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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 MAX ULRICH and RYAN SCHAVRIEN,
 18 individually and on behalf of all others
 19 similarly situated,

20 Plaintiffs,

21 v.

22 ABBOTT LABORATORIES,

23 Defendant.

24 Case No.: 3:24-cv-9452

25 **CLASS ACTION COMPLAINT**

- 26 1. VIOLATION OF FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*)
- 27 2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, *ET SEQ.*)
- 28 3. VIOLATION OF UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)
4. BREACH OF WARRANTY
5. UNJUST ENRICHMENT

JURY TRIAL DEMAND

1 Plaintiffs Ryan Schavrien and Max Ulrich (“**Plaintiffs**”), individually and on behalf of all
2 others similarly situated, as more fully described below (the “**Class**” and “**Class Members**”), bring
3 this class action complaint against Abbott Laboratories (“**Defendant**” and/or “**Abbott**”) and allege
4 the following based upon information and belief, unless otherwise expressly stated as based upon
5 their personal knowledge.

6 **I. INTRODUCTION**

7 1. Two things are true of most parents and other child caregivers: They love their
8 children more than anything and will go to great lengths to protect their health, safety, and
9 wellbeing. Manufacturers of children’s products understand these core values of their target
10 demographic.

11 2. Manufacturers also recognize another near-universal truth: Parents are not nutritional
12 experts and therefore rely on them to accurately represent the risks and benefits of products designed
13 for children, including foods and beverages.

14 3. Unfortunately, these truths have led to a history of marketing abuse by leading
15 manufacturers. In the late 1970s, the abuse centered on baby formula. The industry dangerously
16 promoted manufactured formulas as healthy replacements for breastfeeding or cow’s milk, even
17 though manufactured formula was linked to hundreds of thousands of preventable infant deaths in
18 low- and middle-income countries worldwide.

19 4. Fortunately, the FDA intervened and established strict nutritional and labeling
20 requirements for all manufactured infant formulas sold in the United States. But infants were defined
21 to include only children up to 12 months of age.

22 5. This left a regulatory gap that persists today: children over 12 months. In response,
23 leading manufacturers invented a whole new category of beverages to continue marketing to parents
24 unregulated. They referred to it as “formula” for children over the age of 12 months, sometimes
25 calling it “toddler milk.” Unlike real baby formula, this was, and remains, a nutritionally
26 unnecessary and manufactured concoction.

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1 6. To convince parents that “toddler milk” was a legitimate and beneficial product,
2 manufacturers marketed it in the same way as they had marketed infant formula before the FDA
3 stepped in: as a healthy choice. That false marketing continues today, unchecked.

4 7. This consumer class action arises from the role of Abbott Laboratories in perpetuating
5 this ongoing and harmful market fraud. Their wildly popular toddler formulas—Similac “Go &
6 Grow” and PediaSure “Grow & Gain”—are littered with prominent representations about
7 “Complete, Balanced Nutrition” and similar health claims related to children’s growth and brain
8 development.

9 8. But these manufactured concoctions, like the infant formula of the 1970s, are not
10 comparable to real milk or any other beverage with nutritional value. Instead, Abbott injects up to
11 12 grams of added sugar per serving, equivalent to almost half a can of soda—for very young
12 children.

13 9. The drinks’ primary ingredients—sugar, corn syrup, vegetable oils, and highly
14 processed carbohydrates—render Abbott’s health marketing claims dangerously false. While this is
15 true for all children Abbott targets, it is particularly egregious for children under the age of two,
16 given the medical consensus that children this young should not consume *any* added sugars.

17 10. Abbott’s front-label promises to improve brain development with the added ingredient
18 DHA are also demonstrably false because DHA does not have beneficial effects on cognitive
19 development or executive function in children.

20 11. Finally, Abbott promises parents that pediatricians recommend its sugar-laden
21 formulas. In truth, health experts have been sounding the alarm about this market epidemic: soda-
22 like beverages masquerading as toddler “formula” or “milk.” As a result, major health and pediatric
23 organizations worldwide have condemned the use and sale of toddler “nutritional drinks” because
24 they are unnecessary, pose harm to young children, and have established poor nutritional outcomes.¹

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27 ¹ See, e.g., *Decreasing Community Toddler Formula Use*, American Academy of Pediatrics (April
28 14, 2022), <https://www.aap.org/en/advocacy/community-health-and-advocacy/community-pediatrics-funded-projects/decreasing-community-toddler-formula-use/> (last visited Dec. 23, 2024).

1 12. Against this backdrop, Abbott’s label claims are meaningfully false. This harms not
2 only parents who pay a premium for the beverages, believing they are doing something good for
3 their children, but also hundreds of thousands of children now being raised on a fake “formula”
4 invented to evade FDA review and with health outcomes as bad as the sugar with which they are
5 loaded.

6 13. Plaintiffs, deceived by Abbott’s false advertising, now bring this consumer class
7 action as concerned parents of young children, and on behalf of all others similarly deceived, to
8 hold the \$47 billion formula industry accountable for this alarming health fraud and put an end to
9 Abbott’s outsized role in it.

10 14. **The Products.** The products at issue are Abbott’s two branded lines of drinks aimed
11 at children: (1) Similac Go & Grow and (2) PediaSure Grow & Gain (collectively, the “**Products**”).

12 15. **Similac Go & Grow:** Abbott’s Similac Go & Grow products at issue are all flavors
13 and varieties of (1) Similac Go & Grow 360 Total Care Powder (2) and Similac Go & Grow 360
14 Total Care Sensitive Powder.

15 16. Abbott makes the following representations on the front labels of these beverages: (1)
16 claims of nutritional value for toddlers, including that the beverages are “Toddler Drinks” providing
17 “360 Total Care” for young children of “12-36 months”; and (2) implied representations that the
18 inclusion of the ingredient docosahexaenoic acid (“**DHA**”) will improve toddlers’ brain
19 development, including through prominent references to “DHA” and “Brain Development.”

20 17. Images of Abbott’s Similac Go & Grow Products are below:

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18. **PediaSure Grow & Gain:** Abbott’s PediaSure Grow & Gain products at issue are all flavors and varieties of PediaSure Grow & Gain Bottles, PediaSure Grow & Gain Cans, PediaSure Grow & Gain Fiber, PediaSure Grow & Gain Shake Mix Powder, and PediaSure SideKicks.

19. Abbott makes the following representations on the front labels of these beverages: (1) claims of nutritional value for children, including that the beverages provide “Complete, Balanced Nutrition” and “Balanced Nutrition to Help Fill Gaps”; (2) claims that the beverages are the “#1 Pediatrician Recommended Brand”; and (3) claims that the beverages will aid young children’s brain development through the mention of “DHA” as a component of the drinks (collectively with Similac Go & Grow representations detailed above, the “**Challenged Representations**”).

20. Images of Abbott's PediaSure Grow & Gain Products are below:



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1 21. Each of the Challenged Representations Abbott makes on these Products' front labels
2 is false and misleading because (1) Abbott's toddler beverages do *not* provide balanced nutrition to
3 toddlers, (2) Abbott's toddler beverages are *not* recommended by pediatricians, and (3) the DHA in
4 Abbott's toddler beverages does *not* support brain development. Instead, these beverages, which are
5 loaded with sugar, corn syrup, vegetable oils, and powdered milk, are harmful to toddlers' health.

6 22. Abbott displays false, misleading, and deceptive claims on the front labels of its
7 toddler beverages to obscure from parents the truth about the actual quality and health effects of
8 these Products. This intentional misrepresentation of the nutritional value misleads parents about
9 the Products' benefits, violating California consumer protection laws and leading parents and
10 caregivers to provide their toddlers with sugary, harmful drinks that are disguised as healthy choices.

11 23. Abbott's false, deceptive, and misleading claims that these Products provide balanced
12 nutrition, are pediatrician-recommended, and support toddlers' brain development led Plaintiffs and
13 other similarly situated reasonable consumers to incorrectly believe that the Products are nutritious,
14 pediatrician-recommended beverages beneficial to toddlers' brain development and overall health.

15 24. Through falsely, misleadingly, and deceptively labeling, advertising, and marketing
16 the Products, Abbott has sought to take advantage of unwitting consumers, allowing Abbott to
17 establish and maintain an unfair competitive advantage over Abbott's lawfully acting competitors.

18 25. **Primary Dual Objectives.** Plaintiffs bring this action individually and in a
19 representative capacity on behalf of those similarly situated consumers who purchased the Products
20 during the relevant Class Period (Class and/or Subclass defined *infra*) for dual primary objectives.
21 **One**, Plaintiffs seek, on Plaintiffs' individual behalf and on behalf of the Class/Subclass, a monetary
22 recovery of the price premium Plaintiffs and consumers have overpaid for Products that should—
23 but fail to—comport with the Challenged Representations, as consistent with permissible law
24 (including, for example, damages, restitution, disgorgement, and any applicable penalties/punitive
25 damages solely as to those causes of action so permitted). **Two**, Plaintiffs seek, on Plaintiffs'
26 individual behalf and on behalf of the Class/Subclass, injunctive relief to stop Abbott's unlawful
27 manufacture, marketing, and sale of the Products with the Challenged Representations to avoid or
28 mitigate the risk of deceiving the public into believing that the Products are nutritious, pediatrician-

1 recommended drinks that support toddlers' brain development and overall health by requiring
2 Abbott to change its business practices to immediately cease and desist from selling the unlawful
3 Products in violation of law, which may include one or more of the following: removal or
4 modification of the Challenged Representations from the Products' labels and Abbott's website and
5 marketing materials; and/or discontinuance of the Products' manufacture, marketing, and/or sale.

6 **II. JURISDICTION**

7 26. This Court has subject matter jurisdiction over this action pursuant to the Class Action
8 Fairness Act of 2005, 28 U.S.C. Section 1332, because: (1) the Class consists of 100 or more
9 members; (2) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and
10 costs; and (3) minimal diversity exists because at least one plaintiff and one defendant are citizens
11 of different states. This Court also has supplemental jurisdiction over any state law claims pursuant
12 to 28 U.S.C. Section 1367.

13 27. Abbott is subject to personal jurisdiction in California based upon sufficient minimum
14 contacts that exist between Abbott and California. Abbott is authorized to do and is doing business
15 in California, and Abbott advertises, markets, and sells its Products in California. Abbott has
16 purposefully availed itself of the protections of California law and should reasonably expect to
17 defend itself in court in California for harm arising out of its pervasive contacts with the state.

18 **III. VENUE**

19 28. Venue is proper in this District under 28 U.S.C. Section 1391 because a substantial
20 part of the events, omissions, and acts giving rise to Plaintiffs' claims occur in this District: Abbott
21 advertises, markets, distributes and sells the Products in this District, gaining substantial revenue
22 and profits from doing business in this District, including through monies consumers pay Abbott in
23 this District.

24 **IV. PARTIES**

25 29. **Plaintiff Max Ulrich.** The following is alleged based upon Plaintiff Ulrich's personal
26 knowledge:

- 27 a. **Residence.** Plaintiff Ulrich is a resident of Sonoma County in the state of
28 California.

