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11 Attorneys for Defendant  
12 NEXTFOODS, INC.

13 **UNITED STATES DISTRICT COURT FOR**  
14 **THE SOUTHERN DISTRICT OF CALIFORNIA**

15 EVLYN ANDRADE-HEYMSFIELD, on )  
16 behalf of herself, all others similarly )  
17 situated, and the general public, )  
18 )  
19 Plaintiff, )  
20 )  
21 v. )  
22 )  
23 NEXTFOODS, INC., )  
24 )  
25 Defendants. )

CASE NO. 3:21-cv-01446-BTM-MSB  
**DEFENDANT NEXTFOODS, INC.’S  
ANSWER TO FIRST AMENDED  
COMPLAINT**

Complaint Filed: August 13, 2021  
FAC Filed: May 27, 2022

26 Defendant NextFoods, Inc. (“NextFoods”) hereby answers the First Amended  
27 Complaint (“FAC”) of Plaintiff Evlyn Andrade-Heymselfeld (“Plaintiff”) and states  
28 its defenses thereto as follows:

1. NextFoods admits that for several years it has sold a line of beverages  
branded GoodBelly that are JuiceDrinks containing probiotics. NextFoods admits  
that the packaging attached as Appendix 1 appear to be accurate samples of some

1 GoodBelly products sold at particular times. The content of the GoodBelly  
2 products' packaging speaks for itself. NextFoods admits that the GoodBelly  
3 products' packaging at times contained the words digestive health, overall health,  
4 and overall wellness. NextFoods denies the remaining allegations in Paragraph 1 of  
5 the FAC.

6 2. NextFoods denies the allegations in paragraph 2 of the FAC.

7 3. NextFoods denies the allegations in paragraph 3 of the FAC.

8 4. NextFoods denies the allegations in paragraph 4 of the FAC.

9 5. NextFoods denies the allegations in paragraph 5 of the FAC.

10 6. Paragraph 6 contains no allegations of fact. Nonetheless, to the extent  
11 it can be interpreted as containing factual allegations, NextFoods denies the  
12 allegations in paragraph 6 of the FAC.

13 7. NextFoods admits that this Court has subject matter jurisdiction under  
14 28 U.S.C. § 1332(d)(2).

15 8. NextFoods admits that this Court has personal jurisdiction over  
16 NextFoods for claims in this case brought by California residents arising out of  
17 purchases made in California. NextFoods denies all remaining allegations in  
18 paragraph 8.

19 9. NextFoods admits that venue is proper in this District. NextFoods  
20 denies the remaining allegations in Paragraph 9 of the FAC.

21 10. NextFoods lacks sufficient knowledge or information to form a belief  
22 as to the truth of the allegations in paragraph 10 of the FAC and therefore denies  
23 them.

24 11. NextFoods admits that its principal place of business is in Boulder,  
25 Colorado. NextFoods denies the remaining allegations in Paragraph 11 of the FAC.

26 12. NextFoods admits that NextFoods was founded in or about 2006.  
27 Answering further, NextFoods responds that the sources purportedly quoted in  
28 paragraph 12 speak for themselves and denies Plaintiff's interpretation and

1 characterization of them. NextFoods denies all remaining allegations in paragraph  
2 12.

3 13. NextFoods lacks sufficient information to form a belief as to the truth  
4 of allegations of paragraph 13 of the FAC and therefore denies them. NextFoods  
5 denies the allegations in paragraph 13. Answering further, NextFoods responds that  
6 the study cited in footnote six speaks for itself and, without admitting the accuracy  
7 or truth of that study or its findings, denies that Plaintiff’s characterization of the  
8 study is accurate.

9 14. The content of the GoodBelly products’ packaging speaks for itself.  
10 NextFoods admits that the GoodBelly products’ packaging at times contained the  
11 words digestive health, overall health, and wellness. NextFoods denies the  
12 remaining allegations in Paragraph 14 of the FAC.

13 15. The content of the GoodBelly products’ packaging speaks for itself.  
14 NextFoods admits that the GoodBelly products’ packaging at times contained the  
15 words digestive health, overall health, and wellness. NextFoods denies the  
16 remaining allegations in Paragraph 15 of the FAC.

17 16. NextFoods admits that paragraph 16 includes images of what appear to  
18 altered images of certain panels of a Probiotic Juice Drink package, but denies that  
19 the red circles around certain language appeared on any packaging and denies that  
20 the images in paragraph 16 depict all relevant panels of the packaging.

21 17. NextFoods lacks sufficient information to form a belief as to the truth  
22 of the allegations of paragraph 17 of the FAC and therefore denies them.  
23 Answering further, NextFoods responds that the studies cited in footnote eight speak  
24 for themselves and, without admitting the accuracy or truth of the studies or their  
25 findings, denies that Plaintiff’s characterization of the studies is accurate.

26 18. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 18 of the FAC and therefore denies them.

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1           19. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 19 of the FAC and therefore denies them.  
3 Answering further, NextFoods responds that the study cited in footnote nine speaks  
4 for itself and, without admitting the accuracy or truth of that study or its findings,  
5 denies that Plaintiff’s characterization of the study is accurate.

