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

12 MEHVA ROFFMAN and LISA CHONG, as  
13 individuals, on behalf of themselves, the  
14 general public, and those similarly situated,

15 Plaintiffs,

16 v.

17 PERFECT BAR, LLC,

18 Defendant.

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 EN-  
RICHMENT

JURY TRIAL DEMANDED

**INTRODUCTION**

1  
2 1. Plaintiff Mehva Roffman and Lisa Chong, by and through their counsel, bring this  
3 class action against Defendant Perfect Bar, LLC (“Defendant”) to seek redress for its unlawful and  
4 deceptive practices in labeling and marketing its consumer food products.

5 2. Consumers are increasingly health conscious and, as a result, many consumers seek  
6 foods high in protein. To capitalize on this trend, Defendant prominently labels its consumer food  
7 products as providing specific amounts of protein per serving depending on the product, such as  
8 “15G PROTEIN” on the front of the Perfect Bar in Dark Chocolate Chip Peanut Butter flavor and  
9 “7G PROTEIN” on the front of the Perfect Peanut Butter Cups Dark Chocolate flavor. Consumers,  
10 in turn, reasonably expect that each product will actually provide the amount of protein per serving  
11 claimed on the front of the product package in a form that can be used by the body as protein.

12 3. The Food and Drug Administration (“FDA”) recognizes that (1) when  
13 manufacturers tout an amount of protein on the front label that amount is likely to be material to  
14 purchasing decisions, even though reasonable consumers may not know the total amount of  
15 protein they need to ingest on a daily basis, and (2) not all proteins are the same in their ability to  
16 meet human nutritional requirements, so a simple statement about the number of grams does not  
17 actually inform consumers about how much usable protein they are receiving. Some proteins are  
18 deficient in one or more of the nine amino acids essential to human protein synthesis and/or are  
19 not fully digestible within the human gut. When a human body uses up the least prevalent  
20 essential amino acid from a food product, protein synthesis shuts down and all of the remaining  
21 amino acids from that protein source degrade mostly into waste. Likewise, whatever portion of a  
22 protein source is not digestible is similarly unavailable for protein synthesis. A protein’s ability to  
23 support human nutritional requirements is known as its “quality.”

24 4. The FDA required method for measuring protein quality is called the “Protein  
25 Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS (pronounced Pee-  
26 Dee-Kass). It combines a protein source’s amino acid profile and its percent digestibility into a  
27 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows  
28 how much protein in a product is actually available to support human nutritional requirements.

1 The regulations term this the “corrected amount of protein per serving.” 21 C.F.R.  
2 § 101.9(c)(7)(ii). The FDA prohibits front label claims about the amount of protein, unless  
3 manufactures also provide information about the protein quality in the nutrition fact panel  
4 (“NFP”) “expressed as” a percent daily value (“%DV”) and placed immediately adjacent to the  
5 statement of protein quantity. 21 C.F.R. § 101.9(c)(7)(i)-(iii). The %DV is the corrected amount  
6 of protein per serving divided by the daily reference value for protein of 50 grams. *Id.* Using the  
7 same example of a product containing 10 grams total protein per serving with a PDCAAS of .5,  
8 the %DV is 10% (5g/50g). Had all of the protein in the product been useful in human nutrition,  
9 the %DV would be 20% (10g/50g).

10 5. The protein claims on the front of all of Defendant’s products – such as “15G  
11 PROTEIN” – are misleading because they are stated in the form of a quantitative amount  
12 appearing alone, without any information about protein quality. FDA regulations prohibit a  
13 manufacturer from stating “the amount or percentage of a nutrient” on the front label if it is  
14 “false or misleading in any respect.” 21 C.F.R. § 101.13(i)(3). The primary protein source in  
15 Defendant’s products is nut protein (including peanuts, cashews, and almonds). Nuts are low  
16 quality protein with a PDCAAS score of between 0.4 and 0.5, which means that only 40-50% of  
17 the protein in Defendant’s products is actually available to support human protein needs.  
18 Accordingly, although Defendant advertises its Perfect Bar in Dark Chocolate Chip Peanut  
19 Butter flavor, for example, with a “15g PROTEIN” claim, it actually provides, in a form that  
20 humans can use, as little as 7.5 grams of protein, i.e., less than half the protein consumers  
21 reasonably expect to receive based on the label. This is misleading.

22 6. Additionally, Defendant failed to provide in the NFP a statement of the corrected  
23 amount of protein per serving calculated according to the PDCAAS methodology and expressed  
24 as a %DV for some of its products, including the Perfect Peanut Cups, Perfect Bites, and Perfect  
25 Kids Bars. The protein claims on the front of those packages, such as “7g PROTEIN” made on  
26 the Perfect Peanut Butter Cup Dark Chocolate flavor, are unlawful in violation of parallel state  
27 and federal laws because Defendant did not comply with the regulatory requirements for making  
28 a protein claim.

1 7. Defendant’s unlawful and misleading protein claims caused Plaintiffs and  
2 members of the Class to pay a price premium for the products.

3 **PARTIES**

4 8. Mehva Roffman (“Roffman”) is an individual and a resident of San Francisco,  
5 California.

6 9. Lisa Chong (“Chong”) is an individual and a resident of San Francisco, California.

7 10. Roffman and Chong are collectively referred to hereafter as “Plaintiffs.”

8 11. Defendant Perfect Bar, LLC. (“Defendant”) is a corporation existing under the laws  
9 of Delaware with its principal place of business in San Diego, California.

10 **JURISDICTION AND VENUE**

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

14 13. The injuries, damages and/or harm upon which this action is based, occurred or  
15 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State  
16 of California. Defendant regularly conducts and/or solicits business in, engages in other persistent  
17 courses of conduct in, and/or derives substantial revenue from products provided to persons in the  
18 State of California. Defendant has engaged, and continues to engage, in substantial and  
19 continuous business practices in the State of California.

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

23 15. In accordance with California Civil Code Section 1780(d), Plaintiff Chong con-  
24 currently files herewith a declaration establishing that, at various times throughout the class pe-  
25 riod, she purchased Perfect Bar protein bars in the Dark Chocolate Chip Peanut Butter flavor at  
26 stores in the Bay Area, including a Safeway retail store in Daly City, California and a Target  
27 retail store in Colma, California, from approximately January 2018 to approximately January  
28 2022. (Plaintiff Chong’s declaration is attached hereto as Exhibit A.)

