

1 **BURSOR & FISHER, P.A.**
 2 L. Timothy Fisher (State Bar No. 191626)
 3 Luke Sironski-White (State Bar No. 348441)
 4 Ines Diaz Villafana (State Bar No. 354099)
 5 1990 North California Boulevard, Suite 940
 6 Walnut Creek, CA 94596
 7 Telephone: (925) 300-4455
 8 Facsimile: (925) 407-2700
 9 Email: ltfisher@bursor.com
 10 lsironski@bursor.com
 11 idiaz@bursor.com

12 **SINDERBRAND LAW GROUP, PC**
 13 Gregory Marc Sinderbrand (State Bar No. 179586)
 14 5805 Sepulveda Blvd., Suite 801
 15 Sherman Oaks, CA 91411
 16 Telephone: (818) 3703912
 17 Email: greg@sinderbrandlaw.com

18 *Attorneys for Plaintiff*

19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 CAROL SCOTT, individually and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 ZENWISE LLC,

26 Defendant.

27 Case No. 2:24-cv-4673

28 **CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Carol Scott (“Plaintiff”) brings this action on behalf of herself, and all
2 others similarly situated against Defendant Zenwise LLC (“Defendant” or
3 “Zenwise”). Plaintiff makes the following allegations pursuant to the investigation
4 of her counsel and based upon information and belief, except as to the allegations
5 specifically pertaining to herself, which are based on personal knowledge.

6 **NATURE OF ACTION**

7 1. This is a putative class action against Defendant Zenwise for deceptive
8 sales practices regarding its Digestive Enzymes and No Bloat dietary supplement
9 products (the “Product(s)").¹

10 2. Gas and bloating are common ailments in society. Abdominal bloating
11 “is a very common symptom that affects 10-30% of people.”² Similarly common,
12 excessive gas, is a symptom that often accompanies bloating.³ Gas and bloating
13 commonly affect people who are suffering from health conditions such as irritable
14 bowel syndrome (IBS).⁴ These conditions, can lead to serious implications to a
15 person’s quality of life. When dealing with bloating and excessive gas, people report
16 “significant difficulties ... [in their] ability to work and participate in social or
17 recreational activities.”⁵ For example a study measuring people’s answer to an
18 intestinal gas questionnaire found that out of the respondents that reported
19 gastrointestinal symptoms, 53.8% of them reported pain and discomfort (compared
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21 _____
22 ¹ This includes the Zenwise Digestive Enzymes – Probiotic Multi Enzymes with
23 Probiotics and Zenwise NO BLOAT Probiotics, Digestive Enzymes for Bloating.
24 Both Products use the same active ingredients in similar doses and are for purposes
25 of this action substantially similar.

26 ² Syed Thiwan, *Abdominal Bloating: A Mysterious Symptom*, UNC SCHOOL OF
27 MEDICINE, [https://www.med.unc.edu/ibs/wp-](https://www.med.unc.edu/ibs/wp-content/uploads/sites/450/2017/10/Abdominal-Bloating.pdf)
28 [content/uploads/sites/450/2017/10/Abdominal-Bloating.pdf](https://www.med.unc.edu/ibs/wp-content/uploads/sites/450/2017/10/Abdominal-Bloating.pdf).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

1 to only 21.1% of respondents that reported no gastrointestinal symptoms).⁶ In
2 regards to carrying out usual activities, 22.6% of survey respondents reported some
3 problems and 1.9% reported extreme problems (compared to 8.6% and 0.6%,
4 respectively, from respondents without gastrointestinal symptoms).⁷ The study
5 further found that the survey scores were worse for women compared to men and
6 noted that this outcome was confirmed by existing literature that has also found that
7 gastrointestinal issues (such as gas and bloating) are perceived to be worse by
8 women and have a bigger effect on women’s quality of life.

9 3. While gas and bloating are common issues, treatment in a formal setting
10 with a medical provider is not.⁸ A Cedars-Sinai study found that 58.5% of
11 respondents “said they have never sought care for their symptoms.” Some reasons
12 respondents reported for not seeking medical treatment for bloating were that “they
13 were able to manage it with over-the-counter medications or lifestyle changes
14 (20.8%)” and that “they weren’t comfortable discussing bloating with a healthcare
15 provider (8.5%).”⁹

16 4. So, rather than seeking treatment through medical providers, many
17 people, including Plaintiff, seek an over-the-counter solution. And in response, a
18 whole cottage industry has emerged – offering up over-the-counter solutions that
19 claim to alleviate gas and bloating. The products have been highly lucrative, with
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21 ⁶ Martin Duracinsky, Sharon Archbold, Beatriz Lobo, Pasccal Bessonneau,
22 Frédérique Thonon, Javier Santos, Danila Guagnozzi, Nalin Payakachat, Benoit
23 Coffin, Fernando Azpiroz, Peter J. Whorwell, and Olivier Chassany, *The Intestinal*
24 *Gas Questionnaire (IGQ): Psychometric validation of a new instrument for*
measuring gas-related symptoms and their impact on daily life among general
population and irritable bowel syndrome, 34 *NEUROGASTROENTEROL MOTIL* (2022)
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9285021/>.

25 ⁷ *Id.*

26 ⁸ Cedars Sinai, *Bloating Common Issue Among Americans, Study Reports*, (Nov. 24,
27 2022), [https://www.cedars-sinai.org/newsroom/bloating-common-issue-among-](https://www.cedars-sinai.org/newsroom/bloating-common-issue-among-americans-study-reports/)
[americans-study-reports/](https://www.cedars-sinai.org/newsroom/bloating-common-issue-among-americans-study-reports/).

28 ⁹ *Id.*

1 the digestive health supplements market reaching approximately \$16.5 billion in the
2 U.S. in 2022.

3 5. Zenwise markets its Products as a solution to a general population of
4 consumers who suffer from gas and bloating. Defendant manufactures, distributes,
5 advertises, and sells the Products throughout the United States. It markets and sells
6 the Products as a complete solution that “ACTS FAST,” and is “Clinically Proven
7 [to] Work in Hours.”¹⁰

8 6. But Zenwise’s promises to quickly get rid of gas and bloating are not
9 true. Plaintiff’s counsel engaged an expert physician who reviewed the published
10 scientific literature regarding the primary ingredients in the Products and discovered
11 the truth: the Claims are false and deceptive because the Products cannot do what
12 Defendant claims they can do.

