrative protein bar market, Defendant  
12 knows that when it comes to labeling and marketing, words matter. This is why  
13 Defendant chose to name the Products "FIT" Snacks, and to emblazon the word  
14 "FIT" on the front and center of each Product label, in a bold all-capitalized font,  
15 where it cannot be missed by consumers.

16 116. Defendant chose to label the Products in this way to impact consumer  
17 choices and gain market dominance, as it is well aware that all consumers who  
18 purchased the Products were exposed to, and would be impacted by, the "FIT"  
19 representation and would reasonably believe from this representation that the  
20 Products are healthy. However, the Products are not "healthy", in violation of the  
21 United States Food, Drug and Cosmetic Act ("FDCA") and parallel state laws.

22 117. Defendant's deceptive marketing has been successful. Customer  
23 reviews indicate that they buy the FITSNACKS because they supposedly support a  
24 healthy lifestyle.

25 118. As described herein, Defendant's false, deceptive and misleading label  
26 statements violate 21 U.S.C. § 343(a)(1) and the statutes adopted by many states,  
27 which deem food misbranded when "its labeling is false or misleading in any  
28 particular."

1 119. Defendant's foregoing deceptive and unfair acts and practices,  
2 including its omissions, were and are deceptive acts or practices in violation of the  
3 New York's General Business Law § 349, Deceptive Acts and Practices, N.Y. Gen.  
4 Bus. Law 349, et seq., in that:

5 Defendant manufactured, labeled, packaged, marketed, advertised,  
6 distributed, and/or sold the Products with the word "FIT" on the front and  
7 center of each Product label, in a bold all-capitalized font, where it cannot be  
8 missed by consumers, in order to convince consumers that the products are  
9 healthy when they knew, or should have known that the products are not  
10 "healthy" in violation of the FDCA and parallel state laws.

11 120. Defendant further deceived reasonable consumers into believing that  
12 the Products were fit for their intended purpose of a healthy lifestyle, and omitted  
13 and failed to disclose that the Products are not healthy as defined by the FDCA and  
14 parallel state laws.

15 121. Plaintiff and the New York Subclass Members suffered damages when  
16 they purchased the Products. Defendant's unconscionable, deceptive and/or unfair  
17 practices caused actual damages to Plaintiff and the New York Subclass Members  
18 who were unaware that the Products are not "healthy" in violation of the FDCA and  
19 parallel state laws.

20 122. Defendant's foregoing deceptive acts and practices, including its  
21 omissions, were likely to deceive, and did deceive, consumers acting reasonably  
22 under the circumstances. Consumers, including Plaintiff and putative New York  
23 Subclass Members, would not have purchased their Products had they known that  
24 the Products are not "healthy" as defined by the FDCA and parallel state laws.

25 123. As a direct and proximate result of Defendant's deceptive acts and  
26 practices, including its omissions, Plaintiff and New York Subclass Members have  
27 been damaged as alleged herein, and are entitled to recover actual damages to the  
28

1 extent permitted by law, including class action rules, in an amount to be proven at  
2 trial.

3 124. In addition, Plaintiff and New York Subclass Members seek equitable  
4 and injunctive relief against Defendant's on terms that the Court considers  
5 reasonable, and reasonable attorneys' fees and costs.

6 125. On October 6, 2021, Plaintiff gave notice to Defendant of its violations  
7 of the New York General Business Law § 349 On October 21, 2021, Defendant  
8 responded to Plaintiff by letter, but did not remedy its breaches of New York General  
9 Business Law § 349.

10 126. Therefore, within 30 days of receiving notice, Defendant did not take  
11 the necessary steps outlined in Plaintiff's notice letter to remedy their breach of New  
12 York General Business Law § 349 for the Products.

13 127. In addition, Defendant's conduct showed malice, motive, and the  
14 reckless disregard of the truth such that an award of punitive damages is appropriate.

15  
16 **COUNT V**  
17 **Violation of New York General Business Laws § 350**  
18 **(On Behalf of Plaintiff Lumbra and the New York Subclass)**

19 128. Plaintiff Rachel Lumbra repeats and re-alleges the allegations above as  
20 if set forth herein.

