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

NICOLE LOZA, KIMBERLY HALL, AND  
NICOLE RIVERA, on behalf of themselves,  
the general public, and those similarly situated,

Plaintiffs,

v.

THE HERSHEY COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT;  
FALSE ADVERTISING; FRAUD, DECEIT,  
AND/OR MISREPRESENTATION;  
UNFAIR BUSINESS PRACTICES; AND  
UNJUST ENRICHMENT

JURY TRIAL DEMANDED

**INTRODUCTION**

1. Plaintiffs Nicole Loza, Kimberly Hall and Nicole Rivera, by and through their counsel, bring this class action against Defendant The Hershey Company (“Defendant”) to seek redress for its unlawful and deceptive practices in the labeling and marketing of Lily’s chocolate products which make prominent front label claims that the products are “Stevia Sweetened.”

2. Consumers desire foods sweetened with Stevia because it is a natural, plant-based sugar alternative with known health benefits, such as an anti-hypertensive, anti-obesity, anti-diabetic, antioxidant, anti-cancer, anti-inflammatory, and antimicrobial effects and improvement of kidney function. Consumers understand the representation “Stevia Sweetened” to mean that the Lily’s chocolate products are entirely, or at the very least predominantly, sweetened with Stevia. Consumers seeking Stevia sweetened products do so for a specific reason – they want

1 solely, if not predominantly, Stevia because it is a natural plant-based sweetener, has understood  
2 health benefits, and is preferred over alternative sweeteners that present health risks.

3 3. Defendant’s representations are misleading because despite the prominent front  
4 label claim representations, the Products are predominately and primarily sweetened with  
5 *erythritol*. Erythritol is a highly processed sugar alcohol which is not a natural sweetener like  
6 Stevia. Recent studies have shown that erythritol is disruptive to gut health and is linked to  
7 increased risk of heart attack and stroke. Consumers reasonably understand (and believe) that  
8 products marketed as “Stevia Sweetened” obtain their sweet taste from Stevia, not some other  
9 sweetener, let alone an artificial, harmful sweetener. Defendant’s labeling of the Lily’s  
10 chocolates as “Stevia Sweetened” is designed to – and does – deceive, mislead, and defraud  
11 consumers like Plaintiffs.

12 4. Defendant’s unlawful and misleading “Stevia Sweetened” claims caused  
13 Plaintiffs and members of the class to, at a minimum, pay a price premium for the Lily’s  
14 products.

15 **PARTIES**

16 5. Plaintiff Nicole Loza is, and at all times alleged in this Class Action Complaint  
17 was, an individual and a resident of South San Francisco, California. Plaintiff Loza makes her  
18 permanent home in California and intends to remain in California.

19 6. Plaintiff Kimberly Hall is, and at all times alleged in this Class Action Complaint  
20 was, an individual and a resident of Santa Rosa, California. Plaintiff Hall makes her permanent  
21 home in California and intends to remain in California.

22 7. Plaintiff Nicole Rivera is, and at all times alleged in this Class Action Complaint  
23 was, an individual and a resident of San Bernadino, California. Plaintiff Rivera makes her  
24 permanent home in California and intends to remain in California.

25 8. Defendant The Hershey Company is a Delaware corporation doing business in  
26 the United States and the state of California.

1 **JURISDICTION AND VENUE**

2 9. This Court has subject matter jurisdiction over this action pursuant to the Class  
3 Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A) because: (i) there are 100 or more class  
4 members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of  
5 interest and costs; and (iii) at least one Class member and Defendant are citizens of different  
6 states.

7 10. The injuries, damages and/or harm upon which this action is based, occurred or  
8 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State  
9 of California. Defendant regularly conducts and/or solicits business in, engages in other  
10 persistent courses of conduct in, and/or derives substantial revenue from products provided to  
11 persons in the State of California. Defendant has engaged, and continues to engage, in substantial  
12 and continuous business practices in the State of California.

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

16 12. In accordance with California Civil Code Section 1780(d), Plaintiffs concurrently  
17 file herewith a declaration establishing that (i) Plaintiff Loza purchased Lily’s chocolate  
18 products, including the Lily’s Peppermint Flavor White Chocolate Style Baking Chips, on one or  
19 more occasions during the last four years while in California and (ii) Plaintiff Hall purchased  
20 Lily’s chocolate products, including the Lily’s Creamy Milk Chocolate and Lily’s Salted  
21 Caramel Milk Chocolate bar, on one or more occasions during the last four years while in  
22 California. (Plaintiffs’ declarations are attached hereto as Exhibits A and B.)

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

24 **SUBSTANTIVE ALLEGATIONS**

25 14. Defendant manufactures, distributes, markets, advertises, and sells food products  
26 under the brand name “Lily’s.” The Lily’s products have packaging that predominately,  
27 uniformly, and consistently states on the principal display panel of the product labels that they  
28 are “Stevia Sweetened.” Plaintiffs have attached as Exhibit C a non-exhaustive list of the Lily’s

1 products that currently or during the Class Period have made “Stevia Sweetened” claims on the  
2 front of the product packages and are sweetened with erythritol. The products listed in Exhibit  
3 C, and any other Lily’s products, including the Lily’s chocolate bars, baking chips, baking bars,  
4 chocolate popcorn, dark chocolate almonds, chocolate caramels, chocolate peanuts, chocolate  
5 peanut butter cups, and tasting squares, that claim they are sweetened using Stevia but are  
6 sweetened with erythritol will hereinafter be referred to as the “Products.”

