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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10 STEVEN PRESCOTT, individually and on  
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 ABBOTT LABORATORIES,

14 Defendant.

Case No.

15 **CLASS ACTION COMPLAINT**

- 16 1. VIOLATION OF CALIFORNIA  
CONSUMERS LEGAL REMEDIES  
ACT, (CAL. CIV. CODE §§ 1750, *et seq.*)
- 17 2. VIOLATION OF CALIFORNIA FALSE  
ADVERTISING LAW, (CAL. BUS. &  
PROF. CODE §§ 17500, *et seq.*)
- 18 3. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW, (CAL.  
BUS. & PROF. CODE §§ 17200, *et seq.*)
- 19 4. BREACH OF EXPRESS WARRANTY
- 20 5. UNJUST  
ENRICHMENT/RESTITUTION

21 **JURY TRIAL DEMANDED**

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1 Plaintiff Steven Prescott (“**Plaintiff**”), individually, and on behalf of all other similarly  
2 situated purchasers, as more fully described herein (the “**Class**”), brings this class action complaint  
3 against Abbott Laboratories (“**Defendant**”). Plaintiff’s allegations are based upon personal  
4 knowledge as to himself and his own acts, and upon information and belief as to all other matters  
5 based on the investigation conducted by and through Plaintiff’s attorneys.

6 **I. SYNOPSIS**

7 1. Every day, millions of health-conscious consumers seek to make purchase decisions  
8 that align with their nutritional needs, and they trust food and beverage companies to advertise  
9 product attributes honestly.

10 2. Informed choice is especially important to the ~150M (and rising) people living with  
11 type 2 diabetic conditions in the United States who necessarily depend on diet to manage their  
12 disease and live a longer life.<sup>1</sup>

13 3. This putative class action arises from Defendant’s abuse of consumer trust by  
14 marketing its popular “Glucerna” brand shakes and powders as nutritional and “formulated  
15 specifically for diabetics” even though they contain sucralose and other key ingredients shown to  
16 deregulate blood sugar, worsen diabetes, and even cause it, among other harms.

17 4. Noting specifically the “increased risk of type 2 diabetes, cardiovascular diseases, and  
18 mortality in adults,” the World Health Organization advises against consuming sugar alternatives  
19 like the sucralose featured in the Products. Other medical studies are in accord.

20 5. Defendant employs teams of food scientists who know about these health risks, but  
21 nowhere does Defendant disclose any of them. Defendant elects instead to tell an affirmatively false  
22 story, prominently on the front labels of its Glucerna Products, that the Products “help manage blood  
23 sugar” and are the “#1 doctor recommended brand” that is “specifically designed for people with  
24 diabetes” (collectively, the “**Diabetes Health Claims**” or the “**Challenged Representations**”), as  
25 follows:

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<sup>1</sup> Diabetes Statistics, DIABETES RSCH. INST. (2022).

1 a. Glucerna Original Shakes, Glucerna Hunger Smart Shakes, Glucerna Protein  
2 Smart Shakes, and Glucerna Original Snack Shakes: “help manage blood  
3 sugar”; “#1 doctor recommended brand”; “scientifically designed for people  
4 with diabetes” (collectively, the “Shakes”).

5 b. Glucerna Hunger Smart Powder: “#1 doctor recommended brand”;  
6 “scientifically designed for people with diabetes” (the “Powder,” together with  
7 the Shakes and collectively, the “Glucerna Products” or the “Products”).

8 6. Defendant’s deceptive marketing has proved profitable, and Defendant now enjoys a  
9 leading market position in the multi-billion-dollar health foods industry. As Defendant intended,  
10 reasonable consumers understand the Challenged Representations to mean the Products are healthy  
11 drinks and powders that are suitable for, or can aid in, the management of blood sugar generally and  
12 diabetes specifically.

13 7. But because all the Products are made with sucralose, they are neither healthy nor  
14 suitable for these purposes. Instead, according to science yet unknown to consumers, sucralose  
15 negatively affects pancreatic beta cells, promotes insulin resistance, destabilizes glucose absorption,  
16 causes obesity, and harms the gut microbiome.

17 8. Similarly harmful to diabetics, and blood sugar regulation for everyone, are three  
18 other ingredients featured in the Shakes: (1) carrageenan, a Product additive that impairs insulin  
19 signaling; (2) choline chloride, which has been shown to exacerbate glucose and insulin resistance  
20 in people with Type 2 diabetes specifically; and (3) maltodextrin, a carbohydrate Defendant adds to  
21 the Glucerna Original and Snack Shakes which negatively influences the gut microbiome and has a  
22 glycemic index superseding that of table sugar.

23 9. Against this backdrop, the Products are not “scientifically designed for people with  
24 diabetes” as Defendant boldly touts. Nor do they “help manage blood sugar” as promised. Instead,  
25 the Products negatively affect blood sugar levels and gut health, which can be harmful to everyone  
26 and especially those with diabetes.

27 10. Absent judicial intervention, millions of diabetics and other consumers will continue  
28 to unknowingly ingest unhealthy ingredients in Products they would otherwise avoid—and pay

1 Defendant a premium to do so. True and accurate depictions of the Products' false labels and  
2 packaging are shown below as "Exhibits 1-5."

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4 **Exhibit 1: Glucerna Original Shakes**





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1 Exhibit 2: Glucerna Hunger Smart Shakes





1 Exhibit 3: Glucerna Protein Smart Shakes



1 Exhibit 4: Glucerna Original Snack Shakes



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Exhibit 5: Glucerna Hunger Smart Powder



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11. **The Products.** All Glucerna Products at issue are manufactured or sold by Defendant to consumers in California and the United States. The Products are:

- i. **Glucerna Original Shake:** all flavors, varieties, and sizes of Glucerna Original Shake drinks, including but not limited to, Glucerna Original Homemade Vanilla, Glucerna Original Creamy Strawberry, Glucerna Original Rich Chocolate, Glucerna Original Classic Butter Pecan, and Glucerna Original Chocolate Caramel;
- ii. **Glucerna Hunger Smart Shake:** all flavors, varieties, and sizes of Glucerna Hunger Smart Shakes, including, but not limited to, Glucerna Hunger Smart Rich Chocolate, Glucerna Hunger Smart Homemade Vanilla, Glucerna Hunger Smart Creamy Strawberry, and Glucerna Hunger Smart Peaches & Crème;
- iii. **Glucerna Protein Smart Shake:** all flavors, varieties and sizes of Glucerna Protein Smart Shake, including, but not limited to, Glucerna Protein Smart Chocolate and Glucerna Protein Smart Vanilla;
- iv. **Glucerna Original Snack Shake:** all flavors, varieties and sizes of Glucerna Original Snack Shake, including, but not limited to, Glucerna Original Snack Rich Chocolate and Glucerna Original Snack Homemade Vanilla; and,
- v. **Glucerna Hunger Smart Powder:** all flavors, varieties and sizes of Glucerna Hunger Smart Powder, including, but not limited to, Glucerna Hunger Smart Powder Rich Chocolate and Glucerna Hunger Smart Powder Homemade Vanilla.

12. **The Deception.** Through labeling, packaging, advertising, and marketing its Glucerna Products with the Diabetes Health Claims, Defendant misleads reasonable consumers, including Plaintiff, into believing the Products are nutritional drinks and powders that provide diabetes and blood sugar management benefits, when they do not.

///

1           13.    **Primary Dual Objectives.** Plaintiff brings this action individually and on behalf of  
2 those similarly situated consumers who purchased the Products during the relevant Class Period  
3 (Class defined *infra*), for dual primary objectives: **One**, Plaintiff seeks, on his behalf and on behalf  
4 of the Class, injunctive relief to stop Defendant’s unlawful manufacture, marketing, and sale of the  
5 Products to avoid or mitigate the risk of deceiving the public into believing the Products can provide  
6 the advertised benefits, by requiring that Defendant change its business practices, which may  
7 include one or more of the following: remove the “to help manage blood sugar,” “scientifically  
8 designed for people with diabetes,” and “#1 doctor recommended brand” claims on the Products’  
9 labels and/or packaging, and/or discontinuance of the Products’ manufacture, marketing, and/or  
10 sale. **Two**, Plaintiff seeks, on his behalf and on behalf of the Class, monetary recovery of the  
11 premium consumers paid for the Products due to the false and deceptive labeling, consistent with  
12 permissible law (including, for example, damages, restitution, disgorgement, and any applicable  
13 penalties solely as those causes of action so permitted).

14    **II.    JURISDICTION AND VENUE**

15           14.    This Court has subject matter jurisdiction of this action pursuant to the Class Action  
16 Fairness Act of 2005, 28 U.S.C. Section 1332, because: (i) the Class consists of 100 or more  
17 members, (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and  
18 costs, and (iii) minimal diversity exists because at least one Plaintiff (CA) and Defendant (IL) are  
19 citizens of different states. This Court has supplemental jurisdiction over state law claims pursuant  
20 to 28 U.S.C. Section 1367.

21           15.    Venue is proper in this District under 28 U.S.C. Section 1391 because a substantial  
22 part of the events, omissions, and acts giving rise to the claims occurred in this District. Defendant  
23 markets and sells Products in this District, Defendant gains substantial revenue and profits from  
24 doing business in this District, and consumers pay Defendant in this District.

25           16.    Defendant is subject to personal jurisdiction in California based upon sufficient  
26 minimum contacts that exist between Defendant and California. Defendant is authorized to do and  
27 is doing business in California, and Defendant advertises and solicits business in California.  
28 Defendant has purposefully availed itself of the protections of California law and should reasonably

1 expect to be hauled into court in California for harm arising out of its pervasive contacts with  
2 California.

