

**JUST FOOD LAW PLLC**

Maia Kats (To be admitted *pro hac vice*)  
maiakats@justfoodlaw.com  
5335 Wisconsin Avenue, NW, Ste. 440  
Washington, DC 20015  
Telephone: (202) 243-7910

**KUZYK LAW, LLP**

Michael D. Braun (SBN 167416)  
mdb@kuzykclassactions.com  
2121 Avenue of the Stars, Ste. 800  
Los Angeles, CA 90067  
Telephone: (213) 401-4100  
Facsimile: (213) 401-0311

*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**IAN MCCAUSLAND, CARLO GARCIA,  
and MICHAEL ZURL on behalf of  
themselves and all others similarly situated,**

**Plaintiffs,**

**v.**

**PEPSICO, INC.,**

**Defendant**

**CASE NO.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY, AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Ian Mccausland, Carlo Garcia, and Michael Zurl (together, Plaintiffs), individually  
2 and on behalf of all others similarly situated, bring this Class Action Complaint against PepsiCo, Inc.  
3 (“PepsiCo” or “Defendant”), and on the basis of personal knowledge, information and belief, and  
4 investigation of counsel, allege as follows:

5 **NATURE OF THE ACTION**

6 1. “Gatorade Protein Bars” are a food product manufactured, marketed, and sold, by  
7 PepsiCo.

8 2. PepsiCo markets its Gatorade Protein Bars (the “Product” or “Bar”) as a nutritious  
9 food for consumers comprised of ingredients that will build muscle, and thereby enhance athleticism  
10 and overall well-being.

11 3. Individually as well as collectively, the marketing statements and claims of PepsiCo  
12 create a health halo around the Bar that leads reasonable consumers to perceive—by inference,  
13 omission, innuendo, and/or falsity—that the Product is good-for-you, and/or contributes to overall  
14 physical fitness and well-being; whereas in reality it contains excessive added sugars, which  
15 ingredient leading health authorities advise restricting or omitting from the diet in order to promote  
16 physical fitness and well-being.

17 4. Specifically, PepsiCo markets a deceptive health halo for the Product by:

- 18 a. Naming it “PROTEIN BAR” as opposed to naming and labeling the Product a  
19 candy bar or dessert given that sugar is its principal characterizing ingredient;
- 20 b. Emblazoning the front label, known as the principal display panel (“PDP”),  
21 with the marketing statement “20 G Protein”;
- 22 c. Carrying the marketing statement, “THE PROTEIN BAR PROVIDER,” in  
23 super bolded, contrasting, and enlarged font on two side panels of the Product  
24 package, in addition to the marketing statement “PROTEIN TO HELP  
25 MUSCLES REBUILD”;
- 26 d. Prominently plastering the PDP with symbols for professional baseball,  
27 basketball, and football players—thereby linking the Product with  
28

1 exceptionally fit and healthy humans—along with logos, and/or endorsements,  
2 of the leading professional sports associations including the National Football  
3 League (“NFL”), National Basketball Association (“NBA”), Women’s  
4 National Basketball Association (“WNBA”), and Major League Baseball  
5 (“MLB”); and

6 e. Tapping into the good faith consumers place in the Gatorade brand and the  
7 Gatorade Sports Science Institute by carrying a large Gatorade brand symbol  
8 on the PDP.

9  
10 5. PepsiCo’s health halo marketing of the Product goes beyond the label too. By way of  
11 example, on the Product’s Amazon.com landing page, the Bar is aggressively marketed as:

- 12 a. “Backed by Science”;  
13 b. “Formulated and tested by the Gatorade Sports Science Institute”;  
14 c. “Used by the Pros”;  
15 d. “The Protein Bar Provider of the NFL, NBA, and MLB”;  
16 e. among other deceptive statements connecting Product consumption with  
17 enhanced athleticism and overall well-being and health.  
18

19 6. In the minds of consumers, testing and formulation by the Gatorade Sports Science  
20 Institute (“GSSI”) is a big positive for their athleticism, and/or well-being or health. Consumers  
21 understand the role of GSSI to be precisely as Gatorade markets it to be:

22 committed to helping athletes *optimize their health and performance* through  
23 research and education in hydration and *nutrition science*. The GSSI has  
24 experience working with some of the best practitioners, teams and athletes in  
25 the United States and across the globe. The provision of this service would not  
26 be possible without the translation of sports *nutrition research into sports*  
*nutrition practice*.

27 \* \* \*

28 [GSSI] help[s] athletes *optimize their health and performance* through  
research, innovation, education and service in hydration and *nutrition science*.

1           7.       In fact, GSSI was founded and is funded by PepsiCo, the second largest food and  
2 beverage company in the world, and advances PepsiCo’s commercial interests.

3           8.       Collectively as well as individually, PepsiCo’s health halo marketing statements are  
4 false, deceptive, and unlawful, including with respect to material omissions about the Product’s  
5 primary characterizing ingredient—added sugars. Contrary to benefitting consumers’ health and/or  
6 their workouts, excess added sugars have deleterious effects on athleticism (fitness) and overall well-  
7 being according to the leading health authorities.

8           9.       Despite emblazoning the PDP with claims that the Product has 20 grams of protein,  
9 and naming it “PROTEIN BAR,” **the Product has 30% more sugar by weight than it does**  
10 **protein**—or 29 grams (with 28 grams of added sugars). Twenty-nine grams is equivalent to  
11 approximately **7.25 teaspoons of added sugars in a single serving**.

12           10.       According to the American Heart Association, the maximum amount of added sugars  
13 that adult women and children should consume per day is 6 teaspoons, or approximately 24 grams –  
14 across the entirety of one’s diet. For men, the maximum recommended amount is 9 teaspoons or 36  
15 grams per day.<sup>1</sup> **A single serving of Gatorade Protein Bars exceeds that recommended added**  
16 **sugar daily ceiling for women and children, and amounts to 78% of the total recommended**  
17 **daily limit for men.**

18           11.       Instead of good nutrition for muscles, the body, fitness, athleticism, and/or health,  
19 consuming high levels of added sugars links with obesity, diabetes, and cardiovascular disease  
20 according to the leading health authorities—which therefore recommend restricting or omitting  
21 intake of added sugars.

22           12.       Obesity, diabetes, and cardiovascular disease are critical medical conditions.  
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27 <sup>1</sup> See, e.g., AMERICAN HEART ASSOCIATION, [https://www.heart.org/en/healthy-living/healthy-](https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/how-much-sugar-is-too-much)  
28 [eating/eat-smart/sugar/how-much-sugar-is-too-much](https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/how-much-sugar-is-too-much) (last visited March 22, 2023).

1 13. Indeed, obesity and type-2 diabetes, largely a function of diet, have officially reached  
2 pandemic levels in the United States. Diabetes is commonly called the “Other Pandemic”; unlike  
3 Covid-19, however, it shows no signs of slowing.<sup>2</sup>

4 14. Plaintiffs would not have purchased, purchased as many of, or paid as much for  
5 Gatorade Protein Bars had the Product been marketed transparently—that is, as an excessively high  
6 added sugar candy or junk food the consumption of which health authorities recommend eliminating  
7 and/or limiting because of associated health risks.

8 15. Indeed, **Gatorade Protein Bars contain more added sugar than the typical candy**  
9 **bar (e.g. Snickers, among others) and 4.5 more teaspoons of sugar per serving than a Dunkin’**  
10 **chocolate frosted donut with sprinkles** (28 grams as contrasted with 10.5 grams in the donut—  
11 almost 3 times the added sugar, in fact).<sup>3</sup>

12 16. At bottom, Gatorade Protein Bars are artificially fortified junk food intended to entice  
13 unwitting health-conscious consumers into believing that purchasing and eating them is a net benefit  
14 to their health and/or athleticism when in truth they are consuming a nutrient they have *no need* to  
15 supplement in their diet—protein—along with approximately 7¼ teaspoons of added sugars.

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24 <sup>2</sup> E.g., Jane Caldwell, *Diabetes: The Other Pandemic*, Abbott Viewpoints (July 22, 2022)  
25 [https://www.globalpointofcare.abbott/us/en/knowledge-insights/viewpoints/diabetes-the-other-](https://www.globalpointofcare.abbott/us/en/knowledge-insights/viewpoints/diabetes-the-other-pandemic.html#:~:text=It%20is%2C%20therefore%2C%20aptly%20named,in%2010%20American%20has%20diabetes.&text=8.5%20million%20were%20undiagnosed%2C%20according,American%20Diabetes%20Association%20(ADA).)  
26 [pandemic.html#:~:text=It%20is%2C%20therefore%2C%20aptly%20named,in%2010%20American%20has%20diabetes.&text=8.5%20million%20were%20undiagnosed%2C%20according,American%20Diabetes%20Association%20\(ADA\).](https://www.globalpointofcare.abbott/us/en/knowledge-insights/viewpoints/diabetes-the-other-pandemic.html#:~:text=It%20is%2C%20therefore%2C%20aptly%20named,in%2010%20American%20has%20diabetes.&text=8.5%20million%20were%20undiagnosed%2C%20according,American%20Diabetes%20Association%20(ADA).)

