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8 UNITED STATES DISTRICT COURT FOR THE
 9 NORTHERN DISTRICT OF CALIFORNIA

10 MOLLY BROWN and ADINA RINGLER,
 11 as individuals, on behalf of themselves, the
 12 general public, and those similarly situated,

13 Plaintiffs,

14 v.

15 FOOD FOR LIFE BAKING CO., INC.,

16 Defendant.

CASE NO. 3:21-cv-10054-TLT

**FIRST AMENDED CLASS ACTION COM-
 PLAINT FOR VIOLATION OF THE CALI-
 FORNIA CONSUMERS LEGAL
 REMEDIES ACT; FALSE ADVERTISING;
 FRAUD, DECEIT, AND/OR MISREPRE-
 SENTATION; UNFAIR BUSINESS PRAC-
 TICES; AND UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

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INTRODUCTION

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2 1. Plaintiffs Molly Brown and Adina Ringler, by and through their counsel, bring this
3 class action against Defendant Food For Life Baking Co., Inc. 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 that provide the amount of nutrients, such as protein, required for their health. To capitalize
7 on this trend, Defendant prominently labels some of its consumer food products as providing specific
8 amounts of protein per serving depending on the product, such as “7g PLANT-BASED PROTEIN
9 PER SERVING” on the front of its Ezekiel 4:9 Sprouted Flourless Flake Cereal, Raisin. 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.

12 3. However, the Food and Drug Administration (“FDA”) prohibits such front label
13 claims about the amount of protein, unless manufacturers also provide additional information in the
14 nutrition facts panel about how much of the recommended daily value for protein that the product
15 will actually provide. 21 C.F.R. §§ 101.9(c)(7)(i), 101.13 (b), (n). That is because the FDA
16 recognizes that (1) when manufacturers tout an amount of protein on the front label, that amount is
17 likely to be material to purchasing decisions, even though reasonable consumers may not know the
18 total amount of protein they need to ingest on a daily basis, and (2) not all proteins are the same in
19 their ability to meet human nutritional requirements, so a simple statement about the number of
20 grams does not actually inform consumers about how much usable protein they are receiving. Some
21 proteins are deficient in one or more of the nine amino acids essential to human protein synthesis
22 and/or are not fully digestible within the human gut. When a human body uses up the least prevalent
23 essential amino acid from a food product, protein synthesis shuts down and all of the remaining
24 amino acids from that protein source degrade mostly into waste. Likewise, whatever portion of a
25 protein source is not digestible is similarly unavailable for protein synthesis. A protein’s ability to
26 support human nutritional requirements is known as its “quality.”

27 4. The FDA required method for measuring protein quality is called the “Protein
28 Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS (pronounced Pee-

1 Dee-Kass). It combines a protein source's amino acid profile and its percent digestibility into a
2 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows
3 how much protein in a product is actually available to support human nutritional requirements. The
4 regulations term this the "corrected amount of protein per serving." 21 C.F.R. § 101.9(c)(7)(ii). For
5 example, a PDCAAS of .5 means that only half of the protein in that product is actually available to
6 support human protein needs. If the product contained 10 grams total protein per serving, the
7 corrected amount of protein would be only 5 grams per serving.

8 5. Because protein products can vary widely in their ability to support human protein
9 needs (even between two comparator products with the same total protein quantity) and consumers
10 are generally unaware about the usability of various proteins, and may even be unaware of the total
11 amount of usable protein they should ingest each day, the FDA prohibits manufacturers from
12 advertising or promoting their products with a protein claim unless they have satisfied various
13 requirements, of which two are most important here. First, the manufacturer must calculate the
14 "corrected amount of protein per serving" based on the quality of the product's protein using the
15 PDCAAS method. Second, the manufacturer must use the PDCAAS computation to provide "a
16 statement of the corrected amount of protein per serving" in the nutrition facts panel ("NFP")
17 "expressed as" a percent daily value ("%DV") and placed immediately adjacent to the statement of
18 protein quantity. 21 C.F.R. § 101.9(c)(7)(i)-(ii). The %DV is the corrected amount of protein per
19 serving divided by the daily reference value for protein of 50 grams. *Id.* Using the same example of
20 a product containing 10 grams total protein per serving with a PDCAAS of .5, the %DV is 10%
21 (5g/50g). Had all of the protein in the product been useful in human nutrition, the %DV would be
22 20% (10g/50g). The FDA regulations that govern nutrient content claims are also clear that the
23 manufacturer may not make any front label claims about the amount of protein in the product unless
24 it complies with these two requirements. *See* 21 C.F.R. § 101.13(b) ("a nutrient content claim[] may
25 not be made on the label...unless the claim is made in accordance with this regulation [i.e., §
26 101.13]..." and (n) ("[n]utrition labeling in accordance with § 101.9...shall be provided for any
27 food for which a nutrient content claim is made"); *accord* 58 Fed. Reg. 2302, 23310 (manufacturer
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1 can only make “a nutrient content claim . . . on the label or in labeling of a food, provided that the
2 food bears nutrition labeling that complies with the requirements in proposed § 101.9.”).

3 6. The primary protein sources in Defendant’s products is wheat. Wheat is a low
4 quality protein with a PDCAAS score between 0.4 and 0.5, which means Defendant’s products
5 will provide nutritionally as little as *half* of their total protein quantity. Nevertheless, Defendant
6 failed to provide in the NFP a statement of the corrected amount of protein per serving calculated
7 according to the PDCAAS methodology and expressed as a %DV. Accordingly, the protein claims
8 on the front of the package, such as “7g PLANT-BASED PROTEIN PER SERVING” are unlawful
9 and in violation of parallel state and federal laws. 21 C.F.R. § 101.9(c)(7)(i), 101.13(b), (n). The
10 failure to include a statement of the corrected amount of protein inside the NFP also rendered the
11 NFP itself unlawful. *Id.* § 101.9(c)(7)(i).

12 7. Where a product makes a protein claim, the NFP is required to contain a statement
13 of the corrected amount of protein per serving calculated according to the PDCAAS methodology
14 and expressed as a %DV. Accordingly, the protein claims on the front of the Defendants’ cereals
15 and other products, such as “7g PLANT-BASED PROTEIN PER SERVING,” are unlawful in
16 violation of parallel state and federal laws because Defendant did not comply with the regulatory
17 requirements for making a protein claim.

