	Case 4:22-cv-04021-KAW Document	1 Filed 07/08/22 Page 1 of 27
1 2 3 4 5 6 7		S DISTRICT COURT RICT OF CALIFORNIA
8 9	Elena Nacarino, on behalf of herself and all	CASE NO.: 3:22-cv-04021
10 11	others similarly situated, Plaintiff,	CLASS ACTION COMPLAINT
12	v.	
13	KSF Acquisition Corporation, a corporation; and DOES 1 through 10, inclusive,	DEMAND FOR JURY TRIAL
14	Defendants.	
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	CLASS A	CTION COMPLAINT

Plaintiff Elena Nacarino ("Plaintiff"), on behalf of herself and all others similarly situated,
 brings this class action against Defendant KSF Acquisition Corporation ("Defendant" or "KSF")
 based on Defendant's false and deceptive advertising and labeling of its SlimFast smoothie and
 shake mix products. Plaintiff makes the following allegations based on the investigation of her
 counsel, and on information and belief, except as to allegations pertaining to Plaintiff individually,
 which are based on her personal knowledge.

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#### **INTRODUCTION**

8 1. This case is predicated on a systemic course of false, misleading, and unlawful
9 conduct: Defendant has falsely and deceptively misrepresented the amount of protein in its
10 SlimFast smoothie and shake mix products (the "Products").<sup>1</sup>

2. The Products are one of the nation's leading smoothie and shake mixes, and
Defendant is one of the nation's leading manufacturers of these products. Consumers trust
Defendant to be transparent and sincere in its advertising, rather than deceitful and misleading.
Unfortunately for consumers, this is not Defendant's practice with respect to its marketing and
advertising of the Products.

3. Specifically, on the front label of each of the Products, Defendant prominently
places a representation which promises a specific number of grams of protein (e.g., "20g HIGH
PROTEIN") (hereinafter, the "Protein Representation").<sup>2</sup> Consumers understand this message
simply: each serving of the Products' smoothie/shake mix contains the number of grams of protein
promised on the front label.

4. However, unbeknownst to consumers, the shake mix contains far fewer grams of
protein than what is promised in the Protein Representation. Instead, the Products require *milk* to
be added in order to obtain the grams of protein advertised in the Protein Representation.

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 $28 \parallel^2$  See Paragraph 16, *infra*, for an example of the Protein Representation.

 <sup>&</sup>lt;sup>1</sup> The Products include the following: (1) SlimFast Original Meal Replacement Shake Mix; (2)
 SlimFast Advanced Nutrition Smoothie Mix; (3) SlimFast Diabetic Weight Loss Meal Shake; and
 (4) SlimFast Advanced Immunity Smoothie Mix.

- S. Nothing on the Products' front packaging discloses to consumers that they must
   add milk to receive the amount of protein promised in the Protein Representation.
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3 6. Plaintiff and other consumers purchased the Products based on the reasonable belief that they would receive the grams of protein per serving promised in the Protein 4 5 Representation from the Products alone. Had Plaintiff and other consumers known the truth-i.e., 6 that consumers must add milk to obtain the grams of protein promised in the Protein Representation-they would not have purchased the Products or they would have paid less for 7 8 them. Thus, Plaintiff and other consumers have suffered economic injury as a result of 9 Defendant's deceptive marketing. Plaintiff and other consumers have also suffered a financial 10 injury in the form of paying a price premium for a greater amount of protein than what was provided to them. 11

7. Plaintiff seeks relief in this action individually, and on behalf of all other similarly
situated individuals who purchased Defendant's falsely and deceptively labeled Products, seeking
to prevent Defendant from continuing to falsely advertise the Products in the future, and to obtain
monetary compensation for purchases of the Products.

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#### JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal
Rules of Civil Procedure, there are thousands of proposed Class members, the aggregate amount
in controversy exceeds \$5,000,000 exclusive of interest and costs, and Defendant is a citizen of a
state different from at least some members of the proposed Classes, including Plaintiff.

9. This Court has personal jurisdiction over Defendant because Defendant has
sufficient minimum contacts in California, or otherwise intentionally avails itself of the markets
within California, through its sale of the Products in California and to California consumers.

10. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b)(2) because
a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this
District. Plaintiff resides in this District and she purchased one of the Products in this District
during the statute of limitations period.

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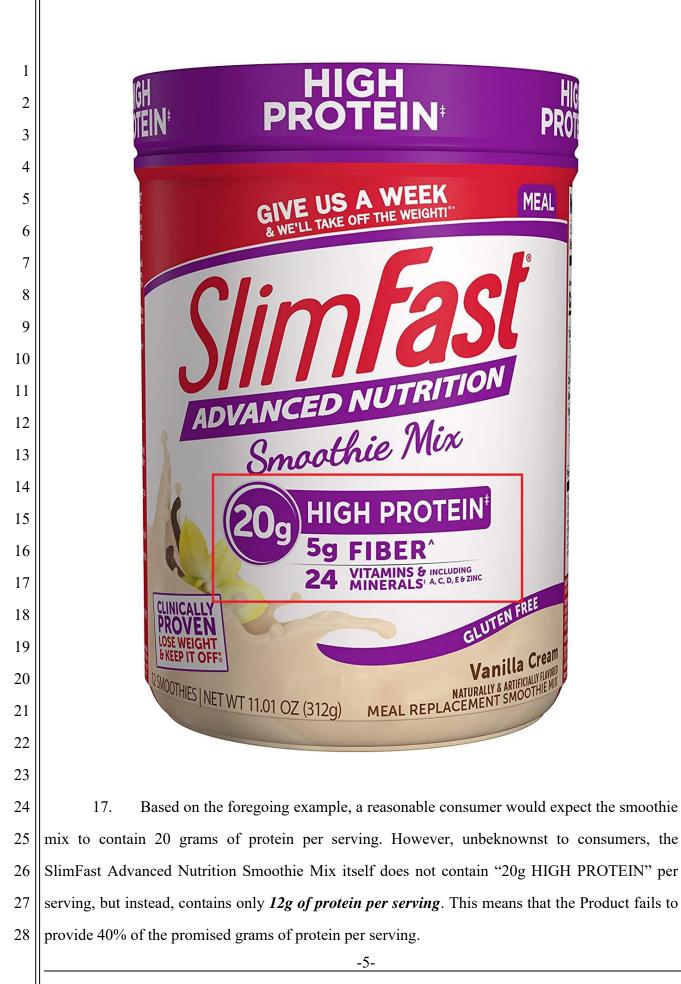
#### **PLAINTIFF**

