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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ELENA NACARINO and MEGAN TAY-
LOR, as individuals, on behalf of them-
selves, the general public and those
similarly situated,

Plaintiffs,

v.

KASHI COMPANY,

Defendant.

CASE NO.

**CLASS ACTION COMPLAINT FOR VIO-
LATION OF THE CALIFORNIA CON-
SUMERS LEGAL REMEDIES ACT;
FALSE ADVERTISING; FRAUD, DECEIT,
AND/OR MISREPRESENTATION; UN-
FAIR BUSINESS PRACTICES; UNJUST
ENRICHMENT; AND VIOLATIONS OF
ILLINOIS CONSUMER PROTECTION
STATUTES**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Plaintiffs Elena Nacarino and Megan Taylor by and through their counsel, bring
3 this class action against Defendant Kashi Company to seek redress for its deceptive practices in
4 labeling and marketing its consumer food products.

5 2. Consumers are increasingly health conscious and, as a result, many consumers
6 seek foods high in protein. To capitalize on this trend, Defendant prominently labels some of its
7 consumer food products as providing specific amounts of protein per serving depending on the
8 product, such as “11g Protein” on the front of its Kashi Go Cinnamon Crisp cereal. Consumers, in
9 turn, reasonably expect that each product will provide the actual amount of protein per serving
10 claimed on the front of the product package.

11 3. In truth, however, Defendant’s products do not deliver the amount of protein that
12 the labels claim. For example, Defendant labeled the front of the box of its Kashi Go Cinnamon
13 Crisp cereal as providing “11g Protein.” Based on amino acid content testing, Defendant’s
14 products contain less protein than claimed, meaning, for example, rather than containing 11
15 grams of protein, the Kashi Go Cinnamon Crisp cereal actually contained only 9.37 grams (i.e.,
16 an overstatement by approximately 18%) in a 51-gram serving.

17 4. Further, Defendant uses proteins of low biological value to humans, such as oat
18 protein, in its products. Accordingly, when the protein content is adjusted for its poor quality
19 based on the Food and Drug Administration (“FDA”) mandated “Protein Digestibility Corrected
20 Amino Acid” score, (“PDCAAS”), Defendant’s products provide even less protein per serving
21 than amino acid content testing alone reveals. Oat protein typically has a PDCAAS score between
22 0.45 and 0.51. Thus, after adjusting the protein content based on PDCAAS, the Kashi Go
23 Cinnamon Crisp cereal provides only 7 grams of protein (i.e., an overstatement by approximately
24 57%).

25 5. Defendant’s misrepresentations caused Plaintiffs and members of the class to pay a
26 price premium for the products.

27
28

PARTIES

1
2 6. Elena Nacarino is an individual and a resident of San Francisco, California.

3 7. Megan Taylor is, and at all times alleged in this Class Action Complaint was, an
4 individual and a resident of Grayslake, Illinois.

5 8. Elena Nacarino and Megan Taylor are collectively referred to hereafter as
6 “Plaintiffs.”

7 9. Defendant Kashi Company (“Defendant”) is a corporation existing under the laws
8 of California with its principal place of business in Solana Beach, California, and is registered to
9 do business in California.

10 **JURISDICTION AND VENUE**

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

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

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

23 13. In accordance with California Civil Code Section 1780(d), Plaintiff Nacarino
24 concurrently files herewith a declaration establishing that, at various times throughout the class
25 period, she purchased Kashi Go cereals in the Original, Honey Almond Flax Crunch, Peanut
26 Butter Crunch, and Cinnamon Crisp flavors at stores in the Bay Area, including Target in Daly
27 City, California. (Plaintiff Nacarino’s declaration is attached hereto as Exhibit A.)

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

SUBSTANTIVE ALLEGATIONS

1
2 15. Defendant manufactures, distributes, markets, advertises, and sells a variety of
3 breakfast and snack products in the United States under the brand name “Kashi.” Some of these
4 products, including cereals, bars, waffles, and bowls, have packaging that predominately, uni-
5 formly, and consistently states on the principal display panel of the product labels that they con-
6 tain and provide a certain amount of protein per serving. Plaintiffs have attached as Exhibit B a
7 non-exhaustive list of the Kashi products that make protein claims on the front of the product
8 packages. The products listed in Exhibit B, and any other Kashi brand product that claims a spe-
9 cific amount of protein on the front of its label, will hereinafter be referred to as the “Products.”

10 16. The representation that the Products contain and provide a specific amount of pro-
11 tein per serving was uniformly communicated to Plaintiffs and every other person who purchased
12 any of the Products in California, Illinois and the United States. The same or substantially similar
13 product label has appeared on each Product during the entirety of the Class Period in the general
14 form of the following example:



1
2 17. As described in detail below, Defendant’s advertising and labeling of the Products
3 as containing and providing specific amounts of protein per serving is false, misleading, and in-
4 tended to induce consumers to purchase the Products at a premium price, while ultimately failing
5 to meet consumer expectations. These representations deceive and mislead reasonable consumers
6 into believing that a serving of the Products will provide the grams of protein as represented on
7 the label, when in fact, protein content testing for the Kashi Go Cinnamon Crisp cereal, for exam-
8 ple, revealed that a serving contains only 9.37 grams of protein – an overstatement by approxi-
9 mately 18%. Further, when correcting for the digestibility (and therefore bio-usability) of the
10 protein through PDCAAS, the amount provided will be even less because Defendant uses pro-
11 teins of low biological value to humans in its products, such as oats. For example, after adjusting
12 the protein content based on PDCAAS, the Kashi Go Cinnamon Crisp cereal provides only 7
13 grams of protein (i.e., an overstatement by approximately 57%).