7 15. The representation that the Products are “Stevia Sweetened” was uniformly  
8 communicated to Plaintiffs and every other person who purchased any of the Products in  
9 California. The same or substantially similar product label has appeared on each Product during  
10 the entirety of the Class Period in the general form of the following example:



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24 16. As shown in the ingredient list on the back of the Products, which have appeared  
25 consistently throughout the Class Period in the general form of the following example (from the  
26 Salted Almond Milk Chocolate Style Chocolate Bars), the Products contain far more erythritol  
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1 than Stevia. See 21 C.F.R. § 101.4. Stevia is, in fact, listed as the second to last or last ingredient  
 2 in each of the Products’ ingredient lists as seen in the example below.<sup>1</sup>



17 17. Stevia is derived from the leaves of the *Stevia rebaudiana* (Bertoni) plant, an  
 18 herbal shrub native to South America.<sup>2</sup> Stevia is known to be high in antioxidants.<sup>3</sup> Multiple

20 <sup>1</sup> The ingredient list on the example shown reads: UNSWEETENED CHOCOLATE, COCOA  
 21 BUTTER, ERYTHRITOL, CHICORY ROOT FIBER, DEXTRIN, WHOLE MILK POWDER  
 22 (rBST FREE), DRY RAOSTED ALMONDS, MILK FAT (rBST FREE), SEA SALT,  
 23 SUNFLOWER LECHTIN, STEVIA EXTRACT, VANILLA EXTRACT.

24 <sup>2</sup> Everything You Need to Know About Stevia Sweeteners – Food Insight,  
 25 <https://foodinsight.org/everything-you-need-to-know-about-stevia-sweeteners/> (last accessed  
 26 February 28, 2024).

27 <sup>3</sup> Victoria Peteliuk, Lesia Rybchuk, Maria Bayliak, Kenneth B. Storey, and Oleh Lushchak,  
 28 Natural sweetener *Stevia rebaudiana*: Functionalities, health benefits and potential risks,  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8600158/#:~:text=Many%20studies%20have%20shown%20that,.%2C%2017%5B19%5D> (last accessed February 28, 2024) (hereinafter,  
 “Stevia Functionalities, health benefits and potential risks”).

1 studies have shown that Stevia can be used to prevent or treat cancer, inhibits the activity of  
2 many pathogenic bacteria, can be used to treat immune diseases and reduce edema.<sup>4</sup> Stevia can  
3 also be used to treat diabetes because it “can suppress glucose levels, significantly increase  
4 glucose tolerance and stabilize blood sugar levels.”<sup>5</sup> Stevia has also been shown to reverse high  
5 blood pressure, which is the most dangerous factor in the development of myocardial infarction  
6 and ischemic stroke.<sup>6</sup> Likewise, Stevia can be used to treat obesity and kidney disorders.<sup>7</sup> As  
7 such, Stevia is considered to be a more healthy, higher value sweetener.

8 18. Stevia is also desired by consumers as an alternative to more harmful sweeteners,  
9 including sugar and artificial sweeteners that are known to contribute to health risks including  
10 tumors, cancer, heart disease, liver disease, high blood pressure, obesity, and diabetes.

11 19. However, unbeknownst to consumers, the Products are not solely, or even  
12 predominantly, sweetened with Stevia. Instead, the Products are predominantly sweetened with  
13 erythritol.

14 20. Erythritol is a sugar alcohol which is generally crafted from GMO cornstarch.<sup>8</sup>  
15 Ingestion of erythritol can lead to multiple side effects, including digestive problems, diarrhea,  
16 bloating, cramps, gas, nausea, and headaches.<sup>9</sup> Dieticians recognize the fact that erythritol is  
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20 <sup>4</sup> *Id.*

21 <sup>5</sup> Stevia Benefits | Natural Health Guide, <https://www.indigo-herbs.co.uk/natural-health-guide/benefits/stevia> (last accessed February 28, 2024).

22 <sup>6</sup> Stevia Functionalities, health benefits and potential risks.

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

24 <sup>8</sup> Meritage Medical Network, *What Is Erythritol? Erythritol Side Effects And Danger*,  
25 <https://meritagemed.com/erythritol/#:~:text=Erythritol%20side%20effects%20typically%20include,headaches%20may%20occur%20as%20well> (last visited February 28, 2024).

26 <sup>9</sup> *Id.*

1 more disruptive to the consumer’s gut than Stevia.<sup>10</sup> It also has been linked to an increased risk  
2 of heart attacks and stroke.<sup>11</sup>

3 21. While the “Stevia Sweetened” representations in isolation deceive reasonable  
4 consumers into believing that the Products are solely or predominantly sweetened with Stevia,  
5 all of the Products also represent on their front labels that they have “No Sugar Added.” The “No  
6 Sugar Added” representations only compound the deceptive nature of the Products’ labeling.  
7 Consumers see the “No Sugar Added” representations and understand that they are purchasing  
8 a specialty chocolate product, where the Product is not sweetened with sugar, but a specific,  
9 alternative sweetener, Stevia. Consumers see only a single piece of information on the front of  
10 the Product packages as to the sweetener used as an alternative to sugar: Stevia. Thus, the “Stevia  
11 Sweetened” representations in the context of the “No Sugar Added” representations further serve  
12 to mislead reasonable consumers to believe that the Products are solely or predominantly  
13 sweetened with Stevia. Moreover, the combination of Defendant’s unambiguous representations  
14 make it far less likely that a consumer will turn the package over to read the fine print of the  
15 ingredient label. Otherwise stated, because the front label presents all the material information  
16 about the Products—i.e., the sweetener (Stevia), no sugar added, the flavor and percent cacao—  
17 Plaintiffs allege that very few consumers bother to turn the Product over and read the ingredient  
18 labels.

