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Attorneys for Plaintiff Karen Radford on behalf
of herself and others similarly situated

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Karen Radford, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

Lyons Magnus, LLC, a California limited
liability company, TRU Aseptics, LLC, a
Wisconsin limited liability company; and
DOES 1 to 10, inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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INTRODUCTION

Plaintiff Karen Radford (“Plaintiff”), on behalf of herself and all others similarly situated, files this Class Action Complaint against Defendants Lyons Magnus, LLC and TRU Aseptics, LLC (“Defendants”), and in support states the following:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiff, and others similarly situated, who purchased Defendants’ Recalled Products, including: Lyons Ready Care, Lyons Barista Style, Pirq, Glucerna, Aloha Protein Powder, Intelligentsia, Kate Farms, Oatly, Premier Protein, MRE, Stumptown Cold Brew Coffee, Imperial, and Thick/Nectar Consistency Dairy Drink (hereinafter “Recalled Products”), which were all manufactured, sold and distributed by Defendants. Several of Defendants’ Recalled Products have been shown to be adulterated with Cronobacter sakazakii and Clostridium botulinum. The presence of Cronobacter sakazakii and Clostridium botulinum in Defendants’ Recalled Products was not disclosed in the products’ label, in violation of state and federal law. Plaintiff and the putative classes suffered economic damages due to Defendants’ misconduct (as set forth below) and they seek injunctive relief and restitution for the full purchase price of the Recalled Products they purchased. Plaintiff alleges the following based upon personal knowledge as well as investigation by counsel, and as to all other matters, upon information and belief. Plaintiff further believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and Plaintiff is a citizen of a state different from Defendants.

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1 11. On July 28, 2022, Defendants recalled a list of fifty-three (53) of their
2 products due to possible contamination with *Cronobacter sakazakii* (hereinafter
3 “Cronobacter”).

4 12. As part of the Warning, the FDA Deputy Commissioner for Food Policy
5 and Response stated, “Lyons Magnus LLC (“Lyons Magnus” or the “Company”)
6 today announced that it is voluntarily recalling nutritional and beverage products due
7 to the potential for microbial contamination, including from the organism
8 Cronobacter. The list of recalled products does not include products intended for
9 infants (i.e. under the age of one). While infection related to Cronobacter is rare, the
10 common symptoms of illness could include fever, vomiting and urinary tract
11 infection.”² “Root cause analysis indicates that the products did not meet commercial
12 sterility specifications.”³

13 13. The initial recall notice included the products listed above and included
14 the following product information:⁴

Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
Lyons Ready Care	Thickened Dairy Drink - Moderately Thick/Honey Consistency 12ct/32 fl oz cartons	045796100466	10045796100463	4512	12/30/2022
				5512	12/31/2022
				5902	11/1/2022
	Thickened Dairy Drink - Moderately Thick/Honey Consistency 24ct/8 fl oz	045796100442	10045796100449	0012	11/6/2022

24 ² U.S. FOOD & DRUG ADMIN., COMPANY ANNOUNCEMENT: Lyons Magnus Voluntarily Recalls 53
25 Nutritional and Beverage Products Due To The Potential For Microbial Contamination (Jul. 29, 2022),
[https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-voluntarily-recalls-53-
nutritional-and-beverage-products-due-potential-microbial](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-voluntarily-recalls-53-nutritional-and-beverage-products-due-potential-microbial).

26 ³ U.S. FOOD & DRUG ADMIN., COMPANY ANNOUNCEMENT: Lyons Magnus Expands Voluntary Recall to
27 Include Additional Nutritional and Beverage Products Due to the Potential for Microbial Contamination (Aug.
16, 2022), [https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-expands-
voluntary-recall-include-additional-nutritional-and-beverage-products-due](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-expands-voluntary-recall-include-additional-nutritional-and-beverage-products-due).

28 ⁴ U.S. FOOD & DRUG ADMIN., *supra* note 2.

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
	cartons				
	2.0 High Calorie High Protein Nutritional Drink Butter Pecan 12ct/32 fl oz cartons	045796100497	10045796100494	1412	2/15/2023
6312				2/10/2023	
9312				2/13/2023	
9902				1/4/2023	
	2.0 High Calorie High Protein Nutritional Drink Chocolate 12ct/32 fl oz cartons	045796100503	10045796100500	8212	2/2/2023
	Thickened Dairy Drink - Mildly Thick/Nectar Consistency 12ct/32 fl oz cartons	;	;	3512	12/29/2022
				4512	12/30/2022
	2.0 High Calorie High Protein Nutritional Drink Vanilla 12ct/32 fl oz cartons	045796100916	10045796100913	7902	11/3/2022
				5312	2/9/2023
				6312	2/10/2023
				6512	3/2/2023
				7512	3/3/2023
				8512	3/4/2023
				8902	1/3/2023
	Thickened Dairy Drink - Mildly Thick/Nectar Consistency 24ct/8 fl oz cartons	045796100435	10045796100432	9902	1/4/2023
				3712	1/18/2023
				5212	12/1/2022
				5712	1/20/2023
				8512	1/3/2023
				8902	11/4/2022
				4712	1/19/2023
	Lyons Barista Style Almond Non-Dairy	045796101654	10045796101651	9902	11/5/2022
				2012	1/7/2023
				3012	1/8/2023