1 **b. Purchase Details.**

- 2 • Plaintiff Ulrich repeatedly purchased Abbott’s Similac Go & Grow 360
3 Total Care Powder and Similac Go & Grow 360 Total Care Sensitive
4 Powder Products for his young son’s consumption between approximately
5 mid-2021 and mid-2022. Plaintiff Ulrich purchased these Products from
6 various retailers, including Target, Safeway, and Albertsons stores, in the
7 Santa Rosa, California area.
- 8 • Plaintiff Ulrich also purchased Abbott’s PediaSure Grow & Gain Products
9 for his son’s consumption at various retailers, including Target and Walmart
10 stores, in the Santa Rosa, California area on multiple occasions in early
11 2023.

12 **c. Reliance on Challenged Representations.** In making his purchases, Plaintiff
13 Ulrich read the Challenged Representations on the Products’ labeling, leading him
14 to believe that the Products were nutritious for young children, that they were
15 recommended by pediatricians, and that the ingredient DHA supported toddlers’
16 brain development.

17 **d. No Actual Knowledge of Falsity.** At the time of his purchases, Plaintiff Ulrich
18 did not know that the Challenged Representations were false in that he did not
19 know that the Products were not nutritious for toddlers, that they were not
20 recommended by pediatricians, and that the ingredient DHA did and does not
21 support brain development.

22 **e. No Notice of Contradictions.** Plaintiff Ulrich did not notice any disclaimer,
23 qualifier, or other explanatory statement or information on the Products’ labels
24 that contradicted the prominent Challenged Representations or otherwise
25 suggested that the Products were not, in fact, nutritious, pediatrician-
26 recommended, or beneficial for toddlers’ brain development.

27 **f. Causation/Damages.** Plaintiff Ulrich would not have purchased the Products or
28 would not have paid as much for the Products but for the Challenged

1 Representations—i.e., that the Products are nutritious for toddlers, that they are
2 recommended by pediatricians, and that DHA supports toddlers’ brain
3 development.

4 g. **Desire to Repurchase.** Plaintiff Ulrich continues to see the Products available for
5 purchase and would consider purchasing the Products again in the future if he
6 could be sure the Products delivered the qualities they advertised.

7 h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff Ulrich is
8 not personally familiar with the formulation of the Products, as he does not possess
9 any specialized knowledge, skill, experience, or education in the manufacturing
10 of toddler formula or the effect of certain nutrients on toddlers’ brain development.
11 Thus, Plaintiff Ulrich is unable to determine whether the Products’ Challenged
12 Representations—i.e., whether the Products are nutritious for toddlers,
13 recommended by pediatricians, or support toddlers’ brain development through
14 the inclusion of DHA—are true.

15 i. **Plaintiff Ulrich’s Future Harm.** Abbott continues to market and sell the Products
16 with the Challenged Representations. Plaintiff Ulrich is an average consumer
17 who is not sophisticated in the manufacturing of toddler formula or the effect of
18 certain nutrients on brain development. Since Plaintiff Ulrich would like to
19 purchase the Products again in the future despite the fact that the Products were
20 once marred by false advertising or warranties, he would likely and reasonably—
21 but incorrectly—assume in such a scenario that the Products are nutritious for
22 toddlers, that they are recommended by pediatricians, and that the ingredient DHA
23 supports toddler brain development as advertised. Accordingly, Plaintiff Ulrich is
24 at risk of reasonably—but incorrectly—assuming that Abbott has fixed the
25 Products such that he may buy them again with the belief that they are no
26 longer falsely advertised and warranted. In this regard, Plaintiff Ulrich is
27 currently—and will continue to be—deprived of the ability to purchase the
28 Products.

1 30. **Plaintiff Ryan Schavrien.** The following is alleged based upon Plaintiff Ryan
2 Schavrien's personal knowledge:

- 3 a. **Residence.** Plaintiff Schavrien is a resident of San Bernadino County in the state
4 of California.
- 5 b. **Purchase Details.** Plaintiff Schavrien repeatedly purchased Abbott's PediaSure
6 Grow & Gain Bottles in varying package sizes from Target and Sam's Club stores
7 in the Redlands and San Bernardino, California areas for his young son's
8 consumption between approximately 2016 and April 2024. Plaintiff Schavrien
9 paid between approximately \$13.99 and \$29.99 for the Products during his
10 purchases.
- 11 c. **Reliance on Challenged Representations.** In making his purchases, Plaintiff
12 Schavrien read the Challenged Representations on the Products' labeling, leading
13 him to believe that the Products were nutritious for young children, that they were
14 recommended by pediatricians, and that they supported his child's brain
15 development because they contained the ingredient DHA.
- 16 d. **No Actual Knowledge of Falsity.** At the time of his purchases, Plaintiff
17 Schavrien did not know that the Challenged Representations were false in that he
18 did not know that the Products are not nutritious for toddlers and other children,
19 that they are not recommended by pediatricians, and that the ingredient DHA does
20 not support brain development.
- 21 e. **No Notice of Contradictions.** Plaintiff Schavrien did not notice any disclaimer,
22 qualifier, or other explanatory statement or information on the Products' labels
23 that contradicted the prominent Challenged Representations or otherwise
24 suggested that the Products were not, in fact, nutritious, pediatrician-
25 recommended, or beneficial for young children's brain development.
- 26 f. **Causation/Damages.** Plaintiff Schavrien would not have purchased the Products
27 or would not have paid as much for the Products but for the Challenged
28 Representations—i.e., that the Products are nutritious for toddlers, that they are

1 recommended by pediatricians, and that DHA supports young children’s brain
2 development.

3 g. **Desire to Repurchase.** Plaintiff Schavrien continues to see the Products available
4 for purchase and would consider purchasing the Products again in the future if he
5 could be sure the Products delivered the qualities they advertised.

6 h. **Lack of Personal Knowledge/Expertise to Determine Truth.** Plaintiff
7 Schavrien is not personally familiar with the formulation of the Products, as he
8 does not possess any specialized knowledge, skill, experience, or education in the
9 manufacturing of toddler formula or the effect of certain nutrients on young
10 children’s brain development. Thus, Plaintiff Schavrien is unable to determine
11 whether the Products’ Challenged Representations—i.e., whether the Products are
12 nutritious for young children, are recommended by pediatricians, or support
13 children’s brain development through the inclusion of DHA—are true.

14 i. **Plaintiff Schavrien’s Future Harm.** Abbott continues to market and sell the
15 Products with the Challenged Representations. Plaintiff Schavrien is an average
16 consumer who is not sophisticated in the manufacturing of toddler formula or the
17 effect of certain nutrients on brain development. Since Plaintiff Schavrien would
18 like to purchase the Products again in the future despite the fact that the Products
19 were once marred by false advertising or warranties, he would likely and
20 reasonably—but incorrectly—assume in such a scenario that the Products are
21 nutritious for toddlers, that they are recommended by pediatricians, and that the
22 ingredient DHA supports toddler brain development as advertised.
23 Accordingly, Plaintiff Schavrien is at risk of reasonably—but incorrectly—
24 assuming that Abbott has fixed the Products such that he may buy them again with
25 the belief that they are no longer falsely advertised and warranted. In this regard,
26 Plaintiff Schavrien is currently—and will continue to be—deprived of the ability
27 to purchase the Products.

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1 31. **Defendant Abbott Laboratories** is an Illinois-registered corporation with its
2 principal place of business in Lake County, Illinois. Abbott was doing business in the state of
3 California at all relevant times. Directly and through its agents, Abbott maintains substantial
4 contacts with and receives substantial benefits and income from and through the state of California.
5 Abbott is the owner, manufacturer, and/or distributor of the Products. Abbott and its agents
6 promoted, marketed and sold the Products at issue throughout the United States, including in
7 particular within the state of California. The unfair, unlawful, deceptive, and misleading Challenged
8 Representations on the Products were prepared, authorized, ratified, and/or approved by Abbott and
9 its agents to mislead and deceive consumers in the state of California into purchasing the Products.
10 Additionally, Abbott knew of the falsity of the Challenged Representations, but it failed to disclose
11 their falsity at the time Plaintiffs, and all Class Members, purchased the Products, notwithstanding
12 Abbott's duty to do so. Further, Abbott had the right and authority, at all relevant times, to
13 discontinue use of the Challenged Representations, including the time leading up to and through the
14 incidents giving rise to the claims asserted (including Plaintiffs' purchase of the Products described
15 *supra* and all Class Members' purchases of the Products).

16 V. FACTUAL ALLEGATIONS

17 A. Background

18 32. In November 1979, the U.S. Food and Drug Administration ("FDA") was confronted
19 with a major health crisis. A popular infant formula had been found to be deficient in the essential
20 nutrient chloride, with this deficiency causing severe health consequences in infants. This revelation
21 came amid growing global recognition of the dangers of promoting manufactured formulas for very
22 young children as healthy replacements for breastfeeding or cow's milk, with formula use linked to
23 hundreds of thousands of preventable infant deaths annually in low- and middle-income countries
24 worldwide.²

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27 ² Jesse K. Anttila-Hughes, et al., *Mortality from Nestlé's Marketing of Infant Formula in Low and*
28 *Middle-Income Countries*, NATIONAL BUREAU OF ECONOMIC RESEARCH (2018 (revised 2023)),
<https://www.nber.org/papers/w24452>.

1 33. These discoveries prompted public demands for governmental responses to protect
2 human health by ensuring that all commercially distributed infant formula was nutritionally
3 adequate and otherwise not harmful to human health.

4 34. The government responded: In 1980, the United States enacted the Infant Formula
5 Act, codified at 21 U.S.C. Section 350a (“**Act**”), establishing strict nutritional standards and labeling
6 requirements for all infant formula sold in the United States. The FDA defined infant formula as
7 food that may be the sole source of nutrition for infants—i.e., children up to 12 months of age—as
8 an alternative to human milk.

9 35. A year later, the World Health Organization (“**WHO**”) passed the 1981 International
10 Code of Marketing Breastmilk Substitutes. Recognizing the well-documented benefits of feeding
11 infants breastmilk instead of formula, as well as the unique vulnerability of parents and other
12 caretakers to deceptive formula marketing, the WHO advised countries to *completely prohibit* the
13 marketing of infant formula. (Today, formula is one of only two products in the world for which
14 there are international recommendations that countries prohibit their marketing. *The other is*
15 *tobacco.*³)

16 36. Faced with the costs of navigating the sweeping new regulatory regime created under
17 the Infant Formula Act, the United States’ formula industry devised a new way to protect and
18 maximize their profits: by targeting slightly older children with similar beverages marketed as
19 “toddler formulas.” By pivoting to marketing formulas to the parents and caretakers of young
20 children 12 months and older, formula multinationals evaded the FDA’s infant formula regulations
21 that applied to babies under that age.

22 37. This remains the dynamic today: While the FDA continues to strictly regulate the
23 contents and marketing of *infant* formulas—e.g., by requiring that each infant formula pass a pre-
24 market review, contain minimum volumes of 30 specified nutrients, be “safe and suitable” for its
25 intended use, and comply with specific labeling requirements—these regulations do not apply to
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27 ³ Heather Vogell, *The U.S. Government Defended the Overseas Business Interests of Baby Formula*
28 *Makers. Kids Paid the Price*, PROPUBLICA (Mar. 21, 2024),
<https://www.propublica.org/article/how-america-waged-global-campaign-against-baby-formula-regulation-thailand>.

