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11 *Natasha Safaradi, and Patrick Gilbert*

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 Case No.: 2:17-cv-02042

15 ARASH HASHEMI, NATASHA  
16 SAFARADI, and PATRICK GILBERT,  
17 individually and on behalf of all others  
18 similarly situated,

19 Plaintiffs,

20 v.

21 DR PEPPER SNAPPLE GROUP, INC.,  
22 and DR PEPPER/SEVEN UP, INC.,

23 Defendants.

24 **CLASS ACTION COMPLAINT**

- 25 1. **Violation of California Civil Code §1750, et seq.**
- 26 2. **Violation of California Business and Professions Code § 17200, et seq.**
- 27 3. **Violation of California Business and Professions Code § 17500, et seq.**
- 28 4. **Breach of California Express Warranty Law**
1. **Breach of California Implied Warranty Law**
2. **Violation of Colorado Revised Statutes § 6-1-105**
3. **Breach of Colorado Express Warranty**
4. **Breach of Colorado Implied Warranty**
5. **Common Law Fraud**
6. **Intentional Misrepresentation**
7. **Negligent Misrepresentation**
8. **Breach of Contract**
9. **Quasi-Contract/Unjust Enrichment/Restitution**

**JURY TRIAL DEMANDED**

1 Plaintiffs Arash Hashemi, Natasha Safaradi, and Patrick Gilbert (“Plaintiffs”)  
2 by and through their counsel, bring this Class Action Complaint against Defendants  
3 Dr Pepper Snapple Group, Inc., and Dr Pepper/Seven Up, Inc. (“Defendants”), on  
4 behalf of themselves and all others similarly situated, and allege upon personal  
5 knowledge as to their own actions, and upon information and belief as to counsel’s  
6 investigations and all other matters, as follows:

7 **NATURE OF THE ACTION**

8 1. Plaintiffs bring this consumer protection and false advertising class  
9 action lawsuit against Defendants, based on Defendants’ false and misleading  
10 business practices with respect to the marketing and sale of its Canada Dry Ginger  
11 Ale (the “Product”).

12 2. At all relevant times, Defendants has labeled, packaged, and marketed  
13 the Product as being “Made from Real Ginger,” indicating that the Product contains  
14 ginger.

15 3. However, independent testing by a laboratory determined that the  
16 Product does not contain a detectable amount of ginger.

17 4. Therefore, unbeknownst to consumers, the Product was and continues to  
18 be falsely advertised because the Product does not contain a detectable amount of  
19 ginger, despite Defendants’ representations.

20 5. Plaintiffs and other consumers purchased the Product, reasonably relying  
21 on Defendants’ deceptive representation about the Product, and believing that the  
22 Product contained a detectable amount of ginger. Had Plaintiffs and other consumers  
23 known that the Product did not contain a detectable amount of ginger they would not  
24 have purchased the Product or would have paid significantly less for the Product.  
25 Therefore, Plaintiffs and consumers have suffered injury in fact as a result of  
26 Defendants’ deceptive practices.

27 6. Plaintiffs bring this class action lawsuit on behalf of themselves and all  
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1 others similarly situated. Plaintiffs seek to represent a California Subclass, a  
2 California Consumer Subclass, a Colorado Subclass, and a Nationwide Class (defined  
3 *infra* in paragraphs 33-36) (collectively referred to as “Classes”).

4 7. Plaintiffs, on behalf of themselves and other consumers, are seeking  
5 damages, restitution, declaratory and injunctive relief, and all other remedies the  
6 Court deems appropriate.

7 **JURISDICTION AND VENUE**

8 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
9 1332(d)(2)(A) because this case is a class action where the aggregate claims of all  
10 members of the proposed Classes are in excess of \$5,000,000, exclusive of interests  
11 and costs, and Plaintiffs, as well as most members of the proposed Classes, which  
12 total more than 100 class members, are citizens of states different from the state of  
13 Defendants.

14 9. This Court has personal jurisdiction over Defendants because  
15 Defendants have sufficient minimum contacts in California or otherwise intentionally  
16 did avail themselves of the markets within California, through their sale of the  
17 Product in California and to California consumers.

