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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MOLLY BROWN, individually, and on  
behalf of the general public and those  
similarly situated,

Plaintiff,

v.

VAN'S INTERNATIONAL FOODS, INC.,

Defendant.

CASE NO. 3:22-CV-00001-WHO

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

JURY TRIAL DEMANDED

**INTRODUCTION**

1. Plaintiff Molly Brown, by and through her counsel, brings this class action against Defendant Van's International Foods, Inc. to seek redress for its unlawful and deceptive practices in labeling and marketing its consumer food products.

2. Consumers are increasingly health conscious and seek foods that provide the amount of nutrients, such as protein, required for their health. To capitalize on this trend,

1 Defendant prominently labels some of its consumer food products as providing specific amounts  
2 of protein per serving depending on the product, such as “10g PLANT-BASED protein” on the  
3 front of the Van’s Power Grains Protein Original Waffles.

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

19         4.         The FDA required method for measuring protein quality is called the “Protein  
20 Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS (pronounced Pee-  
21 Dee-Kass). It combines a protein source’s amino acid profile and its percent digestibility into a  
22 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows  
23 how much protein in a product is actually available to support human nutritional requirements.  
24 The regulations term this the “corrected amount of protein per serving.” 21 C.F.R.  
25 § 101.9(c)(7)(ii). For example, a PDCAAS of .5 means that only half of the protein in that product  
26 is actually available to support human protein needs. If the product contained 10 grams total  
27 protein per serving, the corrected amount of protein would be only 5 grams per serving.

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

6. The primary protein sources in Defendant’s products are wheat and oats. Both are low quality proteins with PDCAAS scores that range between 0.4 and 0.5, which means that, although Defendant advertises its products with a “10g PLANT-BASED protein” claim, it actually provides in a form that humans can use, as little as 5 grams of protein—i.e., less than half the protein consumers reasonably expect to receive based on the label. Nevertheless, Defendant

failed to provide in the NFP a statement of the corrected amount of protein per serving calculated according to the PDCAAS methodology and expressed as a %DV. Accordingly, the protein claims on the front of the package, such as “10g PLANT-BASED Protein” are unlawful and in violation of parallel state and federal laws. 21 C.F.R. § 101.9(c)(7)(i), 101.13(b), (n). The failure to include a statement of the corrected amount of protein inside the NFP also rendered the NFP itself unlawful. *Id.* § 101.9(c)(7)(i).

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

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

### **PARTIES**

9. Molly Brown (“Plaintiff”) is an individual and a resident of Novato, California.

10. Defendant Van’s International Foods, Inc. (“Defendant”) is a corporation existing under the laws of California with its principal place of business in Oakbrook Terrace, Illinois, and is registered to do business in California.

### **JURISDICTION AND VENUE**

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

1           12.     The injuries, damages and/or harm upon which this action is based, occurred or  
2 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State  
3 of California. Defendant regularly conducts and/or solicits business in, engages in other persistent  
4 courses of conduct in, and/or derives substantial revenue from products provided to persons in  
5 the State of California. Defendant has engaged, and continues to engage, in substantial and  
6 continuous business practices in the State of California.

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

10          14.     In accordance with California Civil Code Section 1780(d), Plaintiff Brown  
11 concurrently files herewith a declaration establishing that, at various times throughout the class  
12 period, she purchased Van's Protein Waffles in Original, Blueberry, and Chocolate Chip flavors,  
13 as well as Van's Protein Pancakes in Chocolate Chip flavor from Whole Foods stores in San  
14 Rafael and Novato, California and Sprouts stores in San Rafael and Petaluma, California from  
15 approximately 2019 to February 2021. (Plaintiff's declaration is attached hereto as Exhibit A.)

16          15.     Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

17                   **SUBSTANTIVE ALLEGATIONS**

18          16.     Defendant manufactures, distributes, markets, advertises, and sells breakfast food  
19 products in the United States under the brand name "Vans." Some of these products, including  
20 waffles and pancakes, have packaging that predominately, uniformly, and consistently states on  
21 the principal display panel of the product labels that they contain and provide a certain amount of  
22 protein per serving. Plaintiff has attached as Exhibit B a non-exhaustive list of the Vans products  
23 that make protein claims on the front of the product packages. The products listed in Exhibit B,  
24 and any other Vans brand product that claims a specific amount of protein on the front of its label,  
25 will hereinafter be referred to as the "Products."