1 *toddler* formulas, which the FDA does not view as nutritionally necessary.⁴ In fact, there is currently
2 *no regulatory standard* governing the composition of toddler formulas in the United States.⁵

3 38. Pediatric organizations worldwide agree that toddler beverages provide no nutritional
4 benefit over a diet of cow's milk and regular food, and that toddler beverages can be harmful for
5 toddlers' health.⁶ For example, toddler formulas, like Abbott's, typically contain added sugars from
6 ingredients like corn syrup despite a medical consensus that children under the age of two should
7 not consume *any* added sugars.⁷ Experts have also concluded that such regular consumption of
8 added sugars can condition toddlers to a sugar-laden diet at a very young age when their taste
9 preferences are forming and highly impressionable, potentially leading to long-term health
10 implications.⁸

11 39. Despite the negative health effects, formula manufacturers, including Abbott, have
12 engaged in aggressive and unregulated marketing of toddler formulas, misleading consumers to
13 believe that toddler formulas are healthier than cow's milk overall and for specific benefits such as
14 brain development⁹ and immune function.¹⁰

15 40. International pediatric organizations have predictably found that such deceptive
16 toddler formula marketing has prompted consumers to use toddler formulas interchangeably with

17 ⁴ *Infant Formula*, U.S. FOOD AND DRUG ADMINISTRATION, <https://www.fda.gov/food/resources-you-food/infant-formula> (Dec. 2, 2024); *see also* Maria Godoy, *New report warns that beverages marketed as toddler formulas are not necessary*, NPR (Oct. 24, 2023), <https://www.npr.org/2023/10/24/1208165047/new-report-warns-that-beverages-marketed-as-toddler-formulas-are-not-necessary>.

18 ⁵ George J. Fuchs, III, MD, FAAP, et al., *Older Infant-Young Child "Formulas,"* THE AMERICAN ACADEMY OF PEDIATRICS (Oct. 20, 2023), <https://doi.org/10.1542/peds.2023-064050>.

19 ⁶ *Id.*

20 ⁷ Yoon Y Choi, et al., *Medical experts recommend that children under 2 years of age should not consume any added sugar. US toddler milk sales and associations with marketing practices*, CAMBRIDGE UNIVERSITY PRESS (Feb. 4, 2020), <https://www.cambridge.org/core/journals/public-health-nutrition/article/us-toddler-milk-sales-and-associations-with-marketing-practices/60781FD9D8C193EFFF474E0A6BBDBA3C>.

21 ⁸ Claire McCarthy, M.D., *Do toddler formulas deliver on nutrition claims? So-called toddler formulas are costly, unnecessary, and sometimes even unhealthy*, HARVARD HEALTH PUBLISHING (Nov. 27, 2023), <https://www.health.harvard.edu/blog/do-toddler-formulas-deliver-on-nutrition-claims-202311272996>.

22 ⁹ Bonny Jasani, et al., *Long chain polyunsaturated fatty acid supplementation in infants born at term*, COCHRANE DATABASE OF SYSTEMATIC REVIEWS (Mar. 10, 2017) <https://doi.org/10.1002/14651858.CD000376.pub4> (finding through a 2017 meta-analysis of 15 studies no definitive link between the consumption of DHA (touted by formula manufacturers for its alleged brain development benefits) and brain development).

23 ¹⁰ *Id.*

1 infant formulas on the mistaken belief that they contain comparable nutritional components and
2 convey similar health benefits, inducing caregivers to feed infants toddler formulas that do not
3 provide adequate nutrition.¹¹ Formula manufacturers have an obvious financial incentive to target
4 “the sippy cups of the world”¹² by aggressively marketing the claimed health benefits of components
5 such as DHA.

6 41. Abbott’s marketing and promotion of the Products are part and parcel of this alarming
7 and unregulated trend. Abbott not only sells Products that are generally unhealthy, but also places
8 specific, false, and misleading claims on the Products’ front labels, deceiving consumers into
9 believing that they are beneficial—and even essential—for their toddlers’ health and development.

10 42. The Products are labeled with one or more of the Challenged Representations, as
11 follows:

- 12 1) Similac Go & Grow 360 Total Care Powder (labeled and advertised with Challenged
13 Representations “Toddler Drink,” “360 Total Care,” “12-36 months,” “DHA,” and
14 “Brain Development”)
- 15 2) Similac Go & Grow 360 Total Care Sensitive Powder (labeled and advertised with
16 Challenged Representations “Toddler Drink,” “360 Total Care,” “12-36 months,”
17 “DHA,” and “Brain Development”)
- 18 3) PediaSure Grow & Gain Bottles (labeled and advertised with Challenged
19 Representations “Complete, Balanced Nutrition,” “#1 Pediatrician Recommended
20 Brand,” and “DHA Omega-3”)
- 21 4) PediaSure Grow & Gain Cans (labeled and advertised with Challenged
22 Representations “#1 Pediatrician Recommended Brand” and “DHA Omega-3”)
- 23 5) PediaSure Grow & Gain Fiber (labeled and advertised with Challenged
24 Representations “Complete, Balanced Nutrition,” “#1 Pediatrician Recommended
25 Brand,” and “DHA Omega-3”)

26 ¹¹ *Id.*

27 ¹² Vogell, *supra* note 3 (reporting statement by chief financial officer and treasurer of DHA
28 manufacturer Martek Biosciences Corp. explaining to analysts that formula companies used DHA
“as a hook to expand their market share” by marketing to the parents of caregivers of babies and
toddlers).

1 6) PediaSure Grow & Gain Shake Mix Powder (labeled and advertised with Challenged
2 Representation “#1 Pediatrician Recommended Brand”); *and*

3 7) PediaSure SideKicks (labeled and advertised with Challenged Representations
4 “Balanced Nutrition to Help Fill Gaps” and “#1 Pediatrician Recommended Brand”).

5 43. Abbott reinforces its false label claims through numerous statements on its official
6 websites, www.pediasure.com and www.similac.com, further demonstrating the company’s intent
7 and knowledge that such claims are material to consumers. These website statements include:

8 Statements from www.pediasure.com:

- 9 • “PediaSure is a delicious nutrition drink that complements a diet for kids who are
10 behind in growth”
- 11 • “DHA omega-3 for brain and eyes”
- 12 • “PediaSure Grow & Gain and PediaSure Grow & Gain with Fiber are sources of
13 complete, balanced nutrition to help kids grow when inadequate growth is a concern”
- 14 • “PediaSure SideKicks is nutrition to help fill gaps”; *and*
- 15 • “PediaSure SideKicks shakes are intended to be a nutritious choice to help balance
16 out a picky eater’s uneven diet”.

17 Statements from www.similac.com:

- 18 • “Go & Grow 360 Total Care has our exclusive blend of DHA for brain and eye
19 development”
- 20 • “Go & Grow 360 Total Care Sensitive has our exclusive blend of DHA for brain and
21 eye development”
- 22 • “Designed for toddlers aged 12-36 months old”
- 23 • “WHOLE-TODDLER SUPPORT: For immune support, brain development, and
24 digestive health”
- 25 • “BRAIN & EYE DEVELOPMENT: Our exclusive blend of DHA for brain and eye
26 development”
- 27 • “Helps Provide Building Blocks for Your Toddler’s Developing Brain”
- 28 • “Help Balance your Toddler’s Diet”; *and*

- “Helps Support Growth & Development”.

B. The Products Are Not Nutritious and Include a Harmful Amount of Sugar

44. Abbott’s Products, marketed as nutritious to children as young as one year old, contain up to 12 grams of added sugar per serving—equivalent to the sugar in half a can of soda. This is directly at odds with medical guidelines, which state that children under the age of two should consume no added sugar at all.¹³ In all cases, added sugar is toxic to the human body and greatly increases the risk of cardiovascular disease, diabetes, obesity, cancer, and a wide variety of other chronic diseases.¹⁴

45. Children in particular have a strong preference for a sweet taste, and early introduction of added sugars in the diet of toddlers can promote sweet-taste preference and result in an increased likelihood of consuming excessive sugar-sweetened beverages and food later in life.

46. Despite the associated negative health risks of sugar consumption in children, Abbott adds in its purportedly nutritious Products alarming amounts of sugar:

- 1) Similac Go & Grow 360 Total Care Powder: Four grams per serving, but Abbott recommends two servings (i.e., eight grams total)
- 2) Similac Go & Grow 360 Total Care Sensitive Powder: Three grams per serving, but Abbott recommends two servings (i.e., six grams total)
- 3) PediaSure Grow & Gain Fiber (Vanilla, Chocolate, Strawberry): Twelve grams
- 4) PediaSure Sidekicks: Twelve grams
- 5) PediaSure Grow & Gain Bottles (Vanilla, Chocolate, Strawberry, Banana flavors):
Nine grams
- 6) PediaSure Grow & Gain Cans (Vanilla, Chocolate): Nine grams
- 7) PediaSure Grow & Gain Fiber (Vanilla, Chocolate, Strawberry): Twelve grams
- 8) PediaSure Grow & Gain Shake Mix Powder (Vanilla, Chocolate, Strawberry): Eight
grams

¹³ Choi, et al., *supra* note 7.

¹⁴ *Sugar: How Bad Are Sweets for Your Kids?*, CLEVELAND CLINIC (July 5, 2024), <https://health.clevelandclinic.org/sugar-how-bad-are-sweets-for-your-kids> (last visited Dec. 26, 2024).

1 9) PediaSure Sidekicks: Twelve grams

2 47. Up to 20 percent of the calories in the Products come from added sugar. That is 20
3 percent more than what is safe for children younger than two,¹⁵ and unhealthy for children of all
4 ages. Abbott’s health representations characterizing the Products as providing “Balanced Nutrition”
5 are thus false, misleading, and deceptive.

6 48. Excessive consumption of added sugar is toxic to the human body and greatly
7 increases the risk of cardiovascular disease, diabetes, liver disease, and a wide variety of other
8 chronic diseases—*especially* in children.¹⁶ Beyond these immediate health risks, regular
9 consumption of added sweeteners at such a young age when toddlers, who are naturally predisposed
10 to enjoying and seeking out sweet foods and beverages, are forming their dietary tastes can condition
11 them to normalize and expect a sweetener-laden diet, potentially leading to longer-term health
12 implications.¹⁷

13 49. Due to the severity of the adverse health outcomes associated with excess added sugar
14 consumption in childhood, the American Heart Association¹⁸ and U.S. Centers for Disease Control
15 and Prevention¹⁹ recommend that children younger than two years old should not be given *any* foods
16 or beverages with added sugars.²⁰ Similar guidance exists for all children. Still, Abbott injects the
17 toddler drinks with excessive sugar and targets all children, including those under two.