19 22. Even if consumers had looked at the ingredient list, it would not have alerted  
20 consumers that the “Stevia Sweetened” claim was false because the ingredient list does not  
21 disclose that the ingredient erythritol is a sweetener. Reasonable consumers do not know what  
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24 <sup>10</sup> The Best And Worst Sweeteners, According to an RD,  
25 <https://www.humnutrition.com/blog/best-and-worst-sweeteners/#:~:text=Dates%2C%20honey%20maple%20syrup%2C%20and,agave%2C%20and%20brown%20rice%20syrup> (last accessed February 28, 2024).  
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27 <sup>11</sup> <https://www.cnn.com/2023/02/27/health/zero-calorie-sweetener-heart-attack-stroke-wellness/index.html> (last visited February 28, 2024).  
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1 erythritol is, how it is manufactured or even that it is a sweetener. Nor do reasonable consumers  
2 know of the health risks associated with consuming erythritol.

3 23. Defendant knew or should have known that Plaintiffs and other consumers, in  
4 purchasing the Products, would rely on Defendant's false and misleading representations.  
5 Nonetheless, Defendant deceptively advertises the Products in order to deceive consumers and  
6 gain an unfair advantage in the market. Defendant is well aware of consumers desire for natural  
7 sweeteners such as Stevia, which is why it chose to predominately label it with the only reference  
8 being to "Stevia." Knowing that erythritol is a less desired and cheaper sugar substitute,  
9 Defendant intentionally failed to disclose it on the front label of the Products.

10 24. Consumers are willing to pay more for the Products based on the belief that the  
11 Products are solely, or at the very least primarily, sweetened with Stevia. Plaintiffs and other  
12 consumers would have paid significantly less for the Products, or would not have purchased  
13 them at all, had they known that the truth about them. Thus, through the use of misleading  
14 representations, Defendant commands a price that Plaintiffs and the Class would not have paid  
15 had they been fully informed.

16 25. Therefore, Plaintiffs and other consumers purchasing the Products have suffered  
17 injury in fact and lost money as a result of Defendant's false and deceptive practices, as described  
18 herein.

19 26. In making unlawful, false, misleading, and deceptive representations, Defendant  
20 distinguishes the Products from their competitors' products. Defendant knew and intended that  
21 consumers would purchase, and pay a premium for, products labeled with "Stevia Sweetened"  
22 claims. By using this branding and marketing strategy, Defendant is stating that the Products are  
23 superior to, better than, and more nutritious and healthful than other products that do not make  
24 "Stevia Sweetened" claims, or that properly disclose on the front of the product package that the  
25 product contains artificially sweeteners.

26 27. Defendant intends and knows that consumers will and do rely upon front of the  
27 package food labeling statements in making their purchasing decisions. Label claims and other  
28 forms of advertising and marketing drive product sales, particularly if placed prominently on the



1 front of product packaging, as Defendant has done with the claims on the Products that they are  
2 sweetened with Stevia. Most consumers do not check the ingredient list at the point of sale. This  
3 is consistent with the reports of Food Navigator, a food industry publication, which reported that  
4 “that there’s actually much more consumer focus on front-of-pack claims than on the ingredient  
5 list” when it comes to matching consumer preferences, quoting the director of marketing for  
6 DuPont Nutrition & Health in North America.<sup>12</sup> Even if consumers did review the Products’  
7 ingredient list, reasonable consumers do not know what erythritol is, let alone know that it is an  
8 artificial sweetener.

9 28. Because consumers pay a price premium for products that are sweetened with  
10 Stevia, and also pay a premium for products that contain no artificial sweeteners, by labeling its  
11 Products with “Stevia Sweetened” and/or omitting that the Products are actually sweetened by  
12 an artificial sweetener (erythritol), Defendant is able to both increase its sales and retain more  
13 profits.

14 29. Defendant engaged in the practices complained of herein to further its private  
15 interests of: (i) increasing sales of the Products while decreasing the sales of competitors that do  
16 not misrepresent the ingredients used to sweetened their products and/or (ii) commanding a  
17 higher price for its Products because consumers will pay more for the Products sweetened with  
18 Stevia instead of artificial sweeteners.

19 30. The market for Stevia sweetened products is continuing to grow and expand, and  
20 because Defendant knew consumers rely on representations about the ingredients used to  
21 sweeten food products, Defendant has an incentive to continue to make such unlawful and  
22 misleading representations. In addition, other trends suggest that Defendant has no incentive to  
23 change its labeling practices.

24 31. For example, as one market analysis explained:  
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27 <sup>12</sup> Elaine Watson, Who is driving the clean label agenda, and what does clean really mean?, Food  
28 Navigator, 9 March 2012, <https://www.foodnavigator-usa.com/Article/2012/02/27/Who-is-driving-the-clean-label-agenda-and-what-does-clean-really-mean> (last acced February 28, 2024).

