

1 Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
2 Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
3 Laura E. Goolsby (SBN 321721)
Laura.Goolsby@capstonelawyers.com
4 Nathan N. Kiyam (SBN 317677)
Nate.Kiyam@capstonelawyers.com
5 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 ALANA GUTIERREZ, individually,
13 and on behalf of a class of similarly
14 situated individuals,

15 Plaintiff,

16 v.

17 KENDAL NUTRICARE USA LLC,
a Delaware limited liability company,

18 Defendants.
19
20
21

Case No.:

**CLASS ACTION COMPLAINT
FOR:**

- (1) Violation of California's Consumer Legal Remedies Act ("CLRA")
- (2) Violation of California's Unfair Competition Law
- (3) Violation of California's False Advertising Law
- (4) Common Law Fraud, Deceit, and/or Misrepresentation
- (5) Unjust Enrichment
- (6) Injunctive Relief

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff Alana Gutierrez (“Plaintiff”) brings this Complaint
3 individually and on behalf of all persons similarly situated against Kendal
4 Nutricare USA LLC (“Kendal Nutricare” or “Defendants”) to seek redress for
5 Defendants’ deceptive and unlawful practices in labeling and marketing Kendamil
6 Toddler Drink (“Kendamil” or “the Product”).

7 2. Intending to profit from parents’ increasing desire to purchase food
8 for their young children that provides physical health benefits, Defendants
9 misbrand the Product by making nutrient content claims on the product
10 packages that are strictly prohibited by the Food and Drug Administration
11 (“FDA”). Moreover, the nutrient content claims on the Product misleads
12 purchasers into believing that the products provide physical health benefits for
13 children under two years of age in order to induce parents into purchasing
14 Defendants’ products. In fact, the Product is harmful both nutritionally and
15 developmentally for children under two.

16 3. Defendants’ misbranding caused Plaintiff and members of the class
17 to pay a price premium for the Product.

THE PARTIES

18
19 4. Plaintiff is a California citizen residing in Shingle Springs, California.

20 5. In or around February 2024, and for about three (3) months thereafter,
21 Plaintiff purchased the Product for her child when he was one (1) year old from
22 Target. Plaintiff purchased the Product in reliance on the representations on the
23 packaging that the Product provides physical health benefits for children under
24 two years of age. But for these representations, Plaintiff would not have purchased
25 the Product.

26 6. Defendant Kendal Nutricare is a limited liability company organized
27 and in existence under the laws of the State of Delaware and registered to do
28 business in various other states. Kendal Nutricare is headquartered in Boulder,

1 Colorado.

2 **JURISDICTION**

3 7. This is a class action.

4 8. Members of the proposed Class number more than 100 and at least
5 one plaintiff and one defendant are citizens of different states.

6 9. There are at least 100 members in the proposed class, and the
7 aggregate claims of individual Class Members exceed \$5,000,000.00 in value,
8 exclusive of interest and costs.

9 10. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

10 11. This Court has personal jurisdiction over Plaintiff because Plaintiff
11 submits to this Court’s jurisdiction. This Court has personal jurisdiction over
12 Defendants because they conduct substantial business in this District and discovery
13 will show that significant conduct involving Defendants giving rise to the
14 Complaint took place in this District.

15 **VENUE**

16 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
17 the conduct giving rise to this lawsuit occurred here and Defendants are subject to
18 personal jurisdiction here by conducting business within the State of California.
19 Plaintiff’s counsel’s Declaration of Venue, to the extent required under California
20 Civil Code section 1780(d), is attached hereto as **Exhibit 1**.

21 **FACTUAL ALLEGATIONS**

22 13. Defendants manufacture, distribute, market, advertise, and sell
23 toddler drink products under the brand name “Kendamil.” These products have
24 packaging that predominately, uniformly, and consistently makes nutrient content
25 claims on the principal display panel of the product labels. A non-exhaustive
26 demonstrative of Kendamil’s labeling, which contain nutrient content claims, is
27 attached hereto as **Exhibit 2**.

28 14. The Product is intended for children under the age of two. The

1 Product is labeled with the intended age for the Product on the front label, “12-
2 36 MONTHS.”

3 15. FDA regulations explicitly prohibit certain nutrient content claims
4 on foods intended for children under the age of two. 21 C.F.R. § 101.13(b)(3).

5 16. Defendants nevertheless make nutrient content claims on the
6 Product label.

7 17. For example, the Product states on the front label, “milk-based
8 powder **with** iron (emphases added),” “DHA + ARA,” “WITH HMOs,” and “WITH
9 MFGM.”

10 18. Additionally, the Product states on the back label, “**MFGM** Naturally
11 present in our **whole milk** (emphasis in original)” **HMOs** Our unique **HMO blend**
12 (emphasis in original);” “**PREBIOTIC** With dual **GOS + FOS prebiotics**
13 (emphasis in original);” “**IMMUNE SUPPORT** Vitamin C (emphasis in original);”
14 “**BRAIN HEALTH** DHA, Iron, Iodine (emphasis in original);” and “**GROWTH**
15 Calcium, Vitamins D + E (emphasis in original).”

16 19. As described in detail below, Defendants’ advertising and
17 labeling of the Product with nutrient content claims is unlawful, misleading,
18 deceptive, and intended to induce consumers to purchase the Product at a
19 premium price. These claims deceive and mislead reasonable consumers into
20 believing that the Product provide physical health benefits for their child when in
21 fact, the Product is harmful for children under two both nutritionally and
22 developmentally.

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

24 20. The Food and Drug Administration regulates nutrition content
25 labeling. According to these regulations, “no nutrient content claims may be
26 made on food intended specifically for use by infants and children less than
27 2 years of age,” subject to certain exceptions not applicable here. 21 C.F.R. §
28 101.13(b)(3).

1 21. According to the regulations, nutrient content claims can be expressed
2 or implied. 21 C.F.R. § 101.13(b)(1), 21 C.F.R. § 101.13(b)(2).