6           20. NextFoods lacks sufficient information to form a belief as to the truth  
7 of the allegations of paragraph 20 of the FAC and therefore denies them.  
8 Answering further, NextFoods responds that the study cited in footnote nine speaks  
9 for itself and, without admitting the accuracy or truth of that study or its findings,  
10 denies that Plaintiff’s characterization of the study is accurate.

11           21. NextFoods lacks sufficient information to form a belief as to the truth  
12 of the allegations of paragraph 21 of the FAC and therefore denies them.  
13 Answering further, NextFoods responds that the study cited in footnote eleven  
14 speaks for itself and, without admitting the accuracy or truth of that study or its  
15 findings, denies that Plaintiff’s characterization of the study is accurate.

16           22. NextFoods lacks sufficient information to form a belief as to the truth  
17 of the allegations of paragraph 22 of the FAC and therefore denies them.  
18 Answering further, NextFoods responds that the studies cited in footnote twelve  
19 speak for themselves and, without admitting the accuracy or truth of the studies or  
20 their findings, denies that Plaintiff’s characterization of the studies is accurate.

21           23. NextFoods lacks sufficient information to form a belief as to the truth  
22 of the allegations of paragraph 23 of the FAC and therefore denies them.  
23 Answering further, NextFoods responds that the study cited in footnote thirteen  
24 speaks for itself and, without admitting the accuracy or truth of that study or its  
25 findings, denies that Plaintiff’s characterization of the study is accurate.

26           24. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 24 of the FAC and therefore denies them.  
28 Answering further, NextFoods responds that the study cited in footnote fourteen

1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff’s characterization of the study is accurate.

3 25. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 25 of the FAC and therefore denies them.

5 26. NextFoods lacks sufficient information to form a belief as to the truth  
6 of the allegations of paragraph 26 of the FAC and therefore denies them.

7 Answering further, NextFoods responds that the study cited in footnote fifteen  
8 speaks for itself and, without admitting the accuracy or truth of that study or its  
9 findings, denies that Plaintiff’s characterization of the study is accurate.

10 27. NextFoods lacks sufficient information to form a belief as to the truth  
11 of the allegations of paragraph 27 of the FAC and therefore denies them.

12 Answering further, NextFoods responds that the study cited in footnote sixteen  
13 speaks for itself and, without admitting the accuracy or truth of that study or its  
14 findings, denies that Plaintiff’s characterization of the study is accurate.

15 28. NextFoods lacks sufficient information to form a belief as to the truth  
16 of the allegations of paragraph 28 of the FAC and therefore denies them.

17 Answering further, NextFoods responds that the study cited in footnote seventeen  
18 speaks for itself and, without admitting the accuracy or truth of that study or its  
19 findings, denies that Plaintiff’s characterization of the study is accurate.

20 29. NextFoods lacks sufficient information to form a belief as to the truth  
21 of the allegations of paragraph 29 of the FAC and therefore denies them.

22 Answering further, NextFoods responds that the study cited in footnote eighteen  
23 speaks for itself and, without admitting the accuracy or truth of that study or its  
24 findings, denies that Plaintiff’s characterization of the study is accurate.

25 30. NextFoods lacks sufficient information to form a belief as to the truth  
26 of the allegations of paragraph 30 of the FAC and therefore denies them.

27 Answering further, NextFoods responds that the study cited in footnote nineteen

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1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff's characterization of the study is accurate.

3 31. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 31 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnote twenty  
6 speaks for itself and, without admitting the accuracy or truth of that study or its  
7 findings, denies that Plaintiff's characterization of the study is accurate.

8 32. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 32 of the FAC and therefore denies them.

10 33. NextFoods lacks sufficient information to form a belief as to the truth  
11 of the allegations of paragraph 33 of the FAC and therefore denies them.  
12 Answering further, NextFoods responds that the studies cited in footnotes twenty-  
13 one and twenty-two speak for themselves and, without admitting the accuracy or  
14 truth of the studies of their findings, denies that Plaintiff's characterization of the  
15 study is accurate.

16 34. NextFoods lacks sufficient information to form a belief as to the truth  
17 of the allegations of paragraph 34 of the FAC and therefore denies them.  
18 Answering further, NextFoods responds that the study cited in footnote twenty-three  
19 speaks for itself and, without admitting the accuracy or truth of that study or its  
20 findings, denies that Plaintiff's characterization of the study is accurate.

21 35. NextFoods lacks sufficient information to form a belief as to the truth  
22 of the allegations of paragraph 35 of the FAC and therefore denies them.  
23 Answering further, NextFoods responds that the study cited in footnote twenty-four  
24 speaks for itself and, without admitting the accuracy or truth of that study or its  
25 findings, denies that Plaintiff's characterization of the study is accurate.

26 36. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 36 of the FAC and therefore denies them.  
28 Answering further, NextFoods responds that the study cited in footnote twenty-five

1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff's characterization of the study is accurate.

3 37. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 37 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnotes twenty-six  
6 through twenty-nine speak for themselves and, without admitting the accuracy or  
7 truth of the studies or their findings, denies that Plaintiff's characterization of the  
8 studies is accurate.

