

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

LAUREN WALKER, individually, and on
behalf of herself and those similarly situated,

Plaintiff,

v.

KETTLE AND FIRE INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Lauren Walker (“Plaintiff”) by and through her counsel, brings this class action against Defendant Kettle and Fire Inc. (“Kettle & Fire” or “Defendant”) to seek redress for its unlawful and deceptive practices in labeling and marketing the protein content in its consumer food products.

2. Consumers are increasingly health conscious and, as a result, many consumers seek foods high in protein, which provides a variety of known health benefits including but not limited to, building and repairing tissue, blood sugar and muscle mass maintenance, energy, and overall positive health impacts.

3. Defendant knows consumers are mindful of the number of grams of protein they consume, and thus, protein content is a material driver in the purchase of products promoting inclusion of protein. Thus, Defendant prominently labels its bone broth products including: Reduced Sodium Classic Chicken Bone Broth, Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth (hereinafter, the “Product(s)”)¹ with the specific

¹ Subject to further discovery, Plaintiff reserves the right to amend the Products at issue to

amount of protein per serving on the Products' front labels and/or in the Nutrition Fact Panel ("NFP"). Consumers, in turn, reasonably expect that each Product will actually provide the amount and percentage daily value of protein per serving stated on the Product package. However, as detailed herein, Defendant grossly overstates the bioavailable protein content in each of the Products by calculating the percent daily value of protein ("%DV") using a less accurate method that fails to account for protein quality, despite the fact that federal law explicitly bars it from doing so.

4. The Food and Drug Administration ("FDA") regulations require that the number of grams of protein in a serving, expressed to the nearest gram, be included on a food product's NFP.² The protein content in a food is "calculated on the basis of the factor 6.25 times the nitrogen content of the food as determined by the appropriate method of analysis as given in the 'Official Methods of Analysis of the AOAC International,' except when official AOAC procedures described... require a specific factor other than 6.25."³ This method is also known as the Kjeldahl Nitrogen testing method. Accordingly, food producers, such as Defendant, must ensure that their products actually contain the amount of protein listed on their labels.

5. Additionally, the FDA prohibits front label claims on protein content, unless manufacturers also provide additional information in the NFP about how much of the recommended daily value for protein that the product will actually provide.⁴ That is because the FDA recognizes that (1) when manufacturers tout an amount of protein on the front label, that

include any other Kettle & Fire product that claims a specific amount of protein on its label that is inaccurate.

² 21 C.F.R. § 101.9(c)(7).

³ *Id.*

⁴ 21 C.F.R. §§ 101.9(c)(7)(i), 101.13(b), (n).

amount is likely to be material to consumer purchasing decisions, regardless of whether reasonable consumers know the total amount of protein they need to ingest on a daily basis, and (2) not all proteins are the same in their ability to meet human nutritional requirements, so a simple statement about the number of grams on the front label does not actually inform consumers about how much usable protein they are actually receiving.

6. The FDA required method for measuring protein quality is called the “Protein Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS. It combines a protein source’s amino acid profile and percent digestibility into a factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows how much protein in a product is actually available to support human nutritional requirements. The regulations term this the “corrected amount of protein per serving.”⁵ For example, a PDCAAS of 0.5 means that only half of the protein in that product is actually available to support human protein needs. Thus, if a product with a PDCAAS of 0.5 contained 10 grams total protein per serving, the corrected amount of protein would be only 5 grams per serving.

7. The FDA prohibits manufacturers from advertising or promoting their products with a protein claim unless they have satisfied two requirements. First, the manufacturer must calculate the “corrected amount of protein per serving” based on the quality of the product’s protein using the PDCAAS method. Second, the manufacturer must use the PDCAAS computation to provide “a statement of the corrected amount of protein per serving” in the NFP “expressed as” a percent daily value (“%DV”) and placed immediately adjacent to the statement of protein quantity.⁶ The %DV is the corrected amount of protein per serving divided by the daily reference

⁵ 21 C.F.R. § 101.9(c)(7)(ii).

⁶ 21 C.F.R. §§ 101.9(c)(7)(i)–(iii).

value for protein of 50 grams.⁷

8. Based on Kjeldahl Nitrogen testing, it is clear Defendant misrepresents the total protein content of its Reduced Sodium Classic Chicken Bone Broth, Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth products. Plaintiff's testing of these Products shows that they contain less than 20 percent of what is reported on the products' NFPs (as well as on the front of the product for the Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth products).

9. Defendant further provides a %DV on the NFP for its Reduced Sodium Classic Chicken Bone Broth, Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth. However, the %DV provided does not accurately represent the percent daily value of useful protein actually contained within the products.

10. As detailed herein, testing shows that the true %DV in these products is less than what is claimed. When tested using the PDCAAS methodology, it is clear that these products do not deliver the %DV advertised. Put simply, Defendant failed to provide a statement of the corrected amount of protein per serving calculated according to the PDCAAS methodology, expressed as a %DV, as required under federal regulations.

11. Consumers reasonably expect that Defendant's Products will actually provide the full amount of protein per serving claimed on the Products' labels and stated in the protein quantity section of the NFPs. But Defendant's Products do not do so. Had Defendant included a statement of the accurate amount of protein in grams, as well as the correct amount of protein per serving in

⁷ *Id.*; For example, if a product contains 10 grams total protein per serving with a PDCAAS of 0.5, then the corrected amount of protein is 5 grams per serving and the %DV is 10% (5g ÷ 50g). For another example, if a product contains 10 grams total protein per serving with a PDCAAS of 1, and all of the protein in the product was useful in human nutrition, the %DV would be 20% (10g ÷ 50g).

the form of a %DV—as it was required to do under the law—it would have revealed that the Products provided less protein than represented, and that the protein provided is nutritionally 0% of their total protein intake under the PDCAAS method of calculating protein content, because the Products contain markedly low quality proteins. That information is material to reasonable consumers.

12. Defendant’s unlawful and misleading protein claims caused Plaintiff and members of the Class to pay a price premium for the Products.

