IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Caley Keene, on behalf of herself and all others similarly situated, Plaintiff, v. Lentiful, LLC, Defendant.	**C. A. NO.______________** **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Caley Keene brings this action on behalf of herself and all others similarly situated against Defendant Lentiful, LLC. Plaintiff makes the following allegations pursuant to the investigation of counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This case arises out of Defendant's deceptive, misleading, and unlawful practices with respect to its marketing and sale of its Lentiful food products (the "Product" or "Products").[1]

2. Defendant manufactures and sells its Products throughout the United States in a variety of physical and e-commerce stores.

3. Defendant's marketing stresses the importance of protein consumption, the health benefits of its Products, and the high-protein nature of its Products.

4. Notably, all Products are labeled as "PACKED WITH PROTEIN" and containing "12g Protein."

[1] At the time of this filing, the following Lentiful products are included in this definition: Mexican Green Chile, French Mirepoix, Thai Coconut Curry, Homestyle Chili, Pineapple Chorizo, Low Sodium Tomato Bolognese, Low Sodium Vegetable Harvest, Low Sodium Three-Bean Chili, and Low Sodium Cilantro Lime Chile.


Quick & Delicious • Packed with Protein & Fiber • Plant-Based
lentiful™
Instant Lentils
Mexican Green Chile


lentiful™
Instant Lentils
JUST ADD WATER & MICROWAVE
12G Protein
7G Fiber
200 Calories
NON GMO
Mexican Green Chile
Jalapeños • Cilantro

5. Additionally, the Nutrition Facts Panel ("NFP") claims that the Products contain 24% of the Daily Recommended Value ("%DV" or "DRV") for protein.

6. These representations lead reasonable consumers, like Plaintiff, to believe that the Products are high protein snacks that contain 24% of the DRV for protein.

7. Instead of providing a high protein product containing 24% of the DRV for protein, Defendant provides a product containing approximately half of the represented daily value and far less than the amount required to make the high protein representation.

8. Consumers are increasingly health conscious and, as a result, many consumers seek foods high in protein. To capitalize on this trend, Defendant prominently labels its Products as providing high amounts of protein per serving, such as "PACKED WITH PROTEIN" and containing "12g Protein." Consumers, in turn, reasonably expect that each product will actually provide the amounts of protein claimed on the front and top of the product package in a form the body can use.

9. Moreover, reasonable consumers expect that when the NFP claims that a product contains 24% of the DRV for protein, that it actually provides 24% of the DRV rather than half of this amount.

10. The Food and Drug Administration ("FDA") prohibits such prominent label claims about the amount of protein unless manufacturers also provide additional information in the NFP about how much of the recommended daily value for protein that the product will *actually* provide. 21 C.F.R. §§ 101.9(c)(7)(i), 101.13(b), (n). That is because the FDA recognizes that (1) when manufacturers tout an amount of protein on the front and top of the label, that amount is likely to be material to purchasing decisions, even though reasonable consumers may not know the total amount of protein they need to ingest on a daily basis, and (2) not all proteins are the same in their ability to meet human nutritional requirements, so a simple statement about the number of grams does not actually inform consumers about how much usable protein they are receiving. Some proteins are deficient in one or more of the nine amino acids essential to human protein synthesis and/or are

not fully digestible within the human gut. When a human body uses up the least prevalent essential amino acid from a food product, protein synthesis shuts down and all of the remaining amino acids from that protein source degrade mostly into waste. Likewise, whatever portion of a protein source is not digestible is similarly unavailable for protein synthesis. A protein's ability to support human nutritional requirements is known as its "quality."

11. The FDA required method for measuring protein quality is called the "Protein Digestibility Corrected Amino Acid Score"—known by its acronym PDCAAS. It combines a protein source's amino acid profile and its percent digestibility into a discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows how much protein in a product is actually available to support human nutritional requirements. The regulations term this the "corrected amount of protein per serving." 21 C.F.R. § 101.9(c)(7)(ii). For example, a PDCAAS of .5 means that only half of the protein in that product is actually available to support human protein needs. If the product contained 12 grams total protein per serving, the corrected amount of protein would be only 6 grams per serving. As a result, protein products can vary widely in their ability to support human protein needs—even between two comparator products with the same total protein quantity.

12. Because consumers are generally unaware about the usability of various proteins, and may even be unaware of the total amount of usable protein they should ingest each day, the FDA prohibits manufacturers from advertising or

promoting their products with a protein claim unless they have satisfied two requirements. First, the manufacturer must calculate the "corrected amount of protein per serving" based on the quality of the product's protein using the PDCAAS method. Second, the manufacturer must use the PDCAAS computation to provide "a statement of the corrected amount of protein per serving" in the NFP "expressed as" a percent daily value ("%DV") and placed immediately adjacent to the statement of protein quantity. 21 C.F.R. § 101.9(c)(7)(i)-(iii). The %DV is the corrected amount of protein per serving divided by the daily reference value for protein of 50 grams. *Id.* Using the same example of a product containing 12 grams total protein per serving with a PDCAAS of .5, the %DV is 12% (6g/50g). Had all of the protein in the product been useful in human nutrition, the %DV would be 24% (12g/50g). The FDA regulations that govern nutrient content claims are also clear that a manufacturer may not make any claims on the packaging about the amount of protein in the product unless it complies with these two requirements. *See* 21 C.F.R. § 101.13(b) ("A nutrient content claim[] may not be made on the label…unless the claim is made in accordance with this regulation [i.e., § 101.13]…" and (n) ("[n]utrition labeling in accordance with § 101.8…shall be provided for any food for which a nutrient content claim is made"); *accord* 58 Fed. Reg. 2302, 23310 (manufacturer can only make a "nutrient content claim…on the label or in labeling of a food, provided that the food bears nutrition labeling that complies with the requirements in proposed § 101.9.").

13. The primary protein source in Defendant's Products is lentils. The PDCAAS scores for lentils fall between approximately .5 and .6, which means Defendant's products will provide nutritionally less than 40-50% of the protein quantity claimed. Nevertheless, Defendant failed to provide in the NFP an accurate statement of the corrected amount of protein per serving calculated according to the PDCAAS methodology and expressed as a %DV. Accordingly, the protein claims on the front and top of the package, such as "12g Protein" and "PACKED WITH PROTEIN" are unlawful in violation of parallel state and federal laws because Defendant did not comply with the regulatory requirements for making a protein claim. 21 C.F.R. § 101.9(c)(7)(i), 101.13(b), (n). The failure to include an accurate statement of the corrected amount of protein inside the NFP also rendered the NFP itself unlawful. *Id.* § 101.9(c)(7)(i).

