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

LAURA ROBACK, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

PEAK FOODS, LLC,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Laura Roback (“Plaintiff”), on behalf of herself and all others similarly
2 situated, by and through undersigned counsel, brings this class action against
3 Defendant Peak Foods, LLC (“Defendant”) based upon personal knowledge as to
4 herself, and upon information, investigation, and belief of her counsel. This Court has
5 subject matter jurisdiction over this action under the Class Action Fairness Act, 28
6 U.S.C. § 1332(d), as further alleged below.
7

8 INTRODUCTION

9
10 1. This class action seeks to challenge Defendant’s false and deceptive
11 practices in the marketing and sale of one of its products, which is marketed as free of
12 sugar.
13

14 2. Specifically, Defendant has sold and marketed its truwhip zero sugar
15 whipped topping product (the “Product”) as “ZERO SUGAR” and containing “0g
16 SUGAR” (the “Zero Sugar Representations”), representing to consumers that the
17 Product is free of sugar.
18

19 3. Despite the Zero Sugar Representations, and unbeknownst to consumers,
20 the Product contains sugar in the form of allulose.
21

22 4. Plaintiff and other consumers purchased the Product and paid a premium
23 price based upon their reliance on the Zero Sugar Representations. Had Plaintiff and
24 other consumers been aware that the Zero Sugar Representations were false, they
25 would not have purchased the Product or would have paid significantly less for it.
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1 Accordingly, Plaintiff and Class members have been injured by Defendant's deceptive
2 business practices.

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4 **JURISDICTION AND VENUE**

5 5. This Court has subject matter jurisdiction under the Class Action Fairness
6 Act, 28 U.S.C. § 1332(d), in that: (1) this is a class action involving more than 100
7 Class members; (2) the parties are minimally diverse, as at least one member of the
8 proposed Class(es) is a citizen of a state different than Defendant's state of citizenship;
9 and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interest and
10 costs.
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13 6. This Court has personal jurisdiction over Defendant because it conducts
14 and transacts substantial business in California, and intentionally and purposefully
15 placed the Product into the stream of commerce within California.
16

17 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a
18 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in
19 this District. Namely, Plaintiff purchased the Product in this District.
20

21 **PLAINTIFF**

22 8. Plaintiff is a citizen of the United States and the State of California, and
23 currently resides in Fortuna, California. In or around October 2026, Plaintiff purchased
24 the Product from a supermarket in Petaluma, California. Based on the Product's Zero
25 Sugar Representations, Plaintiff reasonably believed that the Product was free of sugar.
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1 Had she known that the Product was not free of sugar, she would not have purchased
2 it, or would have paid significantly less for it.

3 9. Despite Defendant's misrepresentations, Plaintiff would purchase the
4 Product, as advertised, if it were actually free of sugar. Although Plaintiff regularly
5 shops at various stores that carry the Product, absent an injunction of Defendant's
6 deceptive advertising, she will be unable to rely with confidence on Defendant's
7 advertising of the Product in the future. Furthermore, while Plaintiff currently believes
8 that the Product is not free of sugar, she lacks personal knowledge as to Defendant's
9 specific business practices, and thus, she will not be able to determine whether the
10 Product truly will accurately reflect its advertising. This leaves doubt in her mind as to
11 the possibility that at some point in the future the Product could be made in accordance
12 with the Zero Sugar Representations. This uncertainty, coupled with her desire to
13 purchase the Product, is an ongoing injury that can and would be rectified by an
14 injunction enjoining Defendant from making the alleged misleading representations. In
15 addition, other Class members will continue to purchase the Product, reasonably but
16 incorrectly believing that the Product is free of sugar.

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22 **DEFENDANT**

23 10. Defendant Peak Foods, LLC is an Ohio limited liability company with its
24 principal place of business in Boise, Idaho. Defendant operates the truwhip brand,
25 which sells whipped toppings, including the Product challenged in this Complaint.
26 Defendant sells the Product throughout California, including in this District.
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FACTUAL ALLEGATIONS

11. Defendant is responsible for the formulation, manufacturing, marketing, labeling, advertising, distribution, and sale of truwhip branded products, which are sold in retail stores across the United States and through third-party online retailers.