1 16. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

2 **SUBSTANTIVE ALLEGATIONS**

3 17. Defendant manufactures, distributes, markets, advertises, and sells a variety of pro-  
4 tein products in the United States under the brand name “Perfect Bar.” These products, including  
5 protein bars and peanut butter cups, have packaging that predominately, uniformly, and consis-  
6 tently states on the principal display panel of the product labels that they contain and provide a cer-  
7 tain amount of protein per serving. Plaintiff has attached as Exhibit B a non-exhaustive list of the  
8 products that make protein claims on the front of the product packages. The products listed in Ex-  
9 hibit B, and any other Perfect Bar brand products (including any discontinued flavors sold during  
10 the Class Period) that claim a specific amount of protein on the front of its label, will hereinafter be  
11 referred to as the “Products.”

12 18. The representation that the Products contain and provide a specific amount of pro-  
13 tein per serving was uniformly communicated to Plaintiffs and every other person who purchased  
14 any of the Products. The same or substantially similar product label has appeared on each Product  
15 during the entirety of the Class Period in the general form of the following example:  
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19. The nutrition facts panel on the back of some of Products, including the Perfect Peanut Butter Cups, Perfect Bites, and the Perfect Kids Bars, uniformly and consistently failed to provide any statement of the corrected amount of protein per serving, expressed as a %DV, throughout the Class Period. The nutrition facts panel of the Products has appeared consistently throughout the Class Period in the general form of the following example (from the Perfect Peanut Butter Cup Dark Chocolate flavor):

Nutrition Facts	Amount/serving	% DV	Amount/serving	% DV
	1 serving Serving size <b>2 Cups (40g)</b>	<b>Total Fat</b> 14g	<b>18%</b>	<b>Sodium</b> 125mg
Sat. Fat 4.5g		<b>23%</b>	<b>Total Carb.</b> 16g	<b>6%</b>
Trans Fat 0g			Dietary Fiber 3g	<b>11%</b>
Polyunsat. Fat 1g			Total Sugars 11g	
Monounsat. Fat 8g			Incl. 9g Added Sugars	<b>18%</b>
<b>Cholesterol</b> 5mg		<b>2%</b>	<b>Protein</b> 7g	
<b>Calories per serving</b> <b>210</b>	Vitamin D 0% • Calcium 4% • Iron 10% • Potassium 4% Vitamin E 8% • Niacin 20% • Folate 6% • Magnesium 8% • Zinc 6%			

**INGREDIENTS:** Peanut Butter\*, Dark Chocolate\*† (Cacao Beans\*, Cane Sugar\*, Cocoa Butter\*, Sunflower Lecithin), Honey\*, Nonfat Dry Milk\*, Rice Protein\*, Dried Whole Egg Powder\*, Sea Salt, Dried Whole Food Powders (Kale\*, Flax Seed\*, Rose Hip\*, Orange\*, Lemon\*, Papaya\*, Tomato\*, Apple\*, Alfalfa\*, Celery\*, Kelp\*, Dulce\*, Carrot\*, Spinach\*), Sunflower Lecithin\*, Flax Seed Oil\*, Sunflower Oil\*, Sesame Seed Oil\*, Olive Oil\*, Pumpkin Seed Oil\*. \*Organic †Fair Trade Chocolate  
**ALLERGEN WARNING: CONTAINS PEANUTS, MILK AND EGGS. PRODUCED ON EQUIPMENT ALSO HANDLING TREE NUTS. MAY CONTAIN OCCASIONAL NUT SHELLS.**

1           20.     As described in detail below, Defendant’s advertising and labeling of the Products  
2 as containing and providing specific amounts of protein per serving is unlawful, misleading, and  
3 intended to induce consumers to purchase the Products at a premium price, while ultimately fail-  
4 ing to meet consumer expectations. The Products’ front label protein claims are misleading be-  
5 cause they deceive reasonable consumers into believing that a serving of the Products will  
6 provide the grams of protein as represented on the label, when in fact, correcting for the Products’  
7 poor protein quality through PDCAAS, the amount provided will be approximately half or less  
8 because Defendant uses nut proteins, which are of low biological value to humans, in the Prod-  
9 ucts.

10           21.     Additionally, for some of the Products, Defendant’s failure to provide the required  
11 statement of the corrected amount of protein per serving also deceived and misled reasonable  
12 consumers into believing that a serving of the Products will provide the grams of protein repre-  
13 sented on the label, when that is not true. The Products’ front label protein claims on these Prod-  
14 ucts are unlawful because Defendant did not: (1) calculate the “corrected amount of protein per  
15 serving” based on the quality of the product’s protein using the PDCAAS method; and (2) pro-  
16 vide a statement of that corrected amount of protein per serving in the NFP, expressed as %DV.  
17 21 C.F.R. § 101.9(c)(7)(i) & (iii). The false, misleading, and unlawful front label protein claims  
18 induced consumers to purchase the Products at a premium price.

19           **Consumer Demand for Protein**

20           22.     Many American consumers are health conscious and seek wholesome, natural  
21 foods to keep a healthy diet, so they routinely rely upon nutrition information when selecting and  
22 purchasing food items.

23           23.     Protein is found throughout the body—in muscle, bone, skin, hair, and virtually  
24 every other body part or tissue. The health benefits of protein are well studied and wide ranging.  
25 Scientific studies have confirmed that protein can assist in weight loss, reduce blood pressure,  
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1 reduce cholesterol, and control for risk factors for cardiovascular diseases. The National Acad-  
2 emy of Medicine recommends that adults get a minimum of .8 grams of protein for every kilo-  
3 gram of body weight per day, or just over 7 grams for every 20 pounds of body weight.<sup>1</sup> For a  
4 140-pound person, that means about 50 grams of protein each day. For a 200-pound person, that  
5 means about 70 grams of protein each day.

6 24. The health benefits of protein are just as important, if not more important, for chil-  
7 dren. Children are in a relative state of constant growth and rely on protein as the building block  
8 of muscle, bone, skin, hair, and virtually every other body part or tissue. The National Academies  
9 of Science recommends the following amounts of daily intake of protein based on age group: 1-3  
10 years old: 13 g of protein per day; 4-8 years old: 19 g of protein per day; 9-13 years old: 34 g of  
11 protein per day.<sup>2</sup>

12 25. Protein *quantity* by itself does not tell the full story of protein from a human nutri-  
13 tional standpoint. A protein's *quality* is also critical because humans cannot fully digest or utilize  
14 some proteins. Proteins are not monolithic. They are simply chains of amino acids, and different  
15 types of amino acids chained together in different ways will make different types of proteins. Fur-  
16 ther, the makeup of the protein changes the function of that protein in the body, and certain types  
17 of proteins are more easily digested and used by humans than others.

