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

15 Pearl Magpayo, individually, and on  
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 Walmart Inc.,

20 Defendant.

CASE NO.: 3:24-cv-01350-WHO

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Pearl Magpayo (“Plaintiff”), individually, and on behalf of all others  
2 similarly situated, by and through her attorneys, brings this Class Action Complaint  
3 against Walmart Inc. (“Defendant”), based upon personal knowledge as to herself,  
4 and upon information, investigation and belief of her counsel.  
5

### 6 INTRODUCTION

7 1. It should go without saying that reasonable consumers associate heart  
8 health with the prevention of heart disease.

9 2. One person dies every 33 seconds in the United States from  
10 cardiovascular disease.<sup>1</sup> Coronary heart disease is the most common type of  
11 cardiovascular disease, killing 375,476 people in 2021.<sup>2</sup> About 1 in 20 adults aged 20  
12 and older have coronary heart disease (about 5%).<sup>3</sup> In 2021, about 2 in 10 deaths from  
13 coronary heart disease happen in adults less than 65 years old.<sup>4</sup>  
14

15 3. This national health problem has spurred an entire industry dedicated to  
16 marketing Omega-3 supplements, often with marketing known to mislead reasonable  
17 consumers.  
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19 4. “The sale of fish oil supplements is a multibillion-dollar industry, and  
20 many people take fish oil capsules daily, believing the omega-3 fatty acids they  
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23 <sup>1</sup> *Heart Disease Facts*, Ctrs. Disease Control & Prevention (May 15, 2023),  
24 <https://www.cdc.gov/heartdisease/facts.htm>.

25 <sup>2</sup> *Id.*

26 <sup>3</sup> *Id.*

27 <sup>4</sup> Lindsey Bever, *Marketers Overstate Fish Oil Claims for Heart Health, Study Shows*,  
28 *Wash. Post* (Aug. 23, 2023), [www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-benefits/](http://www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-benefits/).

1 contain are good for their overall health, particularly for their heart.”<sup>5</sup>

2 5. “Most research shows that over-the-counter fish oil supplements don’t  
3 offer cardiovascular benefits, but that hasn’t stopped marketers from touting them for  
4 heart health, a new study shows.”<sup>6</sup>

5 6. In a study by JAMA Cardiology, the labels of more than 2,800 fish oil  
6 supplements were examined.<sup>7</sup>

7 7. It was found that a majority of fish oil supplements make misleading  
8 claims increasing the potential for consumer misinformation, and that certain heart  
9 health claims are made on fish oil products even though there is a lack of trial data  
10 showing efficacy.<sup>8</sup>

11 8. Indeed, even the U.S. Department of Health and Human Services, National  
12 Center for Complementary and Integrative Health (“NIH”) has stated that “[r]esearch  
13 indicates that omega-3 supplements don’t reduce the risk of heart disease.”<sup>9</sup>

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17 <sup>5</sup> *Id.*; see also ASCEND Study Collaborative Grp., *Effects of n-3 Fatty Acid*  
18 *Supplements in Diabetes Mellitus*, 379 N. Eng. J. Med. 1540 (Oct. 18, 2018),  
19 <https://www.nejm.org/doi/full/10.1056/nejmoa1804989> (finding that in a randomized  
20 trial of more than 15,000 patients with diabetes, a risk factor for cardiovascular  
21 disease, the risk of a serious cardiovascular event was not significantly different  
22 between those who were taking an omega-3 supplement and those who were not).

23 <sup>6</sup> Bever, *supra* note 4.

24 <sup>7</sup> Joanna N. Assadourian et al., *Health Claims and Doses of Fish Oil Supplements in*  
25 *the US*, 8(10) JAMA Cardiology 984, 986 (Aug. 23, 2023),  
26 [https://jamanetwork.com/journals/jamacardiology/article-abstract/2808769?utm\\_campaign=articlePDF&utm\\_medium=articlePDFlink&utm\\_source=articlePDF&utm\\_content=jamacardio.2023.2424](https://jamanetwork.com/journals/jamacardiology/article-abstract/2808769?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jamacardio.2023.2424).

27 <sup>8</sup> *Id.* at 985.

28 <sup>9</sup> *Omega-3 Supplements: In Depth*, Nat’l Ctr. Complimentary & Integrative Health  
 (“NIH”) - U.S. Dep’t Health & Hum. Servs. (Apr. 2018),

1 9. “However, people who eat *seafood* one to four times a week are less  
2 likely to die of heart disease.” (emphasis added).<sup>10</sup>

3 10. Despite the lack of evidentiary support, companies like Defendant  
4 continue to make false and misleading claims related to Omega-3 supplements  
5 because reasonable consumers are particularly vulnerable to such claims.  
6

7 11. As stated by registered dietitian Scott Keatley, co-owner of Keatley  
8 Medical Nutrition Therapy, “Many people take fish oil because of longstanding  
9 beliefs about its potential health benefits, particularly for heart health.”<sup>11</sup>

10 12. “*The supplement industry*, anecdotal evidence and earlier studies *have*  
11 *often promoted these benefits*. Once a narrative becomes deeply embedded in popular  
12 culture, it can be difficult to change, even when new evidence emerges.”<sup>12</sup>  
13

14 13. This case involves an Omega-3 Supplement also touting purported heart  
15 health benefits—Defendant’s Spring Valley Fish Oil Omega-3 supplement. The  
16

17 <https://www.nccih.nih.gov/health/omega3-supplements-in-depth> (scroll down to  
18 heading “What Do We Know About the Effectiveness of Omega-3s” and click on the  
19 “+” button to the right of “Heart Disease” subheading) (“A 2018 analysis of 10 major  
20 omega-3 supplementation studies (77,917 total participants, all at high risk of heart  
21 disease), each of which involved at least 500 participants and a treatment duration of  
22 at least a year, found no evidence that omega-3s could reduce the risk of fatal or  
23 nonfatal coronary heart disease.”) (last visited March 2, 2024). *Id.* (“In 2016, the U.S.  
24 Government’s Agency for Healthcare Research and Quality (AHRQ) did a  
25 comprehensive evaluation of 98 studies of omega-3s and heart disease, including both  
26 diet and supplementation studies. They did not find evidence that omega-3s can  
27 reduce the risk of heart attacks or death from heart disease.”).

28 <sup>10</sup> *Id.*

<sup>11</sup> Korin Miller, *Most Fish Oil Supplements Make Unsupported Heart Health Claims, Finds New Study. Here's Why Experts Say Most People Can Skip Them.*, yahoo!life (Aug. 23, 2023), <https://www.yahoo.com/lifestyle/fish-oil-supplements-heart-heart-study-150006741.html>.