14. In addition to being unlawful under 21 CFR §§ 101.9 and 101.13, Defendant's prominent protein claims on the front and top of the package while presenting a false statement of the corrected amount of protein per serving expressed as a %DV in the NFP, is also likely to mislead reasonable consumers. Consumers reasonably expect that Defendant's products will actually provide nutritionally the amount of protein claimed on the front of the package and stated in the protein quantity section of the NFP, *i.e.*, that the products contain high quality proteins. But Defendant's products do not do so and instead contain low quality proteins far below the represented %DV. Had Defendant included an accurate statement of the corrected amount of protein per serving in the NFP, as it

was required to do under the law, it would have revealed that the Product contains low quality proteins. That information was material to reasonable consumers.

15. Plaintiff and other reasonable consumers purchased the Products believing that they were accurately represented. Specifically, Plaintiff and reasonable consumers believed that the Products contained accurate label information and representations. Plaintiff and other reasonable consumers would not have purchased the Products if they had known about the misrepresentations and omissions, or would have purchased them on different terms.

16. Plaintiff brings this action individually and on behalf of those similarly situated and seeks to represent a Class. Plaintiff seeks damages, interest thereon, reasonable attorneys' fees and costs, restitution, other equitable relief, and disgorgement of all benefits Defendant has enjoyed from its unlawful and deceptive business practices, as detailed herein. In addition, Plaintiff seeks injunctive relief to stop Defendant's unlawful and deceptive conduct in the labeling and marketing of the Products.

PARTIES

17. Plaintiff is a citizen of California, who purchased the Products during the class period, as described herein. The advertising and labeling on the package of the Products purchased by Plaintiff, including the high-protein representations, is typical of the advertising and labeling of the Products purchased by members of the Class. During the Class Period, Plaintiff purchased the Mexican Green Chile flavor of the Product from a Whole Foods store located in Alameda County, California. In

making her purchase, Plaintiff relied upon Defendant's labeling and advertising claims, namely, the "PACKED WITH PROTEIN" and "12G PROTEIN," representations made throughout the Product's packaging and the claim that the Product contained 24% of the Daily Recommended Value for protein.

18. In purchasing the Products, Plaintiff was exposed to, read, and relied upon Defendant's labeling claims that were intended to appeal to consumers interested in protein-focused products. To the best of her recollection, Plaintiff read and relied on Defendant's labeling representations including "PACKED WITH PROTEIN," "12G PROTEIN," and the Products contained 24% of the DRV for protein.

19. These statements and omissions led Plaintiff to believe that consuming the Products would provide an excellent source of protein and assist with leading a healthy lifestyle.

20. Defendant is a Delaware limited liability company with its principal place of business in Broomfield, Colorado.

a. From its headquarters in Colorado, Defendant produces, markets and distributes the Products in retail stores across the United States including stores physically located in the States of California and Colorado.

b. The deceptive labeling and marketing decisions made by Defendant occurred primarily and substantially at its headquarters located within the State of Colorado.

c. The deceptive, unlawful, and fraudulent representations are distributed primarily from the State of Colorado throughout the nation.

d. The deceptive labeling and marketing described herein was created in Colorado, originate within and distributed from Colorado, and proceeds thereof were received by Defendant in Colorado.

21. Whenever reference is made in this Complaint to any representation, act, omission, or transaction of a defendant, that allegation shall mean that the defendant did the act, omission, or transaction through its officers, directors, employees, agents, and/or representatives while they were acting within the actual or ostensible scope of their authority.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over Defendant. Defendant purposefully avails itself of the Colorado consumer market and distributes the Products to many locations within this District and hundreds of retail locations throughout the State of Colorado, where the Products are purchased by hundreds of consumers every day. Further, Defendant operates its principal place of business within Colorado.

23. This Court has original subject-matter jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act ("CAFA"), explicitly provides for the original jurisdiction of the federal courts in any class action in which at least 100 members are in the

proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum of $5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of individual members of the proposed Class (as defined herein) are well in excess of $5,000,000.00 in the aggregate, exclusive of interest and costs.

24. Venue is proper in this District under 28 U.S.C. § 1391(a) because substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature, quality, and/or ingredients of the Products, occurred within this District and the Defendant conducts business in this District.

FACTUAL ALLEGATIONS

A. Defendant Manufactures, Labels, and Advertises the Product

25. Defendant manufactures, labels, and advertises the Product.

26. Defendant markets and labels the Product with the representations as described herein. Specifically, the Product contains: (1) protein content claims on the front and top of the Products' labels, (2) the claim that each product is "PACKED WITH PROTEIN" and contains "12g protein," and (3) the misrepresentation of the DRV for protein in the NFP.

27. The following images display the top label, the front label, and an enlarged Nutrition Facts panel from the back label:

28. On the top label, as shown above, the Defendant prominently represents that the product is "PACKED WITH PROTEIN."

29. On the front label, as shown above, the Defendant prominently represents that the product contains “12G PROTEIN.”

30. In the NFP, as shown above, the Defendant notably misrepresents the Percent Daily Value for protein.

31. Defendant presents that the Products contain complete proteins with a PDCAAS of 1.0 by stating that the Product’s 12 grams of protein represent 24% of the %DV.

32. The protein in the Products is derived from lentils which are incomplete proteins and only have PDCAAS ranging from 0.54 to 0.63.[2]

33. Thus, the Products provide approximately 40%-50% less protein than represented by Defendant.

34. Additionally, Defendant emphasizes the protein-focused nature of the Products in other forms of marketing.

Why go all in on lentils?

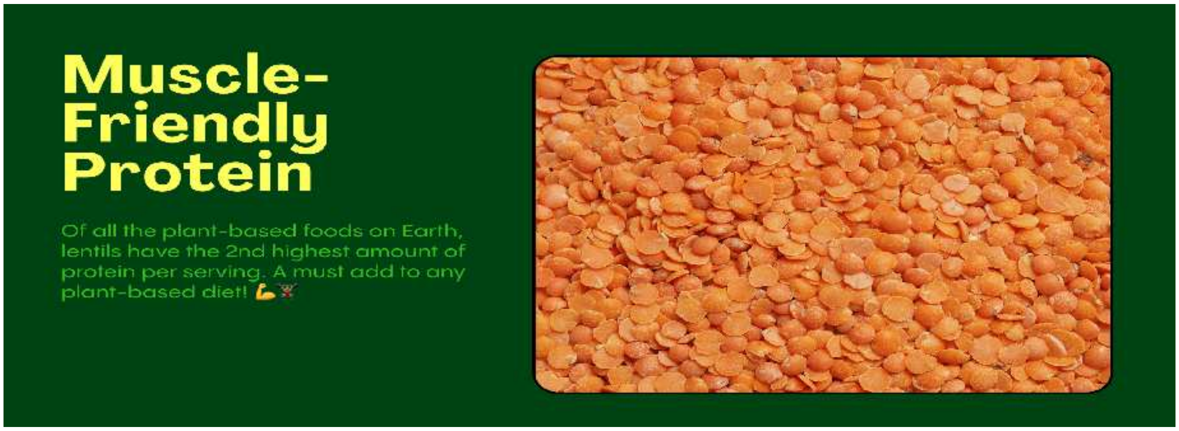
As very active people, we had your classic concerns around eating more plant-based. How would we get our protein for the day? Would we always be hungry? Would we be getting the right kind of nutrients we need?