18 26. All of a human's proteins are formed through the process of protein synthesis  
19 within their own bodies. That is, although humans consume dietary proteins, they digest those  
20 proteins, break them down into their constituent amino acids, and then use those amino acids as  
21 building blocks to synthesize the human proteins necessary for life, tissue repair, and other func-  
22 tions. Of the twenty total amino acids, humans can produce only eleven of them on their own.  
23 Humans cannot produce, under any circumstances, nine of the amino acids required for protein  
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26 <sup>1</sup> National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber,*  
27 *Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients).*

28 <sup>2</sup> *Id.*



1 synthesis. These nine amino acids are called the “essential amino acids” and they must be sup-  
2 plied through the diet.

3 27. All nine essential amino acids are necessary for protein synthesis to take place.  
4 Lacking even one essential amino acid will prevent protein synthesis from occurring, and the rest  
5 of the proteins will degrade into waste. Accordingly, once the body uses up the limiting essential  
6 amino acid from a protein source, the remainder of that protein becomes useless to human protein  
7 synthesis and has little nutritional value. As the FDA has explicitly recognized, “[b]ecause excess  
8 amino acids are not stored in the body, humans need a constant supply of good quality dietary  
9 proteins to support growth and development.” 58 Fed. Reg. 2079 at 2101. High-quality proteins,  
10 therefore, are those that contain all nine essential amino acids because they have a greater effect  
11 on protein synthesis and are fully digestible. A dietary protein containing all of the essential  
12 amino acids in the correct proportions is typically called a “complete protein.”

13 28. A protein source’s digestibility also affects the amount of useable protein a person  
14 receives from consuming it. Many plant-based proteins are only 85% digestible, meaning 15% of  
15 the protein from that source will simply pass through the body without ever being absorbed at all.

16 29. As the FDA has stated in official guidance, “Accurate methods for determining  
17 protein quality are necessary because different food protein sources are not equivalent in their  
18 ability to support growth and body protein maintenance.” 56 Fed. Reg. 60366, § B. The Protein  
19 Digestibility Corrected Amino Acid Score (“PDCAAS”), is the FDA mandated measure of pro-  
20 tein quality, and it accounts for both the amino acid profile and the digestibility of the protein. 21  
21 C.F.R. § 101.9(c)(7)(ii).

22 30. The PDCAAS method requires the manufacturer to determine the amount of es-  
23 sential amino acids that the food contains and then combine that with the proteins’ digestibility  
24 into an overall discount factor (i.e., a “score” from 0.0-1.0) that represents the actual amount of  
25 protein the food provides nutritionally when multiplied by raw protein quantity. The regulations  
26 term this the “corrected amount of protein per serving.” 21 C.F.R. § 101.9(c)(7)(i).

27 31. Defendant uses plant-based nut proteins in its products. Because of the differences  
28 in benefits depending on the amino acid composition of a protein, the source of protein is impor-

1 tant. Whey protein is animal-based and contains all nine essential amino acids. It has a high bio-  
2 logical value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant  
3 proteins rarely contain all nine essential amino acids. Further, plant proteins such as nut proteins  
4 (including peanuts and almonds), which Defendant uses in the Products according to the ingredient  
5 lists, are of low quality to humans. These types of proteins typically have a PDCAAS of between  
6 .4 and .5, meaning only 40-50% of the protein from those sources will be useable by humans as  
7 protein. Accordingly, Defendant's use of low quality proteins means that they actually provide far  
8 less protein to humans than the Product labels claim.

### 9 **Federal and State Regulations Governing Food Labeling**

10 32. Identical federal and California laws regulate the content of labels on packaged  
11 food. The requirements of the federal Food, Drug & Cosmetic Act ("FDCA"), and its labeling  
12 regulations, including those set forth in 21 C.F.R. §§ 101, 102, were adopted by the California  
13 legislature in the Sherman Food Drug & Cosmetic Law (the "Sherman Law"). California Health  
14 & Safety Code § 110100 ("All food labeling regulations and any amendments to those regulations  
15 adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date  
16 shall be the food labeling regulations of this state."). The federal laws and regulations discussed  
17 below are applicable nationwide to all sales of packaged food products. Additionally, none of the  
18 California laws sought to be enforced here imposes different requirements on the labeling of  
19 packaged food for sale in the United States.

20 33. According to FDA regulations, "[a] statement of the corrected amount of protein  
21 per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the  
22 RDI or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . *shall* be  
23 given if a protein claim is made for the product . . ." 21 C.F.R. 101.9(c)(7)(i) (emphasis added).  
24 Further, FDA regulations require the %DV to be calculated using PDCAAS, a method that ac-  
25 counts for both protein quantity and protein quality. 21 C.F.R. § 101.9(c)(7)(i)-(iii); FDA Food  
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1 Labeling Guide, p. 29, Question N.22.<sup>3</sup> The first step is to calculate the “corrected amount of pro-  
2 tein per serving” by multiplying protein quantity by the PDCAAS quality value, and then divid-  
3 ing that “corrected amount” by 50 grams (the “recommended daily value” for protein) to come up  
4 with the %DV. *Id.*

5 34. The Products all make protein claims on the front label, but some fail to provide a  
6 statement of the corrected amount of protein per serving in the NFP calculated according to the  
7 PDCAAS method. The protein claims on the front of these Products are, therefore, unlawful, and  
8 were never permitted to be on the labels in the first instance.

9 35. Defendant’s use of a front-label protein claim, while failing to include the required  
10 statement of the corrected amount of protein per serving in the NFP calculated using the  
11 PDCAAS method and expressed as a %DV, is also misleading. By failing to provide it, Defen-  
12 dant misled consumers into believing that the Products provide a higher amount of protein than  
13 they really do. It also enabled Defendant to conceal the fact that its Products consist of low qual-  
14 ity proteins that simply do not provide all of the protein that quantity alone represents. Indeed,  
15 when promulgating 21 C.F.R. § 101.9(c)(7), the FDA explained in published guidance that “In-  
16 formation on protein quantity alone can be misleading on foods that are of low protein quality.” It  
17 also explained that it was prohibiting manufacturers from making any protein claims at all *unless*  
18 the manufacturer provides a statement of the corrected amount of protein per serving in the NFP  
19 based on PDCAAS. 58 Fed. Reg. 2079 at 2101-2.

20 36. Similarly, 21 C.F.R. § 101.13(i)(3) prohibits manufacturers from making a claim  
21 on the front of a product’s package about the “amount or percentage of a nutrient,” such as pro-  
22 tein, if the statement is “false or misleading in any respect.” If it is, then “it may not be made on  
23 the label.” 21 C.F.R. § 101.13(b). This is true even if the same amount appears in the nutrition  
24 facts panel. 21 C.F.R. § 101.13(c). The FDA explained in promulgating section 101.13(i) that the

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26 <sup>3</sup> Guidance for Industry: A Food Labeling Guide (“FDA Food Labeling Guide”) p. 29, Question  
27 N22, U.S. Food & Drug Administration, <https://www.fda.gov/media/81606/download> (last ac-  
28 cessed February 18, 2020).