26          17.     The representation that the Products contain and provide a specific amount of  
27 protein per serving was uniformly communicated to Plaintiff and every other person who  
28 purchased any of the Products in California and the United States. The same or substantially

similar product label has appeared on each Product during the entirety of the Class Period in the general form of the following example:



18. 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

#### Nutrition Facts

4 servings per container

**Serving size 2 pancakes**

Amount per serving

**Calories 190**

% Daily Value\*

**Total Fat** 5g 6%

Saturated Fat 0g 0%

Trans Fat 0g

**Cholesterol** 0mg 0%

**Sodium** 280mg 12%

**Total Carbohydrate**

27g 10%

Dietary Fiber 1g 4%

Total Sugars 5g

Includes 4g Added Sugars 8%

**Protein** 10g

Vitamin D 0mcg 0%

Calcium 30mg 2%

Iron 2mg 10%

Potassium 58mg 2%

**Disclaimer:** Nutritional information is subject to change. See product label to verify ingredients and allergens.



throughout the Class Period in the general form of the following example:

19. As described in detail below, Defendant's front label protein claims, which advertise the Products as containing and providing specific amounts of protein per serving, are unlawful because Defendant did not: (1) calculate the "corrected amount of protein per serving" based on the quality of the product's protein using the PDCAAS method; and (2) provide a statement of that corrected amount of protein per serving in the NFP, expressed as %DV. 21 C.F.R. § 101.9(c)(7)(i) & (iii). Defendant's failure to comply with § 101.9 also makes the front label claims unlawful under §§ 101.13(n) and (b). The unlawful front label protein claims induced consumers to purchase the Products at a premium price. Had Defendant not included a protein claim on the front label of its Products, as required by FDA regulations, reasonable consumers would not have purchased or would have paid less for the Products.

20. Defendant's failure to provide the required statement of the corrected amount of protein per serving, as well as Defendant's prominent front label protein claims made in the absence of any statement of the corrected amount of protein in the NFP, deceived and misled reasonable consumers into believing that a serving of the Products will provide the grams of protein represented on the label, when that is not true. Had Defendant complied with the law, the statement of the corrected amount of protein would have revealed the Products provide significantly less protein than claimed because Defendant uses low quality proteins in its products, such as wheat and oats. The absence of this information also allowed Defendant to charge a price premium. Had reasonable consumers been informed of the true amount of protein that the products provided through a statement of the corrected amount of protein per serving, as required by FDA regulations, they would not have purchased or would have paid less for the Products.

### **Consumer Demand for Protein**

21. Many American consumers are health conscious and seek wholesome, natural foods to keep a healthy diet, so they routinely rely upon nutrition information when selecting and purchasing food items. This is especially true in the community of athletes, registered dietitians, and coaches, to which Defendant markets. As noted by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, "[s]tudies show that consumers trust and believe the

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

4 22. Protein is found throughout the body—in muscle, bone, skin, hair, and virtually  
 5 every other body part or tissue. The health benefits of protein are well studied and wide ranging.  
 6 Scientific studies have confirmed that protein can assist in weight loss, reduce blood pressure,  
 7 reduce cholesterol, and control for risk factors for cardiovascular diseases. The National Academy  
 8 of Medicine recommends that adults get a minimum of .8 grams of protein for every kilogram of  
 9 body weight per day, or just over 7 grams for every 20 pounds of body weight.<sup>2</sup> For a 140-pound  
 10 person, that means about 50 grams of protein each day. For a 200-pound person, that means about  
 11 70 grams of protein each day.<sup>3</sup>

12 23. Athletes and fitness enthusiasts typically consume much higher amounts of protein  
 13 each day; typically between 1 to 1.5 grams of protein for every pound of body weight.

