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

12 **MARAT MARTIROSYAN,**  
13 **individually and on behalf of all others**  
14 **similarly situated,**

15 **Plaintiff,**

16 **vs.**

17 **9199-4467 QUÉBEC INC. d/b/a**  
18 **EARTH RATED,**

19 **Defendant.**

Case No. 2:24-cv-9557

20 **CLASS ACTION COMPLAINT**

- 21 1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
- 22 2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND PROFESSIONS CODE § 17500, *et. seq.*
- 23 3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et. seq.*
- 24 4. UNJUST ENRICHMENT
- 25 5. BREACH OF EXPRESS WARRANTY

26 **DEMAND FOR JURY TRIAL**

1 Plaintiff Marat Martirosyan (“**Plaintiff**”), individually and on behalf of all  
2 other similarly situated purchasers (the “**Class**” and “**Class Members**”), brings this  
3 class action lawsuit against 9199-4467 QUÉBEC INC. d/b/a Earth Rated  
4 (“**Defendant**”), and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action lawsuit brought on behalf of all purchasers of Earth  
7 Rated “Plant-Based” Dog Wipes (available in various scents and sizes) (the  
8 “**Product**”), a pet wipe that is sold online and at retail locations throughout California  
9 and the United States.

10 2. Defendant falsely and deceptively advertises the Products as “plant-  
11 based” (“**Challenged Representation**”). However, contrary to the Product’s  
12 Challenged Representation, as explained in detail below, the Product actually  
13 contains numerous non-plant-based, unnatural, synthetic, artificial, and/or highly  
14 processed ingredients. Through falsely, misleadingly, and deceptively labeling the  
15 Product, Defendant seeks to take advantage of consumers’ desire for a truly plant-  
16 based product. Yet, Defendant has done so at the expense of unwitting consumers, as  
17 well as Defendant’s lawfully acting competitors, over whom Defendant maintains an  
18 unfair competitive advantage.

19 3. Plaintiff brings this action individually and in a representative capacity  
20 on behalf of similarly situated consumers who purchased the Product during the  
21 relevant Class Period (Class and/or Subclass defined infra), for dual primary  
22 objectives: **One**, Plaintiff seeks, on Plaintiff’s individual behalf and on behalf of the  
23 Class/Subclass, a monetary recovery of the price premium Plaintiff and consumers  
24 overpaid for a Product that should, but fails to, comport with the Challenged  
25 Representation (which may include, for example, damages, restitution, disgorgement,  
26 and/or any applicable penalties, fines, or punitive/exemplary damages) solely to the  
27 extent that the causes of action pled herein permit such recovery. **Two**, Plaintiff seeks,  
28 on his individual behalf and on behalf of the Class/Subclass, injunctive relief to stop

1 Defendant’s unlawful manufacture, marketing, and sale of the Product with the  
2 Challenged Representation to avoid or mitigate the risk of deceiving the public into  
3 believing that the Product conforms to the Challenged Representation, by requiring  
4 Defendant to change its business practices, which may include one or more of the  
5 following: removal or modification of the Challenged Representation from the  
6 Product’s labels, removal or modification of the Challenged Representation from the  
7 Product’s advertising, modification of the Product’s formulation be it a change in  
8 ingredients or its sourcing and manufacturing processes, and/or discontinuance of the  
9 Product’s manufacture, marketing, and/or sale.

10 4. A true and correct copy of the Product label is pictured below.

11  
12 *Figure 1 – **Earth Rated “Plant-Based” Dog Wipes***



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### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 and the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and defendant are citizens of different states. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiff is a citizen of California who resides in this District. Plaintiff purchased the Product in this District. Defendant has deliberately marketed,

1 advertised, and sold the Products within this District. Defendant receives substantial  
2 compensation from sales in this District.

3 7. Defendant is subject to personal jurisdiction in California based upon  
4 sufficient minimum contacts which exist between Defendant and California.  
5 Defendant is authorized to do and is doing business in California.

### 6 PARTIES

7 8. **Plaintiff:** Plaintiff is, and at all times relevant hereto was, a citizen of  
8 California. Plaintiff purchased the Earth Rated “Plant-Based” Dog Wipes from a  
9 Petco location in Los Angeles in July of 2024. In making his purchase, Plaintiff relied  
10 upon Defendant’s labeling and advertising claims, namely, the Plant-Based  
11 Representation label clearly printed on the front of the Product. These claims were  
12 prepared and approved by Defendant and its agents and disseminated statewide and  
13 nationwide, to encourage consumers to purchase the Product. If Plaintiff had known  
14 that the Product contained ingredients that are non-plant-based, unnatural, synthetic,  
15 artificial, and/or highly processed, then Plaintiff would not have purchased the  
16 Product, or he would have purchased it at a substantially lower price.

17 9. **Plaintiff’s Future Harm:** Plaintiff would like to purchase the Product  
18 again only if he can be sure that Defendant is compliant with the state consumer  
19 protection laws. Plaintiff continues to see Defendant’s Product in stores available for  
20 purchase, and desires to purchase it again if the representations regarding the Plant-  
21 Based Representation was in fact true. Since Plaintiff would like to purchase the  
22 Product again to obtain a pet product that, as advertised, is truly plant-based and  
23 therefore does not contain non-plant-based, unnatural, synthetic, artificial, and/or  
24 highly processed ingredients, Plaintiff would purchase it again in the future—despite  
25 the fact that it was once marred by false advertising or labeling—as Plaintiff would  
26 reasonably, but incorrectly, assume the Product was improved (no longer contains  
27 non-plant-based, synthetic, artificial, and/or highly processed ingredients). In that  
28 regard, Plaintiff is an average consumer who is not sophisticated in the chemistry,

1 manufacturing, and formulation of pet products, such as the Product. Neither Plaintiff,  
 2 nor reasonable consumers, have the requisite knowledge to accurately differentiate  
 3 between ingredients that are “plant-based” and those that are “synthetic”—  
 4 particularly those non-plant-based ingredients identified *infra*. Accordingly, Plaintiff  
 5 is at risk of reasonably, but incorrectly, assuming that Defendant fixed the formulation  
 6 of the Product such that Plaintiff may buy it again, believing it to no longer be falsely  
 7 advertised. Plaintiff is, therefore, currently and in the future deprived of the ability to  
 8 rely on the Challenged Representation. Based on information and belief, the labeling  
 9 of the Product purchased by Plaintiff is typical of the labeling of the Product  
 10 purchased by members of the class.

11 10. **Defendant:** 9199-4467 Québec Inc. d/b/a Earth Rated is a Canadian  
 12 corporation with its principal business at 8500 Decarie Blvd., 7th Floor, Mont-Royal,  
 13 Québec, H4P 2N2, Canada. Defendant directly and through its agents, has substantial  
 14 contacts with and receives substantial benefits and income from and through the State  
 15 of California. Defendant is the owner, manufacturer, and distributor of the Product,  
 16 and is the company that created and/or authorized the false, misleading, and deceptive  
 17 packaging of the Product.

## 18 FACTUAL ALLEGATIONS

### 19 **A. Plant-Based Market**

20 11. Consumers value plant-based products for numerous reasons, including  
 21 perceived benefits of avoiding diseases, attaining health and wellness, helping the  
 22 environment, assisting local farmers, assisting factory workers who would otherwise  
 23 be exposed to synthetic and hazardous substances, and financially supporting the  
 24 companies that share these values.<sup>1</sup> In response to consumers’ desire for plant-based  
 25 products, many companies, including Defendant, have scrambled to manufacture,  
 26 market, and sell purportedly “plant-based” products in an effort to gain market share.

27  
 28 <sup>1</sup> See generally *Plant-Based Personal Care Products*, Eternal Spiral Books (Nov. 24, 2018),  
<https://eternalspiralbooks.com/plant-based-personal-care-products/> (last accessed 11/04/2024).

1 Unfortunately, rather than creating the natural, plant-based products consumers  
2 desire, Defendant has chosen to “greenwash” the Product and market it through  
3 deceptive labeling and advertising to convince consumers the Product is plant-based  
4 and natural when, in reality, it contains synthetic and highly processed ingredients.

5 12. **FTC Guidelines.** In response to frequent and pervasive greenwashing,  
6 the United States Federal Trade Commission (“FTC”) created the “Green Guides” to  
7 help companies avoid making misleading and deceptive claims.<sup>2</sup> As relevant here,  
8 the FTC stated:

9  
10 Marketers, nevertheless, are responsible for substantiating consumers’  
11 reasonable understanding of “biobased,” and other similar claims, such as  
12 **“plant-based,”** in the context of its advertisements.<sup>3</sup>

13 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims, p. 246,  
14 available at [https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf)  
15 [issues-revised-green-guides/greenguidesstatement.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf) (emphasis added). Here,  
16 Defendant disregarded FTC guidelines on “Plant-Based” claims, opting to  
17 manufacture the Product with ingredients that are neither water nor plant, and at times  
18 entirely artificial, synthetic, or substantially processed. Thus, Defendant did not fulfill  
19 its responsibility to “substantiat[e] consumers’ reasonable understanding of . . . ‘plant-  
20 based’” advertising claims as reasonable consumers, such as Plaintiff, reasonably  
21 believe that “plant-based” Product only contains water or plant ingredients that have  
22 not undergone substantial processing.