1 The global Stevia market is experiencing growth, with increasing consumer preferences  
 2 for sugar-free alternatives and a focus on healthier living. The rising demand for plant-  
 3 based, organic sweeteners further boosts the market. Key players in the industry are  
 4 expanding product offerings to meet the growing global demand, with a promising future  
 for the Stevia market. [The] Stevia market size is estimated at USD 0.84 billion in 2024  
 and is expected to reach USD 1.36 billion by 2029, growing at a CAGR of 10.12% during  
 the forecast period (2024-2029).<sup>13</sup>

5 32. To capitalize on the growing market, Defendant continues to launch new product  
 6 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant  
 7 has continued to replicate its misrepresentations on new products. It is therefore likely that  
 8 Defendant will continue to unlawfully and/or misleadingly advertise the Products and perpetuate  
 9 the misrepresentations regarding the sweeteners used in the Products.

10 **The Products' Labeling Violates Federal and State Regulations**

11 33. Identical federal and California laws regulate the content of labels on packaged  
 12 food. The requirements of the Act, and its labeling regulations, including those set forth in 21  
 13 C.F.R. §§ 101, 102, were adopted by the California legislature in the Sherman Food Drug &  
 14 Cosmetic Law (the "Sherman Law"). California Health & Safety Code § 110100 ("All food  
 15 labeling regulations and any amendments to those regulations adopted pursuant to the federal  
 16 act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling  
 17 regulations of this state.") The federal laws and regulations discussed below are applicable  
 18 nationwide to all sales of packaged food products. Additionally, none of the California laws  
 19 sought to be enforced here imposes different requirements on the labeling of packaged food for  
 20 sale in the United States.

21 34. The Act, 21 U.S.C. § 343(a), and the Sherman Law, Cal. Health & Saf. Code §  
 22 110660, provide that a food is misbranded if "its labeling is false or misleading in any particular."

23 35. Defendant's marketing, advertising, and sale of the Products violates the  
 24 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et.*  
 25 *Seq.*), including but not limited to:

26 \_\_\_\_\_  
 27 <sup>13</sup> Steiva Market Analysis 2024, [https://fhafnb.com/blog/stevia-](https://fhafnb.com/blog/stevia-market/#:~:text=Growing%20consumer%20interest%20in%20sugar,to%20lower%20blood%20sugar%20levels)  
 28 [market/#:~:text=Growing%20consumer%20interest%20in%20sugar,to%20lower%20blood%20sugar%20levels](https://fhafnb.com/blog/stevia-market/#:~:text=Growing%20consumer%20interest%20in%20sugar,to%20lower%20blood%20sugar%20levels) (last accessed February 28, 2024).

- 1 a. Section 110705 (a food is misbranded if words, statements and other
- 2 information required by the Sherman Law to appear food labeling is either
- 3 missing or not sufficiently conspicuous);
- 4 b. Section 110760, which makes it unlawful for any person to manufacture,
- 5 sell, deliver, hold, or offer for sale any food that is misbranded;
- 6 c. Section 110765, which makes it unlawful for any person to misbrand any
- 7 food; and
- 8 d. Section 110770, which makes it unlawful for any person to receive in
- 9 commerce any food that is misbranded or to deliver or proffer for delivery
- 10 any such food.

11 36. Defendant's marketing, advertising, and sale of the Products also violates the  
12 false advertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et.*  
13 *Seq.*), including, but not limited to:

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

23 37. A reasonable consumer would expect that the Products provide what Defendant  
24 identifies them to provide on the product labels and that the labels would not be contrary to the  
25 policies or regulations of the State of California and/or the FDA. For example, a reasonable  
26 consumer would expect that, when Defendant labels the Products as being "Stevia Sweetened,"  
27 as Defendant claims on the Products, Stevia is the only, or at the very least primary, sweetener  
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1 in the Products, and that the Products are not primarily sweetened by an alternative artificial  
2 sweetener.

3 **PLAINTIFFS' EXPERIENCES**

4 **Plaintiff Nicole Loza**

5 38. On multiple occasions in the last three years, Plaintiff Loza purchased Lily's  
6 Peppermint Flavor White Chocolate Style Baking Chips from Outlet Market at Bayshore in San  
7 Francisco, California.

8 39. Plaintiff Loza made each of her purchases after reading and relying on the  
9 truthfulness of Defendant's front labels that promised the Products were "Stevia Sweetened."  
10 She believed the truth of each representation, i.e., that the product would actually be sweetened  
11 solely, or at the very least predominantly, by Stevia as claimed on the front label. Plaintiff did  
12 not review the back of the Product packages prior to her purchases. Even if she had, Plaintiff  
13 was not aware that erythritol is an artificial sweetener. However, Plaintiff Loza later learned after  
14 purchasing the Products that the Products' primary sweetening ingredient is erythritol, a  
15 synthetic sweetener linked to adverse health effects. Had Plaintiff Loza known this, she would  
16 not have purchased the Products, or at a minimum, would have paid less for each Product.