18 8. In addition to being unlawful under 21 C.F.R. §§ 101.9 and 101.13, Defendant’s
19 prominent protein claim on the front of the package, in the absence of any statement of the corrected
20 amount of protein per serving expressed as a %DV in the NFP, also is likely to mislead reasonable
21 consumers. Consumers reasonably expect that Defendant’s products will actually provide
22 nutritionally the full amount of protein per serving claimed on the front of the product package and
23 stated in the protein quantity section of the NFP. But Defendant’s products do not do so on account
24 of their low protein quality. Had Defendant included a statement of the corrected amount of protein
25 per serving in the NFP, as it was required to do under the law, it would have revealed that the
26 products provide nutritionally as little as half of their total protein quantity. That information was
27 material to reasonable consumers.

28 9. Additionally, Defendant’s protein claims are also misleading because they are stated

1 in the form of quantitative amounts appearing alone, without any information about protein quality.
2 FDA regulations prohibit a manufacturer from stating “the amount or percentage of a nutrient” on
3 the front label if it is “false or misleading in any respect.” 21 C.F.R. § 101.13(i)(3). The primary
4 protein source in Defendant’s products is wheat. Wheat is a low quality protein with a PDCAAS
5 score that ranges between 0.4 and 0.5. Accordingly, although Defendant advertises its cereals, for
6 example, with a “7g PLANT-BASED PROTEIN PER SERVING” claim, they actually provide, in
7 a form that humans can use, as little as 2.8 grams of protein, i.e., less than half of the protein
8 consumers reasonably expect to receive based on the labels. This is misleading.

9 10. Defendant’s unlawful and misleading protein claims caused Plaintiffs and members
10 of the class to pay a price premium for the products.

11 **PARTIES**

12 11. Molly Brown is, and at all times alleged in this Class Action Complaint was, an
13 individual and a resident of Novato, California.

14 12. Adina Ringler is an individual and a resident of Northridge, California.

15 13. Molly Brown and Adina Ringler are collectively referred to hereafter as “Plaintiffs.”

16 14. Defendant Food For Life Baking Co., Inc. (“Defendant”) is a corporation existing
17 under the laws of California with its principal place of business in Solana Beach, California, and is
18 registered to do business in California.

19 **JURISDICTION AND VENUE**

20 15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
21 § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and
22 costs; and at least one Plaintiffs and Defendant are citizens of different states.

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

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

4 18. In accordance with California Civil Code Section 1780(d), Plaintiff Brown
5 concurrently files herewith a declaration establishing that, at various times throughout the class
6 period, she purchased Ezekiel 4:9 Sprouted Waffles in the Original and Golden Flax flavors and the
7 Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors from Whole Foods and other
8 grocery retailers in Novato, California from approximately 2018 to approximately July 2021.
9 (Plaintiff Brown’s declaration is attached hereto as Exhibit A.)

10 19. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

11 **SUBSTANTIVE ALLEGATIONS**

12 20. Defendant manufactures, distributes, markets, advertises, and sells a variety of food
13 products in the United States under the brand name “Ezekiel 4:9.” Some of these products, including
14 cereals, waffles, pasta, buns, and English muffins, have packaging that predominately, uniformly,
15 and consistently states on the principal display panel of the product labels that they contain and
16 provide a certain amount of protein per serving. Plaintiffs have attached as Exhibit B a non-exhaus-
17 tive list of the Ezekiel 4:9 products that make protein claims on the front of the product packages.
18 The products listed in Exhibit B, and any other Ezekiel 4:9 brand product that claims a specific
19 amount of protein on the front of its label, will hereinafter be referred to as the “Products.”

20 21. The representation that the Products contain and provide a specific amount of protein
21 per serving was uniformly communicated to Plaintiffs and every other person who purchased any of
22 the Products in California and the United States. The same or substantially similar product label has
23 appeared on each Product during the entirety of the Class Period in the general form of the following
24 example:

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22. The nutrition facts panel on the Products 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:

Nutrition Facts	Amount/serving	% Daily Value*	Amount/serving	% Daily Value*
	Total Fat	1g	1%	Total Carbohydrate
Saturated Fat	0g	0%	Dietary Fiber	5g 18%
Trans Fat	0g		Total Sugars	11g
Cholesterol	0mg	0%	Includes 11g of Added Sugars	22%
Sodium	200mg	9%	Protein	7g
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.				

7 servings per container
Serving size 3/4 cup (55g)
Calories 190 per serving

Calcium 20mg <2% • Iron 2.1mg 10% • Potassium 290mg 6% • Vitamin E 1.6 I.U. 6% • Vitamin K 11.28mcg 15% • Thiamine 0.08mg 6% • Riboflavin 0.06mg 4% • Niacin 1.05mg 6% • Vitamin B6 0.28mg 15% • Folic Acid 7.15mcg 0% • Phosphorus 155.65mg 15% • Magnesium 50.05mg 15% • Zinc 0.88mg 6% • Manganese 1.43mg 75%

23. As described in detail below, Defendant’s advertising and labeling of the Products as containing and providing specific amounts of protein per serving is unlawful, misleading, and intended to induce consumers to purchase the Products at a premium price, while ultimately failing to meet consumer expectations. The Products’ front label protein claims are unlawful because Defendant did not: (1) calculate the “corrected amount of protein per serving” based on the quality of the

1 and that many consumers use it to help them build a healthy diet.” Indeed, the FDA recommends
2 relying on Nutrition Facts Labels as the primary tool to monitor the consumption of protein.¹

3 26. Protein is found throughout the body—in muscle, bone, skin, hair, and virtually every
4 other body part or tissue. The health benefits of protein are well studied and wide ranging. Scientific
5 studies have confirmed that protein can assist in weight loss, reduce blood pressure, reduce choles-
6 terol, and control for risk factors for cardiovascular diseases. The National Academy of Medicine
7 recommends that adults get a minimum of .8 grams of protein for every kilogram of body weight
8 per day, or just over 7 grams for every 20 pounds of body weight.² For a 140-pound person, that
9 means about 50 grams of protein each day. For a 200-pound person, that means about 70 grams of
10 protein each day.³

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

17 28. Protein *quantity* by itself does not tell the full story from a human nutritional stand-
18 point. A protein’s *quality* is also critical because humans cannot fully digest or utilize some proteins.
19 Proteins are not monolithic. They are simply chains of amino acids, and different types of amino
20 acids chained together in different ways will make different types of proteins. Further, the makeup
21 of the protein changes the function of that protein in the human body, and certain types of proteins
22 are more easily digested and used by humans than others.

