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11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 Donna Costan, individually, and on
 15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 Costco Wholesale Corporation,
 19

20 Defendant.
 21

CASE NO.: '24CV2156 JO AHG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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

5 **INTRODUCTION**

- 6 1. Heart health is a major concern for consumers in the United States.¹
7 2. It is a national health problem that has spurred an entire industry
8 dedicated to marketing Omega-3 supplements, often with marketing known to
9 mislead reasonable consumers.
10 3. “The sale of fish oil supplements is a multibillion-dollar industry, and
11 many people take fish oil capsules daily, believing the omega-3 fatty acids they
12 contain are good for their overall health, particularly for their heart.”²

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14
15 ¹ Cathy Lewis, *More Than Half of U.S. Adults Don’t Know Heart Disease Is Leading*
16 *Cause Of Death, Despite 100-Year Reign*, Am. Heart Ass’n (“AHA”) (Jan. 24, 2024),
17 [http://newsroom.heart.org/news/more-than-half-of-u-s-adults-dont-know-heart-](http://newsroom.heart.org/news/more-than-half-of-u-s-adults-dont-know-heart-disease-is-leading-cause-of-death-despite-100-year-reign)
18 [disease-is-leading-cause-of-death-despite-100-year-reign](http://newsroom.heart.org/news/more-than-half-of-u-s-adults-dont-know-heart-disease-is-leading-cause-of-death-despite-100-year-reign).

19 ² Lindsey Bever, *Marketers Overstate Fish Oil Claims for Heart Health, Study Shows*,
20 Wash. Post (Aug. 23, 2023),
21 [https://www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-](https://www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-benefits/)
22 [benefits/](https://www.washingtonpost.com/wellness/2023/08/23/fish-oil-supplements-heart-benefits/); *see also* ASCEND Study Collaborative Grp., *Effects of n–3 Fatty Acid*
23 *Supplements in Diabetes Mellitus* (“ASCEND Study”), 379 N. Eng. J. Med. 1540
24 (Oct. 18, 2018), <https://www.nejm.org/doi/full/10.1056/nejmoa1804989> (finding that
25 in a randomized trial of more than 15,000 patients with diabetes, a risk factor for
26 cardiovascular disease, the risk of a serious cardiovascular event was not significantly
27 different between those who were taking an omega-3 supplement and those who were
28 not).

1 4. “Heart disease along with stroke, which is the fifth leading cause of
2 death, claimed more lives in 2021 in the U.S. than all forms of cancer and chronic
3 lower respiratory disease combined.”³

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

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

9 7. It was found that a majority of fish oil supplements make structure
10 function claims related to heart health, even though there is a lack of trial data showing
11 efficacy, and that such statements increased the potential for consumer
12 misinformation.⁶

13 8. Indeed, as to heart disease specifically (one of the indicators of heart health)
14 even the U.S. Department of Health and Human Services, National Center for
15 Complementary and Integrative Health (“NIH”) has stated that “[r]esearch indicates that
16 omega-3 supplements don’t reduce the risk of heart disease.”⁷

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³ Lewis, *supra* note 1.

19

⁴ Bever, *supra* note 2.

20

⁵ Joanna N. Assadourian et al., *Health Claims and Doses of Fish Oil Supplements in the US*, 8(10) JAMA Cardiology 984, 986 (Aug. 23, 2023), https://jamanetwork.com/journals/jamacardiology/article-abstract/2808769?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jamacardio.2023.2424.

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⁶ *Id.* at 985.

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⁷ *Omega-3 Supplements: In Depth*, Nat’l Ctr. Complimentary & Integrative Health (“NIH”) - U.S. Dep’t Health & Hum. Servs. (Apr. 2018),

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1 9. Despite such evidence, companies like Defendant continue to make false
2 and misleading claims related to Omega-3 supplements because reasonable
3 consumers are particularly vulnerable to such claims.

4 10. As stated by registered dietitian Scott Keatley, co-owner of Keatley
5 Medical Nutrition Therapy, “[m]any people take fish oil because of longstanding
6 beliefs about its potential health benefits, particularly for heart health.”⁸

7 11. “*The supplement industry*, anecdotal evidence and earlier studies *have*
8 *often promoted these benefits*. Once a narrative becomes deeply embedded in popular
9 culture, it can be difficult to change, even when new evidence emerges.”⁹

10 12. This case involves Omega-3 Supplements also touting purported heart
11

12
13 <https://www.nccih.nih.gov/health/omega3-supplements-in-depth> (scroll down to
14 heading “What Do We Know About the Effectiveness of Omega-3s” and click on the
15 “+” button to the right of “Heart Disease” subheading) (“A 2018 analysis of 10 major
16 omega-3 supplementation studies (77,917 total participants, all at high risk of heart
17 disease), each of which involved at least 500 participants and a treatment duration of
18 at least a year, found no evidence that omega-3s could reduce the risk of fatal or
19 nonfatal coronary heart disease.”) (last visited March 2, 2024). *Id.* (“In 2016, the U.S.
20 Government’s Agency for Healthcare Research and Quality (AHRQ) did a
21 comprehensive evaluation of 98 studies of omega-3s and heart disease, including both
22 diet and supplementation studies. They did not find evidence that omega-3s can
23 reduce the risk of heart attacks or death from heart disease.”).

24 ⁸ Korin Miller, *Most Fish Oil Supplements Make Unsupported Heart Health Claims,*
25 *Finds New Study. Here's Why Experts Say Most People Can Skip Them.*, yahoo!life
26 (Aug. 23, 2023), [https://www.yahoo.com/lifestyle/fish-oil-supplements-heart-heart-](https://www.yahoo.com/lifestyle/fish-oil-supplements-heart-heart-study-150006741.html)
27 [study-150006741.html](https://www.yahoo.com/lifestyle/fish-oil-supplements-heart-heart-study-150006741.html).