18 50. Additionally, Abbott’s Products contain ingredients other than added sugars that are
19 known to harm human health. These include maltodextrin, which has been shown to damage tooth

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22 ¹⁵ This group includes infants as well as the portion of toddlers between the ages of one and two
23 years, as Abbott and other leading manufacturers routinely “cross-promote” their infant and toddler
24 formulas to engender brand loyalty, causing confusion among consumers and reportedly prompting
25 some caregivers to feed toddler formulas to infants on the mistaken assumption that the products
26 are interchangeable. Jasani, et al., *supra* note 9.

¹⁶ *Sugar: How Bad Are Sweets for Your Kids?*, *supra* note 14.

¹⁷ McCarthy, *supra* note 8.

¹⁸ *Kids and added sugars: How much is too much?*, AMERICAN HEART ASSOCIATION (Aug. 22,
2016), <https://www.heart.org/en/news/2023/05/23/kids-and-added-sugars-how-much-is-too-much>
27 (last visited Dec. 23, 2024).

¹⁹ *Get the Facts: Added Sugars*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 5,
2024), <https://www.cdc.gov/nutrition/php/data-research/added-sugars.html> (last visited Dec. 23,
2024).

²⁰ *Kids and added sugars: How much is too much?*, *supra* note 18.

1 enamel among children who consume drinks containing maltodextrin.²¹ Maltodextrin—a
 2 carbohydrate—also has a significant glycemic index—one that supersedes that of table sugar.²²
 3 Furthermore, maltodextrin interacts with sucralose to impair insulin sensitivity²³ and has been
 4 identified as a factor that can influence the gut microbiome.²⁴

5 **C. The Pediatrician-Recommended Statements are Misleading**

6 51. Abbott claims that its PediaSure products are the “#1 Pediatrician Recommended
 7 Brand.” In truth, there is a consensus among leading health and pediatric organization worldwide
 8 condemning the use and sale of such toddler “nutritional drinks.”²⁵ For instance, the American
 9 Academy of Pediatrics advises against using toddler formula, citing “established poor nutritional
 10 outcomes,” and describes toddler formula as “unnecessary and potentially harmful to young
 11 children.”²⁶

12 52. Health organizations recommend that parents should not feed their children “toddler
 13 formulas” for good reason: Toddler formulas do not provide any nutritional advantage over a well-
 14 balanced diet that includes human milk and/or cow’s milk, and the presence of high amounts of
 15 added sugars these formulas commonly contain are extremely unhealthy for toddlers and especially
 16 so for those under the age of two.²⁷

17 **D. DHA Does Not Support Brain Development**

18 53. Abbott prominently labels its Products with “DHA Omega-3,” “DHA,” and/or “Brain
 19 Development,” claiming benefits for toddlers’ brain development. In reality, DHA *does not* support
 20 brain development in very young children.²⁸

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 22 ²¹ Denise L. Hofman, et al., *Nutrition, Health, and Regulatory Aspects of Digestible Maltodextrins*,
 23 CRITICAL REVIEWS IN FOOD SCIENCE AND NUTRITION (Feb, 12, 2015),
<https://www.tandfonline.com/doi/full/10.1080/10408398.2014.940415>.

24 ²² Christine Mikstas, *What is maltodextrin?*, NOURISH BY WEBMD (July 10, 2023),
<https://www.webmd.com/diet/what-is-maltodextrin>.

25 ²³ Claire Greenhill, *Metabolic effects of sucralose*, 16 NAT. REV. ENDOCRINOLOGY 256-257
 (2020), <https://www.nature.com/articles/s41574-020-0348-6>.

26 ²⁴ *Id.*

27 ²⁵ See, e.g., Fuchs, *supra* note 5.

28 ²⁶ *Decreasing Community Toddler Formula Use*, *supra* note 1.

²⁷ *Sugar: How Bad Are Sweets for Your Kids?*, *supra* note 14.

²⁸ Jasani, et al., *supra* note 9 (summarizing multiple medical studies finding no link between DHA intake and brain development).

1 54. DHA is an omega-3 fatty acid that is a primary structural component of the human
2 brain. However, *supplementing a toddler's diet with DHA does not support brain development.*²⁹ A
3 comprehensive 2018 study concluded that DHA supplementation in toddlers has *no beneficial effect*
4 on cognitive development or measures of executive function.³⁰ Worse, DHA supplementation may
5 actually result in *negative* effects on language development and effortful control in certain
6 subgroups of children.³¹ Additional studies confirm that DHA supplementation has no effect on
7 neurodevelopmental outcomes such as cognitive and language composites and visual-motor
8 integration in toddlers.³²

9 55. Abbott's brain development claims also mislead consumers about the overall
10 impression of the Products, as such claims have been shown to influence parents' (incorrect) belief
11 that toddler formulas are healthier and more nutritionally advantageous than cow's milk when they
12 are not.³³

13 56. Abbott's DHA statements also violate 21 C.F.R. 101.13(b)(3), which prohibits
14 nutrient content claims on food intended specifically for children under two years of age, with a
15 narrow exception (inapplicable here) for "percentages claims" of vitamins and minerals made in
16 relation to a Reference Daily Intake ("RDI").

17 57. The FDA defines an implied nutrient content claim as any claim that "[s]uggests that
18 the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and
19 is made in association with an explicit claim or statement about a nutrient." 21 C.F.R. 101.13(2)(ii).

20 58. Abbott represents on the front labels of its Similac Products that these Products are
21 intended for children under the age of two by advertising the Products as being appropriate for
22 toddlers "12-36 months" old. On the same labels, Abbott makes implied nutrient content claims by
23 advertising that the Products contain DHA to promote "Brain Development." These Challenged

24 ²⁹ *Id.*

25 ³⁰ Sarah A. Keim et al., *Effect of Docosahexaenoic Acid Supplementation vs Placebo on*
26 *Developmental Outcomes of Toddlers Born Preterm: A Randomized Clinical Trial*, JAMA PEDIATR.
172(12): 1126-1134 (Dec. 1, 2018), doi: 10.1001/jamapediatrics.2018.3082.

27 ³¹ *Id.*

28 ³² Angela M. Devlin et al., *Developmental Outcomes at 24 Months of Age in Toddlers*
Supplemented with Arachidonic Acid and Docosahexaenoic Acid: Results of a Double Blind,
Randomized, Controlled Trial, NUTRIENTS 9(9):975 (Sep. 6, 2017), doi: 10.3390/nu9090975.

³³ Fuchs, *supra* note 5.

1 Representations thus fit squarely within the contours of proscribed nutrient content claims for food
2 intended for children younger than two years of age, violating 21 C.F.R. 101.13(b)(3).

3 **E. Consumers Were Misled by the Challenged Representations to Their Detriment**

4 59. **Products.** Abbott manufactures, markets, promotes, advertises, labels, packages, and
5 sells Similac Go & Grow 360 Total Care Powder, Similac Go & Grow 360 Total Care Sensitive
6 Powder, PediaSure Grow & Gain Bottles, PediaSure Grow & Gain Cans, PediaSure Grow & Gain
7 Fiber, PediaSure Grow & Gain Shake Mix Powder, and PediaSure SideKicks, each of which
8 displays one or more of the Challenged Representations on the Products' front-facing labels.

9 60. **The Challenged Representations.** On the Products' front labels, Abbott
10 conspicuously displays the Challenged Representations. Specifically, Abbott falsely and
11 misleadingly labels the Products with the statements "Complete, Balanced Nutrition," "Balanced
12 Nutrition to Help Fill Gaps," "#1 Pediatrician Recommended Brand," "DHA Omega-3," "DHA,"
13 and "Brain Development" despite the facts that the Products are neither nutritious for toddlers nor
14 recommended by pediatricians, and the ingredient DHA does not support brain development.

15 61. **Reasonable Consumer's Perception.** The Challenged Representations lead
16 reasonable consumers, like Plaintiffs, to believe that the Products provide balanced nutrition and
17 specific health benefits for toddlers when they do not. Many consumers are interested in purchasing
18 nutritious drinks for their toddlers to improve their health and supplement their diets with perceived
19 missing nutrients. Front-label representations, such as the Challenged Representations, are highly
20 material to their purchasing decisions. As such, the Challenged Representations lead reasonable
21 consumers to believe that the Products provide balanced nutrition for toddlers, are recommended by
22 pediatricians, and support toddlers' brain development with the ingredient DHA.

23 62. **Materiality.** The Challenged Representations are material to reasonable consumers,
24 including Plaintiffs, in deciding to buy the Products—meaning that it is important to consumers that
25 the Products are nutritious for children and support their development, thereby motivating them to
26 buy the Products. Nutrition-related claims are a top purchase driver for all consumers and are
27 especially important to parents and other caregivers when making purchases for their children.

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1 63. **Reliance.** The Class, including Plaintiffs, reasonably relied on the Challenged
2 Representations in deciding to purchase the Products, as Plaintiffs, as well as the Class, made their
3 purchase decisions based at least in part on their reasonable belief that Abbott’s Products were
4 nutritious drinks that bolster toddlers’ health.

5 64. **Falsity.** The Challenged Representations are false, misleading, and deceptive
6 because, contrary to the front-label statements “Complete, Balanced Nutrition,” “Balanced
7 Nutrition to Help Fill Gaps,” “#1 Pediatrician Recommended Brand,” “DHA Omega-3,” “DHA,”
8 and “Brain Development,” the Products are not nutritious for toddlers, they are not recommended
9 by pediatricians, and the ingredient DHA does not support brain development.

10 65. **Consumers Lack Knowledge of Falsity.** The Class members who purchased the
11 Products, including Plaintiffs, do not know and had no reason to know, at the time of purchase, that
12 the Products’ Challenged Representations are false, misleading, deceptive, and unlawful. Further,
13 the Products’ actual formulation fails to provide sufficient notice to consumers, who reasonably rely
14 on the Challenged Representations as assurances that the Products are healthy for toddlers and can
15 help balance their diet and nurture brain development—and who, unlike Abbott, do not possess the
16 specialized knowledge required to conclude that a toddler formula advertised to bolster toddlers’
17 health nevertheless contains harmful added sugars and additives and is condemned by most health
18 organizations around the world as an unhealthy and harmful product.

19 66. **Abbott’s Knowledge.** Abbott knew, or should have known, that the Challenged
20 Representations are misleading, deceptive, and unlawful at the time Abbott manufactured,
21 marketed, advertised, labeled, and sold the Products using the Challenged Representations to
22 Plaintiffs and the Class.

- 23 a. **Knowledge of Reasonable Consumers’ Perception.** Abbott knew or should
24 have known that the Challenged Representations would lead reasonable
25 consumers to believe that the Products are healthy, nutritious drinks that help
26 toddlers’ brains develop. Not only has Abbott utilized a long-standing brand
27 strategy to identify the Products as healthy beverages to provide toddlers with
28 important nutrients, but Abbott also has an obligation under Section 5 of the

1 Federal Trade Commission Act, codified at 15 U.S.C. Section 45, to evaluate
2 its marketing claims from the perspective of the reasonable consumer. That
3 means Abbott was statutorily obligated to consider whether the Challenged
4 Representations, whether in isolation or in conjunction with Abbott's
5 marketing strategy, would mislead reasonable consumers into believing that
6 the Products are nutritious for toddlers, recommended by pediatricians, and
7 helpful for toddlers' brain development. Thus, Abbott either knew that the
8 Challenged Representations were misleading before it marketed the Products
9 to the Class, including Plaintiffs, or Abbott would have known that that it was
10 deceptive had it fulfilled its statutory obligation to evaluate the nature and
11 impacts of the Challenged Representations on reasonable consumers.