23 29. All of a human’s proteins are formed through the process of protein synthesis within
24 their own bodies. That is, although humans consume dietary proteins, they digest those proteins,
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26 ¹ FDA Protein Fact Sheet, [https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLa-
27 bel/factsheets/Protein.pdf](https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/factsheets/Protein.pdf)

28 ² National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber,
Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients)*.

³ *Id.*

⁴ *Id.*

1 break them down into their constituent amino acids, and then use those amino acids as building
2 blocks to synthesize the human proteins necessary for life, tissue repair, and other functions. Of the
3 twenty total amino acids, humans can produce only eleven of them on their own. Humans cannot
4 produce, under any circumstances, nine of the amino acids required for protein synthesis. These nine
5 amino acids are called the “essential amino acids” and they must be supplied through the diet.

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

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

19 32. As the FDA has stated in official guidance, “Accurate methods for determining pro-
20 tein quality are necessary because different food protein sources are not equivalent in their ability to
21 support growth and body protein maintenance.” 56 Fed. Reg. 60366, § B. The Protein Digestibility
22 Corrected Amino Acid Score (“PDCAAS”) is the FDA mandated measure of protein quality, and it
23 accounts for both the amino acid profile and the digestibility of the protein. 21 C.F.R. §
24 101.9(c)(7)(ii).

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

3 34. Defendant uses plant-based proteins in its products. Because of the differences in
4 benefits depending on the amino acid composition of a protein, the source of protein is important.
5 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological
6 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein
7 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Wheat pro-
8 teins, which Defendant uses in its Products according to the ingredient lists, does not contain all nine
9 essential amino acids and is low quality to humans. Wheat proteins typically have a PDCAAS of
10 between 0.4 and 0.5, meaning only 40-50% of the protein from those sources will be useable by
11 humans as protein.

12 35. Accordingly, Defendant’s use of low quality proteins means that they actually pro-
13 vide far less protein to humans than the Product labels claim.

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

15 36. Identical federal and California laws regulate the content of labels on packaged food.
16 The requirements of the federal Food, Drug & Cosmetic Act (“FDCA”), and its labeling regulations,
17 including those set forth in 21 C.F.R. §§ 101, 102, were adopted by the California legislature in the
18 Sherman Food Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code §
19 110100 (“All food labeling regulations and any amendments to those regulations adopted pursuant
20 to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food
21 labeling regulations of this state.”). The federal laws and regulations discussed below are applicable
22 nationwide to all sales of packaged food products. Additionally, no state imposes different require-
23 ments on the labeling of packaged food for sale in the United States.

24 37. According to FDA regulations, “[a] statement of the corrected amount of protein per
25 serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI
26 or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . *shall* be given if
27 a protein claim is made for the product . . .” 21 C.F.R. 101.9(c)(7)(i) (emphasis added). If a
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1 manufacturer does not want to perform PDCAAS and provide a statement of the corrected amount
2 of protein per serving in the NFP, then it shall not make any protein claims.

3 38. The regulation governing nutrient content claims, section 101.13, also makes this
4 plain. Section 101.13(n) provides that “[n]utrition labeling in accordance with § 101.9 . . . shall be
5 provided for any food for which a nutrient content claim is made” and § 101.13(b) states “a nutrient
6 content claim[] may not be made on the label . . . unless the claim is made in accordance with this
7 regulation [i.e., § 101.13]” In other words, a manufacturer may not make any protein nutrient
8 content claims on the front labels of their products unless they have complied with the requirements
9 for protein labeling in the NFP pursuant to section 101.9(c)(7). Indeed, the FDA made clear when
10 promulgating § 101.13(n) that it means that a manufacturer can only make “a nutrient content claim
11 . . . on the label or in labeling of a food, provided that the food bears nutrition labeling that complies
12 with the requirements in proposed § 101.9.” 58 Fed. Reg. 2302, 23310.

13 39. Further, FDA regulations for protein require the %DV to be calculated using
14 PDCAAS, a method that accounts for both protein quantity and protein quality. 21 C.F.R. §
15 101.9(c)(7)(ii); FDA Food Labeling Guide, p. 29, Question N.22.⁵ The first step is to calculate the
16 “corrected amount of protein per serving” by multiplying protein quantity by the PDCAAS quality
17 value, and then dividing that “corrected amount” by 50 grams (the “recommended daily value” for
18 protein) to come up with the %DV. *Id.*

19 40. The Products all make protein claims on the front label, but fail, uniformly to provide
20 a statement of the corrected amount of protein per serving in the NFP calculated according to the
21 PDCAAS method. The protein claims on the front are, therefore, unlawful, and were never permitted
22 to be on the label in the first instance under §§ 101.9(c)(7)(i), 101.13(n), and 101.13(b).

23 41. Defendant’s failure to include a statement of the corrected amount of protein per
24 serving expressed as a %DV in the NFP also renders the NFP itself unlawful under
25 §§ 101.9(c)(7)(i)-(iii).

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28 ⁵ Guidance for Industry: A Food Labeling Guide (“FDA Food Labeling Guide”) p. 29, Question
N22, U.S. Food & Drug Administration, <https://www.fda.gov/media/81606/download> (last accessed February 18, 2020).

1 42. Moreover, the FDA has explained in published guidance that that “Information on
2 protein quantity alone can be misleading on foods that are of low protein quality.” It also explained
3 that it was prohibiting manufacturers from making any protein claims at all *unless* the manufacturer
4 provides a statement of the corrected amount of protein per serving in the NFP based on PDCAAS
5 because “nutrition labeling must allow consumers to readily identify foods with particularly low
6 quality protein to prevent them from being misled by information on only the amount of protein
7 present.” 58 Fed. Reg. 2079 at 2101-2.

8 43. Similarly, 21 C.F.R. § 101.13(i)(3) prohibits manufacturers from making a claim on
9 the front of a product’s package about the “amount or percentage of a nutrient,” such as protein, if
10 the statement is “false or misleading in any respect.” If it is, then “it may not be made on the label.”
11 21 C.F.R. § 101.13(b). This is true even if the same amount appears in the NFP. 21 C.F.R.
12 § 101.13(c). Since the omission of the %DV from the NFP rendered the front label protein claim
13 misleading, the protein claim was not permitted to be on the front label.

14 44. Under the FDCA, the term false has its usual meaning of “untruthful,” while the term
15 misleading is a term of art that covers labels that are technically true, but are likely to deceive con-
16 sumers.