17 40. Plaintiff continues to desire to purchase chocolate products, including those  
18 marketed and sold by Defendant, and would like to purchase chocolate products that are  
19 sweetened with Stevia. If the Products were reformulated to be sweetened solely, or at the very  
20 least primarily, with Stevia as represented on the labels, or the labels were changed to provide  
21 non-misleading information, Plaintiff would likely purchase them again in the future. Plaintiff  
22 regularly visits stores where the Products and other chocolate products are sold. Because Plaintiff  
23 does not know the formula for Defendant's products, which can change over time, Plaintiff will  
24 be unable to rely on Defendant's labels when shopping for chocolate products in the future absent  
25 an injunction that prohibits Defendant from mislabeling the Products. In addition, at present  
26 Plaintiff cannot rely on the accuracy of Defendant's labels for the entire line of Products, which  
27 Plaintiff is also interested in purchasing with truthful labeling. Should Defendant begin to market  
28 and sell a new line of products, Plaintiff could also be at risk for buying another one of

1 Defendant's products in reliance on the same or similar misrepresentation and omissions. And  
2 because of Defendant's unlawful and misleading labels on its Products, Plaintiff cannot make  
3 informed choices between chocolate products offered by Defendant and chocolate products  
4 offered by other manufacturers, such as choices based on price and ingredient used to sweeten  
5 the chocolate.

6 **Plaintiff Kimberly Hall**

7 41. On multiple occasions in the last three years, Plaintiff Hall purchased Lily's  
8 Creamy Milk Chocolate and Lily's Salted Caramel Milk Chocolate from her local grocery store  
9 in Santa Rosa, CA.

10 42. Plaintiff Hall made each of her purchases after reading and relying on the  
11 truthfulness of Defendant's front labels that promised the Products were "Stevia Sweetened."  
12 She believed the truth of each representation, i.e., that the product would actually be sweetened  
13 solely, or at the very least predominantly, by Stevia as claimed on the front label. Plaintiff did  
14 not review the back of the Product packages prior to her purchases. Even if she had, Plaintiff  
15 was not aware that erythritol is an artificial sweetener. However, Plaintiff Hall later learned after  
16 purchasing the Products that the Products' primary sweetening ingredient is erythritol, a  
17 synthetic sweetener linked to adverse health effects. Had Plaintiff Hall known this, she would  
18 not have purchased the Products, or at a minimum, would have paid less for each Product.

19 43. Plaintiff continues to desire to purchase chocolate products, including those  
20 marketed and sold by Defendant, and would like to purchase chocolate products that are  
21 sweetened with Stevia. If the Products were reformulated to be sweetened solely, or at the very  
22 least primarily, with Stevia as represented on the labels, or the labels were changed to provide  
23 non-misleading information, Plaintiff would likely purchase them again in the future. Plaintiff  
24 regularly visits stores where the Products and other chocolate products are sold. Because Plaintiff  
25 does not know the formula for Defendant's products, which can change over time, Plaintiff will  
26 be unable to rely on Defendant's labels when shopping for chocolate products in the future absent  
27 an injunction that prohibits Defendant from mislabeling the Products. In addition, at present  
28 Plaintiff cannot rely on the accuracy of Defendant's labels for the entire line of Products, which

1 Plaintiff is also interested in purchasing with truthful labeling. Should Defendant begin to market  
2 and sell a new line of products, Plaintiff could also be at risk for buying another one of  
3 Defendant's products in reliance on the same or similar misrepresentation and omissions. And  
4 because of Defendant's unlawful and misleading labels on its Products, Plaintiff cannot make  
5 informed choices between chocolate products offered by Defendant and chocolate products  
6 offered by other manufacturers, such as choices based on price and ingredient used to sweeten  
7 the chocolate.

8 **Plaintiff Nicole Rivera**

9 44. On multiple occasions in the last three years, Plaintiff Rivera purchased Lily's  
10 Salted Caramel Milk Chocolate Style bar from Amazon.com.

11 45. Plaintiff Rivera made each of her purchases after reading and relying on the  
12 truthfulness of Defendant's front labels that promised the Products were "Stevia Sweetened."  
13 She believed the truth of each representation, i.e., that the product would be sweetened solely,  
14 or at the very least predominantly, by Stevia as claimed on the front label. Plaintiff did not review  
15 the back of the Product packages prior to her purchases. Even if she had, Plaintiff was not aware  
16 that erythritol is an artificial sweetener. However, Plaintiff Rivera later learned after purchasing  
17 the Products that the Products' primary sweetening ingredient is erythritol, a synthetic sweetener  
18 linked to adverse health effects. Had Plaintiff Rivera known this, she would not have purchased  
19 the Products, or at a minimum, would have paid less for each Product.

20 46. Plaintiff continues to desire to purchase chocolate products, including those  
21 marketed and sold by Defendant, and would like to purchase chocolate products that are  
22 sweetened with Stevia. If the Products were reformulated to be sweetened solely, or at the very  
23 least primarily, with Stevia as represented on the labels, or the labels were changed to provide  
24 non-misleading information, Plaintiff would likely purchase them again in the future. Plaintiff  
25 regularly visits stores where the Products and other chocolate products are sold. Because Plaintiff  
26 does not know the formula for Defendant's products, which can change over time, Plaintiff will  
27 be unable to rely on Defendant's labels when shopping for chocolate products in the future absent  
28 an injunction that prohibits Defendant from mislabeling the Products. In addition, at present

1 Plaintiff cannot rely on the accuracy of Defendant’s labels for the entire line of Products, which  
2 Plaintiff is also interested in purchasing with truthful labeling. Should Defendant begin to market  
3 and sell a new line of products, Plaintiff could also be at risk for buying another one of  
4 Defendant’s products in reliance on the same or similar misrepresentation and omissions. And  
5 because of Defendant’s unlawful and misleading labels on its Products, Plaintiff cannot make  
6 informed choices between chocolate products offered by Defendant and chocolate products  
7 offered by other manufacturers, such as choices based on price and ingredient used to sweeten  
8 the chocolate.

