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

MALIA OBILLO individually and on behalf
of herself and all others similarly situated,

Plaintiff,

v.

I-HEALTH, INC.,

Defendant.

Case No.: 3:24-cv-02459-PHK

**FIRST AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Malia Obillo, a California citizen, on behalf of herself and all others similarly situated, alleges violations of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*; California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof Code §§ 17200, *et seq.*; California’s False Advertising Law (“FAL”), Cal. Bus. & Prof Code §§ 17500, *et seq.*; for breach of California’s express and implied warranty; breach of contract; intentional and negligent misrepresentation; and unjust enrichment against Defendant i-Health, Inc (“i-Health” or “Defendant”). This Court has jurisdiction pursuant to 28 U.S.C. § 1332. In support of these claims, Ms. Obillo states as follows:

NATURE OF THE ACTION

1. This is a class action against i-Health, for false and deceptive representations that it’s over the counter (“OTC”) product, Culturelle IBS Complete Support (the “Product”), is “clinically shown” to reduce pain, bloating and other IBS symptoms.

2. Sufferers of IBS symptoms rely on i-Health’s deceptive claims and misrepresentations

1 on the Product's label when purchasing the Product. They pay premium prices because they believe
 2 that the Product was "clinically shown" to relieve their symptoms, when those packaging claims do
 3 not actually have "clinical" support.

4 3. As a direct and proximate result of Defendant's false and misleading advertising claims
 5 and marketing practices, Plaintiff and the members of the Class, as defined herein, purchased
 6 Defendant's ineffective Product. Plaintiff and the members of the Class purchased the Product because
 7 they were deceived or confused into believing that the product was clinically shown to reduce their
 8 IBS symptoms. As a result, Plaintiff and members of the Class purchased a product that was not
 9 effective and that did not produce the promised relief. As a result, the Plaintiff and the Class have been
 10 injured in fact. Plaintiff and the Class Members have suffered an ascertainable and out-of-pocket loss.

11 4. Ms. Obillo brings this action on behalf of herself, and others similarly situated to rectify
 12 these unlawful practices and compensate consumers for the losses they incurred in relying on i-
 13 Health's deceptive and misleading Product labels.

14 THE PARTIES

15 4. Plaintiff Malia Obillo is a natural person and citizen of California who at all times
 16 relevant to the facts and transactions referenced in this Complaint resided in the City of Oakland in
 17 the Northern District of California. Ms. Obillo purchased the Product, manufactured and distributed
 18 by Defendant, during the four (4) years prior to the filing of this Complaint ("the Class Period") for
 19 personal, family or household purposes. Ms. Obillo was injured in fact and lost money as a result of
 20 Defendant's unlawful labeling and ineffective product.

21 5. Defendant i-Health, Inc., is a corporation incorporated under the laws of Delaware,
 22 with its principal place of business in Connecticut. Upon information and belief, i-Health's principal
 23 place of business is 55 Sebethe Drive, Suite 102, Cromwell, Connecticut 06416, and its address for
 24 service of process is Goodwin Square, 225 Asylum Street, 20th Floor, Hartford, Connecticut 06103.

25 6. Defendant is liable for the acts of their employees, agents, representatives,
 26 coconspirators, affiliates, and related entities under the theories of respondeat superior, agency,
 27 conspiracy, joint venture, joint enterprise, as parents-subsidaries, or under corporate veil piercing.

28 7. Where reference is made herein to Defendant and its employees, agents,

representatives, co-conspirators or related entities, Plaintiff intends that any such act, conduct or reference is attributable to Defendant through these theories of vicarious liability.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because this is a putative class action wherein, upon information and belief, the aggregate amount in controversy exceeds \$5,000,000; there are over 100 class members; and minimal diversity requirements are met. *See* 28 U.S.C. § 1332(d)(2).

9. Venue is proper in the District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Ms. Obillo's claims occurred in this judicial district. Ms. Obillo purchased the Product at issue and was misled by i-Health's inaccurate labelling in this District.

FACTUAL ALLEGATIONS

10. IBS, or irritable bowel syndrome, is a common, chronic condition that affects the stomach and intestines. Some individuals are more severely affected by IBS symptoms than others, and a person's symptoms may worsen during periods of stress or after eating certain foods.

