

GUTRIDE SAFIER LLP

SETH A. SAFIER (State Bar No. 197427)

seth@gutridesafier.com

MARIE A. MCCRARY (State Bar No. 262670)

marie@gutridesafier.com

HAYLEY REYNOLDS (State Bar No. 306427)

hayley@gutridesafier.com

100 Pine Street, Suite 1250

San Francisco, CA 94111

Telephone: (415) 336-6545

Facsimile: (415) 449-6469

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GILLIAN DAVIDSON and SAMUEL
DAVIDSON, on behalf of themselves and those
similarly situated,

Plaintiffs,

v.

SPROUT FOODS INC.,

Defendant.

Case No.: _____

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW; FAL;
COMMON LAW FRAUD; CONSUMERS
LEGAL REMEDIES ACT; AND UNJUST
ENRICHMENT**

JURY TRIAL DEMANDED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

1. Plaintiffs Gillian Davidson and Samuel Davidson, by and through their counsel, bring this class action against Defendant Sprout Foods Inc. d/b/a Sprout (“Defendant”) to seek redress for Defendant’s deceptive and unlawful practices in labeling and marketing the Sprout brand baby and toddler food products.

2. Parents are increasingly aware of the need to provide healthy food for their children, especially at the critical age of less than 2 years old. To make healthy food choices for their children, parents rely on nutritional information on food product labels.

3. Intending to profit from parents’ increasing desire to purchase health food for their young children, Defendant misbrands its baby and toddler food products by making nutrient content claims on the product packages that are strictly prohibited by the Food and Drug Administration (“FDA”), and by misleading purchasers into believing that its products are healthier than other products for children under two years of age in order to induce parents into purchasing Defendant’s products.

4. Defendant’s misbranding caused Plaintiffs and members of the class to pay a price premium for the products.

II. PARTIES

5. Gillian Davidson is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Oakland, California.

6. Samuel Davidson is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Oakland, California. Samuel Davidson and Gillian Davidson are spouses.

7. Defendant Sprout Foods Inc. d/b/a Sprout, is a corporation existing under the laws of the State of Delaware, having its principal place of business in the State of New Jersey.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. JURISDICTION AND VENUE

8. 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 Plaintiffs and at least one Defendant are citizens of different states.

9. The injuries, damages and/or harm upon which this action is based, occurred, or arose out of activities engaged in by Defendant within, affecting, and emanating from, the State of California. Defendant regularly conduct and/or solicit business in, engage in other persistent courses of conduct in, and/or derive substantial revenue from products provided to persons in the State of California. Defendant has engaged, and continue to engage, in substantial and continuous business practices in the State of California.

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

11. In accordance with California Civil Code Section 1780(d), Plaintiffs concurrently file herewith a declaration establishing that, at various times throughout the class period, they purchased the following Sprout Products: Pumpkin, Apple, Red Lentil, and Cinnamon; Strawberry with Banana & Butternut Squash; and Sweet Potato, White Beans, and Cinnamon pouches in Oakland, California. (Plaintiffs’ declarations are attached hereto as Exhibits B and C.)

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

IV. SUBSTANTIVE ALLEGATIONS

13. Defendant manufactures, distributes, markets, advertises, and sells a variety of baby and toddler food products under the brand name “Sprout.” Many of these products have packaging that predominately, uniformly, and consistently make nutrient content claims on the principal display panel of the product labels (the “Products”). A non-exhaustive list of the Products and the express nutrient content claims made on the product packages is attached hereto as **Exhibit A**.

14. The Products are intended for children under the age of two. Many of the Products are baby food “pouches.” These pouches that contain pureed baby food were

1 introduced to the market over a decade ago, and as of 2018, accounted for 25 percent of baby
2 food sales in the United States.

3 15. FDA regulations explicitly prohibit certain nutrient content claims on foods
4 intended for children under the age of two. 21 C.F.R. § 101.13(b)(3).

5 16. An ever-growing industry, there is seemingly no limit to the combination of
6 foods that can go into baby food pouches, as evidenced by the wide array of flavors of the
7 Products. Looking for a way to differentiate itself in the growing market, Defendant has turned
8 to making nutrient content claims on the front of the Product labels.