9 47. Plaintiffs and members of the Class have been economically damaged by their  
10 purchase of the Products because the advertising for the Products was and is untrue and/or  
11 misleading under state law and the products are misbranded; therefore, the Products are worth  
12 less than what Plaintiffs and members of the Class paid for them and/or Plaintiffs and members  
13 of the Class did not receive what they reasonably intended to receive.

14 **CLASS ALLEGATIONS**

15 48. Plaintiffs bring this class action lawsuit on behalf of themselves and a proposed  
16 class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of  
17 Civil Procedure. Plaintiffs seek to represent the following group of similarly situated persons,  
18 defined as follows:

19 **The Class:** All persons in the United States who purchased the Products between  
20 March 8, 2020 and the present (the “Class Period”).

21 **The Subclass:** All Class Members who purchased the Products in the State of  
22 California.

23 49. This action has been brought and may properly be maintained as a class action  
24 against Defendant because there is a well-defined community of interest in the litigation and the  
25 proposed class is easily ascertainable.

26 50. Numerosity: Plaintiffs do not know the exact size the Class and Subclass, but they  
27 estimate that each is composed of more than 100 persons. The persons in the Class and Subclass  
28

1 are so numerous that the joinder of all such persons is impracticable and the disposition of their  
2 claims in a class action rather than in individual actions will benefit the parties and the courts.

3 51. Common Questions Predominate: This action involves common questions of law  
4 and fact to the potential Class and Subclass because each class member's claim derives from the  
5 deceptive, unlawful and/or unfair statements and omissions that led consumers to believe that  
6 the Products were "Stevia Sweetened" as represented on the Product labels. The common  
7 questions of law and fact predominate over individual questions, as proof of a common or single  
8 set of facts will establish the right of each member of the Class and Subclass to recover. The  
9 questions of law and fact common to the Class and Subclass are:

- 10 a. Whether the marketing, advertising, packaging, labeling, and other  
11 promotional materials for the Products are unlawful and/or misleading;
- 12 b. Whether Defendant's actions violate the laws invoked herein;
- 13 c. Whether labeling the Products with a "Stevia Sweetened" claim causes  
14 the Products to command a price premium in the market;
- 15 d. Whether representations regarding the sweetener in the Products are  
16 material to a reasonable consumer;
- 17 e. Whether Defendant's engaged in the behavior knowingly, recklessly, or  
18 negligently;
- 19 f. The amount of profits and revenues Defendant earned as a result of the  
20 conduct;
- 21 g. Whether Class and Subclass members are entitled to restitution, injunctive  
22 and other equitable relief and, if so, what is the nature (and amount) of  
23 such relief; and
- 24 h. Whether Class and Subclass members are entitled to payment of actual,  
25 incidental, consequential, exemplary and/or statutory damages plus  
26 interest thereon, and if so, what is the nature of such relief.

27 52. Typicality: Plaintiffs' claims are typical of the claims of the other members of the  
28 Class and Subclass because, among other things, all such claims arise out of the same wrongful



1 course of conduct engaged in by Defendant in violation of law as complained of herein. Further,  
2 the damages of each member of the Class and Subclass was caused directly by Defendant's  
3 wrongful conduct in violation of the law as alleged herein.

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

16 54. Superiority: There is no plain, speedy, or adequate remedy other than by  
17 maintenance of this class action. The prosecution of individual remedies by members of the Class  
18 and Subclass will tend to establish inconsistent standards of conduct for Defendant and result in  
19 the impairment of Class and Subclass members' rights and the disposition of their interests  
20 through actions to which they were not parties. Class action treatment will permit a large number  
21 of similarly situated persons to prosecute their common claims in a single forum simultaneously,  
22 efficiently, and without the unnecessary duplication of effort and expense that numerous  
23 individual actions would engender. Furthermore, as the damages suffered by each individual  
24 member of the Class and Subclass may be relatively small, the expenses and burden of individual  
25 litigation would make it difficult or impossible for individual members of the class to redress the  
26 wrongs done to them, while an important public interest will be served by addressing the matter  
27 as a class action.  
28



1 representations that the goods it sells have sponsorship, approval, characteristics, ingredients,  
2 uses, benefits, or quantities, which they do not have. In violation of California Civil Code  
3 §1770(a)(7), Defendant's acts, practices, and omissions constitute improper representations that  
4 the goods it sells are of a particular standard, quality, or grade, when they are of another. In  
5 violation of California Civil Code §1770(a)(8), Defendant deceptively markets and advertises  
6 that, unlike other chocolate product manufacturers, it sells Products that are exclusively, or at  
7 least primarily, sweetened by Stevia. In violation of California Civil Code §1770(a)(9),  
8 Defendant has advertised goods or services with intent not to sell them as advertised.

9         61. Plaintiffs request that this Court enjoin Defendant from continuing to employ the  
10 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
11 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the  
12 future, Plaintiffs and the other members of the Subclass will continue to suffer harm. Plaintiffs  
13 and those similarly situated have no adequate remedy at law to stop Defendant's continuing  
14 practices.