3 **III. PARTIES**

4 17. **Plaintiff Steven Prescott.** The following is alleged based upon Plaintiff's personal  
5 knowledge:

- 6 a. **Residence.** Plaintiff is, and at all times relevant was, a resident of California residing  
7 in the county of Santa Cruz.
- 8 b. **Purchase Details and Background Information.** Plaintiff was diagnosed with Type  
9 2 diabetes in 2005 and continues to suffer from diabetes through the time of the filing  
10 of this Complaint. Plaintiff purchased the Glucerna Original Shake Homemade  
11 Vanilla and Glucerna Original Shake Creamy Strawberry Products in California  
12 within the last four (4) years of the filing of this Complaint from a Rite Aid store  
13 located in Santa Cruz, California in or around September 2021. Plaintiff paid  
14 approximately \$12.99 for each pack of six.
- 15 c. **Reliance on Challenged Representations.** In making his purchases, Plaintiff  
16 understood the Products' advertising to mean that the Products would aid in managing  
17 his diabetes. Plaintiff relied upon Defendant's labeling, marketing, and advertising  
18 claims, that the Products could "[ ] help manage blood sugar," are "scientifically  
19 designed for people with diabetes," and are the "#1 doctor recommended brand."
- 20 d. **Caution/Damages.** Plaintiff would not have purchased the Products, or would not  
21 have paid as much for the Products, had he known they could not provide the  
22 advertised benefits.
- 23 e. **Desire to Repurchase:** Plaintiff continues to see the Products available for purchase  
24 and would like to purchase the Products again in the future if he could be sure the  
25 Products were compliant with California and consumer protection laws.
- 26 f. **Lack of Personal Knowledge and Expertise:** Plaintiff is not personally familiar  
27 with, and does not possess any specialized knowledge skill, experience, or education,  
28 in the manufacture of nutritional drinks and, therefore, Plaintiff has no way of

1 determining whether Defendant’s Products can actually “[ ] help manage blood sugar,”  
2 are “scientifically designed for people with diabetes,” and are the “#1 doctor  
3 recommended brand.”

4 g. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the Products’  
5 representations, statements, or functions as they are advertised.

6 18. **Plaintiff’s Future Harm.** Defendant continues to market and sell the Products as  
7 nutritional drinks and powders that “[ ] help manage blood sugar,” are “scientifically designed for  
8 people with diabetes,” and are the “#1 doctor recommended brand.” Plaintiff wants to purchase the  
9 Products in the future if he can be sure the Products can provide the advertised benefits. However,  
10 Plaintiff is an average consumer who is not sophisticated in, for example, the ingredients that go  
11 into making diabetic nutritional drinks and powders, similar to and including the Products, and he  
12 cannot determine if the Products can achieve their advertised benefits. Since Plaintiff would like to  
13 purchase the Products again—despite the fact that the Products currently cannot achieve the  
14 advertised benefits—Plaintiff would likely and reasonably, but incorrectly, assume the Products can  
15 achieve the advertised benefits. Accordingly, Plaintiff is at risk of reasonably, but incorrectly,  
16 assuming that Defendant has fixed the Products such that Plaintiff may buy it again, believing it can  
17 achieve the advertised benefits of diabetes and blood sugar management. In this regard, Plaintiff is  
18 currently and, in the future, deprived of the ability to rely on the Products’ labeling and packaging.  
19 However, an injunction prohibiting use of the Challenged Representations unless true would enable  
20 Plaintiff to rely confidently on the Product labels in making his future purchase decisions.

21 19. **Defendant Abbott Laboratories** is a company headquartered in Abbott Park,  
22 Illinois. Abbott Laboratories is located at 100 Abbott Park Road, Abbott Park, Illinois 60064.  
23 Defendant, directly and through its agents, has substantial contacts with and receives substantial  
24 benefits and income from and through the State of California. Defendant is the owner, manufacturer,  
25 and/or distributor of the Products, and is a company that created and/or authorized the false,  
26 misleading, and deceptive labeling and packaging for the Products. Defendant and its agents  
27 manufactured, advertised, marketed, and sold the Products in this jurisdiction and in this judicial  
28 district. The unfair, unlawful, deceptive, and misleading false advertising claims on the Products



1 were prepared, authorized, ratified, and/or approved by Defendant and its agents, and, accordingly,  
 2 disseminated throughout the State of California and nationwide by Defendant and its agents to  
 3 deceive and mislead consumers into purchasing the Products.

#### 4 **IV. FACTUAL ALLEGATIONS**

##### 5 **A. Background on Products and Product Claims**

6 20. **Sucralose.** Sucralose was discovered in 1976 by chemists who were testing it for use  
 7 as an insecticide. Because of its sweet taste, it was also found to be useful as food. Sucralose is  
 8 synthesized by chlorinating the sugar sucrose, by substituting three hydroxyl groups with three  
 9 chlorine atoms. Sucralose is approximately 600 times sweeter than sucrose, or sugar. Since 1998,  
 10 Defendant’s Glucerna brand has been associated with shakes and powders purportedly “formulated  
 11 specifically for diabetics and others with dietary restrictions,”<sup>2</sup> including the Products featuring  
 12 sucralose.

13 21. **Diabetes, Generally.** Roughly 37.3 million Americans, or 1 in 10 Americans, have  
 14 diabetes.<sup>3</sup> Diabetes is characterized by high blood sugar caused by the inability to produce enough  
 15 insulin—a hormone that allows sugar to be removed from the blood stream and used for energy in  
 16 the cells of the pancreas.<sup>4</sup> The most common form of diabetes is Type 2 diabetes, which impairs  
 17 the pancreas due to insulin resistance typically as a result of diet and lifestyle factors.<sup>5</sup> Insulin  
 18 resistance means that the cells in the pancreas stop responding to insulin that normally triggers the  
 19 flow of glucose into the cells.<sup>6</sup> When the cells become resistant, insulin is no longer able to signal  
 20 glucose uptake, so it remains in the blood stream where it causes problems like organ failure and  
 21 diabetes.<sup>7</sup> People who suffer from Type 2 diabetes may be prescribed medicine but generally  
 22

23 <sup>2</sup> See Defendant’s official website at, <http://www.abbott.com/about-abbott/our-heritage.html> (last  
 24 visited August 10, 2023).

25 <sup>3</sup> *The Facts, Stats, and Impacts of Diabetes*, CDC,  
 26 [https://www.cdc.gov/diabetes/library/spotlights/diabetes-facts-  
 stats.html#:~:text=37.3%20million%20Americans%E2%80%94about%201,t%20know%20they%  
 20have%20it](https://www.cdc.gov/diabetes/library/spotlights/diabetes-facts-stats.html#:~:text=37.3%20million%20Americans%E2%80%94about%201,t%20know%20they%20have%20it) (last visited Aug. 21, 2023).

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

28 <sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1 manage the disease via exercise and healthy eating. That is why people with Type 2 diabetes seek  
2 out food products that are nutritional and can help them manage their blood sugar.

3       22. **The Products Contain Express and Implied Health Claims.** The Products claim to  
4 aid consumers suffering from diabetes in managing their blood sugar levels. The Diabetes Health  
5 Claims not only serve as express claims regarding diabetes, but they also serve as implied health  
6 claims to all consumers, including non-diabetics, who reasonably understand the claims to mean the  
7 Products are healthy shakes and powders for people with diabetes as well as those without.

8           a. The Glucerna Original Shakes, Glucerna Hunger Smart Shakes, Glucerna  
9 Protein Smart Shakes and Glucerna Original Snack Shakes contain the  
10 following claims directly on the front of the packaging:

11           i. “To Help Manage Blood Sugar”

12           ii. “Scientifically Designed For People With Diabetes”

13           iii. “#1 Doctor Recommended Brand”

14           b. The Glucerna Hunger Smart Powders contain the following statements on the  
15 front of the packaging: “Scientifically Designed For People With Diabetes”  
16 and “#1 Doctor Recommended Brand.”

17       23. **The Products Contain Sucralose, Which is Harmful to Diabetics and is Generally**  
18 **Unhealthy.** A core ingredient in all the Products is sucralose. While the Products purport to be  
19 designed specifically for people with diabetes and to aid with blood sugar management, sucralose  
20 has been shown to induce and worsen obesity, metabolic syndrome, and Type 2 diabetes itself by  
21 interfering with bodily responses that contribute to control glucose and energy balance.<sup>8</sup> The  
22 ingestion of sucralose causes blood sugar destabilization by triggering an abnormally high reaction  
23 to glucose, causing it to irrationally spike after consuming a normal meal.<sup>9</sup> A 2017 study found that  
24 after only two weeks of daily sucralose intake, there was a glucose absorption enhancement,

25 \_\_\_\_\_  
26 <sup>8</sup> M. Yanina Pepino, *Metabolic Effects of Non-Nutritive Sweeteners*, 152 (PART B) PHYSIOLOGY &  
27 BEHAV., 450, 450 (Dec. 1, 2015),  
<https://www.sciencedirect.com/science/article/pii/S0031938415003728#bb0215>.

28 <sup>9</sup> M. Yanina Pepino et al., *Sucralose Affects Glycemic and Hormonal Responses to an Oral*  
*Glucose Load*, 36 DIABETES CARE 2530, 2530-34 (Apr. 30, 2013),  
<https://pubmed.ncbi.nlm.nih.gov/23633524/>.

