

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TANYA ZUCKERBROT, MS, RD, and :
TANYA ZUCKERBROT NUTRITION, LLC, d/b/a :
F-FACTOR, : Index No.

Plaintiffs, :

JURY TRIAL DEMANDED

v. :

EMILY GELLIS LANDE, :

Defendant. :

X

COMPLAINT

Plaintiffs, Tanya Zuckerbrot, MS, RD, and Tanya Zuckerbrot Nutrition, LLC, d/b/a/
F-Factor (collectively, “Plaintiffs”) by their attorneys, Winston & Strawn LLP and Davis Goldberg
& Galper, PLLC, for their Complaint for financial damages, reputational damages, punitive
damages, and injunctive relief against Defendant Emily Gellis Lande, allege as follows:

NATURE OF THE ACTION

1. This action arises from an estimated 4,500-plus false, defamatory, and/or harassing
statements pervasively and continuously published on the internet by Emily Gellis Lande
(hereinafter “Gellis” because she uses @emilygellis on Instagram) over an approximately 75-day
period about: (1) the F-Factor diet and F-Factor products; (2) Tanya Zuckerbrot Nutrition, LLC,
d/b/a F-Factor (hereinafter “F-Factor”), as a company, and its employees; and (3) Tanya
Zuckerbrot, MS, RD, personally (hereinafter “Zuckerbrot”). These estimated 4,500-plus false,
defamatory, and/or harassing statements were made by Gellis on her public Instagram account in

the form of written posts and over 750 minutes of videos, including over 400 minutes of videos that, as of the date of the filing of this Complaint, have been saved to Gellis's Instagram TV page.

2. The relevant time period in which Gellis made these estimated 4,500-plus false, defamatory, and/or harassing statements is from July 22, 2020, up to the date of the filing of this Complaint.

3. Tanya Zuckerbrot, MS, RD, is an internationally known dietitian, a two-time bestselling author, and the creator and CEO of the renowned F-Factor Diet—a liberating and sustainable approach to weight loss and optimal health based on scientifically proven fiber-rich nutrition. Zuckerbrot has worked in private practice for more than 20 years and has advised thousands of clients, including celebrities, business and government leaders, and media personalities, to improve their health and manage their weight through nutrition. In addition to working with private clients, Zuckerbrot is a lecturer, consultant, spokesperson, and national media personality. In 2017, Zuckerbrot transitioned from clinician to CEO and oversaw operations of F-Factor from the ground up, releasing several successful products including F-Factor 20/20 Fiber/Protein Powders and Bars certified and produced with Zuckerbrot's philosophy and approach. With Zuckerbrot's leadership, F-Factor employs more than 80% women and advocates for and provides higher median salaries than the national average for registered dietitians. As founder and CEO, Zuckerbrot instilled a strong ethos for F-Factor to help those in need. For example, during the COVID-19 pandemic, F-Factor donated over 250,000 F-Factor Bars to over 200 hospitals, food banks, and shelters across the country to support essential workers and those facing food insecurity. Zuckerbrot's philanthropy extends outside the office as well; she is a board member of several philanthropic organizations. Zuckerbrot holds a master's degree in Nutrition and Food Studies from New York University; is an accredited member of the American Dietetic

Association, the Greater New York Dietetic Association, and the American Association for Diabetes Educators; and is a member of the National Association of Professional Women. Zuckerbrot holds a Commission of Dietetic Registration (“CDR”) Certificate of Training in Adult Weight Management, as well as a CDR Certificate of Training in Childhood and Adolescent Weight Management.

4. F-Factor is a major success and, before Gellis’s sustained unlawful attacks, was generating over \$1 million/month in revenue and attracting the committed attention of capital investors. This made sense because the F-Factor diet and F-Factor products—powders and bars that combined high-fiber and high-protein—are a major success that medical professionals and scientific studies establish are healthy and safe and that filled a gap in the market for consumers.

5. Gellis’s illegal, abusive, and harassing social media misconduct has caused, and continues to cause, devastating financial damages and enormous emotional distress to Plaintiffs by defaming and/or harassing Zuckerbrot, F-Factor, and the F-Factor diet and products. Moreover, Gellis’s conduct was facilitated and made possible by Facebook and Instagram, which were repeatedly and comprehensively notified about Gellis’s gross abuse of their platforms. Nevertheless, Facebook and Instagram knowingly and intentionally refused to take any action to prevent or stop Gellis’s outrageous conduct.

6. Since beginning her campaign against F-Factor and Zuckerbrot, Gellis has published numerous outlandish, false, and defamatory statements about the F-Factor diet and F-Factor products, including the following:

- i. Gellis falsely stated that the F-Factor diet and products are unsafe and cause people substantial emotional and physical harm;

- ii. Gellis falsely stated that she had evidence that someone died as a result of consuming F-Factor products;
- iii. Gellis falsely stated that she had evidence that F-Factor products caused a woman to miscarry a pregnancy;
- iv. Gellis falsely stated that F-Factor encouraged pregnant women to ingest, at unsafe levels, arsenic and a product called guar gum four times a day;
- v. Gellis falsely stated that F-Factor products contain high levels of arsenic and therefore that the F-Factor products are unsafe;
- vi. Gellis falsely stated that she had evidence that F-Factor powder caused a heart attack;
- vii. Gellis falsely stated that the F-Factor products destroy the intestinal lining of those who consume the products;
- viii. Gellis falsely stated that she had evidence that the F-Factor diet causes eating disorders and has crippling effects on mental health;
- ix. Gellis falsely stated that she had evidence that the F-Factor diet and products cause severe gastrointestinal problems;
- x. Gellis falsely stated that F-Factor products cause severe damage to users' colons;
- xi. Gellis falsely stated that F-Factor products cause severe gastrointestinal pain that requires hospitalization;
- xii. Gellis falsely stated that F-Factor products cause hernias;
- xiii. Gellis falsely stated she had evidence that F-Factor powder causes anxiety and panic attacks; and

xiv. Gellis falsely stated that F-Factor products contain an unsafe ingredient known as guar gum and therefore that the F-Factor products are unsafe.

7. Gellis also made numerous outlandish, false, and defamatory statements about the company F-Factor and F-Factor employees, including the following:

- i. Gellis falsely stated that F-Factor and F-Factor dietitians engaged in criminal activity;
- ii. Gellis falsely stated that F-Factor violated HIPAA by disclosing confidential patient information;
- iii. Gellis falsely stated that F-Factor violated federal law by deleting negative comments posted by the public on F-Factor's social media accounts;
- iv. Gellis falsely stated that F-Factor lied to the public about the number of complaints it has received about its products;
- v. Gellis falsely stated that F-Factor required employees to sign non-disclosure agreements and falsely implied that F-Factor had something to hide;
- vi. Gellis falsely stated that F-Factor lied in a Certificate of Analysis released by F-Factor, a document that attests to the laboratory analysis of the F-Factor products;
and
- vii. Gellis falsely stated that an F-Factor employee was using or selling illegal drugs.

8. Gellis also posted numerous outlandish, false, and defamatory statements about Tanya Zuckerbrot, personally, including the following:

- i. Gellis falsely stated that Zuckerbrot threatened to kill Gellis's family;
- ii. Gellis falsely stated that Zuckerbrot poisoned people daily;
- iii. Gellis falsely stated that Zuckerbrot was engaged in criminal wrongdoing;

- iv. Gellis falsely stated that she had evidence Zuckerbrot and her family sent people to physically harm Gellis;
 - v. Gellis falsely stated that Zuckerbrot sent people to follow and intimidate Gellis;
 - vi. Gellis falsely stated that Zuckerbrot sent people to harass Gellis online;
 - vii. Gellis falsely stated that Zuckerbrot was involved in cyberbullying; and
 - viii. Gellis falsely stated that Zuckerbrot intentionally misled the public regarding the safety of F-Factor products.
9. In addition to this barrage of outlandish, false, and defamatory statements, Gellis made hundreds of additional harassing statements about F-Factor and Zuckerbrot during the same time period, including the following:
- i. On one day alone, August 30, 2020, Gellis posted videos containing numerous harassing statements, including (1) asking Zuckerbrot “where the fuck are you... are you enjoying your last moments of freedom?”; (2) accusing Zuckerbrot of “selling fucking packaged poison”; (3) comparing Zuckerbrot to Harvey Weinstein and Jeffrey Epstein; (4) abusing a pregnant F-Factor dietitian for posting a picture of pizza; (5) accusing the pregnant dietitian of harming her unborn child by consuming F-Factor products; (6) and accusing Zuckerbrot and F-Factor of encouraging pregnant women to consume large quantities of unsafe ingredients;
 - ii. In another instance, September 2, 2020, Gellis stated about Zuckerbrot and her family: “You guys are disgusting cowards and I hope the criminal justice system does its job. Fuck you, Your [sic] scum.”
 - iii. On September 8, 2020, Gellis called Zuckerbrot “despicable” and accused her of “profit[ing] off this cult like mentality.” “You are the scum of the earth. I hope we

come face to face one day so I can stare you right in the eyes and tell you what a bottom feeder you are,” Gellis wrote about Zuckerbrot. The same day, Gellis made harassing statements in a video that she broadcast on her Instagram page—stating, “Tanya is live... What a cowinkydink [coincidence]. Of course, she started a live. She’s trying to steal my thunder. What a hoe. You’s a hoe. You’s a ho, ho, ho. Merry Christmas.”;

- iv. On August 13, 2020, Gellis called Zuckerbrot a “loser cyber bully who is poisoning people” and a “fool,” while falsely stating that a harassing Instagram post Gellis received came from or at the direction of Zuckerbrot;
- v. On August 6, 2020, Gellis launched into an expletive-laced rant about Zuckerbrot and F-Factor that included many harassing statements, including accusing F-Factor of sending people to harass her and her husband;
- vi. Throughout her smear campaign, including on August 8, August 15, August 29, and September 8, 2020, Gellis referred to F-Factor as a “cult” and Zuckerbrot a “cult leader”;
- vii. On September 10, 2020, Gellis concluded a post about Zuckerbrot’s appearance on The Today Show by saying, “Tanya... go FUCK YOURSELF. Quote me.”;
- viii. On August 12, 2020, Gellis again falsely accused Zuckerbrot and F-Factor of harassing Gellis online. In so doing, she called Zuckerbrot and F-Factor “disgusting” and “the definition of losers”; and
- ix. On August 21, 2020, Gellis taunted Zuckerbrot and “the F-Factor team,” calling them “so desperate,” and threatening, “it’s going to be a very bumpy, ah, next couple of months”.

10. Gellis's uncontrolled, unchecked, and continuous false statements and defamatory and/or harassing conduct starkly displays the harms of social media in its current form. Just a few dedicated social media users/publishers can cause an incredible amount of emotional and financial damage in a short time without consequence. Social media platform companies—Instagram and Facebook, for example—*could* do something about it. In fact, to appease consumers and the public, these companies promise and act like they will reasonably regulate what is posted on their platforms but they do *not* actually do so in any meaningful way.

11. Private social media platform companies Facebook, Twitter, and Instagram were founded and gained rapid popularity in the early 2000s. While each platform has a slightly different target audience and strategic objectives, the basic user experience is the same: users can either publicly post (a message, photo, or video) to their followers or privately send a direct message to other users of that social media platform. Thus, the era of private companies operating mass communication social networks began. Many eyes shifted from the front pages of curated, edited, and source-checked newspapers to these unregulated social media platforms. These social media platforms provide certain well-known communication benefits to individuals, businesses, and society as a whole. But these social media platforms also allow wrongdoers like Gellis to make false, defamatory, and/or harassing statements to single-handedly destroy a person's reputation and the reputation and commercial viability of carefully built businesses.

