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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN PRESCOTT, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TC HEARTLAND, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, (CAL. CIV. CODE §§ 1750, *et seq.*)
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, (CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)
4. BREACH OF EXPRESS WARRANTY
5. UNJUST ENRICHMENT/RESTITUTION

JURY TRIAL DEMANDED

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1 Plaintiff Steven Prescott (“**Plaintiff**”), individually, and on behalf of all other similarly
 2 situated purchasers, as more fully described herein (the “**Class**”), brings this class action complaint
 3 against TC Heartland, LLC (“**Heartland**” or “**Defendant**”). Plaintiff’s allegations are based upon
 4 personal knowledge as to himself and his own acts, and upon information and belief as to all other
 5 matters based on the investigation conducted by and through Plaintiff’s attorneys.

6 **I. SYNOPSIS**

7 1. This putative class action arises from Defendant’s decades long consumer fraud,
 8 marketing “Splenda” to health-conscious consumers, including those with Type 2 diabetes, as a
 9 healthy sugar alternative even though Splenda’s primary ingredient sucralose has been shown to
 10 cause and worsen diabetes, among other harms.

11 2. The World Health Organization itself has advised against the consumption of sugar
 12 alternatives like sucralose, noting specifically the “increased risk of type 2 diabetes, cardiovascular
 13 diseases, and mortality in adults.” Other medical studies are in accord.

14 3. But the labels on Defendant’s Splenda Products¹ tell a different story, including that
 15 they are “recommended” by doctors and dietitians, and are for “Diabetes Care,” among other false
 16 claims (collectively, the “**Diabetes Health Claims**” or the “**Challenged Representations**”), as
 17 follows:

- 18 a. Splenda “Diabetes Care” Shakes: “helps manage blood sugar”; “Diabetes Care.”
 19 b. Splenda Zero Calorie Sweetener Packets: “#1 Recommended Brand by Doctors
 20 and Dietitians”; “Suitable for People with Diabetes.”
 21 c. Splenda Granulated Zero Calorie Sweetener, Splenda Zero Calorie Sweetener
 22 Minis, Splenda Liquid Sweetener Zero, Splenda Water Enhancers, Splenda
 23 Premium Sweet Tea, and Splenda Multi-Use Syrup: “Suitable for People with
 24 Diabetes.”

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26 _____
 27 ¹ The Products are: (1) Splenda Diabetes Care Shakes, (2) Splenda Zero Calorie Sweetener
 28 Packets, (3) Splenda Granulated Zero Calorie Sweetener (4) Splenda Zero Calorie Sweetener
 Minis, (5) Splenda Liquid Sweetener Zero, (6) Splenda Water Enhancer, (7) Splenda Premium
 Sweet Tea, and (8) Splenda Multi-Use Syrup (collectively, the “**Splenda Products**” or the
 “**Products**”).

1 4. Reasonable consumers understand the Challenged Representations to mean the
2 Products are healthy sugar alternatives that are also suitable for, or can aid in, the management of
3 blood sugar generally and diabetes specifically. But because the Products are made of sucralose,
4 they are neither healthy nor suitable for these purposes. Rather, according to science yet unknown
5 to consumers, sucralose negatively affects pancreatic beta cells, which promote insulin resistance,
6 destabilizes glucose absorption, causes obesity, and harms the gut microbiome.

7 5. The Products therefore do not “help manage blood sugar,” do not aid in “diabetes
8 care,” and are not “suitable for people with diabetes,” as advertised. Instead, the Products negatively
9 affect blood sugar levels and gut health, which can be harmful to everyone and especially those with
10 diabetes. In all cases, consumers are harmed by paying a premium for the health claims touted by
11 Defendant that are untrue.

12 6. Further underscoring the need for judicial intervention is the rising rate of diabetes
13 and prediabetes in the United States, having reached approximately 40 million and 96 million,
14 respectively.² This population depends on truthful label claims to make safe, informed choices to
15 manage their disease and live a longer and healthier life. Defendant’s decision to instead prey on
16 them for profit while knowingly ignoring the science on sucralose is unconscionable and cannot
17 stand under consumer protection laws.

18 7. The Products’ labels and packaging are shown below as “**Exhibits 1-8.**”

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28 ² See *Diabetes Statistics*, DIABETES RSCH. INST. (2022), <https://diabetesresearch.org/diabetes-statistics/>.

Exhibit 1: Splenda Diabetes Care Shakes.

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Exhibit 2: Splenda Zero Calorie Sweetener.



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Exhibit 3: Splenda Granulated Zero Calorie Sweetener.



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TEAR HERE ►►

RESEALABLE

Splenda. ZERO CALORIE SWEETENER

CHOCO-CHIP COOKIES

SERVINGS: 36 | TOTAL TIME: 1 HOUR, 20 MINUTES | CALORIES: 120



INGREDIENTS

- 2/3 cup butter or margarine, softened
- 2/3 cup brown sugar, firmly packed
- 2/3 cup SLENDA® Zero Calorie Sweetener, Granulated
- 2 tsp vanilla
- 2 eggs
- 1 1/2 cups all-purpose flour
- 1 tsp baking soda
- 1/4 tsp salt
- 1 cup semi-sweet chocolate chips

PREPARATION

Preheat oven to 350°F. Cream butter, brown sugar, SLENDA® Granulated Sweetener and vanilla together in a medium mixing bowl. Mix until well blended and creamy. Add eggs, one at a time, mixing well after each addition. Scrape sides of bowl. Add flour, baking soda and salt. Mix until well blended. Stir in chocolate chips. Place level tablespoons of cookie dough on an ungreased baking sheet. Bake 10-12 minutes or until golden brown. Remove from oven and cool on a wire cooling rack.

NUTRITION INFO Per serving (1 cookie): Calories 120, Calories from fat 45, Total Fat 5g, Saturated Fat 3g, Cholesterol 20mg, Sodium 90mg, Total Carbs 11g, Dietary Fiber 0g, Sugar 1g, Protein 0g

Nutrition Facts

276 servings per container
Serving size 2 tsp. (1.0g)
Amount Per Serving
Calories 0

	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol 0mg	0%
Sodium 0mg	0%
Total Carbohydrate <1g	0%
Dietary Fiber 0g	0%
Total Sugars 0g	0%
Includes Added Sugars	0%
Protein 0g	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	0%

*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet.

INGREDIENTS: MALTODEXTRIN, SLENDA® SUCRALOSE.

PARVE GLUTEN FREE HALAL

ICED TEA

SERVINGS: 8 | TOTAL TIME: 25 MINUTES | CALORIES: 25



INGREDIENTS

- 2 cups boiling water
- 6 tea bags
- 2 cups SLENDA® Zero Calorie Sweetener, Granulated
- 6 cups cold water
- 1 lemon slice for garnish

PREPARATION

In a heatproof pitcher, add boiling water and tea bags. Cover and steep for 20 minutes. Remove tea bags and squeeze into brew before discarding. Stir in SLENDA® Sweetener and cold water. Serve at room temperature over ice and garnish with the lemon slice. Keep refrigerated.

NUTRITION INFO Per serving (8 fluid ounces): Calories 25, Total Fat 0g, Saturated Fat 0g, Cholesterol 0mg, Sodium 0mg, Total Carbs 0g, Dietary Fiber 0g, Sugars 0g, Protein 0g

SWEETENER CONVERSION
MEASURES THE SAME AS SUGAR

SUGAR	SLENDA® ZERO CALORIE SWEETENER
1 tsp	1 tsp
1 Tbsp	1 Tbsp
1 cup	1 cup
100g	4 Tbsp (approx.)
100g	1/2 cup (approx.)

Use a full cup of SLENDA® Zero Calorie Sweetener for every full cup of sugar.

Distributed by TC Heartland, LLC
Carmel, IN 46012

*Among healthcare professionals clinically treating patients.

LEMONADE

SERVINGS: 8 | TOTAL TIME: 10 MINUTES | CALORIES: 30



INGREDIENTS

- 6 cups water
- 1 1/4 cups squeezed lemon juice (approximately 10 lemons)
- 2 cups SLENDA® Zero Calorie Sweetener, Granulated

PREPARATION

In a pitcher, combine all ingredients and mix well. Serve over ice.

NUTRITION INFO Per serving (8 fluid ounces): Calories 30, Total Fat 0g, Saturated Fat 0g, Cholesterol 0mg, Sodium 0mg, Total Carbs 0g, Dietary Fiber 0g, Sugars 0g, Protein 0g

In some recipes, SLENDA® Zero Calorie Sweetener may contribute minimal calories.

SUITABLE FOR PEOPLE WITH DIABETES

STORE IN A COOL, DRY PLACE.

the sweet dish®
Recipe Club at splenda.com

For delicious recipes and baking tips, visit us at splenda.com or call 1-800-777-5363.

Para obtener recetas deliciosas y sugerencias para hornear, visítanos en splendaespanol.com o lláma al 1-800-777-5363.

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Exhibit 7: Splenda Premium Sweet Teas.



Nutrition Facts	
about 11 servings per container	
Serving size 12 fl. oz. (355mL)	
Amount per serving	
Calories	0
% Daily Value*	
Total Fat 0g	0%
Sodium 25mg	1%
Total Carbohydrate <1g	1%
Total Sugars 0g	
Includes 0 g Added Sugars 0%	
Protein 0g	
Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, vitamin D, calcium, iron and potassium.	
*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	
INGREDIENTS: WATER, NATURAL FLAVOR, BLACK TEA, MALIC ACID, CITRIC ACID, SODIUM CITRATE, SLENDA® SUCRALOSE	
Suitable for people with diabetes	

**SUGAR
FREE**

**GLUTEN
FREE**

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Nutrition Facts	
about 11 servings per container	
Serving size 12 fl. oz. (355mL)	
Amount per serving	
Calories	0
% Daily Value*	
Total Fat 0g	0%
Sodium 0mg	0%
Total Carbohydrate <1g	0%
Total Sugars 0g	
Includes 0g Added Sugars 0%	
Protein 0g	
Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, vitamin D, calcium, iron and potassium.	
*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	
INGREDIENTS: BREWED TEA (WATER, TEA), NATURAL FLAVOR, CITRIC ACID, MALIC ACID, SPLENDA® SUCRALOSE.	
Distributed by TC Heartland LLC	
Suitable for people with diabetes	

SUGAR
FREE

GLUTEN
FREE

KETO

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Nutrition Facts
 about 11 servings per container
Serving size 12 fl. oz. (355mL)

Amount per serving	
Calories	5
% Daily Value*	
Total Fat 0g	0%
Sodium 40mg	2%
Total Carbohydrate 2g	1%
Total Sugars 0g	
Added Sugars 0g 0%	
Protein 0g	

Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, vitamin D, calcium, iron and potassium.