11. The exact cause of IBS symptoms is unknown.

12. There is not a specific test to diagnose IBS.

13. IBS symptoms can have a significant impact on a person's daily life and include abdominal pain, cramping, bloating, gas, diarrhea, constipation, indigestion, heartburn, nausea, and vomiting. As there is no cure for IBS, treatment is focused on lessening the severity of the symptoms.

i-Health's Label for Culturelle IBS Complete Support is Misleading

14. i-Health is one of the largest distributors of pre- and pro-biotic products in the United States.

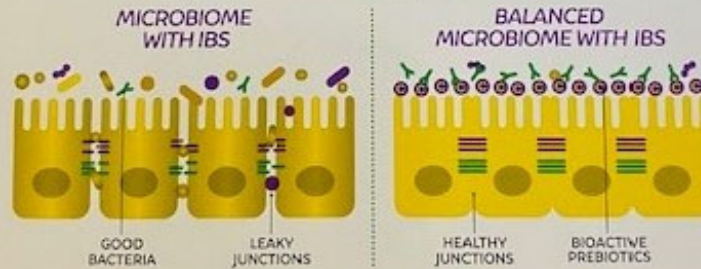
15. At all times relevant hereto, i-Health designed, manufactured, produced, promoted, marketed and/or sold the Product.

16. The following are true and correct images of the Product:



Culturelle® IBS Complete Support is a medical food that is clinically shown* to help relieve the intensity & reduce the frequency of severe digestive symptoms associated with all types of IBS which can take a toll on your mind and body.

Take Culturelle® IBS Complete Support daily to feel more like yourself again.



Formulated with a proprietary blend of HMO bioactive prebiotics that are **clinically shown*** to help restore your digestive balance. They work by selectively nourishing your body's own good bacteria while displacing bad bacteria. They also support your body's intestinal barrier **helping to relieve your IBS symptoms.**

* Shown in an open label clinical study including 317 IBS participants.

Culturelle® IBS Complete Support
For dietary management of irritable bowel syndrome (IBS).

FREE FROM



Box contains: 28 easy to mix packets

Daily dose: 1 packet

Ingredients: Proprietary formulation (2'-Fucosyllactose, Lacto-N-neotetraose).

May contain traces of milk (lactose). The formulation has been used safely by many people who are lactose intolerant.

Storage: Store in a cool, dry place. **Keep out of reach of children.**

For questions, concerns or to report an adverse event please call (800) 722-3476. www.Culturelle.com

Distributed by i-Health, Inc.
55 Sebethe Drive, Cromwell CT 06416
Culturelle® is a trademark of DSM

1 17. Defendant uniformly represents on Culturelle product labels the following false and
2 deceptive statements:

- 3 a. Provides “IBS Complete Support”;
- 4 b. Is “Clinically shown to relieve ▼ Abdominal Pain • Bloating • Constipation •
5 Diarrhea Due to IBS”;
- 6 c. Provides “More Symptom Free Days ▼”;
- 7 d. Was “Shown in a clinical study ▼ to improve IBS symptoms within 4 weeks”;
- 8 e. Has effects that support the representation that “Living with IBS is difficult,
9 taking Culturelle® IBS complete support to help manage symptoms is easy”;
- 10 f. “Helps Normalize Bowel Movements”;
- 11 g. Is “For dietary management of irritable bowel syndrome (IBS)”;
- 12 h. “[I]s clinically shown ▼ to help relieve the intensity & reduce the frequency of
13 severe digestive symptoms associated with all types of IBS which can take a toll
14 on your mind and body”;
- 15 i. Is “Formulated with a proprietary blend of HMO bioactive prebiotics that are
16 clinically shown ▼ to help restore your digestive balance”; and
- 17 j. “[H]elp[] to relieve your IBS symptoms.”

18 18. Each consumer who has purchased the Culturelle product has been exposed to
19 Defendant’s misleading advertising.

20 19. The above-described misrepresentations are material to customers, who purchase these
21 Products to obtain the advertised relief from IBS systems, which the products cannot provide.

22 20. The ▼ symbols indicate that according to the Product label, the representation was
23 “Shown in an open label clinical study including 317 IBS participants.”

24 21. There were similar representations on the Culturelle.com website.

25 22. The label implies that people who use the Product will be cured of all the listed
26 symptoms for periods of time, falsely stating the Product’s benefits in reliance on the clinical study
27 referenced on the label.

28 23. All of the misrepresentations at issue here have the tendency or capacity to deceive or

1 confuse reasonable consumers into believing that the Culturelle product will “relieve [their] IBS
2 symptoms,” or otherwise provide a benefit with respect to management of IBS. In fact, the product
3 has not been “clinically proven” to provide those benefits.