12. In 1996, prior to the founding of these social media platform companies, Congress created the Communications Decency Act, which today shields social media platform companies from liability for content published by their users. *See* 47 U.S.C. § 230. As a result, and all because of a law passed prior to their existence, these private social media platform companies are insulated

from liability for any harm caused by their users posting false, defamatory, and/or harassing information and statements on their platform.

13. Today, it is readily apparent that these social media platform companies cause enormous and serious financial and emotional harm to third-party individuals and businesses. In fact, several published studies show that the nature of a user sitting behind a computer screen created a different social environment—one less constrained from the fear of repercussions—than in-person interactions. This led to an increase in bullying of American youth—with extreme examples leading to well-publicized youth suicides. This woke up the American public and regulatory agencies, showing that social media communications, under certain circumstances, can be extremely harmful to individuals’ reputations, the financial stability of small businesses, and to society generally. To make matters worse, the advent of smartphones means victims of social media misconduct cannot leave social media misconduct behind, and instead, essentially carry it in their pocket all day, every day.

14. In a thinly veiled attempt to avoid future regulatory action, these private social media companies, including Facebook and Instagram, created Terms of Use and Community Guidelines¹ under the guise of imposing meaningful self-regulation of social media misconduct occurring on their platforms. For example, Instagram’s Terms of Use state that a user of the Instagram platform “can’t do anything unlawful, misleading, or fraudulent or for an illegal or unauthorized purpose,” and “can’t ... provide inaccurate information.” Since Instagram is a private

¹ See Instagram Terms of Use, https://help.instagram.com/478745558852511?utm_campaign=Tactical-Social-Media&utm_medium=facebook&utm_source=tsomedia. Users are instructed not to do “anything unlawful, misleading, or fraudulent.” The terms allow Instagram to remove any content and stop providing services to a user who violates the terms of use. The “Community Guidelines” asks that users “[r]espect other members of the Instagram community” and prohibits “content that targets private individuals to degrade or shame them, personal information meant to blackmail or harass someone, and repeated unwanted messages.” Community Guidelines, [https://help.instagram.com/477434105621119/?helpref=hc_fnav&bc\[0\]=Instagram%20Help&bc\[1\]=Privacy%20and%20Safety%20Center](https://help.instagram.com/477434105621119/?helpref=hc_fnav&bc[0]=Instagram%20Help&bc[1]=Privacy%20and%20Safety%20Center).

social media company that has a contract with its users, Instagram is unrestrained by users' First Amendment rights and has the legal right to "remove any content or information [users] share on the Service if [Instagram] believes that it violates these Terms of Use." Additionally, Instagram's Community Guidelines state that users must "follow the law" and "respect other members of the Instagram community." Instagram promises to "remove content that targets private individuals to degrade or shame them" and "repeated unwanted messages" violating its Community Guidelines. Instagram was obviously hoping that its promise to use its Terms of Use to prevent serious social media misconduct would placate the public, government regulatory authorities, and Congress so that its platform immunity would continue. However, as happened here, social media platforms frequently do not fulfill their assumed and required legal duty to carry out the promises they made to the public in their voluntarily undertaken policing requirements.

15. In this case, Zuckerbrot and F-Factor are victims of Instagram's decision not to enforce its Terms of Use and Community Guidelines with respect to Gellis's conduct and to breach its assumed duty to enforce these provisions.

16. Starting in late July 2020, Zuckerbrot began reporting Gellis's Instagram communications discussed above to Facebook (Instagram's parent company) because Gellis's communications clearly and blatantly violated the Terms of Use and Community Guidelines that Instagram promised to enforce.

17. For over a month, on multiple occasions, Zuckerbrot provided detailed information to the appropriate Facebook representatives about Gellis's outrageous and blatant conduct on Instagram and demanded that Facebook take appropriate action to prevent and stop it. For instance, on August 31, 2020, Zuckerbrot sent screenshots of Gellis drawing prison garb on top of a photo of Zuckerbrot, writing threats to F-Factor's registered dietitians, exposing the home

address of Zuckerbrot, her children, and her husband, and reposting unsubstantiated allegations about the health effects of F-Factor's products.

18. To assist Facebook in evaluating the sheer volume of Gellis's outlandish and unlawful behavior, on September 1, 2020, Zuckerbrot sent Facebook additional evidence via an Excel spreadsheet documenting Gellis's behavior. Zuckerbrot also sent several videos, including a video where Gellis admitted to republishing a false accusation that F-Factor's products caused a miscarriage. This provided Facebook with overwhelming evidence of social media misconduct by Gellis that clearly violated Instagram's Terms of Use and Community Guidelines.

19. On August 31 and September 1, 2020, Zuckerbrot's husband wrote to Facebook to explain that Gellis's conduct, which violated its Terms of Use and Community Guidelines, "single-handedly ruined my wife's career and candidly [is] ruining her emotional state." "[M]y wife is devolving in front of my eyes," he wrote. He begged that Facebook have "some accountability applied to [its] platform and a sincere recognition that when misused, Instagram can cause serious harm." On September 5, 2020, he asked Facebook to "explain to me how these posts are not cyber-bullying, stalking, harassment and defamation."

20. Despite having overwhelming evidence that Gellis violated Instagram's Terms of Use and Community Guidelines, Facebook intentionally refused to do anything to prevent or stop the serious and harmful social media misconduct she directed at Zuckerbrot and F-Factor.

21. Facebook also became aware that Gellis's social media misconduct viciously attacked a current F-Factor employee, Jessica Rossman (hereinafter "Rossman"), with extreme cyberbullying on Instagram. On several occasions, Rossman directly communicated with Facebook authorities and provided them detailed information about Gellis's serious social media misconduct directed personally at Rossman. This included Gellis posting unlawful, false,

shameful, and degrading content about Rossman's family being cocaine dealers. Rossman explained to Facebook how Gellis used the Instagram platform, in violation of its Terms of Use and Community Guidelines, to destroy "my career, my business, my boss, my reputation, and my name." As with Zuckerbrot, Facebook did nothing.

22. Hiding behind its Section 230 immunity, Instagram is currently allowed to provide a platform for social media users to abuse others and to shut down thriving, law-abiding businesses. Gellis and other social media users know this. In fact, on August 18, 2020, Gellis confidently and brazenly posted how Instagram will never do anything to take down her account.

23. And so, for approximately 75 consecutive days, Gellis has publicly broadcast, to her growing audience of more than 208,000 followers, 4,500-plus false, defamatory, and/or harassing statements about the safety of the F-Factor diet and products, about F-Factor and its employees, and about Zuckerbrot personally. Gellis has done so and continues to do so with flagrant disregard for the veracity of the published statements and knowing of, and even encouraging, the harmful effect of those statements on Zuckerbrot and F-Factor.

24. On several occasions, Zuckerbrot, and people connected to Zuckerbrot, have either made publicly available or directly provided substantial information to Gellis that established that Gellis was publishing false and defamatory information about the F-Factor diet and products, F-Factor as a company and its employees, and Zuckerbrot, personally. In addition, people connected to Zuckerbrot demanded that Gellis stop this irresponsible and outrageous social media conduct. Despite having evidence that established she was publishing false and defamatory information and being requested to stop, Gellis continued her same course of social media misconduct directed at the F-Factor diet and products, F-Factor and its employees, and Zuckerbrot, personally.

25. Engaging in this social media misconduct has benefited Gellis commercially, and so Gellis is motivated to continue to make false, defamatory, and/or harassing statements about F-Factor and Zuckerbrot, even when Gellis knows the statements are damaging because they are false and/or harassing. As an Instagram influencer, Gellis is more valuable to brands the more followers she can attract. An Instagram influencer uses his or her account to promote brands or products in exchange for compensation. For example, a fashion influencer posts links to the clothes he or she is wearing in his or her Instagram photos so that the viewer can purchase the item. Gellis frequently does this. In return for these posted links, the company selling the product linked typically compensates the influencer based on how many sales the company made that came through the posted link. On information and belief, Gellis is compensated for using this same format. Now, dragging F-Factor and Zuckerbrot through the mud has attracted attention, and thus dollars for Gellis. Since launching her smear campaign against Zuckerbrot and F-Factor, Gellis has grown her Instagram following by nearly 50,000 followers. Gellis has personally benefited from her illegal attacks on F-Factor and Zuckerbrot in other ways too, including because it caused her to be featured in articles on various internet platforms and in *The New York Times*, and provided her the opportunity to appear on The Today Show.

26. Gellis's social media misconduct described above has specifically caused Plaintiffs to suffer enormous financial harm, reputational damage, and devastating emotional distress. Since July 2020, when Gellis's misconduct began, F-Factor's well-established monthly sales revenue has dropped from approximately \$1 million/month to less than \$90,000/month, as a direct result of Gellis's misconduct. In addition, right before Gellis's misconduct began, there was an investor who was days away from making a significant capital investment in F-Factor at a pre-money

valuation of \$40 million. As a result of Gellis's social media misconduct, that capital investor has completely withdrawn his commitment to make his investment in F-Factor.

27. Gellis's social media misconduct described above has also caused devastating emotional distress. Zuckerbrot, who is normally a lively, positive, and outgoing woman, has become withdrawn and is sometimes unable to get out of bed. After years of regularly posting videos of herself engaging with other F-Factor employees and connecting with clients on Instagram, she has virtually withdrawn from social media communications. In short, Gellis's conduct has caused Zuckerbrot to fear for her safety, her employees' safety, and the safety of her family.

28. Zuckerbrot and F-Factor seek substantial financial damages, reputational damages, punitive damages, and preliminary and permanent injunctive relief.

PARTIES

29. Plaintiff Tanya Zuckerbrot Nutrition, LLC, d/b/a/ F-Factor, is a Delaware corporation with its principal place of business in New York, New York.

30. Plaintiff Tanya Zuckerbrot is an individual and a Registered Dietitian licensed in the State of New York, who resides in New York City, New York.

31. Defendant Emily Gellis (also known as Emily Gellis Lande) is an individual who, on information and belief, resides in New York, New York.

JURISDICTION AND VENUE

32. This Court has personal jurisdiction over Gellis pursuant to N.Y. C.P.L.R. § 301 because Gellis is domiciled in the State of New York.

33. This Court has subject matter jurisdiction pursuant to section 7(a) of the New York Constitution.

34. Venue is proper under N.Y. C.P.L.R. § 503, because F-Factor’s principal place of business is in New York County.

FACTUAL ALLEGATIONS

I. Tanya Zuckerbrot and F-Factor

35. Zuckerbrot is a Registered Dietitian and the Founder and CEO of F-Factor—at one point a premier service and product-based company specializing in the health and wellness space. In addition to being a well-established private practice, F-Factor manufactures and sells high-fiber and protein powder and bars. Before creating F-Factor, Zuckerbrot built a highly successful clinical nutrition practice from the ground up, using her nutrition expertise to help her clients achieve positive health outcomes. Building on her education and clinical experience, Zuckerbrot then developed a groundbreaking dietary program focused on high-fiber foods, the “F-Factor” diet, and wrote two books about the health benefits of fiber (*The F-Factor Diet*, published in 2006 and updated and republished in 2018, and *The Miracle Carb Diet: Make Calories and Fat Disappear—with Fiber!*, published in 2012). In 2012, Zuckerbrot founded F-Factor, a plaintiff here. In 2018, to help individuals seeking to incorporate additional fiber into their diets and to fill the need for more specialized fiber products, F-Factor developed and launched F-Factor Fiber/Protein Bars and F-Factor 20/20 Fiber/Protein Powder.