28 ⁹ *Id.* (emphasis added)

1 health benefits—Defendant’s Kirkland Signature Fish Oil products (the “Products”)¹⁰.
2 The Products all state—“Helps Support a Healthy Heart” (hereinafter “Heart Health
3 Representation”). *See example below.*

4 13. None of the labels on the Products mention the risks of fish oil supplements
5 to heart health, including the increased risk of atrial fibrillation (“Heart Health
6 Omissions”) (collectively the “Heart Health Representations and Omissions”).



28 ¹⁰ The Products are fully defined in paragraph 29.

1 14. Collectively, The Heart Health Representation and Omissions lead
2 reasonable consumers to believe the Products’ Omega-3s support heart health.

3 15. Unbeknownst to consumers, the Heart Health Representation and
4 Omissions are false and misleading because the Products’ Omega-3s do not support heart
5 health and could even harm heart health. Specifically, the Products do not reduce the risk
6 of heart disease or adverse cardiovascular events (including heart attacks, strokes,
7 unstable angina, arrhythmias, heart failure, or death from coronary heart disease), nor do
8 they improve homocysteine levels (a marker of heart health). Indeed, the Products can
9 actually harm heart health by increasing the risk of atrial fibrillation. As discussed in
10 more detail below, these allegations are well supported by current studies on Omega-3
11 supplementation, and by leading authorities in the field of heart health like the NIH.

12 16. Because the Products do not support heart health, reasonable consumers
13 have been misled by the Products’ Heart Health Representation.

14 17. The Heart Health Representations on the Products are known as structure
15 function claims (a claim that a product is intended to affect the structure or any function
16 of the body, e.g., supports a healthy heart).

17 18. While dietary supplements are permitted to make such claims, the FDA
18 requires that they be “truthful and non-misleading.”¹¹

19 19. As set forth, herein, the Heart Health Representations and Omissions
20 would be considered false and misleading based on Plaintiff’s controverting evidence—
21 studies, NIH fact sheets, guidance from medical professionals and organizations—
22 demonstrating that not only do the Products fail to support heart health, but they also
23 may harm heart health.

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

27 ¹¹ Regulations on Statements Made for Dietary Supplements Concerning the Effect
28 of the Product on the Structure or Function of the Body, 65 Fed. Reg. 1000 at 1003.

1 the Products.

2 21. Had Plaintiff and other consumers been aware that the Products do not
3 support heart health, they would not have purchased the Products or would have paid
4 significantly less for them.

5 22. Accordingly, Plaintiff and Class members have been injured by
6 Defendant's deceptive business practices.

7 **JURISDICTION AND VENUE**

8 23. This Court has subject matter jurisdiction pursuant to the Class Action
9 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under
10 Rule 23 of the Federal Rules of Civil Procedure, there are thousands of proposed Class
11 members, the aggregate amount in controversy exceeds \$5,000,000 exclusive of
12 interest and costs, and Defendant is a citizen of a state different from at least some
13 members of the proposed Classes, including Plaintiff.

14 24. This Court has personal jurisdiction over Defendant because Defendant
15 has sufficient minimum contacts in California, or otherwise intentionally avails itself
16 of the markets within California, through its sale of goods and products (including the
17 Products) in California and to California consumers.

18 25. Venue is proper in this judicial District pursuant to 28 U.S.C.
19 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the
20 claims at issue in this case occurred in this District. Specifically, Plaintiff resides in
21 this District and she purchased one of the Products at issue in this case in this District
22 during the statute of limitations period.

23 **PLAINTIFF**

24 26. Plaintiff Donna Costan is a citizen of California and currently resides in
25 Carlsbad, California. During the relevant class period, Plaintiff purchased the
26 Kirkland 1000 mg Fish Oil Product from a Costco in Carlsbad, California. Based on
27 the Heart Health Representation, Plaintiff reasonably believed the Product would
28 support heart health. Plaintiff was also misled by Defendant's failure to disclose the heart

1 health risks associated with the Product, as nothing on the labeling alerted her to the fact
2 that the Products could actually harm her heart health. Had she known the Product
3 does not support heart health (and/or could actually harm her heart health), she would
4 not have purchased it, or would have paid significantly less for it. As such, Plaintiff
5 has been directly financially injured by Defendant’s false and misleading labeling.

6 27. Despite Defendant’s misrepresentation, Plaintiff would purchase any of
7 the Products, as labeled and marketed, if they actually supported heart health.
8 Although Plaintiff regularly shops at Costco, which carries the Products, absent an
9 injunction of Defendant’s deceptive labeling, she will be unable to rely with
10 confidence on Defendant’s labeling and advertising of the Products in the future.
11 Furthermore, while Plaintiff currently believes the Products’ labeling and advertising
12 is inaccurate, she lacks personal knowledge as to Defendant’s specific business
13 practices, and thus, she will not be able determine whether the Products truly abide
14 by their Heart Health Representation. This leaves doubt in her mind as to the
15 possibility that at some point in the future the Products could be made in accordance
16 with the Heart Health Representation on the Products’ front label and advertising.
17 This uncertainty, coupled with her desire to purchase a Product supporting heart
18 health, is an ongoing injury that can and would be rectified by an injunction enjoining
19 Defendant from making the alleged misleading representations and omissions. In
20 addition, other Class members will continue to purchase the Products, reasonably but
21 incorrectly, believing that they support heart health, and that they will not harm heart
22 health.

23 **DEFENDANT**

24 28. Defendant is a Washington corporation with its principal place of
25 business in Issaquah, Washington. Defendant is an American multinational
26 corporation, which operates a chain of membership-only big-box warehouse club
27 retail stores, that sells a variety of consumer goods, including supplements.

FACTUAL ALLEGATIONS

29. At issue in this Complaint are the following Kirkland Signature Fish Oil products:

- Kirkland Signature 1000 mg Fish Oil; and
- Kirkland Signature Wild Alaskan 1400 mg Fish Oil

(collectively, the “Products”).