1 worsening blood glucose response to external glucose, and a deleterious impact on glycemic control,  
2 which causes a predisposition for diabetes in healthy adults.<sup>10</sup>

3 24. In an even more recent large-scale study of 105,588 participants conducted in July  
4 2023 researchers studied the relationship between sucralose (and other artificial sweeteners) and the  
5 risk of Type 2 diabetes. The study discovered that as compared to non-consumers of sucralose, those  
6 who consume sucralose had a higher risk of developing Type 2 diabetes.<sup>11</sup>

7 25. Further undermining Defendant's Diabetes Health Claims is a May 2023  
8 comprehensive review of 11 meta-analyses derived from 7 systemic reviews finding that  
9 consumption of artificially sweetened beverages, including sucralose, is associated with a higher  
10 risk of obesity, Type 2 diabetes, hypertension, cardiovascular disease incidence, and all-cause  
11 mortality.<sup>12</sup>

12 26. **Sucralose Damages Pancreatic Beta-Cells.** While the Products claim "to help  
13 manage blood sugar," the truth is the sucralose in the Products *deregulates* blood sugar by disrupting  
14 the gut microbiome, causing gut dysbiosis, and damaging residual functioning of the pancreas  
15 through multiple pathways. It induces a prediabetic state by killing beta cells of the pancreas that  
16 release insulin, which after prolonged consumption leads to diabetes.<sup>13</sup> When these beta cells die,  
17 insulin is no longer produced, and diabetes becomes more severe and permanent.<sup>14</sup> Sucralose can

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20 <sup>10</sup> Richard Young et al., *Impact of Artificial Sweeteners on Glycaemic Control in Healthy*  
21 *Humans*, EUROPEAN ASS'N FOR THE STUDY OF DIABETES, (Sept. 14, 2017),  
22 <https://www.easd.org/media-centre/home.html#!resources/impact-of-artificial-sweeteners-on-glycaemic-control-in-healthy-humans>.

23 <sup>11</sup> Charlotte Debras et al., *Artificial Sweeteners and Risk of Type 2 Diabetes in the Prospective*  
24 *NutriNet-Sante Cohort*, DIABETES CARE (July 25, 2023),  
25 <https://diabetesjournals.org/care/article/doi/10.2337/dc23-0206/153434/Artificial-Sweeteners-and-Risk-of-Type-2-Diabetes>.

26 <sup>12</sup> Cristina Diaz et al., *Artificially Sweetened Beverages and Health Outcomes: An Umbrella*  
27 *Review*, 14(4) ADVANCES IN NUTRITION 710, 710 (July, 2023),  
28 <https://www.sciencedirect.com/science/article/pii/S2161831323003150?via%3Dihub>.

<sup>13</sup> S. Gupta et al., *Sucralose Induced Pancreatic Toxicity in Albino Rats: Histomorphological*  
*Evidence*, 31 J. MORPHOL. SCI 123, 125-6 (2014), <https://d-nb.info/1181607574/34>.

<sup>14</sup> Patrik Rorsman & Frances M Ashcroft, *Pancreatic  $\beta$ -Cell Electrical Activity and Insulin*  
*Secretion: Of Mice and Men*, 98 (1) PHYSIOLOGICAL REVIEWS 117, 117-18 (Jan. 1, 2018),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5866358/>.

1 also cause necrosis of the pancreas and inflammation of the liver because of its negative effect on  
2 gut health.<sup>15</sup>

3       **27. Sucralose Causes Insulin Resistance.** Sucralose decreases insulin sensitivity,  
4 meaning it causes cells to be more resistant to insulin, which signals the cells to take sugar out of  
5 the bloodstream.<sup>16</sup> For example, in a 2020 study, participants were given either sucralose or water  
6 followed by a glucose tolerance test. The study found that those who consumed sucralose had higher  
7 blood insulin levels.<sup>17</sup> This can cause a suffering pancreas, as seen in Type 2 diabetics, to work  
8 even harder, pumping more and more insulin resulting in the cells becoming more resistant. Over  
9 time, the pancreas can shut down and the cells no longer respond to insulin (i.e., insulin resistance)  
10 which can cause high blood sugar and diabetes.<sup>18</sup>

11       **28.** The insulin resistance caused by sucralose also impacts healthy individuals. A 14-day  
12 short-term study that tested sucralose consumption at the 15% Acceptable Daily Intake (ADI) in  
13 healthy participants found a significant decrease in insulin sensitivity.<sup>19</sup> Another short-term study  
14 lasting 10 days discovered that when sucralose is paired with a carbohydrate such as maltodextrin,  
15 as it is in Defendant's Products, its consumption decreases insulin sensitivity in non-diabetic  
16 participants.<sup>20</sup> Likewise, following a 4-week consumption of sucralose in healthy participants in a  
17 randomized, double-blind, placebo-controlled study, sucralose was found to decrease insulin

18 \_\_\_\_\_  
19 <sup>15</sup> Xiaoming Bian et al., *Gut Microbiome Response to Sucralose and Its Potential Role in Inducing*  
20 *Liver Inflammation in Mice*, 8 FRONT PHYSIOL 487, 487-88 (July 24, 2017),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5522834/>.

21 <sup>16</sup> Yanina M. Pepino, *The Not-So Sweet Effects of Sucralose on Blood Sugar Control*, 108(3) THE  
22 AM. J. OF CLINICAL NUTRITION 431, 431-432 (Sept., 2018),  
<https://www.sciencedirect.com/science/article/pii/S0002916522029665?via%3Dihub>.

23 <sup>17</sup> Kushagra Mathur et al., *Effect of Artificial Sweeteners on Insulin Resistance Among Type-2*  
24 *Diabetes Mellitus Patients*, 9 (1) J. FAM. MED PRIM. CARE 69, 69 (2020),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7014832/>.

25 <sup>18</sup> *Type 2 Diabetes*, CDC, <https://www.cdc.gov/diabetes/basics/type2.html> (last visited Aug. 10,  
26 2023).

27 <sup>19</sup> Alonso Romo-Romo et al., *Sucralose Decrease Insulin Sensitivity in Healthy Subjects: A*  
28 *Randomized Controlled Trial*, 108 AM. J. CLINICAL NUTRITION 485, 485 (Sept. 1, 2018),  
<https://pubmed.ncbi.nlm.nih.gov/30535090/>; Pepino, *supra* note 16.

<sup>20</sup> Jelle R. Dalenberg et al., *Short-Term Consumption of Sucralose With, but Not Without,*  
*Carbohydrate Impairs Neural and Metabolic Sensitivity to Sugar in Humans*, 31(3) CELL  
METABOLISM 493, 493 (Mar. 3, 2020), <https://www.cell.com/cell-metabolism/fulltext/S1550-41312030057-7>.



1 sensitivity.<sup>21</sup> Notably, in a randomized, placebo-controlled clinical trial, even a single 48 mg sip of  
 2 sucralose increased the amount of insulin in the blood to an unhealthy level (known as  
 3 hyperinsulinemia) in otherwise healthy participants.<sup>22</sup>

4 29. In addition, because sucralose acts like glucose, it gets mistaken as such by the sweet  
 5 taste receptors in the pancreas. This weakens insulin receptors, causing the release of insulin that  
 6 leads to Type 2 diabetes and obesity.<sup>23</sup> Sucralose also causes insulin resistance by triggering faster  
 7 insulin secretion rate while decreasing insulin clearance (i.e., removal from the blood).<sup>24</sup> This  
 8 heightened level of insulin in the blood further weakens insulin receptors which prevents cells from  
 9 taking in glucose, causing permanent high blood sugar and a weakened pancreas—a feature of  
 10 diabetes.<sup>25</sup>

11 30. **Sucralose Harms the Gut Microbiome.** Sucralose has also been shown to cause gut  
 12 dysbiosis (i.e., an imbalance between good and bad bacteria in the gut) and inflammation.<sup>26</sup> A  
 13 disruption in the bacterial environment in the gut from sucralose causes inflammation, worsens  
 14 insulin resistance, and promotes obesity and increases sugar cravings.<sup>27</sup> Even minimal amounts of  
 15 sucralose intake can increase acidity of the entire GI tract and kill good bacteria for weeks after  
 16 consumption.<sup>28</sup> Interference with gut microbiota from sucralose also induces glucose intolerance

17  
 18 <sup>21</sup> Amornpan Lertrit et al., *Effects of Sucralose on Insulin and Glucagon-Like Peptide-1 Secretion*  
 19 *in Healthy Subjects: A Randomized, Double-Blind, Placebo-Controlled*, 55-56 NUTRITION 125,  
 125 (Nov., 2018),

20 <https://www.sciencedirect.com/science/article/abs/pii/S0899900718302557?via%3Dihub>.

21 <sup>22</sup> Angelica Y. Gomez-Arauz et al., *A Single 48mg Sucralose Sip Unbalances Monocyte*  
 22 *Subpopulations and Stimulates Insulin Secretion in Healthy Young Adults*, J. IMMUNOL RSCH.  
 (Apr. 28, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6512026/>.

23 <sup>23</sup> Mathur, *supra* note 17.

24 <sup>24</sup> *Id.*

25 <sup>25</sup> *Id.*

26 <sup>26</sup> Susan S. Schiffman & Kristina I. Rother, *Sucralose, A Synthetic Organochlorine Sweetener:*  
 27 *Overview of Biological Issues*, 16 J. OF TOXICOLOGY AND ENV'T HEALTH, PART B 399, 399  
 (Nov. 12, 2013),

28 <https://www.tandfonline.com/doi/pdf/10.1080/10937404.2013.842523?noFrame=true>.

<sup>27</sup> Clare J. Lee et al., *Gut Microbiome and its Role in Obesity and Insulin Resistance*, 1461(1) ANN  
 N.Y. ACAD. SCI. 37, 37 (May 14, 2019), <https://pubmed.ncbi.nlm.nih.gov/31087391/>.

<sup>28</sup> Mohamed B. Abou-Donia et al., *Splenda Alters Gut Microflora and Increases Intestinal p-*  
*Glycoprotein and Cytochrome p-450 in Male Rats*, 71 J TOXICOL. ENV'T. HEALTH 1415 (2008)  
<https://pubmed.ncbi.nlm.nih.gov/18800291/>.