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

20 25. Protein *quantity* by itself does not tell the full story from a human nutritional  
 21 standpoint. A protein’s *quality* is also critical because humans cannot fully digest or utilize some  
 22 proteins. Proteins are not monolithic. They are simply chains of amino acids, and different types  
 23 of amino acids chained together in different ways will make different types of proteins. Further,

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26 <sup>1</sup> FDA Protein Fact Sheet,  
 27 <https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/factsheets/Protein.pdf>

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

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

<sup>4</sup> *Id.*



1 the makeup of the protein changes the function of that protein in the human body, and certain  
2 types of proteins are more easily digested and used by humans than others.

3 26. All of a human's proteins are formed through the process of protein synthesis  
4 within their own bodies. That is, although humans consume dietary proteins, they digest those  
5 proteins, break them down into their constituent amino acids, and then use those amino acids as  
6 building blocks to synthesize the human proteins necessary for life, tissue repair, and other  
7 functions. Of the twenty total amino acids, humans can produce only eleven of them on their own.  
8 Humans cannot produce, under any circumstances, nine of the amino acids required for protein  
9 synthesis. These nine amino acids are called the "essential amino acids" and they must be supplied  
10 through the diet.

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

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

24 29. As the FDA has stated in official guidance, "Accurate methods for determining  
25 protein quality are necessary because different food protein sources are not equivalent in their  
26 ability to support growth and body protein maintenance." 56 Fed. Reg. 60366, § B. The Protein  
27 Digestibility Corrected Amino Acid Score ("PDCAAS") is the FDA mandated measure of protein  
28 quality, and it accounts for both the amino acid profile and the digestibility of the protein. 21

1 C.F.R. § 101.9(c)(7)(ii). The PDCAAS method requires the manufacturer to determine the  
 2 amount of essential amino acids that the food contains and then combine that into a discount  
 3 factor score based on humans' ability to digest the amino acid profile.

4 30. Defendant uses plant-based proteins in its products. Because of the differences in  
 5 benefits depending on the amino acid composition of a protein, the source of protein is important.  
 6 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological  
 7 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein  
 8 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Further,  
 9 plant proteins such as wheat and oat proteins, which Defendant uses in its Products according to  
 10 the ingredient lists, are not fully digested by humans. Both types of proteins also typically have a  
 11 PDCAAS of between 0.4 and 0.5, meaning only 40-50% of the protein from those sources will  
 12 be digested and available to humans.

13 31. Accordingly, Defendant's use of low quality proteins, even in combination with  
 14 some higher quality proteins, means that they actually provide far less protein to humans than the  
 15 Product labels claim.

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

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

26 33. According to FDA regulations, "[a] statement of the corrected amount of protein  
 27 per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the  
 28 RDI or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . *shall* be

given if a protein claim is made for the product . . .” 21 C.F.R. 101.9(c)(7)(i) (emphasis added). If a manufacturer does not want to perform PDCAAS and provide a statement of the corrected amount of protein per serving in the NFP, then it shall not make any protein claims.

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

35. Further, FDA regulations require the %DV for protein to be calculated using PDCAAS, a method that accounts for both protein quantity and protein quality. 21 C.F.R. § 101.9(c)(7)(ii); FDA Food Labeling Guide, p. 29, Question N.22.<sup>5</sup> The first step is to calculate the “corrected amount of protein per serving” by multiplying protein quantity by the PDCAAS quality value, and then dividing that “corrected amount” by 50 grams (the “recommended daily value” for protein) to come up with the %DV. *Id.*

36. Defendant’s products all make protein claims on the front label, but fail, uniformly to provide a statement of the corrected amount of protein per serving in the NFP calculated according to the PDCAAS method. The protein claims on the front are, therefore, unlawful, and

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<sup>5</sup> 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 were never permitted to be on the label in the first instance under §§ 101.9(c)(7)(i), 101.13(n),  
2 and 101.13(b).

3 37. Defendant's failure to include a statement of the corrected amount of protein per  
4 serving expressed as a %DV in the NFP also renders the NFP itself unlawful under  
5 §§ 101.9(c)(7)(i)-(iii).