<sup>12</sup> *Id.*

1 Products' front label includes the following prominent heart health representations:

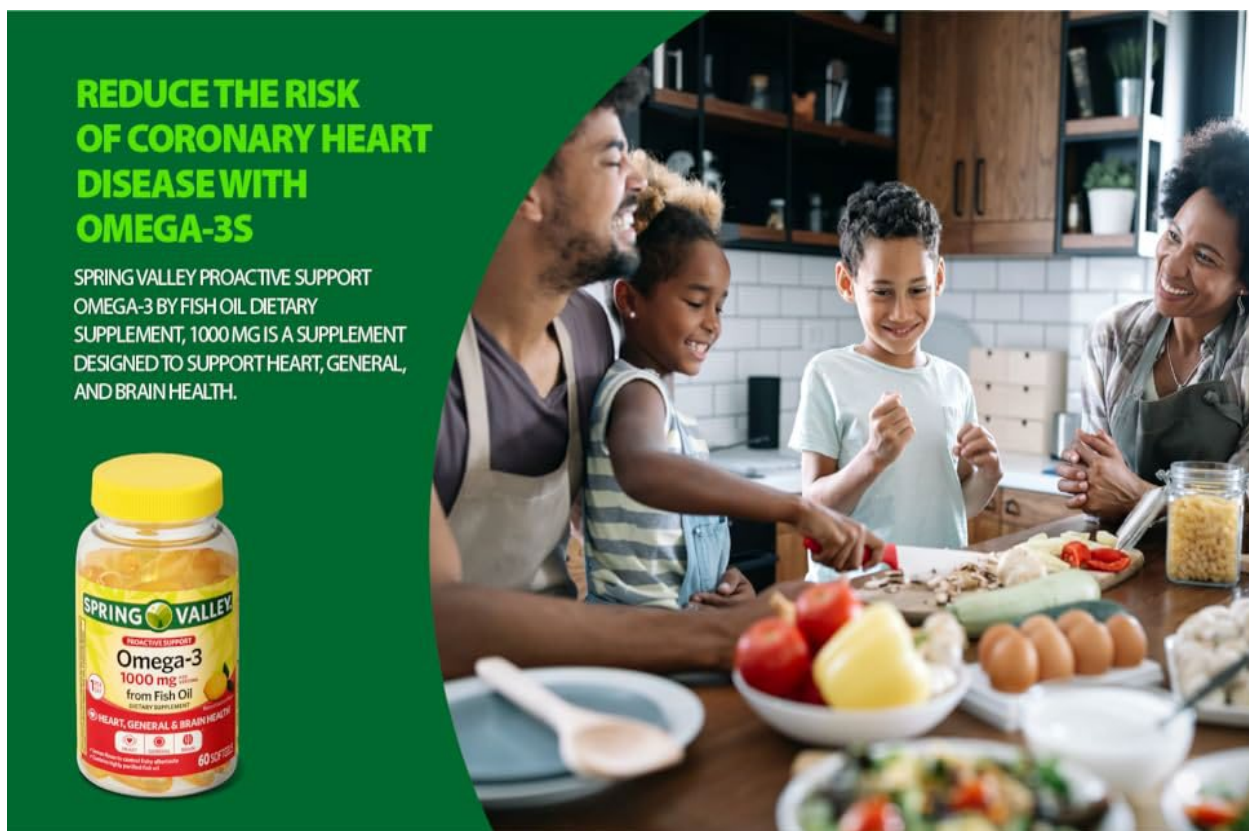
- 2 • "Fish Oil is a source of Omega-3 fatty acids that support heart health"
- 3 • "Heart Health"
- 4 • A heart symbol

5 *See example of front label below.*



1 14. Collectively, the heart health representations lead reasonable consumers to  
2 believe the Products' Omega-3s support heart health (i.e., that the Omega-3s in the  
3 Products reduce the risk of heart disease).

4 15. Indeed, this message has been reinforced by online advertising, stating that  
5 the Products "REDUCE THE RISK OF CORONARY HEART DISEASE."<sup>13</sup> See  
6 below.  
7



22 16. The heart symbol is also used online to promote the Products' heart health  
23 benefits.<sup>14</sup> See image on next page.  
24  
25

26 <sup>13</sup> Amazon, [https://m.media-amazon.com/images/S/aplus-media-library-service-  
27 media/f0e9ef0e-1d5c-4637-91ba-1ea7c8cb2be8.\\_\\_CR0,0,1941,1201\\_PT0\\_SX970\\_V1\\_\\_.png](https://m.media-amazon.com/images/S/aplus-media-library-service-media/f0e9ef0e-1d5c-4637-91ba-1ea7c8cb2be8.__CR0,0,1941,1201_PT0_SX970_V1__.png)

28 <sup>14</sup> Amazon, [https://m.media-amazon.com/images/I/716zsVui21L.\\_AC\\_SL1500\\_.jpg](https://m.media-amazon.com/images/I/716zsVui21L._AC_SL1500_.jpg)  
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17. Unbeknownst to consumers, the heart health representations are false and misleading because the Products' Omega-3s do not support heart health (i.e., the Omega-3s in the Products do not reduce the risk of heart disease). As discussed in more detail below, this allegation is well supported by current studies on Omega-3 supplementation, and by leading authorities in the field of heart health like the NIH.

18. The heart health representations also lead reasonable consumers to believe there is—at least some—conclusive research to show that the Products' Omega-3s

1 reduce the risk of heart disease. Unbeknownst to consumers, there is no conclusive  
2 research to show that the Products’ Omega-3s reduce the risk of heart disease.

3         19. It should be noted that the U.S. Food and Drug Administration (the  
4 “FDA”) has addressed this exact form of deception and taken tremendous efforts to  
5 ensure that supplements accurately communicate to consumers the level of scientific  
6 evidence that exists for a health claim.

7  
8         20. As discussed in more detail below, because the Products make health  
9 claims that lead reasonable consumers to believe the Products will reduce the risk of heart  
10 disease, Defendant was required by the FDA to include a disclaimer stating that  
11 “Supportive *but not* conclusive research shows that consumption of EPA and DHA  
12 Omega-3 fatty acids *may* reduce the risk of coronary heart disease.” (emphasis  
13 added). This is because the FDA has found that health claims related to heart disease  
14 on Omega-3 supplements lack significant scientific agreement.

15  
16         21. While Plaintiff is not bringing claims to enforce the FDA’s rules and  
17 regulations, the fact that the FDA requires such a disclaimer shows that reasonable  
18 consumers can be misled about the level of scientific support that exists for a health  
19 claim.  
20

21         22. This is because consumers reasonably trust and rely on a supplement’s  
22 health claims and believe that there must be at least some conclusive research before  
23 a company is allowed to make a health claim like—supports heart health.

24         23. Because that is not the case, reasonable consumers have been misled by the  
25 Products’ health claims.

26         24. Plaintiff and other consumers purchased the Products and paid a price  
27 premium relying on the false and deceptive labeling, advertising, and marketing of  
28





1 this District and she purchased one of the Products at issue in this case in this District  
2 during the statute of limitations period.

3  
4 **PLAINTIFF**

5 31. Plaintiff Pearl Magpayo is a citizen of California and currently resides in  
6 Hayward, California. During the relevant class period, including in or around May or  
7 June 2023, Plaintiff purchased the Spring Valley Omega-3 Fish Oil Soft Gels, Heart  
8 Health Dietary Supplement, 1000 mg from a Walmart in either Union City or San  
9 Leandro, California. Based on the representations “Heart Health,” “Fish Oil is a source  
10 of Omega-3 fatty acids that *support heart health*,” “Omega-3,” and the heart symbol on  
11 the front label of the Product, Plaintiff reasonably believed the Product would support  
12 heart health (i.e., that the Product would reduce the risk of heart disease). Had she known  
13 the Product does not support heart health, she would not have purchased it, or would  
14 have paid significantly less for it. As such, Plaintiff has been directly financially  
15 injured by Defendant’s false and misleading labeling.  
16

17 32. Based on the Product’s heart health representations, Plaintiff also  
18 reasonably believed there was conclusive research showing that consumption of the  
19 Product’s Omega-3s would reduce the risk of heart disease. Had she known that there  
20 is no conclusive research showing that consumption of the Product’s Omega-3s  
21 reduces the risk of heart disease, she would not have purchased the Product, or would  
22 have paid significantly less for it. As such, Plaintiff has been directly financially  
23 injured by Defendant’s false and misleading labeling.  
24

25 33. Despite Defendant’s misrepresentations, Plaintiff would purchase the  
26 Products, as labeled and marketed, if they actually supported heart health, and there  
27 was conclusive research supporting such a claim. Although Plaintiff regularly shops  
28

1 at stores that carry the Products, absent an injunction of Defendant’s deceptive  
2 labeling, she will be unable to rely with confidence on Defendant’s labeling and  
3 advertising of the Products in the future. Furthermore, while Plaintiff currently  
4 believes the Products’ labeling and advertising is inaccurate, she lacks personal  
5 knowledge as to Defendant’s specific business practices, and thus, she will not be able  
6 determine whether the Products truly abide by their heart health representations. This  
7 leaves doubt in her mind as to the possibility that at some point in the future the  
8 Products could be made in accordance with the heart health representations on the  
9 Products’ front label and advertising. This uncertainty, coupled with her desire to  
10 purchase a Product supporting heart health, is an ongoing injury that can and would  
11 be rectified by an injunction enjoining Defendant from making the alleged misleading  
12 representations. In addition, other Class members will continue to purchase the  
13 Products, reasonably but incorrectly, believing that they support heart health, and that  
14 there is conclusive research supporting such a claim.  
15  
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17 **DEFENDANT**