4 **National Advertising Division Recommends i-Health Discontinue “Clinically Shown” Claims**

5 24. The National Advertising Division (NAD), an independent self-regulatory
6 organization, monitors and evaluates national advertising in all media for truth and accuracy, as well
7 as provides dispute resolution services to the advertising industry involving advertisers’ claims.

8 25. The Procter & Gamble Company (P&G), a competing manufacturer of probiotics and
9 prebiotics, challenged i-Health’s claims on the Product’s label.¹

10 26. In resolving claims like those at issue, , NAD makes one of three determinations. Either
11 the evidence 1) fully substantiates the claim under review; 2) is insufficient to support the claim, but
12 the claim may be modified in current and future advertising to better reflect the evidence; or 3) is
13 wholly insufficient to support the claim, such that NAD recommends discontinuing the claims.

14 27. NAD’s findings are detailed in its final decision, attached as Exhibit A.

15 28. As shown above, the Product’s packaging states, in several ways, that the Product has
16 been “clinically shown” to provide benefits to IBS sufferers.

17 29. NAD refers to such claims as “establishment” claims because they promise the
18 consumer that scientific evidence proves or “establishes” the truth of the claims. Exhibit A at 5.

19 30. NAD defines “clinical” to mean that a study has “controlled, consistent, and
20 reproducible conditions.” *Id.*

21 31. NAD identified methodological flaws in i-Health’s study, such as failure to use a
22 placebo control and lack of blinding; and found that studies regarding the Product’s mechanism of
23 action were inadequate evidence to support product efficacy claims. *Id.* at 8-9.

24 32. NAD determined that because i-Health’s study lacked blinding and controls, the
25 Product has not been “**clinically shown**” to provide the claimed benefits. *Id.* at 5.

26 33. NAD determined that the claims on the Product’s packaging convey the message that
27

28 ¹ See Press Release, BBB National Programs, *National Advertising Division Recommends i-Health Discontinue Health-Related Claims for Culturelle IBS Complete Support*, (May 31, 2022) <https://bbbprograms.org/media-center/dd/ihealth-culturelle-ibs-complete-support>.

1 the Product provides specific benefits related to IBS symptom relief and management and that the
2 Product can even treat or cure the underlying conditions by going beyond symptom relief. *Id.* at 10.

3 34. NAD also recommended that i-Health discontinue the claim “IBS Complete Support”
4 in the Product name, finding that “‘IBS Complete Support’ conveys the message that the Product
5 provides broad support for consumers suffering from IBS, a message which is not supported by the
6 evidence.” *Id.* at 11.

7 35. These misleading and false representations are directed at people who at the very least
8 suffer from the digestive symptoms listed on the Product label and who are relying on the Product to
9 help them with the symptoms, which can be very painful.

10 36. Although Defendant lacks scientifically valid substantiation for the claims the Product
11 are “clinically proven” to reduce IBS symptoms, that is not the basis for the claims alleged here.
12 Instead, the heart of this matter is that – irrespective of Defendant’s lack of substantiation – the labeling
13 statements at issue here are affirmatively false or misleading, or otherwise have the capacity to deceive
14 or confuse reasonable consumers.

15 37. In other words, Plaintiff is not arguing that Defendant has the burden to prove that its
16 products are effective or that it must conduct tests showing its products are effective; instead,
17 Plaintiff’s claims arise from the fact that Defendant’s products have not been “clinically proven” to be
18 effective and in fact, were not effective in treating her IBS symptoms.

19 38. Contrary to the Product’s labeling:

- 20 a. the Product does not provide “IBS Complete Support”;
- 21 b. Is not “Clinically shown to relieve Abdominal Pain, Bloating, Constipation, and
22 Diarrhea Due to IBS;”
- 23 c. Does not Provide “More Symptom Free Days;”
- 24 d. Was not “Shown in a clinical study to improve IBS symptoms within 4 weeks;”
- 25 e. Does not help “Normalize Bowel Movements;”
- 26 f. Was not clinically shown to “help relieve the intensity & reduce the frequency of
27 severe digestive symptoms associated with all types of IBS which can take a toll
28 on your mind and body;”

39. Defendant knows that its product was not “clinically proven” to relieve symptoms but fails to disclose that fact to customers.

40. For consumers’ choice to be a real choice, consumers must be adequately and truthfully informed about what benefits, if any, Culturelle provides. This would require a disclosure that Culturelle was not clinically proven, because without that disclosure, consumer choice is meaningless.