1 regulation was necessary “since many consumers have a limited knowledge and understanding of  
2 the amounts of nutrients that are recommended for daily consumption,” which means that “a  
3 statement declaring that the product contained a specified amount of a nutrient could be mislead-  
4 ing. By its very presence, such a statement could give consumers who were unfamiliar with the  
5 dietary recommendations the false impression that the product would assist them in maintaining  
6 healthy dietary practices relative to the amount of the nutrient consumed when it, in fact, would  
7 not.” 56 Fed. Reg. 60421. The rules are different for amounts in the NFP and nutrient content  
8 claims because a voluntary nutrient declaration on the front panel “is viewed by the agency as an  
9 effort to market the food as a significant source of nutrients.” 56 Fed. Reg. 60366.

10 37. The protein claims on the front of all the Products are therefore misleading be-  
11 cause the Products all use poor quality nut proteins. The FDA has promulgated a separate set of  
12 regulations that govern nutrient content claims on the front of a package. 21 C.F.R. § 101.13. A  
13 nutrient content claim is a claim that “expressly or implicitly characterizes the level of a nutrient.”  
14 21 C.F.R. § 101.13(b). “Express” nutrient content claims include any statement outside the Nutri-  
15 tion Facts Panel, about the level of a nutrient. 21 C.F.R. 101.13(b)(1); 21 C.F.R. § 101.13(c).  
16 Stating information from the nutrition facts panel (such as grams protein per serving) elsewhere  
17 on the package necessarily constitutes a nutrient content claim. 21 C.F.R. § 101.13(c).

18 A manufacturer cannot make a nutrient content claim in the form of a “statement  
19 about the amount or percentage of a nutrient” if the statement is “false or mislead-  
20 ing in any respect.” 21 C.F.R. 101.13(i)(3).

21 38. Under the FDCA, the term false has its usual meaning of “untruthful,” while the  
22 term misleading is a term of art that covers labels that are technically true, but are likely to de-  
23 ceive consumers.

24 39. While a required statement *inside* of the NFP escapes regulations reserved for nu-  
25 trient content claims (21 C.F.R. § 101.13(c)), the identical statement *outside* of the NFP is still  
26 considered a nutrient content claim and is therefore subject to 21 C.F.R. § 101.13(i)(3). 21  
27 C.F.R. § 101.13(c). Indeed, the Ninth Circuit has specifically held that “a requirement to state  
28 certain facts in the nutrition label is not a license to make that statement elsewhere on the prod-  
uct.” *Reid v. Johnson & Johnson*, 780 F.3d 952, 960 (9th Cir. 2015). Thus, Defendant’s quantita-

1 tive protein claims on the front label are subject to analysis as a nutrient content claim and can-  
2 not be false or misleading in any manner.

3 40. Defendant's protein representations on the front package are misleading because  
4 they broadly tout protein quantity *alone* while ignoring that the poor quality nut proteins in the  
5 Products will provide far less useable protein than claimed. The claim on the front is therefore  
6 separately misleading and should never have appeared on the Product packages.

7 **Defendant's Marketing and Labeling of the Products Violates State and Federal Food La-**  
8 **beling Laws**

9 41. Defendant's Products are unlawful, misbranded, and violate the Sherman Law,  
10 California Health & Safety Code § 110660, *et seq.* Defendant makes protein content claims on the  
11 front of the Product packages even though, for some of the Products, it uniformly fails to provide  
12 a statement of the corrected amount of protein per serving in the NFP calculated according to the  
13 PDCAAS method and expressed as a %DV as required by 21 C.F.R. § 101.9(c)(7)(i). Defendant's  
14 failure to comply with this requirement render its front label protein claim unlawful per se and the  
15 product misbranded.

16 42. Defendant's front label protein quantity claim on all the Products is also mislead-  
17 ing, and therefore prohibited by sections 101.13(i)(3) and (b), because it states that it provides a  
18 specific amount of protein per serving—s such as "15G PROTEIN" for the Perfect Bar Dark  
19 Chocolate Chip and Peanut Butter flavor —when, in fact, after adjusting the protein content based  
20 on PDCAAS, the products will provide approximately half that much protein.

21 43. Defendant's marketing, advertising, and sale of the Products violates the false ad-  
22 vertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*), in-  
23 cluding but not limited to:

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

1 to sell any falsely or misleadingly advertised food; and

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

5 44. Defendant’s marketing, advertising, and sale of the Products violates the  
6 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et. seq.*),  
7 including but not limited to:

- 8 a. Section 110665 (a food is misbranded if its labeling does not conform with the  
9 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));  
10 b. Section 110705 (a food is misbranded if words, statements and other information  
11 required by the Sherman Law to appear food labeling is either missing or not  
12 sufficiently conspicuous);  
13 c. Section 110760, which makes it unlawful for any person to manufacture, sell,  
14 deliver, hold, or offer for sale any food that is misbranded;  
15 d. Section 110765, which makes it unlawful for any person to misbrand any food; and  
16 e. Section 110770, which makes it unlawful for any person to receive in commerce  
17 any food that is misbranded or to deliver or proffer for delivery any such food.

18 45. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA  
19 regulations, including but not limited to 21 C.F.R. § 101.9 (c)(7), which have been incorporated by  
20 reference in the Sherman Law, by failing to include on their product labels the nutritional  
21 information required by law.

22 46. A reasonable consumer would expect that the Products provide what Defendant  
23 identifies them to provide on the product labels and that the labels would not be contrary to the  
24 policies or regulations of the State of California and/or the FDA. For example, a reasonable  
25 consumer would expect that when Defendant labels its Products with “15G PROTEIN” as it  
26 claimed on the Perfect Bar in Dark Chocolate Chip Peanut Butter flavor label, the Products would  
27 provide 15 grams of protein per serving in a form their bodies could use as protein.  
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1           47. Consumers lack the meaningful ability to test or independently ascertain the truth-  
2 fulness of Defendant's food labeling claims, especially at the point of sale. Reasonable consumers  
3 do not walk around with the PDCAAS values for various protein sources stored in their heads. Its  
4 discovery requires investigation well beyond the grocery store aisle and knowledge of food chem-  
5 istry beyond that of the average consumer. An average consumer does not have the specialized  
6 knowledge necessary to ascertain that a serving of a Product does not provide the number of grams  
7 of protein that is represented on the front of the product package. An average consumer also lacks  
8 the specialized knowledge necessary to determine the PDCAAS for the Products. The average rea-  
9 sonable consumer had no reason to suspect that Defendant's representations on the packages were  
10 misleading. Therefore, consumers had no reason to investigate whether the Products actually do  
11 provide the amount of protein per serving that the labels claim they do and reasonably relied on  
12 Defendant's representations regarding the nature of the Products.