12 b. **Knowledge of Falsity.** Abbott manufactured and marketed the Products with
13 the Challenged Representations despite these Products not conforming with
14 the representations. Specifically, Abbott advertised and labeled the Products
15 with the Challenged Representations but chose to design and manufacture
16 these Products with levels of added sugar that no responsible physician could
17 recommend and that cannot provide the claimed support for brain
18 development.

19 c. **Knowledge of Materiality.** Abbott knew or should have known of the
20 Challenged Representations' materiality to consumers. *First*, manufacturers
21 and marketers like Abbott generally reserve the front primary display panel of
22 labels on consumer products for the information they believe will most
23 effectively persuade consumers to buy the products. I.e., the *primary goal* of
24 manufacturers in designing their front-label statements is to materially impact
25 consumers' shopping and purchasing decisions. Here, the conspicuousness of
26 the Challenged Representations on the Products' labels demonstrates Abbott's
27 awareness of their importance to consumers and Abbott's understanding and
28 expectation that consumers would be attracted to buy products that advertised

1 the supposed product benefits asserted through the Challenged
2 Representations. *Second*, manufacturers and marketers repeat marketing
3 claims to emphasize and characterize a brand or product line, shaping
4 consumers' expectations, because they believe those repeated messages will
5 drive consumers to buy their products. Here, Abbott's constant, unwavering
6 use of the Challenged Representations on countless Product labels and
7 advertisements as well as throughout Abbott's marketing campaign evidences
8 Abbott's awareness that the claimed qualities promoted through the
9 Challenged Representations are important to consumers. It also evidences
10 Abbott's intent to convince consumers that the Products conform to the
11 Challenged Representations and, in turn, prompt consumers to buy the
12 Products. *Third*, the Products' primary—if not only—advertised purpose was
13 to provide a nutritious drink to fortify toddlers' health. Thus, Abbott knew, in
14 designing and marketing the Products using the verbiage in question, that the
15 Challenged Representations were material to consumers.

16 d. **Abbott's Continued Deception, Despite Its Knowledge.** Abbott, as the
17 manufacturer and marketer of the Products, had exclusive control over the
18 Challenged Representations' inclusion on the Products' labels and
19 advertisements—i.e., Abbott readily and easily could have stopped using the
20 Challenged Representations to sell the Products. However, despite Abbott's
21 knowledge of the Challenged Representations' falsity and the high likelihood
22 that consumers would reasonably rely on the Challenged Representations in
23 deciding to buy the Products, Abbott deliberately chose to market the Products
24 with the Challenged Representations, thereby misleading consumers into
25 buying or overpaying for the Products. Thus, Abbott knew, or should have
26 known, at all relevant times that the Challenged Representations would
27 mislead reasonable consumers, such as Plaintiffs, into buying the Products to
28 attain the Product attributes that Abbott falsely advertised and warranted.

1 67. **Detriment.** Plaintiffs and similarly situated consumers would not have purchased the
2 Products or would not have paid a price premium for them if they had known that the Challenged
3 Representations were false and misleading—and that the Products thus do not provide balanced
4 nutrition for toddlers, are generally condemned by pediatricians, and do not support toddlers’ brain
5 development through the inclusion of the ingredient DHA. Each such claim was claimed, promised,
6 warranted, advertised, and/or represented by Abbott. Accordingly, based on Abbott’s Challenged
7 Representations, reasonable consumers, including Plaintiffs, purchased the Products to their
8 detriment.

9 **F. The Products are Substantially Similar**

10 68. As described above, Plaintiffs purchased Defendant’s Similac Go & Grow Products
11 as well as Defendant’s PediaSure Grow & Gain Bottles in the chocolate and vanilla flavors (the
12 “**Purchased Products**”). The additional Products identified *supra* (collectively, the “**Unpurchased**
13 **Products**”) are substantially similar to the Purchased Products.

- 14 a. **Abbott.** All Products are manufactured, sold, marketed, advertised, and labeled
15 by Abbott.
- 16 b. **Brand.** All Products are sold under the same two brand names— PediaSure or
17 Similac—and all Products display the parent brand “Abbott” and its logo on the
18 front labeling.
- 19 c. **Marketing Demographics.** All Products are marketed directly to consumers for
20 personal consumption.
- 21 d. **Purpose.** All Products are beverages, either in liquid or powder form, marketed
22 as nutritious drinks for toddlers.
- 23 e. **Use.** All Products are used in the same manner: consumed as beverages, either
24 directly from the container or by adding water or another liquid to the powdered
25 mix product.
- 26 f. **Challenged Representations.** All Products contain one or more of the
27 Challenged Representations on their labeling.
- 28 g. **Packaging.** All Products are packaged in similar packaging.

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h. **Key Attributes.** All Products claim to support toddlers’ health while failing to conform to these promises.

Misleading Effect. The misleading effect of the Challenged Representations on consumers is the same for all Products: Consumers overpay for beverages that are advertised as nutritious, recommended by pediatricians, and beneficial for toddlers’ brain development through the inclusion of DHA, when in reality the Products contain harmful quantities of added sugar, are widely condemned (rather than “recommended”) by pediatric and health organizations, and do not support brain development due to the inclusion of the ingredient DHA.

G. No Adequate Remedy at Law

69. **No Adequate Remedy at Law.** Plaintiffs and members of the Class are entitled to equitable relief because no adequate remedy at law exists.

a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the California Unfair Competition Law (“UCL”), which is one year longer than the statutes of limitations under the California False Advertising Law (“FAL”) and California Consumers Legal Remedies Act (“CLRA”). In addition, the statutes of limitations periods for breach of warranty and unjust enrichment/restitution causes of action vary (generally between approximately two and six years) under state law in the states in which Nationwide Class members reside and/or purchased Abbott’s Products. Thus, California Subclass members who purchased the Products more than three years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class members who purchased the Products prior to the furthest reach-back under the statute of limitations for breach of warranty will be barred from recovery if equitable relief were not permitted for restitution/unjust enrichment.

b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein.

1 It includes, for example, Abbott’s overall unfair marketing scheme to promote and
2 brand the Products with the Challenged Representations across a multitude of media
3 platforms, including the Products’ labels, over a long period of time, in order to gain
4 an unfair advantage over competitor products and to exploit consumers’ desire for
5 products that comport with the Challenged Representations. The UCL also creates a
6 cause of action for violations of law, including violations of statutory law, regulations,
7 or court orders related to similar representations made about the type of products at
8 issue. Thus, Plaintiffs and Class members may be entitled to restitution under the UCL
9 but not to damages under other causes of action asserted herein. (E.g., the FAL
10 requires actual or constructive knowledge of the falsity, while the CLRA is limited to
11 certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease,
12 any goods or services for personal, family, or household purposes).) Similarly, unjust
13 enrichment/restitution is broader than breach of warranty. For example, in some
14 states, breach of warranty may require privity of contract or pre-lawsuit notice, which
15 are not typically required to establish unjust enrichment/restitution. Thus, Plaintiffs
16 and Class members may be entitled to recover under an unjust enrichment/restitution
17 cause of action but may not be entitled to recover damages for breach of warranty if,
18 e.g., they purchased the Products from third-party retailers or did not provide adequate
19 notice of a breach prior to the commencement of this action.

20 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief
21 is appropriate on behalf of Plaintiffs and members of the Class because Abbott
22 continues to misrepresent the Products with the Challenged Representations.
23 Injunctive relief is necessary to prevent Abbott from continuing to engage in the
24 unfair, fraudulent, and/or unlawful conduct described herein and to prevent future
25 harm—none of which can be achieved through available legal remedies (such as
26 monetary damages to compensate past harm). Further, injunctive relief, in the form of
27 affirmative disclosures, is necessary to dispel the public misperception about the
28 Products that has resulted from years of Abbott’s unfair, fraudulent, and unlawful

1 marketing efforts. Such disclosures would include, but are not limited to, publicly
2 disseminated statements providing accurate information about the Products’ true
3 nature and/or requiring prominent qualifications and/or disclaimers on the Products’
4 front labeling concerning the Products’ true nature. An injunction requiring
5 affirmative disclosures to dispel the public’s misperception and prevent the ongoing
6 deception and repeat purchases based thereon is also not available through a legal
7 remedy (such as monetary damages). In addition, Plaintiffs are currently unable to
8 accurately quantify the damages caused by Abbott’s future harm because discovery
9 and Plaintiffs’ investigation have not yet completed, rendering injunctive relief all the
10 more necessary. For example, because the Court has not yet certified any class, the
11 following remains unknown: the scope of any class or sub-class, the identities of the
12 members of such class(es), the proposed class members’ respective purchasing
13 practices, Abbott’s revenues realized through past/future Products sales, and the
14 quantities of past/future Products sales.

- 15 d. **Public Injunction.** Further, because a “public injunction” is available under the UCL,
16 damages will not adequately “benefit the general public” in a manner equivalent to an
17 injunction.
- 18 e. **California vs. Nationwide Class Claims.** Violations of the UCL, FAL, and CLRA
19 are claims asserted on behalf of Plaintiffs and the California Subclass against Abbott,
20 while breach of warranty and unjust enrichment/restitution are asserted on behalf of
21 Plaintiffs and the Nationwide Class. Dismissal of farther-reaching claims, such as
22 restitution, would bar recovery for non-California members of the Nationwide Class.
23 In other words, legal remedies available or adequate under the California-specific
24 causes of action (such as the UCL, FAL, and CLRA causes of action) have no impact
25 on this Court’s jurisdiction to award equitable relief under the remaining causes of
26 action asserted on behalf of non-California putative Nationwide Class members.
- 27 f. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an
28 initial pleading in this action, and discovery has not yet commenced and/or is at its

1 initial stages. No class has been certified yet. No expert discovery has commenced
2 and/or completed. The completion of fact/non-expert and expert discovery, as well as
3 the certification of this case as a class action, is necessary to finalize and determine
4 the adequacy and availability of all remedies, including legal and equitable remedies,
5 as to both Plaintiffs' individual claims and those of any certified class or subclass.
6 Plaintiffs therefore reserves Plaintiffs' rights to amend this Complaint and/or assert
7 additional facts that demonstrate this Court's jurisdiction to order equitable remedies
8 where no adequate legal remedies are available for either Plaintiffs and/or any
9 certified class or subclass. Such proof, to the extent necessary, will be presented prior
10 to the trial of any equitable claims for relief and/or the entry of an order granting
11 equitable relief.

12 VI. CLASS ACTION ALLEGATIONS

13 70. **Class Definition.** Plaintiffs bring this action as a class action on behalf of themselves
14 and all others similarly situated as members of the Class defined as follows:

15 All residents of the United States who, within the applicable statute of limitations
16 periods, purchased the Products containing the Challenged Representations on the
17 Products' labels for purposes other than resale ("**Nationwide Class**"); *and*
18 All residents of California who, within four years prior to the filing of this action,
19 purchased the Products containing the Challenged Representations on the Products'
20 labels for purposes other than resale ("**California Subclass**").

