

FITZGERALD JOSEPH LLP

JACK FITZGERALD (SBN 257370)

jack@fitzgeraldjoseph.com

PAUL K. JOSEPH (SBN 287057)

paul@fitzgeraldjoseph.com

MELANIE PERSINGER (SBN 275423)

melanie@fitzgeraldjoseph.com

TREVOR M. FLYNN (SBN 253362)

trevor@fitzgeraldjoseph.com

CAROLINE S. EMHARDT (SBN 321222)

caroline@fitzgeraldjoseph.com

2341 Jefferson Street, Suite 200

San Diego, California 92110

Phone: (619) 215-1741

Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PATRICIA KRSTOFIAK, LUIS CARRENO, and
JONATHAN ZIMMERMAN, on behalf of
themselves, all others similarly situated, and the
general public,

Plaintiffs,

v.

BELLRING BRANDS, INC. and PREMIER
NUTRITION COMPANY, LLC,

Defendants.

Case No: 3:23-cv-02819

CLASS ACTION

**COMPLAINT FOR CONSUMER FRAUD;
BREACH OF WARRANTY; NEGLIGENT &
INTENTIONAL MISREPRESENTATION;
AND UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs PATRICIA KRYSTOFIAK, LUIS CARRENO, and JONATHAN ZIMMERMAN, on
2 behalf of themselves, all others similarly situated, and the general public, by and through their undersigned
3 counsel, hereby bring this action against Defendants BELLRING BRANDS, INC. (“BellRing”) and
4 PREMIER NUTRITION COMPANY, LLC (“Premier”), and allege the following upon their own
5 knowledge, or where they lack personal knowledge, upon information and belief, including the investigation
6 of their counsel.

7 **INTRODUCTION**

8 1. BellRing and Premier market and sell ready-to-drink protein shakes and plant protein
9 powders under the brand name “Premier Protein.” Unfortunately for Plaintiffs and other purchasers, testing
10 conducted by multiple independent, ISO-accredited laboratories in April, May, and June 2023 demonstrates
11 that Defendants’ Premier Protein Shakes and Premier Protein Plant Powders (together, the “Premier Protein
12 Products”) contain high levels of lead—in some cases almost three times the legal limit under California’s
13 Proposition 65—which Defendants do not disclose.

14 2. The presence of lead in food poses a serious safety risk to consumers because it can cause
15 irreversible damage to many of the body’s crucial systems and organs, including the brain, liver, kidneys,
16 and bones. Moreover, lead exposure can cause a wide variety of health problems, including cancer, diabetes,
17 reproductive disorders, and behavioral disorders. As such, no amount of lead is considered safe to consume.

18 3. In addition, lead exposure can negatively affect the immune system. Despite this, Defendants
19 prominently market the Premier Protein Shakes as promoting immune health.

20 4. This is not Defendants’ first major problem with the Premier Protein brand. Last August,
21 they initiated a major recall after several lots of the product were identified as spoiled and contaminated
22 with microbial organisms that could cause severe food poisoning and botulism.

23 5. Defendants thus well understand the risks of relying on outside suppliers and manufacturers
24 beyond their control. Defendants could have made the Premier Protein brand safer by bringing the products’
25 manufacture in-house and putting in place systems to ensure a high level of quality control that would
26 drastically reduce the risk that the products become contaminated or adulterated, whether with microbes or
27 heavy metals. But Defendants put profits over people, continuing to rely on suppliers and third-party
28 manufacturers for the Premier Protein Products, rather than spend the money needed to make the brand safe.

1 12. Plaintiff Luis Carreno is a citizen of California and is domiciled in, and is a resident of, San
2 Diego County, California

3 13. Plaintiff Jonathan Zimmerman is a citizen of New York and is domiciled in, and is a resident
4 of, Nassau County, New York.

5 14. Defendant BellRing Brands, Inc. is a Delaware corporation with its principal place of
6 business in St. Louis, Missouri.

7 15. Defendant Premier Nutrition Company, LLC is a Delaware limited liability corporation with
8 its principal place of business in Emeryville, California.

9 **FACTS**

10 **I. LEAD CONSUMPTION IS HARMFUL TO HUMAN HEALTH**

11 16. Lead is a heavy metal found in the Earth’s crust. It has no positive physiological role in the
12 human body, but its harmful effects are manifold. At the cellular level, “heavy metals, including lead, create
13 reactive radicals which damage cell structures, including DNA and cell membrane.”¹ For humans, lead is a
14 cumulative toxicant that negatively affects multiple body systems, including the neurological,
15 haematological, gastrointestinal, cardiovascular, immune, and renal systems.²

16 17. Lead exposure is particularly harmful to children. At high levels of exposure, lead attacks
17 the brain and central nervous system, and can cause convulsions, comas, and death. Moreover, children who
18 survive lead poisoning may be left intellectually disabled or with behavioral disorders.

19 18. Even when lead exposure is not severe or obvious, its effects are pernicious. At lower levels
20 of exposure, lead produces a spectrum of injuries across multiple body systems. For example, it can affect
21 children’s brain development, resulting in lower IQ, and can cause behavioral changes such as reduced
22 attention span, increased antisocial behavior, and reduced educational attainment. Lead exposure can also
23 cause anemia, hypertension, renal impairment, immunotoxicity, toxicity to the reproductive organs, type 2
24 diabetes, and cancer. The damaging neurological and behavioral effects of lead are believed to be
25 irreversible. Particularly relevant here:

26 _____
27 ¹ “Lead” in Kosnett M.J. et al., *Poisoning and Drug Overdose*, McGraw Hill Professional (5th ed. 2006).

28 ² World Health Organization, “Exposure to Lead: A Major Public Health Concern” (2d ed. 2021), *available*
at <https://www.who.int/publications/i/item/9789240037656>.

1 Metal toxicants which affect the immune system may contribute to an increased incidence
 2 of autoimmune diseases, infectious diseases and cancer. In the recent past, there has been
 3 a growing concern among health and environmental scientists on the impact of
 4 environmental exposure to heavy metal lead on human health. In some instances *the
 immune system appears to be exquisitely sensitive to the toxic heavy metal lead as
 compared to other toxicological parameters.*³

5 19. Lead in the body is distributed to the brain, liver, kidneys and bones, and stored in the teeth
 6 and bones, where it accumulates over time. In times of stress, however, “the body can mobilize lead stores,
 7 thereby increasing the level of lead in the blood.”⁴ For example, lead that has accumulated in the bones is
 8 released into blood during pregnancy, exposing the fetus to lead.

9 20. Its ability to accumulate in the body and lie in wait to be released into the blood without
 10 control and at unexpected times, makes lead particularly dangerous. Moreover, because lead accumulates
 11 in the body with repeated exposure, even “extremely low” levels of consistent lead exposure can, for
 12 example, “reduce the cognitive capacity of children.”⁵ Moreover, as lead exposure increases, the range and
 13 severity of symptoms and effects also increase.

14 21. As a result, the World Health Organization has declared that “There is no level of exposure
 15 to lead that is known to be without harmful effects,” and “There is no known safe blood lead concentration.”⁶

16 22. Moreover, pursuant to Proposition 65, and in the interest of helping consumers avoid cancer
 17 and reproductive system disorders, the state of California has promulgated a maximum allowable dose level
 18 (MADL) for lead of just 0.5 µg (micrograms, sometimes expressed mcg) per day.⁷

19 _____
 20 ³ Mishra, K.P., “Lead exposure and its impact on immune system: a review,” TOXICOLOGY, Vol. 23, No. 6,
 21 at 969-72 (Sept. 2009) (emphasis added); *see also* Pukanha, K. et al., “The Immunotoxicity of Chronic
 22 Exposure to High Levels of Lead: An Ex Vivo Investigation,” TOXICS, Vol. 8, No. 3, at 56 (July 2020)
 23 (Concluding that “chronic high Pb exposure may cause a shift toward humoral immune response, together
 with a suppression of cellular immunity, thereby suggesting an elevation in cancer risk of Pb-exposed
 workers.”).

24 ⁴ Centers for Disease Control and Prevention, “What is the Biological Fate of Lead in the Body?” (June 12,
 2019), https://www.atsdr.cdc.gov/csem/leadtoxicity/biologic_fate.html.

25 ⁵ Needleman H.L., et al., “The longterm effects of exposure to low doses of lead in childhood—An 11-year
 26 follow-up report,” N.E.J. MED., Vol. 322 at 83-88 (1990).

27 ⁶ World Health Organization, “Lead Poisoning” (Aug. 31, 2022), *available at* <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

28 ⁷ Although Plaintiffs note this to help demonstrate the high amount of lead in the Premier Protein Products,
 Plaintiffs do not bring any claims based on Defendants’ violation of California’s Proposition 65.

1 **II. DEFENDANTS MANUFACTURE AND MARKET PREMIER PROTEIN PRODUCTS**
 2 **CONTAINING DANGEROUS AMOUNTS OF LEAD, WHICH THEY FAIL TO DISCLOSE**

3 **A. Defendants Jointly Manufacture and Promote the Premier Protein Products**

4 23. BellRing is a consumer products holding company operating in the global convenient
 5 nutrition category, which it estimates to be worth \$54 billion. According to BellRing, the market can be
 6 broken down into four key consumer need states: everyday nutrition, adult nutrition, sports nutrition, and
 7 weight management.

8 24. BellRing is specifically focused on protein products and owns three brands, with
 9 corresponding subsidiaries: Premier Protein, Dymatize, and PowerBar.

10 25. Premier Protein, however, is BellRing’s “flagship brand.”⁸ According to BellRing’s 2022
 11 Annual Report, “For years, we have largely attributed BellRing’s success to Premier Protein and it remains
 12 our largest brand.”⁹ In fact, ready-to-drink Premier Protein Shakes account for 79% of BellRing’s
 13 approximately \$1.4 billion in annual sales (and the Premier Protein brand accounted for 81% of its sales).

14 26. BellRing’s 2022 10-K further says that while “most brands in the convenient nutrition
 15 category are positioned to appeal to consumers primarily in one need state,” it believes “*Premier Protein*
 16 has developed brand equities and product value propositions to appeal to a broad range of consumer need
 17 states.”¹⁰

18 27. While Premier is technically a subsidiary of BellRing’s, the two effectively act as a single
 19 unit. Thus, for example—although the subsidiaries for the Dymatize and PowerBar brands are technically
 20 affiliates of Premier’s—Premier’s “Careers” website says that the company “makes great-tasting food
 21 products under the brand names *Premier Protein*, *Dymatize*, and *PowerBar*, and is part of publicly-traded
 22 BellRing Brands (NYSE:BRBR).”¹¹

23
 24
 25
 26 ⁸ BRBR 2022 Annual Report at 2.

27 ⁹ *Id.*

28 ¹⁰ BellRing Brands, Inc. 2022 Form 10-K, at 6 (Nov. 17, 2022) [“BRBR 2022 10-K”].

¹¹ See “Join Us!,” at <https://jobs.premiernutrition.com/premier-nutrition>.

1 28. Similarly, in its public filings, BellRing—which is a spin-off from Post Foods—includes
2 Premier and its other brand subsidiaries when referring to itself.¹²

3 29. Likewise, BellRing’s Privacy Policy “includes information collected through” Premier’s
4 website, shown in the excerpt below.¹³

5 **Effective Date: August 16, 2021**

6 At BellRing Brands, Inc. and our subsidiaries, Premier Nutrition Company, LLC, Dymatize Enterprises, LLC and Supreme
7 Protein, LLC (“BellRing,” “we” or “our”), we want you to be familiar with how and why we collect, use and disclose
8 information about you. This includes information we collect through our website, www.bellring.com,
9 www.premierprotein.com, www.dymatize.com, www.powerbar.com and <https://www.supremeprotein.com> (our “Site”) and in
10 connection with the operation of our business and the offering of our subsidiaries’ products and services. Some of this
11 information may individually identify you. This Privacy Policy explains our information practices with respect to the
12 information collected and the choices you can make about the collection, access and use of your information.