13           48. Defendant intends and knows that consumers will and do rely upon front label  
14 claims in making their purchasing decisions. Label claims and other forms of advertising and mar-  
15 keting drive product sales, particularly if placed prominently on the front of product packaging, as  
16 Defendant has done with the claims on the Products that they contain and provide specific amounts  
17 of protein per serving.

18  
19 **Defendant Misleadingly Markets the Products to Increase Profits and Gain a Competitive**  
20 **Edge**

21           49. In making false, misleading, and deceptive representations, Defendant distin-  
22 guishes the Products from its competitors' products. Defendant knew and intended that consum-  
23 ers would purchase, and pay a premium for, products labeled with a protein claim. By using this  
24 branding and marketing strategy, Defendant is stating that the Products are superior to, better  
25 than, and more nutritious and healthful than other products that do not make protein claims or that  
26 properly provide the required statement of the corrected amount of protein in the product as de-  
27 termined by the PDCAAS method and express as a %DV and otherwise do not mislead consum-  
28 ers about the amount of protein their products actually provide.

**Defendant Intends to Continue to Market the Products as Containing More Protein than the Products Actually Contain**

1  
2 50. Because consumers pay a price premium for products that make protein claims,  
3 and also pay a premium for products that provide more protein, by labeling its Products as con-  
4 taining more grams of protein per serving than they actually provide, Defendant is able to both  
5 increase its sales and retain more profits.

6 51. Defendant engaged in the practices complained of herein to further its private in-  
7 terests of: (i) increasing sales of the Products while decreasing the sales of competitors that do not  
8 misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a  
9 higher price for its Products because consumers will pay more for the Products due to consumers'  
10 demand for products containing more protein.

11 52. The market for protein products is continuing to grow and expand, and because  
12 Defendant knows consumers rely on representations about the number of grams of protein in food  
13 products, Defendant has an incentive to continue to make such unlawful and misleading represen-  
14 tations. In addition, other trends suggest that Defendant has no incentive to change its labeling  
15 practices.

16 53. For example, one market analysis revealed that between 2013-2017, product  
17 launches with a protein claim grew 31%.<sup>4</sup>

18 54. To capitalize on the growing market, Defendant continues to launch new product  
19 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant  
20 has continued to replicate its misrepresentations on new products. It is therefore likely that De-  
21 fendant will continue to misleadingly advertise the Products and perpetuate the misrepresenta-  
22 tions regarding the protein in the Products.

23  
24  
25  
26  
27 <sup>4</sup> [https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm\\_source=copyright&utm\\_medium=OnSite&utm\\_campaign=copyright](https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright)  
28



**PLAINTIFFS' EXPERIENCES**

**Chong**

55. Plaintiff Chong has purchased Perfect Bar protein bars in the Dark Chocolate Chip Peanut Butter flavor at stores in the Bay Area, including Safeway in Daly City, California and Target in Colma, California, from approximately January 2018 to approximately March 2020.

56. Plaintiff Chong made each of her purchases of the Perfect Bar protein bar in Dark Chocolate Chip Peanut Butter flavor after reading and relying on the product front labels that promised that the bars provided “15G PROTEIN” on the front of the product package. She relied on the protein representation for each purchase and purchased each product because of the protein representations. She also believed in the truth of each representation, i.e., that the product would actually provide her the specific amount of protein on the front label in a form her body could utilize as protein.

57. Plaintiff Chong not only purchased the Products because the labels said that they provided a specified amount of protein per serving, but she also paid more money for the Products than she would have paid had the product not unlawfully contained a protein claim, or had that protein claim not been misleading regarding the number of grams of protein it provided.

58. Had Defendant not misrepresented (by omission and commission) the true nature of the Products, Plaintiff Chong would not have purchased them or, at a very minimum, she would have paid less for the Products.

Plaintiff Chong continues to desire to purchase protein products, including those marketed and sold by Defendant. If the Products were reformulated to provide the grams of protein that are represented on the labels, Plaintiff Chong would likely purchase them again in the future. Plaintiff Chong regularly visits stores where the Products and other protein products are sold. Because Plaintiff Chong does not know the formula for Defendant’s products and cannot test whether or not the Products provide the amount of protein that is represented on the label.

**Roffman**

59. Plaintiff Roffman has purchased Perfect Peanut Butter Cups Dark Chocolate and Milk Chocolate flavor at stores in the Bay Area, including Whole Foods on Ocean Ave. in San

1 Francisco, California from approximately January 2019 to approximately January 2022.

2 60. Plaintiff Roffman made each of her purchases of the Perfect Peanut Butter Cups af-  
3 ter reading and relying on the product front labels that promised that the bars provided “7G PRO-  
4 TEIN” on the front of the dark chocolate package and “8G PROTEIN” on the front of the milk  
5 chocolate package. She relied on the protein representation for each purchase and purchased each  
6 product because of the protein representations. She also believed in the truth of each representa-  
7 tion, i.e., that the product would actually provide her the specific amount of protein on the front  
8 label in a form her body could utilize as protein.

9 61. Plaintiff Roffman not only purchased the Products because the labels said that they  
10 provided a specified amount of protein per serving, but she also paid more money for the Products  
11 than she would have paid had the product not unlawfully contained a protein claim, or had that  
12 protein claim not been misleading regarding the number of grams of protein it provided.

13 62. Had Defendant not misrepresented (by omission and commission) the true nature of  
14 the Products, Plaintiff Roffman would not have purchased them or, at a very minimum, she would  
15 have paid less for the Products.

16 63. Plaintiff Roffman continues to desire to purchase protein products, including those  
17 marketed and sold by Defendant. If the Products were reformulated to provide the grams of protein  
18 that are represented on the labels, Plaintiff Roffman would likely purchase them again in the fu-  
19 ture. Plaintiff Roffman regularly visits stores where the Products and other protein products are  
20 sold. Because Plaintiff Roffman does not know the formula for Defendant’s products and cannot  
21 test whether or not the Products provide the amount of protein that is represented on the label.

22 **CLASS ALLEGATIONS**

23 64. Plaintiffs bring this class action lawsuit on behalf of themselves and a proposed  
24 class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of  
25 Civil Procedure. Plaintiffs seek to represent the following groups of similarly situated persons,  
26 defined as follows:

27 The Class: All persons in the United States who purchased the Products between  
28 April 22, 2018 and the present.

The California Subclass: All persons in the State of California who purchased the

1 Products between April 22, 2018 and the present.

2 57. This action has been brought and may properly be maintained as a class action  
3 against Defendant because there is a well-defined community of interest in the litigation and the  
4 proposed classes are easily ascertainable.