PARTIES

13. Plaintiff Lauren Walker is an individual domiciled in Brooklyn, New York.

14. Defendant Kettle and Fire Inc. is a corporation existing under the laws of the State of Delaware with its principal place of business in Austin, Texas.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs, and Plaintiff and Defendant are citizens of different states.

16. A significant portion of the injuries, damages and/or harm upon which this action is based occurred or arose out of the activities engaged in by Defendant within, affecting and emanating from, the State of New York. Defendant regularly conducts and/or solicits business in, engages in other persistent courses of conduct in and/or derives substantial revenue from products provided to persons in the State of New York. Defendant engaged, and continues to engage, in substantial and continuous business practices in the State of New York.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the state of New

York, including within this District.

18. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

I. Defendant Misrepresents the Protein in its Products

19. Defendant manufactures, distributes, markets, advertises and sells a variety of bone broth Products. These Products have packaging that predominately, uniformly and consistently states the Products contain a specific amount of protein. However, the Products at issue here do not contain the amount of protein represented on the product packaging.

20. The representations that the Products contain and provide an amount of protein per serving and container were uniformly communicated to Plaintiff and every other person who purchased the Products. Each of the Reduced Sodium Classic Chicken Bone Broth, Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth labels include a label representation regarding the amount of protein and %DV per serving. Additionally, the Classic Chicken Bone Broth, Mushroom Chicken Bone Broth and Turmeric Ginger Bone Broth also advertise the amount of protein per container on the front label.

21. By way of example, the same or substantially similar Product label appeared on each Product during the entirety of the Class Period:

Reduced Sodium Classic Chicken Bone Broth



ORGANIC  **NO PRESERVATIVES**

Kettle & Fire

**REDUCED SODIUM
CLASSIC CHICKEN
BONE BROTH**

50% Less Sodium Than Our Regular Bone Broth

NET WT. 16.9oz (1 LB 0.9oz) 479g



Reduced Sodium Chicken Bone Broth

Nutrition Facts	
Serving size	1 container (479g)
Amount per serving	
Calories	80
	% Daily Value*
Total Fat 0.5g	1%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 310mg	13%
Total Carbohydrate 1g	0%
Dietary Fiber <1g	3%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 17g	8%
Vit D 0mcg 0% • Calcium 50mg 4%	
Iron 0mg 0% • Potas 500mg 10%	

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

17g

Protein

14+ hr

Simmer Time



Non-GMO
Verified



Certified
Gluten Free



Glyphosate
Residue Free



USDA
Organic

Classic Chicken Bone Broth



ORGANIC  **NO PRESERVATIVES**

Kettle & Fire

**CLASSIC CHICKEN
BONE BROTH**

19g PROTEIN PER CONTAINER

See Nutrition Information for Sodium Content

NET WT. 16.9oz (1 LB 0.9oz) 479g



Classic Chicken Bone Broth

Nutrition Facts	
Serving size	1 container (479g)
Amount per serving	
Calories	80
	% Daily Value*
Total Fat 0.5g	1%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 620mg	27%
Total Carbohydrate 1g	0%
Dietary Fiber <1g	3%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 19g	5%
Vit D 0mcg 0% • Calcium 50mg 4%	
Iron 0mg 0% • Potas 500mg 10%	

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

19g

Protein

14+ hr

Simmer Time



Non-GMO
Verified



Certified
Gluten Free

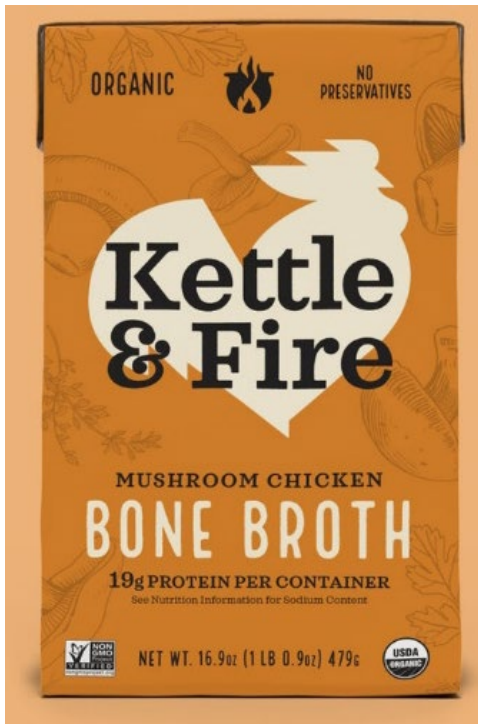


Glyphosate
Residue Free



USDA
Organic

Mushroom Chicken Bone Broth



Mushroom Chicken Bone Broth

Nutrition Facts	
Serving size	1 container (479g)
Amount per serving	
Calories	100
	% Daily Value*
Total Fat 1g	1%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 860mg	37%
Total Carbohydrate 4g	1%
Dietary Fiber 2g	7%
Total Sugars 1g	
Includes 0g Added Sugars	0%
Protein 19g	7%
Vit D 0mcg	0%
Calcium 60mg	4%
Iron 0.3mg	2%
Potas 730mg	15%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

19g Protein

Non-GMO Verified

Glyphosate Residue Free

14+ hr Simmer Time

Certified Gluten Free

USDA Organic

Turmeric Ginger Bone Broth



22. As described in detail herein, Defendant's protein claims, which advertise the Products as containing and providing specific amounts of protein per serving/container, are unlawful and deceptive in that: (1) the Products misrepresent the number of grams of protein contained therein when tested using the appropriate nitrogen testing method; and (2) the Products' labels misrepresent the %DV of protein provided because Defendant fails to calculate the "corrected amount of protein per serving" based on the quality of the Products' protein using the PDCAAS method. Not only did Defendant misrepresent the protein contained in its Products, it did so in a manner that violated the federal Food, Drug & Cosmetic Act ("FDCA"), specifically 21 C.F.R. §§ 101.9(c)(7).