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
Pirq	Beverage 12ct/32 fl oz cartons			3712	3/19/2023
				4012	1/9/2023
				5712	3/21/2023
				5012	1/10/2023
	Coconut Non-Dairy Beverage 12ct/32 fl oz cartons	045796101791	10045796101798	1612	3/7/2023
				2612	3/8/2023
				2712	3/18/2023
				3612	3/9/2023
				8412	2/22/2023
	Oat Non- Dairy Beverage 12ct/32 fl oz cartons	045796101807	10045796101804	0612	3/6/2023
				2212	1/27/2023
				3212	1/28/2023
				4212	1/29/2023
				6412	2/20/2023
				7412	2/21/2023
Pirq	Plant Protein Decadent Chocolate 12ct/325ml cartons	857690008065	857690008164	5412	5/25/2023
				6412	5/26/2023
				7412	5/27/2023
				8012	4/18/2023
				9012	4/19/2023
	Plant Protein Caramel Coffee 12ct/325ml cartons	857690008089	857690008140	8412	7/27/2023
				9412	7/28/2023
	Plant Protein Golden Vanilla 12ct/325ml cartons	857690008041	857690008157	3412	5/23/2023
				4412	5/24/2023
				5012	4/15/2023
Plant Protein Decadent Chocolate 4ct/325ml cartons	857690008065	857690008294	9012	4/19/2023	

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
	Plant Protein Caramel Coffee 4ct/325ml cartons	857690008089	857690008270	8412	7/27/2023
	Plant Protein Golden Vanilla 4ct/325ml cartons	857690008041	857690008287	4412	5/24/2023
				6012	4/16/2023
				7012	4/17/2023
	Plant Protein Very Strawberry 12ct/325ml cartons	857690008300	857690008331	4412	7/23/2023
				5412	7/24/2023
				7012	6/16/2023
				8012	6/17/2023
	Plant Protein Very Strawberry 4ct/325ml cartons	857690008300	857690008317	7012	6/16/2023
	Glucerna Original 8 fl oz tetra carton 24 count club case (sold only at Costco, BJ's Wholesale Club, and Sam's Club)	Chocolate 24ct/237ml cartons	70074685656	70074685649	400254X00
400264X00					8/1/2023
400274X00					8/1/2023
410364X00					9/1/2023
Strawberry 24ct/237ml cartons		70074685670	70074685663	400244X00	8/1/2023
				410354X00	9/1/2023
Vanilla 24ct/237ml cartons		70074685632	70074685625	400194X00	8/1/2023
				400204X00	8/1/2023
				400214X00	8/1/2023
				400224X00	8/1/2023
				400234X00	8/1/2023
				410294X00	9/1/2023
				410304X00	9/1/2023
				410314X00	9/1/2023
				410334X00	9/1/2023
410344X00	9/1/2023				

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
Aloha	Chocolate Sea Salt Plant-Based Protein 4ct/330ml cartons	842096112355	10842096142359	8312	7/12/2023
				9312	7/13/2023
	Coconut Plant-Based Protein 4ct/330ml cartons	842096112379	108420961423733	7312	7/11/2023
	Vanilla Plant-Based Protein 4ct/330ml cartons	842096112348	10842096142342	7312	7/11/2023
	Iced Coffee Plant Based Protein 4ct/330ml cartons	842096112386	10842096142380	0412	7/19/2023
9312				7/18/2023	
Intelligentsia	Cold Coffee 12ct/330ml cartons	800222000969	10800222000966	9212	12/7/2022
	Oat Latte 12ct/330ml cartons	800222000976	10800222000980	7112	1/4/2023
				8112	1/5/2023
Kate Farms	Pediatric Standard 1.2 Vanilla 12ct/250ml cartons	851823006904	851823006997	2512	6/1/2023
				3512	6/2/2023
				4512	6/3/2023
				5512	6/4/2023
				6512	6/5/2023
Oatly	Oat-Milk Barista Edition 12ct/32 fl oz slim cartons (Food Service Channel)	190646630058	101906466300550	0112	20APR2023 LM
				1112	21APR2023 LM
				2902	02APR2023 LM
				3902	03APR2023 LM
				4902	04APR2023 LM