17 45. The FDA explained in promulgating section 101.13(i) that the regulation was neces-
18 sary “since many consumers have a limited knowledge and understanding of the amounts of nutrients
19 that are recommended for daily consumption,” which means that “a statement declaring that the
20 product contained a specified amount of a nutrient could be misleading. By its very presence, such
21 a statement could give consumers who were unfamiliar with the dietary recommendations the false
22 impression that the product would assist them in maintaining healthy dietary practices relative to the
23 amount of the nutrient consumed when it, in fact, would not.” 56 Fed. Reg. 60421. The rules are
24 different for amounts in the NFP and nutrient content claims because a voluntary nutrient declara-
25 tion on the front panel “is viewed by the agency as an effort to market the food as a significant source
26 of nutrients.” 56 Fed. Reg. 60366

27 46. In addition to regulating the NFP, the FDA has promulgated a separate set of regula-
28 tions that govern nutrient content claims on the front of a package. 21 C.F.R. § 101.13. A nutrient

1 content claim is a claim that “expressly or implicitly characterizes the level of a nutrient.” 21 C.F.R.
2 § 101.13(b). “Express” nutrient content claims include any statement outside the NFP, about the
3 level of a nutrient. 21 C.F.R. 101.13(b)(1); 21 C.F.R. § 101.13(c). Stating information from the
4 nutrition facts panel (such as grams protein per serving) elsewhere on the package necessarily con-
5 stitutes a nutrient content claim. 21 C.F.R. § 101.13(c). A manufacturer cannot make a nutrient con-
6 tent claim in the form of a “statement about the amount or percentage of a nutrient” if the statement
7 is “false or misleading in any respect.” 21 C.F.R. 101.13(i)(3).

8 47. While a required statement *inside* of the NFP escapes regulations reserved for nu-
9 trient content claims (21 C.F.R. § 101.13(c)), the identical statement *outside* of the NFP is still
10 considered a nutrient content claim and is therefore subject to 21 C.F.R. § 101.13(i)(3). 21 C.F.R.
11 § 101.13(c). Indeed, the Ninth Circuit has specifically held that “a requirement to state certain
12 facts in the nutrition label is not a license to make that statement elsewhere on the prod-
13 uct.” *Reid v. Johnson & Johnson*, 780 F.3d 952, 960 (9th Cir. 2015). Thus, Defendant’s quantita-
14 tive protein claims on the front label are subject to analysis as a nutrient content claim and cannot
15 be false or misleading in any manner.

16 48. Defendant’s protein representations on the front of the package are misleading be-
17 cause they broadly tout protein quantity alone while ignoring that the poor quality proteins in the
18 Products will provide far less useable protein than claimed. The claim on the front is therefore sep-
19 arately misleading and should never have appeared on the package.

20 **Defendant’s Marketing and Labeling of its Products Violates State and Federal Food**
21 **Labeling Laws**

22 49. Defendant’s Products are unlawful, misbranded, and violate the Sherman Law,
23 California Health & Safety Code § 110660, *et seq.* Defendant makes protein nutrient content claims
24 on the front of its Product packages even though it uniformly fails to provide a statement of the
25 corrected amount of protein per serving in the NFP calculated according to the PDCAAS method
26 and expressed as a %DV as required by 21 C.F.R. § 101.9(c)(7)(i). Defendant’s failure to comply
27 with this requirement renders its front label protein claim unlawful *per se* and the product
28 misbranded pursuant to § 101.13(n) and (b), as well as under § 101.9(c)(7)(i) itself. Defendant’s

1 omission of the %DV from the NFP despite the fact that it makes front label protein claims is also
2 unlawful and in violation of § 101.9(c)(7)(i)-(iii).

3 50. Defendant’s standalone, front label protein quantity claim is also misleading, and
4 therefore prohibited by sections 101.13(i)(3), (b), and (n) due to Defendant’s failure to include a
5 statement of the corrected amount of protein per serving in the NFP calculated using the PDCAAS
6 method and expressed as a %DV. Consumers have a “limited knowledge and understanding of the
7 amount of [protein] that [is] recommended for daily consumption,” let alone an understanding of the
8 science behind protein quality and how different types of proteins are used and absorbed in the body.
9 56 Fed. Reg. 60421. The FDA requires a statement of the corrected amount of protein per serving in
10 the NFP precisely to ensure that “consumers are not misled by information on only the amount of
11 protein present” in a product with low quality protein. 58 Fed. Reg. 2079 at 2101-2. Defendant’s
12 failure to provide them renders the labels misleading. Further, the front label is also misleading
13 because it states that it provides a specific amount of protein per serving—such as “7g PLANT-
14 BASED PROTEIN PER SERVING” for the Ezekial 4:9 Sprouted Flourless Flake Cereal in Raisin
15 flavor—when, in fact, after adjusting the protein content based on PDCAAS, the products will
16 provide approximately half that much protein.

17 51. Defendant’s marketing, advertising, and sale of the Products violates the false adver-
18 tising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*), includ-
19 ing but not limited to:

- 20 a. Section 110390, which makes it unlawful to disseminate false or misleading food
21 advertisements that include statements on products and product packaging or labeling
22 or any other medium used to directly or indirectly induce the purchase of a food
23 product;
- 24 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer
25 to sell any falsely or misleadingly advertised food; and
- 26 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded food
27 or to deliver or proffer for delivery any food that has been falsely or misleadingly
28 advertised.

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

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

14 53. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA regulations,
15 including but not limited to 21 C.F.R. § 101.13(i)(3), (b), (c) and (n); and 21 C.F.R. § 101.9 (c)(7),
16 which have been incorporated by reference in the Sherman Law, by failing to include on its Product
17 labels the nutritional information required by law.

18 54. A reasonable consumer would expect that the Products provide what Defendant
19 identifies them to provide on the product labels and that the labels would not be contrary to the
20 policies or regulations of the State of California and/or the FDA. For example, a reasonable
21 consumer would expect that when Defendant labels its Products with “7g PLANT-BASED
22 PROTEIN PER SERVING” per serving, as it claimed on the Ezekiel 4:9 Sprouted Flourless Flake
23 Cereal (Raisin) label, the Products would provide 7 grams of protein per serving in a form their
24 bodies could use as protein. Because Defendant did not conduct PDCAAS analysis and provide a
25 statement of the corrected amount of protein per serving, expressed as a %DV, consumers have no
26 idea that the Products provide significantly less protein.