13 7. Specifically, the Products do not include ingredients clinically proven to
14 quickly provide gas and bloating relief and the scientific literature shows the
15 ingredients cannot and do not provide the promised results if taken as directed.

16 8. Defendant failed to disclose these material facts anywhere on the
17 Products’ labeling, packaging, or marketing materials, and Defendant intended
18 consumers to rely on its labeling, packaging, or marketing, in making their
19 purchasing decisions. Through its conduct, Defendant has violated California state
20 consumer protection laws in the process.

21 9. Had Plaintiffs and all other similarly situated consumers known that
22 contrary to Defendant’s representations, the Products do not perform as advertised,
23 they would have paid less for the Product or not purchased it at all.

24 10. Accordingly, Plaintiff brings her claims against Defendant individually
25 and on behalf of a class of all others similarly situated for (1) violation of
26 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.; (2)
27 violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.; (3)

28 ¹⁰ See Figures 1-5 below.

1 violation of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, et
2 seq.; (4) Fraud; (5) Fraudulent Inducement; (6) Fraudulent Misrepresentation; (7)
3 Breach of Express Warranty; (8) Breach of Implied Warranty; and (9) Unjust
4 Enrichment.

5 **THE PARTIES**

6 11. Plaintiff Carol Scott is a resident of California who resides in Sherman
7 Oaks, California. Plaintiff Scott purchased the Products from Amazon on January
8 20, 2024. At the time of her purchase, Plaintiff Scott visited the Amazon website
9 from her home computer and reviewed Defendant’s marketing materials and claims
10 related to the Products, including those set forth in paragraphs 24-26 below. Plaintiff
11 Scott understood that based on Defendant’s claims, the Products contained
12 ingredients that were clinically proven to quickly provide (within hours) relief from
13 gas and bloating (in the case of the No Bloat product – complete relief from
14 bloating). Plaintiff Scott reasonably relied on these representations and warranties in
15 deciding to purchase the Products, and these representations and warranties were part
16 of the basis of the bargain in that she would not have purchased the Products, or
17 would not have purchased them on the same terms, if the true facts had been known.
18 Further Plaintiff Scott used the Products as directed on the label and experienced no
19 gas or bloating relief. As a direct result of Defendant’s material misrepresentations
20 and omissions, Plaintiff Scott suffered and continues to suffer, economic injuries.

21 12. Defendant Zenwise LLC (“Defendant”) is a limited liability company
22 registered in Delaware with its principal place of business in Orlando, Florida.
23 Zenwise manufactures, sells, and/or distributes the Products, and is responsible for
24 the advertising, marketing, trade dress, and packaging of the Products online and
25 through various retailers throughout the United States.

26 **JURISDICTION AND VENUE**

27 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
28 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 (“CAFA”),

1 because this case is a class action where the aggregate claims of all members of the
2 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there
3 are over 100 members of the putative class, and Plaintiff, as well as most members of
4 the proposed class, are citizens of different states than Defendant.

5 14. This Court has personal jurisdiction over Defendant because Defendant
6 transacts substantial business in this District, has substantial aggregate contacts with
7 this District, engaged in conduct that has and had a direct, substantial, reasonably
8 foreseeable, and intended effect of causing injury to persons throughout this District,
9 and purposefully availed itself of the laws of the State of California in this District,
10 because the acts and transactions giving rise to this action occurred in this District.

11 15. This Court is the proper venue for this action pursuant to 28 U.S.C. §
12 1391 because a substantial part of the events, omissions, and acts giving rise to
13 Plaintiff's claims herein occurred in this District.

14 FACTUAL ALLEGATIONS

15 16. Plaintiff's counsel engaged an expert physician with extensive
16 experience in digestive enzyme and probiotic research to review the scientific
17 literature around the use of the relevant ingredients included in the Products and to
18 evaluate the claims Defendant makes on the Products' labels and in advertising.
19 Based on this review, the expert concluded that Defendant's claims set forth in
20 paragraphs 24-26 below are false and misleading. The following background
21 information on how probiotics and digestive enzymes work, and the evaluation of
22 Defendant's label claims are all based on the medical expert's analysis.

23 **A. How Probiotics and Digestive Enzymes Work**

24 17. Probiotics are live microorganisms that occur naturally in some foods
25 (such as yogurt and kimchi) or can be ingested through dietary supplements.
26 Probiotics are beneficial bacteria or yeast, similar to the beneficial bacteria that exist
27 naturally in the human gut. The health benefits of probiotic consumption include
28

1 balancing the natural bacteria already existing in the gut which helps with
2 gastrointestinal health and the immune system.

3 18. Although proven to lead to health benefits, probiotic supplements are
4 not an immediate solution. Positive health effects will not occur immediately, but
5 instead will arise gradually over time and may not even be noticeable. The effects of
6 taking probiotic supplements depend on the individual taking them, the dosage, and
7 the probiotic strain taken.

8 19. One such probiotic strain that has been studied and found to promote
9 gut health is DE111, a strain of *Bacillus subtilis*. Studies have found a variety of
10 health benefits from the use of DE111, such as an increase in normal stools,
11 increased bowel movements per day, and improvement in microbiome diversity.

12 20. However, research has not supported that DE111 is effective in
13 combatting gas and bloating. Nor has research on the general use of *Bacillus subtilis*
14 supplements supported its use in eliminating or even reducing gas and bloating.

15 21. Notably, research on DE111 typically has been conducted in 3-6 week
16 periods. This underscores the fact that health effects from supplementation are not
17 immediate and may take weeks to months to appear.

18 22. Digestive enzymes are “proteins that break down larger molecules like
19 fats, proteins, and carbs into smaller molecules that are easier to absorb across the
20 small intestine.”¹¹ Different types of digestive enzymes will break down different
21 kinds of nutrients. For example, lipases are a group of enzymes that help break
22 down fats in the gut. Amylase enzymes break down carbohydrates into smaller
23 molecules like glucose and maltose. And proteases are enzymes that break down
24 protein into smaller peptides and amino acids.