6 38. Defendant's use of a front-label protein claim, while failing to include the required  
7 statement of the corrected amount of protein per serving in the NFP calculated using the PDCAAS  
8 method and expressed as a %DV, is also misleading. By failing to provide it, Defendant misled  
9 consumers into believing that the Products provide a higher amount of protein than they really do.  
10 It also enabled Defendant to conceal the fact that its Products consist of low quality proteins that  
11 simply do not provide all of the protein that the quantity figure alone represents. Indeed, when  
12 promulgating 21 C.F.R. § 101.9(c)(7), the FDA explained in published guidance that  
13 "Information on protein quantity alone can be misleading on foods that are of low protein quality."  
14 It also explained that it was prohibiting manufacturers from making any protein claims at all  
15 *unless* the manufacturer provides a statement of the corrected amount of protein per serving in  
16 the NFP based on PDCAAS because "nutrition labeling must allow consumers to readily identify  
17 foods with particularly low quality protein to prevent them from being misled by information on  
18 only the amount of protein present." 58 Fed. Reg. 2079 at 2101-2.

19 39. Similarly, 21 C.F.R. § 101.13(i)(3) prohibits manufacturers from making a claim  
20 on the front of a product's package about the "amount or percentage of a nutrient," such as protein,  
21 if the statement is "false or misleading in any respect." If it is, then "it may not be made on the  
22 label." 21 C.F.R. § 101.13(b). This is true even if the same amount appears in the nutrition facts  
23 panel. 21 C.F.R. § 101.13(c). Since the omission of the %DV from the nutrition facts panel  
24 rendered the front label protein claim misleading, the protein claim was not permitted to be on  
25 the front label.

26 40. Under the FDCA, the term false has its usual meaning of "untruthful," while the  
27 term misleading is a term of art that covers labels that are technically true, but are likely to deceive  
28 consumers.

**Defendant's Marketing and Labeling of its Products Violates State and Federal Food Labeling Laws**

41. Defendant's Products are unlawful, misbranded, and violate the Sherman Law, California Health & Safety Code § 110660, et seq. Defendant makes protein nutrient content claims on the front of its Product packages even though it uniformly fails to provide a statement of the corrected amount of protein per serving in the NFP calculated according to the PDCAAS method and expressed as a %DV as required by 21 C.F.R. § 101.9(c)(7)(i). Defendant's failure to comply with this requirement renders its front label protein claim unlawful per se and the product misbranded pursuant to § 101.13(n) and (b), as well as under § 101.9(c)(7)(i) itself. Defendant's omission of the %DV from the NFP despite the fact that it makes front label protein claims is also unlawful and in violation of § 101.9(c)(7)(i)-(iii).

42. Defendant's standalone, front label protein quantity claim is also misleading, and therefore prohibited by sections 101.13(i)(3), (b), and (n) due to Defendant's failure to include a statement of the corrected amount of protein per serving in the NFP calculated using the PDCAAS method and expressed as a %DV. Consumers have a "limited knowledge and understanding of the amount of [protein] that [is] recommended for daily consumption," let alone an understanding of the science behind protein quality and how different types of proteins are used and absorbed in the body. 56 Fed. Reg. 60421. The FDA requires a statement of the corrected amount of protein per serving in the NFP precisely to ensure that "consumers are not misled by information on only the amount of protein present" in a product with low quality protein. 58 Fed. Reg. 2079 at 2101-2. Defendant's failure to provide it rendered the label misleading.

43. Defendant's marketing, advertising, and sale of the Products violates the false advertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*), including but not limited to:

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

offer to sell any falsely or misleadingly advertised food; and

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

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

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

45. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA regulations, 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), which have been incorporated by reference in the Sherman Law, by failing to include on its Product labels the nutritional information required by law.

46. A reasonable consumer would expect that the Products provide what Defendant identifies them to provide on the product labels and that the labels would not be contrary to the policies or regulations of the State of California and/or the FDA. For example, a reasonable consumer would expect that when Defendant labels its Products with "10g PLANT-BASED protein" per serving, as it claimed on the Vans Protein Original Waffles label, the Products would provide 10 grams of protein per serving in a form their bodies could use as protein. Because



1 Defendant did not conduct PDCAAS analysis and provide a statement of the corrected amount of  
2 protein per serving, expressed as a %DV, consumers have no idea that the Products provide  
3 significantly less protein.