21 The "Nationwide Class" and "California Subclass" are collectively referred to as the "**Class.**"

22 71. **Class Definition Exclusions.** Excluded from the Class are: (i) Abbott, its assigns,
23 successors, and legal representatives; (ii) any entities in which Abbott has controlling interests; (iii)
24 federal, state, and/or local governments, including, but not limited to, their departments, agencies,
25 divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial
26 officer presiding over this matter and person within the third degree of consanguinity to such judicial
27 officer.
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1 72. **Reservation of Rights to Amend the Class Definition.** Plaintiffs reserves the right
2 to amend or otherwise alter the class definition presented to the Court at the appropriate time in
3 response to facts learned through discovery, legal arguments advanced by Abbott, or otherwise.

4 73. **Numerosity.** Members of the Class are so numerous that joinder of all members is
5 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of
6 purchasers (if not more) dispersed throughout the United States, and the California Subclass
7 likewise consists of thousands of purchasers (if not more) dispersed throughout the state of
8 California. Accordingly, it would be impracticable to join all members of the Class before the Court.

9 74. **Common Questions Predominate.** There are numerous and substantial questions of
10 law or fact common to all members of the Class that predominate over any individual issues.
11 Included within the common questions of law or fact are:

- 12 a. Whether Abbott engaged in unlawful, unfair, or deceptive business practices
13 by advertising and selling the Products;
 - 14 b. Whether Abbott’s conduct of advertising and selling the Products as nutritious
15 for toddlers, pediatrician-recommended, and helpful for toddlers’ brain
16 development through the inclusion of DHA constitutes an unfair method of
17 competition, or unfair or deceptive act or practice, in violation of Civil Code
18 Section 1750, *et seq.*;
 - 19 c. Whether Abbott used deceptive representations in connection with the sale of
20 the Products in violation of Civil Code Section 1750, *et seq.*;
 - 21 d. Whether Abbott represented that the Products have characteristics or
22 quantities that they do not have in violation of Civil Code Section 1750, *et*
23 *seq.*;
 - 24 e. Whether Abbott advertised the Products with intent not to sell them as
25 advertised in violation of Civil Code Section 1750, *et seq.*;
 - 26 f. Whether Abbott’s labeling and advertising of the Products are misleading in
27 violation of Business and Professions Code Section 17500, *et seq.*;
- 28

- 1 g. Whether Abbott knew or by the exercise of reasonable care should have
2 known its labeling and advertising was and is misleading in violation of
3 Business and Professions Code Section 17500, *et seq.*;
- 4 h. Whether Abbott's conduct is an unfair business practice within the meaning
5 of Business and Professions Code Section 17200, *et seq.*;
- 6 i. Whether Abbott's conduct is a fraudulent business practice within the meaning
7 of Business and Professions Code Section 17200, *et seq.*;
- 8 j. Whether Abbott's conduct is an unlawful business practice within the meaning
9 of Business and Professions Code Section 17200, *et seq.*;
- 10 k. Whether Plaintiffs and the Class paid more money for the Products than they
11 actually received;
- 12 l. How much more money Plaintiffs and the Class paid for the Products over
13 they actually received;
- 14 m. Whether Abbott's conduct constitutes breach of warranty;
- 15 n. Whether Plaintiffs and the Class are entitled to injunctive relief; *and*
- 16 o. Whether Abbott was unjustly enriched by its unlawful conduct.

17 75. **Predominance.** The common questions of law and fact predominate over questions
18 that affect only individual Class Members.

19 76. **Typicality.** Plaintiffs' claims are typical of the claims of the Class Members they
20 seek to represent because Plaintiffs, like the Class Members, purchased Abbott's misleading and
21 deceptive Products. Abbott's unlawful, unfair and/or fraudulent actions concern the same business
22 practices described herein irrespective of where they occurred or were experienced. Plaintiffs and
23 the Class sustained similar injuries arising out of Abbott's conduct. Plaintiffs' and Class Members'
24 claims arise from the same practices and course of conduct and are based on the same legal theories.

25 77. **Adequacy.** Plaintiffs are adequate representatives of the Class they seek to represent
26 because Plaintiff' interests do not conflict with the interests of the Class Members they seek to
27 represent. Plaintiffs will fairly and adequately protect Class Members' interests, and they have
28

1 retained counsel experienced and competent in the prosecution of complex class actions, including
2 complex questions that arise in consumer protection litigation.

3 78. **Ascertainability.** Class Members can easily be identified by an examination and
4 analysis of the business records regularly maintained by Abbott, among other records within
5 Abbott's possession, custody, or control. Additionally, further Class Member data can be obtained
6 through additional third-party retailers who retain customer records and order histories.

7 79. **Superiority and Substantial Benefit.** A class action is superior to other methods for
8 the fair and efficient adjudication of this controversy, since individual joinder of all members of the
9 Class is impracticable and no other group method of adjudication of all claims asserted herein is
10 more efficient and manageable for at least the following reasons:

- 11 a. The claims presented in this case predominate over any questions of law or
12 fact, if any exist at all, affecting any individual member of the Class;
- 13 b. Absent a Class, the members of the Class will continue to suffer damage and
14 Abbott's unlawful conduct will continue without remedy while Abbott profits
15 from and enjoys its ill-gotten gains;
- 16 c. Given the size of individual Class Members' claims, few, if any, Class
17 Members could afford to or would seek legal redress individually for the
18 wrongs Abbott committed against them, and absent Class Members have no
19 substantial interest in individually controlling the prosecution of individual
20 actions;
- 21 d. When the liability of Abbott has been adjudicated, claims of all members of
22 the Class can be administered efficiently and/or determined uniformly by the
23 Court; *and*
- 24 e. This action presents no difficulty that would impede its management by the
25 Court as a class action, which is the best available means by which Plaintiffs
26 and Class Members can seek redress for the harm caused to them by Abbott.

27 80. **Inconsistent Rulings.** Because Plaintiffs seek relief for all members of the Class, the
28 prosecution of separate actions by individual members would create a risk of inconsistent or varying

1 adjudications with respect to individual members of the Class, which would establish incompatible
2 standards of conduct for Abbott.

3 81. **Injunctive/Declaratory Relief.** The prerequisites to maintaining a class action for
4 injunctive or equitable relief are met, as Abbott has acted or refused to act on grounds generally
5 applicable to the Class, thereby making appropriate final injunctive or declaratory relief with respect
6 to the Class as a whole.

7 82. **Manageability.** Plaintiffs and Plaintiffs’ counsel are unaware of any difficulties that
8 are likely to be encountered in the management of this action that would preclude its maintenance
9 as a class action.

10 **VII. CAUSES OF ACTION**

11 **COUNT ONE**

12 **Violation of California False Advertising Law**

13 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

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

15 83. **Incorporation by reference.** Plaintiffs re-allege and incorporate by reference all
16 allegations contained in this complaint as though fully set forth herein.

17 84. **California Subclass.** Plaintiffs brings this claim individually and on behalf of the
18 California Subclass who purchased the Products within the applicable statute of limitations.

19 85. **FAL Standard.** The False Advertising Law, codified at California Business and
20 Professions Code Section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading
21 advertising[.]”

22 86. **Challenged Representations Disseminated to Public.** Abbott violated the FAL
23 when it advertised and marketed the Products using the Challenged Representations, which were
24 deceptive because the Products do not conform to their assertions. The Challenged Representations
25 were material because they are likely to mislead a reasonable consumer into purchasing the
26 Products.

27 87. **Knowledge.** In making and disseminating the Challenged Representations alleged
28 herein, Abbott knew or should have known that the Challenged Representations were untrue or

1 misleading, and acted in violation of the FAL.

2 88. **Intent to Sell.** Abbott’s Challenged Representations were specifically designed to
3 induce reasonable consumers, like Plaintiffs and the California Subclass, to purchase the Products.

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

13 **COUNT TWO**

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

15 **(Cal. Civ. Code § 1750, *et seq.*)**

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

17 90. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all
18 allegations contained in this complaint, as though fully set forth herein.

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

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

24 93. **Goods/Services.** The Products are “goods” as defined by the CLRA under California
25 Civil Code Section 1761(a).

26 94. **Abbott.** Abbott is a “person” as defined by the CLRA under California Civil Code
27 Section 1761(c).

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1 95. **Consumers.** Plaintiffs and members of the California Subclass are “consumers” as
2 defined by the CLRA under California Civil Code Section 1761(d).

3 96. **Transactions.** The purchase of the Products by Plaintiffs and members of the
4 California Subclass are “transactions” as defined by the CLRA under California Civil Code Section
5 1761(e).

6 97. **Violations of the CLRA.** Abbott violated the following sections of the CLRA by
7 selling the Products to Plaintiffs and the California Subclass through the misleading, deceptive, and
8 fraudulent Challenged Representations:

- 9 a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses
10 [or] benefits . . . which [they] do not have.”
- 11 b. Section 1770(a)(7) by representing that the Products “are of a particular standard,
12 quality, or grade . . . [when] they are of another.”
- 13 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as
14 advertised.”
- 15 d. Section 1770(a)(16) by representing that the Products have “been supplied in
16 accordance with a previous representation” when they have not.

17 98. **Knowledge.** Abbott’s uniform and material Challenged Representations regarding the
18 Products were likely to deceive.

19 99. **Malicious.** Abbott’s conduct was malicious, fraudulent, and wanton in that Abbott
20 intentionally misled and withheld material information from consumers, including Plaintiffs, to
21 increase sales of the Products.

22 100. **Plaintiffs Could Not Have Avoided Injury.** Plaintiffs and members of the California
23 Subclass could not have reasonably avoided such injury. Plaintiffs and members of the California
24 Subclass were misled and unaware of the existence of facts that Abbott suppressed and failed to
25 disclose, and Plaintiffs and members of the California Subclass would not have purchased the
26 Products and/or would have purchased them on different terms had they known the truth.

27 101. **Causation/Reliance/Materiality.** Plaintiffs and the California Subclass suffered
28 harm due to Abbott’s violations of the CLRA because they relied on the Challenged Representations

1 in deciding to purchase the Products. The Challenged Representations factored substantially into
2 the decisions by Plaintiffs and the California Subclass to purchase the Products.

3 102. **Section 1782(d)—Prelitigation Demand/Notice.** Pursuant to California Civil Code
4 Section 1782, more than 30 days prior to the filing of this complaint, Plaintiffs’ counsel, acting on
5 behalf of all members of the Class, mailed a Demand Letter via U.S. Certified Mail, return receipt
6 requested, addressed to Abbott Laboratories at its headquarters and principal place of business
7 registered with the California Secretary of State (100 Abbott Park Road, D367 AP6D, Abbott Park,
8 IL 60064) and its registered agent for service of process (CT Corporation System, 330 North Brand
9 Boulevard, Suite 700, Glendale, CA 91203). Delivery of the Demand Letter to Abbott’s registered
10 agent was confirmed.