30. The front label of the Products all state— “Helps Support a Healthy Heart,” and call out the Products’ Omega-3s. *See image below.*





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

32. Unbeknownst to consumers, the Products' Heart Health Representation and Omissions are false and misleading because the Products' Omega-3s do not

1 support heart health and may even harm heart health. Specifically, the Products do not
2 reduce the risk of heart disease or adverse cardiovascular events (including heart attacks,
3 strokes, unstable angina, arrhythmias, heart failure, or death from coronary heart
4 disease), nor do they improve homocysteine levels (a marker of heart health). Indeed, the
5 Products can actually harm heart health by increasing the risk of atrial fibrillation. As
6 discussed in more detail below, these allegations are well supported by current studies
7 on Omega-3 supplementation, and by leading authorities in the field of heart health like
8 the NIH.

9 33. In fact, as discussed in more detail below, “most [recent studies] found
10 little or no evidence for a protective effect of omega-3 supplements against heart
11 disease.”¹²

12 **Heart Health and the Fish Oil Industry**

13 34. Consumer concern for hearth health has spurred an entire industry
14 dedicated to marketing Omega-3 supplements, often with marketing known to
15 mislead reasonable consumers.

16 35. Americans are rightly concerned about their heart health because one
17 person dies every 33 seconds in the United States from heart disease.

18 36. In fact, the most common type of heart disease, coronary heart disease,
19 killed 375,476 people in 2021.

20 37. In response, omega-3 supplements have skyrocketed in popularity, and
21 created “a multibillion-dollar industry” that encourages people to “take fish oil
22 capsules daily” because they “believe[] the omega-3 fatty acids they contain are good
23 for their overall health, particularly for their heart.”¹³

24 38. Several news outlets have recently brought the effectiveness of omega-3
25 supplements into question. For example, the New York Post described fish oil
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27 ¹² NIH, *supra* note 7.

28 ¹³ Bever, *supra* note 2.

1 supplements as “worthless” and the health claims they make as “outrageous,”¹⁴ while
2 the Washington Post said that “. . . the wording used by fish oil marketers could lead
3 to misinformation about the role of the dietary supplement.”¹⁵

4 **Studies Finding that Omega-3 Supplements Do Not Support Heart Health**

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

7 Consumers have been told so many times that dietary fish oil
8 supplements promote heart health that it seems to be accepted as factual.
9 But this conventional thinking is not supported by the science. After
10 decades of promises that fish oil “may work,” the lack of demonstrated
11 benefit leads me to conclude that consumers are wasting their money on
12 supplements in an effort to reduce cardiovascular risk.¹⁶

13 40. Heart health can be measured by certain criteria: the presence or absence
14 of disease, reduction of cardiovascular events (including heart attacks, strokes, unstable
15 angina, arrhythmias, heart failure, or death from coronary heart disease), and improving
16 markers of heart health like homocysteine levels.¹⁷ Thus, whether over-the-counter
17 omega-3 supplements improve these measures of heart health is relevant to whether
18 the Products actually support heart health.

19 ¹⁴ Marc Lallanilla, *Why Fish Oil Supplements Are Basically Worthless: Study*, N.Y.
20 Post (Oct. 2, 2023), [https://nypost.com/2023/10/02/why-fish-oil-supplements-are-](https://nypost.com/2023/10/02/why-fish-oil-supplements-are-basically-worthless-study/)
21 [basically-worthless-study/](https://nypost.com/2023/10/02/why-fish-oil-supplements-are-basically-worthless-study/).

22 ¹⁵ Bever, *supra* note 2.

23 ¹⁶ R. Preston Mason, *The False Promise of Fish Oil Supplements*, Scientific American
24 (Aug. 22, 2019), [https://blogs.scientificamerican.com/observations/the-false-](https://blogs.scientificamerican.com/observations/the-false-promise-of-fish-oil-supplements/)
25 [promise-of-fish-oil-supplements/](https://blogs.scientificamerican.com/observations/the-false-promise-of-fish-oil-supplements/).

26 ¹⁷ Paul Ganguly, *Role Of Homocysteine In The Development Of Cardiovascular*
27 *Disease*, 14(6) Nutrition J. 1 (Jan. 10, 2015),
28 <http://www.nutritionj.com/content/14/1/6>.

1 41. In this case, studies show that although consumers have been led to
2 believe that the Products promote heart health, “multiple randomized clinical trials
3 have shown no cardiovascular benefits to fish oil supplements.”¹⁸

4 42. For example, the ASCEND Study concluded that “there was no
5 significant difference in the incidence of serious vascular events between [patients
6 with diabetes but without evidence of cardiovascular disease] who received n-3 fatty
7 acids and those who received placebo” and that “[t]hese findings, together with results
8 of earlier randomized trials involving patients with and those without diabetes, do not
9 support the current recommendations for routine dietary supplementation with n-3
10 fatty acids to prevent vascular events.”¹⁹

11 43. Meta-analyses of supplementation with marine-derived omega-3 fatty
12 acids have reached a similar conclusion. Finding, for example, that “marine-derived
13 omega-3 fatty acids . . . had no significant association with reductions in fatal or
14 nonfatal coronary heart disease or any major vascular events.”²⁰

15 44. Similarly, another study found that: “Supplementation with n-3 fatty
16 acids did not result in a lower incidence of major cardiovascular events or cancer than
17 placebo.”²¹

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20 ¹⁸ Assadourian, *supra* note 5, at 985.

21 ¹⁹ ASCEND study, *supra* note 2.

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

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

1 45. In 2020, the STRENGTH Randomized Clinical Trial stated that its
2 “findings [did] not support use of this omega-3 fatty acid formulation to reduce major
3 adverse cardiovascular events in high-risk patients.”²²

4 46. Omega-3 supplements also do not impact the other markers of heart
5 health. For example, a study published by the Journal of Research in Pharmacy
6 Practice found that “Omega-3 does not seem to be able to change the inflammatory
7 markers significantly, particularly homocysteine.”²³

8 47. The Omega-3s in the Products also fail to reduce the risk of heart disease
9 or heart attacks. Specifically, the U.S. Department of Health and Human Services,
10 National Center for Complementary and Integrative Health (“NIH”) states that
11 “[r]esearch indicates that omega-3 supplements don’t reduce the risk of heart disease.”²⁴

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

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

18 * * *

19 In 2016, the U.S. Government’s Agency for Healthcare Research and

20 ²² Stephen J. Nicholls et al., *Effect of High-Dose Omega-3 Fatty Acids vs Corn Oil on*
21 *Major Adverse Cardiovascular Events in Patients at High Cardiovascular Risk: The*
22 *STRENGTH Randomized Clinical Trial* (“STRENGTH Trial”), 324(22) JAMA 2268,
23 2268 (Nov. 15, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2773120>.