23 13. Consumers are willing to pay a price premium for the “plant-based”  
24 products, and believe it is important that products are plant-based.

25 14. Similar to a desire for a more expensive brand, consumers associate  
26 products labeled as “plant-based” to be better. If the same two products were shown

27 <sup>2</sup> See generally 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims.

28 <sup>3</sup> See 16 C.F.R. § 260 – Guides for the Use of Environmental Marketing Claims, p. 246,  
available at [https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf)  
[green-guides/greenguidesstatement.pdf](https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf) (emphasis added).

1 to a consumer, one of which contained the “plant-based” label, consumers would  
2 chose the product with the “plant-based” label, believing to be a better alternative to  
3 the same product which does not contain the “plant-based” label.

4 15. However, consumers are not scientists. They do not understand the  
5 manufacturing process, and are not well-versed in the processes involved in obtaining,  
6 synthesizing, or preparing various products and their ingredients.

7 16. Consumers rely on the manufacturers to honestly label the products.  
8 When consumers see “plant-based” labels, they perceive the products to be fully  
9 plant-based, and not containing any non-plant-based ingredients – whether synthetic,  
10 processed, chemically altered, or otherwise unnatural.

11 17. Consumers rely on the corporate America (and here, on Defendant) to  
12 honestly label the products, and chose to buy the “plant-based” products, reasonably  
13 believing the front labels to be truthful.

14 18. **Reasonable Consumer’s Perception.** The Challenged Representation,  
15 in isolation or combined with Defendants’ marketing campaign and brand strategy,  
16 lead reasonable consumers, like Plaintiff, into believing that the Products conform to  
17 the Challenged Representation. More specifically, reasonable consumers interpret the  
18 Challenged Representation to mean that the Products are “plant-based”— meaning,  
19 they only contain natural plant and water ingredients, to the exclusion of artificial and  
20 synthetic ingredients. As such, the Product’s label has the “capacity, likelihood, or  
21 tendency to deceive or confuse the public” into believing that they are fully plant-  
22 based and are truthfully labeled. *See Williams v. Gerber Prods. Co.*, 552 F.3d 934,  
23 938 (9th Cir. 2008) (citing *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002) and *Leoni*  
24 *v. State Bar*, 39 Cal. 3d 609, 626 (1985)) (The California Supreme Court has  
25 recognized “that [consumer protection] laws prohibit ‘not only advertising which is  
26 false, but also advertising which, although true, is either actually misleading or which  
27 has a capacity, likelihood or tendency to deceive or confuse the public.’”).  
28



1 19. The reasonable consumer’s perception of the Challenged Representation  
 2 is consistent with their ordinary and common usage, as defined by dictionaries, and  
 3 the regulatory definition of artificial:

4 **a. Plant-Based Definition:**

- 5 i. Merriam-Webster Dictionary Definition: Plant-Based. “[M]ade or  
 6 derived from plants”; “consisting . . . entirely of food (such as  
 7 vegetables, fruits, nuts, oils, and beans) derived from plants.”<sup>4</sup>
- 8 ii. Cambridge Dictionary Definition: Plant-Based. “[C]onsisting or  
 9 made completely of plants.”<sup>5</sup>
- 10 iii. Dictionary.com Definition: Plant-Based. “[C]onsisting entirely ...  
 11 of whole ... plant parts, such as vegetables, fruits, grains, nuts,  
 12 legumes, and seeds.”<sup>6</sup>
- 13 iv. Oxford Learners Dictionary Definition. Plant Based. “[C]onsists  
 14 ... entirely of foods from plants, such as fruits, vegetables and  
 15 grains.”<sup>7</sup>

16 **b. Artificial Definitions:**

- 17 i. Merriam-Webster Dictionary Definition: Artificial. “[H]umanly  
 18 contrived” and “MAN-MADE.”<sup>8</sup>
- 19 ii. Cambridge Dictionary Definition: Artificial. “[M]ade by people.”<sup>9</sup>
- 20 iii. Dictionary.com Definition: Artificial. “made by human skill;  
 21 produced by humans (opposed to natural)”; “produced by man; not  
 22 occurring naturally”; “made in imitation of a natural product, esp  
 23 as a substitute; not genuine”<sup>10</sup>
- 24 iv. Oxford Learner’s Dictionaries Definition: Artificial. “created by  
 25 people; not happening naturally”<sup>11</sup>

26 <sup>4</sup> Merriam-Webster.com, *plant-based*, available at <https://www.merriam-webster.com/dictionary/plant-based> (last accessed 11/04/2024).

27 <sup>5</sup> Cambridge Dictionary, *plant-based*, available at <https://dictionary.cambridge.org/us/dictionary/english/plant-based> (last accessed 11/04/2024).

28 <sup>6</sup> Dictionary.com, *plant-based*, available at <https://www.dictionary.com/browse/plant-based> (last accessed 11/04/2024).

<sup>7</sup> Oxford Learner’s Dictionaries, *plant-based*, available at <https://www.oxfordlearnersdictionaries.com/us/definition/english/plant-based?q=plant-based> (last accessed 11/04/2024).

<sup>8</sup> Merriam-Webster.com, *artificial*, available at <https://www.merriam-webster.com/dictionary/artificial> (last accessed 11/04/2024).

<sup>9</sup> Cambridge Dictionary, *artificial*, available at <https://dictionary.cambridge.org/us/dictionary/english/artificial> (last accessed 11/04/2024).

<sup>10</sup> Dictionary.com, *artificial*, available at <https://www.dictionary.com/browse/artificial> (last accessed 11/04/2024).

<sup>11</sup> Oxford Learner’s Dictionaries, *artificial*, available at <https://www.oxfordlearnersdictionaries.com/definition/english/artificial#:~:text=artificial%20made%20or%20produced%20to,artificial%20light> (last accessed 11/04/2024).

- v. 21 C.F.R. 101.22(a)(1) Definition: “Artificial Flavor.” A flavoring agent that “is not derived from . . . natural sources,” like animals, spices, fruits, vegetables, roots, or “similar plant material.”

**c. Synthetic Definitions:**

- i. Merriam-Webster Dictionary Definition: Synthetic. “The term ‘synthetic’ means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources[.]”<sup>12</sup>
- ii. Cambridge Dictionary Definition: Synthetic. “made artificially and not produced from natural substances”; “an artificial substance or material”<sup>13</sup>
- iii. Dictionary.com Definition: Synthetic. “noting or pertaining to compounds formed through a chemical process by human agency, as opposed to those of natural origin”; “something made by a synthetic, or chemical, process”; “(of a substance or material) made artificially by chemical reaction”; “Produced artificially, especially in a laboratory or other man-made environment”<sup>14</sup>
- iv. Oxford Learner’s Dictionaries Definition: Synthetic. “artificial; made by combining chemical substances rather than being produced naturally by plants or animals”<sup>15</sup>

**d. Man-Made Definitions:**

- i. Merriam-Webster Dictionary Definition: Man-Made. “[M]anufactured, created, or constructed by human beings *specifically: SYNTHETIC.*”<sup>16</sup>
- ii. Cambridge Dictionary Definition: Man-Made. “artificial rather than natural”; “produced or developed by humans rather than coming directly from nature”; “made by people, rather than existing naturally”<sup>17</sup>
- iii. Dictionary.com Definition: Man-Made. “produced, formed, or made by humans”; “produced artificially; not resulting from natural processes”; “made or produced by man; artificial”<sup>18</sup>

<sup>12</sup> 7 U.S.C. § 6502 (21).

<sup>13</sup> Cambridge Dictionary, *synthetic*, available at <https://dictionary.cambridge.org/dictionary/english/synthetic> (last accessed 11/04/2024).

<sup>14</sup> Dictionary.com, *artificial*, available at <https://www.dictionary.com/browse/synthetic> (last accessed 11/04/2024).

<sup>15</sup> Oxford Learner’s Dictionaries Definition, *synthetic*, available at [https://www.oxfordlearnersdictionaries.com/definition/english/synthetic\\_1?q=synthetic](https://www.oxfordlearnersdictionaries.com/definition/english/synthetic_1?q=synthetic) (last accessed 11/04/2024).

<sup>16</sup> Merriam-Webster.com, *man-made*, available at <https://www.merriam-webster.com/dictionary/man-made> (last accessed 11/04/2024).

<sup>17</sup> Cambridge Dictionary, *man-made*, available at <https://dictionary.cambridge.org/dictionary/english/man-made> (last accessed 11/04/2024).

<sup>18</sup> Dictionary.com, *man-made*, available at <https://www.dictionary.com/browse/man-made> (last accessed 11/04/2024).

iv. Oxford Learner’s Dictionaries Definition: Man-Made. “made by people; not natural”<sup>19</sup>

20. Accordingly, reasonable consumers, like Plaintiff, interpret the Plant-Based Representations as claims that the Product contains no non-plant-based, unnatural, artificial, and/or synthetic ingredients.