21 129. New York Business Law §350 prohibits "[f]alse advertising in the  
22 conduct of any business, trade or commerce or in the furnishing of any service[.]"  
23 N.Y. GEN. BUS. LAW § 350.

24 130. Defendant's actions occurred in the conduct of business, trade or  
25 commerce.

26 131. Defendant's foregoing acts and practices, including its advertising,  
27 were directed at consumers.  
28

1           132. Defendant's conduct, as described in this Complaint, constitutes "false  
2 advertising" within the meaning of the New York GBL, as Defendant publicly  
3 disseminated misleading and false advertisements through advertising and  
4 marketing statements, suggesting that their Products were healthy.

5           133. Defendant's foregoing, consumer-oriented, unfair or deceptive acts and  
6 practices, including its advertising, representations, and omissions, constitutes false  
7 and misleading advertising in a material way in violation of the New York's General  
8 Business Law § 350.

9           134. Defendant's false, misleading and deceptive advertising and  
10 representations include misrepresenting and misleadingly marketing and labeling  
11 the products were fit for their intended purpose of a healthy lifestyle and omitting  
12 and failing to disclose that the Products are not healthy as defined by the FDCA and  
13 parallel state laws.

14           135. Defendant's false, misleading, and deceptive advertising and  
15 representations of fact were and are directed at consumers.

16           136. Defendant's false, misleading, and deceptive advertising and  
17 representations of fact were and are likely to mislead a reasonable consumer acting  
18 reasonably under the circumstances.

19           137. Defendant's false, misleading, and deceptive advertising and  
20 representations of fact have resulted in consumer injury or harm to the public interest

21           138. Defendant intended that Plaintiff and each of the other members of the  
22 New York Subclass would rely upon their deceptive conduct and false advertising,  
23 and a reasonable person would in fact be misled by this deceptive conduct.  
24 Defendant engaged in misleading and deceptive advertising that represented that the  
25 Products were "fit," or in other words, "healthy." Defendant chose to label the  
26 Products in this way to impact consumer choices and gain market dominance, as it  
27 is aware that all consumers who purchased the Products were exposed to, and would  
28 be impacted by, the "fit" representation and would reasonably believe from this



1 representation that the Products are healthy. This use of the word “fit” misleads  
2 consumers into believing the Products were healthy. However, the Products are not  
3 “healthy” as they are not healthy as defined by the FDCA and parallel state laws.  
4 Thus, Defendant’s advertising and labeling that the Products were fit and healthy  
5 was an unfair, untrue, and misleading practice.

6 139. Consumers, including Plaintiff and New York subclass members either  
7 would not have purchased the Products or would have paid less for them had the  
8 known that the Products are not “healthy” in violation of the FDCA and parallel state  
9 laws.

10 140. As a direct and proximate result of Defendant’s deceptive acts and  
11 practices, including its use or employment of false advertising, Plaintiff and each  
12 of the other members of the New York Subclass have sustained actual damages in  
13 an amount to be proven at trial.

14 141. In addition, Plaintiff and New York Subclass Members seek equitable  
15 and injunctive relief against Defendant on terms that the Court considers reasonable,  
16 and reasonable attorneys’ fees and costs.

17 142. On November 17, 2021, Plaintiff gave notice to Defendant of its  
18 violations of the New York General Business Law § 350. Defendant never  
19 responded to Plaintiff’s letter.

20 143. Therefore, within 30 days of receiving notice, Defendant did not take  
21 the necessary steps outlined in Plaintiff’s notice letter to remedy their breach of New  
22 York General Business Law § 350 for the Products.

23 144. In addition, Defendant’s conduct showed malice, motive, and the  
24 reckless disregard of the truth such that an award of punitive damages is appropriate.  
25  
26  
27  
28



**COUNT VI**  
**Breach of Express Warranty**  
**(On Behalf of the National Class and, alternatively,**  
**the California and New York Subclasses)**

145. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

146. Plaintiffs, and each member of the National Class, formed a contract with Defendant at the time Plaintiffs and each member of the National Class purchased the Products.