9 38. NextFoods lacks sufficient information to form a belief as to the truth  
10 of the allegations of paragraph 38 of the FAC and therefore denies them.  
11 Answering further, NextFoods responds that the study cited in footnotes thirty and  
12 thirty-one speaks for itself and, without admitting the accuracy or truth of that study  
13 or its findings, denies that Plaintiff's characterization of the study is accurate.

14 39. NextFoods lacks sufficient information to form a belief as to the truth  
15 of the allegations of paragraph 39 of the FAC and therefore denies them.  
16 Answering further, NextFoods responds that the study cited in footnotes thirty-two  
17 and thirty-three speaks for itself and, without admitting the accuracy or truth of that  
18 study or its findings, denies that Plaintiff's characterization of the study is accurate.

19 40. NextFoods lacks sufficient information to form a belief as to the truth  
20 of the allegations of paragraph 40 of the FAC and therefore denies them.  
21 Answering further, NextFoods responds that the study cited in footnotes thirty-four  
22 and thirty-five speaks for itself and, without admitting the accuracy or truth of that  
23 study or its findings, denies that Plaintiff's characterization of the study is accurate.

24 41. NextFoods lacks sufficient information to form a belief as to the truth  
25 of the allegations of paragraph 41 of the FAC and therefore denies them.  
26 Answering further, NextFoods responds that the study cited in footnote thirty-six  
27 speaks for itself and, without admitting the accuracy or truth of that study or its  
28 findings, denies that Plaintiff's characterization of the study is accurate.

1           42. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 42 of the FAC and therefore denies them.  
3 Answering further, NextFoods responds that the study cited in footnote thirty-seven  
4 speaks for itself and, without admitting the accuracy or truth of that study or its  
5 findings, denies that Plaintiff’s characterization of the study is accurate.

6           43. NextFoods lacks sufficient information to form a belief as to the truth  
7 of the allegations of paragraph 43 of the FAC and therefore denies them.

8           44. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 44 of the FAC and therefore denies them.  
10 Answering further, NextFoods responds that the study cited in footnote thirty-eight  
11 speaks for itself and, without admitting the accuracy or truth of that study or its  
12 findings, denies that Plaintiff’s characterization of the study is accurate.

13           45. NextFoods lacks sufficient information to form a belief as to the truth  
14 of the allegations of paragraph 45 of the FAC and therefore denies them.

15           46. NextFoods lacks sufficient information to form a belief as to the truth  
16 of the allegations of paragraph 46 of the FAC and therefore denies them.  
17 Answering further, NextFoods responds that the study cited in footnote forty speaks  
18 for itself and, without admitting the accuracy or truth of that study or its findings,  
19 denies that Plaintiff’s characterization of the study is accurate.

20           47. NextFoods lacks sufficient information to form a belief as to the truth  
21 of the allegations of paragraph 47 of the FAC and therefore denies them. Answering  
22 further, NextFoods responds that the study cited in footnote forty-one speaks for  
23 itself and, without admitting the accuracy or truth of that study or its findings, denies  
24 that Plaintiff’s characterization of the study is accurate.

25           48. NextFoods lacks sufficient information to form a belief as to the truth  
26 of the allegations of paragraph 48 of the FAC and therefore denies them.

27 Answering further, NextFoods responds that the studies cited in footnote forty-two  
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1 speak for themselves and, without admitting the accuracy or truth of the studies or  
2 their findings, denies that Plaintiff’s characterization of the studies is accurate.

3 49. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 49 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnote forty-three,  
6 forty-four, and forty-five speaks for itself and, without admitting the accuracy or  
7 truth of that study or its findings, denies that Plaintiff’s characterization of the study  
8 is accurate.

9 50. NextFoods lacks sufficient information to form a belief as to the truth  
10 of the allegations of paragraph 50 of the FAC and therefore denies them.  
11 Answering further, NextFoods responds that the studies cited in footnotes forty-six  
12 and forty-seven speak for themselves and, without admitting the accuracy or truth of  
13 the studies or their findings, denies that Plaintiff’s characterization of the studies is  
14 accurate.

15 51. NextFoods lacks sufficient information to form a belief as to the truth  
16 of the allegations of paragraph 51 of the FAC and therefore denies them.  
17 Answering further, NextFoods responds that the study cited in footnote forty-eight  
18 speaks for itself and, without admitting the accuracy or truth of that study or its  
19 findings, denies that Plaintiff’s characterization of the study is accurate.

20 52. NextFoods lacks sufficient information to form a belief as to the truth  
21 of the allegations of paragraph 52 of the FAC and therefore denies them.  
22 Answering further, NextFoods responds that the study cited in footnote forty-nine  
23 speaks for itself and, without admitting the accuracy or truth of that study or its  
24 findings, denies that Plaintiff’s characterization of the study is accurate.

25 53. NextFoods lacks sufficient information to form a belief as to the truth  
26 of the allegations of paragraph 53 of the FAC and therefore denies them.  
27 Answering further, NextFoods responds that the study cited in footnote fifty speaks

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1 for itself and, without admitting the accuracy or truth of that study or its findings,  
2 denies that Plaintiff’s characterization of the study is accurate.