13 30. The link to a privacy policy on Premier’s website, meanwhile, is to the same URL on the
14 BellRing website (bellring.com/privacy-policy).

15 31. Moreover, the “Leadership” page of BellRing’s website¹⁴ includes biographies of persons
16 who work for both BellRing and Premier, as follows:

- 17 • Darcy Horn Davenport - President & Chief Executive Officer, BellRing Brands,
18 Inc.
- 19 • Paul Rode - Chief Financial Officer, BellRing Brands, Inc.
- 20 • Doug Cornille - Chief Growth Officer, Premier Nutrition Company
- 21 • Marc Mollere - Senior Vice President and General Manager of International,
22 Premier Nutrition Company
- 23 • Robin Singh - Senior Vice President of Operations, Premier Nutrition Company¹⁵

24 ¹² See BRBR 2022 10-K at 5-6 (“Unless otherwise indicated or the context otherwise requires, all references
25 in this report to ‘BellRing,’ ‘we,’ ‘our,’ ‘us,’ ‘the Company’ and ‘our Company’ refer to (1) Old BellRing
26 and its consolidated subsidiaries during the periods prior to the completion of the Spin-off, including
27 BellRing LLC, Premier Nutrition Company, LLC (‘Premier Nutrition’), Dymatize Enterprises, LLC
28 (‘Dymatize’), Supreme Protein, LLC (‘Supreme Protein’), the PowerBar brand and Active Nutrition
International GmbH (‘Active Nutrition International’) and (2) us and our consolidated subsidiaries during
the periods subsequent to the Spin-off, including, BellRing LLC, Premier Nutrition, Dymatize, Supreme
Protein and Active Nutrition International, in each case, unless otherwise stated or the context otherwise
indicates.”).

¹³ See “Privacy Policy,” <https://bellring.com/privacy-policy>.

¹⁴ See “Leadership,” <https://bellring.com/leadership>.

¹⁵ Mr. Singh’s biography says, “Prior to joining BellRing Brands and Premier Nutrition, Robin spent 24
years at Mondelez International serving in a variety of roles, including vice president of operations.”

- Eric Hunn - Vice President of People, BellRing Brands, Inc.
- Craig Rosenthal - Senior Vice President & General Counsel, BellRing Brands, Inc.
- Michael Sparda - Vice President of Sales, Premier Nutrition Company
- Ching-Yee Hu - Senior Vice President, Research & Innovation, Premier Nutrition Company.

B. Defendants Market the Premier Protein Products as Healthy, Including for Children

32. During at least the four years preceding the filing of this Complaint (the “Class Period”) Defendants (or their corporate predecessors) have manufactured, marketed, distributed, and sold the Premier Protein Products, with the Premier Protein Plant Powder having been introduced to the market more recently than the Premier Protein Shakes, in around March 2023.

33. During the Class Period, the Premier Protein Shakes have been available in at least 18 flavors, in 11 ounce and 11.5 ounce sizes, both individually and in cases containing multiple bottles (such as 4-packs, 8-packs, 12-packs, 15-packs, and 18-packs, as well as in “sampler” or “variety” packs of various sizes). This includes the following flavors:

- | | | |
|---------------------------|-------------------|------------------------|
| • Chocolate | • Vanilla | • Cookies & Cream |
| • Chocolate Peanut Butter | • Root Beer Float | • Bananas & Cream |
| • Chocolate Hazelnut | • Cake Batter | • Peaches & Cream |
| • Winter Mint Chocolate | • Oats & Maple | • Strawberries & Cream |
| • Café Latte | • Cinnamon Roll | • Blueberries & Cream |
| • Caramel | • Apple Cinnamon | • Pumpkin Spice |

34. The Premier Protein Plant Powders are available in Chocolate and Vanilla flavors, in a 19.7 ounce container.

35. The Premier Protein Products are sold across a diverse network of channels including club, food, drug and mass, eCommerce, specialty, and convenience. Walmart (including Sam’s Club) and Costco are particularly important sellers of the Premier Protein Product, accounting for 63.5% of Defendants’ brand sales in 2022. Moreover, the Premier Protein Products are available online at major retailers including Amazon, Walmart, and Target, as well as a variety of smaller online grocery retailers.

36. According to BellRing, “*Premier Protein* employs a broad media strategy, which includes digital media, search marketing, television, in-store marketing and demos and online dedicated programming,” while “As part of its marketing strategy, *Premier Protein*” also “leverages its fans’

enthusiasm for the brand to spread the word of our products” by “utilizing an influencer marketing program called ‘Premier Shakers’ that leverages micro-influencers, content creators and top-tier influencers to generate further awareness of *Premier Protein*.”¹⁶ Defendants’ “marketing strategy is aimed at accelerating the brand’s positioning as a lifestyle brand for mainstream consumers,” and its “marketing initiatives are focused on increasing awareness to drive product trial and adoption as well as expanding household penetration among this group of consumers.”¹⁷

37. To this end, Defendants affirmatively market and promote the Premier Protein Products as healthy and nutritious foods. At times, Defendants even market the products as healthy for children, and helpful in promoting weight loss.

1. Through the Products’ Labels and Packaging

38. First, the Premier Protein Shakes’ labels suggest the products are both generally healthy, and specifically beneficial for the body’s immune system, including through the following representations:

- “a healthy snack”
- “HIGH PROTEIN SHAKE”
- “with nutrients for ENERGY & IMMUNE health support” or “with nutrients for IMMUNE HEALTH support” (during some of the Class Period)
- “NO ARTIFICIAL GROWTH HORMONES used to produce” (on some flavors)

39. Exemplars of the Premier Protein Shakes’ label and packaging appear below.



¹⁶ BRBR 2022 10-K at 7.

¹⁷ *Id.*





40. In addition, as depicted below, the outside of at least the 12-pack of 11 oz. Premier Protein Shakes also contains an “IMMUNE HEALTH” claim and says, “Maintaining a healthy lifestyle can be hard. Premier Protein is here to make things a little easier.” It also quotes a consumer as saying “I started my health journey at 41 and the taste of Premier Protein helps me not feel deprived from sweets. I drink it every day and I cook with it.”



1 41. Second, the Premier Protein Plant Powders' labels suggest the products are healthy, including
2 through the following representations:

- 3 • "plant protein"
- 4 • "packed with plant protein"
- 5 • "plant based"
- 6 • "plant-based protein"
- 7 • "a powerful nutrition boost"
- 8 • "High Protein"
- 9 • "NO DAIRY OR SOY INGREDIENTS, GLUTEN FREE, LACTOSE
10 FREE"

11
12 42. Exemplars of the Premier Protein Plant Powders' packaging appear below.

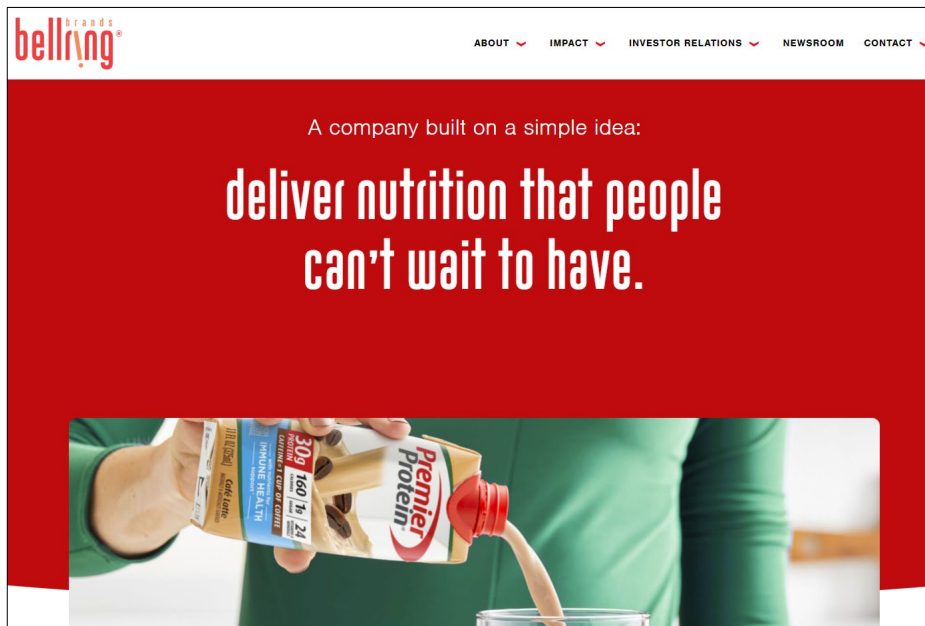




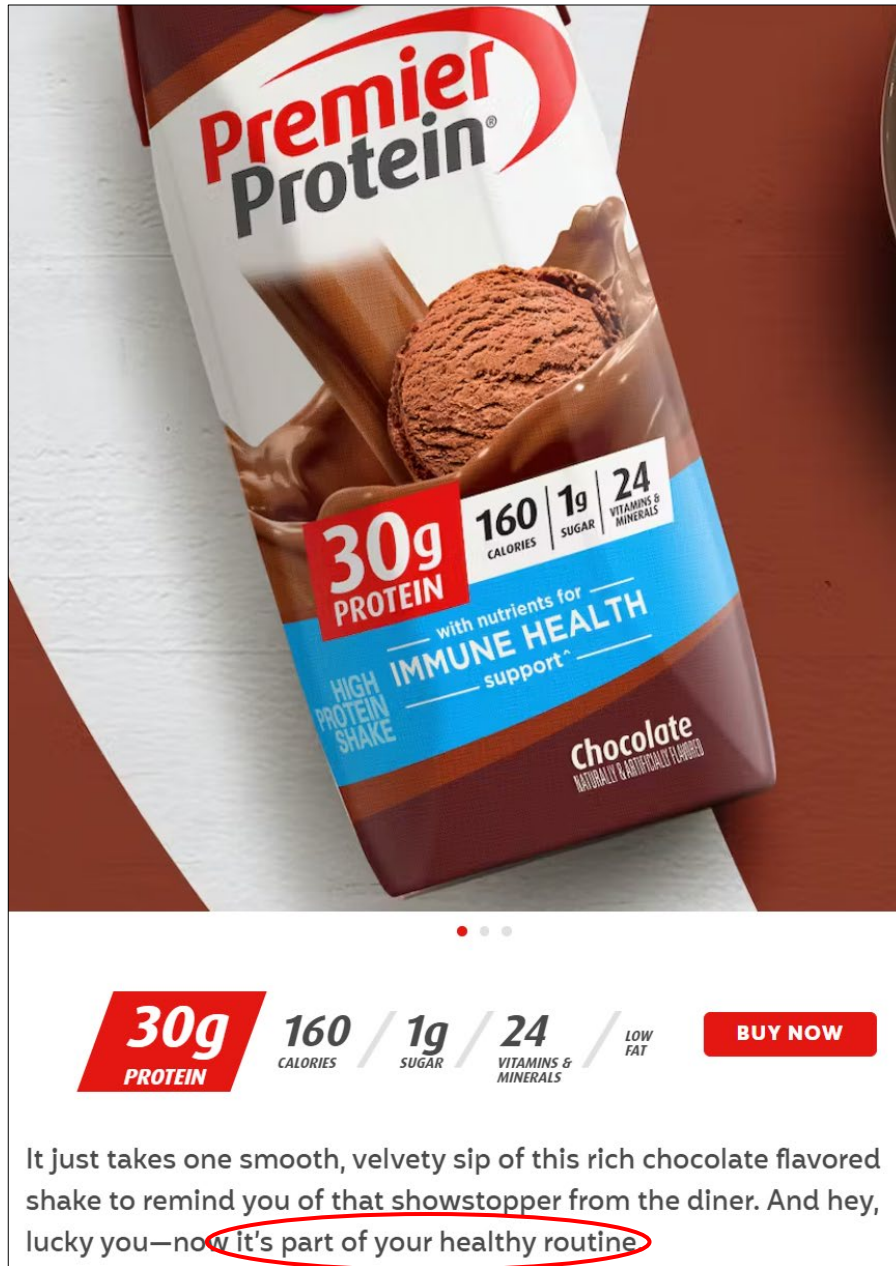
2. Through Defendants’ Websites and Social Media

43. Defendants’ online marketing efforts reiterate its message that consumption of the Premier Protein Products promotes general and immune health.