18 34. Defendant is a Delaware limited liability company with its principal  
19 place of business in Bentonville, Arkansas. Defendant is an American multinational  
20 retail corporation that sells a variety of consumer goods, including supplements.  
21

22 **FACTUAL ALLEGATIONS**

23 35. At issue in this Complaint are the following Spring Valley Omega-3 Fish  
24 Oil products (collectively, the “Products”):  
25

- 26 • Spring Valley Omega-3 Fish Oil Soft Gels, Heart Health Dietary  
27 Supplement, 1000 mg, 60 Count;
- 28 • Spring Valley Proactive Support Omega-3 Mini from Fish Oil Dietary

1 Supplement, 1000 mg, 120 Count;

- 2 • Spring Valley Omega-3 Fish Oil For Heart and Brain Health, Dietary
- 3 Supplement Soft gels, 1000 mg, 60 Count;
- 4
- 5 • Spring Valley Maximum Care Omega-3 from Fish Oil Eye Brain Bone &
- 6 Heart Health Dietary Supplement Soft gels, 2000 mg, 120 Count;
- 7 • Spring Valley Fish Oil Omega-3 General & Heart Health Dietary
- 8 Supplement Soft gels, 500 mg, 60 Count, 120, & 180 count;
- 9 • Spring Valley Proactive Support Omega-3 from Fish Oil Heart General &
- 10 Brain Health Dietary Supplement Soft gels, 1000 mg, 120 Count;
- 11 • Spring Valley Omega-3 Fish Oil Soft Gels, 1000 mg, 180 Count;
- 12 • Spring Valley Omega-3 Fish Oil Brain & Heart Health Dietary Supplement
- 13 Soft gels, 2000 mg, 180 count; and
- 14
- 15 • Spring Valley Omega-3 Natural Lemon Flavor Dietary Supplement Twin
- 16 Pack, 1000 mg, 360 count.

17 36. The front label of the Products include the following heart health  
18 representations: (1) “Heart Health”; (2) a heart symbol; (3) and “Fish Oil is a source  
19 of Omega-3 fatty acids that support heart health.” *See below.*



1           37. Unfortunately for consumers, Defendant engages in false and misleading  
2 business practices to gain a competitive edge in the market, all at the expense of  
3 unsuspecting consumers. Defendant accomplishes this by using front label  
4 representations that lead reasonable consumers to believe the Products' Omega-3s  
5 support heart health.  
6

7           38. Unbeknownst to consumers, the Products' heart health representations  
8 are false and misleading because the Products' Omega-3s do not support heart health  
9 (i.e., the Products' Omega-3s do not reduce the risk of heart disease). As discussed in  
10 more detail below, this allegation is well supported by current studies on Omega-3  
11 supplementation, and by reputable organizations in the field of heart health like the  
12 NIH.  
13

14           39. Based on the Products' heart health representations, reasonable  
15 consumers are also led to believe there is—at least some—conclusive research to show  
16 that the Products' Omega-3s reduce the risk of heart disease.  
17

18           40. Unbeknownst to consumers, there is no conclusive research to show that  
19 the Products' Omega-3s reduce the risk of heart disease. In fact, as discussed in more  
20 detail below, “most [recent studies] found little or no evidence for a protective effect  
21 of omega-3 supplements against heart disease.”<sup>15</sup>  
22

### **History Of Heart Disease and the Fish Oil Industry**

23           41. The rise of heart disease has spurred an entire industry dedicated to  
24 marketing Omega-3 supplements, often with marketing known to mislead reasonable  
25 consumers.  
26  
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28 <sup>15</sup> NIH, *supra* note 9.

1 42. Americans are rightly concerned about their heart health because one  
2 person dies every 33 seconds in the United States from heart disease. In fact, the most  
3 common type of heart disease, coronary heart disease, killed 375,476 people in 2021.

4 43. In response, omega-3 supplements have skyrocketed in popularity, and  
5 created “a multibillion-dollar industry” that encourages people to “take fish oil  
6 capsules daily” because they “believe[] the omega-3 fatty acids they contain are good  
7 for their overall health, particularly for their heart.”<sup>16</sup>

8 44. Several news outlets have recently brought the effectiveness of omega-3  
9 supplements into question. For example, the New York Post described fish oil  
10 supplements as “worthless” and the health claims they make as “outrageous,”<sup>17</sup> while  
11 the Washington Post said that “the vagueness of the wording used by fish oil  
12 marketers could lead to misinformation about the role of the dietary supplement.”<sup>18</sup>  
13  
14

15 **Studies Finding that Omega-3 Supplements**  
16 **Do Not Reduce the Risk of Heart Disease**

17 45. Studies show that although consumers have been led to believe that  
18 taking fish oil supplements will reduce the risk of heart disease, “multiple randomized  
19 clinical trials have shown no cardiovascular benefits to fish oil supplements.”<sup>19</sup>  
20

21 46. Meta-analyses of supplementation with marine-derived omega-3 fatty  
22 acids have reached a similar conclusion. Finding, for example, that “marine-derived  
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24 <sup>16</sup> Bever, *supra* note 4.

25 <sup>17</sup> Marc Lallanilla, *Why Fish Oil Supplements Are Basically Worthless: Study*, N.Y.  
26 Post (Oct. 2, 2023), <https://nypost.com/2023/10/02/why-fish-oil-supplements-are-basically-worthless-study/>.

27 <sup>18</sup> Bever, *supra* note 4.

28 <sup>19</sup> Assadourian, *supra* note 7, at 985.

1 omega-3 fatty acids . . . had no significant association with reductions in fatal or  
2 nonfatal coronary heart disease or any major vascular events.”<sup>20</sup>

3 47. Similarly, another study found that: “Supplementation with n-3 fatty  
4 acids did not result in a lower incidence of major cardiovascular events or cancer than  
5 placebo.”<sup>21</sup>

6  
7 48. The U.S. Department of Health and Human Services, National Center for  
8 Complementary and Integrative Health (“NIH”) states that “[r]esearch indicates that  
9 omega-3 supplements don’t reduce the risk of heart disease.”<sup>22</sup>

10 49. In support, the NIH cites to two separate findings, including the 2018  
11 meta-analysis discussed in paragraph 45 and the 2016 AHRQ study described below:

12  
13 A 2018 analysis of 10 major omega-3 supplementation studies (77,917  
14 total participants, all at high risk of heart disease), each of which  
15 involved at least 500 participants and a treatment duration of at least a  
16 year, found no evidence that omega-3s could reduce the risk of fatal or  
17 nonfatal coronary heart disease.

18 \* \* \*

19 In 2016, the U.S. Government’s Agency for Healthcare Research and  
20 Quality (AHRQ) did a comprehensive evaluation of 98 studies of omega-  
21 3s and heart disease, including both diet and supplementation studies.  
22 They did not find evidence that omega-3s can reduce the risk of heart  
23 attacks or death from heart disease.<sup>23</sup>

24  
25 <sup>20</sup> Theingi Aung et al., *Associations of Omega-3 Fatty Acid Supplement Use with*  
26 *Cardiovascular Disease Risks: Meta-analysis of 10 Trials Involving 77 917*  
27 *Individuals*, 3(3) JAMA Cardiology 225, 226 (Mar. 21, 2018)  
28 <https://jamanetwork.com/journals/jamacardiology/fullarticle/2670752>.

<sup>21</sup> JoAnn E. Manson et al., *Marine n-3 Fatty Acids and Prevention of Cardiovascular*  
*Disease and Cancer*, 830(1) N. Eng. J. Med. 23, 23 (Jan. 3, 2019),  
<https://www.nejm.org/doi/10.1056/NEJMoa1811403>.

<sup>22</sup> NIH, *supra* note 9.

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

1           50.    “Several other analyses of the evidence have been done in the last few  
2 years (2012 or later), and like the 2018 analysis and the AHRQ report, most found  
3 little or no evidence for a protective effect of omega-3 supplements against heart  
4 disease.”<sup>24</sup>

5  
6           51.    In 2020, the STRENGTH Randomized Clinical Trial stated that its  
7 “findings [did] not support use of this omega-3 fatty acid formulation to reduce major  
8 adverse cardiovascular events in high-risk patients.”<sup>25</sup>

9           52.    Based on such findings, several experts have debunked the myth that fish  
10 oil supplements are conclusively linked to heart health benefits. For example, in an  
11 interview with health.com, Timothy Jacobson, MD, chief cardiologist for Kaiser  
12 Permanente in the Northwest, stated that:

13  
14           “There have now been a large number of well-conducted studies which  
15 have not shown a cardiac benefit to taking over-the-counter fish oil  
16 supplements,” . . .