21. **Falsity**. The Challenged Representation is false and deceptive because the Product contains numerous non-plant-based ingredients. Specifically, the Product contains the following non-plant-based, unnatural, synthetic, and/or artificial ingredients, in varying combinations:

- **Citric Acid** is commercially produced using a multi-step chemical reaction and microbial fermentation process involving the bacteria *Aspergillus niger* and glucose.<sup>20</sup> Bacteria are prokaryotes, and not plants (which are composed of eukaryotic cells).<sup>21</sup>
- **Caprylyl Glycol** is manufactured synthetically meaning it relies less on natural resources like palm and coconut oil.<sup>22</sup>
- **Glycerin** is synthetic, produced by the hydrogenolysis of carbohydrates. Hydrogenolysis is the chemical reaction whereby a carbon-carbon or carbon-heteroatom single bond is cleaved or undergoes lysis by hydrogen.<sup>23</sup>

<sup>19</sup> Oxford Learner’s Dictionary, *man-made*, available at <https://www.oxfordlearnersdictionaries.com/definition/english/man-made?q=man-made> (last accessed 11/04/2024).

<sup>20</sup> All, et al. *Overview of Citric Acid Production from Aspergillus Niger*. Taylor & Francis, <https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>. (last accessed 11/04/2024).

<sup>21</sup> Prokaryotes: Bacteria & Archaea. Organismal Biology, <https://organismalbio.biosci.gatech.edu/biodiversity/prokaryotes-bacteria-archaea-2/>. (last accessed 11/04/2024).

<sup>22</sup> Dubey, Dr. Tanya. “Caprylyl Glycol: The Ultimate Skincare Ingredient You Should Definitely Know about!” Enclave. Enclave, February 21, 2022. <https://enclave.in/article/caprylyl-glycol-the-ultimate-skincare-ingredient-you-should-definitely-know-about>. (last accessed 11/04/2024).

<sup>23</sup> *Glycerin—Produced by Hydrolysis of Fats and Oils*. <https://www.ams.usda.gov/sites/default/files/media/Glycerin%20Petition%20to%20remove%20TR%202013.pdf>. (last accessed 11/04/2024).

- 1 ● **Propylene Glycol** is a synthetic, water-absorbent, substance which has  
2 many uses including being an anti-freeze and being used to make  
3 polyester compounds.<sup>24</sup> It is made by undergoing chemical  
4 transformation.<sup>25</sup>
- 5 ● **Sodium Citrate** is a trisodium salt of citric acid, which is synthetically  
6 created. Sodium citrate is also listed as being “synthetic” under 7  
7 C.F.R. § 205.605. According to 7 U.S.C. § 6502 (21), the term  
8 “synthetic” means a substance that is formulated or manufactured by a  
9 chemical process or by a process that chemically changes a substance  
10 extracted from naturally occurring plant, animal, or mineral  
11 sources[.]”
- 12 ● **Tocopheryl Acetate** is a synthetic, highly processed form of Vitamin E  
13 manufactured using acetic acid.<sup>26</sup>

14 22. In addition to those ingredients that are not plant-based, the Product  
15 contains numerous ingredients that have been subject to significant chemical  
16 modification or processing, which materially altered the ingredients’ original, natural  
17 or plant-based composition. Put differently, to create certain ingredients used in the  
18 Product, natural and plant-based ingredients are subjected to substantial processing  
19 such that the resulting ingredient used in the Product is an entirely new, synthetically-  
20 created ingredient—one that fundamentally differs from the original natural or plant-  
21 based ingredient. Accordingly, the Challenged Representation is false, misleading,  
22 and deceptive, and therefore unlawful.

23 ///

24 ///

25 <sup>24</sup>

26 <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=1120&toxid=240#:~:text=Propylene%20glycol%20is%20a%20synthetic,lead%20to%20contact%20with%20food.>

27 <sup>25</sup> <https://corpusnaturals.com/blogs/natural-curious/plant-based-propylene-glycol#:~:text=Raw%20material%20source%20matters.,from%20one%20chemical%20to%20another.> (last accessed 11/04/2024).

28 <sup>26</sup> *Alpha-Tocopherol Acetate*. National Center for Biotechnology Information. PubChem Compound Database, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/alpha-Tocopherol-acetate>. (last accessed 11/04/2024).

1 **B. Defendant Misleads Plaintiff and Reasonable Consumers, Who Relied on**  
2 **the Material and False Advertising Claims to their Detriment**

3 23. **Materiality.** The Challenged Representation is material to reasonable  
4 consumers, including Plaintiff, in deciding to buy the Product. Specifically, the  
5 composition of the Product containing only plant-based ingredients—is important to  
6 consumers and motivates them to buy the Product.

7 24. **Reliance.** The Class, including Plaintiff, reasonably relied on the  
8 Challenged Representation in deciding to purchase the Product.

9 25. **Consumers Lack Knowledge of Falsity.** Consumers, including Plaintiff,  
10 do not know, and have no reason to know, at the time of purchase, that the Product’s  
11 Challenged Representation is false, misleading, deceptive, and unlawful. That is  
12 because consumers, including Plaintiff, do not work for Defendant and therefore have  
13 no personal knowledge of the actual ingredients used to make the Product or how  
14 those ingredients are made, including whether non-plant-based ingredients are  
15 included in the Product. Additionally, average consumers do not have the specialized  
16 knowledge of a chemist or product-developer. Thus, reasonable consumers, like  
17 Plaintiff, cannot discern from the Product’s ingredient disclosures whether  
18 ingredients, are plant-based. Furthermore, reasonable consumers, like Plaintiff, do not  
19 ordinarily review information on the back or side panels of a consumer product’s  
20 packaging, like the Product’s packaging, particularly dense, fine-print ingredient  
21 disclosures, or review such information on websites. Indeed, studies show that only  
22 approximately 7.7% to 11.6% of people even look at the side or back labels of  
23 consumer goods, such as ingredient lists, before they buy it.<sup>27</sup>

24 \_\_\_\_\_  
25 <sup>27</sup> Grunert, Klaus, et. al, *Nutrition knowledge, and use and understanding of nutrition*  
26 *information on food labels among consumers in the UK*, 55 *Appetite* 177, at 179-181 (2010)  
27 available at  
28 <https://reader.elsevier.com/reader/sd/pii/S0195666310003661?token=95E4146C1BB7D7A7C9A487F22F0B445BD44499550086E04870765EBE116ED32DBFE3795E60B69C75831563CD1BC6655A&originRegion=us-east-1&originCreation=20220720162546> (consumer purchasing behavior study using in-store observation and interview data collection methodology to realistically estimate

1           26. The average consumer spends generally not more than 13 seconds to  
2 make an in-store purchasing decision.<sup>28</sup> That decision is heavily based upon the  
3 product's front labeling because consumers do not have time to review and read every  
4 portion of the label and inspect in detail the rear label which depicts in small print the  
5 ingredients.

6           27. **Defendant's Knowledge.** Defendant knew, or should have known, that  
7 the Challenged Representation was false, misleading, deceptive, and unlawful, at the  
8 time that Defendant manufactured, marketed, advertised, labeled, and sold the  
9 Product using the Challenged Representation to Plaintiff and the Class. Defendant  
10 intentionally and deliberately used the Challenged Representation, alongside its  
11

12 \_\_\_\_\_  
13 the degree consumers use nutritional information (found on side/back panels of food product labels  
14 and packaging), finding: (1) only **11.6% of respondents**, who looked at a product and placed it in  
15 their shopping cart, **were actually observed looking at the side/back panels of its packaging or**  
16 **labels** (panels other than the front panel) before placing it in the cart; (2) of those who looked at the  
17 side/back panels, only 31.8% looked at it the product "in detail" (i.e., 3.7% of respondents who  
18 looked at the product, looked at side/back panels in detail); and (3) the **respondents self-reported**  
19 **frequency of reviewing side/back panels** (for nutritional information) **is overreported by 50%**  
20 when the in-store interview data and observational data are compared); Grunert, Klaus, et. al, *Use*  
21 *and understanding of nutrition information on food labels in six European countries*, 18(3) *Journal*  
22 *of Public Health* 261, 261, 263, 266 (2010), available at  
23 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2967247/> (last accessed July 20, 2022) (consumer  
24 purchasing behavior study using in-store observation and interview data collection methodology to  
25 evaluate whether people look at food labels before buying them, where they looked, and how long  
26 they looked, finding: (1) respondents spent, on average, approximately 35 seconds, per product, on  
27 products they bought; and (2) 62.6% of respondents looked at the front packaging, and **only 7.7%**  
28 **looked elsewhere (side/back panels) on the packaging**, for products they bought); Benn, Yael, et  
al., *What information do consumers consider and how do they look for it, when shopping for*  
*groceries online*, 89 *Appetite* 265, 265, 270 (2015), available at  
<https://www.sciencedirect.com/science/article/pii/S0195666315000422#bib0060> (last accessed  
October 31, 2024) (consumer purchasing behavior study using online eye-movement tracking and  
recording, finding: (1) once on the product webpages, respondents tend to look at the pictures of  
products, rather than examine detailed product information; and (2) by comparison to pictures of  
products where 13.83-19.07% of respondents fixated, far less fixated on subsidiary information:  
4.17% of respondents looked at nutrition information, 3.30% ingredients, 2.97% allergy  
information, and 0.09% recycling information for example).