*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: WATER, MALIC ACID, VEGETABLE JUICE (FOR COLOR), SODIUM CITRATE, CITRIC ACID, SPLENDA® SUCRALOSE, NATURAL FLAVOR, HIBISCUS EXTRACT.

Distributed by TFC International LLC

Suitable for people with diabetes



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Exhibit 8: Splenda Multi-Use Syrup.

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1 8. **The Products.** All Splenda Products at issue are manufactured or sold by Defendant
2 to consumers in California and the United States. The Products are:

- 3 a. **Splenda “Diabetes Care” Shakes:** all flavors, varieties, and sizes of Splenda
4 “Diabetes Care” Shake Drinks, including but not limited to, the French Vanilla,
5 Milk Chocolate, and Strawberry Banana flavors;
- 6 b. **Splenda Zero Calorie Sweetener:** all Splenda Zero Calorie Sweetener packets;
- 7 c. **Splenda Granulated Zero Calorie Sweetener:** all Splenda Granulated Zero
8 Calorie Sweetener packages;
- 9 d. **Splenda Zero Calorie Sweetener Minis:** all Splenda Zero Calorie Sweetener
10 Minis;
- 11 e. **Splenda Liquid Sweetener Zero:** all flavors, varieties, and sizes of Splenda
12 Liquid Sweetener Zero, including, but not limited to, the Original and French
13 Vanilla flavors;
- 14 f. **Splenda Water Enhancer:** all flavors, varieties, and sizes of Splenda Water
15 Enhancer, including, but not limited to, Strawberry Watermelon, Sweet Tea, and
16 Mandarin Orange flavors;
- 17 g. **Splenda Premium Sweet Tea:** all flavors, varieties, and sizes of Splenda
18 Premium Sweet Tea, including, but not limited to, the Sweet Tea, White Peach,
19 and Hibiscus flavors; and,
- 20 h. **Splenda Multi-Use Syrup:** all flavors, varieties, and sizes of Splenda Multi-Use
21 Syrup.

22 9. **The Deception.** By labeling, packaging, advertising, and marketing its Splenda
23 Products with the Diabetes Health Claims (“helps manage blood sugar,” “Diabetes Care,” “#1
24 Recommended Brand by Doctors and Dietitians,” “Suitable for People with Diabetes”), Defendant
25 misleads reasonable consumers, including Plaintiff, into believing the Products are healthy sugar
26 alternatives and sugar-alternative drinks that provide diabetes and/or blood sugar management
27 benefits, when they do not.

28 ///

1 10. **Primary Dual Objectives.** Plaintiff brings this action individually and on behalf of
2 those similarly situated who purchased the Products during the relevant Class Period (Class defined
3 *infra*), for dual primary objectives: **One**, Plaintiff seeks, on his behalf and on behalf of the Class,
4 injunctive relief to stop Defendant’s unlawful manufacture, marketing, and sale of the Products as
5 described herein to avoid or mitigate the risk of deceiving the public into believing the Products can
6 provided the advertised benefits, by requiring that Defendant change its business practices, which
7 may include one or more of the following: remove the “Diabetes Care,” “helps manage blood
8 sugar,” “#1 Recommended Brand by Doctors and Dietitians,” and “Suitable for People with
9 Diabetes” claims on the Products’ labels and/or packaging, and/or discontinuance of the Products’
10 manufacture, marketing, and/or sale. **Two**, Plaintiff seeks, on his behalf and on behalf of the Class,
11 monetary recovery of the premium consumers paid for the Products due to the false and deceptive
12 labeling, consistent with permissible law (including, for example, damages, restitution,
13 disgorgement, and any applicable penalties/punitive damages solely as to those causes of action so
14 permitted).

15 **II. JURISDICTION AND VENUE**

16 11. This Court has subject matter jurisdiction over this action pursuant to the Class Action
17 Fairness Act of 2005, 28 U.S.C. Section 1332, because: (i) the Class consists of 100 or more
18 members, (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and
19 costs, and (iii) minimal diversity exists because at least one Plaintiff (CA) and Defendant (IN) are
20 citizens of different states. This Court has supplemental jurisdiction over any state law claims
21 pursuant to 28 U.S.C. Section 1367.

22 12. Venue is proper in this District under 28 U.S.C. Section 1391 because a substantial
23 part of the events, omissions, and acts giving rise to Plaintiff’s claims occur in this District.
24 Defendant markets and sells Products in this District, Defendant gains substantial revenue and
25 profits from doing business in this District, and consumers pay Defendant in this District.

26 13. Defendant is subject to personal jurisdiction in California based upon sufficient
27 minimum contacts that exist between Defendant and California. Defendant is authorized to do and
28 is doing business in California, and Defendant advertises and solicits business in California.

1 Defendant has purposefully availed itself of the protections of California law and should reasonably
2 expect to be hauled into court in California for harm arising out of its pervasive contacts with
3 California.

4 **III. PARTIES**

5 14. **Plaintiff Steven Prescott.** The following is alleged based upon Plaintiff's personal
6 knowledge:

7 a. **Residence.** Plaintiff is, and at all times relevant was, a resident of California residing
8 in the county of Santa Cruz.

9 b. **Purchase Details and Background Information.** Plaintiff was diagnosed with Type
10 2 diabetes in 2005 and continues to suffer from diabetes through the time of the filing
11 of this Complaint. Plaintiff purchased the Splenda "Diabetes Care" Shakes in Milk
12 Chocolate and French Vanilla flavors, the Splenda Zero Calorie Sweetener (100 ct.),
13 and the Splenda Liquid Sweetener Zero Products in California within the last four (4)
14 years of the filing of this Complaint. Specifically, Plaintiff purchased the Splenda
15 "Diabetes Care" Shake Products in Milk Chocolate and French Vanilla flavors from
16 a Walgreens store located in Santa Cruz, California in or around September 2021,
17 paying approximately \$9.99 for each pack of six. Plaintiff purchased the Splenda Zero
18 Calorie Sweetener (100 ct.) from a Safeway store located in Santa Cruz, California in
19 or around Winter 2020. Plaintiff paid approximately \$5.99 for this Product. Finally,
20 Plaintiff purchased the Splenda Liquid Sweetener Zero from a Safeway store located
21 in Santa Cruz, California in or around Summer 2021, paying approximately \$5.99.

22 c. **Reliance on Challenged Representations.** In making his purchases, Plaintiff relied
23 on Defendant's labeling, marketing, and advertising claims, that the Products "help[]
24 manage blood sugar," are for "Diabetes Care," are the "#1 Recommended Brand by
25 Doctors and Dietitians," and are "Suitable for People with Diabetes." Plaintiff
26 understood the Products' advertising to mean the Products would be suitable for and
27 aid in managing his diabetes.

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1 d. **Causation/Damages.** Plaintiff would not have purchased the Products, or would not
2 have paid as much for them, had he known they could not provide the advertised
3 benefits.

4 e. **Desire to Repurchase.** Plaintiff continues to see the Products available for purchase
5 and would like to purchase the Products again in the future if he could be sure the
6 Products were compliant with California and consumer protection laws.

7 f. **Lack of Personal Knowledge and Expertise.** Plaintiff is not personally familiar
8 with, and does not possess any specialized knowledge skill, experience, or education,
9 in the manufacture of drinks and sugar alternatives. Therefore, Plaintiff has no way
10 of determining whether Defendant's Products can provide blood sugar management
11 benefits or are particularly suitable for diabetic use, as advertised.

12 g. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on the Products'
13 representations, statements, or function as they are advertised.

14 15. **Plaintiff's Future Harm.** Defendant continues to market and sell the Products as
15 sugar alternatives and sugar-alternative drinks that "help[] manage blood sugar," are for "Diabetes
16 Care," are the "#1 Recommended Brand by Doctors and Dietitians," and are "Suitable for People
17 with Diabetes." Plaintiff wants to purchase the Products in the future if he can be sure the Products
18 can provide the advertised benefits. However, Plaintiff is an average consumer who is not
19 sophisticated in, for example, the ingredients that go into making diabetic drinks and sugar
20 alternatives, similar to and including the Products, and he cannot determine if the Products can
21 achieve their advertised benefits. Since Plaintiff would like to purchase the Products again—despite
22 the fact that the Products currently cannot achieve the advertised benefits—Plaintiff would likely
23 and reasonably, but incorrectly, assume the Products can achieve the advertised benefits.
24 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendant has fixed
25 the Products such that Plaintiff may buy them again, believing they can achieve the advertised
26 benefits of diabetes care and blood sugar management. In this regard, Plaintiff is currently and, in
27 the future, deprived of the ability to rely on the Products' labeling and packaging. However, an
28

1 injunction prohibiting use of the Challenged Representations unless true would enable Plaintiff to
2 rely confidently on the Product labels in making his future purchase decisions.

3 16. **Defendant TC Heartland, LLC** is a corporation headquartered in Carmel, Indiana.
4 Heartland is located at 14390 Clay Terrace Blvd., Suite 205, Carmel, Indiana 46032. Defendant,
5 directly and through its agents, has substantial contacts with and receives substantial benefits and
6 income from and through the state of California. Defendant is the owner, manufacturer, and/or
7 distributor of the Products, and is a company that created and/or authorized the false, misleading,
8 and deceptive labeling and packaging for the Products. Defendant and its agents manufactured,
9 advertised, marketed, and sold the Products at issue nationwide and in this judicial district. The
10 unfair, unlawful, deceptive, and misleading false advertising claims on the Products were prepared,
11 authorized, ratified, and/or approved by Defendant and its agents, and, accordingly, disseminated
12 throughout the state of California and nationwide by Defendant and its agents to deceive and mislead
13 consumers into purchasing the Products.

14 **IV. FACTUAL ALLEGATIONS**

15 **A. Background on Products and Product Claims**

16 17. **Sucralose.** Sucralose was discovered in 1976 by chemists who were testing it for use
17 as an insecticide. Because of its sweet taste, it was also found to be useful as a food. Sucralose is
18 synthesized by chlorinating the sugar sucrose, by substituting three hydroxyl groups with three
19 chlorine atoms. Sucralose is approximately 600 times sweeter than sucrose, or sugar. In its pure
20 form, it is known as sucralose. When mixed with fillers, namely dextrose and maltodextrin, it is
21 known as “Splenda,” Defendant’s global brand of artificial sweeteners and related food products.
22 Splenda is “the most recognizable and iconic low-calorie sweetener brand in the world.”³

23 18. **Diabetes, Generally.** Roughly 37.3 million Americans, or 1 in 10 Americans, have
24 diabetes.⁴ Diabetes is characterized by high blood sugar caused by the inability to produce enough

25 _____
26 ³ See Splenda, OUR STORY, <https://www.splenda.com/about-splenda/#:~:text=From%20the%20first%20yellow%20Splenda,new%20compound%20made%20from%20sugar> (last visited Aug. 16, 2023).

