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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 EASTERN DIVISION

14 SARAH MCCRACKEN, Individually
15 And on Behalf of All Others Similarly
16 Situated,

17 Plaintiff,

18 v.

19 KSF ACQUISITION CORPORATION,

20 Defendant.

21 Case No. **5:22-cv-01666**

22 **SECOND AMENDED CLASS
23 ACTION COMPLAINT**

24 **DEMAND FOR JURY TRIAL**

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1 Sarah McCracken (“McCracken” or “Plaintiff”) brings this consumer class
2 action against Defendant KSF Acquisition Corporation (the “Defendant,” or the
3 “Company,” or “SlimFast”) for the misleading and deceptive advertising of its
4 SlimFast meal replacement products (the “SlimFast Products”). The Plaintiff’s
5 allegations are based upon personal knowledge as to her own acts and upon her
6 investigation, the investigation of counsel, and information and belief as to all other
7 matters. Plaintiff, on behalf of herself and all others similarly situated, alleges:

8 **INTRODUCTION**

9 1. This is a class action brought on behalf of purchasers of the SlimFast
10 Original Shake Mix, SlimFast Original Shakes, SlimFast Keto Fat Bomb Meal Bars,
11 and SlimFast Fat Bomb Keto Snack Cups that were falsely advertised as
12 “CLINICALLY PROVEN – LOSE WEIGHT AND KEEP IT OFF” (the “Clinically
13 Proven Claim”) by Defendant.

14 2. SlimFast is an American company headquartered in Palm Beach
15 Gardens, Florida that manufactures, markets, and distributes meal replacement
16 products, including protein bars, smoothies, and snacks.

17 3. Over the last two decades, the Clinically Proven Claim has been
18 prominently displayed on more than fifty-three SlimFast Products, conveying to a
19 reasonable consumer that SlimFast Products have been clinically proven to cause
20 and maintain weight loss.

21 4. In an effort to deceitfully corroborate the Clinically Proven Claim,
22 SlimFast’s website features fifty-one studies published between 1999 and 2011.
23 However, these studies do not evaluate the efficacy of SlimFast’s individual
24 products to cause and maintain weight loss. Instead, SlimFast’s studies merely
25 validate the efficacy of the SlimFast Plan, a suggested low-calorie diet of 1200-1600
26 calories per day. The studies featured on SlimFast’s website demonstrate that
27 SlimFast Products lead to weight loss *if consumed with a low-calorie diet* of between
28 1200-1600 calories per day. Notably, no clinical studies have been conducted

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1 regarding the effectiveness of SlimFast Products in “losing weight” or “keeping it
2 off” independent of a low-calorie diet. Thus, the message conveyed to consumers
3 through SlimFast’s Clinically Proven Claim diverges from the actual results of
4 SlimFast’s published studies. SlimFast intentionally overgeneralizes the results
5 gathered from the clinical studies and disingenuously leads consumers to believe that
6 the products they are purchasing have been validated through clinical testing to
7 cause weight loss. They have not.

8 5. SlimFast’s deceptive advertising techniques were recently scrutinized
9 by the National Advertising Division (“NAD”), a body within the independent non-
10 profit BBB National Programs that monitors and oversees the truthfulness and
11 accuracy of advertising across United States corporations. (*See Exhibit A*). In a
12 decision issued in August 2021, NAD stated that “a reasonable consumer could take
13 away the message that the Advertiser’s clinically proven claim refers to any product
14 upon which it appears.” NAD’s finding on this issue was affirmed by the National
15 Advertising Review Board (“NARB”), a private appellate review body. (*See Exhibit*
16 *B*). In other words, NAD and NARB concluded that the message SlimFast conveyed
17 to consumers through its Clinically Proven Claim was false and misleading.

18 6. Because SlimFast has deceptively misrepresented the effectiveness of
19 its products, consumers have purchased SlimFast Products under the incorrect belief
20 that the products are clinically proven to cause and maintain weight loss and are thus
21 superior to other meal replacement products on the market. In reality, SlimFast
22 Products have not undergone clinical testing, and the Products themselves do not
23 cause purchasers to lose weight or keep it off.