Lentils solve for all of this. High protein, high fiber, packed with a slew of micronutrients like potassium, iron and folate. Slow digesting carbs that help you feel fuller for longer. It truly is a superfood.

But the best part about lentils, in our opinion, is how they’re a flavor chameleon. They simply absorb the flavor of whatever cuisine’s spices and ingredients that you cook them in. And we know, because we’ve tried them all!

We’re betting that by creating easy lentil meals in fun and modern flavors (we call them “Hello Fresh” type flavors), that more Americans will discover and enjoy lentils just like we have, and in turn embrace more plant-based eating, which is our ultimate goal.

[2] Nosworthy, Matthew, *Determination of the protein quality of cooked Canadian pulses*, FOOD SCIENCE & NUTRITION vol. 5,4 896-903. 20 Jun. 2017, *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5521049/.



B. <u>Importance of Protein Quality</u>

35. 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. 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.[3]

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

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

[3] FDA Protein Fact Sheet, https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/factsheets/Protein.pdf.

[4] National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (Macronutrients) (2005).

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

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

40. A protein source's digestibility also affects the amount of useable protein a person receives from consuming it. Plant-based proteins like lentils are approximately 50% digestible, meaning 50% of the protein from that source will simply pass through the body without ever being absorbed at all.

41. As the FDA has stated in official guidance, "Accurate methods for determining protein quality are necessary because different food protein sources are not equivalent in their ability to support growth and body protein maintenance." 56 Fed. Reg. 60366, § B. The Protein Digestibility Corrected Amino Acid Score ("PDCAAS"), is the FDA mandated measure of protein quality, and it accounts for both the amino acid profile and the digestibility of the protein. 21 C.F.R. § 101.9(c)(7)(ii).

42. The PDCAAS method requires the manufacturer to determine the amount of essential amino acids that the food contains and then combine that with the proteins' digestibility into an overall discount factor (i.e., a "score" from 0.0-1.0) that represents the actual amount of protein the food provides nutritionally when multiplied by raw protein quantity. The regulations term this the "corrected amount of protein per serving." 21 C.F.R. § 101.9(c)(7)(i).

43. Defendant uses plant-based proteins in its products. Because of the differences in benefits depending on the amino acid composition of a protein, the source of protein is important. Although some plants can be high quality protein sources, most plant-based proteins do not contain all nine essential amino acids and are low quality to humans. The primary sources of the Product's protein comes from

lentils which have PDCAAS scores of approximately .5 and .6, meaning approximately 40-50% of the protein from those sources will be useless to humans nutritionally speaking.

44. Accordingly, Defendant's use of low-quality proteins in the Products means that they actually provide far less protein to humans than the Product labels represent.

C. Defendant Violates Identical Federal and State Regulations.

a. Federal and State Regulations are Identical.

45. The FDA oversees the regulation and labeling of food pursuant to the Federal Food, Drug and Cosmetic Act ("FDCA").

46. California's Sherman Food, Drug and Cosmetic Law, Cal. Heath & Saf. Code § 110765 et seq. (the "Sherman Law"), incorporates all food labeling regulations promulgated by the FDA under the FDCA. *See e.g.*, Cal. Heath & Saf. Code § 110100(a) ("All food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling regulations of this state."), § 110380 and § 110505.

47. The federal laws and regulations discussed below are applicable nationwide to all sales of packaged food products. Additionally, none of the California laws sought to be enforced here imposes different requirements on the labeling of packaged food for sale in the United States.

48. To be clear, Plaintiff does not allege any claims pursuant to the FDCA and Sherman Law and relies on these regulations only to the extent they provide a predicate basis for liability under state and common law, as set forth herein.

b. Regulations Governing the Labeling of Food Products.

49. 21 U.S.C. § 343 addresses misbranded food and states that a "food shall be deemed to be misbranded – (a) If (1) its labeling is false or misleading in any particular, or (2) in the case of a food to which section 350 of this title applies, its advertising is false or misleading in a material respect or its labeling is in violation of section 350(b)(2) of this title." *See* 21 U.S.C. § 343(a).

50. The Product contains an unadjusted 12 grams of protein per serving.

a. The protein is derived from lentils.

b. The protein source in the Products is an incomplete protein.

c. The protein quality score for lentils is 0.54 to 0.63.[5]

d. Properly adjusted for protein quality, the Products contain less about 13% of the DRV.

51. The Product makes nutrient content claims concerning protein content.

52. The Product makes unlawful nutrient content claims like "Packed with Protein."[6]

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[5] Nosworthy, Matthew, *Determination of the protein quality of cooked Canadian pulses*, FOOD SCIENCE & NUTRITION vol. 5,4 896-903. 20 Jun. 2017, *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5521049/.

[6] *E.g.*, *Klammer v. Mondelez Int'l, Inc.*, No. 22-CV-02046-JSW, 2023 WL 5748774, at *4 (N.D. Cal. Sept. 6, 2023) ("[T]he Court concludes that Plaintiff has sufficiently alleged that the statements 'high protein lentils' and 'protein-packed' plausibly imply a level of protein contained in the Product and constitute nutrient content

53. Reasonable consumers, including Plaintiff, believe that the term "Packed with Protein" means that the products are "high" in protein or constitute an "excellent source" of protein.

54. This consumer belief is consistent with FDA regulations that provide a benchmark for the ability to claim that a food product is "high," "rich in," or "excellent source of" a particular nutrient – 10 grams or more of complete proteins per serving for protein. *See* 21 C.F.R. § 101.54; 21 C.F.R. § 101.9(c)(7)(iii).