12. Defendant has prominently labeled the Product as “ZERO SUGAR” and “0g SUGAR” on the Product’s front and side labels, representing to consumers that its Product is free of sugar. A representative example is depicted below:



13. However, despite the Zero Sugar Representations, the Product is not free of sugar. Instead, the Product contains sugar in the form of allulose.

1 14. Allulose is a sugar, in both chemical composition and function.

2 15. *First*, allulose is a sugar in chemical composition. Allulose has the
3 molecular formula $C_6H_{12}O_6$ and is the C-3 epimer of D-fructose, meaning that it shares
4 fructose's molecular formula and differs only in the position of a single hydroxyl
5 group.¹

6
7 16. For this reason, allulose is a sugar under federal law, which defines sugars
8 by chemical structure. Specifically, 21 C.F.R. § 101.9(c)(6)(ii) defines "Total Sugars"
9 as "the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and
10 sucrose)." Allulose is a free monosaccharide and therefore falls squarely within that
11 definition.
12

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14 17. Relatedly, a food may be labeled "zero sugar" only if it contains less than
15 0.5 grams of sugars per serving, as those sugars are defined by 21 C.F.R. §
16 101.9(c)(6)(ii). *See* 21 C.F.R. § 101.60(c)(1).
17

18 18. The United States Food and Drug Administration (the "FDA") has
19 repeatedly confirmed that "[a]llulose is a monosaccharide." FDA, *The Declaration of*
20 *Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels:*
21 *Guidance for Industry* (the "Guidance") § III.3 (Oct. 2020); *see also id.* § II (allulose
22 "is a monosaccharide with a molecular formula of $C_6H_{12}O_6$ "); *id.* § III.2 (same).
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27 ¹ Han-Joo Maeng et al., *Metabolic Stability of D-Allulose in Biorelevant Media and*
28 *Hepatocytes: Comparison with Fructose and Erythritol*, 8 *Foods* 448 (Oct. 1, 2019),
<https://doi.org/10.3390/foods8100448>.

1 19. The FDA reached that classification deliberately. In its 2016 rulemaking,
2 the FDA expressly declined to exclude allulose from the sugars declaration,
3 determining that allulose, “as a monosaccharide, must be included in the amount of the
4 declaration of [carbohydrate, sugars and/or added sugars] pending any future
5 rulemaking.” 81 Fed. Reg. 33742, 33796 (May 27, 2016).

7 20. The Guidance did not disturb that determination. It announced only that
8 the FDA “intend[s] to exercise enforcement discretion with respect to the exclusion of
9 allulose from the amount of ‘Total Sugars’ and ‘Added Sugars’ declared on the label
10 pending future rulemaking”—a statement of enforcement policy, not an interpretation
11 of § 101.9(c)(6)(ii). Guidance § III.3. The FDA has not since undertaken that
12 rulemaking, and its original definition therefore remains in force.

15 21. *Second*, allulose functions as a sugar. Allulose performs sugar’s
16 technological functions in food, delivering bulk, mouthfeel, solubility, and browning
17 comparable to conventional sugars, and it is added to foods and beverages as a partial
18 replacement for sugars and high-fructose corn syrup.

20 22. Allulose is therefore a sugar, and the presence of allulose in the Product
21 renders Defendant’s Zero Sugar Representations false and misleading.

23 23. Reasonable consumers, including Plaintiff, understand the Zero Sugar
24 Representations to mean that the Product contains no sugar. Because the Product in
25 fact contains sugar, the Zero Sugar Representations are likely to deceive, and did
26 deceive, reasonable consumers.
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1 24. The reasonable belief that the Product is free of sugar was a significant
2 factor in Plaintiff's and other Class members' decisions to purchase the Product. Thus,
3 Defendant promises a product that is free of sugar, but provides consumers with a
4 product that contains sugar.
5

6 25. As the entity responsible for the development, labeling, manufacturing,
7 advertising, distribution, and sale of the Product, Defendant knew or should have
8 known that the Product's Zero Sugar Representations are false and misleading.
9

10 26. Defendant also knew or should have known that Plaintiff and other
11 consumers, in purchasing the Product, would rely on Defendant's false and misleading
12 representations. Nonetheless, Defendant deceptively advertises the Product in order to
13 deceive consumers and gain an unfair advantage in the market.
14