3 54. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 54 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnote fifty-one  
6 speaks for itself and, without admitting the accuracy or truth of that study or its  
7 findings, denies that Plaintiff’s characterization of the study is accurate.

8 55. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 55 of the FAC and therefore denies them.  
10 Answering further, NextFoods responds that the study cited in footnote fifty-two  
11 speaks for itself and, without admitting the accuracy or truth of that study or its  
12 findings, denies that Plaintiff’s characterization of the study is accurate.

13 56. NextFoods lacks sufficient information to form a belief as to the truth  
14 of the allegations of paragraph 56 of the FAC and therefore denies them.  
15 Answering further, NextFoods responds that the studies cited in footnotes fifty-three  
16 and fifty-four six speak for themselves and, without admitting the accuracy or truth  
17 of the studies or their findings, denies that Plaintiff’s characterization of the studies  
18 is accurate.

19 57. NextFoods lacks sufficient information to form a belief as to the truth  
20 of the allegations of paragraph 57 of the FAC and therefore denies them.  
21 Answering further, NextFoods responds that the study cited in footnote fifty-five  
22 speaks for itself and, without admitting the accuracy or truth of that study or its  
23 findings, denies that Plaintiff’s characterization of the study is accurate.

24 58. NextFoods lacks sufficient information to form a belief as to the truth  
25 of the allegations of paragraph 58 of the FAC and therefore denies them.

26 59. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 59 of the FAC and therefore denies them.  
28 Answering further, NextFoods responds that the study cited in footnote fifty-six

1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff’s characterization of the study is accurate.

3 60. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 60 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnote fifty-seven  
6 speaks for itself and, without admitting the accuracy or truth of that study or its  
7 findings, denies that Plaintiff’s characterization of the study is accurate.

8 61. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 61 of the FAC and therefore denies them.  
10 Answering further, NextFoods responds that the study cited in footnote fifty-eight  
11 speaks for itself and, without admitting the accuracy or truth of that study or its  
12 findings, denies that Plaintiff’s characterization of the study is accurate.

13 62. NextFoods lacks sufficient information to form a belief as to the truth  
14 of the allegations of paragraph 62 of the FAC and therefore denies them.

15 63. NextFoods lacks sufficient information to form a belief as to the truth  
16 of the allegations of paragraph 63 of the FAC and therefore denies them.  
17 Answering further, NextFoods responds that the study cited in footnote fifty-nine  
18 speaks for itself and, without admitting the accuracy or truth of that study or its  
19 findings, denies that Plaintiff’s characterization of the study is accurate.

20 64. NextFoods lacks sufficient information to form a belief as to the truth  
21 of the allegations of paragraph 64 of the FAC and therefore denies them.  
22 Answering further, NextFoods responds that the study cited in footnotes sixty and  
23 sixty-one speaks for itself and, without admitting the accuracy or truth of that study  
24 or its findings, denies that Plaintiff’s characterization of the study is accurate.

25 65. NextFoods lacks sufficient information to form a belief as to the truth  
26 of the allegations of paragraph 65 of the FAC and therefore denies them.

27 Answering further, NextFoods responds that the study cited in footnote sixty-two

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1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff’s characterization of the study is accurate.

3         66. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 66 of the FAC and therefore denies them. Answering  
5 further, NextFoods responds that the study cited in footnote sixty-three speaks for  
6 itself and, without admitting the accuracy or truth of that study or its findings, denies  
7 that Plaintiff’s characterization of the study is accurate.

8         67. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 67 of the FAC and therefore denies them.  
10 Answering further, NextFoods responds that the studies cited in footnotes sixty-four,  
11 sixty-five, and sixty-six speak for themselves and, without admitting the accuracy or  
12 truth of the studies or their findings, denies that Plaintiff’s characterization of the  
13 studies is accurate.

14         68. NextFoods lacks sufficient information to form a belief as to the truth  
15 of the allegations of paragraph 68 of the FAC and therefore denies them.

16         69. NextFoods lacks sufficient information to form a belief as to the truth  
17 of the allegations of paragraph 69 of the FAC and therefore denies them.  
18 Answering further, NextFoods responds that the study cited in footnote sixty-seven  
19 speaks for itself and, without admitting the accuracy or truth of that study or its  
20 findings, denies that Plaintiff’s characterization of the study is accurate.

21         70. NextFoods lacks sufficient information to form a belief as to the truth  
22 of the allegations of paragraph 70 of the FAC and therefore denies them.  
23 Answering further, NextFoods responds that the study cited in footnote sixty-eight  
24 speaks for itself and, without admitting the accuracy or truth of that study or its  
25 findings, denies that Plaintiff’s characterization of the study is accurate.

26         71. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 71 of the FAC and therefore denies them.  
28 Answering further, NextFoods responds that the study cited in footnote sixty-nine

1 speaks for itself and, without admitting the accuracy or truth of that study or its  
2 findings, denies that Plaintiff’s characterization of the study is accurate.

3 72. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 72 of the FAC and therefore denies them.  
5 Answering further, NextFoods responds that the study cited in footnote seventy  
6 speaks for itself and, without admitting the accuracy or truth of that study or its  
7 findings, denies that Plaintiff’s characterization of the study is accurate.