24 7. Plaintiff McCracken brings this claim individually and on behalf of the
25 California Class who purchased SlimFast Products. Defendant has violated
26 California’s strong consumer protection and false advertising laws, including
27 California’s False Advertising Law (Bus. & Prof. Code §§ 17500 *et seq.*), Unfair
28 Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*), and the Consumers

1 Legal Remedies Act (Civ. Code §§ 1750 *et seq.*), by intentionally utilizing deceptive
2 trade practices and false and misleading claims to sell SlimFast Products.

3 **PARTIES**

4 8. Plaintiff Sarah McCracken is a citizen of the State of California. She
5 resides in Desert Hot Springs, CA. Between 2017 and 2021, McCracken purchased
6 the following SlimFast Products from Walmart and Stater Bros. Markets in
7 Riverside County: (1) SlimFast Original Meal Replacement Shake Mix in the flavors
8 Vanilla and Chocolate, (2) SlimFast Original Shakes in the flavors Vanilla and
9 Chocolate, (3) SlimFast Keto Fat Bomb Meal Bars in the flavor Whipped Peanut
10 Butter Chocolate, and (4) SlimFast Fat Bomb Keto Snack Cup in the flavors Iced
11 Lemon Drop and Peanut Butter.

12 9. Around 2017, McCracken began her weight loss journey, and she
13 decided to invest in meal replacement products as an easy and convenient way to
14 kickstart her journey. McCracken was aware of the SlimFast brand prior to
15 purchasing the Company's products because she had seen countless SlimFast
16 commercials. She recalls that SlimFast was one of the few meal replacement
17 products advertised specifically for weight loss. She purchased the products because
18 she believed, based on SlimFast's statements, that their products were clinically
19 proven to cause and maintain weight loss.

20 10. Over the years, McCracken had seen several SlimFast commercials and
21 other advertisements promoting SlimFast's low-calorie diet plan, so McCracken was
22 aware of the SlimFast plan, and she consistently adhered to the plan. During the
23 years she used the SlimFast Products, McCracken purchased the SlimFast Products
24 at least every two weeks and replaced one to two meals per day with the SlimFast
25 shakes or bars. McCracken consumed the SlimFast Products alongside sensible,
26 balanced meals because she understood that consistency was key to weight loss. She
27 purchased the products because she believed, based on SlimFast's statements, that
28 the SlimFast products were clinically tested and proven to cause and maintain

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1 weight loss. Specifically, McCracken saw and relied on SlimFast’s statements on the
2 boxes that the products were “CLINICALLY PROVEN – LOSE WEIGHT AND
3 KEEP IT OFF.” She saw the Clinically Proven Claim highlighted in bold,
4 capitalized font on the front of the product packaging, and reasonably believed that
5 SlimFast’s product formula itself had been clinically tested and proven to cause and
6 maintain weight loss. She did not see any disclaimers on the Products or the product
7 packaging that contradicted her understanding of SlimFast’s Clinically Proven
8 Claim.

9 11. McCracken, however, was not able to reach her weight loss goals by
10 using the SlimFast Products. She did not lose weight nor keep it off, as promised by
11 SlimFast, over the few years she utilized the product.

12 12. McCracken purchased and paid substantially more for SlimFast
13 Products than she would have if she had known the truth about the products—that
14 they are not clinically proven to lose weight or keep it off. McCracken has suffered
15 actual damages in the form of her overpayment for SlimFast Products, which she
16 purchased as a result of SlimFast’s misrepresentations and omissions. SlimFast did
17 not inform McCracken of the truth about its weight loss claims. Had McCracken
18 known that the SlimFast Products were not clinically proven to lose weight or keep
19 it off, she would either not have purchased the products or would have paid
20 substantially less for them.