14 **Consumer Demand for Protein**

15 18. Many American consumers are health conscious and seek wholesome, natural
16 foods to keep a healthy diet, so they routinely rely upon nutrition information when selecting and
17 purchasing food items. This is especially true in the community of athletes, registered dietitians,
18 and coaches, to which Defendant markets. As noted by FDA Commissioner Margaret Hamburg
19 during an October 2009 media briefing, “[s]tudies show that consumers trust and believe the nu-
20 trition facts information and that many consumers use it to help them build a healthy diet.” In-
21 deed, the FDA recommends relying on Nutrition Facts Labels as the primary tool to monitor the
22 consumption of protein.¹

23 19. Protein is found throughout the body—in muscle, bone, skin, hair, and virtually
24 every other body part or tissue. The health benefits of protein are well studied and wide ranging.
25 Scientific studies have confirmed that protein can assist in weight loss, reduce blood pressure,
26

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

1 reduce cholesterol, and control for risk factors for cardiovascular diseases. The National Acad-
2 emy of Medicine recommends that adults get a minimum of .8 grams of protein for every kilo-
3 gram of body weight per day, or just over 7 grams for every 20 pounds of body weight.² For a
4 140-pound person, that means about 50 grams of protein each day. For a 200-pound person, that
5 means about 70 grams of protein each day.

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

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

14 22. Protein *quantity* by itself does not tell the full story from a human nutritional
15 standpoint. A protein's *quality* is also critical because, as explained below, humans cannot fully
16 digest or utilize some proteins. As the FDA has stated in published guidance: "Information on
17 protein quantity alone can be misleading on foods that are of low protein quality" as a result, "nu-
18 trition labeling must allow consumers to readily identify foods with particularly low quality pro-
19 tein to prevent them from being misled by information on only the amount of protein present." 58
20 Fed. Reg. 2079 at 2101-2.

21 23. Protein is not a monolithic substance, but instead comes in many varieties. Pro-
22 teins are chains of different amino acids, and different types of amino acids chained together in
23 different ways will make different types of proteins. Further, the makeup of the protein that is in-
24 gested changes the function of the protein in the body, and certain types of proteins are more eas-
25 ily digested and used by humans than others.

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

28 ³ *Id.*

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

8 25. All nine essential amino acids are necessary for protein synthesis to take place.
9 Lacking even one essential amino acid will prevent protein synthesis from occurring, and the rest
10 of the proteins will degrade into waste. Accordingly, once the body uses up the limiting essential
11 amino acid from a protein source, the remainder of that protein becomes useless to human protein
12 synthesis and has little nutritional value. High-quality proteins, therefore, are those that contain
13 all nine essential amino acids because they have a greater effect on protein synthesis and are fully
14 digestible. A dietary protein containing all of the essential amino acids in the correct proportions
15 is typically called a "complete protein."

16 26. 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 27. As the FDA has stated in official guidance, "Accurate methods for determining
20 protein quality are necessary because different food protein sources are not equivalent in their
21 ability to support growth and body protein maintenance." 56 Fed. Reg. 60366, § B. The Protein
22 Digestibility Corrected Amino Acid Score ("PDCAAS") is the FDA mandated measure of protein
23 quality, and it accounts for both the amino acid profile and the digestibility of the protein. 21
24 C.F.R. § 101.9(c)(7)(ii). The PDCAAS method requires the manufacturer to determine the
25 amount of essential amino acids that the food contains and then multiply that number by humans'
26 ability to digest the amino acid profile.

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

1 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological
2 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein
3 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Further,
4 plant proteins such as oat proteins, which Defendant uses in its Products according to their ingre-
5 dient lists, are not fully digested by humans. Oat proteins typically have a PDCAAS of between
6 0.45 and 0.51, meaning only 45-51% of the protein from those sources will be digested and
7 bioavailable to humans.

8 29. Accordingly, Defendant's use of low quality proteins, even in combination with
9 some higher quality proteins, means that they actually provide far less protein to humans than the
10 Product labels claim, or that amino acid content testing without correcting for digestibility shows.

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

12 30. The Food and Drug Administration regulates nutrition content labeling. According
13 to these regulations, "[a] statement of the corrected amount of protein per serving, as determined
14 in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein,
15 as appropriate, and expressed as a Percent of Daily Value . . . shall be given if a protein claim is
16 made for the product . . ." 21 C.F.R. 101.9(c)(7)(i).

17 31. Further, FDA regulations require the DRV to be calculated using amino acid
18 analysis, more specifically the Protein Digestibility Corrected Amino Acid Score ("PDCAAS").
19 21 C.F.R. § 101.9(c)(7)(ii); FDA Food Labeling Guide, p. 29, Question N.22. The PDCAAS
20 method does not calculate protein content by nitrogen combustion, which is otherwise permitted
21 under 21 C.F.R. § 101.9(c)(7) for products that do not make protein content claims.⁴

22 32. Accordingly, when a product makes a protein content claim, FDA regulations re-
23 quire manufacturers to calculate the amount of amino acids that the food contains and then multi-
24 ply that amount by humans' ability to digest the amino acid profile (the PDCAAS) to come up
25 with a percent daily value.