25 23. While these kinds of digestive enzymes at specific dosage levels *can* be
26 helpful for a narrow population of consumers that suffer from digestive disorders, the
27

28 ¹¹ https://www.healthline.com/nutrition/natural-digestive-enzymes#TOC_TITLE_HDR_12

1 scientific literature establishes that the digestive enzymes included in the Zenwise
2 formulations, if taken as directed, cannot and do not provide fast acting or total relief
3 from gas and bloating to a general population of consumers.

4 **B. False and Misleading Product Claims**

5 24. Defendant makes a number of false and misleading claims on its
6 Products' labels that give consumers the impression that its Products are fast-acting
7 (within hours) at reducing gas and bloating. *See* Figure 1. Specifically, Defendant
8 makes claims on the Zenwise Digestive Enzymes Product label that the Product
9 contains "FAST ACTING PROBIOTICS," and is "Clinically Proven Works in
10 Hours." *See* Figure 1. Defendant makes similar claims on its No Bloat Product such
11 as that the Product contains a "Clinically Proven Probiotic," "Acts Fast," and
12 provides "Fast Gas & Bloating Relief." *See* Figure 1.



Figure 1

25. Defendant makes similar false and misleading claims about its Products in its marketing and advertising materials. For example, when consumers purchase the Products on Defendant’s Amazon store, they will come across the following materials for the Digestive Enzyme Product. *See* Figures 2-3. These include false and misleading claims that the Digestive Enzyme Product includes “Probiotics That Are Clinically Proven to Reduce Gas and Bloating in Hours” and that it “Work[s] in Hours not Weeks.”

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Figure 2

About this item

- Digestive Enzymes + Probiotics + Prebiotics: Convenient 3-in-1 home or on-the-go gut support solution for relief from occasional bloating, gas, and discomfort from hard to digest foods.
- Lab Proven Multi Enzyme Blend: Shown to digest foods up to 39% more completely and 2 hours faster than your body can on its own. Perfect for gluten exposure or Keto and Paleo diets.
- Clinically Proven DE111 Probiotic: Guaranteed to arrive alive and work within hours in small intestine where 90% of nutrient absorption occurs.
- Botanical Bounty: Turmeric, Ginger, Green Papaya, Inulin, Apple Pectin, Bladderwrack, Fennel, and Wakame all aid gut health and stomach comfort.
- 15 Count Single Empty Tin + 180 Count Tin Replenishment: We suggest taking 1 capsule before each meal or drink to experience digestive delight.

Figure 3

1 26. Defendant makes similar false and misleading claims on the marketing
2 and advertising on its Amazon store page for its No Bloat Product. For example,
3 aside from the name of the product “No Bloat” which, in it of itself, is an express
4 claim that the products eliminates bloating if taken as directed, Defendant claims that
5 the Product will “Banish Bloating,” includes a “Clinically Proven Probiotic,” and
6 “works within hours.” See Figures 4-5.



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18 **Figure 4**

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About this item

- **Banish Bloating:** Your best solution for prompt bloat relief to help you feel lighter and better. With digestive enzymes, clinically proven probiotics, and organic botanicals, NO BLØAT helps breakdown lactose and offers support for the gas and bloating that’s at the root of your belly discomfort.
- **Gut Love Starts With Digestive Enzymes:** Our BioCore Optimum Complete Digestive Enzymes Blend aids digestion by helping break down hard-to-digest foods you eat that can lead to food, alcohol and water retention bloating, gas, and digestive woes.
- **Clinically Proven DE111 Probiotic:** 1 Billion CFUs of DE111 that works in hours! This unique spore-forming probiotic is guaranteed to survive passage through to the small intestine where it helps your body absorb the nutrients from foods.
- **Organic Digestive Botanical Blend:** Includes herbs and greens including Turmeric, Ginger, Dandelion Extract, Fennel Seed Powder, and Cinnamon Extract for digestive mobility support, and a happy, healthy GI tract.
- **50 Serving Supply:** Includes 1 (100 Count) Zenwise NO BLØAT. We suggest taking 2 capsules daily after a meal for optimal support.

Figure 5

C. Defendant’s Misrepresentations and Omissions Are Actionable

27. According to Plaintiff’s medical expert, Defendant’s Products do not contain clinically proven ingredients that are capable of providing fast gas and bloating relief, let alone complete relief.

28. Specifically, the medical expert opined that the enzyme blend included in the Products is not potent enough to provide relief for gas and bloating when taken as directed. For example, studies measuring the effect of the enzyme α -galactosidase (an enzyme Defendant includes in its Products) at a dose of 1200 GalU, have shown no statistically significant results in regard to fast acting relief from gas and bloating. Notably, the dosage in these studies is at least *four* times the dosage included in the Products. Other studies that measured the lactase enzyme (also in the Products) have shown positive effects on gastrointestinal symptoms for dosages between 3000 and 9000 ALU, which is significantly more than the dosage in the Products.

29. While Defendant makes claims about the probiotics in the Products being clinically proven to provide gas and bloating relief within hours, including the DE111 probiotic, Plaintiff’s medical expert concluded that because studies

1 conducted on DE111 do *not* show gas and bloating relief, the “clinically proven”
2 claims are false. Further, Plaintiff’s medical expert opined that it is highly deceptive
3 to suggest that the probiotics work within hours because, even though research has
4 found that the DE111 probiotic can survive transit to reach the small intestine and
5 start germinating within hours of ingestion, it has not been shown, nor is it true, that
6 it works within hours to *provide relief*.

7 30. Further Plaintiff’s medical expert opined that Defendant’s claims on the
8 Products, “No Bloat” and “Banish Bloating” (which imply that the Products will
9 eliminate bloating) are scientifically impossible because there is no known product
10 or ingredient in the scientific literature that has been shown to completely eliminate
11 bloating for a general population of consumers who suffer from these symptoms.

12 31. In sum, the expert’s findings were that Defendant’s claims that its
13 Products would provide fast relief for gas and bloating were neither clinically
14 proven, nor were the Products capable of providing the promised results at the
15 dosages Defendant recommends. Therefore, the expert concluded that all of the
16 claims discussed are false and deceptive.

