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10 UNITED STATES DISTRICT COURT FOR THE
 11 NORTHERN DISTRICT OF CALIFORNIA

12 MOLLY BROWN and ADINA RINGLER,
 13 as individuals, on behalf of themselves, the
 14 general public, and those similarly situated,

15 Plaintiffs,

16 v.

17 FOOD FOR LIFE BAKING CO., INC.,

18 Defendant.

19 CASE NO.

20 **CLASS ACTION COMPLAINT FOR**
 21 **VIOLATION OF THE CALIFORNIA**
 22 **CONSUMERS LEGAL REMEDIES ACT;**
 23 **FALSE ADVERTISING; FRAUD, DECEIT,**
 24 **AND/OR MISREPRESENTATION; UN-**
 25 **FAIR BUSINESS PRACTICES; AND UN-**
 26 **JUST ENRICHMENT**

27 JURY TRIAL DEMANDED

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INTRODUCTION

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2 1. Plaintiffs Molly Brown and Adina Ringler, by and through their counsel, bring this
3 class action against Defendant Food For Life Baking Co., Inc. to seek redress for its unlawful and
4 deceptive practices in labeling and marketing its consumer food products.

5 2. Consumers are increasingly health conscious and, as a result, many consumers seek
6 foods high in protein. To capitalize on this trend, Defendant prominently labels some of its consumer
7 food products as providing specific amounts of protein per serving depending on the product, such
8 as “7g PLANT-BASED PROTEIN PER SERVING” on the front of its Ezekiel 4:9 Sprouted
9 Flourless Flake Cereal, Raisin. Consumers, in turn, reasonably expect that each product will actually
10 provide the amount of protein per serving claimed on the front of the product package.

11 3. However, the Food and Drug Administration (“FDA”) recognizes that not all proteins
12 are the same in their ability to meet human nutritional requirements. Some proteins are deficient in
13 one or more of the nine amino acids essential to human protein synthesis and/or are not fully
14 digestible within the human gut. When a human body uses up the least prevalent essential amino
15 acid from a food product, protein synthesis shuts down and all of the remaining amino acids from
16 that protein source degrade mostly into waste. Likewise, whatever portion of a protein source is not
17 digestible is similarly unavailable for protein synthesis. A protein’s ability to support human
18 nutritional requirements is known as its “quality.”

19 4. The FDA required method for measuring protein quality is called the “Protein
20 Digestibility Corrected Amino Acid Score”—known by its acronym PDCAAS (pronounced Pee-
21 Dee-Kass). It combines a protein source’s amino acid profile and its percent digestibility into a
22 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows
23 how much protein in a product is actually available to support human nutritional requirements. The
24 regulations term this the “corrected amount of protein per serving.” 21 C.F.R. § 101.9(c)(7)(ii). For
25 example, a PDCAAS of .5 means that only half of the protein in that product is actually available to
26 support human protein needs. If the product contained 10 grams total protein per serving, the
27 corrected amount of protein would be only 5 grams per serving.

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1 5. Because protein products can vary widely in their ability to support human protein
2 needs (even between two comparator products with the same total protein quantity), the FDA
3 prohibits manufacturers from advertising or promoting their products with a protein claim unless
4 they have calculated the corrected amount of protein per serving based on PDCAAS and provided
5 this information to consumers in the Nutrition Facts Panel (“NFP”) in the form of a percent daily
6 value (“%DV) for protein. 21 C.F.R. § 101.9(c)(7)(i). The %DV is the corrected amount of protein
7 per serving divided by the daily reference value for protein of 50 grams. *Id.* Using the same example
8 of a product containing 10 grams total protein per serving with a PDCAAS of .5, the %DV is 10%
9 (5g/50g). Had all of the protein in the product been useful in human nutrition, the %DV would be
10 20% (10g/50g).

11 6. Accordingly, Defendant’s products are unlawfully, unfairly and deceptively
12 misbranded. The protein claims on the front of the package, such as such as “7g PLANT-BASED
13 PROTEIN PER SERVING” are unlawful and in violation of parallel state and federal requirements
14 because Defendant failed to provide a %DV for protein in the NFP calculated according to the
15 PDCAAS methodology.