1 33. Identical federal, California and Illinois laws regulate the content of labels on
2 packaged food and require truthful, accurate information on the labels of packaged foods. The
3 requirements of the federal Food, Drug & Cosmetic Act (“FDCA”), and its labeling regulations,
4 including those set forth in 21 C.F.R. §§ 101, 102, were adopted by the California legislature in
5 the Sherman Food Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code
6 § 110100 (“All food labeling regulations and any amendments to those regulations adopted pur-
7 suant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the
8 food labeling regulations of this state.”). The Illinois legislature adopted federal regulations as
9 well in the Illinois Food, Drug, and Cosmetic Act. 410 ILCS 620. The federal laws and regula-
10 tions discussed below are applicable nationwide to all sales of packaged food products. Addition-
11 ally, no state imposes different requirements on the labeling of packaged food for sale in the
12 United States.

13 34. Under the FDCA, the term false has its usual meaning of “untruthful,” while the
14 term misleading is a term of art that covers labels that are technically true, but are likely to de-
15 ceive consumers. Under the FDCA, if any single representation on the labeling is false or mis-
16 leading, the entire food is misbranded, and no other statement in the labeling can cure a
17 misleading statement.

18 35. To implement the FDCA, the Food and Drug Administration (FDA) promulgated
19 regulations, including regulations that govern nutrient content claims. A nutrient content claim is
20 a claim that “expressly or implicitly characterizes the level of a nutrient.” 21 C.F.R. § 101.13(b).
21 “Express” nutrient content claims include any statement, outside the Nutrition Facts Panel, about
22 the level of a nutrient. 21 C.F.R. 101.13(b)(1); 21 C.F.R. § 101.13(c). Stating information from
23 the nutrition facts panel (such as grams protein per serving) elsewhere on the package necessarily
24 constitutes a nutrient content claim. 21 C.F.R. § 101.13(c). Like labels generally, nutrient content
25 claims in particular cannot be “false or misleading in any respect.” 21 C.F.R. 101.13(i)(3).

26 36. In addition to regulating nutrient content claims, FDA regulations require labels to
27 include a Nutrition Facts Panel (“NFP”), 21 C.F.R. § 101.9, and that the NFP contain a statement
28 of the number of grams of protein in a serving. 21 C.F.R. § 101.9(c)(7). The regulations permit a

1 manufacturer to compute the number of grams of protein for the NFP by relying on the nitrogen
2 method of analysis as given in the “Official Methods of Analysis of the AOAC International.” *Id.*
3 Manufacturers are also permitted to rely on alternative methods. *Id.*

4 37. Moreover, where a product makes a protein claim, it must include a percent daily
5 value for the protein in the NFP using PDCAAS, a method that accounts for both the quantity and
6 quality of protein in the product. 21 C.F.R. 101.9(c)(7)(i)-(ii). The first step is to calculate the
7 “corrected amount of protein per serving” by multiplying protein quantity by PDCAAS, and then
8 dividing that “corrected amount” by 50 grams (the “recommended daily value” for protein) to
9 come up with a percent daily value. *Id.*

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

18 39. Defendant’s protein representations on the front package are false and misleading
19 because they broadly tout protein quantity while ignoring that the poor quality proteins in the
20 Product and the fact that the Products will provide far less useable protein than claimed. Indeed,
21 the FDA stated in published guidance that such a practice is misleading. *See* 58 Fed. Reg. 2079 at
22 2101-2 (“Information on protein quantity alone can be misleading on foods that are of low protein
23 quality.”)

24 40. Further in addition to its blanket adoption of federal labeling requirements, Cali-
25 fornia and Illinois have also enacted a number of laws and regulations that adopt and incorporate
26 specific enumerated federal food laws and regulations. *See* California Health & Safety Code §
27 110660 (misbranded if label is false and misleading); California Health & Safety Code § 110705
28

1 (misbranded if words, statements and other information required by the Sherman Law are either
2 missing or not sufficiently conspicuous); 410 ILCS 620/11.

3 41. Representing that the Products contain a certain amount of protein per serving, as
4 Defendant's labels do, is a statement of fact, and use of these phrases on the labels of packaged
5 food is limited by the aforementioned laws and regulations.

6 **Defendant's Marketing and Labeling of its Products Violates State and Federal Food Label-**
7 **ing Laws**

8 42. Defendant's labeling of the Products is unlawful and violates the Sherman Law,
9 California Health & Safety Code § 110660, et seq., because the Products' labels state that each
10 Product contains and provides a specific amount of protein per serving—such as “11g Protein”
11 for the Kashi Go Cinnamon Crisp cereal—when, in fact, amino acid content testing reveals that
12 the Products contain less – such as 9.37 grams of protein for the Kashi Go Cinnamon Crisp
13 cereal, which overstates the protein by approximately 18%. Further, Defendant uses proteins of
14 low biological value to humans in its products, such as oat protein. For example, after adjusting
15 the protein content based on PDCAAS, the Kashi Go Cinnamon Crisp cereal provides only 7
16 grams of protein (i.e., an overstatement by approximately 57%).