21 13. At present, McCracken has concerns about purchasing SlimFast
22 Products for herself, as she does not know whether SlimFast’s advertising will
23 continue to be false and misleading. In the future, McCracken would pay a premium
24 for SlimFast Products if they were, in fact, clinically proven to lose weight and keep
25 it off. In addition to restitution, McCracken also seeks injunctive relief to enjoin
26 SlimFast from continuing to mislead her and other consumers through its false
27 advertising.

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1 due to both societal trends and effective marketing. SlimFast’s products aligned with
2 a growing trend towards liquid diets and weight-loss beverages, which promised
3 consumers weight loss results if they consumed dangerously low-calorie diets. The
4 Company also leveraged celebrity endorsements to create further hype for its
5 products by partnering with household names like Los Angeles Dodgers manager
6 Tommy Lasorda and New York Mayor Ed Koch to promote their products. In an
7 October 19, 1989 LA Times article titled ‘Diet Company Ads Are Mixing Fame
8 With Physique: Marketing: Celebrity endorsements have helped boost profits--and
9 also fattened the wallets of some slimmed-down stars,’¹ Alan Citron wrote about
10 SlimFast’s deal with Lasorda, who was widely known as being a pasta lover, in
11 which Lasorda would acquire a lucrative endorsement payment if he lost weight
12 through the Company’s weight-loss program.

13 20. In 2000, global consumer goods company Unilever purchased SlimFast
14 for \$2.3 billion. Unilever’s skills did not immediately transfer to the weight loss
15 industry, however, and sales decreased from over \$600 million in 2000 to \$550
16 million in 2002. Unilever faced even more trouble when Dr. Robert Atkins’ low-
17 carbohydrate, high-protein diet—the Atkins Low Carb Diet—surged in popularity in
18 2003, further challenging SlimFast’s leading position in the weight-loss industry.
19 Although the Atkins Low Carb Diet only remained popular until 2005, consumers’
20 desire for a low-carbohydrate, high-protein diet remained.

21 21. With sales rapidly declining, Unilever sold SlimFast in 2014 to food
22 and consumer brand specialist Kainos Capital for an undisclosed amount. In 2018,
23 Kainos Capital sold SlimFast to Irish nutrition group Glanbia for \$350 million.

24 **B. The SlimFast Market**

25 22. SlimFast’s products have always been advertised as *weight loss*
26 products—a premise that is reflected in the company’s name. Some household meal
27

28 ¹ <https://www.latimes.com/archives/la-xpm-1989-10-16-fi-275-story.html>

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1 supplement brands, like Ensure or Premier Protein, advertise their products as
2 energy enhancers to be consumed as snacks or in conjunction with exercise. By
3 contrast, SlimFast has never shied away from claiming its offerings as meal
4 replacement products designed for weight loss. Thus, consumers reasonably
5 gravitate to the Company’s products with the expectation of buying a product that
6 will assist them in losing weight.

7 23. The SlimFast Products and the SlimFast Plan are independent products
8 and services. Consumers can either adhere to the SlimFast Plan or purchase and use
9 SlimFast Products independently of the SlimFast Plan. SlimFast has four weight loss
10 plans, all of which fall under the SlimFast Plan, including the Favorite Foods Plan,
11 SlimFast Low-Carb Plan, the SlimFast Keto Plan, and the SlimFast Original Plan.
12 While some consumers may choose to use SlimFast Products while adhering to the
13 SlimFast Plan, it is not a requirement.

14 24. The Company offers SlimFast Products within six main product lines,
15 including Original, Immunity, Advanced Nutrition, Advanced Energy, Low Carb,
16 and Keto. All SlimFast Products conspicuously display the Clinically Proven Claim
17 on the front of their packaging in a bold and prominent capital letter font. The
18 Clinically Proven Claim is also outlined in a rectangular box to set it apart from the
19 other text featured on SlimFast’s product packaging (see images below).

20 25. Below is the product packaging for the SlimFast Original Shakes,
21 which features the bold Clinically Proven Claim:



1 See <https://shop.slimfast.com/collections/ready-to-drink/products/slimfast-original-shakes> (last viewed December 23, 2022).