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

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

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

49. In making unlawful, misleading, and deceptive representations, Defendant distinguishes its Products from its competitors' products. Defendant knew and intended that consumers would purchase, and pay a premium for, products labeled with a protein claim. By using this branding and marketing strategy, Defendant is stating that its Products are superior to, better than, and more nutritious and healthful than other products that do not make protein claims, or that properly provide the required statement of the corrected amount of protein in the product as determined by the PDCAAS method and express as a %DV and otherwise do not mislead consumers about the amount of protein their products actually provide.

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

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

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

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

53. For example, one market analysis revealed that between 2013-2017, product launches with a protein claim grew 31%.<sup>6</sup>

54. To capitalize on the growing market, Defendant continues to launch new product lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant has continued to replicate its misrepresentations on the new product lines. It is therefore likely that Defendant will continue to unlawfully and/or misleadingly advertise its Products.

### **PLAINTIFF'S EXPERIENCES**

55. Plaintiff has purchased Van's Protein Waffles in Original, Blueberry, and Chocolate Chip flavors, as well as Van's Protein Pancakes in Chocolate Chip flavor from Whole Foods stores in San Rafael and Novato, California and Sprouts stores in San Rafael and Petaluma, California from approximately 2019 to February 2021.

56. Plaintiff 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 protein per serving. For example, she purchased the Van's Protein Waffles in the original flavor after reading and relying on the representation of "10g PLANT-BASED protein" per serving 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 her body could utilize. Had Defendant complied with the law, and not made the protein claims on the front of its packages in these circumstances, she would not have been drawn to the Products and would not have purchased them. At a minimum she would have paid less for each Product.

57. Moreover, had Defendant adequately disclosed the corrected amount of protein per serving for each Product expressed as a %DV, as FDA regulations require, Plaintiff would not have purchased the Products or would have, at minimum, paid less for them. Plaintiff regularly checks the NFP before purchasing any product and uses that as a basis for buying and/or comparing similar products. She looked at and read the NFP on the Products before purchasing

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<sup>6</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)

1 them for the first time. She is a vegan and her youngest child is a vegetarian, which means that  
2 protein is very important to her and her family. She examines the %DV column for protein when  
3 manufacturers provide that information, although not all always do. When manufacturers provide  
4 that information, she will always choose the product that provides more of the recommended daily  
5 value of protein (i.e., has a higher %DV for protein) because, as a vegan and a mom to a vegetarian  
6 child, she needs to make sure they all receive their daily recommended protein, which can be  
7 difficult to do. When a manufacturer does not provide a %DV for protein, she can only go off of  
8 the stated grams of protein, and she assumes that all of those disclosed grams are in a form her  
9 body can use as protein.

10 58. When she purchased the Vans Protein Original Waffles, relying on the  
11 representation of “10g PLANT-BASED protein” per serving, Plaintiff was looking for a product  
12 that would provide her 10 grams of useable protein per serving. Had she seen that the product  
13 provided only 10% (or less) of the daily value for protein—i.e., only approximately 5 grams or  
14 less corrected amount of protein per serving—she would not have purchased the product or, at a  
15 minimum would have paid less for it. Plaintiff would also have used the information as a basis to  
16 compare similar products and would have chosen instead to purchase one with a higher %DV.  
17 Without the statement of the corrected amount of protein per serving in the form of a %DV, the  
18 only information plaintiff had about the Products was the 10 gram protein quantity claim, and she  
19 believed she was receiving the full amount of that quantity in a form her body could use. Because  
20 the Products did not provide any statement of the corrected amount of protein per serving, she did  
21 not have any reason to believe that the Products provided less protein than the amount represented  
22 in the NFP and on the front of the label. Nor did she have any reason to know the Products  
23 consisted of anything other than high quality proteins, and did in fact believe she was receiving  
24 10 grams of high quality protein.

