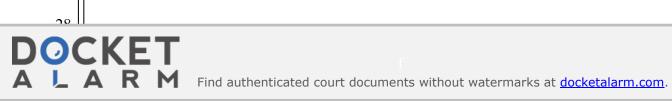
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9	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
10			
11	GILLIAN DAVIDSON and SAMUEL DAVIDSON, on behalf of themselves and those	Case No.:	
12	similarly situated,	CLASS ACTION COMPLAINT FOR VIOLATION OF THE CALIFORNIA	
13	Plaintiffs,	UNFAIR COMPETITION LAW; FAL; COMMON LAW FRAUD; CONSUMERS	
14	v.	LEGAL REMEDIES ACT; AND UNJUST ENRICHMENT	
15	SPROUT FOODS INC.,	ENRICHWENT	
16	Defendant.	JURY TRIAL DEMANDED	
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I. <u>INTRODUCTION</u>

- 1. Plaintiffs Gillian Davidson and Samuel Davidson, by and through their counsel, bring this class action against Defendant Sprout Foods Inc. d/b/a Sprout ("Defendant") to seek redress for Defendant's deceptive and unlawful practices in labeling and marketing the Sprout brand baby and toddler food products.
- 2. Parents are increasingly aware of the need to provide healthy food for their children, especially at the critical age of less than 2 years old. To make healthy food choices for their children, parents rely on nutritional information on food product labels.
- 3. Intending to profit from parents' increasing desire to purchase health food for their young children, Defendant misbrands its baby and toddler food products by making nutrient content claims on the product packages that are strictly prohibited by the Food and Drug Administration ("FDA"), and by misleading purchasers into believing that its products are healthier than other products for children under two years of age in order to induce parents into purchasing Defendant's products.
- 4. Defendant's misbranding caused Plaintiffs and members of the class to pay a price premium for the products.

II. PARTIES

- 5. Gillian Davidson is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Oakland, California.
- 6. Samuel Davidson is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Oakland, California. Samuel Davidson and Gillian Davidson are spouses.
- 7. Defendant Sprout Foods Inc. d/b/a Sprout, is a corporation existing under the laws of the State of Delaware, having its principal place of business in the State of New Jersey.



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III. JURISDICTION AND VENUE

- 8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and Plaintiffs and at least one Defendant are citizens of different states.
- 9. The injuries, damages and/or harm upon which this action is based, occurred, or arose out of activities engaged in by Defendant within, affecting, and emanating from, the State of California. Defendant regularly conduct and/or solicit business in, engage in other persistent courses of conduct in, and/or derive substantial revenue from products provided to persons in the State of California. Defendant has engaged, and continue to engage, in substantial and continuous business practices in the State of California.
- 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the state of California, including within this District.
- 11. In accordance with California Civil Code Section 1780(d), Plaintiffs concurrently file herewith a declaration establishing that, at various times throughout the class period, they purchased the following Sprout Products: Pumpkin, Apple, Red Lentil, and Cinnamon; Strawberry with Banana & Butternut Squash; and Sweet Potato, White Beans, and Cinnamon pouches in Oakland, California. (Plaintiffs' declarations are attached hereto as Exhibits B and C.)
 - 12. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

IV. SUBSTANTIVE ALLEGATIONS

- 13. Defendant manufactures, distributes, markets, advertises, and sells a variety of baby and toddler food products under the brand name "Sprout." Many of these products have packaging that predominately, uniformly, and consistently make nutrient content claims on the principal display panel of the product labels (the "Products"). A non-exhaustive list of the Products and the express nutrient content claims made on the product packages is attached hereto as **Exhibit A**.
 - 14. The Products are intended for children under the age of two. Many of the

introduced to the market over a decade ago, and as of 2018, accounted for 25 percent of baby food sales in the United States.

- 15. FDA regulations explicitly prohibit certain nutrient content claims on foods intended for children under the age of two. 21 C.F.R. § 101.13(b)(3).
- 16. An ever-growing industry, there is seemingly no limit to the combination of foods that can go into baby food pouches, as evidenced by the wide array of flavors of the Products. Looking for a way to differentiate itself in the growing market, Defendant has turned to making nutrient content claims on the front of the Product labels.
- 17. For example, Defendant has a line of "Power Pak" baby food pouches called that states on the front label, "3g of Protein, 5g of Fiber and 300mg Omega-3 from Chia ALA" and "12 Months & Up." An exemplar is shown below:



18. Another line of pouches advertises "plant protein power" and states on the front label "2 grams of Plant Protein Power" and "6 Months & Up." An exemplar is shown below.



19. As described in detail below, Defendant's advertising and labeling of the Products with express nutrient content claims is unlawful, misleading, deceptive, and intended to induce consumers to purchase the Products at a premium price. These claims deceive and mislead reasonable consumers into believing that the Products will provide more benefits than its competitors, and induces parents to purchase the Products despite a lack of evidence that an increased intake for the nutrients advertised are appropriate or recommended for infants and toddlers less than 2 years of age.

Federal and State Regulations Governing Food Labeling

- 20. The Food and Drug Administration regulates nutrition content labeling. According to these regulations, "no nutrient content claims may be made on food intended specifically for use by infants and children less than 2 years of age," subject to certain exceptions not applicable here. 21 C.F.R. § 101.13(b)(3).
- 21. According to the regulations, nutrient content claims can be expressed or implied. 21 C.F.R. § 101.13(b)(1), 21 C.F.R. § 101.13(b)(2).
- 22. An express nutrient content claim is "any direct statement about the level (or range) of a nutrient in the food." 21 C.F.R. § 101.13(b)(1). Further, where information that is required or permitted to be "declared in nutrition labeling, and that appears as part of the



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