23. Indeed, Plaintiff tested the Products using both the Kjeldahl Nitrogen Test, as well as the PDCAAS method, and found Defendant drastically overstates the total amount of protein and the %DV of protein in the Products. The results of Plaintiff's testing are found below:

Name of Product	Protein on Label	Protein Found in Testing (Kjeldahl)	%DV per Label (FDA: 50g/day)	%DV of Protein Found from Testing (PDCAAS)
Kettle & Fire Low Sodium Chicken Bone Broth	17g	1.62g	8%	0%
Kettle & Fire Classic Chicken Bone Broth	19g	13.08g	5%	0%
Kettle & Fire Mushroom Chicken Bone Broth	19g	12.79g	7%	0%
Kettle & Fire Turmeric Ginger Bone Broth	17g	13.22g	8%	0%

24. Here, each of the Products contained significantly less total protein in grams and contributed 0% to the overall daily value of protein when measured by PDCAAS. This is a significant and material misrepresentation.

25. Defendant's prominent protein label claims deceive and mislead reasonable consumers into believing a serving of the Products will provide the grams of protein represented on the label, and a particular quality of protein, when that is not true. Had Defendant complied with the law, the statement of the total and corrected amount of protein would have revealed to consumers that the Products provide significantly less total protein than claimed, and that Defendant uses low quality proteins in the Products that do not contribute to the %DV protein

needs of that individual. Defendant has been able to charge a price premium for the product as a result of these misrepresentations and omissions.

26. Defendant's failure to comply with § 101.9(c)(7) also makes the label claims unlawful under §§ 101.13(n) and (b). The unlawful protein claims induced consumers to purchase the Products at a premium price. Had Defendant complied with FDCA and related FDA regulations, accurately reporting the protein levels and quality contained therein as a %DV, reasonable consumers would not have purchased them or would have paid less for the Products.

27. Additionally, these representations render the Products adulterated under the FDCA, and therefore they should not (and could not) be legally sold.

II. Consumer Demand for Protein

28. As Defendant is well aware, many American consumers are health conscious and routinely rely upon nutrition information when selecting and purchasing food items. As noted by former FDA Commissioner Margaret Hamburg during an October 2009 media briefing, "[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet."⁸ Indeed, FDA recommends relying on NFPs as the primary tool to monitor the consumption of protein.⁹

29. Protein is found throughout the body—in muscle, bone, skin, hair and virtually every other body part or tissue. The health benefits of protein are well studied and wide ranging. Scientific studies confirm that protein can assist in weight loss, reduce blood pressure, reduce cholesterol and control risk factors for cardiovascular diseases.

⁸ Transcript for FDA's Media Briefing on Front-of-Pack Labeling, October 20, 2009.

⁹ FDA Protein Fact Sheet, https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/assets/InteractiveNFL_Protein_October2021.pdf (last accessed November 21, 2025).

30. Additionally, protein is particularly valued by those who are dieting, athletes, bodybuilders and individuals recovering from injuries. Protein provides the essential amino acids that build and repair muscle tissue. Protein is also a highly satiating nutrient, meaning it helps you feel full for longer. This can reduce hunger and promote weight management. Protein can help regulate blood sugar levels, which is beneficial for people with diabetes or prediabetes. Simply put, protein is the most sought-after macronutrient in food, when compared to carbs and fats. Many consumers build ketogenic (or “keto”) diets which focus on maximizing protein intake.

31. Indeed, the National Academy of Medicine recommends that adults ingest a minimum of 0.8 grams of protein for every kilogram of body weight per day, or just over 7 grams for every 20 pounds of body weight.¹⁰ For a 140-pound person, that means about 50 grams of protein each day. For a 200-pound person, that means about 70 grams of protein each day. Most individuals have difficulty hitting these goals. That is why consumers seek out foods high in protein.

32. This is also likely why Defendant highlights the amount of protein in its Products. Space on a label is limited, and Defendant would not advertise the levels of protein in its Products if protein content if it was not material to consumers. In other words, when it comes to precious label real estate, Defendant knows that words matter to consumers, and Defendant specifically chose to label the Products with the challenged protein content to attract consumers attention and impact their purchasing decisions.

33. But protein quantity by itself does not tell the full story from a nutritional standpoint. A protein’s quality is also critical because humans cannot fully digest or utilize some

¹⁰ National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients)*.

proteins.

34. Proteins are not monolithic—they are chains of amino acids, and different types of amino acids chained together in different ways will make different types of proteins. Further, the makeup of a protein changes the function of that protein in the body, and certain types of proteins are more easily digested and used by humans than others.

35. All of a human's proteins are formed through the process of protein synthesis within their own bodies. That is, although humans consume dietary proteins, they digest those proteins, break them down into their constituent amino acids and then use those amino acids as building blocks to synthesize the human proteins necessary for life, tissue repair and other functions. Of the twenty total amino acids, humans can produce only eleven amino acids on their own. Humans cannot produce—under any circumstances—nine of the amino acids. These nine amino acids are called the “essential amino acids” and they must be supplied through the diet.

36. All nine essential amino acids are necessary for protein synthesis. Lacking even one essential amino acid will prevent protein synthesis from occurring, and the rest of the proteins will degrade into waste. Accordingly, once the body uses up the limiting essential amino acid from a protein source, the remainder of that protein becomes useless to human protein synthesis and has little nutritional value.

37. As the FDA explicitly recognized, “[b]ecause excess amino acids are not stored in the body, humans need a constant supply of good quality dietary proteins to support growth and development.”¹¹ High-quality proteins, therefore, are those that contain all nine essential amino acids because they have a greater effect on protein synthesis and are fully digestible. A dietary protein containing all essential amino acids in the correct proportions is typically called a

¹¹ 58 Fed. Reg. 2079 at 2101

“complete protein.”

38. A protein source’s digestibility also affects the amount of usable protein a person receives from consumption. Plant-based proteins, like wheat and oats, are approximately 85% digestible, meaning 15% of the protein from those sources will simply pass through the body without ever being absorbed. This can greatly affect the bioavailability of protein in food.