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
				6112	26APR2023 LM
				9012	19APR2023 LM
Premier Protein	Chocolate 12ct/330ml cartons	643843714477	643843714200	2412/2142BT	7/20/2023
				3412/2143BT	7/21/2023
				4612/2164BT	8/11/2023
				5612/2165BT	8/12/2023
				66122166BT	8/13/2023
	Vanilla 18ct/330ml cartons	643843715351	643843718642	0012/2100BT	6/8/2023
				1012/2101BT	6/9/2023
				1212/2121BT	6/29/2023
				1612/2161BT	8/8/2023
				2012/2102BT	6/10/2023
				2212/2122BT	6/30/2023
				3012/2103BT	6/11/2023
	4012/2104BT	6/12/2023			
	Chocolate 18ct/330ml cartons	643843715344	643843718581	9712/2179BT	8/26/2023
		643843714507	643843713944	0612/2160BT	8/7/2023
	Vanilla 12ct/330ml cartons	;	;	4902/2094BT	6/2/2023
				9512/2159BT	8/6/2023
	Vanilla 4ct/330ml cartons	643843714507	643843714736	4902/2094BT	6/2/2023
				5902/2095BT	6/3/2023
				6902/2096BT	6/4/2023
7902/2097BT				6/5/2023	
8902/2098BT				6/6/2023	
Café Latte 4ct/330ml cartons	643843716686	643843716662	3212/2123BT	7/1/2023	
			4212/2124BT	7/2/2023	
			5212/2125BT	7/3/2023	
			62122126BT	7/4/2023	
			7212/2127BT	7/5/2023	

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
	Café Latte 18ct/330ml cartons	643843716655	643843718567	8212/2128BT	7/6/2023
	Vanilla 15ct/330ml cartons	643843714507	643843720461	5902/2095BT	6/3/2023
MRE	Cookies & Cream Protein Shake 4ct/330ml cartons	810044573893	10810044573968	2112	4/22/2023
				3112	4/23/2023
				9612	6/18/2023
	Milk Chocolate Protein Shake 4ct/330ml cartons	810044573916	10810044573944	3112	4/23/2023
				4112	4/24/2023
				5112	4/25/2023
	Salted Caramel Protein Shake 4ct/330ml cartons	810044573923	10810044573937	1112	4/21/2023
				2112	4/22/2023
				7612	6/16/2023
				8612	6/17/2023
	Vanilla Milk Shake Protein Shake 4ct/330ml cartons	810044573909	10810044573951	0112	4/20/2023
				1112	4/21/2023
6612				6/15/2023	
7612				6/16/2023	
Stumptown	Cold Brew Coffee With Oat Milk Original 12ct/325ml cartons	855186006878	10855186006875	3312	12/9/2022
				4312	12/10/2022
	Cold Brew Coffee With Oat Milk Horchata 12ct/325ml cartons	855186006892	10855186006892	4312	12/10/2022
				5312	12/11/2022
	Cold Brew Coffee With Oat Milk Chocolate 12ct/325ml	855186006892	10855186006892	6312	12/12/2022

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Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
	cartons				
	Cold Brew Coffee With Cream & Sugar Chocolate 12ct/325ml cartons	855186006861	855186006861	0412	12/16/2022
	Cold Brew Coffee with Cream & Sugar Original 12ct/325ml cartons	855156306847	10855186006844	1412	12/17/2022
				2312	12/8/2022
				3312	12/9/2022
Imperial	Med Plus 2.0 Vanilla Nutritional Drink 12ct/32 fl oz cartons	074865927307	10074865927304	2312	2/6/2023
				3312	2/7/2023
				7112	1/22/2023
				8112	1/23/2023
				8612	3/14/2023
	Thickened Dairy Drink - Moderately Thick/Honey Consistency 12ct/32 fl oz cartons	0734730556147	10734730556144	5512	12/31/2022
				5902	11/1/2022
				6902	11/2/2022
				7212	12/3/2022
	Thickened Dairy Drink - Mildly Thick/Nectar Consistency 24ct/8 fl oz cartons	074865945493	10074865945490	0012	11/6/2022
				2212	11/28/2022
				3212	11/29/2022
				4212	11/30/2022
				5712	1/20/2023
				6712	1/21/2023
	Med Plus NSA 1.7 Vanilla Nutritional Drink 12ct/32 fl oz cartons	0734730310749	10734730310746	9902	11/5/2022
				1902	12/27/2022
				1312	2/5/2023