<sup>28</sup> Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN (Jan. 13, 2015),  
[https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-](https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-window/)  
[window/](https://www.nielsen.com/us/en/insights/article/2015/make-the-most-of-your-brands-20-second-window/) (citing *Shopping Takes Only Seconds... In-Store and Online*, EHRENBERG-BASS  
INSTITUTE OF MARKETING SCIENCE (2015)) (last visited 11/04/2024).

1 massive marketing campaign and brand strategy, to cause Plaintiff and similarly  
2 situated consumers to buy the Product believing that the Challenged Representation  
3 is true.

- 4
- 5 a. **Knowledge of Falsity.** Defendant marketed the Product with the  
6 Challenged Representation, but Defendant opted to formulate and  
7 manufacture them in a manner that does not conform to this  
8 representation. Specifically, Defendant advertised and labeled the  
9 Product with the Challenged Representation, but, instead of using only  
10 ingredients that are plant-based, Defendant chose to make the Product  
11 with numerous non-plant-based ingredients.
- 12 b. **Knowledge of Reasonable Consumers' Perception.** Defendant  
13 knew, or should have known, that the Challenged Representation  
14 would lead reasonable consumers into believing that the Product was  
15 composed of only plant-based ingredients—i.e., the Product does not  
16 contain ingredients that are not plant-based. Not only has Defendant  
17 labeled the Product with the Challenged Representation and executed  
18 a long-standing brand strategy and advertising campaign to identify  
19 the Product with the Challenged Representation, but Defendant also  
20 has an obligation under section 5 of the Federal Trade Commission  
21 Act, codified at 15 U.S.C. §§ 45, to evaluate its marketing claims from  
22 the perspective of the reasonable consumer. That means Defendant  
23 was statutorily obligated to consider whether the Challenged  
24 Representation, be it in isolation or conjunction with its marketing  
25 campaign, would mislead reasonable consumers into believing that the  
26 Product was made of only plant-based ingredients. Thus, Defendant  
27 either knew the Challenged Representation was misleading before it  
28 marketed the Product to the Class, including Plaintiff, or Defendant  
would have known that it was deceptive had Defendant complied with  
its statutory obligations.
- c. **Knowledge of Materiality.** Defendant knew or should have known  
that the Challenged Representation is material to consumers. *First*,  
manufacturers and marketers, like Defendant, generally reserve the  
front primary display panel of labels on consumer products for the  
most important and persuasive information, which they believe will  
motivate consumers to buy the products. Here, the conspicuousness of  
the Challenged Representation on the Product's labels demonstrates  
Defendant's awareness of its importance to consumers and  
Defendant's understanding that consumers prefer and are motivated to  
buy products that conform to the Challenged Representation. *Second*,  
manufacturers and marketers repeat marketing claims to emphasize  
and characterize a brand or product line, shaping the consumers'  
expectations, because they believe those repeated messages will drive  
consumers to buy the Product. Here, the constant, unwavering use of

1 the Challenged Representation on the Product, advertisements, and  
 2 throughout Defendant's marketing campaign, evidence Defendant's  
 3 awareness that the falsely advertised Product-attribute is important to  
 4 consumers. It also evidences Defendant's intent to convince  
 consumers that the Product conforms to the Challenged  
 Representation and, ultimately, drive sales.

5 **d. Defendant Continued Deception, Despite Its Knowledge.**  
 6 Defendant, as the manufacturer and marketer of the Product, had  
 7 exclusive control over the Challenged Representation's inclusion on  
 8 the Product's labels, and advertisements—i.e., Defendant readily and  
 9 easily could have stopped using the Challenged Representation to sell  
 10 the Product. However, despite Defendant's knowledge of the  
 11 Challenged Representation's falsity, and Defendant's knowledge that  
 12 consumers reasonably rely on the Challenged Representation in  
 13 deciding to buy the Product, Defendant deliberately chose to market  
 14 the Product with the Challenged Representation thereby misleading  
 15 consumers into buying or otherwise overpaying for the Product. Thus,  
 16 Defendant knew, or should have known, at all relevant times, that the  
 17 Challenged Representation misleads reasonable consumers, such as  
 18 Plaintiff, into buying the Product to attain the product-attributes that  
 19 Defendant falsely advertised and warranted. Indeed, notwithstanding  
 20 Plaintiff's demand to Defendant to stop misleading consumers with  
 21 the Challenged Representation, Defendant has continued to market the  
 22 Product using the Challenged Representation.

23 28. By letter dated July 26, 2024, Plaintiff advised Defendant of its false and  
 24 misleading claims pursuant to California Civil Code Section 1782, subdivision (a)  
 25 regarding Defendant's use of non-plant-based, unnatural and synthetic ingredients.  
 26 Plaintiff has provided Defendant with notice of its violations of the CLRA pursuant  
 27 to Civil Code § 1782(a).

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

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

31 **a. Broader Statutes of Limitations.** The statutes of limitations for the  
 32 causes of action pled herein vary. The limitations period is four years  
 33 for claims brought under the UCL, which is one year longer than the  
 34 statutes of limitations under the FAL and CLRA. In addition, the  
 35 statutes of limitations vary for certain states' laws for breach of  
 36 warranty and unjust enrichment/restitution, between approximately 2  
 37 and 6 years. Thus, California Subclass members who purchased the  
 38 Product more than 3 years prior to the filing of the complaint will be  
 barred from recovery if equitable relief were not permitted under the  
 UCL. Similarly, Nationwide Class members who purchased the  
 Product prior to the furthest reach-back under the statute of limitations



1 for breach of warranty, will be barred from recovery if equitable relief  
2 were not permitted for restitution/unjust enrichment.

3 **b. Broader Scope of Conduct.** In addition, the scope of actionable  
4 misconduct under the unfair prong of the UCL is broader than the other  
5 causes of action asserted herein. It includes, for example, Defendant's  
6 overall unfair marketing scheme to promote and brand the Product  
7 with the Challenged Representation, across a multitude of media  
8 platforms, including the Product's labels, over a long period of time,  
9 in order to gain an unfair advantage over competitor products and to  
10 take advantage of consumers' desire for products that comport with  
11 the Challenged Representation. The UCL also creates a cause of action  
12 for violations of law (such as statutory or regulatory requirements and  
13 court orders related to similar representation and omission made on  
14 the type of products at issue). Thus, Plaintiff and Class members may  
15 be entitled to restitution under the UCL, while not entitled to damages  
16 under other causes of action asserted herein (e.g., the FAL requires  
17 actual or constructive knowledge of the falsity; the CLRA is limited  
18 to certain types of plaintiff (an individual who seeks or acquires, by  
19 purchase or lease, any goods or services for personal, family, or  
20 household purposes) and other statutorily enumerated conduct).  
21 Similarly, unjust enrichment/restitution is broader than breach of  
22 warranty. For example, in some states, breach of warranty may  
23 require privity of contract or pre-lawsuit notice, which are not  
24 typically required to establish unjust enrichment/restitution. Thus,  
25 Plaintiff and Class members may be entitled to recover under unjust  
26 enrichment/restitution, while not entitled to damages under breach of  
27 warranty, because they purchased the products from third-party  
28 retailers or did not provide adequate notice of a breach prior to the  
commencement of this action.

19 **c. Injunctive Relief to Cease Misconduct and Dispel Misperception.**  
20 Injunctive relief is appropriate on behalf of Plaintiff and members of  
21 the Class because Defendant continues to misrepresent the Product  
22 with the Challenged Representation. Injunctive relief is necessary to  
23 prevent Defendant from continuing to engage in the unfair, fraudulent,  
24 and/or unlawful conduct described herein and to prevent future  
25 harm—none of which can be achieved through available legal  
26 remedies (such as monetary damages to compensate past harm).  
27 Further, injunctive relief, in the form of affirmative disclosures is  
28 necessary to dispel the public misperception about the Product that has  
resulted from years of Defendant's unfair, fraudulent, and unlawful  
marketing efforts. Such disclosures would include, but are not limited  
to, publicly disseminated statements that the Product's Challenged  
Representation is not true and providing accurate information about  
the Product's true nature; and/or requiring prominent qualifications  
and/or disclaimers on the Product's front label concerning the  
Product's true nature. An injunction requiring affirmative disclosures

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

- 11 d. **Public Injunction.** Further, because a “public injunction” is available  
 12 under the UCL, damages will not adequately “benefit the general  
 13 public” in a manner equivalent to an injunction.
- 14 e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL,  
 15 and CLRA are claims asserted on behalf of Plaintiff and the California  
 16 Subclass against Defendant, while breach of warranty and unjust  
 17 enrichment/restitution are asserted on behalf of Plaintiff and the  
 18 Nationwide Class. Dismissal of farther-reaching claims, such as  
 19 restitution, would bar recovery for non-California members of the  
 20 Class. In other words, legal remedies available or adequate under the  
 21 California-specific causes of action (such as the UCL, FAL, and  
 22 CLRA) have no impact on this Court’s jurisdiction to award equitable  
 23 relief under the remaining causes of action asserted on behalf of non-  
 24 California putative class members.