2 26. Below is the product packaging for the SlimFast Original Shake Mixes,
3 which features the bold Clinically Proven Claim:



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10 See <https://shop.slimfast.com/collections/original/products/slimfast-original-shake-mixes> (last viewed December 23, 2022).

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12 27. Below is the product packaging for the SlimFast Keto Fat Bomb Meal
13 Bars, which features the bold Clinically Proven Claim:



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20 See <https://shop.slimfast.com/collections/meal-replacement-bars/products/slimfast-keto-fat-bomb-meal-bars> (last viewed December 23, 2022).

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22 28. Below is the product packaging for the SlimFast Fat Bomb Keto Snack
23 Cups, which features the bold Clinically Proven Claim:

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See <https://shop.slimfast.com/collections/keto/products/keto-fat-bombs> (last viewed December 23, 2022).

C. Brand Credibility Essential to Weight-Loss Brand Success

29. Consumers seeking a health-related or lifestyle-related change fall into a particularly vulnerable demographic of people who can easily fall victim to the manipulative advertising by manufacturers of weight-loss treatment supplements and diets. These consumers may try several different brands or products until they find one they can trust and rely on to achieve their desired goals.

30. In an oversaturated weight-loss product market, brand credibility and clinical validation is essential to a product’s success. Products that have undergone clinical testing and advertise clinically proven weight-loss results have a significantly higher chance of standing out among competitor brands during the consumer decision-making process. SlimFast knew this and utilized malicious, false, and misleading marketing tactics to prey upon vulnerable consumers seeking weight-loss assistance in order to offset the Company’s decreasing dominance in the weight-loss industry. SlimFast exploited its intimate knowledge of the weight-loss industry by utilizing the Clinical Proven Claim to advertise all SlimFast Products as clinically proven to cause or maintain weight-loss, even though none of the SlimFast Products have been tested independent of a low-calorie diet.

31. SlimFast’s Clinically Proven Claim appears in a prominent bold font on the front of SlimFast’s product packaging, and thus conveys to consumers that the

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1 product on which the claim appears has been clinically proven to cause and maintain
2 weight loss. NAD agreed. In its 2021 decision, NAD described the Clinically Proven
3 Claim “as a stamp on 53+ shakes, snacks, and bars alongside other text and imagery
4 that is product-focused” The agency further noted that the claim conveys a
5 “clinically proven weight-loss and maintenance message about each individual
6 SlimFast product.”

7 32. On SlimFast’s website, the Company cites to fifty-one ‘Clinical
8 Studies’ (the “Clinical Studies”) in an attempt to support its claim. However,
9 SlimFast’s “supporting evidence” is “based on clinical studies demonstrating weight
10 loss *through a calorie-controlled diet* comprised of one sensible meal, two meal
11 replacements, and three snacks, regular exercise, and plenty of fluids.” None of the
12 studies evaluated, let alone clinically proved, whether the SlimFast Products
13 themselves cause or maintain weight loss. At best, the studies merely confirm the
14 commonsense premise that a low-calorie diet can lead to weight loss.

15 33. NAD came to the same conclusion. In its 2021 decision, NAD analyzed
16 SlimFast’s clinical studies and concluded that “[t]he clinical studies demonstrate
17 dieters will lose weight if they consistently adhere to 1200-1400 calories a day, not
18 that the current SlimFast products are clinically proven to promote and help maintain
19 weight loss.”