15         62. On or about June 7, 2023, Defendant was provided with notice and a demand to  
16 correct, repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices  
17 complained of herein. Despite receiving the aforementioned notice and demand, Defendant  
18 failed to do so in that, among other things, they failed to identify consumers, notify them of their  
19 right to correction, repair, replacement or other remedy, and/or to provide that remedy.  
20 Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of  
21 themselves and those similarly situated Subclass members, compensatory damages, punitive  
22 damages and restitution of any ill-gotten gains due to Defendant's acts and practices.

23         63. Plaintiffs also requests that this Court award them costs and reasonable attorneys'  
24 fees pursuant to California Civil Code § 1780(d).

**PLAINTIFFS' SECOND CAUSE OF ACTION**  
**(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**  
**On Behalf of Plaintiffs and the Subclass**

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

65. Beginning at an exact date unknown to Plaintiffs, but within four (4) years preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of the Products.

66. Defendant made representations and statements (by omission and commission) that led reasonable customers to believe that the Products that they were purchasing were sweetened using Stevia, and that the Products were not primarily sweetened by an artificial sweetener.

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

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

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

70. The aforementioned practices, which Defendant used, and continues to use, to their significant financial gain, also constitutes unlawful competition and provide an unlawful advantage over Defendant's competitors as well as injury to the general public.

71. As a direct and proximate result of such actions, Plaintiffs and the other members have suffered, and continue to suffer, injury in fact and have lost money and/or property as a

1 result of such false, deceptive and misleading advertising in an amount which will be proven at  
2 trial, but which is in excess of the jurisdictional minimum of this Court.

3 72. Plaintiffs seek, on behalf of themselves and those similarly situated, full  
4 restitution of monies, as necessary and according to proof, to restore any and all monies acquired  
5 by Defendant from Plaintiffs, the general public, or those similarly situated Subclass members  
6 by means of the false, misleading and deceptive advertising and marketing practices complained  
7 of herein, plus interest thereon. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs  
8 make the following allegations in this paragraph only hypothetically and as an alternative to any  
9 contrary allegations in their other causes of action, in the event that such causes of action will  
10 not succeed. Plaintiffs and the Subclass may be unable to obtain monetary, declaratory and/or  
11 injunctive relief directly under other causes of action and will lack an adequate remedy at law,  
12 if the Court requires them to show classwide reliance and materiality beyond the objective  
13 reasonable consumer standard applied under the FAL, because Plaintiffs may not be able to  
14 establish each Subclass member's individualized understanding of Defendant's misleading  
15 representations as described in this Complaint, but the FAL does not require individualize proof  
16 of deception or injury by absent Subclass members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287  
17 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief under the UCL and FAL 'is available  
18 without individualized proof of deception, reliance, and injury.'"). In addition, Plaintiffs and the  
19 Subclass may be unable to obtain such relief under other causes of action and will lack an  
20 adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent,  
21 reckless, and/or negligence), because the FAL imposes no such *mens rea* requirement and  
22 liability exists even if Defendant acted in good faith.

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

25 74. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction  
26 to prohibit Defendant from continuing to engage in the false, misleading and deceptive  
27 advertising and marketing practices complained of herein. Such misconduct by Defendant,  
28 unless and until enjoined and restrained by order of this Court, will continue to cause injury in

1 fact to the general public and the loss of money and property in that Defendant will continue to  
2 violate the laws of California, unless specifically ordered to comply with the same. This  
3 expectation of future violations will require current and future consumers to repeatedly and  
4 continuously seek legal redress in order to recover monies paid to Defendant to which they are  
5 not entitled. Plaintiffs, those similarly situated, and/or other consumers have no other adequate  
6 remedy at law to ensure future compliance with the California Business and Professions Code  
7 alleged to have been violated herein.

8 **PLAINTIFFS' THIRD CAUSE OF ACTION**  
9 **(Common Law Fraud, Deceit and/or Misrepresentation)**  
10 **On Behalf of Plaintiffs and the Class**

11 75. Plaintiffs reallege and incorporate by reference the paragraphs of this Class  
12 Action Complaint as if set forth herein.

13 76. Defendant has fraudulently and deceptively informed Plaintiffs that the Products  
14 were sweetened using Stevia. Defendant failed to disclose that the Products were primarily  
15 sweetened with an artificial sweetener.

16 77. These misrepresentations and omissions were known exclusively to, and actively  
17 concealed by, Defendant, not reasonably known to Plaintiffs, and material at the time they were  
18 made. Defendant knew or should have known the composition of the Products, and knew or  
19 should have known that the Products were not exclusively, or at least primarily, sweetened with  
20 Stevia as represented on the front label. Defendant's misrepresentations and omissions  
21 concerned material facts that were essential to the analysis undertaken by Plaintiffs as to whether  
22 to purchase Defendant's Products. In misleading Plaintiffs and not so informing them, Defendant  
23 breached their duty to them. Defendant also gained financially from, and as a result of, their  
24 breach.

25 78. Plaintiffs and those similarly situated relied to their detriment on Defendant's  
26 misrepresentations and fraudulent omissions. Had Plaintiffs and those similarly situated been  
27 adequately informed and not intentionally deceived by Defendant, they would have acted  
28 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of  
them, or (iii) paying less for the Products.



1 21 U.S.C. § 343(a), et seq. and FDA regulations, which are incorporated into the Sherman Law  
2 (California Health & Safety Code §§ 110100(a), 110380, and 110505).