55. To make a claim that a food is "high" in protein, the foods must meet a certain level of Reference Daily Intake (RDI) or Daily Reference Value (DRV). For example, 21 C.F.R. § 101.54 requires that the "food contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed." For protein, the FDA has established that the RDI or DRV for adults and children over 4 years old is 50 grams of complete protein. 21 C.F.R. § 101.9(c)(7)(iii).

56. Generally, a manufacturer is not required to include the DRV for protein. However, when a product's label makes a nutrient content claim related to protein content, the manufacturer is required to include the DRV.

a. 21 C.F.R. § 101.9(c)(7) and *see* Guidance for Industry: A Food Labeling Guide, U.S. FOOD & DRUG ADMINISTRATION, https://www.fda.gov/files/food/published/Food-Labeling-Guide-

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claims."); *Forrett v. Gourmet Nut Inc.*, No. 22-CV-02045-BLF, 2023 WL 3749556, at *5 (N.D. Cal. June 1, 2023) ("The Court therefore determines that 'Protein Packed' is a nutrient content claim that characterizes the level of protein in the food and that triggers the requirements of 21 C.F.R. § 101.9(c)(7).").

%28PDF%29.pdf at N22 ("The percent of the DRV is required if a protein claim is made for the product or if the product is represented or purported to be for use by infants or children under 4 years of age.").

57. The Products fail to include the accurate %DV for protein.

58. The Products represent that they contain 24% of the DRV for protein.

59. In reality, the Products contain about 13% of the DRV for protein.

60. Thus, the Products not only misrepresent the true DRV but also contain materially less of the protein content required to substantiate its unlawful high protein claim.

61. By misrepresenting the DRV for protein, the Defendant is able to mislead and deceive consumers that the Products are excellent sources of protein.

62. Despite containing only deficient amounts of protein, consumers are misled by Defendant's marketing, labeling, and advertising to believe that the Products are high in protein containing 24% of the DRV for protein.

c. The Products Are Misbranded Under the Regulations Governing the Labeling of Food Products.

63. The marketing of the Product as "Packed with Protein" and containing "12g Protein" in prominent locations on the label of the Product, throughout the Class Period, evidences Defendant's awareness that high protein claims are material to consumers.

64. The misrepresentation of the DRV for protein allows Defendant to further mask the protein deficiencies contained within the Products.

65. As described herein, the Products contain deficient amounts of protein to justify these claims.

66. Thus, the Products' labels are false and misleading, and therefore the Products are misbranded.

67. To be clear, Plaintiff does not allege any claims pursuant to the FDCA and relies on these regulations only to the extent they provide a predicate basis for liability under state and common law, as set forth herein.

d. The Front and Top Label Protein Claims Were Unlawful Due to the Misrepresentation of the %DV Inside the Nutrition Facts Panel as was the NFP Itself.

68. A nutrient content claim is a claim that "expressly or implicitly characterizes the level of a nutrient." 21 C.F.R. § 101.13(b). "Express" nutrient content claims include any statement outside the Nutrition Facts Panel, about the level of a nutrient. 21 C.F.R. 101.13(b)(1). "Implied" nutrient content claims "[d]escribe[] the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount." 21 C.F.R. 101.13(b)(2).

69. The FDA has always considered nutrient content claims to be "a marketing activity," the purpose of which is to advertise a specific product as a "significant source" of the relevant nutrient. 56 Fed. Reg. 60366, 60372, 60375. The FDA has long been suspicious of nutrient content claims and has repeatedly stated that such claims can be misleading, so the rules that govern them are far more restrictive. Indeed, "the general rule is that 'nutrient content claims' are not

permitted on food labels" and must instead satisfy all of the requirements of § 101.13 before being authorized to appear at all.

70. FDA regulations specifically condition the ability to make a nutrient content claim on compliance with the rules governing the NFP. Section 101.9(c)(7)(i), in particular, sets forth special rules for the NFP when manufacturers make a protein claim outside the NFP. It provides that "[a] statement of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . shall be given if a protein claim is made for the product . . ." 21 C.F.R. 101.9(c)(7)(i) (emphasis added). If a manufacturer does not want to perform PDCAAS and provide a statement of the corrected amount of protein per serving in the NFP, then it shall not make any protein claims.

71. The regulation governing nutrient content claims, section 101.13, also makes this plain. Section 101.13(n) provides that "[n]utrition labeling in accordance with § 101.9 . . . shall be provided for any food for which a nutrient content claim is made" and § 101.13(b) states "a nutrient content claim[] may not be made on the label . . . unless the claim is made in accordance with this regulation [i.e., § 101.13] . . . ." In other words, a manufacturer may not make any protein nutrient content claims on the labels of their products unless they have complied with the requirements for protein labeling in the nutrition facts panel pursuant to section 101.9(c)(7). Indeed, the FDA made clear when promulgating § 101.13(n) that it

means that a manufacturer can only make "a nutrient content claim . . . on the label or in labeling of a food, provided that the food bears nutrition labeling that complies with the requirements in proposed § 101.9." 58 Fed. Reg. 2302, 23310.

72. Further, FDA regulations require the %DV for protein to be calculated using PDCAAS, a method that accounts for both protein quantity and protein quality. 21 C.F.R. § 101.9(c)(7)(i)-(iii); FDA Food Labeling Guide, p. 29, Question N.22.[7] The first step is to calculate the "corrected amount of protein per serving" by multiplying protein quantity by the PDCAAS quality value, and then dividing that "corrected amount" by 50 grams (the "recommended daily value" for protein) to come up with the %DV. *Id.*

73. The Products, currently or during the Class Period, all made protein claims on the front and top of the label but failed to provide a statement of the corrected amount of protein per serving in the NFP calculated according to the PDCAAS method. The protein claims on the front and back are, therefore, unlawful, and were never permitted to be on the labels in the first instance under §§ 101.9(c)(7)(i), 101.13(n), and 101.13(b).

74. Defendant's failure to include an accurate statement of the corrected amount of protein per serving expressed as a %DV in the NFP also renders the NFP itself unlawful under §§ 101.9(c)(7)(i)-(iii).

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[7] 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.

75. Defendant's Products are, therefore, unlawful, misbranded, and violate the Sherman Law, California Health & Safety Code § 110660, *et seq*. Defendant, currently and during the Class Period, made protein content claims on the front and back of its Product packaging even though it uniformly failed to provide a statement of the corrected amount of protein per serving in the NFP calculated according to the PDCAAS method and expressed as a %DV as required by 21 C.F.R. § 101.9(c)(7)(i). Defendant's failure to comply with this requirement render these front and top label protein claims unlawful *per se* and the product misbranded pursuant to § 101.13(n) and (b), as well as under § 101.9(c)(7)(i) itself. Defendant's NFPs are also unlawful and in violation of § 101.9(c)(7)(i)-(iii).

e. The Products' Labeling Violates Federal and State Regulations.