25 59. Plaintiff continues to desire to purchase protein products, including the Van’s  
26 Protein Waffles and Van’s Protein Pancakes and others of the Products that Defendant markets  
27 and sells, and would like to purchase products that provide, for example, 10 grams of useable  
28 protein per serving. Plaintiff regularly visits stores where Defendant’s Products and other protein

products are sold. Because Plaintiff does not know the formula for Defendant's products, which can change over time, and cannot test whether the Products provide the amount of digestible protein that is represented on the label without first purchasing the Product, Plaintiff will be unable to rely on Defendant's labels when shopping for protein products in the future absent an injunction that prohibits Defendant from mislabeling its Products. Plaintiff would also be forced to retest and/or reanalyze each Product at each time of purchase because a Product's ingredient list and labeling would not reveal any changes in the amount of digestible protein, even if such changes took place. In addition, at present Plaintiff cannot rely on the accuracy of Defendant's labels for the entire line of Products, which Plaintiff is also interested in purchasing with labeling that comports with regulations. Should Defendant begin to market and sell a new line of products, Plaintiff could also be at risk for buying another one of Defendant's products in reliance on the same or similar misrepresentation and omissions. And because of Defendant's unlawful and misleading labels on its Products, Plaintiff cannot make informed choices between protein products offered by Defendant and protein products offered by other manufacturers, such as choices based on price and relative nutritional content.

60. Plaintiff and members of the Classes have been economically damaged by their purchase of the Products because the advertising for the Products was and is untrue and/or misleading under state law and the products are misbranded; therefore, the Products are worth less than what Plaintiff and members of the Class paid for them and/or Plaintiff and members of the Class did not receive what they reasonably intended to receive.

### **CLASS ALLEGATIONS**

61. Plaintiff brings this class action lawsuit on behalf of herself and proposed classes of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. Plaintiff seeks to represent the following groups of similarly situated persons, defined as follows:

The Class: All persons in the United States who purchased the Products between January 1, 2018 and the present.

The Subclass: All persons in the State of California who purchased the Products between January 1, 2018 and the present.

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

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

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

- a. What is PDCAAS for the protein in the Products;
- b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are unlawful.
- c. Whether Defendant's actions violate California laws invoked herein;
- d. Whether labeling the Products with a protein claim causes the Products to command a price premium in the market;
- e. Whether Defendant's failure to provide a statement of the corrected amount of protein per serving in the Products, despite prominent front label protein claims, was likely to deceive reasonable consumers;
- f. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- g. The amount of profits and revenues Defendant earned as a result of the conduct;
- h. Whether Class members are entitled to restitution, injunctive and other equitable relief and, if so, what is the nature (and amount) of such relief; and
- i. Whether Class members are entitled to payment of actual, incidental,



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

3 65. Typicality: Plaintiff's 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  
6 damages of each member of the Classes were caused directly by Defendant's wrongful conduct  
7 in violation of the law as alleged herein.

8 66. Adequacy of Representation: Plaintiff will fairly and adequately protect the  
9 interests of all class members because it is in their best interests to prosecute the claims alleged  
10 herein to obtain full compensation due to them for the unfair and illegal conduct of which they  
11 complain. Plaintiff also has no interests that are in conflict with, or antagonistic to, the interests  
12 of class members. Plaintiff has retained highly competent and experienced class action attorneys  
13 to represent their interests and that of the classes. By prevailing on their own claims, Plaintiff will  
14 establish Defendant's liability to all class members. Plaintiff and their counsel have the necessary  
15 financial resources to adequately and vigorously litigate this class action, and Plaintiff 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 67. Superiority: There is no plain, speedy, or adequate remedy other than by  
19 maintenance of this class action. The prosecution of individual remedies by members of the  
20 classes will tend to establish inconsistent standards of conduct for Defendant and result in the  
21 impairment of Class members' rights and the disposition of their interests through actions to  
22 which they were not parties. Class action treatment will permit a large number of similarly  
23 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,  
24 and without the unnecessary duplication of effort and expense that numerous individual actions  
25 would engender. Furthermore, as the damages suffered by each individual member of the classes  
26 may be relatively small, the expenses and burden of individual litigation would make it difficult  
27 or impossible for individual members of the classes to redress the wrongs done to them, while an  
28 important public interest will be served by addressing the matter as a class action.

68. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### **CAUSES OF ACTION**

Plaintiff does not plead, and hereby disclaims, causes of action under the FDCA and regulations promulgated thereunder by the FDA. Plaintiff relies on the FDCA and FDA regulations only to the extent such laws and regulations have been separately enacted as state law or regulation or provide a predicate basis of liability under the state and common laws cited in the following causes of action.