1 and interacts with sweet-taste receptors in the digestive system that play a vital role in glucose  
 2 absorption and insulin secretion, meaning sucralose deregulates blood sugar management.<sup>29</sup>  
 3 Additionally, the sucralose induced gut dysbiosis triggers beta cell destruction of the pancreas, an  
 4 organ necessary for our bodies to produce insulin which naturally regulates blood sugar.<sup>30</sup> In a  
 5 randomized clinical trial study, young, healthy participants who consumed 48 mg of sucralose every  
 6 day for ten weeks were found to have gut dysbiosis.<sup>31</sup> A 2018 study conducted over 6-weeks found  
 7 that sucralose worsened gut inflammation in mice with Crohn’s disease.<sup>32</sup>

8       31. **Sucralose Promotes Obesity.** Sucralose also increases sugar cravings, which can  
 9 lead to overconsumption of sugars and cause weight gain and obesity.<sup>33</sup> Obese individuals who  
 10 consume sucralose are found to have much higher blood sugar and insulin spikes in response to  
 11 normal sugar, which not only promotes weight gain, but also promotes insulin resistance as it  
 12 impairs insulin signaling that causes less glucose uptake from the blood.<sup>34</sup> Thus, consumption of  
 13 sucralose increases the risk of Type 2 diabetes and obesity, thereby decreasing the overall health  
 14 and life expectancy of an individual.<sup>35</sup> Sucralose can also induce liver inflammation,<sup>36</sup> and further

15 \_\_\_\_\_  
 16 <sup>29</sup> *Id.*

17 <sup>30</sup> Gupta, *supra*, note 13.

18 <sup>31</sup> Alexander Rodriguez-Palacios et al., *The Artificial Sweetener Splenda Promotes Gut*  
 19 *Proteobacteria, Dysbiosis, and Myeloperoxidase Reactivity in Crohn’s Disease—Like Ileitis*, 24  
 20 *INFLAMMATORY BOWEL DISEASE* 1005, 1005 (Mar. 15, 2018),  
 21 <https://academic.oup.com/ibdjournal/article/24/5/1005/4939054>.

22 <sup>32</sup> Lucia A. Mendez-Garcia et al., *Ten-Week Sucralose Consumption Induces Gut Dysbiosis and*  
 23 *Altered Glucose and Insulin Levels in Healthy Young Adults*, 10 *MICROORGANISMS* 434, 434 (Feb.  
 24 14, 2022), <https://www.mdpi.com/2076-2607/10/2/434/htm>.

25 <sup>33</sup> Qing Yang, *Gain Weight by “Going Diet?” Artificial Sweeteners and the Neurobiology of*  
 26 *Sugar Cravings*, 83 *YALE J. BIOL. MED.* 101, 101 (2010),  
 27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892765>; Qiao-Ping Wang et al., *Sucralose*  
 28 *Promotes Food Intake Through NPY and a Neuronal Fasting Response*, 24 *CELL METABOLISM*  
 75, 75 (2016), [https://www.cell.com/cell-metabolism/comments/S1550-4131\(16\)30296-0#secsectitle0010](https://www.cell.com/cell-metabolism/comments/S1550-4131(16)30296-0#secsectitle0010).

29 <sup>34</sup> Hubert Kolb et al., *Insulin: Too Much of a Good Thing is Bad*, *BMC MED* (2020),  
 30 <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-020-01688-6#:~:text=Because%20of%20the%20largely%20unrestricted,increased%20risk%20of%20cardiovascular%20disease.>

31 <sup>35</sup> *Id.*

32 <sup>36</sup> Xiaoming Bian et al., *Gut Microbiome Response to Sucralose and its Potential Role in Inducing*  
 33 *Liver Inflammation in Mice*, 8 *FRONT. PHYSIOL.* 487, 487 (July 23, 2017),  
 34 <https://www.frontiersin.org/articles/10.3389/fphys.2017.00487/full>.

1 exacerbate fatty liver, or non-alcoholic liver disease. A study conducted in February 2023 found  
 2 that newborns whose mothers heavily consumed sucralose during their pregnancy had a higher birth  
 3 weight than those whose mothers consumed sucralose and other non-nutritive sweeteners only  
 4 sporadically.<sup>37</sup> The newborns were significantly heavier and above the 95th percentile of birth  
 5 weight.

6 **32. Surcalose-6-Acetate, a Sucralose Metabolite, has Been Linked to Genotoxicity.**

7 Sucralose-6-acetate is an impurity left over from the manufacturing process of sucralose. Regardless  
 8 of whether a product contains Sucralose-6-acetate in its original formulation, it is a metabolite of  
 9 sucralose, meaning it is formed in the gut once sucralose is digested. A recent study published on  
 10 May 29, 2023, found evidence that sucralose-6-acetate is genotoxic (i.e., destroys human DNA).<sup>38</sup>  
 11 The study reaffirms the harm sucralose causes by promoting diabetes and destabilizing blood sugar.  
 12 Further, sucralose-6-acetate, when exposed to human intestinal cells, increased inflammation,  
 13 oxidative stress, and caused cancer. The study further showed that sucralose disrupts essential  
 14 cellular processes that metabolize toxins, increasing risk of adverse toxicological exposures and  
 15 cellular toxicity. Both sucralose and sucralose-6-acetate impair the intestinal barrier to cause a  
 16 “leaky gut,” which is problematic because toxins that normally would be flushed out of the body in  
 17 feces are instead leaked out of the gut and absorbed into the bloodstream where they cause disease.

18 **33. Carrageenan and Choline Chloride, Other Ingredients in the Glucerna Original**  
 19 **Shakes, Glucerna Protein Smart Shakes, Glucerna Hunger Smart Shakes, and the Glucerna**  
 20 **Original Snack Shakes, Also Promote the Development of Diabetes by Causing Glucose**  
 21 **Intolerance and Insulin Resistance.** Exposure to low concentration (i.e., 10 mg/L) of the Product  
 22

23 <sup>37</sup> Jose Alfredo Aguayo-Guerrero et al., *Newborns from Mothers Who Intensely Consumed*  
 24 *Sucralose during Pregnancy Are Heavier and Exhibit Markers of Metabolic Alteration and Low-*  
 25 *Grade Systemic Inflammation: A Cross-Sectional, Prospective Study*, 11 *BIOMEDICINES* 650, 650  
 26 (Feb. 21, 2023), <https://www.semanticscholar.org/paper/Newborns-from-Mothers-Who-Intensely-Consumed-during-Aguayo-Guerrero-M%C3%A9ndez-Garc%C3%ADa/7e741d2539290a3f4583bc1f323c07bffc8d989>.

27 <sup>38</sup> Susan S. Schiffman et al., *Toxicological and Pharmacokinetic Properties of Suraclose-6-*  
 28 *Acetate and its Parent Sucralose: In Vitro Screening Assays*, 26(6) *J. OF TOXICOLOGICAL AND*  
*ENV'T HEALTH, PART B* 307, 307 (May 29, 2023),  
<https://www.tandfonline.com/doi/full/10.1080/10937404.2023.2213903>.

1 additive carrageenan (i.e., 10 mg/L) for only six days led to carrageenan-induced inflammation. This  
 2 impairs insulin signaling, meaning the cells do not take up glucose and the resulting high blood  
 3 glucose levels cause organ damage over time.<sup>39</sup> As a result, another study concluded that the  
 4 “*elimination* of dietary ingestion of carrageenan [like that in Defendant’s Shakes] may help in  
 5 efforts to reduce the incidence of diabetes and its associated morbidities.”<sup>40</sup> (emphasis added).  
 6 Despite this science, Defendant encourages diabetics and others to consume the Shakes, and thus  
 7 carrageenan, by virtue of the Challenged Representations.

8 34. The other added ingredient, choline chloride, also does not counteract insulin  
 9 resistance. Instead, in a 2013 study, researchers found that increased choline intake in mice that  
 10 were fed a high fat diet led to an increase in plasma glucagon which resulted in insulin resistance.<sup>41</sup>  
 11 The study thus concluded that too much dietary consumption of choline chloride could exacerbate  
 12 glucose and insulin resistance in people with obesity or Type 2 diabetes.<sup>42</sup>

13 35. **Maltodextrin, Another Ingredient in the Glucerna Original Shakes and the**  
 14 **Glucerna Original Snack Shakes, Also Promotes the Development of Diabetes by Causing**  
 15 **Glucose Intolerance and Insulin Resistance.** Maltodextrin—a carbohydrate—has a significant  
 16 Glycemic Index (GI) that supersedes the GI of table sugar.<sup>43</sup> It has also been identified as a factor  
 17 that can influence the gut microbiome.<sup>44</sup> A study on forty-five healthy young adults, aged 20-45,

18  
 19  
 20  
 21 <sup>39</sup> Sumit Bhattacharyya et al., *Exposure to Common Food Additive Carrageenan Alone Leads to*  
 22 *Fasting Hyperglycemia and in Combination with High Fat Diet Exacerbates Glucose Intolerance*  
 23 *and Hyperlipidemia Without Effect on Weight*, J. DIABETES RSCH. 1, 1 (Mar. 25, 2015),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4390184/pdf/JDR2015-513429.pdf>.

24 <sup>40</sup> *Id.*

25 <sup>41</sup> Wu, Gengshu et al., *Choline Supplementation Promotes Hepatic Insulin Resistance in*  
 26 *Phosphatidylethanolamine N- Methyltransferase-deficient Mice via Increased Glucagon Action*,  
 27 288(2) J. OF BIOLOGICAL CHEM. 837, 837-847 (2013) <https://doi.org/10.1074/jbc.M112.415117>.