44. For example, BellRing’s website prominently displays the brand while stating it is “A company built on a simple idea: deliver nutrition that people can’t wait to have.”



1 45. Premier’s website includes product-specific pages. Each Premier Protein Shake page
2 promotes the product as “part of your healthy routine,” as shown below.



23 46. Moreover, each product page has a list of “Benefits” the product purportedly provides, which
24 are replete with health and wellness claims. The example shown below, for the Chocolate flavor Premier
25 Protein Shake, states, for example, “good for nourishment,” “an essential nutrient,” “healthy immune
26 support,” “important antioxidants your body needs to support a healthy immune system as part of a healthy
27 diet and lifestyle,” “your daily hookup of important nutrients that help support your immune system as part
28 of a healthy diet and lifestyle,” and “help give your body the nourishment it needs.”

Benefits

- 30g Of Protein**
Protein isn't just good for nourishment. It's an essential nutrient that helps your body build and maintain muscle. In fact, some studies suggest it may be beneficial to eat 25-30g of protein at each meal.
- Award-Winning Taste**
With so many indulgent flavors and that smooth, creamy texture, it's no wonder Premier Protein shakes have won The American Masters of Taste Gold Medal for SUPERIOR TASTING ready-to-drink protein beverages every year since 2015.
- Healthy Immune Support**
Our shakes contain Vitamins C and E, important antioxidants your body needs to help support a healthy immune system as part of a healthy diet and lifestyle.
- 1g Of Sugar**
Sacrifices? No, thank you. Our award-winning taste comes without all the sugar, helping to take on cravings.
- Keeps You Feeling Full**
Life throws a lot at you. There's not time to waste feeling hungry! A 30g protein shake helps keep you feeling full for whatever comes next.
- 24 Vitamins & Minerals**
Think of a shake as part of your daily hook up of important nutrients that help support your immune system as part of a healthy diet and lifestyle and help give your body the nourishment it needs.

47. In an article on the Premier website titled “Protein Shakes for Everyone!,”¹⁸ Defendants depict several different types of Premier Protein consumers, including a pre-teen and teenage children, and give advice, including from a “Dr. Applegate,” as follows:

- “Whether you’re too busy to eat breakfast, concerned that your kids aren’t getting the nutrition they need, or trying to hit specific fitness goals like muscle gain or weight loss, additions of protein drinks to your lifestyle can help.”
- “Find Your Teen; Any parent of a teenager knows—keeping your teen fed, particularly with the things you want them to eat—is a challenge. Gone are the days of them eating three meals a day at your table. Enter busy sports schedules and it’s hard to say what they’re putting in their bodies. Protein is a macro that can really start to lag, especially since teens actually have higher protein needs for their size than adults. Dr. Applegate says a protein shake can help bridge some of these gaps.
 - Offer a protein shake at breakfast to add a dose of protein to cereal and fruit.
 - Pack a chilled shake along with a banana for an easy snack after school
 - When a meal is lacking in high-quality protein like fish or plant protein, add in a shake.”

48. In fact, *Defendants market the Premier Protein Products for children as young as four years old*, writing in the same article, “when you really just want your kids to get the nutrients they need to grow and stay healthy . . . kids as young as four can reap the benefits of protein shakes to supplement their normal diet . . . What kid can say no to a chocolatey shake?!”

¹⁸ See <https://www.premierprotein.com/whats-shaking/shakes-for-everyone>.

1 49. Defendants further reiterate their health and wellness marketing for the products through
 2 their social media accounts. Premier’s Facebook page, for example, says that “The team at Premier Nutrition
 3 is dedicated to researching and developing a variety of products” with “exceptional nutritional values that
 4 are unsurpassed by any other products on the market.” A Facebook campaign Premier ran also encouraged
 5 users to “Share how Premier Protein has helped you along your health and fitness journey . . . for a chance
 6 to be featured on our social media channels!” And in a post on Instagram, Premier wrote, “We know what
 7 an important role our shakes play in your wellness routines.”

8 50. Defendants also maintain a YouTube channel with dozens of videos marketing the Premier
 9 Protein Products.¹⁹ Some of these commercials—likely because they are integrated into third-party retailer
 10 websites for marketing purposes, or are being pushed as commercials to relevant YouTube viewers—have
 11 tens of millions of views.

12 51. For example, a commercial titled “Breakfast with Benefits” has 23 million views, and
 13 reiterates the Premier Protein Shakes’ labeling claims.



21 52. As depicted below, in YouTube copy for a recent commercial regarding Root Beer Float
 22 Premier Protein Shakes, Defendants state that the product provides “modern nutrition you need to feel like
 23 the bee’s knees.”

24
25
26
27

Sip Sip Hooray! Root Beer Float is Back.

Premier Protein
5.27K subscribers

Subscribe

👍 2

💬

➦ Share

⬇️ Download

⌵ Save

85 views May 4, 2023

Cool and creamy notes of vanilla ice cream meet zippy and refreshing root beer flavors for a shake that rattles and rolls. It's the nostalgic taste you love with the modern nutrition you need to feel like the bee's knees.

28 ¹⁹ See <https://www.youtube.com/@PremierNutritionNews/videos>.

1 53. Several Premier Protein commercials take the form of people telling stories about their
2 experiences with the products. These frequently involve individuals who have existing health issues or are
3 seeking to lose weight. In this manner, Defendants suggest the Premier Protein Products are beneficial for
4 individuals with diseases and those looking to lose weight.

5 54. One commercial, titled “Lawreece and Karter’s Story,” concerns the mother of a 4-year-old
6 son with cerebral palsy.²⁰ In it, Lawreece says:

7 Premier Protein has played a huge part in Karter’s health journey. Children that have
8 cerebral palsy are on the low end of the weight scale. Premier has kept him in the middle
9 range. I will give him Premier Protein through his G-tube, which allows supplements to go
10 in without him orally taking it and this is huge because he still needs those nutrients that
11 he missed. It was a step of faith that I took on my own. Their protein stood out, just on the
nutritional facts. We are faced with a lot of challenges and it has given me less worry. I
would definitely advise all parents and families of special needs children to try this out
because it has helped us.

12 55. An extended version of the commercial features Karter’s caregiver, Deja, titled “Deja
13 Lawreece and Karter’s story.”²¹ In it, Deja says that Premier Protein is “a big factor in keeping his health
14 going.” Lawreece then says, “My cousin Deja has come a long way. She’s lost over 100 pounds and that’s
15 huge, supplementing food and exercising and using Premier Protein.” Deja then says, “Nutrition is important
16 to me because nutrition has changed my life.” Later she says that by her and Karter “both just taking Premier
17 Protein it plays a big part in our health and, you know, our look on life, that we’re able to like be very
18 positive forces in each other’s lives.”

19 56. Deja is also featured alone in a commercial titled “Deja’s Story 2.”²² In it, she discusses
20 losing weight and says:

21 So I restarted my journey again. Right now I’m at 80 pounds in 3 months. This time around
22 with losing weight, I detoxed my body. By detoxing, I learned to replenish with the right
23 fuel. So that right fuel included Premier Protein and it allowed me to tone my body, it
allowed me to lose the weight, but also in a healthy way.

24 [. . .]

25 I noticed that with losing weight sometimes it can be very tiring. You’re constantly in the
26 gym every day. I’m in the gym twice a day. Yeah, I’m getting results from that, but I’m

27 ²⁰ See <https://www.youtube.com/watch?v=DV5SGeflZsk>.

28 ²¹ See <https://www.youtube.com/watch?v=iULEAPNY7rI>.

²² See https://www.youtube.com/watch?v=_zABpVrMKfM.

1 also getting tired. Premier Protein, that's helping me to keep going. So I'm back in the gym
2 right after a whole five-hour workout. Premier is the start of my lifestyle. You would not
see these guns had it not been for Premier.

3 [. . .]

4 That little self-care goes a long way. Just one shake is a whole lot of self-care and self-
love.

5 57. Another commercial, titled "Raymond's Story,"²³ features a 64-year-old grandfather with
6 lupus. During the commercial, he says:

7 I try to work out and keep myself as physically fit as I possibly can. . . . I was diagnosed
8 with lupus about 10 years ago. Lupus is an autoimmune disease. It's in the multiple
9 sclerosis family and with me lupus can attack any part of my body. It's a lifelong disease,
there's no cure for it.

10 My challenge is for me to try to get the muscle tone I could get when I was younger. I
know I can. I will.

11 I was in the gym for about an hour and a half. Just at the end I was kind of dragging. I
12 drank my protein shake and I was able to continue.

13 [. . .]

14 One of the things that happens when you get a little older is you get a little wiser. If
15 something works for me, I try to pass it down to, like the people who are a little younger
16 than me. I try to tell them, like, what works for me, and tell them to try it and to have a
program of their own. I know that Premier works for me. It definitely makes me feel better,
it gives me the power and the strength to keep moving.

17 [. . .]

18 I have to be healthy for myself first. You know, there are people that I love, I want to be
19 healthy for them.

20 58. A commercial titled "Marina's Story"²⁴ features a retail worker who says:

21 My health journey started with a doctor who did not have a good bedside manner. She
22 basically bluntly told me, "you're just too fat." At that point I decided I needed to do
something about that. I was having joint problems, I was prediabetic, I had high blood
23 pressure. I had to make hard decisions.

24 I feel like the Premier Protein shakes are a tool. The doctor told me how important protein
is. A girlfriend drinks Premier drinks and she gave me one, and it was good. It wasn't
25 tolerable, it was good. I was very satisfied.

26 [. . .]

27 ²³ See https://www.youtube.com/watch?v=WY_2_HjP-6M.

28 ²⁴ See <https://www.youtube.com/watch?v=KSOfDvtrVKU>.

1 My transition with this health journey has been interesting. I used to walk to work and walk
2 home. Now I walk for enjoyment because there's no pain.

3 [. . .]

4 The advice I would have for other people who are trying to live healthier, don't get
5 discouraged if you're trying something new and it's not for you. I tried a lot of things that
6 didn't taste good and I could have just said, "well this is not for me," but I kept looking
7 and I found something that I can incorporate into my lifestyle that works.

8 I'm being healthy for myself. I just want to have a better quality of life. I have to want to
9 change for myself.

10 59. A commercial titled "Leigh Ann's Story" features a doctoral student who explains:

11 Nutrition has become increasingly, I guess important in my lifestyle. About four years ago
12 I embarked on a decision to have weight loss surgery. I had to begin changing how I ate,
13 pretty much pay attention to everything I put in my body.

14 [. . .]

15 I feel like I'm the same person, I just carry less with me. I found that one of the things that
16 was really important was to start the day with shakes. Because that way I knew I was
17 starting the day with a head start on the amount of protein I need to get in a day.

18 It's really important for me to get a particular amount of protein a day. I don't eat a lot and
19 what I eat has to be pretty nutritionally dense.