17 32. Plaintiff purchased the Products with the expectation that the Products
18 were capable of providing fast relief of her gas and bloating symptoms. Plaintiff also
19 reasonably believed that Defendant had clinical evidence to support these purported
20 benefits . Had she known that these efficacy claims were false, and that the Products
21 do not contain ingredients that are “clinically proven” to provide the promised results
22 she would not have purchased them.

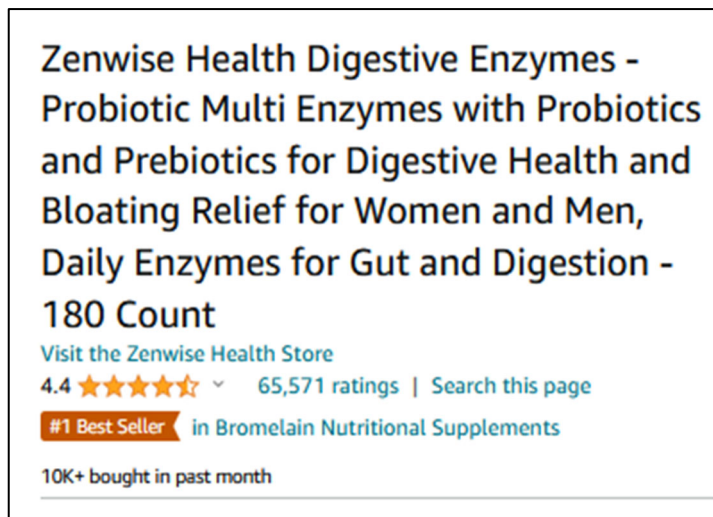
23 33. Further, Plaintiff and the Class were injured by the full purchase price
24 of the Products because the Products are worthless, as they are marketed as being
25 clinically proven to provide the promised to quickly relieve gas and bloating
26 symptoms when they are not in fact clinically proven to provide the promised results
27 and are incapable of providing the promised results if taken as directed.

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1 **C. Marketplace Success of Products**

2 34. With knowledge that a general population of vulnerable consumers
3 suffer from debilitating gas and bloating issues, Defendant has deployed a
4 sophisticated, uniform marketing campaign for the Products, including on Amazon
5 and on social media platforms such as TikTok. This false advertising scheme has
6 worked. The Company has lined its pockets with tens of millions of dollars in ill-
7 gotten gains from consumers.

8 35. The Digestive Enzymes product has now achieved #1 Best Seller status
9 on Amazon with over 65,000 reviews and over 10,000 units sold in the past month as
10 of May 2024 (Figure 6). The Company even touts in its advertising how the
11 Products have gone “viral.” See Figure 1.



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20 **Figure 6**

21 **FED. R. CIV. P. 9(b) ALLEGATIONS**

22 36. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n
23 alleging fraud or mistake, a party must state with particularity the circumstances
24 constituting fraud or mistake.” To the extent necessary, as detailed in the paragraphs
25 above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing
26 the following elements with sufficient particularity.
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1 37. WHO: Defendant made material omissions of fact in its advertising of
2 the Products by omitting that they are not capable of providing fast acting gas and
3 bloating relief (or complete elimination of bloating) and that they do not contain
4 clinically proven ingredients that can provide such relief (collectively the
5 “Advertised Benefits”).

6 38. WHAT: Defendant’s conduct was and continues to be fraudulent and
7 deceptive because it has the effect of deceiving consumers into believing that the
8 Products are able to provide the Advertised Benefits. Defendant failed to disclose to
9 Plaintiff and Class Members that the Products do not provide the Advertised
10 Benefits. Defendant knew or should have known this information is material to all
11 reasonable consumers and impacts consumers’ purchasing decisions. Yet, Defendant
12 has omitted from the labeling and advertising of its Products the fact that they cannot
13 provide the Advertised Benefits.

14 39. WHEN: Defendant omitted from its advertising and labeling of the
15 Products the fact that they are not capable of providing the Advertised Benefits
16 continuously throughout the applicable statutory periods, including at the point of
17 sale.

18 40. WHERE: Defendant’s omissions were made through its own marketing
19 materials, on its website, and product pages of secondhand sellers for Defendant’s
20 Products (such as Amazon) and were thus viewed by every purchaser, including
21 Plaintiff, at the point of sale in every transaction. The Products are sold in brick-and-
22 mortar stores and online nationwide.

23 41. HOW: Defendant omitted from the Products’ advertising and labeling
24 the fact that they are not capable of providing the Advertised Benefits. And as
25 discussed in detail throughout the Complaint, Plaintiff and Class Members read and
26 relied on Defendant’s omissions before purchasing the Products.

27 42. WHY: Defendant omitted from the advertising and labeling of the
28 Products that they are not capable of proving the Advertised Benefits for the express

1 purpose of inducing Plaintiff and Class Members to purchase the Products for more
2 than they would have paid had they known the truth about the Products. As such,
3 Defendant unlawfully profited by selling the Products to thousands of consumers
4 throughout the nation, including Plaintiff and the Class Members.

5 **CLASS ALLEGATIONS**

6 43. Plaintiff brings this class action pursuant to 23(b)(2) and 23(b)(3) of the
7 Federal Rules of Civil Procedure, individually and on behalf of a class defined as all
8 persons in the United States who purchased the Products (the “Class”). Excluded
9 from the Class are persons who made such purchases for purposes of resale.

10 44. Plaintiff also seeks to represent a subclass of all Class Members who
11 purchased the Products in the State of California (the “California Subclass”).
12 Excluded from the California Subclass are persons who made such purchases for
13 purpose of resale.

14 45. As a result of additional information obtained through further
15 investigation and discovery, the above-described Classes may be modified or
16 narrowed as appropriate, including through the use of multi-state subclasses.

17 46. ***Numerosity:*** Members of the Classes are so numerous that their
18 individual joinder herein is impracticable. On information and belief, the Classes
19 includes thousands of consumers. The precise number of Class members and their
20 identities are unknown to Plaintiff at this time but will be determined through
21 discovery. Class Members may be notified of the pendency of this action by mail,
22 email, and/or publication.