Plaintiff Malia Obillo’s Facts

41. Ms. Obillo is a consumer who purchased the Product for her personal use, as she has experienced all the symptoms that the Product’s label claims it is “clinically shown” to relieve.

42. On June 11, 2022, Ms. Obillo, relying on the representation on the Product label that it is “clinically shown to relieve” IBS symptoms, purchased the Product for \$38.74, inclusive of tax, from a Target store in Emeryville, California, within the Northern District of California.

43. At the time Ms. Obillo purchased the Product, she did not know, and had no reason to know, that Defendant’s claims were misleading and unlawful as set forth herein.

44. Ms. Obillo did not experience any of the relief the Product claimed it would provide.

45. Ms. Obillo paid more for the Product than she would have had she known that the “clinically shown” claims on the label were unsubstantiated.

46. i-Health provides the Product labeling materials, which are used by consumers, and the labels make false claims and misrepresentations.

47. Defendant’s labeling, advertising and marketing as alleged herein is false and misleading and was designed to increase sales of the Product at issue.

48. Manufacturers, like i-Health, are aware that consumers who suffer from the symptoms listed on the Product label, like Ms. Obillo, are more likely to buy products that are marketed as being supported by a clinical study.

49. i-Health labels its Product as supported by clinical science because the connotation of that representation is that the Product is superior and more valuable.

50. As a result of i-Health’s unlawful and misleading claims, Ms. Obillo and thousands of similarly situated consumers purchased the Product at issue.

51. Consumers like Ms. Obillo are deceived by i-Health’s misrepresentations and are

1 harmed by overpaying for a material feature or benefit advertised on the product labels that they do
2 not receive.

3 52. i-Health's misrepresentations are part of an extensive labeling, advertising and
4 marketing campaign, and a reasonable person would attach importance to i-Health's
5 misrepresentations in determining whether to purchase the Product at issue.

6 53. i-Health capitalized on misleading and deceiving purchasers of its Product to get an
7 unfair business advantage when competing with its marketplace peers.

8 54. These false representations have been made for a period of time up to and including at
9 least June 2022.

10 **CLASS ACTION ALLEGATIONS**

11 55. Ms. Obillo brings this action on behalf of the following class of persons (the "Class"),
12 subject to modification after discovery and case development:

13 All persons in the State of California who, within four years prior to
14 April 25, 2025, purchased the Product.

15 56. Excluded from the Class are Defendant, any entities in which Defendant has a
16 controlling interest; its agents and employees; and any Judge to whom this action is assigned and any
17 member of such Judge's staff and immediate family.

18 57. It is administratively feasible to ascertain Class members by reference to objective
19 criteria: California consumers who purchased the Product during specified time period. There are no
20 subjective issues such that determining class membership would require a "mini-trial" on the merits
21 of each Class member's claim.

22 58. Ms. Obillo proposes that she serve as class representative and that her counsel serve as
23 class counsel.

24 59. Ms. Obillo is an adequate class representative because her interests do not conflict
25 with the interests of the Class members, and she will adequately and fairly protect the interests of the
26 Class members. Ms. Obillo intends to prosecute this action vigorously and has taken actions before
27 filing this Complaint by hiring skilled and experienced counsel and by making a pre-suit demand on
28 behalf of Class members to protect the interests of the Class. There is no conflict between Ms. Obillo

1 and the proposed Class.

2 60. To prosecute this case, Ms. Obillo has chosen the undersigned law firm, which has the
3 financial and legal resources to meet the substantial costs and legal issues associated with this type
4 of consumer class litigation.

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

- 8 a. Whether Defendant engaged in unfair or deceptive business practices by advertising
9 and selling the Product with material misrepresentations on its packaging;
- 10 b. Whether Defendant made unlawful and misleading claims regarding the substantiation
11 of the claims on the Product's label;
- 12 c. Whether the Product was falsely advertised;
- 13 d. Whether Defendant violated the CLRA, UCL, FAL, breached express and/or implied
14 warranties, breached contracts, engaged in negligent or intentional misrepresentations,
15 or were unjustly enriched;
- 16 e. Whether Ms. Obillo and the Class were damaged by Defendant's conduct;
- 17 f. Whether Ms. Obillo and the Class are entitled to actual and/or statutory damages as a
18 result of Defendant's actions;
- 19 g. Whether Ms. Obillo and the Class are entitled to restitution;
- 20 h. Whether Ms. Obillo and the Class are entitled to attorneys' fees and costs.