9 17. For example, Defendant has a line of “Power Pak” baby food pouches called that
10 states on the front label, “3g of Protein, 5g of Fiber and 300mg Omega-3 from Chia ALA” and
11 “12 Months & Up.” An exemplar is shown below:



12
13
14
15
16
17
18
19
20
21
22
23 18. Another line of pouches advertises “plant protein power” and states on the front
24 label “2 grams of Plant Protein Power” and “6 Months & Up.” An exemplar is shown below.



19. As described in detail below, Defendant’s advertising and labeling of the Products with express nutrient content claims is unlawful, misleading, deceptive, and intended to induce consumers to purchase the Products at a premium price. These claims deceive and mislead reasonable consumers into believing that the Products will provide more benefits than its competitors, and induces parents to purchase the Products despite a lack of evidence that an increased intake for the nutrients advertised are appropriate or recommended for infants and toddlers less than 2 years of age.

Federal and State Regulations Governing Food Labeling

20. The Food and Drug Administration regulates nutrition content labeling. According to these regulations, “no nutrient content claims may be made on food intended specifically for use by infants and children less than 2 years of age,” subject to certain exceptions not applicable here. 21 C.F.R. § 101.13(b)(3).

21. According to the regulations, nutrient content claims can be expressed or implied. 21 C.F.R. § 101.13(b)(1), 21 C.F.R. § 101.13(b)(2).

22. An express nutrient content claim is “any direct statement about the level (or range) of a nutrient in the food.” 21 C.F.R. § 101.13(b)(1). Further, where information that is required or permitted to be “declared in nutrition labeling, and that appears as part of the

1 nutrition label . . . is declared elsewhere on the label or in labeling, it is a nutrient content claim
2 and is subject to the requirements for nutrient content claims.” 21 C.F.R. § 101.13(c).

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

13 24. Under the FDCA, the term “misleading” covers labels that are technically true,
14 but are likely to deceive consumers. Under the FDCA, if any single representation on the
15 labeling is misleading, the entire food is misbranded, and no other statement in the labeling can
16 cure a misleading statement.

17 25. Further in addition to its blanket adoption of federal labeling requirements,
18 California has also enacted a number of laws and regulations that adopt and incorporate specific
19 enumerated federal food laws and regulations. *See* California Health & Safety Code § 110660
20 (misbranded if label is misleading).

21 26. Under California law, a food product that is “misbranded” cannot legally be
22 manufactured, advertised, distributed, sold, or possessed. Misbranded products have no
23 economic value and are legally worthless.

24 27. Representing that the Products will provide certain health benefits by making
25 unlawful nutrient content claims as Defendant’s labels do is prohibited by the aforementioned
26 misbranding laws and regulations.

1 28. The regulations relating to nutrient content claims discussed herein are intended
2 to ensure that consumers are not misled as to the actual or relative levels of nutrients in food
3 products.

4 **Defendant’s Marketing and Labeling of the Products Violates State and Federal Food**
5 **Labeling Laws**

6 29. The Products are unlawful, misbranded, and violate the Sherman Law, California
7 Health & Safety Code § 110660, *et seq.*, because the Products are intended for children less
8 than 2 years of age and the Products’ labels contain nutrient content claims.

9 30. The Products at issue in this case are intended for children 8 months and up, if
10 not younger.

11 31. Some Product labels explicitly state on the label the age for which the Product is
12 intended. For example, the Sprout Power Pak Apple with Superblend Blueberry Plum Pouch is
13 labeled “12 Months & Up.” The Sprout Butternut Chickpea Quinoa Dates Pouch is labeled “8
14 Months & Up.”

15 32. Other Product labels do not include an intended age. However, the Products are
16 in the “Baby Food” grocery store aisles, alongside similar puree pouch products.

17 33. Defendant misbrands the Products by making nutrient content claims that are
18 strictly prohibited by the FDA, and by misleading purchasers into believing that its products
19 are healthier in order to induce parents into purchasing the Products.