39. Because reasonable consumers value protein, they also value high quality and digestible proteins over the alternative. This is why PDCAAS is important to consumers. PDCAAS measures a combination of digestibility and the least prevalent amino acid, correcting for any deficiencies in low quality proteins. And when PDCAAS is represented as a %DV, it provides consumers with a quick and easy way to compare the quality of protein between two competing products.

40. Given the importance of protein to consumers, it is understandable that the FDA has specific regulations to ensure that food manufacturers accurately represent both the total amount and quality of protein in their food products. These regulations inform Plaintiff’s misrepresentation claims.

III. Federal Regulations Governing Food Labeling

41. Federal laws regulate the content of labels on packaged food. The requirements of the FDCA, and its labeling regulations are applicable nationwide to all sales of packaged food products. Additionally, none of the state laws sought to be enforced here impose different requirements on the labeling of packaged food for sale in the United States.

42. The FDCA provides that a food is misbranded if “its labeling is false or misleading in any particular.”¹² This requirement parallels state consumer protection laws, which prohibit false

¹² 21 U.S.C. § 343(a)

and misleading advertising. But, the FDCA's prohibition is also adopted by states in their own parallel food labeling laws, such as the New York State Agriculture and Markets Law § 201 ("Food shall be deemed to be misbranded: 1. if its labeling is false or misleading in any particular....").¹³

43. Through the FDCA, the FDA regulates the nutritional labeling of food, including the requirement to provide information about the level of certain nutrients like protein.¹⁴ More specifically, the nutrition facts label regarding protein must include the protein content, "[a] statement of the number of grams of protein in a serving."¹⁵ Protein content may be calculated on the basis of the factor 6.25 times the nitrogen content of the food as determined by the appropriate method of analysis as given in the "Official Methods of Analysis of the AOAC International." The AOAC adopted the Kjeldahl Nitrogen testing method, which was used in Plaintiff's own testing of the Products, as set out herein. But the FDCA not only requires that food labels contain the correct total amount of protein, but also ensures that other aspects of the protein content of food are accurately represented.

44. The FDA specifically provides that food manufacturers must disclose the quality of their protein if they make certain protein claims. According to FDA regulations, "[a] statement of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . shall be given if a protein claim is made for the product"¹⁶ If a manufacturer does not want to provide a statement of the corrected amount of protein per serving in the NFP, then it shall not make any protein claims. Additionally, if a manufacturer does provide

¹³ N.Y. Agric. & Mkts. Law § 201 (McKinney).

¹⁴ See 21 C.F.R. § 101.9(c)(7).

¹⁵ See *id.*

¹⁶ 21 C.F.R. § 101.9(c)(7)(i).

a %DV for protein, it must be calculated as the corrected amount of protein per serving, not just based on the total amount of protein in the product.

45. Further, FDA regulations require the %DV for protein to be calculated using PDCAAS, a method that accounts for both protein quantity and protein quality.¹⁷ The first step is to calculate the “corrected amount of protein per serving” by multiplying protein quantity by the PDCAAS quality value and then dividing that “corrected amount” by 50 grams (the “recommended daily value” for protein) to come up with the %DV.¹⁸

46. Indeed, when promulgating 21 C.F.R. § 101.9(c)(7), the FDA explained in published guidance that “[i]nformation on protein quantity alone can be misleading on foods that are of low protein quality.”¹⁹ It also explained that it was prohibiting manufacturers from making any protein claims at all unless the manufacturer provides a statement of the corrected amount of protein per serving in the NFP based on PDCAAS because “nutrition labeling must allow consumers to readily identify foods with particularly low-quality protein to prevent them from being misled by information on only the amount of protein present.”²⁰

47. Similarly, 21 C.F.R. § 101.13(i)(3), prohibits manufacturers from making a claim on a product’s package about the “amount or percentage of a nutrient,” such as protein, if the statement is “false or misleading in any respect.” If it is, then “it may not be made on the label.”²¹

¹⁷ 21 C.F.R. § 101.9(c)(7)(ii); *see also* Guidance for Industry: A Food Labeling Guide (“FDA Food Labeling Guide”) p. 29, Question N22, U.S. Food & Drug Administration, <https://www.fda.gov/media/81606/download> (last accessed November 20, 2025).

¹⁸ *Id.*

¹⁹ 58 Fed. Reg. 2079 at 2101

²⁰ *Id.* at 2101–2.

²¹ 21 C.F.R. § 101.13(b).

This is true even if the same amount appears in the nutrition facts panel.²²

48. Under the FDCA, the term “false” has its usual meaning of untruthful, while the term “misleading” is a term of art that covers labels that are technically true but are likely to deceive consumers.

IV. Defendant’s Marketing and Labeling of the Products Independently Violates Federal and State Law

49. Defendant’s Products are unlawful, misbranded and violate state and federal law. Defendant both misrepresents the amount of total protein in its Products, as well as the %DV, as required by 21 C.F.R. § 101.9(c)(7). Defendant’s failure to comply with this requirement renders the label protein claims on each Product unlawful *per se* and the Products misbranded pursuant to §§ 101.13(n) and (b), as well as under § 101.9(c)(7), and parallel state law.

50. As noted herein, the total amount of protein in food products is material to consumers. Accordingly, misrepresenting the total amount of protein in the Products by over 20 percent is deceptive and misleading, rendering Defendant’s Product labels literally false. Indeed, Defendant represents the Products contain between 19 and 17 grams of protein, but testing confirms that they may contain as little as 1.62 grams of usable protein.

51. Defendant also fails to provide an accurate %DV of protein on the Products’ labels, misrepresenting the quality of protein contained therein. Consumers have a “limited knowledge and understanding of the amount of [protein] that [is] recommended for daily consumption,”²³ let alone an understanding of the science behind protein quality and how different types of proteins are used and absorbed in the body. The FDA thus requires a statement of the corrected amount of protein per serving in the NFP precisely to ensure that “consumers are not misled by information

²² 21 C.F.R. § 101.13(c).