20 60. A commercial titled "CHARMAINE Story,"²⁵ featuring a mother of six children, says:

21 I have a very active family. We're constantly busy, constantly on the go. I'm a mom 24/7.
22 You get tired and burnt out from that. I couldn't keep up anymore. Premier Protein has
23 been an amazing part of my journey. Just because things change in your life, it doesn't
24 mean that you can't stay on top of your health. I want to stick with it and I want something
25 that is convenient enough for my schedule. . . . It's a life-changer for me. If I can do it with
26 six kids, other moms can do it too. I want to make sure I'm a good role model for my kids,
27 I want to practice what I preach, you know?

28 61. The "CHARMAINE Story" commercial has been edited into a 30-second version, and two
different 15-second versions. These shortened commercials have been integrated into product pages for the
Premier Protein Products on third-party retailer websites, such as Target.com. As a result, these shortened
versions have collectively been viewed more than 26 million times.

62. A commercial titled "ANDY Story" features the father of two daughters who says:

I want to be an active dad and to be around for a long time. And I also want to be a dad
who's a great example. Eating nutritiously and exercising are hard to come by. Premier

²⁵ See https://www.youtube.com/watch?v=T7Gbtj_y7mQ.

1 Protein gives me the change to be flexible. I've got to be intentional about what I grab in
2 the middle of the afternoon. No matter how busy, no matter how hectic the schedule is,
Premier Protein allows me to eat nutritiously throughout the day.

3 [. . .]

4 At the end of the day, I want to have a lifestyle that is healthy. And this is something that
I can trust and something I know is going to make a difference.

5 63. The "ANDY Story" commercial also features Andy and his daughters making pancake batter
6 with a Premier Protein shake as Andy says they "love experimenting with pancakes, different recipes."



16 64. A 15-second version of the "ANDY Story" commercial has 2 million views.

17 **3. Through Information Provided to Online Retailers**

18 65. The Premier Protein Products are available to purchase from a wide variety of online
19 retailers including Amazon.com, Walmart.com, Target.com, SamsClub.com, Kroger.com, Ralphs.com, and
20 many others. Defendants provide these online retailers with product images, product information, and
21 marketing pieces. These items regularly repeat Defendants' claims that the Premier Protein Products are
22 both generally healthy, and specifically promote immune health.

23 66. In many instances, the product images and marketing materials displayed on Amazon,
24 Walmart, Target, and other online retailers highlight and repeat Defendants' health and wellness claims that
25 appear on the Premier Protein Products' labels. Moreover, in several cases Defendants go further, for
26 example claiming the Premier Protein Shakes "Help curb your hunger," provide "Guilt-free indulgence,"
27 and are "Keto friendly." Exemplars of these materials, relating to the Chocolate flavor 11.5 oz. Premier
28 Protein Shake, appear below.

Gluten Free

With nutrients for
IMMUNE HEALTH
system support*

*antioxidants Vitamins C & E, as part of a healthy diet and lifestyle.

With nutrients for
IMMUNE HEALTH
system support*

Gluten Free
No Soy Ingredients

*antioxidants Vitamins C & E, as part of a healthy diet and lifestyle. U D

Enjoy a shake in the morning or as a healthy snack.

Nutrition Facts	
1 serving per container	
Serving size 1 Shake (11.5 fl oz)	
Amount per serving	
Calories 160	
% Daily Value*	
Total Fat 3g	4%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 180mg	8%
Total Carbohydrate 5g	2%
Dietary Fiber 3g	11%
Total Sugars 1g	
Incl. 0g Added Sugars	0%
Protein 30g	60%
Vitamin D 9mg 32%	Calcium 85mg 50%
Iron 2.5mg 15%	Potassium 320mg 5%

Ingredients: WATER, MILK PROTEIN CONCENTRATE, CALCIUM CASEINATE, COCOA POWDER (PROCESSED WITH ALKALI, CONTAINS LESS THAN 1% OF HIGH OLEIC SUNFLOWER OIL OR SOYBEAN OIL, NATURAL AND ARTIFICIAL FLAVORS, INULIN, CELLULOSE GEL AND CELLULOSE GUM, SALT, SUCRALOSE, ASCORBATE POTASSIUM, CARBAGESEAN, TRIPOTASSIUM PHOSPHATE, DIPOTASSIUM PHOSPHATE, SODIUM HEXAMETAPHOSPHATE, VITAMIN AND MINERAL BLEND (D-ALPHA-TOCOPHERYL ACETATE [VITAMIN E], ZINC GLUCONATE CHLORATE, FERRIC ORTHOPHOSPHATE, VITAMIN A PALMITATE, NIACINAMIDE, PHYTONADIONE [VITAMIN K1], POTASSIUM IODIDE, CHOLECALCIFEROL [VITAMIN D3], COPPER GLUCONATE, CALCIUM D-PANTOTHENATE, MANGANESE SULFATE, SODIUM SELENITE, BIOTIN, SODIUM MOLYBDATE, FOLIC ACID, THIAMINE MONONITRATE [VITAMIN B1], CYANOCOBALAMIN [VITAMIN B12], PYRIDOXINE HYDROCHLORIDE [VITAMIN B6], RIBOFLAVIN [VITAMIN B2], CHROMIUM POLYNICOTINATE, MAGNESIUM PHOSPHATE, SODIUM ASCORBATE. CONTAINS MILK AND SOY.

Enjoy a shake in the morning or as a healthy snack.

Nutrition Facts	
1 serving per container	
Serving size 1 Shake (11 fl oz)	
Amount per serving	
Calories 160	
% Daily Value*	
Total Fat 3g	4%
Saturated Fat 0.5g	3%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 180mg	8%
Total Carbohydrate 5g	2%
Dietary Fiber 3g	11%
Total Sugars 1g	
Incl. 0g Added Sugars	0%
Protein 30g	60%
Vitamin D 9mg 36%	Calcium 85mg 50%
Iron 2.5mg 15%	Potassium 400mg 8%

Ingredients: WATER, MILK PROTEIN CONCENTRATE, CALCIUM CASEINATE, COCOA POWDER (PROCESSED WITH ALKALI, CONTAINS LESS THAN 1% OF HIGH OLEIC SUNFLOWER OIL, NATURAL AND ARTIFICIAL FLAVORS, INULIN, CELLULOSE GEL AND CELLULOSE GUM, SALT, SUCRALOSE, ASCORBATE POTASSIUM, CARBAGESEAN, TRIPOTASSIUM PHOSPHATE, DIPOTASSIUM PHOSPHATE, SODIUM HEXAMETAPHOSPHATE, VITAMIN AND MINERAL BLEND (D-ALPHA-TOCOPHERYL ACETATE [VITAMIN E], ZINC GLUCONATE CHLORATE, FERRIC ORTHOPHOSPHATE, VITAMIN A PALMITATE, NIACINAMIDE, PHYTONADIONE [VITAMIN K1], POTASSIUM IODIDE, CHOLECALCIFEROL [VITAMIN D3], COPPER GLUCONATE, CALCIUM D-PANTOTHENATE, MANGANESE SULFATE, SODIUM SELENITE, BIOTIN, SODIUM MOLYBDATE, FOLIC ACID, THIAMINE MONONITRATE [VITAMIN B1], CYANOCOBALAMIN [VITAMIN B12], PYRIDOXINE HYDROCHLORIDE [VITAMIN B6], RIBOFLAVIN [VITAMIN B2], CHROMIUM POLYNICOTINATE, MAGNESIUM PHOSPHATE, SODIUM ASCORBATE. CONTAINS MILK.

30g PROTEIN | **160 CALORIES** | **1g SUGAR** | **24 VITAMINS & MINERALS**

with nutrients for
IMMUNE HEALTH
support

Help curb your hunger.

Keto friendly, 5g carbohydrate.

Now with 2x vitamin C*

*compared to previous formula

30g PROTEIN | **160 CALORIES** | **1g SUGAR** | **24 VITAMINS & MINERALS** | **LOW FAT**

with nutrients for
IMMUNE HEALTH
support

Help curb your hunger.


Keto friendly, 5g carbohydrate.

Guilt-free indulgence.

Chocolate
NATURALLY & ARTIFICIALLY FLAVORED

1 67. In addition, most Premier Protein Product pages on Amazon include a section of the listing
 2 titled “From the Manufacturer,” with additional product details. As shown below, Defendants’ product
 3 information includes statements like, “Our mission is to inspire optimism on the way to better health” and
 4 “you’re on a journey to becoming a healthier, happier you. We’re here to help you stay on course. Every
 5 shake, bar, and powder nourishes your body with sustainable, feel-good energy and gives you just what you
 6 need to achieve your health goals.” Defendants further tell consumers the Premier Protein Shakes are
 7 “complete with all essential amino acids” and “help fuel muscles quickly and for several hours to support
 8 your goals.”


9 Amazon.com : Premier Protein 30g Protein Shake, Café Latte, 11.5 fl oz : Health & Household



10
11
12
13

14 **About Us**

15 Our mission is to inspire optimism on the way to better health. Every day, you’re on a journey to becoming a happier, healthier you. We’re here to help you
 16 stay on course. Our protein-rich products satisfy your cravings for both nutrition and amazing taste. Every shake, bar and powder nourishes your body
 17 with sustainable, feel-good energy and gives you just what you need you to achieve your health goals.



18
19
20
21
22

23 **Product Description**

24 Packaged in a 11.5oz bottle, each Premier Protein Shake contains 30 grams of protein, complete with all the essential amino acids, 1g of sugar, 3-5g carbs (depending on flavor), 160 calories, 24 vitamins & minerals, and is also low in fat. We use a blend of milk protein and casein in our shakes to help fuel muscles quickly and for several hours to help support your goals. Enjoy a shake as a healthy snack, a breakfast on-the-go, an afternoon snack, or as pre- or post-workout fuel. They are delicious as is but are also highly customizable. Try blending with your favorite fruits and vegetables for a delicious smoothie or adding to cereal or oatmeal. Available in 11 delicious flavors: Chocolate, Vanilla, Cafe Latte, Caramel, Cookies & Cream, Strawberries & Cream, Bananas & Cream, Peaches & Cream, Cinnamon Roll, Chocolate Peanut Butter and Cake Batter Delight.

25 **Product details**

26 Package Dimensions : 6.89 x 2.28 x 2.24 inches; 13.76 Ounces
 27 UPC : 643843717898
 28 Manufacturer : Premier Nutrition
 ASIN : B09DLG6TXB
 Country of Origin : USA

https://www.amazon.com/Premier-Protein-Shake-Café-Latte/dp/B09DLG6TXB/ref=sr_1_50_f3_0o_fs?crd=2DWE71FSJ6NAP&keywords=premier+protein&qjd=1685650951&sr=8-50

1 68. Similarly, the manufacturer information on the Walmart.com product page for the Root Beer
 2 Float Premier Protein Shake, depicted below, encourages consumers, as on the label, to “Enjoy a shake in
 3 the morning or as a healthy satisfying snack.” It further encourages purchasers to consume the products “for
 4 breakfast on-the-go, an afternoon snack, or as pre- or post-workout fuel.”

5 **About this item**

6 Product details

7 Premier Protein Root Beer Float is back for a limited time only! Packaged in recyclable 11.5 fl oz bottle, each Premier Protein
 8 shake contains 30 grams of protein, complete with all of the essential amino acids, 1g of sugar, 160 calories, 24 vitamins &
 9 minerals, and is also low in fat. We use a proprietary blend of milk protein, casein and whey protein in our shakes to help fuel
 10 muscles quickly and for several hours to help support your goals. Enjoy a shake in the morning or as a healthy satisfying snack.
 11 They are perfect for breakfast on-the-go, an afternoon snack, or as pre- or post-workout fuel. Available in 11 delicious smooth
 12 and creamy flavors: Cafe Latte, Chocolate, Vanilla, Caramel, Cookies & Cream, Bananas & Cream, Peaches & Cream,
 13 Strawberries & Cream, Chocolate Peanut Butter, Cinnamon Roll, Cake Batter Delight. Premier Protein 30g Protein Shake, Root
 14 Beer Float.