27 ⁴ *The Facts, Stats, and Impacts of Diabetes*, CDC,
28 <https://www.cdc.gov/diabetes/library/spotlights/diabetes-facts->

1 insulin—a hormone that allows sugar to be removed from the blood stream and used for energy in
 2 the cells of the pancreas.⁵ The most common form of diabetes is Type 2 diabetes, which impairs the
 3 pancreas due to insulin resistance typically as a result of diet and lifestyle factors.⁶ Insulin resistance
 4 means that the cells in the pancreas stop responding to insulin that normally triggers the flow of
 5 glucose into the cells.⁷ When the cells become resistant, insulin is no longer able to signal glucose
 6 uptake, so it remains in the blood stream where it causes problems like organ failure and diabetes.⁸
 7 People who suffer from Type 2 diabetes may be prescribed medicine but generally manage the
 8 disease via exercise and healthy eating. Accordingly, people with Type 2 diabetes seek out food
 9 products that are sugar-free, low in calories, and can help them manage their blood sugar.

10 19. **The Products Contain Express and Implied Health Claims.** The Product labels
 11 contain express claims that they are suitable for and/or aid in managing diabetes. *See* Diabetes
 12 Health Claims, *supra*. The Diabetes Health Claims not only serve as express claims regarding
 13 diabetes, but they also serve as implied health claims to all consumers, including non-diabetics, who
 14 reasonably understand the Diabetes Health Claims to mean the Products are a healthy alternative to
 15 sugar for people with diabetes as well as those without.

16 20. The Splenda “Diabetes Care” Shakes contain the following claims on the packaging:

- 17 a. “Helps Manage Blood Sugar.”
- 18 b. “Diabetes Care.”
- 19 c. “#1 Recommended Brand by Doctors and Dietitians.”

20 21. The Splenda Zero Calorie Sweetener Packets and the Splenda Granulated Zero
 21 Calorie Sweetener contain the following statements on the packaging:

- 22 a. “#1 Recommended Brand by Doctors and Dietitians.”
- 23 b. “Suitable for People with Diabetes.”

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 26 [stats.html#:~:text=37.3%20million%20Americans%E2%80%94about%201,t%20know%20they%20have%20it](#) (last reviewed Apr. 4, 2023).

27 ⁵ *Id.*

28 ⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

1 22. The Splenda Zero Calorie Sweetener Minis, Splenda Liquid Sweetener Zero, Splenda
2 Water Enhancer, Splenda Premium Sweet Tea, and the Splenda Multi-Use Syrup contain the
3 following statement on the packaging: “Suitable for People with Diabetes.”

4 23. The deliberateness of Defendant’s fraudulent scheme is exemplified by the ubiquitous
5 yellow “Splenda” packet itself, which consumers are routinely exposed to in coffee shops and
6 restaurants across the United States. Among all the ingredients and nutrition facts, the only product
7 claim Defendant elected to highlight is “Suitable for People with Diabetes,” setting it off against the
8 yellow and all the other nutritional facts, in its own eye-catching red font:



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24. **The Products Contain Sucralose, Which is Harmful, Especially to Diabetics.** The primary ingredient in all the Products is sucralose. While the Products purport to be suitable for people with diabetes and aid with blood sugar management, sucralose has been shown to induce and worsen obesity, metabolic syndrome, and Type 2 diabetes itself by interfering with bodily responses that contribute to control glucose and energy balance.⁹ The ingestion of sucralose causes blood sugar destabilization by triggering an abnormally high reaction to glucose, causing it to irrationally spike after consuming a normal meal.¹⁰ A 2017 study found that after only two weeks of daily sucralose intake, there was a glucose absorption enhancement, worsening blood glucose response to external glucose, and a deleterious impact on glycaemic control, which causes a predisposition for diabetes in healthy adults.¹¹

⁹ M. Yanina Pepino, *Metabolic Effects of Non-Nutritive Sweeteners*, 152 (PART B) *PHYSIOLOGY & BEHAV.* 450, 450 (Dec. 1, 2015),

<https://www.sciencedirect.com/science/article/pii/S0031938415003728#bb0215>.

¹⁰ M. Yanina Pepino et al., *Sucralose Affects Glycaemic and Hormonal Responses to an Oral Glucose Load*, 36(9) *DIABETES CARE* 2530, 2530-34 (Apr. 30, 2013), <https://pubmed.ncbi.nlm.nih.gov/23633524/>.

¹¹ Richard Young et al., *Impact of Artificial Sweeteners on Glycaemic Control in Healthy Humans*, *EUROPEAN ASS'N FOR THE STUDY OF DIABETES*, (Sept. 14, 2017), <https://www.easd.org/media-centre/home.html#!resources/impact-of-artificial-sweeteners-on-glycaemic-control-in-healthy-humans>.

1 25. In an even more recent large-scale study of 105,588 participants conducted in July
2 2023 researchers studied the relationship between sucralose (and other artificial sweeteners) and the
3 risk of Type 2 diabetes. The study found that as compared to non-consumers of sucralose, those
4 who consume sucralose had a higher risk of developing Type 2 diabetes.¹²

5 26. Further undermining Defendant's Diabetes Health Claims is a May 2023
6 comprehensive review of 11 meta-analyses derived from 7 systemic reviews finding that
7 consumption of artificially sweetened beverages, including sucralose, is associated with a higher
8 risk of obesity, Type 2 diabetes, hypertension, cardiovascular disease incidence, and all-cause
9 mortality.¹³

10 27. **Sucralose Damages Pancreatic Beta-Cells.** While the Products claim to "help
11 manage blood sugar" the truth is sucralose *deregulates* blood sugar by disrupting the gut
12 microbiome, causing gut dysbiosis, and damaging residual functioning of the pancreas through
13 multiple pathways. It induces a prediabetic state by killing beta cells of the pancreas that release
14 insulin, which after prolonged consumption leads to diabetes.¹⁴ When these beta cells die, insulin is
15 no longer produced, and diabetes becomes more severe and permanent.¹⁵ Sucralose can also cause
16 necrosis of the pancreas and inflammation of the liver because of its negative effect on gut health.¹⁶

17 28. **Sucralose Causes Insulin Resistance.** Sucralose decreases insulin sensitivity,
18 meaning it causes cells to be more resistant to insulin, which signals the cells to take sugar out of
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21 ¹² Charlotte Debras et al., *Artificial Sweeteners and Risk of Type 2 Diabetes in the Prospective*
22 *NutriNet-Sante Cohort*, DIABETES CARE (July 25, 2023),
<https://diabetesjournals.org/care/article/doi/10.2337/dc23-0206/153434/Artificial-Sweeteners-and-Risk-of-Type-2-Diabetes>.

23 ¹³ Cristina Diaz et al., *Artificially Sweetened Beverages and Health Outcomes: An Umbrella*
24 *Review*, 14(4) ADVANCES IN NUTRITION 710, 710 (July, 2023),
<https://www.sciencedirect.com/science/article/pii/S2161831323003150?via%3Dihub>.

25 ¹⁴ S. Gupta et al., *Sucralose Induced Pancreatic Toxicity in Albino Rats: Histomorphological*
26 *Evidence*, 31(2) J. MORPHOL. SCI. 123, 125-6 (2014), <https://d-nb.info/1181607574/34>.

27 ¹⁵ Patrik Rorsman & Frances M. Ashcroft, *Pancreatic β -Cell Electrical Activity and Insulin*
28 *Secretion: Of Mice and Men*, 98(1) PHYSIOLOGICAL REV. 117, 117-118 (Jan. 1, 2018),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5866358/>.

¹⁶ Xiaoming Bian et al., *Gut Microbiome Response to Sucralose and Its Potential Role in Inducing*
Liver Inflammation in Mice, 8 FRONT PHYSIOL 487, 487-88 (July 24, 2017),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5522834/>.

1 the bloodstream.¹⁷ For example, in a 2020 study, participants were given either sucralose or water
 2 followed by a glucose tolerance test. The study found that those who had consumed sucralose had
 3 higher blood insulin levels.¹⁸ This can cause a suffering pancreas, as seen in Type 2 diabetics, to
 4 work even harder, pumping more and more insulin resulting in the cells becoming more resistant.
 5 Over time, the pancreas can shut down and the cells no longer respond to insulin (i.e., insulin
 6 resistance) which can cause high blood sugar and diabetes.¹⁹

7 29. The insulin resistance caused by sucralose also impacts healthy individuals. A short-
 8 term study (14 days) that tested sucralose consumption at the 15% Acceptable Daily Intake (ADI)
 9 in healthy participants found a significant decrease in insulin sensitivity.²⁰ Another short-term study
 10 (10 days) found that when sucralose is paired with a carbohydrate such as maltodextrin, as it is in
 11 Defendant's Products, its consumption decreases insulin sensitivity in non-diabetic participants.²¹
 12 Likewise, following a 4-week consumption of sucralose in healthy participants in a randomized,
 13 double-blind, placebo-controlled study, sucralose was found to decrease insulin sensitivity.²²
 14 Notably, in a randomized, placebo-controlled clinical trial, even a single 48 mg sip of sucralose

18 ¹⁷ Yanina M. Pepino, *The Not-So Sweet Effects of Sucralose on Blood Sugar Control*, 108(3) THE
 19 AM. J. OF CLINICAL NUTRITION 431, 431-432 (Sept., 2018),

<https://www.sciencedirect.com/science/article/pii/S0002916522029665?via%3Dihub>.

20 ¹⁸ Kushagra Mathur et al., *Effect of Artificial Sweeteners on Insulin Resistance Among Type-2*
 21 *Diabetes Mellitus Patients*, 9 (1) J. FAM. MED. PRIM. CARE 69, 69 (2020),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7014832/>

22 ¹⁹ *Type 2 Diabetes*, CDC, <https://www.cdc.gov/diabetes/basics/type2.html> (last visited Aug. 16,
 2023).

23 ²⁰ Alonso Romo-Romo et al., *Sucralose Decrease Insulin Sensitivity in Healthy Subjects: A*
 24 *Randomized Controlled Trial*, 108 AM. J. CLINICAL NUTRITION 485, 485 (Sept. 1, 2018),
<https://pubmed.ncbi.nlm.nih.gov/30535090/>; Pepino, *supra* note 17.

25 ²¹ Jelle R. Dalenberg et al., *Short-Term Consumption of Sucralose With, but Not Without,*
 26 *Carbohydrate Impairs Neural and Metabolic Sensitivity to Sugar in Humans*, 31(3) CELL
 METABOLISM 493, 493 (Mar. 3, 2020), <https://www.cell.com/cell-metabolism/fulltext/S1550-41312030057-7>.

27 ²² Amornpan Lertrit et al., *Effects of Sucralose on Insulin and Glucagon-Like Peptide-1 Secretion*
 28 *in Healthy Subjects: A Randomized, Double-Blind, Placebo-Controlled*, 55-56 NUTRITION 125,
 125 (Nov., 2018),
<https://www.sciencedirect.com/science/article/abs/pii/S0899900718302557?via%3Dihub>.