8 73. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 73 of the FAC and therefore denies them.  
10 Answering further, NextFoods responds that the study cited in footnote seventy-one  
11 speaks for itself and, without admitting the accuracy or truth of that study or its  
12 findings, denies that Plaintiff’s characterization of the study is accurate.

13 74. NextFoods lacks sufficient information to form a belief as to the truth  
14 of the allegations of paragraph 74 of the FAC and therefore denies them.  
15 Answering further, NextFoods responds that the study cited in footnote seventy-two  
16 speaks for itself and, without admitting the accuracy or truth of that study or its  
17 findings, denies that Plaintiff’s characterization of the study is accurate.

18 75. NextFoods lacks sufficient information to form a belief as to the truth  
19 of the allegations of paragraph 75 of the FAC and therefore denies them.  
20 Answering further, NextFoods responds that the studies cited in footnote seventy-  
21 three speak for themselves and, without admitting the accuracy or truth of the  
22 studies or their findings, denies that Plaintiff’s characterization of the studies is  
23 accurate.

24 76. NextFoods lacks sufficient information to form a belief as to the truth  
25 of the allegations of paragraph 76 of the FAC and therefore denies them.  
26 Answering further, NextFoods responds that the study cited in footnote seventy-four  
27 speaks for itself and, without admitting the accuracy or truth of that study or its  
28 findings, denies that Plaintiff’s characterization of the study is accurate.

1           77. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 77 of the FAC and therefore denies them.  
3 Answering further, NextFoods responds that the studies cited in footnote seventy-  
4 five speak for themselves and, without admitting the accuracy or truth of the studies  
5 or their findings, denies that Plaintiff’s characterization of the studies is accurate.

6           78. NextFoods lacks sufficient information to form a belief as to the truth  
7 of the allegations of paragraph 78 of the FAC and therefore denies them.

8           79. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 79 of the FAC and therefore denies them.

10          80. NextFoods lacks sufficient information to form a belief as to the truth  
11 of the allegations of paragraph 80 of the FAC and therefore denies them.

12          81. NextFoods lacks sufficient information to form a belief as to the truth  
13 of the allegations of paragraph 81 of the FAC and therefore denies them.  
14 Answering further, NextFoods responds that the study cited in footnote seventy-six  
15 speaks for itself and, without admitting the accuracy or truth of that study or its  
16 findings, denies that Plaintiff’s characterization of the study is accurate.

17          82. NextFoods lacks sufficient information to form a belief as to the truth  
18 of the allegations of paragraph 82 of the FAC and therefore denies them.  
19 Answering further, NextFoods responds that the study cited in footnote seventy-  
20 seven speaks for itself and, without admitting the accuracy or truth of that study or  
21 its findings, denies that Plaintiff’s characterization of the study is accurate.

22          83. NextFoods lacks sufficient information to form a belief as to the truth  
23 of the allegations of paragraph 83 of the FAC and therefore denies them.  
24 Answering further, NextFoods responds that the study cited in footnote seventy-  
25 eight speaks for itself and, without admitting the accuracy or truth of that study or its  
26 findings, denies that Plaintiff’s characterization of the study is accurate.

27          84. NextFoods lacks sufficient information to form a belief as to the truth  
28 of the allegations of paragraph 84 of the FAC and therefore denies them.

1 Answering further, NextFoods responds that the study cited in footnote seventy-nine  
2 speaks for itself and, without admitting the accuracy or truth of that study or its  
3 findings, denies that Plaintiff’s characterization of the study is accurate.

4 85. NextFoods lacks sufficient information to form a belief as to the truth  
5 of the allegations of paragraph 85 of the FAC and therefore denies them.

6 Answering further, NextFoods responds that the study cited in footnote eighty  
7 speaks for itself and, without admitting the accuracy or truth of that study or its  
8 findings, denies that Plaintiff’s characterization of the study is accurate.

9 86. NextFoods lacks sufficient information to form a belief as to the truth  
10 of the allegations of paragraph 86 of the FAC and therefore denies them.

11 Answering further, NextFoods responds that the study cited in footnote eighty-one  
12 speaks for itself and, without admitting the accuracy or truth of that study or its  
13 findings, denies that Plaintiff’s characterization of the study is accurate.

14 87. NextFoods lacks sufficient information to form a belief as to the truth  
15 of the allegations of paragraph 87 of the FAC and therefore denies them.

16 Answering further, NextFoods responds that the study cited in footnote eighty-two  
17 speaks for itself and, without admitting the accuracy or truth of that study or its  
18 findings, denies that Plaintiff’s characterization of the study is accurate.

19 88. NextFoods lacks sufficient information to form a belief as to the truth  
20 of the allegations of paragraph 88 of the FAC and therefore denies them.

21 Answering further, NextFoods responds that the study cited in footnote eighty-three  
22 speaks for itself and, without admitting the accuracy or truth of that study or its  
23 findings, denies that Plaintiff’s characterization of the study is accurate.

24 89. NextFoods lacks sufficient information to form a belief as to the truth  
25 of the allegations of paragraph 89 of the FAC and therefore denies them.

26 Answering further, NextFoods responds that the study cited in footnote eighty-four  
27 speaks for itself and, without admitting the accuracy or truth of that study or its  
28 findings, denies that Plaintiff’s characterization of the study is accurate.