27 55. Consumers lack the meaningful ability to test or independently ascertain the truthfulness
28 of Defendant’s food labeling claims, especially at the point of sale. Reasonable consumers,

1 when they look at the front label of the Products, believe the Products provide the amount of protein
2 represented on the front label. Because Defendant does not include any information as to the quality
3 of the protein anywhere on the packaging, even though it was legally required to do so via the state-
4 ment of corrected amount of protein expressed as a %DV, consumers do not have any reason to think
5 otherwise. Reasonable consumers do not walk around with the PDCAAS values for various protein
6 sources stored in their heads. They would not know the true amount of protein the Products provide
7 nutritionally merely by looking elsewhere on the product package. Its discovery requires investiga-
8 tion well beyond the grocery store aisle and knowledge of food chemistry beyond that of the average
9 consumer. An average consumer does not have the specialized knowledge necessary to ascertain
10 that a serving of a Product does not provide the number of grams of protein that is represented on
11 the front of the product package. An average consumer also lacks the specialized knowledge neces-
12 sary to determine the PDCAAS for the Products. The average reasonable consumer had no reason
13 to suspect that Defendant's representations on the packages were misleading. Therefore, consumers
14 had no reason to investigate whether the Products actually do provide the amount of protein per
15 serving that the labels claim they do and reasonably relied on Defendant's representations regarding
16 the nature of the Products.

17 56. Defendant intends and knows that consumers will and do rely upon food labeling
18 statements in making their purchasing decisions. Label claims and other forms of advertising and
19 marketing drive product sales, particularly if placed prominently on the front of product packaging,
20 as Defendant has done with the claims on the Products that they contain and provide specific
21 amounts of protein per serving.

22 **Defendant Misleadingly Markets Its Products to Increase Profits and Gain a Competitive**
23 **Edge**

24 57. In making unlawful, false, misleading, and deceptive representations, Defendant dis-
25 tinguishes its Products from its competitors' products. Defendant knew and intended that consumers
26 would purchase, and pay a premium for, products labeled with a protein claim. By using this brand-
27 ing and marketing strategy, Defendant is stating that its Products are superior to, better than, and
28 more nutritious and healthful than other products that do not make protein claims, or that properly

1 provide the required statement of the corrected amount of protein in the product as determined by
2 the PDCAAS method and express as a %DV and otherwise do not mislead consumers about the
3 amount of protein their products actually provide.

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

6 58. Because consumers pay a price premium for products that make protein claims, and
7 also pay a premium for products that provide more protein, by labeling its Products with protein
8 claims and/or omitting the required statement of the corrected amount of protein per serving, De-
9 fendant is able to both increase its sales and retain more profits.

10 59. Defendant engaged in the practices complained of herein to further its private inter-
11 ests of: (i) increasing sales of its Products while decreasing the sales of competitors that do not
12 misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a
13 higher price for its Products because consumers will pay more for these Products due to consumers'
14 demand for products with protein claims and/or more protein.

15 60. The market for protein products is continuing to grow and expand, and because De-
16 fendant knows consumers rely on representations about the number of grams of protein in food
17 products, Defendant has an incentive to continue to make such unlawful and misleading representa-
18 tions. In addition, other trends suggest that Defendant has no incentive to change its labeling prac-
19 tices.

20 61. For example, one market analysis revealed that between 2013-2017, product launches
21 with a protein claim grew 31%.⁶

22 62. To capitalize on the growing market, Defendant continues to launch new product
23 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant has
24 continued to replicate its misrepresentations on the new product lines. It is therefore likely that De-
25 fendant will continue to unlawfully and/or misleadingly advertise its Products and perpetuate the
26 misrepresentations regarding the protein in its Products.

27
28 ⁶ https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright

PLAINTIFFS' EXPERIENCES

Plaintiff Molly Brown

1
2
3 63. Plaintiff Brown has purchased Ezekiel 4:9 Sprouted Waffles in the Original and
4 Golden Flax flavors and the Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors
5 from a Whole Foods and other grocery retailers in Novato, California from approximately 2018 to
6 approximately July 2021.

7 64. Plaintiff Brown made each of her purchases after reading and relying on the truthfulness of Defendant's front labels that promised the Products provided a specific number of grams of
8 protein per serving. For example, she purchased the Ezekiel 4:9 Sprouted Waffles in the Original
9 flavor relying on the representation of "9g PLANT-BASED PROTEIN PER SERVING" per serving
10 on the front of the product package. She believed the truth of each representation, i.e., that the product would actually provide her the specific amount of protein claimed on the front labels in a form
11 her body could utilize as protein. Had Defendant complied with the law, and not made the protein
12 claims on the front of its packages in these circumstances, she would not have been drawn to the
13 Products and would not have purchased them. At a minimum she would have paid less for each
14 Product.

15
16
17 65. Moreover, had Defendant adequately disclosed the corrected amount of protein per
18 serving for each Product expressed as a %DV, as FDA regulations require, Plaintiff would not have
19 purchased the Products or would have, at minimum, paid less for them. Plaintiff regularly checks
20 the NFP before purchasing any product, including the %DV column for protein when manufacturers
21 provide it, and she uses that information as a basis of comparison between similar products. She
22 looked at and read the NFP on the Ezekiel 4:9 Sprouted Waffles in the Original and Golden Flax
23 flavors and the Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors before purchasing
24 them for the first time. Manufacturers do not always disclose the %DV for protein, but when
25 they do, she selects the product that provides more of the recommended daily value of protein (i.e.,
26 has a higher %DV for protein). When a manufacturer does not provide a %DV for protein, she can
27 only go off of the stated grams of protein, and she assumes that all of those disclosed grams are in a
28 form her body can use as protein.

1 66. For example, with the Ezekiel 4:9 Sprouted Waffles in the Original flavor, Plaintiff
2 Brown was looking for a product that would provide her 9 grams of useable protein per serving. Had
3 she seen that the product provided only 10% (or less) of the daily value for protein—i.e., only ap-
4 proximately 5 grams or less corrected amount of protein per serving—she would not have purchased
5 the product or, at a minimum would have paid less for it. Plaintiff would also have used the infor-
6 mation as a basis to compare similar products and would have chosen instead to purchase one with
7 a higher %DV. Without the statement of the corrected amount of protein per serving in the form of
8 a %DV, the only information Plaintiff Brown had about the Products was the 9 gram protein quantity
9 claim, and she believed she was receiving the full amount of that quantity in a form her body could
10 use. Because the Products did not provide any statement of the corrected amount of protein per
11 serving, she did not have any reason to believe that the Products provided less protein than the
12 amount represented on the front of the label. Plaintiff Brown did in fact believe that she was receiv-
13 ing 9 grams of high quality protein when she purchased the Ezekiel 4:9 Sprouted Waffles in the
14 Original flavor.