5 65. Numerosity: Plaintiffs do not know the exact size the Classes, but they estimate  
6 that it is composed of more than 100 persons. The persons in the Classes are so numerous that the  
7 joinder of all such persons is impracticable and the disposition of their claims in a class action  
8 rather than in individual actions will benefit the parties and the courts.

9 58. Common Questions Predominate: This action involves common questions of law  
10 and fact to the potential Classes because each class member's claim derives from the deceptive,  
11 unlawful and/or unfair statements and omissions that led consumers to believe that the Products  
12 contained the amount of protein as represented on the Product labels. The common questions of  
13 law and fact predominate over individual questions, as proof of a common or single set of facts  
14 will establish the right of each member of the Classes to recover. The questions of law and fact  
15 common to the Classes are:

- 16 a. What is the PDCAAS for the protein in the Products;
- 17 b. Whether the marketing, advertising, packaging, labeling, and other promotional  
18 materials for the Products are unlawful and/or misleading;
- 19 c. Whether Defendant's actions violate Federal and California laws invoked herein;
- 20 d. Whether labeling the Products with a protein claim causes the Products to  
21 command a price premium in the market;
- 22 e. Whether Defendant's failure to provide a statement of the corrected amount of  
23 protein per serving in the Products sold to the Class and Subclass members was  
24 likely to deceive reasonable consumers;
- 25 f. Whether representations regarding the number of grams of protein in the Products  
26 are material to a reasonable consumer;
- 27 g. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- 28 h. The amount of profits and revenues Defendant earned as a result of the conduct;

- 1 i. Whether Class members are entitled to restitution, injunctive and other equitable
- 2 relief and, if so, what is the nature (and amount) of such relief; and
- 3 j. Whether Class members are entitled to payment of actual, incidental,
- 4 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
- 5 what is the nature of such relief.

6 66. Typicality: Plaintiffs' claims are typical of the claims of the other members of the  
7 Classes because, among other things, all such claims arise out of the same wrongful course of  
8 conduct engaged in by Defendant in violation of law as complained of herein. Further, the  
9 damages of each member of the Classes were caused directly by Defendant's wrongful conduct in  
10 violation of the law as alleged herein.

11 67. Adequacy of Representation: Plaintiffs will fairly and adequately protect the  
12 interests of all Class and Subclass members because it is in their best interests to prosecute the  
13 claims alleged herein to obtain full compensation due to them for the unfair and illegal conduct of  
14 which they complain. Plaintiffs also have no interests that are in conflict with, or antagonistic to,  
15 the interests of the Class and Subclass members. Plaintiffs have retained highly competent and  
16 experienced class action attorneys to represent their interests and that of the Classes. By  
17 prevailing on their own claims, Plaintiffs will establish Defendant's liability to all Class and  
18 Subclass members. Plaintiffs and their counsel have the necessary financial resources to  
19 adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their  
20 fiduciary responsibilities to the Class and Subclass members and are determined to diligently  
21 discharge those duties by vigorously seeking the maximum possible recovery for Class and  
22 Subclass members.

23 68. Superiority: There is no plain, speedy, or adequate remedy other than by  
24 maintenance of this class action. The prosecution of individual remedies by members of the  
25 classes will tend to establish inconsistent standards of conduct for Defendant and result in the  
26 impairment of Class members' rights and the disposition of their interests through actions to  
27 which they were not parties. Class action treatment will permit a large number of similarly  
28 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,

1 and without the unnecessary duplication of effort and expense that numerous individual actions  
2 would engender. Furthermore, as the damages suffered by each individual member of the classes  
3 may be relatively small, the expenses and burden of individual litigation would make it difficult  
4 or impossible for individual members of the class to redress the wrongs done to them, while an  
5 important public interest will be served by addressing the matter as a class action.

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

8 **CAUSES OF ACTION**

9 Plaintiffs do not plead, and hereby disclaim, causes of action under the FDCA and  
10 regulations promulgated thereunder by the FDA. Plaintiffs rely on the FDCA and FDA  
11 regulations only to the extent such laws and regulations have been separately enacted as state law  
12 or regulation or provide a predicate basis of liability under the state and common laws cited in the  
13 following causes of action.

14 **PLAINTIFFS' FIRST CAUSE OF ACTION**

15 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §**  
16 **1750, et seq.)**

17 **On Behalf of Plaintiffs and the Subclass**

18 70. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint  
19 as if set forth herein.

20 59. Plaintiffs bring this claim individually and on behalf of the other members of the  
21 Subclass.

22 71. Defendant's actions, representations and conduct have violated, and continue to  
23 violate the CLRA, because they extend to transactions that are intended to result, or which have  
24 resulted, in the sale or lease of goods or services to consumers.

25 72. Plaintiffs and other Subclass members are "consumers" as that term is defined by  
26 the CLRA in California Civil Code § 1761(d).

27 73. The Products that Plaintiffs (and other similarly situated Subclass members)  
28 purchased from Defendant were "goods" within the meaning of California Civil Code § 1761(a).

74. Defendant's acts and practices, set forth in this Class Action Complaint, led

1 customers to falsely believe that the Products provided nutritionally the amount of protein  
2 claimed on the product package. By engaging in the actions, representations and conduct set forth  
3 in this Class Action Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), §  
4 1770(a)(5), § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California  
5 Civil Code §1770(a)(2), Defendant's acts and practices constitute improper representations  
6 regarding the source, sponsorship, approval, or certification of the goods they sold. In violation of  
7 California Civil Code §1770(a)(5), Defendant's acts and practices constitute improper  
8 representations that the goods it sells have sponsorship, approval, characteristics, ingredients,  
9 uses, benefits, or quantities, which they do not have. In violation of California Civil Code  
10 §1770(a)(7), Defendant's acts and practices constitute improper representations that the goods it  
11 sells are of a particular standard, quality, or grade, when they are of another. In violation of  
12 California Civil Code §1770(a)(8), Defendant deceptively markets and advertises that, unlike  
13 other protein product manufacturers, it sells Products that provide more grams of protein than the  
14 Products actually do. In violation of California Civil Code §1770(a)(9), Defendant has advertised  
15 goods or services with intent not to sell them as advertised. Finally, Defendant had a duty to  
16 disclose the corrected amount of protein per serving for all the Products in the NFP as calculated  
17 by the PDCAAS method, which Defendant failed to do. 21 C.F.R. § 101.9(c)(7)(i)-(iii).

18         75. Plaintiffs request that this Court enjoin Defendant from continuing to employ the  
19 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
20 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the  
21 future, Plaintiffs and the other members of the Subclass will continue to suffer harm. Plaintiffs  
22 and those similarly situated have no adequate remedy at law to stop Defendant's continuing  
23 practices.