- 15 • Get ready for the deliciously vintage notes of fizzy root beer with a big scoop of vanilla ice cream, this root beer float flavored
 16 shake is available for a limited time only; Winner of American Masters of Taste Gold Medal for SUPERIOR TASTING ready-to-
 17 drink protein beverages
- 18 • 30g of protein to help curb your hunger, as a mid-day snack or for post workout recovery; includes all essential amino acids
- 19 • Guilt free indulgence: 1g Sugar, 5g Carbs, 160 Calories and Low Fat; Gluten Free; No Artificial Colors, Keto and Bariatric
 20 Friendly, Kosher
- We're all in it together when it comes to helping out the environment! That's why we've designed a more sustainable shake
 bottle. We've lowered our carbon footprint and created a bottle that's easier to recycle by using less material, eliminating the
 foil seal on the bottle, and switching to PET plastic. Oh, and don't worry- your shakes will still taste just as amazing as always!
- Skip the hassle of protein powder with the convenience of this ready to drink protein shake; great on the go nourishment that
 also pairs well with coffee, cereal, a pancake recipe, or in your favorite smoothie
- Contains milk and soy
- Try all eleven (11) delicious smooth and creamy flavors: Cafe Latte, Chocolate, Vanilla, Caramel, Cookies & Cream, Bananas &
 Cream, Peaches & Cream, Strawberries & Cream, Chocolate Peanut Butter, Cinnamon Roll, Cake Batter Delight

ⓘ We aim to show you accurate product information. Manufacturers, suppliers and others provide what you see here, and we
 have not verified it. [See our disclaimer](#)

21 69. The “Product details” provided by Premier for Sam’s Club online, depicted below, likewise
 22 reiterates Defendants’ health and wellness claims for the products. This includes statements like, “it’s part
 23 of your healthy routine,” “contains a variety of healthy ingredients,” “can provide many benefits,” “Healthy
 24 Immune Support,” “help support a healthy immune system as part of a healthy diet and lifestyle,”
 25 “committed to promoting a healthy and active lifestyle,” and “think of this shake as part of your daily hookup
 26 of important nutrients that can help support your immune health as part of a healthy diet and lifestyle and
 27 help give your body the nourishment it needs.”

1
2
3
4
5
6
7
8
9
10

About this item

[Product details](#) [Specifications](#)

It just takes one smooth, velvety sip of this rich chocolate flavored shake to remind you of that showstopper from the diner. And hey, lucky you—now it's part of your healthy routine. Get the vital protein that you body needs with the Premier Protein High Protein Shake. With this beverage multi-pack, you can curb hunger, grow muscle and feel stronger.

Is a Premier Protein High Protein Shake Good For You?

This creamy chocolate beverage is designed to fill you up and replace a meal, which can be a convenient way to save time without compromising your diet. While it's tasty and filling, this Premier Chocolate Shake also contains a variety of healthy ingredients and amino acids, vitamins and minerals, which can provide many benefits. With a high protein shake like this, you can promote the development of lean muscle mass with very little effort.

Healthy Immune Support

Our Premier Chocolate Shake contain Vitamins C and E, important antioxidants your body needs to help support a healthy immune system as part of a healthy diet and lifestyle.

Think of this shake as part of your daily hookup of important nutrients that help support your immune system as part of a healthy diet and lifestyle and help give your body the nourishment it needs.

Easy to Carry Around

Premier Chocolate Shake comes in compact, Tetra Pak cartons with resealable lids for additional convenience. Not only are these handy cartons extremely easy to carry or pack in a bag, but they're also environmentally friendly, so you can enjoy them with a guilt-free conscience. Take one with you to the gym and refuel when you need to get through a tough workout.

About Premier Protein High Protein Shakes

Since its founding, Premier Protein has been committed to promoting a healthy and active lifestyle. With enough protein, people may have the energy they need to pursue their goals.

Premier Taste

The Premier Protein Shake has been Recipient of the American Master of Taste Gold Medal for superior tasting ready-to-drink protein beverages in a national taste test by Chefs In America in 2015, 2016, 2017, 2018 and 2019.

If the item details above aren't accurate or complete, we want to know about it. [Report incorrect product info](#)

11
12
13

70. In addition, some products' "Specifications" page suggests a "Recommended Usage" of "1-2 Premier Protein High Protein Shakes daily," as depicted below.

14
15
16

About this item

[Product details](#) [Specifications](#)

- Recommended Usage: 1-2 Premier Protein High Protein Shakes daily as a meal replacement or snack
- Shake well and serve cold for best enjoyment
- Refrigerate after opening
- Each shake now with a resealable Dream Cap™ for an improved drinking experience
- Contains milk
- Recipient of the American Master of Taste Gold Medal for superior-tasting, ready-to-drink protein beverages in a national taste test by Chefs in America in 2015, 2016 and 2017

17
18
19

71. While much of the imagery used for the Premier Protein Products on Target.com is similar to that used for Amazon, Walmart and Sam's Club, Target's product pages also frequently include short video commercials, typically clips from the YouTube videos discussed above.

20
21
22
23

72. In the product details information Defendants provided to Target, they reiterate their health and wellness claims for the product, for example stating that the Premier Protein Shakes are "a healthy snack," and suggesting people drink them "for the breakfast on-the-go and [as an] afternoon snack, or as a pre-or-post workout fuel."

24

C. The Premier Protein Products Contain High Amounts of Lead

25
26
27
28

73. Independent laboratory testing completed in April, May, and June 2023 by two separate, ISO-accredited laboratories demonstrates that the Premier Protein Products contain high levels of lead—with each serving of each product well in excess of the 0.5 µg MADL (*i.e.*, daily limit) under California's Proposition 65.

Product	Flavor	Laboratory	Testing Date	Lead (µg per serving)	% of Prop 65 Daily Limit
Protein Shakes	Chocolate	ISO-Accredited Lab 1	5.22.2023	1.39	278%
		ISO-Accredited Lab 2	5.31.2023	1.346	268%
	Vanilla	ISO-Accredited Lab 1	5.22.2023	0.498	-
		ISO-Accredited Lab 2	6.02.2023	0.833	166%
	Caramel	ISO-Accredited Lab 1	5.01.2023	1.08	216%
		ISO-Accredited Lab 2	6.02.2023	0.717	143%
	Café Latte	ISO-Accredited Lab 1	5.22.2023	1.33	266%
		ISO-Accredited Lab 2	6.02.2023	0.969	194%
Protein Powder	Vanilla	ISO-Accredited Lab 1	4.27.2023	0.529	106%
	Chocolate	ISO-Accredited Lab 2	6.05.2023	0.667	133%

D. Defendants Omit Material Information About the Presence of Lead in the Premier Protein Products and its Related Health Harms

74. As a public company and global brand with over a billion dollars in annual sales, Defendants have earned significant public trust that Premier Protein foods are safe and fit for regular consumption. Reasonable consumers believe Defendants would not sell products that are unsafe.

75. Defendants knew or should have known that they owed consumers a duty of care to adequately test the Premier Protein Products for lead and other heavy metals. Had Defendants done so, they would have known that the Premier Protein Products contain significant levels of lead.

76. Defendants knew or should have known they could control the levels of lead and other heavy metals in the Premier Protein Products by properly monitoring for their presence, sourcing ingredients with less heavy metals, adjusting the products' formulations to reduce or eliminate heavy metals, and improving their manufacturing processes to eliminate introduction of lead caused by Defendants themselves. In the interest of cost-savings, however, Defendants failed to implement sufficient quality control systems and procedures in the Premier Protein Products' formulation and manufacturing, unreasonably relying on third parties for much of the products' ingredient sourcing, testing, and manufacturing.

77. Defendants knew or should have known that Plaintiffs and other Class Members would rely upon the packaging and advertising of the Premier Protein Products stating or suggesting that the products are healthy, and Defendants intended for consumers to do so.

1 78. Defendants knew or should have known that reasonable consumers would consume the
2 Premier Protein Products regularly, and possibly multiple times each day, leading to repeated lead exposure,
3 which accumulates in the body and its systems over time. Indeed, Defendants encouraged such daily,
4 repeated consumption behavior.

5 79. While representing that the Premier Protein Products are beneficial to overall and immune
6 health, Defendants regularly omitted and continue to omit material information regarding the presence and
7 countervailing detrimental health effects of the high levels of lead in the products.

8 80. Nowhere on the label of the Premier Protein Products, nor in the off-label advertising for the
9 products, including on their websites, do Defendants disclose to consumers the lead content of the products,
10 nor even the possibility that consuming the products may expose them to lead.

11 81. Defendants are under a duty to disclose this information to consumers because they are
12 revealing some information about the Premier Protein Products—enough to suggest they are beneficial—
13 without revealing directly relevant information regarding the harmful effects of lead in the products
14 described herein.

15 82. Defendants are further under a duty to disclose this information because their deceptive
16 omissions concern human health and safety, specifically the detrimental health consequences of consuming
17 the Premier Protein Products.

18 83. Defendants are further under a duty to disclose this information because they were in a
19 superior position to know of the dangers presented by the lead in the Premier Protein Products, as they are
20 large, sophisticated companies that hold themselves out as having expert knowledge regarding the health
21 impact of consuming the products.

22 84. Moreover, Defendants are under a duty to disclose this information because, including
23 through the acts alleged herein, they actively concealed material facts not known to Plaintiffs and other
24 Class Members concerning the potential for the Premier Protein Products to expose them to lead, and the
25 detrimental effects thereof.

1 **E. Defendants Have a History of Quality Control Problems**

2 85. Defendants have a history of quality control issues that should have made them particularly
3 vigilant about dangerous or unsafe levels of contaminants in the Premier Protein Products, and particularly
4 their lead levels.

5 86. In 2013, Premier was sent a 60-day Proposition 65 notice by the Environmental Research
6 Center for excessive lead found in two of its protein bars. Premier settled that case, agreeing to pay fines,
7 penalties, and attorneys' fees for its Proposition 65 violations.²⁶

8 87. In 2019, Premier also settled a class action lawsuit alleging it falsely overstated the amount
9 of protein in in the Premier Protein Shakes.²⁷

10 88. In 2022, Premier recalled many of its 11 ounce Premier Protein Shakes due to potential
11 microbial contamination from the organisms *Cronobacter sakazakii*, and *Clostridium botulinum*, which can
12 cause serious illness including botulism.²⁸

13 89. In August 2023, a federal jury found Premier's marketing of its "Joint Juice" product was
14 false, misleading, and fraudulent, and that the product was worthless.²⁹

15 90. In short, Defendants have a history of quality control issues, including specifically as to lead
16 contamination. Defendants knew or should have known that they owed consumers a duty of care to
17 adequately test for lead. Had they done so, they would have known that the Premier Protein Products
18 contained significant levels of lead.

19 91. Alternatively, Defendants did know that the Premier Protein Products contained significant
20 levels of lead and purposely hid that fact from consumers.

21
22
23
24
25 ²⁶ See <https://oag.ca.gov/system/files/prop65/settlements/2013-00696S3624.pdf>.

26 ²⁷ See <https://topclassactions.com/lawsuit-settlements/consumer-products/food/judge-gives-final-ok-9m-premier-nutrition-protein-shake-settlement>.

27 ²⁸ See <https://www.premierprotein.com/recall-information>.

28 ²⁹ See <https://www.natlawreview.com/article/pulp-fiction-food-court-squeezes-statutory-damages-request-class-defrauded-joint>.

F. Defendants Encourage Consumers’ Repeated Use of the Premier Protein Products Throughout the Day

92. Through a variety of statements and other marketing methods, Defendants encourage Premier Protein Product purchasers to consume multiple servings each day. By doing so, Defendants increase consumers’ exposure to the lead in the Premier Protein Products.