20 34. In fact, during the NAD proceeding, SlimFast acknowledged that none
21 of its products had been clinically proven to cause and maintain weight loss.
22 Nonetheless, SlimFast has consistently misrepresented the findings of the cited
23 clinical studies in a way that conveys to consumers that SlimFast Products cause and
24 maintain weight loss. Because SlimFast failed to adequately disclose that the
25 Clinically Proven Claims are based on a low-calorie diet and not due to the Products
26 themselves, the prominent display of the claim on the Company’s product packaging
27 would mislead a reasonable consumer.
28

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1 **D. SlimFast’s Purported Disclaimers on Its Website Are Vague and**
2 **Misleading.**

3 35. Nowhere on SlimFast’s website (“Product Webpage”) does the
4 Company clearly indicate that its Clinically Proven Claim is based on adherence to
5 the low-calorie SlimFast Plan and not based on something intrinsic to the SlimFast
6 Products themselves. Further, the Product Webpage describes the SlimFast plan as
7 an *option*, but by no means necessary. Defendant makes many references to the
8 SlimFast Plan, but none of the references would lead a consumer to believe they
9 must adhere to the SlimFast Plan to achieve the results advertised by the Clinically
10 Proven Claim.

11 36. For example, the Company advertises the SlimFast Plan as one of the
12 four “Ways to Enjoy” SlimFast Products. The four “Ways to Enjoy” include: (1)
13 “The SlimFast Plan – Replace two meals a day to lose the weight and keep it off”;
14 (2) “Blend it Up – Combine with milk and ice to blend for a creamy & thick
15 smoothie”; (3) “No-Fuss Breakfast – Start your day with all the delicious nutrition
16 you need”; (4) “Make it Your Own – Get creative with customizable smoothie
17 recipes.” Here, the SlimFast Plan is represented as a suggested method for
18 consumers to enjoy the individual SlimFast Products.

19 37. In addition, SlimFast’s inconspicuous disclaimer featured at the bottom
20 of each Product Webpage does not provide any clarity about the company’s
21 Clinically Proven Claim. At the bottom of each Product Webpage—hidden beneath
22 the product title, product description, nutritional and ingredients descriptions,
23 photos, flavor and size choices, auto-delivery option, claims, reviews, subscription
24 sign-up, and links to the Company’s social media, customer service, and other
25 SlimFast Resources—Defendant includes the following disclaimer:

26
27 *Based on clinical studies demonstrating weight loss through a calorie-
28 controlled diet comprised of one sensible meal, two meal replacements,
and three snacks, regular exercise, and plenty of fluids. Average weight

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loss is 1-2 lbs per week. This product is intended to help manage carb & sugar intake and not intended for the treatment or prevention of disease, including Diabetes Type I, Type II, or Gestational Diabetes.

However, even if a consumer was able to find and view this disclaimer, the disclaimer does not clearly explain which features of SlimFast’s offerings have been clinically tested—the products themselves or the low-calorie diet plan. The disclaimer does not explicitly reference the SlimFast Plan and does not make clear that the separate Clinically Proven Claim is only accurate if consumers adhere to a low-calorie diet.

E. SlimFast’s Purported Disclaimers on the Back of Its Product Packaging Are Vague and Misleading.

38. The front of SlimFast’s product packaging prominently features the Clinically Proven Claim. By contrast, SlimFast’s attempt to qualify its Clinically Proven Claim on the back of its product packaging is ambiguous and written in fine print.

39. The following is an example of the Alleged Claim Certification on the back of SlimFast Product packaging:



See <https://www.amazon.com/SlimFast-Original-Replacement-Vitamins-Chocolate/dp/B000DZT0N0/> (last viewed October 25, 2022).

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40. The back of the product packaging reads:

“For over 40 years, millions of Americans have lost weight and kept it off using SlimFast Original Meal Shakes, as part of the clinically proven SlimFast Plan. 50 Clinical studies prove the SlimFast Plan helps you effectively lose weight, and you can see results in just one week!*

The asterisk directs consumers to another disclaimer, which reads: “*When used as part of the SlimFast plan. Individual results may vary.”