23 47. ***Commonality and Predominance:*** Common questions of law and fact
24 exist as to all Class Members and predominate over questions affecting only
25 individual Class Members. These common legal and factual questions include, but
26 are not limited to:

- 27 (a) whether the Products include ingredients that are clinically
28 proven to provide the Advertised Benefits;

- 1 (b) whether the Products are capable of providing the Advertised
2 Benefits (e.g., whether the Products are capable of providing
3 relief from gas and bloating in a fast-acting manner (i.e., within
4 hours);
- 5 (c) whether Defendant’s representations about the Products’
6 capabilities and the Products being clinically proven included
7 false and/or misleading statements and/or omissions;
- 8 (d) whether Defendant has been unjustly enriched as a result of the
9 unlawful conduct alleged in this Complaint such that it would be
10 inequitable for Defendant to retain the benefits conferred upon it
11 by Plaintiff and the Classes;
- 12 (e) whether Plaintiffs and the Class sustained damages with respect
13 to the common law claims asserted, and if so, the proper measure
14 for their damages;

15 48. With respect to the California Subclass, additional questions of law and
16 fact common to the members include whether Defendant violated the California
17 Consumers Legal Remedies Act as well as the California Unfair Competition Law.

18 49. **Typicality:** Plaintiff’s claims are typical of the claims of the proposed
19 Classes she seeks to represent because Plaintiff, like all members of the Classes, was
20 induced by Defendant’s false and misleading statements to purchase Defendant’s
21 Products and subsequently did purchase Defendant’s Products during the relevant
22 class periods without knowing that Defendant’s claims about the Products’ purported
23 “clinically proven” benefits to quickly relieve gas and bloating were false and
24 misleading. Plaintiff, like all members of the Classes, has been damaged by
25 Defendant’s misconduct in the very same way as the members of the Classes.
26 Further, the factual bases of Defendant’s misconduct are common to all members of
27 the Classes and represent a common thread of misconduct resulting in injury to all
28 members of the Classes.

50. **Adequacy:** Plaintiff is an adequate representative of the Classes she
seeks to represent because her interests do not conflict with the interests of the
members of the Classes, she has retained counsel competent and experienced in

1 prosecuting class actions, and they intend to prosecute this action vigorously. The
2 interests of the members of the Classes will be fairly and adequately protected by
3 Plaintiff and her counsel.

4 51. **Superiority:** A class action is superior to other available means for the
5 fair and efficient adjudication of the claims of the members of the Classes. Each
6 individual member of the Classes may lack the resources to undergo the burden and
7 expense of individual prosecution of the complex and extensive litigation necessary
8 to establish Defendant's liability. Individualized litigation increases the delay and
9 expense to all parties and multiplies the burden on the judicial system presented by
10 the complex legal and factual issues of this case. Individualized litigation also
11 represents a potential for inconsistent or contradictory judgments. By contrast, the
12 class action device presents far fewer management difficulties and provides the
13 benefits of single adjudication, economy of scale, and comprehensive supervision by
14 a single court on the issue of Defendant's liability. Class treatment of the liability
15 issues will ensure that all claims and claimants are before this Court for consistent
16 adjudication of the liability issues.

17 52. Defendant has acted or failed to act on grounds generally applicable to
18 the Classes, thereby making appropriate final injunctive relief with respect to the
19 Classes as a whole.

20 53. Without a class action, Defendant will continue a course of action that
21 will result in further damages to the Plaintiff and Members of the Classes and will
22 likely retain the benefits of wrongdoing.

23 54. Based on the foregoing allegations, Plaintiff's claims for relief include
24 those set forth below.

COUNT I
**(Violation of California’s Unfair Competition Law,
Cal. Bus. & Prof. Code §§ 17200, et seq.)**
On Behalf of Plaintiff and the California Subclass

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4 55. Plaintiff realleges and reincorporates by reference all paragraphs alleged
5 above.

6 56. Plaintiff brings this claim individually and on behalf of the California
7 Subclass against Defendant.

8 57. California Business and Professions Code § 17200 prohibits “any
9 unlawful, unfair, or fraudulent business act or practice.” For the reasons discussed
10 above, Defendant has engaged in unlawful, unfair, and fraudulent business acts or
11 practices in violation of California Business & Professions Code § 17200.

12 58. By committing the acts and practices alleged herein, Defendant has
13 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§
14 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and
15 unfair conduct.

16 59. Defendant has violated the UCL’s proscription against engaging in
17 **Unlawful Business Practices** as a result of its violations of the CLRA, Cal. Civ.
18 Code § 1770(a)(5), (a)(7), and (a)(9) as alleged below, and violations of California’s
19 False Advertising Law, in addition to breaches of warranty and violations of
20 common law.

21 60. As more fully described above, Defendant’s misleading marketing,
22 advertising, packaging, and labeling of the Products is likely to deceive reasonable
23 consumers. In addition, Defendant has committed unlawful business practices by,
24 inter alia, making the representations and omissions of material facts, as set forth
25 more fully herein, and violating the common law.

26 61. Plaintiff and the California Subclass Members reserve the right to allege
27 other violations of law which constitute other unlawful business acts or practices.
28

1 62. Defendant has also violated the UCL’s proscription against engaging in
2 **Unfair Business Practices**. Defendant’s acts, omissions, misrepresentations,
3 practices and non-disclosures as alleged herein also constitute “unfair” business acts
4 and practices within the meaning of Business & Professions Code § 17200 *et seq.* in
5 that its conduct is substantially injurious to consumers, offends public policy, and is
6 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct
7 outweighs any alleged benefits attributable to such conduct.

8 63. There were reasonably available alternatives to further Defendant’s
9 legitimate business interests, other than the conduct described herein as noted above.

10 64. Defendant has further violated the UCL’s proscription against engaging
11 in **Fraudulent Business Practices**. Defendant’s claims, nondisclosures and
12 misleading statements with respect to the Product, as more fully set forth above,
13 were false, misleading and/or likely to deceive the consuming public within the
14 meaning of Business & Professions Code § 17200.

15 65. Plaintiff and the other California Subclass Members suffered a
16 substantial injury by virtue of buying Products that they would not have purchased
17 absent Defendant’s unlawful, fraudulent, and unfair marketing, advertising,
18 packaging, and omission about the efficacy of the Products.

19 66. There is no benefit to consumers or competition from deceptively
20 marketing and omitting material facts about the true nature of the Products.