36. Zuckerbrot received a Bachelor’s degree from the University of Michigan in 1993 and a Master’s degree in Nutrition and Food Studies from New York University (“NYU”) in 1998.

37. During her time at NYU, Zuckerbrot completed the necessary steps to become a registered dietitian. Registered dietitians are medical professionals licensed by the State of New York. They assess nutritional needs based on age, activity level, and medical conditions such as diabetes, high blood pressure, food allergies, and obesity. Based on their initial and ongoing assessments, registered dietitians plan for and direct the provision of food appropriate for physical

and dietary needs and provide nutrition counseling, which includes advice on dietary changes. In doing so, registered dietitians integrate and apply principles derived from nutrition, biochemistry, physiology, food management, and behavioral and social sciences.²

38. To become a registered dietitian in New York, applicants must complete a rigorous process which, during Zuckerbrot's pursuit of her RD, consisted of an educational program, a registration examination, and an experiential program. While at NYU, Zuckerbrot finished the requisite course of study, passed the registration exam, and completed a one-year clinical program at NYU Medical Center. As Zuckerbrot met all of the requirements, the Commission on Dietetic Registration certified her as a Registered Dietitian in 1997.

39. In 1999, Zuckerbrot opened her own clinical nutrition practice in New York City. Its beginnings were humble: Zuckerbrot worked out of her apartment, looking up the numbers of local cardiologists and endocrinologists in the phonebook and calling them to offer dietary and nutritional services for their patients.

40. In time, Zuckerbrot began to develop working relationships with several medical doctors. As they grew to appreciate her expertise and trust her judgment, these medical doctors began to refer patients to Zuckerbrot and treat her as an extension of their medical teams.

41. As her practice expanded, Zuckerbrot began to specialize in prescribing nutrition intervention to patients with clinical issues such as diabetes, gastrointestinal disorders, and cardiovascular disease. By counselling these patients to eat certain foods and avoid others, Zuckerbrot was able to mitigate some of the immediate harmful effects of these issues and promote patient longevity and health.

² See Dietetics and Nutrition, Office of the Professions, New York State Education Department, *Dietetics and Nutrition*, <http://www.op.nysed.gov/prof/diet/#>.

42. In the ordinary course of her practice and when the clinical circumstances warranted it, Zuckerbrot would prescribe high-fiber diets to her patients. From her clinical training, Zuckerbrot knew that increasing fiber intake could help lower cholesterol levels, which would benefit her patients with cardiovascular issues. Zuckerbrot also relied on her specialized clinical knowledge in advising her diabetic patients. She knew from her clinical training that more fiber consumption could help diabetes patients maintain healthy blood-sugar levels.

43. Moreover, and in addition to receiving the intended health benefits from increased fiber intake, Zuckerbrot's clients on high-fiber diets often lost weight.

44. Pleased with the positive results they were receiving from Zuckerbrot's work, Zuckerbrot's patients began to recommend her to their friends, colleagues, and family members. As a result, Zuckerbrot received a large influx of new clients, including many people who were interested in seeing Zuckerbrot to lose weight rather than to treat any underlying medical condition. Recognizing that for certain patients, weight loss can promote overall health, Zuckerbrot began to develop dietary and nutritional solutions that would help her clients lose weight in a healthy, sustainable manner.

45. Based on the results, Zuckerbrot began to organize these solutions into a dietary program that focused on substituting high-fiber carbohydrates for refined ones, increasing overall fiber and protein intake, and ensuring consistent consumption of healthy fats. Under these general contours, she could also tailor the program to meet the particular needs of individuals.

46. Because of the successful results experienced by her clients, Zuckerbrot's already well-known private nutrition practice grew to become one of the most sought-after practices in the country. To accommodate all her new clients, Zuckerbrot hired additional registered dietitians.

47. Zuckerbrot was happy with the success of her in-person practice, but also wanted to share her dietary insights and recommendations with more people than just her in-person clients. At that time, in 2000, there was little public awareness about the benefits of high-fiber diets for weight management. Low-carbohydrate (“low-carb”) diets such as Atkins and South Beach were extremely popular, and many people did not understand the important distinctions between fiber and other less beneficial carbohydrates.

48. Zuckerbrot thus decided to write a book to share her knowledge about the benefits of a high-fiber diet with people everywhere. In 2006, Zuckerbrot published *The F-Factor Diet: Discover the Secret to Permanent Weight Loss*, which lays out a general, high-fiber dietary program customizable to fit the particular health needs of each individual. The book also includes scientific studies that demonstrate the benefits of increased fiber intake and recipes for fiber-rich dishes.

49. In 2012, Zuckerbrot wrote another book, *The Miracle Carb Diet: Make Calories and Fat Disappear—with Fiber!*, which provides additional dietary insights and recommendations, updated scientific research, and additional recipes.

50. In 2012, Zuckerbrot also founded her company, F-Factor, to help support her efforts to raise awareness of the benefits of the F-Factor diet.

51. Although F-Factor had a loyal group of followers, it took time for the diet’s popularity to grow. Initial sales of Zuckerbrot’s books were modest. Over time, however, the successful results began to speak for themselves. And because of positive word-of-mouth and glowing reviews from the media, the F-Factor diet rapidly increased in popularity around 2013.

52. As the F-Factor diet took off, Zuckerbrot began to realize that the products available in the marketplace were inadequate to meet the needs of her clients and others following the F-

Factor diet. For example, around 2016, a client asked Zuckerbrot for a high-quality protein powder that was also high in fiber. Zuckerbrot looked but could not find one. Recognizing an opportunity to grow her brand and provide healthier options to her clients and others, Zuckerbrot began looking into developing high-fiber, high-protein food products and dietary supplements under the F-Factor label.

53. In 2018, F-Factor began manufacturing high-fiber protein powders for use in shakes, smoothies, and other foods. In addition, F-Factor started making high-fiber protein bars, which consumers can eat on the go.

54. F-Factor products are made with completely safe, high-quality, and all-natural ingredients commonly used in food products and dietary supplements.

55. The main ingredients in F-Factor 20/20 Fiber/Protein Powders are organic whey protein and partially hydrolyzed guar gum (“PHGG”), a water-soluble dietary fiber derived from the *tetragonoloba* plant, also known as the guar bean.³ PHGG is commonly used in clinical nutrition to promote bowel regularity, gut bacteria health, and healthy blood sugar and cholesterol levels. PHGG is often added to food products and beverages to deliver the benefits of fiber without the negative side effects that can sometimes accompany other high-fiber sources. PHGG is FDA-approved and often used in food products and dietary supplements. There are also many clinical trials showing its safety and efficacy at high intake levels.⁴ F-Factor Fiber/Protein Powders are

³ Although they both come from the guar bean, PHGG is not guar gum and the two have vastly different properties. Guar gum is almost 250 times more viscous than PHGG. Small quantities of guar gum are sometimes used in food products as a thickener or emulsifier. If consumed in large quantities, however, guar gum can cause negative side effects. F-Factor products do *not* contain guar gum.

⁴ See Giuseppina Quartarone, *Role of PHGG as a Dietary Fiber: A Review Article*, 59 *Minerva Gastroenterologica e Dietologica* 4, 239-40 (2013), <https://pubmed.ncbi.nlm.nih.gov/24212352/> (concluding, after an extensive review of the available research, that “PHGG has been studied in both animals and humans; its safety is well known and several clinical uses are well established”); Finley et al., *Safety Assessment and Caloric Value of Partially Hydrolyzed Guar Gum*, 61 *J. Agric. Food Chem.* 8, 1756-71 (2013), <https://pubs.acs.org/doi/pdf/10.1021/jf304910k> (reviewing completed safety evaluations and finding that PHGG “appears not to offer any health risk”); Joanne L. Slavin & Norman A. Greenberg, *Partially Hydrolyzed Guar Gum: Clinical Nutrition Uses*, 19 *Nutrition* 6, 549-52 (2003),

sweetened with Stevia, a natural sugar substitute. The powders also include small amounts of flavor-enhancing ingredients such as lo han guo fruit extract, cocoa powder, and natural flavors.

56. F-Factor Fiber/Protein Bars are made with soluble corn fiber and brown rice protein concentrate, almond and peanut butters, sea salt, palm kernel oil, glycerin, and natural flavors. Like the protein powders, the bars are sweetened with Stevia. The Peanut Butter Fiber/Protein Bars also include peanut flour, chicory root fiber, and peanut oil. The Blueberry and Chocolate Brownie bars also include pea protein crisp, oats, and sunflower lecithin. The Chocolate Brownie variety also includes cocoa powder.

57. The F-Factor diet and products are completely safe when used as recommended, which is detailed in the F-Factor books and on the F-Factor website and the F-Factor product labels. Medical professionals and scientific studies establish, without doubt, that when the F-Factor diet and the F-Factor products are used as recommended, they cause no substantial negative health problems.

58. As soon as these products were introduced, F-Factor became a leading producer of high-fiber, high-protein products in the market. And for two years, sales of F-Factor products were robust. By early 2020, F-Factor was generating approximately \$1 million in gross sales from these sales per month, and in May 2020, F-Factor had gross sales of over \$1.4 million.

II. Gellis's Smear Campaign Against F-Factor and Zuckerbrot

59. In mid-July 2020, Gellis began a smear campaign to destroy Zuckerbrot and F-Factor. This campaign continues today. During this time period, Gellis has continually and repeatedly made false, defamatory, and/or harassing statements about the safety of the F-Factor

<https://www.sciencedirect.com/science/article/abs/pii/S0899900702010328> (noting that “PHGG has been used in cereals, juices, shakes, yogurt, meal replacements, soups, and baked goods and as a fiber source in enteral nutrition products” and “has undergone extensive toxicity testing and found to be safe”).

diet and F-Factor products, about F-Factor and its employees, and about Zuckerbrot personally.⁵ Since safety is the primary concern for any food-product manufacturer, these false statements about the lack of safety of the F-Factor diet and products are incredibly damaging. But Gellis did not stop there. She has attacked Zuckerbrot personally, as well as F-Factor's employees. To Zuckerbrot, Gellis's onslaught was completely unexpected. Zuckerbrot has never met Gellis and had no idea who Gellis was until she became a victim of Gellis's attacks.

a. Gellis Makes False and Defamatory Statements About the Safety of the F-Factor Diet and F-Factor Products

60. Since mid-July 2020, Gellis has made numerous social media posts stating, or claiming that she has evidence, that the F-Factor diet and products are unsafe and that Zuckerbrot and F-Factor concealed safety information from clients and ignored concerns about product safety. These are untrue.

61. For example, on July 22, 2020, Gellis posted a statement on her Instagram account⁶ that she had evidence that the F-Factor diet causes eating disorders and has "crippling effects" on mental health. Without regard for the truth, she published the following, from a purported anonymous Instagram user:

I did f factor before my wedding and lost 13 lbs in like 7 weeks. I am thankful that I didn't have last damaging effects on my body like some of these women but I had crippling effects on my mental health. I spent my honeymoon in Italy and I cried after eating pasta bc I kept doing this f factor math in my head. I was at my lowest weight and refused to look at myself in the mirror in a bathing suit after a pasta dinner. Think it definitely gave me disordered eating and I am so sad it robbed me of those amazing moments.

⁵ Upon information and belief, Gellis made additional false, defamatory, and/or harassing statements about Plaintiffs beyond those identified in this complaint. She continues to make such statements. Therefore, Plaintiffs reserve the right to amend this complaint to add additional statements.