3 86. In particular, Defendant has engaged, and continues to engage, in unfair and  
4 fraudulent practices by, without limitation, misleading reasonable consumers regarding the  
5 sweetener used in the Products.

6 87. Plaintiffs and those similarly situated relied to their detriment on Defendant's  
7 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated  
8 been adequately informed and not deceived by Defendant, they would have acted differently by,  
9 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or  
10 (iii) paying less for the Products.

11 88. Defendant's acts and omissions are likely to deceive the general public.

12 89. Defendant engaged in these deceptive and unlawful practices to increase its  
13 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and  
14 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

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

18 91. As a direct and proximate result of such actions, Plaintiffs and the other Subclass  
19 members have suffered and continue to suffer injury in fact and have lost money and/or property  
20 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount  
21 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.  
22 Among other things, Plaintiffs and the Subclass members lost the amount they paid for the  
23 Products.

24 92. As a direct and proximate result of such actions, Defendant has enjoyed, and  
25 continues to enjoy, significant financial gain in an amount which will be proven at trial, but  
26 which is in excess of the jurisdictional minimum of this Court.

27 93. Plaintiffs seek, on behalf of themselves and those similarly situated, equitable  
28 relief, including the restitution for the premium and/or full price that they or others paid to



1 Defendant as a result of Defendant’s conduct. Plaintiffs and the Subclass lack an adequate  
2 remedy at law to obtain such relief with respect to their “unlawfulness” claims in this UCL cause  
3 of action because the California Sherman Law does not provide a direct cause of action, so  
4 Plaintiffs and the Subclass must allege those violations as predicate acts under the UCL to obtain  
5 relief.

6 94. Plaintiffs also seek equitable relief, including restitution, with respect to their  
7 UCL “fraudulent” prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs  
8 make the following allegations in this paragraph only hypothetically and as an alternative to any  
9 contrary allegations in their other causes of action, in the event that such causes of action do not  
10 succeed. Plaintiffs and the Subclass may be unable to obtain monetary, declaratory and/or  
11 injunctive relief directly under other causes of action and will lack an adequate remedy of law,  
12 if the Court requires them to show classwide reliance and materiality beyond the objective  
13 reasonable consumer standard applied under the UCL, because Plaintiffs may not be able to  
14 establish each Subclass member’s individualized understanding of Defendant’s misleading  
15 representations as described in this Complaint, but the UCL does not require individualized proof  
16 of deception or injury by absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013,  
17 1020, 1023-25 (distinguishing, for purposes of CLRA claim, among class members for whom  
18 website representations may have been materially deficient, but requiring certification of UCL  
19 claim for entire class). In addition, Plaintiffs and the Subclass may be unable to obtain such relief  
20 under other causes of action and will lack an adequate remedy at law, if Plaintiffs are unable to  
21 demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the UCL  
22 imposes no such *mens rea* requirement and liability exists even if Defendant acted in good faith.

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

25 96. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction  
26 to prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices  
27 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained  
28 by order of this Court, will continue to cause injury in fact to the general public and the loss of

1 money and property in that Defendant will continue to violate the laws of California, unless  
2 specifically ordered to comply with the same. This expectation of future violations will require  
3 current and future consumers to repeatedly and continuously seek legal redress in order to  
4 recover monies paid to Defendant to which they were not entitled. Plaintiffs and those similarly  
5 situated have no other adequate remedy at law to ensure future compliance with the California  
6 Business and Professions Code alleged to have been violated herein.

7 **PLAINTIFFS' FIFTH CAUSE OF ACTION**  
8 **(Unjust Enrichment)**  
9 **On Behalf of Plaintiffs and the Class**

10 97. Plaintiffs reallege and incorporate by reference the paragraphs of this Class  
11 Action Complaint as if set forth herein.

12 98. Plaintiffs and members of the Class conferred a benefit on Defendant by  
13 purchasing the Products.

14 99. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs'  
15 and Class members' purchases of the Products, which retention is unjust and inequitable, because  
16 Defendant falsely represented that the Products were sweetened exclusively, or at least primarily,  
17 with Stevia. Defendant did not disclose to consumers on the front of the Products' packages that  
18 they were actually sweetened with an artificial sweetener.

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

23 101. Plaintiffs, therefore, seek an order requiring Defendant to make restitution to  
24 them and other members of the Class.

1 **PRAYER FOR RELIEF**

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

4 A. Certification of the proposed Class and Subclass, including appointment of  
5 Plaintiffs' counsel as class counsel;

6 B. An order temporarily and permanently enjoining Defendant from continuing the  
7 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

8 C. An award of compensatory damages in an amount to be determined at trial, except  
9 for those causes of action where compensatory damages are not legally available;

10 D. An award of statutory damages in an amount to be determined at trial, except for  
11 those causes of action where statutory damages are not legally available;

12 E. An award of punitive damages in an amount to be determined at trial, except for  
13 those causes of action where punitive damages are not legally available;

14 F. An award of treble damages, except for those causes of action where treble  
15 damages are not legally available;

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

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

19 I. For reasonable attorneys' fees and the costs of suit incurred; and

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

21 **JURY TRIAL DEMANDED**

22 Plaintiffs hereby demand a trial by jury.

23 Dated: March 8, 2024

**GUTRIDE SAFIER LLP**

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