2 11. Plaintiff is a citizen of the United States and the State of California and she 3 currently resides in San Francisco, California. In or around December 2021, Plaintiff purchased the SlimFast Advanced Nutrition Smoothie Mix Vanilla Cream Product from a Safeway store in 4 5 San Francisco, California. In purchasing the Product, Plaintiff saw and relied on the "20g HIGH PROTEIN" representation on the Product's front label. Based on this representation, Plaintiff 6 7 believed that the smoothie mix itself contained 20 grams of protein per serving. Plaintiff's 8 reasonable belief that the Product's smoothie mix contained the number of grams promised in the 9 Protein Representation was an important factor in her decision to purchase the Product. Plaintiff 10 would not have purchased the Product, or she would have paid less for it (i.e., she would not have paid a price premium), but for the aforementioned misrepresentation. Because did not receive the 11 number of grams of protein from the Product itself as promised, Plaintiff suffered injury in fact 12 13 and lost money as a result of Defendant's misleading, false, unfair, and deceptive practices, as 14 described herein.

15 12. Despite Defendant's misrepresentations, Plaintiff would purchase the Products, as 16 advertised, if they actually provided the grams of protein in the Products' shake/smoothie mix as 17 stated on the front label. Although Plaintiff regularly shops at stores that carry the Products, absent 18 an injunction of Defendant's deceptive advertising, she will be unable to rely with confidence on 19 Defendant's advertising of the Products in the future. Furthermore, while Plaintiff currently 20 believes that the Protein Representation is inaccurate, she lacks personal knowledge as to 21 Defendant's specific business practices, and thus, she will not be able determine whether the Products truly will provide the stated protein from the mix itself. This leaves doubt in her mind as 22 23 to the possibility that at some point in the future the Products could be made in accordance with 24 the representations on the Products' front label. This uncertainty, coupled with her desire to 25 purchase the Products, is an ongoing injury that can and would be rectified by an injunction enjoining Defendant from making the alleged misleading representations. In addition, other Class 26 27 members will continue to purchase the Products, reasonably but incorrectly, believing that they 28 will receive the grams of protein from the Products as stated on the front label.

-3-

1	DEFENDANT
2	13. KSF Acquisition Corporation is a Delaware corporation that maintains its principal
3	place of business and headquarters in Palm Beach Gardens, Florida. It markets and distributes the
4	Products throughout California and the United States. The Products are sold in grocery stores such
5	as Ralph's, and online on websites such as Amazon.com.
6	FACTUAL ALLEGATIONS
7	14. Defendant owns SlimFast, one of the leading dietary shake and smoothie mix
8	brands in the United States. Consumers trust Defendant to be honest and forthright in its
9	advertising and marketing of its products, including the Products at issue here.
10	15. Despite this trust, Defendant has engaged in false and deceptive advertising in the
11	marketing and sale of the Products.
12	16. For example, as demonstrated below, on the front label of each of the Products,
13	Defendant prominently places a representation which promises a specific number of grams of
14	protein (e.g., "20g HIGH PROTEIN") (hereinafter, the "Protein Representation").
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	-4- CLASS ACTION COMPLAINT



18. Defendant's other Products suffer from the same flaw. Most shockingly, SlimFast's 1 2 Original Product promises "10g PROTEIN", but the mix only contains 2g of protein per serving. 3 The Original Product fails to provide a considerable 80% of the promised grams of protein. 4 19. The Advanced Immunity Product similarly promises "20g PROTEIN", but only 5 provides 12g of protein per serving. The Diabetic Weight Loss Products promise 10-11g of 6 protein, but provide only 2-3g of protein per serving. 7 20. Instead, to obtain the number of grams of protein represented on the Products' front 8 labeling, consumers must add milk to the Products. Nothing on the Products' front packaging 9 discloses to consumers that they must add milk to receive the amount of protein promised in the 10 Protein Representation. 11 21. As a result, Defendant's labeling of the Products is false and deceptive, and mislead reasonable consumers. 12 13 22. Complaints by other purchasers of the Products show that this deception is not an 14 isolated incident experienced by Plaintiff. Below are a few of many complaints by consumers of the Products regarding this precise issue:<sup>3</sup> 15 16 Jenny 17 **★**☆☆☆☆ Misleading and fraudulent information 18 Reviewed in the United States on November 27, 2018 19 Style: Advanced Nutrition Flavor Name: Vanilla Cream Size: 12 Servings (Pack of 1) Verified Purchase This product does not contain the 20 grams of protein it claims. It only contains 12 grams of protein 20 per serving. In order to reach the 20 grams you have to mix it with 8 oz. of dairy milk. If you are lactose 21 intolerant or just avoid dairy this is not doable. All through the description of this product it claims that the "powder" contains 20 grams of protein. False and misleading. When I complained to the company, 22 they said they were sorry and that I should return the product if I was unhappy. Great! So now I have to pay the return shipping to send back a product I was duped into buying. Wow! Thanks for nothing! 23 355 people found this helpful 24 25 <sup>3</sup>https://www.amazon.com/SlimFast-Original-Replacement-Vitamins-Chocolate/dp/B000DZT0N0/ref=cm cr arp d product top?ie=UTF8#customerReviews 26 [Original Product] and https://www.amazon.com/SlimFast-Advanced-Nutrition-Vanilla-Smoothie/dp/B0187HZC32/ref=sr 1 6?crid=1XVUQEA6HULL9&keywords=Slimfast%2Badva 27 nced&qid=1642984987&s=hpc&sprefix=slimfast%2Badvance%2Chpc%2C121&sr=1-6&th=1 [Advanced Nutrition Product] (last visited July 6, 2022). 28 -6-CLASS ACTION COMPLAINT

#### Lynette Molina

#### 📌ជជជជជា Do not waste your money

Reviewed in the United States on September 29, 2019

Style: Advanced Nutrition | Flavor Name: Vanilla Cream | Size: 12 Servings (Pack of 2) | Verified Purchase

It contains a deceiving wrapper making you think that the protein grams you will get are from the shake powder, but in reality they are counting the milk's protein on the grams advertised. I cant drink milk so it was such a waste of money. Any other protein brand indicates the protein grams in yhe from of the label for the powder only, then will have a chat with or without milk on the nutritional facts.