3 22. An express nutrient content claim is “any direct statement about
4 the level (or range) of a nutrient in the food.” 21 C.F.R. § 101.13(b)(1). Further,
5 where information that is required or permitted to be “declared in nutrition
6 labeling, and that appears as part of the nutrition label . . . is declared elsewhere
7 on the label or in labeling, it is a nutrient content claim and is subject to the
8 requirements for nutrient content claims.” 21 C.F.R. § 101.13(b)(1).

9 23. An implied nutrient content claim is any claim that: “(i) Describes the
10 food or an ingredient therein in a manner that suggests that a nutrient is absent
11 or present in a certain amount (e.g., “high in oat bran”); or (ii) Suggests that the
12 food, because of its nutrient content, may be useful in maintaining healthy dietary
13 practices and is made in association with an explicit claim or statement about a
14 nutrient (e.g., “healthy, contains 3 grams (g) of fat”).” 21 C.F.R. § 101.13(b)(2).

15 24. The FDA explicitly regulates certain nutrient content claims such
16 as “more” claims. “More” claims use terms such as “more,” “added,” “plus,” or
17 synonyms to describe the level of a nutrient in a food. 21 C.F.R. § 101.54(e).
18 Where the claim is based on a nutrient that has been added to the food, the food
19 must comply with the FDA’s Fortification Policy, as stated in 21 C.F.R. § 104.20.
20 *See* 21 C.F.R. § 101.54(e)(ii).

21 25. The Fortification Policy only allows for fortification under
22 specific circumstances. The Fortification Policy goes on to list four circumstances
23 where fortification is appropriate:

- 24 a. “[T]o correct a dietary insufficiency recognized by
25 the scientific community. . .”
- 26 b. “[T]o restore such nutrient(s) to a level(s) representative of the food
27 prior to storage, handling and processing. . .”
- 28 c. “[I]n proportion to the total caloric content. . . to balance the vitamin,

1 mineral, and protein content...”

2 d. “to avoid nutritional inferiority” when replacing a traditional food.

3 21 C.F.R. § 104.20(b)-(e).

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

16 27. California’s adoption of food regulations that are identical to
17 the federal regulations stems from the state’s “historic police powers” to regulate
18 food labeling, which long-predates the enactment of the FDCA. *See Plumley v.*
19 *Massachusetts*, 155 U.S. 461, 472 (1894) (“if there be any subject over which it
20 would seem the states ought to have plenary control, and the power to legislate
21 in respect to which ... it is the protection of the people against fraud and
22 deception in the sale of food products.”); *see also Florida Lime & Avocado*
23 *Growers v. Paul*, 373 U.S. 132, 144 (1963) (“States have always possessed a
24 legitimate interest in ‘the protection of (their) people against fraud and deception
25 in the sale of food products’ at retail markets within their borders.”) (citation
26 omitted)

27 28. Although California amended its food labeling laws in 1995 in
28 response to the federal implementation of the 1993 Nutrition Labeling and

1 Education Act, California’s regulations of food labels predate the enactment of
2 the Sherman Law. For example, the current Cal. Health & Safety Code § 110660
3 invoked herein states “[a]ny food is misbranded if its labeling is false or
4 misleading in any particular.” California originally enacted this regulation in 1939,
5 previously found at Cal. Health & Safety Code § 26490. *See People v. 748 Cases*
6 *of Life Saver Candy Drops*, 94 Cal. App. 2d 599, 607 (1949) (applying section
7 26490 prohibition on “labeling is false or misleading in any particular” in food
8 labeling claim in 1949).

9 29. Under the FDCA, the term “misleading” covers labels that are
10 technically true, but are likely to deceive consumers. Under the FDCA, if any
11 single representation on the labeling is misleading, the entire food is misbranded,
12 and no other statement in the labeling can cure a misleading statement.

13 30. Further in addition to its blanket adoption of federal labeling
14 requirements, California has also enacted a number of laws and regulations that
15 adopt and incorporate specific numerated federal food laws and regulations. *See*
16 *California Health & Safety Code § 110660* (misbranded if label is misleading).

17 31. Under California law, a food product that is “misbranded” cannot
18 legally be manufactured, advertised, distributed, sold, or possessed.
19 Misbranded products have no economic value and are legally worthless.

20 32. Representing that the Product will provide certain health benefits
21 by making unlawful nutrient content claims as Defendants’ labels do is prohibited
22 by the aforementioned misbranding laws and regulations.

23 33. The regulations relating to nutrient content claims discussed herein
24 are intended to ensure that consumers are not misled as to the actual or relative
25 nutritional value of food products.

26 **Defendants’ Marketing and Labeling of the Product Violates State and**
27 **Federal Food Labeling Laws**

28 34. The Product is unlawful, misbranded, and violates the Sherman Law,

1 California Health & Safety Code § 110660, *et seq.*, because the Product is
2 intended for children less than 2 years of age and the Product’s label contains
3 nutrient content claims.

4 35. As described above, the Product at issue in this case is intended for
5 children one year and up as evidenced on the front label and in the Product title.

6 36. Beyond the Product label, the Product is also sold in the “Baby Food”
7 grocery store aisles, alongside infant formulas. On information and belief,
8 Defendants direct retailers to sell the Product in the baby food aisle.

9 37. Defendants misbrand the Product by making nutrient content
10 claims that are strictly prohibited by the FDA, and by misleading purchasers into
11 believing that its Product provides physical health benefits in order to induce
12 parents into purchasing the Product.