20 34. All the Product labels contain impermissible express nutrient content claims. As
21 shown in **Exhibit A**, the Product labels prominently state nutrient content claims on the front
22 label such as “3g of Protein, 4g of Fiber and 300mg Omega-3 from Chia ALA.” The grams of
23 protein and fiber appear in the nutrition facts panel and are therefore nutrient content claims
24 when stated elsewhere on the label. 21 C.F.R. § 101.13(c). The statement of the presence of
25 other nutrients are also express nutrient content claims because it is a direct statement about the
26 level of a nutrient in the product. *See* 21 C.F.R. § 101.13(b)(1).

1 35. Foods intended for children less than two are prohibited from making such
2 nutrient content claims. 21 C.F.R. § 101.13(b)(3). Therefore, the Products are accordingly
3 misbranded.

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

- 7 a. Section 110390, which makes it unlawful to disseminate false or misleading food
8 advertisements that include statements on products and product packaging or
9 labeling or any other medium used to directly or indirectly induce the purchase of a
10 food product;
- 11 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold, or
12 offer to sell any falsely or misleadingly advertised food; and
- 13 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded
14 food or to deliver or proffer for delivery any food that has been falsely or
15 misleadingly advertised.

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

- 19 a. Section 110665 (a food is misbranded if its labeling does not conform with the
20 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
- 21 b. Section 110760, which makes it unlawful for any person to manufacture, sell,
22 deliver, hold, or offer for sale any food that is misbranded;
- 23 c. Section 110765, which makes it unlawful for any person to misbrand any food;
24 and
- 25 d. Section 110770, which makes it unlawful for any person to receive in commerce
26 any food that is misbranded or to deliver or proffer for delivery any such food.

27 38. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA
28 regulations, including, but not limited to, 21 C.F.R. §§ 101.13(b), 101.13(c), which have been

1 incorporated by reference in the Sherman Law, by including impermissible nutrient content
2 claims on the labels of foods intended for children less than 2 years of age.

3 39. A reasonable consumer would rely on the label claims to purchase the product.
4 For example, a reasonable consumer would believe that because Defendant labeled the Products
5 as containing certain nutrients and as being nutritious, that they were superior to other similar
6 products that do not make the impermissible claims. A reasonable consumer would also believe
7 that the Product label's inclusion of the nutrient content claims means that an increased intake
8 of those nutrients would be beneficial for his or her child.

9 40. Defendant intends for and know that consumers will and do rely upon food
10 labeling statements in making their purchasing decisions. Label claims and other forms of
11 advertising and marketing drive product sales, particularly if placed prominently on the front of
12 product packaging, as Defendant has done on the Product labels.

13 41. Because consumers pay a price premium for Products that have a nutrient
14 content claim, by labeling the Products as providing nutritional value, Defendant is able to both
15 increase its sales and retain more profits.

16 42. Defendant engaged in the practices complained of herein to further its private
17 interests of: (i) increasing sales of its Products while decreasing the sales of competitors'
18 products that do not make unlawful nutrient content claims, and/or (ii) commanding a higher
19 price for the Products because consumers will pay more for them due to consumers' demand for
20 healthful products for their children.

21 43. The market for baby food pouch products continues to grow, and because
22 Defendant knows consumers rely on the nutrient content claims on the Product labels,
23 Defendant has an incentive to continue to make such misleading and unlawful representations.

24 44. Defendant continues to launch new product lines with nutrient content claims to
25 maintain its competitive edge, making it likely that Defendant will continue to misleadingly
26 advertise its Products.

1 V. **PLAINTIFFS' EXPERIENCE**

2 **Gillian Davidson**

3 45. During the last four years, Ms. Davidson purchased several Sprout Organic food
4 pouches for her child starting when her child was under 2 years of age, including each of the
5 following varieties: Pumpkin, Apple, Red Lentil, and Cinnamon; Strawberry with Banana &
6 Butternut Squash; and Sweet Potato, White Beans, and Cinnamon. She purchased the products
7 primarily from Amazon.com.