15 67. Plaintiff Brown continues to desire to purchase protein products, including those mar-
16 keted and sold by Defendant, and would like to purchase products that provide, for example, 9 grams
17 of protein per serving. If the Products were reformulated to provide in a usable form the grams of
18 protein that are represented on the labels, or the labels were reformulated to provide non-misleading
19 information, Plaintiff would likely purchase them again in the future. Plaintiff Brown regularly visits
20 stores where the Products and other protein products are sold. Because Plaintiff Brown does not
21 know the formula for Defendant's products, which can change over time, and cannot test whether
22 the Products provide the amount of digestible protein that is represented on the label without first
23 purchasing the Product, Plaintiff Brown will be unable to rely on Defendant's labels when shopping
24 for protein products in the future absent an injunction that prohibits Defendant from mislabeling its
25 Products. Plaintiff Brown would also be forced to retest and/or reanalyze each Product at each time
26 of purchase because a Product's ingredient list and labeling would not reveal any changes in the
27 amount of digestible protein, even if such changes took place. In addition, at present Plaintiff cannot
28 rely on the accuracy of Defendant's labels for the entire line of Products, which Plaintiff is also

1 interested in purchasing with labeling that comports with regulations. Should Defendant begin to
2 market and sell a new line of products, Plaintiff Brown could also be at risk for buying another one
3 of Defendant's products in reliance on the same or similar misrepresentations and omissions. And
4 because of Defendant's unlawful and misleading labels on the Products, Plaintiff cannot make in-
5 formed choices between protein products offered by Defendant and protein products offered by other
6 manufacturers, such as choices based on price and relative nutritional content.

7 68. Plaintiff Brown and members of the Class have been economically damaged by their
8 purchase of the Products because the advertising for the Products was and is untrue and/or mislead-
9 ing under state law and the products are misbranded; therefore, the Products are worth less than what
10 Plaintiffs and members of the Class paid for them and/or Plaintiffs and members of the Class did not
11 receive what they reasonably intended to receive.

12 **Plaintiff Adina Ringler**

13 69. Plaintiff Ringler has purchased Ezekiel 4:9 Sprouted Flourless Flake cereal in the
14 Raisin flavor at a Whole Foods store in Porter Ranch, California in January and February 2020.
15 Additionally, Plaintiff Ringler purchased the Ezekiel 4:9 Flourless Sprouted Whole Grain English
16 Muffins from a Ralph's store in Granada Hills, California in January 2020

17 70. Plaintiff Ringler made each of her purchases after reading and relying on the truth-
18 fulness of Defendant's front labels that promised the Products provided a specific number of grams
19 of protein per serving. For example, she purchased the Ezekiel 4:9 Sprouted Flourless Flake cereal
20 in the Raisin flavor relying on the representation of "7g PLANT-BASED PROTEIN PER SERV-
21 ING" on the front of the product package. She believed in the truth of each representation, i.e., that
22 the product would actually provide her the specific amount of protein claimed on the front label in
23 a form her body could utilize as protein. Had Defendant complied with the law, and not made the
24 protein claims on the front of its packages in these circumstances, she would not have been drawn
25 to the Products and would not have purchased them. At a minimum she would have paid less for
26 each Product.

27 71. Moreover, had Defendant adequately disclosed the corrected amount of protein per
28 serving for each Product expressed as a %DV, as FDA regulations require, Plaintiff would not have

1 purchased the Products or would have, at minimum, paid less for them. Plaintiff regularly checks
2 the NFP before purchasing any product, including the %DV column for protein when manufacturers
3 provide it, and she uses that information as a basis of comparison between similar products. She
4 looked at and read the NFP on the Ezekiel 4:9 Sprouted Flourless Flake cereal in the Raisin flavor
5 and Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins before purchasing them for the
6 first time. Manufacturers do not always disclose the %DV for protein, but when they do, she selects
7 the product that provides more of the recommended daily value of protein (i.e., has a higher %DV
8 for protein). When a manufacturer does not provide a %DV for protein, she can only go off of the
9 stated grams of protein, and she assumes that all of those disclosed grams are in a form her body can
10 use as protein.

11 72. For example, with the Ezekiel 4:9 Sprouted Flourless Flake cereal in the Raisin fla-
12 vor, Plaintiff was looking for a product that would provide her 7 grams of useable protein per serv-
13 ing. Had she seen that the product provided only 7% (or less) of the daily value for protein—i.e.,
14 only approximately 3.5 grams or less corrected amount of protein per serving—she would not have
15 purchased the product or, at a minimum would have paid less for it. Plaintiff would also have used
16 the information as a basis to compare similar products and would have chosen instead to purchase
17 one with a higher %DV. Without the statement of the corrected amount of protein per serving in the
18 form of a %DV, the only information Plaintiff Ringler had about the Products was the 7 gram protein
19 quantity claim, and she believed she was receiving the full amount of that quantity in a form her
20 body could use. Because the Products did not provide any statement of the corrected amount of
21 protein per serving, she did not have any reason to believe that the Products provided less protein
22 than the amount represented on the front of the label. Plaintiff Ringler did in fact believe that she
23 was receiving 7 grams of high quality protein when she purchased the Ezekiel 4:9 Sprouted Flourless
24 Flake cereal in the Raisin flavor.

25 73. Plaintiff Ringler continues to desire to purchase protein products, including those
26 marketed and sold by Defendant, and would like to purchase products that provide, for example, 7
27 grams of protein per serving. If the Products were reformulated to provide in a usable form the grams
28 of protein that are represented on the labels, or the labels were reformulated to provide non-

1 class is easily ascertainable.