24         76. Plaintiffs provided Defendant with notice and a demand to correct, repair, replace  
25 or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein.  
26 Despite receiving the aforementioned notice and demand, Defendant failed to do so in that,  
27 among other things, it failed to identify similarly situated customers, notify them of their right to  
28 correction, repair, replacement or other remedy, and/or to provide that remedy. Accordingly,

1 Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and those  
2 similarly situated Subclass members, compensatory damages, punitive damages and restitution of  
3 any ill-gotten gains due to Defendant's acts and practices.

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

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

9 78. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
10 Complaint as if set forth herein.

11 60. Plaintiffs bring this claim individually and on behalf of the other members of the  
12 Subclass.

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

16 80. Defendant made representations and statements (by omission and commission)  
17 that led reasonable customers to believe that the Products that they were purchasing contained  
18 more grams of protein per serving than the Products actually provided. Further, Defendant had a  
19 duty to disclose the corrected amount of protein per serving in the NFP on all the Products, as  
20 calculated according to the PDCAAS method, which Defendant failed to do.

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

27 82. Defendant's acts and omissions are likely to deceive the general public.

28 83. Defendant engaged in these false, misleading and deceptive advertising and  
marketing practices to increase its profits. Accordingly, Defendant has engaged in false

1 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and  
2 Professions Code.

3 84. The aforementioned practices, which Defendant used, and continues to use, to its  
4 significant financial gain, also constitute unlawful competition and provide an unlawful  
5 advantage over Defendant's competitors as well as injury to the general public.

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

10 86. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution  
11 of monies, as necessary and according to proof, to restore any and all monies acquired by  
12 Defendant from Plaintiffs, the general public, or those similarly situated by means of the false,  
13 misleading and deceptive advertising and marketing practices complained of herein, plus interest  
14 thereon. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the following  
15 allegations in this paragraph only hypothetically and as an alternative to any contrary allegations  
16 in their other causes of action, in the event that such causes of action will not succeed. Plaintiffs  
17 and the Subclass may be unable to obtain monetary, declaratory and/or injunctive relief directly  
18 under other causes of action and will lack an adequate remedy at law, if the Court requires them  
19 to show classwide reliance and materiality beyond the objective reasonable consumer standard  
20 applied under the FAL, because Plaintiffs may not be able to establish each Subclass member's  
21 individualized understanding of Defendant's misleading representations as described in this  
22 Complaint, but the FAL does not require individualize proof of deception or injury by absent  
23 Class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012)  
24 ("restitutionary relief under the UCL and FAL 'is available without individualized proof of  
25 deception, reliance, and injury.'"). In addition, Plaintiffs and the Class may be unable to obtain  
26 such relief under other causes of action and will lack an adequate remedy at law, if Plaintiffs are  
27 unable to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the  
28 FAL imposes no such *mens rea* requirement and liability exists even if Defendant acted in good



1 faith.

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

4 88. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction  
5 to prohibit Defendant from continuing to engage in the false, misleading and deceptive  
6 advertising and marketing practices complained of herein. Such misconduct by Defendant, unless  
7 and until enjoined and restrained by order of this Court, will continue to cause injury in fact to the  
8 general public and the loss of money and property in that Defendant will continue to violate the  
9 laws of California, unless specifically ordered to comply with the same. This expectation of  
10 future violations will require current and future consumers to repeatedly and continuously seek  
11 legal redress in order to recover monies paid to Defendant to which it is not entitled. Plaintiffs,  
12 those similarly situated and/or other California consumers have no other adequate remedy at law  
13 to ensure future compliance with the California Business and Professions Code alleged to have  
14 been violated herein.

15 **PLAINTIFFS' THIRD CAUSE OF ACTION**  
16 **(Common Law Fraud, Deceit and/or Misrepresentation)**  
17 **On Behalf of Plaintiffs and the Class and Subclass**

18 89. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
19 Complaint as if set forth herein.

20 61. Plaintiffs bring this claim individually and on behalf of the other members of the  
21 Class and the Subclass.

22 90. Defendant has fraudulently and deceptively informed Plaintiffs that the Products  
23 provide more grams of protein than they actually provide in a form useful to the human body.  
24 Further, Defendant failed to provide a statement of the corrected amount of protein per serving in  
25 the NFP, calculated according to the PDCAAS method, on all the Products, as it was required to  
26 do.

27 91. These misrepresentations and omissions were known exclusively to, and actively  
28 concealed by, Defendant, not reasonably known to Plaintiffs, and material at the time they were  
made. Defendant knew or should have known the composition of the Products, and knew or

1 should have known that the Products did not contain or provide the amount of protein represented  
2 on the label. Defendant's misrepresentations and omissions concerned material facts that were  
3 essential to the analysis undertaken by Plaintiffs as to whether to purchase Defendant's Products.  
4 In misleading Plaintiffs and not so informing Plaintiffs, Defendant breached its duty to them.  
5 Defendant also gained financially from, and as a result of, its breach.

6 92. Plaintiffs and those similarly situated relied to their detriment on Defendant's  
7 misrepresentations and fraudulent omissions. Had Plaintiffs and those similarly situated been  
8 adequately informed and not intentionally deceived by Defendant, they would have acted  
9 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of  
10 them, or (iii) paying less for the Products.

11 93. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant  
12 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.  
13 Specifically, Defendant fraudulently and deceptively induced Plaintiffs and those similarly  
14 situated to, without limitation, purchase the Products.

15 94. Plaintiffs and those similarly situated justifiably and reasonably relied on  
16 Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

17 95. As a direct and proximate result of Defendant's misrepresentations and/or  
18 omissions, Plaintiffs and those similarly situated have suffered damages, including, without  
19 limitation, the amount they paid for the Products.

20 96. Defendant's conduct as described herein was wilful and malicious and was  
21 designed to maximize Defendant's profits even though Defendant knew that it would cause loss  
22 and harm to Plaintiffs and those similarly situated.

23 **PLAINTIFFS' FOURTH CAUSE OF ACTION**  
24 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**  
25 **Code § 17200, et seq.)**  
26 **On Behalf of Plaintiffs and the Subclass**

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

98. Plaintiffs bring this claim individually and on behalf of the other members of the

1 Subclass.

2 99. Within four (4) years preceding the filing of this lawsuit, and at all times  
3 mentioned herein, Defendant has engaged, and continues to engage, in unlawful, unfair, and  
4 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent  
5 business practices outlined in this complaint.