15 27. Consumers are willing to pay more for the Product based on the belief that
16 the Product is free of sugar. Plaintiff and other consumers would have paid significantly
17 less for the Product, or would not have purchased it at all, had they known the truth
18 about it. Thus, through the use of misleading representations, Defendant commands a
19 price that Plaintiff and the Class would not have paid had they been fully informed.
20

21 28. Therefore, Plaintiff and other consumers purchasing the Product have
22 suffered injury in fact and lost money as a result of Defendant's false and deceptive
23 practices, as described herein.
24

25 29. The Product's Zero Sugar Representations are also unlawful nutrient
26 content claims under federal law and California law.
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1 30. Congress empowered the FDA to oversee and regulate food labeling by
2 enacting the Federal Food, Drug, and Cosmetic Act (the “FDCA”), as amended by the
3 Nutrition Labeling and Education Act, 21 U.S.C. §§ 301 *et seq.* The FDA promulgated
4 the relevant food-labeling regulations in 21 C.F.R. part 101.
5

6 31. FDA regulations distinguish mandatory or permitted declarations within
7 the Nutrition Facts panel from nutrient-content claims appearing elsewhere on a label
8 or in labeling. Information appearing as part of the Nutrition Facts panel is not itself a
9 nutrient-content claim. 21 C.F.R. § 101.13(c). By contrast, Defendant’s separate Zero
10 Sugar Representations expressly characterize the level of sugar in the Product and are
11 thus nutrient-content claims governed by 21 C.F.R. §§ 101.13(b) and 101.60(c)(1).
12

13 32. Nutrient content claims are strictly forbidden unless specifically allowed
14 under FDA regulations. 21 C.F.R. § 101.13(b) (“A claim that expressly or implicitly
15 characterizes the level of a nutrient of the type required to be in nutrition labeling under
16 § 101.9 or under § 101.36 (that is, a nutrient content claim) may not be made on the
17 label or in labeling of foods unless the claim is made in accordance with this regulation
18 and with the applicable regulations in subpart D . . .”).
19

20 33. Within Subpart D, section 101.60(c)(1) specifically governs the use of
21 sugar-free nutrient content claims and prohibits the use of terms such as “zero sugar”
22 unless the claims satisfy certain requirements, including:
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1 (i) The food contains less than 0.5 g of sugars, as defined in §
2 101.9(c)(6)(ii), per reference amount customarily consumed and per
3 labeled serving . . . ; and

4 (ii) The food contains no ingredient that is a sugar or that is generally
5 understood by consumers to contain sugars unless the listing of the
6 ingredient in the ingredient statement is followed by an asterisk that refers
7 to the statement below the list of ingredients, which states “adds a trivial
8 amount of sugar,” “adds a negligible amount of sugar,” or “adds a dietarily
9 insignificant amount of sugar”

10 21 C.F.R. § 101.60(c)(1)(i)–(ii). These quoted requirements are conjunctive; thus, each
11 must be satisfied.
12

13 34. The Product does not comply with these regulations because, upon
14 information and belief, Defendant did not include allulose when calculating the amount
15 of sugars for purposes of the 0.5-gram threshold as required by section 101.60(c)(1)(i).
16

17 35. Because the Product’s sugar content exceeds 0.5 grams when accounting
18 for the allulose, the Product cannot lawfully bear the Zero Sugar Representations.
19

20 36. Defendant likewise does not satisfy section 101.60(c)(1)(ii). Allulose is a
21 sugar and is expressly listed as an ingredient in the Product, but Defendant does not
22 follow that listing in the ingredient statement with an asterisk referring to a statement
23 that allulose “adds a trivial amount of sugar,” “adds a negligible amount of sugar,” or
24 “adds a dietarily insignificant amount of sugar.” Regardless, even if Defendant did
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1 include such a disclaimer, the disclaimer option under section 101.60(c)(1)(ii) is
2 available only where the independent 0.5-gram requirement of section 101.60(c)(1)(i)
3 is also met, which it is not.
4

5 37. Because the Product's label includes deceptive and impermissible
6 nutrient-content claims, the Product is "misbranded" under federal law. 21 U.S.C. §
7 343(a)(1), (r)(1)(A).
8