1           90. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 90 of the FAC and therefore denies them.  
3 Answering further, NextFoods responds that the study cited in footnote eighty-five  
4 speaks for itself and, without admitting the accuracy or truth of that study or its  
5 findings, denies that Plaintiff’s characterization of the study is accurate.

6           91. NextFoods lacks sufficient information to form a belief as to the truth  
7 of the allegations of paragraph 91 of the FAC and therefore denies them.  
8 Answering further, NextFoods responds that the study cited in footnote eighty-six  
9 speaks for itself and, without admitting the accuracy or truth of that study or its  
10 findings, denies that Plaintiff’s characterization of the study is accurate.

11           92. NextFoods lacks sufficient information to form a belief as to the truth  
12 of the allegations of paragraph 92 of the FAC and therefore denies them.  
13 Answering further, NextFoods responds that the study cited in footnote eighty-seven  
14 speaks for itself and, without admitting the accuracy or truth of that study or its  
15 findings, denies that Plaintiff’s characterization of the study is accurate.

16           93. NextFoods lacks sufficient information to form a belief as to the truth  
17 of the allegations of paragraph 93 of the FAC and therefore denies them.  
18 Answering further, NextFoods responds that the documents cited in footnotes  
19 eighty-eight, eighty-nine, and ninety speak for themselves and, without admitting  
20 the accuracy or truth of any statements in such documents, denies that Plaintiff’s  
21 characterization of the documents is accurate.

22           94. NextFoods lacks sufficient information to form a belief as to the truth  
23 of the allegations of paragraph 94 of the FAC and therefore denies them.  
24 Answering further, NextFoods responds that the document cited in footnote ninety-  
25 one speaks for itself and, without admitting the accuracy or truth of any statements  
26 in such document, denies that Plaintiff’s characterization of the document is  
27 accurate.

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1           95. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 95 of the FAC and therefore denies them.

3           96. NextFoods admits that it sold and continues to sell GoodBelly  
4 JuiceDrinks in California and other states in sizes that have included at times 32-  
5 ounce and 15.2-ounce sizes in various flavors. NextFoods denies all remaining  
6 allegations in paragraph 96.

7           97. NextFoods admits that the serving size stated on the JuiceDrinks label  
8 is 8 oz. NextFoods admits that the amount of sugar per serving size varies by flavor.  
9 NextFoods denies all remaining allegations in paragraph 97.

10          98. NextFoods denies the allegations in paragraph 98.

11          99. NextFoods denies the allegations in paragraph 99.

12          100. NextFoods denies the allegations in paragraph 100.

13          101. NextFoods denies the allegations in paragraph 101.

14          102. NextFoods denies the allegations in paragraph 102.

15          103. NextFoods denies the allegations in paragraph 103.

16          104. NextFoods denies the allegations in paragraph 104.

17          105. NextFoods denies the allegations in paragraph 105.

18          106. NextFoods denies the allegations in paragraph 106.

19          107. NextFoods lacks sufficient information to form a belief as to the truth  
20 of the allegations of paragraph 107 of the FAC and therefore denies them.

21          108. NextFoods lacks sufficient information to form a belief as to the truth  
22 of the allegations of paragraph 108 of the FAC and therefore denies them.

23          109. NextFoods lacks sufficient information to form a belief as to the truth  
24 of the allegations of paragraph 109 of the FAC and therefore denies them.

25          110. NextFoods lacks sufficient information to form a belief as to the truth  
26 of the allegations of paragraph 110 of the FAC and therefore denies them.

27          111. NextFoods denies the allegations in paragraph 111 of the FAC.

28          112. NextFoods denies the allegations in paragraph 112 of the FAC.

1 113. NextFoods denies the allegations in paragraph 113 of the FAC.

2 114. NextFoods lacks sufficient information to form a belief as to the truth  
3 of the allegations of paragraph 114 of the FAC and therefore denies them.

4 115. NextFoods lacks sufficient information to form a belief as to the truth  
5 of the allegations of paragraph 115 of the FAC and therefore denies them.

6 116. NextFoods lacks sufficient information to form a belief as to the truth  
7 of the allegations of paragraph 116 of the FAC and therefore denies them.

8 117. NextFoods lacks sufficient information to form a belief as to the truth  
9 of the allegations of paragraph 117 of the FAC and therefore denies them.

10 118. NextFoods lacks sufficient information to form a belief as to the truth  
11 of the allegations of paragraph 118 of the FAC and therefore denies them.

12 119. NextFoods lacks sufficient information to form a belief as to the truth  
13 of the allegations of paragraph 119 of the FAC and therefore denies them.

14 120. NextFoods lacks sufficient information to form a belief as to the truth  
15 of the allegations of paragraph 120 of the FAC and therefore denies them.

16 121. NextFoods lacks sufficient information to form a belief as to the truth  
17 of the allegations of paragraph 121 of the FAC and therefore denies them.

18 122. NextFoods lacks sufficient information to form a belief as to the truth  
19 of the allegations of paragraph 122 of the FAC and therefore denies them.