⁶ All statements alleged in this complaint were published on Gellis's public Instagram account, unless otherwise stated.

In fact, Gellis had no evidence that the F-Factor diet or F-Factor products, when used as recommended, could ever cause a substantial health problem. Accordingly, this statement—that the F-Factor diet caused an eating disorder and has crippling effects on mental health—is false and defamatory, falsely implying that the F-Factor diet is unsafe.

62. On August 5, 2020, Gellis posted a statement that the F-Factor team deleted complaints about F-Factor to “try[] to silence” unsatisfied customers and to “attempt[] to manipulate” the story. Without regard for the truth, she wrote:

To turn a conversation about people who have been harmed by your products and turn it into a conversation about cyber bullying is a low low I didn't expect to see the f factor team go. You might not have liked how people tried to get your attention creating spam accounts but that's because you kept blocking—deleting—and trying to silence them...stop attempting to manipulate the Story.

In fact, Gellis had no evidence that the F-Factor team deleted any complaints. Accordingly, this statement—that the F-Factor team deleted complaints and tried to conceal information—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

63. On August 6, 2020, Gellis posted a statement that she had evidence that the F-Factor diet and products caused severe gastrointestinal problems. Without regard for the truth, she published the following, from a purported anonymous Instagram user: “I became very ill in March after following F-Factor for three months (GGs, powders, bars and all). I literally shit myself a few times a day and couldn't keep any food down for two weeks. No lie.” In fact, Gellis had no evidence that the F-Factor diet or F-Factor products, when used as recommended, could ever cause substantial health problems. Accordingly, this statement—that the F-Factor diet and products caused substantial gastrointestinal health problems—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

64. On August 18, 2020, Gellis posted that she had evidence that a woman had a miscarriage linked to consumption of F-Factor products. Without regard for the truth, she published the following, from a purported anonymous Instagram user:

I miscarried 9 weeks & they said there were high traces of lead in my blood that could have been the reason I miscarried. I never even thought about the powders/bars etc. I hired a specialist to come to my apartment for \$10K and run all these crazy tests thinking maybe there was a lead based paint in my apartment as we live in a coop and I'm sure you know the apartments are so old! I am freaking out. I had a miscarriage because of these damn powders. I cried all week reading these as I put 2 and 2 together. I remember the doctor saying after the miscarriage, your blood work came back and there was something very odd.... You have high levels of lead. I am beside myself. I never would have known – one of my friends said to me – did you hear what's going on with TZ/FFactor? She knew I went....

In fact, Gellis had no evidence that the F-Factor diet or F-Factor products, when used as recommended, could ever cause substantial health problems. Accordingly, this statement—that the F-Factor diet and products caused a pregnancy miscarriage—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

65. On August 21, 2020, Gellis posted that she had evidence that F-Factor products contain guar gum and that the products are unsafe. Without regard for the truth, and knowing that the F-Factor 20/20 Fiber/Protein powder does not contain guar gum, she published the following from someone who refused to provide his/her name but identified himself/herself as a Physician Assistant and Registered Dietitian.

Been looking in to the FFactor protein. “Organic Guar Gum” is the second ingredient listed- this has been banned in a lot of countries and at one point was banned in the US. It basically slows down emptying and digestion by the gallbladder and creates “steatosis” and essentially can cause fatty liver disease which would explain the elevated liver enzymes and gallbladder attacks people are having on it[.]

In fact, Gellis had no evidence that the F-Factor products contained guar gum or that the F-Factor diet and products, when used as recommended, could ever cause any substantial health problems. Accordingly, these statements—that the F-Factor product contains guar gum and that the F-Factor

products would cause fatty liver disease or gallbladder attacks—are false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

66. On August 26, 2020, Gellis stated that F-Factor products caused severe damage to users' colons, severe gastrointestinal pain that required hospitalization, kidney stones, and hernias. Without regard for truth, she published the following: "We have victims with their colons removed. Victims with rashes + hives. Victims with severe Gastro pain leading to hospital visits. Victims with kidney stones + hernias. What gives? DEMAND JUSTICE NOW DEMAND YOUR \$ back. Demand a COA. Enough of the bullying silence culture! I want to see you guys on top." In fact, Gellis had no evidence that the F-Factor diet or F-Factor products, when used as recommended, could ever cause substantial health problems. Accordingly, this statement—that the F-Factor diet and products cause irreparable damage to colons, severe gastrointestinal pain requiring hospitalization, kidney stones, and hernias—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

67. On August 30, 2020, Gellis posted on Instagram that Zuckerbrot encouraged pregnant women to ingest unsafe levels of arsenic and a harmful product called guar gum four times a day. Without regard for the truth, she published the following:

My final thoughts for today, truly, what is the fair punishment for encouraging women and pregnant women to ingest arsenic and fucking massive amounts of guar gum protein powder four times a day? You decide. I love it, now. Now all the DMs: This person just a nice girl and she's a nice pregnant girl, why are you attacking her? I'm not attacking her. Why is she telling women and pregnant women that they should eat arsenic and guar gum in massive amounts, four times a day? Why would a nice person do that? What's nice about that? Hm? What's nice about that? So let me ask you something, it's OK for you to suggest it to other people and hurt them, right?

This is a false and defamatory statement. F-Factor does not encourage women and pregnant women to ingest unsafe levels of any ingredient, and the F-Factor products do not contain guar gum or unsafe levels of arsenic. The F-Factor diet and products are safe when used as

recommended. Accordingly, these statements—that F-Factor encourages women to ingest unsafe ingredients and that the F-Factor products contain guar gum and unsafe levels of arsenic—are false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

68. On September 6, 2020, Gellis posted that she had evidence that someone died as a result of consuming F-Factor products. Without regard for truth, she published the following: “I feared the day would come when I would heard [sic] a story about someone who died. Yesterday, I heard from someone, about their client who was bowel obstructed. She was obsessed with this diet. She was in her fifties. She is no longer with us.” Gellis then posted a video in which she continued to speak about the death. Despite the lack of any details, she asserted the death was a result of consuming F-Factor products. In fact, Gellis had no evidence that the F-Factor diet or products, when used as recommended, could ever cause substantial health problems. Accordingly, this statement—that the F-Factor diet and products caused a fatal bowel obstruction—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

69. On September 7, 2020, Gellis posted that she had evidence that the F-Factor powder caused anxiety and panic attacks. Without regard for the truth, she published the following from a purported anonymous Instagram user: “I have to say I stopped the powders when I first messaged you on August 16th. And I have to say I stopped having anxiety and daily panic attacks.” Gellis added, “Wow.” In fact, Gellis had no evidence that the F-Factor diet and products, when used as recommended, could ever cause substantial health problems. Accordingly, this statement—that the F-Factor powder caused anxiety and panic attacks—is false and defamatory, falsely implying that the F-Factor products are unsafe.

70. On September 8, 2020, Gellis posted that she had evidence that F-Factor products would “destroy” the intestinal lining of those who consume the products. Without regard for the

truth, she published the following from a purported anonymous Instagram user: “That’s what is called green washing and it’s a marketing tactic her products aren’t even organic and the whey isn’t grass fed sooo yum!!!... Love eating glyphosate. That will destroy your intestinal lining. Would love to see the amount of pesticides residue on that coa....” In fact, Gellis had no evidence that the F-Factor diet and products, when used as recommended, could ever cause any substantial health problems. Accordingly, this statement—that the F-Factor diet and products will destroy intestinal lining—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

71. On October 1, 2020, Gellis posted that she had evidence that F-Factor products caused a heart attack. Without regard for the truth, Gellis wrote: “Today I met a healthy 44-year-old woman at Kyma. She said she had wanted to write me forever but instead told me yesterday. She had a heart attack at 44 years old. Perfectly healthy woman. She also was broken out in hives. What she believed led to it? F Factor protein powder she only stopped eating it once I exposed the diet. She said she feels great now.... But seriously people when will you realize the diet industry is about \$\$\$\$ not your health?” In fact, Gellis had no evidence that the F-Factor diet or products, when used as recommended, could ever cause any substantial health problems. Accordingly, this statement—that the F-Factor product caused a heart attack—is false and defamatory, falsely implying that the F-Factor diet and products are unsafe.

72. Each of the above-described statements made by Gellis is demonstrably false and defamatory, and these represent just a sampling of examples—Gellis has made other similar false statements that the F-Factor diet and products are unsafe or implying that the F-Factor diet and products are unsafe. But, as explained above, the F-Factor diet and F-Factor products, when used as recommended, could not cause any substantial health problems. Gellis made each of the above

statements (and others like it) knowing it was false or with reckless disregard for the truth. Even if Gellis originally thought that some of the allegations were true, which is unreasonable, given that many of the above statements came from purportedly anonymous users who claimed a vast variety of unrelated symptoms, she took no reasonable action to verify the truth of the statements she republished and she continued to post and republish such statements even after learning that the F-Factor diet and F-Factor products are safe.

b. Gellis Was Provided Information That Clearly Established That She Was Making False Statements About the Safety of the F-Factor Diet and F-Factor Products

73. To refute Gellis's false and defamatory statements about the safety of the F-Factor diet and F-Factor products, and to stem the destruction Gellis's statements were having on F-Factor's reputation and sales and Zuckerbrot's reputation, F-Factor, Zuckerbrot, and others connected to Plaintiffs provided Gellis and the public with truthful and accurate information about the F-Factor diet and products. Paragraphs 73–78 set forth a summary of some of this information, which establishes that Gellis knew she was making false and defamatory statements about the safety of the F-Factor diet and products at the time she was making the statements.

74. On August 16, 2020, F-Factor posted a message on its Instagram page available to the public and Gellis making it clear that its products meet the highest industry standards and are safe for consumption. F-Factor explained that F-Factor products, like all products using natural ingredients, can contain trace amounts of heavy metals well below any level of toxicity to humans. The reason these products may contain trace amounts of heavy metals is because such metals are found naturally in the soil in which some F-Factor product ingredients are grown. As a result, trace amounts frequently appear in many all-natural and even organic food products.⁷ F-Factor

⁷ See U.S. Food and Drug Administration, *Metals and Your Food*, Aug. 24, 2020, <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food> (explaining that

further explained that it maintains the highest standards for testing its products, including testing for trace amounts of heavy metals, microbiological content, and label claim veracity. No products leave the F-Factor facilities unless tested and shown to be 100% safe for consumption.

75. On August 22, F-Factor posted another message on its Instagram page available to the public and Gellis making it clear that the diet and products are safe. In this post, F-Factor also committed to releasing Certificates of Analysis to provide clear public information about the ingredients contained in the products. The Certificate of Analysis for the Chocolate 20/20 Fiber/Protein Powder was posted to F-Factor's website on August 27, 2020, and the Certificates of Analysis for the vanilla 2020 Fiber/Protein Powder and Unflavored Powder were posted on August 31, 2020. These certificates made clear that there are no unsafe levels of heavy metals in the products—only trace amounts.

76. On August 24, 2020, F-Factor again addressed the complete safety of the F-Factor diet and products. It explained that the diet and products were used safely and successfully by huge numbers of people who had read the *F-Factor Diet* book in the 14 years since the book was first published and that the book was endorsed by many nutritionists and physicians.

77. On August 27, 2020, Zuckerbrot appeared on national television on The Today Show, where she again discussed the success and endorsements of the *F-Factor Diet* book and explained the trace metals found in F-Factor products. NBC independently reviewed F-Factor's Certificate of Analysis in advance of the interview and confirmed that the levels of all naturally occurring compounds listed on the Certificate were safe for consumption.