21 62. Proof of a common set of facts will establish the right of each Class member to
22 recover.

23 63. Ms. Obillo's claims arise from the same course of conduct that give rise to the claims
24 of the Class members and are based on the same legal theories.

25 64. Ms. Obillo's claims are typical of the claims of the Class members because Ms. Obillo,
26 like the Class members, purchased the Product in reliance on the misleading assertions on its
27 packaging. Defendant's unlawful, unfair and/or fraudulent actions concern the same business
28 practices described herein irrespective of where they occurred or were experienced.

1 in California Civil Code § 1761(e).

2 76. Defendant violates California Civil Code § 1770(a)(5) by representing that the Product
3 has “characteristics, ... uses [or] benefits ... which [they] do not have” in that Defendant advertised
4 the Product as “clinically” proven when it is not.

5 77. Similarly, Defendant violates California Civil Code § 1770(a)(7) by representing that
6 the Product “is of a particular standard, quality, or grade ... if they are of another” by advertising that
7 the Product was “clinically” shown to remedy IBS symptoms when the Product does not actually have
8 those qualities.

9 78. Lastly, Defendant violates California Civil Code § 1770(a)(9) by advertising the
10 Product “with intent not to sell them as advertised” due to deceptive statements and claims that the
11 Product was “clinically” shown to reduce IBS symptoms when it was not.

12 79. As discussed above, however, these claims are not supported by a clinical study
13 because the study referenced does not meet minimum scientific standards, and as such the claim is
14 unfair or deceptive.

15 80. Defendant’s assertions that the Product is “clinically” proven is an expressly stated
16 feature that consumers often will pay more for, and the Product did not actually have that feature.

17 81. Ms. Obillo relied on the Product’s claims and suffered as a result.

18 82. Ms. Obillo and the Class members reasonably and justifiably relied on Defendant’s
19 misrepresentations in purchasing the Product. Had the Product been honestly advertised and labeled,
20 Ms. Obillo and Class members would not have purchased them and/or would have paid less for them.

21 83. As a proximate and direct result of Defendant’s conduct, Ms. Obillo and Class members
22 have been injured and suffered damages by purchasing one or more of the Product that feature false
23 and/or misleading labeling.

24 84. Likewise, Defendant has unreasonably profited from this conduct.

25 85. Given that Defendant’s conduct violated California Civil Code § 1770(a)(5), Ms.
26 Obillo and Class members are entitled to and seek injunctive relief to put an end to Defendants’
27 violations of the CLRA.

28 86. Moreover, Defendant’s conduct is malicious, fraudulent, and wanton in that Defendant

1 intentionally misled and withheld material information from consumers to increase the sale of the
2 Product.

3 87. Pursuant to California Civil Code § 1782(a), Ms. Obillo on her own behalf, and on
4 behalf of Class members, notified Defendant of the alleged violations of the CLRA in a letter dated
5 September 22, 2022. Despite giving Defendant more than 30 days from the date of the notification
6 letter to provide appropriate relief for violations of the CLRA as to the proposed Class, Defendant
7 failed to provide such relief.

8 88. Ms. Obillo also requests that the Court enjoin Defendant from continuing to employ
9 the unlawful methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2).

10 89. As such, Ms. Obillo also seeks compensatory, monetary and punitive damages, in
11 addition to equitable and injunctive relief, and requests that this Court enter such Orders or judgments
12 as may be necessary to restore to any person in interest any money which may have been acquired by
13 means of such unfair business practices, and for such other relief as provided in California Civil Code
14 § 1780 and in the Prayer for Relief.

15 **COUNT II**
16 **Violation of California's Unfair Competition Law**
17 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

18 90. Ms. Obillo incorporates the preceding paragraphs as if alleged herein.

19 91. California's Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §§ 17200, *et*
20 *seq.*, protects consumers by holding companies liable for unfair competition and unlawful business
21 practices.

22 92. The UCL provides a private right of action to any person who has suffered injury in
23 fact and, as a result of unfair business practices, has lost money or property. Cal. Bus. & Prof. Code
24 § 17204.

25 93. The UCL broadly applies to any corporation that engages in unfair competition. *Id.*
26 §§ 17200, 17201.

27 94. The UCL defines unfair competition to include any "unlawful, unfair, or fraudulent"
28 business act or practice. *Id.* § 17200.