²³ 56 Fed. Reg. 60421

on only the amount of protein present” in a product with low quality protein.²⁴

52. Indeed, Defendant represents its Products have between 5 and 8 %DV of protein, when testing shows that it should be zero. Defendant’s failure to provide a statement of the corrected amount of protein per serving for the Products renders those labels misleading.

53. Defendant violated 21 U.S.C. § 343(a), and the standards set by FDA regulations, including but not limited to 21 C.F.R. § 101.9(c)(7), which were implemented to prevent the false and misleading conduct described herein. These federal food regulations are also incorporated into several state’s food laws, including in New York.²⁵ These are not just technical violations of food labeling law, but serious misrepresentations that harm both consumers and competition.

54. A reasonable consumer would expect the Products provide what Defendant claims on the Product labels and that the labels would not be contrary to the policies or regulations of FDA and advertised in violation of New York law.

55. For example, reasonable consumers would expect that when Defendant labels its Products with “19g Protein Per Container,” as it claims on the Classic Chicken Bone Broth Product label, for example, the Product would provide 19 grams of protein per serving in a form their bodies could use as protein. However, testing shows that it only provided 13.08 grams of protein per container. Accordingly, Defendant’s Product only provides 69 percent of the total protein advertised and labeled.

56. Additionally, the Classic Chicken Bone Broth Product label represents that the Product provides 5% of a person’s daily value of protein, when accurate PDCAAS testing shows

²⁴ 58 Fed. Reg. 2079 at 2101–02.

²⁵ See N.Y. Agric. & Mkts. Law § 214-b. (McKinney) (“[t]his article and the regulations promulgated thereunder shall be so interpreted and construed, however, as to effectuate its general purpose to enact state legislation uniform with the federal act approved June twenty-fifth, nineteen hundred thirty-eight, and all acts amendatory thereof and supplemental thereto.”).

that it is actually zero. It is plain that Defendant did not use the corrected amount of protein per serving, as required, but calculated the %DV based on all of the 19 grams of protein it falsely represents is in its Product. Because Defendant did not provide an accurate statement of the corrected amount of protein per serving, expressed as a %DV, consumers have no idea that the Products contain nutritionally lower quality protein.

57. As shown in the table above at paragraph 23, similar misrepresentations also appear on Defendant's Reduced Sodium Chicken, Mushroom Chicken and Turmeric Ginger Bone Broth. All of these Products have less total protein in grams, and as %DV of protein, when compared to what is reported on the label. Indeed, each of the Products have zero %DV of protein when tested using PDCAAS.

58. Consumers lack the meaningful ability to test or independently ascertain the truthfulness of Defendant's food labeling claims, especially at the point of sale. They would not know the true amount of protein the Products provide nutritionally merely by looking elsewhere on the Products. Its discovery requires investigation well beyond the grocery store aisle and knowledge of food chemistry beyond that of the average consumer.

59. An average consumer does not have the specialized knowledge necessary to ascertain that a serving of the Products does not provide the number of grams of protein that is represented on the labels. An average consumer also lacks the specialized knowledge necessary to determine the PDCAAS for the Products. The average reasonable consumer has no reason to suspect that Defendant's representations on the Products' labels are misleading. Therefore, consumers have no reason to investigate whether the Products actually do provide the amount of protein per serving that the Products' labels claim. Nor do consumers have a way to prevent their injury. Instead, consumers reasonably rely on Defendant's representations regarding the nutritional

contents of the Products.

60. Additionally, Defendant's actions harm competition. In making false, misleading and deceptive representations, Defendant distinguishes the Products from its competitors' products. By using this branding and marketing strategy, Defendant states that the Products are superior to, better than and more nutritious than other products that do not make such overstated protein claims, correctly represent the total amount of protein contained therein or that properly provide the required statement of the corrected amount of protein in the product as determined by the PDCAAS method and express as a %DV and otherwise do not mislead consumers about the amount of protein their products actually provide.

61. Defendant intends and knows that consumers will and do rely upon food labeling statements in making their purchasing decisions. Label claims and other forms of advertising and marketing drive product sales, particularly if placed prominently on the product packaging, as Defendant does with the claims on the Products' labels regarding specific amounts of protein per serving.

62. Defendant continues to market its Products with the demonstrably false protein claims. Accordingly, consumers continue to be harmed by Defendant's fraudulent business practices. Because consumers are unable to confirm the accuracy of the nutritional labeling on Defendant's Products before purchasing them, they are unable to determine if Defendant's fraudulent business was correct, or if Defendant still misrepresents its Products' protein contents.

63. Defendant intended for Plaintiff and the Class Members to be deceived or misled. Defendant's deceptive and misleading practices proximately caused harm to the Plaintiff and the Class.

64. Because consumers pay a premium for products that provide more protein, by

labeling the Products as containing more grams and %DV of protein per serving than they actually provide, Defendant is able to both increase its sales and retain more profits.

PLAINTIFF'S EXPERIENCE

65. Plaintiff Lauren Walker purchased Kettle & Fire's Chicken Bone Broth multiple times from Thrivemarket.com in the State of New York from Winter 2022 to May 2025. Plaintiff Walker purchased Defendant's Chicken Bone Broth on at least 15 occasions for approximately \$15.00 per unit.

66. Plaintiff Walker made each of her purchases after reading and relying on Defendant's Product labels that promised the Products provided a specific amount of protein per serving. She believed the truth of each representation, *i.e.*, that the Products would actually provide the specific amount of protein claimed on the labels in a form human bodies could utilize. Had Defendant complied with the law and not made the protein claims on the Products' labels, she would not have been drawn to the Products and would not have purchased them. At a minimum, Plaintiff Walker would have paid less for each Product.

67. Moreover, had Defendant followed FDA regulations and adequately disclosed the corrected amount of protein per serving for each Product expressed as a %DV, Plaintiff Walker would not have purchased the Products or would have, at minimum, paid less for them.