#### **PLAINTIFF'S FIRST CAUSE OF ACTION** **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions Code § 17200, *et seq.*)** **On Behalf of Plaintiff and the Subclass**

69. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

70. Plaintiff brings this claim individually and on behalf of the other members of the Subclass.

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

72. In particular, Defendant made unlawful front label protein claims and unlawful omissions of the statement of the corrected amount of the protein from the NFP. In doing so, Defendant has engaged, and continues to engage, in unlawful practices by, without limitation, violating the following state and federal laws: (i) the CLRA as described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman Law (Article 3), including without limitation, California Health & Safety Code §§ 110390, 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705, 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of food in 21 U.S.C. § 343(a), *et seq.*

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

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

74. Plaintiff and those similarly situated relied to their detriment on Defendant's unlawful, unfair, and fraudulent business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by Defendant, they would have acted differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing a smaller quantity of the Products, and/or (iii) paying less for the Products.

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

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

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

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

6           79. 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           80. Plaintiff seeks, on behalf of herself and those similarly situated, equitable relief,  
10 including restitution for the premium and/or the full price that they and others paid to Defendant  
11 as result of Defendant's conduct. Plaintiff and the Subclass lack an adequate remedy at law to  
12 obtain such relief with respect to their "unlawfulness" claims in this UCL cause of action because  
13 the California Sherman Law does not provide a direct cause of action, so Plaintiff and the Subclass  
14 must allege those violations as predicate acts under the UCL to obtain relief.

15           81. Plaintiff also seeks equitable relief, including restitution, with respect to their UCL  
16 "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(2), Plaintiff makes 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 Plaintiff and the Subclass 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  
22 standard applied under the UCL, because Plaintiff may not be able to establish each Subclass  
23 member's individualized understanding of Defendant's misleading representations as described  
24 in this Complaint, but the UCL does not require individualized proof of deception or injury by  
25 absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25  
26 (distinguishing, for purposes of CLRA claim, among class members for whom website  
27 representations may have been materially deficient, but requiring certification of UCL claim for  
28 entire class). In addition, Plaintiff and the Subclass may be unable to obtain such relief under

1 other causes of action and will lack an adequate remedy at law, if Plaintiff is unable to demonstrate  
 2 the requisite *mens rea* (intent, reckless, and/or negligence), because the UCL imposes no such  
 3 *mens rea* requirement and liability exists even if Defendant acted in good faith.

4 82. Plaintiff also seeks, on behalf of herself and those similarly situated, a declaration  
 5 that the above-described trade practices are fraudulent, unfair, and/or unlawful.

6 83. Plaintiff seeks, on behalf of herself 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  
 9 by order of this Court, will continue to cause injury in fact to the general public and the loss of  
 10 money and property in that Defendant will continue to violate the laws of California, unless  
 11 specifically ordered to comply with the same. This expectation of future violations will require  
 12 current and future consumers to repeatedly and continuously seek legal redress in order to recover  
 13 monies paid to Defendant to which they were not entitled. Plaintiff, those similarly situated and/or  
 14 other consumers nationwide have no other adequate remedy at law to ensure future compliance  
 15 with the California Business and Professions Code alleged to have been violated herein.

16 **PLAINTIFF'S 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 Plaintiff and the Subclass**

20 84. Plaintiff realleges and incorporate the paragraphs of this Class Action Complaint  
 21 as if set forth herein.

22 85. Plaintiff brings this claim individually and on behalf of the other members of the  
 23 Subclass.

24 86. 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 87. Plaintiff and other subclass members are "consumers" as that term is defined by  
 28 the CLRA in California Civil Code § 1761(d).