### 25 CLASS ALLEGATIONS

26 30. **Class Definition.** Plaintiff brings this action as a class action pursuant to  
 27 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all  
 28 others similarly situated, and as members of the Classes defined as follows:

29 All persons or entities that, within the applicable statute of  
 30 limitations periods, purchased the Product in the United States,  
 31 displaying the Challenged Representation on the Product’ labels,  
 32 for purposes other than resale (“**Nationwide Class**”); and

33 All persons or entities that, within four years prior to the filing of  
 34 this Complaint through present, purchased the Product in  
 35 California, displaying the Challenged Representation on the  
 36 Product’ labels, for purposes other than resale (“**California**  
 37 **Subclass**”).

38 (“Nationwide Class” and “California Subclass,” collectively, “**Class**”).

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

7           32. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves  
8 the right to amend or otherwise alter the class definitions presented to the Court at the  
9 appropriate time in response to facts learned through discovery, legal arguments  
10 advanced by Defendant, or otherwise.

11           33. **Numerosity:** Members of the Class are so numerous that joinder of all  
12 members is impracticable. Upon information and belief, the Nationwide Class  
13 consists of tens of thousands of purchasers (if not more) dispersed throughout the  
14 United States, and the California Subclass likewise consists of thousands of  
15 purchasers (if not more) dispersed throughout the State of California. Accordingly, it  
16 would be impracticable to join all members of the Class before the Court.

17           34. **Common Questions Predominate:** There are numerous and substantial  
18 questions of law or fact common to all members of the Class that predominate over  
19 any individual issues. Included within the common questions of law or fact are:

- 20
- 21           a. Whether Defendant engaged in unlawful, unfair or deceptive business  
22 practices by advertising and selling the Product;
- 23           b. Whether Defendant’s conduct of advertising and selling the Product as  
24 only containing plant-based ingredients, creating the reasonable  
25 assumption that the Product does not contain any non-plant-based  
26 ingredients, when the Product contains some combination of non-plant-  
27 based ingredients, constitutes an unfair method of competition, or unfair  
28 or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive representation in connection with the  
sale of the Product in violation of Civil Code section 1750, *et seq.*;

- 1 d. Whether Defendant represented that the Product has characteristics or
- 2 quantities that it does not have in violation of Civil Code section 1750, *et*
- 3 *seq.*;
- 4 e. Whether Defendant advertised the Product with intent not to sell it as
- 5 advertised in violation of Civil Code section 1750, *et seq.*;
- 6 f. Whether Defendant's labeling and advertising of the Product is untrue or
- 7 misleading in violation of Business and Professions Code section 17500,
- 8 *et seq.*;
- 9 g. Whether Defendant knew or by the exercise of reasonable care should
- 10 have known its labeling and advertising was and is untrue or misleading
- 11 in violation of Business and Professions Code section 17500, *et seq.*;
- 12 h. Whether Defendant's conduct is an unfair business practice within the
- 13 meaning of Business and Professions Code section 17200, *et seq.*;
- 14 i. Whether Defendant's conduct is a fraudulent business practice within the
- 15 meaning of Business and Professions Code section 17200, *et seq.*;
- 16 j. Whether Defendant's conduct is an unlawful business practice within the
- 17 meaning of Business and Professions Code section 17200, *et seq.*;
- 18 k. Whether Plaintiff and the Class paid more money for the Product than
- 19 they actually received;
- 20 l. How much more money Plaintiff and the Class paid for the Product than
- 21 they actually received;
- 22 m. Whether Defendant's conduct constitutes breach of warranty;
- 23 n. Whether Plaintiff and the Class are entitled to injunctive relief; and
- 24 o. Whether Defendant was unjustly enriched by its unlawful conduct.

25 35. **Typicality:** Plaintiff's claims are typical of the claims of the Class  
26 Members he seeks to represent because Plaintiff, like the Class Members, purchased  
27 Defendant's misleading and deceptive Product. Defendant's unlawful, unfair and/or  
28 fraudulent actions concern the same business practices described herein irrespective  
of where they occurred or were experienced. Plaintiff and the Class sustained similar  
injuries arising out of Defendant's conduct. Plaintiff's and Class Members' claims

1 arise from the same practices and course of conduct and are based on the same legal  
2 theories.

3 36. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to  
4 represent because his interests do not conflict with the interests of the Class Members  
5 Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class  
6 Members' interests and has retained counsel experienced and competent in the  
7 prosecution of complex class actions, including complex questions that arise in  
8 consumer protection litigation.

9 37. **Superiority and Substantial Benefit:** A class action is superior to other  
10 methods for the fair and efficient adjudication of this controversy, since individual  
11 joinder of all members of the Class is impracticable and no other group method of  
12 adjudication of all claims asserted herein is more efficient and manageable for at least  
13 the following reasons:

- 14 a. The claims presented in this case predominate over any questions of law  
15 or fact, if any exist at all, affecting any individual member of the Class;
- 16 b. Absent a Class, the members of the Class will continue to suffer damage  
17 and Defendant's unlawful conduct will continue without remedy while  
18 Defendant profits from and enjoy its ill-gotten gains;
- 19 c. Given the size of individual Class Members' claims, few, if any, Class  
20 Members could afford to or would seek legal redress individually for the  
21 wrongs Defendant committed against them, and absent Class Members  
22 have no substantial interest in individually controlling the prosecution of  
23 individual actions;
- 24 d. When the liability of Defendant has been adjudicated, claims of all  
25 members of the Class can be administered efficiently and/or determined  
26 uniformly by the Court; and
- 27 e. This action presents no difficulty that would impede its management by  
28 the Court as a class action, which is the best available means by which  
Plaintiff and Class Members can seek redress for the harm caused to them  
by Defendant.

38. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of  
the Class, the prosecution of separate actions by individual members would create a

1 risk of inconsistent or varying adjudications with respect to individual members of  
2 the Class, which would establish incompatible standards of conduct for Defendant.

3 39. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class  
4 action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as  
5 Defendant has acted or refused to act on grounds generally applicable to the Class,  
6 thereby making appropriate final injunctive or equitable relief with respect to the  
7 Class as a whole.

8 40. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any  
9 difficulties that are likely to be encountered in the management of this action that  
10 would preclude its maintenance as a class action.

11 **COUNT ONE**

12 **Violation of California Unfair Competition Law**

13 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

14 **(*On Behalf of the California Subclass*)**

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

17 42. **California Subclass.** This cause of action is brought pursuant to Business  
18 and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California  
19 Subclass who purchased the Product within the applicable statute of limitations.

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

24 44. **False Advertising Claims.** Defendant, in its labeling and advertising of  
25 the Product, made false and misleading statements and fraudulent omissions  
26 regarding the quality and characteristics of the Product—specifically, the Challenged  
27 Representation (i.e., that the Product is composed of only plant-based ingredients) —  
28 despite the fact the Product also contains six non-plant-based, synthetic ingredients.

1 Such claim and omission appear on the front labels of the Product, which is sold at  
2 retail stores, point-of-purchase displays, and online.

3 **45. Defendant’s Deliberately False and Fraudulent Marketing Scheme.**  
4 Defendant does not have any reasonable basis for the claims about the Product made  
5 in Defendant’s advertising and on Defendant’s labeling because the Product’s  
6 ingredients are non-plant-based, unnatural, synthetic, and/or artificial. Defendant  
7 knew and knows that the Product contains non-plant-based ingredients, yet Defendant  
8 intentionally advertises and markets the Product to cause reasonable consumers to  
9 believe that the Product is plant-based.

10 **46. False Advertising Claims Cause Purchase of Product.** Defendant’s  
11 labeling and advertising of the Product led to, and continue to lead to, reasonable  
12 consumers, including Plaintiff, believing that the Product contained only plant-based  
13 ingredients, to the exclusion of non-plant-based, synthetic ingredients.

14 **47. Injury In Fact.** Plaintiff and the California Subclass have suffered injury  
15 in fact and have lost money or property as a result of and in reliance upon Defendant’s  
16 Challenged Representation—namely Plaintiff and the California Subclass lost the  
17 purchase price for the Product they bought from the Defendant.