20 123. NextFoods lacks sufficient information to form a belief as to the truth  
21 of the allegations of paragraph 123 of the FAC and therefore denies them.

22 124. NextFoods lacks sufficient information to form a belief as to the truth  
23 of the allegations of paragraph 124 of the FAC and therefore denies them.

24 125. NextFoods lacks sufficient information to form a belief as to the truth  
25 of the allegations of paragraph 125 of the FAC and therefore denies them.

26 126. NextFoods lacks sufficient information to form a belief as to the truth  
27 of the allegations of paragraph 126 of the FAC and therefore denies them.

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1           127. NextFoods lacks sufficient information to form a belief as to the truth  
2 of the allegations of paragraph 127 of the FAC and therefore denies them.

3           128. NextFoods lacks sufficient information to form a belief as to the truth  
4 of the allegations of paragraph 128 of the FAC and therefore denies them.

5           129. NextFoods lacks sufficient information to form a belief as to the truth  
6 of the allegations of paragraph 129 of the FAC and therefore denies them.

7           130. NextFoods lacks sufficient information to form a belief as to the truth  
8 of the allegations of paragraph 130 of the FAC and therefore denies them.

9           131. NextFoods lacks sufficient information to form a belief as to the truth  
10 of the allegations of paragraph 131 of the FAC and therefore denies them.

11           132. NextFoods lacks sufficient information to form a belief as to the truth  
12 of the allegations of paragraph 132 of the FAC and therefore denies them.

13           133. NextFoods lacks sufficient information to form a belief as to the truth  
14 of the allegations of paragraph 133 of the FAC and therefore denies them.

15           134. NextFoods lacks sufficient information to form a belief as to the truth  
16 of the allegations of paragraph 134 of the FAC and therefore denies them.

17           135. NextFoods lacks sufficient information to form a belief as to the truth  
18 of the allegation that Plaintiff relied on particular statements and therefore denies  
19 such allegation. NextFoods denies all remaining allegations in paragraph 135.

20           136. NextFoods lacks sufficient information to form a belief as to the truth  
21 of allegations regarding the circumstances under which Plaintiff would or would not  
22 have purchased Probiotic JuiceDrinks and therefore denies such allegations on this  
23 basis. NextFoods denies all remaining allegations in paragraph 136.

24           137. NextFoods denies the allegations in paragraph 137.

25           138. NextFoods denies the allegations in paragraph 138.

26           139. NextFoods lacks sufficient information to form a belief as to the truth  
27 of allegations regarding Plaintiff's willingness or unwillingness to purchase  
28 Probiotic JuiceDrinks under any particular circumstances and therefore denies such

1 allegations on this basis. NextFoods denies all remaining allegations in paragraph  
2 139.

3 140. NextFoods lacks sufficient information to form a belief as to the truth  
4 of allegations regarding the circumstances under which Plaintiff would or would not  
5 have purchased Probiotic JuiceDrinks and therefore denies such allegations on this  
6 basis. NextFoods denies all remaining allegations in paragraph 140.

7 141. NextFoods denies the allegations in paragraph 141.

8 142. NextFoods denies the allegations in paragraph 142.

9 143. NextFoods denies the allegations in paragraph 143.

10 144. NextFoods admits that Plaintiff seeks to represent a class of persons in  
11 California who, at any time from four years preceding the date of the filing of the  
12 Complaint to the time a class is notified purchased, for personal or household use,  
13 and not for resale or distribution, any JuiceDrinks. NextFoods denies all remaining  
14 allegations in paragraph 144.

15 145. NextFoods denies the allegations in paragraph 145.

16 146. NextFoods denies the allegations in paragraph 146.

17 147. NextFoods denies the allegations in paragraph 147.

18 148. NextFoods denies the allegations in paragraph 148.

19 149. NextFoods denies the allegations in paragraph 149.

20 150. NextFoods denies the allegations in paragraph 150.

21 151. NextFoods denies the allegations in paragraph 151.

22 152. NextFoods denies the allegations in paragraph 152.

23 153. NextFoods admits that Plaintiff realleges and incorporates the  
24 allegations elsewhere in the Complaint as if set forth in full in paragraph 153.  
25 NextFoods repeats and incorporates by reference its answers to allegations  
26 elsewhere in the Complaint as if set forth in full.

27 154. Admit.

28 155. NextFoods denies the allegations in paragraph 155.

1 156. Admit.

2 157. NextFoods denies the allegations in paragraph 157.

3 158. NextFoods denies the allegations in paragraph 158.

4 159. NextFoods denies the allegations in paragraph 159.

5 160. NextFoods denies the allegations in paragraph 160.

6 161. NextFoods denies the allegations in paragraph 161.

7 162. NextFoods denies the allegations in paragraph 162.

8 163. NextFoods denies the allegations in paragraph 163.

9 164. NextFoods admits that Plaintiff seeks an order for the restitution of all  
10 monies from the sale of Probiotic JuiceDrinks. NextFoods denies all remaining  
11 allegations in paragraph 164.

12 165. NextFoods denies the allegations in paragraph 165.

13 166. NextFoods admits that Plaintiff realleges and incorporates the  
14 allegations elsewhere in the Complaint as if set forth in full in paragraph 166.  
15 NextFoods repeats and incorporates by reference its answers to allegations  
16 elsewhere in the Complaint as if set forth in full.