16 7. Moreover, because Defendant’s protein claim is in the form of a quantitative amount
17 appearing alone, without any information about protein quality, it is also separately actionable as
18 misleading. FDA regulations prohibit a manufacturer from stating “the amount or percentage of a
19 nutrient” on the front label if it is “false or misleading in any respect.” 21 C.F.R. § 101.13(i)(3). The
20 primary protein sources in Defendant’s products is wheat. Wheat is a low quality protein with a
21 PDCAAS score between 0.4 and 0.5. Accordingly, although Defendant advertises its products with
22 a “7g PLANT-BASED PROTEIN PER SERVING” claim, it actually provides, in a form that
23 humans can use, as little as 3g protein, i.e., less than half the protein consumers reasonable expect
24 to receive based on the label. This is misleading.

25 8. Defendant’s unlawful and misleading protein claims caused Plaintiffs and members
26 of the class to pay a price premium for the products.

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PARTIES

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2 9. Molly Brown is, and at all times alleged in this Class Action Complaint was, an
3 individual and a resident of Novato, California.

4 10. Adina Ringler is an individual and a resident of Northridge, California.

5 11. Molly Brown and Adina Ringler are collectively referred to hereafter as “Plaintiffs.”

6 12. Defendant Food For Life Baking Co., Inc. (“Defendant”) is a corporation existing
7 under the laws of California with its principal place of business in Solana Beach, California, and is
8 registered to do business in California.

9 **JURISDICTION AND VENUE**

10 13. This Court has jurisdiction over the subject matter of this action pursuant to 28
11 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest
12 and costs; and at least one Plaintiffs and Defendant are citizens of different states.

13 14. The injuries, damages and/or harm upon which this action is based, occurred or
14 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State of
15 California. Defendant regularly conducts and/or solicits business in, engages in other persistent
16 courses of conduct in, and/or derives substantial revenue from products provided to persons in the
17 State of California. Defendant has engaged, and continues to engage, in substantial and continuous
18 business practices in the State of California.

19 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
20 substantial part of the events or omissions giving rise to the claims occurred in the state of California,
21 including within this District.

22 16. In accordance with California Civil Code Section 1780(d), Plaintiff Brown
23 concurrently files herewith a declaration establishing that, at various times throughout the class
24 period, she purchased Ezekiel 4:9 Sprouted Waffles in the Original and Golden Flax flavors and the
25 Ezekiel 4:9 Burger Buns in the Sprouted Grains and Sesame flavors from Whole Foods and other
26 grocery retailers in Novato, California from approximately 2018 to approximately July 2021.
27 (Plaintiff Brown’s declaration is attached hereto as Exhibit A.)

28 17. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

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2 18. Defendant manufactures, distributes, markets, advertises, and sells a variety of food
3 products in the United States under the brand name “Ezekiel 4:9.” Some of these products, including
4 cereals, waffles, pasta, buns, and English muffins have packaging that predominately, uniformly,
5 and consistently states on the principal display panel of the product labels that they contain and
6 provide a certain amount of protein per serving. Plaintiffs have attached as Exhibit B a non-exhaus-
7 tive list of the Ezekiel 4:9 products that make protein claims on the front of the product packages.
8 The products listed in Exhibit B, and any other Ezekiel 4:9 brand product that claims a specific
9 amount of protein on the front of its label, will hereinafter be referred to as the “Products.”

10 19. The representation that the Products contain and provide a specific amount of protein
11 per serving was uniformly communicated to Plaintiffs and every other person who purchased any of
12 the Products in California and the United States. The same or substantially similar product label has
13 appeared on each Product during the entirety of the Class Period in the general form of the following
14 example:



22 20. The nutrition facts panel on the Products uniformly and consistently failed to provide
23 any referenced percent daily value of the Products’ protein content throughout the Class Period. The
24 nutrition facts panel of the Products has appeared consistently throughout the Class Period in the
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