18 **48. Conduct Violates the UCL.** Defendant’s conduct, as alleged herein,  
19 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.  
20 The UCL prohibits unfair competition and provides, in pertinent part, that “unfair  
21 competition shall mean and include unlawful, unfair or fraudulent business practices  
22 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code §  
23 17200. In addition, Defendant’s use of various forms of advertising media to  
24 advertise, call attention to, or give publicity to the sale of goods or merchandise that  
25 are not as represented in any manner constitutes unfair competition, unfair, deceptive,  
26 untrue or misleading advertising, and an unlawful business practice within the  
27 meaning of Business and Professions Code Sections 17200 and 17531, which  
28

1 advertisements have deceived and are likely to deceive the consuming public, in  
2 violation of Business and Professions Code Section 17200.

3       **49. No Reasonably Available Alternatives/Legitimate Business Interests.**  
4 Defendant failed to avail itself of reasonably available, lawful alternatives to further  
5 its legitimate business interests.

6       **50. Business Practice.** All of the conduct alleged herein occurred and  
7 continues to occur in Defendant's business. Defendant's wrongful conduct is part of  
8 a pattern, practice and/or generalized course of conduct, which will continue on a  
9 daily basis until Defendant voluntarily alters its conduct or Defendant is otherwise  
10 ordered to do so.

11       **51. Injunction.** Pursuant to Business and Professions Code Sections 17203  
12 and 17535, Plaintiff and the members of the California Subclass seek an order of this  
13 Court enjoining Defendant from continuing to engage, use, or employ its practice of  
14 labeling and advertising the sale and use of the Product. Likewise, Plaintiff and the  
15 members of the California Subclass seek an order requiring Defendant to disclose  
16 such misrepresentation, and to preclude Defendant's failure to disclose the existence  
17 and significance of said misrepresentation.

18       **52. Causation/Damages.** As a direct and proximate result of Defendant's  
19 misconduct in violation of the UCL, Plaintiff and members of the California Subclass  
20 were harmed in the amount of the purchase price they paid for the Product. Further,  
21 Plaintiff and members of the California Subclass have suffered and continue to suffer  
22 economic losses and other damages including, but not limited to, the amounts paid  
23 for the Product, and any interest that would have accrued on those monies, in an  
24 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
25 violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains  
26 to compensate Plaintiff and the California Subclass for said monies, as well as  
27 injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm  
28 that will result.



1           **53. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
2 cause of action for violation of the UCL on behalf of Plaintiff and the California  
3 Subclass. Defendant’s unfair, fraudulent, and unlawful conduct described herein  
4 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of  
5 punitive damages as permitted by law. Defendant’s misconduct is malicious as  
6 Defendant acted with the intent to cause Plaintiff and consumers to pay for a Product  
7 that they were not, in fact, receiving. Defendant willfully and knowingly disregarded  
8 the rights of Plaintiff and consumers as Defendant was, at all times, aware of the  
9 probable dangerous consequences of its conduct and deliberately failed to avoid  
10 misleading consumers, including Plaintiff. Defendant’s misconduct is oppressive as,  
11 at all relevant times, said conduct was so vile, base, and/or contemptible that  
12 reasonable people would look down upon it and/or otherwise would despise such  
13 corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel  
14 and unjust hardship in knowing disregard of their rights. Defendant’s misconduct is  
15 fraudulent as Defendant intentionally misrepresented and/or concealed material facts  
16 with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting  
17 malice, oppression, and/or fraud was committed, authorized, adopted, approved,  
18 and/or ratified by officers, directors, and/or managing agents of Defendant.

19                                    **“Unfair” Prong**

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

24           **55. Injury.** Defendant’s actions of mislabeling the Product with the  
25 Challenged Representation do not confer any benefit to consumers; rather, doing so  
26 causes injuries to consumers, who do not receive a product commensurate with their  
27 reasonable expectations, overpay for the Product, and receive a product of lesser  
28 standards than what they reasonably expected to receive. Consumers cannot avoid

1 any of the injuries caused by Defendant’s deceptive labeling and/or advertising of the  
2 Product. Accordingly, the injuries caused by Defendant’s deceptive labeling and  
3 advertising outweigh any benefits.

4       **56. Balancing Test.** Some courts conduct a balancing test to decide if a  
5 challenged activity amounts to unfair conduct under California Business and  
6 Professions Code Section 17200. They “weigh the utility of the Defendant’s conduct  
7 against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada,*  
8 *N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

9       **57. No Utility.** Here, Defendant’s conduct of labeling the Product as made  
10 with plant-based ingredients—when the Product contains numerous non-plant-based  
11 ingredients, has no utility and financially harms purchasers. Thus, the utility of  
12 Defendant’s conduct is vastly outweighed by the gravity of harm.

13       **58. Legislative Declared Policy.** Some courts require that “unfairness must  
14 be tethered to some legislative declared policy or proof of some actual or threatened  
15 impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735  
16 (9th Cir. 2007).

17       **59. Unfair Conduct.** Defendant’s labeling and advertising of the Product, as  
18 alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes  
19 unfair conduct. Defendant knew or should have known of its unfair conduct.  
20 Defendant’s misrepresentation constitutes an unfair business practice within the  
21 meaning of California Business and Professions Code Section 17200.

22       **60. Reasonably Available Alternatives.** There existed reasonably available  
23 alternatives to further Defendant’s legitimate business interests, other than the  
24 conduct described herein. Defendant could have refrained from labeling the Product  
25 with the Challenged Representation.

26       **61. Defendant’s Wrongful Conduct.** All of the conduct alleged herein  
27 occurs and continues to occur in Defendant’s business. Defendant’s wrongful conduct  
28

1 is part of a pattern or generalized course of conduct repeated on thousands of  
2 occasions daily.

3 62. **Injunction.** Pursuant to Business and Professions Code Sections 17203,  
4 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
5 from continuing to engage, use, or employ its practices of labeling the Product with  
6 the Challenged Representation.

7 63. **Causation/Damages.** Plaintiff and the California Subclass have suffered  
8 injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff  
9 and the California Subclass paid an unwarranted premium for the Product.  
10 Specifically, Plaintiff and the California Subclass paid for a Product that was  
11 supposedly made with only plant-based ingredients, but instead purchased a Product  
12 that contains numerous non-plant-based ingredients. Plaintiff and the California  
13 Subclass would not have purchased the Product, or would have paid substantially less  
14 for the Product, if they had known that the Product's advertising and labeling were  
15 deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of  
16 ill-gotten gains pursuant to the UCL.

### **"Fraudulent" Prong**

18 64. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits  
19 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*  
20 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

21 65. **Fraudulent & Material Challenged Representation.** Defendant used  
22 the Challenged Representation with the intent to sell the Product to consumers,  
23 including Plaintiff and the California Subclass. The Challenged Representation is  
24 false, and Defendant knew or should have known of its falsity. The Challenged  
25 Representation is likely to deceive consumers into purchasing the Product because it  
26 is material to the average, ordinary, and reasonable consumer.

1           **66. Fraudulent Business Practice.** As alleged herein, the misrepresentation  
2 by Defendant constitutes a fraudulent business practice in violation of California  
3 Business & Professions Code Section 17200.

4           **67. Reasonable and Detrimental Reliance.** Plaintiff and the California  
5 Subclass reasonably and detrimentally relied on the material and false Challenged  
6 Representation to their detriment in that they purchased the Product.

7           **68. Reasonably Available Alternatives.** Defendant had reasonably  
8 available alternatives to further its legitimate business interests, other than the conduct  
9 described herein. Defendant could have refrained from labeling the Product with the  
10 Challenged Representation.

11           **69. Business Practice.** All of the conduct alleged herein occurs and continues  
12 to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern  
13 or generalized course of conduct.

14           **70. Injunction.** Pursuant to Business and Professions Code Sections 17203,  
15 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
16 from continuing to engage, use, or employ its practice of labeling the Product with  
17 the Challenged Representation.

18           **71. Causation/Damages.** Plaintiff and the California Subclass have suffered  
19 injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff  
20 and the California Subclass paid an unwarranted premium for the Product.  
21 Specifically, Plaintiff and the California Subclass paid for a Product that was  
22 supposedly made with only plant-based ingredients, but instead purchased a Product  
23 that contains numerous non-plant-based ingredients. Plaintiff and the California  
24 Subclass would not have purchased the Product, or would have paid substantially less  
25 for the Product, if they had known that the Product's advertising and labeling were  
26 deceptive. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of  
27 ill-gotten gains pursuant to the UCL.  
28

1 **“Unlawful” Prong**

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

5 73. **Violations of CLRA and FAL.** Defendant’s labeling of the Product, as  
6 alleged herein, violates California Civil Code sections 1750, *et seq.* (the “CLRA”)  
7 and California Business and Professions Code sections 17500, *et seq.* (the “FAL”) as  
8 set forth below in the sections regarding those causes of action.