24 ²³ Tahereh Gholipur-Shahraki et al., *Effect of Omega-3 Fatty Acids Supplementation*
25 *on Homocysteine Level in Patients Undergoing Continuous Ambulatory Peritoneal*
26 *Dialysis*, 11(2) J. Rsch. Pharm. Prac. 80, 80 (Dec. 14, 2022),
27 <https://pmc.ncbi.nlm.nih.gov/articles/PMC9926915/>.

28 ²⁴ NIH, *supra* note 7.

1 Quality (AHRQ) did a comprehensive evaluation of 98 studies of omega-
2 3s and heart disease, including both diet and supplementation studies.
3 They did not find evidence that omega-3s can reduce the risk of heart
4 attacks or death from heart disease.²⁵

5 49. “Several other analyses of the evidence have been done in the last few
6 years (2012 or later), and like the 2018 analysis and the AHRQ report, most found
7 little or no evidence for a protective effect of omega-3 supplements against heart
8 disease.”²⁶

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

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

16 In fact, Jacobson said, taking fish oil could even have adverse effects for
17 some people. “There is data these supplements may increase the risk of
18 atrial fibrillation,” he said.²⁷

19 51. Dr. Ann Marie Navar, associate professor of medicine at University of
20 Texas Southwestern Medical School, states “as a preventive cardiologist, I see
21 patients in clinic all the time taking fish oil with the belief it is helping their heart.
22 They are often surprised when I tell them that randomized trials have shown no benefit
23 for fish oil supplements on heart attacks or strokes.”²⁸

23 ²⁵ *Id.*

24 ²⁶ *Id.*

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

28 ²⁸ Miller, *supra* note 8.

1 52. Indeed, as stated in the Washington Post, “[m]ost research shows that
2 over-the-counter fish oil supplements don’t offer cardiovascular benefits, but that
3 hasn’t stopped marketers from touting them for heart health, a new study shows.”²⁹

4 53. The lack of scientific support for heart health claims on fish oil
5 supplements has led to a report from JAMA Cardiology examining the potential for
6 consumer deception.³⁰

7 54. In the report, the labels of more than 2,800 fish oil supplements were
8 examined. The report found:³¹

- 9
- 10 • “One in 5 US adults older than 60 years takes fish oil supplements often for
11 heart health despite multiple randomized clinical trials showing no data for
12 cardiovascular benefit for supplement-range doses. Statements on the
13 supplement labels may influence consumer beliefs about health benefits.”
 - 14 • Heart health claims (e.g., “promotes heart health”) were the most common
15 health claims made on fish oil supplements.
 - 16 • Results of this cross-sectional study suggest that the majority of fish oil
17 supplement labels make heart health claims, usually in the form of
18 structure/function claims, that imply a health benefit across a variety of
19 organ systems despite a lack of trial data showing efficacy.
 - 20 • Results of this cross-sectional study suggest that fish oil supplement labels
21 frequently include health claims in the form of structure/function claims that
22 imply health benefits across a wide range of organ systems, increasing
23 potential for consumer misinformation.

24 55. The JAMA Cardiology report shows that Plaintiff and other reasonable
25 consumers are in fact being misled by claims like “*supports a healthy heart,*” when

26 ²⁹ Bever, *supra* note 2.

27 ³⁰ Assadourian, *supra* note 5, at 984.

28 ³¹ *Id.* at 984.

1 several companies, like Defendant, often have no support for such claims.

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

3 56. Atrial fibrillation is heart arrhythmia that causes an irregular heart
4 rhythm, which “usually result[s] from the effects of the heart not pumping as well as
5 it should.”³² There is no question that atrial fibrillation is a marker of heart health,
6 and that an increased risk of atrial fibrillation is harmful to heart health.

7 57. In a large new study that was recently published, it was found that “[f]or
8 people with a healthy cardiovascular profile, regular use of fish oil supplements . . .
9 was associated with *an increased risk of atrial fibrillation.*”³³

10 58. In 2020, the STRENGTH Randomized Clinical Trial also found that
11 consumption of Omega-3 supplements increased the risk of atrial fibrillation. Indeed,
12 the trial was stopped after participants were treated for a median of about 3.5 years
13 when the probability of benefit from omega-3 supplementation appeared low and the
14 supplemented group had a higher incidence of atrial fibrillation.³⁴

15 _____
16 ³² Atrial Fibrillation Symptoms, Johns Hopkins Medicine,
17 [https://www.hopkinsmedicine.org/health/conditions-and-diseases/atrial-](https://www.hopkinsmedicine.org/health/conditions-and-diseases/atrial-fibrillation/afib-symptoms)
18 [fibrillation/afib-symptoms](https://www.hopkinsmedicine.org/health/conditions-and-diseases/atrial-fibrillation/afib-symptoms) (last visited Nov. 5, 2024).

19 ³³ Ge Chen et al., *Regular Use of Fish Oil Supplements And Course of Cardiovascular*
20 *Diseases: Prospective Cohort Study*, 3 *BJM Med.* 1, 7 (May 21,
21 2024), <https://bmjmedicine.bmj.com/content/3/1/e000451.info> (additionally,
22 “findings do not support the use of fish oil or omega 3 fatty acid supplements for the
23 primary prevention of incident atrial fibrillation or other specific clinical
24 cardiovascular disease events in generally healthy individuals”).

25 ³⁴ STRENGTH Trial, *supra* note 22, at 2272, 2276 (Nov. 15, 2020),
26 <https://jamanetwork.com/journals/jama/fullarticle/2773120>
27 (“With regard to prespecified tertiary end points, an increased rate of investigator-
28 reported new-onset atrial fibrillation was observed in the omega-3 CA group.”).