“metals...are in many foods...because our air, water, and soil all contain metals”); U.S. Food and Drug Administration, *Total Diet Study Statistics on Element Results*, Dec. 11, 2007, <https://www.fda.gov/media/79746/download> (compilation of FDA test results showing the presence of trace amounts of heavy metals in hundreds of common food products).

78. On September 10, 2020, F-Factor issued a press release announcing the launch of a new page on F-Factor's website called *Correcting the Record*, on which it posted information about F-Factor products in response to the false statements made by Gellis. One example of misinformation explained in the release is that F-Factor products contain guar gum. As the release explains, F-Factor products contain partially hydrolyzed guar gum, which is a safe and healthy source of fiber, and do not contain guar gum.

c. Gellis Makes False and Defamatory Statements About the Company F-Factor and F-Factor Employees

79. Gellis also posted on Instagram, and continues to post, false and defamatory statements about the company F-Factor and F-Factor employees.

80. On August 4, 2020, Gellis posted that F-Factor required employees to sign non-disclosure agreements and implied that F-Factor had something to hide. In the video she says:

Ask yourself that question, why do they—why do they want us to sign an NDA to work at F-Factor? You don't have to sign an NDA to work with me.... We're not talking about, like, working with the Kardashians here, you know, like we have to sign an NDA. You know, normal people, regular life, nothing to hide, you don't have to sign an NDA to work for me, no worries. Why do you have to sign an NDA to work there? What the fuck goes on there that you got to hide?

This statement is false; F-Factor has not and does not require employees to sign an NDA. Accordingly, this statement is false and defamatory.

81. On August 24, 2020, Gellis urged the Miss Universe program to sever its ties with F-Factor (Zuckerbrot has been the Official Dietitian for the organization for more than ten years) based on her false allegations about the safety of F-Factor products. In fact, the F-Factor diet and products, when used as recommended, cause no substantial health problems. Accordingly, this statement—that the diet and products are unsafe—is false and defamatory.

82. On August 25, 2020, Gellis posted that F-Factor and F-Factor dietitians had engaged in criminal activity, prescribed unsafe diets, and violated the Health Insurance Portability and Accountability Act (“HIPAA”) by disclosing clients’ personal records. She wrote:

I hope to see f factor and their dietitians behind bars. That’s where they belong. Prescribing diets that are single handedly sending women to the emergency room every week. HIPAA violations of clients personal records. Glamorizing diet culture and pushing powder, dangerous powder !! To the special dietitians there who had their relative plant a fake miscarriage story, I didn’t know such sick fucks like you exist. Now I know. As you may have been able to tell I am a wonderful opponent - one who doesn’t back down - I’ll rest when you are behind bars.

These statements are false. As discussed above, the F-Factor diet and products are completely safe. When used as recommended, the diet and products cause no substantial health problems. F-Factor does not send women to the emergency room. Nor does F-Factor violate HIPAA; F-Factor has not improperly released any client records. And F-Factor employees have not engaged in criminal conduct. Accordingly, these statements are false and defamatory.

83. On August 27, 2020, Gellis posted that F-Factor violated HIPAA by disclosing client records, violated federal law by deleting comments, lied about the number of complaints it had received, and lied about treating patients with eating disorders. She posted a list of these purported “violations” by F-Factor: “Violations 1. Hippa [sic] Violation sharing personal client records with NYT. 2. FTC violation deleting comments. 3. Lies about #of complaints (claims only 50 in 176,000 purchase order [sic]) 4. Lies on diets starts tomorrow podcast about treating patients with eating disorder 5. Lies about COA being proprietary 6. Refused to release COA.” Each of these purported “violations” is a false statement. F-Factor did not share confidential records and did not violate HIPAA. F-Factor did not delete comments in a way that would violate any laws. F-Factor did not misrepresent the number of complaints it received. And F-Factor did not lie about treating patients with eating disorders. F-Factor did consider the COA of its products proprietary, as it has the right to do, but later released a COA to assuage customer concerns based

on the false statements from Gellis and others. Accordingly, these statements by Gellis are false and defamatory.

84. Also on August 27, 2020, Gellis publicly called on Bloomingdale's to stop carrying F-Factor products based on her false allegations about the safety of F-Factor products. Gellis again urged Bloomingdale's to stop carrying F-Factor products on September 1, when she posted an advertising photo of F-Factor 20/20 Fiber/Protein powder with the caption "@bloomingdales @fortycarrots don't pretend you haven't heard this story." In fact, the F-Factor diet and F-Factor products, when used as recommended, cause no substantial health problems. Accordingly, these statements—that the F-Factor products are unsafe and therefore should not be sold—are false and defamatory statements, falsely implying that the F-Factor products are unsafe.

85. On September 8, 2020, Gellis urged @theskinnyconfidential, another Instagram influencer account, to retract its prior promotion of F-Factor based on her false allegations as to the safety of F-Factor products. In fact, the F-Factor diet and products, when used as recommended, cause no substantial health problems. Accordingly, this statement—that the diet and products are unsafe—is false and defamatory.

86. On September 12, 2020, Gellis falsely accused an F-Factor employee of using or selling illegal drugs. In this post, Gellis posted a photo of Jessica Rossman, F-Factor's Director of Communications & Marketing, posing with a bag of F-Factor Fiber/Protein powder. Gellis repeatedly questioned Rossman's role at the company, saying, "I feel it's important to note her role here" just before posting a video of herself listening to the song "Cocaine" by Eric Clapton, with a photo of the album cover and song name, then "Adderall" by Almighty, MyM, with a photo of the album cover and song name. Taken together, these statements falsely implied that

Rossman's position at F-Factor involves the sale or use of drugs. Accordingly, these statements are false and defamatory.

87. On September 15, 2020, Gellis stated that F-Factor concealed complaints about its product, implying that the product is unsafe and that the Company was not transparent. She wrote "When they go on national television... And tell you all... They've only received 50 complaints... This isn't even ¼ of them." In fact, F-Factor has not concealed complaints about the product, nor has F-Factor falsely reported the number of health-related complaints received. Accordingly, this is a false and defamatory statement.

d. Gellis Makes False and Defamatory Statements About Tanya Zuckerbrot

88. In addition to making false and defamatory statements about the F-Factor diet and products and F-Factor the company and its employees, Gellis made, and continues to make, many false and defamatory statements about Zuckerbrot personally, including the following:

89. On August 12, 2020, Gellis posted that she heard from other sources that Zuckerbrot and her family would "send people to physically harm" Gellis. Without regard for the truth, she said, "I've heard from several people that I should be scared for my life, that F-Factor and Co., wife, husband, will stop at nothing. That they will physically send people to physically harm me. So you guys can all be my witnesses, thousands of you watching, if something happens to me over me sharing this story, you'll know exactly where it came from and then you can be the witness to my story." In fact, at no time did Zuckerbrot send people to physically harm Gellis or anyone else, and there is absolutely no evidence that she did or planned to. Accordingly, this is a false and defamatory statement.

90. On August 13, 2020, Gellis posted a message she purportedly received from an anonymous Instagram user that was harassing and negative towards Gellis. Gellis then posted that

Zuckerbrot was the person who sent the harassing post. Without regard for the truth, Gellis wrote, “Tanya, you’re a loser cyber bully who is poisoning people on the daily. Worry about yourself fool.” The statement that Zuckerbrot is the person who sent Gellis this harassing message is false. Zuckerbrot did not send the message to Gellis, and Zuckerbrot has never engaged in any cyberbullying of Gellis. Accordingly, this is a false and defamatory statement. In addition, Gellis’s statement that Zuckerbrot is “poisoning people” is also false, and there is absolutely no evidence to suggest otherwise. Accordingly, this statement, too, is false and defamatory.

91. On August 19, 2020, Gellis posted that Zuckerbrot was encouraging many people to send harassing Instagram messages to Gellis. Without regard for the truth, Gellis posted on her Instagram account:

You [meaning Zuckerbrot] want to send people to harass me 24/7. I haven’t sent one person to your account because I don’t need to. The stories speak volumes... But here’s the deal, if I get one more message from an anonymous account, threatening me, stalking me out and harassing me, I’m coming for you criminally. We will meet you in court and the world will watch. Your move. Stop being a damn fool...In your famous words, “everything on the internet has a digital footprint”. Oh yes, yes it does. And that goes for your assistant – for your nanny – for your staff. For every single one of them who reached out to me. I will pursue you criminally for damages – for harassment. Buckle up, it’s gonna be a bumpy ride!

In fact, Zuckerbrot never sent any harassing Instagram messages to Gellis or encouraged others to do so. There is absolutely no evidence that Zuckerbrot ever sent any harassing Instagram message to Gellis and no evidence suggesting that Zuckerbrot ever encouraged anyone else to send any harassing Instagram messages to Gellis. Accordingly, these statements, that Zuckerbrot sent harassing messages to Gellis and that she encouraged others to do so, are false and defamatory.

92. On August 25, 2020, Gellis posted a photograph of Zuckerbrot that she edited to draw an orange prison jumpsuit onto Zuckerbrot and captioned, “How you will look [sic] behind bars!,” communicating that Zuckerbrot is involved in criminal activity and should be in prison. In

fact, Zuckerbrot has never engaged, nor is there any evidence to suspect that she has ever engaged, in any criminal conduct. Accordingly, this Instagram post by Gellis is false and defamatory.

93. On August 25, 2020, Gellis again posted on Instagram that Zuckerbrot is involved in criminal activity. She posted: “These girls deserve justice! And justice will be tanya zuckerbrot behind bars.” In fact, Zuckerbrot has never engaged, nor is there any evidence to suspect that she has ever engaged, in criminal activity. Accordingly, this Instagram post by Gellis is false and defamatory.

94. On August 30, 2020, Gellis posted that Zuckerbrot sent people to follow and intimidate Gellis. In a video, Gellis said:

We’ve been in this for almost a month now. I’m sorry. How much more of my life do I need to sacrifice for this woman to be honest? And literally, this is just the fact, I can’t control that they only like playing dirty, like they don’t want to play nice. They want to play dirty, like they’re sending fucking Mossad people to follow me in the street in East Hampton and like, guys, what do you want me to do? You don’t want me to fucking talk? I’m going to talk. And this is the only thing that gets them to respond. This is not my choice. So make yourself fully aware of that. This is not my decision, OK? This is how they like to play. So I am going to play with them in the same sandbox.

In fact, Zuckerbrot never sent anyone to follow or intimidate Gellis at any time, under any circumstances, nor is there any evidence that she did. Accordingly, this is a false and defamatory statement.

95. On September 11, 2020, Gellis stated that Zuckerbrot threatened to kill Gellis’s family. Without regard for the truth, she said:

There is the element of bullying and stalking and harassment and defamation or blackmail about my life, threats to kill my family, that elevate the story to a different level. Why threaten to kill my family over a diet? When you look at it on that basis alone, it’s completely illogical. Why would anyone threaten to kill my mother, or my father, or my sister over a diet? It doesn’t even make sense...

In fact, Zuckerbrot never threatened to kill or harm Gellis or her family nor is there any evidence that she did. Accordingly, this is a false and defamatory statement.

96. On September 30, 2020, Gellis stated that Zuckerbrot had caused serious harm to a large number of people. Without regard for the truth, she said, “Tanya Zuckerbrot has sent hundreds of people to the hospital, hundreds of people to the hospital from going on F-Factor, OK?” In fact, neither Zuckerbrot’s treatment nor the F-Factor diet has caused anyone to go to the hospital, let alone hundreds of people. Accordingly, this is a false and defamatory statement.