27 <sup>3</sup> See, e.g., FOODUCATE, [https://www.fooducate.com/product/Dunkin-Donuts-Chocolate-Frosted-](https://www.fooducate.com/product/Dunkin-Donuts-Chocolate-Frosted-Donut-with-Sprinkles/52D85125-1AA3-E1F8-4693-B492F5DDD5AD)  
28 [Donut-with-Sprinkles/52D85125-1AA3-E1F8-4693-B492F5DDD5AD](https://www.fooducate.com/product/Dunkin-Donuts-Chocolate-Frosted-Donut-with-Sprinkles/52D85125-1AA3-E1F8-4693-B492F5DDD5AD) (last accessed July 18, 2023).

**JURISDICTION**

1  
2 17. This Court has jurisdiction over this action under the Class Action Fairness Act, 28  
3 U.S.C. 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum or value of \$5,000,000,  
4 exclusive of interest and costs, and more than two-thirds of the members of the Class reside in states  
5 other than the state of which Defendant is a citizen.

6 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part  
7 of the events and misrepresentations giving rise to Plaintiffs’ claims occurred in this District, and  
8 Defendant (1) is authorized to conduct business in this District and has intentionally availed itself of  
9 the laws and markets of this District through the promotion, marketing, distribution and sale of its  
10 products here, (2) resides in this District, and (3) is subject to personal jurisdiction in this District.

11 19. Pursuant to Civil Local Rule 3-2(c), an intra-district assignment to the San Jose  
12 Division is appropriate because a substantial part of the events or omissions which give rise to the  
13 claims asserted herein occurred in this Division, including that Plaintiff Mccausland made purchases  
14 of Gatorade Protein Bars in San Jose, Santa Clara County, from Amazon.com.

15  
16 **PARTIES**

17 20. Plaintiff Ian Mccausland is a resident of the City of San Jose, California.

18 21. During the Class Period (as defined below), he purchased Gatorade Protein Bars in  
19 California for personal, family, and/or household use. Mr. Mccausland considers himself a fitness  
20 enthusiast.

21 22. Mr. Mccausland purchased Gatorade Protein Bars from Amazon.com on November  
22 30, 2022, December 6, 2022, March 25, 2023, June 4, 2023, and July 6, 2023.

23 23. The label touted claims of and/or equivalent to “PROTEIN BAR” in large, bolded  
24 letters, “20 g of Protein,” and contained logos for the NFL, NBA, WNBA, and MLB sports leagues,  
25 and the side labels in oversized bolded and capitalized letters, stated “PROTEIN TO HELP  
26 MUSCLES REBUILD.”  
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1           24.     The Amazon.com landing page made similar claims, including that the Product is  
2 “backed by science,” and the choice of “Pros.”

3           25.     Mr. Mccausland saw and relied on these and like representations, individually and  
4 collectively, as well as the trust he placed in the Gatorade brand, when he purchased Gatorade  
5 Protein Bars.

6           26.     Mr. Mccausland believed that consuming Gatorade Protein Bars would be a clear  
7 benefit to his muscles and athleticism—and overall health thereby—as opposed to a Product with  
8 excessive total and/or added sugars the consumption of which is discouraged by health authorities  
9 given their link with ill-health and disease.

10          27.     Mr. Mccausland was not familiar with how many grams of sugar are in a teaspoon  
11 and/or what limits on added sugar daily intake the health authorities recommend. Nor did he  
12 understand the potential for negative health effects associated with regularly consuming Gatorade  
13 Protein Bars.

14          28.     Mr. Mccausland would not have purchased Gatorade Protein Bars, as many of them,  
15 and/or would have paid less for the Products, had he understood their actual nutritional character  
16 and/or that they contained 7.25 teaspoons of total sugars—or approximately 7 teaspoons of added  
17 sugars—in a single serving.

18          29.     Consequently, Mr. Mccausland lost money as a result of PepsiCo’s misleading and  
19 unlawful marketing.

20          30.     Mr. Mccausland would consider purchasing the Product again were it marketed in a  
21 non-misleading and lawful manner such that he could trust the marketing claims.

22          31.     Plaintiff Michael Zurl is a resident of Remsenburg, New York.

23          32.     During the Class period (as defined below), he purchased Gatorade Protein Bars in  
24 New York for personal, family, and/or household use. Mr. Zurl considers himself a fitness  
25 enthusiast.

26          33.     Mr. Zurl purchased Gatorade Protein Bars from Amazon.com on March 23, 2020,  
27 April 17, 2020, May 8, 2020, May 20, 2020, June 17, 2020, July 20, 2020, August 29, 2020,  
28 December 28, 2021, March 15, 2022, March 30, 2022, as well as on other dates.

1           34.     The label package touted claims of and/or equivalent to “PROTEIN BAR” in large,  
2     bolded letters, “20 g of Protein,” and contained logos for the NFL, NBA, WNBA, and MLB sports  
3     leagues, and the side labels in oversized bolded and capitalized letters, stated “PROTEIN TO HELP  
4     MUSCLES REBUILD.”

5           35.     The Amazon.com landing page made similar claims, including that the Product is  
6     “backed by science,” and the choice of “Pros.”

7           36.     Mr. Zurl saw and relied on these and like representations, individually and  
8     collectively, as well as the trust he placed in the Gatorade brand, when he purchased Gatorade  
9     Protein Bars.

10          37.     Mr. Zurl believed that consuming Gatorade Protein Bars would be beneficial to his  
11     muscles and athleticism—and overall health thereby—as opposed a Product with excessive total  
12     and/or added sugars the consumption of which is discouraged by health authorities given their  
13     association with ill-health and disease.

14          38.     Mr. Zurl was not familiar with how many grams of sugar are in a teaspoon and/or  
15     what limits on added sugar daily intake the health authorities recommend. Nor did he understand the  
16     potential for negative health effects associated with regularly consuming Gatorade Protein Bars.

17          39.     Mr. Zurl would not have purchased Gatorade Protein Bars, as many of them, and/or  
18     would have paid less for the Product, had he understood its actual nutritional character and/or that it  
19     contained 7.25 teaspoons of total sugars—or approximately 7 teaspoons of added sugars--in a single  
20     serving.

21          40.     Consequently, Mr. Zurl lost money as a result of PepsiCo’s misleading and unlawful  
22     marketing.

23          41.     Mr. Zurl would consider purchasing the Product again were it marketed in a non-  
24     misleading and lawful manner such that he could trust the marketing claims.

25          42.     Plaintiff Carlo Garcia is a resident of the City of Sanger, California.

26          43.     During the Class period (as defined below), he purchased Gatorade Protein Bars in  
27     California for personal, family, and/or household use. Mr. Garcia considers himself a fitness  
28     enthusiast.



1           44. Mr. Garcia purchased Gatorade Protein Bars from Amazon.com on June 21, and  
2 August 19, 2020.

3           45. The label touted claims of and/or equivalent to “PROTEIN BAR” in large, bolded  
4 letters, “20 g of Protein,” and contained logos for the NFL, NBA, WNBA, and MLB sports leagues,  
5 and the side labels in oversized bolded and capitalized letters, stated “PROTEIN TO HELP  
6 MUSCLES REBUILD.”

7           46. The Amazon.com landing page made similar claims, including that the Product is  
8 “backed by science,” and the choice of “Pros.”

9           47. Mr. Garcia saw and relied on these and like representations, individually and  
10 collectively, as well as the trust he placed in the Gatorade brand, when he purchased Gatorade  
11 Protein Bars.

12           48. Mr. Garcia believed that consuming Gatorade Protein Bars would be a clear benefit to  
13 his muscles and athleticism—and overall health thereby—as opposed to a product with excessive  
14 total and/or added sugars the consumption of which is discouraged by health authorities given their  
15 link with ill-health and disease.

16           49. Mr. Garcia was not familiar with how many grams of sugar are in a teaspoon and/or  
17 what limits on added sugar daily intake the health authorities recommend. Nor did he understand the  
18 potential for negative health effects associated with regularly consuming Gatorade Protein Bars.

19           50. Mr. Garcia would not have purchased Gatorade Protein Bars, as many of them, and/or  
20 would have paid less for the Product, had he understood its actual nutritional character and/or that it  
21 contained 7.25 teaspoons of sugar—or approximately 7 teaspoons of added sugars—in a single  
22 serving.

23           51. Consequently, Mr. Garcia lost money as a result of PepsiCo’s misleading and  
24 unlawful marketing.

25           52. Mr. Garcia would consider purchasing the Product again were it marketed in a non-  
26 misleading and lawful manner such that he could trust the marketing claims.