1 59. Based on such findings, Gregory Curfman, MD, Assistant Professor of
2 Medicine at Harvard Medical School and former editor-in-chief of Harvard Health
3 Publishing concluded that “[p]atients who choose to take omega-3 fatty acids,
4 especially in high doses, *should be informed of the risk of [atrial fibrillation]* and
5 followed up for the possible development of this common and potentially hazardous
6 arrhythmia.”³⁵

7 60. For these reasons, other medical professionals like Timothy Jacobson,
8 MD, chief cardiologist for Kaiser Permanente in the Northwest, also state that “[t]here
9 is data these supplements may increase the risk of atrial fibrillation.”³⁶

10 61. Based on these allegations, it is more than plausible that the Products
11 pose a risk of harm to consumers, and that consumers are being misled by the Heart
12 Health Representation and Omissions.

13 **The Products Make False and Misleading Structure Function Claims**

14 62. The FDA has taken significant precautions to ensure that consumers are
15 not misled by structure function claims (any claim that a product is intended to affect
16 the structure or any function of the body [e.g., *supports heart health*]) made on dietary
17 supplements by requiring such claims to be “truthful and non-misleading.”³⁷

18 63. Structure function claims violate both state and federal law if they are
19 false or misleading in any respect. Because Defendant’s Heart Health Representations
20 (e.g., “Helps Support a Healthy Heart”) are false and misleading structure function
21 claims, they are also unlawful.

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23 ³⁵ Gregory Curfman, *Omega-3 Fatty Acids and Atrial Fibrillation*, 325(11) JAMA
24 1063 (Mar. 16, 2021), <https://doi.org/10.1001/jama.2021.2909> (emphasis added)
25 (finding “there may be a dose-related risk of [atrial fibrillation] with omega-3 fatty
26 acid intake”).

27 ³⁶ Garone, *supra* note 27.

28 ³⁷ 65 Fed. Reg. 1000, *supra* note 11, at 1003.

1 64. Indeed, a JAMA study intended to “evaluate health claims made on the
2 labels of fish oil supplements in the US” found that “most [fish oil supplement] labels
3 use structure/function claims to imply cardiovascular benefit (eg, supports heart
4 health)” and ultimately concluded that “fish oil supplement labels frequently include
5 . . . structure/function claims that imply health benefits across a wide range of organ
6 systems, increasing potential for consumer misinformation.”³⁸

7 65. Here, as demonstrated by the studies cited above, the Heart Health
8 Representations are false and misleading structure/function claims because the
9 Products do not support heart health, and may even harm heart health.

10 66. As the entity responsible for the development, manufacturing,
11 packaging, labeling, advertising, distribution and sale of the Products, Defendant
12 knew or should have known that the Products falsely and deceptively represent that
13 they support heart health.

14 67. Defendant also knew or should have known that Plaintiff and other
15 consumers, in purchasing the Products, would rely on Defendant’s front label Heart
16 Health Representation and Omissions. Nonetheless, Defendant deceptively advertises
17 the Products in order to mislead consumers and gain an advantage over other fish oil
18 supplements that do not use deceptive claims like the Heart Health Representation
19 and Omissions.

20 68. Consumers are willing to pay more for the Products based on the belief
21 that the Products will support their heart health, and will not harm their heart health.
22 Plaintiff and other consumers would have paid significantly less for the Products, or
23 would not have purchased them at all, had they known the truth about them. Thus,
24 through the use of misleading representations, Defendant commands a price that
25 Plaintiff and the Class would not have paid had they been fully informed. Therefore,
26 Plaintiff and other consumers purchasing the Products have suffered injury in fact and
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28 ³⁸ Assadourian, *supra* note 5, at 986, 988.

1 lost money as a result of Defendant’s false and deceptive practices, as described
2 herein.

3 **No Adequate Remedy at Law**

4 69. Plaintiff seeks damages, and in the alternative, restitution. Plaintiff is
5 permitted to seek equitable remedies in the alternative because she has no adequate
6 remedy at law.

7 70. A legal remedy is not adequate if it is not certain as an equitable remedy.
8 To obtain a full refund as damages, Plaintiff must show that the products she received
9 have essentially no market value. In contrast, Plaintiff can seek restitution without
10 making this showing. This is because Plaintiff purchased products that she would not
11 otherwise have purchased, but for Defendant’s misrepresentations and omissions.
12 Obtaining a full refund at law is less certain than obtaining a full refund in equity.

13 71. Finally, the remedies at law available to Plaintiff are not equally prompt
14 or otherwise efficient. The need to schedule a jury trial may result in delay. And a
15 jury will take longer, and be more expensive than a bench trial.

16 **CLASS ACTION ALLEGATIONS**

17 72. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all
18 other applicable laws and rules, individually, and on behalf of all members of the
19 following Classes:

20 **California Class**

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

23 **California Consumer Subclass**

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

27 73. The California Class and California Consumer Subclass are referred to
28 collectively as the “Classes.”

1 74. Excluded from the Classes are the following individuals and/or entities:
2 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
3 former employees, and any entity in which Defendant has a controlling interest; all
4 individuals who make a timely election to be excluded from this proceeding using the
5 correct protocol for opting out; and all judges assigned to hear any aspect of this
6 litigation, as well as their immediate family members.

7 75. Plaintiff reserves the right to modify or amend the definition of the
8 proposed Classes and/or add subclasses before the Court determines whether class
9 certification is appropriate.

10 76. Plaintiff is a member of both Classes.

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

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

- 18 a. whether Defendant's course of conduct alleged herein violates the
19 statutes and other laws that are pled in this Complaint;
- 20 b. whether reasonable consumers would rely upon Defendant's
21 representations and omissions about the Products and reasonably
22 believe the Products' Omega-3s support heart health;
- 23 c. whether Defendant knew or should have known its representations
24 and omissions were false or misleading;
- 25 d. whether Defendant was unjustly enriched by retaining monies from
26 the sale of the Products;
- 27 e. whether certification of each Class is appropriate under Rule 23;

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1 f. whether Plaintiff and the members of each Class are entitled to
2 declaratory, equitable, or injunctive relief, and/or other relief, and the
3 scope of such relief; and

4 g. the amount and nature of the relief to be awarded to Plaintiff and the
5 Classes.