17 43. Defendant's marketing, advertising, and sale of the Products violates the false ad-
18 vertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*),
19 including 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
22 labeling or any other medium used to directly or indirectly induce the purchase of
23 a food product;
- 24 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or
25 offer to sell any falsely or misleadingly advertised food; and
- 26 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded
27 food or to deliver or proffer for delivery any food that has been falsely or
28 misleadingly advertised.

1 44. A reasonable consumer would expect that the Products contain and provide what
2 Defendant identifies them to contain and provide on the product labels and that the labels would
3 not be contrary to the policies or regulations of the State of California, the State of Illinois, and/or
4 the FDA. For example, a reasonable consumer would expect that when Defendant labels its
5 Products as containing “11g Protein” per serving, as it claimed on the 51 gram serving size of the
6 Kashi Go Cinnamon Crisp cereal’s label, the Products would provide 11 grams of protein per 51
7 gram serving. However, based on amino acid content testing, Defendant’s Products contain less
8 protein than claimed. For example, the Kashi Go Cinnamon Crisp cereal only contained 9.37
9 grams of protein per 51 gram serving size – an overstatement of approximately 18%.

10 45. Moreover, based on the types of protein stated in the Products’ ingredient lists, the
11 amount of digestible or usable protein the Products actually deliver to the human body is even
12 lower than the amino content testing itself reveals. Defendant uses poor quality proteins, such as
13 oat proteins, in the Products, which will result in each Product’s overall PDCAAS being far less
14 than 1.0. For example, after adjusting the protein content based on PDCAAS, the Kashi Go
15 Cinnamon Crisp cereal provides only 7 grams of protein (i.e., an overstatement by approximately
16 57%).

17 46. Consumers lack the meaningful ability to test or independently ascertain the truth-
18 fulness of Defendant’s food labeling claims, especially at the point of sale. Consumers would not
19 know the true protein content of the Products merely by looking elsewhere on the product pack-
20 age. Its discovery requires investigation well beyond the grocery store aisle and knowledge of
21 food chemistry beyond that of the average consumer. An average consumer does not have the
22 specialized knowledge necessary to ascertain that a serving of a Product does not contain the
23 number of grams of protein that is represented on the front of the product package. An average
24 consumer also lacks the specialized knowledge necessary to determine the PDCAAS for the
25 Products. That combined with Defendant’s active concealment in representing that the Products
26 contain and provide specific amounts of protein per serving, and not disclosing otherwise any-
27 where on the label, gave the average reasonable consumer no reason to suspect that Defendant’s
28 representations on the packages were false. Therefore, consumers had no reason to investigate

1 whether the Products actually do contain and provide the amount of protein per serving that the
2 labels claim they do. Thus, reasonable consumers relied on Defendant's representations regarding
3 the nature of the Products.

4 47. Defendant intends and knows that consumers will and do rely upon food labeling
5 statements in making their purchasing decisions. Label claims and other forms of advertising and
6 marketing drive product sales, particularly if placed prominently on the front of product packag-
7 ing, as Defendant has done with the claims on the Products that they contain and provide specific
8 amounts of protein per serving.

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

11 48. In making false, misleading, and deceptive representations, Defendant distin-
12 guishes its Products from its competitors' products. Defendant knew and intended that consumers
13 would purchase, and pay a premium for, products labeled as having more protein over compara-
14 ble products that do not contain misleading protein representations on the product labels. By us-
15 ing this branding and marketing strategy, Defendant is stating that its Products are superior to,
16 better than, and more nutritious and healthful than other products that do not misrepresent the
17 number of grams of protein on their labels.

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

20 49. Because consumers pay a price premium for products that contain more protein, by
21 labeling its Products as containing more grams of protein per serving than they actually contain,
22 Defendant is able to both increase its sales and retain more profits.

23 50. Defendant engaged in the practices complained of herein to further its private in-
24 terests of: (i) increasing sales of its Products while decreasing the sales of competitors that do not
25 misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a
26 higher price for its Products because consumers will pay more for these Products due to consum-
27 ers' demand for products containing more protein.

28 51. 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

1 products, Defendant has an incentive to continue to make such false representations. In addition,
2 other trends suggest that Defendant has no incentive to change its labeling practices.

3 52. For example, one market analysis revealed that between 2013-2017, product
4 launches with a protein claim grew 31%.⁵

5 53. To capitalize on the growing market, Defendant continues to launch new product
6 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant
7 has continued to replicate its misrepresentations on the new product lines. It is therefore likely
8 that Defendant will continue to misleadingly advertise its Products and perpetuate the misrepre-
9 sentations regarding the protein in its Products.

10 **PLAINTIFFS' EXPERIENCES**

11 **Plaintiff Elena Nacarino**

12 54. Plaintiff Nacarino has purchased Kashi Go cereals in the Original, Honey Almond
13 Flax Crunch, Peanut Butter Crunch, and Cinnamon Crisp flavors at stores in the Bay Area, in-
14 cluding Target in Daly City, California, on multiple occasions during the last four years.

15 55. Plaintiff Nacarino made each of her purchases after reading and relying on the
16 truthfulness of Defendant's product label that promised the Products provided the number of
17 grams on the label. For example, she purchased the Kashi Go Cinnamon Crisp cereal relying on
18 the representation of "11g Protein" per serving on the front of the product package. She relied on
19 the protein representation for each product that she purchased and purchased each product be-
20 cause of the protein representations. But on each of the Products she purchased, Defendant mis-
21 represented the protein contents of the Products as containing more protein than they actually
22 provide. For example, the Kashi Go Cinnamon Crisp contains 18% less protein than claimed, and
23 provides even less when adjusted by the PDCAAS.