17           In fact, Jacobson said, taking fish oil could even have adverse effects for  
18 some people. “There is data these supplements may increase the risk of  
atrial fibrillation,” he said.<sup>26</sup>

19           53.    Dr. Ann Marie Navar, associate professor of medicine at University of  
20 Texas Southwestern Medical School, states “as a preventive cardiologist, I see

21  
22  
23 <sup>24</sup> *Id.*

24 <sup>25</sup> Stephen J. Nicholls et al., *Effect of High-Dose Omega-3 Fatty Acids vs Corn Oil on*  
25 *Major Adverse Cardiovascular Events in Patients at High Cardiovascular Risk: The*  
26 *STRENGTH Randomized Clinical Trial*, 324(22) JAMA 2268, E1 (Nov. 15, 2020),  
<https://jamanetwork.com/journals/jama/fullarticle/2773120>.

27 <sup>26</sup> Sarah Garone, *Study: Majority of Fish Oil Supplements Make Unfounded Health*  
28 *Claims*, health.com (Aug. 29, 2023), <https://www.health.com/fish-oil-supplements-for-heart-health-7852475>.



1 patients in clinic all the time taking fish oil with the belief it is helping their heart.  
2 They are often surprised when I tell them that randomized trials have shown no benefit  
3 for fish oil supplements on heart attacks or strokes.”<sup>27</sup>

4  
5 54. Indeed, as stated in the Washington Post, “[m]ost research shows that  
6 over-the-counter fish oil supplements don’t offer cardiovascular benefits, but that  
7 hasn’t stopped marketers from touting them for heart health, a new study shows.”<sup>28</sup>

8  
9 55. The lack of scientific support for heart health claims on fish oil  
10 supplements has led to a report from JAMA Cardiology examining the potential for  
11 consumer deception.

12  
13 56. In the report, the labels of more than 2,800 fish oil supplements were  
14 examined. The report found:<sup>29</sup>

- 15 • “One in 5 US adults older than 60 years takes fish oil supplements often for  
16 heart health despite multiple randomized clinical trials showing no data for  
17 cardiovascular benefit for supplement-range doses. Statements on the  
18 supplement labels may influence consumer beliefs about health benefits.”
- 19 • Heart health claims (e.g., “promotes heart health”) were the most common  
20 health claims made on fish oil supplements.
- 21 • Results of this cross-sectional study suggest that the majority of fish oil  
22 supplement labels make health claims, usually in the form of  
23 structure/function claims, that imply a health benefit across a variety of  
24 organ systems despite a lack of trial data showing efficacy.

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27 <sup>27</sup> Miller, *supra* note 11.

28 <sup>28</sup> Bever, *supra* note 4.

<sup>29</sup> Assadourian, *supra* note 7, at 984.

- Results of this cross-sectional study suggest that fish oil supplement labels frequently include health claims in the form of structure/function claims that imply health benefits across a wide range of organ systems, increasing potential for consumer misinformation.

57. The JAMA Cardiology report shows that not only do the Products’ lack support for their heart health representations, but that Plaintiff and other reasonable consumers are in fact being misled.

**The Potential Risks of Omega-3 Fish Oil Supplements**

58. “[S]ome omega-3 dietary supplements contain cholesterol, oxidized fatty acids, saturated fatty acids, or other contaminants” that can negate the purported benefits of certain fish oil supplements.<sup>30</sup>

59. “In extreme cases, dietary [omega-3] supplements may have up to 37% saturated fat content.”<sup>31</sup>

60. This can be especially problematic for patients with elevated triglyceride levels. For these patients, the American Heart Association recommends (“AHA”) 2-

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<sup>30</sup> Ann C. Skulas-Ray et al., *Omega-3 Fatty Acids for the Management of Hypertriglyceridemia: A Science Advisory From the American Heart Association*, 140 *Circulation* No. e673, e687 (Aug. 19, 2019), <https://www.ahajournals.org/doi/10.1161/CIR.0000000000000709> (“[S]ome omega-3 dietary supplements contain cholesterol, oxidized fatty acids, saturated fatty acids, or other contaminants that can affect their net risk-benefit relationship . . . . In extreme cases, dietary n-3 FA supplements may have up to 37% saturated fat content. This is undesirable, especially if ≥10 capsules of these products are required to achieve ≥3 g/d EPA+DHA. The calorie burden of this many capsules (≈100 kcal/d) is also undesirable.”) (citations omitted); *see generally* Jenna C Sullivan Ritter, *Quality Analysis of Commercial Fish Oil Preparations*, 93 *J. Sci. Food & Agriculture* 1935 (Nov. 16, 2012), <https://doi.org/10.1002/jsfa.5994>.

<sup>31</sup> Skulas-Ray, *supra* note 30.

1 4 grams of EPA + DHA per day.<sup>32</sup>

2 61. 2-4 grams per day is considered a prescription-strength level of EPA +  
3 DHA that far exceeds the daily amount of EPA + DHA in the Products, which are  
4 simply dietary supplements.<sup>33</sup>

5 62. In fact, the Products only provide between .415-1.48 grams of EPA +  
6 DHA per day.

7 63. At these levels, “patients may need to take 10 or more fish oil [Dietary  
8 Supplement] capsules per day” to attain the level of EPA and DHA recommended by  
9 AHA. This would negate the purported benefits of taking fish oil supplements by  
10 increasing intake of saturated fats and oxidized lipids.<sup>34</sup>

11 64. “The calorie burden of this many capsules ( $\approx$ 100 kcal/d) is also  
12 undesirable.”<sup>35</sup>

13 65. “Regarding additional ingredients found in omega-3 fatty acid dietary  
14 supplements, one study specifically testing the contents found that half of the samples  
15 tested provided 30–50 % of recommended daily cholesterol intake at a dose of 3.4 g  
16 EPA/DHA, and two-thirds of the products provided at least 2.5 g of saturated fats.”<sup>36</sup>

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19  
20  
21 <sup>32</sup> R. Preston Mason & Samuel C.R. Sherratt, *Omega-3 Fatty Acid Fish Oil Dietary*  
22 *Supplements Contain Saturated Fats and Oxidized Lipids That May Interfere with*  
23 *Their Intended Biological Benefits*, 483 *Biochemical & Biophysical Resch.*  
24 *Comm’ns.* 425, 425 (Dec. 21, 2016), <https://doi.org/10.1016/j.bbrc.2016.12.127>.

25 <sup>33</sup> The strongest Products challenged in this action provide 2000 mg of fish oil, with  
26 only 1.48 grams of EPA + DHA.

27 <sup>34</sup> Mason & Sherratt, *supra* note 32.

28 <sup>35</sup> Skulas-Ray, *supra* note 30.

<sup>36</sup> Jonathan Fialkow, *Omega-3 Fatty Acid Formulations in Cardiovascular Disease:*

1                                   **The Products Mislead Consumers About the Level of**  
2                                   **Scientific Support that Exists for the Heart Health Representations**

3           66.    The commonly held belief that fish oil supplements reduce the risk of  
4 heart disease, coupled with the Products’ heart health representations, results in many  
5 consumers being misled into believing there is—at least some—conclusive evidence  
6 to support the Products’ heart health representations.  
7

8           67.    R. Preston Mason, a member of Cardiovascular Division at Brigham and  
9 Women’s Hospital and Harvard Medical School since 2002, wrote that:

10           Consumers have been told so many times that dietary fish oil  
11 supplements promote heart health that it seems to be accepted as factual.  
12 But this conventional thinking is not supported by the science. After  
13 decades of promises that fish oil “may work,” the lack of demonstrated  
14 benefit leads me to conclude that consumers are wasting their money on  
15 supplements in an effort to reduce cardiovascular risk.<sup>37</sup>

16           68.    For such reasons, the FDA has taken significant precautions to ensure  
17 that consumers are not misled about the level of scientific evidence that exists for a  
18 health claim. This is especially true for the health claims at issue in this case: (1)  
19 “Heart Health”; (2) a heart symbol; and (3) “support[s] heart health.”