28 <sup>42</sup> *Id.*

<sup>43</sup> Christine Mikstas, *What is maltodextrin?*, Nourish by WebMD (July 10, 2023),  
[https://www.webmd.com/diet/what-is-maltodextrin#:~:text=The%20glycemic%20index%20\(GI\)%20in,or%20diabetes%20can%20be%20fatal.](https://www.webmd.com/diet/what-is-maltodextrin#:~:text=The%20glycemic%20index%20(GI)%20in,or%20diabetes%20can%20be%20fatal.)

<sup>44</sup> *Id.*



1 who did not regularly consume a low-calorie sweetener (LCD) found that insulin sensitivity was  
2 reduced when consuming both sucralose and maltodextrin in a beverage.<sup>45</sup>

3       **36. The World Health Organization (“WHO”) Advises Against the Consumption of**  
4 **Sucralose.** On May 15, 2023, the WHO released a set of guidelines urging against the consumption  
5 of sucralose, among other non-sugar sweeteners, “to control body weight or reduce the risk of  
6 noncommunicable diseases (NCDs),” including diabetes. The WHO’s advisory comes on the heels  
7 of “the findings of a systematic review of the available evidence ... suggest[ing] that there may be  
8 potential undesirable effects from long-term use of NSS [non-sugar sweeteners], such as an  
9 *increased risk of type 2 diabetes*, cardiovascular diseases, and mortality in adults.”<sup>46</sup> (emphasis  
10 added). Still, Defendant continues to tout the Products as suitable for those with diabetes and as  
11 recommended by doctors.

12       **37. The Center for Science in the Public Interest (“CSPA”) Advises Against**  
13 **Consumption of Sucralose.** The CSPA, one of the oldest, independent, science-based, and  
14 consumer advocacy non-profit organizations in the United States has also stated that sucralose, like  
15 that found in the Products, should be “avoided,” after a large 2016 Italian study on male mice found  
16 that sucralose caused leukemia and related blood cancers.<sup>47</sup>

17       **38. Even the First Round of Testing for FDA Approval Found Sucralose to Affect**  
18 **Blood Sugar.** In 1999, the FDA approved sucralose as a general-purpose sweetener. However, a  
19 six-month clinical test on sucralose conducted during the first round of FDA-approval found  
20

21  
22  
23 <sup>45</sup> Jelle R. Dalenberg et al., *Short-Term Consumption of Sucralose with, but Not without,*  
24 *Carbohydrate Impairs Neural and Metabolic Sensitivity to Sugar in Humans*, 31(3) CELL METAB.  
25 493, 493-502 (Mar. 3, 2020),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7784207/#:~:text=These%20findings%20indicate%20that%20consumption%20of%20sucralose%20in,suggesting%20dysregulation%20of%20gut-brain%20control%20of%20glucose%20metabolism.>

26 <sup>46</sup> *WHO advises not to use non-sugar sweeteners for weight control in newly released guideline*,  
27 WORLD HEALTH ORG., (May 15, 2023), [https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline.](https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline)

28 <sup>47</sup> *Sucralose: Chemical Cuisine Rating*, CTR. FOR SCI. IN THE PUBLIC INTEREST (Jan. 4, 2021),  
[https://www.cspinet.org/article/sucralose.](https://www.cspinet.org/article/sucralose)

1 sucralose to have a *negative* effect on blood sugar.<sup>48</sup> This stands in contrast to Defendant’s false  
2 claim that the Products “help manage blood sugar.”

3 39. **The Products’ Substantial Similarity:** Plaintiff purchased the Glucerna Original  
4 Shakes in the Homemade Vanilla and Creamy Strawberry Product flavors (“**Purchased**  
5 **Products**”).

6 40. The Glucerna Original Shakes, including without limitation, Classic Butter Pecan,  
7 Chocolate Caramel, and Rich Chocolate Product flavors (“Original Shakes”); Glucerna Hunger  
8 Smart Shakes, including without limitation, Rich Chocolate, Homemade Vanilla, Creamy  
9 Strawberry, and Peaches & Crème flavors (“Hunger Smart Shakes”); Glucerna Protein Smart  
10 Shakes, including without limitation, Chocolate and Vanilla flavors (“Protein Smart Shakes”); and  
11 Glucerna Original Snack Shake, including without limitation, Rich Chocolate and Homemade  
12 Vanilla flavors (“Snack Shakes”) are substantially similar to the Purchased Products:

- 13 **i. Defendant.** The Original Shakes, Hunger Smart Shakes, Protein Smart  
14 Shakes, and Snack Shakes are manufactured, sold, marketed, advertised,  
15 labeled, and packaged by Defendant.
- 16 **ii. Brand.** The Original Shakes, Hunger Smart Shakes, Protein Smart Shakes,  
17 and Snack Shakes are sold under the same brand name: Glucerna.
- 18 **iii. Purpose.** The Original Shakes, Hunger Smart Shakes, Protein Smart Shakes,  
19 and Snack Shakes are intended to be consumed.
- 20 **iv. Key Ingredients.** The Original Shakes, Hunger Smart Shakes, Protein  
21 Smart Shakes, and Snack Shakes are made largely from the same  
22 ingredients, including, but not limited to sucralose, carrageenan, choline  
23 chloride, and maltodextrin (in Original Shakes and Snack Shakes only).

24  
25  
26  
27 <sup>48</sup> *Food Additives Permitted for Direct Addition to Food for Human Consumption: Sucralose*, 21  
28 C.F.R. PART 172 (Apr. 3, 1998), <https://www.govinfo.gov/content/pkg/FR-1998-04-03/html/98-8750.html>.

- 1                   v.    **Marketing Demographics.** The Original Shakes, Hunger Smart Shakes,  
2                   Protein Smart Shakes, and Snack Shakes are marketed directly to diabetic,  
3                   pre-diabetic, and health-conscious consumers for personal consumption.
- 4                   vi.   **Representations.** The Products are labeled and advertised using the  
5                   Challenged Representations (i.e., “to help manage blood sugar,”  
6                   “scientifically designed for people with diabetes,” and “#1 doctor  
7                   recommended brand.”).
- 8                   vii. **Packaging.** The Original Shakes, Hunger Smart Shakes, Protein Smart  
9                   Shakes, and Snack Shakes are similarly packaged, including using similar  
10                  styles for written content. The Products’ front labeling share the same  
11                  marketing claims, including brand identity and identity of the product line.
- 12                viii. **Misleading Effect.** The misleading effect of the Challenged Representations  
13                  on consumers is the same for the Original Shakes, Hunger Smart Shakes,  
14                  Protein Smart Shakes, and Snack Shakes—consumers over-pay a premium  
15                  for a product that claims to provide blood sugar management benefits,  
16                  despite the inclusion of ingredients like sucralose, carrageenan, choline  
17                  chloride and maltodextrin (in the Original Shakes and Snack Shakes) that  
18                  worsen blood sugar.

19                41. The Glucerna Hunger Smart Shake Powders (“Powders”), including without  
20                limitation, the Homemade Vanilla and Rich Chocolate flavors are substantially similar to the  
21                Purchased Products as follows:

- 22                   i.    **Defendant.** The Powders are manufactured, sold, marketed, advertised, and  
23                   labeled by Defendant.
- 24                   ii. **Brand.** The Powders are sold under the same brand name: Glucerna.
- 25                   iii. **Purpose.** The Powders are intended to be consumed.
- 26                   iv. **Key Ingredients.** The Powders are made largely from the same ingredients,  
27                   including sucralose.
- 28

- v. **Marketing Demographics.** The Powders are marketed directly to diabetic, pre-diabetic, and health-conscious consumers for personal consumption.
- vi. **Representations.** The Powders are labeled and advertised using the Challenged Representations (i.e., “scientifically designed for people with diabetes” and “#1 doctor recommended brand”).
- vii. **Misleading Effect.** The misleading effect of the Challenged Representations on consumers is the same for the Powders—consumers over-pay a premium for a product that claims to provide blood sugar management benefits, despite the inclusion of ingredients like sucralose that worsen blood sugar.

**B. Plaintiff and Reasonable Consumers Were Misled by the Challenged Representations**

42. **Representations on the Products’ Labels.** Defendant manufactures, markets, advertises, labels, packages, and sells the Products with the following representations: “to help manage blood sugar,” “scientifically designed for people with diabetes,” and “#1 doctor recommended brand,” respectively. (See “**Exhibits 1-5**,” *supra*).

43. On the Shakes, the section symbol after the “#1 Doctor Recommended Brand §” representation connects to the “§ Scientifically Designed for People with Diabetes” statement. The labels on the Powder similarly connect these statements but using a † symbol. In both cases, connecting the two statements further underscores for consumers the purported suitability of the Products for diabetics.

44. The false representation on the Shake’s front label “to help manage blood sugar” is followed by a † symbol, leading to this statement on the side of the Product: “Designed to help minimize blood sugar spikes in people with diabetes compared to high glycemic carbohydrates.” To the extent consumers see this side-label statement, it affirms the false notion that the Products are specifically suited for people with diabetes.

45. **Consumers Reasonably Believe the Products Can Help Them Manage Their Blood Sugar.** Plaintiff and other reasonable consumers were deceived by Defendant into believing that the Products conform to the Challenged Representations. Reasonable consumers interpret the



1 Challenged Representations to mean that the Products can aid in managing their blood sugar and/or  
2 are designed for their diabetic condition. Reasonable consumers have no way of knowing, nor do  
3 they have a reason to know or believe, that the Products cannot provided the advertised benefits.