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

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

18 81. **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law
19 and fact identified in this Complaint predominate over any other questions affecting
20 only individual members of the Classes. Class issues fully predominate over any
21 individual issue because no inquiry into individual conduct is necessary; all that is
22 required is a narrow focus on Defendant's misconduct detailed at length in this
23 Complaint.

24 82. **Superiority:** A class action is superior to all other available methods for
25 the fair and efficient adjudication of this litigation because individual litigation of
26 each claim is impractical. It would be unduly burdensome to have individual litigation
27 of hundreds of thousands of individual claims in separate lawsuits, every one of which
28 would present the issues presented in the Complaint/lawsuit. Further, because of the

1 87. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
2 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
3 quantities which they do not have. . . .” By using the Heart Health Representation on
4 the front label of the Products, Defendant has represented and continues to represent
5 that the Products have sponsorship, approval, *characteristics*, uses, and benefits (i.e.,
6 that the Products support heart health) that they do not have. Therefore, Defendant
7 has violated section 1770(a)(5) of the CLRA.

8 88. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or
9 services are of a particular standard, quality, or grade, or that goods are of a particular
10 style or model, if they are of another.” By using the Heart Health Representation on
11 the front label of the Products, Defendant has represented and continues to represent
12 that the Products are of a particular standard, quality, or grade (i.e., that the Products
13 support heart health) that they do not meet. Therefore, Defendant has violated section
14 1770(a)(7) of the CLRA.

15 89. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
16 with intent not to sell them as advertised.” By using the Heart Health Representation
17 on the front label of the Products, and not delivering Products that support heart
18 health, Defendant has advertised the Products with characteristics it intended not to
19 provide to consumers. As such, Defendant has violated section 1770(a)(9) of the
20 CLRA.

21 90. At all relevant times, Defendant has known or reasonably should have
22 known that the Heart Health Representation on the front label of the Products is false
23 and deceptive, and that Plaintiff and other members of the California Consumer
24 Subclass would reasonably and justifiably rely on this representation when purchasing
25 the Products. Nonetheless, Defendant deceptively advertises the Products as such in
26 order to deceive consumers into believing the Products support heart health.

27 91. Moreover, Defendant omitted material facts that it was required to
28 disclose by failing to include the fact that fish oil supplements may increase the risk

1 of atrial fibrillation and harm heart health. Defendant had a duty to disclose such facts
2 because they are contrary to the affirmative Heart Health Representations. This
3 omission is false and misleading, and Defendant knew, or should have known,
4 through the exercise of reasonable care, the Heart Health Representations and
5 Omissions were false and misleading.

6 92. Plaintiff and members of the California Consumer Subclass have
7 justifiably relied on Defendant's misleading representations and omissions when
8 purchasing the Products. Moreover, based on the materiality of Defendant's
9 misleading and deceptive conduct, reliance may be presumed or inferred for Plaintiff
10 and members of California Consumer Subclass.

11 93. Plaintiff and members of the California Consumer Subclass have
12 suffered and continue to suffer injuries caused by Defendant because they would have
13 paid significantly less for the Products, or would not have purchased them at all, had
14 they known that the Products do not support heart health.

15 94. Under Cal. Civ. Code § 1780(a), Plaintiff and Class members currently
16 seek injunctive relief for Defendant's violations of the CLRA.

17 95. Plaintiff mailed notice to Defendant of its CLRA violations pursuant to
18 Cal. Civ. Code § 1782 on January 5, 2024. Defendant has not agreed to rectify the
19 problems identified herein within 30 days of receipt. Thus, Plaintiff seeks damages
20 pursuant to Cal. Civ. Code § 1780 individually, and on behalf of the members of the
21 Classes.

22 96. Pursuant to Cal. Civ. Code § 1780(d), a declaration of venue is attached
23 to this Complaint.

24 **SECOND CLAIM FOR RELIEF**

25 **Violation of California's False Advertising Law**

26 **California Business & Professions Code § 17500, *et seq***

27 ***(For the California Class)***

28 97. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if

1 fully set forth herein.

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

5 99. The FAL makes it “unlawful for any person to make or disseminate or
6 cause to be made or disseminated before the public . . . in any advertising device . . .
7 or in any other manner or means whatever, including over the Internet, any statement,
8 concerning . . . personal property or services professional or otherwise, or
9 performance or disposition thereof, which is untrue or misleading and which is
10 known, or which by the exercise of reasonable care should be known, to be untrue or
11 misleading.” Cal. Bus. & Prof. Code § 17500.

12 100. Defendant has represented and continues to represent to the public,
13 including Plaintiff and members of the proposed California Class, through its
14 deceptive labeling and advertising, that the Products support heart health. Because
15 Defendant has disseminated misleading information regarding the Products, and
16 Defendant knows, knew, or should have known through the exercise of reasonable
17 care that the representations were and continue to be misleading, Defendant has
18 violated the FAL.

19 101. Moreover, Defendant omitted material facts that it was required to
20 disclose by failing to include the fact that fish oil supplements may increase the risk
21 of atrial fibrillation and harm heart health. Defendant had a duty to disclose such facts
22 because they are contrary to the affirmative Heart Health Representations. Defendant
23 knows, knew, or should have known through the exercise of reasonable care that the
24 omissions were and continue to be misleading.

25 102. As a result of Defendant’s false advertising, Defendant has and continues
26 to unlawfully obtain money from Plaintiff and members of the California Class.
27 Plaintiff therefore requests that the Court cause Defendant to restore this fraudulently
28 obtained money to Plaintiff and members of the proposed California Class, to

1 disgorge the profits Defendant made on these transactions, and to enjoin Defendant
2 from violating the FAL or violating it in the same fashion in the future as discussed
3 herein. Otherwise, Plaintiff and members of the proposed California Class may be
4 irreparably harmed and/or denied an effective and complete remedy.