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

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

- 13 a. What is PDCAAS for the protein in the Products;
- 14 b. Whether the marketing, advertising, packaging, labeling, and other promotional
15 materials for the Products are unlawful and/or misleading;
- 16 c. Whether Defendant's actions violate Federal and California laws invoked herein;
- 17 d. Whether labeling the Products with a protein claim causes the Products to command
18 a price premium in the market;
- 19 e. Whether Defendant's failure to provide a statement of the corrected amount of protein
20 per serving in the Products, despite prominent front label protein claims was likely to
21 deceive reasonable consumers;
- 22 f. Whether representations regarding the number of grams of protein in the Products are
23 material to a reasonable consumer;
- 24 g. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- 25 h. The amount of profits and revenues Defendant earned as a result of the conduct;
- 26 i. Whether Class members are entitled to restitution, injunctive and other equitable
27 relief and, if so, what is the nature (and amount) of such relief; and
- 28 j. Whether Class members are entitled to payment of actual, incidental, consequential,

1 exemplary and/or statutory damages plus interest thereon, and if so, what is the nature
2 of such relief.

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

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

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

1 regulations, including but not limited to 21 C.F.R. and 21 C.F.R. §§ 101.9 (c)(7), 101.13 (b), and
2 (n), which are incorporated into the Sherman Law (California Health & Safety Code §§ 110100(a),
3 110380, and 110505).

4 87. In particular, Defendant has engaged, and continues to engage, in unlawful, unfair,
5 and/or fraudulent practices by, without limitation, the following: (1) unlawfully making a protein
6 nutrient content claim on the front of the package without complying with the regulatory
7 requirements for making a protein claim set forth in 21 C.F.R. §§ 101.9(c)(7)(i)-(iii), 101.13(b) and
8 (n), which are incorporated by reference into California's Sherman law; (2) failing to provide a
9 statement of the corrected amount of protein per serving in the NFP, calculated according to the
10 PDCAAS method and expressed as a %DV, as required by 21 C.F.R. §§ 101.9(c)(7)(i)-(iii), which
11 are also so incorporated into the Sherman Law; and (3) misleading reasonable consumers regarding
12 the amount of protein that the Products provide nutritionally in a form that humans can use by
13 omitting a statement of the corrected amount of protein per serving in the NFP, calculated according
14 to the PDCAAS method and expressed as a %DV, which omission, renders the front label protein
15 nutrient content claim misleading in violation of 21 C.F.R § 101.13(i)(3) and §§ 101.13(c) & (b), all
16 of which are also incorporated into the Sherman Law.

17 88. Plaintiffs and those similarly situated relied to their detriment on Defendant's
18 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated been
19 adequately informed and not deceived by Defendant, they would have acted differently by, without
20 limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or (iii) paying
21 less for the Products.

22 89. Defendant's acts and omissions are likely to deceive the general public.

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

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

1 92. As a direct and proximate result of such actions, Plaintiffs and the other Class
2 members, have suffered and continue to suffer injury in fact and have lost money and/or property as
3 a result of such deceptive and/or unlawful trade practices and unfair competition in an amount which
4 will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. Among
5 other things, Plaintiffs and Class members lost the amount they paid for the Products.

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

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

15 95. Plaintiffs also seeks equitable relief, including restitution, with respect to their UCL
16 "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the
17 following allegations in this paragraph only hypothetically and as an alternative to any contrary
18 allegations in their other causes of action, in the event that such causes of action do not succeed.
19 Plaintiffs and the Class may be unable to obtain monetary, declaratory and/or injunctive relief
20 directly under other causes of action and will lack an adequate remedy of law, if the Court requires
21 them to show classwide reliance and materiality beyond the objective reasonable consumer standard
22 applied under the UCL, because Plaintiffs may not be able to establish each Class member's
23 individualized understanding of Defendant's misleading representations as described in this
24 Complaint, but the UCL does not require individualized proof of deception or injury by absent class
25 members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for
26 purposes of CLRA claim, among class members for whom website representations may have been
27 materially deficient, but requiring certification of UCL claim for entire class). In addition, Plaintiffs
28 and the Class may be unable to obtain such relief under other causes of action and will lack an

1 adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent,
2 reckless, and/or negligence), because the UCL imposes no such *mens rea* requirement and liability
3 exists even if Defendant acted in good faith.

4 96. Plaintiffs also seek, on behalf of themselves and those similarly situated, a declaration
5 that the above-described trade practices are fraudulent, unfair, and/or unlawful.

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

16 **PLAINTIFFS' SECOND CAUSE OF ACTION**
17 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §**
18 **1750, et seq.)**
19 **On Behalf of Plaintiffs and the Subclass**

20 98. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint as
21 if set forth herein.

22 99. Plaintiffs bring this claim individually and on behalf of the other members of the
23 California Subclass.

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

27 101. Plaintiffs and other class members are "consumers" as that term is defined by the
28 CLRA in California Civil Code § 1761(d).

102. The Products that Plaintiffs (and other similarly situated class members) purchased

1 from Defendant were “goods” within the meaning of California Civil Code § 1761(a).

2 103. Defendant’s acts and practices, set forth in this Class Action Complaint, led
3 customers to falsely believe that the Products provided nutritionally the amount of protein claimed
4 on the product package. By engaging in the actions, representations and conduct set forth in this
5 Class Action Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), §
6 1770(a)(5), § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California
7 Civil Code §1770(a)(2), Defendant’s acts and practices constitute improper representations
8 regarding the source, sponsorship, approval, or certification of the goods they sold. In violation of
9 California Civil Code §1770(a)(5), Defendant’s acts and practices constitute improper
10 representations that the goods they sell have sponsorship, approval, characteristics, ingredients, uses,
11 benefits, or quantities, which they do not have. In violation of California Civil Code §1770(a)(7),
12 Defendant’s acts and practices constitute improper representations that the goods it sells are of a
13 particular standard, quality, or grade, when they are of another. In violation of California Civil Code
14 §1770(a)(8), Defendant has disparaged the goods, services, or business of another by false or
15 misleading representation of fact. In particular, because Defendant had a duty to disclose the
16 corrected amount of protein per serving in the NFP as calculated by the PDCAAS method, which
17 Defendant failed to do, 21 C.F.R. § 101.9(c)(7)(i)-(iii) (as incorporated into the Sherman Law),
18 Defendant’s prominent statement of grams of protein per serving—which vastly overstates the
19 amount of digestible protein—was false and/or misleading because of material omission and thus
20 implicitly disparages competitor products that do accurately provide such disclosures and prevents
21 consumers from making accurate informed choices between Defendant’s Products and competitor
22 products. In violation of California Civil Code §1770(a)(9), Defendant has advertised goods or
23 services with intent not to sell them as advertised.

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

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

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

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

14 107. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
15 Complaint as if set forth herein.

16 108. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other
17 members of the California Class.