9 74. **Additional Violations.** Defendant’s conduct in making the false  
10 representation described herein constitutes a knowing failure to adopt policies in  
11 accordance with and/or adherence to applicable laws, as set forth herein, all of which  
12 are binding upon and burdensome to its competitors. This conduct engenders an unfair  
13 competitive advantage for Defendant, thereby constituting an unfair, fraudulent  
14 and/or unlawful business practice under California Business & Professions Code  
15 sections 17200-17208. Additionally, Defendant’s misrepresentation of material facts,  
16 as set forth herein, violates California Civil Code sections 1572, 1573, 1709, 1710,  
17 1711, and 1770, as well as the common law.

18 75. **Unlawful Conduct.** Defendant’s labeling and advertising of the Product,  
19 as alleged herein, are false, deceptive, misleading, and unreasonable, and constitute  
20 unlawful conduct. Defendant knew or should have known of its unlawful conduct.

21 76. **Reasonably Available Alternatives.** Defendant had reasonably  
22 available alternatives to further its legitimate business interests, other than the conduct  
23 described herein. Defendant could have refrained from labeling the Product with the  
24 Challenged Representation and/or omitting that the Product contained non-plant-  
25 based ingredients.

26 77. **Business Practice.** All of the conduct alleged herein occurs and continues  
27 to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern  
28 or generalized course of conduct.

1 78. **Injunction.** Pursuant to Business and Professions Code Section 17203,  
 2 Plaintiff and the California Subclass seek an order of this Court enjoining Defendant  
 3 from continuing to engage, use, or employ its practice of false and deceptive  
 4 advertising of the Product.

5 79. **Causation/Damages.** Plaintiff and the California Subclass have suffered  
 6 injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff  
 7 and the California Subclass paid an unwarranted premium for the Product.  
 8 Specifically, Plaintiff and the California Subclass paid for a Product that was  
 9 supposedly comprised of only plant-based ingredients, but instead purchased a  
 10 Product that contains numerous non-plant-based ingredients. Plaintiff and the  
 11 California Subclass would not have purchased the Product, or would have paid  
 12 substantially less for the Product, if they had known that the Product's advertising and  
 13 labeling were deceptive. Accordingly, Plaintiff seeks damages, restitution and/or  
 14 disgorgement of ill-gotten gains pursuant to the UCL.

## 15 **COUNT TWO**

### 16 **Violation of California False Advertising Law**

17 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

18 ***(On Behalf of the California Subclass)***

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

21 81. **California Subclass.** Plaintiff brings this claim individually and on  
 22 behalf of the California Subclass who purchased the Product within the applicable  
 23 statute of limitations.

24 82. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof.  
 25 Code section 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading  
 26 advertising[.]"

27 83. **False & Material Challenged Representation Disseminated to Public.**  
 28 Defendant violated section 17500 when it advertised and marketed the Product

1 through the unfair, deceptive, untrue, and misleading Challenged Representation  
2 disseminated to the public through the Product's labeling, marketing, and advertising.  
3 This representation was false because the Product does not conform to it. The  
4 representation was material because it is likely to mislead a reasonable consumer into  
5 purchasing the Product.

6 84. **Knowledge.** In making and disseminating the representation alleged  
7 herein, Defendant knew or should have known that the representation was untrue or  
8 misleading, and acted in violation of § 17500.

9 85. **Intent to Sell.** Defendant's Challenged Representation was specifically  
10 designed to induce reasonable consumers, like Plaintiff and the California Subclass,  
11 to purchase the Product.

12 86. **Causation/Damages.** As a direct and proximate result of Defendant's  
13 misconduct in violation of the FAL, Plaintiff and members of the California Subclass  
14 were harmed in the amount of the purchase price they paid for the Product. Further,  
15 Plaintiff and members of the Class have suffered and continue to suffer economic  
16 losses and other damages including, but not limited to, the amounts paid for the  
17 Product, and any interest that would have accrued on those monies, in an amount to  
18 be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the  
19 FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate  
20 Plaintiff and the California Subclass for said monies, as well as injunctive relief to  
21 enjoin Defendant's misconduct prevent ongoing and future harm that will result.

22 87. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct  
23 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
24 warranting an award of punitive damages as permitted by law. Defendant's  
25 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and  
26 consumers to pay for a Product that they were not, in fact, receiving. Defendant  
27 willfully and knowingly disregarded the rights of Plaintiff and consumers as  
28 Defendant was aware of the probable dangerous consequences of its conduct and

1 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's  
2 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,  
3 and/or contemptible that reasonable people would look down upon it and/or otherwise  
4 would despise such corporate misconduct. Said misconduct subjected Plaintiff and  
5 consumers to cruel and unjust hardship in knowing disregard of their  
6 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times,  
7 intentionally misrepresented and/or concealed material facts with the intent to deceive  
8 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
9 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
10 officers, directors, and/or managing agents of Defendant.

### 11 **COUNT THREE**

#### 12 **Violation of California Consumers Legal Remedies Act**

13 **(Cal. Civ. Code §§ 1750, *et seq.*)**

14 **(*On Behalf of the California Subclass*)**

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

17 89. **California Subclass.** Plaintiff brings this claim individually and on  
18 behalf of the California Subclass who purchased the Product within the applicable  
19 statute of limitations.

20 90. **CLRA Standard.** The CLRA provides that “unfair methods of  
21 competition and unfair or deceptive acts or practices undertaken by any person in a  
22 transaction intended to result or which results in the sale or lease of goods or services  
23 to any consumer are unlawful.”

24 91. **Goods/Services.** The Product is a “good,” as defined by the CLRA in  
25 California Civil Code §1761(a).

26 92. **Defendant.** Defendant is a “person,” as defined by the CLRA in  
27 California Civil Code §1761(c).

28



1 93. **Consumers.** Plaintiff and members of the California Subclass are  
2 “consumers,” as defined by the CLRA in California Civil Code §1761(d).

3 94. **Transactions.** The purchase of the Product by Plaintiff and members of  
4 the California Subclass are “transactions” as defined by the CLRA under California  
5 Civil Code § 1761(e).

6 95. **Violations of the CLRA.** Defendant violated the following sections of  
7 the CLRA by selling the Product to Plaintiff and the California Subclass through the  
8 false, misleading, deceptive, and fraudulent Challenged Representation:

- 9 a. Section 1770(a)(5) by representing that the Product has  
10 “characteristics, . . . uses [or] benefits . . . which [it] do[es] not have.”  
11 b. Section 1770(a)(7) by representing that the Product “[is] of a particular  
12 standard, quality, or grade . . . [when] [it is] of another.”  
13 c. Section 1770(a)(9) by advertising the Product “with [the] intent not to  
14 sell [it] as advertised.”

15 96. **Knowledge.** Defendant’s uniform and material representation regarding  
16 the Product was likely to deceive, and Defendant knew or should have known that its  
17 representation was untrue and misleading.

18 97. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in  
19 that Defendant intentionally misled and withheld material information from  
20 consumers, including Plaintiff, to increase the sale of the Product.

21 98. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the  
22 California Subclass could not have reasonably avoided such injury. Plaintiff and  
23 members of the California Subclass were unaware of the existence of the facts that  
24 Defendant suppressed and failed to disclose, and Plaintiff and members of the  
25 California Subclass would not have purchased the Product and/or would have  
26 purchased it on different terms had they known the truth.

27 99. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass  
28 suffered harm as a result of Defendant’s violations of the CLRA because they relied

1 on the Challenged Representation in deciding to purchase the Product. The  
2 Challenged Representation was a substantial factor. The Challenged Representation  
3 was material because a reasonable consumer would consider it important in deciding  
4 whether to purchase the Product.

5 100. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California  
6 Civil Code, section 1782, more than thirty days prior to the filing of this complaint,  
7 on or around July 26 of 2024, Plaintiff’s counsel, acting on behalf all members of the  
8 Class, mailed a Demand Letter, via U.S. certified mail, return receipt requested,  
9 addressed to Defendant 9199-4467 Québec Inc. at its headquarters and principal place  
10 of business (8500 Decarie Blvd., 7th Floor, Mont-Royal, Québec, H4P 2N2, Canada),  
11 and its alternative address (228-1350 rue Mazurette, Montréal Québec H4N1H2,  
12 Canada).

13 101. **Causation/Damages.** As a direct and proximate result of Defendant’s  
14 misconduct in violation of the CLRA, Plaintiff and members of the California  
15 Subclass were harmed in the amount of the purchase price they paid for the Product.  
16 Further, Plaintiff and members of the Class have suffered and continue to suffer  
17 economic losses and other damages including, but not limited to, the amounts paid  
18 for the Product, and any interest that would have accrued on those monies, in an  
19 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for  
20 violation of this Act in the form of damages, restitution, disgorgement of ill-gotten  
21 gains to compensate Plaintiff and the California Subclass for said monies.