21 67. Plaintiff and the other California Subclass Members had no way of
22 reasonably knowing that the Products they purchased were not as marketed,
23 advertised, packaged, or labeled. Thus, they could not have reasonably avoided the
24 injury each of them suffered.

25 68. The gravity of the consequences of Defendant’s conduct as described in
26 this Complaint outweighs any justification, motive, or rationale, particularly
27 considering the available legal alternatives which exist in the marketplace, and such
28

1 conduct is immoral, unethical, unscrupulous, offends established public policy, or is
2 substantially injurious to Plaintiff and the other California Subclass Members.

3 69. Pursuant to California Business and Professional Code § 17203,
4 Plaintiff and the California Subclass seek an order of this Court that includes, but is
5 not limited to, an order requiring Defendant to (a) provide restitution to Plaintiff and
6 the other California Subclass Members; (b) disgorge all revenues obtained as a result
7 of violations of the UCL; and (c) pay Plaintiff’s and the California Subclass’
8 attorneys’ fees and costs.

9 **COUNT II**
10 **(Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
11 **California Civil Code § 1750, *et seq.*)**
12 **(Injunctive Relief Only)**

13 70. Plaintiff realleges and reincorporates by reference all paragraphs alleged
14 above.

15 71. Plaintiff brings this claim individually and on behalf of the California
16 Subclass against Defendant.

17 72. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services
18 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
19 which they do not have or that a person has a sponsorship, approval, status,
20 affiliation, or connection which he or she does not have.”

21 73. Civil § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
22 a particular standard, quality, or grade, or that goods are of a particular style or
23 model, if they are of another.”

24 74. Civil § 1770(a)(9) prohibits “advertising goods or services with intent
25 not to sell them as advertised.”

26 75. Defendant violated Civil Code §§ 1770(a)(5), (a)(7), and (a)(9) by
27 holding out the Product as containing ingredients that are clinically proven to
28 provide gas and bloating relief, being clinically proven to act fast (i.e., within hours),
and as being capable of alleviating bloating and gas symptoms if taken as directed

1 when in fact the ingredients in the Products are not clinically proven to provide the
2 promised results and are not capable of providing the promised results if taken as
3 directed.

4 76. Defendant had and has exclusive knowledge of the Products’
5 composition and efficacy, which was not known to Plaintiff or California Subclass
6 Members.

7 77. Defendant made partial representations to Plaintiff and California
8 Subclass Members, while suppressing the true nature of the Products. Specifically,
9 by displaying the Products and describing that they include clinically proven
10 ingredients and are and capable of providing fast-acting relief of gas and bloating,
11 including on the Products’ packaging, on its website, on its Amazon website, and in
12 its marketing, without disclosing that the ingredients in the Products were neither
13 clinically proven nor capable of providing the promised results if taken as directed.
14 Moreover, Defendant affirmatively misrepresented the Products despite its
15 knowledge that the Products was unable to provide the Advertised Benefits.

16 78. Plaintiff and the California Subclass Members have suffered harm as a
17 result of these violations of the CLRA because they have incurred charges and/or
18 paid monies for the Products that they otherwise would not have incurred or paid,
19 and were unknowingly exposed to a significant and substantial health risk.

20 79. On February 26, 2024, prior to the filing of this Complaint, Plaintiff’s
21 counsel sent Defendant a CLRA notice letter, which complied in all respects with
22 California Civil Code § 1782(a). The letter was sent via certified mail, return receipt
23 requested, advising Defendant that it was in violation of the CLRA and demanding
24 that they cease and desist from such violations and make full restitution by refunding
25 the monies received therefrom. The letter stated that it was sent on behalf of all
26 other similarly situated purchasers.

27 80. Defendant failed to remedy the issues raised in the notice letter.
28 Accordingly, Plaintiff seeks damages from Defendant for its violations of the CLRA.

1 81. Injunctive relief is also appropriate, and indeed necessary, to require
2 Defendant to provide full and accurate disclosures regarding the Products so that
3 Plaintiff and Subclass Members can reasonably rely on Defendant’s representations
4 as well of those of Defendant’s competitors who otherwise may have an incentive to
5 follow Defendant’s deceptive practices, further misleading consumers.

6 **COUNT III**
7 **(Violation of California’s False Advertising Law,**
8 **Cal. Bus. & Prof. Code § 17500, *et seq.*)**
9 **On Behalf of the California Subclass**

10 82. Plaintiff realleges and reincorporates by reference all paragraphs alleged
11 above.

12 83. Plaintiff brings this claim individually and on behalf of the California
13 Subclass against Defendant.

14 84. Defendant’s acts and practices, as described herein, have deceived
15 and/or are likely to continue to deceive California Subclass Members and the public.
16 As described above, and throughout this Complaint, Defendant misrepresented the
17 Products as containing ingredients clinically proven to provide fast gas and bloating
18 relief and that the Products were capable of providing gas and bloating relief if taken
19 as directed.

20 85. By its actions, Defendant disseminated uniform advertising regarding
21 the Products to and across California. The advertising was, by its very nature, unfair,
22 deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code §
23 17500, *et seq.* Such advertisements were intended to and likely did deceive the
24 consuming public for the reasons detailed herein.

25 86. The above-described false, misleading, and deceptive advertising
26 Defendant disseminated continues to have a likelihood to deceive in that Defendant
27 failed to disclose that the Products’ ingredients are not clinically proven to provide
28 the promised results and that the Products are not capable of providing the promised
results if taken as directed.

1 87. Defendant continues to make the above referenced misrepresentation of
2 the Products to consumers that the Products.

3 88. In making and disseminating these statements, Defendant knew or
4 should have known its advertisements were untrue and misleading in violation of
5 California law. Plaintiff and other Class Members based their purchasing decisions
6 on Defendant’s misrepresentations and omitted material facts. The revenue
7 attributable to the Products sold in those false and misleading advertisements likely
8 amounts to tens of millions of dollars. Plaintiff and Class Members were injured in
9 fact and lost money and property as a result.

