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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ANDRE VITIOSUS, DEBRA
FOLEY, and RACHEL LUMBRA,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

ALANI NUTRITION, LLC,
Defendant.

Case No.: '21 CV2048 MMAMDD

CLASS ACTION COMPLAINT

Plaintiffs Andres Vitiosus, Debra Foley, and Rachel Lumbra (collectively
“Plaintiffs”), individually and on behalf of all others similarly situated, by and
through their undersigned counsel, bring the following Class Action Complaint
against Defendant Alani Nutrition, LLC (“Defendant”):

NATURE OF THE ACTION

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2 1. This is a civil class action brought individually by Plaintiffs on behalf
3 of consumers who purchased Defendant’s FIT SNACKS Whey Protein Baked Bar
4 products, including but not limited to, those in any of the following flavors:
5 Chocolate Cake, Peanut Butter Cup, Peanut Butter Crisp, Cookies and Cream, and
6 Munchies, Fruity Cereal, Confetti Cake, Blueberry Muffin, or any other limited,
7 discontinued, or seasonal flavors (the “Products”).

8 2. Defendant misleads consumers into thinking that its Products are
9 “healthy”, based on the synonymous name of the Products “FIT” Snacks, when in
10 fact the Products typically contain 6 grams of fat, depending on flavor and size of
11 the Products. The United States Food, Drug and Cosmetic Act, along with parallel
12 state statutes, have found healthy claims to be misleading in high fat content products
13 just like Defendant’s.

14 3. As a purveyor in the highly lucrative protein bar market, Defendant
15 knows that when it comes to labeling and marketing, words matter. This is why
16 Defendant chose to name the Products “FIT” Snacks, and to emblazon the word
17 “FIT” on the front and center of each Product label, in a bold all-capitalized font,
18 where consumers cannot miss it.

19 4. Defendant chose to label the Products in this way to impact consumer
20 choices and gain market dominance, as it is well aware that all consumers who
21 purchased the Products were exposed to, and would be impacted by, the “FIT”
22 representation and would reasonably believe from this representation that the
23 Products are healthy. However, the Products are not “healthy” as they contain high
24 levels of fat in violation of the United States Food, Drug and Cosmetic Act
25 (“FDCA”) and parallel state laws.

26 5. The FDCA was enacted, in part, to ensure companies accurately label
27 and identify their products so consumers can choose more healthful diets. As part
28

1 of this strategic plan, the FDCA, along with parallel state statutes, have found
2 healthy claims to be misleading in high fat content products such as Defendant’s
3 Products at issue in this litigation. Defendant’s labeling of the Products as “FIT”,
4 and in the manner described above, is in violation of the FDCA and parallel state
5 laws and is deceptive and unlawful.

6
7 **PARTIES**

8 6. Plaintiff Andres Vitiosus is a resident and citizen of Escondido,
9 California in San Diego County.

10 7. Plaintiff Debra Foley is a resident and citizen of Palmdale, California
11 in Los Angeles County.

12 8. Plaintiff Rachel Lumbra is a resident of Schenectady, New York in
13 Schenectady County.

14 9. Defendant Alani Nutrition, LLC is a Kentucky Limited Liability
15 Corporation with its principal place of business at 7201 intermodal Drive, Louisville,
16 Kentucky, 40258.

17 10. Defendant designed, manufactured, warranted, advertised, and sold the
18 Products throughout the United States, including the State of California, and
19 continues to do so.

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21 **JURISDICTION AND VENUE**

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23 11. This Court has subject matter jurisdiction over this class action pursuant
24 to 28 U.S.C. § 1332(d). The matter in controversy, exclusive of interest and costs,
25 exceeds the sum or value of \$5,000,000 and is a class action in which some members
26 of the Classes are citizens of states other the state in which Defendant is incorporated
27 and has its principal place of business.

1 12. This Court has personal jurisdiction over Defendant because the acts
2 and omissions giving rise to this action occurred in the state of California. This Court
3 also has personal jurisdiction over Defendant because Defendant placed the Products
4 in the stream of commerce directed at the State of California, Plaintiffs purchased
5 the Products within California, and Defendant’s fraud and misrepresentations
6 occurred in California.

7 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and
8 (c) because a substantial part of the events or omissions giving rise to at least one of
9 Plaintiffs’ claims occurred in this District. Specifically, Plaintiff Vitiosus purchased
10 the Products within this District.

11 14. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant
12 transacts substantial business in this District.

13
14 **FACTUAL ALLEGATIONS**

15 15. At all relevant times, Defendant has marketed its Products in a
16 consistent and uniform manner. Defendant sells the Products in all 50 states on its
17 website and through various distributors and retailers across the United States.
18

19 ***FIT SNACKS***

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21 16. Defendant states on its website about the FIT SNACKS: “We crafted
22 our line of supplements for people who take their health and wellness seriously.
23 From appropriate portions to balanced ingredients, Alani Nu supplements are
24 designed to help you find your strength inside. Fill the gaps in your nutrition, find
25 extra motivation, or even balance your hormones with supplements to assist in
26 fitness and wellness goals.”¹
27

28 ¹ <https://www.alaninu.com/pages/benefits> (last visited 10/14/2021).

1 17. Defendant states on every box of the Products “SNACKS YOU
2 WON’T FEEL GUILTY ABOUT, FLAVORS YOU’LL LOVE.”²

3 18. Defendant has a marketing campaign that promotes the Products as
4 “Balanced nutrition & superior taste”, “You’ve found a protein bar that fits all your
5 needs”, and “Care-free snacking just got better”.³

6 19. Defendant bases its marketing campaign on the claim that snacking on
7 the Products is “without guilt”. It says on its website when purchasing the Products
8 “indulge your cravings without the guilt. Smart snacking should be care-free and
9 delicious which is why we’ve come up with a pretty awesome protein bar to fit all
10 your needs. With our traditional flavors like Confetti Cake and Fruity Cereal, and
11 new flavors like Blueberry Muffin & Chocolate Cake. Trust us, you’re going to want
12 one of each.”⁴

13 20. As discussed in more detail below, however, Defendant intentionally
14 misleads consumers into believing the Products are a healthy choice by naming and
15 marketing the Product as “FIT” in order to increase its sale and maximize its profits.

16 21. Thus, Defendant’s consumers pay more for the FIT SNACKS, which
17 contains significantly higher amounts of fat than consumers reasonably expect.

18 22. Plaintiffs would not have purchased or would have paid less for the
19 Products had they known that the Products were deceptively labeled in violation of
20 the FDCA and parallel state laws.

21
22 ***Labeling Requirements and Regulations***

23 23. The Products’ names “FIT SNACKS” and “FITBAR,” also referred to
24 in the United States Food and Drug Administration (“FDA”) regulations as the
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26 _____
27 ²<https://www.amazon.com/Alani-Nu-Gluten-Free-Low-Sugar-Blueberry/dp/B087QX8CXV?th=1> (last visited 10/14/2021).

28 ³ *Id.*

⁴ <https://www.alaninu.com/products/protein-bar-12pk> (last visited 10/14/2021).

1 “statement of identity,” are prominently stated on the “principal display panel,” or
2 the front label, of the Products.

3 24. Under the applicable FDA regulation, the Product label’s statement of
4 identity must be an appropriate descriptive name that is not misleading. 21 C.F.R. §
5 101.3(b)(3).

6 25. Pursuant to 21 U.S.C. § 321(ff), Defendant’s Products are “foods”
7 regulated by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.,
8 (“FDCA”) and FDCA regulations.

9 26. Under section 403(r)(1)(A) of the FDCA (21 U.S.C. 343(r)(1)(A)), a
10 food is mislabeled if it bears claims, either express or implied, that characterizes the
11 level of a nutrient which is of a type required to be declared in nutrition labeling
12 unless the claim is made in accordance with a regulatory definition established by
13 FDA.

14 27. 21 CFR 101.65(d)(2) of the FDA provides:

15 You may use the term "healthy" or related terms (e.g., "health," "healthful,"
16 "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and
17 "healthiness") as an implied nutrient content claim on the label or in labeling
18 of a food that is useful in creating a diet that is consistent with dietary
19 recommendations if:

- 20
21 (i) The food meets the following conditions for fat, saturated
22 fat, cholesterol, and other nutrients:
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If the food is...	The fat level must be...	The saturated fat level must be...	The cholesterol level must be...	The food must contain...
(A) A raw fruit or vegetable	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(B) A single-ingredient or a mixture of frozen or canned fruits and vegetables ¹	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(C) An enriched cereal-grain product that conforms to a standard of identity in part 136, 137 or 139 of this chapter	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(D) A raw, single-ingredient seafood or game meat	Less than 5 grams (g) total fat per RA ² and per 100 g	Less than 2 g saturated fat per RA and per 100 g	Less than 95 mg cholesterol per RA and per 100 g	At least 10 percent of the RDI ³ or the DRV ⁴ per RA of one or more of vitamin A, vitamin C, calcium, iron, protein, or fiber
(E) A meal product as defined in § 101.13(l) or a main dish product as defined in § 101.13(m)	Low fat as defined in § 101.62(b)(3)	Low saturated fat as defined in § 101.62(c)(3)	90 mg or less cholesterol per LS ⁵	At least 10 percent of the RDI or DRV per LS of two nutrients (for a main dish product) or of three nutrients (for a meal product) of: vitamin A, vitamin C, calcium, iron, protein, or fiber
(F) A food not specifically listed in this table	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	At least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber

28. Section 101.62(b)(2) defines low fat as: “contains 3 g or less of fat per reference amount customarily consumed[.]”

1 29. While the term “FIT” is not listed as an implied nutrient claim, the term
2 “fit” is synonymous with the term “healthy.” Merriam-Webster defines “fit” as
3 “sound physically and mentally : HEALTHY.”⁵

4 30. Further, the Federal Trade Commission has stated that synonyms of the
5 statutorily defined terms for Nutrient Content Claims will also face enforcement
6 action for being misleading.⁶

7 31. Specifically, in its latest statement, it specifically stated it was going to
8 enforce misleading synonyms like the claims made by Defendant for FIT SNACKS:

9
10 The Commission will examine advertising to ensure that
11 claims that characterize the level of a nutrient, including
12 those using **synonyms that are not provided for in**
13 **FDA's regulations, are consistent with FDA**
14 **definitions.** Commission precedent establishes that **an**
15 **advertisement that can reasonably be interpreted in**
16 **a misleading way is deceptive, even though other,**
17 **nonmisleading interpretations may be equally**
18 **possible. Thus, when express or implied claims**
19 **suggest that a food product meets the standard for**
20 **use of an FDA-defined term, advertisers should**
21 **ensure that the food actually meets the relevant FDA**
22 **standard.** For example, depending on the context of an
23 ad, use of the phrases "packed with" or "lots of" to
24 describe the level of fiber in a food could convey to some
25 reasonable consumers that the food is "high" in fiber.
26 Because FDA's regulations define the terms "good
27 source" and "high" with respect to fiber, consumers are
28 likely to be misled if a "high fiber" claim is implied by
an ad for a food that is only a "good source" of fiber.⁷

32. Both the FDA and FTC believe these types of claims, including their
synonyms, to be misleading to consumers.

⁵ See <https://www.merriam-webster.com/dictionary/fit> (Last visited Sept. 3, 2021).

⁶ See <https://www.ftc.gov/public-statements/1994/05/enforcement-policy-statement-food-advertising#44> (last visited November 19, 2021).

⁷ *Id.* (emphasis supplied).

1 33. Defendant intentionally named and marketed the Products with the
2 term “Fit” to make the Products stand out to consumers. In doing so, consumers were
3 misled into believing that the Products are healthy.

4 34. However, pursuant to the FDCA and parallel state statutes, the Products
5 are not healthy. Therefore, Defendant’s Products are misleading under the FDCA,
6 and parallel state statutes, because the Products contain well over 3 grams of fat.

7 35. Further, the FDA states in their Guidance for the Industry regarding
8 “healthy” claims, that they intend to exercise enforcement discretion where the
9 products: 1) are not low in fat, but have a fat profile makeup of predominately mono
10 and polyunsaturated fats; or 2) contain at least ten percent of the Daily Value (DV)
11 per reference amount customarily consumed (RACC) of potassium or Vitamin D”.⁸

12 36. The FIT SNACKS Munchies contains 4 grams of Saturated Fat and 6
13 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label,
14 but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats
15 are clearly and factually not the “majority” of the fat content contained within the
16 Munchies. Further, the Munchies contains 0% of the DV of Vitamin D and 2% of
17 the DV of potassium. Therefore, the Munchies also have far below 10% the DV of
18 potassium and Vitamin D required to be “healthy”.

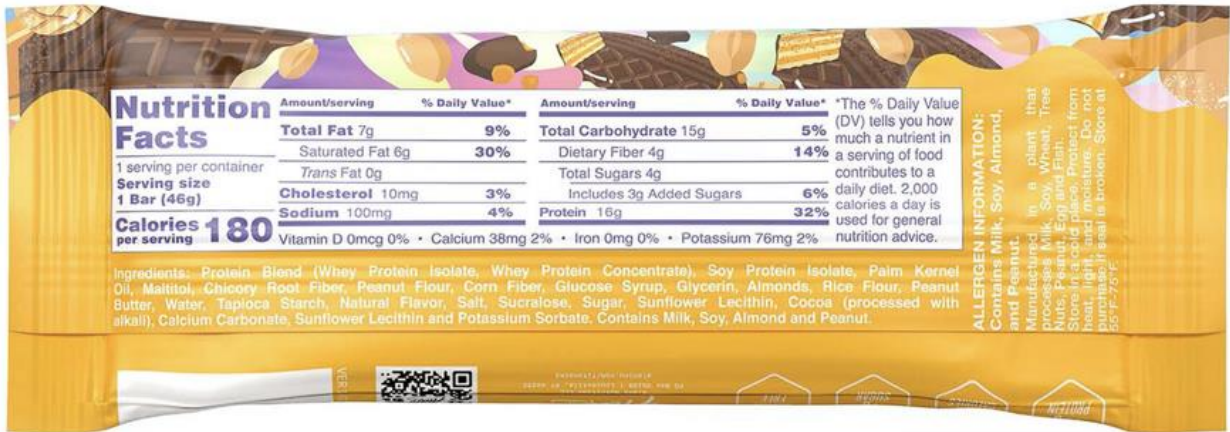
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⁸ See <https://www.fda.gov/media/100520/download> (Last visited Sept. 4, 2021).



37. The FIT SNACKS Peanut Butter Crisp contains 6 grams of Saturated Fat and 7 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 1g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Peanut Butter Crisp. Further, the Peanut Butter Crisp contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Peanut Butter Crisp also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.

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38. The FIT SNACKS Blueberry Muffin contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Blueberry Muffin. the Blueberry Muffin contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Blueberry Muffin also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.



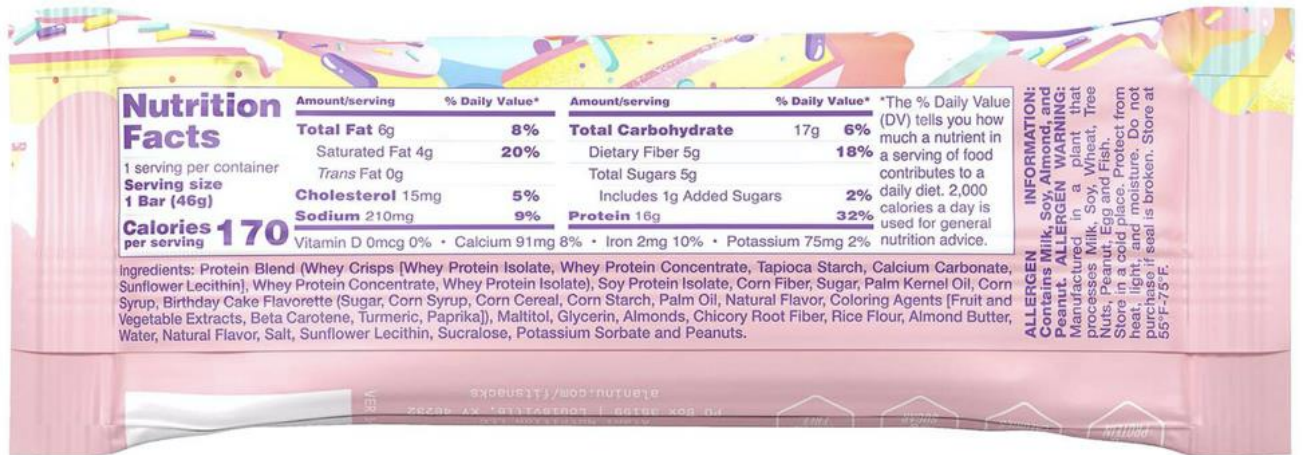
39. The FIT SNACKS Chocolate Cake contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Chocolate Cake. Further, the Chocolate Cake contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Chocolate Cake also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.

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40. The FIT SNACKS Confetti Cake contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Confetti Cake. Further, the Confetti Cake contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Confetti Cake also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.

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41. The FIT SNACKS Fruity Cereal contains 4 grams of Saturated Fat and 6 grams of Total Fat. The mono and polyunsaturated fats are not listed on the label, but at a maximum they are 2g of fat. Therefore, the mono and polyunsaturated fats are clearly and factually not the “majority” of the fat content contained within the Fruity Cereal. Further, the Fruity Cereal contains 0% of the DV of Vitamin D and 2% of the DV of potassium. Therefore, the Fruity Cereal also has far below 10% the DV of potassium and Vitamin D required to be “healthy”.

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42. Defendant’s false, deceptive and misleading label statements violate 21 U.S.C. § 343(a)(1) and statutes adopted by many states deeming food misbranded when “its labeling is false or misleading in any particular.”

43. Defendant’s false, deceptive and misleading label statements are unlawful under State Unfair and Deceptive Acts and Practices Statutes and/or Consumer Protection Acts, which prohibit unfair, deceptive or unconscionable acts in the conduct of trade or commerce.

44. Further, as explained above, Defendant’s claims are misleading to consumers in violation of 21 U.S.C. § 343, which states, “A food shall be deemed to

1 be misbranded—False or misleading label [i]f its labeling is false or misleading in
2 any particular.”

3 45. The California Sherman Law explicitly incorporates by reference “[a]ll
4 food labeling regulations and any amendments to those regulations adopted pursuant
5 to the FDCA,” as the food labeling regulations of California Cal. Health & Saf.
6 Code, § 110100, subd. (a). Thus, a violation of federal food labeling laws is an
7 independent violation of California law and actionable as such.

8 46. The New York Food, Drug and Cosmetic Act, New York has expressly
9 adopted the federal food labeling requirements and has stated “[a] food shall be
10 deemed misbranded in accordance with the Federal Food, Drug and Cosmetic Act
11 (21 U.S.C. §343)[.]” Public Health Law §71.05(d). Thus, a violation of federal food
12 labeling laws is an independent violation of New York law and actionable as such.

13 47. Plaintiffs and Class members would not have purchased the Products
14 or would have not paid as much for the products, had they known the truth about the
15 mislabeled and falsely advertised products.

16
17 ***Plaintiffs’ Purchases of The Products***

18 **Andres Vitiosus**

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20 48. Plaintiff Andres Vitiosus purchased the FIT SNACKS in 2018, 2019,
21 2020 from a local Walmart and GNC.

22 49. After observing the word “FIT” on the label, Plaintiff Vitiosus
23 purchased the Products believing it to be a healthy option and for the protein benefits.

24 50. Plaintiff Vitiosus paid approximately \$30 for the box of Products at
25 each time of purchase.

26 51. If Plaintiff Vitiosus had been aware that the Products were not
27 “healthy” or “fit” as defined by federal and state law they would not have purchased
28 or paid significantly less for the Products.

1 52. As a result of Defendant’s actions, Plaintiff Vitiosus has incurred
2 damages, including economic damages.

3 **Debra Foley**

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5 53. Plaintiff Nancy Foley purchased FIT SNACKS Protein Bar on or
6 around July 29, 2021.

7 54. After observing the word “FIT” on the label, Plaintiff purchased the
8 Product believing it to be a healthy option that would help her lose weight.

9 55. Plaintiff paid \$6.98 for the Product.

10 56. If Plaintiff had been aware that the Products were not “healthy” or “fit”
11 as defined by federal and state law they would not have purchased or paid
12 significantly less for the Products.

13 57. As a result of Defendant’s actions, Plaintiff has incurred damages,
14 including economic damages.

15 **Rachel Lumbra**

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17 58. Plaintiff Rachel Lumbra purchased FIT SNACKS Fit Snacks in
18 January, February, and May of 2021.

19 59. After observing the word “FIT” on the label, Plaintiff purchased the
20 Product believing it to be a healthy option that would help her lose weight.

21 60. Plaintiff paid \$3.99 for the Product at each time of purchase.

22 61. If Plaintiff had been aware that the Products were not “healthy” or “fit”
23 as defined by federal and state law they would not have purchased or paid
24 significantly less for the Products.

25 62. As a result of Defendant’s actions, Plaintiff has incurred damages,
26 including economic damages.

CLASS ACTION ALLEGATIONS

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3 63. Plaintiffs bring this action individually and as representatives of all
4 those similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure,
5 on behalf of the below-defined Classes:

6 **National Class:** During the fullest period allowed by law, all persons
7 in the United States who purchased any of the Products for their
8 personal use and not for resale within the United States.

9 **California Subclass:** During the fullest period allowed by law, all
10 persons in the State of California who purchased any of the Products
11 for personal use and not for resale in the State of California.

12 **New York Subclass:** During the fullest period allowed by law, all
13 persons in the State of New York who purchased any of the Products
14 for personal use and not for resale in the State of New York.

15 64. Members of the classes described are referred to as “Class Members”
16 or members of the “Classes.”

17 65. The following are excluded from the Classes: (1) any Judge presiding
18 over this action and members of his or her family; (2) Defendant, Defendant’s
19 subsidiaries, parents, successors, predecessors, and any entity in which Defendant
20 or its parent has a controlling interest (as well as current or former employees,
21 officers, and directors); (3) persons who properly execute and file a timely request
22 for exclusion from the Class; (4) persons whose claims in this matter have been
23 finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and
24 Defendant’s counsel; and (6) the legal representatives, successors, and assigns of
25 any such excluded persons.

26 66. Certification of Plaintiffs’ claims for class-wide treatment is
27 appropriate because Plaintiffs can prove the elements of their claims on a class-wide
28 basis using the same evidence as would be used to prove those elements in individual
actions alleging the same claims.

1 67. Plaintiffs reserve the right to amend the definitions of the Classes if
2 discovery or further investigation reveals that the Classes should be expanded or
3 otherwise modified.

4 68. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The
5 members of the Classes are so numerous that individual joinder of all Class Members
6 is impracticable. On information and belief, Class Members number in the thousands
7 to millions. The precise number or identification of members of the Classes are
8 presently unknown to Plaintiffs but may be ascertained from Defendant’s books and
9 records. Class Members may be notified of the pendency of this action by
10 recognized, Court-approved notice dissemination methods, which may include U.S.
11 mail, electronic mail, Internet postings, and/or published notice.

12 69. **Commonality and Predominance – Federal Rule of Civil Procedure**
13 **23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all members of
14 the Classes, which predominate over any questions affecting individual members of
15 the Classes. These common questions of law or fact include, but are not limited to,
16 the following:

- 17 a) Whether Defendant made false and/or misleading statements to the
18 consuming public concerning the use of the word “FIT” to market,
19 advertise, package, label, promote and sell the Products;
20 b) Whether the marketing, advertising, packaging, labeling, and other
21 promotional materials for the Products are deceptive and conform with
22 the requirements of the FDCA;
23 c) Whether Defendant’s representations concerning the Products were
24 likely to deceive a reasonable consumer;
25 d) Whether Defendant’s representations caused injury to Plaintiffs and
26 Class and Subclass Members; and
27 e) Whether Plaintiffs and Class and Subclass Members are entitled to
28 damages.

1 70. Defendant engaged in a common course of conduct giving rise to the
2 legal rights sought to be enforced by Plaintiffs, on behalf of themselves and the other
3 Class Members. Similar or identical statutory and common law violations, business
4 practices, and injuries are involved. Individual questions, if any, pale by comparison,
5 in both quality and quantity, to the numerous common questions that dominate this
6 action.

7 71. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’
8 claims are typical of the claims of the other Class Members because, among other
9 things, all such claims arise out of the same wrongful course of conduct engaged in
10 by Defendant in violation of law as complained of herein. Plaintiffs share the
11 aforementioned facts and legal claims or questions with Class Members, and
12 Plaintiffs and all Class Members have been similarly affected by Defendant’s
13 common course of conduct as alleged herein. Plaintiffs and all Class Members
14 sustained monetary and economic injuries including, but not limited to, ascertainable
15 loss arising out of Defendant’s wrongful conduct.

16 72. **Adequacy of Representation – Federal Rule of Civil Procedure**
17 **23(a)(4).** Plaintiffs are adequate representatives of the Classes because they are
18 members of the Classes and her interests do not conflict with the interests of the Class
19 Members she seeks to represent. Plaintiffs have also retained counsel competent and
20 experienced in complex commercial and class action litigation. Plaintiffs and their
21 counsel intend to prosecute this action vigorously for the benefit of all Class
22 Members. Accordingly, the interests of the Class Members will be fairly and
23 adequately protected by Plaintiffs and their counsel.

24 73. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure**
25 **23(b)(1).** Absent a class action, Class Members will continue to suffer the harm
26 described herein, for which they would have no remedy. Even if separate actions
27 could be brought by individual consumers, the resulting multiplicity of lawsuits
28 would cause undue burden and expense for both the Court and the litigants, as well

1 as create a risk of inconsistent rulings and adjudications that might be dispositive of
2 the interests of similarly situated consumers, substantially impeding their ability to
3 protect their interests, while establishing incompatible standards of conduct for
4 Defendant. Accordingly, the proposed Classes satisfies the requirements of Fed. R.
5 Civ. P. 23(b)(1).

6 74. **Declaratory and Injunctive Relief – Federal Rule of Civil**
7 **Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally
8 applicable to Plaintiffs and all Class Members, thereby making appropriate final
9 injunctive relief and declaratory relief, as described below, with respect to the Classes
10 as a whole.

11 75. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class
12 action is superior to any other available methods for the fair and efficient adjudication
13 of the present controversy for at least the following reasons:

- 14 • The damages suffered by each individual putative Class Member do
15 not justify the burden and expense of individual prosecution of the
16 complex and extensive litigation necessitated by Defendant’s conduct;
- 17 • Even if individual Class Members had the resources to pursue
18 individual litigation, it would be unduly burdensome to the courts in
19 which the individual litigation would proceed;
- 20 • The claims presented in this case predominate over any questions of
21 law or fact affecting individual Class Members;
- 22 • Individual joinder of all putative Class Members is impracticable;
- 23 • Absent a class action, Plaintiffs and putative Class Members will
24 continue to suffer harm as a result of Defendant’s unlawful conduct;
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- This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and putative Class Members can seek redress for the harm caused by Defendant.

76. In the alternative, the Classes may be certified for the following reasons:

- The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudication with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant;
- Adjudications of individual Class and Members’ claims against Defendant would, as a practical matter, be dispositive of the interests of other putative Class Members who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests; and
- Defendant has acted or refused to act on grounds generally applicable to the putative Classes, thereby making appropriate final and injunctive relief with respect to the putative Classes as a whole.

CLAIMS ALLEGED

COUNT I

Violation of California’s Unfair Competition Law (“UCL”)

California Business and Professions Code §17200, *et seq.*

(On Behalf of Plaintiffs Vitiosus and Foley

and the California Subclass)

CLASS ACTION COMPLAINT

1 77. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the
2 allegations above as if set forth herein.

3 78. The UCL defines “unfair business competition” to include any
4 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
5 untrue or misleading” advertising. Cal. Bus. Prof. Code § 17200.

6 79. A business act or practice is “unfair” under the UCL if it offends an
7 established public policy or is immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to consumers, and that unfairness is determined by weighing
9 the reasons, justifications and motives of the practice against the gravity of the harm
10 to the alleged victims.

11 80. Defendant’s actions constitute “unfair” business practices because, as
12 alleged above, Defendant engaged in misleading and deceptive advertising and
13 labeling that represented that the Products were “fit,” or in other words, “healthy.”
14 This use of the word “fit” misleads consumers into believing the Products are
15 “healthy” or “fit” as defined by federal and state law. Defendant’s acts and practices
16 offend an established public policy of accurate labeling, and is immoral, unethical,
17 oppressive, and substantially injurious to consumers.

18 81. The harm to Plaintiffs and the California Subclass outweighs the utility
19 of Defendant’s practices. There were reasonably available alternatives to further
20 Defendant’s legitimate business interests other than the misleading and deceptive
21 conduct described herein.

22 82. A business act or practice is “fraudulent” under the UCL if it is likely
23 to deceive members of the consuming public.

24 83. Defendant’s acts and practices alleged above constitute fraudulent
25 business acts or practices as they have deceived Plaintiffs is highly likely to deceive
26 members of the consuming public. Defendant intended that Plaintiffs and each of
27 the other members of the California Subclass would rely upon their deceptive
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1 conduct and false advertising, and a reasonable person would in fact be misled by
2 this deceptive conduct.

3 84. A business act or practice is “unlawful” under the UCL if it violates
4 any other law or regulation.

5 85. Defendant’s acts and practices alleged above constitute unlawful
6 business acts or practices as they have violated state and federal law. Defendant’s
7 false, deceptive, and misleading label statements violate 21 U.S.C. § 343(a)(1),
8 which states, “[a] food shall be deemed to be misbranded—If (1) its labeling is false
9 or misleading in any particular[.]”

10 86. In addition, California law expressly prohibits false advertising. See
11 Cal. Bus. & Prof. Code 17500. Moreover, the Consumer Legal Remedies Act, Cal.
12 Civ. Code § 1770(a)(9), (“CLRA”) also prohibits a business from “[a]dvertising
13 goods or services with intent not to sell them as advertised[.]”

14 87. The violation of any law constitutes an “unlawful” business practice
15 under the UCL.

16 88. As detailed herein, the acts and practices alleged were intended to or
17 did result in violations of the FTCA, the FAL, and the CLRA.

18 89. Defendant’s practices, as set forth above, have misled Plaintiffs, the
19 California Subclass, and the public in the past and will continue to mislead in the
20 future. Consequently, Defendant’s practices constitute an unlawful, fraudulent, and
21 unfair business practice within the meaning of the UCL.

22 90. Defendant’s violation of the UCL, through its unlawful, unfair, and
23 fraudulent business practices, are ongoing and present a continuing threat that
24 Plaintiffs and the members of the California Subclass and the public will be deceived
25 into purchasing products based on misrepresentations and suffer economic damages
26 to be proven at trial.

27 91. Pursuant to the UCL, Plaintiffs and the California Subclass are entitled
28 to preliminary and permanent injunctive relief and order Defendant to cease this

1 unfair competition, as well as disgorgement and restitution to Plaintiffs and the
2 California Subclass of all Defendant’s revenues associated with its unfair
3 competition, or such portion of those revenues as the Court may find equitable.

4
5 **COUNT II**
6 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**
7 **California Civil Code §1750, et seq.**
8 **(On Behalf of Plaintiffs Vitiosus and Foley**
9 **and the California Subclass)**

9 92. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the
10 allegations above as if set forth herein.

11 93. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code
12 § 1750, et seq. Plaintiffs and the California Subclass are “consumers” as defined by
13 Cal. Civ. Code § 1761(d). Defendant’s sale of the Products in retail stores and online
14 to Plaintiffs and the California Subclass were “transactions” within the meaning of
15 Cal. Civ. Code §1761(e). The Products are “goods” within the meaning of Cal. Civ.
16 Code § 1761(a).

17 94. Defendant violated and continues to violate the CLRA by engaging in
18 at least the following practices proscribed by Cal. Civ. Code § 1770(a) in
19 transactions with Plaintiffs and the California Subclass that were intended to result
20 in, and did result in, the sale of the Products:

21 95. “Advertising goods or services with intent not to sell them as
22 advertised” (Cal. Civ. Code § 1770(a)(9));

23 96. Representing that the Products “have sponsorship, approval,
24 characteristics, ingredients, uses, benefits, or quantities that they do not have” (Cal.
25 Civ. Code § 1770(a)(5));

26 97. Representing that the Products “are of a particular standard, quality, or
27 grade, or that goods are of a particular style or model, if they are of another” (Cal.
28 Civ. Code § 1770(a)(7)).

1 98. Defendant profited from the sale of the falsely, deceptively, and
2 unlawfully advertised the Products to unwary consumers.

3 99. Defendant's wrongful business practices constituted, and constitute, a
4 continuing course of conduct in violation of the CLRA.

5 100. Defendant's wrongful business practices were a direct and proximate
6 cause of actual harm to Plaintiffs and California Subclass Members.

7 101. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on October 8,
8 2021, Plaintiff Foley and California Subclass Members sent the required notice to
9 Defendant regarding its unlawful conduct and violation of the CLRA.

10 102. After receiving notice regarding its unlawful conduct and violation of
11 the CLRA, Defendant did not meet the demands enumerated in Plaintiff Foley's
12 notice letter within 30 days. Hence, Plaintiff Foley now seeks to recover actual
13 damages from Defendant pursuant to the CLRA.

14 103. Pursuant to California Civil Code § 1780, Plaintiffs seek injunctive
15 relief, reasonable attorneys' fees and costs, and any other relief that the Court deems
16 proper on behalf of the California Subclass.

17
18 **COUNT III**
19 **Violation of California's False Advertising Law ("FAL")**
20 **California Business & Professions Code §17500, et seq.**
21 **(On behalf of Plaintiffs Vitiosus and Foley**
22 **and the California Subclass)**

23 104. Plaintiffs Andres Vitiosus and Debra Foley repeat and re-allege the
24 allegations above as if set forth herein.

25 105. Cal. Bus. & Prof. Code § 17500 provides:

26 It is unlawful for any...corporation...with intent...to dispose
27 of...personal property...to induce the public to enter into any
28 obligation relating thereto, to make or disseminate or cause to be
made or disseminated...from this state before the public in any
state, in any newspaper or other publication, or any advertising

1 device, or by public outcry or proclamation, or in any other
2 manner or means whatever, including over the Internet, any
3 statement...which is untrue or misleading, and which is known,
4 or which by the exercise of reasonable care should be known, to
be untrue or misleading...

5 106. The “intent” required by Section 17500 is the intent to dispose of
6 property, and not the intent to mislead the public in the disposition of such property.

7 107. Defendant’s advertising and labeling that represented misrepresented
8 the amount of protein in the Products was an unfair, untrue, and misleading practice.
9 This deceptive marketing practice gave consumers the false impression of the
10 amount of protein in the Products.

11 108. As a direct and proximate result of Defendant’s misleading and false
12 advertisements, Plaintiffs and the California Subclass have suffered injury in fact
13 and have lost money. As such, Plaintiffs request that this Court order Defendant to
14 restore this money to Plaintiffs and all members of the California Subclass, and to
15 enjoin Defendant from continuing these unfair practices in violation of the FAL in
16 the future. Otherwise, Plaintiffs, the California Subclass, and the broader public will
17 be irreparably harmed and/or denied an effective and complete remedy.

18 **COUNT IV**
19 **Violation of New York General Business Law § 349**
20 **(On Behalf of Plaintiff Lumbra and the New York Subclass)**

21 109. Plaintiff Rachel Lumbra repeats and re-alleges the allegations above as
22 if set forth herein.

23 110. New York Business Law §349 prohibits “[d]eceptive acts or practices
24 in the conduct of any business, trade or commerce or in the furnishing of any
25 service[.]” N.Y. GEN. BUS. LAW § 349.

26 111. Defendant’s actions occurred in the conduct of business, trade or
27 commerce.

1 112. Defendant’s foregoing acts and practices, including its omissions, were
2 directed at consumers.

3 113. Defendant’s foregoing deceptive acts and practices, including its
4 omissions, were material, in part, because they concerned an essential part of the
5 Products ingredients and functionality.

6 114. Defendant’s conduct, as described in this Complaint, constitutes
7 “deceptive acts or practices” within the meaning of the New York GBL. All of
8 Defendant’s deceptive acts and practices, which were intended to mislead consumers
9 in a material way in the process of purchasing Defendant’s Products, constitute
10 conduct directed at consumers.

11 115. As purveyors in the highly lucrative protein bar market, Defendant
12 knows that when it comes to labeling and marketing, words matter. This is why
13 Defendant chose to name the Products “FIT” Snacks, and to emblazon the word
14 “FIT” on the front and center of each Product label, in a bold all-capitalized font,
15 where it cannot be missed by consumers.

16 116. Defendant chose to label the Products in this way to impact consumer
17 choices and gain market dominance, as it is well aware that all consumers who
18 purchased the Products were exposed to, and would be impacted by, the “FIT”
19 representation and would reasonably believe from this representation that the
20 Products are healthy. However, the Products are not “healthy”, in violation of the
21 United States Food, Drug and Cosmetic Act (“FDCA”) and parallel state laws.

22 117. Defendant’s deceptive marketing has been successful. Customer
23 reviews indicate that they buy the FITSNACKS because they supposedly support a
24 healthy lifestyle.

25 118. As described herein, Defendant’s false, deceptive and misleading label
26 statements violate 21 U.S.C. § 343(a)(1) and the statutes adopted by many states,
27 which deem food misbranded when “its labeling is false or misleading in any
28 particular.”

1 119. Defendant’s foregoing deceptive and unfair acts and practices,
2 including its omissions, were and are deceptive acts or practices in violation of the
3 New York’s General Business Law § 349, Deceptive Acts and Practices, N.Y. Gen.
4 Bus. Law 349, et seq., in that:

5 Defendant manufactured, labeled, packaged, marketed, advertised,
6 distributed, and/or sold the Products with the word “FIT” on the front and
7 center of each Product label, in a bold all-capitalized font, where it cannot be
8 missed by consumers, in order to convince consumers that the products are
9 healthy when they knew, or should have known that the products are not
10 “healthy” in violation of the FDCA and parallel state laws.

11 120. Defendant further deceived reasonable consumers into believing that
12 the Products were fit for their intended purpose of a healthy lifestyle, and omitted
13 and failed to disclose that the Products are not healthy as defined by the FDCA and
14 parallel state laws.

15 121. Plaintiff and the New York Subclass Members suffered damages when
16 they purchased the Products. Defendant’s unconscionable, deceptive and/or unfair
17 practices caused actual damages to Plaintiff and the New York Subclass Members
18 who were unaware that the Products are not “healthy” in violation of the FDCA and
19 parallel state laws.

20 122. Defendant’s foregoing deceptive acts and practices, including its
21 omissions, were likely to deceive, and did deceive, consumers acting reasonably
22 under the circumstances. Consumers, including Plaintiff and putative New York
23 Subclass Members, would not have purchased their Products had they known that
24 the Products are not “healthy” as defined by the FDCA and parallel state laws.

25 123. As a direct and proximate result of Defendant’s deceptive acts and
26 practices, including its omissions, Plaintiff and New York Subclass Members have
27 been damaged as alleged herein, and are entitled to recover actual damages to the
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1 extent permitted by law, including class action rules, in an amount to be proven at
2 trial.

3 124. In addition, Plaintiff and New York Subclass Members seek equitable
4 and injunctive relief against Defendant's on terms that the Court considers
5 reasonable, and reasonable attorneys' fees and costs.

6 125. On October 6, 2021, Plaintiff gave notice to Defendant of its violations
7 of the New York General Business Law § 349 On October 21, 2021, Defendant
8 responded to Plaintiff by letter, but did not remedy its breaches of New York General
9 Business Law § 349.

10 126. Therefore, within 30 days of receiving notice, Defendant did not take
11 the necessary steps outlined in Plaintiff's notice letter to remedy their breach of New
12 York General Business Law § 349 for the Products.

13 127. In addition, Defendant's conduct showed malice, motive, and the
14 reckless disregard of the truth such that an award of punitive damages is appropriate.

15
16 **COUNT V**
17 **Violation of New York General Business Laws § 350**
18 **(On Behalf of Plaintiff Lumbra and the New York Subclass)**

19 128. Plaintiff Rachel Lumbra repeats and re-alleges the allegations above as
20 if set forth herein.

21 129. New York Business Law §350 prohibits "[f]alse advertising in the
22 conduct of any business, trade or commerce or in the furnishing of any service[.]"
23 N.Y. GEN. BUS. LAW § 350.

24 130. Defendant's actions occurred in the conduct of business, trade or
25 commerce.

26 131. Defendant's foregoing acts and practices, including its advertising,
27 were directed at consumers.
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1 132. Defendant’s conduct, as described in this Complaint, constitutes “false
2 advertising” within the meaning of the New York GBL, as Defendant publicly
3 disseminated misleading and false advertisements through advertising and
4 marketing statements, suggesting that their Products were healthy.

5 133. Defendant’s foregoing, consumer-oriented, unfair or deceptive acts and
6 practices, including its advertising, representations, and omissions, constitutes false
7 and misleading advertising in a material way in violation of the New York’s General
8 Business Law § 350.

9 134. Defendant’s false, misleading and deceptive advertising and
10 representations include misrepresenting and misleadingly marketing and labeling
11 the products were fit for their intended purpose of a healthy lifestyle and omitting
12 and failing to disclose that the Products are not healthy as defined by the FDCA and
13 parallel state laws.

14 135. Defendant’s false, misleading, and deceptive advertising and
15 representations of fact were and are directed at consumers.

16 136. Defendant’s false, misleading, and deceptive advertising and
17 representations of fact were and are likely to mislead a reasonable consumer acting
18 reasonably under the circumstances.

19 137. Defendant’s false, misleading, and deceptive advertising and
20 representations of fact have resulted in consumer injury or harm to the public interest

21 138. Defendant intended that Plaintiff and each of the other members of the
22 New York Subclass would rely upon their deceptive conduct and false advertising,
23 and a reasonable person would in fact be misled by this deceptive conduct.
24 Defendant engaged in misleading and deceptive advertising that represented that the
25 Products were “fit,” or in other words, “healthy.” Defendant chose to label the
26 Products in this way to impact consumer choices and gain market dominance, as it
27 is aware that all consumers who purchased the Products were exposed to, and would
28 be impacted by, the “fit” representation and would reasonably believe from this

1 representation that the Products are healthy. This use of the word “fit” misleads
2 consumers into believing the Products were healthy. However, the Products are not
3 “healthy” as they are not healthy as defined by the FDCA and parallel state laws.
4 Thus, Defendant’s advertising and labeling that the Products were fit and healthy
5 was an unfair, untrue, and misleading practice.

6 139. Consumers, including Plaintiff and New York subclass members either
7 would not have purchased the Products or would have paid less for them had the
8 known that the Products are not “healthy” in violation of the FDCA and parallel state
9 laws.

10 140. As a direct and proximate result of Defendant’s deceptive acts and
11 practices, including it’s use or employment of false advertising, Plaintiff and each
12 of the other members of the New York Subclass have sustained actual damages in
13 an amount to be proven at trial.

14 141. In addition, Plaintiff and New York Subclass Members seek equitable
15 and injunctive relief against Defendant on terms that the Court considers reasonable,
16 and reasonable attorneys’ fees and costs.

17 142. On November 17, 2021, Plaintiff gave notice to Defendant of its
18 violations of the New York General Business Law § 350. Defendant never
19 responded to Plaintiff’s letter.

20 143. Therefore, within 30 days of receiving notice, Defendant did not take
21 the necessary steps outlined in Plaintiff’s notice letter to remedy their breach of New
22 York General Business Law § 350 for the Products.

23 144. In addition, Defendant’s conduct showed malice, motive, and the
24 reckless disregard of the truth such that an award of punitive damages is appropriate.
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COUNT VI
Breach of Express Warranty
(On Behalf of the National Class and, alternatively,
the California and New York Subclasses)

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4 145. Plaintiffs repeat and re-allege the allegations above as if set forth
5 herein.

6 146. Plaintiffs, and each member of the National Class, formed a contract
7 with Defendant at the time Plaintiffs and each member of the National Class
8 purchased the Products.

9 147. The terms of the contract include the promises and affirmations of fact
10 made by Defendant on the Products' packaging and through marketing and
11 advertising, as described above.

12 148. This labeling, marketing, and advertising constitute express warranties
13 and became part of the basis of the bargain and are part of the standardized contract
14 between Plaintiffs and the members of the National Class and Defendant.

15 149. As set forth above, Defendant purports, through its "fit" claims made
16 in connection with its advertising, labeling, marketing, and packaging, to create an
17 express warranty that the Products contain a certain amount Total Fat and that a
18 majority of that fat is the healthier mono and polyunsaturated fat.

19 150. Plaintiffs and the members of the National Class performed all
20 conditions precedent to Defendant's liability under this contract when they
21 purchased the Products.

22 151. Defendant breached express warranties about the Products and their
23 qualities because Defendant's Products' name, "FIT SNACKS" were misleading, as
24 set forth above, and the Products do not conform to Defendant's affirmations and
25 promises described above.

26 152. Plaintiffs and each of the members of the National Class would not have
27 purchased the Products had they known the true nature of the Products' nutritional
28 value.

1 153. As a result of Defendant’s breach of warranty, Plaintiffs and each of the
2 members of the National Class have been damaged in the amount of the purchase
3 price of the Products and any consequential damages resulting from their purchases.

4 154. Plaintiff Foley and California Subclass Members sent notice to
5 Defendant regarding its unlawful conduct and breach of express warranties.

6 155. After receiving notice regarding its unlawful conduct and breach of
7 express warranties, Defendant did not meet the demands enumerated in their notice
8 letter within 30 days.

9
10 **COUNT VII**
11 **Unjust Enrichment**
12 **(In the Alternative to Count I and on Behalf of the National Class**
13 **and, alternatively, the California and New York Subclasses)**

14 156. Plaintiffs repeat and re-allege the allegations above as if set forth
15 herein.

16 157. Plaintiffs and the other members of the National Class conferred
17 benefits on Defendant by purchasing the Products.

18 158. Defendant has been unjustly enriched in retaining the revenues derived
19 from the purchase of the Products by Plaintiffs and the other members of the
20 National Class.

21 159. Retention of those monies under these circumstances is unjust and
22 inequitable because Defendant’s labeling of the Products was misleading to
23 consumers, which caused injuries to Plaintiffs and the other members of the National
24 Class because they would have not purchased the Products if Defendant’s had not
25 mislead them into believing the Products were “fit,” or healthy.

26 160. Because Defendant’s retention of the non-gratuitous benefits conferred
27 on them by Plaintiffs and the other members of the National Class is unjust and
28 inequitable, Defendant must pay restitution to Plaintiffs and the other members of
the National Class for their unjust enrichment, as ordered by the Court.

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JURY DEMAND

161. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, pray for judgment and relief against Defendant as follows:

- a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Classes described herein; and (ii) appointing Plaintiff to serve as representatives for the Classes and Plaintiffs’ counsel to serve as Class Counsel;
- b) For an order enjoining Defendant from continuing to engage in the unlawful conduct set forth herein;
- c) For an order awarding restitution of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- d) For an order requiring disgorgement of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- e) For compensatory and punitive damages, including actual and statutory damages, arising from Defendant’s wrongful conduct and illegal conduct;
- f) For an award of reasonable attorneys’ fees and costs and expenses incurred in the course of prosecuting this action; and

For such other and further relief as the Court deems just and proper

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DATED: December 8, 2021.

Respectfully submitted,

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

/s/ Alex R. Straus

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Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Andre Vitiosus, Debra Foley, and Rachel Lumbr

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Alex R. Straus Milberg Coleman Bryson Phillips Grossman PLLC 280 S. Beverly Dr. Beverly Hills, CA 90212

DEFENDANTS

Alani Nutrition, LLC

County of Residence of First Listed Defendant Jefferson (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'21CV2048 MMAMDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332. Brief description of cause: This product is mislabeled.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/07/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Alex R. Straus

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

Alex R. Straus, SBN 321366
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
280 S. Beverly Drive
Beverly Hills, CA 90212

Plaintiffs' Attorneys
Additional attorneys on signature page

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANDRES VITIOSUS, DEBRA
FOLEY, and RACHEL LUMBRA
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

ALANI NUTRITION, LLC
Defendant.

Case No. '21CV2048 MMAMDD

Declaration of Alex R. Straus

DECLARATION OF ALEX R. STRAUS

I, Alex R. Straus, declare as follows:

1. I am an attorney with the law firm Milberg Coleman Bryson Phillips Grossman, PLLC, counsel for Plaintiffs Andre Vitiosus, Debra Foley, and Rachel Lumbra. I am admitted to practice law in California and before this Court and I am a member in good standing of the State Bar of California.

2. This declaration is made pursuant to California Civil Code section 1780(d).

3. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.

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4. If called as a witness, I could and would competently testify to the matters included herein.

5. Plaintiff Andres Vitiosus is a resident of Escondido, California in San Diego County.

6. I am informed and believe that venue is proper in this Court under Civil Code 1780(d) because the Defendant is doing business in this District, and a substantial portion of the transaction at issue occurred in this District.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct, and that this declaration was executed on December 7, 2021 in Los Angeles County, California.

/s/ Alex R. Straus
Alex R. Straus (SBN 321366)

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Alex R. Straus (SBN 321366)
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Attorneys for Plaintiffs
Additional Counsel on Signature
Page

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DEBRA FOLEY, ANDRES
VITIOSUS,
individually and on behalf of all
others
similarly situated,

Case No.: _____

Plaintiffs,

v.

ALANI NUTRITION, LLC
,
Defendant.

DECLARATION OF ANDRES VITIOSUS

I, Andres Vitiosus, declare as follows:

1. I am a named plaintiff in the above-captioned litigation.
2. I have personal knowledge of the matters set forth below except to those

matters stated herein which are based on information and belief, which matters I

1 believe to be true.

2 3. If called as a witness I could and would competently testify to the
3 matters included herein.

4 4. I reside in Escondido, California.

5 5. I am informed and believe that venue is proper in this Court under Civil
6 Code 1780(d) because the Defendant is doing business in this District, and a
7 substantial portion of the events or omissions at issue occurred in this District.

8
9 I declare under penalty of perjury under the laws of the State of California and
10 the United States that the foregoing is true and correct and this declaration was
11 executed on 12/6/2021 | 10:04:08 AM PST in Escondido, California.

12
13 DocuSigned by:
14 *Andres Vitosus*
15 7E8824120B52465...
16 Andres Vitosus

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fit Snacks Protein Bars Falsely Advertised as Healthy, Class Action Claims](#)