1 increased the amount of insulin in the blood to an unhealthy level (known as hyperinsulinemia) in
2 otherwise healthy participants.²³

3 30. Moreover, because sucralose acts like glucose, it gets mistaken as such by the sweet
4 taste receptors in the pancreas. This weakens insulin receptors, causing the release of insulin that
5 leads to Type 2 diabetes and obesity.²⁴ Sucralose also causes insulin resistance by triggering faster
6 insulin secretion rate while decreasing insulin clearance (i.e., removal from the blood).²⁵ This
7 heightened level of insulin in the blood further weakens insulin receptors which prevents cells from
8 taking in glucose, causing permanent high blood sugar and a weakened pancreas—a feature of
9 diabetes.²⁶

10 31. **Sucralose Harms the Gut Microbiome.** Sucralose has also been shown to cause
11 gut dysbiosis (i.e., an imbalance between good and bad bacteria in the gut) and inflammation.²⁷ A
12 disruption in the bacterial environment in the gut from sucralose causes inflammation, worsens
13 insulin resistance, and promotes obesity and increases sugar cravings.²⁸ Even minimal amounts of
14 sucralose intake can increase acidity of the entire GI tract and kill good bacteria for weeks after
15 consumption.²⁹ Interference with gut microbiota from sucralose also induces glucose intolerance
16 and interacts with sweet-taste receptors in the digestive system that play a vital role in glucose
17 absorption and insulin secretion, meaning sucralose deregulates blood sugar management.³⁰
18 Additionally, the sucralose induced gut dysbiosis triggers beta cell destruction of the pancreas, an
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20 ²³ Angelica Y. Gomez-Arauz et al., *A Single 48mg Sucralose Sip Unbalances Monocyte*
21 *Subpopulations and Stimulates Insulin Secretion in Healthy Young Adults*, J. IMMUNOL RSCH.
(Apr. 28, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6512026/>.

22 ²⁴ Mathur, *supra* note 18.

23 ²⁵ *Id.*

24 ²⁶ *Id.*

25 ²⁷ Susan S. Schiffman & Kristina I. Rother, *Sucralose, A Synthetic Organochlorine Sweetener:*
26 *Overview of Biological Issues*, 16 J. OF TOXICOLOGY AND ENV'T HEALTH, PART B 399, 399 (Nov.
27 12, 2013), <https://www.tandfonline.com/doi/pdf/10.1080/10937404.2013.842523?noFrame=true>.

28 ²⁸ Clare J. Lee et al., *Gut Microbiome and Its Role in Obesity and Insulin Resistance*, 1461(1)
ANN. N.Y. ACAD. SCI. 37, 37 (May 14, 2019), <https://pubmed.ncbi.nlm.nih.gov/31087391/>.

²⁹ Mohamed B. Abou-Donia et al, *Splenda Alters Gut Microflora and Increases Intestinal P-*
Glycoprotein and Cytochrome P-450 in Male Rats, 71 J. TOXICOL ENV'T HEALTH 1415 (2008)
<https://pubmed.ncbi.nlm.nih.gov/18800291/>.

³⁰ *Id.*; Jotham Suez et al., *Artificial Sweeteners Induce Glucose Intolerance by Altering the Gut*
Microbiota, 514 NATURE 181, 181 (Sept. 17, 2014), <https://www.nature.com/articles/nature13793>.

1 organ necessary for our bodies to produce insulin which naturally regulates blood sugar.³¹ In a
 2 randomized clinical trial study, young, healthy participants who consumed 48 mg of sucralose every
 3 day for ten weeks were found to have gut dysbiosis.³² A 2018 study conducted over 6-weeks found
 4 that sucralose worsened gut inflammation in mice with Crohn’s disease.³³

5 **32. Sucralose Promotes Obesity.** Sucralose also increases sugar cravings, which can
 6 lead to overconsumption of sugars and cause weight gain and obesity.³⁴ Obese individuals who
 7 consume sucralose are found to have much higher blood sugar and insulin spikes in response to
 8 normal sugar, which not only promotes weight gain and worsens obesity, but also promotes insulin
 9 resistance as it impairs insulin signaling that causes less glucose uptake from the blood.³⁵ Thus,
 10 consumption of sucralose increases the risk of Type 2 diabetes and obesity, thereby decreasing the
 11 overall health and life expectancy of an individual.³⁶ Sucralose can also induce liver inflammation,³⁷
 12 and further exacerbate fatty liver, or non-alcoholic liver disease. A small-sized 2018 study of a mix
 13 of healthy and obese breastfeeding mothers, found that ingestion of a 12-ounce diet soda with 68
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 16 ³¹ Gupta, *supra*, note 14.

17 ³² Lucia A. Mendez-Garcia et al., *Ten-Week Sucralose Consumption Induces Gut Dysbiosis and*
 18 *Altered Glucose and Insulin Levels in Healthy Young Adults*, 10 MICROORGANISMS 434, 434 (Feb.
 19 14, 2022), <https://www.mdpi.com/2076-2607/10/2/434/htm>.

20 ³³ Alexander Rodriguez-Palacios et al., *The Artificial Sweetener Splenda Promotes Gut*
 21 *Proteobacteria, Dysbiosis, and Myeloperoxidase Reactivity in Crohn’s Disease—Like Ileitis*, 24
 22 INFLAMMATORY BOWEL DISEASE 1005, 1005 (Mar. 15, 2018),
 23 <https://academic.oup.com/ibdjournal/article/24/5/1005/4939054>.

24 ³⁴ Qing Yang, *Gain Weight by “Going Diet?” Artificial Sweeteners and the Neurobiology of*
 25 *Sugar Cravings*, 83 YALE J. BIOL. MED. 101, 101 (2010),
 26 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892765/>; Qiao-Ping Wang, et al., *Sucralose*
 27 *Promotes Food Intake Through NPY and a Neuronal Fasting Response*, 24 CELL METABOLISM
 28 75, 75 (2016), [https://www.cell.com/cell-metabolism/comments/S1550-4131\(16\)30296-0#secsectitle0010](https://www.cell.com/cell-metabolism/comments/S1550-4131(16)30296-0#secsectitle0010).

³⁵ Hubert Kolb et al., *Insulin: Too Much of a Good Thing is Bad*, BMC MED., (2020),
[https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-020-01688-6#:~:text=Because%20of%20the%20largely%20unrestricted,increased%20risk%20of%20cardiovascular%20disease](https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-020-01688-6#:~:text=Because%20of%20the%20largely%20unrestricted,increased%20risk%20of%20cardiovascular%20disease;); Susan E. Swithers, *Artificial Sweeteners Produce the Counterintuitive Effect*
 of *Inducing Metabolic Derangements*, 24 TRENDS ENDOCRINOLOGY & METABOLISM 431, 431
 (Sept. 24, 2013), <https://pubmed.ncbi.nlm.nih.gov/23850261/>.

³⁶ Kolb, *supra*, note 27.

³⁷ Xiaoming Bian et al., *Gut Microbiome Response to Sucralose and its Potential Role in Inducing*
Liver Inflammation in Mice, 8 FRONT. PHYSIOL. 487, 487 (July 23, 2017),
<https://www.frontiersin.org/articles/10.3389/fphys.2017.00487/full>.

1 mg of sucralose transferred into breastmilk up to 6 hours after consumption.³⁸ A study conducted
 2 in February 2023 found that newborns whose mothers heavily consumed sucralose during their
 3 pregnancy had a higher birth weight than those whose mothers consumed sucralose and other non-
 4 nutritive sweeteners only sporadically.³⁹ The newborns were significantly heavier and above the
 5 95th percentile of birth weight.

6 **33. Sucralose-6-Acetate, a Sucralose Metabolite, has Been Linked to Genotoxicity.**

7 Sucralose-6-acetate is an impurity left over from the manufacturing process of sucralose. Regardless
 8 of whether a product contains Sucralose-6-acetate in its original formulation, it is a metabolite of
 9 sucralose, meaning it is formed in the gut once sucralose is digested. A study published on May 29,
 10 2023, found evidence that sucralose-6-acetate is genotoxic (i.e., destroys human DNA).⁴⁰ The study
 11 reaffirms the harm sucralose causes by promoting diabetes and destabilizing blood sugar. Further,
 12 sucralose-6-acetate, when exposed to human intestinal cells, increased inflammation, oxidative
 13 stress, and caused cancer. The study further showed that sucralose disrupts essential cellular
 14 processes that metabolize toxins, increasing risk of adverse toxicological exposures and cellular
 15 toxicity. Both sucralose and sucralose-6-acetate impair the intestinal barrier to cause a “leaky gut,”
 16 which is problematic because toxins that normally would be flushed out of the body in feces are
 17 instead leaked out of the gut and absorbed into the bloodstream where they cause disease.

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 22 ³⁸ Kristina I. Rother et al., *Pharmacokinetics of Sucralose and Acesulfame-Potassium in Breast*
 23 *Milk Following Ingestion of Diet Soda*, 66 J. PEDIATR GASTROENTEROL NUTRITION 466, 466
 (Mar., 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5825238/>.

24 ³⁹ Jose Alfredo Aguayo-Guerrero et al., *Newborns from Mothers Who Intensely Consumed*
 25 *Sucralose during Pregnancy Are Heavier and Exhibit Markers of Metabolic Alteration and Low-*
 26 *Grade Systemic Inflammation: A Cross-Sectional, Prospective Study*, 11 BIOMEDICINES 650, 650
 (Feb. 21, 2023), <https://www.semanticscholar.org/paper/Newborns-from-Mothers-Who-Intensely-Consumed-during-Aguayo-Guerrero-M%C3%A9ndez-Garc%C3%ADa/7e741d2539290a3f4583bc1f323c07bffc8d989>.

27 ⁴⁰ Susan S. Schiffman et al., *Toxicological and Pharmacokinetic Properties of Sucralose-6-*
 28 *Acetate and its Parent Sucralose: In Vitro Screening Assays*, 26(6) J. OF TOXICOLOGICAL AND
 ENV'T HEALTH, PART B 307, 307 (May 29, 2023),
<https://www.tandfonline.com/doi/full/10.1080/10937404.2023.2213903>.

1 34. **Sucralose Linked to Colon Cancer in Mice.** A 2020 study conducted on mice that
2 consumed 1.5 mg of sucralose in water over the course of 6-weeks found that sucralose caused an
3 increase in the number and size of cancerous colon tumors.⁴¹

4 35. **Sucralose Used at High Temperatures in Cooking Can Lead to the Formation
5 of Toxic or Carcinogenic Compounds.** Studies have found that sucralose used in cooking at high
6 temperatures, typically over 200 F, can lead to the formation of chlorinated organic compounds that
7 lead to diseases such as cancer, liver, and kidney damage.⁴²

8 36. **Carrageenan, Another Ingredient in the Splenda “Diabetes Care” Shakes, Can
9 Also Lead to Diabetes by Causing Glucose Intolerance and Insulin Resistance.** Exposure to low
10 concentration (10 mg/L) of one of the Product’s additives, carrageenan, for only six days led to
11 carrageenan-induced inflammation. This impairs insulin signaling, meaning the cells do not take up
12 glucose and the resulting high blood glucose levels cause organ damage over time.⁴³ As a result,
13 another study further concluded that the “*elimination* of dietary ingestion of carrageenan [like that
14 in the Products] may help in efforts to reduce the incidence of diabetes and its associated
15 morbidities.”⁴⁴ (emphasis added). Despite this science, Defendant encourages diabetics and others
16 to consume the Products, and thus carrageenan, by virtue of the Challenged Representations.

17 37. **The World Health Organization (“WHO”) Advises Against the Consumption
18 of Sucralose.** On May 15, 2023, the WHO released a set of guidelines urging against the
19 consumption of sucralose, among other non-sugar sweeteners, “to control body weight or reduce
20 the risk of noncommunicable diseases (NCDs),” including diabetes. The WHO’s advisory comes
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22 ⁴¹ Xueting Li et al., *Sucralose Promotes Colitis-Associated Colorectal Cancer Risk in a Murine
23 Model Along with Changes in Microbiota*, 10 FRONT. ONCOL. (June 3, 2020),
<https://www.frontiersin.org/journals/oncology/articles/10.3389/fonc.2020.00710/full>.

24 ⁴² Andreas Eisenreich et al., *Heating of Food Containing Sucralose Might Result in the
25 Generation of Potentially Toxic Chlorinated Compounds*, 321 FOOD CHEM. (Aug. 15, 2020),
<https://pubmed.ncbi.nlm.nih.gov/32278984/>; Diogo N. de Oliveria et al., *Thermal Degradation of
26 Sucralose: A Combination of Analytical Methods to Determine Stability and Chlorinated
Byproducts*, 5 Sci. Reps. 1, 1-4 (Apr. 15, 2015), <https://www.nature.com/articles/srep09598.pdf>.

27 ⁴³ Sumit Bhattacharyya et al., *Exposure to Common Food Additive Carrageenan Alone Leads to
28 Fasting Hyperglycemia and in Combination With High Fat Diet Exacerbates Glucose Intolerance
and Hyperlipidemia Without Effect on Weight*, 2015 J. DIABETES RES. 1, 3-11 (Mar. 25, 2015),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4390184/pdf/JDR2015-513429.pdf>.

⁴⁴ *Id.*

1 on the heels of “the findings of a systematic review of the available evidence . . . suggest[ing] that
2 there may be potential undesirable effects from long-term use of NSS [non-sugar sweeteners], such
3 as an *increased risk of type 2 diabetes*, cardiovascular diseases, and mortality in adults.”⁴⁵ (emphasis
4 added). Still, Defendant continues to tout the Products as for “Diabetes Care” and “recommended”
5 by doctors and dieticians.

6 **38. The Center for Science in the Public Interest (“CSPA”) Advises Against**
7 **Consumption of Sucralose.** The CSPA, one of the oldest, independent, science-based, and
8 consumer advocacy non-profit organizations in the United States has also stated that sucralose, like
9 that found in the Products, should be “avoided,” after a large 2016 Italian study on male mice found
10 that sucralose caused leukemia and related blood cancers.⁴⁶

11 **39. Even the First Round of Testing for FDA Approval Found Sucralose to Affect**
12 **Blood Sugar.** In 1999, the FDA approved sucralose as a general-purpose sweetener. Still, a six-
13 month clinical test on sucralose conducted during the first round of FDA-approval found sucralose
14 to have a *negative* effect on blood sugar.⁴⁷ This stands in contrast to Defendant’s false claim that
15 the Products “help[] manage blood sugar.”

16 **40. Petition to the Federal Trade Commission (“FTC”) to Investigate the Safety of**
17 **Sucralose.** Consistent with the science demonstrating the falsity of the Challenged Representations,
18 the FTC has also been petitioned to investigate deceptive advertising claims by Tate & Lyle—the
19 supplier for Defendant’s sucralose—among others based on the evidence demonstrating sucralose
20 metabolizes and bioaccumulates in rats.⁴⁸

21 **41. The Products’ Substantial Similarity.** Plaintiff purchased the Splenda “Diabetes
22 Care” Shakes in the Milk Chocolate and French Vanilla Product flavors (“**Purchased Shakes**”), the

23 _____
24 ⁴⁵ WHO Advises Not to Use Non-Sugar Sweeteners for Weight Control in Newly Released
25 *Guideline*, WORLD HEALTH ORG., (May 15, 2023), <https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline>.

26 ⁴⁶ *Sucralose*, CTR. FOR SCI. IN THE PUB. INT., <https://www.cspinet.org/article/sucralose> (last
updated Jan. 4, 2021).

27 ⁴⁷ Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucralose, 21
28 C.F.R. Part 172 (Apr. 3, 1998), <https://www.govinfo.gov/content/pkg/FR-1998-04-03/html/98-8750.htm>.

⁴⁸ Andrew Smith, *Request for Investigation of Deceptive Advertising of Sucralose*, U.S. RIGHT TO
KNOW (Nov. 19, 2018), <https://usrtk.org/wp-content/uploads/2018/11/Sucralose-FTC-letter.pdf>.

1 Splenda Zero Calorie Sweetener Packets (“**Purchased Sweetener**”), and the Splenda Liquid
2 Sweetener Zero Original flavor (“**Purchased Liquid Sweetener**”) (collectively, the “**Purchased**
3 **Products**”).

4 42. The Splenda Diabetes Care Shake Strawberry Banana flavor is substantially similar
5 to the Purchased Shakes (collectively the “**Shakes**”):

- 6 a. **Defendant.** The Shakes are manufactured, sold, marketed, advertised, labeled,
7 and packaged by Defendant.
- 8 b. **Brand.** All Shakes are sold under the same brand name: Splenda.
- 9 c. **Purpose.** All Shakes are intended to be consumed.
- 10 d. **Key Ingredients.** All Shakes are made largely from the same ingredients,
11 including, but not limited to, sucralose, carrageenan, water, microfiltered milk
12 protein, canola oil, short-chain fructooligosaccharides, allulose, natural and
13 artificial flavor, potassium citrate, salt, sunflower lecithin, dipotassium phosphate,
14 and gellan gum.
- 15 e. **Marketing Demographics.** All Shakes are marketed directly to diabetic, pre-
16 diabetic, and health-conscious consumers for personal consumption.
- 17 f. **Representations.** The Shakes are labeled and advertised using the same
18 Challenged Representations (i.e., “Diabetes Care,” “helps manage blood sugar,”
19 and “#1 Recommended Brand by Doctors and Dietitians”).
- 20 g. **Packaging.** The Shakes are similarly packaged, including using similar styles for
21 written content. The Products’ front labeling share the same marketing claims,
22 including brand identity and identity of the product line.
- 23 h. **Misleading Effect.** The misleading effect of the Challenged Representations on
24 consumers is the same for all Shakes—consumers overpay a premium for a
25 product that claims to provide blood sugar management benefits, despite the
26 inclusion of ingredients like sucralose and carrageenan (in the Shakes) that worsen
27 blood sugar.
- 28

1 43. The Splenda Granulated Zero Calorie Sweetener (“Granulated Sweetener”) is
2 substantially similar to the Purchased Sweetener as follows:

3 **a. Defendant.** The Granulated Sweetener is manufactured, sold, marketed,
4 advertised, and labeled by Defendant.

5 **b. Brand.** The Granulated Sweetener is sold under the same brand name: Splenda.

6 **c. Purpose.** The Granulated Sweetener is intended to be consumed.

7 **d. Key Ingredients.** The Granulated Sweetener is made largely from the same
8 ingredient, sucralose.

9 **e. Marketing Demographics.** The Granulated Sweetener is marketed directly to
10 diabetic, pre-diabetic, and health-conscious consumers for personal consumption.

11 **f. Representations.** The Granulated Sweetener is labeled and advertised using the
12 same Challenged Representations (i.e., “#1 Recommended Brand by Doctors and
13 Dietitians,” and “Suitable for People with Diabetes).

14 **g. Misleading Effect.** The misleading effect of the Challenged Representations on
15 consumers is the same for the Granulated Sweetener Product—consumers over-
16 pay a premium for a sugar substitute that claims to be suitable for people with
17 diabetes, despite the inclusion of ingredients like sucralose that worsen blood
18 sugar and cause other health consequences for consumers, especially diabetics.

19 44. The Splenda Zero Calorie Sweetener Minis (“Minis”), Splenda Liquid Sweetener
20 Zero including, without limitation the French Vanilla flavor (“Liquid Sweetener”), Splenda Water
21 Enhancer, including, without limitation the Strawberry Watermelon, Sweet Tea, and Mandarin
22 Orange flavors (“Water Enhancer”), Splenda Premium Sweet Tea, including, without limitation, the
23 Sweet Tea, White Peach, and Hibiscus flavors (“Tea”), and the Splenda Multi-Use Syrup (“Syrup”) are
24 substantially similar to the Purchased Liquid Sweetener as follows:

25 **a. Defendant.** The Minis, Liquid Sweetener, Water Enhancer, Tea, and Syrup are
26 manufactured, sold, marketed, advertised, and labeled by Defendant.

27 **b. Brand.** The Minis, Liquid Sweetener, Water Enhancer, Tea, and Syrup are sold
28 under the same brand name: Splenda.

- 1 **c. Purpose.** The Minis, Liquid Sweetener, Water Enhancer, Tea, and Syrup are
2 intended to be consumed.
- 3 **d. Key Ingredients.** The Minis, Liquid Sweetener, Water Enhancer, Tea, and Syrup
4 are made largely from the same ingredient, sucralose.
- 5 **e. Marketing Demographics.** The Minis, Liquid Sweetener, Water Enhancer, Tea,
6 and Syrup are marketed directly to diabetic, pre-diabetic, and health-conscious
7 consumers for personal consumption.
- 8 **f. Representations.** The Minis, Liquid Sweetener, Water Enhancer, Tea, and Syrup
9 are labeled and advertised using the same Challenged Representations (i.e.,
10 “Suitable for People with Diabetes).
- 11 **g. Misleading Effect.** The misleading effect of the Challenged Representations on
12 consumers is the same for the Minis, Liquid Sweetener, Water Enhancer, Tea, and
13 Syrup Products—consumers over-pay a premium for an artificial sweetener
14 product that claims to be suitable for people with diabetes, despite the inclusion
15 of ingredients like sucralose that worsen blood sugar and cause other health
16 consequences for consumers, especially diabetics.

17 **B. Plaintiff and Reasonable Consumers Were Misled by the Challenged**
18 **Representations**

19 45. **Representations on the Products’ Labels.** Defendant manufactures, markets,
20 advertises, labels, packages, and sells the Products with the following representations: “helps
21 manage blood sugar,” “Diabetes Care,” “#1 Recommended Brand by Doctors and Dietitians,” and
22 “Suitable for People with Diabetes,” respectively (*See* “**Exhibits 1-8,**” *supra*).

23 46. Additionally, on the “Diabetes Care” shakes, a small plus-like symbol appears next
24 to the false “HELPS MANAGE BLOOD SUGAR” claim, leading to this side-label statement:
25 “Learn More at Splenda.com.” To the extent consumers visit Splenda.com, it only furthers the
26 deception. The website devotes an entire menu page to “Diabetes Management,” *instructing*
27 consumers to use Splenda sweeteners to “help manage blood sugar” and otherwise reinforcing the
28

1 false label claims that the Products are suitable for managing blood sugar generally and for diabetics
2 specifically, even though they are not.

3 47. Further doubling down on the false Diabetes Health Claims on the “Diabetes Care”
4 shakes, Defendant appends a small “*” to “#1 Recommended Brand by Doctors and Dieticians,”
5 which leads to the following side-label statement: “The Splenda brand family is the sweetener brand
6 recommended most by healthcare professionals clinically treating patients.” On the Splenda Zero
7 Calorie Sweeteners and the Granulated Zero Calorie Sweeteners the “*” leads to a similar statement,
8 as follows: “Among healthcare professionals clinically treating patients.” Consumers reasonably
9 understand these statements to mean the Products are somehow medically approved for the
10 “clinical” treatment of diabetes or other health conditions, when they are not.

11 48. **False “Suitable for People with Diabetes” Claim.** Certain of Defendant’s
12 Products, namely, Splenda Zero Calorie Sweeteners, Splenda Zero Granulated Calorie Sweeteners,
13 Splenda Zero Calorie Sweetener Minis, Splenda Liquid Sweetener, Splenda Water Enhancer,
14 Splenda Premium Sweet Tea, and Splenda Multi-Use Syrup display the Challenged Representation,
15 “Suitable for people with diabetes,” on the side or back labels (*See “Exhibits 1-8,” supra*). Plaintiff
16 and other consumers of artificial sweeteners, including the Splenda Products, pay particular
17 attention to products’ nutritional information and health claims, and therefore routinely view the
18 back or side label of food and beverage products to understand their carbohydrate and sugar content,
19 as well as their overall health value. Accordingly, consumers of the Products viewed and relied upon
20 the “suitable for people with diabetes” representation on the Products’ side and rear labels in making
21 their purchase decisions.

22 49. **Consumers Reasonably Believe the Products Can Help Them Manage Their**
23 **Blood Sugar.** Plaintiff and other reasonable consumers were deceived by Defendant into believing
24 that the Products conform to the Challenged Representations. Reasonable consumers interpret the
25 Challenged Representations to mean that the Products can aid in managing their blood sugar and/or
26 are suitable for their diabetic condition. Reasonable consumers have no way of knowing, nor do
27 they have a reason to know or believe, that the Products cannot provided the advertised benefits.

28 50. **Consumers Reasonably Believe the Challenged Representations are Implied**

1 **Health Claims.** Plaintiff and other reasonable consumers, including those without diabetes or pre-
2 diabetes, interpret the Challenged Representations to mean that the Products are healthy sugar
3 alternatives. Specifically, consumers understand Defendant’s label claims that the Products “help[]
4 manage blood sugar,” are for “Diabetes Care,” are the “#1 Recommended Brand by Doctors and
5 Dietitians,” and “Suitable for People with Diabetes,” as an indication that the Products are uniquely
6 healthy sugar alternatives, given their doctor and dietitian recommendation and their suitability for
7 people with medical conditions like diabetes. In making their purchases, Plaintiff and other
8 reasonable consumers, including those without diabetes or pre-diabetes, relied on Defendant’s
9 misrepresentations of health.

10 51. **Material.** The Challenged Representations are material to reasonable consumers,
11 including Plaintiff, because they have the potential to influence consumers’ decision to purchase the
12 Products, as set forth herein. Plaintiff would not have purchased the Products or would have paid
13 significantly less for them if he had known that the Products’ label claims were false and misleading,
14 that the Products cannot aid in managing his blood sugar (but in actuality can worsen it), and that
15 the Products cannot otherwise aid in “Diabetes Care.”

16 52. **Reliance.** Reasonable consumers, including Plaintiff, reasonably relied on the
17 Products’ Challenged Representations, including understanding the representations to be implied
18 health claims, in deciding to purchase the Products.

19 53. **Falsity.** The Products’ Challenged Representations are false and deceptive because
20 the Products do not provide the advertised benefits.

21 54. **Consumers Lack Knowledge of Deception/Fraudulence.** Consumers, including
22 Plaintiff, who purchased the Products, did not know, and had no reason to know, at the time of
23 purchase, that the Products were incapable of providing the advertising benefits.

24 55. **Defendant’s Knowledge.** Defendant knew, or should have known, that its Products’
25 Challenged Representations were false, misleading, deceptive, and unlawful at the time that
26 Defendant manufactured, marketed, advertised, labeled, and sold the Products using the Challenged
27 Representations to Plaintiff and the Class. Defendant intentionally and deliberately used the
28 Challenged Representations to cause Plaintiff and similarly situated consumers to purchase the

1 Products. Defendant, as the manufacturer, had exclusive control over how the Products were
2 marketed and labeled, and Defendant readily and easily could have remedied the deception by
3 stopping the use of the Challenged Representations. Instead, Defendant deliberately chose to market
4 the Products with the Challenged Representations, thereby misleading consumers into buying or
5 overpaying for the Products. Thus, Defendant knew, or should have known, at all relevant times,
6 that the Challenged Representations mislead reasonable consumers, such as Plaintiff, into buying
7 the Products to attain the product attributes that Defendant falsely advertised and warranted.

8 56. **Detriment.** Plaintiff and similarly situated consumers would not have purchased the
9 Products if they had known the Products could not provide the advertised benefits or would not have
10 overpaid a price premium for the Products, if they had known that the Challenged Representations
11 were false as labeled, claimed, promised, warranted, advertised, and represented. Accordingly,
12 based on Defendant's material misrepresentations, reasonable consumers, including Plaintiff,
13 purchased the Products to their detriment.

14 **C. No Adequate Remedy at Law**

15 57. **No Adequate Remedy at Law.** Plaintiff and members of the Class are entitled to
16 equitable relief as no adequate remedy at law exists.

17 a. **Broader Statutes of Limitation.** The statutes of limitation for the causes
18 of action pled herein vary. The limitations period is four years for claims
19 brought under the UCL, which is one year longer than the statutes of
20 limitation under the FAL and CLRA. In addition, the statutes of limitation
21 vary for certain states' laws for breach of warranty and unjust
22 enrichment/restitution, between approximately 2 and 6 years. Thus, Class
23 members who purchased the Products more than 3 years prior to the filing
24 of the complaint will be barred from recovery if equitable relief were not
25 permitted under the UCL.

26 b. **Broader Scope of Conduct.** In addition, the scope of actionable
27 misconduct under the unfair prong of the UCL is broader than the other
28 causes of action asserted herein. It includes, for example, Defendant's

1 overall unfair marketing scheme to brand the Products with the
2 Challenged Representations across a multitude of media platforms,
3 including the Products' labels and packaging, over a long period of time,
4 in order to gain an unfair advantage over competitor products and to take
5 advantage of consumers' desire for products that comport with the
6 labeling and advertising. The UCL also creates a cause of action for
7 violations of law (such as statutory or regulatory requirements and court
8 orders related to similar representations made on the type of products at
9 issue). Thus, Plaintiff and Class members may be entitled to restitution
10 under the UCL, while not entitled to damages under other causes of action
11 asserted herein (e.g., the FAL requires actual or constructive knowledge
12 of the falsity; the CLRA is limited to certain types of plaintiffs (an
13 individual who seeks or acquires, by purchase or lease, any goods or
14 services for personal, family, or household purposes) and other statutorily
15 enumerated conduct).

16 **c. Injunctive Relief to Cease Misconduct and Dispel Misperception.**

17 Injunctive relief is appropriate on behalf of Plaintiff and members of the
18 Class because Defendant continues to misrepresent the Products as
19 alleged herein. Injunctive relief is necessary to prevent Defendant from
20 continuing to engage in the unfair, fraudulent, and/or unlawful conduct
21 described herein and to prevent future harm—none of which can be
22 achieved through available legal remedies (such as monetary damages to
23 compensate past harm). Further, injunctive relief, in the form of
24 affirmative disclosures, is necessary to dispel the public misperception
25 about the Products that have resulted from years of Defendant's unfair,
26 fraudulent, and unlawful marketing efforts. Such disclosures would
27 include, but are not limited to, publicly disseminated statements that the
28 Products' labeling and advertising is not true and providing accurate

1 information about the Products’ true nature; and/or requiring prominent
2 qualifications and/or disclaimers on the Products’ front label concerning
3 the Products’ true nature. An injunction requiring affirmative disclosures
4 to dispel the public’s misperception and to prevent the ongoing deception
5 and repeat purchases based thereon, is also not available through a legal
6 remedy (such as monetary damages). In addition, Plaintiff is *currently*
7 unable to accurately quantify the damages caused by Defendant’s future
8 harm, because discovery and Plaintiff’s investigation has not yet
9 completed, rendering injunctive relief all the more necessary. For
10 example, because the court has not yet certified any class, the following
11 remains unknown: the scope of the class, the identities of its members,
12 their respective purchasing practices, prices of past/future Product sales,
13 and quantities of past/future Product sales.

14 d. **Public Injunction.** Further, because a “public injunction” is available
15 under the UCL, damages will not adequately “benefit the general public”
16 in a manner equivalent to an injunction.

17 e. **Procedural Posture—Incomplete Discovery & Pre-Certification.** This
18 is an initial pleading in this action and discovery has not yet commenced
19 and/or is at its initial stages. No class has been certified yet. No expert
20 discovery has commenced and/or completed. The completion of fact/non-
21 expert and expert discovery, as well as the certification of this case as a
22 class action, are necessary to finalize and determine the adequacy and
23 availability of all remedies, including legal and equitable, for Plaintiff’s
24 individual claims and any certified class. Plaintiff therefore reserves his
25 right to amend this complaint and/or assert additional facts that
26 demonstrate this Court’s jurisdiction to order equitable remedies where
27 no adequate legal remedies are available for either Plaintiff and/or any
28 certified class. Such proof, to the extent necessary, will be presented prior

1 to trial of any equitable claims for relief and/or the entry of an order
2 granting equitable relief.

3 **V. CLASS ALLEGATIONS**

4 58. **Class Definition.** Plaintiff brings this action on his own behalf and on behalf of all
5 other persons similarly situated. The Classes Plaintiff seeks to represent are defined as follows:

6 All residents of the United States who, within the four years prior to the
7 filing of this Complaint, purchased the Products for purposes other than
8 resale (the “Nationwide Class”); and

9 All residents of California who, within four years prior to the filing of this
10 Complaint, purchased the Products for purposes other than resale (the
11 “California Subclass”).

12 (“Nationwide Class” and “California Subclass,” collectively, the “Class”)

13 59. **Class Definition Exclusions.** Excluded from the Class are: (i) Defendant, its
14 assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling
15 interests; (iii) federal, state, and/or local governments, including, but not limited to, their
16 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions;
17 and (iv) any judicial officer presiding over this matter and person within the third degree of
18 consanguinity to such judicial officer.

19 60. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right
20 to amend or otherwise alter the class definition presented to the Court at the appropriate time in
21 response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

22 61. **Numerosity.** The Class is so numerous that their individual joinder herein is
23 impracticable. On information and belief, members of the Class number in the thousands or
24 hundreds of thousands throughout California and the United States. The precise number of Class
25 members and their identities are unknown to Plaintiff at this time but may be determined through
26 discovery. Class members may be notified of the pendency of this action by mail and/or publication
27 through the distribution records of Defendant and third-party retailers and vendors.

28 62. **Common Questions Predominate.** Common questions of fact and law predominate
over questions which may affect individual class members, including the following:

1 a. Whether Defendant’s conduct constitutes an unfair method of
2 competition or unfair or deceptive act or practice in violation of California Civil Code Section 1750,
3 *et seq.*;

4 b. Whether Defendant used deceptive representations in connection with the
5 sale of the Product in violation of California Civil Code Section 1750, *et seq.*;

6 c. Whether Defendant represented the Products to have characteristics that
7 they do not have in violation of California Civil Code Section 1750, *et seq.*;

8 d. Whether Defendant advertised the Products with the intent not to sell
9 them as advertised in violation of California Civil Code Section 1750, *et seq.*;

10 e. Whether Defendant’s advertising is untrue or misleading within the
11 meaning of Business and Professions Code Section 17500, *et seq.*;

12 f. Whether Defendant knew or by the exercise of reasonable care should
13 have known its advertising was and is untrue or misleading in violation of Business and Professions
14 Code Section 17500, *et seq.*;

15 g. Whether Defendant made false and misleading representations in its
16 advertising and labeling of the Product in violation of Business and Professions Code Section 17500,
17 *et seq.*;

18 h. Whether Defendant’s conduct is an unfair business act or practice within
19 the meaning of Business and Professions Code Section 17200, *et seq.*;

20 i. Whether Defendant’s conduct is a fraudulent business act or practice
21 within the meaning of Business and Professions Code Section 17200, *et seq.*;

22 j. Whether Defendant’s conduct is an unlawful business act or practice
23 within the meaning of Business and Professions Code Section 17200, *et seq.*;

24 k. Whether Defendant’s conduct constitutes a breach of warranty;

25 l. Whether Defendant was unjustly enriched by its deceptive conduct;

26 m. Whether Plaintiff and the Class paid more money or a premium amount
27 for the Products than they actually received; and
28

1 n. How much more money or premium amount Plaintiff and the Class paid
2 for the Products than they actually received.

3 63. **Typicality.** Plaintiff's claims are typical of the claims of the Class, and Plaintiff will
4 fairly and adequately represent and protect the interests of the Class. Plaintiff has retained competent
5 and experienced counsel in class action and other complex litigation.

6 64. **Adequacy.** Plaintiff is an adequate representative of the Class he seeks to represent
7 because his interests do not conflict with the interests of the Class Members Plaintiff seeks to
8 represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained
9 counsel experienced and competent in the prosecution of complex class actions, including complex
10 questions that arise in consumer protection litigation.

11 65. **Superiority and Substantial Benefit.** A class action is superior to other available
12 methods for fair and efficient adjudication of this controversy. The expense and burden of individual
13 litigation would make it impracticable or impossible for the Class to prosecute their claims
14 individually.

15 66. **Manageability.** The trial and litigation of Plaintiff's claims are manageable.
16 Individual litigation of the legal and factual issues raised by Defendant's conduct would increase
17 delay and expense to all parties and the court system. The class action device presents far fewer
18 management difficulties and provides the benefits of a single, uniform adjudication, economics of
19 scale, and comprehensive supervision by a single court.

20 67. **Injunctive/Equitable Relief.** Defendant has acted on grounds generally applicable
21 to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief
22 appropriate with respect to the Class as a whole. The prosecution of separate actions by individual
23 Class members would create the risk of inconsistent or varying adjudications with respect to
24 individual Class members that would establish incompatible standards of conduct for Defendant.

25 68. **Inconsistent Rulings.** Absent a class action, Defendant will likely retain the benefits
26 of its wrongdoing. Because of the small size of the individual Class members' claims, few, if any,
27 Class members could afford to seek legal redress for the wrongs complained of herein. Absent a
28

1 representative action, the Class will continue to suffer losses and Defendant will be allowed to
 2 continue these violations of law and to retain the proceeds of its ill-gotten gains.

3 69. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
 4 Defendant's false representations. Plaintiff and the Class purchased the Products under the false
 5 belief that the Products could provide the advertised benefits. Plaintiff and the Class relied upon
 6 Defendant's labeling, packaging, and advertising claims and would not have purchased the
 7 Products, or would paid significantly less for them, if they had known that the Products could not
 8 provide the advertised benefits.

9 70. On February 9, 2023, written notice was sent to Defendant via certified U.S. mail
 10 pursuant to Civil Code Section 1750, *et seq.*, which set forth the claims of the Class concerning the
 11 Products' false, misleading, deceptive, unlawful, unfair, and fraudulent claims.

12 CAUSES OF ACTION

13 COUNT ONE

14 **Violation of California Consumers Legal Remedies Act,**

15 **(California Civil Code 1750, *et seq.*)**

16 **(*On Behalf of the California Subclass*)**

17 71. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
 18 allegations contained in this complaint, as though fully set forth herein.

19 72. **California Subclass.** Plaintiff brings this claim individually and on behalf of the
 20 California Subclass who purchased the Products within the applicable statute of limitations.

21 73. **CLRA Standard.** The CLRA provides that "unfair methods of competition and
 22 unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or
 23 which results in the sale or lease of goods or services to any consumer are unlawful."

24 74. **Goods/Services.** The Products are "goods," as defined by the CLRA in California
 25 Civil Code §1761(a).

26 75. **Defendant.** Defendant is a "person," as defined by the CLRA in California Civil
 27 Code §1761(c).

28 76. **Consumers.** Plaintiff and members of the Class are "consumers," as defined by the

1 CLRA in California Civil Code §1761(d).

2 77. **Transactions.** The purchase of the Products by Plaintiff and members of the Class
3 are “transactions” as defined by the CLRA under California Civil Code section 1761(e).

4 78. **Violations of the CLRA.** Defendant violated the following sections of the CLRA
5 by advertising and selling the Products to Plaintiff and the Class through the false, misleading,
6 deceptive, and fraudulent Challenged Representations:

- 7 a. Section 1770(a)(5) by representing that the Products have “characteristics,
8 . . . uses [or] benefits . . . which they do not have.”
- 9 b. Section 1770(a)(7) by representing that the Products “are of a particular
10 standard, quality, or grade . . . [when] they are of another.”
- 11 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell
12 them as advertised.”

13 79. **Knowledge.** Defendant’s uniform material representations regarding the Products
14 were likely to deceive, and Defendant knew or should have known that its representations were
15 untrue and misleading.

16 80. **Malicious.** Defendant’s conduct is malicious, fraudulent, and wanton in that
17 Defendant intentionally misled and withheld material information from consumers, including
18 Plaintiff, to increase the sales of the Products.

19 81. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the Class
20 could not have reasonably avoided such injury. Plaintiff and members of the Class were unaware of
21 the existence of the facts that Defendant suppressed and failed to disclose, and Plaintiff and members
22 of the Class would not have purchased the Products and/or would have purchased them on different
23 terms had they known the truth.

24 82. **Causation/Reliance/Materiality.** Plaintiff and the Class suffered harm as a result
25 of Defendant’s violations of the CLRA because they purchased the Products relying on the
26 Challenged Representations in deciding to purchase the Products. The Challenged Representations
27 were a substantial factor. The Challenged Representations were material because a reasonable
28 consumer would consider them important in deciding whether to purchase the Products.

1 conform to them. The representations were material because they are likely to mislead a reasonable
2 consumer into purchasing the Products.

3 90. **Knowledge.** In making and disseminating the Challenged Representations alleged
4 herein, Defendant knew or should have known that the representations were untrue or misleading
5 and acted in violation of § 17500.

6 91. **Intent to sell.** Defendant's conduct was specifically designed to induce reasonable
7 consumers, like Plaintiff and the Class, to purchase the Products.

8 92. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct
9 in violation of the FAL, Plaintiff and members of the Class were harmed in the amount of the
10 purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered
11 and continue to suffer economic losses and other damages including, but not limited to, the amounts
12 paid for the Products, and any interest that would have accrued on those monies, in an amount to be
13 proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages,
14 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said
15 monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future
16 harm that will result.

17 **COUNT THREE**

18 **Violation of California Unfair Competition Law,**
19 **(Business & Professions Code Section 17200, *et seq.*)**

20 ***(On Behalf of the California Subclass)***

21 93. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
22 allegations contained in this complaint, as though fully set forth herein.

23 94. **California Subclass.** This cause of action is brought pursuant to Business and
24 Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and the California subclass who
25 purchased the Product within the applicable statute of limitations.

26 95. **The UCL.** California Business & Professions Code, sections 17200, *et seq.* (the
27 "UCL") prohibits unfair competition and provides, in pertinent part, that "unfair competition shall
28 mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or

1 misleading advertising.”

2 96. **False Advertising Claims.** Defendant, in its advertising, labeling, and packaging of
3 the Products, made misleading statements regarding the quality and characteristics of the Products—
4 specifically, Defendant labeled, advertised, and markets the Products as drinks and sugar
5 alternatives that “helps manage blood sugar” for “Diabetes Care,” are the “#1 Recommended Brand
6 by Doctors and Dietitians,” and are “Suitable for People with Diabetes,” despite the Products’
7 inclusion of sucralose.

8 97. **Defendant’s Deliberately Fraudulent Marketing Scheme.** Defendant does not
9 have any reasonable basis for the claims about the Products made in Defendant’s advertising and
10 on Defendant’s packaging or labeling of the Products because the Products cannot provide the
11 advertised benefits. Defendant knew and continues to know that the Products cannot provide the
12 advertised benefits (i.e., diabetes care and blood sugar management), though Defendant
13 intentionally advertised and marketed the Products to deceive reasonable consumers into believing
14 that they could achieve the advertised benefits.

15 98. **Misleading Labeling, Advertising Cause Purchase of Product.** Defendant’s
16 labeling and advertising of the Products using the Challenged Representations continues to lead
17 reasonable consumers, including Plaintiff, to believe the Products can truly provide diabetes care
18 and blood sugar management benefits, when they cannot.

19 99. **Injury in Fact.** Plaintiff and the Class have suffered injury in fact and have lost
20 money or property as a result of and in reliance upon Defendant’s Challenged Representations—
21 namely, Plaintiff and the Class lost the money they paid for the Products they purchased from
22 Defendant.

23 100. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes
24 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair
25 competition and provides, in pertinent part, that “unfair competition shall mean and include
26 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
27 advertising.” Cal. Bus & Prof. Code § 17200. In addition, Defendant’s use of various forms of
28 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise

1 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue
2 or misleading advertising, and an unlawful business practice within the meaning of Business and
3 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to
4 deceive the consuming public, in violation of Business and Professions Code Section 17200.

5 101. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant
6 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business
7 interests.

8 102. **Business Practice.** All of the conduct alleged herein occurred and continues to occur
9 in Defendant's business. Defendant's wrongful conduct is part of a pattern, practice and/or
10 generalized course of conduct, which will continue daily until Defendant voluntarily alters its
11 conduct or Defendant is otherwise ordered to do so.

12 103. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,
13 Plaintiff and the Class seek an order from this Court enjoining Defendant from continuing to engage,
14 use, or employ its practice of labeling the Products to "help[] manage blood sugar" for "Diabetes
15 Care," "#1 Recommended Brand by Doctors and Dietitians," and "Suitable for People with
16 Diabetes" when they are not. Plaintiff and the members of the Class also seek an order requiring
17 Defendant to disclose such information and/or precluding Defendant from selling the Products.

18 104. **Causation/Restitution.** As a direct and proximate result of Defendant's misconduct
19 in violation of the UCL, Plaintiff and the Class were harmed in the amount of the purchase price
20 they paid for the Products. Plaintiff and the Class have suffered and continue to suffer economic
21 losses and other damages including, but not limited to, the amounts paid for the Products, and any
22 interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly,
23 Plaintiff seeks restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
24 Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent
25 ongoing and future harm that will result.

26 **"Unfair" Prong**

27 105. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any
28 injury it causes outweighs any benefits provided to consumers and the injury is one that the

1 consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*,
2 142 Cal. App. 4th 1394, 1403 (2006).

3 106. **Injury.** Defendant’s mislabeling of the Products with the Challenged
4 Representations does not confer any benefit to consumers; rather, doing so causes injuries to
5 consumers, who do not receive Products commensurate with their reasonable expectations, receive
6 a Product of lesser standards than what they reasonably expected to receive, and are exposed to
7 increased health risks. Consumers cannot avoid any of the injuries caused by Defendant’s deceptive
8 labeling and advertising of the Products. The injuries caused by Defendant’s deceptive labeling and
9 advertising outweigh any benefits.

10 107. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged
11 activity amounts to unfair conduct under California Business and Professions Code Section 17200.
12 They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged
13 victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

14 108. **No Utility.** Defendant’s conduct of falsely labeling and advertising the Products as
15 drinks and a sugar alternative that can “help[] manage blood sugar” for “Diabetes Care,” is the “#1
16 Recommended Brand by Doctors and Dietitians,” and is “Suitable for People with Diabetes” have
17 no utility and rather, harms purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed
18 by the gravity of harm.

19 109. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered
20 to some legislative declared policy or proof of some actual or threatened impact on competition.”
21 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

22 110. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged
23 herein, is deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant knew
24 or should have known of its unfair conduct. Defendant’s representations constitute an unfair
25 business practice within the meaning of California Business and Professions Code Section 17200.

26 111. **Reasonably Available Alternatives.** Defendant had reasonably available
27 alternatives to further its legitimate business interests, other than the conduct described herein.
28 Defendant could have refrained from selling the Products.

1 detrimentally relied on the labeling on the Products to their detriment in that they purchased the
2 Products without receiving the advertised benefits.

3 119. **Reasonably Available Alternatives.** Defendant had reasonably available
4 alternatives to further its legitimate business interests, other than the conduct described herein.
5 Defendant could have refrained from selling the Products.

6 120. **Business Practice.** All of the conduct alleged herein occurs and continues to occur
7 in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of
8 conduct.

9 121. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff
10 and the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or
11 employ its practice of labeling the Products with, "helps manage blood sugar," "Diabetes Care,"
12 "#1 Recommended Brand by Doctors and Dietitians," and "Suitable for People with Diabetes,"
13 respectively.

14 122. **Causation/Restitution.** Plaintiff and the Class have suffered injury in fact and have
15 lost money as a result of Defendant's fraudulent conduct. Plaintiff and the Class paid for a product
16 that they believed would provide them with blood sugar management benefits.

17 123. Plaintiff and the Class would not have purchased the Products if they had known the
18 truth. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten gains pursuant to the
19 UCL.

20 **"Unlawful" Prong**

21 124. **Unlawful Standard.** The UCL identifies violations of other laws as "unlawful
22 practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC*
23 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

24 125. **Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged
25 herein, violates California Civil Code sections 1750, *et seq.* and California Business and Professions
26 Code sections 17500, *et seq.* as set forth below in the sections regarding those causes of action.

27 126. **Additional Violations.** Defendant's conduct in making the deceptive
28 representations described herein constitutes a knowing failure to adopt policies in accordance with

1 and/or adherence to applicable laws, as set forth herein, all of which are binding upon and
2 burdensome to their competitors. This conduct engenders an unfair competitive advantage for
3 Defendant, thereby constituting an unfair, fraudulent and/or unlawful business practice under
4 California Business & Professions Code sections 17200-17208. Additionally, Defendant's
5 representations of material facts, as set forth herein, violate California Civil Code sections 1572,
6 1573, 1709, 1710, and 1711, as well as the common law.

7 127. **Unlawful Conduct.** Defendant's packaging, labeling, and advertising of the
8 Products, as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unlawful
9 conduct. Defendant knew or should have known of its unlawful conduct.

10 128. **Reasonably Available Alternatives.** Defendant had reasonably available
11 alternatives to further its legitimate business interests, other than the conduct described herein.
12 Defendant could have refrained from selling the Products.

13 129. **Business Practice.** All the conduct alleged herein occurs and continues to occur in
14 Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of
15 conduct.

16 130. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff and
17 the Class seek an order from this Court enjoining Defendant from continuing to engage, use, or
18 employ its practice of labeling the Products with, "helps manage blood sugar," "Diabetes Care,"
19 "#1 Recommended Brand by Doctors and Dietitians," and "Suitable for People with Diabetes,"
20 respectively.

21 131. **Causation/Restitution.** Plaintiff and the Class have suffered injury in fact and have
22 lost money as a result of Defendant's unlawful conduct. Plaintiff and the Class paid an unwarranted
23 premium for the Products. Plaintiff and the Class would not have purchased the Products if they had
24 known that Defendant purposely deceived consumers into believing that the Products could provide
25 the advertised benefits. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten
26 gains pursuant to the UCL.

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COUNT FOUR

Breach of Express Warranty

(On Behalf of the Nationwide Class and California Subclass)

132. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

133. **Nationwide Class and California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass who purchased the Product within the applicable statute of limitations.

134. **Implied Warranty of Merchantability.** By advertising and selling the Products at issue, Defendant, a merchant of goods, made promises and affirmations of fact that the Products are merchantable and conform to the promises or affirmations of fact made on the Products’ packaging and labeling, and through its marketing and advertising, as described herein. This labeling and advertising, combined with the implied warranty of merchantability, constitute warranties that became part of the basis of the bargain between Plaintiff and members of the Class and Defendant—to wit, that the Products, among other things, could provide the advertised benefits.

135. **Breach of Warranty.** Contrary to Defendant’s warranties, the Products do not conform to the Products’ representation of drinks and sugar alternatives that can “help[] manage blood sugar” for “Diabetes Care,” are the “#1 Recommended Brand by Doctors and Dietitians,” and are “Suitable for People with Diabetes,” respectively, and, therefore, Defendant breached its warranties about the Products and their qualities.

136. **Causation/Remedies.** As a direct and proximate result of Defendant’s breach of warranty, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for breach of warranty in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant’s misconduct to prevent ongoing and future

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1 harm that will result.

2 **COUNT FIVE**

3 **Unjust Enrichment/Restitution**

4 *(On Behalf of the Nationwide Class and California Subclass)*

5 137. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
6 allegations contained in this complaint, as though fully set forth herein.

7 138. **Nationwide Class and California Subclass.** Plaintiff brings this claim individually
8 and on behalf of the Nationwide Class and California Subclass who purchased the Product within
9 the applicable statute of limitations.

10 139. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and
11 members of the Class conferred a benefit on Defendant in the form of the purchase price of the
12 Products.

13 140. **Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such
14 benefit and Defendant appreciated the benefit because, were consumers not to purchase the
15 Products, Defendant would not generate revenue from the sales of the Products.

16 141. **Defendant's Unjust Receipt Through Deception.** Defendant's knowing
17 acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained
18 by Defendant's fraudulent, misleading, and deceptive representations.

19 142. **Causation/Restitution.** As a direct and proximate result of Defendant's unjust
20 enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price
21 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue
22 to suffer economic losses and other damages including, but not limited to, the amounts paid for the
23 Products, and any interest that would have accrued on those monies, in an amount to be proven at
24 trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution,
25 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as
26 well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that
27 will result.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief on all causes of action as follows:

- a. **Certification:** For an order certifying this action as a class action, appointing Plaintiff as the Class Representative, and appointing Plaintiff’s Counsel as Class Counsel;
- b. **Declaratory Relief:** For an order declaring that Defendant’s conduct violates the statutes and laws referenced herein;
- c. **Injunction:** For an order requiring Defendant to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; requiring Defendant to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendant’s unlawful conduct; and requiring all further and just corrective action, consistent with permissible law and pursuant to only those causes of action so permitted;
- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with permissible law and pursuant to only those causes of action so permitted;
- e. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with permissible law and pursuant to only those causes of action so permitted;
- f. **Pre-/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with permissible law and pursuant to only those causes of action so permitted; and,
- g. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

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

DATED: August 17, 2023

CLARKSON LAW FIRM, P.C.

/s/ Bahar Sodaify
Shireen M. Clarkson, Esq.
Bahar Sodaify, Esq.
Alan Gudino, Esq.
Ryan Ardi, Esq.

Attorneys for Plaintiff and the Putative Class

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Splenda Products Not Suitable for Diabetics as Advertised, Class Action Claims](#)