13 38. The Product’s front and back labels contain nutrient content claims
14 that are unlawful. As shown in **Exhibit 2**, the Product prominently states nutrient
15 content claims on the front and back labels such as “milk-based powder **with** iron
16 (emphasis added);” “DHA + ARA;” “WITH HMOs;” “WITH MFGM;” “**MFGM**
17 Naturally present in our **whole milk** (emphasis in original)” **HMOs** Our unique
18 **HMO blend** (emphasis in original);” “**PREBIOTIC** With dual **GOS + FOS**
19 **prebiotics** (emphasis in original);” “**IMMUNE SUPPORT** Vitamin C (emphasis
20 in original);” “**BRAIN HEALTH** DHA, Iron, Iodine (emphasis in original);” and
21 “**GROWTH** Calcium, Vitamins D + E (emphasis in original).”

22 39. The terms “**IMMUNE SUPPORT**” in conjunction with “Vitamin C;”
23 “**BRAIN HEALTH**” in conjunction “DHA, Iron, Iodine;” and “**GROWTH**” in
24 conjunction with “Calcium, Vitamins D + E” are each implied nutrient content
25 claims. *See* 21 C.F.R. § 101.13(b)(2); *FDA, Guidance for Industry: A Labeling*
26 *Guide for Restaurants and Other Retail Establishments Selling Away- From-*
27 *Home Foods*, 2008 WL 2155726, at *10 (April 2008) (explicit statement about a
28 nutrient alongside synonyms of healthy are implied nutrient content claims).

1 40. Foods intended for children less than two are prohibited from
2 making such nutrient content claims. 21 C.F.R. § 101.13(b)(3). Therefore, the
3 Product is accordingly misbranded.

4 41. In addition to being unlawful, the nutrient content claims on the
5 Product are also separately misleading.

6 42. Reasonable consumers rely on the label claims to decide to
7 purchase the Product for children under two years old. Reasonable consumers
8 shopping in the baby food aisle of a grocery or online retailer see the Product
9 alongside products intended for children as young as six months and purchase
10 the Product for their toddler under the age of two.

11 43. The nutrient content claims on the Product misleads reasonable
12 consumers into believing the Product will provide physical health benefits for their
13 children, when in fact the Product is harmful.

14 44. The FDA has long warned that nutrient content claims could be
15 misleading. This is especially true in the context of children under two because
16 there are different recommended daily nutrient intakes for children 0-12 months;
17 1-3 years; and 4 years and above.

18 45. The FDA described the purpose of nutrient content claim regulations
19 to be “promoting sound nutrition for the nation’s consumers.” 56 Fed. Reg. 60421.
20 The FDA relies on the USDA’s development of Dietary Guidelines as the basis for
21 encouraging and discouraging the “selection of foods containing low or high levels
22 of certain nutrients as part of an overall diet.” *Id.*

23 46. The FDA forbids nutrient content claims on products intended for
24 children under two because “the agency lacks evidence that a more restrictive
25 dietary pattern for other nutrients such as sodium or an increased intake for
26 nutrients such as fiber are appropriate and recommended for infants and
27 toddlers.” 56 Fed. Reg. 60421; *see* also 58 Fed. Reg. 33731, 33733. Although
28 it has been nearly thirty years, not much has changed regarding the evidence as

1 explained below.

2 47. At the time the regulation was implemented, there were
3 Recommended Daily Intakes (“RDI”) and Daily Recommended Values (“DRV”)
4 for most nutrients for children under two. *See* 58 Fed. Reg. 2302, 2305 (stating there
5 are RDIs for children under two); 58 FR 2206, 2211 (providing the RDIs). Despite
6 knowing the target daily intake of nutrients for these ages, the FDA concluded that
7 it would not be appropriate to promote nutrients on labels for this young group
8 because “relatively little attention has been given” to the dietary patterns of children
9 under two. 56 Fed. Reg. 60421; *see also* 60 Fed. Reg. 67184, 67191.

10 48. The same is true today. For example, there are still RDIs and DRVs
11 for most nutrients for children under two. Just as in 1991, the RDIs and DRVs of
12 nutrients is different for different ages, with a different set of values for children 0-
13 12 months, 1-3 years old, and 4 and above. 21 C.F.R. § 101.9(c)(8)(4). And just as
14 in 1991, in 2020 a USDA working group concluded “[d]eveloping recommended
15 food patterns for infants and toddlers ages 6 to 24 months is challenging. . . in part
16 because the scientific evidence for many questions is relatively scant.” Dietary
17 Guidelines Advisory Committee. 2020. *Scientific Report of the 2020 Dietary*
18 *Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture*
19 *and the Secretary of Health and Human Services*. (hereinafter “2020 Scientific
20 Report”).¹

21 49. Children under two have unique dietary needs because they are
22 experiencing huge amounts of growth, but eating relatively little solid food.
23 Therefore, it is important that children under two receive the “most nutrient dense
24 foods available in the household.” Dewey KG. *The challenge of meeting nutrient*
25 *needs of infants and young children during the period of complementary feeding:*
26 *an evolutionary perspective.* J Nutr. 2013 Dec;143(12):2050-4.

27
28 ¹ U.S. Department of Agriculture, Agricultural Research Service,
Washington, DC. Available at: <https://doi.org/10.52570/DGAC2020>.

1 doi:10.3945/jn.113.182527. Epub 2013 Oct 16. PMID: 24132575; PMCID:
2 PMC3827643.

3 50. The American Academy of Pediatrics (“AAP”) published a clinical
4 report titled “Older Infant-Young Child ‘Formulas’” in November 2023 about “the
5 lack of standardization in nomenclature and composition as well as questionable
6 marketing practices” of formulas directed at older infants and toddlers 6 to 36 months
7 of age (“OIYCFs”).² In it, the AAP explain that “[m]arketing of products in this age
8 group...is often based on vague concerns parents have that their child is not getting
9 some needed micronutrients and that these are uniquely provided by OIYCFs.” In fact,
10 the AAP explained, the World Health Assembly has long recognized specialty
11 formula milks for older infants as unnecessary and the AAP, as well as other expert
12 organizations, have recommended “breastfeeding through 2 years of age or longer or
13 whole cow’s milk and other acceptable nonformula dairy sources in conjunction with
14 appropriate complementary solid foods as nutritionally adequate.”³ Additionally, the
15 AAP stated that “[c]laims of brain development or immune function have incorrectly
16 shown to influence parents’ belief that OIYCFs are healthier than cow milk and
17 promotes their intention to provide OIYCFs to their children.”