76. Defendant's marketing, advertising, and sale of the Products violates the misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et. seq*.), including but not limited to:

i. Section 110665 (a food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 11 343(q));

ii. Section 110705 (a food is misbranded if words, statements and other information required by the Sherman Law to appear on food labeling is either missing or not sufficiently conspicuous);

iii. Section 110760, which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded;

iv. Section 110765, which makes it unlawful for any person to misbrand any food; and

v. Section 110770, which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

77. Defendant's marketing, advertising, and sale of the Products also violates the false advertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*), including, but not limited to:

i. Section 110390, which makes it unlawful to disseminate false or misleading food advertisements that include statements on products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product;

ii. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any falsely or misleadingly advertised food; and

iii. Sections 110398 and 110400, which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely or misleadingly advertised.

78. By failing to include on the Product labels the nutritional information required by law, Defendant has violated the Act and the standards set by FDA regulations, including but not limited to 21 C.F.R. § 101.9 (c)(7) and 21 C.F.R. §§ 101.13(i)(3), (b), (n), which have been incorporated by reference into the Sherman Law.

79. The aforementioned Sherman Law provisions stem from California's traditional, historic police power to regulate food labels, which long predates the FDCA. *See Plumley v. Massachusetts*, 155 U.S. 461, 472 (1894) ("If there be any subject over which it would seem the states ought to have plenary control, and the power to legislate in respect to which . . . it is the protection of the people against fraud and deception in the sale of food products"); *see also Brown v. Van's Int'l Foods, Inc.*, No. 3:22-cv-00001-WHO, 2022 WL 1471454, at *7 (N.D. Cal. May 10, 2022) ("[s]tates have traditionally possessed the power to protect their citizens from fraud and deception in the sale of food, and therefore there is a strong presumption against federal preemption in the area of marketing food"), quoting *Clancy v. Bromley Tea Co.*, 308 F.R.D. 564, 573 (N.D. Cal. 2013).

80. Moreover, while the Sherman Law directly incorporates the FDA food labeling regulations in Section 110665, Plaintiff base her claims on other Sherman Law provisions that independently prohibit the dissemination of "false or misleading food advertisements" (which include food labels) and the misbranding of food, including Sections 110705, 110760, 110765, 110390, 11039, 110398. These provisions, in particular, would exist even if the FDCA did not.

f. The Misrepresentation of the %DV Was Misleading Under Traditional State Law Prohibitions Against Fraudulent and Deceptive Advertising.

81. In addition to violating the aforementioned statutes, Defendant has violated the traditional common law duty not to commit fraud and mislead consumers about the characteristics and qualities of its Products, as well as traditional state law prohibitions on false and misleading advertising that long predate the FDCA or the Sherman Law.

82. Defendant's use of protein claims throughout the Products' packaging, while failing to include the required *accurate* statement of the corrected amount of protein per serving in the Nutrition Facts Panel calculated using the PDCAAS method and expressed as a %DV, is misleading. Reasonable consumers are unaware of the nutritional value of various protein sources and upon seeing front-label and back-label protein claim reasonably believe that all of the protein will be nutritionally available—i.e., that the product contains high quality proteins. Had Defendant complied with the law, the *accurate* statement of the corrected amount of protein expressed as a %DV would have revealed that the Products provide significantly less of the daily value of protein than high quality protein products with comparable protein quantities. Had reasonable consumers been informed of the *accurate* %DV for protein, as required by FDA regulations, they would not have purchased or would have paid less for the Products.

83. Consumers lack the meaningful ability to test or independently ascertain the truthfulness of Defendant's food labeling claims, especially at the point of sale. They would not know the quality of protein in the Products or how much of the daily recommended value of protein they provide merely by looking elsewhere on the product package given Defendant's misrepresentations. Its discovery requires investigation well beyond the grocery store aisle and knowledge of food chemistry beyond that of the average consumer. An average consumer does not have the specialized knowledge necessary to ascertain the nutritional value of the protein in the Products. The average reasonable consumer had no reason to suspect that Defendant's representations and omissions on the packages were misleading.

84. Defendant intends and knows that consumers will and do rely upon food labeling statements in making their purchasing decisions. Label claims and other forms of advertising and marketing drive product sales, particularly if placed prominently on the front or back of product packaging, as Defendant has done with its protein claims.

85. Defendant's duty not to mislead consumers about the quality or nutritional value of the protein in its Products does not stem from either the FDCA or the Sherman Law. Instead, that duty stems from traditional prohibitions on misleading and deceptive advertising that long predate the FDCA or the Sherman Law.

g. Defendant Misleadingly Markets the Products to Increase Profits and Gain a Competitive Edge.

86. In making unlawful, false, misleading, and deceptive representations, Defendant distinguishes the Products from its competitors' products. Defendant knew and intended that consumers would purchase, and pay a premium for, products labeled with protein claims and that failed to reveal they provide less of the daily value of protein than comparable products with high quality proteins. By using this branding and marketing strategy, Defendant is stating that the Products are superior to, better than, and more nutritious and healthful than other products that do not make protein claims, or that do not make protein claims based on poorly- disclosed added ingredients, or that properly provide the required statement of the corrected amount of protein in the product as determined by the PDCAAS method and express as a %DV and otherwise do not mislead consumers about the quality or nutritional value of the protein in its products.

h. Defendant Intends to Continue to Market the Products with Protein Claims.

87. Because consumers pay a price premium for products that make protein claims, and also pay a premium for products that provide more protein, by labeling its Products with protein claims and/or omitting the required statement of the corrected amount of protein per serving, Defendant is able to both increase its sales and retain more profits.

88. Defendant engaged in the practices complained of herein to further its private interests of: (i) increasing sales of the Products while decreasing the sales of

competitors that do not misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a higher price for its Products because consumers will pay more for the Products due to consumers' demand for products with protein claims.

89. The market for protein products is continuing to grow and expand, and because Defendant knows consumers rely on representations about the number of grams of protein in food products, Defendant has an incentive to continue to make such unlawful and misleading representations. In addition, other trends suggest that Defendant has no incentive to change its labeling practices.

90. For example, one market analysis revealed that between 2013-2017, product launches with a protein claim grew 31%.[8]

91. To capitalize on the growing market, Defendant continues to launch new product lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant has continued to replicate its misrepresentations on new products. It is therefore likely that Defendant will continue to unlawfully and/or misleadingly advertise the Products and perpetuate the misrepresentations regarding the protein in the Products.