24 56. At the time of each of her purchases of the Products, Plaintiff Nacarino did not
25 know that the Products did not contain or provide the amount of protein represented on the label.

26
27 _____
28 ⁵ https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright

1 As a result of Defendant's misrepresentations and omissions, the Products have no, or, at a mini-
2 mum, a much lower value to Plaintiff Nacarino.

3 57. Plaintiff Nacarino not only purchased the Products because the labels said that
4 they contained a specified amount of protein per serving, but she also paid more money for the
5 Products than she would have paid for other or a similar product that was not mislabeled regard-
6 ing the number of grams of protein it contained.

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

10 59. Plaintiff Nacarino continues to desire to purchase protein products, including those
11 marketed and sold by Defendant. If the Products were reformulated to provide the grams of pro-
12 tein that are represented on the labels, Plaintiff Nacarino would likely purchase them again in the
13 future. Plaintiff Nacarino regularly visits stores where the Products and other protein products are
14 sold. Because Plaintiff Nacarino does not know the formula for Defendant's products and cannot
15 test whether or not the Products provide the amount of protein that is represented on the label,
16 Plaintiff Nacarino will be unable to rely on Defendant's labels when shopping for protein prod-
17 ucts in the future absent an injunction that prohibits Defendant from labeling its products with the
18 incorrect number of grams of protein that each serving contains. Should Defendant begin to mar-
19 ket and sell a new line of products, Plaintiff Nacarino could be at risk for buying another one of
20 Defendant's products in reliance on the same or similar misrepresentation.

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

26 **Plaintiff Megan Taylor**

27 61. Plaintiff Taylor has purchased Kashi chewy granola bars in the Dark Mocha
28 Almond, Chocolate Almond Sea Salt, Cherry Dark Chocolate, Honey Almond Flax, Trail Mix,

1 Chocolate Peanut Butter, and Grain Free Peanut Butter Chocolate flavors; Kashi cereals in the
2 Whole Wheat Biscuit Cinnamon Harvest, Warm Cinnamon Organic Oat, Honey Toasted Oat,
3 Kashi Go Dark Cocoa, and Kashi Go Cinnamon Vanilla, Kashi Go Cinnamon Crisp flavors; and
4 Kashi waffles in the Blueberry, 7 Grain, Kashi Go Wild Blueberry, Kashi Go Cinnamon Brown
5 Sugar, and Kashi Go Vanilla Buttermilk flavors, throughout grocery stores in the Round Lake
6 Beach, Mundelein, Grayslake, McHenry, Wauconda, Libertyville, and Gurnee, IL area during the
7 last four years.

8 62. Plaintiff Taylor made each of her purchases after reading and relying on the
9 truthfulness of Defendant's product label that promised the Products provided the number of
10 grams on the label. For example, she purchased the Kashi Go Cinnamon Crisp cereal relying on
11 the representation of "11g Protein" per serving. She relied on the protein representation for each
12 product that she purchased and purchased each product because of the protein representations.
13 But on each of the Products she purchased, Defendant misrepresented the protein contents of the
14 Products as containing 18% more grams of protein than they actually contain, and as far more
15 than they actually provide, when adjusted by the PDCAAS.

16 63. At the time of each of her purchases of the Products, Plaintiff Taylor did not know
17 that the Products did not contain or provide the amount of protein represented on the label. As a
18 result of Defendant's misrepresentations and omissions, the Products have no, or, at a minimum,
19 a much lower value to her.

20 64. Plaintiff Taylor not only purchased the Products because the labels said that they
21 contained for example, "11g Protein" per serving, but she also paid more money for the Products
22 than she would have paid for other or a similar protein product that was not mislabeled regarding
23 the number of grams of protein it contained.

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

27 66. Plaintiff Taylor continues to desire to purchase protein products, including those
28 marketed and sold by Defendant. If the Products were reformulated to provide the grams of

1 protein that are represented on the labels, Plaintiff Taylor would likely purchase them again in the
2 future. Plaintiff Taylor regularly visits stores where Defendant's Products and other protein
3 products are sold. Because Plaintiff Taylor does not know the formula for Defendant's products
4 and cannot test whether or not the Products provide the amount of protein that is represented on
5 the label, Plaintiff Taylor will be unable to rely on Defendant's labels when shopping for protein
6 products in the future absent an injunction that prohibits Defendant from labeling its products
7 with the incorrect number of grams of protein that each serving contains. Should Defendant begin
8 to market and sell a new line of products, Plaintiff Taylor could be at risk for buying another one
9 of Defendant's products in reliance on the same or similar misrepresentation.

10 67. Plaintiff Taylor and members of the Class have been economically damaged by
11 their purchase of the Products because the advertising for the Products was and is untrue and/or
12 misleading under Illinois law and the products are misbranded; therefore, the Products are worth
13 less than what Plaintiffs and members of the Class paid for them and/or Plaintiffs and members of
14 the Class did not receive what they reasonably intended to receive.