27           53. Defendant PepsiCo, Inc., is a public corporation organized and existing under the  
28 laws of the State of North Carolina. PepsiCo’s principal place of business is at 700 Anderson Hill

1 Road, Purchase, New York, 10577. PepsiCo is one of the world’s largest food companies, with an  
2 annual revenue in 2022 of \$86.4 billion. Gatorade is a wholly owned division of PepsiCo.

3 **FACTUAL ALLEGATIONS**

4 54. PepsiCo’s Gatorade Protein Bar marketing is deceptive, misleading, and unlawful,  
5 because both individually and collectively the health halo marketing claims, including the Product  
6 name, imply that the Product is a fitness enhancer and/or healthful Product that promotes athleticism  
7 and well-being when, in fact, it contains high levels of total and added sugars.

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9 55. Leading health authorities advise that the consumption of high levels of added sugars  
10 links with serious medical conditions, including obesity, diabetes, and cardiovascular disease, and  
11 therefore recommend reducing and/or limiting their consumption.

12 56. Unlike marketing large amounts of added sugars, which health conscious consumers  
13 seek to avoid, marketing the inclusion of protein as a nutrient in products appeals to consumers and  
14 exponentially increases sales.

15  
16 57. Even though as a scientific matter “*protein deficiency is almost unheard of in the*  
17 *United States*,”<sup>4</sup> consumers mistakenly perceive that adding more protein to their diet is important to  
18 their health and well-being. Because of this advertising-led misperception, global annual protein  
19 sales are skyrocketing and expected to reach \$70 billion by 2025.<sup>5</sup>

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23 \_\_\_\_\_  
24 <sup>4</sup> PHYSICIAN’S COMMITTEE FOR RESPONSIBLE MEDICINE, *The Protein Myth: Fact Sheet*,  
25 [https://www.pcrm.org/good-nutrition/nutrition-](https://www.pcrm.org/good-nutrition/nutrition-information/protein#:~:text=Protein%20deficiency%20is%20almost%20unheard,get%20more%20th)  
26 [information/protein#:~:text=Protein%20deficiency%20is%20almost%20unheard,get%20more%20th](https://www.pcrm.org/good-nutrition/nutrition-information/protein#:~:text=Protein%20deficiency%20is%20almost%20unheard,get%20more%20th)  
27 [an%20enough%20protein](https://www.pcrm.org/good-nutrition/nutrition-information/protein#:~:text=Protein%20deficiency%20is%20almost%20unheard,get%20more%20th) (last visited March 23, 2023).

28 <sup>5</sup> FOOD AND BEVERAGE INSIDER, *3 Trends Shaping Protein Formulation to Meet Consumer Needs*,  
[https://www.foodbeverageinsider.com/protein/3-trends-shaping-protein-formulation-meet-](https://www.foodbeverageinsider.com/protein/3-trends-shaping-protein-formulation-meet-consumer-needs)  
[consumer-needs](https://www.foodbeverageinsider.com/protein/3-trends-shaping-protein-formulation-meet-consumer-needs) (last visited March 23, 2023).

1           58.     PepsiCo, with its Gatorade Protein Bars, capitalizes on this fraudulent advertising  
2 trend—with intensive and misleading marketing about the purported benefits of protein and/or the  
3 advantages of consuming its protein-fortified Product to enhance general fitness, athleticism and  
4 impliedly, overall well-being and/or health—all notwithstanding its high added sugars content.

5                     **PepsiCo’s Unlawful and Deceptive Product Name & General Marketing Scheme**

6           59.     As part of its deception, PepsiCo includes the word protein in the Product name—  
7 PROTEIN BAR—without any reference to the Product’s primary characterizing ingredient—sugar.  
8 ***But the Product has approximately 30% more sugar by weight than protein (29 vs. 20 grams).***  
9

10          60.     The Product packaging also contains numerous highly prominent (bolded, high  
11 contrast, enlarged, capitalized fonts) protein claims, including “20G PROTEIN,” “PROTEIN TO  
12 HELP MUSCLES REBUILD,” “high quality whey,” made to “replenish and rebuild muscles,” and  
13 “THE PROTEIN BAR PROVIDER.”

14          61.     Surrounding marketing, including on Amazon.com, likewise trumpets the Product’s  
15 protein content and the purported scientific substantiation for the Product’s health benefits (including  
16 enhanced athleticism and overall well-being), such as claims of “Backed by Science,” “Gatorade  
17 Sports Science Institute,” and “Used by the Pros,” along with logos for and claims of use by the  
18 NFL, MBL, NBA, and MNBA. *See, e.g.,* Images 1 – 6. Image 7 is of an in-store shelf display.  
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**Gatorade Whey Protein Bars**



**Built to Replenish**  
Made with 20 grams of high quality whey and milk protein to help replenish and rebuild your muscles for athletic recovery.



**Backed by Science**  
All products are formulated and tested at the Gatorade Sports Science Institute.



**Used by the Pros**  
Gatorade is the Protein Bar Provider of the NFL, NBA, and MLB.





Image 7



62. With respect to the Gatorade Sports Science Institute and PepsiCo’s science-related claims (“Backed by Science,” “Formulated and tested at the Gatorade Sports Science Institute”), PepsiCo founded and funds the Gatorade Sports Science Institute (“GSSI”), whose mission it publicly markets is “*to optimize the health and performance of athletes through research and development, innovation, education and sports science service.*”<sup>6</sup>

<sup>6</sup> PRN, *The State-of-the-Art Gatorade Sports Science Institute Joins PepsiCo's R&D Center of Excellence in Valhalla, NY to Strengthen a World-Class Campus for End-to-End Innovation* (June 5, 2003), <https://www.prnewswire.com/news-releases/gatorade-unveils-new-sports-science-lab-for-extensive-athlete-research-and-new-product-innovation-301841799.html>.

1           63.     The Gatorade Sports Science Institute is operated by PepsiCo and is, owing to its  
2 promotion and name, reasonably intertwined with Gatorade in the minds of consumers. GSSI’s work  
3 is perceived by consumers to be science-based and undertaken for the purposes of advancing  
4 nutrition and well-being. It is marketed by PepsiCo as:

5  
6           committed to helping athletes **optimize their health** and performance through  
7 research and education in hydration and **nutrition science**. The GSSI has experience  
8 working with some of the best practitioners, teams and athletes in the United States  
9 and across the globe. The provision of this service would not be possible without the  
10 translation of sports nutrition research into sports **nutrition practice**.

11           64.     In addition to the foregoing, while PepsiCo declares on the PDP in clear and  
12 understandable statements what percentage of the recommended daily limit of fat and sodium are  
13 contained in one serving of the Product—known as the Recommended Daily Value or “%DV”—  
14 PepsiCo omits—or does not make—a like statement for added sugars.

15           65.     Nor does PepsiCo indicate by way of teaspoons the added sugars content on the  
16 Product PDP—statements that average consumers would, alternatively to %DV, understand, find  
17 material, and be concerned by.

18           66.     Instead, unlike its PDP labeling of sodium and fat %DVs, PepsiCo buries the %DV of  
19 added sugars on the back label in fine, tiny print where consumers do not read it.

20           67.     Consumers find front package labels (PDPs) that present added sugar contents in  
21 terms of %DVs—as PepsiCo does for fat and sodium levels—and/or teaspoons, to be relatable,  
22 clear, and effective.<sup>7</sup>

23           68.     Average consumers, as is the case with the Plaintiffs, who trust in Gatorade and its  
24 marketing, are not sufficiently nutritionally literate, or sophisticated scientifically, to comprehend  
25 that the amount of added sugars in the Product is high and/or excessive, and/or to understand that the  
26 leading health authorities advise against the consumption of added sugars at such levels given links

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28 <sup>7</sup> C. Miller *et al.*, *You can’t just eat 16 teaspoons of sugar. . .*, BMC PUBLIC HEALTH (2022; 22:  
1241), <https://pubmed.ncbi.nlm.nih.gov/35733102/>.

1 to disease—particularly when presented with Gatorade/ PepsiCo’s health halo marketing about  
2 protein levels and the Product overall.<sup>8</sup>

3 69. The majority of consumers have no idea how many grams of added sugars are in a  
4 teaspoon (a relatable measure), or how many grams the leading authorities believe to be excessive  
5 and harmful.

6 **Authorities’ Statements on Added Sugars and Nutritional Science, and Related Facts**

7 70. PepsiCo capitalizes on its marketing of Gatorade Protein Bars as healthful and/or  
8 beneficial to overall athleticism and well-being, trumpeting its protein content. Foods that are  
9 marketed as good for you appeal to increasingly health-conscious consumers, and equally, according  
10 to Nielsen’s 2015 Global Health & Wellness Survey, “88% of those polled are willing to pay more  
11 for healthier foods.”