88. The Products that Plaintiff (and other similarly situated subclass members)

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

2 89. 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  
 9 of 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,  
 11 uses, benefits, or quantities, which they do not have. In violation of California Civil Code  
 12 § 1770(a)(7), Defendant’s acts and practices constitute improper representations that the goods it  
 13 sells are of a particular standard, quality, or grade, when they are of another. In violation of  
 14 California Civil Code § 1770(a)(8), Defendant has disparaged the goods, services, or business of  
 15 another by false or misleading representation of fact. In particular, because Defendant had a duty  
 16 to disclose the corrected amount of protein per serving in the NFP as calculated by the PDCAAS  
 17 method, which Defendant failed to do, 21 C.F.R. § 101.9(c)(7)(i)-(iii) (as incorporated into the  
 18 Sherman Law), Defendant’s prominent statement of grams of protein per serving—which vastly  
 19 overstates the amount of digestible protein—was false and/or misleading because of material  
 20 omission and thus implicitly disparages competitor products that do accurately provide such  
 21 disclosures and prevents consumers from making accurate informed choices between Defendant’s  
 22 Products and competitor products. In violation of California Civil Code §1770(a)(9), Defendant  
 23 has advertised goods or services with intent not to sell them as advertised.

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



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

92. Plaintiff also request that this Court award her costs and reasonable attorneys' fees pursuant to California Civil Code § 1780(d).

**PLAINTIFF'S THIRD CAUSE OF ACTION**  
**(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**  
**On Behalf of Plaintiff and the Subclass**

93. Plaintiff realleges and incorporate by reference the paragraphs of this Class Action Complaint as if set forth herein.

94. Plaintiff brings this claim individually and on behalf of the other members of the Subclass.

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

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

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

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

3 98. Defendant's acts and omissions are likely to deceive the general public.

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

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

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

15 102. Plaintiff seeks, on behalf of herself and those similarly situated, full restitution of  
16 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant  
17 from Plaintiff, the general public, or those similarly situated by means of the false, misleading  
18 and deceptive advertising and marketing practices complained of herein, plus interest thereon.  
19 Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in  
20 this paragraph only hypothetically and as an alternative to any contrary allegations in their other  
21 causes of action, in the event that such causes of action will not succeed. Plaintiff and the Subclass  
22 may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes  
23 of action and will lack an adequate remedy at law, if the Court requires them to show classwide  
24 reliance and materiality beyond the objective reasonable consumer standard applied under the  
25 FAL, because Plaintiff may not be able to establish each Subclass member's individualized  
26 understanding of Defendants' misleading representations as described in this Complaint, but the  
27 FAL does not require individualize proof of deception or injury by absent Subclass members. *See,*  
28 *e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief

under the UCL and FAL ‘is available without individualized proof of deception, reliance, and injury.’”).

103. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that the above-described practices constitute false, misleading and deceptive advertising.

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

**PLAINTIFF’S FOURTH CAUSE OF ACTION**  
**(Common Law Fraud, Deceit and/or Misrepresentation)**  
**On Behalf of Plaintiff and the Classes**

105. Plaintiff reallege and incorporate by reference the paragraphs of this Class Action Complaint as if set forth herein.

106. Plaintiff brings this claim individually and on behalf of the other members of the Class and the Subclass.

107. Defendant has fraudulently and deceptively informed Plaintiff that the Products provide more grams of protein than they actually provide in a form useful to the human body. Defendant made quantitative protein claims on the front of all of the Product packages while failing to list provide a statement of the corrected amount of protein per serving in the NFP, calculated according to the PDCAAS method, as it was required to do.

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

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

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

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

111. Plaintiff and those similarly situated justifiably and reasonably relied on Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

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

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

**PLAINTIFF'S FIFTH CAUSE OF ACTION**  
**(Unjust Enrichment)**  
**On Behalf of Plaintiff and the Classes**

114. Plaintiff realleges and incorporate by reference all paragraphs alleged herein.

115. Plaintiff brings this claim individually and on behalf of the other members of the Class and the Subclass.

116. Plaintiff and members of the Classes conferred a benefit on the Defendant by purchasing the Products.

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

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

119. Plaintiff, therefore, seeks an order requiring Defendant to make restitution to her and other members of the Classes.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and those similarly situated, respectfully request that the Court enter judgement against Defendant as follows:

A. Certification of the proposed Classes, including appointment of Plaintiff's counsel as class counsel;

B. An order temporarily and permanently enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

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

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

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

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

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

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

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

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

6 **JURY TRIAL DEMANDED**

7 Plaintiff hereby demands a trial by jury.

8 Dated: May 31, 2022

9 **GUTRIDE SAFIER LLP**

10 /s/Seth Safier/s/

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