20           69.    Under 21 C.F.R. § 101.14, a health claim is defined as any claims,  
21 written statements, symbols, or vignettes that characterize the relationship of any  
22 supplement to a disease or health-related condition.  
23

24 \_\_\_\_\_  
25 *Dietary Supplements are Not Substitutes for Prescription Products*, 16 Am. J.  
26 Cardiovascular Drugs 229, 235 (Apr. 30, 2016), <https://doi.org/10.1007%2Fs40256-016-0170-7>.

27 <sup>37</sup> R. Preston Mason, *The False Promise of Fish Oil Supplements*, Scientific American  
28 (Aug. 22, 2019), <https://blogs.scientificamerican.com/observations/the-false-promise-of-fish-oil-supplements/>.

1           70. The FDA recognizes that supplements can make either express health  
2 claims or *implied* health claims. 21 C.F.R. § 101.14.

3           71. An implied health claim is defined as “statements, symbols, vignettes, or  
4 other forms of communication that suggest, within the context in which they are  
5 presented, that a relationship exists between the presence or level of a substance in  
6 the food and a disease or health-related condition.” *Id.*

8           72. Examples of implied health claims include written statements that simply  
9 include the word “heart.” *See id.*<sup>38</sup>

10           73. Certain symbols—such as “**a heart symbol**,” can also convey an implied  
11 health claim.<sup>39</sup>

12           74. The FDA has specifically stated that simply using the word heart on a  
13 supplement can imply a health claim relating to cardiovascular disease<sup>40</sup>:

14  
15           FDA does agree, however, that under §101.14(a)(1), a dietary supplement  
16 name that included the word “heart” could be a health claim, depending  
17 on the context. Thus, a dietary supplement could be called “HeartTabs”  
18 if its claim was “to maintain healthy circulation,” or some other role  
19 related to the structure or function of the heart that did not imply

20 <sup>38</sup> 21 C.F.R. § 101.14(a)(1) (“Health claim means any claim made on the label or in  
21 labeling of a food, including a dietary supplement, that expressly or by implication,  
22 including ‘third party’ references, written statements (e.g., a brand name including a  
23 term such as ‘heart’), symbols (e.g., a heart symbol), or vignettes, characterizes the  
24 relationship of any substance to a disease or health-related condition.”)

25 <sup>39</sup> *Id.* (“Implied health claims include those statements, symbols, vignettes, or other  
26 forms of communication that suggest, within the context in which they are presented,  
27 that a relationship exists between the presence or level of a substance in the food and  
28 a disease or health-related condition.”).

<sup>40</sup> Cardiovascular disease is the umbrella term, which includes heart disease. *See* AHA  
Editorial Staff, *What Is Cardiovascular Disease?*, Am. Heart Ass’n (last reviewed  
Jan. 10, 2024), <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease>.

1 treatment or prevention of disease. *If, however, the product name was*  
 2 *not qualified by any further claim in the labeling, the product could be*  
 3 *considered, under §101.14(a)(1), to be intended for treatment or*  
 4 *prevention of cardiovascular disease.*<sup>41</sup>

5 75. As to the use of a heart symbol on supplements, the FDA has stated that  
 6 it is ordinarily considered an implied health claim regarding heart disease:

7 FDA also believes that the heart symbol has become so widely associated  
 8 with prevention of heart disease that its use in the labeling of a dietary  
 9 supplement would be *ordinarily considered an implied heart disease*  
 10 *prevention claim.* Consistent with the examples provided in the January  
 11 6, 1993, Federal Register document on health claims (58 FR 2486),  
 12 however, there may be *unusual* cases in which, in context, the use of a  
 13 heart symbol does not imply heart disease prevention.<sup>42</sup>

14 \* \* \*

15 FDA agrees that in most cases, a picture of a healthy organ would not be  
 16 considered a disease claim, if, in the context of the labeling as a whole, it  
 17 did not imply treatment or prevention of disease. As described in  
 18 response to comment 51 of section II.I of this document, however, *there*  
 19 *may be symbols for organs, like the heart symbol, that have become so*  
 20 *widely recognized as symbols for disease treatment or prevention, their*  
 21 *use in labeling would constitute an implied disease claim.*<sup>43</sup>

22 76. Under the FDA's regulations, Defendant's use of the word "heart" (in  
 23 "Heart Health" and "support[s] *heart* health")—along with Defendant's use of the heart  
 24 symbol—constitute an implied health claim related to heart disease.

25 <sup>41</sup> Regulations on Statements Made for Dietary Supplements Concerning the Effect  
 26 of the Product on the Structure or Function of the Body, 65 Fed. Reg. 10000, 1022  
 27 (Jan. 6, 2000) (codified at 21 C.F.R. pt. 101) (emphasis added).

28 <sup>42</sup> *Id.* (emphasis added).

<sup>43</sup> *Id.* at 1026 (emphasis added).

1 77. Indeed, even the defense bar recognizes that the use of the heart symbol  
2 alone is sufficient to constitute an implied health claim:<sup>44</sup>



3  
4 *(Exception: The preamble to the final rules indicate that use of  
5 the heart symbol on product label and labeling is an  
6 impermissible heart disease prevention claim.)*

7 78. As a health claim, the Products' heart health representations must  
8 comply with specific rules and regulations that have been enacted by the FDA to  
9 prevent consumer deception.

10 79. The FDA allows a limited number of health claims—either “authorized”  
11 health claims or “qualified” health claims.<sup>45</sup>

12 80. Authorized health claims must follow the strict language proscribed by  
13 the FDA, but do not need to be “qualified” by a disclaimer. An example of an  
14 authorized health claim that is unqualified is, “Adequate calcium and vitamin D as  
15 part of a healthful diet, along with physical activity, may reduce the risk of  
16 osteoporosis in later life.”<sup>46</sup>

17  
18 81. Because unqualified health claims have such a high influence on reasonable  
19 consumers, the FDA will only allow an *unqualified* health claim on a product label if  
20 the FDA “determines, based on the totality of publicly available scientific evidence  
21

22  
23 <sup>44</sup> Todd A. Harrison et al., *Permissible vs. Impermissible Structure/Function Claims*  
24 *for Dietary Supplements*, Venable LLP (2014),  
25 [https://www.venable.com/files/upload/FDLI-Dietary\\_Supplements.pdf](https://www.venable.com/files/upload/FDLI-Dietary_Supplements.pdf).

26 <sup>45</sup> See *Yamagata v. Reckitt Benckiser LLC*, 445 F. Supp. 3d 28, 32 n. 1 (N.D. Cal.  
27 2020) (citing *Questions and Answers on Health Claims in Food Labeling*, Food &  
28 Drug Admin. (“FDA”) (Mar. 10, 2020), <https://www.fda.gov/food/food-labeling-nutrition/questions-and-answers-health-claims-food-labeling>).

<sup>46</sup> 21 C.F.R. § 101.72.

1 (including evidence from well-designed studies conducted in a manner which is  
 2 consistent with generally recognized scientific procedures and principles), that there  
 3 is *significant scientific agreement*, among experts qualified by scientific training and  
 4 experience to evaluate such claims, that the claim is supported by such evidence.”<sup>47</sup>  
 5

6 82. The FDA has authorized only 12 unqualified health claims since 1990.<sup>48</sup>

7 83. The Products’ implied health claims (i.e., heart health representations) have  
 8 not been authorized by the FDA.<sup>49</sup>

9 84. Because the Products’ health claims are not authorized, the FDA requires  
 10 that Defendant properly qualify the Products’ health claims with an appropriate  
 11 disclaimer to ensure that consumers are not misled by the level of scientific evidence that  
 12 exists for the Products’ heart health claims.  
 13

14 85. “Qualified health claims are supported by some scientific evidence, but  
 15 do not meet the significant scientific agreement standard. *To ensure that they are not*  
 16 *false or misleading to consumers*, qualified health claims *must be* accompanied by a  
 17 disclaimer or other qualifying language to accurately communicate the level of  
 18 scientific evidence supporting the claim.”<sup>50</sup>  
 19

20 86. The FDA has required the following disclaimer for qualified health claims  
 21 on Omega-3 supplements:

22 . . . FDA will consider exercising enforcement discretion for the  
 23 following qualified health claim: Supportive but not conclusive research

24 <sup>47</sup> 21 U.S.C. § 343(r)(3)(B)(i) (emphasis added); 21 C.F.R. § 101.14 (c).