4       **46. Consumers Reasonably Believe the Challenged Representations are Implied**  
5 **Health Claims.** Plaintiff and other reasonable consumers, including those without diabetes or pre-  
6 diabetes, interpret the Challenged Representations to mean that the Products are nutritional shakes  
7 and powders. Specifically, consumers understand Defendant’s label claims that the Products “[  
8 help manage blood sugar,” are “scientifically designed for people with diabetes” and are the “#1  
9 doctor recommended brand” as an indication that the Products are uniquely healthy, given their  
10 doctor recommendation and their designation for people with medical conditions like diabetes. In  
11 making their purchases, Plaintiff and other reasonable consumers, including those without diabetes  
12 or pre-diabetes, relied on Defendant’s misrepresentations of health.

13       **47. Material.** The Challenged Representations are material to reasonable consumers,  
14 including Plaintiff, because they have the potential to influence consumers’ decision to purchase the  
15 Products, as set forth herein. Plaintiff would not have purchased the Products, or would have paid  
16 significantly less for them, if he had known that the Products’ label claims were false and  
17 misleading, that the Products cannot help in managing his blood sugar (but in actuality can worsen  
18 it), and that the Products are not otherwise suitable for diabetes care.

19       **48. Reliance.** Reasonable consumers, including Plaintiff, reasonably relied on the  
20 Products’ Challenged Representations, including understanding the representations to be implied  
21 health claims, in deciding to purchase the Products.

22       **49. Falsity.** The Products’ Challenged Representations are false and deceptive because  
23 the Products cannot provide the advertised benefits.

24       **50. Consumers Lack Knowledge of Deception/Fraudulence.** Consumers, including  
25 Plaintiff, who purchased the Products, did not know, and had no reason to know, at the time of  
26 purchase, that the Products were incapable of providing the advertising benefits.

27       **51. Defendant’s Knowledge.** Defendant knew, or should have known, that its Products’  
28 Challenged Representations were false, misleading, deceptive, and unlawful at the time that

1 Defendant manufactured, marketed, advertised, labeled, and sold the Products using the Challenged  
2 Representations to Plaintiff and the Class. Defendant intentionally and deliberately used the  
3 Challenged Representations to cause Plaintiff and similarly situated consumers to purchase the  
4 Products. Defendant, as the manufacturer, had exclusive control over how the Products were  
5 marketed and labeled, and Defendant readily and easily could have remedied the deception by  
6 stopping the use of the Challenged Representations to sell the Products. Defendant deliberately  
7 chose to market the Products with the Challenged Representations, thereby misleading consumers  
8 into buying or overpaying for the Products. Thus, Defendant knew, or should have known, at all  
9 relevant times, that the Challenged Representations mislead reasonable consumers, such as Plaintiff,  
10 into buying the Products to attain the product attributes that Defendant falsely advertised and  
11 warranted.

12 52. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the  
13 Products if they had known the Products could not provide the advertised benefits or would not have  
14 overpaid a price premium for the Products, if they had known that the Challenged Representations  
15 were false as labeled, claimed, promised, warranted, advertised, and represented. Accordingly,  
16 based on Defendant's material misrepresentations and omissions, reasonable consumers, including  
17 Plaintiff, purchased the Products to their detriment.

18 **C. No Adequate Remedy at Law**

19 53. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to  
20 equitable relief as no adequate remedy at law exists.

- 21 a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action  
22 pled herein vary. The limitations period is four years for claims brought under the  
23 UCL, which is one year longer than the statutes of limitations under the FAL and  
24 CLRA. In addition, the statutes of limitations vary for certain states' laws for breach  
25 of warranty and unjust enrichment/restoration, between approximately 2 and 6 years.  
26 Thus, Class members who purchased the Products more than 3 years prior to the filing  
27 of the complaint will be barred from recovery if equitable relief were not permitted  
28 under the UCL.

- 1           b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under  
2           the unfair prong of the UCL is broader than the other causes of action asserted herein.  
3           It includes, for example, Defendant’s overall unfair marketing scheme to brand the  
4           Products with the Challenged Representations across a multitude of media platforms,  
5           including the Products’ labels and packaging, over a long period of time, in order to  
6           gain an unfair advantage over competitor products and to take advantage of  
7           consumers’ desire for products that comport with the labeling and advertising. The  
8           UCL also creates a cause of action for violations of law (such as statutory or regulatory  
9           requirements and court orders related to similar representations and omissions made  
10          on the type of products at issue). Thus, Plaintiff and Class members may be entitled  
11          to restitution under the UCL, while not entitled to damages under other causes of  
12          action asserted herein (e.g., the FAL requires actual or constructive knowledge of the  
13          falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or  
14          acquires, by purchase or lease, any goods or services for personal, family, or  
15          household purposes) and other statutorily enumerated conduct).
- 16          c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief  
17          is appropriate on behalf of Plaintiff and members of the Class because Defendant  
18          continues to misrepresent the Products as alleged herein. Injunctive relief is necessary  
19          to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or  
20          unlawful conduct described herein and to prevent future harm—none of which can be  
21          achieved through available legal remedies (such as monetary damages to compensate  
22          past harm). Further, injunctive relief, in the form of affirmative disclosures, is  
23          necessary to dispel the public misperception about the Products that have resulted  
24          from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such  
25          disclosures would include, but are not limited to, publicly disseminated statements  
26          that the Products’ labeling and advertising is not true and providing accurate  
27          information about the Products’ true nature; and/or requiring prominent qualifications  
28          and/or disclaimers on the Products’ front label concerning the Products’ true nature.

1 An injunction requiring affirmative disclosures to dispel the public’s misperception  
2 and to prevent the ongoing deception and repeat purchases based thereon, is also not  
3 available through a legal remedy (such as monetary damages). In addition, Plaintiff is  
4 *currently* unable to accurately quantify the damages caused by Defendant’s future  
5 harm, because discovery and Plaintiff’s investigation has not yet completed, rendering  
6 injunctive relief all the more necessary. For example, because the court has not yet  
7 certified any class, the following remains unknown: the scope of the class, the  
8 identities of its members, their respective purchasing practices, prices of past/future  
9 Product sales, and quantities of past/future Product sales.

10 d. **Public Injunction.** Further, because a “public injunction” is available under the UCL,  
11 damages will not adequately “benefit the general public” in a manner equivalent to an  
12 injunction.

13 e. **Procedural Posture—Incomplete Discovery & Pre-Certification.** This is an initial  
14 pleading in this action and discovery has not yet commenced and/or is at its initial  
15 stages. No class has been certified yet. No expert discovery has commenced and/or  
16 completed. The completion of fact/non-expert and expert discovery, as well as the  
17 certification of this case as a class action, are necessary to finalize and determine the  
18 adequacy and availability of all remedies, including legal and equitable, for Plaintiff’s  
19 individual claims and any certified class. Plaintiff therefore reserves his right to amend  
20 this complaint and/or assert additional facts that demonstrate this Court’s jurisdiction  
21 to order equitable remedies where no adequate legal remedies are available for either  
22 Plaintiff and/or any certified class. Such proof, to the extent necessary, will be  
23 presented prior to trial of any equitable claims for relief and/or the entry of an order  
24 granting equitable relief.

25 **V. CLASS ALLEGATIONS**

26 54. **Class Definition.** Plaintiff brings this action on his own behalf and on behalf of all  
27 other persons similarly situated. The Class which Plaintiff seeks to represent is defined as follows:  
28



1 All residents of the United States who, within the four years prior to the  
2 filing of this Complaint, purchased the Products for purposes other than  
3 resale (the “Nationwide Class”); and

4 All residents of California who, within four years prior to the filing of this  
5 Complaint, purchased the Products for purposes other than resale (the  
6 “California Subclass”).

7 (“Nationwide Class” and “California Subclass,” collectively, the “Class”)

8 55. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its assigns,  
9 successors, and legal representatives; (ii) any entities in which Defendant has controlling interests;  
10 (iii) federal, state, and/or local governments, including, but not limited to, their departments,  
11 agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any  
12 judicial officer presiding over this matter and person within the third degree of consanguinity to  
13 such judicial officer.

14 56. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right to  
15 amend or otherwise alter the class definition presented to the Court at the appropriate time in  
16 response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

17 57. **Numerosity.** The Class is so numerous that their individual joinder herein is  
18 impracticable. On information and belief, members of the Class number in the thousands or  
19 hundreds of thousands throughout California and the United States. The precise number of Class  
20 members and their identities are unknown to Plaintiff at this time but may be determined through  
21 discovery. Class members may be notified of the pendency of this action by mail and/or publication  
22 through the distribution records of Defendant and third-party retailers and vendors.

23 58. **Common Questions Predominate.** Common questions of fact and law predominate  
24 over questions which may affect individual class members, including the following:

25 a. Whether Defendant’s conduct constitutes an unfair method of competition or  
26 unfair or deceptive act or practice in violation of California Civil Code Section 1750, *et seq.*;

27 b. Whether Defendant used deceptive representations in connection with the sale  
28 of the Product in violation of California Civil Code Section 1750, *et seq.*;

c. Whether Defendant represented the Products to have characteristics that they  
do not have in violation of California Civil Code Section 1750, *et seq.*;

1 d. Whether Defendant advertised the Products with the intent not to sell them as  
2 advertised in violation of California Civil Code Section 1750, *et seq.*;

3 e. Whether Defendant’s advertising is untrue or misleading within the meaning  
4 of Business and Professions Code Section 17500, *et seq.*;

5 f. Whether Defendant knew or by the exercise of reasonable care should have  
6 known its advertising was and is untrue or misleading in violation of Business and Professions Code  
7 Section 17500, *et seq.*;

8 g. Whether Defendant made false and misleading representations in its  
9 advertising and labeling of the Product in violation of Business and Professions Code Section 17500,  
10 *et seq.*;

11 h. Whether Defendant’s conduct is an unfair business act or practice within the  
12 meaning of Business and Professions Code Section 17200, *et seq.*;

13 i. Whether Defendant’s conduct is a fraudulent business act or practice within  
14 the meaning of Business and Professions Code Section 17200, *et seq.*;

15 j. Whether Defendant’s conduct is an unlawful business act or practice within  
16 the meaning of Business and Professions Code Section 17200, *et seq.*;

17 k. Whether Defendant’s conduct constitutes a breach of warranty;

18 l. Whether Defendant was unjustly enriched by its deceptive conduct;

19 m. Whether Plaintiff and the Class paid more money or a premium amount for  
20 the Products than they actually received; and

21 n. How much more money or premium amount Plaintiff and the Class paid for  
22 the Products than they actually received.