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[8] Gil Hyslop, *10 Key Snack Trends to Watch*, BAKERYANDSNACKS.COM (Sep. 28, 2021), https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch.

D. Plaintiff and Consumers Purchased the Products to Their Detriment.

92. Plaintiff and the Class Members reasonably relied to their detriment on Defendant's misleading representations and omissions.

93. Defendant's false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled the Plaintiff and the Class Members.

94. In making the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay a premium for Products represented as containing high amounts of quality protein over comparable products not so represented.

95. In making unlawful, false, misleading, and deceptive representations, Defendant distinguishes the Products from its competitors' products. Defendant knew and intended that consumers would purchase, and pay a premium for, products labeled with protein claims and that failed to reveal they provide less of the daily value of protein than comparable products with high quality proteins. By using this branding and marketing strategy, Defendant is stating that the Products are superior to, better than, and more nutritious and healthful than other products that do not make protein claims, or that properly provide the required statement of the corrected amount of protein in the product as determined by the PDCAAS method and express as an accurate %DV and otherwise do not mislead consumers about the quality or nutritional value of the protein in their products.

96. For example, this competing product from Whole Foods makes protein representations throughout its product, is composed of plant-based proteins that are incomplete. In contrast with Defendant's Products, Whole Foods presents an accurate DRV for protein.

97. Because consumers pay a price premium for products that make protein claims, and also pay a premium for products that provide more protein, by labeling its Products with protein claims and misrepresenting the required %DV, Defendant is able to both increase its sales and retain more profits.

98. Defendant engaged in the practices complained of herein to further its private interests of: (i) increasing sales of the Products while decreasing the sales of competitors that do not misrepresent the amount of quality protein contained in its products, and/or (ii) commanding a higher price for its Products because consumers

will pay more for the Products due to consumers' demand for products with protein claims.

99. The market for protein products is continuing to grow and expand, and because Defendant knows consumers rely on representations about the amount of quality protein in food products, Defendant has an incentive to continue to make such unlawful and misleading representations. In addition, other trends suggest that Defendant has no incentive to change its labeling practices.

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

101. To capitalize on the growing market, Defendant continues to launch new product lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant has continued to replicate its misrepresentations on new products. It is therefore likely that Defendant will continue to unlawfully and/or misleadingly advertise the Products and perpetuate the misrepresentations regarding the protein in the Products.

102. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions, Defendant injured the Plaintiff and the Class Members in that they:

a. Paid a sum of money for Products that were not what Defendant represented;

b. Paid a premium price for Products that were not what Defendant represented;

c. Were deprived of the benefit of the bargain because the Products they purchased were different from what Defendant warranted; and

d. Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendant represented.

103. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class Members would not have been willing to pay the same amount for the Products they purchased, and, consequently, Plaintiff and the Class Members would not have been willing to purchase the Products.

104. Plaintiff and the Class Members paid for Products that were high in protein but received Products that were not high in protein. The products Plaintiff and the Class Members received were worth less than the Products for which they paid.

105. Based on Defendant's misleading and deceptive representations, Defendant was able to, and did, charge a premium price for the Products over the cost of competitive products that are not represented as high in protein.

106. Plaintiff and the Class Members all paid money for the Products. However, Plaintiff and the Class Members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiff and the Class Members purchased, purchased more of, and/or paid more for, the Products than they would have had they known the truth about the Products.

Consequently, Plaintiff and the Class Members have suffered injury in fact and lost money as a result of Defendant's wrongful conduct.

FACTS COMMON TO ALL CAUSES OF ACTION

107. Consumers are focused on increasing the amount of protein in their diets. This increased demand indicates that consumers are willing to pay a premium for products labeled and marketed as high protein.[9]

108. Defendant's Products are manufactured, distributed, and marketed by Defendant and sold in drug, grocery, and other online and brick-and-mortar retail stores nationwide.

109. Based on the language that appears on each product, Plaintiff reasonably believed that Products were high in protein.

110. The phrase "PACKED WITH PROTEIN" is a representation to a reasonable consumer that Defendant's Products are high in protein. The phrase is misleading to a reasonable consumer because Defendant's Products are not high in protein.

111. Consistent with this belief, Defendant misrepresents the DRV in the NFP to further represent that the Product is high in protein by representing that the Product contains 24% of the DRV for protein.

[9] *See* Brooks, Robert & Simpson, S.J. & Raubenheimer, David. (2010*). The price of protein: Combining evolutionary and economic analysis to understand excessive energy consumption.* Obesity Reviews : an official journal of the International Association for the Study of Obesity. 11. 887-94. 10.1111/j.1467-789X.2010.00733.x.

112. Defendant knows (and knew) that consumers will pay more for a product marketed as high protein, and intended to deceive Plaintiff and putative Class Members by representing that its Products as purportedly high-protein products.

CLASS DEFINITIONS AND ALLEGATIONS

113. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of herself, on behalf of all others similarly situated, and as a member of the classes defined as follows (the "Class"):

> All citizens of California who, within the relevant statute of limitation periods, purchased Defendant's Products.

114. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers, and directors, those who purchased the Products for resale, all persons who make a timely election to be excluded from the Class, the judge to whom the case is assigned and any immediate family members thereof, and those who assert claims for personal injury.

115. The members of the Class are so numerous that joinder of all Class Members is impracticable. Defendant has sold, at a minimum, thousands of units of the Products to Class Members.

116. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the putative Class that predominate over questions that may affect individual Class Members include, but are not limited to the following:

a. whether Defendant misrepresented material facts concerning the Products on the label of every product;

b. whether Defendant's conduct was unfair, misleading, and/or deceptive;

c. whether Defendant has been unjustly enriched as a result of the unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it would be inequitable for Defendant to retain the benefits conferred upon them by Plaintiff and the Class;

d. whether Plaintiff and the Class are entitled to equitable and/or injunctive relief; and

e. whether Plaintiff and the Class have sustained damages with respect to the common-law claims asserted, and if so, the proper measure of their damages.

117. Plaintiff's claims are typical of those of other Class Members because Plaintiff, like all members of the Class, purchased Defendant's Products bearing the high protein representations and Plaintiff sustained damages from Defendant's wrongful conduct.

118. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel that is experienced in litigating complex class actions. Plaintiff has no interests which conflict with those of the Class.

119. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial

detriment suffered by Plaintiff and the other Class Members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, making it impracticable for Class Members to individually seek redress for Defendant's wrongful conduct. Even if Class Members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

120. The prerequisites to maintaining a class action for equitable relief are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate equitable relief with respect to the Class as a whole.

121. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another might not. Additionally, individual actions could be dispositive of the interests of the Class even where certain Class Members are not parties to such actions.

FIRST CLAIM FOR RELIEF
Violation of the Colorado Consumer Protection Act,
Colo. Rev. Stat. §§6-1-101, *et seq.*

122. Plaintiff repeats and realleges each and every factual allegation contained in the foregoing paragraphs as if fully set forth herein.

123. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against the Defendant.

124. Defendant's conduct was and continues to be fraudulent because, directly or through its agents and employees, Defendant made materially false representations and omissions.

125. As described herein, Defendant made representations that the Products are high in protein when the Products are not high in protein.

126. Additionally, Defendant perpetuates its misrepresentation by falsely representing the DRV for protein in the NFP.

127. Defendant is aware that the representations and omissions they have made about the Products were and continue to be false and misleading.

128. Defendant had an improper motive—to derive financial gain at the expense of accuracy or truthfulness—in its practices related to the labeling and advertising of the Products.

129. There were reasonable alternatives available to Defendant to further its legitimate business interests, other than the conduct described herein.

130. Defendant's deceptive marketing as described herein was conducted by Defendant from within the state of Colorado.

131. Defendant is a "person" as defined by Colo. Rev. Stat. 601-102(6).

132. Plaintiff, as well as the Class and general public, are actual or potential consumers of the products offered by Defendant.

133. A company doing business in Colorado violates the Colorado Consumer Protection Act when it does any of the following:

a. Advertises goods, services, or property with intent not to sell them as advertised; or

b. Fails to disclose material information concerning goods, services, or property, which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

134. Defendant violates both of these prohibitions.

135. Information about the true nature of the protein contained within the Products was not disclosed nor was it apparent to a reasonable consumer.

136. Defendant's representations and omissions were material because they were likely to deceive reasonable consumers about the nature of the Products, inducing them into spending money and purchasing food products that did not contain protein levels as represented on the Products' packaging.

137. Defendant intended to mislead Plaintiff and the other Class members and induce them to rely on Defendant's misrepresentations and omissions.

138. Had Plaintiff and the other Class members known the truth about the Products' protein representations, they would not have purchased the Products.

139. Defendant engaged in the above unfair and deceptive acts or practices in the course of its business.

140. Defendant engaged in the above unfair and deceptive acts or practices with malice and/or willfulness.

141. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and the Class suffered injuries in the form of monetary losses when they failed to receive food products containing high levels of protein and containing 24% of the %DV as represented by Defendant.

142. The above unfair and deceptive practices and acts by Defendant were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the Class that they could not reasonably avoid.

143. Defendant knew or should have known that its misrepresentations and omissions would deceive Plaintiff and the Class. Defendant's actions in engaging in the above-named unfair practices and deceptive acts were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Class.

144. Plaintiff and the Class seek relief under Colorado's Consumer Protection Act, including but not limited to including actual damages or statutory damages of $500 (whichever is greater), restitution, penalties, injunctive relief, treble damages, and/or attorney's fees and costs.

SECOND CLAIM FOR RELIEF
Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code § 1750, *et seq.*

145. Plaintiff repeats and realleges each and every factual allegation contained in the foregoing paragraphs as if fully set forth herein.

146. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against the Defendant.

147. At all times relevant hereto, Plaintiff and members of the Class were "consumer[s]," as defined in Civil Code section 1761(d).

148. At all times relevant hereto, Defendant constituted a "person," as defined in Civil Code section 1761(c).

149. At all times relevant hereto, the Products manufactured, marketed, advertised, and sold by Defendant constituted "goods," as defined in Civil Code section 1761(a).

150. The purchases of the Products by Plaintiff and members of the Class are "transactions" within the meaning of Civil Code section 1761(e).

151. Defendant's acts, practices, and omissions, set forth in this Complaint, led customers to falsely believe that the Products contained high quality proteins that provided nutritionally the full amount of protein advertised on the product package. By engaging in the actions, representations and conduct set forth in this Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code §1770(a)(2), Defendant's acts and practices constitute improper representations regarding the source, sponsorship, approval, or certification of the goods they sold. In violation of California Civil Code §1770(a)(5),

Defendant's acts and practices constitute improper representations that the goods it sells have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which they do not have. In violation of California Civil Code § 1770(a)(7), Defendant's acts, practices, and omissions constitute improper representations that the goods it sells are of a particular standard, quality, or grade, when they are of another. In violation of California Civil Code §1770(a)(8),

152. Defendant deceptively markets and advertises that, unlike other protein product manufacturers, it sells Products that provide nutritionally more protein than the Products actually do. In violation of California Civil Code §1770(a)(9), Defendant has advertised goods or services with intent not to sell them as advertised.

153. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief, reasonable attorneys' fees and costs, and any other relief that the Court deems proper.

154. Defendant knew or should have known that its Products did not contain the claimed characteristics because Defendant manufactured, marketed and sold its Products without those characteristics that it claimed. Defendant knew or should have known that its representations about its products as described herein violated consumer protection laws, and that these statements would be relied upon by Plaintiff and members of the Class.

155. Defendant's actions as described herein were done with conscious disregard of Plaintiff's and Class Members' rights and was wanton and malicious.

156. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendant is still representing that its Products have characteristics which they do not have.

THIRD CLAIM FOR RELIEF
Violations of the False Advertising Law ("FAL"),
Cal. Bus. & Prof. Code §§ 17500 *et seq*.

157. Plaintiff repeats and realleges each and every factual allegation contained in the foregoing paragraphs as if fully set forth herein.

158. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against the Defendant.

159. Beginning at an exact date unknown to Plaintiff, but within four (4) years preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of the Products.

160. Defendant made representations and statements (by omission and commission) that led reasonable customers to believe that the Products that they were purchasing contained high quality proteins that provided nutritionally more grams of protein per serving than the Products actually provided, and that the Products were appropriate for meeting protein dietary needs. Defendant had a duty to disclose the corrected amount of protein per serving in the NFP, as calculated according to the PDCAAS method, which Defendant failed to do.

161. Plaintiff and those similarly situated relied to their detriment on Defendant's false, misleading and deceptive advertising and marketing practices,

including each of the misrepresentations and omissions set forth above. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendant, they would have acted differently by, without limitation, refraining from purchasing Defendant's Products or paying less for them.

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

163. Defendant engaged in these false, misleading and deceptive advertising and marketing practices to increase its profits. Accordingly, Defendant has engaged in false advertising, as defined and prohibited by section 17500, *et seq*. of the California Business and Professions Code.