41. This is not an adequate disclosure. It is buried in the fine print on the back of the SlimFast Products, and it conflicts with SlimFast’s prominent and misleading advertising on the front of its product packaging. In fact, NAD also found SlimFast’s claim qualifications on the back of its product packaging to be misleading and inconspicuous. During the NAD proceeding, SlimFast attempted to qualify the Clinically Proven Claim by pointing to the fine-print disclosure on the back of the packaging. The purported qualification statement “when used as part of the SlimFast Plan” was written in small print amidst a visually busy mix of descriptions, disclaimers, and policies. NAD ultimately concluded that the disclosure “was not clear and conspicuous because it appears on the back of the package while the prominent clinically proven claim appears on the front of the package.” Thus, “it is unlikely that consumers will see the disclosure.”

42. However, even consumers who read the disclaimer cannot reasonably understand that the Clinically Proven Claim is referring to SlimFast’s suggested calorie-controlled diet and has nothing to do with the SlimFast Products. For example, the disclaimer states: “50 Clinical studies prove the SlimFast Plan helps you effectively lose weight and you can see results in just one week.” The text does not make clear, however, that the purported clinical approval refers solely to the regimen of a low-calorie diet and no clinical testing has been conducted to validate the efficacy of the SlimFast Products. Thus, SlimFast’s purported disclaimer on the

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1 back of its product packaging stating that the Clinically Proven Claim refers to the
2 SlimFast Plan is misleading to consumers because it does not clearly explain which
3 features of SlimFast’s offerings have been clinically tested—the products themselves
4 or the low-calorie diet plan.

5 43. Further, when consumers purchase SlimFast Products, they are
6 purchasing a product and not the SlimFast Plan. Thus, upon viewing the Clinically
7 Proven Claim prominently displayed on the front of the package, the reasonable
8 conclusion is that the claim applies to the product on which it appears, and not to
9 some other weight-loss plan not included in the product’s purchase. Nor does the
10 Product’s packaging explicitly state that a consumer must follow a low-calorie diet
11 to achieve the “clinically proven” results.

12 44. Plaintiff McCracken was also misled by SlimFast’s labeling. She was
13 aware of the SlimFast Plan before she bought the products because she had seen
14 several commercials and advertisements promoting the SlimFast Plan. However, due
15 to the placement and appearance of the Clinically Proven Claim, she reasonably
16 believed that SlimFast products she purchased had been clinically proven to cause
17 and maintain weight loss. She understood the SlimFast Plan to be just one method to
18 realize weight loss results at a faster rate, and she did not view SlimFast’s purported
19 fine print disclaimer on the back of the product packaging. She reasonably purchased
20 the Products because she believed they would perform better than other products on
21 the market in helping her lose weight and keep it off.

22 45. SlimFast’s advertising would therefore mislead a reasonable consumer
23 into believing that the Company’s current SlimFast Products were clinically tested
24 and proven to cause and maintain weight loss, even though not a single one of these
25 individual SlimFast Products underwent such testing. Indeed, that is exactly what
26 Plaintiff McCracken believed based on SlimFast’s statements.

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28

1 McCracken cannot trust SlimFast’s marketing claims and would not purchase
2 SlimFast’s Products.

3
4 **CLASS ACTION ALLEGATIONS**

5 52. Plaintiff brings this action as a class action pursuant to Federal Rule of
6 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and a proposed Class
7 defined as follows:

8 All persons who purchased the following SlimFast Products with the
9 Clinically Proven Claim in the State of California (the “Class”):
10 SlimFast Original Shake Mix; SlimFast Original Shakes; SlimFast
11 Keto Fat Bomb Meal Bars; and SlimFast Fat Bomb Keto Snack
12 Cups

13 53. Numerosity Under Rule 23(a)(1). The Class is so numerous that the
14 individual joinder of all members is impracticable, and the disposition of the claims
15 of all Class members in a single action will provide substantial benefits to the parties
16 and the Court. Plaintiffs, on information and belief, allege that the Nationwide Class
17 includes at least thousands of persons.