68. Plaintiff Walker checks the NFP before purchasing products for the first time, and she uses that information as a basis of comparison between similar products. She looked at and read the NFP on the Products before purchasing them for the first time. She especially looks at the protein content on the NFP. Manufacturers do not always disclose a %DV for protein, but when they do, she prefers a product that provides more of the recommended daily amount of protein (*i.e.*, the one with a higher %DV). When a manufacturer does not provide a %DV for protein, she

can only go off of the stated grams of protein, and she reasonably assumes that all of those disclosed grams are in a form her body can use as protein.

69. Plaintiff Walker continues to desire to purchase products that contain protein, including those marketed and sold by Defendant. Plaintiff Walker would like to purchase products that provide, for example, 19 grams of usable protein per serving if they are correctly advertised as containing that amount. If the Products were reformulated to provide, in a usable form, the grams of protein that are represented on the labels, or the labels were reformulated to provide non-misleading information, Plaintiff Walker would likely purchase them again in the future for a fair price based on accurate labels and marketing.

70. Plaintiff Walker and members of the Class were economically damaged by their purchases of the Products because the advertising for the Products was, and remains, untrue and/or misleading under state law and the Products are misbranded; therefore, the Products are worth less than what Plaintiff Walker and members of the Class paid for them and/or Plaintiff Walker and members of the Class did not receive what they reasonably intended to receive.

TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS

71. For years Defendant had actual knowledge that the Products do not contain the amount of protein as listed on the Products' labels.

72. Defendant has a duty to accurately disclose the amount of protein in its Products. Yet despite its duty and knowledge, Defendant misrepresented that fact. Indeed, FDA regulations require that Defendant test and/or properly calculate the protein contents in its Products using specific methodology. Defendant must test and/or properly calculate protein contents of its Products and was aware of the falsity of its labels or failed to conduct the required testing, but labeled its Products with inflated levels of protein, knowing that it had no basis to do so.

73. Defendant made, and continues to make, affirmative misrepresentations to consumers to promote the sale of the Products, including that the Products contain certain amounts of protein.

74. Defendant misrepresented material facts that are important to Plaintiff and Class Members in deciding whether to purchase the Products. Defendant's misrepresentations were knowing, and it intended to, and did, deceive reasonable consumers, including Plaintiff and Class Members.

75. As a result, Plaintiff and Class Members reasonably relied upon Defendant's affirmative misrepresentations of these material facts and suffered injury as a proximate result of that justifiable reliance.

76. The amount of protein in the formulation, design and/or manufacture of the Products was not reasonably detectable to Plaintiff and Class Members.

77. At all times, Defendant actively and intentionally misrepresented the protein content in its Products and failed to inform Plaintiff and Class Members of the actual amount they contain. Plaintiff's and Class Members' lack of awareness was thus not attributable to a lack of diligence on their part.

78. The statements, words and acts by Defendant were made for the purpose of misrepresenting the truth that the Products do not contain the amount of protein as listed on the Products' labels.

79. Defendant misrepresented the accurate amount of protein in the Products for the purpose of delaying Plaintiff and Class Members from filing a complaint on their causes of action.

80. Due to Defendant's active misrepresentation to Plaintiff and Class Members of the true amount of protein contained in its Products, any and all applicable statutes of limitations that

may otherwise be applicable to the allegations are tolled. Moreover, Defendant is estopped from relying on any statute of limitations in light of its active misrepresentation regarding the protein content in its Products.

81. Furthermore, the causes of action alleged herein did not occur until Plaintiff and Class Members discovered the Products indeed did not contain the amount of protein listed on the Products' labels. Plaintiff and Class Members had no realistic ability to discern that the Products did not possess the alleged protein content until they learned the Products do not actually contain the represented amount. In either event, Plaintiff and Class Members were hampered in their ability to discover their causes of action because of Defendant's active misrepresentation regarding the true nature of its Products.

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

82. Although Defendant is in the best position to know what content it placed on its Product packaging, on its website(s) and on the websites of retailers of the Products during the relevant timeframe, and the knowledge it had regarding the protein content in the Products, to the extent necessary, Plaintiff satisfies the requirements of Rule 9(b) by alleging the following facts with particularity:

83. **WHO:** Defendant made material misrepresentations of fact through its Products' packaging regarding the amount of protein in the Products.

84. **WHAT:** Defendant's conduct was, and continues to be, fraudulent because it misrepresented the amount of protein in the Products, a fact that Defendant knew, or should have known, to be false, but nonetheless marketed, and continues to market, the Products as containing a specific amount of protein without disclosing the quality of protein or adjusting the Products' protein content in the NFP. Thus, Defendant's conduct deceived Plaintiff and Class Members into

believing that the Products contained more protein than the amount represented on the Products' labels. Defendant knew, or should have known, this information is material to reasonable consumers—including Plaintiff and Class Members—in making their purchasing decisions, yet it continued to pervasively market and label its Products as containing more protein than the Products actually contained.

85. **WHEN:** Defendant made material misrepresentations during the putative class periods and at the time Plaintiff and Class Members purchased the Products, prior to and at the time Plaintiff and Class Members made claims after realizing the Products did not contain the represented amount of protein, and continuously throughout the applicable class periods.

86. **WHERE:** Defendant's marketing message was uniform and pervasive, carried through material misrepresentations on the Products' labeling and packaging, its website(s) and the websites of retailers of the Products.

87. **HOW:** Defendant made material misrepresentations of material facts regarding the Products, including, but not limited to, the amount of protein in the Products.

88. **WHY:** Defendant made the material misrepresentations detailed herein for the express purpose of inducing Plaintiff, Class Members, and all reasonable consumers to purchase and/or pay a premium price for the Products, the effect of which was Defendant profited by selling the Products to many thousands of consumers.

89. **INJURY:** Plaintiff and Class Members purchased, paid a premium, or otherwise paid more for the Products when they otherwise would not have absent Defendant's misrepresentations.

CLASS ALLEGATIONS

90. Plaintiff Walker brings this action individually and as a representative of all those

similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3), on behalf of herself and the members of the following classes:²⁶

- (a) **Nationwide Class:** During the fullest period allowed by law, qll person who purchased Defendant's Products for personal use within the United States ; and
- (b) **New York Class:** During the fullest period allowed by law, all person who purchased Defendant's Products for personal use within the State of New York. .