Brand	Description	UPC Carton	UPC Case (if sold in cases)	Lot Code	Best By Date
	Med Plus 2.0 Butter Pecan Nutritional Drink 12ct/32 fl oz cartons	074865927321	10074865927328	0012	1/5/2023
				1412	2/15/2023
				9512	3/5/2023
				9902	1/4/2023
	Thickened Dairy Drink - Mildly	0734730556154	10734730556151	2512	12/28/2022
				3512	12/29/2022
	6902	11/2/2022			
Thick/Nectar Consistency 12ct/32 fl oz cartons	Thickened Dairy Drink - Moderately Thick/Honey Consistency 24ct/8 fl oz cartons	074865945509	10074865945506	4212	11/30/2022
				6212	12/2/2022

14. These products may contain *Cronobacter sakazakii* and *Clostridium botulinum* bacteria.

15. Per the CDC website, *Cronobacter* is a germ that can live in very dry places. The germs can live in dry foods, such as powdered food products.⁵

16. *Cronobacter sakazakii* and *Clostridium botulinum* bacterium can get into the Recalled Product if contaminated raw materials are used to make the product or if the powder touches a contaminated surface in the manufacturing environment.

17. *Cronobacter sakazakii* and *Clostridium botulinum* bacterium can cause severe, life-threatening infections, blood stream infections (sepsis), meningitis, and symptoms may include: fever, vomiting, and urinary tract infection. Infants, people over sixty-five (65), and those with weakened immune systems are those most at risk of developing severe illness from *Cronobacter*.⁶

18. On August 16, 2022, the FDA published an announcement by Lyons Magnus that the manufacturer expanded its recall to include “additional nutritional

⁵ CDC, <https://www.cdc.gov/cronobacter/technical.html> (last visited Jan. 17, 2023).

⁶ *Id.*

1 and beverage products due to the potential for microbial contamination.”⁷ The recall
2 expanded to include nearly 400 additional Lyons Magnus food nutritional and
3 beverage products, which are listed in their entirety at the following FDA.gov
4 website: [https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-expands-voluntary-recall-include-additional-nutritional-and-beverage-products-due)
5 [magnus-expands-voluntary-recall-include-additional-nutritional-and-beverage-](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-expands-voluntary-recall-include-additional-nutritional-and-beverage-products-due)
6 [products-due](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/lyons-magnus-expands-voluntary-recall-include-additional-nutritional-and-beverage-products-due).

7 19. “This recall is being conducted due to the potential for microbial
8 contamination, including from the organisms *Cronobacter sakazakii* and *Clostridium*
9 *botulinum*.”⁸

10 20. According to Lyons Magnus’ own company statement:

11 *Clostridium botulinum* may cause a severe form of food poisoning. It can
12 begin from six hours to two weeks after eating food that contains the toxin.
13 Symptoms may include double vision, blurred vision, drooping eyelids, slurred
14 speech, difficulty swallowing, and muscle weakness. Botulism poisoning can cause
15 respiratory paralysis, resulting in death, unless assistance with breathing (mechanical
16 ventilation) is provided.⁹

17 21. Defendants failed to take adequate, reasonable measures to protect the
18 health and lives of people consuming their products.

19 22. As a result of Defendants’ use of marketing and advertising that omits
20 from disclosure, including from the ingredients list, that the recalled products contain
21 *Cronobacter sakazakii* and *Clostridium botulinum*, reasonable consumers are led to
22 believe that they are purchasing products that are not contaminated with bacteria. For
23 example, Defendants’ packaging and marketing for Glucerna states “GLUCERNA
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27 ⁷ U.S. FOOD & DRUG ADMIN., *supra* note 2.

28 ⁸ *Id.*

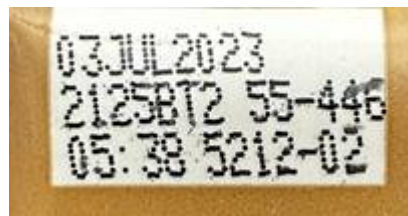
⁹ *Id.*

1 SHAKES ARE GOOD SOURCES OF NUTRIENTS TO HELP SUPPORT
2 IMMUNE HEALTH.”¹⁰

3 23. Plaintiff purchased Defendants’ Recalled Product – specifically,
4 Premier Protein- Café Latte, at Walmart in and around Pensacola, Florida. Plaintiff
5 verified that the products purchased included those on the recall list issued by
6 Defendants.



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17 *Figure 1, Image of UPC Carton of Premier Protein purchased by Plaintiff.*



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22 *Figure 2, Image of Lot Code of Premier Protein purchased by Plaintiff.*

23 24. Plaintiff made purchases of the Premier Protein – Café Latte in or
24 around the summer of 2022.