10 89. The misrepresentations and non-disclosures by Defendant of the
11 material facts described and detailed herein constitute false and misleading
12 advertising and, therefore, constitute a violation of Cal. Bus. & Prof. Code § 17500,
13 *et seq.*

14 90. As a result of Defendant’s wrongful conduct, Plaintiff and Class
15 Members lost money in an amount to be proven at trial. Plaintiff and Class Members
16 are therefore entitled to restitution as appropriate for this cause of action.

17 91. Plaintiff and Class Members seek all monetary and non-monetary relief
18 allowed by law, including restitution of all profits stemming from Defendant’s
19 unfair, unlawful, and fraudulent business practices; declaratory relief; reasonable
20 attorneys’ fees and costs under California Code of Civil Procedure § 1021.5;
21 injunctive relief; and other appropriate equitable relief.

22 **COUNT IV**
23 **(Fraud)**
On Behalf of the Classes

24 92. Plaintiff realleges and reincorporates by reference all paragraphs alleged
25 above.

26 93. Plaintiff brings this claim individually and on behalf of the Class and
27 California Subclass (the “Classes”)
28

1 94. At the time Plaintiff and Class Members purchased the Products,
2 Defendant did not disclose, but instead misrepresented, what the Products were
3 capable of doing, including concealing that the ingredients were not clinically proven
4 to provide fast gas and bloating relief if taken as directed. Defendant also falsely
5 claimed that the No Bloat product banishes bloating.

6 95. Defendant affirmatively misrepresented the Products, giving the
7 appearance that they included clinically proven ingredients that could provide gas
8 and bloating relief that is not possible given the ingredients and recommended
9 dosages.

10 96. Defendant also knew that its omissions and misrepresentations
11 regarding the Products were material, and that a reasonable consumer would rely
12 upon Defendant's representations (and corresponding omissions) in making
13 purchasing decisions.

14 97. Plaintiff and Class Members did not know—nor could they have known
15 through reasonable diligence—about the true nature of the Products.

16 98. Plaintiff and Class Members would have been reasonable in relying on
17 Defendant's misrepresentations (and corresponding omissions) in making their
18 purchasing decisions.

19 99. Plaintiff and Class Members had a right to rely upon Defendant's
20 representations (and corresponding omissions) as Defendant maintained
21 monopolistic control over knowledge of the true quality of the Products.

22 100. Plaintiff and Class Members sustained damages as a result of their
23 reliance on Defendant's omissions and misrepresentations, thus causing Plaintiff and
24 Class Members to sustain actual losses and damages in a sum to be determined at
25 trial, including punitive damages.

COUNT V
(Fraudulent Inducement)
On Behalf of the Classes

1
2
3 101. Plaintiff realleges and reincorporates by reference all paragraphs alleged
4 above.

5 102. Plaintiff brings this claim individually and on behalf of the Class and
6 California Subclass.

7 103. Defendant did not disclose, but instead concealed and misrepresented,
8 the Products as discussed herein.

9 104. Defendant knew, or should have known, that the Products were falsely
10 portrayed and that knowledge of the true capabilities of the Products and true
11 scientific literature backing the Products discussed throughout was withheld from the
12 consumer public.

13 105. Defendant also knew that its omissions and misrepresentations
14 regarding the Products were material, and that a reasonable consumer would rely on
15 Defendant's representations (and corresponding omissions) in making purchasing
16 decision.

17 106. Plaintiff and Class Members did not know—nor could they have known
18 through reasonable diligence—about the true quality of the Products.

19 107. Plaintiff and Class Members would have been reasonable in relying on
20 Defendant's misrepresentations (and corresponding omissions) in making their
21 purchasing decisions.

22 108. Plaintiff and Class Members had a right to rely on Defendant's
23 representations (and corresponding omissions) as Defendant maintained a
24 monopolistic control over the Products, and what information was available
25 regarding the Products.
26
27
28

1 109. Defendant intended to induce—and did, indeed, induce—Plaintiff and
2 Class Members into purchasing the Products based upon its affirmative
3 representations and omissions.

4 110. Plaintiff and Class Members sustained damages as a result of their
5 reliance on Defendant’s omission and misrepresentations, thus causing Plaintiff and
6 Class Members to sustain actual losses and damages in a sum to be determined at
7 trial.

8 **COUNT VI**
9 **(Fraudulent Misrepresentation)**
 On Behalf of the Classes

10 111. Plaintiff realleges and reincorporates by reference all paragraphs alleged
11 above.

12 112. Plaintiff brings this claim individually and on behalf of the Classes.

13 113. Defendant falsely represented to Plaintiff and the Classes that the
14 Products contained ingredients clinically proven to provide fast gas and bloating
15 relief if taken as directed.

16 114. Defendant intentionally, knowingly, and recklessly made these
17 misrepresentations to induce Plaintiff and the Class to purchase the Products.

18 115. Defendant knew or should have known that its representations about the
19 Products were false in that the Products do not contain ingredients clinically proven
20 to provide fast gas and bloating relief and that the Products are not capable of
21 providing gas and bloating relief if taken as directed. Defendant knowingly allowed
22 its packaging, labels, advertisements, promotional materials, and websites to
23 intentionally mislead consumers, such as Plaintiff and the Class.

24 116. Plaintiff and the Class did in fact rely on these misrepresentations and
25 purchased the Product to their detriment. Given the deceptive manner in which
26 Defendant advertised, marketed, represented, and otherwise promoted the Products,
27 Plaintiff’s and the Classes’ reliance on Defendant’s misrepresentations was
28

1 justifiable.

2 117. As a direct and proximate result of Defendant's conduct, Plaintiff and
3 the Classes have suffered actual damages in that they would not have purchased the
4 Products at all had they known that the Products do not conform to Defendant's
5 advertising and marketing.

6 118. Plaintiff and the Classes seek actual damages, attorney's fees, costs, and
7 other such relief the Court deems proper.

8 **COUNT VII**
9 **Breach of Express Warranty**
10 **On Behalf of the Classes**

11 119. Plaintiff realleges and reincorporates by reference all paragraphs alleged
12 above.

13 120. Plaintiff brings this claim individually and on behalf of the Class and
14 California Subclass.

15 121. Defendant, as the manufacturer, marketer, distributor, and/or seller of
16 the Products, expressly warranted that the Products contained ingredients clinically
17 proven to provide fast gas and bloating relief and that the Products would provide
18 gas and bloating relief.