18 109. Beginning at an exact date unknown to Plaintiffs, but within three (3) years preceding
19 the filing of this lawsuit, Defendant made untrue, false, deceptive and/or misleading statements in
20 connection with the advertising and marketing of the Products.

21 110. Defendant made representations and statements (by omission and commission) that
22 led reasonable customers to believe that the Products that they were purchasing provided more grams
23 of protein per serving than the Products actually provided. Further, Defendant had a duty to disclose
24 the corrected amount of protein per serving in the NFP, as calculated according to the PDCAAS
25 method, which Defendant failed to do.

26 111. Plaintiffs and those similarly situated relied to their detriment on Defendant's false,
27 misleading and deceptive advertising and marketing practices, including each of the
28 misrepresentations and omissions set forth above. Had Plaintiffs and those similarly situated been
adequately informed and not intentionally deceived by Defendant, they would have acted differently

1 by, without limitation, refraining from purchasing Defendant’s Products or paying less for them.

2 112. Defendant’s acts and omissions are likely to deceive the general public.

3 113. Defendant engaged in these false, misleading and deceptive advertising and
4 marketing practices to increase its profits. Accordingly, Defendant has engaged in false advertising,
5 as defined and prohibited by section 17500, *et seq.* of the California Business and Professions Code.

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

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

13 116. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
14 of monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
15 from Plaintiffs, the general public, or those similarly situated by means of the false, misleading and
16 deceptive advertising and marketing practices complained of herein, plus interest thereon. Pursuant
17 to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs makes the following allegations in this
18 paragraph only hypothetically and as an alternative to any contrary allegations in their other causes
19 of action, in the event that such causes of action will not succeed. Plaintiffs and the Class may be
20 unable to obtain monetary, declaratory and/or injunctive relief directly under other causes of action
21 and will lack an adequate remedy at law, if the Court requires them to show classwide reliance and
22 materiality beyond the objective reasonable consumer standard applied under the FAL, because
23 Plaintiffs may not be able to establish each Class member’s individualized understanding of
24 Defendant’s misleading representations as described in this Complaint, but the FAL does not require
25 individualize proof of deception or injury by absent class members. *See, e.g., Ries v. Ariz. Bevs. USA*
26 *LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) (“restitutionary relief under the UCL and FAL ‘is
27 available without individualized proof of deception, reliance, and injury.’”). In addition, Plaintiffs
28 and the Class may be unable to obtain such relief under other causes of action and will lack an

1 adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent,
2 reckless, and/or negligence), because the FAL imposes no such *mens rea* requirement and liability
3 exists even if Defendant acted in good faith.

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

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

16 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
17 **(Common Law Fraud, Deceit and/or Misrepresentation)**
18 **On Behalf of Plaintiffs and the Classes**

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

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

23 121. Defendant has fraudulently and deceptively informed that the Products provide more
24 grams of protein than they actually provide in a form useful to the human body. Further, Defendant
25 made quantitative protein claims on the front of all of the Product packages while failing to list
26 provide a statement of the corrected amount of protein per serving in the NFP, calculated according
27 to the PDCAAS method.

28 122. These misrepresentations and omissions were known exclusively to, and actively
concealed by, Defendant, not reasonably known to Plaintiffs, and material at the time they were

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

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

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

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

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

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

24 **PLAINTIFFS' FIFTH CAUSE OF ACTION**
25 **(Unjust Enrichment)**
26 **On Behalf of Plaintiffs and the Classes**

27 128. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

28 129. Plaintiffs bring this claim individually and on behalf of the other members of the
Class and Subclass.

1 130. Plaintiffs and members of the Class conferred a benefit on the Defendant by
2 purchasing the Products.

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

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

12 133. Plaintiffs, therefore, seek an order requiring Defendant to make restitution to them
13 and other members of the Class.

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PRAYER FOR RELIEF

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

4 A. Certification of the proposed Classes, including appointment of Plaintiffs' counsel as
5 class counsel;

6 B. An order temporarily and permanently enjoining Defendant from continuing the
7 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Com-plaint;

8 C. An award of compensatory damages in an amount to be determined at trial, except
9 for those causes of action where compensatory damages are not legally available;

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

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

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

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

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

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

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

JURY TRIAL DEMANDED

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22 Plaintiffs hereby demand a trial by jury.
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Dated: October 7, 2022

GUTRIDE SAFIER LLP

/s/ Seth Safier/s/
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Attorneys for Plaintiffs

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EXHIBIT A

I, Molly Brown, declare:

1. I am a Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, I purchased Ezekiel 4:9 Sprouted Waffles (Golden Flax), Ezekiel 4:9 Sprouted Waffles (Original), and Ezekiel 4:9 Burger Buns (Sprouted Grains and Sesame) from Whole Foods and other grocery retailer(s) in Novato, California from approximately 2018 to approximately July 2021.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 17th day of November 2021, in Novato, California.

DocuSigned by:
Molly Brown
AEC78E11801A486
Molly Brown

Exhibit B

Product Type	Variety/Flavor	Protein Nutrient Content Claim
Cereal		
Ezekiel 4:9 Sprouted Crunchy Cereal	Almond Whole Grain	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Golden Flax	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Low Sodium	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Original	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Cinnamon Raisin	7 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Original Flake	8 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Almond Flake	8 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Raisin Flake	7 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Flax + Chia Flake	7 grams
Waffles		
Ezekiel 4:9 Sprouted Waffles	Apple Nut	10 grams
Ezekiel 4:9 Sprouted Waffles	Blueberry	10 grams
Ezekiel 4:9 Sprouted Waffles	Golden Flax	10 grams
Ezekiel 4:9 Sprouted Waffles	Original	9 grams
Buns		
Ezekiel 4:9 Hot Dog Buns	Sprouted Grain	10 grams
Ezekiel 4:9 Burger Buns	Sprouted Grain Sesame	5 grams
Ezekiel 4:9 Burger Buns	Sprouted Grain	5 grams
Pasta		
Ezekiel 4:9 Sprouted Pasta	Elbows	8 grams
Ezekiel 4:9 Sprouted Pasta	Fettuccine	8 grams
Ezekiel 4:9 Sprouted Pasta	Penne	8 grams
Ezekiel 4:9 Sprouted Pasta	Spaghetti	8 grams

Product Type	Variety/Flavor	Protein Nutrient Content Claim
English Muffins		
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Original	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Cinnamon Raisin	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Flax	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Low Sodium	Complete Protein