8 46. Ms. Davidson made each of her purchases after reading the nutrient content
9 claims on the product labels, including, for example, "Contains 3g of Protein." She purchased
10 the Products instead of other products, because she believed the Products to be superior in
11 providing nutrition for her child.

12 47. As a result of Defendant's unlawful nutrient content claims, the Products have
13 no, or at a minimum, a much lower value to Ms. Davidson.

14 48. Ms. Davidson not only purchased the Products because the labels contained
15 nutrient content claims, but she also paid more money for the Products than she would have
16 paid for them if they did not contain nutrient content claims.

17 49. Had Defendant not unlawfully and misleadingly labeled the Products, Ms.
18 Davidson would not have purchased them or, at a very minimum, she would have paid less for
19 the Products.

20 50. Ms. Davidson continues to desire to purchase pouch products, including those
21 marketed and sold by Defendant. If the Products did not contain deceptive and misleading
22 labels, Plaintiffs would likely purchase the Products again in the future. Ms. Davidson regularly
23 shops at stores and online retailers where the Products and other baby food pouch products are
24 sold.

25 **Samuel Davidson**

26 51. During the last four years, Mr. Davidson purchased several Sprout Organic food
27 pouches for his child starting when his child was under 2 years of age, including each of the
28 following varieties: Pumpkin, Apple, Red Lentil, and Cinnamon; Strawberry with Banana &

1 Butternut Squash; and Sweet Potato, White Beans, and Cinnamon. He purchased the products
2 primarily from Amazon.com.

3 52. Mr. Davidson made each of his purchases after reading the nutrient content
4 claims on the product labels, including, for example, “Contains 3g of Protein.” He purchased
5 the Products instead of other products, because he believed the Products to be superior in
6 providing nutrition for his child.

7 53. As a result of Defendant’s unlawful nutrient content claims, the Products have
8 no, or at a minimum, a much lower value to Mr. Davidson.

9 54. Mr. Davidson not only purchased the Products because the labels contained
10 nutrient content claims, but he also paid more money for the Products than he would have paid
11 for them if they did not contain nutrient content claims.

12 55. Had Defendant not unlawfully and misleadingly labeled the Products, Ms.
13 Davidson would not have purchased them or, at a very minimum, he would have paid less for
14 the Products.

15 56. Mr. Davidson continues to desire to purchase pouch products, including those
16 marketed and sold by Defendant. If the Products did not contain deceptive and misleading
17 labels, Plaintiffs would likely purchase the Products again in the future. Mr. Davidson regularly
18 shops at stores where the Products and other baby food pouch products are sold.

19 57. Plaintiffs and members of the Class have been economically damaged by their
20 purchase of the Products because the advertising for the Products was and is misleading under
21 California law and the products are misbranded; therefore, the Products are worth less than what
22 Plaintiffs and members of the Class paid for them.

23 **VI. CLASS ALLEGATIONS**

24 58. Plaintiffs bring this class action lawsuit on behalf of themselves and a proposed
25 class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of
26 Civil Procedure. Plaintiffs seek to represent the following group of similarly situated persons,
27 defined as follows:
28

1 Class: All persons in the State of California who purchased the Products between
2 February 18, 2018 and the present.

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

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

10 61. Common Questions Predominate: This action involves common questions of law
11 and fact to the Class because each class member's claim derives from the deceptive, unlawful
12 and/or unfair statements and omissions that led them to rely on the unlawful nutrient content
13 claims on the Product labels. The common questions of law and fact predominate over
14 individual questions, as proof of a common or single set of facts will establish the right of each
15 member of the Class to recover. The questions of law and fact common to the Class are:

- 16 a. Whether the marketing, advertising, packaging, labeling, and other promotional
17 materials for the Products are deceptive and/or unlawful;
- 18 b. Whether Defendant's actions violate Federal and California laws invoked herein;
- 19 c. Whether labeling the Products with unlawful nutrient content claims causes the
20 Products to command a price premium in the market as compared with similar
21 products that do not make such unlawful claims;
- 22 d. Whether Defendant's advertising and marketing regarding the Products was
23 likely to deceive reasonable consumers;
- 24 e. Whether representations regarding the nutrient content of the Products are
25 material to a reasonable consumer;
- 26 f. Whether Defendant engaged in the behavior knowingly, recklessly, or
27 negligently;
- 28