12 71. As for protein bars—dubbed Frankenfood by nutritionist scientists for their fat, salt,  
13 and added sugar content—the global market is anticipated to swell to more than \$2 billion by 2026,  
14 even though “[y]ou’d be hard-pressed to find an American who actually needs more protein.”<sup>9</sup>

15 72. “‘People [] instinctively associate protein with fitness.’ When they eat protein bars,  
16 ‘people think they’re doing something good for their health.’”<sup>10</sup>

17 73. But whereas protein deficiency is *not* a genuine or reasonable health concern in the  
18 United States,<sup>11</sup> obesity, diabetes, and cardiovascular disease are. Indeed, obesity and diabetes are  
19 official *pandemics* in the United States, and cardiovascular disease is closing in—with even the  
20 Armed Forces reporting an inability to recruit sufficient numbers of healthy youth to the military.

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22  
23 <sup>8</sup> *Id.*

24 <sup>9</sup> Dani Blu, *Are Protein Bars Actually Good For You?*, N.Y. TIMES, Jan. 12, 2023,  
25 [https://www.nytimes.com/2023/01/12/well/eat/protein-bars.html?smid=nytcore-ios-  
26 share&referringSource=articleShare](https://www.nytimes.com/2023/01/12/well/eat/protein-bars.html?smid=nytcore-ios-share&referringSource=articleShare) (quoting Eric Rimm, professor of epidemiology and nutrition at  
the Harvard T.H. Chan School of Public Health).

27 <sup>10</sup> *Id.* (quoting Marion Nestle, professor of nutrition, food studies, and health at New York  
University).

28 <sup>11</sup> *See supra* FN 4.



1 74. Indeed, reports are that 77% of Americans in the 17-24 age bracket are not eligible  
2 for military service due to a variety of factors. Being overweight is the biggest individual  
3 disqualifier.<sup>12</sup>

4 75. More generally, the U.S. Obesity Prevalence was 41.9% from 2017-2020. Overall,  
5 college-educated populations have significantly lower obesity rates than others, and minority groups  
6 have higher rates, including overall 49.9% for African American adults and 45.6% for Latino  
7 adults.<sup>13</sup> These latter groups also have lower nutritional literacy, and are more susceptible therefore  
8 to deceptive and misleading marketing of fortified junk food.

9 76. With respect to diabetes, rates have doubled over the last 20 years, with more than 37  
10 million people diagnosed with diabetes today (one in five), and another 96 million (one in three)  
11 who are pre-diabetic (a serious health condition that leads to diabetes without intervention). Many of  
12 those who are diabetic as well as prediabetic are undiagnosed.<sup>14</sup> Estimate are that the United States  
13 will soon hit the point where 50% of the population is either diabetic or pre-diabetic—constituting  
14 something like an atomic bomb for public health and public coffers.

15 77. Medical complications of obesity and/or diabetes include cardiovascular disease,  
16 amputation, vision impairment, kidney disease, and death.<sup>15</sup> Related public treasury costs—for  
17 health care, disability benefits, and premature death—are estimated to be in the billions annually.

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21 <sup>12</sup> Stephen A. Cheney, *Obesity's Increasing Threat to Military Readiness: The Challenge to U. S.*  
22 *National Security*, AMERICAN SECURITY PROJECT 2022,  
23 [https://www.jstor.org/stable/pdf/resrep46869.pdf?refreqid=excelsior%3A6e2957e4ee9a2cf85140541](https://www.jstor.org/stable/pdf/resrep46869.pdf?refreqid=excelsior%3A6e2957e4ee9a2cf85140541540e847b1&ab_segments=&origin=&initiator=&acceptTC=1)  
24 [540e847b1&ab\\_segments=&origin=&initiator=&acceptTC=1](https://www.jstor.org/stable/pdf/resrep46869.pdf?refreqid=excelsior%3A6e2957e4ee9a2cf85140541540e847b1&ab_segments=&origin=&initiator=&acceptTC=1) (last accessed July 17, 2023).

25 <sup>13</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Adult Obesity Facts*,  
26 <https://www.cdc.gov/obesity/data/adult.html> (last visited March 29, 2023).

27 <sup>14</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Pre-Diabetes*,  
28 <https://www.cdc.gov/diabetes/basics/prediabetes.html> (last visited March 29, 2023).

<sup>15</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Diabetes: Coexisting Conditions and Complications*, <https://www.cdc.gov/diabetes/data/statistics-report/coexisting-conditions-complications.html> (last visited March 29, 2023).

1 According to the American Diabetes Association, the total cost for diabetes in 2017 alone was  
2 approximately \$403.9 billion.<sup>16</sup>

3 78. Consumption of excessive added sugars correlates with obesity, diabetes, and other  
4 related medical conditions including cardiovascular disease and certain cancers, according to the  
5 Centers for Disease Control and Prevention (“CDC”) and other reputable health authorities. For this  
6 reason, CDC findings and recommendations are that-

7  
8 Americans are eating and drinking too many added sugars, which can contribute to  
9 health problems such as weight gain and obesity, type 2 diabetes, and heart disease.  
10 To live healthier, longer lives, most Americans need to move more and eat better,  
11 **including consuming fewer added sugars.**<sup>17</sup>

12 79. Because of this, “a leading health indicator for [the CDC’s] Healthy People 2030 is to  
13 reduce consumption of added sugars by people aged 2 and older.”<sup>18</sup>

14 80. Other health authorities similarly advise limiting sugar intake, including the World  
15 Health Organization (“WHO”). According to the WHO, significant health benefits are derived from  
16 limiting total sugars to 5% or less of daily caloric intake.<sup>19</sup> This is consistent with the  
17 recommendation of the Advisory Panel to the U.S. Dietary Guidelines Committee, which suggested  
18 in 2020 that daily added sugar intake be reduced to 6% or less of total calories—meaning 120  
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21 <sup>16</sup> Joan O’Connell, Spero m. Manson, *Understanding the Economic Costs of Diabetes and*  
22 *Prediabetes and What We May Learn About Reducing the Health and Economic Burden of these*  
23 *Conditions*, DIABETES CARE (2019 September; 42(9)),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC67026111609-1611>.

24 <sup>17</sup> <https://www.cdc.gov/nutrition/data-statistics/added-sugars.html> (last visited July 17, 2023).

25 <sup>18</sup> Weeratunga, P., Jayasinghe, S., Perera, Y. *et al.* Per capita sugar consumption and prevalence of  
26 diabetes mellitus – global and regional associations. *BMC Public Health* 14, 186 (2014),  
<https://doi.org/10.1186/1471-2458-14-186>.

27 <sup>19</sup> WORLD HEALTH ORGANIZATION, *Healthy Diet* (April 29, 2020), <https://www.who.int/news-room/fact-sheets/detail/healthy-diet>.  
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1 calories per 2,000 calorie diet (although the Trump Administration rejected this recommendation and  
2 retained a slightly higher figure of 10% of total calories).<sup>20</sup>

3 81. The U.S. Office of Disease Prevention and Health Promotion also recommends a  
4 reduction in added sugars, explaining in a publication entitled “**Cut Down on Added Sugars,**” that  
5 “[c]hoosing a healthy eating pattern low in added sugars can have important health benefits.”<sup>21</sup>

6 82. In the words of the 2015 U.S. Dietary Guidelines Advisory Committee, “[s]trong and  
7 consistent evidence shows that intake of added sugars from food and/or sugar sweetened beverages  
8 are associated with excess body weight in children and adults.” It similarly found that “[s]trong  
9 **evidence shows that higher consumption of added sugars. . . increases the risk of type 2**  
10 **diabetes among adults and this relationship is not fully explained by body weight.**”<sup>22</sup>

11 83. American’s intake of processed foods is the largest contributor to increased dietary  
12 rates of added sugars in the U.S. Processed foods—notwithstanding any health halo marketing—  
13 account for more than 92% of added sugars in the diets of children, for example, with approximately  
14 71% exceeding the daily recommended limits on added sugars.<sup>23</sup>

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19 <sup>20</sup> IFT, *U.S. Dietary Guidelines Committee recommends lowering added sugar consumption* (“The  
20 2020 DGAC revisited this topic and concluded that a more appropriate target to help mitigate  
21 cardiovascular disease and obesity is to lower the number . . . from added sugars”),  
<https://www.ift.org/news-and-publications/news/2020/july/16/us-dietary-guidelines-committee-recommends-lowering-added-sugar-consumption>.

22 <sup>21</sup> DIETARY GUIDELINES FOR AMERICANS (8<sup>th</sup> Ed.),  
23 [https://health.gov/sites/default/files/2019-10/DGA\\_Cut-Down-On-Added-Sugars.pdf](https://health.gov/sites/default/files/2019-10/DGA_Cut-Down-On-Added-Sugars.pdf) (last visited  
July 14, 2023).