95. A business act or practice is "unlawful" under the UCL if it violates any other law or

1 regulation. The UCL’s coverage is “sweeping, embracing anything that can properly be called a
2 business practice and that at the same time is forbidden by law.” *Cel-Tech Commc’ns, Inc. v. Los*
3 *Angeles Cellular Tel. Co.*, 973 P.2d 527, 539 (Cal. 1999).

4 96. Because the UCL’s definition of unfair competition includes any unlawful business
5 act or practice, the statute “borrows violations of other laws and treats them as unlawful practices”
6 that are independently actionable under the UCL. *Id.* at 539–40. Accordingly, violations of other
7 statutes as alleged herein are all actionable under the UCL. Specifically, Defendants’ violations of
8 sections 1770(a)(5), 1770(a)(7), and 1770(a)(9) of the CLRA constitute as basis for Plaintiff’s UCL
9 claim under the unlawful prong.

10 97. Defendant’s conduct constitutes unfair and/or fraudulent business acts and practices
11 because Defendant made false representations to Ms. Obillo and Class members that were likely to
12 deceive Ms. Obillo and Class members into purchasing Defendant’s Product. Defendant
13 misrepresented and made false statements that the claims on the Product’s packaging were
14 “clinically” proven when they were not.

15 98. Defendant is aware that the claims or omissions they make about the Product are and
16 continue to be false and misleading.

17 99. Defendant had an improper motive—to derive financial gain at the expense of
18 accuracy or truthfulness—in its practices related to the labeling of its Product.

19 100. Defendant’s conduct was, and continues to be, unfair, in that the injury to countless
20 purchasers of the Product is substantial and is not outweighed by any countervailing benefits to
21 consumers or to competitors.

22 101. There were reasonable alternatives available to Defendant to further Defendant’s
23 legitimate business interests other than the conduct described herein.

24 102. Moreover, Ms. Obillo and Class members could not have reasonably avoided such
25 injury, given that Defendant failed to disclose the Product’s true characteristics. Ms. Obillo and Class
26 members purchased the Product in reliance on the representations made by Defendant, as alleged
27 herein.

28 103. As a result of the above conduct, Ms. Obillo has suffered economic injury, and

Defendant has been unjustly enriched at the expense of Ms. Obillo and Class members through: the monies paid to Defendant for the Product that lacked the characteristics advertised, interest lost on those monies, and their unwitting support of a business enterprise that promotes deception and undue greed to the detriment of consumers.

104. As a result of the business acts and practices described above, Ms. Obillo and Class members, pursuant to section 17203 of the UCL, are entitled to an Order enjoining such future wrongful conduct on the part of Defendant and such other Orders and judgments that may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for the Product as a result of the wrongful conduct of Defendant. Pursuant to California Civil Code § 3287(a), Ms. Obillo and Class members are further entitled to pre-judgment interest as a direct and proximate result of Defendant's unfair and fraudulent business conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation, and Ms. Obillo and Class members are entitled to interest in an amount according to proof.

COUNT III
Violation of the California False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, *et seq.*

105. Ms. Obillo incorporates the preceding paragraphs as if alleged herein.

106. California's False Advertising Law (FAL), Cal. Bus. & Prof. Code §§ 17500, *et seq.*, prohibits unfair, deceptive, untrue or misleading advertising.

107. Defendant violated the FAL when they represented through false and misleading advertising and through other express representations that Product was "clinically" tested when it was not. Defendant misled consumers to believe that the Product possessed quality, characteristics, and value that it did not actually have.

108. Defendant violated the FAL when they represented, through its false and misleading advertising, and through other express representations, that the Product would help all the symptoms mentioned on the packaging.

109. Defendant's deceptive practices were specifically designed to induce Ms. Obillo and Class members to purchase the Product. Defendant engaged in marketing efforts to reach Ms. Obillo and Class members and were successful in persuading Ms. Obillo and Class members to purchase the

1 falsely advertised Product. Ms. Obillo and Class members purchased the Product in reliance on
2 Defendant's false and misleading statements.

3 110. Ms. Obillo and Class members would not have purchased Defendant's Product had it
4 not been for Defendant's misrepresentations of material facts. Ms. Obillo and Class members were
5 denied the benefit of the bargain when they decided to purchase Defendant's Product over competitor's
6 product.

7 111. Had Ms. Obillo and Class members been aware of the false and misleading advertising
8 tactics, they would have paid less than what they paid for the Product, or they would not have
9 purchased it at all.