23 59. **Typicality.** Plaintiff’s claims are typical of the claims of the Class, and Plaintiff will  
24 fairly and adequately represent and protect the interests of the Class. Plaintiff has retained competent  
25 and experienced counsel in class action and other complex litigation.

26 60. **Adequacy.** Plaintiff is an adequate representative of the Class he seeks to represent  
27 because his interests do not conflict with the interests of the Class Members Plaintiff seeks to  
28 represent. Plaintiff will fairly and adequately protect Class Members’ interests and has retained

1 counsel experienced and competent in the prosecution of complex class actions, including complex  
2 questions that arise in consumer protection litigation.

3         61. **Superiority and Substantial Benefit:** A class action is superior to other available  
4 methods for fair and efficient adjudication of this controversy. The expense and burden of individual  
5 litigation would make it impracticable or impossible for the Class to prosecute their claims  
6 individually.

7         62. **Manageability.** The trial and litigation of Plaintiff's claims are manageable.  
8 Individual litigation of the legal and factual issues raised by Defendant's conduct would increase  
9 delay and expense to all parties and the court system. The class action device presents far fewer  
10 management difficulties and provides the benefits of a single, uniform adjudication, economics of  
11 scale, and comprehensive supervision by a single court.

12         63. **Injunctive/Equitable Relief.** Defendant has acted on grounds generally applicable to  
13 the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief  
14 appropriate with respect to the Class as a whole. The prosecution of separate actions by individual  
15 Class members would create the risk of inconsistent or varying adjudications with respect to  
16 individual Class members that would establish incompatible standards of conduct for Defendant.

17         64. **Inconsistent Rulings.** Absent a class action, Defendant will likely retain the benefits  
18 of its wrongdoing. Because of the small size of the individual Class members' claims, few, if any,  
19 Class members could afford to seek legal redress for the wrongs complained of herein. Absent a  
20 representative action, the Class will continue to suffer losses and Defendant will be allowed to  
21 continue these violations of law and to retain the proceeds of its ill-gotten gains.

22         65. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
23 Defendant's false representations and material omissions. Plaintiff and the Class purchased the  
24 Products under the false belief that the Products could provide the advertised benefits. Plaintiff and  
25 the Class relied upon Defendant's labeling, packaging, and advertising claims and would not have  
26 purchased the Products, or would paid significantly less for the Products, if they had known that the  
27 Products could not provide the advertised benefits.

28 ///





- b. Section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or grade . . . [when] they are of another.”
- c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as advertised.”

75. **Knowledge.** Defendant’s uniform material representations and omissions regarding the Products were likely to deceive, and Defendant knew or should have known that its representations and omissions were untrue and misleading.

76. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that Defendant intentionally misled and withheld material information from consumers, including Plaintiff, to increase the sales of the Products.

77. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the Class could not have reasonably avoided such injury. Plaintiff and members of the Class were unaware of the existence of the facts that Defendant suppressed and failed to disclose, and Plaintiff and members of the Class would not have purchased the Products and/or would have purchased them on different terms had they known the truth.

78. **Causation/Reliance/Materiality.** Plaintiff and the Class suffered harm as a result of Defendant’s violations of the CLRA because they purchased the Products relying on the Challenged Representations in deciding to purchase the Products. The Challenged Representations were a substantial factor. The Challenged Representations were material because a reasonable consumer would consider it important in deciding whether to purchase the Products.

79. **Section 1782(d) Notice Requirement.** Pursuant to California Civil Code, section 1782, on March 22, 2023, Plaintiff, on Plaintiff’s behalf and on behalf of members of the Class, notified Defendant of its alleged violations of the CLRA via U.S. Certified Mail.

80. **Causation/Damages (Section 1782(d)).** As a direct and proximate result of Defendant’s misconduct in violation of the CLRA, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.



1 price they paid for the Products. Further, Plaintiff and members of the Class have suffered and  
2 continue to suffer economic losses and other damages including, but not limited to, the amounts  
3 paid for the Products, and any interest that would have accrued on those monies, in an amount to be  
4 proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages,  
5 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said  
6 monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future  
7 harm that will result.

8 **COUNT THREE**

9 **Violation of California Unfair Competition Law,**  
10 **(Business & Professions Code Section 17200, *et seq.*)**  
11 **(*On Behalf of the California Subclass*)**

12 89. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
13 allegations contained in this complaint, as though fully set forth herein.

14 90. **California Subclass.** This cause of action is brought pursuant to Business and  
15 Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and the California Subclass who  
16 purchased the Product within the applicable statute of limitations.

17 91. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the  
18 “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall  
19 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
20 misleading advertising.”

21 92. **False Advertising Claims.** Defendant, in its advertising, labeling, and packaging of  
22 the Products, made misleading statements and fraudulent omissions regarding the quality and  
23 characteristics of the Products—specifically, Defendant labeled, advertised, and markets the  
24 Products as nutritional products that “[ ] help manage blood sugar,” are “scientifically designed for  
25 people with diabetes” and are the “#1 doctor recommended brand,” despite the Products’ inclusion  
26 of sucralose.

27 93. **Defendant’s Deliberately Fraudulent Marketing Scheme.** Defendant does not have  
28 any reasonable basis for the claims about the Products made in Defendant’s advertising and on

1 Defendant's packaging or labeling of the Products because the Products cannot provide the  
2 advertised benefits. Defendant knew and continues to know that the Products cannot provide the  
3 advertised benefits (i.e., diabetes care and blood sugar management), though Defendant  
4 intentionally advertised and marketed the Products to deceive reasonable consumers into believing  
5 that they could achieve the advertised benefits.

6       94. **Misleading Labeling, Advertising Cause Purchase of Product.** Defendant's  
7 labeling and advertising of the Products using the Challenged Representations, and continues to lead  
8 to, reasonable consumers, including Plaintiff, believing that the Products can truly provide diabetes  
9 care and blood sugar management benefits, when they cannot.

10       95. **Injury in Fact.** Plaintiff and the Class have suffered injury in fact and have lost money  
11 or property as a result of and in reliance upon Defendant's Challenged Representations—namely,  
12 Plaintiff and the Class lost the money they paid for the Products they purchased from Defendant.

13       96. **Conduct Violates the UCL.** Defendant's conduct, as alleged herein, constitutes  
14 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair  
15 competition and provides, in pertinent part, that "unfair competition shall mean and include  
16 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
17 advertising." Cal. Bus & Prof. Code § 17200. In addition, Defendant's use of various forms of  
18 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise  
19 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue  
20 or misleading advertising, and an unlawful business practice within the meaning of Business and  
21 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to  
22 deceive the consuming public, in violation of Business and Professions Code Section 17200.

23       97. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant  
24 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business  
25 interests.

26       98. **Business Practice.** All of the conduct alleged herein occurred and continues to occur  
27 in Defendant's business. Defendant's wrongful conduct is part of a pattern, practice and/or  
28 generalized course of conduct, which will continue daily until Defendant voluntarily alters its

1 conduct or Defendant is otherwise ordered to do so.

2 99. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,  
3 Plaintiff and the Class seek an order from this Court enjoining Defendant from continuing to engage,  
4 use, or employ its practice of labeling the Products as “to help manage blood sugar,” “scientifically  
5 designed for people with diabetes,” and “#1 doctor recommended brand” when they are not. Plaintiff  
6 and the members of the Class also seek an order requiring Defendant to disclose such information,  
7 and/or precluding Defendant from selling the Products.

8 100. **Causation/Restitution.** As a direct and proximate result of Defendant’s misconduct  
9 in violation of the UCL, Plaintiff and the Class were harmed in the amount of the purchase price  
10 they paid for the Products. Plaintiff and the Class have suffered and continue to suffer economic  
11 losses and other damages including, but not limited to, the amounts paid for the Products, and any  
12 interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
13 Plaintiff seeks restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the  
14 Class for said monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent  
15 ongoing and future harm that will result.

16 **“Unfair” Prong**

17 101. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any injury  
18 it causes outweighs any benefits provided to consumers and the injury is one that the consumers  
19 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal.  
20 App. 4th 1394, 1403 (2006).

21 102. **Injury.** Defendant’s action of mislabeling the Products with the Challenged  
22 Representations does not confer any benefit to consumers; rather, doing so causes injuries to  
23 consumers, who do not receive Products commensurate with their reasonable expectations, receive  
24 a Product of lesser standards than what they reasonably expected to receive, and are exposed to  
25 increased health risks. Consumers cannot avoid any of the injuries caused by Defendant’s deceptive  
26 labeling and advertising of the Products. The injuries caused by Defendant’s deceptive labeling and  
27 advertising outweigh any benefits.

28 103. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged



1 activity amounts to unfair conduct under California Business and Professions Code Section 17200.  
2 They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged  
3 victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9<sup>th</sup> Cir. 2012).