24 <sup>22</sup> U.S. DEPT. OF HEALTH & HUMAN SERV. & U.S. DEPT. OF AGRIC., *Scientific Report of the*  
25 *2015 Dietary Guidelines Advisory Committee*, at 342-43, (2015),  
26 <https://health.gov/dietaryguidelines/2015-scientific-report/PDFs/Scientific-Report-of-the-2015-Dietary-Guidelines-Advisory-Committee.pdf>.

27 <sup>23</sup> Daniela Nehri, *et. al*, *Consumption of ultra-processed foods and its association with added sugar*  
28 *content in the diets of US children, NHANES 2009-2014*,” July 30, 2019 *Pediatric Obesity*, available  
at <https://pubmed.ncbi.nlm.nih.gov/31364315/>.

1 84. Hidden—or unrecognized—added sugars in processed packaged foods account for a  
2 large percentage of these, including from so-called health or energy bars.<sup>24</sup>

3 85. Because of the harmful health implications, the American Heart Association  
4 (“AHA”) recommends no more than six (6) teaspoons of added sugar a day for women and children  
5 across their entire daily dietary intake, and nine (9) for men. *See supra* n. 1.

6 86. A single Gatorade Protein Bar (one serving) contains 28 grams of added sugars and  
7 29 grams of total sugars, the equivalent of approximately 7.25 teaspoons of sugar (divide grams by  
8 four to approximate the number of teaspoons).

9 87. Put another way, **a single serving of the Product—one Gatorade Protein**  
10 **Bar—exceeds the daily, health-based limits for added sugars recommended by the AHA for**  
11 **women and youth, and approaches it for men.**

12 **PepsiCo’s Conduct Violates Multiple Statutory Provisions, Official Policies, and Regulations**  
13 **Targeting Deceptive Marketing—Strongly Supporting Plaintiffs’ Claims**

14  
15 88. Both federal and state health authorities have promulgated policies and regulations  
16 targeting deceptive advertising of foods—and in particular, fortified junk foods like Gatorade  
17 Protein Bars that masquerade as health or good-for-you foods.

18 89. In addition to prohibiting deceptive business practices and false advertising, both  
19 New York and California laws incorporate parallel federal principles and/or provisions into their  
20 consumer protection statutes—namely New York’s General Business Law Sections 349 and 350,  
21 and California’s Sherman Act, Unfair Competition Law (“UCL”), California Business and  
22 Professions Code § 17200 *et seq.*, California Consumer Legal Remedies Act (“CLRA”), California  
23 Civil Code § 1750 *et seq.*, and California False Advertising Law, California Business and  
24 Professions Code § 17500.

25  
26 <sup>24</sup> NBC News, *Are Sneaky Sugars Hiding in Your Food*,  
27 <https://www.nbcnews.com/better/lifestyle/are-sneaky-sugars-hiding-your-food-use-these-healthy-swaps-ncna1135041> (last accessed July 17, 2023).  
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1                    **Section 343 of the Federal Food, Drug and Cosmetic Act**

2            90.        First and foremost, Section 343 of the Federal Food, Drug and Cosmetic Act  
3 (FFDCA) provides that a food is “misbranded . . . (a) if (1) its labeling is false or misleading in any  
4 particular.” This includes deception by way of inference, innuendo, and/or omission—as is the case  
5 with Gatorade Protein Bars given their deceptive health halo.

6            91.        As set forth above, PepsiCo’s marketing misleads consumers about the true qualities  
7 and characteristics of Gatorade Protein Bars—which, instead of enhancing athleticism and/or overall  
8 fitness and well-being by providing essential nutrients that its consumers are missing and/or which  
9 they require to build muscle—a claim that PepsiCo markets as supported by sports science no less—  
10 is instead saturated with added sugars. Added sugars, moreover, are stated by leading and reputable  
11 health authorities to correlate with obesity, diabetes, and cardiovascular disease, and therefore  
12 recommended by the same to be omitted from or limited in the diet.

13                    **21 C.F.R. § 102.5**

14            92.        Additionally intended to prevent deception, Federal Food & Drug Administration  
15 (“FDA”) regulations require that foods be named after their characterizing ingredients—which in  
16 this case is (or at the least includes) sugar—the dominant ingredient in Gatorade Protein Bars.

17            93.        More specifically, 21 C.F.R. § 102.5 provides that:

18  
19                    (a)        The common or usual name of a food shall include a statement of the  
20 presence . . . of any characterizing ingredient(s) or component(s) . . . when the  
presence . . . of such ingredient(s) or component(s) in the *food* has a material bearing  
on price or consumer acceptance. . . .

21 21 C.F.R. § 102.5 (emphasis in original).

22            94.        So too, the FDA mandates that the PDP shall bear as one of its principal features a  
23 statement of the identity of the commodity. 21 C.F.R. § 101.3(a)-(b). Such statement of identity shall  
24 be in terms of the common or usual name of the food. *Id.* In other words, sugar—more so than  
25 protein—needs to be conspicuously referenced in the Product name on the PDP.

26            95.        While named “PROTEIN BAR,” the Gatorade Protein Bars have **30% more sugar**  
27 **by weight than they do protein**, yet PepsiCo fails to reference sugar in the name Protein Bar—let  
28 alone lead with it.

1 96. To the contrary, PepsiCo omits any reference to sugar as the key characterizing  
 2 ingredient from the Protein Bar name, and then piles on the deception with multiple other protein-  
 3 related health and wellbeing claims, such as “Backed by Science,” along with emblazoning the logos  
 4 of professional sports leagues—who members are virtually the fittest people on the planet—on the  
 5 Product’s PDP.

6 ***The Jelly Bean Rule***

7 97. The Product also runs afoul of the FDA’s policy against the “random fortification of  
 8 foods,” including nutrient fortification of “sugars; or snacks; or snack foods such as candies”  
 9 because it could “result in deceptive or misleading claims for certain foods.” 21 C.F.R. § 104.20.

10 98. The FDA opposes fortification of sugar foods precisely because the practice can  
 11 “mislead” the public to consume unhealthy foods believing, given labeling claims, that they are  
 12 healthful. *Id.*, § 104.20(a).

13 99. The policy against fortification of junk foods otherwise known as the “Jelly Bean  
 14 Rule,” is egregiously violated here.

15 ***FDA’s Draft Policy on Dietary Guidance Statements***

16 100. Finally, the FDA Draft Policy on Dietary Guidance Statements similarly seeks to  
 17 prevent deceptive marketing of junk foods by limiting foods that use dietary guidance statements  
 18 about protein (and other nutrients) in their marketing to those foods **that have fewer than 10%DV,  
 19 or 5 grams, of added sugars. Gatorade Protein Bars have 28 grams of added sugars. See Image**  
 20 **8.** Again, instead of 5 grams, Gatorade Protein Bars have 29 grams of sugars, and 28 grams of added  
 21 sugars.

22 Image 8

23 **Appendix 3. Recommendations for Products Bearing Dietary Guidance Statements**

24

Product	The subject of the DGS is...	Then the food group equivalent (FGE) recommendation is...	And the recommended saturated fat level per RACC is...	The recommended sodium level per RACC is...	The recommended added sugar level per RACC is...
Individual food	A food, food group, or the entire food product	At least 1 FGE per RACC from 1 food group	10% DV (2 g)	15% DV (345 mg)	10% DV (5 g)

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101. In the words of the FDA:

Healthy dietary patterns can accommodate nutrient-dense foods with small amounts of added sugars. However, as the amount of added sugars increases in the diet, it becomes more difficult to stay within calorie limits. To help Americans identify foods lower in added sugars while also ensuring that a variety of products fall below the recommended added sugars level for products bearing Dietary Guidance Statements, we recommend that individual foods (including mixed products as described in Section VI, Question 6) bearing Dietary Guidance Statements not contain more than 10 percent of the DV for added sugars (5 grams) per RACC.<sup>25</sup>

102. While in draft form yet and not binding, the document clearly evinces the FDA’s own expert thinking on consumer fraud and consumer susceptibility to fraud when foods high in added sugars (defined as anything over 5 grams per serving) are fortified with nutrients and then packaged and marketed as healthy and/or nutritious and/or good-for-you foods—precisely as PepsiCo’s does with Gatorade Protein Bars.

103. As the Guidance says elsewhere, just as with the Jelly Bean Rule, the FDA’s impetus for such restrictions is that exceeding recommended levels “may cause consumers to believe that the product will contribute to a diet that promotes better health, when, in fact, the product contains levels of certain nutrients that are inconsistent with nutritious dietary patterns.” *Id.*, 26.

**Comparators and Competitors**

104. **Notably, Gatorade Protein Bars Products have 30% more calories and two more grams of added sugar than a Snickers Candy Bar.**<sup>26</sup>

105. A KitKat Bar has 14 grams of added sugar—that is, 50% less added sugar than a Gatorade Protein Bar.<sup>27</sup>

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<sup>25</sup> FDA Draft Guidance on Dietary Guidance Statements, at 29 (March 2023), available at <https://www.fda.gov/media/166342/download?attachment>.