1 g. The amount of profits and revenues earned by Defendant as a result of the
2 conduct;

3 h. Whether class members are entitled to restitution, injunctive and other equitable
4 relief and, if so, what is the nature (and amount) of such relief; and

5 i. Whether class members are entitled to payment of actual, incidental,
6 consequential, exemplary and/or statutory damages plus interest thereon, and if
7 so, what is the nature of such relief.

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

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

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

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

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

9 **VII. CAUSES OF ACTION**

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

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

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

21 67. Plaintiffs and other subclass members are "consumers" as that term is defined by
22 the CLRA in California Civil Code § 1761(d).

23 68. The Products that Plaintiffs (and other similarly situated subclass members)
24 purchased from Defendant were "goods" within the meaning of California Civil Code §
25 1761(a).

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

1 70. Defendant's acts and practices, set forth in this Class Action Complaint, led
2 Plaintiffs and other similarly situated consumers to falsely believe that the Products were
3 superior to other products and would provide increased nutritional value for their babies. By
4 engaging in the actions, representations and conduct set forth in this Class Action Complaint,
5 Defendant has violated, and continue to violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7), and
6 § 1770(a)(8) of the CLRA. In violation of California Civil Code §1770(a)(2), Defendant's acts
7 and practices constitute improper representations regarding the source, sponsorship, approval,
8 or certification of the goods they sold. In violation of California Civil Code §1770(a)(5),
9 Defendant's acts and practices constitute improper representations that the goods they sell have
10 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which they do
11 not have. In violation of California Civil Code §1770(a)(7), Defendant's acts and practices
12 constitute improper representations that the goods it sells are of a particular standard, quality, or
13 grade, when they are of another. In violation of California Civil Code §1770(a)(8), Defendant
14 has disparaged the goods, services, or business of another by false or misleading representation
15 of fact.

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

22 72. Plaintiffs provided Defendant with notice and demand that Defendant corrects,
23 repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices
24 complained of herein. Despite receiving the aforementioned notice and demand, Defendant
25 failed to do so in that, among other things, they failed to identify similarly situated customers,
26 notify them of their right to correction, repair, replacement or other remedy, and/or to provide
27 that remedy. Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on
28

1 behalf of themselves and those similarly situated class members, compensatory damages,
2 punitive damages and restitution of any ill-gotten gains due to Defendant's acts and practices.

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

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

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

10 75. Beginning at an exact date unknown to Plaintiffs, 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 76. Defendant made representations and statements (by omission and commission)
14 that led reasonable customers to believe that the Products that they were purchasing were
15 superior to competitor products that did not contain unlawful nutrient content claims.
16 Defendant's representations similarly led reasonable consumers to believe that the Product
17 provided nutrients at levels that would be beneficial for their children.

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

23 78. Defendant's acts and omissions are likely to deceive reasonable consumers and
24 the general public.

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

1 80. The aforementioned practices, which Defendant used, and continue to use, to
2 their significant financial gain, also constitute unlawful competition and provide an unlawful
3 advantage over Defendant’s competitors as well as injury to the general public.

4 81. As a direct and proximate result of such actions, Plaintiffs and the other subclass
5 members have suffered, and continue to suffer, injury in fact and have lost money and/or
6 property as a result of such false, deceptive and misleading advertising in an amount which will
7 be proven at trial, but which is in excess of the jurisdictional minimum of this Court. In
8 particular, Plaintiffs, and those similarly situated, paid a price premium for the Products, i.e., the
9 difference between the price consumers paid for the Products and the price that they would have
10 paid but for Defendant’s false, deceptive and misleading advertising. This premium can be
11 determined by using econometric or statistical techniques such as hedonic regression or conjoint
12 analysis. Alternatively, Plaintiffs and those similarly situated will seek a full refund of the price
13 paid upon proof that the sale of the Products was unlawful.