9 38. Plaintiff does not seek to enforce the FDCA directly. Instead, she seeks
10 relief under independently enforceable state consumer-protection laws, including
11 California's Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §
12 109875 *et seq.* (the "Sherman Law"), which adopts food-labeling requirements
13 identical to federal requirements. The federal provisions identify the standards
14 California has adopted and the conduct that renders the Product misbranded under
15 California law.
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18 39. The Sherman Law adopts federal food-labeling regulations as California
19 regulations. Cal. Health & Safety Code § 110100(a); *see also id.* § 110670.
20

21 40. Defendant's marketing, advertising, distribution, and sale of the Product
22 violate the Sherman Law's misbranding provisions, including:
23

24 (a) Section 110660 (a food is misbranded if its labeling is false or misleading in
25 any particular);
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1 (b) Section 110670 (a food is misbranded if its labeling does not conform with
2 the requirements for nutrient content or health claims set forth in 21 U.S.C. §
3 343(r));

4 (c) Section 110760 (making it unlawful for any person to manufacture, sell,
5 deliver, hold, or offer for sale any food that is misbranded);

6 (d) Section 110765 (making it unlawful for any person to misbrand any food);
7 and
8

9 (e) Section 110770 (making it unlawful for any person to receive in commerce
10 any food that is misbranded or to deliver or proffer for delivery any such food).
11

12 41. Defendant's marketing, advertising, distribution, and sale of the Product
13 also violate the Sherman Law's false-advertising provisions, including:
14

15 (a) Sections 109885 and 110390 (defining "advertisement" to include
16 representations on products and their packages, and prohibiting dissemination of
17 food advertisements that are false or misleading in any particular);
18

19 (b) Section 110395 (making it unlawful to manufacture, sell, deliver, hold, or
20 offer to sell any falsely or misleadingly advertised food); and
21

22 (c) Sections 110398 and 110400 (making it unlawful to advertise misbranded
23 food or to deliver or proffer for delivery any food that has been falsely or
24 misleadingly advertised).
25

26 42. Because the Product bears nutrient-content claims (the Zero Sugar
27 Representations) despite containing more than 0.5 grams of allulose per serving in
28

1 violation of 21 C.F.R. § 101.60(c)(1), the Product is misbranded under California law,
2 and Defendant's advertising, distribution, and sale of the Product are unlawful.

3
4 **CLASS ACTION ALLEGATIONS**

5 43. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 and all other
6 applicable laws and rules, individually, and on behalf of all members of the following
7 Classes:

8
9 **California Class**

10 All residents of California who purchased the Product within the
11 applicable statute of limitations period ("California Class").

12 **California Consumer Subclass**

13 All residents of California who purchased the Product for personal,
14 family, or household purposes, within the applicable statute of limitations
15 period ("California Consumer Subclass") (together with the California
16 Class, the "Classes").

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

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25 45. Plaintiff reserves the right to modify or amend the definition of the
26 proposed Classes and/or add subclasses before the Court determines whether class
27 certification is appropriate.
28

1 46. Plaintiff is a member of all the Classes.

2 47. **Numerosity:** Members of each Class are so numerous and geographically
3 dispersed that individual joinder of all Class members is impracticable. The precise
4 number of Class members is unknown to Plaintiff but is likely to be ascertained from
5 Defendant's records through its online marketplace, or through sales data obtained via
6 third parties. At a minimum, there likely are tens of thousands of Class members.
7

8 48. **Commonality:** There are questions of law and fact common to the
9 proposed Classes. Common questions of law and fact include, without limitation:
10

- 11 a. whether Defendant's course of conduct alleged herein violates the
12 statutes and other laws that are pled in this Complaint;
13 b. whether reasonable consumers would rely upon Defendant's
14 representations about the Product and reasonably believe the Product
15 is free of sugar;
16 c. whether Defendant knew or should have known its representations
17 were false or misleading;
18 d. whether Defendant was unjustly enriched by retaining monies from the
19 sale of the Product;
20 e. whether Defendant's conduct violates California's Sherman Law;
21 f. whether certification of each Class is appropriate under Rule 23;
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1 g. 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 h. the amount and nature of the relief to be awarded to Plaintiff and the
5 Classes, including whether Plaintiff and the Classes are entitled to
6 punitive damages.
7

8
9 49. **Typicality:** Plaintiff's claims are typical of those of the other Class
10 members because Plaintiff, as well as Class members, purchased the Product. Plaintiff
11 and the members of the Classes relied on the representations made by Defendant about
12 the Product prior to purchasing the Product. Plaintiff and the members of each Class
13 paid for Defendant's Product and would not have purchased it (or would have paid
14 substantially less for it) had they known that Defendant's representations were untrue.
15

16
17 50. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the
18 proposed Classes as her interests do not conflict with the interests of the members of
19 the proposed Classes she seeks to represent, and she has retained counsel competent
20 and experienced in class action litigation. Thus, the interests of the members of the
21 Classes will be fairly and adequately protected by Plaintiff and her counsel.
22

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

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

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

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

54. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if fully set forth herein.

55. Plaintiff brings this claim individually and on behalf of the members of the proposed California Consumer Subclass against Defendant pursuant to California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*

56. The Product is a "good" within the meaning of Cal. Civ. Code § 1761(a), and the purchases of the Product by Plaintiff and members of the California Consumer Subclass constitute "transactions" within the meaning of Cal. Civ. Code § 1761(e).

57. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have" By representing the Product with the Zero Sugar Representations, Defendant has represented and continues to represent that the Product has characteristics (i.e., that it is free of sugar) that it does not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

58. Cal. Civ. Code § 1770(a)(7) prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." By representing the Product with the Zero Sugar Representations, Defendant has represented and continues to represent that the Product

1 is of a particular standard (i.e., that it is free of sugar) when it is not of that standard.
2 Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

3 59. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
4 with intent not to sell them as advertised.” By advertising the Product with the Zero
5 Sugar Representations, Defendant has advertised the Product with characteristics it
6 intended not to provide to consumers. As such, Defendant has violated section
7 1770(a)(9) of the CLRA.
8
9

10 60. At all relevant times, Defendant has known or reasonably should have
11 known that the Product’s Zero Sugar Representations are false and misleading, and that
12 Plaintiff and other members of the California Consumer Subclass would reasonably
13 and justifiably rely on the Zero Sugar Representations when purchasing the Product.
14 Nonetheless, Defendant deceptively advertises the Product as such in order to deceive
15 consumers into believing that the Product is free of sugar, when it is not.
16
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18 61. Plaintiff and members of the California Consumer Subclass have
19 justifiably relied on Defendant’s misleading representations when purchasing the
20 Product. Moreover, based on the materiality of Defendant’s misleading and deceptive
21 conduct, reliance may be presumed or inferred for Plaintiff and members of the
22 California Consumer Subclass.
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25 62. Plaintiff and members of the California Consumer Subclass have suffered
26 and continue to suffer injuries caused by Defendant because they would have paid
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1 significantly less for the Product, or would not have purchased it at all, had they known
2 that the Product is not free of sugar.

3 63. Under Cal. Civ. Code § 1782, on or around October 20, 2026, counsel for
4 Plaintiff mailed a notice and demand letter by certified mail to Defendant, outlining
5 that Defendant has violated the CLRA for the reasons described herein. If within 30
6 days of receipt, Defendant does not agree to rectify the problems identified herein,
7 Plaintiff will amend this Complaint to seek damages pursuant to Cal. Civ. Code § 1780
8 on behalf of herself and the members of the California Consumer Subclass.
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10 64. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a
11 declaration of venue, attached hereto as Exhibit A to this Complaint.
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14 **SECOND CLAIM FOR RELIEF**
15 **Violation of California’s False Advertising Law**
16 **California Business & Professions Code §§ 17500, *et seq.***
17 ***(On behalf of the California Class)***

18 65. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if
19 fully set forth herein.

20 66. Plaintiff brings this claim individually and on behalf of the members of
21 the proposed California Class against Defendant pursuant to California’s False
22 Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*
23

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

6 68. Defendant has represented and continues to represent to the public,
7 including Plaintiff and members of the proposed California Class, through its deceptive
8 advertising, that the Product is free of sugar when it is not. Because Defendant has
9 disseminated misleading information regarding the Product, and Defendant knows,
10 knew, or should have known through the exercise of reasonable care that the
11 representations were and continue to be misleading, Defendant has violated the FAL.
12
13

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

**Violation of California's Unfair Competition Law
California Business & Professions Code §§ 17200, *et seq.*
(On behalf of the California Class)**

70. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if fully set forth herein.

71. Plaintiff brings this claim individually and on behalf of the members of the proposed California Class against Defendant pursuant to California Business & Professions Code § 17200 ("UCL").

72. The UCL, Cal. Bus. & Prof. Code § 17200, provides, in pertinent part, that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

73. Under the UCL, a business act or practice is "unlawful" if it violates any established state or federal law. Defendant's false and misleading advertising of the Product was and continues to be "unlawful" because it violates the CLRA, the FAL, the Sherman Law, and other applicable laws as described herein. As a result of Defendant's unlawful business acts and practices, Defendant has unlawfully obtained money from Plaintiff and members of the proposed California Class.

74. Under the UCL, a business act or practice is "unfair" if the conduct is substantially injurious to consumers, offends public policy, or is immoral, unethical, oppressive, or unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the alleged victims. Defendant's conduct was

1 and continues to be of no benefit to purchasers of the Product, as it is misleading, unfair,
2 unlawful, and injurious to consumers who rely on the Product's advertising. Deceiving
3 consumers into believing they will receive a Product that is free of sugar, but failing to
4 provide the Product as advertised, is of no benefit to consumers. Therefore,
5 Defendant's conduct was and continues to be "unfair." As a result of Defendant's unfair
6 business acts and practices, Defendant has unfairly obtained and continues to unfairly
7 obtain money from Plaintiff and members of the proposed California Class.
8
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10 75. Under the UCL, a business act or practice is "fraudulent" if it actually
11 deceives or is likely to deceive members of the consuming public. Defendant's conduct
12 here was and continues to be fraudulent because, due to the Product's Zero Sugar
13 Representations, the Product has the effect of deceiving consumers into believing they
14 will receive a product that is free of sugar when the Product is not manufactured as
15 such. Because Defendant misled Plaintiff and members of the California Class,
16 Defendant's conduct was "fraudulent." As a result of Defendant's fraudulent business
17 acts and practices, Defendant has fraudulently obtained and continues to fraudulently
18 obtain money from Plaintiff and members of the California Class.
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22 76. Plaintiff requests that the Court cause Defendant to restore this
23 unlawfully, unfairly, and fraudulently obtained money to her and members of the
24 proposed California Class, to disgorge the profits Defendant made on these
25 transactions, and to enjoin Defendant from violating the UCL or violating it in the same
26 fashion in the future as discussed herein. Otherwise, Plaintiff and members of the
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1 proposed California Class may be irreparably harmed and/or denied an effective and
2 complete remedy.

3
4 **FOURTH CLAIM FOR RELIEF**
5 **Breach of Express Warranty**
6 **Cal. Com. Code § 2313**
7 ***(On behalf of the California Class)***

8 77. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if
9 fully set forth herein.

10 78. Plaintiff brings this claim individually and on behalf of the members of
11 the California Class against Defendant for breach of express warranty under Cal. Com.
12 Code § 2313.

13 79. California's express warranty statute provides that "(a) Any affirmation
14 of fact or promise made by the seller to the buyer which relates to the goods and
15 becomes part of the basis of the bargain creates an express warranty that the goods shall
16 conform to the affirmation or promise," and "(b) Any description of the goods which
17 is made part of the basis of the bargain creates an express warranty that the goods shall
18 conform to the description." Cal. Com. Code § 2313.

19 80. Plaintiff and members of the California Class formed a contract with
20 Defendant at the time they purchased the Product. As part of those contracts Defendant
21 labeled and marketed the Product as "ZERO SUGAR" and containing "0g SUGAR"
22 representing that the Product is free of sugar.
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1 81. The Product's Zero Sugar Representations: (a) are affirmations of fact or
2 promises made by Defendant to consumers that the Product is free of sugar; (b) became
3 part of the basis of the bargain to purchase the Product when Plaintiff and other
4 consumers relied on the representations; and (c) created an express warranty that the
5 Product would conform to the affirmations of fact or promises. In the alternative, the
6 representations about the Product are descriptions of goods that were made as part of
7 the basis of the bargain to purchase the Product, and which created express warranties
8 that the Product would conform to the product descriptions.
9

10
11 82. Plaintiff and members of the California Class reasonably and justifiably
12 relied on the foregoing express warranties, believing that the Product did in fact
13 conform to those warranties.
14

15 83. Defendant has breached the express warranties made to Plaintiff and
16 members of the California Class by failing to provide the Product in accordance with
17 the Zero Sugar Representations.
18

19 84. Plaintiff and members of the California Class paid a premium price for the
20 Product but did not obtain the full value of the Product as represented. If Plaintiff and
21 members of the California Class had known of the true nature of the Product, they
22 would not have been willing to pay the premium price associated with it. As a result,
23 Plaintiff and members of the California Class suffered injury and deserve to recover all
24 damages afforded under the law.
25
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1 85. Plaintiff and the other California Class members notified Defendant of the
 2 breaches of its express warranties within a reasonable time and/or were not required to
 3 do so. Indeed, Plaintiff sent a notice letter to Defendant regarding its breaches on or
 4 around October 20, 2026. Defendant was also on notice of its breaches from other
 5 sources, including the FDA’s guidance cited *supra*.
 6

7
 8 **FIFTH CLAIM FOR RELIEF**
 9 **Breach of Implied Warranty**
 10 **Cal. Com. Code § 2314**
 11 ***(On behalf of the California Class)***

12 86. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if
 13 fully set forth herein.

14 87. Plaintiff brings this claim individually and on behalf of the members of
 15 the California Class against Defendant for breach of implied warranty under Cal. Com.
 16 Code § 2314.

17 88. California’s implied warranty of merchantability statute provides that “a
 18 warranty that the goods shall be merchantable is implied in a contract for their sale if
 19 the seller is a merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).
 20

21 89. California’s implied warranty of merchantability statute also provides that
 22 “[g]oods to be merchantable must be at least such as . . . (f) conform to the promises or
 23 affirmations of fact made on the container or label if any.” Cal. Com. Code §
 24 2314(2)(f).
 25
 26
 27
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1 90. Defendant is a merchant with respect to the sale of the Product. Therefore,
2 a warranty of merchantability is implied in every contract for sale of the Product to
3 California consumers.

4
5 91. By advertising the Product with the Zero Sugar Representations,
6 Defendant made an implied promise in the Product's labeling that the Product is free
7 of sugar. The Product, however, has not conformed to these promises because the
8 Product contains sugar in the form of allulose. Plaintiff, as well as other California
9 consumers, did not receive the goods as impliedly warranted by Defendant to be
10 merchantable. Therefore, the Product is not merchantable under California law, and
11 Defendant has breached its implied warranty of merchantability in regard to the
12 Product.

13
14
15 92. If Plaintiff and members of the California Class had known that the
16 Product's Zero Sugar Representations were false and misleading, they would not have
17 been willing to pay the premium price associated with them. Therefore, as a direct
18 and/or indirect result of Defendant's breach, Plaintiff and members of the California
19 Class have suffered injury and deserve to recover all damages afforded under the law.

20
21 93. Plaintiff and the other California Class members notified Defendant of the
22 breaches of its implied warranties within a reasonable time and/or were not required to
23 do so. Indeed, Plaintiff sent a notice letter to Defendant regarding its breaches on or
24 around October 20, 2026. Defendant was also on notice of its breaches from other
25 sources, including the FDA's guidance cited *supra*.

SIXTH CLAIM FOR RELIEF
Quasi-Contract/Unjust Enrichment/Restitution
(On behalf of the California Class)

94. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if fully set forth herein.

95. Plaintiff brings this claim individually and on behalf of the members of the proposed California Class against Defendant for unjust enrichment.

96. As alleged herein, Defendant has intentionally and recklessly made misleading representations to Plaintiff and members of the California Class to induce them to purchase the Product. Plaintiff and members of the California Class have reasonably relied on the misleading representations and have not received all of the benefits (i.e., a product that is free of sugar) promised by Defendant through the Product's Zero Sugar Representations. Plaintiff and members of the proposed California Class have therefore been induced by Defendant's misleading and deceptive representations about the Product, and paid more money to Defendant for the Product than they otherwise would and/or should have paid.

97. Plaintiff and members of the proposed California Class have conferred a benefit upon Defendant as Defendant has retained monies paid to it by Plaintiff and members of the proposed California Class.

98. The monies received were obtained under circumstances that were at the expense of Plaintiff and members of the proposed California Class—i.e., Plaintiff and members of the proposed California Class did not receive the full value of the benefit

1 conferred upon Defendant. Therefore, it is inequitable and unjust for Defendant to
2 retain the profit, benefit, or compensation conferred upon it.

3 99. As a direct and proximate result of Defendant's unjust enrichment,
4 Plaintiff and members of the proposed California Class are entitled to restitution,
5 disgorgement, and/or the imposition of a constructive trust upon all profits, benefits,
6 and other compensation obtained by Defendant from its deceptive, misleading, and
7 unlawful conduct as alleged herein.
8
9

10 **SEVENTH CLAIM FOR RELIEF**
11 **Common Law Fraud**
12 ***(On behalf of the California Class)***

13 100. Plaintiff repeats the allegations contained in paragraphs 1-53 above as if
14 fully set forth herein.

15 101. Plaintiff brings this claim individually and on behalf of the members of
16 the proposed California Class against Defendant for common law fraud.

17 102. Defendant has willfully, falsely, and knowingly misrepresented the
18 Product through the Product's Zero Sugar Representations, as it knew that the Product
19 was not free of sugar.
20

21 103. Defendant has therefore made knowing, fraudulent misrepresentations as
22 to the Product.
23
24

25 104. Defendant's misrepresentations were material (i.e., they affected
26 Plaintiff's and Class members' purchasing decisions given their importance), and were
27
28

1 central to the Product's functionality because the Product is advertised as free of sugar,
2 but in fact contains sugar in the form of allulose.

3 105. Defendant knew or recklessly disregarded the fact that the Product's Zero
4 Sugar Representations were false and deceptive.

6 106. Defendant intended that Plaintiff and members of the Classes rely on the
7 Product's advertising, because, if they had known the truth that the Product's Zero
8 Sugar Representations were false and misleading, they would have paid less for the
9 Product or would not have purchased it at all.

11 107. Plaintiff and members of the Classes have reasonably and justifiably relied
12 on Defendant's misrepresentations when purchasing the Product, and if Plaintiff and
13 members of the Classes had known the truth about the Product, they would not have
14 paid monies for the Product or would have paid less monies for the Product.

17 108. For these reasons, Plaintiff and members of the Classes have suffered
18 monetary losses, including interest they would have accrued on these monies, as a
19 direct and proximate result of Defendant's fraudulent conduct.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, herself and on behalf of the proposed Classes,
23 respectfully prays for the following relief:

25 A. Certification of this case as a class action on behalf of the proposed
26 Classes defined above, appointment of Plaintiff as Class representative, and
27 appointment of her counsel as Class counsel;
28

1 B. A declaration that Defendant's actions, as described herein, violate the
2 statutes and laws described herein;

3 C. An award of injunctive and other equitable relief as is necessary to protect
4 the interests of Plaintiff and the proposed Classes, including, *inter alia*, an order
5 prohibiting Defendant from engaging in the unlawful acts described above;
6

7 D. An award to Plaintiff and the proposed Classes of restitution and/or other
8 equitable relief, including, without limitation, restitutionary disgorgement of all profits
9 and unjust enrichment that Defendant obtained from Plaintiff and the proposed Classes
10 as a result of its unlawful, unfair, and fraudulent business practices described herein;
11

12 E. An award of all economic, monetary, actual, consequential, and
13 compensatory damages caused by Defendant's conduct;
14

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

16 G. An award to Plaintiff and her counsel of reasonable expenses and
17 attorneys' fees;
18

19 H. An award to Plaintiff and the proposed Classes of pre- and post-judgment
20 interest, to the extent allowable; and
21

22 I. For such further relief that the Court may deem just and proper.
23

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff, on behalf of herself and the proposed Classes, hereby demands a jury
26 trial with respect to all issues triable of right by jury.
27
28

1 Dated: October 20, 2026

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16 ***pro hac vice application forthcoming*

17 *Attorneys for Plaintiff and the Putative Classes*