<sup>26</sup> SNICKERS, <https://www.snickers.com/products/chocolate/snickers-singles-size-chocolate-candy-bars-186-oz-bars> (last visited March 27, 2023).

<sup>27</sup> HERSHEY, <https://www.hersheyland.com/products/kit-kat-milk-chocolate-king-size-candy-bar-3-oz.html> (last visited March 27, 2023).

1           106. Almost incomprehensively, even a **chocolate frosted Dunkin Donut with sprinkles**  
2 **has nearly 3 times fewer grams of added sugars than a Gatorade Protein Bar, that is, 28 grams**  
3 **for the Gatorade Protein Bar as contrasted with 10.5 grams in the donut.**

4           107. By corollary, leading competitor “protein bars” have dramatically fewer grams of  
5 added sugar than Gatorade Protein Bars.

6           108. KIND PROTEIN Bars, Dark Chocolate variety, have a mere 6 grams of added  
7 sugars—22 fewer grams of added sugars than Gatorade Protein Bars.<sup>28</sup>

8           109. RXBAR Protein Bars, Chocolate Sea Salt variety, have zero grams of added sugars—  
9 28 fewer grams (7 teaspoons) of added sugars than Gatorade Protein Bars.<sup>29</sup>

10           110. Quest Protein Bars, Chocolate Chip Cookie Dough variety, have zero grams of added  
11 sugars—28 fewer grams of added sugars than Gatorade Protein Bars—and one gram of total  
12 sugars.<sup>30</sup>

13           111. Think Protein Bars—in like varieties—also have zero grams of added sugar.<sup>31</sup>

14           112. Gatorade Protein Bars are protein-fortified sugar or snack foods, which deceive  
15 consumers into believing that they are consuming a healthful food when in fact they are consuming  
16 junk food.

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21 <sup>28</sup> KIND, <https://www.kindsnacks.com/protein-bars/dark-chocolate-nut-M20802.html> (last visited  
22 March 27, 2023).

23 <sup>29</sup> AMAZON, [https://www.amazon.com/RXBAR-Whole-Protein-Chocolate-](https://www.amazon.com/RXBAR-Whole-Protein-Chocolate-Ounce/dp/B0143NQVQ6/ref=sr_1_7?keywords=rx+bars&qid=1679952549&sr=8-7)  
24 [Ounce/dp/B0143NQVQ6/ref=sr\\_1\\_7?keywords=rx+bars&qid=1679952549&sr=8-7](https://www.amazon.com/RXBAR-Whole-Protein-Chocolate-Ounce/dp/B0143NQVQ6/ref=sr_1_7?keywords=rx+bars&qid=1679952549&sr=8-7) (last visited  
25 March 27, 2023).

26 <sup>30</sup> AMAZON, [https://www.amazon.com/Quest-Nutrition-Chocolate-Protein-](https://www.amazon.com/Quest-Nutrition-Chocolate-Protein-Friendly/dp/B00DLDH1N2?source=ps-sl-shoppingads-lpcontext&ref_=fplfs&psc=1&smid=ATVPDKIKX0DER)  
27 [Friendly/dp/B00DLDH1N2?source=ps-sl-shoppingads-](https://www.amazon.com/Quest-Nutrition-Chocolate-Protein-Friendly/dp/B00DLDH1N2?source=ps-sl-shoppingads-lpcontext&ref_=fplfs&psc=1&smid=ATVPDKIKX0DER)  
28 [lpcontext&ref\\_=fplfs&psc=1&smid=ATVPDKIKX0DER](https://www.amazon.com/Quest-Nutrition-Chocolate-Protein-Friendly/dp/B00DLDH1N2?source=ps-sl-shoppingads-lpcontext&ref_=fplfs&psc=1&smid=ATVPDKIKX0DER) (last visited March 28, 2023).

<sup>31</sup> [https://shop.thinkproducts.com/think-High-Protein-Bar-Brownie-Crunch/p/TKP-](https://shop.thinkproducts.com/think-High-Protein-Bar-Brownie-Crunch/p/TKP-701271&c=ThinkProducts@ThinkThinHPB)  
701271&c=ThinkProducts@ThinkThinHPB (last visited March 30, 2023).



**Reliance and Economic Injury**

1  
2 113. When purchasing Gatorade Protein Bars, Plaintiffs sought a product that would  
3 increase their athleticism and by inference, their overall well-being and health.

4 114. Plaintiffs read and relied on PepsiCo's false and misleading Product name (*i.e.*,  
5 Gatorade Protein Bar) and misleading claims in its marketing, including labeling, of the Product.

6 115. Plaintiffs purchased Gatorade Protein Bars, and paid more for them than they would  
7 have paid, believing the Product had qualities they sought (*e.g.*, fomenting athleticism and  
8 healthfulness) based on the misleading labeling and marketing; but, the Product was unsatisfactory  
9 to them for the reasons described.

10 116. Plaintiffs paid more for Gatorade Protein Bars than they would have had they not been  
11 misled by the false and misleading labeling and advertising complained of herein. Plaintiffs would  
12 not have purchased the Product absent these misrepresentations, or would have purchased them less  
13 frequently.

14 117. For these reasons, the Gatorade Protein Bars were worth less than what Plaintiffs paid  
15 for them.

16 118. Plaintiffs purchased Gatorade Protein Bars based on the false and misleading  
17 representations described herein.

18 119. Instead of receiving products that have materially enhanced their athleticism, or that  
19 were healthful and/or advantageous to their well-being, Plaintiffs received products with materially  
20 different characteristics.

21 120. Plaintiffs lost money as a result of PepsiCo's deception in that Plaintiffs did not  
22 receive what they paid for.

23 121. Plaintiffs altered their position to their detriment and suffered damages in an amount  
24 equal to the amount they paid for Gatorade Protein Bars, and/or the price differential that they paid  
25 for the Products.

26 122. By engaging in its misleading and deceptive marketing, sales and pricing scheme,  
27 PepsiCo reaped and continues to reap increased sales and profits.

28

1 123. PepsiCo is familiar with marketing research and knows that many of its customers  
2 purchase Gatorade Protein Bars because they are health conscious and believe that the Product is  
3 beneficial to their overall athleticism and/or health and wellbeing.

4 124. PepsiCo knows that the overall healthfulness of a product is material to consumers'  
5 decision to purchase its Product.

6 125. PepsiCo, and its Gatorade and the “Gatorade Sports Medicine Institute” division,  
7 deliberately cultivates these misperceptions through its marketing, sales, and pricing scheme. Indeed,  
8 PepsiCo relies and capitalizes on consumer misconceptions about Gatorade Protein Bar.

9  
10 **Class Allegations**

11 126. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules  
12 of Civil Procedure on behalf of two classes.

13 127. The class that Plaintiffs Mccausland and Garcia seek to represent (the “California  
14 Class”) is composed of and defined as follows:

15 All persons residing in California who have purchased Gatorade Protein  
16 Bars for their own use (which includes for their families), and not for  
17 resale, during the liability period. Excluded from the Class are:  
18 governmental entities; Defendant; any entity in which Defendant has a  
19 controlling interest; Defendant's officers, directors, affiliates, legal  
20 representatives, employees, co-conspirators, successors, subsidiaries,  
21 and assigns; and, any judge, justice, or judicial officer presiding over  
22 this matter and the members of their immediate families and judicial  
23 staff.

24 128. The class that Plaintiff Zurl seeks to represent (the “New York Class”) is composed  
25 of and defined as follows:

26 All persons residing in New York who have purchased Gatorade Protein  
27 Bars for their own use (which includes for their families), and not for  
28 resale, during the liability period. Excluded from the Class are:  
governmental entities; Defendant; any entity in which Defendant has a  
controlling interest; Defendant's officers, directors, affiliates, legal  
representatives, employees, co-conspirators, successors, subsidiaries,

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and assigns; and, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

129. Collectively, the California and New York classes are referred to as the Classes.

130. For the purposes of this Complaint, the term “Class Members” refers collectively to all members of the Classes, including the named Plaintiffs.

131. This action is maintainable as a class action under Federal Rules of Civil Procedure Rule 23(a), and (b)(2) and (b) (3).

132. **Numerosity.** The Classes each consist of many thousands of persons throughout the States of California and New York. Each Class is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action will benefit the parties and the Court.

133. **Commonality and Predominance.** The questions of law and fact common to each Class have the capacity to generate common answers that will drive resolution of this action. They predominate over any questions affecting only individual class members. Common questions of law and fact include, but are not limited to, the following:

- a. Whether PepsiCo contributed to, committed, or is responsible for the conduct alleged herein;
- b. Whether PepsiCo’s conduct constitutes the violations of law alleged herein;
- c. Whether PepsiCo acted willfully, recklessly, negligently, or with gross negligence in the violations of laws alleged herein;
- d. Whether Class Members are entitled to restitution and damages.