17 167. Admit.

18 168. Admit.

19 169. NextFoods denies the allegations in paragraph 169.

20 170. NextFoods denies the allegations in paragraph 170.

21 171. NextFoods denies the allegations in paragraph 171.

22 172. NextFoods denies the allegations in paragraph 172.

23 173. NextFoods denies the allegations in paragraph 173.

24 174. NextFoods denies the allegations in paragraph 174.

25 175. NextFoods admits that Plaintiff realleges and incorporates the  
26 allegations elsewhere in the Complaint as if set forth in full in paragraph 175.  
27 NextFoods repeats and incorporates by reference its answers to allegations  
28 elsewhere in the Complaint as if set forth in full.

1 176. Admit.

2 177. NextFoods denies the allegations in paragraph 177.

3 178. NextFoods denies the allegations in paragraph 178.

4 179. NextFoods denies the allegations in paragraph 179.

5 180. NextFoods admits that more than 30 days before filing this lawsuit,  
6 Plaintiff sent notice of her claims to NextFoods by certified mail, return receipt  
7 requested. NextFoods denies all remaining allegations in paragraph 180.

8 181. NextFoods denies the allegations in paragraph 181.

9 182. Admit.

10 183. NextFoods admits that Plaintiff realleges and incorporates the  
11 allegations elsewhere in the Complaint as if set forth in full in paragraph 183.  
12 NextFoods repeats and incorporates by reference its answers to allegations  
13 elsewhere in the Complaint as if set forth in full.

14 184. NextFoods denies the allegations in paragraph 184.

15 185. NextFoods denies the allegations in paragraph 185.

16 186. NextFoods denies the allegations in paragraph 186.

17 187. NextFoods denies the allegations in paragraph 187.

18 188. NextFoods denies the allegations in paragraph 188.

19 189. NextFoods admits Plaintiff, on behalf of herself, all others similarly  
20 situated, and the general public, seeks the relief and remedies stated in paragraph  
21 189. NextFoods denies Plaintiff or any other person or the general public is entitled  
22 to such relief.

23 190. NextFoods admits Plaintiff seeks a jury trial.

24 **AFFIRMATIVE DEFENSES**

25 In further response to Plaintiff’s FAC, subject to discovery, based on  
26 information and belief, and without assuming the burden of proof on any issue for  
27 which Plaintiff bears the burden of proof, NextFoods asserts the following  
28 additional affirmative defenses. By designating the following as affirmative

1 defenses, NextFoods does not in any way waive or limit any defenses which are or  
2 may be raised by its denials, allegations, and averments set forth herein. These  
3 defenses are pled in the alternative, are raised to preserve the rights of NextFoods to  
4 assert such defenses, and are asserted without prejudice to NextFoods' ability to  
5 raise other and further defenses.

6 **FIRST AFFIRMATIVE DEFENSE**

7 (Constitutionally Protected Speech)

8 Plaintiff's claims are barred, in whole or in part, because NextFoods'  
9 commercial speech was not misleading and is protected under the First Amendment  
10 of the United States Constitution and the California Constitution.

11 **SECOND AFFIRMATIVE DEFENSE**

12 (Statute of Limitations)

13 The FAC, and each alleged claim contained therein, is barred, in whole or in  
14 part, by the applicable statute of limitations.

15 **THIRD AFFIRMATIVE DEFENSE**

16 (Preemption)

17 Plaintiff's claims are preempted in whole or in part under the federal law,  
18 including but not limited to the Nutrition Labeling and Education Act, 21 U.S.C. §  
19 341 *et seq.*

20 **FOURTH AFFIRMATIVE DEFENSE**

21 (Failure to Mitigate Damages)

22 Plaintiff, any class members and/or the general public failed or refused to  
23 exercise reasonable care and diligence to avoid loss and minimize damages and,  
24 therefore, may not recover for losses that could have been prevented by reasonable  
25 efforts on their part, or by expenditures which might reasonably have been made.  
26 Therefore, their recovery, if any, should be reduced by the failure of them to  
27 mitigate their damages, if any.

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**FIFTH AFFIRMATIVE DEFENSE**

(Estoppel)

Plaintiff’s claims are barred in whole or in part by the doctrine of estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

Plaintiff’s claims and all forms of relief sought are barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

(Laches)

Plaintiff’s claims and all forms of relief sought are barred by the doctrine of laches.

**EIGHTH AFFIRMATIVE DEFENSE**

(Compliance with Law)

Plaintiff’s claims are barred in whole or in part because the labeling of the challenged products complied with all applicable laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

(Waiver)

Each and every cause of action in the FAC is barred by the doctrine of waiver.

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**TENTH AFFIRMATIVE DEFENSE**

(Reservation of Additional Defenses)

NextFoods reserves the right to amend its Answer and assert additional affirmative defenses as they become available or apparent to it through discovery in this matter or otherwise.

Dated: March 30, 2023

**BROWNLIE HANSEN LLP**

/s/ Ryan T. Hansen

RYAN T. HANSEN

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Attorneys for Defendant NextFoods, Inc.