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#### ★☆☆☆☆ This product only has 2g protein as compared to the advertised 10g!! Reviewed in the United States on June 9, 2020

Flavor Name: Rich Chocolate Royale | Size: 34 Servings (Pack of 1) | Verified Purchase

It advertises 10g protein If you look on the Nutritional Facts it's only 2g protein and only 10g if you mix it with non fat milk! False advertising. What if you mix it with water or something other than milk? They shouldn't put that on the front of the can if that's not accurate. I decided to go with Pure Protein powder that I found on amazon. Around the same price, 25g of protein and only 4g of sugar compared to the 11g with this product. Also around the same calories. Way better for your body.

#### Christine A Berger

#### ★☆☆☆☆ CONTAINS \*\*TWO\*\* GRAMS OF PROTEIN

Reviewed in the United States on September 13, 2018 Flavor Name: Rich Chocolate Royale | Size: 34 Servings (Pack of 1) | **Verified Purchase** 

The product arrived and I was furious to see it contains only 2 grams of protein. I feel the marketing is blatantly misleading in repeatedly stating 10 grams of protein. The other 8 is from milk you have to add yourself; it's also strongly implied this product is ready-to-drink with water like the familiar cans. I looked at my husband's hot cocoa mix and it's literally the same amount of protein and calories; 2 grams protein and 100 calories. And at least the cocoa I could drink mixed with water! I am seeking a refund. This is not a nutritional product and I don't feel it would add any health or wellness benefits over just drinking a glass of plain milk.

23. The belief that the Products themselves will actually contain the amount of protein 1 2 promised in the Protein Representation is even more reasonable given that other smoothie and 3 shake mix manufacturers correctly advertise on their products' front labels the amount of protein 4 that consumers will receive based on the products alone, irrespective of whether the consumer 5 adds milk or any other ingredient.

6 24. As demonstrated below, one of the nation's leading nutrient supplement 7 companies, Nestle's Garden of Life, correctly advertises the grams of protein consumers receive 8 solely from the content of its Garden of Life Fit High Protein For Weight Loss dietary shake 9 product.<sup>4</sup> The product's front label advertises "28 grams" of protein, and this is precisely what consumers receive from the product's contents alone.

Replacement/dp/B01NA7VLNL/ref=sr 1 16?crid=1XIVG45GIOYG2&keywords=Protein%2Bsh

ake%2Bmix&qid=1649130728&rdc=1&sprefix=protein%2Bshake%2Bmi%2Caps%2C154&sr=8

-8-

CLASS ACTION COMPLAINT

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<sup>4</sup> https://www.amazon.com/Garden-Life-Organic-Meal-

-16&th=1 (last visited July 8, 2022).

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# Supplement Facts

Serving Size 1 Level Scoop (About 46.5g) Servings Per Container 20

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		Amount Per Serving	% Daily Value
'	Calories	180	
,	Total Fat	3 g	4%1
	Saturated Fat	0.5 g	3%1
	Trans Fat	0 g	
	Polyunsaturated Fat	1 g	
	Monounsaturated Fat	1 g	
	Sodium	280 mg	12%
	Total Carbohydrate	11 g	4%1
	Dietary Fiber	4 g	14%1
	Soluble Fiber	2 g	
	Insoluble Fiber	2 g	
	Total Sugars	<1 g	+
	Includes 0g Added Sugars		0%1
	Protein	28 g	38%1
	Vitamin D	25 mcg (1,000 IU)	125%
	Calcium (naturally occurring)	150 mg	12%
	Iron (naturally occurring)	3 mg	17%
	Potassium (naturally occurring)	90 mg	2%
	Vitamin A	280 mcg	31%
	Vitamin C (naturally occurring)	1.2 mg	1%
	Vitamin E (from Sunflower Oil)	15 mg	100%
	Vitamin K	130 mcg	108%
	Magnesium (naturally occurring)	27 mg	6%
	Chromium (from Brown Rice Chelate)	35 mcg	100%

https://www.amazon.com/Natures-Bounty-Complete-Collagen-Chocolate/dp/B08YS3TWTT/ref=sr 1 6?crid=1XIVG45GIOYG2&keywords=Protein+shake+mi 28

-10-

#### CLASS ACTION COMPLAINT

Bounty,



**DIRECTIONS:** Mix two (2) scoops (33 g) with 8 oz of water. To increase the protein content to more than 20 grams per serving and enjoy a creamy texture, mix with 8 oz of skim milk. Shake can also be enjoyed by mixing with you favorite vegetarian milk alternative. Best served ice cold.

Amount Per Serving		%Daily Value
Calories	110	
Total Fat	3 g	4%**
Saturated Fat	1 g	5%**
Cholesterol	25 mg	8%
Total Carbohydrate	11 g	4%**
Dietary Fiber	6 g	21%**
Total Sugars	2 g	***
Includes 2g Added Sugars		4%**
Protein	15 g	30%**
Vitamin C (as Ascorbic Acid)	60 mg	67%
Vitamin D (as D2 Ergocalciferol)	20 mcg (800 IU)	100%
Thiamin (Vitamin B-1) (as Thiamin Hydrochloride)	1.5 mg	125%
Riboflavin (Vitamin B-2)	1.7 mg	131%
Niacin (as Niacinamide)	20 mg	125%
Vitamin B-6 (as Pyridoxine Hydrochloride)	2 mg	118%
Folate	666 mcg DFE (400 mcg Folic Acid)	167%
Vitamin B-12 (as Cyanocobalamin)	6 mcg	250%
Biotin (as d-Biotin)	300 mcg	1,000%
Pantothenic Acid (as d-Calcium Pantothenate)	10 mg	200%
Calcium	230 mg	18%
Iron	3 mg	17%
Phosphorus	230 mg	18%
Magnesium	50 mg	12%
Sodium	100 mg	4%
Potassium	380 mg	8%
Digestive Enzyme Blend Bromelain (from Pineapple), Papain (from Papaya fruit)	11 mg	
Flaxseed	888 mg	***
which typically contains: Alpha-Linolenic Acid (Omega-3)	218 mg	
Other Fatty Acids		
Collagen	3 g	
**Percent Daily Values are based on a 2,000 calorie diet. ***Daily Value not established.		