11 103. **Causation/Damages.** As a direct and proximate result of Abbott’s misconduct in
12 violation of the CLRA, Plaintiffs and members of the California Subclass were harmed in that they
13 were fraudulently induced into purchasing a product they either would not have purchased at the
14 price they did or not have purchased at all. As a result of Abbott’s conduct described herein,
15 Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other
16 damages, including, but not limited to, the amounts paid for the Products and any interest that would
17 have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiffs seeks a
18 monetary award for violation of the CLRA in the form of damages, restitution, and/or disgorgement
19 of ill-gotten gains to compensate Plaintiffs and the California Subclass for said monies.

20 104. **Injunction.** Given that Abbott’s conduct violated California Civil Code Section 1780,
21 Plaintiffs and members of the California Subclass are entitled to—and do hereby—seek injunctive
22 relief to put an end to Abbott’s violations of the CLRA and to dispel the public misperception
23 generated, facilitated, and fostered by Abbott’s false advertising campaign. Plaintiffs have no
24 adequate remedy at law. Without equitable relief, Abbott’s unfair and deceptive practices will
25 continue to harm Plaintiffs and the California Subclass. Accordingly, Plaintiffs seek an injunction
26 to enjoin Abbott from continuing to employ the unlawful methods, acts, and practices alleged herein
27 pursuant to Section 1780(a)(2), and otherwise require Abbott to take corrective action necessary to
28 dispel the public misperception engendered, fostered, and facilitated through Abbott’s deceptive

1 labeling of the Products with the Challenged Representations.

2 105. **Punitive Damages.** Abbott’s unfair, fraudulent, and unlawful conduct described
3 herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive
4 damages as permitted by law. Abbott’s misconduct is malicious, as Abbott acted with the intent to
5 cause Plaintiffs and consumers to pay for Products that they were not, in fact, receiving. Abbott
6 willfully and knowingly disregarded the rights of Plaintiffs and California Subclass members, as
7 Abbott was at all times aware of the probable dangerous consequences of its conduct and
8 deliberately failed to avoid misleading consumers, including Plaintiffs. Abbott’s misconduct was
9 oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that
10 reasonable people would look down upon it and/or otherwise would despise such corporate
11 misconduct. Said misconduct subjected Plaintiffs and the California Subclass to cruel and unjust
12 hardship in knowing disregard of their rights, as Abbott’s aggressive promotion of the Products
13 through its use of the Challenged Representations induced thousands of parents and other caregivers
14 to purchase formula for children under their care based on a reasonable—but ultimately mistaken—
15 assumption that the Products were nutritionally complete and/or balanced, pediatrician-approved,
16 and fortified with an ingredient (in DHA) that promoted brain development among these toddlers.
17 And Abbott’s misconduct was fraudulent because Abbott at all relevant times intentionally
18 misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and California
19 Subclass members. Abbott’s officers, directors, and/or managing agents committed, authorized,
20 adopted, approved, and/or ratified this wrongful conduct constituting malice, oppression, and/or
21 fraud. An award of punitive damages is thus appropriate and warranted to reduce the possibility that
22 Abbott’s executives might view any outcome here as an acceptable cost of doing business in this
23 multi-billion-dollar industry.

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COUNT THREE

Violation of California Unfair Competition Law

(Cal. Bus. & Prof. Code § 17200, *et seq.*)

(*On Behalf of the California Subclass*)

106. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

107. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code Section 17200, *et seq.*, on behalf of Plaintiffs and a California Subclass composed of consumers who purchased the Products within the applicable statute of limitations.

108. **The UCL.** California Business & Professions Code Section 17200, *et seq.* (the “UCL”) prohibits unfair competition and provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising.”

109. **False Advertising Claims.** Abbott, in its advertising of the Products, made false and misleading statements through the false claims asserted in its Challenged Representations regarding the quality and characteristics of the Products—specifically, through its widespread use of the Challenged Representations to promote and sell the Products. Such claims appear on the front labels of the Products, which are sold at retail stores, including through point-of-purchase displays, as well as in Abbott’s website advertising materials.

110. **Abbott’s Deliberately Fraudulent Marketing Scheme.** Abbott does not have any reasonable basis to support the veracity of the Challenged Representations promoting the Products because the Products do not provide “complete” and/or “balanced” nutrition for toddlers, are not pediatrician-recommended, and do not support toddlers’ brain development through the inclusion of DHA. Abbott knew and knows that the Products do not supply “complete” and/or “balanced” nutrition because (1) as with other toddler formulas, unlike infant formulas for which this is required and enforced by the FDA, they are not designed to meet the complete nutritional needs of the very young children they target, and (2) they contain harmful levels of added sugars—up to 12 grams per serving; knew and knows that the Products are not pediatrician-recommended (and are, in fact,

1 uniformly *condemned* by pediatric and health organizations); and knew and knows that the
2 ingredient DHA does not support toddlers’ brain development. Despite this knowledge, Abbott
3 intentionally advertised and marketed the Products with the Challenged Representations to deceive
4 reasonable consumers.

5 **111. Misleading Advertising Claims Cause Purchase of Products.** Abbott’s labeling
6 and advertising of the Products led to, and continues to lead to, reasonable consumers, including
7 Plaintiffs, believing that the Products are healthy, nutritional drinks for toddlers that are
8 recommended by pediatricians and that support brain development with DHA.

9 **112. Injury in Fact.** Plaintiffs and the California Subclass have suffered injury in fact and
10 have lost money or other property as a result of and in reliance upon the Challenged Representations.
11 Namely, Plaintiffs and the California Subclass lost the purchase price for the Products they bought
12 from Abbott.

13 **113. Conduct Violates the UCL.** Through its conduct described herein, Abbott committed
14 serial unfair, unlawful, and fraudulent business practices in violation of the UCL. Cal. Bus & Prof.
15 Code § 17200 (prohibited “unfair competition” includes “unlawful, unfair, or fraudulent business
16 practices”). And through its use of various forms of media to advertise, call attention to, or give
17 publicity to the sale of goods or merchandise that are not as represented in any manner, Abbott
18 engaged in unfair, deceptive, untrue or misleading advertising, also in violation of the UCL. *Ibid.*
19 (“unfair competition” also includes “unfair, deceptive, untrue or misleading advertising”). Such acts
20 amount to unlawful business practices within the meaning of Business and Professions Code Section
21 17200, *et seq.*, as Abbott’s use of the Challenged Representations advertisements have deceived and
22 are likely to deceive the consuming public.

23 **114. No Reasonably Available Alternatives/Legitimate Business Interests.** Abbott
24 failed to avail itself of reasonably available lawful alternatives to further its legitimate business
25 interests.

26 **115. Business Practice.** All of the conduct alleged herein occurred and continues to occur
27 in Abbott’s business. Abbott’s wrongful conduct is part of a pattern, practice and/or generalized
28 course of conduct that will continue on a daily basis until Abbott voluntarily alters its conduct or is

1 ordered to do so.

2 116. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,
3 Plaintiffs and the members of the California Subclass seek an order of this Court enjoining Abbott
4 from continuing to engage, use, or employ its practice of labeling and advertising the sale and use
5 of the Products through the deployment of deceptive claims, including those of the Challenged
6 Representations, to halt ongoing harm and prevent future harm caused by Abbott’s use of the
7 Challenged Representations’ false and deceptive false claims.

8 117. **Causation/Damages.** As a direct and proximate result of Abbott’s misconduct in
9 violation of the UCL, Plaintiffs and members of the California Subclass were harmed in the amount
10 of the purchase price they paid for the Products. Further, Plaintiffs and members of the California
11 Subclass have suffered and continue to suffer economic losses and other damages, including, but
12 not limited to, the amounts paid for the Products and any interest that would have accrued on those
13 monies, in an amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for
14 violation of the UCL in the form of restitution to compensate Plaintiffs and the California Subclass
15 for their losses.

16 **“Unfair” Prong**

17 118. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any injury
18 it causes outweighs any benefits provided to consumers and the injury is one that the consumers
19 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal.
20 App. 4th 1394, 1403 (2006).

21 119. **Injury.** Abbott’s sweeping use of the Challenged Representations to promote its
22 Products confers absolutely no benefit on consumers, instead deceiving them into incorrectly
23 believing that the Products are nutritionally complete and/or balanced, pediatrician-recommended,
24 and beneficial to toddlers’ brain development due to their inclusion of DHA. Rather, Abbott’s acts
25 as described herein cause great harm to consumers in that they both deceive consumers into paying
26 for products that are not what they represent to be while at the same time depriving those consumers
27 of the opportunity to instead purchase toddler formula *not* promoted through false claims. In so
28 doing, Abbott has caused and continues to cause injuries to consumers, who do not receive products

1 commensurate with their reasonable expectations, overpay for the Products, receive Products of
2 lesser standards than what they reasonably expected to receive, and are exposed to increased health
3 risks by unknowingly consuming greater quantities of added sugars and processed ingredients than
4 the Challenged Representations would lead a reasonable consumer to believe, without providing
5 any potentially countervailing benefit.

6 120. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged
7 activity amounts to unfair conduct under the UCL. They “weigh the utility of the defendant’s
8 conduct against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*,
9 691 F.3d 1152, 1169 (9th Cir. 2012).

10 121. **No Utility.** Here, Abbott’s conduct of promoting the Products through the deployment
11 of the Challenged Representations when the Products are not in fact nutritious for toddlers, are not
12 pediatrician-recommended, and do not facilitate toddlers’ brain development has no utility. And as
13 described in detail herein, the same conduct causes harm to consumers, including Plaintiffs and the
14 Class Members, that is significant in that it deprives them of both money and the opportunity to
15 accurately assess which toddler formula (if any) they wish to feed their children. Thus, the utility of
16 Abbott’s conduct is vastly outweighed by the gravity of the harm it causes.

17 122. **Legislative-Declared Policy.** Some courts require that “unfairness must be tethered
18 to some legislative declared policy or proof of some actual or threatened impact on competition.”
19 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007). Here, Abbott’s conduct
20 has impacted and continues to impact its competition in that the Challenged Representations
21 wrongfully promote the Products based on false claims, leading to artificially inflated sales in the
22 highly competitive and lucrative toddler formula industry.

23 123. **Unfair Conduct.** Abbott’s use of its deceptive, misleading, and unreasonable
24 Challenged Representations in its labeling and advertising of the Products, as alleged herein,
25 constitutes unfair conduct of which Abbott knew or should have known. Abbott’s use of the
26 Challenged Representations to promote and sell its Products thus constitutes an unfair business
27 practice within the meaning of the UCL.

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1 **124. Reasonably Available Alternatives.** Abbott enjoyed reasonably available
2 alternatives to the conduct described herein to further its legitimate business interests. Specifically,
3 Abbott could have refrained from promoting the Products using the Challenged Representations or
4 any other misleading assertion.

5 **125. Abbott's Wrongful Conduct.** All of the conduct alleged herein was and remains part
6 and parcel of Abbott's business operations. Abbott's wrongful conduct is part of a pattern or
7 generalized course of conduct repeated, on information and belief, thousands of times every day.

8 **126. Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiffs and
9 the California Subclass seek an order of this Court enjoining Abbott from continuing to promote the
10 Products using the Challenged Representations, including by using them on Product labeling and in
11 Abbott marketing materials.