18 54. Commonality Under Rule 23(a)(2). Common legal and factual
19 questions exist that predominate over any questions affecting only individual
20 members. These common questions, which do not vary among Class members and
21 which may be determined without reference to any Class member’s individual
22 circumstances, include, but are not limited to:

- 23 a) Whether SlimFast should have known that SlimFast Products were not
24 clinically proven to cause and maintain weight loss;
- 25 b) Whether SlimFast’s representations and omissions in advertising and/or
26 labeling are false, deceptive, and misleading;
- 27 c) Whether SlimFast had knowledge that its representations and omissions in
28 advertising and/or labeling is false, deceptive, and misleading;

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- 1 d) Whether SlimFast’s representations and omissions in advertising and/or
- 2 labeling are likely to deceive a reasonable consumer;
- 3 e) Whether SlimFast knew or should have known that reasonable consumers
- 4 rely on clinical validation to assess the efficacy of weight loss;
- 5 f) Whether SlimFast engaged in unlawful, fraudulent, or unfair business
- 6 practices;
- 7 g) Whether SlimFast’s conduct violated the applicable state consumer
- 8 protection laws alleged herein;
- 9 h) Whether SlimFast is subject to liability for violating the California False
- 10 Advertising Law (“FAL”) Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 11 i) Whether SlimFast has violated the Unfair Competition Law (“UCL”), Cal.
- 12 Bus. & Prof. Code §§ 17200 *et seq.*;
- 13 j) Whether SlimFast is subject to liability for violating the Consumers Legal
- 14 Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*;
- 15 k) Whether, because of SlimFast’s omissions and/or misrepresentations of
- 16 material facts, Plaintiff and members of the Class have suffered an
- 17 ascertainable loss of monies and/or property and/or value; and
- 18 l) Whether Plaintiff and members of the Class and are entitled to declaratory
- 19 and injunctive relief.

20 55. Typicality Under Rule 23(a)(3). Plaintiff’s claims are typical of the
 21 Class members’ claims. SlimFast’s course of conduct caused Plaintiff and the Class
 22 members the same harm, damages, and losses as a result of its unlawful conduct.
 23 Likewise, Plaintiff and other Class members must prove the same facts in order to
 24 establish the same claims.

25 56. Adequacy of Representation Under Rule 23(a)(4). Plaintiff is an
 26 adequate Class representative because she is a member of the Class, and her interests
 27 do not conflict with the interests of the Class. Plaintiff has retained counsel
 28 competent and experienced in complex litigation and consumer protection class

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1 action matters such as this action, and Plaintiff and her counsel intend to prosecute
2 this action for the Class’s benefit and have the resources to do so. Plaintiff and her
3 counsel have no interests adverse to those of the other members of the Class.

4 57. Superiority. The Class can be properly maintained because the above
5 common questions of law and fact predominate over any questions affecting
6 individual Class Members. A class action is also superior to all other available
7 methods for the fair and efficient adjudication of this controversy because individual
8 litigation of each Class member’s claim is impracticable. Even if each Class member
9 could afford individual litigation, the court system could not. It would be unduly
10 burdensome if thousands of individual cases proceeded. Individual litigation also
11 presents the potential for inconsistent or contradictory judgments, the prospect of a
12 race to the courthouse, and the risk of an inequitable allocation of recovery among
13 those individuals with equally meritorious claims. It would increase the expense and
14 delay to all parties and the Courts because it requires individual resolution of
15 common legal and factual questions. By contrast, the class action device presents far
16 fewer management difficulties and provides the benefit of a single adjudication,
17 economies of scale, and comprehensive supervision by a single court.

18 **FIRST CLAIM FOR RELIEF**
19 **Violations Of The California False Advertising Law**
20 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***
21 ***On Behalf of Plaintiff McCracken and the Class***

22 58. Plaintiff McCracken, individually and on behalf of the Class,
23 incorporates by reference all the allegations contained in the preceding paragraphs of
24 this Class Action Complaint as if fully set forth herein.

25 59. SlimFast engaged in the advertising and marketing alleged herein with
26 the intent to directly or indirectly influence the sale of SlimFast Products to
27 customers, including Plaintiff.
28

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1 Professions Code Sections 17200 *et seq.* SlimFast’s business practices, as alleged
2 herein, are “unfair” because they utilize immoral, deceptive, and fraudulent
3 marketing practices that cause substantial injuries to customers.