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27 ¹⁰ GLUCERNA, <https://glucerna.com/nutrition-products/glucerna-shakes-rich-chocolate> (last visited Jan. 17, 2023)
28 [<https://web.archive.org/web/20220525200857/https://glucerna.com/nutrition-products/glucerna-shakes-rich-chocolate>].

1 25. Plaintiff purchased Premier Protein believing that the product was safe
2 for consumption having relied upon Defendants' representations that the Premier
3 Protein product she purchased contained "nutrients for Immune Health support."

4 26. Plaintiff paid approximately \$8 per carton purchased at Walmart.

5 27. As a direct and proximate result of Plaintiff purchasing the Recalled
6 Product, Plaintiff has suffered injuries as alleged below.

7 **CLASS ACTION ALLEGATIONS**

8 28. Plaintiff bring this action on behalf of herself and all other similarly
9 situated class members (the "Class" or "Classes") pursuant to Rule 23(a), (b)(2) and
10 (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following
11 Class and/or Sub-Classes against Defendants for violations of Florida state laws
12 and/or similar laws in other states:

13 **Multi-State Class Action**

14 All consumers who purchased any of Defendants' Recalled Product in
15 the United States of America and its territories from July 1, 2021 to the
16 present for personal use or consumption.

17 Excluded from the Class are Defendants, any parent companies,
18 subsidiaries, and/or affiliates, officers, directors, legal representatives,
19 employees, co-conspirators, all governmental entities, and any judge,
justice or judicial officer presiding over this matter.

20 29. In the alternative, Plaintiff brings this action on behalf of herself and all
21 other similarly situated Florida consumers pursuant to Rule 23(a), (b)(2) and (b)(3)
22 of the Federal Rules of Civil Procedure and seeks certification of the following Sub-
23 Classes:

24 **Florida Sub-Class**

25 All consumers who purchased any of Defendants' Recalled Product in
26 Florida, USA from July 1, 2021 to the present for personal use or
27 consumption.

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1 Excluded from the Class are Defendants, any parent companies,
2 subsidiaries, and/or affiliates, officers, directors, legal representatives,
3 employees, co-conspirators, all governmental entities, and any judge,
4 justice or judicial officer presiding over this matter.

5 30. Plaintiff reserves the right to modify these definitions.

6 31. The members of the Class are so numerous that joinder of all members
7 of the Class is impracticable. Plaintiff is informed and believes that the proposed
8 Class/Sub-Classes contains thousands of purchasers of Defendants' Recalled
9 Products who have been damaged by Defendants' conduct as alleged herein. The
10 precise number of Class members is unknown to Plaintiff at this time.

11 32. Plaintiff's claims are typical to those of all Class members because
12 members of the Class are similarly injured through Defendants' uniform misconduct
13 described above and were subject to Defendants' deceptive claims that accompanied
14 each and every Recalled Product. Plaintiff is advancing the same claims and legal
15 theories on behalf of herself and all members of the Class/Sub-Class.

16 33. Plaintiff's claims raise questions of law and fact common to all
17 members of the Class, and they predominate over any questions affecting only
18 individual Class members. The claims of Plaintiff and all prospective Class members
19 involve the same alleged defect. These common legal and factual questions include
20 the following:

- 21 (a) whether Defendants' Products contained *Cronobacter sakazakii* and
22 *Clostridium botulinum* bacterium;
- 23 (b) whether Defendants' omissions are true, or are misleading, or objectively
24 reasonably likely to deceive;
- 25 (c) whether the alleged conduct constitutes violations of the laws asserted;
- 26 (d) whether Defendants' alleged conduct violates public policy;
- 27 (e) whether Defendants engaged in false or misleading advertising; and
- 28 (f) whether Plaintiff and the Class members are entitled to damages and/or
restitution and the proper measure of that loss.

1 34. Plaintiff and her counsel will fairly and adequately protect and represent
2 the interests of each member of the class. Plaintiff has retained counsel experienced
3 in complex litigation and class actions. Plaintiff's counsel has successfully litigated
4 other class action cases similar to that here and have the resources and abilities to
5 fully litigate and protect the interests of the class. Plaintiff intends to prosecute this
6 claim vigorously. Plaintiff has no adverse or antagonistic interests to those of the
7 Class, nor is Plaintiff subject to any unique defenses.