15 **CLASS ALLEGATIONS**

16 68. Plaintiffs bring this class action lawsuit on behalf of themselves and proposed
17 classes of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of
18 Civil Procedure. Plaintiffs seek to represent the following groups of similarly situated persons,
19 defined as follows:

20 The Class: All persons in the United States who purchased the Products between
21 September 10, 2017 and the present.

22 The California Sub-Class: All persons in the State of California who purchased the
23 Products between September 10, 2017 and the present.

24 The Illinois Sub-Class: All persons in the State of Illinois who purchased the Products
25 between September 10, 2017 and the present.

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

70. Numerosity: Plaintiff does not know the exact size the Classes, but they estimate

1 that it is composed of more than 100 persons. The persons in the Classes are so numerous that the
2 joinder of all such persons is impracticable and the disposition of their claims in a class action
3 rather than in individual actions will benefit the parties and the courts.

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

- 11 a. What is the true nature of the protein content in the Products;
- 12 b. Whether the marketing, advertising, packaging, labeling, and other promotional
13 materials for the Products are deceptive and/or unlawful because of
14 misrepresentations;
- 15 c. Whether Defendant's actions violate Federal, California, and Illinois laws invoked
16 herein;
- 17 d. Whether labeling the Products as containing more grams of protein than they
18 actually contain causes the Products to command a price premium in the market as
19 compared with similar products that do not make such misrepresentations;
- 20 e. Whether Defendant's advertising and marketing regarding the Products sold to the
21 Class members was likely to deceive reasonable consumers;
- 22 f. Whether representations regarding the number of grams of protein in the Products
23 are 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 earned by Defendant as a result of the
26 conduct;
- 27 i. Whether Class members are entitled to restitution, injunctive and other equitable
28 relief and, if so, what is the nature (and amount) of such relief; and

1 j. Whether Class members are entitled to payment of actual, incidental,
2 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
3 what is the nature of such relief.

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

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

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

1 or impossible for individual members of the class to redress the wrongs done to them, while an
2 important public interest will be served by addressing the matter as a class action.

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

5 **CAUSES OF ACTION**

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

11 **PLAINTIFFS' FIRST CAUSE OF ACTION**

12 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §
13 1750, *et seq.*)**

14 **On Behalf of Plaintiff Nacarino and the California Sub-Class**

15 76. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint
16 as if set forth herein.

17 77. Plaintiff Nacarino brings this claim individually and on behalf of the other
18 members of the California Sub-Class.

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

22 79. Plaintiff and other sub-class members are "consumers" as that term is defined by
23 the CLRA in California Civil Code § 1761(d).

24 80. The Products that Plaintiff (and other similarly situated sub-class members)
25 purchased from Defendant were "goods" within the meaning of California Civil Code § 1761(a).

26 81. Defendant's acts and practices, set forth in this Class Action Complaint, led
27 customers to falsely believe that the Products contained and provided the amount of protein
28 claimed on the product package. By engaging in the actions, representations and conduct set forth
in this Class Action Complaint, Defendant has violated, and continue to violate, § 1770(a)(2), §

1 1770(a)(5), § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California
2 Civil Code §1770(a)(2), Defendant's acts and practices constitute improper representations
3 regarding the source, sponsorship, approval, or certification of the goods they sold. In violation of
4 California Civil Code §1770(a)(5), Defendant's acts and practices constitute improper
5 representations that the goods they sell have sponsorship, approval, characteristics, ingredients,
6 uses, benefits, or quantities, which they do not have. In violation of California Civil Code
7 §1770(a)(7), Defendant's acts and practices constitute improper representations that the goods it
8 sells are of a particular standard, quality, or grade, when they are of another. In violation of
9 California Civil Code §1770(a)(8), Defendant has disparaged the goods, services, or business of
10 another by false or misleading representation of fact. In violation of California Civil Code
11 §1770(a)(9), Defendant has advertised goods or services with intent not to sell them as advertised.
12 Finally, regarding California Civil Code §1770(a)(8), Defendant falsely or deceptively markets
13 and advertises that, unlike other protein product manufacturers, it sells Products that contain more
14 grams of protein than the Products actually contain.

15 82. Plaintiff requests that this Court enjoin Defendant from continuing to employ the
16 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
17 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the
18 future, Plaintiffs and the other members of the Sub-Class will continue to suffer harm. Plaintiff
19 and those similarly situated have no adequate remedy at law to stop Defendant's continuing
20 practices.

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

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

3 **PLAINTIFFS' SECOND CAUSE OF ACTION**
4 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
5 **On Behalf of Plaintiff Nacarino and the California Sub-Class**

6 85. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
7 Complaint as if set forth herein.

8 86. Plaintiff Nacarino brings this claim individually and on behalf of the other
9 members of the California Sub-Class.

10 87. Beginning at an exact date unknown to Plaintiff, but within three (3) years
11 preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive
12 and/or misleading statements in connection with the advertising and marketing of the Products.

13 88. Defendant made representations and statements (by omission and commission)
14 that led reasonable customers to believe that the Products that they were purchasing contained
15 more grams of protein per serving than the Products actually contained or provided.

16 89. Plaintiff and those similarly situated relied to their detriment on Defendant's false,
17 misleading and deceptive advertising and marketing practices, including each of the
18 misrepresentations and omissions set forth above. Had Plaintiff and those similarly situated been
19 adequately informed and not intentionally deceived by Defendant, they would have acted
20 differently by, without limitation, refraining from purchasing Defendant's Products or paying less
21 for them.