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

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

166. Plaintiff seeks, on behalf of himself and those similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies acquired by Defendant from Plaintiff, the general public, or those similarly

situated by means of the false, misleading and deceptive advertising and marketing practices complained of herein, plus interest thereon. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in this paragraph only hypothetically and as an alternative to any contrary allegations in her other causes of action, in the event that such causes of action will not succeed. Plaintiff and the Class may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes of action and will lack an adequate remedy at law, if the Court requires them to show class-wide reliance and materiality beyond the objective reasonable consumer standard applied under the FAL, because Plaintiff may not be able to establish each Class member's individualized understanding of Defendant's misleading representations as described in this Complaint, but the FAL does not require individualize proof of deception or injury by absent Class members. *See, e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief under the UCL and FAL 'is available without individualized proof of deception, reliance, and injury.'"). In addition, Plaintiff and the Class may be unable to obtain such relief under other causes of action and will lack an adequate remedy at law, if Plaintiff is unable to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the FAL imposes no such *mens rea* requirement and liability exists even if Defendant acted in good faith.

167. Plaintiff seeks, on behalf of himself and those similarly situated, a declaration that the above-described practices constitute false, misleading and deceptive advertising.

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

FOURTH CLAIM FOR RELIEF
Violations of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq*.

169. Plaintiff repeats and realleges each and every factual allegation contained in the foregoing paragraphs as if fully set forth herein.

170. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against the Defendant.

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

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

173. In particular, Defendant has engaged, and continues to engage, in unfair and fraudulent practices by, without limitation, the following: (i) unlawfully making a protein claim on the package without complying with the regulatory requirements for making a protein claim set forth in 21 C.F.R. § 101.9(c)(7)(i)-(iii) and incorporated by reference by California's Sherman law; (ii) failing to provide a statement of the corrected amount of protein per serving in the NFP, calculated according to the PDCAAS method and expressed as a %DV, as required by FDA regulations; and (iii) misleading reasonable consumers regarding the quality of protein in its products and its contribution to consumers' daily protein needs by omitting the %DV for protein.

174. Defendant's conduct constitutes an unfair business act and practice pursuant to California Business & Professions Code §§ 17200, *et seq*. (the "UCL"). The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising . . . ."

175. Defendant's knowing conduct, as alleged herein, constitutes an "unfair" and/or "fraudulent" business practice, as set forth in California Business & Professions Code §§ 17200-17208.

176. Defendant's conduct was and continues to be unfair and fraudulent because, directly or through its agents and employees, Defendant made materially false representations and omissions.

177. As described herein, Defendant made representations that the Products are high in protein when the Products are not high in protein.

178. Defendant is aware that the representations and omissions they have made about the Products were and continue to be false and misleading.

179. Defendant had an improper motive—to derive financial gain at the expense of accuracy or truthfulness—in its practices related to the labeling and advertising of the Products.

180. There were reasonable alternatives available to Defendant to further its legitimate business interests, other than the conduct described herein.

181. Defendant's misrepresentations of material facts, as set forth herein, also constitute an "unlawful" practice because they violate California Civil Code §§

1572, 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein, as well as the common law.

182. Defendant's conduct in making the representations and omissions described herein constitutes a knowing failure to adopt policies in accordance with and adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to their competitors. This conduct creates an unfair competitive advantage for Defendant, thereby constituting an unfair business practice under California Business & Professions Code §§ 17200-17208.

183. In addition, Defendant's conduct was, and continues to be, unfair in that its injury to countless purchasers of the Products is substantial, and is not outweighed by any countervailing benefits to consumers or to competitors.

184. Moreover, Plaintiff and members of the Class could not have reasonably avoided such injury. Defendant's material misrepresentations and omissions regarding the Products were likely to deceive, and Defendant knew or should have known that its misrepresentations and omissions were untrue and misleading. Plaintiff purchased the Products in reliance on the representations made by Defendant, including that the Products' labeling was accurate as alleged herein, and without knowledge of Defendant's misrepresentations and omissions.

185. Plaintiff and those similarly situated relied to their detriment on Defendant's unlawful, unfair, and fraudulent business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by Defendant, they would have acted differently by, without limitation: (i) declining to purchase

the Products, (ii) purchasing less of the Products, or (iii) paying less for the Products.

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

187. Defendant engaged in these deceptive and unlawful practices to increase its profits. Accordingly, Defendant has engaged in unlawful and fraudulent trade practices, as defined and prohibited by section 17200, *et seq*. of the California Business and Professions Code.

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

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

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

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

192. Plaintiff also seeks equitable relief, including restitution, with respect to her UCL "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in this paragraph only hypothetically and as an alternative to any contrary allegations in their other causes of action, in the event that such causes of action do not succeed. Plaintiff and the Class may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes of action and will lack an adequate remedy of law, if the Court requires them to show class-wide reliance and materiality beyond the objective reasonable consumer standard applied under the UCL, because Plaintiff may not be able to establish each Class Member's individualized understanding of Defendant's misleading representations as described in this Complaint, but the UCL does not require individualized proof of deception or injury by absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for purposes of CLRA claim, among class members for whom website representations may have been materially deficient, but requiring

certification of UCL claim for entire class). In addition, Plaintiff and the Class may be unable to obtain such relief under other causes of action and will lack an adequate remedy at law, if Plaintiff is unable to demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the UCL imposes no such *mens rea* requirement and liability exists even if Defendant acted in good faith.

193. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-described trade practices are fraudulent, unfair, and/or unlawful.

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

FIFTH CLAIM FOR RELIEF
Unjust Enrichment

195. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

196. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against the Defendant.

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

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

199. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class Members' purchases of the Products. Retention of those monies under these circumstances is unjust and inequitable because of Defendant's misrepresentations about the Products, which caused injuries to Plaintiff and Class Members because they would not have purchased the Products if the true facts had been known.

200. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Classes is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Classes for its unjust enrichment, as ordered by the Court.

RELIEF DEMANDED

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the members of the Class;

b. For an order declaring the Defendant's conduct violates the statutes and laws referenced herein;

c. For an order awarding, as appropriate, compensatory, monetary, and statutory damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;

d. For an order requiring Defendant to immediately cease and desist from selling their misbranded Products in violation of law; enjoining Defendant from continuing to label, market, advertise, distribute, and sell the Products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

e. For prejudgment and post judgment interest on all amounts awarded;

f. For an order awarding punitive damages; and

g. For an order awarding attorneys' fees and expenses and costs of suit.

JURY DEMAND

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

Dated: July 23, 2026

Respectfully submitted,

/s/ J. Ryan Gustafson

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