18 51. Defendants’ labeling and marketing of their Product capitalize on the
19 exact concerns and beliefs that the AAP describes. For example, the front and back
20 labels of the Product state, “**MFGM** Naturally present in our **whole milk** (emphasis
21 in original)” **HMOs** Our unique **HMO blend** (emphasis in original);”
22 “**PREBIOTIC** With dual **GOS + FOS prebiotics** (emphasis in original);”
23 “**IMMUNE SUPPORT** Vitamin C (emphasis in original);” “**BRAIN HEALTH**
24 **DHA, Iron, Iodine** (emphasis in original);” and “**GROWTH** Calcium, Vitamins D

25 ² Fuchs GJ, Abrams SA, Amezor AA, et al. American Academy of
26 Pediatrics, Committee on Nutrition. Older Infant-Young Child “Formulas”
27 Pediatrics. 2023; 152(5):e2023064050, available at:
28 https://www.researchgate.net/publication/374896188_Older_Infant-Young_Child_Formulas (last accessed July 24, 2024).

³ *Id.*

1 + E (emphasis in original)” in colorful boxes with illustrations meant to catch the
2 eye. By echoing the nutritional concerns of parents and including vague
3 buzzwords, claims, and graphics that mention immune support, brain health, and
4 growth, Defendants induce and mislead consumers into purchasing their Product
5 for fear that a diet without the Product is nutritionally inadequate for their toddlers.
6 Furthermore, using the words “our” and “unique” in the phrases “**MFGM**
7 Naturally present in our **whole milk** (emphasis in original)” and “Our unique **HMO**
8 **blend** (emphasis in original)” gives the false impression that certain ingredients
9 are exclusive to Kendamil, further inducing parents to buy it.

10 52. Dietary needs for children under two are also different from those of
11 adults because the optimal diet for children under two also has to address needs
12 beyond mere nutrition, such as developing neural pathways in the brain to establish
13 healthy eating habits and developing gross and fine motor skills. The USDA-
14 recommended diet for children under two includes nutrient-dense foods that
15 promote exposure to new flavors and textures. Dietary Guidelines for Americans,
16 2020-2025. 9th Edition. December 2020. Available at DietaryGuidelines.gov
17 (hereinafter “USDA Dietary Guidelines”). The Dietary Guidelines emphasize that
18 the period of 0-24 months “is key for establishing healthy dietary patterns that may
19 influence the trajectory of eating behaviors and health throughout the life
20 course...Children in this age group consume small quantities of foods, so it’s
21 important to make every bite count!” Dietary Guidelines at 53. The AAP also stated
22 in their clinical report, “...in the case of toddlers, developing taste preferences for a
23 mixed diet is ideal.”⁴ By making nutrient content claims on its packages’ front labels,
24 Defendants mislead consumers into believing that foods for children under two
25 should be purchased based on the quantities of the listed nutrients, when other
26 considerations are just as, or more, important.

27
28 ⁴ *Id.*

1 53. The Guidelines also recommend that children “younger than age 2”
2 completely “[a]void foods and beverages with added sugars.” Dietary Guidelines at
3 61. Defendants’ Product has 8 grams of added sugars.

4 54. For these reasons, Defendants marketing the Product as providing
5 physical health benefits for toddlers being a healthful and safe source of nutrients
6 for babies and toddlers is misleading to reasonable consumers and the Product is
7 actually harmful for children under two both nutritionally and developmentally.

8 55. Defendants’ marketing, advertising, and sale of the Product violates
9 the false advertising provisions of the Sherman Law (California Health & Safety
10 Code § 110390, *et. seq.*), including but not limited to:

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

21 56. Defendants’ marketing, advertising, and sale of the Product
22 violates the misbranding provisions of the Sherman Law (California Health &
23 Safety Code § 110660, *et. seq.*), including but not limited to:

- 24 a. Section 110665 (a food is misbranded if its labeling does not
25 conform with the requirements for nutrition labeling as set forth
26 in 21 U.S.C. Sec. 343(q));
27 b. Section 110760, which makes it unlawful for any person to
28 manufacture, sell, deliver, hold, or offer for sale any food that is

- 1 misbranded;
- 2 c. Section 110765, which makes it unlawful for any person to
- 3 misbrand any food; and
- 4 d. Section 110770, which makes it unlawful for any person to
- 5 receive in commerce any food that is misbranded or to deliver or
- 6 proffer for delivery any such food.

7 57. Defendants have violated 21 U.S.C. § 343(a), and the standards

8 set by FDA regulations, including, but not limited to, 21 C.F.R. §§ 101.13(b),

9 101.13(c), 101.54(e), and 104.20, which have been incorporated by reference

10 in the Sherman Law, by including impermissible nutrient content claims on

11 the labels of foods intended for children less than 2 years of age, including

12 misleading claims on the front and back labels.

13 58. A reasonable consumer would rely on the label claims to decide to

14 purchase the Product. For example, Defendants' nutrient content claims mislead

15 a reasonable consumer to believe the Product provides physical health benefits

16 for their child when in fact, the Product is harmful for children under two both

17 nutritionally and developmentally.

18 59. Defendants intend for and know that consumers will and do rely

19 upon food labeling statements in making their purchasing decisions. Label

20 claims and other forms of advertising and marketing drive product sales,

21 particularly if placed prominently on the front of product packaging, as Defendants

22 have done on the Product label.