14 82. Plaintiffs seek equitable relief, including restitution, with respect to their FAL
15 claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs makes the following
16 allegations in this paragraph only hypothetically and as an alternative to any contrary
17 allegations in their other causes of action, in the event that such causes of action will not
18 succeed. Plaintiffs and the Class may be unable to obtain monetary, declaratory and/or
19 injunctive relief directly under other causes of action and will lack an adequate remedy at law, if
20 the Court requires them to show classwide reliance and materiality beyond the objective
21 reasonable consumer standard applied under the FAL, because Plaintiffs may not be able to
22 establish each Class member’s individualized understanding of Defendant’s misleading
23 representations as described in this Complaint, but the FAL does not require individualize proof
24 of deception or injury by absent class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287
25 F.R.D. 523, 537 (N.D. Cal. 2012) (“restitutionary relief under the UCL and FAL ‘is available
26 without individualized proof of deception, reliance, and injury.’”). In addition, Plaintiffs and the
27 Class may be unable to obtain such relief under other causes of action and will lack an adequate
28 remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent, reckless,

1 and/or negligence), because the FAL imposes no such *mens rea* requirement and liability exists
2 even if Defendant acted in good faith.

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

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

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

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

21 86. Defendant has fraudulently and deceptively included unlawful nutrient content
22 claims on the Product labels.

23 87. The unlawfulness of the claims was known exclusively to, and actively
24 concealed by, Defendant, not reasonably known to Plaintiffs, and material at the time they were
25 made. Defendant's unlawful statements concerned material facts that were essential to the
26 analysis undertaken by Plaintiffs as to whether to purchase the Products. In misleading Plaintiffs
27 and not so informing them, Defendant breached their duty to Plaintiffs. Defendant also gained
28 financially from, and as a result of, their breach.

1 88. Plaintiffs and those similarly situated relied to their detriment on Defendant's
2 unlawful representations. Had Plaintiffs and those similarly situated been adequately informed
3 and not intentionally deceived by Defendant, they would have acted differently by, without
4 limitation: (i) declining to purchase the Products, (ii) purchasing less of them, or (iii) paying
5 less for the Products.

6 89. By and through such fraud, deceit, and unlawful representations, Defendant
7 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.
8 Specifically, Defendant fraudulently and deceptively induced Plaintiffs and those similarly
9 situated to, without limitation, purchase the Products.

10 90. Plaintiffs and those similarly situated justifiably and reasonably relied on
11 Defendant's unlawful representations, and, accordingly, were damaged by Defendant.

12 91. As a direct and proximate result of Defendant's unlawful representations,
13 Plaintiffs and those similarly situated have suffered damages, including, without limitation, the
14 amount they paid for the Products.

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

18 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
19 **(Unlawful, unfair, and fraudulent trade practices violation of Business and**
20 **Professions Code § 17200, *et seq.*)**
21 **On Behalf of Themselves and the Class**

22 93. Plaintiffs realleges and incorporates by reference the paragraphs of this Class
23 Action Complaint as if set forth herein.

24 94. Within four (4) years preceding the filing of this lawsuit, and at all times
25 mentioned herein, Defendant has engaged, and continue to engage, in unlawful, unfair, and
26 fraudulent trade practices in California by engaging in the conduct outlined in this Complaint.

27 95. Defendant has engaged, and continue to engage, in unfair practices as described
28 herein, in violation of the Unfair Competition Law, California Business & Professions Code §§
17200 *et seq.* (the "UCL"), by, without limitation, including unlawful nutrient content claims on

1 the Product labels and thereby selling Products that were not capable of being sold or held
2 legally and which were legally worthless.