91. Excluded from these class definitions are: (1) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge's staff or immediate family; and (3) Class Counsel. Plaintiff reserves the right to amend the Class definition, as necessary.

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

93. **Numerosity:** Plaintiff does not know the exact size of the Class but estimates that it is composed of more than 100 persons. The persons in the Class are so numerous that the joinder of all such persons is impracticable and the disposition of its claims in a class action rather than in individual actions will benefit the parties and the courts.

94. **Common Questions Predominate:** This action involves common questions of law and fact to the potential Class because each Class Member's claim derives from the deceptive, unlawful, and/or unfair statements and omissions that led consumers to believe that the Products

²⁶ Unless otherwise specified, all references in this Complaint to "Classes" or the "Class" refer collectively to the Nationwide Class and New York Class.

contained the amount of protein as represented on the Product labels. The common questions of law and fact predominate over individual questions, as proof of a common or single set of facts will establish the right of each member of the Class to recover. The questions of law and fact common to the Classes are:

- a. Whether the marketing, advertising, packaging, labeling and other promotional materials for the Products are misleading;
- b. Whether Defendant's actions violate the consumer protection laws invoked herein;
- c. Whether labeling the Products with a protein claim causes the Products to command a price premium in the market;
- d. Whether Defendant's failure to provide a statement of the corrected amount of protein per serving in the Products, despite prominent front label protein claims, was likely to deceive reasonable consumers;
- e. Whether Defendant engaged in the challenged behavior knowingly, recklessly or negligently;
- f. The profits and revenues Defendant earned as a result of the conduct;
- g. Whether Class Members are entitled to restitution, injunctive and other equitable relief and, if so, what is the nature (and amount) of such relief; and
- h. Whether Class Members are entitled to payment of actual, incidental, consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the nature of such relief.

95. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, all such claims arise out of the same wrongful course of conduct engaged in by Defendant in violation of law as complained of herein. Further, the damages

of each member of the Class were caused directly by Defendant's wrongful conduct in violation of the law as alleged herein.

96. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the interests of all Class Members because it is in Plaintiff's best interests to prosecute the claims alleged herein to obtain full compensation due to Plaintiff for the unfair and illegal conduct of which Plaintiff complains. Plaintiff also has no interests that conflict with, or are antagonistic to, the interests of the Class. Plaintiff retained highly competent and experienced class action attorneys to represent Plaintiff and the interests of the Class. By prevailing on her own claims, Plaintiff will establish Defendant's liability to all members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to litigate this class action adequately and vigorously. Plaintiff and counsel are aware of their fiduciary responsibilities to the Class and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

97. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met. Defendant will continue to commit the unlawful practices alleged herein and Class Members will remain at an unreasonable and serious risk of repeated harm. Defendant acted, or refused to act, on grounds that apply generally to the Class, such that final injunctive relief and corresponding declaratory relief is appropriate with respect to the Class as a whole.

98. **Superiority:** There is no plain, speedy or adequate remedy other than by maintenance of this class action. Individual actions by members of the Class seeking individual remedies will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class Members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated

persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the Class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

99. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

100. Plaintiff does not plead, and hereby disclaims, causes of action under the FDCA and regulations promulgated thereunder by the FDA. Plaintiff relies on the FDCA and FDA regulations only to the extent such laws and regulations are separately enacted as state law or regulation or provide a predicate basis of liability under the state and common laws cited in the following causes of action:

COUNT I

VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW

NY General Business Law §§ 349, *et seq.*

(On behalf of the Plaintiff, individually and on behalf of the New York Class)

101. Plaintiff, individually, and on behalf of the New York Class, re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

102. The New York General Business Law (“GBL”) § 349, prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state” GBL § 349(a).

103. The practices alleged herein—namely, deceiving customers into believing that the Products contain the amount of protein listed on the Product’s label—are unfair, deceptive and misleading in violation of GBL § 349.

104. The foregoing deceptive acts and practices were directed at Plaintiff and other members of the Class.

105. Defendant’s misrepresentations, including its prominent labeling on the Products regarding the amount of protein the Product’s contain, are material to a reasonable consumer. A reasonable consumer attaches importance to such representations and is induced to act thereon in making purchasing decisions.

106. Plaintiff and members of the Class were injured as a direct and proximate result of Defendant’s unlawful acts as they would have paid less for Defendant’s Products but for Defendant’s material misrepresentations regarding the amount of protein in the Product, as described in this Complaint.

107. As a result of Defendant’s unlawful actions, Plaintiff and members of the Class seek to enjoin Defendant’s deceptive and unlawful acts and practices described herein; to recover the greater of their actual damages or fifty dollars (\$50.00) per violation; and to recover treble damages, reasonable attorneys’ fees, and all other remedies this Court deems proper.

COUNT II

VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW

NY General Business Law §§ 350, *et seq.*

(On behalf of the Plaintiff, individually, and on behalf of the New York Class)

108. Plaintiff, individually, and on behalf of the New York Class, re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

109. GBL § 350 provides in relevant part: “False advertising in the conduct of any business, trade or commerce . . . in this state is hereby declared unlawful.”

110. In turn, GBL § 350-a defines false advertising as:

advertising, including labeling, of a commodity...if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity...to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

111. Defendant’s representations regarding the amount of protein in the Products listed on the Product’s label, are untrue and materially misleading and deceive consumers into believing the Products contain an amount of protein that is substantially higher than the Products actually possess, as detailed herein.

112. Defendant’s misrepresentations regarding the amount of protein in the Products are material to a reasonable consumer. A reasonable consumer attaches importance to such representations and is induced to act thereon in making purchase decisions.

113. Plaintiff and the Class Members were induced to purchase the Products by Defendant’s misrepresentations on the Product’s labels.

114. Plaintiff and members of the Class were injured as a direct and proximate result of Defendant’s unlawful acts as they would have paid less for the Products but for Defendant’s material misrepresentations regarding the their protein amount, as described in this Complaint.