10 112. The above acts of Defendant, in disseminating misleading and deceptive
11 representations and statements throughout California to consumers, including Ms. Obillo and Class
12 members, were and are likely to deceive reasonable consumers, in violation of the FAL.

13 113. In making and disseminating the statements alleged herein, Defendant knew or should
14 have known that the statements were untrue or misleading, and acted in violation of the FAL.

15 114. Defendant engages in unlawful, unfair and deceptive practices in violation of the FAL
16 to induce consumers to purchase its Product.

17 115. As a direct and proximate result of Defendant's unlawful conduct in violation of the
18 FAL, Ms. Obillo and Class members, pursuant to section 17535, are entitled to an Order of this Court
19 enjoining such future wrongful conduct on the part of Defendant and requiring Defendant to disclose
20 the true nature of the misrepresentations.

21 116. Ms. Obillo and Class members also request an Order requiring Defendant to disgorge
22 ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Defendant by means
23 of such acts of false advertising, plus interests and attorneys' fees.

24 **COUNT IV**
25 **Breach of California Express and Implied Warranty**
26 **Cal. Com. Code §§ 2313, 2314**

27 117. Ms. Obillo incorporates the preceding paragraphs as if alleged herein.

28 118. California's implied warranty of merchantability statute provides a warranty that the
goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect

1 to goods of that kind. *See* Cal. Com. Code §2314(1).

2 119. California’s implied warranty of merchantability statute also provides that “[g]oods to
3 be merchantable must be at least such as . . . (f) [c]onform to the promises or affirmations of fact made
4 on the container or label if any.” Cal. Com. Code § 2314(2)(f).

5 120. The Product was manufactured, identified, and sold by Defendant and expressly and
6 impliedly warranted to Ms. Obillo and Class members as “clinically shown” to relieve the symptoms
7 of IBS.

8 121. Defendant had a duty to disclose and/or provide non-deceptive descriptions and
9 marketing of the Product.

10 122. Defendant made promises and affirmations of fact through the sale of the Product
11 constituting warranties when they advertised and sold the Product with the “clinically” shown claims
12 on the packaging.

13 123. Ms. Obillo and Class members relied on these promises and affirmations, and they
14 became part of the basis of the bargain between Ms. Obillo and Class members and Defendant.

15 124. Defendant, through marketing and product labels, created express and implied
16 warranties that the Product was actually “clinically” shown to relieve IBS.

17 125. Defendant are merchants with respect to the sale of the Product. Therefore, a warranty
18 of merchantability is implied in every contract for sale of the Product to Ms. Obillo and Class
19 members.

20 126. Despite Defendant’s express and implied warranties about the Product, the quality and
21 characteristics of the Product were not as Defendant represented them to be.

22 127. The Product did not conform to its affirmations of fact and promises due to Defendants’
23 deceptive and misleading actions.

24 128. Defendant breached express warranties and the implied warranty of merchantability
25 because the Product did not conform to the promises or affirmations of fact made on the labels. *See*
26 Cal. Com. Code §§ 2313, 2314(2)(f).

27 129. Defendant knew the product attributes that potential customers like Ms. Obillo were
28 seeking and developed its marketing and labeling to directly meet those needs and desires without

adequately testing the Product behind the label. *See id.*

130. As a direct and proximate result of Defendant's breach of warranties, Ms. Obillo and Class members were harmed in the amount of the purchase price they paid for the Product.

131. Further, Ms. Obillo and Class members have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amounts paid for the Product, and any interest that would have accrued on those monies, in an amount to be proven at trial.

COUNT V
Breach of Contract

132. Ms. Obillo incorporates the preceding paragraphs as if alleged herein.

133. Ms. Obillo and Class members entered into contracts with Defendant for purchase of Defendant's Product.

134. The terms of the contracts provided that the Product was "clinically" shown to provide "Complete Support" for IBS, as those claims were on the Product's label.

135. Defendant breached the contracts because the Product did not meet the terms that Ms. Obillo and Class members agreed to, and Ms. Obillo and Class members did not receive material benefits they expected to receive under the contracts.

136. Ms. Obillo and Class members were damaged by these breaches, and those damages include the purchase price of Defendant's Product.

COUNT VI
Negligent and Intentional Misrepresentation

137. Ms. Obillo incorporates the preceding paragraphs as if alleged herein.

138. Defendant had a non-delegable duty to truthfully represent the Product, which they breached. Through the labels on the Product that consumers, including Ms. Obillo and Class members, purchased from retail establishments, Defendant deceptively represented that the claims on the Product packaging were "clinically" supported.