25 <sup>48</sup> See 21 C.F.R. §§ 101.72-101.83.

26 <sup>49</sup> *Id.*

27 <sup>50</sup> *Questions and Answers on Health Claims in Food Labeling*, FDA (Dec. 13, 2017),  
 28 <https://www.fda.gov/food/food-labeling-nutrition/questions-and-answers-health-claims-food-labeling> (emphasis added).



1 shows that consumption of EPA and DHA omega-3 fatty acids may  
2 reduce the risk of coronary heart disease. One serving of [Name of the  
3 food] provides [ ] gram of EPA and DHA omega-3 fatty acids. [See  
4 nutrition information for total fat, saturated fat, and cholesterol content.].

5 87. Here, even though the Products' heart health representations are health  
6 claims, they were not qualified with a disclaimer that accurately conveys the level of  
7 scientific evidence/research that exists for the Products' heart health claims, as  
8 required by the FDA.

9 88. While Plaintiff is not bringing this action to enforce the FDA's  
10 regulations, these FDA regulations were enacted specifically to prevent consumer  
11 deception.

12 89. Thus, Defendant's failure to abide by the FDA's regulations further  
13 supports Plaintiff's allegations that reasonable consumers were misled about the level  
14 of scientific evidence/research that purportedly supports the Products' heart health  
15 claims.  
16

17 90. As the entity responsible for the development, manufacturing,  
18 packaging, labeling, advertising, distribution and sale of the Products, Defendant  
19 knew or should have known that the Products falsely and deceptively represent that  
20 they support heart health, and that there is conclusive research to support such a claim.  
21

22 91. Defendant also knew or should have known that Plaintiff and other  
23 consumers, in purchasing the Products, would rely on Defendant's front label heart  
24 health representations. Nonetheless, Defendant deceptively advertises the Products in  
25 order to deceive consumers and gain an advantage over other fish oil supplements that  
26 do not use deceptive claims like the heart health representations.  
27  
28

1 92. Consumers are willing to pay more for the Products based on the belief  
 2 that the Products will reduce their risk of heart disease, and that there is conclusive  
 3 research to support such a claim. Plaintiff and other consumers would have paid  
 4 significantly less for the Products, or would not have purchased them at all, had they  
 5 known the truth about them. Thus, through the use of misleading representations,  
 6 Defendant commands a price that Plaintiff and the Class would not have paid had they  
 7 been fully informed. Therefore, Plaintiff and other consumers purchasing the Products  
 8 have suffered injury in fact and lost money as a result of Defendant’s false and  
 9 deceptive practices, as described herein.  
 10

11 **CLASS ACTION ALLEGATIONS**

12 93. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all  
 13 other applicable laws and rules, individually, and on behalf of all members of the  
 14 following Classes:  
 15

16 **California Class**

17 All residents of California who purchased any of the Products within the  
 18 applicable statute of limitation (“California Class”).

19 **California Consumer Subclass**

20 All residents of California who purchased any of the Products for personal,  
 21 family, or household purposes, within the applicable statute of limitations  
 period (“California Consumer Subclass”).

22 94. The California Class and California Consumer Subclass are referred to  
 23 collectively as the “Classes.”

24 95. Excluded from the Classes are the following individuals and/or entities:  
 25 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or  
 26 former employees, and any entity in which Defendant has a controlling interest; all  
 27 individuals who make a timely election to be excluded from this proceeding using the  
 28

1 correct protocol for opting out; and all judges assigned to hear any aspect of this  
2 litigation, as well as their immediate family members.

3 96. Plaintiff reserves the right to modify or amend the definition of the  
4 proposed Classes and/or add subclasses before the Court determines whether class  
5 certification is appropriate.  
6

7 97. Plaintiff is a member of both Classes.

8 98. **Numerosity**: Members of each Class are so numerous and  
9 geographically dispersed that individual joinder of all Class members is  
10 impracticable. The precise number of Class members is unknown to Plaintiff but is  
11 likely to be ascertained by Defendant's records. At a minimum, there are likely  
12 thousands of Class members.  
13

14 99. **Commonality**: There are questions of law and fact common to the  
15 proposed class(es). Common questions of law and fact include, without limitations:

- 16 a. whether Defendant's course of conduct alleged herein violates the  
17 statutes and other laws that are pled in this Complaint;  
18  
19 b. whether reasonable consumers would rely upon Defendant's  
20 representations about the Products and reasonably believe the  
21 Products' Omega-3s support heart health;  
22  
23 c. whether reasonable consumers would rely upon Defendant's  
24 representations about the Products and reasonably believe there is—  
25 at least some—conclusive research showing that Omega-3 supplements  
26 like the Products reduce the risk of heart disease;  
27  
28 d. whether Defendant knew or should have known its representations  
were false or misleading;

- 1 e. whether Defendant was unjustly enriched by retaining monies from  
2 the sale of the Products;
- 3 f. whether certification of each Class is appropriate under Rule 23;
- 4 g. whether Plaintiff and the members of each Class are entitled to  
5 declaratory, equitable, or injunctive relief, and/or other relief, and the  
6 scope of such relief; and
- 7
- 8 h. the amount and nature of the relief to be awarded to Plaintiff and the  
9 Classes.

10 100. **Typicality**: Plaintiff's claims are typical of the other Class members  
11 because Plaintiff, as well as Class members, purchased one of the Products and relied  
12 on the representations made by the Defendant about the Product prior to purchasing  
13 the Product. Plaintiff and the members of each Class paid for Defendant's Products  
14 and would not have purchased them (or would have paid substantially less for them)  
15 had they known that the Defendant's representations were untrue.

16

17 101. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the  
18 proposed Classes as her interests do not conflict with the interests of the members of  
19 the proposed Classes she seeks to represent, and she has retained counsel competent  
20 and experienced in class action litigation. Thus, the interests of the members of the  
21 Classes will be fairly and adequately protected by Plaintiff and her counsel.

22

23 102. **Predominance**: Pursuant to Rule 23(b)(3), the common issues of law  
24 and fact identified in this Complaint predominate over any other questions affecting  
25 only individual members of the Classes. Class issues fully predominate over any  
26 individual issue because no inquiry into individual conduct is necessary; all that is  
27

1 required is a narrow focus on Defendant's misconduct detailed at length in this  
2 Complaint.

3 103. **Superiority**: A class action is superior to all other available methods for  
4 the fair and efficient adjudication of this litigation because individual litigation of  
5 each claim is impractical. It would be unduly burdensome to have individual litigation  
6 of hundreds of thousands of individual claims in separate lawsuits, every one of which  
7 would present the issues presented in the Complaint/lawsuit. Further, because of the  
8 damages suffered by any individual Class member may be relatively modest in  
9 relation to the cost of litigation, the expense and burden of individual litigation make  
10 it difficult, if not impossible. Furthermore, many of the Class members may be  
11 unaware that claims exist against the Defendant.  
12  
13

14 104. **Declaratory and Injunctive Relief**: Pursuant to Rule 23(b)(2),  
15 declaratory and injunctive relief is appropriate in this matter. Defendant has acted or  
16 refused to act on grounds generally applicable to Plaintiff and the other Class  
17 members, thereby making appropriate final injunctive relief and declaratory relief, as  
18 described below, with respect to the Class members as a whole. Unless a class-wide  
19 injunction is issued, Defendant will continue to advertise, market, promote, and sell  
20 the Products in an unlawful and misleading manner, as described throughout this  
21 Complaint, and members of the Classes will continue to be misled, harmed, and  
22 denied their rights under the law.  
23

24 **FIRST CLAIM FOR RELIEF**  
25 **Violation of California's Consumers Legal Remedies Act**  
26 **California Civil Code § 1750, *et seq.***  
***(For the California Consumer Subclass)***

27 105. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
28 if fully set forth herein.

1           106. Plaintiff brings this claim individually and on behalf of the members of  
2 the proposed California Consumer Subclass against Defendant pursuant to  
3 California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*  
4 *seq.*

5           107. The Products are “good[s]” within the meaning of Cal. Civ. Code  
6 § 1761(a), and the purchases of the Products by Plaintiff and members of the  
7 California Consumer Subclass constitute “transactions” within the meaning of Cal.  
8 Civ. Code § 1761(e).

9           108. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
10 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
11 quantities which they do not have. . . .” By using the heart health representations on  
12 the front label of the Products, Defendant has represented and continues to represent  
13 that the Products have sponsorship, approval, characteristics, uses, and benefits (i.e.,  
14 that the Products support heart health and that there is sponsorship and approval in  
15 the form of conclusive research for such a claim) that they do not have. Therefore,  
16 Defendant has violated section 1770(a)(5) of the CLRA.

17           109. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or  
18 services are of a particular standard, quality, or grade, or that goods are of a particular  
19 style or model, if they are of another.” By using the heart health representations on  
20 the front label of the Products, Defendant has represented and continues to represent  
21 that the Products are of a particular standard, quality, or grade (i.e., that the Products  
22 support heart health and have conclusive research to support such a claim) that they  
23 do not meet. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

24           110. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
25  
26  
27  
28

1 with intent not to sell them as advertised.” By using the heart health representations  
2 on the front label of the Products, and not delivering Products that support heart health  
3 or that have been shown through conclusive research to reduce the risk of heart  
4 disease, Defendant has advertised the Products with characteristics it intended not to  
5 provide to consumers. As such, Defendant has violated section 1770(a)(9) of the  
6 CLRA.  
7

8 111. At all relevant times, Defendant has known or reasonably should have  
9 known that the heart health representations on the front label of the Products are false  
10 and deceptive, and that Plaintiff and other members of the California Consumer  
11 Subclass would reasonably and justifiably rely on these representations when  
12 purchasing the Products. Nonetheless, Defendant deceptively advertises the Products  
13 as such in order to deceive consumers into believing the Products support heart health,  
14 and that there is conclusive research supporting such a claim.  
15

16 112. Plaintiff and members of the California Consumer Subclass have  
17 justifiably relied on Defendant’s misleading representations when purchasing the  
18 Products. Moreover, based on the materiality of Defendant’s misleading and  
19 deceptive conduct, reliance may be presumed or inferred for Plaintiff and members  
20 of California Consumer Subclass.  
21

22 113. Plaintiff and members of the California Consumer Subclass have  
23 suffered and continue to suffer injuries caused by Defendant because they would have  
24 paid significantly less for the Products, or would not have purchased them at all, had  
25 they known that the Products do not support heart health, and that there is no  
26 conclusive research supporting such a claim.  
27  
28

1 114. Under Cal. Civ. Code § 1780(a), Plaintiff and Class members currently  
2 seek injunctive relief for Defendant’s violations of the CLRA.

3 115. Plaintiff mailed notice to Defendant of their CLRA violations pursuant  
4 to Cal. Civ. Code § 1782 on March 5, 2024. If within 30 days of receipt, Defendant  
5 does not agree to rectify the problems identified herein, Plaintiff will amend this  
6 Complaint to seek damages pursuant to Cal. Civ. Code § 1780 individually, and on  
7 behalf of the members of the Classes.  
8

9 116. Pursuant to Cal. Civ. Code § 1780(d), a declaration of venue is attached  
10 to this Complaint.  
11

12 **SECOND CLAIM FOR RELIEF**  
13 **Violation of California’s False Advertising Law**  
14 **California Business & Professions Code § 17500, *et seq***  
15 **(*For the California Class*)**

16 117. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
17 if fully set forth herein.

18 118. Plaintiff brings this claim individually and on behalf of the members of  
19 the proposed California Class against Defendant pursuant to California’s False  
20 Adverting Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq*.

21 119. The FAL makes it “unlawful for any person to make or disseminate or  
22 cause to be made or disseminated before the public . . . in any advertising device . . .  
23 or in any other manner or means whatever, including over the Internet, any statement,  
24 concerning . . . personal property or services professional or otherwise, or  
25 performance or disposition thereof, which is untrue or misleading and which is  
26 known, or which by the exercise of reasonable care should be known, to be untrue or  
27 misleading.” Cal. Bus. & Prof. Code § 17500.  
28



1 120. Defendant has represented and continues to represent to the public,  
2 including Plaintiff and members of the proposed California Class, through its  
3 deceptive labeling and advertising, that the Products support heart health, and that  
4 there is conclusive research supporting such a claim. Because Defendant has  
5 disseminated misleading information regarding the Products, and Defendant knows,  
6 knew, or should have known through the exercise of reasonable care that the  
7 representations were and continue to be misleading, Defendant has violated the FAL.  
8

9 121. As a result of Defendant’s false advertising, Defendant has and continues  
10 to unlawfully obtain money from Plaintiff and members of the California Class.  
11 Plaintiff therefore requests that the Court cause Defendant to restore this fraudulently  
12 obtained money to Plaintiff and members of the proposed California Class, to  
13 disgorge the profits Defendant made on these transactions, and to enjoin Defendant  
14 from violating the FAL or violating it in the same fashion in the future as discussed  
15 herein. Otherwise, Plaintiff and members of the proposed California Class may be  
16 irreparably harmed and/or denied an effective and complete remedy.  
17

18  
19 **THIRD CLAIM FOR RELIEF**  
20 **Violation of California’s Unfair Competition Law (“UCL”),**  
**California Business & Professions Code § 17200, *et seq.***  
***(For the California Class)***

21 122. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
22 if fully set forth herein.

23 123. Plaintiff brings this claim individually and on behalf of the members of  
24 the proposed California Class against Defendant.  
25

26 124. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part,  
27 that “unfair competition shall mean and include unlawful, unfair or fraudulent  
28 business practices and unfair, deceptive, untrue or misleading advertising . . . .”

1           125. Under the UCL, a business act or practice is “unlawful” if it violates any  
2 established state or federal law. Defendant’s false and misleading advertising of the  
3 Products was and continues to be “unlawful” because it violates the CLRA the FAL.  
4 Defendant’s health claims are also “unlawful” under federal laws and regulations,  
5 including 21 U.S.C. § 343(r)(3)(B)(i); 21 C.F.R. § 101.14 (c), and the FDA’s  
6 requirements regarding qualified health claims, as described herein. As a result of  
7 Defendant’s unlawful business acts and practices, Defendant has unlawfully obtained  
8 money from Plaintiff and members of the proposed California Class.  
9

10           126. Under the UCL, a business act or practice is “unfair” if its conduct is  
11 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
12 oppressive, and unscrupulous, as the benefits for committing such acts or practices  
13 are outweighed by the gravity of the harm to the alleged victims. Defendant’s conduct  
14 was and continues to be of no benefit to purchasers of the Products, as it is misleading,  
15 unfair, unlawful, and is injurious to consumers who rely on the Products’ labeling.  
16 Deceiving consumers into believing they will receive a Product(s) that supports heart  
17 health, and that has conclusive research to support such a claim, is of no benefit to  
18 consumers. Therefore, Defendant’s conduct was and continues to be “unfair.” As a  
19 result of Defendant’s unfair business acts and practices, Defendant has and continues  
20 to unfairly obtain money from Plaintiff and members of the proposed California Class.  
21

22           127. Under the UCL, a business act or practice is “fraudulent” if it actually  
23 deceives or is likely to deceive members of the consuming public. Defendant’s  
24 conduct here was and continues to be fraudulent because it has the effect of deceiving  
25 consumers into believing the Products support heart health and that there is conclusive  
26 research supporting such a claim. Because Defendant misled Plaintiff and members  
27  
28

1 of the California Class, Defendant’s conduct was “fraudulent.” As a result of  
2 Defendant’s fraudulent business acts and practices, Defendant has and continues to  
3 fraudulently obtain money from Plaintiff and members of the California Class.

4  
5 128. Plaintiff requests that the Court cause Defendant to restore this  
6 unlawfully, unfairly, and fraudulently obtained money to her, and members of the  
7 proposed California Class, to disgorge the profits Defendant made on these  
8 transactions, and to enjoin Defendant from violating the UCL or violating it in the  
9 same fashion in the future as discussed herein. Otherwise, Plaintiff and members of  
10 the proposed California Class may be irreparably harmed and/or denied an effective  
11 and complete remedy.