115. As a result of Defendant’s unlawful actions, Plaintiff and members of the Class seek to enjoin Defendant’s misleading and unlawful acts and practices described herein; to recover the greater of their actual damages or five hundred dollars (\$500.00) per violation; and to recover treble damages, reasonable attorneys’ fees, and all other remedies this Court deems proper.

COUNT III

BREACH OF EXPRESS WARRANTY

Under New York Common Law

(On behalf of the Plaintiff, individually, and on behalf of the New York Class)

116. Plaintiff, individually, and on behalf of the New York Class, re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

117. Defendant marketed, sold and/or distributed the Products, and Plaintiff and the Class Members purchased the Products.

118. Defendant provided Plaintiff and other members of the New York Class with written express warranties and representations by representing the amount of protein on the Products' labels.

119. Defendant made these express warranties regarding the Products' quality and ingredients in writing through the Products' packaging and labels. These express warranties became part of the basis of the bargain that Plaintiff and the Class entered into upon purchasing the Products.

120. Defendant's advertisements, warranties and representations were made in connection with the sale of the Products to Plaintiff and the Class. Plaintiff and the Class relied on Defendant's advertisements, warranties and representations regarding the Products in deciding whether to purchase the Products.

121. Defendant breached these warranties by providing Products that contain a substantially lower total protein and %DV of protein than warranted. Defendant was on notice of this breach as it was aware of the inaccurate %DV of protein in the Products.

122. This breach resulted in damages to Plaintiff and the other members of the New

York Class who bought the Products but did not receive the goods as warranted.

123. As a proximate result of Defendant's breach of warranties, Plaintiff and the other New York Class Members suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendant promised in its Product promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on Products that had less value than warranted or Products that they would not have purchased and used had they known the true facts about them. In addition, Plaintiff and Class Members paid a premium for Products that did not conform to the Defendant's warranties.

COUNT IV

UNJUST ENRICHMENT

(On behalf of the Plaintiff, individually, and on behalf of the Nationwide Class and, in the alternative, the New York Class)

124. Plaintiff, individually, and on behalf of the Nationwide Class, and in the alternative the New York Class, re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

125. At all times relevant hereto, Defendant deceptively marketed, advertised and sold merchandise to Plaintiff and the Classes.

126. Plaintiff and the Classes conferred upon Defendant non-gratuitous payments for the Products that they would not have if not for Defendant's deceptive advertising and marketing. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Classes, with full knowledge and awareness that, as a result of Defendant's deception, Plaintiff and the Classes were not receiving a product of the quality, nature, fitness or value that had been

represented by Defendant and reasonable consumers would have expected.

127. Defendant was unjustly enriched in retaining the revenues derived from purchases of merchandise by Plaintiff and the Classes, which retention under these circumstances is unjust and inequitable because Defendant falsely represented that the Products contained specific amounts of protein per serving, while failing to disclose that the Products actually provided less protein than represented, which caused injuries to Plaintiff and the Classes because they paid a price premium due to the misleading advertising and markings on the Products.

128. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff and the Classes under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution and non-restitutionary disgorgement of profits to Plaintiff and the Class Members for its unjust enrichment, as ordered by the Court. Plaintiff, and those similarly situated, have no adequate remedy at law to obtain this restitution.

129. Plaintiff, therefore, seeks an order requiring Defendant to make restitution and non-restitutionary disgorgement of profits to Plaintiff and other members of the Class.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of other members of the proposed Class, respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendant as follows:

- A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;
- B. Ordering payment of actual and punitive damages;
- C. Ordering payment of statutory damages pursuant to N.Y. Gen. Bus. Law §§ 349(h)

and 350-d(1);

- D. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;
- E. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- F. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

DATED: November 25, 2025

Respectfully submitted,

/s/ Russell Busch

Russell Busch (Bar No. 5881354)

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Attorneys for Plaintiff and the Proposed Class
**Pro Hac Vice Forthcoming*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LAUREN WALKER, individually, and on behalf of herself
and those similarly situated

(b) County of Residence of First Listed Plaintiff Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

BRYSON HARRIS SUCIU & DeMAY PLLC, 11 Park
Place, 3rd Floor, New York, NY 10007 (919) 926-7948

DEFENDANTS

KETTLE AND FIRE INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2).

Brief description of cause:
deceptive business practices, false advertising, breach of warranty, unjust enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000+
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 11/25/2025 SIGNATURE OF ATTORNEY OF RECORD

/s/ Russell Busch

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Russell Busch, counsel for Plaintiff Lauren Walker, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000.00 exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief, or
- ☐ the matter is otherwise ineligible for the following reason:

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks. Add an additional page if needed.

n/a

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

n/a

NEW YORK EASTERN DISTRICT DIVISION OF BUSINESS RULE 1(d)(3)

If you answer "Yes" to any of the questions below, this case will be designated as a Central Islip case and you must select Office Code 2.

1. Is the action being removed from a state court that is located in Nassau or Suffolk County? ☐ Yes ☒ No
2. Is the action—not involving real property—being brought against United States, its officers or its employees AND the majority of the plaintiffs reside in Nassau or Suffolk County? ☐ Yes ☒ No
3. If you answered "No" to all parts of Questions 1 and 2:
 - a. Did a substantial part of the events or omissions giving rise to claim or claims occur in Nassau or Suffolk County? ☐ Yes ☒ No
 - b. Do the majority of defendants reside in Nassau or Suffolk County? ☐ Yes ☒ No
 - c. Is a substantial amount of any property at issue located in Nassau or Suffolk County? ☐ Yes ☒ No
4. If this is a Fair Debt Collection Practice Act case, was the offending communication received in either Nassau or Suffolk County? ☐ Yes ☒ No

(Note, a natural person is considered to reside in the county in which that person is domiciled; an entity is considered a resident of the county that is either its principal place of business or headquarters, of if there is no such county in the Eastern District, the county within the District with which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: /s/ Russell Busch

AO 440 (Rev. 06/12) Summons in a Civil Action

Civil Action No. 1:25-cv-6568

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: