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10 UNITED STATES DISTRICT COURT FOR THE
 11 NORTHERN DISTRICT OF CALIFORNIA

12 MOLLY BROWN and ADINA RINGLER,
 13 as individuals, on behalf of themselves, the
 14 general public, and those similarly situated,

15 Plaintiffs,

16 v.

17 FOOD FOR LIFE BAKING CO., INC.,

18 Defendant.

CASE NO.

**CLASS ACTION COMPLAINT FOR
 VIOLATION OF THE CALIFORNIA
 CONSUMERS LEGAL REMEDIES ACT;
 FALSE ADVERTISING; FRAUD, DECEIT,
 AND/OR MISREPRESENTATION; UN-
 FAIR BUSINESS PRACTICES; AND UN-
 JUST ENRICHMENT**

JURY TRIAL DEMANDED

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INTRODUCTION

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2 1. Plaintiffs Molly Brown and Adina Ringler, by and through their counsel, bring this
3 class action against Defendant Food For Life Baking Co., Inc. to seek redress for its unlawful and
4 deceptive practices in labeling and marketing its consumer food products.

5 2. Consumers are increasingly health conscious and, as a result, many consumers seek
6 foods high in protein. To capitalize on this trend, Defendant prominently labels some of its consumer
7 food products as providing specific amounts of protein per serving depending on the product, such
8 as “7g PLANT-BASED PROTEIN PER SERVING” on the front of its Ezekiel 4:9 Sprouted
9 Flourless Flake Cereal, Raisin. Consumers, in turn, reasonably expect that each product will actually
10 provide the amount of protein per serving claimed on the front of the product package.

11 3. However, the Food and Drug Administration (“FDA”) recognizes that not all proteins
12 are the same in their ability to meet human nutritional requirements. Some proteins are deficient in
13 one or more of the nine amino acids essential to human protein synthesis and/or are not fully
14 digestible within the human gut. When a human body uses up the least prevalent essential amino
15 acid from a food product, protein synthesis shuts down and all of the remaining amino acids from
16 that protein source degrade mostly into waste. Likewise, whatever portion of a protein source is not
17 digestible is similarly unavailable for protein synthesis. A protein’s ability to support human
18 nutritional requirements is known as its “quality.”

19 4. The FDA required method for measuring protein quality is called the “Protein
20 Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS (pronounced Pee-
21 Dee-Kass). It combines a protein source’s amino acid profile and its percent digestibility into a
22 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows
23 how much protein in a product is actually available to support human nutritional requirements. The
24 regulations term this the “corrected amount of protein per serving.” 21 C.F.R. § 101.9(c)(7)(ii). For
25 example, a PDCAAS of .5 means that only half of the protein in that product is actually available to
26 support human protein needs. If the product contained 10 grams total protein per serving, the
27 corrected amount of protein would be only 5 grams per serving.

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1 5. Because protein products can vary widely in their ability to support human protein
2 needs (even between two comparator products with the same total protein quantity), the FDA
3 prohibits manufacturers from advertising or promoting their products with a protein claim unless
4 they have calculated the corrected amount of protein per serving based on PDCAAS and provided
5 this information to consumers in the Nutrition Facts Panel (“NFP”) in the form of a percent daily
6 value (“%DV) for protein. 21 C.F.R. § 101.9(c)(7)(i). The %DV is the corrected amount of protein
7 per serving divided by the daily reference value for protein of 50 grams. *Id.* Using the same example
8 of a product containing 10 grams total protein per serving with a PDCAAS of .5, the %DV is 10%
9 (5g/50g). Had all of the protein in the product been useful in human nutrition, the %DV would be
10 20% (10g/50g).

11 6. Accordingly, Defendant’s products are unlawfully, unfairly and deceptively
12 misbranded. The protein claims on the front of the package, such as such as “7g PLANT-BASED
13 PROTEIN PER SERVING” are unlawful and in violation of parallel state and federal requirements
14 because Defendant failed to provide a %DV for protein in the NFP calculated according to the
15 PDCAAS methodology.

16 7. Moreover, because Defendant’s protein claim is in the form of a quantitative amount
17 appearing alone, without any information about protein quality, it is also separately actionable as
18 misleading. FDA regulations prohibit a manufacturer from stating “the amount or percentage of a
19 nutrient” on the front label if it is “false or misleading in any respect.” 21 C.F.R. § 101.13(i)(3). The
20 primary protein sources in Defendant’s products is wheat. Wheat is a low quality protein with a
21 PDCAAS score between 0.4 and 0.5. Accordingly, although Defendant advertises its products with
22 a “7g PLANT-BASED PROTEIN PER SERVING” claim, it actually provides, in a form that
23 humans can use, as little as 3g protein, i.e., less than half the protein consumers reasonable expect
24 to receive based on the label. This is misleading.

25 8. Defendant’s unlawful and misleading protein claims caused Plaintiffs and members
26 of the class to pay a price premium for the products.

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PARTIES

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2 9. Molly Brown is, and at all times alleged in this Class Action Complaint was, an
3 individual and a resident of Novato, California.

4 10. Adina Ringler is an individual and a resident of Northridge, California.

5 11. Molly Brown and Adina Ringler are collectively referred to hereafter as “Plaintiffs.”

6 12. Defendant Food For Life Baking Co., Inc. (“Defendant”) is a corporation existing
7 under the laws of California with its principal place of business in Solana Beach, California, and is
8 registered to do business in California.

9 **JURISDICTION AND VENUE**

10 13. This Court has jurisdiction over the subject matter of this action pursuant to 28
11 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest
12 and costs; and at least one Plaintiffs and Defendant are citizens of different states.

13 14. The injuries, damages and/or harm upon which this action is based, occurred or
14 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State of
15 California. Defendant regularly conducts and/or solicits business in, engages in other persistent
16 courses of conduct in, and/or derives substantial revenue from products provided to persons in the
17 State of California. Defendant has engaged, and continues to engage, in substantial and continuous
18 business practices in the State of California.

19 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
20 substantial part of the events or omissions giving rise to the claims occurred in the state of California,
21 including within this District.

22 16. In accordance with California Civil Code Section 1780(d), Plaintiff Brown
23 concurrently files herewith a declaration establishing that, at various times throughout the class
24 period, she purchased Ezekiel 4:9 Sprouted Waffles in the Original and Golden Flax flavors and the
25 Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors from Whole Foods and other
26 grocery retailers in Novato, California from approximately 2018 to approximately July 2021.
27 (Plaintiff Brown’s declaration is attached hereto as Exhibit A.)

28 17. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

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2 18. Defendant manufactures, distributes, markets, advertises, and sells a variety of food
3 products in the United States under the brand name “Ezekiel 4:9.” Some of these products, including
4 cereals, waffles, pasta, buns, and English muffins have packaging that predominately, uniformly,
5 and consistently states on the principal display panel of the product labels that they contain and
6 provide a certain amount of protein per serving. Plaintiffs have attached as Exhibit B a non-exhaus-
7 tive list of the Ezekiel 4:9 products that make protein claims on the front of the product packages.
8 The products listed in Exhibit B, and any other Ezekiel 4:9 brand product that claims a specific
9 amount of protein on the front of its label, will hereinafter be referred to as the “Products.”

10 19. The representation that the Products contain and provide a specific amount of protein
11 per serving was uniformly communicated to Plaintiffs and every other person who purchased any of
12 the Products in California and the United States. The same or substantially similar product label has
13 appeared on each Product during the entirety of the Class Period in the general form of the following
14 example:



22 20. The nutrition facts panel on the Products uniformly and consistently failed to provide
23 any referenced percent daily value of the Products’ protein content throughout the Class Period. The
24 nutrition facts panel of the Products has appeared consistently throughout the Class Period in the
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1 general form of the following example:

Nutrition Facts	Amount/serving	% Daily Value*	Amount/serving	% Daily Value*
	Total Fat 1g		1%	Total Carbohydrate 42g
Saturated Fat 0g		0%	Dietary Fiber 5g	18%
Trans Fat 0g			Total Sugars 11g	
Cholesterol 0mg		0%	Includes 11g of Added Sugars	22%
Sodium 200mg		9%	Protein 7g	
Calcium 20mg <2% • Iron 2.1mg 10% • Potassium 290mg 6% • Vitamin E 1.6 I.U. 6% • Vitamin K 11.28mcg 15% • Thiamine 0.08mg 6% • Riboflavin 0.06mg 4% • Niacin 1.05mg 6% • Vitamin B6 0.28mg 15% • Folic Acid 7.15mcg 0% • Phosphorus 155.65mg 15% • Magnesium 50.05mg 15% • Zinc 0.88mg 6% • Manganese 1.43mg 75%				

7 servings per container
Serving size 3/4 cup (55g)
Calories 190 per serving

* 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.

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21. As described in detail below, Defendant's advertising and labeling of the Products as containing and providing specific amounts of protein per serving is unlawful, misleading, and intended to induce consumers to purchase the Products at a premium price, while ultimately failing to meet consumer expectations. These representations deceive and mislead reasonable consumers into believing that a serving of the Products will provide the grams of protein as represented on the label, when in fact, correcting for the Products poor protein quality through PDCAAS, the amount provided will be approximately half or less because Defendant uses proteins of low biological value to humans in its products, such as wheat.

Consumer Demand for Protein

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22. Many American consumers are health conscious and seek wholesome, natural foods to keep a healthy diet, so they routinely rely upon nutrition information when selecting and purchasing food items. This is especially true in the community of athletes, registered dietitians, and coaches, to which Defendant markets. As noted by 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." Indeed, the FDA recommends relying on Nutrition Facts Labels as the primary tool to monitor the consumption of protein.¹

23. 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 have confirmed that protein can assist in weight loss, reduce blood pressure, reduce

¹ FDA Protein Fact Sheet, <https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/factsheets/Protein.pdf>

1 cholesterol, and control for risk factors for cardiovascular diseases. The National Academy of Med-
2 icine recommends that adults get a minimum of .8 grams of protein for every kilogram of body
3 weight per day, or just over 7 grams for every 20 pounds of body weight.² For a 140-pound person,
4 that means about 50 grams of protein each day. For a 200-pound person, that means about 70 grams
5 of protein each day.

6 24. Athletes and fitness enthusiasts typically consume much higher amounts of protein
7 each day; typically between 1 to 1.5 grams of protein for every pound of body weight.

8 25. The health benefits of protein are just as important, if not more important, for chil-
9 dren. Children are in a relative state of constant growth and rely on protein as the building block of
10 muscle, bone, skin, hair, and virtually every other body part or tissue. The National Academies of
11 Science recommends the following amounts of daily intake of protein based on age group: 1-3 years
12 old: 13 g of protein per day; 4-8 years old: 19 g of protein per day; 9-13 years old: 34 g of protein
13 per day.³

14 26. Protein *quantity* by itself does not tell the full story from a human nutritional stand-
15 point. A protein's *quality* is also critical because humans cannot fully digest or utilize some proteins.
16 Proteins are not monolithic. They are simply chains of amino acids, and different types of amino
17 acids chained together in different ways will make different types of proteins. Further, the makeup
18 of the protein changes the function of that protein in the human body, and certain types of proteins
19 are more easily digested and used by humans than others.

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

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28 ² National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber,*
Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients).

³ *Id.*

1 28. All nine essential amino acids are necessary for protein synthesis to take place. Lack-
2 ing even one essential amino acid will prevent protein synthesis from occurring, and the rest of the
3 proteins will degrade into waste. Accordingly, once the body uses up the limiting essential amino
4 acid from a protein source, the remainder of that protein becomes useless to human protein synthesis
5 and has little nutritional value. As the FDA has explicitly recognized, “[b]ecause excess amino acids
6 are not stored in the body, humans need a constant supply of good quality dietary proteins to support
7 growth and development.” 58 Fed. Reg. 2079 at 2101. High-quality proteins, therefore, are those
8 that contain all nine essential amino acids because they have a greater effect on protein synthesis
9 and are fully digestible. A dietary protein containing all of the essential amino acids in the correct
10 proportions is typically called a “complete protein.”

11 29. A protein source’s digestibility also affects the amount of useable protein a person
12 receives from consuming it. Many plant-based proteins are only 85% digestible, meaning 15% of
13 the protein from that source will simply pass through the body without ever being absorbed at all.

14 30. As the FDA has stated in official guidance, “Accurate methods for determining pro-
15 tein quality are necessary because different food protein sources are not equivalent in their ability to
16 support growth and body protein maintenance.” 56 Fed. Reg. 60366, § B. The Protein Digestibility
17 Corrected Amino Acid Score (“PDCAAS”) is the FDA mandated measure of protein quality, and it
18 accounts for both the amino acid profile and the digestibility of the protein. 21 C.F.R. §
19 101.9(c)(7)(ii). The PDCAAS method requires the manufacturer to determine the amount of essen-
20 tial amino acids that the food contains and then combine that into a discount factor score based on
21 humans’ ability to digest the amino acid profile.

22 31. Defendant uses plant-based proteins in its products. Because of the differences in
23 benefits depending on the amino acid composition of a protein, the source of protein is important.
24 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological
25 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein
26 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Further,
27 plant proteins, such as wheat proteins, which Defendant uses in its Products according to the ingre-
28 dient lists, are not fully digested by humans. Both types of proteins also typically have a PDCAAS

1 of between 0.4 and 0.5, meaning only 40-50% of the protein from those sources will be digested and
2 available to humans.

3 32. Accordingly, Defendant's use of low quality proteins, even in combination with some
4 higher quality proteins, means that they actually provide far less protein to humans than the Product
5 labels claim.

6 **Federal and State Regulations Governing Food Labeling**

7 33. Identical federal and California laws regulate the content of labels on packaged food.
8 The requirements of the federal Food, Drug & Cosmetic Act ("FDCA"), and its labeling regulations,
9 including those set forth in 21 C.F.R. §§ 101, 102, were adopted by the California legislature in the
10 Sherman Food Drug & Cosmetic Law (the "Sherman Law"). California Health & Safety Code §
11 110100 ("All food labeling regulations and any amendments to those regulations adopted pursuant
12 to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food
13 labeling regulations of this state."). The federal laws and regulations discussed below are applicable
14 nationwide to all sales of packaged food products. Additionally, no state imposes different require-
15 ments on the labeling of packaged food for sale in the United States.

16 34. According to FDA regulations, "[a] statement of the corrected amount of protein per
17 serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI
18 or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . *shall* be given if
19 a protein claim is made for the product . . ." 21 C.F.R. 101.9(c)(7)(i) (emphasis added). Further,
20 FDA regulations require the %DV to be calculated using PDCAAS, a method that accounts for both
21 protein quantity and protein quality. 21 C.F.R. § 101.9(c)(7)(ii); FDA Food Labeling Guide, p. 29,
22 Question N.22.⁴ The first step is to calculate the "corrected amount of protein per serving" by mul-
23 tiplying protein quantity by the PDCAAS quality value, and then dividing that "corrected amount"
24 by 50 grams (the "recommended daily value" for protein) to come up with the %DV. *Id.*

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28 ⁴ 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 ac-
cessed February 18, 2020).

1 35. Defendant’s products all make protein claims on the front label, but fail, uniformly
2 to provide a %DV for protein in the NFP. The protein claim on the front is, therefore, unlawful, and
3 was never permitted to be on the label in the first instance.

4 36. In addition to regulating the NFP, the FDA has promulgated a separate set of regula-
5 tions that govern nutrient content claims on the front of a package. 21 C.F.R. § 101.13. A nutrient
6 content claim is a claim that “expressly or implicitly characterizes the level of a nutrient.” 21 C.F.R.
7 § 101.13(b). “Express” nutrient content claims include any statement outside the Nutrition Facts
8 Panel, about the level of a nutrient. 21 C.F.R. 101.13(b)(1); 21 C.F.R. § 101.13(c). Stating infor-
9 mation from the nutrition facts panel (such as grams protein per serving) elsewhere on the package
10 necessarily constitutes a nutrient content claim. 21 C.F.R. § 101.13(c).

11 A manufacturer cannot make a nutrient content claim in the form of a “statement
12 about the amount or percentage of a nutrient” if the statement is “false or misleading
in any respect.” 21 C.F.R. 101.13(i)(3).

13 37. Under the FDCA, the term false has its usual meaning of “untruthful,” while the term
14 misleading is a term of art that covers labels that are technically true, but are likely to deceive con-
15 sumers.

16 38. While a required statement *inside* of the NFP escapes regulations reserved for nutri-
17 ent content claims (21 C.F.R. § 101.13(c)), the identical statement *outside* of the NFP is still consid-
18 ered a nutrient content claim and is therefore subject to 21 C.F.R. § 101.13(i)(3). 21 C.F.R. §
19 101.13(c). Indeed, the Ninth Circuit has specifically held that “a requirement to state certain facts in
20 the nutrition label is not a license to make that statement elsewhere on the product.” *Reid v. Johnson*
21 *& Johnson*, 780 F.3d 952, 960 (9th Cir. 2015). Thus, Defendant’s quantitative protein claims on the
22 front label are subject to analysis as a nutrient content claim and cannot be false or misleading in
23 any manner.

24 39. Moreover, the FDA has explained in published guidance that that “Information on
25 protein quantity alone can be misleading on foods that are of low protein quality” and that “nutrition
26 labeling must allow consumers to readily identify foods with particularly low quality protein to pre-
27 vent them from being misled by information on only the amount of protein present.” 58 Fed. Reg.
28 2079 at 2101-2.

1 40. Defendant’s protein representations on the front package are misleading for this very
2 reason. They broadly tout protein quantity *alone* while ignoring that the poor quality proteins in the
3 Products will provide far less useable protein than claimed. The claim on the front is therefore sep-
4 arately misleading and should never have appeared on the package.

5 **Defendant’s Marketing and Labeling of its Products Violates State and Federal Food**
6 **Labeling Laws**

7 41. Defendant’s Products are unlawful, misbranded, and violate the Sherman Law,
8 California Health & Safety Code § 110660, et seq. Defendant makes protein content claims on the
9 front of its Product packages and yet has left the Percent Daily Value column of its nutrition facts
10 for protein completely blank in violation of applicable nutrition labeling regulations. Further, the
11 front label is also independently misleading. Each Products’ label states that it provides a specific
12 amount of protein per serving—such as “7g PLANT-BASED PROTEIN PER SERVING” for the
13 Ezekial 4:9 Sprouted Flourless Flake Cereal in Raisin flavor—when, in fact, after adjusting the
14 protein content based on PDCAAS, the products will provide approximately half that much protein.

15 42. Defendant’s marketing, advertising, and sale of the Products violates the false adver-
16 tising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*), includ-
17 ing but not limited to:

- 18 a. Section 110390, which makes it unlawful to disseminate false or misleading food
19 advertisements that include statements on products and product packaging or labeling
20 or any other medium used to directly or indirectly induce the purchase of a food
21 product;
- 22 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer
23 to sell any falsely or misleadingly advertised food; and
- 24 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded food
25 or to deliver or proffer for delivery any food that has been falsely or misleadingly
26 advertised.

27 43. Defendant’s marketing, advertising, and sale of the Products violates the misbranding
28 provisions of the Sherman Law (California Health & Safety Code § 110660, *et. seq.*), including but

1 not limited to:

- 2 a. Section 110665 (a food is misbranded if its labeling does not conform with the
- 3 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
- 4 b. Section 110705 (a food is misbranded if words, statements and other information
- 5 required by the Sherman Law to appear food labeling is either missing or not
- 6 sufficiently conspicuous);
- 7 c. Section 110760, which makes it unlawful for any person to manufacture, sell, deliver,
- 8 hold, or offer for sale any food that is misbranded;
- 9 d. Section 110765, which makes it unlawful for any person to misbrand any food; and
- 10 e. Section 110770, which makes it unlawful for any person to receive in commerce any
- 11 food that is misbranded or to deliver or proffer for delivery any such food.

12 44. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA regulations,

13 including but not limited to 21 C.F.R. § 101.9 (c)(7), which have been incorporated by reference in

14 the Sherman Law, by failing to include on their product labels the nutritional information required

15 by law.

16 45. A reasonable consumer would expect that the Products provide what Defendant

17 identifies them to provide on the product labels and that the labels would not be contrary to the

18 policies or regulations of the State of California and/or the FDA. For example, a reasonable

19 consumer would expect that when Defendant labels its Products with “7g PLANT-BASED

20 PROTEIN PER SERVING” per serving, as it claimed on the Ezekiel 4:9 Sprouted Flourless Flake

21 Cereal (Raisin) label, the Products would provide 7 grams of protein per serving in a form their

22 bodies could use as protein.

23 46. Consumers lack the meaningful ability to test or independently ascertain the truthfulness

24 of Defendant’s food labeling claims, especially at the point of sale. Reasonable consumers do

25 not walk around with the PDCAAS values for various protein sources stored in their heads. They

26 would not know the true amount of protein the Products provide nutritionally merely by looking

27 elsewhere on the product package. Its discovery requires investigation well beyond the grocery store

28 aisle and knowledge of food chemistry beyond that of the average consumer. An average consumer

1 does not have the specialized knowledge necessary to ascertain that a serving of a Product does not
2 provide the number of grams of protein that is represented on the front of the product package. An
3 average consumer also lacks the specialized knowledge necessary to determine the PDCAAS for the
4 Products. The average reasonable consumer had no reason to suspect that Defendant's representa-
5 tions on the packages were misleading. Therefore, consumers had no reason to investigate whether
6 the Products actually do provide the amount of protein per serving that the labels claim they do and
7 reasonably relied on Defendant's representations regarding the nature of the Products.

8 47. Defendant intends and knows that consumers will and do rely upon food labeling
9 statements in making their purchasing decisions. Label claims and other forms of advertising and
10 marketing drive product sales, particularly if placed prominently on the front of product packaging,
11 as Defendant has done with the claims on the Products that they contain and provide specific
12 amounts of protein per serving.

13 **Defendant Misleadingly Markets Its Products to Increase Profits and Gain a Competitive**
14 **Edge**

15 48. In making false, misleading, and deceptive representations, Defendant distinguishes
16 its Products from its competitors' products. Defendant knew and intended that consumers would
17 purchase, and pay a premium for, products labeled with a protein claim. By using this branding and
18 marketing strategy, Defendant is stating that its Products are superior to, better than, and more nu-
19 tritious and healthful than other products that do not make protein claims, or that do not mislead
20 consumers about the amount of protein their products actually provide.

21 **Defendant Intends to Continue to Market its Products as Containing More Protein than the**
22 **Products Actually Contain**

23 49. Because consumers pay a price premium for products that make protein claims, and
24 also pay a premium for products that provide more protein, by labeling its Products as containing
25 more grams of protein per serving than they actually provide, Defendant is able to both increase its
26 sales and retain more profits.

27 50. Defendant engaged in the practices complained of herein to further its private inter-
28 ests of: (i) increasing sales of its Products while decreasing the sales of competitors that do not

1 misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a
2 higher price for its Products because consumers will pay more for these Products due to consumers'
3 demand for products containing more protein.

4 51. The market for protein products is continuing to grow and expand, and because De-
5 fendant knows consumers rely on representations about the number of grams of protein in food
6 products, Defendant has an incentive to continue to make such unlawful and misleading representa-
7 tions. In addition, other trends suggest that Defendant has no incentive to change its labeling prac-
8 tices.

9 52. For example, one market analysis revealed that between 2013-2017, product launches
10 with a protein claim grew 31%.⁵

11 53. To capitalize on the growing market, Defendant continues to launch new product
12 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant has
13 continued to replicate its misrepresentations on the new product lines. It is therefore likely that De-
14 fendant will continue to misleadingly advertise its Products and perpetuate the misrepresentations
15 regarding the protein in its Products.

16 **PLAINTIFFS' EXPERIENCES**

17 **Plaintiff Molly Brown**

18 54. Plaintiff Brown has purchased Ezekiel 4:9 Sprouted Waffles in the Original and
19 Golden Flax flavors and the Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors
20 from a Whole Foods and other grocery retailers in Novato, California from approximately 2018 to
21 approximately July 2021.

22 55. Plaintiff Brown made each of her purchases after reading and relying on the Defend-
23 ant's product front label that promised the Products provided a specific number of grams of protein
24 per serving. For example, she purchased the Ezekiel 4:9 Sprouted Waffles in the Original flavor
25 relying on the representation of "9g PLANT-BASED PROTEIN PER SERVING" per serving on
26 the front of the product package. She relied on the protein representation for each product that she
27 purchased and purchased each product because of the protein representations. She also believed in

28 ⁵ https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright

1 the truth of each representation, i.e., that the product would actually provide her the specific amount
2 of protein on the front label in a form her body could utilize as protein.

3 56. Plaintiff Brown not only purchased the Products because the labels said that they
4 provided a specified amount of protein per serving, but she also paid more money for the Products
5 than she would have paid had the product not unlawfully contained a protein claim, or had that
6 protein claim not been misleading regarding the number of grams of protein it provided.

7 57. Had Defendant not misrepresented (by omission and commission) the true nature of
8 the Products, Plaintiff Brown would not have purchased them or, at a very minimum, she would
9 have paid less for the Products.

10 58. Plaintiff Brown continues to desire to purchase protein products, including those mar-
11 keted and sold by Defendant. If the Products were reformulated to provide the grams of protein that
12 are represented on the labels, Plaintiff Brown would likely purchase them again in the future. Plain-
13 tiff Brown regularly visits stores where the Products and other protein products are sold. Because
14 Plaintiff Brown does not know the formula for Defendant's products and cannot test whether or not
15 the Products provide the amount of protein that is represented on the label, Plaintiff Brown will be
16 unable to rely on Defendant's labels when shopping for protein products in the future absent an
17 injunction that prohibits Defendant from labeling its products with the incorrect number of grams of
18 protein that each serving contains. Should Defendant begin to market and sell a new line of products,
19 Plaintiff Brown could be at risk for buying another one of Defendant's products in reliance on the
20 same or similar misrepresentation.

21 59. Plaintiff Brown and members of the Class have been economically damaged by their
22 purchase of the Products because the advertising for the Products was and is untrue and/or mislead-
23 ing under state law and the products are misbranded; therefore, the Products are worth less than what
24 Plaintiffs and members of the Class paid for them and/or Plaintiffs and members of the Class did not
25 receive what they reasonably intended to receive.

26 **Plaintiff Adina Ringler**

27 60. Plaintiff Ringler has purchased Ezekiel 4:9 Sprouted Flourless Flake cereal in the
28 Raisin flavor at a Whole Foods store in Porter Ranch, California in January and February 2020.

1 Additionally, Plaintiff Ringler purchased the Ezekiel 4:9 Flourless Sprouted Whole Grain English
2 Muffins from a Ralph's store in Granada Hills, California in January 2020

3 61. Plaintiff Ringler made each of her purchases after reading and relying on the Defend-
4 ant's product front label that promised the Products provided a specific number of grams of protein
5 per serving. For example, she purchased the Ezekiel 4:9 Sprouted Flourless Flake cereal in the Raisin
6 flavor relying on the representation of "7g PLANT-BASED PROTEIN PER SERVING" on the front
7 of the product package. She relied on the protein representation for each product that she purchased
8 and purchased each product because of the protein representations. She also believed in the truth of
9 each representation, i.e., that the product would actually provide her the specific amount of protein
10 on the front label in a form her body could utilize as protein.

11 62. Plaintiff Ringler not only purchased the Products because the labels said that they
12 provided a specified amount of protein per serving, but she also paid more money for the Products
13 than she would have paid had the product not unlawfully contained a protein claim, or had that
14 protein claim not been misleading regarding the number of grams of protein it provided.

15 63. Had Defendant not misrepresented (by omission and commission) the true nature of
16 the Products, Plaintiff Ringler would not have purchased them or, at a very minimum, she would
17 have paid less for the Products.

18 64. Plaintiff Ringler continues to desire to purchase protein products, including those
19 marketed and sold by Defendant. If the Products were reformulated to provide the grams of protein
20 that are represented on the labels, Plaintiff Ringler would likely purchase them again in the future.
21 Plaintiff Ringler regularly visits stores where the Products and other protein products are sold. Be-
22 cause Plaintiff Ringler does not know the formula for Defendant's products and cannot test whether
23 or not the Products provide the amount of protein that is represented on the label, Plaintiff Ringler
24 will be unable to rely on Defendant's labels when shopping for protein products in the future absent
25 an injunction that prohibits Defendant from labeling its products with the incorrect number of grams
26 of protein that each serving contains. Should Defendant begin to market and sell a new line of prod-
27 ucts, Plaintiff Ringler could be at risk for buying another one of Defendant's products in reliance on
28 the same or similar misrepresentation.

- 1 b. Whether the marketing, advertising, packaging, labeling, and other promotional
- 2 materials for the Products are unlawful and/or misleading;
- 3 c. Whether Defendant's actions violate Federal and California laws invoked herein;
- 4 d. Whether labeling the Products with a protein claim causes the Products to command
- 5 a price premium in the market;
- 6 e. Whether Defendant's advertising and marketing regarding the Products sold to the
- 7 Class members was likely to deceive reasonable consumers;
- 8 f. Whether representations regarding the number of grams of protein in the Products are
- 9 material to a reasonable consumer;
- 10 g. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- 11 h. The amount of profits and revenues Defendant earned as a result of the conduct;
- 12 i. Whether Class members are entitled to restitution, injunctive and other equitable
- 13 relief and, if so, what is the nature (and amount) of such relief; and
- 14 j. Whether Class members are entitled to payment of actual, incidental, consequential,
- 15 exemplary and/or statutory damages plus interest thereon, and if so, what is the nature
- 16 of such relief.

17 70. Typicality: Plaintiffs' claims are typical of the claims of the other members of the
18 Classes because, among other things, all such claims arise out of the same wrongful course of
19 conduct engaged in by Defendant in violation of law as complained of herein. Further, the damages
20 of each member of the Classes were caused directly by Defendant's wrongful conduct in violation
21 of the law as alleged herein.

22 71. Adequacy of Representation: Plaintiffs will fairly and adequately protect the interests
23 of all class members because it is in their best interests to prosecute the claims alleged herein to
24 obtain full compensation due to them for the unfair and illegal conduct of which they complain.
25 Plaintiffs also have no interests that are in conflict with, or antagonistic to, the interests of class
26 members. Plaintiffs have retained highly competent and experienced class action attorneys to
27 represent their interests and that of the classes. By prevailing on their own claims, Plaintiffs will
28 establish Defendant's liability to all class members. Plaintiffs and their counsel have the necessary

1 financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel
2 are aware of their fiduciary responsibilities to the class members and are determined to diligently
3 discharge those duties by vigorously seeking the maximum possible recovery for class members.

4 72. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance
5 of this class action. The prosecution of individual remedies by members of the classes will tend to
6 establish inconsistent standards of conduct for Defendant and result in the impairment of Class
7 members' rights and the disposition of their interests through actions to which they were not parties.
8 Class action treatment will permit a large number of similarly situated persons to prosecute their
9 common claims in a single forum simultaneously, efficiently, and without the unnecessary
10 duplication of effort and expense that numerous individual actions would engender. Furthermore, as
11 the damages suffered by each individual member of the classes may be relatively small, the expenses
12 and burden of individual litigation would make it difficult or impossible for individual members of
13 the class to redress the wrongs done to them, while an important public interest will be served by
14 addressing the matter as a class action.

15 73. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
16 management of this action that would preclude its maintenance as a class action.

17 **CAUSES OF ACTION**

18 Plaintiffs do not plead, and hereby disclaim, causes of action under the FDCA and regulations
19 promulgated thereunder by the FDA. Plaintiffs rely on the FDCA and FDA
20 regulations only to the extent such laws and regulations have been separately enacted as state law
21 or regulation or provide a predicate basis of liability under the state and common laws cited in the
22 following causes of action.

23 **PLAINTIFFS' FIRST CAUSE OF ACTION** 24 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions Code** 25 **§ 17200, et seq.)** 26 **On Behalf of Plaintiffs and the Subclass**

27 74. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
28 Complaint as if set forth herein.

75. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other

1 members of the California Subclass.

2 76. Within four (4) years preceding the filing of this lawsuit, and at all times mentioned
3 herein, Defendant has engaged, and continues to engage, in unlawful, unfair, and fraudulent trade
4 practices in California by engaging in the unlawful, unfair, and fraudulent business practices outlined
5 in this complaint.

6 77. In particular, Defendant has engaged, and continues to engage, in unlawful practices
7 by, without limitation, violating the following state and federal laws: (i) the CLRA as described
8 herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman Law (Article
9 3), including without limitation, California Health & Safety Code §§ 110390, 110395, 110398 and
10 110400; (iv) the misbranded food provisions of the Sherman Law (Article 6), including without
11 limitation, California Health & Safety Code §§ 110660, 110665, 110705, 110760, 110765, and
12 110770; and (v) and federal laws regulating the advertising and branding of food in 21 U.S.C. §
13 343(a), *et seq.* and FDA regulations, including but not limited to 21 C.F.R. 21 C.F.R. § 101.9 (c)(7),
14 which are incorporated into the Sherman Law (California Health & Safety Code §§ 110100(a),
15 110380, and 110505).

16 78. In particular, Defendant has engaged, and continues to engage, in unlawful and
17 fraudulent practices by, without limitation, the following: (i) unlawfully making a protein claim on
18 the front of the package without ever providing the required %DV in the NFP; and (ii) misleading
19 reasonable consumers regarding the amount of protein that the Products provide nutritionally in a
20 form that humans can use.

21 79. Plaintiffs and those similarly situated relied to their detriment on Defendant's
22 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated been
23 adequately informed and not deceived by Defendant, they would have acted differently by, without
24 limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or (iii) paying
25 less for the Products.

26 80. Defendant's acts and omissions are likely to deceive the general public.

27 81. Defendant engaged in these deceptive and unlawful practices to increase its profits.
28 Accordingly, Defendant has engaged in unlawful trade practices, as defined and prohibited by

1 section 17200, *et seq.* of the California Business and Professions Code.

2 82. The aforementioned practices, which Defendant has used to its significant financial
3 gain, also constitute unlawful competition and provide an unlawful advantage over Defendant's
4 competitors as well as injury to the general public.

5 83. As a direct and proximate result of such actions, Plaintiffs and the other Class
6 members, have suffered and continue to suffer injury in fact and have lost money and/or property as
7 a result of such deceptive and/or unlawful trade practices and unfair competition in an amount which
8 will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. Among
9 other things, Plaintiffs and Class members lost the amount they paid for the Products.

10 84. As a direct and proximate result of such actions, Defendant has enjoyed, and
11 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which
12 is in excess of the jurisdictional minimum of this Court.

13 85. Plaintiffs seek, on behalf of themselves and those similarly situated, equitable relief,
14 including restitution for the premium and/or the full price that they and others paid to Defendant as
15 result of Defendant's conduct. Plaintiffs and the Class lack an adequate remedy at law to obtain such
16 relief with respect to their "unlawfulness" claims in this UCL cause of action because the California
17 Sherman Law does not provide a direct cause of action, so Plaintiffs and the Class must allege those
18 violations as predicate acts under the UCL to obtain relief.

19 86. Plaintiffs also seeks equitable relief, including restitution, with respect to their UCL
20 "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the
21 following allegations in this paragraph only hypothetically and as an alternative to any contrary
22 allegations in their other causes of action, in the event that such causes of action do not succeed.
23 Plaintiffs and the Class may be unable to obtain monetary, declaratory and/or injunctive relief
24 directly under other causes of action and will lack an adequate remedy of law, if the Court requires
25 them to show classwide reliance and materiality beyond the objective reasonable consumer standard
26 applied under the UCL, because Plaintiffs may not be able to establish each Class member's
27 individualized understanding of Defendant's misleading representations as described in this
28 Complaint, but the UCL does not require individualized proof of deception or injury by absent class

1 members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for
2 purposes of CLRA claim, among class members for whom website representations may have been
3 materially deficient, but requiring certification of UCL claim for entire class). In addition, Plaintiffs
4 and the Class may be unable to obtain such relief under other causes of action and will lack an
5 adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent,
6 reckless, and/or negligence), because the UCL imposes no such *mens rea* requirement and liability
7 exists even if Defendant acted in good faith.

8 87. Plaintiffs also seek, on behalf of themselves and those similarly situated, a declaration
9 that the above-described trade practices are fraudulent, unfair, and/or unlawful.

10 88. Plaintiff seek, on behalf of themselves and those similarly situated, an injunction to
11 prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices
12 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained by
13 order of this Court, will continue to cause injury in fact to the general public and the loss of money
14 and property in that Defendant will continue to violate the laws of California, unless specifically
15 ordered to comply with the same. This expectation of future violations will require current and future
16 consumers to repeatedly and continuously seek legal redress in order to recover monies paid to
17 Defendant to which they were not entitled. Plaintiffs, those similarly situated and/or other consumers
18 nationwide have no other adequate remedy at law to ensure future compliance with the California
19 Business and Professions Code alleged to have been violated herein.

20 **PLAINTIFFS' SECOND CAUSE OF ACTION**
21 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §**
22 **1750, *et seq.*)**
23 **On Behalf of Plaintiffs and the Subclass**

24 89. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint as
25 if set forth herein.

26 90. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other
27 members of the California Subclass.

28 91. Defendant's actions, representations and conduct have violated, and continue to
violate the CLRA, because they extend to transactions that are intended to result, or which have

1 resulted, in the sale or lease of goods or services to consumers.

2 92. Plaintiffs and other class members are “consumers” as that term is defined by the
3 CLRA in California Civil Code § 1761(d).

4 93. The Products that Plaintiffs (and other similarly situated class members) purchased
5 from Defendant were “goods” within the meaning of California Civil Code § 1761(a).

6 94. Defendant’s acts and practices, set forth in this Class Action Complaint, led
7 customers to falsely believe that the Products provided the amount of protein claimed on the product
8 package. By engaging in the actions, representations and conduct set forth in this Class Action
9 Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5),
10 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
11 §1770(a)(2), Defendant’s acts and practices constitute improper representations regarding the
12 source, sponsorship, approval, or certification of the goods they sold. In violation of California Civil
13 Code §1770(a)(5), Defendant’s acts and practices constitute improper representations that the goods
14 they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which
15 they do not have. In violation of California Civil Code §1770(a)(7), Defendant’s acts and practices
16 constitute improper representations that the goods it sells are of a particular standard, quality, or
17 grade, when they are of another. In violation of California Civil Code §1770(a)(8), Defendant has
18 disparaged the goods, services, or business of another by false or misleading representation of fact.
19 In violation of California Civil Code §1770(a)(9), Defendant has advertised goods or services with
20 intent not to sell them as advertised.

21 95. Plaintiffs request that this Court enjoin Defendant from continuing to employ the
22 unlawful methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2).
23 If Defendant is not restrained from engaging in these types of practices in the future, Plaintiffs and
24 the other members of the Class will continue to suffer harm. Plaintiffs and those similarly situated
25 have no adequate remedy at law to stop Defendant’s continuing practices.

26 96. Defendant was provided with notice and a demand to correct, repair, replace or
27 otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein. Despite
28 receiving the aforementioned notice and demand, Defendant failed to do so in that, among other

1 things, it failed to identify similarly situated customers, notify them of their right to correction,
2 repair, replacement or other remedy, and/or to provide that remedy. Accordingly, Plaintiffs seek,
3 pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and those similarly situated
4 class members, compensatory damages, punitive damages and restitution of any ill-gotten gains due
5 to Defendant's acts and practices.

6 97. Plaintiffs also request that this Court award them costs and reasonable attorneys' fees
7 pursuant to California Civil Code § 1780(d).

8 **PLAINTIFFS' THIRD CAUSE OF ACTION**
9 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
10 **On Behalf of Plaintiffs and the Subclass**

11 98. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
12 Complaint as if set forth herein.

13 99. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other
14 members of the California Class.

15 100. Beginning at an exact date unknown to Plaintiffs, but within three (3) years preceding
16 the filing of the Class Action Complaint, Defendant made untrue, false, deceptive and/or misleading
17 statements in connection with the advertising and marketing of the Products.

18 101. Defendant made representations and statements (by omission and commission) that
19 led reasonable customers to believe that the Products that they were purchasing provided more grams
20 of protein per serving than the Products actually provided. Further, Defendant failed to list the %DV
21 of protein on its Products as it was required to do.

22 102. Plaintiffs and those similarly situated relied to their detriment on Defendant's false,
23 misleading and deceptive advertising and marketing practices, including each of the
24 misrepresentations and omissions set forth above. Had Plaintiffs and those similarly situated been
25 adequately informed and not intentionally deceived by Defendant, they would have acted differently
26 by, without limitation, refraining from purchasing Defendant's Products or paying less for them.

27 103. Defendant's acts and omissions are likely to deceive the general public.

28 104. Defendant engaged in these false, misleading and deceptive advertising and
marketing practices to increase its profits. Accordingly, Defendant has engaged in false advertising,

1 as defined and prohibited by section 17500, *et seq.* of the California Business and Professions Code.

2 105. The aforementioned practices, which Defendant used, and continues to use, to its
3 significant financial gain, also constitute unlawful competition and provide an unlawful advantage
4 over Defendant's competitors as well as injury to the general public.

5 106. As a direct and proximate result of such actions, Plaintiffs and the other Class
6 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
7 as a result of such false, deceptive and misleading advertising in an amount which will be proven at
8 trial, but which is in excess of the jurisdictional minimum of this Court.

9 107. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
10 of monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
11 from Plaintiffs, the general public, or those similarly situated by means of the false, misleading and
12 deceptive advertising and marketing practices complained of herein, plus interest thereon. Pursuant
13 to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs makes the following allegations in this
14 paragraph only hypothetically and as an alternative to any contrary allegations in their other causes
15 of action, in the event that such causes of action will not succeed. Plaintiffs and the Class may be
16 unable to obtain monetary, declaratory and/or injunctive relief directly under other causes of action
17 and will lack an adequate remedy at law, if the Court requires them to show classwide reliance and
18 materiality beyond the objective reasonable consumer standard applied under the FAL, because
19 Plaintiffs may not be able to establish each Class member's individualized understanding of
20 Defendant's misleading representations as described in this Complaint, but the FAL does not require
21 individualize proof of deception or injury by absent class members. *See, e.g., Ries v. Ariz. Bevs. USA*
22 *LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief under the UCL and FAL 'is
23 available without individualized proof of deception, reliance, and injury.'"). In addition, Plaintiffs
24 and the Class may be unable to obtain such relief under other causes of action and will lack an
25 adequate remedy at law, if Plaintiffs are unable to demonstrate the requisite *mens rea* (intent,
26 reckless, and/or negligence), because the FAL imposes no such *mens rea* requirement and liability
27 exists even if Defendant acted in good faith.

28 108. Plaintiffs seek, on behalf of themselves and those similarly situated, a declaration that

1 the above-described practices constitute false, misleading and deceptive advertising.

2 109. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction to
3 prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising and
4 marketing practices complained of herein. Such misconduct by Defendant, unless and until enjoined
5 and restrained by order of this Court, will continue to cause injury in fact to the general public and
6 the loss of money and property in that Defendant will continue to violate the laws of California,
7 unless specifically ordered to comply with the same. This expectation of future violations will
8 require current and future consumers to repeatedly and continuously seek legal redress in order to
9 recover monies paid to Defendant to which it is not entitled. Plaintiffs, those similarly situated and/or
10 other consumers nationwide have no other adequate remedy at law to ensure future compliance with
11 the California Business and Professions Code alleged to have been violated herein.

12 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
13 **(Common Law Fraud, Deceit and/or Misrepresentation)**
14 **On Behalf of Plaintiffs and the Classes**

15 110. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
16 Complaint as if set forth herein.

17 111. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other
18 members of the Class and Subclass.

19 112. Defendant has fraudulently and deceptively informed that the Products provide more
20 grams of protein than they actually provide in a form useful to the human body. Further, Defendant
21 failed to list the %DV of protein on its Products as it was required to do.

22 113. These misrepresentations and omissions were known exclusively to, and actively
23 concealed by, Defendant, not reasonably known to Plaintiffs, and material at the time they were
24 made. Defendant knew or should have known the composition of the Products, and knew or should
25 have known that the Products did not contain or provide the amount of protein represented on the
26 label. Defendant's misrepresentations and omissions concerned material facts that were essential to
27 the analysis undertaken by Plaintiffs as to whether to purchase Defendant's Products. In misleading
28 Plaintiffs and not so informing Plaintiffs, Defendant breached its duty to them. Defendant also
gained financially from, and as a result of, its breach.

1 114. Plaintiffs and those similarly situated relied to their detriment on Defendant's
2 misrepresentations and fraudulent omissions. Had Plaintiffs and those similarly situated been
3 adequately informed and not intentionally deceived by Defendant, they would have acted differently
4 by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of them, or (iii)
5 paying less for the Products.

6 115. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant
7 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.
8 Specifically, Defendant fraudulently and deceptively induced Plaintiffs and those similarly situated
9 to, without limitation, purchase the Products.

10 116. Plaintiffs and those similarly situated justifiably and reasonably relied on
11 Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

12 117. As a direct and proximate result of Defendant's misrepresentations and/or omissions,
13 Plaintiffs and those similarly situated have suffered damages, including, without limitation, the
14 amount they paid for the Products.

15 118. Defendant's conduct as described herein was wilful and malicious and was designed
16 to maximize Defendant's profits even though Defendant knew that it would cause loss and harm to
17 Plaintiffs and those similarly situated.

18
19 **PLAINTIFFS' FIFTH CAUSE OF ACTION**
20 **(Unjust Enrichment)**
21 **On Behalf of Plaintiffs and the Classes**

22 119. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

23 120. Plaintiffs Brown and Ringler bring this claim individually and on behalf of the other
24 members of the Class and Subclass.

25 121. Plaintiffs and members of the Class conferred a benefit on the Defendant by
26 purchasing the Products

27 122. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs' and
28 Class members' purchases of the Products, which retention is unjust and inequitable, because
Defendant falsely represented that the Products contained and provided specific amounts of protein
per serving, when, in fact, the Products contained less protein than represented, and provided even

1 less. This harmed Plaintiffs and Class members because they paid a price premium as a result.

2 123. Because Defendant's retention of the non-gratuitous benefit conferred on it by
3 Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs
4 and the Class members for its unjust enrichment, as ordered by the Court. Plaintiffs and those
5 similarly situated have no adequate remedy at law to obtain this restitution.

6 124. Plaintiffs, therefore, seek an order requiring Defendant to make restitution to them
7 and other members of the Class.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,
10 respectfully request that the Court enter judgement against Defendant as follows:

- 11 A. Certification of the proposed Classes, including appointment of Plaintiffs' counsel as
12 class counsel;
- 13 B. An order temporarily and permanently enjoining Defendant from continuing the
14 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Com-
15 plaint;
- 16 C. An award of compensatory damages in an amount to be determined at trial, except
17 for those causes of action where compensatory damages are not legally available;
- 18 D. An award of statutory damages in an amount to be determined at trial, except for
19 those causes of action where statutory damages are not legally available;
- 20 E. An award of punitive damages in an amount to be determined at trial, except for those
21 causes of action where punitive damages are not legally available;
- 22 F. An award of treble damages, except for those causes of action where treble damages
23 are not legally available;
- 24 G. An award of restitution in an amount to be determined at trial;
- 25 H. An order requiring Defendant to pay both pre- and post-judgment interest on any
26 amounts awarded;
- 27 I. For reasonable attorneys' fees and the costs of suit incurred; and
- 28 J. For such further relief as this Court may deem just and proper.

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: December 29, 2021

GUTRIDE SAFIER LLP

/s/ Seth Safier/s/
Seth A. Safier, Esq.
Marie McCrary, Esq.
Hayley Reynolds, Esq.
100 Pine Street, Suite 1250
San Francisco, CA 94111

Attorneys for Plaintiffs

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EXHIBIT A

I, Molly Brown, declare:

1. I am a Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, I purchased Ezekiel 4:9 Sprouted Waffles (Golden Flax), Ezekiel 4:9 Sprouted Waffles (Original), and Ezekiel 4:9 Burger Buns (Sprouted Grains and Sesame) from Whole Foods and other grocery retailer(s) in Novato, California from approximately 2018 to approximately July 2021.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 17th day of November 2021, in Novato, California.

DocuSigned by:
Molly Brown
AEC78E11801A486
Molly Brown

Exhibit B

Product Type	Variety/Flavor	Protein Nutrient Content Claim
Cereal		
Ezekiel 4:9 Sprouted Crunchy Cereal	Almond Whole Grain	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Golden Flax	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Low Sodium	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Original	8 grams
Ezekiel 4:9 Sprouted Crunchy Cereal	Cinnamon Raisin	7 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Original Flake	8 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Almond Flake	8 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Raisin Flake	7 grams
Ezekiel 4:9 Sprouted Flourless Cereal	Flax + Chia Flake	7 grams
Waffles		
Ezekiel 4:9 Sprouted Waffles	Apple Nut	10 grams
Ezekiel 4:9 Sprouted Waffles	Blueberry	10 grams
Ezekiel 4:9 Sprouted Waffles	Golden Flax	10 grams
Ezekiel 4:9 Sprouted Waffles	Original	9 grams
Buns		
Ezekiel 4:9 Hot Dog Buns	Sprouted Grain	10 grams
Ezekiel 4:9 Burger Buns	Sprouted Grain Sesame	5 grams
Ezekiel 4:9 Burger Buns	Sprouted Grain	5 grams
Pasta		
Ezekiel 4:9 Sprouted Pasta	Elbows	8 grams
Ezekiel 4:9 Sprouted Pasta	Fettuccine	8 grams
Ezekiel 4:9 Sprouted Pasta	Penne	8 grams
Ezekiel 4:9 Sprouted Pasta	Spaghetti	8 grams

Product Type	Variety/Flavor	Protein Nutrient Content Claim
English Muffins		
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Original	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Cinnamon Raisin	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Flax	Complete Protein
Ezekiel 4:9 Flourless Sprouted Whole Grain English Muffins	Low Sodium	Complete Protein