6 100. In particular, Defendant has engaged, and continues to engage, in unlawful  
7 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as  
8 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman  
9 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,  
10 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article  
11 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705,  
12 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of  
13 food in 21 U.S.C. § 343(a), *et seq.* and FDA regulations, including but not limited to 21 C.F.R. 21  
14 C.F.R. § 101.9 (c)(7), which are incorporated into the Sherman Law (California Health & Safety  
15 Code §§ 110100(a), 110380, and 110505).

16 101. In particular, Defendant has engaged, and continues to engage, in unfair and  
17 fraudulent practices by, without limitation, the following: (i) misleading reasonable consumers  
18 regarding the amount of protein the Products provide nutritionally in a form that humans can use;  
19 (ii) unlawfully making a protein claim on the front of some of the Product packages without  
20 complying with the regulatory requirements for making a protein claim set forth in 21 C.F.R.  
21 § 101.9(c)(7)(i)-(iii) and incorporated by reference by California's Sherman law; and (iii) failing  
22 to provide a statement of the corrected amount of protein per serving in the NFP, calculated  
23 according to the PDCAAS method and expressed as a %DV, on some of the Products as required  
24 by FDA regulations.

25 102. Plaintiffs and those similarly situated relied to their detriment on Defendant's  
26 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated  
27 been adequately informed and not deceived by Defendant, they would have acted differently by,  
28 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or

1 (iii) paying less for the Products.

2 103. Defendant's acts and omissions are likely to deceive the general public.

3 104. Defendant engaged in these deceptive and unlawful practices to increase its  
4 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and  
5 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

6 105. The aforementioned practices, which Defendant has used to its significant  
7 financial gain, also constitute unlawful competition and provide an unlawful advantage over  
8 Defendant's competitors as well as injury to the general public.

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

15 107. As a direct and proximate result of such actions, Defendant has enjoyed, and  
16 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which  
17 is in excess of the jurisdictional minimum of this Court.

18 108. Plaintiffs seek, on behalf of themselves and those similarly situated, equitable  
19 relief, including the restitution for the premium and/or full price that they or others paid to  
20 Defendant as a result of Defendant's conduct. Plaintiffs and the Subclass lack an adequate remedy  
21 at law to obtain such relief with respect to their "unlawfulness" claims in this UCL cause of  
22 action because the California Sherman Law does not provide a direct cause of action, so Plaintiffs  
23 and the Subclass must allege those violations as predicate acts under the UCL to obtain relief.

24 109. Plaintiffs also seek equitable relief, including restitution, with respect to their  
25 UCL "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs  
26 make the following allegations in this paragraph only hypothetically and as an alternative to any  
27 contrary allegations in their other causes of action, in the event that such causes of action do not  
28 succeed. Plaintiffs and the Subclass may be unable to obtain monetary, declaratory and/or

1 injunctive relief directly under other causes of action and will lack an adequate remedy of law, if  
2 the Court requires them to show classwide reliance and materiality beyond the objective  
3 reasonable consumer standard applied under the UCL, because Plaintiffs may not be able to  
4 establish each Subclass member's individualized understanding of Defendants' misleading  
5 representations as described in this Complaint, but the UCL does not require individualized  
6 proof of deception or injury by absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d  
7 1013, 1020, 1023-25 (distinguishing, for purposes of CLRA claim, among class members for  
8 whom website representations may have been materially deficient, but requiring certification of  
9 UCL claim for entire class). In addition, Plaintiffs and the Subclass may be unable to obtain such  
10 relief under other causes of action and will lack an adequate remedy at law, if Plaintiff is unable  
11 to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the UCL  
12 imposes no such *mens rea* requirement and liability exists even if Defendants acted in good  
13 faith.

14       110. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-  
15 described trade practices are fraudulent, unfair, and/or unlawful.

16       111. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit  
17 Defendant from continuing to engage in the deceptive and/or unlawful trade practices complained  
18 of herein. Such misconduct by Defendant, unless and until enjoined and restrained by order of  
19 this Court, will continue to cause injury in fact to the general public and the loss of money and  
20 property in that Defendant will continue to violate the laws of California, unless specifically  
21 ordered to comply with the same. This expectation of future violations will require current and  
22 future consumers to repeatedly and continuously seek legal redress in order to recover monies  
23 paid to Defendant to which they were not entitled. Plaintiffs and those similarly situated have no  
24 other adequate remedy at law to ensure future compliance with the California Business and  
25 Professions Code alleged to have been violated herein.

**PLAINTIFFS' FIFTH CAUSE OF ACTION**

**(Unjust Enrichment)**

**On Behalf of Plaintiffs and the Class and the Subclass**

1  
2  
3 112. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action  
4 Complaint as if set forth herein.

5 113. Plaintiffs bring this claim individually and on behalf of the other members of the  
6 Class and the Subclass.

7 114. Plaintiffs and members of the Class conferred a benefit on the Defendant by  
8 purchasing the Products.

9 115. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs' and  
10 Class members' purchases of the Products, which retention is unjust and inequitable, because  
11 Defendant falsely represented that the Products contained specific amounts of protein per serving,  
12 while failing to disclose that the Products actually provided less protein than represented. This  
13 harmed Plaintiffs and Class members because they paid a price premium as a result.

14 116. Because Defendant's retention of the non-gratuitous benefit conferred on it by  
15 Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to  
16 Plaintiffs and the Class members for its unjust enrichment, as ordered by the Court. Plaintiffs and  
17 those similarly situated have no adequate remedy at law to obtain this restitution.

18 117. Plaintiffs, therefore, seek an order requiring Defendant to make restitution to them  
19 and other members of the Class.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs, on behalf of themselves and those similarly situated,  
22 respectfully request that the Court enter judgement against Defendant as follows:

- 23 A. Certification of the proposed Class and Subclass, including appointment of  
24 Plaintiffs' counsel as class counsel;
- 25 B. An order temporarily and permanently enjoining Defendant from continuing the  
26 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Com-  
27 plaint;
- 28 C. An award of compensatory damages in an amount to be determined at trial, except

1 for those causes of action where compensatory damages are not legally available;

2 D. An award of statutory damages in an amount to be determined at trial, except for  
3 those causes of action where statutory damages are not legally available;

4 E. An award of punitive damages in an amount to be determined at trial, except for  
5 those causes of action where punitive damages are not legally available;

6 F. An award of treble damages, except for those causes of action where treble  
7 damages are not legally available;

8 G. An award of restitution in an amount to be determined at trial;

9 H. An order requiring Defendant to pay both pre- and post-judgment interest on any  
10 amounts awarded;

11 I. For reasonable attorneys' fees and the costs of suit incurred; and

12 J. For such further relief as this Court may deem just and proper.

13 **JURY TRIAL DEMANDED**

14 Plaintiffs hereby demand a trial by jury.

15 Dated: April 22, 2022

16 **GUTRIDE SAFIER LLP**

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