97. On October 5, 2020, Gellis again stated that Zuckerbrot engaged in criminal conduct and caused serious harm, including a heart attack and death. Without regard for the truth, she said:

“And me saying that I think that Tanya belongs in jail? I will stand behind that until the day that I die. She hurt people. She had people in the hospital, physically sick. I mean, she still remains the worst of the worst as far as all these stories go. People losing their colons, people having hives all over their body, distended stomachs, like, somebody even died. It’s—may have been a cause of it. A heart attack at 45 years old. Now, you tell me that this person should be walking the street? I mean, maybe if she would have agreed to take the products off the market, we wouldn’t be having any of these discussions. But she chose not to do that. That was her decision. She’s an adult. I can’t, I can’t help that. So I believe it’s my opinion in America that somebody like that belongs in jail.”

In fact, Zuckerbrot has never engaged in any criminal conduct, and neither Zuckerbrot’s treatment nor the F-Factor diet has caused anyone to require hospitalization. Zuckerbrot has not caused anyone to lose their colon, suffer a heart attack, or die, as a result of her treatment. Accordingly, these are false and defamatory statements.

e. Gellis Makes Additional Harassing Statements About Zuckerbrot

98. Beyond the substantial number of false and defamatory statements pled in this complaint, Gellis also posted on her Instagram account an estimated 4,500-plus harassing statements about Zuckerbrot and her business. New York law defines harassment as “engaging in a course of conduct or repeatedly commit[ting] acts which alarm or seriously annoy [another]

person and which serve[] no legitimate purpose...” N.Y. Penal Law § 240.26. Paragraphs 99–115 set forth below are examples of this harassment:

99. On August 6, 2020, Gellis falsely accused F-Factor of sending people to harass Gellis and her husband and then falsely insinuated that either Zuckerbrot or her company had asked her to apologize. She then launched into an expletive-laced rant:

Can you imagine the gall? The gall. The F-Factor team is sending people to harass me on my page about my mental health. Those DMs are no coincidence, sending people to my husband’s page to tell him not to procreate with me because I’m bat shit crazy. And you’re telling me I owe you an apology? Get the fuck out of here. And when you land back on planet mother fucking Earth, let me know because, bitch, everyone is fucking watching and the gig is up. The curtain is pulled, the shtick is over, however you want to call it. Everyone sees you people for what you are. Shameless, disgusting, narcissistic bullies. And nobody likes it. You’re sick. This is a sickness. You want an apology for me? Go fuck yourself.

100. On August 12, 2020, Gellis once again falsely accused Zuckerbrot and F-Factor of harassing her: “Wow. F factor. you are disgusting. Sending trolls for me again. You are the definition of losers.”

101. On August 13, 2020, Gellis falsely accused Zuckerbrot of harassing her online and harming her patients, followers, and customers: “Tanya, ur a loser cyber bully who is poisoning people on the daily. Worry about yourself you fool.”

102. On August 21, 2020, Gellis again taunted Zuckerbrot and F-Factor in a video she posted on her Instagram account:

This is just a little morning message for Tanya and the F-Factor team. I know you guys are so desperate that you, like, can’t wrap your head around the fact that there’s nobody else behind me encouraging me to do this. Well, now there’s like thousands and probably tens of thousands of women that are, like, really happy that I’m doing this. But none of your like ex-F-Factor people that you despise have like, put me up to this. There is no one like feeding me information on purpose. There’s no co-conspirators here. Like, focus your time on other things. I have a feeling that it’s going to be a very bumpy, ah, next couple of months. So focus your time on that. There’s no one behind me. It’s just me, bitch. It’s just me. That’s all. Happy Friday.

103. On August 30, 2020, Gellis spent most of her waking hours harassing Zuckerbrot and her company. Gellis spent most of the morning on Instagram, ranting about Zuckerbrot and F-Factor. This rant included the following statements directed at Zuckerbrot:

Where the fuck are you? Why the fuck are you on Instagram every fucking day you're on Instagram making your fucking coffee and you're fucking smoothies and you're fucking and now all of a sudden you're not fucking there. So where the fuck are you, OK? Where are you? We all want to know, where are you? Are you still eating the powder or did you decide to—no more powder? Were you ever eating the powder or were you just selling the powder to people? What are you doing? What are you doing? Are you enjoying your last moments of freedom? I'm sorry, what are you doing? Where are you? RESPOND!

104. Early that afternoon, Gellis lashed out at Instagram users who responded negatively to her morning diatribe and suggested that F-Factor's products were poison:

You know what's so funny, all these people that are writing me that I sound unhinged. I sound unhinged? There's a woman that's been selling fucking packaged poison and getting hundreds of thousands of people to buy it. Now that she got caught, she's gas lighting me and I'm unhinged? Literally, go fuck yourself.

105. Later that afternoon, Gellis compared her smear campaign against Zuckerbrot to the government investigations of Harvey Weinstein and Jeffrey Epstein, both of whom were ultimately convicted of sex crimes, stating, "There are fucking FBI agents on fucking Harvey Weinstein and Jeffrey Epstein for fucking years. Look what I've done in four weeks, OK?"

106. That evening, Gellis shifted gears, verbally abusing a pregnant F-Factor dietitian who posted a photograph of a pizza slice on her Instagram and encouraging her followers to do the same:

[D]o you feel that the former dietitians of Factor and the current dietitians of F-Factor deserve to go down? Or does all the blame fall on one person? Like, you guys follow these people, they've never posted a fucking slice of pizza. So here's the problem, they fucking sell you on eating high fiber all day long. So it's like either they've been lying to you about what they actually eat. Either way, they're lying to you because they never show you pizza, all of a sudden they're telling you to eat pizza? Like again, like they actually think you guys are stupid. Like, I hope you go and fucking spam that post and write, like, "do you think we are fucking stupid?"

107. About one hour later, things took a darker turn when Gellis suggested that the employee was harming her unborn child by consuming F-Factor products. “This is the only question I have for you, you shameful human beings,” Gellis stated. “Are you ingesting the arsenic powder, while you’re pregnant? You know, the same arsenic powder that you’re recommending and telling everyone on the Internet is safe? So you post about it, but are you drinking it? Is your future going to be impacted by the arsenic powder?”

108. Around 10:00 p.m., Gellis doubled down on her assertions that F-Factor was poisoning pregnant women:

My final thoughts for today, truly. What is the fair punishment for encouraging women and pregnant women to ingest arsenic and fucking massive amounts of guar gum protein powder four times a day? You decide.... Why is she telling women and pregnant women that they should eat arsenic and guar gum in massive amounts four times a day? Why would a nice person do that? What’s nice about that? Hm? What’s nice about that? So let me ask you something, it’s OK for you to suggest it to other people and hurt them, right?

109. On August 31, 2020, Gellis stated, “Oh, and one more thing. On the mother fucking record. Tanya, i forgive you for calling me ‘the girl who just sells clothes’ in the New York Times. Boy are you going to fucking eat those words.”

110. On September 2, 2020, Gellis falsely stated that Zuckerbrot’s family had “attack[ed] [her] in public.” Gellis then stated the following about Zuckerbrot and her family: “You guys are disgusting cowards and I hope the criminal justice system does its job. Fuck you, Your [sic] scum.”

111. On September 8, 2020, Gellis falsely stated that Zuckerbrot had “shamed” her for her mental health struggles. Gellis continued, “For me there is nothing lower than shaming someone’s mental health struggles.... Tanya you are despicable. You are the scum of the earth. I hope we come face to face one day so I can stare you right in the eyes and tell you what a bottom

feeder you are.” Gellis also stated, “I’m nauseated that you have profited off this cult like mentality for so long. Preying on women and their vulnerabilities for your own personal gain.”

112. On September 9, 2020, Gellis also made harassing statements in a video that she broadcast on her Instagram page. When she noticed that Zuckerbrot was also sharing a video on Zuckerbrot’s own Instagram page, Gellis stated, “Tanya is live...What a cowinkydink [coincidence]. Of course, she started a live. She’s trying to steal my thunder. What a hoe. You’s a hoe. You’s a ho ho ho ho ho, ho, ho. Merry Christmas.”

113. On September 10, 2020, Gellis falsely accused Zuckerbrot and F-Factor of “sen[ding] their cyber trolls to dig up dirt on [her] mental health” and attempting to “blackmail” her, stating that Zuckerbrot “deserves to go down on the wrong side of history.” Gellis also accused Zuckerbrot of psychologically manipulating those who follow the F-Factor diet as well as causing them to develop eating disorders: “Tanya Zuckerbrot has gas lighted 10,000 plus victims on @todayshow and on her Instagram,” Gellis wrote. “I have learned how dark it can be to develop disordered eating... the founder will not apologize to you.” Purporting to speak for all “victims,” Gellis then posted the following: “Tanya... go FUCK YOURSELF. Quote me.”

114. On September 30, 2020, Gellis ridiculed Zuckerbrot for withdrawing from social media, questioned the sincerity of Zuckerbrot’s faith, and accused her of committing unforgivable atrocities:

Where is Tanya Zuckerbrot? I don’t know... Tanya has gone silent. It was her birthday I heard yesterday. Total silence. One post for Rosh Hashanah, one post for Yom Kippur, taking a picture of Central Synagogue. Good for you. No fucking amount of praying can save her, um, from all the horror—horror—that she’s done.

Gellis went on to assert that Zuckerbrot was a poor role model for young people:

Tanya Zuckerbrot is the worst example to young women.... Everything in life does not depend on your fucking size and how, how much money you have. And those are the two things that [she] strive[s] for. Be skinny, be rich. If you live your life according to [her], those are the only two things you’ll ever strive for. Oh, maybe

famous. Be skinny, rich and famous. Fuck off. Fuck you. You're [a] fucking horrible example to women."

Gellis also suggested that Zuckerbrot was a bad mother:

Going to lunches all the time and drinking in the middle of the day. Dude, don't you have children to take care of? Like, what are you doing? Like, what are you doing? Drinking and eating lettuce? And this is like your diet and you're like a leading example on health and fitness for the world? Get the fuck out of here. Give me a break. I swear, it's soooooo crazy. I mean, it's really crazy. It's nuts.

115. At various points during her smear campaign, including on August 8, August 15, August 29, and September 8, 2020, Gellis referred to F-Factor as a cult and Zuckerbrot as the "cult leader."

116. These statements serve no purpose other than to harass, alarm, and annoy Zuckerbrot, and Gellis intends that these statements have that effect.

III. As a Result, Plaintiffs Have Suffered and Continue to Suffer Financial, Reputational, and Emotional Injuries

117. Gellis's social media misconduct described above has specifically caused Plaintiffs to suffer enormous financial harm, reputational damage, and devastating emotional distress. Since July 2020, when Gellis's above-described social media misconduct began, F-Factor's well-established monthly sales revenue has dropped from approximately \$1 million/month to less than \$90,000/month, specifically as a result of Gellis's social media misconduct described above. In addition, right before Gellis's social media misconduct began, there was a significant capital investor who had already made a commitment to make an investment into F-Factor at \$40 million pre-money valuation. As a result of Gellis's social media misconduct, referenced above, that capital investor has completely withdrawn to make a capital investment in F-Factor. The full extent of the financial damage caused is not yet known, but it is clear that Gellis has already caused F-Factor and Zuckerbrot tens of millions of dollars in damages.