19 122. These representations and warranties are false because the scientific
20 literature does not support the claims that the Products are clinically proven to
21 provide the promised results or that the Products are capable of providing the
22 promised results if taken as directed.

23 123. As a direct and proximate cause of Defendant's breach of express
24 warranty, Plaintiff and members of the Classes have been injured and harmed
25 because they would not have purchased the Product, or would have paid substantially
26 less for it, if they had known that the Products were not clinically proven and capable
27 of providing gas and bloating relief. Thus, Plaintiff and members of the Classes
28

1 overpaid for the Product because they do not provide the results that Defendant
2 represents.

3 124. On February 26, 2024, prior to filing this action, Defendant was served
4 with a pre-suit notice letter on behalf of Plaintiff that complied in all respects with
5 U.C.C. §§ 2-313 and 2-607. The letter advised Defendant that it breached an express
6 warranty and demanded that Defendant cease and desist from such breaches and
7 make full restitution by refunding the monies received therefrom.

8 125. As a result of Defendant's breach of warranty, Plaintiff and each Class
9 Member suffered and continue to suffer financial damage, and are entitled to all
10 damages, in addition to costs, interest and fees, including attorney's fees, as allowed
11 by law.

12 **COUNT VIII**
13 **Breach of Implied Warranty**
14 **On Behalf of the Classes**

15 126. Plaintiff realleges and reincorporates by reference all paragraphs alleged
16 above.

17 127. Plaintiff brings this claim individually and on behalf of the Class and
18 California Subclass.

19 128. Defendant, as the manufacturer, marketer, distributor, and/or seller of
20 the Products, impliedly warranted that the Products contained ingredients clinically
21 proven to provide fast gas and bloating relief and that the Products would provide
22 gas and bloating relief.

23 129. These representations and implied warranties are false given that the
24 scientific literature does not support that the ingredients in the Products are clinically
25 proven to provide the promised results and does not support that the Products are
26 capable of providing the promised results if taken as directed.

27 130. As a direct and proximate cause of Defendant's breach of implied
28 warranty, Plaintiff and members of the Classes have been injured and harmed

1 because they would not have purchased the Product, or would have paid substantially
2 less for it, if they had known that the Products were not clinically proven and capable
3 of providing gas and bloating relief. Thus, Plaintiff and members of the Classes
4 overpaid for the Product because they do not provide the results that Defendant
5 represents.

6 131. On February 26, 2024, prior to filing this action, Defendant was served
7 with a pre-suit notice letter on behalf of Plaintiff that complied in all respects with
8 U.C.C. §§ 2-313 and 2-607. The letter advised Defendant that it breached an implied
9 warranty and demanded that Defendant cease and desist from such breaches and
10 make full restitution by refunding the monies received therefrom.

11 132. As a result of Defendant's breach of implied warranty, Plaintiff and
12 each Class Member suffered and continue to suffer financial damage, and are entitled
13 to all damages, in addition to costs, interest and fees, including attorney's fees, as
14 allowed by law.

15 **COUNT IX**
16 **(Unjust Enrichment)**
17 **On Behalf of the Classes**

18 133. Plaintiff realleges and reincorporates by reference all paragraphs alleged
19 above.

20 134. Plaintiff brings this claim individually and on behalf of the Classes.

21 135. To the extent required by law, this cause of action is alleged in the
22 alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

23 136. Plaintiff and Class Members conferred benefits on Defendant by
24 purchasing the Products.

25 137. Defendant was unjustly enriched in retaining the revenues derived from
26 Plaintiff and Class Members' purchases of the Products. Retention of those moneys
27 under these circumstances is unjust and inequitable because Defendant failed to
28 disclose that the Products were unfit for their intended purpose as they did not

1 contain ingredients clinically proven to provide fast gas and bloating relief and were
2 not capable of providing gas and bloating relief if taken as directed. These omissions
3 caused injuries to Plaintiff and Class Members because they would not have
4 purchased the Products if the true facts were known.

5 138. Because Defendant’s retention of the non-gratuitous benefits conferred
6 on them by Plaintiff and Class Members is unjust and inequitable, Defendant has
7 been unjustly enriched in an amount to be determined at trial.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
10 situated, seeks judgment against Defendant, as follows:

- 11 (a) For an order certifying the Class under Fed. R. Civ. P. 23 and
12 naming Plaintiff as representative of the Class and the California
13 Subclass and Plaintiff’s attorneys as Class Counsel;
- 14 (b) For an order declaring the Defendant’s conduct violates the
15 statutes referenced herein;
- 16 (c) For an order finding in favor of Plaintiff, the Class, and the
17 California Subclass on all counts asserted herein;
- 18 (d) For compensatory, statutory, and punitive damages in amounts to
19 be determined by the Court and/or jury;
- 20 (e) For prejudgment interest on all amounts awarded;
- 21 (f) For an order of restitution and all other forms of equitable
22 monetary relief;
- 23 (g) For injunctive relief as pleaded or as the Court may deem proper;
- 24 (h) For an order awarding Plaintiff and the Class and California
25 Subclass their reasonable attorneys’ fees and expenses and costs
26 of suit.

25 **DEMAND FOR TRIAL BY JURY**

26 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by
27 jury of any and all issues in this action so triable of right.
28

1 Dated: June 4, 2024

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3
4 By: /s/ L. Timothy Fisher

5 L. Timothy Fisher (State Bar No. 191626)
6 Luke Sironski-White (State Bar No. 348441)
7 Ines Diaz Villafana (State Bar No. 354099)
8 1990 North California Boulevard, Suite 940
9 Walnut Creek, CA 94596
10 Telephone: (925) 300-4455
11 Facsimile: (925) 407-2700
12 Email: ltfisher@bursor.com
13 lsironski@bursor.com
14 idiaz@bursor.com

11 **SINDERBRAND LAW GROUP, PC**

12 Gregory Marc Sinderbrand (State Bar No. 179586)
13 5805 Sepulveda Blvd., Suite 801
14 Sherman Oaks, CA 91411
15 Telephone: (818) 3703912
16 Email: greg@sinderbrandlaw.com

17 *Attorneys for Plaintiff and the Putative Classes*