8 35. A class action is superior to the other available methods for a fair and
9 efficient adjudication of this controversy. The damages or other financial detriment
10 suffered by the Plaintiff and individual Class members is relatively small compared
11 to the burden and expense that would be entailed by individual litigation of their
12 claims against Defendants. It would thus be virtually impossible for Plaintiff and
13 Class members, on an individual basis, to obtain meaningful and effective redress for
14 the wrongs done to them. Further, it is desirable to concentrate the litigation of the
15 Class members' claims in one forum, as it will conserve party and judicial resources
16 and facilitate the consistency of adjudications. Plaintiff knows of no difficulty that
17 would be encountered in the management of this case that would preclude its
18 maintenance as a class action.

19 36. The Class also may be certified because Defendants have acted or
20 refused to act on grounds applicable to the Class, thereby making appropriate final
21 declaratory and/or injunctive relief with respect to the members of the Class as a
22 whole.

23 37. Plaintiff seeks preliminary and permanent injunctive and equitable relief
24 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
25 enjoin and prevent Defendants from engaging in the acts described above and
26 requiring Defendants to provide a full refund of the purchase price of the Defendants
27 Recalled Products to Plaintiff and Class members.

28

1 38. Unless a Class is certified, Defendants will retain monies received as a
2 result of their conduct that were taken from Plaintiff and the Class members. Unless
3 a Class-wide injunction is issued, Defendants will continue to commit the violations
4 alleged and the members of the Class and the general public will continue to be
5 misled.

6 **FIRST CAUSE OF ACTION**

7 **Unjust Enrichment**

8 **(On Behalf of the Multi-State Class and All State Classes)**

9 39. Plaintiff incorporates by reference and re-alleges each and every
10 allegation contained above, as though fully set forth herein.

11 40. As a result of Defendants’ wrongful and deceptive conduct alleged
12 herein, Defendants knowingly and voluntarily accepted and retained wrongful
13 benefits in the form of money paid by the Plaintiff and members of the Classes when
14 they purchased the Defendants’ Recalled Products.

15 41. In so doing, Defendants acted with conscious disregard for the rights of
16 Plaintiff and members of the Classes.

17 42. As a result of Defendants’ wrongful conduct as alleged herein,
18 Defendants has been unjustly enriched at the expense of, and to the detriment of,
19 Plaintiff and members of the Classes.

20 43. Defendants’ unjust enrichment is traceable to, and resulted directly and
21 proximately from, the conduct alleged herein.

22 44. Under the common law doctrine of unjust enrichment, it is inequitable
23 for Defendants to be permitted to retain the benefits it received, and is still receiving,
24 without justification, from the false and deceptive labeling and marketing of
25 Defendants’ Recalled Products to Plaintiff and members of the Classes.

26 45. Defendants’ retention of such funds under circumstances making it
27 inequitable to do so constitutes unjust enrichment.

28

1 46. The financial benefits derived by Defendants rightfully belong to
2 Plaintiff and members of the Classes.

3 47. Defendants should be compelled to disgorge in a common fund for the
4 benefit of Plaintiff and members of the Classes all wrongful or inequitable proceeds
5 received by them.

6 48. Finally, Plaintiff and members of the Classes may assert an unjust
7 enrichment claim even though a remedy at law may otherwise exist.

8 **SECOND CAUSE OF ACTION**

9 **Negligent Misrepresentation/Omission**

10 **(On Behalf of the Multi-State Class and All State Classes)**

11 49. Plaintiff incorporates by reference and re-allege each and every
12 allegation contained above, as though fully set forth herein.

13 50. Through their labeling and advertising, Defendants made
14 representations to Plaintiff and the Class members concerning the safety of their
15 Recalled Products.

16 51. Defendants have a duty to provide accurate information to consumers
17 with respect to the ingredients identified in Defendants' Recalled Products as
18 detailed above.

19 52. Additionally, Defendants have a duty to not make false representations
20 with respect to the safety of their Products.

21 53. Defendants failed to fulfill their duty when it made false representations
22 regarding the quality and safety of the Products as detailed above.

23 54. Such failures to disclose on the part of Defendants amount to negligent
24 omission and the representations regarding the quality and safety of the product
25 amount to negligent misrepresentation.

26 55. Plaintiff and the other members of the Classes reasonably relied upon
27 such representations and omissions to their detriment.

28

1 56. By reason thereof, Plaintiff and the other Class members have suffered
2 damages in an amount to be proven at trial.

3 **THIRD CAUSE OF ACTION**

4 **Breach of Express Warranty**

5 **(On Behalf of the Multi-State Class and All State Classes)**

6 57. Plaintiff incorporates by reference and re-allege each and every
7 allegation contained above, as though fully set forth herein.