93. In an article on the Premier Protein website titled “The Ultimate Guide to Protein Shakes,” in a section titled “How Many Protein Shakes Should You Drink a Day?,” Defendants say, “How protein shakes fit into your healthy lifestyle will vary from person to person and even day to day. On a particularly busy day, maybe you’ll have a shake on your way into the office and another after you hit the gym.”³⁰

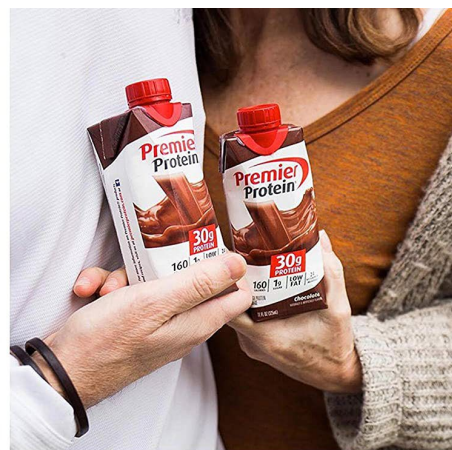
94. In the “From the Manufacturer” information they provided to Amazon, Defendants tell consumers to “Enjoy a shake as a healthy snack, a breakfast on-the-go, an afternoon snack, or as pre- or post-workout fuel.” Defendants go on to say Premier Protein Shakes are “highly customizable. Try blending with your favorite fruits and vegetables for a delicious smoothie or adding to cereal or oatmeal.”

95. These serving suggestions are reinforced through marketing imagery Defendants provide to online retailers like Wal-Mart and Target, which show the Premier Protein Shakes being used to supplement a variety of other foods and beverages, as shown below.



³⁰ See <https://www.premierprotein.com/whats-shaking/the-ultimate-guide-to-protein-shakes>.

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



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



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

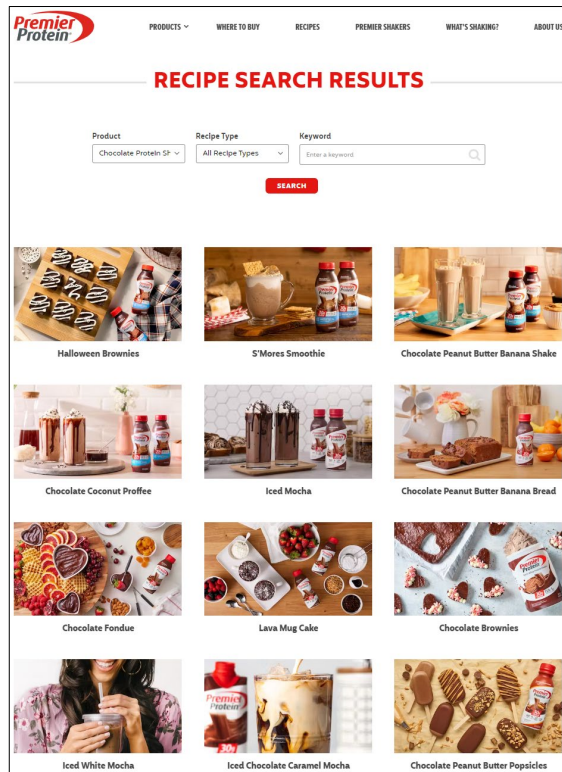


1 96. Defendants also encourage the repeated consumption of the Premier Protein Products in
 2 online commercials. For example, one commercial, titled “Araceli_2021 30,” which is integrated into third-
 3 party retailer websites, involves a woman—the same one featured on the Premier Protein Shake 12-pack
 4 container—who says she uses Premier Protein Shakes to quell her sweet tooth and cooks with it:

5 I’m Araceli and I am a real Premier Protein fan. I started my health journey at 41. I didn’t
 6 realize that 40 was so life-changing. For me it was like a new beginning. The taste of
 7 Premier Protein helps me not feel deprived from sweets. I drink it every day. I cook with
 it. Premier Protein is my thing. I love it.



8
 9
 10
 11
 12
 13
 14 97. Premier’s website also has a section titled “Recipes,” which contains **220** recipes using
 15 Premier products, arranged in “Breakfast,” “Dessert,” “Drinks,” “Seasonal,” and “Snacks” types. There are
 16 24 recipes for the Chocolate Premier Protein Shake alone, some of which are depicted below.



1 98. Premier’s website also links to a cookbook available for download, the cover page of which
 2 is depicted below.³¹



3
 4
 5
 6
 7
 8
 9
 10
 11 99. As an example of the recipes provided, the one depicted below uses the Vanilla Premier
 12 Protein Shake to create Egg White & Spinach Breakfast Biscuits.

BREAKFAST

EGG WHITE & SPINACH BREAKFAST BISCUITS

4 SERVINGS

35 MINS
 OVEN
 420°F
 SHAKE

INGREDIENTS	DIRECTIONS
2 cups all-purpose flour 1/2 tsp baking soda 2 tbsp baking powder 1 pinch salt 1/4 tsp black pepper 8 tbsp cold butter 1 cup Premier Protein Vanilla shake 4 pre-cooked breakfast sausage patties 1 bunch spinach 4 egg whites 4 slices reduced fat swiss cheese	Preheat oven to 420°F. Line a baking sheet pan with parchment paper. In a bowl add flour, baking soda, baking powder, salt and pepper, whisk to combine. Cut butter into chunks, add to flour breaking the butter down with your fingertips until the mixture is crumbly. Add the Premier Protein Vanilla Shake and stir gently. Add two more tablespoons of flour until the dough becomes a ball. Dump the dough onto a well-floured work surface, knead into a flat circle about 1" thick. Using a 3" cookie cutter, cut the biscuits out of the dough and place on baking tray. Bake the biscuits for about 12 mins.

In a large nonstick pan, heat the water, add spinach, cook until wilted. Transfer to a plate. Wipe out the pan with a paper towel and place back on low heat with the butter.

In another bowl, whisk the egg whites until light and airy. Add egg whites to the pan and cook for about 4 mins. Flip the egg whites over and cook for a further 2-3 mins.

Warm the sausage patties in the microwave and slice the biscuits in half. Place a sausage patty on the bottom part of each biscuit. Top the sausage with a slice of swiss cheese, piece of the egg white and some of the wilted spinach. Place the top on each biscuit and serve with your favorite condiments.

RECIPE BY FOODNESS GRACIOUS 10

28 ³¹ See <https://cdn.premierprotein.com/p/a/downloads/premier-protein-cookbook.pdf>.

1 **III. THE PREMIER PROTEIN PRODUCTS' LABELING AND ADVERTISING IS**
2 **MISLEADING**

3 100. Defendants' express statements and suggestions that the Premier Protein Products are healthy
4 are false and misleading because the products' high lead content means the products are, in fact, not healthy.
5 To the contrary, regular consumption of the Premier Protein Products in the repeated, daily manner
6 Defendants promote exposes consumers to unsafe levels of lead. This concern is even more heightened for
7 pregnant women and children who use the products.

8 101. Given the toxic effects of lead, the presence of unsafe levels of toxic heavy metals in the
9 Products is a material fact to reasonable consumers, including Plaintiffs and other Class Members. If the
10 presence, or the risk of presence of unsafe levels of toxic heavy metals in the Premier Protein Products were
11 disclosed to Plaintiffs and other Class Members, they would be unwilling to purchase the products, or to
12 pay as much for them. Defendants' omission of the Premier Protein Products' lead content is therefore
13 deceptive.

14 **IV. THE PREMIER PROTEIN PRODUCTS' LABELING VIOLATES CALIFORNIA AND**
15 **FEDERAL FOOD LABELING LAW**

16 102. California and New York broadly prohibit the misbranding of food in language largely
17 identical to that found in the Federal Food, Drug, and Cosmetic Act ("FDCA").

18 103. The Premier Protein Products' labeling violates California Health and Safety Code §§
19 109875, *et. seq.* (the "Sherman Law"), which has expressly adopted the federal food labeling requirements
20 as its own. *See, e.g., id.* § 110100; *id.* § 110670 ("Any food is misbranded if its labeling does not conform
21 with the requirements for nutrition labeling as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the
22 federal act and the regulation adopted pursuant thereto."). The Premier Protein Products' labeling also
23 violates New York's Agriculture and Marketing Law incorporates the FDCA's labeling provisions found in
24 21 C.F.R. part 101. *See* N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1.

25 104. Specifically, the labeling and website claims are false and misleading for the reasons
26 described herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food whose "label is false
27 or misleading in any particular." Defendants accordingly also violated California's parallel provision of the
28 Sherman Law, *see* Cal. Health & Safety Code § 110670, and New York Agriculture and Marketing Law.

1 105. Second, Defendants “fail[ed] to reveal facts that are material in light of other representations
2 made or suggested by the statement[s], word[s], design[s], device[s], or any combination thereof,” in
3 violation of 21 C.F.R. § 1.21(a)(1). Such facts include the detrimental health consequences of consuming
4 the Premier Protein Products given that they contain lead, which is unsafe in any amount.

5 106. Third, Defendants failed to reveal facts that were “[m]aterial with respect to the
6 consequences which may result from use of the article under” both “[t]he conditions prescribed in such
7 labeling,” and “such conditions of use as are customary or usual,” in violation of § 1.21(a)(2). Namely,
8 Defendants failed to disclose the detrimental health consequences likely to result from the usual
9 consumption of the Premier Protein Products in the customary and prescribed manners, including regular
10 consumption of the standard serving size. This is especially true because Defendants, through a variety of
11 means, encourage consumers to consume the Premier Protein Products multiple times per day.

12 **V. PLAINTIFFS’ PURCHASE, RELIANCE, AND INJURY**

13 107. Plaintiff Patricia Krystofiak regularly purchased the Premier Protein Shakes, in various
14 flavors, online through Walmart.com. She began purchasing the Premier Protein Shakes in approximately
15 2022 and regularly consumed them, often times drinking one Premier Protein Shake daily as a meal
16 replacement. In purchasing the Premier Protein Shakes, Ms. Krystofiak relied on claims that suggested the
17 shakes were healthy, including “High Protein” and “Immune Health Support,” which was particularly
18 important to her. Ms. Krystofiak would not have purchased the Premier Protein Shakes if she knew they
19 contained, or even potentially contained lead.

20 108. Plaintiff Luis Carreno regularly purchased the Premier Protein Plant Powder, in the chocolate
21 flavor, from Walmart in Chula Vista, California and from GNC locations throughout San Diego County. He
22 began purchasing the Premier Protein Plant Powders in mid-2022 and regularly consumed them as a workout
23 supplement. In purchasing the Premier Protein Plant Powder, Mr. Carreno relied on claims that suggested
24 the powder was healthy, including “High Protein” and “Plant Protein,” which were particularly important
25 to him. Mr. Carreno would not have purchased the Premier Protein Plant Powders if he knew they contained,
26 or even potentially contained, lead.

27 109. Plaintiff Jonathan Zimmerman regularly purchased the Premier Protein Shakes, in various
28 flavors, from BJ’s wholesale in Westbury, New York, where he regularly shops. He began purchasing the

1 Shakes in approximately 2018 and has regularly consumed them since then, typically as a meal replacement.
2 In purchasing the Premier Protein Shakes, Mr. Zimmerman was looking for a meal replacement or
3 occasional supplement that provided him with a high amount of protein, and he purchased the Premier
4 Protein Shakes believing based on the totality of the products' labeling that they were healthy. Mr.
5 Zimmerman would not have purchased the Premier Protein Shakes if he knew they contained, or even
6 potentially contained, lead.