118. Gellis's social media misconduct described above has also caused serious reputational damage to F-Factor and Zuckerbrot. Statements asserting or implying that food products are unsafe inevitably cause reputational harm to the producer, even where, as here, the statements are false and unsubstantiated. This is also true of statements about the safety of a diet. Such reputational damage is particularly acute where, as in this case, the statements are widely circulated. Not only were Gellis's false, defamatory, and/or harassing statements broadcast to her more than 208,000 followers on Instagram, Gellis's statements were also reported on by major mainstream publications including *The New York Times*, *The New York Post*, Business Insider, Refinery29, PerezHilton.com, The Verge, Today.com, E!, The Cut, Delish.com, and many others.

119. Zuckerbrot has also suffered devastating emotional distress because of Gellis's social media misconduct. Zuckerbrot, who is normally a lively, positive, and outgoing woman, has become despondent and anxious. She experiences frequent panic attacks. She has difficulty falling asleep and is sometimes unable to get out of bed in the morning. In addition, Zuckerbrot has become withdrawn and fears leaving her home. On September 10, 2020, Zuckerbrot was diagnosed with anxiety, panic attacks, and insomnia. As a result, she is unable to engage with friends, family, and clients as she used to. For example, after years of regularly posting videos of herself engaging with other F-Factor employees and connecting with clients on Instagram, she has virtually withdrawn from social media communications. Her children and family members, too, have stopped posting on social media out of fear of Gellis's attacks. In short, Gellis's conduct has caused Zuckerbrot to fear for her safety, her employees' safety, and the safety of her family.

120. Zuckerbrot and F-Factor seek substantial financial damages, reputational damages, punitive damages, and preliminary injunctive relief.

COUNT I
(F-Factor v. Gellis – Product Disparagement)

121. F-Factor repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the Complaint as if fully set forth herein.

122. Gellis has repeatedly made false and disparaging statements that the F-Factor diet and/or the F-Factor products are unsafe or made false and disparaging statements implying the F-Factor diet and/or the F-Factor products are unsafe. These statements are as follows:

a. Paragraph 61, where it is alleged that Gellis stated on July 22, 2020, that she had evidence the F-Factor diet and products caused an eating disorder and had crippling effects on mental health;

b. Paragraph 62, where it is alleged that Gellis stated on August 5, 2020, that the F-Factor team deleted complaints about F-Factor to conceal safety information from consumers;

c. Paragraph 63, where it is alleged that Gellis stated on August 6, 2020, that she had evidence that the F-Factor diet and products cause severe gastrointestinal problems;

d. Paragraph 64, where it is alleged that Gellis stated on August 18, 2020, that she had evidence that F-Factor products caused a woman to miscarry a pregnancy;

e. Paragraph 65, where it is alleged that Gellis stated on August 21, 2020, that F-Factor products contain an unsafe ingredient known as guar gum and therefore that F-Factor products are unsafe;

f. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause severe damage to users' colons;

g. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause severe gastrointestinal pain that requires hospitalization;

h. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause hernias;

i. Paragraph 67, where it is alleged that Gellis stated on August 30, 2020, that F-Factor encouraged pregnant women to ingest, at unsafe levels, arsenic and a product called guar gum four times a day;

j. Paragraph 68, where it is alleged that Gellis stated on September 6, 2020, that she had evidence that someone died as a result of consuming F-Factor products;

k. Paragraph 69, where it is alleged that Gellis stated on September 7, 2020, that she had evidence that F-Factor powder causes anxiety and panic attacks;

l. Paragraph 70, where it is alleged that Gellis stated on September 8, 2020, that F-Factor products destroy the intestinal lining of those who consume the products; and

m. Paragraph 71, where it is alleged that Gellis stated on October 1, 2020, that she had evidence that F-Factor powder caused a heart attack.

123. These statements communicated to the Gellis audience that following the F-Factor diet and/or consuming the F-Factor products is/are unsafe, because it/they will cause substantial negative health effects. Such statements disparage and reflect negatively on the quality, condition, and/or value of the F-Factor diet and F-Factor's products.

124. Each of these disparaging statements is false and/or false by implication. Overwhelming evidence establishes that following the F-Factor diet and/or consuming the F-Factor products, as recommended, is completely safe and causes no substantial health problems.

125. Gellis published these false and disparaging statements to third parties. Gellis published these statements in posts or stories on Instagram, which is a public platform. Once published, the posts appeared in the Instagram feeds of her followers. Gellis's Instagram page has

more than 208,000 followers. The posts and stories also are viewable by any Instagram user (of which there are more than 1 billion) who is not a follower, by navigating to the host's page.

126. Gellis knew each of these statements were false or made each statement with reckless disregard for the truth. Gellis took no steps to determine whether each statement was true before making it, and she had no basis to believe each statement was true before making it. Additionally, during the relevant time period, Gellis became aware of substantial information that affirmatively communicated to her that the F-Factor diet and the F-Factor products were safe and caused no substantial health problems, when used as recommended.

127. Gellis made the statements maliciously and with ill will toward F-Factor.

128. Because these false and disparaging statements are injurious to F-Factor's commercial reputation, the statements are disparaging per se.

129. Alternatively, and in addition, F-Factor has suffered special damages. As a direct and proximate cause of Gellis's foregoing actions, F-Factor lost approximately 90% of its approximately \$1 million monthly revenue. *See supra* ¶ 117.

130. Unless enjoined by this Court, Gellis will continue to make disparaging statements about the F-Factor diet and F-Factor products, and F-Factor will continue to suffer irreparable harm.

131. F-Factor has no adequate remedy at law to prevent Gellis from continuing to make disparaging statements about the F-Factor diet and F-Factor products, and thus F-Factor has no adequate remedy to prevent future injuries.

132. Accordingly, F-Factor is entitled to financial damages to compensate for the harm Gellis has caused F-Factor and an injunction prohibiting Gellis from making any further disparaging statements.

133. Additionally, F-Factor requests punitive damages to punish Gellis for her disparaging statements and to deter Gellis from making further disparaging statements.

COUNT II
(F-Factor v. Gellis – Defamation)

134. F-Factor repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the complaint as if fully set forth herein.

135. Gellis has repeatedly made false and defamatory statements about F-Factor and F-Factor’s employees. These statements are as follows:

a. Paragraph 80, where it is alleged that on August 4, 2020, Gellis falsely stated that F-Factor required employees to sign non-disclosure agreements and falsely implied that F-Factor had something to hide. In fact, overwhelming evidence establishes that F-Factor does not require employees to sign non-disclosure agreements. Accordingly, this is a false and defamatory statement.

b. Paragraphs 81, 84, and 85, where it is alleged that on August 24, August 27, and September 8, 2020, Gellis falsely stated that F-Factor sells and promotes a diet and products that are unsafe. In fact, the F-Factor diet and products, when used as recommended, cause no substantial health problems.

c. Paragraph 82, where it is alleged that on August 25, 2020, Gellis falsely stated that F-Factor and F-Factor dieticians engaged in criminal activity. In fact, overwhelming evidence establishes that F-Factor and F-Factor dietitians engaged in no criminal activity. Accordingly, this is a false and defamatory statement.

d. Paragraphs 82 and 83, where it is alleged that on August 25 and 27, 2020, Gellis falsely stated that F-Factor violated HIPAA by disclosing confidential patient

information. In fact, overwhelming evidence establishes that F-Factor did not violate HIPAA. Accordingly, this is a false and defamatory statement.

e. Paragraph 83, where it is alleged that on August 27, 2020, Gellis falsely stated that F-Factor violated federal law by deleting negative comments posted by the public on F-Factor's social media accounts. In fact, overwhelming evidence establishes that F-Factor did not violate federal law by deleting negative comments posted by the public on F-Factor's social media accounts. Accordingly, this is a false and defamatory statement.

f. Paragraph 86, where it is alleged that on September 12, 2020, Gellis falsely stated that an F-Factor employee was using or selling illegal drugs. In fact, overwhelming evidence establishes that this employee is not using or selling illegal drugs. Accordingly, this statement is false and defamatory.

g. Paragraph 87, where it is alleged that on September 15, 2020, Gellis falsely stated that F-Factor lied to the public about the number of complaints it has received about its products. In fact, overwhelming evidence establishes that F-Factor did not lie to the public about the number of complaints it has received about its products. Accordingly, this is a false and defamatory statement.

136. These statements communicated to Gellis's audience that F-Factor, as a company, engaged in substantial, intentional, and highly improper serious business misconduct, including engaging in criminal activity, disclosing confidential patient information, falsifying food product test results, and allowing employees to use or sell illegal drugs.

137. Gellis published these statements to third parties. Gellis published these statements in posts and/or stories on Instagram, which is a public platform. Once published, the posts

appeared in the Instagram feeds of her followers. Gellis's Instagram page has more than 208,000 followers. The posts and stories are viewable by any Instagram user (of which there are more than 1 billion) who is not a follower, by navigating to the host's page, too.

138. Gellis did not have legal privilege or authorization from F-Factor to make these statements.

139. Gellis made the statements with knowledge that each statement was false or made each statement with reckless disregard for the truth. Gellis took no steps to properly determine whether any of the statements were true or not before making the statements and she had no reasonable basis to believe the statements were true.

140. Gellis made the statements maliciously and with ill will toward F-Factor.

141. Because these false and defamatory statements are injurious to F-Factor's commercial reputation, the statements are defamatory per se.

142. Alternatively, and in addition, F-Factor has suffered special damages. As a direct and proximate cause of Gellis's foregoing actions, F-Factor lost approximately 90% of its approximately \$1 million monthly revenue. *See supra* ¶ 117.

143. Unless enjoined by this Court, Gellis will continue to make defamatory statements and F-Factor will continue to suffer irreparable harm.

144. F-Factor has no adequate remedy at law to prevent Gellis from continuing to make defamatory statements and thus no adequate remedy to prevent future injuries.

145. Accordingly, F-Factor is entitled to financial damages to compensate for the harm Gellis has caused and an injunction prohibiting Gellis from making any further defamatory statements.

146. Additionally, F-Factor requests punitive damages to punish Gellis for making false and defamatory statements and to deter Gellis from making further false and defamatory statements.

COUNT III
(F-Factor v. Gellis – Deceptive Trade Practices)

147. F-Factor repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the Complaint as if fully set forth herein.

148. Gellis repeatedly made false statements about the safety of the F-Factor diet and/or F-Factor products to consumers of the F-Factor diet and/or F-Factor products in violation of New York General Business Law § 349. These statements are as follows:

a. Paragraph 61, where it is alleged that Gellis stated on July 22, 2020, that she had evidence the F-Factor diet and products caused an eating disorder and had crippling effects on mental health;

b. Paragraph 62, where it is alleged that Gellis stated on August 5, 2020, that the F-Factor team deleted complaints about F-Factor to conceal safety information from consumers;

c. Paragraph 63, where it is alleged that Gellis stated on August 6, 2020, that she had evidence that the F-Factor diet and products cause severe gastrointestinal problems;

d. Paragraph 64, where it is alleged that Gellis stated on August 18, 2020, that she had evidence that F-Factor products caused a woman to miscarry a pregnancy;

e. Paragraph 65, where it is alleged that Gellis stated on August 21, 2020, that F-Factor products contain an unsafe ingredient known as guar gum and therefore that the F-Factor products are unsafe;

f. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause severe damage to users' colons;

g. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause severe gastrointestinal pain that requires hospitalization;

h. Paragraph 66, where it is alleged that Gellis stated on August 26, 2020, that F-Factor products cause hernias;

i. Paragraph 67, where it is alleged that Gellis stated on August 30, 2020, that F-Factor encouraged pregnant women to ingest, at unsafe levels, arsenic and a product called guar gum four times a day;

j. Paragraph 68, where it is alleged that Gellis stated on September 6, 2020, that she had evidence that someone died as a result of consuming F-Factor products;

k. Paragraph 69, where it is alleged that Gellis stated on September 7, 2020, that she had evidence that F-Factor powder causes anxiety and panic attacks;

l. Paragraph 70, where it is alleged that Gellis stated on September 8, 2020, that F-Factor products destroy the intestinal lining of those who consume the products; and

m. Paragraph 71, where it is alleged that Gellis stated on October 1, 2020, that she had evidence that F-Factor powder caused a heart attack.