8 58. As detailed above, Defendants, through their written literature,
9 packaging and labeling, and written and media advertisement, expressly warranted
10 that the Recalled Products were safe and fit for the purposes intended, that they were
11 of merchantable quality, and that they did not pose dangerous health risks.

12 59. Plaintiff and the other Class members read and relied on these express
13 warranties provided by Defendants in the packaging and written advertisements.

14 60. Defendants breached their express warranties because the Recalled
15 Products were defective and not reasonably safe for their intended use.

16 61. Defendants knew or should have known that the Recalled Products did
17 not conform to their express warranties and representations and that, in fact, the
18 Products are not safe and pose serious health risks because they contain *Cronobacter*
19 *sakazakii* and *Clostridium botulinum*.

20 62. Plaintiff and the other Class members have suffered harm on account of
21 Defendants' breach of their express warranty regarding the fitness for use and safety
22 of these Products and are entitled to damages to be determined at trial.

23 **FOURTH CAUSE OF ACTION**

24 **Breach of Implied Warranty**

25 **(On Behalf of the Multi-State Class and All State Classes)**

26 63. Plaintiff incorporates by reference and re-allege each and every
27 allegation contained above, as though fully set forth herein.

28

1 64. Because the Recalled Products contained *Cronobacter sakazakii* and
2 *Clostridium botulinum*, they were not of the same quality as those generally
3 acceptable in the trade and were not fit for the ordinary purposes for which such
4 these nutritional and beverage products are used.

5 65. Plaintiff and members of the Classes purchased these Recalled Products
6 in reliance upon Defendants' skill and judgment and the implied warranties of fitness
7 for the purpose.

8 66. Defendants' Recalled Products were not altered by Plaintiff or members
9 of the Classes.

10 67. Plaintiff and members of the Classes were foreseeable users of the
11 Recalled Products.

12 68. Plaintiff and members of the Classes used the Recalled Products in the
13 manner intended.

14 69. As alleged, the Defendants' Recalled Products were not adequately
15 labeled and did not disclose that they contain harmful *Cronobacter sakazakii* and
16 *Clostridium botulinum*.

17 70. The Recalled Products did not measure up to the promises or facts
18 stated in the written literature, media advertisement and communications by and
19 from Defendants.

20 71. Defendants impliedly warranted that the Recalled Products were
21 merchantable, fit and safe for ordinary use.

22 72. Defendants further impliedly warranted that the Recalled Products were
23 fit for the particular purposes for which they were intended and sold.

24 73. Contrary to these implied warranties, the Recalled Products were
25 defective, unmerchantable, and unfit for their ordinary use when sold, and unfit for
26 the particular purpose for which they were sold.

27 74. By reason thereof, Plaintiff and the other Class members have suffered
28 damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Violation of Florida’s Deceptive and Unfair Trade Practices Act

Fla. Stat. §§ 501.201-213

(On Behalf of the Florida Class)

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5 75. Plaintiff incorporates by reference and re-alleges each and every
6 allegation contained above, as though fully set forth herein.

7 76. Plaintiff was a consumer who used Defendants’ Recalled Products
8 primarily for personal use and thereby suffered ascertainable losses, including mental
9 anguish, as a result of Defendants’ acts and omissions in violation of the applicable
10 consumer protection laws.

11 77. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”)
12 renders unlawful unfair methods of competition, unconscionable acts or practice, and
13 unfair or deceptive acts or practices in the conduct of any trade or commerce. Fla.
14 Stat. § 501.204.

15 78. Among other purposes, FDUTPA is intended “[t]o protect the
16 consuming public and legitimate business enterprises from those who engage in
17 unfair methods of competition, or unconscionable, deceptive, or unfair acts or
18 practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202.

19 79. As alleged herein, Plaintiff has suffered injury in fact and lost money as
20 a result of Defendants’ conduct because they purchased Recalled Products from
21 Defendants in reliance on Defendants’ representation that the ingredients in their
22 Recalled Products were safe and effective and were not contaminated with
23 microorganisms, such as *Cronobacter sakazakii* and *Clostridium botulinum*
24 bacterium.

25 80. Defendants have engaged, and continue to engage, in conduct that is
26 likely to deceive members of the public. This conduct includes representing in their
27 labels that their Recalled Products contain only the ingredients listed in the label,
28 which is untrue, and failing to make any mention that the Recalled Products are

1 adulterated with microorganisms, such as *Cronobacter sakazakii* and *Clostridium*
2 *botulinum* bacterium.

3 81. Florida Statutes, Section 501.204, makes unfair and/or deceptive trade
4 practices in the conduct of any trade or commerce illegal.

5 82. Florida Statutes, Section 501.211, creates a private right of action for
6 individuals who are aggrieved by an unfair and/or deceptive trade practice by
7 another person.