7 110. When purchasing the Premier Protein Products, Plaintiffs were looking for healthy, nutritious
8 options, and believed that was what they were receiving. Plaintiffs would have avoided any Premier Protein
9 Product they knew contained unsafe levels of toxic heavy metals, like lead. Plaintiffs likewise would have
10 avoided any Premier Protein Product they knew could increase their risk of inhibited neurological function,
11 anemia, kidney damage, a compromised immune system, seizures, coma, and death.

12 111. Plaintiffs acted reasonably in purchasing the Premier Protein Products, whose labels did not
13 disclose the presence, or even the risk of the presence, of unsafe levels of lead, and in fact conveyed to
14 reasonable consumers that the Premier Protein Products are healthy and nutritious, and specifically promote
15 immune health.

16 112. By omitting that the Premier Protein Products contained, or were at risk for containing,
17 unsafe levels of lead, Defendants were able to gain a greater share of the market than they would have
18 otherwise, and to increase the size of the market.

19 113. Plaintiffs paid more for the Premier Protein Products, and would only have been willing to
20 pay less, or unwilling to purchase them at all, absent Defendants' affirmative health and wellness statements,
21 as well as their omissions regarding the lead content described herein.

22 114. Plaintiffs would not have purchased the Premier Protein Products if they had known that they
23 were misbranded pursuant to California and FDA regulations, or that they contained unsafe levels of toxic
24 lead in the amounts found in the Premier Protein Products.

25 115. For these reasons, the Premier Protein Products were worth less than what Plaintiffs and
26 other Class Members paid for them.

27 116. Plaintiffs and other Class Members lost money as a result of Defendants' omissions and
28 unfair practices in that they did not receive what they paid for when purchasing the Premier Protein Products.

1 117. Plaintiffs still wish to purchase protein products, and continue to see the Premier Protein
2 Products at the stores in which they regularly shop. They would purchase the Premier Protein Products in
3 the future if—because of an injunction requiring Defendants to disclose lead or other heavy metals when
4 present—they could be assured that, by the absence of a disclosure, the Premier Protein Products no longer
5 contained unsafe levels of toxic metals, including lead. But unless Defendants are enjoined in the manner
6 Plaintiffs request, Plaintiffs may not be able to reasonably determine whether the lead in the Products has
7 been addressed, or whether Defendants are just continuing to omit its presence.

8 118. Plaintiffs’ substantive right to a marketplace free of fraud, where they are entitled to rely
9 with confidence on representations such as those made by Defendants, continues to be violated every time
10 Plaintiffs are exposed to the Premier Protein Products’ labels.

11 119. Plaintiffs’ legal remedies are inadequate to prevent these future injuries.

12 **CLASS ACTION ALLEGATIONS**

13 120. While reserving the right to redefine or amend the class definition prior to or as part of a
14 motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek to
15 represent a class of all persons in the United States (the “Nationwide Class”), and Plaintiffs Krystofiak and
16 Carreno separately seek to represent a subclass of all persons in California (the “California Subclass”), who,
17 at any time from four years preceding the date of the filing of this Complaint to the time a class is notified,
18 purchased one or more Premier Protein Products (as defined herein) for individual household use, and not
19 for resale. Plaintiff Zimmerman further seeks to represent a subclass of all persons in New York (the “New
20 York Subclass”) who, at any time from three years preceding the date of the filing of this Complaint to the
21 time a class is notified, purchased one or more Premier Protein Products for individual household use, and
22 not for resale.

23 121. The members in the proposed Nationwide Class and Subclasses (together, “Classes”) are so
24 numerous that individual joinder of all members is impracticable, and the disposition of the claims of all
25 Class Members in a single action will provide substantial benefits to the parties and Court.

26 122. Questions of law and fact common to Plaintiffs and the Classes include:

27 a. Whether, through labeling and advertising the Premier Protein Products, Defendants
28 communicated a message that the products are generally healthy;

1 b. Whether, through labeling and advertising the Premier Protein Products, Defendants
2 communicated a message that the products promote immune health;

3 c. Whether those messages were material, or likely to be material, to a reasonable
4 consumer, or whether Defendants had reason to believe that they were;

5 d. Whether the Premier Protein Products contain lead;

6 e. Whether the challenged claims are false, misleading, or reasonably likely to deceive a
7 reasonable consumer;

8 f. Whether Defendants were under a duty to disclose information about the Premier
9 Protein Products' lead content;

10 g. Whether Defendants omitted material information about the Premier Protein Products'
11 lead content;

12 h. Whether that omission was material, or likely to be material to a reasonable consumer;

13 i. Whether that omission was likely to deceive a reasonable consumer;

14 j. Whether Defendants' conduct was consumer-oriented.

15 k. Whether Defendants made and breached any warranties;

16 l. Whether Plaintiffs and the Classes are entitled to monetary damages and the measure
17 of those damages;

18 m. Whether Plaintiffs and Classes are entitled to restitution, disgorgement and/or other
19 equitable and injunctive relief;

20 n. Whether Plaintiffs and the Classes are entitled to injunctive or other equitable relief,
21 and its proper scope; and

22 o. Whether Plaintiffs and the Classes are entitled to attorneys' fees, and the proper
23 amount.

24 123. These common questions of law and fact predominate over questions that affect only
25 individual Class Members.

26 124. Plaintiffs' claims are typical of other Class Members' claims because they are based on the
27 same underlying facts, events, and circumstances relating to Defendants' conduct.
28

1 125. Plaintiffs will fairly and adequately represent and protect the interests of the Classes, have
2 no interests incompatible with the interests of the Classes, and have retained counsel competent and
3 experienced in class action litigation.

4 126. Class treatment is superior to other options for resolution of the controversy because the
5 relief sought for each Class Member is small, such that, absent representative litigation, it would be
6 infeasible for Class Members to redress the wrongs done to them.

7 127. Defendants have acted on grounds applicable to the Classes, thereby making appropriate
8 final injunctive and declaratory relief concerning each of the Classes as a whole.

9 128. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a),
10 23(b)(2), and 23(b)(3).

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **Violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.***

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

15 129. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth
16 fully herein.

17 130. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. &
18 Prof. Code § 17200.

19 131. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants
20 alleged herein constitute business acts and practices.

21 **Fraudulent**

22 132. A statement or practice is fraudulent under the UCL if it is likely to deceive a significant
23 portion of the public, applying an objective reasonable consumer test.

24 133. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants were
25 fraudulent because they induced Plaintiffs and other Class Members to purchase the Premier Protein
26 Products under false pretenses, and were likely to deceive reasonable consumers and the public.

Unlawful

134. The acts of Defendants alleged herein are “unlawful” under the UCL in that, as alleged herein, they violate at least the following laws:³²

- a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* and its implementing regulations, including 21 C.F.R. § 1.21; and
- d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety

135. By violating these laws, Defendants have engaged in unlawful business acts and practices.

Unfair

136. Defendants’ conduct with respect to the labeling, advertising, and sale of the Premier Protein Products was unfair because their conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of their conduct, if any, did and does not outweigh the gravity of the harm to their victims.

137. Defendants’ conduct was also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not necessarily limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

138. Defendants’ conduct was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

139. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein.

* * *

140. Defendants profited from, and Plaintiffs and other Class Members suffered injury in fact and lost money as a result of Defendants’ fraudulent, unlawful, and unfair conduct. Therefore Plaintiffs,

³² Plaintiffs reserve the right to allege other violations of law that constitute other unlawful business acts or practices.

1 individually and on behalf of the Nationwide Class and California Subclass seek: (1) an order enjoining
2 Defendants from continuing to conduct business through unlawful, unfair, or fraudulent acts or practices;
3 (2) compensatory restitution; and (3) reasonable attorney’s fees.

4 141. Because Plaintiffs’ claims under the “unfair” prong of the UCL sweep more broadly than
5 their claims under the FAL, CLRA, or UCL’s “fraudulent” prong, Plaintiffs’ legal remedies are inadequate
6 to fully compensate Plaintiffs for all of Defendants’ challenged behavior.

7 **SECOND CAUSE OF ACTION**

8 **Violation of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.***

9 **(On behalf of the Nationwide Class and California Subclass)**

10 142. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth
11 fully herein.

12 143. The FAL provides that “[i]t is unlawful for any person, firm, corporation or association, or
13 any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform
14 services” to disseminate any statement “which is untrue or misleading, and which is known, or which by
15 the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code §
16 17500. It is also unlawful under the FAL to disseminate statements concerning property or services that are
17 “untrue or misleading, and which is known, or which by the exercise of reasonable care should be known,
18 to be untrue or misleading.” *Id.*

19 144. As alleged herein, the advertisements, labeling, policies, acts, and practices of Defendants
20 relating to the Premier Protein Products were likely to mislead consumers acting reasonably, as to the
21 healthfulness of the products.

22 145. Plaintiffs suffered injury in fact as a result of Defendants’ actions as set forth herein because
23 Plaintiffs purchased the Premier Protein Products in reliance on Defendants’ false and misleading statements
24 and omissions concerning the healthfulness and lead content of the products.

25 146. Defendants’ business practices as alleged herein constitute unfair, deceptive, untrue, and
26 misleading advertising pursuant to the FAL because Defendants have advertised the Premier Protein
27 Products in a manner that is untrue and misleading, which Defendants knew or reasonably should have
28 known, and omitted material information from the products’ labeling and advertising.

1 147. Defendants profited from the sale of the falsely and deceptively advertised Premier Protein
2 Products to unwary consumers.

3 148. As a result, Plaintiffs and other Class Members are entitled to injunctive and equitable relief,
4 restitution, and an order for the disgorgement of the funds by which Defendants were unjustly enriched.

5 149. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs, on behalf of themselves and other
6 Class Members seek an order enjoining Defendants from continuing to engage in deceptive business
7 practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

8 150. Because the Court has broad discretion to award restitution under the FAL and could, when
9 assessing restitution under the FAL, apply a standard different than that applied to assessing damages under
10 the CLRA or commercial code (for Plaintiffs' breach of warranty claims), and restitution is not limited to
11 returning to Plaintiffs and other Class Members monies in which they have an interest, but more broadly
12 serves to deter the offender and others from future violations, the legal remedies available under the CLRA
13 and commercial code are more limited than the equitable remedies available under the FAL, and are
14 therefore inadequate.

15 **THIRD CAUSE OF ACTION**

16 **Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***

17 **(On behalf of the Nationwide Class and California Subclass)**

18 151. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth
19 fully herein.

20 152. The CLRA prohibits deceptive practices in connection with the conduct of a business that
21 provides goods, property, or services primarily for personal, family, or household purposes.

22 153. Defendants' false and misleading labeling and other policies, acts, and practices were
23 designed to, and did, induce the purchase of the Premier Protein Products by Plaintiffs and other Class
24 Members for personal, family, or household purposes, and violated and continue to violate the following
25 sections of the CLRA:

- 26 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which
27 they do not have;

1 161. These representations were part of the basis of the bargain, in that Plaintiffs and other Class
2 Members purchased the Premier Protein Products in reasonable reliance on those statements. Cal. Com.
3 Code § 2313(1).

4 162. Defendants breached these express warranties by selling Premier Protein Products that, for
5 the reasons described herein, do not meet the above affirmations, promises, and product descriptions.

6 163. That breach actually and proximately caused injury in the form of the lost purchase price that
7 Plaintiffs and other Class Members paid for the Premier Protein Products.

8 164. As a result, Plaintiffs seek, on behalf of themselves and other Class Members, their actual
9 damages arising as a result of Defendants' breaches of express warranty, including, without limitation,
10 expectation damages.

11 **FIFTH CAUSE OF ACTION**

12 **Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314**

13 **(On Behalf of the Nationwide and California Subclass)**

14 165. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth
15 fully herein.