134. By seeing the name, labeling, display, and marketing of PepsiCo, and by purchasing Gatorade Protein Bars, all Class Members were subject to the same wrongful conduct.

135. Absent PepsiCo’s material deceptions, misstatements and omissions, Plaintiffs and other Class Members would not have purchased Gatorade Protein Bars, would have purchased fewer of them, and/or paid less for them.

136. **Typicality.** Plaintiffs’ claims are typical of the claims of the Classes, respectively,

1 because they all purchased Gatorade Protein Bars and were injured thereby. The claims of Plaintiffs  
2 and other Class Members are based on the same legal theories and arise from the same false,  
3 misleading and unlawful conduct.

4 137. **Adequacy.** Plaintiffs are adequate representatives of the Classes because their  
5 interests do not conflict with those of other Class Members. Each Class Member is entitled to  
6 damages reflecting a similar and discrete purchase or purchases that each Class Member made.  
7 Plaintiffs have retained competent and experienced class action counsel, who intend to prosecute  
8 this action vigorously. The Class Members' interests will be fairly and adequately protected by  
9 Plaintiffs and their counsel.

10 138. **Superiority.** A class action is superior to other available methods for the fair and  
11 efficient adjudication of this controversy, because joinder of all Class Members is impracticable.  
12 The amount at stake for each consumer, while significant, is such that individual litigation would be  
13 inefficient and cost prohibitive. Additionally, adjudication of this controversy as a class action will  
14 avoid the possibility of inconsistent and potentially conflicting adjudication of the claims asserted  
15 herein. Plaintiffs anticipate no difficulty in the management of this action as a class action.

16 139. This Court should certify a class under Rule 23(b)(2) and (b)(3) because Defendant  
17 has acted or refused to act on grounds that apply generally to the Classes, by making illegal, unfair,  
18 misleading and deceptive representations and omissions regarding Gatorade Protein Bars.

19 140. **Notice to the Class.** Plaintiffs anticipate that this Court can direct notice to the  
20 Classes, to be effectuated by publication in major media outlets and the Internet.

21  
22 **FIRST CAUSE OF ACTION**  
23 **(On behalf of the California Class)**  
24 **Violation of California Business & Professions Code §§ 17200 et seq.**  
25 **Unlawful Conduct Prong of the UCL**

26 141. Plaintiffs Mccausland and Garcia incorporate by reference all allegations contained in  
27 the complaint as if fully set forth herein.

28 142. California Business & Professions Code section 17200 (“UCL”) prohibits any  
“unlawful, unfair or fraudulent business act or practice.”

1 143. The acts, omissions, misrepresentations, practices, and non-disclosures of PepsiCo, as  
2 alleged herein, constitute “unlawful” business acts and practices in that they violate the Federal Food,  
3 Drug, and Cosmetic Act (“FFDCA”) and its implementing regulations, including, at least, the  
4 following sections:

- 5 a. 21 U.S.C. § 343, which deems food misbranded when the label contains a  
6 statement that is “false or misleading in any particular,” with “misleading”  
7 defined to “take[] into account (among other things) not only representations  
8 made or suggested by statement, word, design, device, or any combination  
9 thereof, but also the extent to which the labeling or advertising fails to reveal  
10 facts material”;
- 11 b. 21 U.S.C. § 321(n), which states the nature of a false and misleading  
12 advertisement;
- 13 c. 21 C.F.R. § 101.18(b), which prohibits true statements about ingredients that  
14 are misleading in light of the presence of other ingredients; and
- 15 d. 21 C.F.R. § 102.5(c), which prohibits the naming of foods so as to create an  
16 erroneous impression about the presence or absence of ingredient(s) or  
17 component(s) therein.

18 144. PepsiCo’s conduct is further “unlawful” because it violates the California False  
19 Advertising Law (“FAL”) and the Consumer Legal Remedies Act (“CLRA”), as discussed in the  
20 claims below.

21 145. PepsiCo’s conduct also violates the California Sherman Food, Drug, and Cosmetic  
22 Law, Cal. Health & Saf. Code section 109875, *et seq.* (“Sherman Law”), including, at least, the  
23 following sections:

- 24 a. Section 110100 (adopting all FDA regulations as state regulations);
- 25 b. Section 110290 (“In determining whether the labeling or advertisement of a  
26 food ... is misleading, all representations made or suggested by statement,  
27 word, design, device, sound, or any combination of these, shall be taken into  
28 account. The extent that the labeling or advertising fails to reveal facts

- 1                   concerning the food ... or consequences of customary use of the food ... shall
- 2                   also be considered.”);
- 3                   c. Section 110390 (“It is unlawful for any person to disseminate any false
- 4                   advertisement of any food.... An advertisement is false if it is false or
- 5                   misleading in any particular.”);
- 6                   d. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver,
- 7                   hold, or offer for sale any food ... that is falsely advertised.”);
- 8                   e. Section 110398 (“It is unlawful for any person to advertise any food, drug,
- 9                   device, or cosmetic that is adulterated or misbranded.”);
- 10                  f. Section 110400 (“It is unlawful for any person to receive in commerce any
- 11                  food ... that is falsely advertised or to deliver or proffer for delivery any such
- 12                  food....”); and
- 13                  g. Section 110660 (“Any food is misbranded if its labeling is false or misleading
- 14                  in any particular.”).

15                  146. Each of the challenged statements made and actions taken by PepsiCo violates the  
 16                  FFDCA, FDA regulations, the CLRA, the FAL, and the Sherman Law, and therefore violates the  
 17                  “unlawful” prong of the UCL.

18                  147. PepsiCo leveraged its deception to induce Plaintiffs and members of the Class to  
 19                  purchase products that were of lesser value and had different characteristics than advertised.

20                  148. PepsiCo’s deceptive advertising caused Plaintiffs and members of the Class to suffer  
 21                  injury in fact and to lose money or property, as it denied them the benefit of the bargain when they  
 22                  decided to purchase Gatorade Protein Bars over other products. Had Plaintiffs and the members of  
 23                  the Class been aware of PepsiCo’s false and misleading advertising tactics, they would not have  
 24                  purchased Gatorade Protein Bars at all, would have purchased fewer of them, or would have paid  
 25                  less than what they did for the Product.

26                  149. In accordance with California Business & Professions Code section 17203, Plaintiffs  
 27                  seek an order enjoining PepsiCo from continuing to conduct business through unlawful, unfair, and/or  
 28

1 fraudulent acts and practices and to commence a corrective advertising campaign.

2 150. Plaintiffs also seek an order for the disgorgement and restitution of all monies from  
3 the sale of Gatorade Protein Bars that were unjustly acquired through act of unlawful, unfair and/or  
4 fraudulent competition, and pray for relief as set forth below.

5 **SECOND CAUSE OF ACTION**  
6 **(On behalf of the California Class)**  
7 **Violation of California Business & Professions Code §§ 17200, et seq.**  
8 **Unfair and Fraudulent Conduct Prongs of the UCL**

9 151. Plaintiffs Mccausland and Garcia incorporate by reference all of the allegations of the  
10 preceding paragraphs as if fully set forth herein.

11 152. California Business & Professions Code section 17200 prohibits any “unlawful, unfair  
12 or fraudulent business act or practice.”

13 153. The false and misleading labeling of Gatorade Protein Bars, as alleged herein,  
14 constitutes “unfair” business acts and practices because such conduct is immoral, unscrupulous, and  
15 offends public policy. Further, the gravity of PepsiCo’s conduct outweighs any conceivable benefit  
16 of such conduct.

17 154. The acts, omissions, misrepresentations, practices, and non-disclosures of PepsiCo as  
18 alleged herein constitute “fraudulent” business acts and practices, because PepsiCo’s conduct is false  
19 and misleading to Plaintiffs and members of the Class.

20 155. PepsiCo’s labeling and marketing of Gatorade Protein Bars is likely to deceive Class  
21 Members about the value of the Product as beneficial to their athleticism and/or health and/or well-  
22 being.

23 156. PepsiCo either knew or reasonably should have known that the name of and other  
24 statements on the packaging, labels, and other marketing of Gatorade Protein Bars were likely to  
25 deceive consumers.

26 157. In accordance with California Business & Professions Code section 17203, Plaintiffs  
27 seek an order enjoining PepsiCo from continuing to conduct business through unlawful, unfair, and/or  
28 fraudulent acts and practices and to commence a corrective advertising campaign.

1 158. Plaintiffs also seek an order for the disgorgement and restitution of all monies from  
2 the sale of Gatorade Protein Bars that were unjustly acquired through act of unlawful, unfair and/or  
3 fraudulent competition, and pray for relief as set forth below.