149. These false and deceiving statements were directed at consumers. Gellis publishes content on her social media pages about fashion, fitness, food, and other lifestyle topics. Thus, the people who follow or view her pages tend to be consumers interested in improving their health and fitness. When Gellis began posting false and harassing statements about Zuckerbrot and F-Factor, she had approximately 160,000 Instagram followers. Today, Gellis has more than 208,000 followers on Instagram. Furthermore, each of Gellis's followers can share Gellis's posts to their

own friends and followers. Gellis's deceptive statements, therefore, have a broad impact on consumers at large.

150. These statements are deceptive because they are materially misleading to F-Factor's consumers. A reasonable consumer would consider allegations that a food product is dangerous and unsafe when deciding whether to purchase and use the food product. And a reasonable consumer would understand Gellis's statements to imply that the F-Factor diet and products are dangerous and unsafe, when in fact the F-Factor diet and products are safe and cause no substantial health problems, when used as recommended.

151. As a direct and proximate cause of the foregoing actions of Gellis, F-Factor has suffered economic and noneconomic damages. *See supra* ¶¶ 117–118.

152. Unless enjoined by this Court, Gellis will continue to engage in deceptive trade practices targeted at F-Factor's consumers, and F-Factor will continue to suffer irreparable harm.

153. F-Factor has no adequate remedy at law to prevent Gellis from continuing to engage in deceptive trade practices and thus no adequate remedy to prevent future injuries.

154. Accordingly, F-Factor is entitled to financial damages to compensate for the harm Gellis has caused, including statutory treble damages and statutory attorneys' fees, and an injunction prohibiting Gellis from engaging in any further deceptive trade practices.

155. Additionally, F-Factor requests punitive damages to punish Gellis for engaging in deceptive trade practices and to deter Gellis from engaging in any further deceptive trade practices.

COUNT IV
(Zuckerbrot v. Gellis – Defamation)

156. Zuckerbrot repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the Complaint as if fully set forth herein.

157. Gellis made false and defamatory statements about Zuckerbrot. The statements are as follows:

a. Paragraph 89, where it is alleged that on August 12, 2020, Gellis falsely stated that she had evidence Zuckerbrot and her family sent people to physically harm her. In fact, overwhelming evidence establishes that Zuckerbrot did not send people to harm Gellis or anyone else. Accordingly, this is a false and defamatory statement.

b. Paragraph 90, where it is alleged that on August 13, 2020, Gellis falsely stated that Zuckerbrot poisoned people daily. In fact, overwhelming evidence establishes that Zuckerbrot has not poisoned anyone. Accordingly, this is a false and defamatory statement.

c. Paragraph 90, where it is alleged that on August 13, 2020, Gellis falsely stated that Zuckerbrot was cyberbullying her. In fact, Zuckerbrot has not engaged in cyberbullying of Gellis or anyone else. Accordingly, this statement is false and defamatory.

d. Paragraph 91, where it is alleged that on August 19, 2020, Gellis falsely stated that Zuckerbrot sent people to harass Gellis online. In fact, overwhelming evidence establishes that Zuckerbrot never sent anyone to harass Gellis online. Accordingly, this statement is false and defamatory.

e. Paragraphs 92 and 93, where it is alleged that on August 25, 2020, on two separate occasions, Gellis falsely stated that Zuckerbrot was engaged in criminal wrongdoing. In fact, overwhelming evidence establishes that Zuckerbrot has never engaged in any criminal conduct. Accordingly, these are false and defamatory statements.

f. Paragraph 94, where it is alleged that on August 30, 2020, Gellis falsely stated that Zuckerbrot sent people to follow and intimidate Gellis. In fact, Zuckerbrot never sent anyone to follow or intimidate Gellis at any time or under any circumstance. Accordingly, this is a false and defamatory statement.

g. Paragraph 95, where it is alleged that on September 11, 2020, Gellis falsely stated that Zuckerbrot threatened to kill Gellis's family. In fact, overwhelming evidence establishes that Zuckerbrot never threatened to kill or harm Gellis or her family. Accordingly, this is a false and defamatory statement.

h. Paragraph 96, where it is alleged that on September 30, 2020, Gellis falsely stated that Zuckerbrot has caused the hospitalization of hundreds of individuals. In fact, overwhelming evidence establishes that neither Zuckerbrot's treatment nor the F-Factor diet has caused hundreds of people to go to the hospital. Accordingly, this is a false and defamatory statement.

i. Paragraph 97, where it is alleged that on October 5, 2020, Gellis falsely stated that Zuckerbrot was engaged in criminal conduct. In fact, Zuckerbrot has never engaged in any criminal conduct. Accordingly, this is a false and defamatory statement.

j. Paragraph 97, where it is alleged that on October 5, 2020, Gellis falsely stated that Zuckerbrot caused people to suffer serious harm, including loss of their colon, heart attacks, and death. In fact, Zuckerbrot has not caused anyone to lose their colon, suffer a heart attack, or die, as a result of her treatment. Accordingly, this is a false and defamatory statement.

158. These statements communicated to Gellis's audience that Zuckerbrot was engaged in serious personal and professional misconduct, including participation in criminal activity, cyberbullying, and jeopardizing the safety and wellbeing of her patients.

159. Gellis published these statements to third parties. Gellis published these statements in posts or stories on Instagram, which is a public platform. Once published, the posts appeared in the Instagram feeds of her followers. Gellis's Instagram page has more than 208,000 followers. The posts and stories are viewable by any Instagram user (of which there are more than 1 billion) who is not a follower, by navigating to the host's page, too.

160. Gellis did not have legal privilege or authorization from Zuckerbrot to make these statements.

161. Gellis made the statements with knowledge that each statement was false or made each statement with reckless disregard for the truth. Gellis took no steps to properly determine whether any of the statements were true or not before making the statements and she had no reasonable basis to believe the statements were true.

162. Gellis made these statements maliciously and with ill will toward Zuckerbrot.

163. Certain of Gellis's statements constitute defamation per se because they tended to injure Zuckerbrot in her trade, business, and/or profession. *See supra* ¶¶ 90, 96, 97. Because these statements threatened Zuckerbrot's business reputation, they are defamatory per se.

164. Other statements by Gellis were defamatory per se because they accused Zuckerbrot of committing serious crimes. *See supra* ¶ 92, 93, 97.

165. All of the false and defamatory statements directly and proximately caused Zuckerbrot special damages. *See supra* ¶¶ 118–119.

166. As a direct and proximate cause of Gellis's false and defamatory statements, Zuckerbrot has suffered both economic and noneconomic damages. *See supra* ¶¶ 118–119.

167. Unless enjoined by this Court, Gellis will continue to make false and defamatory statements and Zuckerbrot will continue to suffer irreparable harm.

168. Zuckerbrot has no adequate remedy at law to prevent Gellis from continuing to make false and defamatory statements and thus no adequate remedy to prevent future injuries.

169. Accordingly, Zuckerbrot is entitled to financial damages to compensate for the harm Gellis has caused and an injunction prohibiting Gellis from making any further false and defamatory statements.

170. Additionally, Zuckerbrot requests punitive damages to punish Gellis for making false and defamatory statements and to deter Gellis from making any further false and defamatory statements.

COUNT V

(Zuckerbrot v. Gellis – Intentional Infliction of Emotional Distress)

171. Zuckerbrot repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the Complaint as if fully set forth herein.

172. Gellis has engaged in extreme and outrageous conduct. For the last 75 days, Gellis has posted at least 4,500 vicious, unwarranted, and harassing statements about Zuckerbrot and her company. *See supra* ¶¶ 60–115. Cumulatively, Gellis's egregious misconduct is beyond the bounds of decent behavior and is intolerable in a civilized community.

173. Gellis made these vicious, unwarranted, and harassing statements with the intent to cause Zuckerbrot severe emotional distress or with reckless disregard of the substantial probability that her statements would cause severe emotional distress.

174. As a direct and proximate cause of the foregoing actions of Gellis, Zuckerbrot has suffered severe emotional distress. *See supra* ¶¶ 118–119. No reasonable person could be expected to endure such trauma.

175. Unless enjoined by this Court, Gellis will continue to intentionally inflict emotional distress on Zuckerbrot, and Zuckerbrot will continue to suffer irreparable harm.

176. Zuckerbrot has no adequate remedy at law to prevent Gellis from continuing to intentionally inflict emotional distress and thus no adequate remedy to prevent future injuries.

177. Accordingly, Zuckerbrot is entitled to financial damages to compensate for the harm Gellis has caused and an injunction prohibiting Gellis from taking any further acts to intentionally inflict emotional distress.

178. Additionally, Zuckerbrot requests punitive damages to punish Gellis for her intentional infliction of emotional distress and to deter Gellis from further intentional infliction of emotional distress.

COUNT VI
(Zuckerbrot v. Gellis – Civil Harassment)

179. Zuckerbrot repeats and re-alleges each and every allegation contained in paragraphs 1–120 of the Complaint as if fully set forth herein.

180. By posting false, defamatory, and/or harassing statements about Zuckerbrot, her family, and her company every day for over 75 days, *see supra* ¶¶ 60–115, Gellis has engaged in a course of conduct that has alarmed and seriously annoyed Zuckerbrot.

181. Gellis’s harassing conduct serves no legitimate purpose.

182. This conduct and has been and continues to be undertaken by Gellis with intent to harass, annoy, and alarm Zuckerbrot.

183. Gellis's actions have had their intended effect. As a direct and proximate cause of Gellis's conduct, Zuckerbrot has suffered, and will continue to suffer, alarm and serious annoyance.

184. Unless enjoined by this Court, Gellis will continue to harass Zuckerbrot, and Zuckerbrot will continue to suffer irreparable harm.

185. Zuckerbrot has no adequate remedy at law to prevent Gellis from continuing to make harassing statements and thus no adequate remedy to prevent future injuries.

186. Accordingly, Zuckerbrot is entitled to financial damages to compensate for the harm Gellis has caused and an injunction prohibiting Gellis from making any further harassing statements.

187. Additionally, Zuckerbrot requests punitive damages to punish Gellis for her harassing statements and to deter Gellis from making any further harassing statements.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Gellis and in favor of Plaintiffs as follows:

(a) Awarding compensatory damages to Plaintiffs in an amount in excess of \$500,000 to be determined at trial;

(b) Awarding exemplary and punitive damages;

(c) Granting Plaintiffs their costs and disbursements incurred in connection with this litigation, including attorneys' fees, together with such other relief as the Court may deem just and proper;

(d) Enjoining and restraining Gellis from making false, defamatory, or harassing statements about Tanya Zuckerbrot and/or F-Factor and/or its employees; and

(e) Enjoining and restraining Gellis from making false and disparaging statements about the F-Factor diet and/or F-Factor products.

Dated: October 8, 2020
New York, New York

Respectfully submitted,

Tanya Zuckerbrot and
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