147. The terms of the contract include the promises and affirmations of fact made by Defendant on the Products' packaging and through marketing and advertising, as described above.

148. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and are part of the standardized contract between Plaintiffs and the members of the National Class and Defendant.

149. As set forth above, Defendant purports, through its "fit" claims made in connection with its advertising, labeling, marketing, and packaging, to create an express warranty that the Products contain a certain amount Total Fat and that a majority of that fat is the healthier mono and polyunsaturated fat.

150. Plaintiffs and the members of the National Class performed all conditions precedent to Defendant's liability under this contract when they purchased the Products.

151. Defendant breached express warranties about the Products and their qualities because Defendant's Products' name, "FIT SNACKS" were misleading, as set forth above, and the Products do not conform to Defendant's affirmations and promises described above.

152. Plaintiffs and each of the members of the National Class would not have purchased the Products had they known the true nature of the Products' nutritional value.

153. As a result of Defendant's breach of warranty, Plaintiffs and each of the members of the National Class have been damaged in the amount of the purchase price of the Products and any consequential damages resulting from their purchases.

154. Plaintiff Foley and California Subclass Members sent notice to Defendant regarding its unlawful conduct and breach of express warranties.

155. After receiving notice regarding its unlawful conduct and breach of express warranties, Defendant did not meet the demands enumerated in their notice letter within 30 days.

**COUNT VII**  
**Unjust Enrichment**  
**(In the Alternative to Count I and on Behalf of the National Class**  
**and, alternatively, the California and New York Subclasses)**

156. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

157. Plaintiffs and the other members of the National Class conferred benefits on Defendant by purchasing the Products.

158. Defendant has been unjustly enriched in retaining the revenues derived from the purchase of the Products by Plaintiffs and the other members of the National Class.

159. Retention of those monies under these circumstances is unjust and inequitable because Defendant's labeling of the Products was misleading to consumers, which caused injuries to Plaintiffs and the other members of the National Class because they would have not purchased the Products if Defendant's had not mislead them into believing the Products were "fit," or healthy.

160. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiffs and the other members of the National Class is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the other members of the National Class for their unjust enrichment, as ordered by the Court.

**JURY DEMAND**

161. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, pray for judgment and relief against Defendant as follows:

- a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Classes described herein; and (ii) appointing Plaintiff to serve as representatives for the Classes and Plaintiffs' counsel to serve as Class Counsel;
- b) For an order enjoining Defendant from continuing to engage in the unlawful conduct set forth herein;
- c) For an order awarding restitution of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- d) For an order requiring disgorgement of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- e) For compensatory and punitive damages, including actual and statutory damages, arising from Defendant's wrongful conduct and illegal conduct;
- f) For an award of reasonable attorneys' fees and costs and expenses incurred in the course of prosecuting this action; and

For such other and further relief as the Court deems just and proper

1  
2 DATED: December 8, 2021.

Respectfully submitted,

3 **MILBERG COLEMAN BRYSON**  
4 **PHILLIPS GROSSMAN PLLC**

5 /s/ Alex R. Straus

6 Alex R. Straus, Esq. (SBN 321366)

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8 Beverly Hills, CA 90212

9 Tel.: (917) 471-1894

10 Fax: (310) 496-3176

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12 *Attorneys for Plaintiff*  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Andre Vitiosus, Debra Foley, and Rachel Lumbra

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alex R. Straus  
Milberg Coleman Bryson Phillips Grossman PLLC  
280 S. Beverly Dr. Beverly Hills, CA 90212

## DEFENDANTS

Alani Nutrition, LLC

County of Residence of First Listed Defendant Jefferson  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'21CV2048 MMAMDD**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<b>LABOR</b>	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting		<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<b>IMMIGRATION</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education			
	<b>PRISONER PETITIONS</b>			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<b>Other:</b>			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332Brief description of cause:  
This product is mislabeled.

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/07/2021

/s/ Alex R. Straus

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RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE