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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

Attorney for Plaintiff
Emmett Enriques

SUPERIOR COURT OF THE STATE OF CALIFORNIA

LOS ANGELES CENTRAL DIVISION

24ST CV 23588

EMMETT ENRIQUES, individually and on
behalf of other situated,

Plaintiff,

vs.

ONLY WHAT YOU NEED, INC., a Delaware
Corporation; THE SIMPLE GOOD FOODS
COMPANY, a Delaware Corporation; AND
DOES 1 THROUGH 70, INCLUSIVE,

Defendants

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES
ACT (CIV. CODE § 1750, ET SEQ.);**
- (2) VIOLATION OF CALIFORNIA'S
FALSE ADVERTISING LAW (BUS.
& PROF CODE § 17500, ET SEQ.);**
- (3) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
(BUS. & PROF. CODE § 17200, ET
SEQ.)**
- (4) BREACH OF EXPRESS AND
IMPLIED WARRANTIES;**
- (5) NEGLIGENT
MISREPRESENTATION; AND**
- (6) UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiff, Emmett Enriques, brings this Class Action Complaint (“Complaint”) against
2 Defendants, Only What You Need, Inc., and The Simply Good Foods Company (collectively the
3 “Defendants” or “OWYN”) individually and on behalf of all other similarly situated, and
4 complains and alleges upon personal knowledge as to himself and his own acts and experiences
5 and, as to all other matters, upon information and belief, including an investigation conducted by
6 his attorneys:

7 **INTRODUCTION**

8 1. Plaintiff brings this consumer class action lawsuit on behalf of similarly situated
9 consumers (“Class Members”) who purchased for personal, family, or household use, the
10 following ready-to-drink protein shakes marketed and sold by Defendants: (1) Elite PRO
11 Chocolate, 355mL; (2) Elite PRO Vanilla, 355mL; (3) Elite PRO Plant Powered Drink, Vanilla,
12 330mL; (4) Elite PRO Plant Powered Drink, No Nut Butter Cup, 330mL; and (5) Elite PRO
13 Plant Powered Drink, Sea Salted Caramel, 330mL (collectively, the “Shakes” or “Products”).

14 2. These Shakes’ labels and packaging contain numerous material
15 misrepresentations about the amount of macronutrients OWYN represents are in the Products,
16 including but not limited to the following:

- 17 a. The Shakes have significantly higher total carbohydrate content than OWYN
18 claims on the Shakes’ nutrition facts labels and packaging;
- 19 b. The phrase “0 Net Carbs” is prominently displayed across all the Shakes’ labels
20 and packaging, yet OWYN fails to define this term anywhere on the labels or
21 packaging;
- 22 c. If “Net Carbs” is intended to represent total carbohydrates minus dietary fiber,
23 then the actual Net Carb content in the Shakes is far greater than what OWYN
24 claims on the Shakes’ labels and packaging;
- 25 d. Several Shakes contain considerably more sugar than OWYN claims on the
26 Shakes’ nutrition facts labels and packaging; and
- 27 e. Throughout the Class Period, many of the Shakes have contained substantially
28 less protein than OWYN claims on the nutrition facts labels and packaging.

3. Plaintiff seeks injunctive and monetary relief on behalf of the proposed Class, including: (i) requiring accurate disclosure of macronutrients in OWYN's marketing, advertising, and packaging; (ii) requiring testing to verify such disclosures; and (iii) restoring monies to Plaintiff and the members of the proposed Class(es) as defined below.

PARTIES

4. Plaintiff is and at all relevant times was a resident of Los Angeles County, California.

5. Plaintiff purchased the Shakes at retail locations in California including in Los Angeles County.

6. Plaintiff relied on the nutrient-related representations on the packaging and labels of the Shakes when making his purchase. At the time of his purchases, Plaintiff was unaware that OWYN misrepresented the Shakes' macronutrient levels and would not have purchased them if the true macronutrient levels were disclosed, or would have paid less than he did.

7. As a result of OWYN's deceptive conduct as alleged herein, Plaintiff was injured when he paid the purchase price and/or a price premium for the Shakes that did not deliver what Defendant promised.

8. Plaintiff paid the above sum in reliance that the representations on the Shakes were accurate and that there were no material omissions or inaccuracies. Plaintiff would not have purchased the Shakes or would have paid considerably less for them had he known their true macronutrient profile.

9. Defendant Only What You Need, Inc., is a corporation organized under the laws of Delaware with its corporate headquarters located at 33 Irving Place, New York, New York 10003. It sells its Shakes across the State of California and the rest of the country in many retail locations, including but not limited to Kroger, Target, Whole Foods, Walmart, Publix, and CVS.

10. Defendant The Simply Good Foods Company (“SGFC”) is a corporation organized under the laws of Delaware with its corporate headquarters located at 1225 17th Street, Suite 1000, Denver, Colorado 80202. It has a large facility at 777 South Aviation Boulevard, Suite 100, El Segundo, California. On June 13, 2024, SGFC announced it acquired

1 Only What You Need, Inc., for approximately \$280 million and that moving forward, OWYN is
2 to be a brand of SGFC.

3 11. The true names and capacities, whether individual, corporate, associate,
4 representative, or otherwise, of the Defendants identified herein as Does 1 through 70, inclusive,
5 are unknown to Plaintiff, who therefore sues these defendants by said fictitious names.
6 Plaintiff(s) will amend this complaint to allege the true names and capacities of Does 1 through
7 70 when they have been ascertained. Does 1 through 70 are in some manner legally responsible
8 for the wrongs and injuries alleged herein.

9 12. Each defendant acted as the agent or employee of the others and each acted within
10 the scope of that agency or employment.

11 **JURISDICTION**

12 13. This Court has jurisdiction over this action pursuant to California Code of Civil
13 Procedure § 410.10, as the Defendants have purposefully availed themselves of the privileges of
14 conducting activities within the State of California, thereby invoking the benefits and protections
15 of its laws. The Court also has jurisdiction under California Business and Professions Code §
16 17203, as the conduct alleged herein has caused harm to California consumers, including
17 Plaintiff. Plaintiff, on behalf of himself and all others similarly situated, seeks damages
18 exceeding the jurisdictional minimum of this Court.

19 **VENUE**

20 14. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 395(a) and
21 395.5 because the transactions and occurrences giving rise to Plaintiff's claims occurred in Los
22 Angeles County, California, where Plaintiff resides and purchased the Products. (Exhibit D, ¶ 3)

23 **FACTUAL ALLEGATIONS**

24 15. OWYN was launched in 2017 as one of the few nutrition-focused companies that
25 offered consumers ready-to-drink protein shakes that contain only "plant-based" protein.
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27
28

1 16. By 2023, OWYN claimed to generate over \$85 million¹ in revenue and recently
2 claimed it is on track to generate over \$120 million in revenue in 2024.² OWYN offers at least
3 six different lines of ready-to-drink protein shakes and protein powders. Each line has numerous
4 different flavors.

5 17. This complaint focuses on one of the six OWYN product lines. OWYN markets
6 and sells a line of ready-to-drink protein shakes it calls “Elite PRO” Shakes. As compared to the
7 other OWYN products, OWYN claims and represents on the Elite PRO product line label,
8 packaging, and through advertising that the Elite PRO Shakes (1) contain more protein per
9 serving than other ready-to-drink shakes, (2) contain minimal amounts of carbohydrates, and (3)
10 that the few carbohydrates that are present are 100% dietary fiber.

11 18. In effect, OWYN claims that the Elite PRO Shakes have large amounts of protein
12 without any effect on blood sugar levels.

13 19. OWYN then piggybacks off these claims to make a series of additional express
14 nutritional content claims and representations such as the Shakes have “0 Net Carbs”, that the
15 Shakes are “Keto Friendly,” and that the Shakes have “Zero Sugar.” These representations are
16 prominently displayed on the product packaging, in marketing materials, and on OWYN’s
17 website.

18 20. These representations are false. Testing and analysis revealed that the Products:
19 (1) contained more net carbohydrates than advertised, contradicting the “0 Net Carbs” claim; (2)
20 included hidden sugars or ingredients that metabolize as sugars, rendering the “Zero Sugar”
21 claim false; and (3) was not suitable for a ketogenic diet due to its actual carbohydrate content,
22 making the “Keto Friendly” label misleading.

23 21. OWYN was put on notice of its misrepresentations on or about July 7, 2022. It
24 continued thereafter to knowingly mislabel the Shakes without adequate quality control.

25
26 ¹ <https://www.tasteradio.com/episodes/2023/how-owyn-went-from-dtc-upstart-to-an-85m-omnichannel-giant-killer/>

27 ² <https://www.thesimplygoodfoodscompany.com/news-releases/news-release-details/simply-good-foods-company-acquire-only-what-you-need-owyn>

1 22. On May 23, 2024, Plaintiff's counsel sent Only What You Need Inc. a written
2 demand for relief pursuant to California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ.
3 C. §§ 1750, *et seq.*, concerning the false, deceptive, and misleading labeling and advertising for
4 its ready-to-drink protein shakes. A true and correct copy of that letter is attached hereto as
5 **Exhibit B.**

6 23. On July 3, 2024, Plaintiff's counsel sent SGFC another written demand for relief
7 pursuant to California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. C. §§ 1750, *et seq.*,
8 concerning the false, deceptive, and misleading labeling and advertising for its ready-to-drink
9 protein shakes. A true and correct copy of that letter is attached hereto as **Exhibit C.** In the time
10 between May 23, 2024, and July 3, 2024, SGFC completed its acquisition of Only What You
11 Need, Inc., requiring that Plaintiff's counsel send a second demand letter. SGFC elected not to
12 respond.

13 24. OWYN failed to exercise reasonable care in verifying the accuracy of the
14 nutritional content and health claims before marketing and selling the Products once on notice.

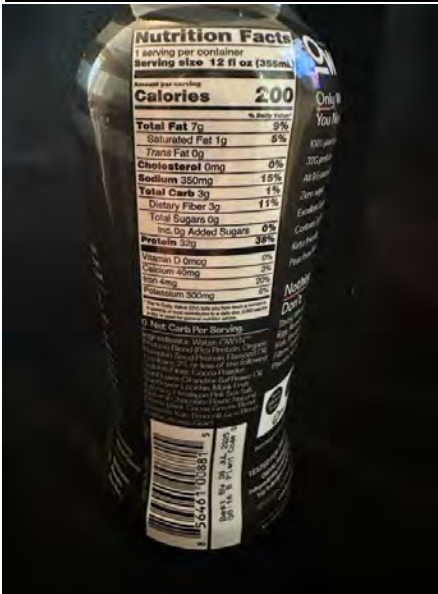
15 25. As a result of Defendants' false and misleading representations, Plaintiff and the
16 Class did not receive the benefits they bargained for and suffered economic loss.

17 26. Set forth below is a brief description of each of the five Shakes addressed herein:

18 **Elite PRO Chocolate, 355mL Plastic Container**

19 27. OWYN manufactures and sells a flavor of protein shakes called Elite PRO
20 Chocolate in a 355mL plastic container. ("355mL Chocolate"). The following images are of the
21 355mL Chocolate Product³:
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23
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25
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27
28 ³ These photographs were taken in 2024. Prior iterations of the Product had a total carbohydrate
value of 7 grams per serving and a protein value of 35 grams per serving.



28. Attached hereto as **Exhibit A.1** is a true and correct certified laboratory report pertaining to the 355mL Chocolate Product dated August 12, 2022.

29. Attached hereto as **Exhibit A.2** is a true and correct certified laboratory report pertaining to the 355mL Chocolate Product dated December 13, 2022.

30. Attached hereto as **Exhibit A.3** is a true and correct certified laboratory report pertaining to the 355mL Chocolate Product dated October 4, 2023.

31. Attached hereto as **Exhibit A.4** is a true and correct certified laboratory report pertaining to the 355mL Chocolate Product dated May 15, 2024.

Elite PRO Vanilla, 355mL Plastic Container

32. OWYN manufactures and sells a flavor of protein shakes called Elite PRO Vanilla in a 355mL plastic container. ("355mL Vanilla"). The following images are of the 355mL Vanilla Product⁴:



⁴ These photographs were taken in 2024. Prior iterations of the Product had a total carbohydrate value of 7 grams per serving and a protein value of 35 grams per serving.



33. Attached hereto as **Exhibit A.5** is a true and correct certified laboratory report pertaining to the 355mL Vanilla Product dated August 12, 2022.

34. Attached hereto as **Exhibit A.6** is a true and correct certified laboratory report pertaining to the 355mL Vanilla Product dated December 13, 2022.

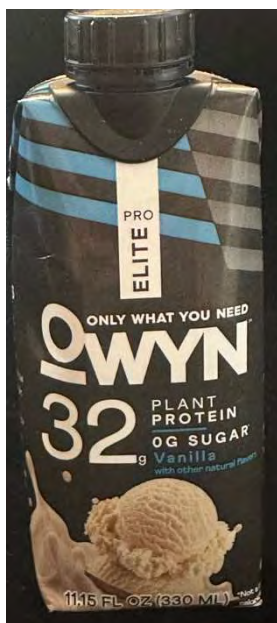
35. Attached hereto as **Exhibit A.7** is a true and correct certified laboratory report pertaining to the 355mL Vanilla Product dated October 4, 2023.

36. Attached hereto as **Exhibit A.8** is a true and correct certified laboratory report pertaining to the 355mL Vanilla Product dated May 15, 2024.

Elite PRO Plant Powered Drink, Vanilla, 330mL

37. OWYN manufactures and sells a flavor of protein shakes called Elite PRO Plant Powered Drink, Vanilla in a 330mL tetra pak container. ("330mL Vanilla"). The Product is sold in four packs. The following images are of the 330mL Vanilla Product, both individually and the entire four-pack⁵

⁵ These photographs were taken in 2024. Prior iterations of the Product had a total carbohydrate value of 6 grams per serving.



38. Attached hereto as **Exhibit A.9** is a true and correct certified laboratory report pertaining to the 330mL Vanilla Product dated December 13, 2022.

39. Attached hereto as **Exhibit A.10** is a true and correct certified laboratory report pertaining to the 330mL Vanilla Product dated May 15, 2024.

Elite PRO Plant Powered Drink, No Nut Butter Cup, 330mL

40. OWYN manufactures and sells a flavor of protein shakes called Elite PRO Plant Powered Drink, No Nut Butter Cup in a 330mL tetra pak container. (“330mL No Nut Butter Cup”). The following images are of the 330mL No Nut Butter Cup Product:



41. Attached hereto as **Exhibit A.11** is a true and correct certified laboratory report pertaining to the 330mL No Nut Butter Cup Product dated May 14, 2024.

Elite PRO Plant Powered Drink, Sea Salted Caramel, 330mL

42. OWYN manufactures and sells a flavor of protein shakes called Elite PRO Plant Powered Drink, Sea Salted Caramel in a 330mL tetra pak container. (“330mL Sea Salted Caramel”). The following images are of the 355mL Sea Salted Caramel Product:



43. Attached hereto as **Exhibit A.2** is a true and correct certified laboratory report pertaining to the 330mL No Nut Butter Cup Product dated May 14, 2024.

The Products are misbranded because the total carbohydrate levels in each of the Products are significantly higher than OWYN Claims on the Nutrition Facts Labels

44. In April 2024, an independent laboratory tested the Products for, among other things, the total carbohydrate levels in each of the Products.

45. For the majority of the Products, the laboratory performed the tests on a composite that included 12 different samples for each Product type, where each of the 12 samples was collected from different retail locations and where each of the 12 samples for each Product had the same lot number and/or the same expiration date.

46. All tests and methods used by the laboratory are specifically approved by AOAC International and were performed according to AOAC International methods and best practices.

47. Set forth below are the results, which include the specific citation to the appropriate laboratory report all of which are attached hereto and all of which have been incorporated by reference to this complaint:

Beverage	Carbohydrates (Label)	Carbohydrates (g) (May 2024 Results)	Percent Difference
330mL Vanilla	6 (¶ 37)	10.6 (Ex. A.10)	76.7% more
330mL No Nut Butter Cup	3 (¶ 40)	9.0 (Ex. A.11)	200% more
330mL Sea Salted Caramel	3 (¶ 42)	6.9 (Ex. A.12)	130% more
355mL Chocolate	3 (¶ 27)	11.0 (Ex. A.4)	266.7% more
355mL Vanilla	3 (¶ 32)	7.8 (Ex. A.8)	160% more

48. As the chart shows, OWYN fails to disclose the correct amount of total carbohydrates in the Products.

49. On information and belief, OWYN's underreporting of the amount of Total Carbohydrates is an ongoing and systemic problem. The same independent laboratory

performed the same set of laboratory tests in March 2022, almost two full years before the above-described tests on three of the five Products.

50. Again, the laboratory performed the tests on a composite sample that included different samples for each of three of the Products, where each of the samples were collected from different retail locations and where each of the samples for each of the three Products had the same lot number and/or the same expiration date.

51. Again, the test used by the laboratory is approved by AOAC International for this purpose and was performed according to AOAC International methods and best practices.

52. Set forth below are the results, which include the specific citation to the appropriate laboratory report all of which are attached hereto and all of which have been incorporated by reference to this complaint:

Beverage	Carbohydrates (Label)	Carbohydrates (g) (March 2022 Results)	Percent Difference
330mL Vanilla	6 (Fn 5)	8.4 (Ex. A.9)	40% more carbohydrates
355mL Chocolate	7 (Fn 3)	10.6 (Ex. A.1)	51% more carbohydrates
355mL Vanilla	7 (Fn 4)	9.3 (Ex. A.5)	39% more carbohydrates

53. Consumers choose low-carbohydrate products for various reasons, including managing conditions like diabetes, adhering to ketogenic ("keto") diets, and supporting weight loss or fitness goals. Accurate labeling is crucial, especially when products are marketed as "keto-friendly," where even small discrepancies in carbohydrate content can disrupt ketosis and derail dietary plans. The differences found in OWYN's products are far from minor; for instance, a product labeled as having 3 grams of carbohydrates actually contains 11 grams—a staggering 266.7% increase. Such significant inaccuracies mislead consumers, undermine their trust, and may have serious health implications for those relying on these labels to manage their diets effectively.

54. The Products are misbranded under 21 C.F.R. § 101.9(g)(4)(i) & (6) because each has significantly more carbohydrates than OWYN claims in the Products' nutrition facts labels.

The Products are misbranded because OWYN's "0 Net Carb" claim is inaccurate.

55. On various prominent locations on the Products' labels, OWYN claims that the Products contain "0 Net Carbs". *See infra* ¶¶ 27, 32, 37, 40, 42.

56. A "Net Carb" claim on the Products' labels is an express nutrition content claim governed by 21 U.S.C §343(r) and 21 C.F.R. § 1.01.13(i)(3). Thus, they are subject to the same labeling accuracy requirements as all macronutrients including total carbohydrates "because 'net carbs' is a configuration of nutrients 'of the type' required to be mentioned on a label by [21 U.S.C.] § 343(q) and its regulations." *Fernandez v. Atkins Nutritionals, Inc.*, 2018 WL 280028, at *7 (S.D. Cal. Jan. 3, 2018).

57. Any "Net Carb" claim (1) must be quantitatively true and (2) the method of calculation disclosed on the packaging.

58. OWYN fails both prongs.

59. First, OWYN does not disclose on the Products' packaging the method OWYN uses to calculate "Net Carbs".

60. Unlike OWYN, competitors in the dietary supplement industry clearly disclose on their product labels the precise method used to calculate 'net carbs.' These disclosures are made following industry norms and the regulatory requirements set forth by the FDA. The following examples showcase typical net carb disclosures made on the label of a product when the product contains a "Net Carb" claim:

a. Atkins Protein-Rich Shake, Dark Chocolate Royale



b. Purely Inspired Organic Protein, Plant-Based Protein Powder, Creamy French Vanilla:

‡ Net carbs are calculated by subtracting total dietary fiber from total carbohydrates.

c. Quest Cheese Crackers:

*10g Total Carbs – 5g Fiber = 5g Net Carbs

d. KIND ZERO Carmel Almond & Sea Salt Bars:

+HOW TO CALCULATE NET CARBS			
14g – 7g – 5g = 2g			
Total Carbs	Dietary Fiber	Allulose	Net Carbs

e. Mikona Cacao Choco Protein Powder:

Net Carbs = Total Carbs – Dietary Fiber

61. Second, in April 2024, an independent laboratory tested the Products for, among other things, the total carbohydrate and the dietary fiber levels in each of the Products.

62. For the majority of the Products, the laboratory performed the tests on a composite sample that included 12 different samples for three Product types, where each of the 12 samples was collected from different retail locations and where each of the 12 samples for each of the three Products had the same lot number and/or the same expiration date.

63. All tests and methods used by the laboratory are specifically approved by AOAC International and were performed according to AOAC International methods and best practices.

64. Set forth below are the results, which include the specific citation to the appropriate laboratory report all of which are attached hereto and all of which have been

incorporated by reference to this complaint. The net carbs are calculated by subtracting dietary fiber from total carbohydrates⁶:

Beverage	Total Carbohydrates		Dietary Fiber		Net Carbs	
	Label (g)	Actual (g)	Label (g)	Actual (g)	Label (g)	Actual (g)
330mL Vanilla	6 (¶ 37)	10.6 (Ex. A.10)	6 (¶ 37)	3.8 (Ex. A.10)	0 (¶ 37)	6.8
330mL No Nut Butter Cup	3 (¶ 40)	9.0 (Ex. A.11)	3 (¶ 40)	5.2 (Ex. A.11)	0 (¶ 40)	3.8
330mL Sea Salted Caramel	3 (¶ 42)	6.9 (Ex. A.12)	3 (¶ 42)	4.2 (Ex. A.12)	0 (¶ 42)	2.7
355mL Chocolate	3 (¶ 27)	7.8 (Ex. A.4)	3 (¶ 27)	2.2 (Ex. A.4)	0 (¶ 27)	5.6
355mL Vanilla	3 (¶ 32)	11 (Ex. A.8)	3 (¶ 32)	3.4 (Ex. A.8)	0 (¶ 32)	7.6

65. As the chart shows, OWYN fails to disclose the correct amount of net carbs in the Products.

66. On information and belief, OWYN's inaccurate claims of the amount of Net Carbs is an ongoing and systemic problem. The same independent laboratory performed the same set of laboratory tests on three of the Products in April 2022, two full years before the above-described tests.

67. Again, the laboratory performed the tests on a composite sample that included different samples for each of three of the Products, where each of the samples was collected from different retail locations and where each of the samples for each of the three Products had the same lot number and/or the same expiration date.

68. Again, all tests and methods used by the laboratory are specifically approved by AOAC International and were performed according to AOAC International methods and best practices.

⁶ This analysis assumes that the Defendants define "Net Carbs" to be total carbohydrates minus dietary fiber. We have no way of knowing though as the Defendants have not defined the term "Net Carbs" anywhere, including on the Products' labels.

69. Set forth below are the results, which include the specific citation to the appropriate laboratory report all of which are attached hereto and all of which have been incorporated by reference to this complaint. The net carbs are calculated by subtracting dietary fiber from total carbohydrates:

Beverage	Total Carbohydrates		Dietary Fiber		Net Carbs	
	Label (g)	Actual (g)	Label (g)	Actual (g)	Label (g)	Actual (g)
330mL Vanilla	6 (Fn 5)	8.4 (Ex. A.9)	6 (Fn 5)	5.7 (Ex. A.9)	6 (¶ 37)	2.7
355mL Chocolate	7 (Fn 3)	10.6 (Ex. A.1)	7 (Fn 3)	6.5 (Ex. A.1)	7 (¶ 27)	4.1
355mL Vanilla	7 (Fn 4)	9.3 (Ex. A.5)	7 (Fn 4)	6.9 (Ex. A.5)	7 (¶ 32)	2.4

70. Consumers rely on net carb labels in adhering to specific dietary regimens such as ketogenic and low-carb diets. This information can be critical for individuals who suffer from diabetes. Any discrepancies can lead to unintended, sometimes serious, dietary consequences. OWYN's failure to provide accurate net carb information not only misleads consumers but also undermines the trust that consumers place in the brand and its products.

71. The Products are misbranded under 21. U.S.C §343(r) and 21 C.F.R. § 1.01.13(i)(3) because OWYN has significantly more "Net Carbs" than OWYN claims on the Products' packaging. As demonstrated by the independent laboratory tests, the actual "Net Carb" content of OWYN's products is far higher than the "0 Net Carbs" claim made on the packaging. Moreover, OWYN simply fails to define how it calculates Net Carbs on the packaging as required. This misbranding not only violates federal labeling requirements but also deceives consumers, leading them to believe that they are consuming a product with fewer carbohydrates than is actually the case. Consequently, OWYN's inaccurate labeling practices represent a serious violation of consumer protection laws and industry standards.

Three of the Products are misbranded because each has more sugar than OWYN claims in the nutrition facts labels.

72. In April 2024, an independent laboratory tested the Products for, among other things, the sugar levels in each of the Products.

73. The laboratory performed the tests on a composite sample that included 12 different samples for each Product type, where each of the 12 samples were collected from different retail locations and where each of the 12 samples for each Product had the same lot number and/or the same expiration date.

74. All tests and methods used by the laboratory are specifically approved by AOAC International and were performed according to AOAC International methods and best practices.

75. Set forth below are the results, which include the specific citation to the appropriate laboratory report all of which are attached hereto and all of which have been incorporated by reference to this complaint:

Beverage	Sugar (Label)	Sugar (g)
330mL Vanilla	0 (¶ 37)	2.1 (Ex. A.10)
330mL No Nut Butter Cup	0 (¶ 40)	2.4 (Ex. A.11)
330mL Sea Salted Caramel	0 (¶ 42)	6.9 (Ex. A.12)

76. As the chart shows, OWYN fails to disclose the correct amount of sugar in three of the Products. These three Products are misbranded under 21 § CFR 101.60 (c) because OWYN has significantly more sugar than OWYN claims in the Products Nutrition Facts Label. These misrepresentations are not only misleading but also harmful to consumers who rely on accurate labeling to make informed dietary choices, particularly those managing sugar intake for health reasons such as diabetes or weight control. OWYN's inaccurate sugar content labeling constitutes a clear violation of federal labeling regulations and underscores the deceptive nature of its marketing practices.

Three of the Products were misbranded for a significant fraction of the class period for having less protein than represented

77. Over the past two years, an independent laboratory has measured the protein levels of three of the Products.

78. In all but one instance, the laboratory performed the tests on a composite sample that included different samples for each Product type, where each of the samples was collected

from different retail locations, and where each of the samples for each Product had the same lot number and/or the same expiration date.

79. All tests and methods used by the laboratory are specifically approved by AOAC International and were performed according to AOAC International methods and best practices.

80. Set forth below are the results from the first set of tests conducted in March 2022, which include the specific citation to the appropriate laboratory report, all of which are attached hereto and incorporated by reference to this complaint:

Beverage	Protein (g) (Label)	Actual Protein (g)
330mL Vanilla	32 (¶ 37)	28.0 (Ex. A.9)
355mL Chocolate	35 (Fn 3)	29.2 (Ex. A.1)
355mL Vanilla	35 (Fn 4)	29.7 (Ex. A.5)

81. As the chart shows, OWYN failed to disclose the correct amount of protein in three of the Products during the March 2022 testing.

82. Below are the results from the second set of tests conducted in December 2022, which also include the specific citation to the appropriate laboratory report, all of which are attached hereto and incorporated by reference to this complaint:

Beverage	Protein (g) (Label)	Actual Protein (g)
355mL Chocolate	35 (Fn 3)	25.8 (Ex. A.2)
355mL Vanilla	35 (Fn 4)	24.5 (Ex. A.6)

83. The December 2022 test results further confirm that OWYN continued to misrepresent the protein content in these Products, with one Product containing as much as 23% less protein than stated on the label.

84. Below are the results from the third set of tests conducted in October 2023, with the specific citation to the appropriate laboratory report attached hereto and incorporated by reference to this complaint:

Beverage	Protein (g) (Label)	Actual Protein (g)
355mL Chocolate	32 (¶ 27)	27.2 (Ex. A.3)
355mL Vanilla	32 (¶ 32)	27.6 (Ex. A.7)

85. The October 2023 test results continue to demonstrate that OWYN's labeling practices were consistently inaccurate, with the Products containing less protein than represented on the nutrition facts labels. This pattern of misrepresentation indicates a systemic issue within OWYN's labeling and quality control processes.

86. Finally, the results from the most recent set of tests conducted in May 2024 are set forth below, with the specific citation to the appropriate laboratory report attached hereto and incorporated by reference to this complaint:

Beverage	Protein (Label)	Protein
330mL Vanilla	32 (¶ 37)	28.1 (Ex. A.10)
330mL No Nut Butter Cup	32 (¶ 40)	31.5 (Ex. A.11)
330mL Sea Salted Caramel	32 (¶ 42)	31.7 (Ex. A.12)
355mL Chocolate	32 (¶ 27)	31.8 (Ex. A.4)
355mL Vanilla	32 (¶ 32)	32.5 (Ex. A.8)

87. The May 2024 test results indicate that several Products still contained less protein than claimed, though the discrepancies were smaller than in previous tests.

88. This misbranding under 21 C.F.R. § 101.9(g)(4)(i) reflects OWYN's ongoing failure to ensure the accuracy of its nutrition facts labels, leading to consumer deception and regulatory violations. By overstating the protein content during the class period, OWYN misled consumers about the true nutritional value of its products, which constitutes a serious breach of consumer trust and regulatory compliance. The pattern of misrepresentation demonstrates a systemic issue within OWYN's labeling practices that must be addressed to ensure consumers receive the full benefits they expect based on the product's nutritional claims.

CLASS ACTION ALLEGATIONS

89. Plaintiff brings this action on his own behalf and on behalf of all persons similarly situated. Such a representative action is necessary to prevent and remedy the deceptive, unlawful, and unfair practices alleged herein.

1 90. This action is brought and may be properly maintained as a class action pursuant
2 to the provisions of Code of Civil Procedure § 382. Plaintiff brings this action on half of himself
3 and all members of the class, defined as follows:

- 4 a. **California Class:** All persons who purchased the Products within the State of
5 California for personal use and not for resale during the fullest period allowed by
6 law.
7 b. **Nationwide Class:** All persons who purchased the Product within the United
8 States for personal use and not for resale during the fullest period allowed by law.
9 c. **Class Members:** Members of the California Class and Nationwide Class are
10 referred to herein as “Class Members” or members of the “Class.”

11 91. The following are excluded from the Class: (1) any Judge presiding over this
12 action and members of their family; (2) Defendants, Defendants’ subsidiaries, parents,
13 successors, predecessors, and any entity in which Defendant or its parents have a controlling
14 interest (as well as current or former employees, officers, and directors); (3) persons who
15 properly execute and file a timely request for exclusion from the Class; (4) persons whose claims
16 in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s
17 counsel and Defendant’s counsel; and (6) the legal representatives, successors, and assigns of
18 any such excluded persons.

19 92. Plaintiff reserves the right to amend the Class definitions or add a Class or Classes
20 if discovery and/or further investigation reveal that the Class definitions should be narrowed,
21 expanded, or otherwise modified.

22 93. The Class is so numerous that joinder of all members is impracticable, in
23 accordance with California Code of Civil Procedure § 382. While the exact number of Class
24 Members is unknown to Plaintiff at this time, given the nature of the claims and the volume of
25 sales of the Products in California and nationwide, Plaintiff believes there are tens of thousands
26 of Class Members. The Class is so numerous that the disposition of their claims in a class action
27 will benefit the parties and the Court.

28 94. There is a well-defined community of interest among the members of the
proposed class. Plaintiff, like all other Class Members, purchased the Products in reliance on the

1 macronutrient labeling and the various representations that the Products contained zero net carbs,
2 zero sugar, and was keto friendly. The factual bases of Defendants' misconduct are common to
3 all Class Members and represent a common practice of wrongful conduct resulting in damages to
4 all Class Members.

5 95. There are common questions of law and fact that predominate over any questions
6 affecting only individual members of the Class. The common questions of fact include, but are
7 not limited to:

- 8 a. Whether Defendants consistently and uniformly misrepresented the nutritional
9 content, including protein, carbohydrates, net carbohydrates, and sugar levels, on
10 the labels and packaging of their Products, affecting all Class Members in a
11 similar manner;
- 12 b. Whether the discrepancies between the labeled nutritional content and the actual
13 nutritional content, as revealed by independent laboratory testing, were systemic
14 and pervasive across all Products sold to Class Members, demonstrating a
15 widespread pattern of deceptive practices;
- 16 c. Whether Defendants were aware or should have been aware of the discrepancies
17 in the nutritional content and deliberately chose to mislead consumers through
18 false labeling and marketing, indicating a uniform intent to deceive Class
19 Members;
- 20 d. Whether the misrepresentations regarding nutritional content were material to the
21 purchasing decisions of the Class Members, with a reasonable consumer likely to
22 have been influenced by the inaccurate information when deciding to purchase the
23 Products; and
- 24 e. Whether all Class Members suffered economic harm due to the misrepresentation
25 of nutritional content, either by paying a premium for Products that did not meet
26 the advertised claims or by purchasing Products they would not have otherwise
27 bought had they known the truth.

28 96. The common questions of law include, but are not limited to:

- a. Whether Defendants omitted and/or failed to disclose material facts concerning the Products;
- b. Whether Defendants misrepresented any of the qualities or characteristics of the Products;
- c. Whether Defendants' conduct was unlawful, unfair, fraudulent, and/or deceptive;
- d. Whether Defendants breached express and/or implied warranties to Plaintiff and Class Members;
- e. Whether Defendants breached a duty to each Class Member;
- f. Whether Defendants' conduct violates the California Consumer Legal Remedies Act, Civil Code §§ 1750, *et seq.*;
- g. Whether Defendants' conduct violates the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- h. Whether Defendants' conduct violates the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- i. Whether Defendants' conduct alleged herein should be enjoined;
- j. Whether Defendant was unjustly enriched as a result of the unlawful conduct alleged herein such that it would be inequitable for Defendants to retain the benefits conferred upon it by Plaintiff and the proposed Class; and
- k. Whether Plaintiff and the Class have sustained damages with respect to the claims asserted, and if so, the proper measure of their damages.

97. Plaintiff's claims are typical of the claims of other Class Members. Plaintiff and all Class Members have sustained economic damage arising out of the common course of conduct as alleged herein.

98. Plaintiff will fairly and adequately represent and protect the interests of the Class. They have retained counsel with substantial experience in prosecuting consumer class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources necessary to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the Class.

1 99. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy since individual joinder of all Class Members is impracticable.
3 Further, as the damages suffered by each individual Class Member may be relatively small, the
4 expense and burden of individual litigation would make it difficult or impossible for individual
5 Class Members to redress the wrongs done to them. The cost to the court system of such
6 individualized litigation would also present the potential for inconsistent or contradictory
7 judgments and would magnify the delay and expense to all parties and the court system in
8 multiple trials of identical factual issues. By contrast, the conduct of this action as a class action
9 presents fewer management difficulties, conserves the resources of the parties and the court
10 system, and protects the rights of each class member.

11 100. Plaintiff and the Class are entitled to recover reasonable attorneys' fees and costs
12 pursuant to applicable law, including but not limited to, California Code of Civil Procedure §
13 1021.5, which provides for the recovery of attorneys' fees in cases that result in the enforcement
14 of an important right affecting the public interest. The prosecution of this action, through its
15 outcome, will confer a significant benefit on a large class of persons by addressing Defendants'
16 unlawful practices and will serve as a deterrent to similar conduct in the future. Additionally,
17 pursuant to California Civil Code § 1780(e), Business and Professions Code §§ 17200 and
18 17500, and other applicable statutes, Plaintiff and the Class seek an award of reasonable
19 attorneys' fees and costs as part of the relief requested in this action.

20 **CAUSES OF ACTION**

21 **COUNT I**

22 **Violation of the California Consumer Legal Remedies Act ("CLRA"), Civil Code §§ 1750,**
23 ***et seq.***

24 **(On Behalf of Plaintiff and the California Class)**

25 101. Plaintiff incorporates by references and realleges each and every allegation
26 contained in paragraphs 1 through 100 above as though fully set forth herein.

27 102. The Products qualify as "goods" as defined by Civil Code § 1761(a).

28 103. Plaintiff and California Class Members' purchases of the Products are
"transactions" as defined by Civil Code § 1761(e).

1 104. Plaintiff and California Class Members are “consumers” as defined by Civil Code
2 § 1761(d) who purchased the Defendants’ Products for personal, family, or household use.

3 105. Plaintiff and Class Members risk irreparable injury as a result of the use or
4 employment by Defendants of unfair, unlawful, or deceptive methods, acts, and practices
5 prohibited by Civil Code § 1770, undertaken by Defendants in transactions intended to result
6 and/or which did result in the sale of goods to consumers.

7 106. During the class period, Defendants have violated Civil Code § 1770 though the
8 acts alleged herein, thereby entitling Plaintiff and each Class Member to relief under Civil Code
9 § 1780, by, *inter alia*:

- 10 a. “Representing that goods... have sponsorship, approval, characteristics,
11 ingredients, uses, benefits, or quantities that they do not have.” Civil Code §
12 1770(a)(5);
- 13 b. “Representing that goods... are of a particular standard, quality, or grade, or that
14 goods are of a particular style or model, if they are of another.” Civil Code §
15 1770(a)(7);
- 16 c. “Advertising goods or services with intent not to sell them as advertised.” Civil
17 Code § 1770(a)(9); and
- 18 d. “Representing that the subject of a transaction has been supplied in accordance
19 with a previous representation when it has not.” Civil Code § 1770(a)(16).

20 107. As detailed in the body of this Complaint, Defendants has repeatedly engaged in
21 conduct deemed a violation of the CLRA and has made representations regarding the Products’
22 benefits or characteristics that they did not in fact have, and represented the Product to be of a
23 quality that was not true. Indeed, Defendants concealed this information from Plaintiff and
24 California Class Members.

25 108. The Products do not have the nutritional content claimed on the Products’
26 advertising, labeling, or other representations, and are therefore of inferior quality and
27 trustworthiness compared to other products in the industry. As detailed above, Defendants
28 further violated the CLRA when they falsely represented that the Products meet a certain
standard or quality.

1 109. As detailed above, Defendants violated the CLRA when they advertised their
2 Products and omitted information that would have alerted consumers to the Products' true
3 nutrition contents.

4 110. Defendants' deceptive practices were specifically designed to induce Plaintiff and
5 California Class Members to purchase or otherwise acquire the Product.

6 111. Defendants engaged in uniform marketing efforts to reach California Class
7 Members, their agents, and/or third parties upon whom they relied, to persuade them to purchase
8 and use the Product manufactured by Defendants. Defendants' packaging, advertising,
9 marketing, website, and retailer product identification and specifications contain numerous false
10 and misleading statements regarding the quality of the Product.

11 112. Defendants omitted and concealed information and material facts from Plaintiff
12 and California Class Members.

13 113. In their purchase of the Products, Plaintiff and California Class Members relied
14 on Defendants' representations and omissions of material fact that the Product contained fewer
15 grams of protein and fiber and more grams of carbohydrates and sugar than advertised.

16 114. These business practices are misleading and/or likely to mislead consumers and
17 should be enjoined.

18 115. Defendants have failed to provide or offer an appropriate correction, repair,
19 replacement, or other remedy, as set forth in Civil Code § 1782(b), for the above-mentioned
20 violations of law.

21 116. Defendants' violations of Civil Code § 1770 present a continuing threat to Class
22 Members and members of the public in that Defendants are continuing to engage in these
23 practices, are continuing to refuse to refund amounts paid by consumers, and will not cease until
24 an injunction is issued by the Court. Unless Defendants are enjoined from continuing to engage
25 in these practices, Plaintiff and the Class Members, who lack an adequate remedy at law to deter
26 Defendants' wrongful conduct, will be irreparably harmed.

27 117. Plaintiff has suffered damage as a result of Defendants' violations of Civil Code §
28 1770, in that he paid for a Product he would not have purchased knowing its true macronutrient

1 profile, or he paid more for the Product than it was actually worth because he attributed a price
2 premium to the macronutrient profile.

3 118. By letters dated May 20, 2024, and July 3, 2024, and mailed as directed in Civil
4 Code § 1782, Plaintiff, by his counsel, has notified Defendants of their violations of the
5 Consumer Legal Remedies Act and has demanded that Defendants provide a remedy that
6 rectifies its conduct. A true and correct copy of the May 20 letter is attached hereto as **Exhibit**
7 **B**. A true and correct copy of the July 3 letter is attached hereto as **Exhibit C**. More than thirty
8 days have elapsed since Plaintiff mailed the letter. Defendants have not remedied the wrongs
9 described in the letter and in this Complaint.

10 119. Defendants' conduct is sufficiently blameworthy to merit the imposition of
11 punitive damages pursuant to Civil Code § 1780(a)(4), to punish, deter and make an example of
12 defendants.

13 120. Plaintiffs and the Class are entitled to an award of attorneys' fees and costs
14 against Defendants pursuant to the provisions of Civil Code § 1780(d).

15 **COUNT II**
16 **Violation of the California False Advertising Law ("UCL"), Cal. Bus. & Prof. Code §§**
17 **17500, *et seq.***
18 **(On Behalf of Plaintiff and the California Class)**

19 121. Plaintiff incorporates by reference and realleges each and every allegation
20 contained in paragraphs 1 through 100 above as though fully set forth herein.

21 122. California Business and Professions Code Section 17500, *et seq.* ("FAL")
22 prohibits advertising in California that is untrue or misleading and which is known, or should
23 have been known, to be untrue or misleading.

24 123. Defendants' advertisements, labeling, and marketing materials contained
25 statements and representations that the Products possessed certain nutritional qualities, including
26 but not limited to the total amounts of protein, carbohydrates, net carbohydrates, and sugar.
27 These representations were untrue and misleading because the Products did not contain the
28 advertised amounts of these macronutrients.

1 132. California Business and Professions Code Section 17200 *et seq.* (“Section
2 17200”), also known as the California Unfair Competition Law (“UCL”), prohibits acts of
3 “unfair competition,” including any unlawful, unfair, fraudulent or deceptive business act or
4 practice as well as “unfair, deceptive, untrue or misleading advertising.”

5 133. Defendants violated the “unfair,” “unlawful,” and “fraudulent” prongs of the UCL
6 by, *inter alia*, misrepresenting the total amounts of protein, carbohydrates, net carbohydrates,
7 and sugar, with respect to the labeling and advertising of its Products. At the time of its
8 misrepresentations, Defendants were either aware the Products contained less protein, less fiber,
9 more total carbohydrates, and more sugar, which no reasonable consumer would expect given
10 the Products’ labeling, or was aware that it lacked the information and/or knowledge required to
11 make such a representation truthfully. Defendants concealed, omitted, and failed to disclose this
12 information to Plaintiff and California Class Members.

13 134. Defendants’ conduct above violated the “unfair” prong of the UCL because its
14 utility (promoting sales) is significantly outweighed by the gravity of the harm that it imposes on
15 consumers (damage in the form of a price premium for an inferior, mislabeled product).
16 Defendants have alternatives to this conduct that would be less harmful to consumers (i.e.,
17 correctly labeling the Products or formulating a better Product), but they do not employ them
18 because their present conduct is more profitable and beneficial to themselves than the
19 alternatives.

20 135. In addition, the conduct above violates the “unfair” prong because the practice is
21 oppressive, unscrupulous, and/or substantially injurious to consumers.

22 136. Defendants’ conduct violated the “unlawful” prong of the UCL because it
23 violated Civil Code §§ 1770, *et seq.*, insofar as it violated numerous federal regulations regarding
24 food labels.

25 137. As a direct and proximate result of Defendants’ unfair, unlawful, and deceptive
26 business practices, Plaintiff and the Class Members have suffered injury in fact.

27 138. As a direct and proximate result of Defendants’ unfair, unlawful, and deceptive
28 business practices, Defendants have been unjustly enriched and should be ordered to make

1 restitution to Plaintiffs and the Class Members pursuant to Business and Professions Code §§
2 17203 and 17204.

3 139. Defendants' unfair, unlawful, and fraudulent business practices described herein
4 present a continuing threat to Plaintiffs, the Class, and members of the public in that Defendants
5 persist and continue to engage in these practices, and will not cease doing so unless and until
6 forced to do so by this Court. Defendants' conduct is causing, and will continue to cause,
7 irreparable injury to Plaintiff and the Class unless enjoined or restrained.

8 **COUNT IV**

9 **Breach of Express and Implied Warranties**
10 **(On Behalf of Plaintiff and the National Class)**

11 140. Plaintiff incorporates by references and realleges each and every allegation
12 contained in paragraphs 1 through 100 above as though fully set forth herein.

13 141. Defendants expressly warranted to Plaintiff and the Class that the Products
14 contained the macronutrient amounts OWYN claimed in the nutrition facts label and were "O
15 Net Carbs," "Keto Friendly," and "Zero Sugar," among other nutritional benefits.

16 142. Defendants further impliedly warranted that the Product provided no impact on
17 blood sugar content.

18 143. Defendants further impliedly warranted that the Products were of merchantable
19 quality and fit for their ordinary purposes, including being suitable for consumers adhering to
20 low-carbohydrate or ketogenic diets.

21 144. Plaintiff and the Class purchased the Products based on these express and implied
22 warranties, reasonably relying on Defendants' representations.

23 145. Defendant breached these warranties by providing a Product that did not conform
24 to the advertised qualities. Specifically: (1) the Products contained more net carbohydrates than
25 disclosed; (2) the Products were not "Keto Friendly" as they contained ingredients in
26 concentrations incompatible with a ketogenic diet; and (3) the Products' "Zero Sugar" claims
27 were false as they contained sugar.

28 146. As a direct and proximate result of Defendants' breaches, Plaintiff and the Class
have suffered damages, including the purchase price of the Product and the loss of the benefit of
their bargain.

COUNT V

**Negligent Misrepresentation
(On Behalf of Plaintiff and the National Class)**

147. Plaintiff incorporates by references and realleges each and every allegation contained in paragraphs 1 through 100 above as though fully set forth herein.

148. Defendant supplied false and misleading information regarding the Products' nutritional content and suitability for specific diets, including the macronutrient information in the Nutrition Facts Panel as well as the following representations: "0 Net Carbs," "Keto Friendly," and "Zero Sugar."

149. Defendants made these misrepresentations without exercising reasonable care in verifying the accuracy of these claims.

150. Plaintiff and the Class reasonably relied on these misrepresentations in purchasing the Product, believing it was suitable for their dietary needs.

151. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiff and the Class suffered economic loss and other damages.

COUNT VI

**Unjust Enrichment
(On Behalf of Plaintiff and the National Class)**

152. Plaintiff incorporates by references and realleges each and every allegation contained in paragraphs 1 through 100 above as though fully set forth herein.

153. Defendants have been unjustly enriched at the expense of Plaintiff and the Class by selling Products that did not conform to its advertised qualities, including macronutrient levels as well as the following representations: "0 Net Carbs," "Keto Friendly," and "Zero Sugar."

154. Plaintiff and the Class conferred a benefit upon Defendants by purchasing the Product based on these misrepresentations.

155. It would be unjust for Defendants to retain the profits from these transactions, as the Product did not meet the expectations set by its labeling and marketing.

156. Plaintiff and the Class seek restitution of all amounts by which Defendants have been unjustly enriched, including disgorgement of all profits obtained from the sale of the Products.

PRAYER FOR RELIEF

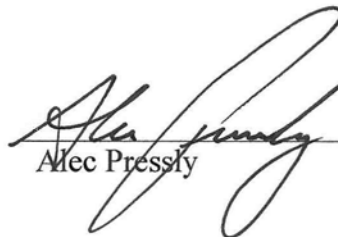
WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for relief and judgment, including of entry of an order as follows:

- a) Declaring that this action is properly maintained as a class action, certifying the proposed Classes, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel;
- b) Directing that Defendants bear the costs of any notice sent to the Classes;
- c) Ordering Defendants to pay restitution to Plaintiff and the Classes;
- d) A jury trial and damages according to proof;
- e) Awarding actual damages to Plaintiff and the Classes;
- f) Awarding Plaintiff and members of the Classes statutory damages, as provided by the applicable state consumer protection statutes invoked above;
- g) Awarding attorneys' fees and litigation costs to Plaintiff and members of the Classes;
- h) Civil penalties, prejudgment interest, and punitive damages as permitted by law; and
- i) Ordering such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial of the claims asserted in this Class Action Complaint.

Dated 9/12/2024


Alec Pressly