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

23 91. Defendant engaged in these false, misleading and deceptive advertising and
24 marketing practices to increase its profits. Accordingly, Defendant has engaged in false
25 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
26 Professions Code.

27 92. The aforementioned practices, which Defendant used, and continues to use, to its
28 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 93. As a direct and proximate result of such actions, Plaintiff and the other Sub-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 false, deceptive and misleading advertising in an amount which will be proven
4 at trial, but which is in excess of the jurisdictional minimum of this Court.

5 94. Plaintiff seeks, on behalf of herself and those similarly situated, full restitution of
6 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
7 from Plaintiff, the general public, or those similarly situated by means of the false, misleading
8 and deceptive advertising and marketing practices complained of herein, plus interest thereon.
9 Plaintiff and those similarly situated lack any adequate remedy at law to obtain this restitution.

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

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

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

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

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

1 99. Defendant has fraudulently and deceptively informed that the Products contain
2 more grams of protein than they actually contain or provide.

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

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

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

20 103. Plaintiffs and those similarly situated justifiably and reasonably relied on
21 Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

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

25 105. Defendant's conduct as described herein was wilful and malicious and was
26 designed to maximize Defendant's profits even though Defendant knew that it would cause loss
27 and harm to Plaintiffs and those similarly situated.
28

1 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
2 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
3 **Code § 17200, et seq.)**
4 **On Behalf of Plaintiff Nacarino and the California Sub-Class**

5 106. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
6 Complaint as if set forth herein.

7 107. Plaintiff Nacarino brings this claim individually and on behalf of the other
8 members of the California Sub-Class.

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

13 109. In particular, Defendant has engaged, and continue to engage, in unlawful
14 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
15 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
16 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
17 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
18 6), including without limitation, California Health & Safety Code §§ 110660, 110760, 110765,
19 and 110770; and (v) and federal laws regulating the advertising and branding of food in 21 U.S.C.
20 § 343(a), et seq. and FDA regulations cited above.

21 110. In particular, Defendant has engaged, and continues to engage, in unfair and
22 fraudulent practices by, without limitation, the following misrepresenting that the Products
23 contain and provide more grams of protein than they actually contain or provide.

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

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

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

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

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

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

15 117. 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 deceptive and/or
18 unlawful trade practices complained of herein, plus interest thereon. Plaintiff and those similarly
19 situated lack any adequate remedy at law to obtain this restitution.

20 118. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that
21 the above-described trade practices are fraudulent, unfair, and/or unlawful.

22 119. Plaintiff seeks, on behalf of herself and those similarly situated, an injunction to
23 prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices
24 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained by
25 order of this Court, will continue to cause injury in fact to the general public and the loss of
26 money and property in that Defendant will continue to violate the laws of California, unless
27 specifically ordered to comply with the same. This expectation of future violations will require
28 current and future consumers to repeatedly and continuously seek legal redress in order to recover

1 monies paid to Defendant to which they were not entitled. Plaintiff, those similarly situated
2 and/or other consumers nationwide have no other adequate remedy at law to ensure future
3 compliance with the California Business and Professions Code alleged to have been violated
4 herein.

5 **PLAINTIFFS' FIFTH CAUSE OF ACTION**
6 **(Unjust Enrichment)**
7 **On Behalf of Plaintiffs and the Class**

8 120. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein

9 121. Plaintiffs bring this claim individually and on behalf of the other members of the
10 Class.

11 122. Plaintiffs and members of the Class conferred a benefit on the Defendant by
12 purchasing the Products

13 123. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs' and
14 Class members' purchases of the Products, which retention is unjust and inequitable, because
15 Defendant falsely represented that the Products contained and provided specific amounts of
16 protein per serving, when, in fact, the Products contained less protein than represented, and
17 provided even less. This harmed Plaintiff and Class members because they paid a price premium
18 as a result.

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

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

25 **PLAINTIFFS' SIXTH CAUSE OF ACTION**
26 **Violation of the Illinois Uniform Deceptive Trade Practices Act**
27 **On Behalf of Plaintiff Taylor and the Illinois Sub-Class**

28 126. Plaintiffs incorporate the above paragraphs by reference as though fully set forth
herein.

1 127. Plaintiff Taylor brings this action individually and on behalf of the Illinois Sub-
2 Class.

3 128. The Illinois Uniform Deceptive Trade Practices Act (“UDTPA”), 815 Ill. Comp.
4 Stat. 510/2, *et seq.*, prohibits “[u]nfair methods of competition and unfair or deceptive acts or
5 practices, including but not limited to the use or employment of any deception, fraud, false pre-
6 tense, false promise, misrepresentation or the concealment, suppression or omission of any mate-
7 rial fact, with intent that others rely upon the concealment, suppression or omission of such
8 material fact.”

9 129. 815 ILCS 510/2 provides in pertinent part that a “person engages in a deceptive
10 trade practice when, in the course of his or her business, vocation, or occupation,” the person does
11 any of the following: “(5) represents that goods or services have . . . uses, benefits or quantities
12 that they do not have . . . ; (7) represents that goods or services are of a particular standard, qual-
13 ity, or grade or that goods are a particular style or model, if they are of another; . . . [or] (12) en-
14 gages in any other conduct which similarly creates a likelihood of confusion or
15 misunderstanding.”