4 104. **No Utility.** Defendant’s conduct of falsely labeling and advertising the Products as  
5 nutritional drinks that can “help manage blood sugar,” “scientifically designed for people with  
6 diabetes,” and “#1 doctor recommended brand” have no utility and rather harms purchasers. Thus,  
7 the utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

8 105. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered  
9 to some legislative declared policy or proof of some actual or threatened impact on competition.”  
10 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

11 106. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged  
12 herein, is deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant knew  
13 or should have known of its unfair conduct. Defendant’s representations and omissions constitute  
14 an unfair business practice within the meaning of California Business and Professions Code Section  
15 17200.

16 107. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives  
17 to further its legitimate business interests, other than the conduct described herein. Defendant could  
18 have refrained from selling the Products.

19 108. **Defendant’s Wrongful Conduct.** All the conduct alleged herein occurs and  
20 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern or  
21 generalized course of conduct repeated on thousands of occasions daily.

22 109. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
23 the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ  
24 its practice of labeling the Products as nutritional products that can “[ ] help manage blood sugar,”  
25 are “scientifically designed for people with diabetes,” and are the “#1 doctor recommended brand.”

26 110. **Causation/Restitution.** Plaintiff and the Class have suffered injury in fact, have lost  
27 money, as a result of Defendant’s unfair conduct. Plaintiff and the Class paid for Products that could  
28 supposedly help with diabetes care and blood sugar management when they cannot. Plaintiff and

1 the Class would not have purchased the Products if they had known that the Products' advertising  
2 and labeling were deceptive. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-  
3 gotten gains pursuant to the UCL.

4 **"Fraudulent" Prong**

5 111. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct)  
6 if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4<sup>th</sup> 1254,  
7 1267 (1992).

8 112. **Fraudulent & Material Challenged Representations.** Defendant sold the Products  
9 as nutritional products that "[ ] help manage blood sugar," are "scientifically designed for people  
10 with diabetes," and are the "#1 doctor recommended brand." These representations were deceptive,  
11 and Defendant knew or should have known of its deception. The representations are likely to  
12 mislead consumers into purchasing the Products because they are material to the average, ordinary,  
13 and reasonable consumer.

14 113. **Fraudulent Business Practice.** As alleged herein, the representations by Defendant  
15 constitute a fraudulent business practice in violation of California Business & Professions Code  
16 Section 17200.

17 114. **Reasonable and Detrimental Reliance.** Plaintiff and the Class reasonably and  
18 detrimentally relied on the labeling on the Products to their detriment in that they purchased the  
19 Products without receiving the advertised benefits.

20 115. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives  
21 to further its legitimate business interests, other than the conduct described herein. Defendant could  
22 have refrained from selling the Products.

23 116. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in  
24 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of  
25 conduct.

26 117. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and  
27 the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ  
28 its practice of labeling the Products as nutritional products that "[ ] help manage blood sugar," are

1 “scientifically designed for people with diabetes,” and are the “#1 doctor recommended brand.”

2 118. **Causation/Restitution.** Plaintiff and the Class have suffered injury in fact and have  
3 lost money as a result of Defendant’s fraudulent conduct. Plaintiff and the Class paid for a product  
4 that they believed could supposedly help with diabetes care and blood sugar management when it  
5 cannot.

6 119. Plaintiff and the Class would not have purchased the Products if they had known the  
7 truth. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten gains pursuant to the  
8 UCL.

9 **“Unlawful” Prong**

10 120. **Unlawful Standard.** The UCL identifies violations of other laws as “unlawful  
11 practices that the unfair competition law makes independently actionable.” *Velazquez v. GMAC*  
12 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

13 121. **Violations of CLRA and FAL.** Defendant’s labeling of the Products, as alleged  
14 herein, violates California Civil Code sections 1750, *et seq.* and California Business and Professions  
15 Code sections 17500, *et seq.* as set forth below in the sections regarding those causes of action.

16 122. **Additional Violations.** Defendant’s conduct in making the deceptive representations  
17 described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence  
18 to applicable laws, as set forth herein, all of which are binding upon and burdensome to their  
19 competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby  
20 constituting an unfair, fraudulent and/or unlawful business practice under California Business &  
21 Professions Code sections 17200-17208. Additionally, Defendant’s representations of material  
22 facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, and 1711,  
23 as well as the common law.

24 123. **Unlawful Conduct.** Defendant’s packaging, labeling, and advertising of the Products,  
25 as alleged herein, is deceptive, misleading, and unreasonable, and constitute unlawful conduct.  
26 Defendant knew or should have known of its unlawful conduct.

27 124. **Reasonably Available Alternatives.** Defendant had reasonably available alternatives  
28 to further its legitimate business interests, other than the conduct described herein. Defendant could

1 have refrained from selling the Products.

2 125. **Business Practice.** All the conduct alleged herein occurs and continues to occur in  
3 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of  
4 conduct.

5 126. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and  
6 the Class seek an order from this Court enjoining Defendant from continuing to engage, use, or  
7 employ its practice of labeling the Products as nutritional products that "[ ] help manage blood  
8 sugar," are "scientifically designed for people with diabetes," and are the "#1 doctor recommended  
9 brand."

10 127. **Causation/Restitution.** Plaintiff and the Class have suffered injury in fact and have  
11 lost money as a result of Defendant's unlawful conduct. Plaintiff and the Class paid an unwarranted  
12 premium for the Products. Plaintiff and the Class would not have purchased the Products if they had  
13 known that Defendant purposely deceived consumers into believing that the Products could  
14 supposedly help with diabetes care and blood sugar management when they cannot.

15 128. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten gains  
16 pursuant to the UCL.

#### 17 COUNT FOUR

#### 18 **Breach of Express Warranty**

#### 19 *(On Behalf of the Nationwide Class and California Subclass)*

20 129. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
21 allegations contained in this complaint, as though fully set forth herein.

22 130. **Nationwide Class and California Subclass.** Plaintiff brings this claim individually  
23 and on behalf of the Nationwide Class and California Subclass who purchased the Product within  
24 the applicable statute of limitations.

25 131. **Implied Warranty of Merchantability.** By advertising and selling the Products at  
26 issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are  
27 merchantable and conform to the promises or affirmations of fact made on the Products' packaging  
28 and labeling, and through its marketing and advertising, as described herein. This labeling and

1 advertising, combined with the implied warranty of merchantability, constitute warranties that  
2 became part of the basis of the bargain between Plaintiff and members of the Class and Defendant—  
3 to wit, that the Products, among other things, could provide the advertised benefits.

4 132. **Breach of Warranty.** Contrary to Defendant’s warranties, the Products do not  
5 conform to the Products’ representations of nutritional products that are made “to help manage  
6 blood sugar,” are “scientifically designed for people with diabetes,” and are the “#1 doctor  
7 recommended brand” and, therefore, Defendant breached its warranties about the Products and their  
8 qualities.

9 133. **Causation/Remedies.** As a direct and proximate result of Defendant’s breach of  
10 warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they  
11 paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to  
12 suffer economic losses and other damages including, but not limited to, the amounts paid for the  
13 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
14 trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages,  
15 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said  
16 monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future  
17 harm that will result.

18 **COUNT FIVE**

19 **Unjust Enrichment/Restitution**

20 ***(On Behalf of the Nationwide Class and California Subclass)***

21 134. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all  
22 allegations contained in this complaint, as though fully set forth herein.

23 135. **Nationwide Class and California Subclass.** Plaintiff brings this claim individually  
24 and on behalf of the Nationwide Class and California Subclass who purchased the Product within  
25 the applicable statute of limitations.

26 136. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and  
27 members of the Class conferred a benefit on Defendant in the form of the purchase price of the  
28 Products.



1 137. **Defendant’s Knowledge of Conferred Benefit.** Defendant had knowledge of such  
 2 benefit and Defendant appreciated the benefit because, were consumers not to purchase the  
 3 Products, Defendant would not generate revenue from the sales of the Products.

4 138. **Defendant’s Unjust Receipt Through Deception.** Defendant’s knowing acceptance  
 5 and retention of the benefit is inequitable and unjust because the benefit was obtained by  
 6 Defendant’s fraudulent, misleading, and deceptive representations.

7 139. **Causation/Restitution.** As a direct and proximate result of Defendant’s unjust  
 8 enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price  
 9 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue  
 10 to suffer economic losses and other damages including, but not limited to, the amounts paid for the  
 11 Products, and any interest that would have accrued on those monies, in an amount to be proven at  
 12 trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution,  
 13 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as  
 14 well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future harm that  
 15 will result.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays  
 18 for judgment and relief on all causes of action as follows:

- 19
- 20 a. **Certification:** For an order certifying this action as a class action, appointing  
 21 Plaintiff as the Class Representative, and appointing Plaintiff’s Counsel as  
 Class Counsel;
  - 22 b. **Declaratory Relief:** For an order declaring that Defendant’s conduct violates  
 23 the statutes and laws referenced herein;
  - 24 c. **Injunction:** For an order requiring Defendant to immediately cease and desist  
 25 from selling the unlawful Products in violation of law; enjoining Defendant  
 26 from continuing to market, advertise, distribute, and sell the Products in the  
 27 unlawful manner described herein; requiring Defendant to engage in an  
 28 affirmative advertising campaign to dispel the public misperception of the  
 Products resulting from Defendant’s unlawful conduct; and requiring all  
 further and just corrective action, consistent with permissible law and pursuant  
 to only those causes of action so permitted;

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- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;
- e. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;
- f. **Pre-/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and,
- g. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues and causes of action so triable.

DATED: August 24, 2023

**CLARKSON LAW FIRM, P.C.**

/s/ Bahar Sodaify  
Shireen M. Clarkson, Esq.  
Bahar Sodaify, Esq.  
Alan Gudino, Esq.  
Ryan Ardi, Esq.

*Attorneys for Plaintiff and the Putative Class*