5 **THIRD CLAIM FOR RELIEF**

6 **Violation of California’s Unfair Competition Law (“UCL”),**
7 **California Business & Professions Code § 17200, *et seq.***
8 ***(For the California Class)***

9 103. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
10 fully set forth herein.

11 104. Plaintiff brings this claim individually and on behalf of the members of
12 the proposed California Class against Defendant.

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

16 106. Under the UCL, a business act or practice is “unlawful” if it violates any
17 established state or federal law. Defendant’s false and misleading advertising of the
18 Products was and continues to be “unlawful” because it violates the CLRA the FAL.
19 As a result of Defendant’s unlawful business acts and practices, Defendant has
20 unlawfully obtained money from Plaintiff and members of the proposed California
21 Class.

22 107. Under the UCL, a business act or practice is “unfair” if its conduct is
23 substantially injurious to consumers, offends public policy, and is immoral, unethical,
24 oppressive, and unscrupulous, as the benefits for committing such acts or practices
25 are outweighed by the gravity of the harm to the alleged victims. Defendant’s conduct
26 was and continues to be of no benefit to purchasers of the Products, as it is misleading,
27 unfair, unlawful, and is injurious to consumers who rely on the Products’ labeling.
28 Deceiving consumers into believing they will receive a Product(s) that supports heart

1 health, even though they do not. Therefore, Defendant’s conduct was and continues
2 to be “unfair.” As a result of Defendant’s unfair business acts and practices, Defendant
3 has and continues to unfairly obtain money from Plaintiff and members of the
4 proposed California Class.

5 108. Under the UCL, a business act or practice is “fraudulent” if it actually
6 deceives or is likely to deceive members of the consuming public. Defendant’s
7 conduct here was and continues to be fraudulent because it has the effect of deceiving
8 consumers into believing the Products support heart health. Because Defendant
9 misled Plaintiff and members of the California Class, Defendant’s conduct was
10 “fraudulent.” As a result of Defendant’s fraudulent business acts and practices,
11 Defendant has and continues to fraudulently obtain money from Plaintiff and
12 members of the California Class.

13 109. Plaintiff requests that the Court cause Defendant to restore this
14 unlawfully, unfairly, and fraudulently obtained money to her, and members of the
15 proposed California Class, to disgorge the profits Defendant made on these
16 transactions, and to enjoin Defendant from violating the UCL or violating it in the
17 same fashion in the future as discussed herein. Otherwise, Plaintiff and members of
18 the proposed California Class may be irreparably harmed and/or denied an effective
19 and complete remedy.

20 **FOURTH CLAIM FOR RELIEF**

21 **Breach of Express Warranty**

22 **Cal. Com. Code § 2313**

23 ***(For the California Class)***

24 110. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
25 fully set forth herein.

26 111. Plaintiff brings this claim individually and on behalf of the members of
27 the California Class against Defendant.

28 112. California’s express warranty statutes provide that “(a) Any affirmation

1 of fact or promise made by the seller to the buyer which relates to the goods and
2 becomes part of the basis of the bargain creates an express warranty that the goods
3 shall conform to the affirmation or promise,” and “(b) Any description of the goods
4 which is made part of the basis of the bargain creates an express warranty that the
5 goods shall conform to the description.” Cal. Com. Code § 2313.

6 113. Defendant has expressly warranted on the Products’ front label that they
7 support heart health. However, as alleged herein, these express representations are
8 false and misleading, as the Products do not support heart health.

9 114. Defendant’s representations about heart health on the Products’ front
10 labels are: (a) affirmations of fact or promises made by Defendant to consumers that
11 the Products support heart health; (b) became part of the basis of the bargain to
12 purchase the Products when Plaintiff and other consumers relied on the
13 representations; and (c) created an express warranty that the Products would conform
14 to the affirmations of fact or promises. In the alternative, the representations about the
15 Products are descriptions of goods which were made as part of the basis of the bargain
16 to purchase the Products, and which created an express warranty that the Products
17 would conform to the product descriptions.

18 115. Plaintiff and members of the California Class reasonably and justifiably
19 relied on the foregoing express warranties, believing the Products support heart
20 health.

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

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

1 recover all damages afforded under the law.

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

4 **FIFTH CLAIM FOR RELIEF**

5 **Breach of Implied Warranty**

6 ***(For the California Class)***

7 119. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
8 fully set forth herein.

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

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

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

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

21 124. By advertising the Products with representations about heart health on
22 the Products’ front label, Defendant made an implied promise that the Products
23 support heart health. However, the Products have not “conformed to the promises. . .
24 made on the container or label” because the Products do not support heart health.
25 Plaintiff, as well as other California consumers, did not receive the goods as impliedly
26 warranted by Defendant to be merchantable. Therefore, the Products are not
27 merchantable under California law and Defendant has breached its implied warranty
28 of merchantability in regard to the Products.

1 125. If Plaintiff and members of the California Class had known that the
2 Products' Heart Health Representation is false and misleading, they would not have
3 been willing to pay the premium price associated with them. Therefore, as a direct
4 and/or indirect result of Defendant's breach, Plaintiff and members of the California
5 Class have suffered injury and deserve to recover all damages afforded under the law.

6 126. On January 5, 2024, the undersigned counsel notified Defendant of its
7 breach of warranty by way of a notice letter outlining the foregoing allegation.

8 **SIXTH CLAIM FOR RELIEF**

9 **Quasi Contract/Unjust Enrichment/Restitution**

10 ***(for the California Class)***

11 127. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
12 fully set forth herein.

13 128. Plaintiff brings this claim individually and on behalf of the members of
14 the proposed California Class against Defendant.

15 129. As alleged herein, Defendant has intentionally and recklessly made
16 misleading representations to Plaintiff and members of the California Class to induce
17 them to purchase the Products. Plaintiff and members of the California Class have
18 reasonably relied on the misleading representations and have not received all of the
19 benefits and promises (that the Products would support heart health) made by
20 Defendant through the Products' representations. Plaintiff and members of the
21 proposed California Class have therefore been induced by Defendant's misleading
22 and deceptive representations about the Products, and paid more money to Defendant
23 for the Products than they otherwise would and/or should have paid.