8 83. Florida Statutes, Section 501.2105, provides that the prevailing party in
9 litigation arising from a cause of action pursuant to Chapter 501 shall be entitled to
10 recover attorney's fees within the limitations set forth therein from the non-
11 prevailing party.

12 84. Florida Statutes, Section 501.213, provides that any remedies available
13 under Chapter 501 are in addition to any other remedies otherwise available for the
14 same conduct under state or local law.

15 85. Florida Statutes, Section 501.203 (3)(c), states that a person has violated
16 the FDUTPA if he/she violates "any law, statute, rule, regulation, or ordinance which
17 proscribes unfair, deceptive, or unconscionable acts or practices."

18 86. Defendants are engaged in the practice of manufacturing, marketing,
19 distributing, selling and otherwise placing into the stream of commerce the Recalled
20 Products which constitutes trade and commerce as defined by Sections 501.203(8)
21 Fla. Stat., and is therefore subject to FDUPA.

22 87. As a result of Defendants' unfair and deceptive trade practices, Plaintiff
23 is entitled to an award of attorney's fees pursuant to FDUTPA, Florida Statutes,
24 Section 501.2105, if they prevail.

25 88. Defendants' conduct with respect to the labeling, advertising,
26 marketing, and sale of their Recalled Products is unfair because Defendants' conduct
27 was immoral, unethical, unscrupulous, or substantially injurious to consumers and
28

1 the utility of their conduct, if any, does not outweigh the gravity of the harm to their
2 victims.

3 89. In accordance with FDUTPA, Plaintiff seeks an order enjoining
4 Defendants from continuing to conduct business through fraudulent or unlawful acts
5 and practices and to commence a corrective advertising campaign. Defendants'
6 conduct is ongoing and continuing, such that prospective injunctive relief is
7 necessary.

8 90. Plaintiffs also seeks an order entitling them to recover all monies spent
9 on the Defendants' Recalled Products, which were acquired through acts of
10 fraudulent, unfair, or unlawful competition. In addition, the measure of restitution
11 should be a full refund of the purchase price insofar as the Recalled Products and their
12 associated labels are worthless. But for Defendants' misrepresentations and
13 omissions, Plaintiff would have paid nothing for Recalled Products that have a risk
14 of containing microorganisms such as *Cronobacter sakazakii* and *Clostridium*
15 *botulinum* bacterium. Indeed, there is no discernible "market" for a
16 nutritional/beverage product that may be adulterated with harmful bacteria. As a
17 result, the Defendants' Recalled Products are rendered valueless.

18 91. As a result of Defendants' conduct in the manufacture of the
19 Defendants' Recalled Products violating the foregoing statutes and regulations,
20 Plaintiff suffered damages in an amount to be proven at trial.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated,
23 pray for judgment against the Defendants as to each and every count, including:

- 24 a. An order declaring this action to be a proper class action, appointing
25 Plaintiff and her counsel to represent the Class/Sub-Classes, and requiring
26 Defendants to bear the costs of class notice;
- 27 b. An order requiring Defendants to engage in a corrective advertising
28 campaign and engage in any further necessary affirmative injunctive relief;

- 1 c. An order awarding declaratory relief, and any further retrospective or
- 2 prospective injunctive relief permitted by law or equity, including
- 3 enjoining Defendants from continuing the unlawful practices alleged
- 4 herein, and injunctive relief to remedy Defendants’ past conduct;
- 5 d. An order requiring Defendants to pay restitution/damages to restore all
- 6 funds acquired by means of any act or practice declared by this Court to be
- 7 an unlawful, unfair, or fraudulent business act or practice, untrue or
- 8 misleading advertising in violation of the above-cited authority, plus pre-
- 9 and post-judgment interest thereon;
- 10 e. An order requiring Defendants to disgorge any ill-gotten benefits received
- 11 from Plaintiff and members of the Class/Sub-Classes as a result of any
- 12 wrongful or unlawful act or practice;
- 13 f. An order requiring Defendants to pay all actual and statutory damages
- 14 permitted under the counts alleged herein;
- 15 g. An order awarding attorneys' fees and costs to Plaintiff and the Class/Sub-
- 16 Classes; and
- 17 h. An order providing for all other such equitable relief as may be just and
- 18 proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

21
22 DATED: January 19, 2023

BRADLEY/GROMBACHER, LLP

23 By: /s/ Kiley L. Grombacher, Esq.
 24 Marcus J. Bradley, Esq.
 25 Kiley L. Grombacher, Esq.
 26 Lirit A. King, Esq.
 Attorneys for Plaintiff and others similarly
 27 situated
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