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-12-

27. The amount of protein contained in the Products is a material factor to Plaintiff and
 other reasonable consumers as the Products serve as nutritional shakes and meal replacements and
 protein is an essential nutrient for the human body.

28. Defendant's decision to highlight the purported protein in the Products through the
conspicuous Protein Representation, in addition to the purchasing decisions and beliefs from
consumers such as Plaintiff and the reviews depicted above, further demonstrate the materiality of
the Protein Representation.

8 29. As the entity ultimately responsible for the manufacturing and advertising of the
9 Products, Defendant is responsible for the accuracy of the information conveyed about the
10 Products, including the representations on the front packaging.

30. Defendant knew or should have known that the Products' advertising is deceptive,
and that reasonable consumers would believe the Products contain the number of grams of protein
per serving promised on the Products' front label. For example, Defendant should have been
aware of the aforementioned complaints from its consumers regarding this precise issue.

15 31. Through the use of misleading representations, Defendant commands a price that 16 Plaintiff and the Classes would not have paid had they been fully informed. Had Plaintiff been 17 aware that the Product was falsely labeled, she would have purchased a different product or paid 18 significantly less for it. Alternatively, had Plaintiff been aware that the Product was falsely labeled 19 she would not have purchased the Product at all.

32. By the use of misleading representations, Defendant created increased market
demand for the Products and increased its market share relative to what its demand and share
would have been had it marketed the Products truthfully.

33. Plaintiff and members of the Classes were exposed to and justifiably relied upon
the same material misrepresentations (i.e., the Protein Representation) throughout the class period.
Specifically, each of the Products contain a Protein Representation, and each of the Products do
not contain the amount of protein promised in the Protein Representation. As such, this case fits
squarely within the parameters for class certification.

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	Case 4:22-cv-04021-KAW Document 1 Filed 07/08/22 Page 15 of 27
1	CLASS ACTION ALLEGATIONS
2	34. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all other
3	applicable laws and rules, individually, and on behalf of all members of the following Classes:
4 5	<u>California Class</u> All residents of California who purchased the Products within the applicable statute of limitation ("California Class").
6 7	California Consumer Subclass
7 8 9	All residents of California who purchased the Product for personal, family, or household purposes, within the applicable statute of limitations period ("California Consumer Subclass") (together with the California Class, the "Classes").
10	35. Excluded from the Classes are the following individuals and/or entities: Defendant
11	and its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any
12	entity in which Defendant has a controlling interest; all individuals who make a timely election to
13	be excluded from this proceeding using the correct protocol for opting out; and all judges assigned
14	to hear any aspect of this litigation, as well as their immediate family members.
15	36. Plaintiff reserves the right to modify or amend the definition of the proposed
16	Classes and/or add subclasses before the Court determines whether class certification is
17	appropriate.
18	37. Plaintiff is a member of all the Classes.
19	38. <u>Numerosity</u> : Members of each Class are so numerous and geographically
20	dispersed that individual joinder of all Class members is impracticable. The precise number of
21	Class members is unknown to Plaintiff but is likely to be ascertained by the Defendant's records
22	or through sales data. At a minimum, there likely are tens of thousands of Class members.
23	39. <u>Commonality</u> : There are questions of law and fact common to the proposed
24 25	class(es). Common questions of law and fact include, without limitations:
23 26	a. whether Defendant's course of conduct alleged herein violates the statutes and
27	other laws that are pled in this Complaint;
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-	-14-
	CLASS ACTION COMPLAINT

1	b. whether reasonable consumers would rely upon Defendant's representations
2	about the Product and reasonably believe the Product's Protein Representation;
3	c. whether Defendant knew or should have known its representations were false or
4	misleading;
5	d. whether Defendant was unjustly enriched by retaining monies from the sale of
6	the Products;
7 8	e. whether certification of each Class is appropriate under Rule 23;
° 9	f. whether Plaintiff and the members of each Class are entitled to declaratory,
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11	equitable, or injunctive relief, and/or other relief, and the scope of such relief;
12	and
13	g. the amount and nature of the relief to be awarded to the Plaintiff and the Class,
14	including whether Plaintiff and the Class are entitled to punitive damages.
15	40. <u>Typicality</u> : Plaintiff's claims are typical of the other Class members because
16	Plaintiff, as well as Class members, purchased the Products. Plaintiff and the members of the
17	Classes relied on the representations made by the Defendant about the Products prior to
18	purchasing the Product. Plaintiff and the members of each Class paid for Defendant's Products
19	and would not have purchased them (or would have paid substantially less for them) had they
20	known that the Defendant's representations were untrue.
21	41. <b>Adequacy:</b> Plaintiff will fairly and adequately protect the interests of the proposed
22 23	Classes as her interests do not conflict with the interests of the members of the proposed Classes
23 24	she seeks to represent, and she has retained counsel competent and experienced in class action
25	litigation. Thus, the interests of the members of the Classes will be fairly and adequately protected
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27	by Plaintiff and her counsel.
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	-15-

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

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43. Superiority: A class action is superior to all other available methods for the fair 7 and efficient adjudication of this litigation because individual litigation of each claim is 8 9 impractical. It would be unduly burdensome to have individual litigation of hundreds of thousands 10 of individual claims in separate lawsuits, every one of which would present the issues presented in 11 the Complaint/lawsuit. Further, because of the damages suffered by any individual Class member 12 may be relatively modest in relation to the cost of litigation, the expense and burden of individual 13 litigation make it difficult, if not impossible. Furthermore, many of the Class members may be 14 unaware that claims exist against the Defendant. 15

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16 44. Declaratory and Injunctive Relief: Pursuant to Rule 23(b)(2), declaratory and 17 injunctive relief is appropriate in this matter. Defendant has acted or refused to act on grounds 18 generally applicable to Plaintiff and the other Class members, thereby making appropriate final 19 injunctive relief and declaratory relief, as described below, with respect to the Class members as a 20whole. Unless a class-wide injunction is issued, Defendant will continue to advertise, market, 21 promote, and sell the Products in an unlawful and misleading manner, as described throughout this 22 Complaint, and members of the Classes will continue to be misled, harmed, and denied their rights 23 24 under the law. 25 26

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

45. Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set forth herein.

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

8 47. The Products are "goods" within the meaning of Cal. Civ. Code  $\S$  1761(a), and the 9 purchases of the Products by Plaintiff and members of the California Consumer Subclass 10 constitute "transactions" within the meaning of Cal. Civ. Code § 1761(e).

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48. Cal. Civ. Code 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have..." By promising a specific number of grams of protein in the Products' Protein Representation on the Products' front labeling, Defendant has represented and continues to represent that the Products have characteristics (i.e., provide a certain number of grams of protein) that they do not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

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49. Cal. Civ. Code § 1770(a)(7) prohibits "[r]espresenting that goods or services are of 18 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are 19 of another." By promising a specific number of grams of protein in the Products' Protein 20 Representation on the Products' front labeling, Defendant has represented and continues to 21 represent that the Products are of a particular standard (i.e., provide a certain number of grams of 22 protein) that they do not meet. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

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23 50. Cal. Civ. Code § 1770(a)(9) prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By promising a specific number of grams of protein in the 25 Products' Protein Representation on the Products' front labeling, Defendant has advertised the 26 Products with characteristics it intended not to provide to consumers. As such, Defendant has 27 violated section 1770(a)(9) of the CLRA.

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51. At all relevant times, Defendant has known or reasonably should have known that
 the Protein Representation is false, and that Plaintiff and other members of the California
 Consumer Subclass would reasonably and justifiably rely on the Products' Protein Representation
 when purchasing the Products. Nonetheless, Defendant deceptively advertises the Products as such
 in order to deceive consumers into believing they are receiving more protein from the Products
 than they are actually receiving.

7 52. Plaintiff and members of the California Consumer Subclass have justifiably relied
8 on Defendant's misleading representations when purchasing the Products. Moreover, based on the
9 materiality of Defendant's misleading and deceptive conduct, reliance may be presumed or
10 inferred for Plaintiff and members of California Consumer Subclass.

53. Plaintiff and members of the California Consumer Subclass have suffered and
continue to suffer injuries caused by Defendant because they would have paid significantly less for
the Products, or would not have purchased them at all, had they known that the Products do not
contain the grams of protein as promised on the Products' front labels.

54. Under Cal. Civ. Code § 1782, on January 25, 2022, counsel for Plaintiff mailed a
notice and demand letter by certified mail to Defendant, outlining that Defendant has violated the
CLRA for the reasons described herein. Defendant responded on February 22, 2022, and as of yet,
has refused to take any action to rectify this misconduct. Because Defendant has failed to fully
rectify the issues within 30 days after receipt of the notice and demand letter, Plaintiff timely filed
the Class Action Complaint for a claim for damages under the CLRA.

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#### <u>SECOND CLAIM FOR RELIEF</u> Violation of California's False Advertising Law California Business & Professions Code § 17500, *et seq* (For the California Class)

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55. Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set
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56. Plaintiff brings this claim individually and on behalf of the members of the
proposed California Class against Defendant pursuant to California's False Advertising Law
("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*

-18-

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

58. Defendant has represented and continues to represent to the public, including
Plaintiff and members of the proposed California Class, through its deceptive packaging, that the
Products provide more protein than they actually contain. Because Defendant has disseminated
misleading information regarding the Products, and Defendant knows, knew, or should have
known through the exercise of reasonable care that the representations were and continue to be
misleading, Defendant has violated the FAL.

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

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#### <u>THIRD CLAIM FOR RELIEF</u> Violation of California's Unfair Competition Law ("UCL"), California Business & Professions Code § 17200, *et seq.* (For the California Class)

23 60. Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set
24 forth herein.

25 61. Plaintiff brings this claim individually and on behalf of the members of the
26 proposed California Class against Defendant pursuant to California Business & Professions Code
27 § 17200 ("UCL").

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

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

9 64. Under the UCL, a business act or practice is "unfair" if its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and 10 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity 11 12 of the harm to the alleged victims. Defendant's conduct was and continues to be of no benefit to 13 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who 14 rely on the packaging. Deceiving consumers into believing they will receive the grams of protein promised on the front packaging of the Products, but providing fewer grams of protein than 15 16 advertised, is of no benefit to consumers. Therefore, Defendant's conduct was and continues to be 17 "unfair." As a result of Defendant's unfair business acts and practices, Defendant has and 18 continues to unfairly obtain money from Plaintiff and members of the proposed California Class.

19 65. Under the UCL, a business act or practice is "fraudulent" if it actually deceives or
20 is likely to deceive members of the consuming public. Defendant's conduct here was and
21 continues to be fraudulent because it has the effect of deceiving consumers into believing they will
22 receive more protein than what is promised on the front packaging of the Products. Because
23 Defendant misled Plaintiff and members of the California Class, Defendant's conduct was
24 "fraudulent." As a result of Defendant's fraudulent business acts and practices, Defendant has and
25 continues to fraudulently obtain money from Plaintiff and members of the California Class.

66. Plaintiff requests that the Court cause Defendant to restore this unlawfully,
unfairly, and fraudulently obtained money to them, and members of the proposed California Class,
to disgorge the profits Defendant made on these transactions, and to enjoin Defendant from

-20-

1 violating the UCL or violating it in the same fashion in the future as discussed herein. Otherwise, 2 Plaintiff and members of the proposed California Class may be irreparably harmed and/or denied 3 an effective and complete remedy.

> FOURTH CLAIM FOR RELIEF **Breach of Express Warranty**

> > Cal. Com. Code § 2313 (For the California Class)

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67. Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set forth herein.

8 68. Plaintiff brings this claim individually and on behalf of the members of the 9 California Class against Defendant for breach of express warranty under Cal. Com. Code § 2313.

10 69. California's express warranty statutes provide that "(a) Any affirmation of fact or 11 promise made by the seller to the buyer which relates to the goods and becomes part of the basis 12 of the bargain creates an express warranty that the goods shall conform to the affirmation or 13 promise," and "(b) Any description of the goods which is made part of the basis of the bargain 14 creates an express warranty that the goods shall conform to the description." Cal. Com. Code § 15 2313.

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70. Defendant has expressly warranted on the Products' front packaging that the 17 Products contain a specific number of grams of protein as stated on the Products' Protein 18 Representation (e.g., "20g HIGH PROTEIN). However, as alleged herein, these express 19 representations are false and misleading. The Products contain far fewer grams of protein than 20explicitly represented on the Products' Protein Representation.

21 71. The Protein Representations on the Products' front labels are: (a) an affirmation of 22 fact or promise made by Defendant to consumers that the Products contain the specific number of 23 grams of protein promised on the Protein Representation; (b) became part of the basis of the 24 bargain to purchase the Products when Plaintiff and other consumers relied on the representations; 25 and (c) created an express warranty that the Products would conform to the affirmations of fact or 26 promises. In the alternative, the representations about the Products are descriptions of goods which 27 were made as part of the basis of the bargain to purchase the Products, and which created an 28 express warranty that the Products would conform to the product descriptions.

-21-

72. Plaintiff and members of the California Class reasonably and justifiably relied on
 the foregoing express warranties, believing that the Products did in fact conform to those
 warranties.

4 73. Defendant has breached the express warranties made to Plaintiff and members of
5 the California Class by failing to provide the Products with the grams of protein promised on the
6 Products' front label.

7 74. Plaintiff and members of the California Class paid a premium price for the Products
8 but did not obtain the full value of the Products as represented. If Plaintiff and members of the
9 California Class had known of the true nature of the Products, they would not have been willing to
10 pay the premium price associated with them. As a result, Plaintiff and members of the California
11 Class suffered injury and deserve to recover all damages afforded under the law.

12 75. On or around December 2021, Plaintiff discovered that Defendant breached its
13 express warranty, and on January 25, 2022, Plaintiff sent a notice letter by certified mail to
14 Defendant, notifying Defendant of the breach. Defendant responded on February 22, 2022, and as
15 of yet, has refused to take any action to rectify this misconduct.

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(*For the California Class*) 76. Plaintiff repeat the allegations contained in paragraphs 1-44 above as if fully set forth herein.

FIFTH CLAIM FOR RELIEF Breach of Implied Warranty

Cal. Com. Code § 2313

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

78. California's implied warranty of merchantability statute provides that "a warranty
that the goods shall be merchantable is implied in a contract for their sale if the seller is a
merchant with respect to goods of that kind." Cal. Com. Code § 2314(1).

79. California's implied warranty of merchantability statute also provides that "[g]oods
to be merchantable must be at least such as . . . (f) conform to the promises or affirmations of fact
made on the container or label if any." Cal. Com. Code § 2314(2)(f).

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80. Defendant is a merchant with respect to the sale of Products. Therefore, a warranty -22-

1 of merchantability is implied in every contract for sale of the Products to California consumers.

2	81. By advertising the Products with the Protein Representations on the Products' front
3	label, Defendant made an implied promise on the container that the Products contain the specific
4	number of grams of protein. The Products, however, have not "conformed to the promisesmade
5	on the container or label" because the Products contain far fewer grams of protein as promised on
6	the Products' front label. Plaintiff, as well as other California consumers, did not receive the goods
7	as impliedly warranted by Defendant to be merchantable. Therefore, the Products are not
8	merchantable under California law and Defendant has breached its implied warranty of
9	merchantability in regard to the Products.
10	82. If Plaintiff and members of the California Class had known that the Products'
11	Protein Representations were false and misleading, they would not have been willing to pay the
12	premium price associated with them. Therefore, as a direct and/or indirect result of Defendant's
13	breach, Plaintiff and members of the California Class have suffered injury and deserve to recover
14	all damages afforded under the law.
15	SIVTH CLAIM EOD DEI IEE
10	SIXTH CLAIM FOR RELIEF
16	Quasi Contract/Unjust Enrichment/Restitution
16	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)
16 17	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set
16 17 18	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         Plaintiff brings this claim individually and on behalf of the members of the
16 17 18 19	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set forth herein.
16 17 18 19 20	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.
16 17 18 19 20 21	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading         representations to Plaintiff and members of the California Class to induce them to purchase the
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.       85.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading         representations to Plaintiff and members of the California Class to induce them to purchase the         Products. Plaintiff and members of the California Class have reasonably relied on the misleading
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.       85.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading         representations to Plaintiff and members of the California Class to induce them to purchase the         Products. Plaintiff and members of the California Class have reasonably relied on the misleading         representations and have not received all of the benefits (i.e., grams of protein) promised by
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.       85.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading         representations to Plaintiff and members of the California Class to induce them to purchase the         Products. Plaintiff and members of the California Class have reasonably relied on the misleading         representations and have not received all of the benefits (i.e., grams of protein) promised by         Defendant through the Products' Protein Representations. Plaintiff and members of the proposed
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	Quasi Contract/Unjust Enrichment/Restitution (for the Classes)         83.       Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set         forth herein.       84.         84.       Plaintiff brings this claim individually and on behalf of the members of the         proposed California Class against Defendant for unjust enrichment.       85.         85.       As alleged herein, Defendant has intentionally and recklessly made misleading         representations to Plaintiff and members of the California Class to induce them to purchase the         Products.       Plaintiff and members of the California Class have reasonably relied on the misleading         representations and have not received all of the benefits (i.e., grams of protein) promised by         Defendant through the Products' Protein Representations. Plaintiff and members of the proposed         California Class have therefore been induced by Defendant's misleading and deceptive

-23-

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

4 87. The monies received were obtained under circumstances that were at the expense of
5 Plaintiff and members of the proposed California Class—i.e., Plaintiff and members of the
6 proposed California Class did not receive the full value of the benefit conferred upon Defendant.
7 Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or compensation
8 conferred upon them.

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

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#### SEVENTH CLAIM FOR RELIEF Common Law Fraud (for the Classes)

15 89. Plaintiff repeats the allegations contained in paragraphs 1-44 above as if fully set
16 forth herein.

17 90. Plaintiff brings this claim individually and on behalf of the members of the Classes
18 for common law fraud.

19 91. Defendant has willfully, falsely, and knowingly misrepresented the Products'
 20 amount of protein through the Products' Protein Representation, as they knew that the Products'
 21 contained less grams of protein per serving than represented.

23
92. Defendant has therefore made knowing, fraudulent misrepresentations as to the
24
Products.

93. Defendant's misrepresentations were material (i.e., they affected Plaintiff and
 members of the Classes' purchasing decisions given their importance), because they relate to the
 central functionality of the Products as nutritional shake mixes, given that the Products contain
 fewer grams of protein than advertised.

-24-

94. Defendant knew or recklessly disregarded the fact that the Products did not contain 1 2 the number of grams of protein as promised in the Products' Protein Representation. 3 95. Defendant intended that Plaintiff and members of the Classes rely on the Protein 4 Representation, as if they had known the truth of the protein levels in the Products, they would 5 have less for the Products or would not have purchased them at all. 6 96. Plaintiff and members of the Classes have reasonably and justifiably relied on 7 Defendant's misrepresentations when purchasing the Products, and if Plaintiff and members of the 8 9 Classes had known the truth about the Products, they would not have paid monies for the Products 10 or would have paid less monies for the Products. 11 97. For these reasons, Plaintiff and members of the Classes have suffered monetary 12 losses, including interest they would have accrued on these monies, as a direct and proximate 13 result of Defendant's fraudulent conduct. 14 15 **PRAYER FOR RELIEF** 16 WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes, respectfully 17 prays for following relief: 18 A. Certification of this case as a class action on behalf of the proposed California 19 Class defined above, appointment of Plaintiff as Class representative, and appointment of their 20 counsel as Class counsel; 21 B. A declaration that Defendant's actions, as described herein, violate the claims 22 described herein; 23 C. An award of injunctive and other equitable relief as is necessary to protect the 24 interests of Plaintiff and the proposed California Class, including, inter alia, an order prohibiting 25 Defendant from engaging in the unlawful act described above; 26 D. An award to Plaintiff and the proposed California Class of restitution and/or other 27 equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust 28 -25-

	Case 4:22	-cv-04021-KAW	Document 1 Filed 07/08/22 Page 27 of 27
1	enrichment th	at Defendant obtai	ned from Plaintiff and the proposed California Class as a result of
2	its unlawful, u	Infair and frauduler	nt business practices described herein;
3	E.	An award of all	economic, monetary, actual, consequential, and compensatory
4	damages caus	ed by Defendant's	conduct;
5	F.	An award of nom	inal, punitive, and statutory damages;
6	H.	An award to Plair	tiff and her counsel of reasonable expenses and attorneys' fees;
7	I.	An award to Plain	ntiff and the proposed California Class of pre and post-judgment
8	interest, to the	extent allowable;	and
9	J.	For such further r	elief that the Court may deem just and proper.
10			DEMAND FOR JURY TRIAL
11	Plainti	ff, on behalf of he	rself and the proposed Classes, hereby demands a jury trial with
12	respect to all i	ssues triable of rig	ht by jury.
13			
14			
15	DATED: July	8, 2022	CUSTODIO & DUBEY, LLP
16			By: <u>/s/ Robert Abiri</u>
17			Dahart Ahiri (CDN 229691)
17 18			Robert Abiri (SBN 238681) E-mail: <u>abiri@cd-lawyers.com</u>
			<i>E-mail: <u>abiri@cd-lawyers.com</u></i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071
18			<i>E-mail: <u>abiri@cd-lawyers.com</u></i> 445 S. Figueroa Street, Suite 2520
18 19			<i>E-mail: <u>abiri@cd-lawyers.com</u></i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095
18 19 20			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899
18 19 20 21			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i> <i>Putative Classes</i>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>			<i>E-mail: abiri@cd-lawyers.com</i> 445 S. Figueroa Street, Suite 2520 Los Angeles, CA 90071 Telephone: (213) 593-9095 Facsimile: (213) 785-2899 <i>Attorney for Plaintiff and the</i>

Case 4:22-cv-04021-KAW Document 1-1 Filed 07/08/22 Page 1 of 2

### EXHIBIT "A"

Vinesign Docum	ent #2:659.576A2080BD:#AA7-DOCG1726FED-141PB2F67/08/22 Page 2 of 2					
1	DECLARATION OF ELENA NACARINO					
2	I, Elena Nacarino, hereby declare:					
3	1. I am a Plaintiff in the action entitled <i>Nacarino v. KSF Acquisition Corporation</i> . I					
4	am a competent adult over eighteen years of age and I have personal knowledge of the facts set					
5	forth herein. If called as a witness, I could and would testify competently thereto.					
6	2. I currently reside in the City of San Francisco located in the County of San					
7	Francisco.					
8	3. In or around December 2021, I purchased the SlimFast Advanced Nutrition					
9	Smoothie Mix product in San Francisco, CA.					
10						
11	I declare under penalty of perjury under the laws of the United States of America and the					
12	State of California that the foregoing is true and correct.					
13						
14	Executed on 07/08/2022 at San Francisco, California.					
15						
16	She					
17						
18	Elena Nacarino					
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20						
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The signed document can be validated at https://appENidesDefComRATION

#### Case 4:22-cv-04021-KAW Document 1-2 Filed 07/08/22 Page 1 of 2 CIVIL COVER SHEET JS-CAND 44 (Rev. 10/2020)

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

I. (a) PLAINTIFFS		DEFEN	DANTS					
Elena Nacarino, on behalf of herself and all other similarly s	situated	KSF Acqu	uisition,	a corp	oration	n; and DOES 1 through 2	10, in	clusive
(b) County of Residence of First Listed Plaintiff San Francisco County (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence of First Listed Defendant Palm Beach County (IN U.S. PLAINTIFF CASES ONLY)					
			N LAND C THE TRAC			CASES, USE THE LOCATION OF LVED.	7	
(c) Attorneys (Firm Name, Address, and Telephone Number)		Attorneys (If Known)						
Robert Abiri, Esq. Custodio & Dubey LLP, 445 S. Figueroa Street, Suite Los Angeles, CA 90071, 213-593-9095	e 2520,							
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		<b>IZENSHI</b> Diversity Cases		INCI	PAL PA	ARTIES (Place an "X" in One Bo and One Box for Defena		aintiff
				PTF	DEF		PTF	DEF
1       U.S. Government Plaintiff       3       Federal Question (U.S. Government Not a Party)	Citizer	n of This State		<b>X</b> <sup>1</sup>	1	Incorporated <i>or</i> Principal Place of Business In This State	4	4
2 U.S. Government Defendant × 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizer	n of Another Sta	nte	2	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	<b>X</b> 5
(indicate Citizenship of Parties in item 111)	Citize	n or Subject of a	ı	3	3	Foreign Nation	6	6

Foreign Country

	CONTRACT	(Frace and A for one box only)
IV.	NATURE OF SUIT	(Place an "X" in One Box Only)

CONTRACT	ТО	RTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES				
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of	422 Appeal 28 USC § 158	375 False Claims Act				
120 Marine	310 Airplane	365 Personal Injury - Product	Property 21 USC § 881	423 Withdrawal 28 USC	376 Qui Tam (31 USC				
130 Miller Act	315 Airplane Product Liability	Liability	690 Other	§ 157	§ 3729(a))				
140 Negotiable Instrument	320 Assault, Libel & Slander	367 Health Care/	LABOR	PROPERTY RIGHTS	400 State Reapportionment				
150 Recovery of	330 Federal Employers'	Pharmaceutical Personal Injury Product Liability	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust				
Overpayment Of Veteran's Benefits	Liability	368 Asbestos Personal Injury	720 Labor/Management	830 Patent	430 Banks and Banking				
151 Medicare Act	340 Marine	Product Liability	Relations	835 Patent-Abbreviated New	450 Commerce				
151 Medicare Act	345 Marine Product Liability	PERSONAL PROPERTY	740 Railway Labor Act	Drug Application	460 Deportation				
Student Loans (Excludes	350 Motor Vehicle	× 370 Other Fraud	751 Family and Medical	840 Trademark	470 Racketeer Influenced & Corrupt Organizations				
Veterans)	355 Motor Vehicle Product	371 Truth in Lending	Leave Act	880 Defend Trade Secrets Act of 2016	480 Consumer Credit				
153 Recovery of	Liability	380 Other Personal Property	790 Other Labor Litigation		485 Telephone Consumer				
Overpayment	360 Other Personal Injury	Damage	791 Employee Retirement Income Security Act	SOCIAL SECURITY	Protection Act				
of Veteran's Benefits	362 Personal Injury -Medical Malpractice	385 Property Damage Product	-	861 HIA (1395ff)	490 Cable/Sat TV				
160 Stockholders' Suits	Marpractice	Liability	IMMIGRATION	862 Black Lung (923)	850 Securities/Commodities/				
190 Other Contract	CIVIL RIGHTS	PRISONER PETITIONS	462 Naturalization	863 DIWC/DIWW (405(g))	Exchange				
195 Contract Product Liability	440 Other Civil Rights	HABEAS CORPUS	Application	864 SSID Title XVI	890 Other Statutory Actions				
196 Franchise	441 Voting	463 Alien Detainee	465 Other Immigration Actions	865 RSI (405(g))	891 Agricultural Acts				
REAL PROPERTY	442 Employment	510 Motions to Vacate	Actions	FEDERAL TAX SUITS	893 Environmental Matters				
210 Land Condemnation	443 Housing/	Sentence		870 Taxes (U.S. Plaintiff or	895 Freedom of Information				
220 Foreclosure	Accommodations	530 General		Defendant)	Act				
230 Rent Lease & Ejectment	445 Amer. w/Disabilities-	535 Death Penalty		871 IRS-Third Party 26 USC	896 Arbitration				
240 Torts to Land	Employment	OTHER		§ 7609	899 Administrative Procedure				
245 Tort Product Liability	446 Amer. w/Disabilities-Other	540 Mandamus & Other			Act/Review or Appeal of Agency Decision				
290 All Other Real Property	448 Education	550 Civil Rights			950 Constitutionality of State				
1 2		555 Prison Condition			Statutes				
		560 Civil Detainee-							
		Conditions of							
		Confinement							
V. ORIGIN (Place an "X" in One Box Only)									
		Demondad form	5 Turn form 1 from	C Malki distaist	9 Malti Jintoi et				
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roceeding State Court Appendie Court Reopened Another District (specify) Litigation–Transfer Litigation–Direct File									
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		which you are filing (Do not ci	te jurisdictional statutes unless di	versity):					
	U.S.C. § 1332 ef description of cause:								
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v	Iolation of CA Statu	tes, Breach of Warran	nty, Onjust Enrichme	in, Common Law Fr	auu				
VII. REOUESTED I	N ✓ CHECK IF THIS IS A	CLASS ACTION DEM.	AND \$	CHECK YES only if dem	anded in complaint:				
COMPLAINT:	UNDER RULE 23, Fed			JURY DEMAND:	× Yes No				
VIII. RELATED CAS	E(S).								
	JUDGE		DOCKET NUMBER						
IF ANY (See instructions):									
IX. DIVISIONAL A	SSIGNMENT (Civil L	ocal Rule 3-2)							
		ANCISCO/OAKLAND	SAN JOSI	F FIDEKA	MCKINLEYVILLE				
(Place an "X" in One Box O		AUGUO/UAKLAND	SAN JUSI	E EUNENA-	WICKINGE I VILLE				
DATE 07/08/2022	SICNAT	URE OF ATTORNEY (	OF RECORD /s/ R	obert Abiri					
	SIGNAI	UNE OF ATTORNET		_					
Print	Print Save As Reset								

#### **INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- **II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) <u>United States defendant</u>. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) <u>Federal question</u>. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) <u>Diversity of citizenship</u>. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- **III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- **IV.** Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the six boxes.
  - (1) <u>Original Proceedings</u>. Cases originating in the United States district courts.
  - (2) <u>Removed from State Court</u>. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) <u>Remanded from Appellate Court</u>. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) <u>Reinstated or Reopened</u>. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) <u>Transferred from Another District</u>. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) <u>Multidistrict Litigation Transfer</u>. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) <u>Multidistrict Litigation Direct File</u>. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

## **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Class Actions Claim Protein Content Is</u> <u>Overstated on SlimFast Smoothie, Shake Mix Labels</u>