12 **127. Causation/Damages.** Plaintiffs and the California Subclass have suffered injury in
13 fact, have lost money, and were exposed to increased health risks as a result of Abbott's unfair
14 conduct. Plaintiffs and the California Subclass paid an unwarranted premium for these Products.
15 Specifically, Plaintiffs and the California Subclass paid for Products that are nutritious for toddlers,
16 recommended by pediatricians, and support toddlers' brain development with DHA. Plaintiffs and
17 the California Subclass would either have paid substantially less for the Products or not bought them
18 at all had they known that the Products' advertising and labeling were false and misleading.
19 Accordingly, Plaintiffs and the California Subclass seek restitution as recompensation for the
20 financial losses they incurred due to Abbott's violations of the UCL.

21 **"Fraudulent" Prong**

22 **128. Fraud Standard.** The UCL considers conduct fraudulent (and prohibited) if it is
23 likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267
24 (1992).

25 **129. Fraudulent & Material Challenged Representations.** Abbott used the Challenged
26 Representations with the intent to sell the Products to consumers, including Plaintiffs and the
27 California Subclass. The Challenged Representations are deceptive, and Abbott knew or should
28 have known as much. The Challenged Representations have at all relevant times been likely to

1 mislead consumers into purchasing the Products because they were and are material to the average
2 reasonable consumer.

3 130. **Fraudulent Business Practice.** As alleged herein, Abbott’s use of the Challenged
4 Representations on the Products’ front labels and in Abbott’s marketing materials to deceive
5 consumers into purchasing the Products constitutes a fraudulent business practice in violation of the
6 UCL.

7 131. **Reasonable and Detrimental Reliance.** Plaintiffs and the California Subclass
8 reasonably relied on the Challenged Representations to their detriment because the Challenged
9 Representations drove them to purchase the Products at the Products’ respective market prices,
10 which were inherently and necessarily inflated because the goods delivered were inferior to those
11 promised.

12 132. **Reasonably Available Alternatives.** Abbott had reasonably available alternatives to
13 further its legitimate business interests other than the conduct described herein. Specifically, Abbott
14 could have refrained from labeling the Products with the Challenged Representations to induce
15 reasonable consumer to buy the Products.

16 133. **Business Practice.** All of the conduct alleged herein occurs and continues to occur
17 during the course of Abbott’s business operations. Abbott’s wrongful conduct is part of a pattern or
18 generalized course of conduct.

19 134. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiffs and
20 the California Subclass seek an order of this Court enjoining Abbott from continuing to engage, use,
21 or employ its practice of labeling the Products with the Challenged Representations.

22 135. **Causation/Damages.** Plaintiffs and the California Subclass have suffered injury in
23 fact and have lost money as a result of Abbott’s fraudulent conduct. Plaintiffs paid an unwarranted
24 premium for the Products. Specifically, Plaintiffs and the California Subclass paid for Products that
25 are nutritious for toddlers, recommended by pediatricians, and support toddlers’ brain development
26 with DHA when, in fact, the Products are not nutritious, not recommended by pediatricians, and do
27 not support toddlers’ brain development. Plaintiffs and the California Subclass would not have
28 purchased the Products had they known the truth. Accordingly, Plaintiffs and the California

1 Subclass seek restitution pursuant to the UCL.

2 **“Unlawful” Prong**

3 136. **Unlawful Standard.** The UCL identifies violations of other laws as “unlawful
4 practices that the unfair competition law makes independently actionable.” *Velazquez v. GMAC*
5 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

6 137. **Violations of CLRA and FAL.** Abbott’s labeling of the Products, as alleged herein,
7 violates California Civil Code Sections 1750, *et seq.* (the “CLRA”) and California Business and
8 Professions Code Sections 17500, *et seq.* (the “FAL”), as set forth above in the sections regarding
9 those causes of action.

10 138. **Fraud.** In addition to violating the CLRA and FAL, Abbott’s use of the Challenged
11 Representations to deceive consumers into purchasing the Products violates California Civil
12 Code Sections 1572 (actual fraud), 1573 (constructive fraud), 1709-1710 (fraudulent deceit), and
13 1711 (deceit upon the public).

14 139. **Additional Violations.** Abbott’s conduct as described herein constituted and
15 continues to constitute a knowing failure to adopt policies in accordance with and/or adherence to
16 applicable laws, as set forth herein, all of which are binding upon and burdensome to its competitors.
17 As Abbott knew or should have known, this conduct engendered an unfair competitive advantage
18 for Abbott and constitutes unfair and fraudulent business practices in violation of the UCL.

19 140. **Reasonably Available Alternatives.** Abbott had reasonably available alternatives to
20 further its legitimate business interests other than the conduct described herein. Specifically, Abbott
21 could have refrained from breaking the law by labeling and otherwise promoting the Products with
22 its deceptive Challenged Representations.

23 141. **Business Practice.** All of the conduct alleged herein occurs and continues to occur
24 within Abbott’s business operations. Abbott’s wrongful conduct is part of a pattern or generalized
25 course of conduct.

26 142. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiffs and
27 the California Subclass seek an order of this Court enjoining Abbott from continuing to engage, use,
28 or employ its practice of deceptive advertising of the Products.

1 the other—to wit, that the Products, among other things, conformed to the Challenged
2 Representations.

3 148. **Breach of Warranty.** Contrary to Abbott’s warranties, the Products did and do *not*
4 conform to the Challenged Representations, and Abbott thus breached its warranties about the
5 Products and their asserted qualities.

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

15 150. **Punitive Damages.** Plaintiffs seek punitive damages pursuant to this cause of action
16 for breach of warranty on behalf of Plaintiffs and the Class. Abbott’s unfair, fraudulent, and
17 unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct
18 warranting an award of punitive damages as permitted by law. Abbott’s misconduct is malicious as
19 Abbott acted with the intent to cause Plaintiffs and consumers to pay for Products that they were
20 not, in fact, receiving. Abbott willfully and knowingly disregarded the rights of Plaintiffs and the
21 Class because Abbott was aware of the probable dangerous consequences of its conduct yet
22 deliberately failed to avoid misleading consumers, including Plaintiffs. Abbott’s misconduct is
23 oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that
24 reasonable people would look down upon it and/or otherwise would despise such misconduct. Said
25 misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in knowing disregard
26 of their rights. And Abbott’s misconduct is fraudulent as Abbott, at all relevant times, intentionally
27 misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and the Class.
28 Again, Abbott’s officers, directors, and/or managing agents committed, authorized, adopted,

1 approved, and/or ratified Abbott’s wrongful conduct constituting malice, oppression, and/or fraud.

2 **COUNT FIVE**

3 **Unjust Enrichment/Restitution**

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

5 151. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all
6 allegations contained in this Complaint, as though fully set forth herein.

7 152. **Nationwide Class & California Subclass.** Plaintiffs bring this claim individually and
8 on behalf of the Nationwide Class and California Subclass (collectively, the Class), members of
9 which purchased the Products within the applicable statute of limitations.

10 153. **Plaintiffs/Class Conferred a Benefit.** By purchasing the Products, Plaintiffs and
11 members of the Class conferred a benefit on Abbott in the form of the purchase price of the Products.

12 154. **Abbott’s Knowledge of Conferred Benefit.** Abbott had knowledge of such
13 conferred benefit and appreciated the conferred benefit because were consumers not to purchase the
14 Products, Abbott would not generate revenue from the sales of the Products.

15 155. **Abbott’s Unjust Receipt Through Deception.** Abbott’s knowing acceptance and
16 retention of the benefit is inequitable and unjust because the benefit was obtained through Abbott’s
17 fraudulent, misleading, and deceptive labeling and advertising of the Products.

18 156. **Causation/Damages.** As a direct and proximate result of Abbott’s unjust enrichment,
19 Plaintiffs and members of the Class were harmed in the amount of the purchase price they paid for
20 the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer other
21 damages, including, but not limited to, any interest that would have accrued on those monies, in an
22 amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for unjust enrichment
23 in damages, restitution, and/or disgorgement of ill-gotten gains and interest to compensate Plaintiffs
24 and the Class for the loss of use and enjoyment of said monies. Plaintiffs also seek injunctive relief
25 to enjoin Abbott’s misconduct to prevent ongoing and future harm that would otherwise result.

26 157. **Punitive Damages.** Plaintiffs seek punitive damages pursuant to this cause of action
27 for unjust enrichment on behalf of Plaintiffs and the Class. Abbott’s unfair, fraudulent, and unlawful
28 conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting

1 an award of punitive damages as permitted by law. Abbott's misconduct was malicious, as Abbott
2 acted with the intent to cause Plaintiffs and members of the Class to pay for Products that they were
3 not, in fact, receiving. Abbott willfully and knowingly disregarded the rights of Plaintiffs and other
4 consumers, as Abbott was aware of the probable dangerous consequences of its conduct and
5 deliberately failed to avoid misleading consumers, including Plaintiffs. Abbott's misconduct is
6 oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that
7 reasonable people would look down upon it and/or otherwise would despise such corporate
8 misconduct. Said misconduct subjected Plaintiffs and other consumers to cruel and unjust hardship
9 in knowing disregard of their rights. Abbott's misconduct is fraudulent, as Abbott, at all relevant
10 times, intentionally misrepresented and/or concealed material facts with the intent to deceive
11 Plaintiffs and other consumers. Officers, directors, and/or managing agents of Abbott committed,
12 authorized, adopted, approved, and/or ratified this wrongful conduct constituting malice,
13 oppression, and/or fraud.

14 **VIII. PRAYER FOR RELIEF**

15 158. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
16 pray for judgment against Abbott as follows:

- 17 a. **Certification:** For an order certifying this action as a class action, appointing
18 Plaintiffs as the Class Representatives, and appointing Plaintiffs' Counsel as Class
19 Counsel;
- 20 b. **Declaratory Relief:** For an order declaring that Abbott's conduct violated the
21 statutes and laws referenced herein consistent with applicable law and pursuant to
22 only those causes of action so permitted;
- 23 c. **Injunction:** For an order requiring Abbott to change its business practices to halt,
24 prevent, or mitigate the risk of the consumer deception and violations of law
25 outlined herein. This includes, for example, orders that Abbott immediately cease
26 and desist from selling the unlawful Products in violation of law; that enjoin
27 Abbott from continuing to market, advertise, distribute, and sell the Products in
28 the unlawful manner described herein; and/or that require Abbott to take all further

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and just corrective action, consistent with applicable law and pursuant to only those causes of action so permitted;

d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiffs and the Class, consistent with applicable law and pursuant to only those causes of action so permitted;

e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with applicable law and pursuant to only those causes of action so permitted;

f. **Attorneys’ Fees & Costs:** For an order awarding attorneys’ fees and costs, consistent with applicable law and pursuant to only those causes of action so permitted;

g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with applicable law and pursuant to only those causes of action so permitted; *and*

h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

IX. DEMAND FOR JURY TRIAL

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

Dated: December 26, 2024

CLARKSON LAW FIRM, P.C.

By:

/s/ Bahar Sodaify
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