23 60. Because consumers pay a price premium for products that have

24 a nutrient content claim, by labeling the Product as providing nutritional value,

25 Defendants are able to both increase its sales and retain more profits.

26 61. Defendants engaged in the practices complained of herein to further

27 its private interests of: (i) increasing sales of their Product while decreasing

28 the sales of competitors' products that do not make unlawful nutrient content

1 claims, and/or (ii) commanding a higher price for the Product because consumers
2 will pay more for them due to consumers' demand for healthful products for their
3 children.

4 62. The market for toddler food and drink products continues to grow,
5 and because Defendants know consumers rely on the nutrient content claims
6 on the Product labels, Defendants have an incentive to continue to make such
7 misleading and unlawful representations.

8 63. Defendants continue to launch new product lines with nutrient
9 content claims to maintain their competitive edge, making it likely that
10 Defendants will continue to misleadingly advertise their Product.

11 **Plaintiff's Experience**

12 64. Plaintiff is a California citizen residing in Shingle Springs, California.

13 65. In or around February 2024, and for about three (3) months thereafter,
14 Plaintiff purchased the Product for her child when he was one (1) year old.

15 66. Plaintiff purchased the Product consistently during that time period,
16 approximately two (2) to four (4) cans of the Product in total.

17 67. Plaintiff made these purchases from Target locations in or around
18 Shingle Springs, California.

19 68. Plaintiff viewed both the advertising for the Product and the Product's
20 packaging prior to purchasing the Product for the first time. Plaintiff purchased
21 the Product in reliance on the representations on the packaging that the Product
22 provides physical health benefits for children under two years of age.

23 69. As a result of Defendants' unlawful and misleading nutrient content
24 claims, the Product has no, or at a minimum, much lower value to Plaintiff .

25 70. Plaintiff not only purchased the Product because the label contained
26 nutrient content claims, but she also paid more money for the Product than she
27 would have paid for it if it did not contain nutrient content claims.

28 71. Had Defendant not unlawfully and misleadingly labeled the

1 Product, Plaintiff would not have purchased it or, at minimum, would have
2 paid less for the Product.

3 72. Plaintiff regularly shops at stores and online retailers where the
4 Product and other baby food products are sold.

5 CLASS ACTION ALLEGATIONS

6 73. Plaintiff brings this lawsuit as a class action on behalf of herself and
7 all others similarly situated as members of the proposed Class pursuant to Federal
8 Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the numerosity,
9 commonality, typicality, adequacy, predominance, and superiority requirements
10 of those provisions.

11 74. The Class and Sub-Classes are defined as:

12
13 **Class:** All persons in the State of California who
purchased the Product between 2021 and the present.

14 **CLRA Sub-Class:** All members of the Class who are
15 “consumers” within the meaning of California Civil
Code § 1761(d).

16 75. Excluded from the Class and Sub-Classes are: (1) Defendants, any
17 entity or division in which Defendants has a controlling interest, and its legal
18 representatives, officers, directors, assigns, and successors; (2) the Judge to whom
19 this case is assigned and the Judge’s staff; (3) any Judge sitting in the presiding
20 state and/or federal court system who may hear an appeal of any judgment entered;
21 and (4) those persons who have suffered personal injuries as a result of the facts
22 alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class
23 definitions if discovery and further investigation reveal that the Class and Sub-
24 Classes should be expanded or otherwise modified.

25 76. **Numerosity:** Although the exact number of Class Members is
26 uncertain, and can only be ascertained through appropriate discovery, the number
27 is significant enough such that joinder is impracticable. The disposition of the
28 claims of these Class Members in a single action will provide substantial benefits

1 to all parties and to the Court. The Class Members are readily identifiable from
2 information and records in Defendants' possession, custody, or control.

3 77. Typicality: Plaintiff's claims are typical of the claims of the Class in
4 that Plaintiff, like all Class Members, purchased the Product designed,
5 manufactured, and distributed by Defendants. The representative Plaintiff, like all
6 Class Members, has been damaged by Defendants' misconduct in that she has
7 incurred the cost of purchasing the Product. Furthermore, the factual bases of
8 Defendants' misconduct are common to all Class Members and represent a
9 common thread resulting in injury to the Class.

10 78. Commonality: There are numerous questions of law and fact
11 common to Plaintiff and the Class that predominate over any question affecting
12 Class Members individually. These common legal and factual issues include the
13 following:

- 14 (a) Whether the marketing, advertising, packaging, labeling, and
15 other promotional materials for the Product is deceptive and/or
16 unlawful;
- 17 (b) Whether Defendants' actions violate Federal and California
18 laws invoked herein;
- 19 (c) Whether labeling the Product with unlawful nutrient content
20 claims causes the Product to command a price premium in the
21 market as compared with similar products that do not make
22 such unlawful claims;
- 23 (d) Whether Defendants' advertising and marketing regarding
24 the Product was likely to deceive reasonable consumers;
- 25 (e) Whether representations regarding the nutrient content of
26 the Product is material to a reasonable consumer;
- 27 (f) Whether Defendants' engaged in the behavior knowingly,
28 recklessly, or negligently;

- 1 (g) The amount of profits and revenues earned by Defendants
2 as a result of the conduct;
- 3 (h) Whether class members are entitled to restitution, injunctive
4 and other equitable relief and, if so, what is the nature (and
5 amount) of such relief; and
- 6 (i) Whether class members are entitled to payment of actual,
7 incidental, consequential, exemplary and/or statutory damages
8 plus interest thereon, and if so, what is the nature of such relief.

9 79. Adequate Representation: Plaintiff will fairly and adequately protect
10 the interests of the Class Members. Plaintiff has retained attorneys experienced in
11 the prosecution of class actions, and Plaintiff intends to vigorously prosecute this
12 action.

13 80. Predominance and Superiority: Plaintiff and Class Members have all
14 suffered, and will continue to suffer, harm and damages as a result of Defendants'
15 unlawful and wrongful conduct. A class action is superior to other available
16 methods for the fair and efficient adjudication of the controversy. Absent a class
17 action, most Class Members would likely find the cost of litigating their claims
18 prohibitively high and would therefore have no effective remedy. Because of the
19 relatively small size of the individual Class Members' claims, it is likely that only
20 a few Class Members could afford to seek legal redress for Defendants'
21 misconduct. Absent a class action, Class Members will continue to incur damages,
22 and Defendants' misconduct will continue unabated without remedy or relief.
23 Class treatment of common questions of law and fact would also be a superior
24 method to multiple individual actions or piecemeal litigation in that it will
25 conserve the resources of the courts and the litigants and promote consistency and
26 efficiency of adjudication.

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FIRST CAUSE OF ACTION

Violation of California’s Consumer Legal Remedies Act (“CLRA”),

Cal Civ. Code § 1750, *et seq.*

(On behalf of the CLRA Sub-Class)

81. Plaintiff incorporates by reference each allegation set forth above.

82. Plaintiff brings this cause of action individually and on behalf of the members of the CLRA Sub-Class.

83. Defendants are “person[s]” as defined by the CLRA. Cal. Civ. Code § 1761(c).

84. Plaintiff and CLRA Sub-Class Members are “consumers” within the meaning of the CLRA. Cal. Civ. Code § 1761(d).

85. The purchase of the Product by Plaintiff and the CLRA Sub-Class Members constitute “transactions” as defined by the CLRA. Cal. Civ. Code § 1761(e).

86. The Product constitutes “goods” or “services” as defined by the CLRA. Cal. Civ. Code § 1761(a) and (b).

87. Plaintiff and the CLRA Sub-Class Members purchased the Product primarily for personal, family, and household purposes as meant by the CLRA. Cal. Civ. Code § 1761(d).

88. Defendants’ representations, active concealments, omissions, and failures to disclose regarding the Product violated the CLRA in the following ways:

89. Defendants’ acts and practices, set forth in this Class Action Complaint, led Plaintiff and other similarly situated consumers to falsely believe that the Product provides physical health benefits for their child when in fact, the Product is harmful for children under two both nutritionally and developmentally. By engaging in the actions, representations and conduct set forth in this Class Action Complaint, Defendants have violated, and continue to violate, §

1 1770(a)(2), § 1770(a)(5), § 1770(a)(7), and § 1770(a)(8) of the CLRA.

2 90. In violation of California Civil Code §1770(a)(2), Defendants'
3 acts and practices constitute improper representations regarding the source,
4 sponsorship, approval, or certification of the goods they sold.

5 91. In violation of California Civil Code §1770(a)(5), Defendants'
6 acts and practices constitute improper representations that the goods they
7 sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
8 quantities, which they do not have.

9 92. In violation of California Civil Code §1770(a)(7), Defendants'
10 acts and practices constitute improper representations that the goods it sells
11 are of a particular standard, quality, or grade, when they are of another.

12 93. In violation of California Civil Code §1770(a)(8), Defendants have
13 disparaged the goods, services, or business of another by false or misleading
14 representation of fact.

15 94. Plaintiff and the CLRA Sub-Class Members seek an order enjoining
16 Defendants' unfair or deceptive acts or practices and equitable relief under Cal.
17 Civ. Code § 1780(e), and any other just and proper relief available under the
18 CLRA.

19 95. Plaintiff provided Defendants with notice of their violations of the
20 CLRA pursuant to California Civil Code § 1782(a), via letter dated July 3, 2024.
21 Defendants failed to provide appropriate relief for their violations of the CLRA.
22 Accordingly, California Plaintiff now seeks monetary, compensatory, and punitive
23 damages, in addition to the injunctive and equitable relief that she seeks on behalf
24 of herself and the CLRA Sub-Class.

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SECOND CAUSE OF ACTION

Violation of California’s Unfair Competition Law,

Cal. Bus. & Prof. Code § 17200, *et seq.*

(On behalf of the Class)

96. Plaintiff incorporates by reference each allegation set forth above.

97. Plaintiff brings this cause of action individually and on behalf of Class Members.

98. California Business & Professions Code § 17200 prohibits “unfair competition” including any “unlawful, unfair, or fraudulent business practice” and “unfair, deceptive, untrue or misleading advertising.” Defendants engaged in conduct that violated each of this statute’s three prongs.

99. Defendants have engaged, and continue to engage, in unfair practices as described herein, in violation of the Unfair Competition Law, California Business & Professions Code §§ 17200 *et seq.* (the “UCL”), by, without limitation, including unlawful nutrient content claims on the Product’s labels and thereby selling Products that were not capable of being sold or held legally and which were legally worthless.

100. Defendants have engaged, and continue to engage, in unlawful practices as described herein, in violation of the UCL, by, without limitation, violating the following 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 §§ 110665, 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of food in 21 U.S.C. § 343, *et seq.* and FDA regulations, including but not limited to 21 C.F.R. §§ 101.13(b), 101.13(c), 101.54(e), and 104.20, which are incorporated into the Sherman Law (California Health &

1 Safety Code §§ 110100(a), 110380, and 110505).

2 101. Defendants have engaged, and continue to engage, in fraudulent
3 practices as described herein, in violation of the UCL, by, without limitation,
4 including unlawful nutrient content claims on the Product labels and thereby
5 selling Products that were not capable of being sold or held legally and which were
6 legally worthless.

7 102. Plaintiff and those similarly situated relied to their detriment on
8 Defendants' unlawful, unfair, and fraudulent business practices. Had Plaintiff
9 and those similarly situated been adequately informed and not deceived by
10 Defendants, they would have acted differently by, without limitation: (i) declining
11 to purchase the Product, (ii) purchasing less of the Product, or (iii) paying less for
12 the Product.

13 103. Defendants' acts and omissions are likely to deceive the general
14 public.

15 104. Defendants engaged in these deceptive and unlawful practices to
16 increase their profits. Accordingly, Defendants have engaged in unlawful trade
17 practices, as defined and prohibited by section 17200, *et seq.* of the California
18 Business and Professions Code.

19 105. The aforementioned practices, which Defendants have used to
20 their significant financial gain, also constitute unlawful competition and provide
21 an unlawful advantage over Defendants' competitors as well as injury to the
22 general public.

23 106. As a direct and proximate result of such actions, Plaintiff and the
24 other Class members, have suffered and continue to suffer injury in fact and
25 have lost money and/or property as a result of such deceptive and/or unlawful
26 trade practices and unfair competition in an amount which will be proven at trial,
27 but which is in excess of the jurisdictional minimum of this Court. In particular,
28 Plaintiff and those similarly situated paid a price premium for the Product, i.e.,

1 the difference between the price consumers paid for the Product and the price
2 that they would have paid but for Defendants’ misrepresentation. This
3 premium can be determined by using econometric or statistical techniques such
4 as hedonic regression or conjoint analysis. Alternatively, Plaintiff and those
5 similarly situated will seek a full refund of the price paid upon proof that the sale
6 of the Product was unlawful.

7 107. As a direct and proximate result of such actions, Defendants have
8 enjoyed, and continue to enjoy, significant financial gain in an amount which
9 will be proven at trial, but which is in excess of the jurisdictional minimum of
10 this Court.

11 108. Plaintiff seeks, on behalf of herself and those similarly situated,
12 equitable relief, including restitution for the premium and/or the full price that they
13 and others paid to Defendants as result of Defendants’ conduct. Plaintiff and the
14 Class lack an adequate remedy at law to obtain such relief with respect to their
15 “unfairness” claims in this UCL cause of action, because there is no cause of
16 action at law for “unfair” conduct. Plaintiff and the Class similarly lack an
17 adequate remedy at law to obtain such relief with respect to their “unlawfulness”
18 claims in this UCL cause of action because the Sherman Law (Articles 3 and 6)
19 and the Federal laws and regulations referenced herein do not provide a direct
20 cause of action, so Plaintiff and the Class must allege those violations as predicate
21 acts under the UCL to obtain relief.

22 109. Plaintiff also seeks equitable relief, including restitution, with respect
23 to her UCL unlawfulness claims for violations of the CLRA, FAL and her
24 UCL “fraudulent” claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2),
25 Plaintiff makes the following allegations in this paragraph only hypothetically and
26 as an alternative to any contrary allegations in their other causes of action, in the
27 event that such causes of action do not succeed. Plaintiff and the Class may be
28 unable to obtain monetary, declaratory and/or injunctive relief directly under

1 other causes of action and will lack an adequate remedy of law, if the Court
2 requires them to show classwide reliance and materiality beyond the objective
3 reasonable consumer standard applied under the UCL, because Plaintiff may
4 not be able to establish each Class member's individualized understanding
5 of Defendants' misleading representations as described in this Complaint, but
6 the UCL does not require individualized proof of deception or injury by absent
7 class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013, 1020, 1023-25
8 (distinguishing, for purposes of CLRA claim, among class members for whom
9 website representations may have been materially deficient, but requiring
10 certification of UCL claim for entire class).

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

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

THIRD CAUSE OF ACTION

False Advertising, Bus. and Prof. Code § 17500, *et seq.*

(On behalf of the Class)

112. Plaintiff incorporates by reference each allegation set forth above.

113. Plaintiff brings this cause of action individually and on behalf of Class Members.

114. Beginning at an exact date unknown to Plaintiff, but within three (3) years preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of the Product.

115. Defendants made representations and statements (by omission and commission) that led reasonable customers to believe that the Product that they were purchasing were physically beneficial for their young children.

116. Plaintiff and those similarly situated relied to their detriment on Defendants' misleading and deceptive advertising and marketing practices, including each of the unlawful claims set forth above. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendants, they would have acted differently by, without limitation, refraining from purchasing the Product or paying less for it.

117. Defendants' acts and omissions are likely to deceive reasonable consumers and the general public.

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

119. The aforementioned practices, which Defendants used, and continue to use, to their significant financial gain, also constitute unlawful competition and provide an unlawful advantage over Defendants' competitors as well as

1 injury to the general public.

2 120. As a direct and proximate result of such actions, Plaintiff and the
3 other Class members have suffered, and continue to suffer, injury in fact and
4 have lost money and/or property as a result of such false, deceptive and
5 misleading advertising in an amount which will be proven at trial, but which is
6 in excess of the jurisdictional minimum of this Court. In particular, Plaintiff,
7 and those similarly situated, paid a price premium for the Product, i.e., the
8 difference between the price consumers paid for the Product and the price that they
9 would have paid but for Defendants' false, deceptive and misleading
10 advertising.

11 121. Plaintiff seeks equitable relief, including restitution, with respect
12 to their FAL claims.

13 122. Plaintiff seeks, on behalf of herself and those similarly situated, a
14 declaration that the above-described practices constitute false, misleading and
15 deceptive advertising.

16 123. Plaintiff seeks, on behalf of herself and those similarly situated, an
17 injunction to prohibit Defendants from continuing to engage in the false,
18 misleading and deceptive advertising and marketing practices complained of
19 herein. Such misconduct by Defendants, unless and until enjoined and restrained
20 by order of this Court, will continue to cause injury in fact to the general public
21 and the loss of money and property in that Defendants will continue to violate the
22 laws of California, unless specifically ordered to comply with the same. This
23 expectation of future violations will require current and future consumers to
24 repeatedly and continuously seek legal redress in order to recover monies paid
25 to Defendants to which they are not entitled. Plaintiff, those similarly situated
26 and/or other California consumers have no other adequate remedy at law to
27 ensure future compliance with the California Business and Professions Code
28 alleged to have been violated herein.

FOURTH CAUSE OF ACTION

Common Law Fraud, Deceit, and/or Misrepresentation

(On behalf of the Class)

124. Plaintiff incorporates by reference each allegation set forth above.

125. Plaintiff brings this cause of action individually and on behalf of Class Members.

126. Defendants have fraudulently and deceptively included unlawful nutrient content claims on the Product labels.

127. The unlawfulness of the claims was known exclusively to, and actively concealed by, Defendants, not reasonably known to Plaintiff, and material at the time they were made. Defendants' unlawful statements concerned material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase the Product. In misleading Plaintiff and not so informing her, Defendants breached their duty to Plaintiff. Defendants also gained financially from, and as a result of, their breach.

128. Plaintiff and those similarly situated relied to their detriment on Defendants' unlawful representations. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendants, they would have acted differently by, without limitation: (i) declining to purchase the Product, (ii) purchasing less of them, or (iii) paying less for the Product.

129. By and through such fraud, deceit, and unlawful representations, Defendants intended to induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those similarly situated to, without limitation, purchase the Product.

130. Plaintiff and those similarly situated justifiably and reasonably relied on Defendants' unlawful representations, and, accordingly, were damaged by Defendants.

1 131. As a direct and proximate result of Defendants' unlawful
2 representations, Plaintiff and those similarly situated have suffered damages,
3 including, without limitation, the amount they paid for the Product.

4 132. Defendants' conduct as described herein was willful and malicious
5 and was designed to maximize Defendants' profits even though Defendants knew
6 that it would cause loss and harm to Plaintiff and those similarly situated.

7 **FIFTH CAUSE OF ACTION**

8 **For Unjust Enrichment**

9 **(On Behalf of the Class)**

10 133. Plaintiff incorporates by reference each allegation set forth above.

11 134. Plaintiff brings this cause of action on behalf of herself and the Class.

12 135. Defendants have received and retained a benefit from Plaintiff and
13 Class Members, and inequity has resulted.

14 136. Defendants have been unjustly enriched in retaining the revenues
15 from Plaintiff's and Class Members' purchases of the Product, which retention
16 is unjust and inequitable, because Defendants sold Products that were not capable
17 of being sold or held legally and which were legally worthless. Plaintiff paid a
18 premium price for the Product.

19 137. Because Defendants' retention of the non-gratuitous benefit
20 conferred on them by Plaintiff and Class members is unjust and inequitable,
21 Defendants must pay restitution and non-restitutionary disgorgement of profits
22 to Plaintiff and the Class members for its unjust enrichment, as ordered by the
23 Court. Plaintiff and those similarly situated have no adequate remedy at law to
24 obtain this restitution.

25 138. Plaintiff, therefore, seeks an order requiring Defendants to pay non-
26 restitutionary disgorgement of profits and make restitution to her and other
27 members of the Class.

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SIXTH CAUSE OF ACTION

**Violation of California’s False Advertising Law, Bus. & Prof. Code § 17501
(On Behalf of the Class)**

139. Plaintiff incorporates by reference each allegation set forth above.

140. Plaintiff brings this cause of action on behalf of herself and the Class.

141. Plaintiff brings this cause of action for restitution pursuant to Section 17535 of the Business and Professions Code. Pursuant to Rule 8(a)(3) of the Federal Rules of Civil Procedure, Plaintiff seeks restitution in the alternative to the damages they seek in their first through fifth causes of action. Plaintiff is entitled to restitution because she lacks an adequate remedy at law; the legal remedies available to her are not as equally prompt and certain, and in other ways efficient.

142. Defendants violated Section 17501 of the Business and Professions Code by through their misleading and deceptive advertising and marketing practices.

143. Defendants made representations and statements (by omission and commission) that led reasonable customers to believe that the Product that they were purchasing was physically beneficial for their young children.

144. Defendants violated Section 17501 with actual or constructive knowledge that their advertisements were untrue or misleading.

145. Defendants violated Section 17501 in order to induce Plaintiff and the class members to purchase the Product based on the false impression that they are physically beneficial for their young children.

146. Plaintiff and the class members reasonably relied on Defendants’ representations and/or omissions made in violation of Section 17501, and were thereby induced to pay more for Defendants’ Product and make purchases they would not have otherwise made.

147. As a direct and proximate result of Defendants’ violations of Section

1 17501, Defendants have improperly acquired money from Plaintiff and the class
2 members. As such, Plaintiff requests this Court order Defendants to restore this
3 money to them and all class members.

4 **RELIEF REQUESTED**

5 148. Plaintiff, on behalf of herself and all others similarly situated,
6 requests the Court enter judgment against Defendants, as follows:

- 7 (a) An order certifying the proposed Class and Sub-Class,
8 designating Plaintiff as named representative of the Class, and
9 designating the undersigned as Class Counsel;
- 10 (b) An order temporarily and permanently enjoining Defendants
11 from continuing the unlawful, deceptive, fraudulent, and unfair
12 business practices alleged in this Complaint;
- 13 (c) An award to Plaintiff and the Class for compensatory,
14 exemplary, and statutory damages, including interest, in an
15 amount to be proven at trial;
- 16 (d) Any and all remedies provided pursuant to the causes of action
17 and statutes alleged herein;
- 18 (e) A declaration that Defendants must disgorge, for the benefit of
19 the Class, all or part of the ill-gotten profits it received from the
20 sale of the Product or make full restitution to Plaintiff and Class
21 Members;
- 22 (f) An award of attorneys' fees and costs, as allowed by law;
- 23 (g) An award of pre-judgment and post-judgment interest, as
24 provided by law;
- 25 (h) Leave to amend the Complaint to conform to the evidence
26 produced at trial; and
- 27 (i) Such other relief as may be appropriate under the
28 circumstances.

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DEMAND FOR JURY TRIAL

149. Pursuant to Federal Rule of Civil Procedure 38(b) and Eastern District of California Local Rule 201, Plaintiff hereby demands a trial by jury of all issues in this action so triable.

Dated: September 6, 2024

Respectfully submitted,
Capstone Law APC

By: /s/ Laura E. Goolsby

Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby
Nathan N. Kiyam

Attorneys for Plaintiff