4 **THIRD CAUSE OF ACTION**  
5 **(On behalf of the California Class)**  
6 **Violation of California Business & Professions Code §§ 17500, et seq.**  
7 **False and Misleading Advertising**

8 159. Plaintiffs Mccausland and Garcia incorporate by reference all of the allegations of the  
9 preceding paragraphs as if fully set forth herein.

10 160. California False Advertising Law Cal. Business & Professions Code sections 17500  
11 and 17508 prohibits “mak[ing] any false or misleading advertising claim.”

12 161. As alleged herein, PepsiCo, in its labeling of Gatorade Protein Bars, makes “false  
13 [and] misleading advertising claim[s],” as it deceives consumers about the value of the Product as  
14 beneficial to overall athleticism and/or health or well-being, and/or its true qualities and  
15 characteristics.

16 162. In reliance on these false and misleading advertising claims, Plaintiffs and members of  
17 the Class purchased and used Gatorade Protein Bars without the knowledge that Protein Bars did not  
18 have the qualities and characteristics marketed by PepsiCo, including with respect to their effect on  
19 overall athleticism and/or health and well-being.

20 163. PepsiCo knew or should have known that its labeling and marketing was likely to  
21 deceive consumers.

22 164. As a result, Plaintiffs and the Class are entitled to equitable relief, restitution, and an  
23 order for the disgorgement of the funds by which PepsiCo was unjustly enriched, and pray for relief  
24 as set forth below.

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**FOURTH CAUSE OF ACTION**  
**(On behalf of California Class)**  
**Violation of California Civil Code §§ 1750, *et seq.***  
**Consumers Legal Remedies Act**

165. Plaintiffs Mccausland and Garcia incorporate by reference all allegations contained in the complaint as if fully set forth herein.

166. The CLRA adopts a statutory scheme prohibiting various deceptive practices in connection with the conduct of a business providing goods, property, or services primarily for personal, family, or household purposes.

167. PepsiCo’s policies, acts, and practices were designed to, and did, result in the purchase and use of Gatorade Protein Bars primarily for personal, family, or household purposes, and violated and continue to violate the following sections of the CLRA:

- a. Section 1770(a)(2), which prohibits representing that goods have a particular composition or contents that they do not have;
- b. Section 1770(a)(5), which prohibits representing that goods have characteristics, uses, or benefits that do not have;
- c. Section 1770(a)(7), which prohibits representing that goods are of a particular standard, quality, or grade if they are of another;
- d. Section 1770(a)(9), which prohibits advertising goods with intent not to sell them as advertised; and
- e. Section 1770(a)(16), which prohibits representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

168. As a result, in accordance with Cal. Civ. Code section 1780(a)(2), Plaintiff and members of the Class have suffered irreparable harm and are entitled to equitable relief in the form of an order:

- a. Enjoining PepsiCo from continuing to engage in the deceptive practices described above;

- 1                   b. Requiring PepsiCo to make full restitution of all monies wrongfully obtained
- 2                   as a result of the conduct described above;
- 3                   c. Requiring PepsiCo to disgorge all ill-gotten gains flowing from the conduct
- 4                   described above;
- 5                   d. Requiring PepsiCo to provide public notice of the true nature of Gatorade
- 6                   Protein Bars; and
- 7                   e. Finding that Defendant willfully and knowingly violated the CLRA.

8           169. Pursuant to Section 1782(b) of the Civil Code, on or about April 5, 2023, Plaintiffs  
 9 notified PepsiCo in writing of the particular violations of the CLRA (the Notice) and demanded,  
 10 among other actions, that Defendant cease marketing Gatorade Protein Bars as set forth in detail  
 11 above. Defendant failed adequately to respond to Plaintiffs' demand within 30 days of the Notice and  
 12 fully satisfy the requirements therein to bring its conduct into compliance with the law and provide  
 13 Plaintiff and the Class the relief requested under the CLRA.

14           170. Pursuant to CIVIL CODE § 1780(a), Plaintiff and members of the Class seek  
 15 compensatory damages, punitive damages, restitution, disgorgement of profits, and an order  
 16 enjoining PepsiCo from deceptively marketing Gatorade Protein Bars, and pray for relief as set forth  
 17 below.

**FIFTH CAUSE OF ACTION**  
**(On behalf of the New York Class)**  
**Violation of New York General Business Law § 349**

18  
 19  
 20           171. Plaintiff Zurl incorporates by reference all of the allegations contained in this  
 21 Complaint as if fully set forth herein.

22           172. New York General Business Law section 349 prohibits “deceptive acts or practices in  
 23 the conduct of any business, trade or commerce or in the furnishing of any service.”

24           173. PepsiCo’s labeling and marketing of Gatorade Protein Bars, as alleged herein,  
 25 constitute “deceptive” acts and practices, as such conduct misled Plaintiff Zurl and other members  
 26 of the New York Class, as to the nutritional character, value, and/or healthfulness of Gatorade  
 27 Protein Bars.

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1 174. As a consequence of Gatorade’s deceptive acts and practices, Plaintiff Zurl and  
2 other members of the New York Class suffered an ascertainable loss of monies. By reasons of the  
3 foregoing, under subsection (h) of N.Y. Gen. Bus. Law section 349, Plaintiff Zurl and other  
4 members of the New York Class also seek actual damages and punitive damages.

5  
6 **SIXTH CAUSE OF ACTION**  
7 **(On behalf of the New York Class)**  
8 **Violation of New York General Business Law § 350**

9 175. Plaintiff Zurl incorporates by reference all of the allegations of the preceding  
10 paragraphs as if fully set forth herein.

11 176. New York General Business Law section 350 prohibits “[f]alse advertising in the  
12 conduct of any business, trade or commerce or in the furnishing of any service.”

13 177. New York General Business Law section 350-a defines “false advertising” as  
14 “advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of  
15 any employment opportunity if such advertising is misleading in a material respect.” The section  
16 also provides that advertising can be false by omission, as it further defines “false advertising” to  
17 include “advertising [that] fails to reveal facts material in the light of such representations with  
18 respect to the commodity... to which the advertising relates.”

19 178. PepsiCo’s labeling, marketing, and advertising of Gatorade Protein Bars, as alleged  
20 herein, are “misleading in a material respect,” and thus “false advertising,” as they falsely represent  
21 Gatorade Protein Bars as beneficial to athleticism and overall health and well-being.

22 179. As a direct and proximate result of PepsiCo’s violation of New York General Business  
23 Law section 350, Plaintiff Zurl and other members of the New York Class have suffered an ascertainable  
24 loss of monies. By reasons of the foregoing, Plaintiff Zurl and other members of the New York Class  
25 seek actual damages and punitive damages.  
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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and behalf of members of the Classes, respectfully request the Court to enter an Order:

- A. Certifying the proposed Classes under Rules 23(a), (b)(2), and (b)(3), as set forth above;
- B. Declaring that Defendant is financially responsible for notifying the Classes members of the pendency of this suit;
- C. Declaring that Defendant has committed the violations of law alleged herein;
- D. Awarding statutory damages in the maximum amount for which the law provides;
- E. Awarding monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount that the Court or jury will determine, in accordance with applicable law;
- F. Providing for any and all equitable monetary relief the Court deems appropriate;
- G. Awarding punitive or exemplary damages in accordance with proof and in an amount consistent with applicable precedent;
- H. Awarding Plaintiffs their reasonable costs and expenses of suit, including attorneys' fees;
- I. Awarding pre- and post-judgment interest to the extent the law allows; and
- J. For such further relief as this Court may deem just and proper.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all causes of action or issues so triable.

DATED: September 1, 2023

Respectfully submitted,

**JUST FOOD LAW PLLC**

BY: /s/ Maia Kats  
Maia Kats (To be admitted *pro hac vice*)  
maiakats@justfoodlaw.com  
5335 Wisconsin Avenue, NW, Ste. 440  
Washington, DC 20015  
Telephone: (202) 243-7910

**KUZYK LAW, LLP**  
Michael D. Braun  
mdb@kuzykclassactions.com  
2121 Avenue of the Stars, Ste. 800  
Los Angeles, California 90067  
Telephone: (213) 401-4100  
Facsimile: (213) 401-0311

*Counsel for Plaintiffs*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

IAN MCCAUSLAND, CARLO GARCIA, and MICHAEL ZURL

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael D. Braun, Kuzky Law, LLP
2121 Avenue of the Stars, Ste. 800, Los Angeles, CA 90067
213-401-4100

DEFENDANTS

PEPSICO, INC.

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

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

Attorneys (If Known)

Drew Tulumello, Weil, Gotshal & Manges LLP
2001 M Street, NW Washington, Washington, D.C. 20036
202 682 7100

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 options: 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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): CA Bus & Prof Code 17200, 17500, CA Civil Code 1780, NY Gen Bus Law 349, 350

Brief description of cause: misleading labeling

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,001.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/01/2023

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature in blue ink.