4 67. SlimFast’s “unfair” business practices include:

- 5 a) Intentionally utilizing clinical studies that were only conducted within the
- 6 bounds of a low-calorie diet to generally advertise all SlimFast Products
- 7 that do not require adherence to a low-calorie diet; and
- 8 b) Failing to clearly and openly disclose that the Clinically Proven Claim is
- 9 based on a low-calorie diet.

10 68. SlimFast’s actions as alleged herein constitute a “fraudulent” practice
11 because, by making the false and misleading Clinically Proven Claim on the front of
12 its Products, SlimFast’s conduct was likely to deceive, and did deceive, reasonable
13 consumers. SlimFast’s failure to adequately disclose that the Clinically Proven
14 Claim did not apply to the SlimFast Products themselves also constitutes a material
15 omission in violation of the UCL.

16 69. As a result of SlimFast’s unlawful, unfair, and fraudulent conduct,
17 Plaintiff McCracken and the Class received an inferior product for that which they
18 were promised. The product they received had, in fact, never been clinically proven
19 to cause and maintain weight loss, which is the sole reason consumers initially
20 purchased and continued to purchase SlimFast Products.

21 70. Pursuant to Business and Professions Code Section 17200 *et seq.*,
22 SlimFast’s deceitful business practices constitute “unfair” competition. Plaintiff
23 McCracken and the Class seek equitable relief, including restitution, to remedy
24 SlimFast’s deceptive marketing and advertising.

25 **THIRD CLAIM FOR RELIEF**

26 **Violations Of The Consumers Legal Remedies Act**

27 **Cal. Civ. Code §§ 1750 *et seq.***

28 ***On Behalf of Plaintiff McCracken and the Class***

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1 71. Plaintiff McCracken, individually and on behalf of the Class,
2 incorporates by reference all the allegations contained in the preceding paragraphs of
3 this Class Action Complaint as fully set forth herein.

4 72. Plaintiff McCracken brings this claim individually and on behalf of the
5 Class against SlimFast.

6 73. The Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code
7 §§ 1750 *et seq.*, is a California statute enacted to protect consumers involved in a
8 transaction against unfair and deceptive business practices.

9 74. SlimFast is a “person” under Cal. Civ. Code § 1761(c).

10 75. Plaintiff McCracken and the Class are “consumers” under Cal. Civ.
11 Code § 1761(d).

12 76. In violation to the CLRA, SlimFast engaged in unfair and deceptive
13 business practices by (a) advertising the weight loss aspect of SlimFast Products in a
14 false and misleading way and (b) representing that SlimFast Products have benefits
15 and qualities they do not have.

16 77. SlimFast intentionally provided Plaintiff McCracken and the Class with
17 products containing weight loss misrepresentations.

18 78. Plaintiff McCracken and the Class relied on SlimFast’s weight loss
19 misrepresentations in purchasing the Products.

20 79. As a result of SlimFast’s conduct, Plaintiff McCracken and the Class
21 received an inferior product from that which they were promised.

22 80. Plaintiff McCracken, individually and on behalf of the Class, demands
23 judgment against SlimFast under the CLRA for declaratory and injunctive relief.

24 81. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff McCracken served
25 SlimFast with notice of its alleged violations of the CLRA by certified mail return
26 receipt requested on September 22, 2022. Because SlimFast failed to remedy its
27 unlawful conduct within the requisite time period, Plaintiff McCracken and the Class
28 seek compensatory damages and relief to which they are entitled.

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J. An Order awarding such other and further relief as the Court deems necessary, just, and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury for all claims and issues so triable.

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Dated: December 29, 2022

SCHUBERT JONCKHEER & KOLBE LLP

/s/ Amber L. Schubert

AMBER L. SCHUBERT (S.B.N. 278696)
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