12  
13 **FOURTH CLAIM FOR RELIEF**  
14 **Breach of Express Warranty**  
15 **Cal. Com. Code § 2313**  
16 **(For the California Class)**

17  
18 129. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
19 if fully set forth herein.

20  
21 130. Plaintiff brings this claim individually and on behalf of the members of  
22 the California Class against Defendant.

23  
24 131. California’s express warranty statutes provide that “(a) Any affirmation  
25 of fact or promise made by the seller to the buyer which relates to the goods and  
26 becomes part of the basis of the bargain creates an express warranty that the goods  
27 shall conform to the affirmation or promise,” and “(b) Any description of the goods  
28 which is made part of the basis of the bargain creates an express warranty that the  
goods shall conform to the description.” Cal. Com. Code § 2313.

132. Defendant has expressly warranted on the Products’ front label that they  
support heart health, and that there is conclusive research supporting such a claim.

1 However, as alleged herein, these express representations are false and misleading, as  
2 the Products do not support heart health, and there is no conclusive research  
3 supporting such a claim.

4  
5 133. Defendant's representations about heart health on the Products' front  
6 labels are: (a) affirmations of fact or promises made by Defendant to consumers that  
7 the Products support heart health, and that there is conclusive research supporting  
8 such a claim; (b) became part of the basis of the bargain to purchase the Products  
9 when Plaintiff and other consumers relied on the representations; and (c) created an  
10 express warranty that the Products would conform to the affirmations of fact or  
11 promises. In the alternative, the representations about the Products are descriptions of  
12 goods which were made as part of the basis of the bargain to purchase the Products,  
13 and which created an express warranty that the Products would conform to the product  
14 descriptions.  
15

16 134. Plaintiff and members of the California Class reasonably and justifiably  
17 relied on the foregoing express warranties, believing the Products support heart  
18 health, and that there is conclusive research supporting such a claim.  
19

20 135. Defendant has breached the express warranties made to Plaintiff and  
21 members of the California Class by failing to provide the Products as represented on  
22 the front label.

23 136. Plaintiff and members of the California Class paid a premium price for  
24 the Products but did not obtain the full value of the Products as represented. If Plaintiff  
25 and members of the California Class had known of the true nature of the Products,  
26 they would not have been willing to pay the premium price associated with them. As  
27 a result, Plaintiff and members of the California Class suffered injury and deserve to  
28

1 recover all damages afforded under the law.

2 137. On March 5, 2024, the undersigned counsel notified Defendant of its  
3 breach of warranty by way of a notice letter outlining the foregoing allegation.

4  
5 **FIFTH CLAIM FOR RELIEF**  
6 **Breach of Implied Warranty**  
7 ***(For the California Class)***

8 138. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
9 if fully set forth herein.

10 139. Plaintiff brings this claim individually and on behalf of the members of  
11 the California Class against Defendant.

12 140. California’s implied warranty of merchantability statute provides that “a  
13 warranty that the goods shall be merchantable is implied in a contract for their sale if  
14 the seller is a merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

15 141. California’s implied warranty of merchantability statute also provides  
16 that “[g]oods to be merchantable must be at least such as . . . (f) conform to the  
17 promises or affirmations of fact made on the container or label if any.” Cal. Com.  
18 Code § 2314(2)(f).

19 142. Defendant is a merchant with respect to the sale of Products. Therefore,  
20 a warranty of merchantability is implied in every contract for sale of the Products to  
21 California consumers.

22 143. By advertising the Products with representations about heart health on  
23 the Products’ front label, Defendant made an implied promise that the Products  
24 support heart health, and that there is conclusive research supporting such a claim.  
25 However, the Products have not “conformed to the promises. . . made on the container  
26 or label” because the Products do not support heart health, and there is no conclusive  
27  
28

1 research supporting such a claim. Plaintiff, as well as other California consumers, did  
2 not receive the goods as impliedly warranted by Defendant to be merchantable.  
3 Therefore, the Products are not merchantable under California law and Defendant has  
4 breached its implied warranty of merchantability in regard to the Products.  
5

6 144. If Plaintiff and members of the California Class had known that the  
7 Products' heart health representations were false and misleading, they would not have  
8 been willing to pay the premium price associated with them. Therefore, as a direct  
9 and/or indirect result of Defendant's breach, Plaintiff and members of the California  
10 Class have suffered injury and deserve to recover all damages afforded under the law.  
11

12 145. On March 5, 2024, the undersigned counsel notified Defendant of its  
13 breach of warranty by way of a notice letter outlining the foregoing allegation.

14 **SIXTH CLAIM FOR RELIEF**  
15 **Quasi Contract/Unjust Enrichment/Restitution**  
16 ***(for the California Class)***

17 146. Plaintiff repeats the allegations contained in paragraphs 1-104 above as  
18 if fully set forth herein.

19 147. Plaintiff brings this claim individually and on behalf of the members of  
20 the proposed California Class against Defendant.

21 148. As alleged herein, Defendant has intentionally and recklessly made  
22 misleading representations to Plaintiff and members of the California Class to induce  
23 them to purchase the Products. Plaintiff and members of the California Class have  
24 reasonably relied on the misleading representations and have not received all of the  
25 benefits and promises (that the Products would support heart health, and that there  
26 was conclusive research supporting such a claim) made by Defendant through the  
27 Products' representations. Plaintiff and members of the proposed California Class  
28

1 have therefore been induced by Defendant’s misleading and deceptive representations  
2 about the Products, and paid more money to Defendant for the Products than they  
3 otherwise would and/or should have paid.

4  
5 149. Plaintiff and members of the proposed Classes have conferred a benefit  
6 upon Defendant as Defendant has retained monies paid to them by Plaintiff and  
7 members of the proposed Classes.

8  
9 150. The monies received were obtained under circumstances that were at the  
10 expense of Plaintiff and members of the proposed Classes—i.e., Plaintiff and  
11 members of the proposed Classes did not receive the full value of the benefit conferred  
12 upon Defendant. Therefore, it is inequitable and unjust for Defendant to retain the  
13 profit, benefit, or compensation conferred upon them.

14  
15 151. As a direct and proximate result of Defendant’s unjust enrichment,  
16 Plaintiff and members of the proposed Classes are entitled to restitution,  
17 disgorgement, and/or the imposition of a constructive trust upon all profits, benefits,  
18 and other compensation obtained by Defendant from its deceptive, misleading, and  
19 unlawful conduct as alleged herein.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, individually and on behalf of the proposed Classes,  
22 respectfully prays for following relief:

23 A. Certification of this case as a class action on behalf of the proposed  
24 Classes defined above, appointment of Plaintiff as Class representative, and  
25 appointment of her counsel as Class Counsel;

26 B. A declaration that Defendant’s actions, as described herein, violate the  
27 claims described herein;  
28

1 C. An award of injunctive and other equitable relief as is necessary to  
2 protect the interests of Plaintiff and the proposed Classes, including, *inter alia*, an  
3 order prohibiting Defendant from engaging in the unlawful acts described above;

4 D. An award to Plaintiff and the proposed Classes of restitution and/or other  
5 equitable relief, including, without limitation, restitutionary disgorgement of all  
6 profits and unjust enrichment that Defendant obtained from Plaintiff and the proposed  
7 Classes as a result of its unlawful, unfair and fraudulent business practices described  
8 herein;

9 E. An award of all economic, monetary, actual, consequential, and  
10 compensatory damages caused by Defendant's conduct;

11 F. An award of nominal, punitive, and statutory damages;

12 G. An award to Plaintiff and her counsel of reasonable expenses and  
13 attorneys' fees;

14 H. An award to Plaintiff and the proposed Classes of pre and post-judgment  
15 interest, to the extent allowable; and

16 I. For such further relief that the Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, individually, and on behalf of the proposed Classes, hereby demands  
19 a jury trial with respect to all issues triable of right by jury.

20 DATED: May 16, 2024

21 **TREEHOUSE LAW, LLP**

22 By: /s/ Ruhandy Glezakos

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