3 96. Defendant has engaged, and continue to engage, in unlawful practices as
4 described herein, in violation of the UCL, by, without limitation, violating the following laws:

5 (i) the CLRA as described herein; (ii) the FAL as described herein; (iii) the advertising
6 provisions of the Sherman Law (Article 3), including without limitation, California Health &
7 Safety Code §§ 110390, 110395, 110398 and 110400; (iv) the misbranded food provisions of
8 the Sherman Law (Article 6), including without limitation, California Health & Safety Code §§
9 110665, 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and
10 branding of food in 21 U.S.C. § 343, *et seq.* and FDA regulations, including but not limited to
11 21 C.F.R. §§ 101.13(b), which are incorporated into the Sherman Law (California Health &
12 Safety Code §§ 110100(a), 110380, and 110505).

13 97. Defendant has engaged, and continue to engage, in fraudulent practices as
14 described herein, in violation of the UCL, by, without limitation, including unlawful nutrient
15 content claims on the Product labels and thereby selling Products that were not capable of being
16 sold or held legally and which were legally worthless.

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

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

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

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

1 102. As a direct and proximate result of such actions, Plaintiffs and the other subclass
2 members, have suffered and continue to suffer injury in fact and have lost money and/or
3 property as a result of such deceptive and/or unlawful trade practices and unfair competition in
4 an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of
5 this Court. In particular, Plaintiffs and those similarly situated paid a price premium for the
6 Products, i.e., the difference between the price consumers paid for the Products and the price
7 that they would have paid but for Defendant’s misrepresentation. This premium can be
8 determined by using econometric or statistical techniques such as hedonic regression or conjoint
9 analysis. Alternatively, Plaintiffs and those similarly situated will seek a full refund of the price
10 paid upon proof that the sale of the Products was unlawful.

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

14 104. Plaintiffs seek, on behalf of themselves and those similarly situated, equitable
15 relief, including restitution for the premium and/or the full price that they and others paid to
16 Defendant as result of Defendant’s conduct. Plaintiffs and the Class lack an adequate remedy at
17 law to obtain such relief with respect to their “unfairness” claims in this UCL cause of action,
18 because there is no cause of action at law for “unfair” conduct. Plaintiffs and the Class similarly
19 lack an adequate remedy at law to obtain such relief with respect to their “unlawfulness” claims
20 in this UCL cause of action because the Sherman Law (Articles 3 and 6) and the Federal laws
21 and regulations referenced herein do not provide a direct cause of action, so Plaintiffs and the
22 Class must allege those violations as predicate acts under the UCL to obtain relief.

23 105. Plaintiffs also seeks equitable relief, including restitution, with respect to their
24 UCL unlawfulness claims for violations of the CLRA, FAL and her UCL “fraudulent” claims.
25 Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the following allegations in
26 this paragraph only hypothetically and as an alternative to any contrary allegations in their other
27 causes of action, in the event that such causes of action do not succeed. Plaintiffs and the Class
28 may be unable to obtain monetary, declaratory and/or injunctive relief directly under other

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

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

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

26 **PLAINTIFFS' FIFTH CAUSE OF ACTION**
27 **(Unjust Enrichment)**
28 **On Behalf of Themselves and the Class**

108. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

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

3 110. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs'
4 and Class Members' purchases of the Products, which retention is unjust and inequitable,
5 because Defendant sold Products that were not capable of being sold or held legally and which
6 were legally worthless. Plaintiffs paid a premium price for the Products.

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

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

13 **VIII. PRAYER FOR RELIEF**

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

16 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel
17 as class counsel;

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

20 C. An award of compensatory damages in an amount to be determined at trial;

21 D. An award of statutory damages in an amount to be determined at trial;

22 E. An award of punitive damages in an amount to be determined at trial;

23 F. An award of treble damages;

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

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

27 I. For reasonable attorney's fees and the costs of suit incurred; and

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IX. JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: February 18, 2022

GUTRIDE SAFIER LLP

/s/ Seth A. Safier /s/
Seth A. Safier (State Bar No. 197427)
seth@gutridesafier.com
Marie A. McCrary (State Bar No. 262670)
marie@gutridesafier.com
Hayley Reynolds (State Bar No. 306427)
hayley@gutridesafier.com
100 Pine Street, Suite 1250
San Francisco, California 94111
Telephone: (415) 336-6545
Facsimile: (415) 449-6469

Attorneys for Plaintiffs