139. These untrue statements deceived Ms. Obillo and Class members by giving them the impression that the Product was tested according to standards generally accepted by the scientific community.

140. At all relevant times when such misrepresentations were made, Defendant knew that the representations were misleading, or acted recklessly in making the representations without regard

1 to the truth; or had been negligent in not knowing that the Product's packaging claims were not
2 "clinically" supported, as that term is legally understood.

3 141. Ms. Obillo and Class members reasonably and justifiably relied on these negligent
4 misrepresentations and omissions, which served to induce and did induce their purchase of the
5 Product.

6 142. Ms. Obillo and Class members were induced to pay more for Defendant's Product than
7 they otherwise would have paid without the deceptive statements, suffering damages.

8 143. Ms. Obillo and Class members would not have purchased the Product or paid as much
9 if the true facts had been known.

10 144. As a direct and proximate result of Defendant's misrepresentations, Ms. Obillo and
11 Class members were harmed in the amount of the purchase price they paid for the Product.

12 145. Further, Ms. Obillo and Class members have suffered and continue to suffer economic
13 losses and other general and specific damages including, but not limited to, the amounts paid for the
14 Product and any interest that would have accrued on those monies, in an amount to be proven at trial.

15 **COUNT VII**
16 **Unjust Enrichment**

17 146. Ms. Obillo incorporates the preceding paragraphs as if alleged herein and pleads the
18 following in the alternative.

19 147. In the event Ms. Obillo and Class members lack adequate remedies at law for the past,
20 present, and future injuries Defendant has inflicted, Ms. Obillo seeks equitable relief on behalf of
21 herself and all others similarly situated.

22 148. As alleged herein, Defendant has intentionally and recklessly made misleading
23 representations to Ms. Obillo and Class members to induce them to purchase the Product.

24 149. Ms. Obillo and Class members have reasonably relied on the misleading
25 representations and have not received all of the benefits promised by Defendant. Ms. Obillo and Class
26 members therefore were induced by Defendant's misleading and deceptive representations about the
27 Product and paid more money to Defendant for the Product than they otherwise would or should have
28 paid.

150. Ms. Obillo and Class members have conferred a benefit upon Defendant and Defendant

1 has retained monies paid to them by Ms. Obillo and Class members to their detriment because Ms.
 2 Obillo and Class members did not receive the full value of the benefit conferred upon Defendant.

3 151. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or
 4 compensation without paying Ms. Obillo and Class members back for the difference of the full value
 5 of the benefits compared to the value actually received.

6 152. As a direct and proximate result of Defendant's unjust enrichment, Ms. Obillo and
 7 Class members are entitled to restitution, disgorgement, and/or the imposition of a constructive trust
 8 upon all profits, benefits, and other compensation obtained by Defendant from their deceptive,
 9 misleading, and unlawful conduct as alleged herein.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Ms. Obillo, on behalf of herself and others similarly situated, respectfully
 12 requests that the Court:

- 13 a. Certify the proposed Class;
- 14 b. Appoint Ms. Obillo as class representative and Ms. Obillo's counsel as class counsel;
- 15 c. Award damages, including compensatory and exemplary damages, to Ms. Obillo and
 16 the Class in an amount to be determined at trial;
- 17 d. Award statutory damages and/or penalties to Ms. Obillo and the Class;
- 18 e. Award punitive damages;
- 19 f. Award Ms. Obillo and the Class their expenses and costs of suit, including reasonable
 20 attorneys' fees to the extent provided by law;
- 21 g. Award pre-and post-judgment interest to the extent provided by law; and
- 22 h. Award such further relief as the Court deems just and proper.

23
 24 DATED: August 6, 2024

Respectfully submitted,

25 ALMEIDA LAW GROUP

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DECLARATION OF JOHN R. PARKER, JR.
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)

I, John R. Parker, Jr., declare as follows:

1. I submit this declaration pursuant to section 1780(d) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto. I am one of the attorneys representing Plaintiff and the putative class in this matter.

2. Defendant I-HEALTH, INC is doing or has done business in the Northern District of California at relevant times.

3. Plaintiff purchased Defendant's product in this District and viewed Defendant's labels in this District. Her claims are typical of those of the Class she seeks to represent in this action.

3. This action was commenced in the United States District Court for the Northern District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on August 6, 2024 in Sacramento, California.

/s/ John R. Parker, Jr. _____

John R. Parker, Jr.