16 166. Defendants, through their acts set forth herein, in the sale, marketing, and promotion of the
17 Premier Protein Products bearing statements "healthy snack," "immune health support" or "a powerful
18 nutrition boost," made representations, that, *inter alia*, the Premier Protein Products are healthy, including
19 for the immune system.

20 167. Defendants are merchants with respect to the goods of this kind, which were sold to Plaintiffs
21 and other Class Members, and there were, in the sale to Plaintiffs and other Class Members, implied
22 warranties that those goods were merchantable.

23 168. However, Defendants breached that implied warranty because, for the reasons discussed
24 herein, the Premier Protein Products were and are not healthy, including for the immune system.

25 169. As an actual and proximate result of Defendants' conduct, Plaintiffs and other Class
26 Members did not receive goods as impliedly warranted by Defendants to be merchantable in that they did
27 not conform to promises and affirmations made on the container or label of the goods.
28

1 170. Defendants further breached their implied warranty because the Premier Protein Products
2 were unsafe in that they contained unsafe levels of toxic lead. Therefore, the products would not pass without
3 objection in the trade or industry and were accordingly not fit for the ordinary purpose for which they are
4 used, which is consumption by consumers, including children and pregnant women.

5 171. Since the presence of lead in the Premier Protein Products renders them unsafe for human
6 consumption, the products that Plaintiffs and other Class Members purchased are worthless, or at a minimum
7 are worth less than Plaintiffs and other Class Members paid for them.

8 172. As a result, Plaintiffs seek, on behalf of themselves and other Class Members, their actual
9 damages arising as a result of Defendants' breaches of implied warranty, including, without limitation,
10 expectation damages.

11 **SIXTH CAUSE OF ACTION**

12 **Unfair and Deceptive Business Practices, N.Y. Gen. Bus. L. § 349**

13 **(On behalf of the New York Subclass)**

14 173. Plaintiff Zimmerman realleges and incorporates the allegations elsewhere in the Complaint
15 as if fully set forth herein.

16 174. During the Class Period, Defendants carried out a plan, scheme and course of conduct which
17 was consumer-oriented.

18 175. Defendants' conduct constitutes deceptive acts or practices or false advertising in the conduct
19 of business, trade, or commerce or in the furnishing of services in New York which affects the public interest
20 under N.Y. Gen. Bus. L. § 349.

21 176. As alleged herein, Defendants engaged in, and continue to engage in, deceptive acts and
22 practices by advertising, marketing, distributing, and selling the Premier Protein Products with false or
23 misleading claims and representations, and deceptive omissions.

24 177. As alleged herein, by misbranding the Premier Protein Products, Defendants engaged in, and
25 continue to engage in, unlawful and deceptive acts and practices.

26 178. Defendants' conduct was materially misleading to Plaintiff Zimmerman and the New York
27 Subclass.

1 179. As a direct and proximate result of Defendants' violation of N.Y. Gen. Bus. L. § 349, Plaintiff
2 Zimmerman and the New York Class were injured and suffered damages.

3 180. The injuries to Plaintiff Zimmerman and the New York Subclass were foreseeable to
4 Defendants and, thus Defendants' actions were unconscionable and unreasonable.

5 181. Defendant is liable for damages sustained by Plaintiff Zimmerman and the New York
6 Subclass to the maximum extent allowable under N.Y. Gen. Bus. L. § 349, actual damages or \$50 per unit,
7 whichever is greater.

8 182. Pursuant to N.Y. Gen. Bus. L. § 349(h), Plaintiff Zimmerman and the New York Subclass
9 seek an Order enjoining Defendants from continuing to engage in unlawful acts or practices, false
10 advertising, and any other acts prohibited by law, including those set forth in this Complaint.

11 **SEVENTH CAUSE OF ACTION**

12 **False Advertising, N.Y. Gen. Bus. L. § 350**

13 **(On behalf of the New York Subclass)**

14 183. Plaintiff Zimmerman realleges and incorporates the allegations elsewhere in the Complaint
15 as if fully set forth herein.

16 184. Defendants have engaged and are engaging in consumer-oriented conduct which is deceptive
17 or misleading in a material way (both by affirmative misrepresentations and by material omissions),
18 constituting false advertising in the conduct of any business, trade, or commerce, in violation of N.Y. Gen.
19 Bus. L. § 350.

20 185. As a result of Defendants' false advertising, Plaintiff Zimmerman and the New York
21 Subclass Members have suffered and continue to suffer substantial injury, including damages, which would
22 not have occurred but for the false and deceptive advertising, and which will continue to occur unless
23 Defendants are permanently enjoined by this Court.

24 186. Plaintiff Zimmerman and the New York Subclass seek to enjoin the unlawful acts and
25 practices described herein, and to recover their actual damages or \$500 per unit, whichever is greater, along
26 with reasonable attorney fees.

EIGHTH CAUSE OF ACTION

Negligent Misrepresentation

(On behalf of the Nationwide Class)

1
2
3
4 187. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if fully set
5 forth herein.

6 188. Defendants marketed the Premier Protein Products in a manner conveying to reasonable
7 consumers that the products promote general health and wellness, and provide specific health benefits to the
8 immune system.

9 189. Defendants' misrepresentations regarding the Premier Protein Products are material to a
10 reasonable consumer because they relate to human health generally and immune health specifically.
11 Reasonable consumers would attach importance to such representations and would be induced to act thereon
12 in making purchase decisions. Defendants intend that Plaintiffs and other consumers rely on these
13 representations, as evidenced by the intentional and conspicuous placement of the representations on the
14 Premier Protein Products' packaging by Defendants

15 190. In selling the Premier Protein Products, Defendants acted in the ordinary course of their
16 business and had a pecuniary interest in Plaintiffs and other Class Members purchasing the products.

17 191. Defendants owed a duty of care to Plaintiffs, not to provide them false or incomplete
18 information when they were making their purchase decisions regarding the Premier Protein Products.

19 192. Defendants knew or had been negligent in not knowing that the Premier Protein Products did
20 not promote health, but instead, contained high levels of toxic lead. Defendants had no reasonable grounds
21 for believing their misrepresentations were not false and misleading.

22 193. Plaintiffs and other Class Members have reasonably and justifiably relied on Defendants'
23 misrepresentations when purchasing the Premier Protein Products and, had the correct facts been known,
24 would not have purchased the products at the prices at which they were offered (or at all).

25 194. Therefore, as a direct and proximate result of Defendants' negligent misrepresentations,
26 Plaintiffs and other Class Members have suffered economic losses and other general and specific damages,
27 in the amount of the products' purchase prices, or some portion thereof, and any interest that would have
28 accrued on those monies, all in an amount to be proven at trial.

NINTH CAUSE OF ACTION

Intentional Misrepresentation

(On behalf of the Nationwide Class)

1
2
3
4 195. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth
5 in full herein.

6 196. Defendants marketed the Premier Protein Products in a manner conveying to reasonable
7 consumers that the products promote general health and wellness and immune system function. However,
8 exposure to lead in the products harms the overall health of the average consumer and harms the immune
9 system. Therefore, Defendants have made misrepresentations about the Premier Protein Products.

10 197. Defendants' misrepresentations regarding the Premier Protein Products are material to a
11 reasonable consumer because they relate to human health generally and the immune system specifically. A
12 reasonable consumer would attach importance to such representations and would be induced to act thereon
13 in making purchase decisions.

14 198. At all relevant times, Defendants knew that the misrepresentations were misleading, or acted
15 recklessly in making the misrepresentations, without regard to their truth.

16 199. Defendants intend that Plaintiffs and other consumers rely on these misrepresentations, as
17 evidenced by the intentional and conspicuous placement of the misleading representations on the Premier
18 Protein Products' packaging by Defendants.

19 200. Plaintiffs and other Class Members have reasonably and justifiably relied on Defendants'
20 intentional misrepresentations when purchasing the Premier Protein Products; had the correct facts been
21 known, they would not have purchased the Premier Protein Products at the prices at which the products
22 were offered (or at all).

23 201. Therefore, as a direct and proximate result of Defendants' intentional misrepresentations,
24 Plaintiffs and other Class Members have suffered economic losses and other general and specific damages,
25 in the amount of the products' purchase prices, or some portion thereof, and any interest that would have
26 accrued on those monies, all in an amount to be proven at trial.

TENTH CAUSE OF ACTION

Unjust Enrichment

(On behalf of the Nationwide Class)

202. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth fully herein.

203. Plaintiffs and other Class Members conferred economic benefits on Defendants by purchasing the Premier Protein Products.

204. Defendants' financial benefits resulting from their unlawful and inequitable conduct are economically traceable to Plaintiffs' and other Class Members' purchases of the Premier Protein Products and the economic benefits conferred on Defendants are a direct and proximate result of their unlawful and inequitable conduct.

205. It would be inequitable, unconscionable, and unjust for Defendants to be permitted to retain these economic benefits because the benefits were procured as a direct and proximate result of their wrongful conduct.

206. As a result, Plaintiffs and other Class Members are entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by Defendants as a result of such business practices.

PRAYER FOR RELIEF

207. Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for judgment against Defendants as to each and every cause of action, and the following remedies:

- a. An Order declaring this action to be a proper class action, appointing Plaintiffs as Class Representatives, and appointing Plaintiffs' undersigned counsel as Class Counsel;
- b. An Order requiring Defendants to bear the cost of Class Notice;
- c. A judgment awarding Plaintiffs other Class Members appropriate relief, including actual, compensatory, and punitive damages (as permitted by law), in an amount to be determined at trial;

1 **FITZGERALD JOSEPH LLP**
 JACK FITZGERALD (SBN 257370)
 2 *jack@fitzgeraldjoseph.com*
 PAUL K. JOSEPH (SBN 287057)
 3 *paul@fitzgeraldjoseph.com*
 MELANIE PERSINGER (SBN 275423)
 4 *melanie@fitzgeraldjoseph.com*
 TREVOR M. FLYNN (SBN 253362)
 5 *trevor@fitzgeraldjoseph.com*
 CAROLINE S. EMHARDT (SBN 321222)
 6 *caroline@fitzgeraldjoseph.com*
 2341 Jefferson Street, Suite 200
 7 San Diego, California 92110
 8 Phone: (619) 215-1741

9 *Counsel for Plaintiff*

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12
 13 PATRICIA KRSTOFIAK and JOHATHAN
 ZIMMERMAN, on behalf of themselves, all
 14 others similarly situated, and the general public,

15 Plaintiffs,

16 v.

17 BELLRING BRANDS, INC. and PREMIER
 18 NUTRITION COMPANY, LLC,
 Defendants.

CONSUMERS LEGAL REMEDIES ACT
VENUE AFFIDAVIT [CCP § 1780(d)]

1 I, Patricia Krystofiak, declare as follows:


2 1. I am a plaintiff in this action. I make this affidavit as required by California Civil Code §
3 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action because
5 defendant is doing business in Alameda County.

6 3. The Complaint in this action is further filed in a proper place for the trial of this action because
7 the transactions that are the subject of the action occurred in Alameda county, in that Defendant was
8 headquartered and had its principal place of business in Alameda County at the time the transactions at issue
9 took place.

10
11 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
12 correct to the best of my knowledge.

13
14 Executed on 6/5/2023 in San Marcos, California.
15 (date)

16
17 DocuSigned by:
18 
19 045CDB900EAA456...
20 Patricia Krystofiak

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PATRICIA KRYSSTOFIAK, LUIS CARRENO, and JONATHAN ZIMMERMAN, on behalf of themselves, all others similarly situated, and the general public.

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Fitzgerald Joseph LLP; 2341 Jefferson St. Ste. 200, San Diego, CA 92110; (619) 215-1741

DEFENDANTS

BELLRING BRANDS, INC. and PREMIER NUTRITION COMPANY, LLC,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Diversity Action; Class Action Fairness Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 06/07/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jack Fitzgerald

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.