16 130. Defendant engaged in unfair and deceptive acts in violation of 815 Ill. Comp. Stat.
17 510/2 when it misrepresented and deceptively concealed, suppressed and/or omitted the material
18 information known to Defendant as set forth above concerning the protein content of the Prod-
19 ucts, which has caused damage and injury to Plaintiff and the Sub-Class members. Plaintiff and
20 Sub-Class members were injured by Defendant’s unfair and deceptive conduct at the time of pur-
21 chasing the Products.

22 131. Defendant represented, directly or indirectly, that its Products provide a certain
23 amount of protein, when in reality, they provide far less usable protein as alleged herein.

24 132. Defendant knew or should have known that its protein representations were false
25 and misleading.

26 133. Defendant’s deceptive acts occurred in a course of conduct involving trade and
27 commerce in Illinois and throughout the United States.
28

1 134. Defendant's deceptive acts proximately caused actual injury and damage to Plain-
2 tiff and the Sub-Class members at the point of purchase.

3 135. Plaintiff and Sub-Class members would not have purchased, or would have paid
4 less for, the Products but for Defendants' material misrepresentations as described in this Com-
5 plaint. Defendant intended Plaintiff and all Sub-Class members to rely on their deceptive acts
6 when purchasing Defendants' Products.

7 136. Plaintiff seeks, on behalf of herself and those similarly situated, full restitution of
8 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
9 from Plaintiff, the general public, or those similarly situated by means of the deceptive and/or
10 unlawful trade practices complained of herein, plus interest thereon. Plaintiff and those similarly
11 situated lack any adequate remedy at law to obtain this restitution.

12 137. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that
13 the above-described trade practices are fraudulent, unfair, and/or unlawful.

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

25 **PLAINTIFFS' SEVENTH CAUSE OF ACTION**

26 **Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act**
27 **On Behalf of Plaintiff Taylor and the Illinois Sub-Class**

28 139. Plaintiffs incorporate the above paragraphs by reference as though fully set forth
herein.

1 140. Plaintiff Taylor brings this action individually and on behalf of the Illinois Sub-
2 Class.

3 141. In Illinois, the Consumer Fraud and Deceptive Business Practices Act, 815 Ill.
4 Comp. Stat. 505/1, et seq., prohibits “unfair methods of competition and unfair or deceptive acts
5 or practices, including but not limited to the use or employment of any deception, fraud, false pre-
6 tense, false promise, misrepresentation or the concealment, suppression or omission of any mate-
7 rial fact, with intent that others rely upon the concealment, suppression or omission of such
8 material fact or the use or employment of any practice described in Section 2 of the ‘Uniform De-
9 ceptive Trade Practices Act.’”

10 142. Plaintiff and the Sub-Class members were injured by Defendant’s deceptive mis-
11 representations and these misrepresentations were material and deceived Plaintiff and the Sub-
12 Class. Because Plaintiff and Sub-Class members relied on Defendant’s misrepresentations, con-
13 cealments and omissions when purchasing Defendant’s Products, they were injured at the time of
14 purchase.

15 143. Defendant does business in Illinois, sells and distributes the Products in Illinois,
16 and engaged in and continue to engage in deceptive acts and practices in connections with the
17 sale of its Products in Illinois and elsewhere in the United States.

18 144. The Products purchased by Plaintiff and the Sub-Class members were “consumer
19 items” as that term is defined under the Illinois Consumer Fraud Act.

20 145. Defendant engaged in unfair and deceptive acts in violation of 815 Ill. Comp. Stat.
21 505/2 when it misrepresented and deceptively concealed, suppressed and/or omitted the material
22 information known to Defendant as set forth above concerning its Products, which has caused
23 damage and injury to Plaintiff and Sub-Class members at the time of purchase.

24 146. Defendant represented, directly or indirectly, that its Products provide a certain
25 amount of protein, when in reality, they provide far less usable protein as alleged herein.

26 147. Defendant knew or should have known that its protein representations were false
27 and misleading.

28

1 148. Defendant's deceptive acts occurred in a course of conduct involving trade and
2 commerce in Illinois and throughout the United States.

3 149. Defendant's deceptive acts proximately caused actual injury and damage to Plain-
4 tiff and the Sub-Class members at the point of purchase.

5 150. Plaintiff and Sub-Class members would not have purchased, or would have paid
6 less for, the Products but for Defendants' material misrepresentations as described in this Com-
7 plaint. Defendant intended Plaintiff and all Sub-Class members to rely on their deceptive acts
8 when purchasing Defendants' Products.

9 151. Plaintiff seeks, on behalf of herself and those similarly situated, full restitution of
10 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
11 from Plaintiff, the general public, or those similarly situated by means of the deceptive and/or
12 unlawful trade practices complained of herein, plus interest thereon. Plaintiff and those similarly
13 situated lack any adequate remedy at law to obtain this restitution.

14 152. Plaintiff seeks, on behalf of herself and those similarly situated, a declaration that
15 the above-described trade practices are fraudulent, unfair, and/or unlawful.

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

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,

1 respectfully request that the Court enter judgement against Defendant as follows:

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

20 **JURY TRIAL DEMANDED**

21 Plaintiffs hereby demand a trial by jury.

22 Dated: September 10, 2021

GUTRIDE SAFIER LLP

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