24 130. Plaintiff and members of the proposed Classes have conferred a benefit
25 upon Defendant as Defendant has retained monies paid to them by Plaintiff and
26 members of the proposed Classes.

27 131. The monies received were obtained under circumstances that were at the
28 expense of Plaintiff and members of the proposed Classes—i.e., Plaintiff and

1 members of the proposed Classes did not receive the full value of the benefit conferred
2 upon Defendant. Therefore, it is inequitable and unjust for Defendant to retain the
3 profit, benefit, or compensation conferred upon them.

4 132. As a direct and proximate result of Defendant’s unjust enrichment,
5 Plaintiff and members of the proposed Classes are entitled to restitution,
6 disgorgement, and/or the imposition of a constructive trust upon all profits, benefits,
7 and other compensation obtained by Defendant from its deceptive, misleading, and
8 unlawful conduct as alleged herein.

9 **SEVENTH CLAIM FOR RELIEF**

10 **Negligent Misrepresentation**

11 ***(For the California Class)***

12 133. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
13 fully set forth herein.

14 134. Plaintiff brings this claim individually and on behalf of the members of
15 the California Class against Defendant.

16 135. Defendant had a duty to disclose to Plaintiff and Class Members correct
17 information as to the quality and characteristics of the Products because Defendant
18 was in a superior position than Plaintiff and Class Members such that reliance by
19 Plaintiff and Class Members was justified. Defendant possessed the skills and
20 expertise to know the type of information that would influence a consumer’s
21 purchasing decision.

22 136. At all relevant times, Defendant negligently or carelessly
23 misrepresented, omitted, and concealed from consumers material facts regarding the
24 quality and characteristics of the Products, including representing that the Products
25 supports heart health and would not harm heart health when that was not the case.

26 137. Defendant made such false and misleading statements and omissions
27 with the intent to induce Plaintiff and Class Members to purchase the Products at a
28 premium price.

1 138. Defendant was careless in ascertaining the truth of its representations in
2 that it knew or should have known that Plaintiff and Class Members would pay a
3 premium based on the Heart Health Representations and Omissions.

4 139. Plaintiff and the Class Members were unaware of the falsity of
5 Defendant's misrepresentations and omissions and, as a result, justifiably relied on
6 them when making the decision to purchase the Products.

7 140. Plaintiff and the Class Members would not have purchased the Products
8 or paid as much for the Product if the true facts had been known.

9 **EIGHTH CLAIM FOR RELIEF**

10 **Intentional Misrepresentation/Fraud**

11 ***(For the California Class)***

12 141. Plaintiff repeats the allegations contained in paragraphs 1-83 above as if
13 fully set forth herein.

14 142. Plaintiff brings this claim individually and on behalf of the members of
15 the California Class against Defendant.

16 143. Defendant had a duty to disclose to Plaintiff and Class Members correct
17 information as to the quality and characteristics of the Products because Defendant
18 was in a superior position than Plaintiff and Class Members such that reliance by
19 Plaintiff and Class Members was justified. Defendant possessed the skills and
20 expertise to know the type of information that would influence a consumer's
21 purchasing decision.

22 144. At all relevant times, Defendant intentionally misrepresented, omitted,
23 and concealed from consumers material facts regarding the quality and characteristics
24 of the Products, including representing that the Products support heart health and will
25 not harm heart health. These representations and omissions were material and were
26 uniformly made.

27 145. As described above, Defendant's representations and omissions were
28 false and misleading, as the Products do not support heart health, and can harm heart

1 health. Defendant made these misrepresentations with actual knowledge of their
2 falsity and/or made them with fraudulent intent.

3 146. Defendant made such false and misleading statements and omissions
4 with the intent to induce Plaintiff and Class Members to purchase the Products at a
5 premium price, deprive Plaintiff and Class Members of property or otherwise causing
6 injury, and thus, Defendant has committed fraud.

7 147. Defendant's deceptive or fraudulent intent is evidenced by motive and
8 opportunity. Defendant knew that consumers value products that support heart health.
9 For that reason, Defendant labeled and advertised its Products with the Heart Health
10 Representations and Omissions to gain a competitive edge and to induce Plaintiff and
11 Class Members to purchase its Products at a premium price. As a leader in the
12 supplement industry, Defendant is in a unique position to know that omega-3s do not
13 support, and can harm, heart health, and thus Defendant knew that the representations
14 and omissions were false and misleading when it made them.

15 148. Plaintiff and the Class Members were unaware of the falsity in
16 Defendant's misrepresentations and omissions and, as a result, justifiably relied on
17 them when making the decision to purchase the Product.

18 149. As a proximate result of Defendant's intentional misrepresentations,
19 Plaintiff and the Class were induced to purchase the Products at a premium.

20 150. Plaintiff and the Class Members would not have purchased the Products
21 or paid as much for the Products if the true facts had been known.

22 151. As a result of their reliance, Plaintiff and Class Members were injured in
23 an amount to be proven at trial, including, but not limited to, their lost benefit of the
24 bargain and overpayment at the time of purchase.

25 152. Defendant's conduct was knowing, intentional, with malice,
26 demonstrated a complete lack of care, and was in reckless disregard for the rights of
27 Plaintiff and Class Members. Plaintiff and Class Members are therefore entitled to an
28 award of punitive damages.

1 **PRAYER FOR RELIEF**

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

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

7 B. A declaration that Defendant’s actions, as described herein, violate the
8 claims described herein;

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

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

17 E. An award of all economic, monetary, actual, consequential, and
18 compensatory damages caused by Defendant’s conduct;

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

20 G. An award to Plaintiff and her counsel of reasonable expenses and
21 attorneys’ fees;

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

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

25 **DEMAND FOR JURY TRIAL**

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

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DATED: November 18, 2024

TREEHOUSE LAW, LLP

By: /s/ Ruhandy Glezakos

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