22 102. **Injunction.** Given that Defendant’s conduct violated California Civil  
23 Code section 1780, Plaintiff and members of the California Subclass are entitled to  
24 seek, and do hereby seek, injunctive relief to put an end to Defendant’s violations of  
25 the CLRA and to dispel the public misperception generated, facilitated, and fostered  
26 by Defendant’s false advertising campaign. Plaintiff has no adequate remedy at law.  
27 Without equitable relief, Defendant’s unfair and deceptive practices will continue to  
28 harm Plaintiff and the California Subclass. Accordingly, Plaintiff seeks an injunction

1 to enjoin Defendant from continuing to employ the unlawful methods, acts, and  
2 practices alleged herein pursuant to section 1780(a)(2), and otherwise requires  
3 Defendant to take corrective action necessary to dispel the public misperception  
4 engendered, fostered, and facilitated through Defendant's deceptive labeling of the  
5 Product with the Challenged Representation.

6 103. **Punitive Damages.** Defendant's unfair, fraudulent, and unlawful conduct  
7 described herein constitutes malicious, oppressive, and/or fraudulent conduct  
8 warranting an award of punitive damages as permitted by law. Defendant's  
9 misconduct is malicious as Defendant acted with the intent to cause Plaintiff and  
10 consumers to pay for a Product that they were not, in fact, receiving. Defendant  
11 willfully and knowingly disregarded the rights of Plaintiff and consumers as  
12 Defendant was, at all times, aware of the probable dangerous consequences of its  
13 conduct and deliberately failed to avoid misleading consumers, including Plaintiff.  
14 Defendant's misconduct is oppressive as, at all relevant times, said conduct was so  
15 vile, base, and/or contemptible that reasonable people would look down upon it and/or  
16 otherwise would despise such corporate misconduct. Said misconduct subjected  
17 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their  
18 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times,  
19 intentionally misrepresented and/or concealed material facts with the intent to deceive  
20 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
21 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
22 officers, directors, and/or managing agents of Defendant. Accordingly, Plaintiff seeks  
23 an award of punitive damages against Defendant.

#### 24 **COUNT FOUR**

#### 25 **Breach of Warranty**

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

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

1           **105. Nationwide Class & California Subclass.** Plaintiff brings this claim  
2 individually and on behalf of the Class who purchased the Product within the  
3 applicable statute of limitations.

4           **106. Express Warranty.** By advertising and selling the Product at issue,  
5 Defendant made promises and affirmations of fact on the Product’s labeling, and  
6 through its marketing and advertising, as described herein. This labeling and  
7 advertising constitute express warranties and became part of the basis of the bargain  
8 between Plaintiff and members of the Class and Defendant. Defendant purports,  
9 through the Product’s labeling and advertising, to create express warranties that the  
10 Product, among other things, conforms to the Challenged Representation.

11           **107. Implied Warranty of Merchantability.** By advertising and selling the  
12 Product at issue, Defendant, merchant of goods, made promises and affirmations of  
13 fact that the Product is merchantable and conforms to the promises or affirmations of  
14 fact made on the Product’s labeling, and through its marketing and advertising, as  
15 described herein. This labeling and advertising, combined with the implied warranty  
16 of merchantability, constitute warranties that became part of the basis of the bargain  
17 between Plaintiff and members of the Class and Defendant—to wit, that the Product,  
18 among other things, conforms to the Challenged Representation.

19           **108. Breach of Warranty.** Contrary to Defendant’s express warranties, the  
20 Product does not conform to the Challenged Representation and, therefore, Defendant  
21 breached its warranties about the Product and its qualities.

22           **109. Causation/Remedies.** As a direct and proximate result of Defendant’s  
23 breach of express warranty, Plaintiff and members of the Class were harmed in the  
24 amount of the purchase price they paid for the Product. Further, Plaintiff and members  
25 of the Class have suffered and continue to suffer economic losses and other damages  
26 including, but not limited to, the amounts paid for the Product, and any interest that  
27 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
28 Plaintiff seeks a monetary award for breach of warranty in the form of damages,

1 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the  
2 Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct  
3 to prevent ongoing and future harm that will result.

4 **110. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
5 cause of action for breach of warranty on behalf of Plaintiff and the Class.  
6 Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes  
7 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive  
8 damages as permitted by law. Defendant's misconduct is malicious as Defendant  
9 acted with the intent to cause Plaintiff and consumers to pay for Product that they  
10 were not, in fact, receiving. Defendant willfully and knowingly disregarded the rights  
11 of Plaintiff and consumers as Defendant was aware of the probable dangerous  
12 consequences of its conduct and deliberately failed to avoid misleading consumers,  
13 including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said  
14 conduct was so vile, base, and/or contemptible that reasonable people would look  
15 down upon it and/or otherwise would despise such misconduct. Said misconduct  
16 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard  
17 of their rights. Defendant's misconduct is fraudulent as Defendant, at all relevant  
18 times, intentionally misrepresented and/or concealed material facts with the intent to  
19 deceive Plaintiff and consumers. The wrongful conduct constituting malice,  
20 oppression, and/or fraud was committed, authorized, adopted, approved, and/or  
21 ratified by officers, directors, and/or managing agents of Defendant.

## 22 **COUNT FIVE**

### 23 **Unjust Enrichment/Restitution**

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

25 **111. Incorporation by Reference.** Plaintiff re-alleges and incorporates by  
26 reference all allegations contained in this complaint, as though fully set forth herein.  
27  
28

1           112. **Nationwide Class & California Subclass.** Plaintiff brings this claim  
2 individually and on behalf of the Class who purchased the Product within the  
3 applicable statute of limitations.

4           113. **Plaintiff/Class Conferred a Benefit.** By purchasing the Product,  
5 Plaintiff and members of the Class conferred a benefit on Defendant in the form of  
6 the purchase price of the Product.

7           114. **Defendant's Knowledge of Conferred Benefit.** Defendant had  
8 knowledge of such benefit and Defendant appreciated the benefit because, were  
9 consumers not to purchase the Product, Defendant would not generate revenue from  
10 the sales of the Product.

11           115. **Defendant's Unjust Receipt Through Deception.** Defendant's owing  
12 acceptance and retention of the benefit is inequitable and unjust because the benefit  
13 was obtained by Defendant's fraudulent, misleading, and deceptive representation  
14 and omission.

15           116. **Causation/Damages.** As a direct and proximate result of Defendant's  
16 unjust enrichment, Plaintiff and members of the Class were harmed in the amount of  
17 the purchase price they paid for the Product. Further, Plaintiff and members of the  
18 Class have suffered and continue to suffer economic losses and other damages  
19 including, but not limited to, the amounts paid for the Product, and any interest that  
20 would have accrued on those monies, in an amount to be proven at trial. Accordingly,  
21 Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or  
22 disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies,  
23 as well as injunctive relief to enjoin Defendant's conduct to prevent ongoing and  
24 future harm that will result.

25           117. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this  
26 cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendant's  
27 unfair, fraudulent, and unlawful conduct described herein constitutes malicious,  
28 oppressive, and/or fraudulent conduct warranting an award of punitive damages as

1 permitted by law. Defendant's misconduct is malicious as Defendant acted with the  
2 intent to cause Plaintiff and consumers to pay for a Product that they were not, in fact,  
3 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and  
4 consumers as Defendant was aware of the probable dangerous consequences of its  
5 conduct and deliberately failed to avoid misleading consumers, including Plaintiff.  
6 Defendant's misconduct is oppressive as, at all relevant times, said conduct was so  
7 vile, base, and/or contemptible that reasonable people would look down upon it and/or  
8 otherwise would despise such corporate misconduct. Said misconduct subjected  
9 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their  
10 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times,  
11 intentionally misrepresented and/or concealed material facts with the intent to deceive  
12 Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
13 and/or fraud was committed, authorized, adopted, approved, and/or ratified by  
14 officers, directors, and/or managing agents of Defendant.

15 **PRAYER FOR RELIEF**

16 118. WHEREFORE, Plaintiff, individually and on behalf of all others  
17 similarly situated, prays for judgment against Defendant as follows:

- 18
- 19 a. **Certification:** For an order certifying this action as a class action,  
20 appointing Plaintiff as the Class Representative, and appointing  
21 Plaintiff's Counsel as Class Counsel, consistent with applicable law;
- 22 b. **Declaratory Relief:** For an order declaring that Defendant's conduct  
23 violates the statutes and laws referenced herein, consistent with  
24 applicable law and pursuant to only those causes of action so permitted;
- 25 c. **Injunction:** For an order requiring Defendant to change its business  
26 practices to prevent or mitigate the risk of the consumer deception and  
27 violations of law outlined herein. This includes, for example, orders that  
28 Defendant immediately cease and desist from selling the unlawful  
Product in violation of law; that enjoin Defendant from continuing to  
market, advertise, distribute, and sell the Product in the unlawful manner  
described herein; that require Defendant to engage in an affirmative  
advertising campaign to dispel the public misperception of the Product  
resulting from Defendant's unlawful conduct; and/or that require  
Defendant to take all further and just corrective action, consistent with

applicable law and pursuant to only those causes of action so permitted;

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

**DEMAND FOR JURY TRIAL**

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

DATED: November 5, 2024

**MALK & POGO LAW GROUP, LLP**

/s/ Valter Malkhasyan

Valter Malkhasyan, Esq.

Erik Pogosyan, Esq.

*Counsel for Plaintiff*

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