18 10. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(1) because  
19 Defendants regularly conduct business throughout this District, and a substantial part  
20 of the events and/or omissions giving rise to this action occurred in this District.

21 **PARTIES**

22 11. Plaintiff Arash Hashemi is a citizen of California, residing in Los  
23 Angeles County. In or around January 2017, Mr. Hashemi purchased the Product at a  
24 Ralph’s in Los Angeles, California. Mr. Hashemi purchased the Product reasonably  
25 relying on the Defendants’ representation on the Product that the Product was “Made  
26 from Real Ginger,” and believing that the Product would contain at least a detectable  
27 amount of ginger. Mr. Hashemi would not have purchased the Product or would have  
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1 paid significantly less for the Product had he known that the Product does not contain  
2 a detectable amount of ginger. Mr. Hashemi therefore suffered injury in fact and lost  
3 money as a result of Defendants’ misleading, false, unfair, and fraudulent practices,  
4 as described herein. After Mr. Hashemi learned that the Product is falsely advertised,  
5 he ceased purchasing and consuming the Product, and retained counsel. Mr. Hashemi  
6 is likely to purchase the Product in the future if it was reformulated to include a  
7 detectable amount of ginger.

8 12. Plaintiff Natasha Safaradi is a citizen of California, residing in Los  
9 Angeles County. In or around December 2016, Ms. Safaradi purchased the Product  
10 at a Ralph’s in Los Angeles, California. Ms. Safaradi purchased the Product,  
11 reasonably relying on the Defendants’ representation on the Product that the Product  
12 was “Made from Real Ginger,” and believing that the Product would contain at least  
13 a detectable amount of ginger. Ms. Safaradi would not have purchased the Product or  
14 would have paid significantly less for the Product had she known that the Product did  
15 not contain a detectable amount of ginger. Ms. Safaradi therefore suffered injury in  
16 fact and lost money as a result of Defendants’ misleading, false, unfair, and  
17 fraudulent practices, as described herein. After Ms. Safaradi learned that the Product  
18 is falsely advertised, she ceased purchasing and consuming the Product, and retained  
19 counsel. Ms. Safaradi is likely to purchase the Product in the future if it was  
20 reformulated to include a detectable amount of ginger.

21 13. Plaintiff Patrick Gilbert is a citizen of Colorado, residing in Denver,  
22 Colorado. In or around February 2016, Mr. Gilbert purchased the Product at King  
23 Soopers in Denver, Colorado. Mr. Gilbert purchased the Product, reasonably relying  
24 on the Defendants’ representation on the Product that the Product was “Made from  
25 Real Ginger,” and believing that the Product would contain at least a detectable  
26 amount of ginger. Mr. Gilbert would not have purchased the Product or would have  
27 paid significantly less for the Product had he known that the Product did not contain a  
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1 detectable amount of ginger. Mr. Gilbert therefore suffered injury in fact and lost  
2 money as a result of Defendants’ misleading, false, unfair, and fraudulent practices,  
3 as described herein. After Mr. Gilbert learned that the Product is falsely advertised,  
4 he ceased purchasing and consuming the Product, and retained counsel. Mr. Gilbert  
5 is likely to purchase the Product in the future if it was reformulated to include a  
6 detectable amount of ginger.

7 14. Defendant Dr Pepper Snapple Group, Inc. is a corporation incorporated  
8 in Delaware, with its principal place of business in Plano, Texas. Defendant Dr  
9 Pepper Snapple Group, Inc. directly and/or through its agents, formulates,  
10 manufactures, labels, packages, markets, distributes, and sells the Product  
11 nationwide, including in California. Defendant Pepper Snapple Group, Inc. has  
12 maintained substantial distribution and sales in this District.

13 15. Defendant Dr Pepper/Seven Up, Inc. is a corporation incorporated in  
14 Delaware, with its principal place of business in Plano, Texas. Defendant Dr  
15 Pepper/Seven Up, Inc. is a wholly owned subsidiary of Defendant Dr Pepper Snapple  
16 Group, Inc.

17 **FACTUAL ALLEGATIONS**

18 **I. The False And Misleading Advertisement Of The Product**

19 16. At all relevant times, Defendants directly and/or through their agents,  
20 formulated, manufactured, labeled, packaged, marketed, distributed, and sold the  
21 Product across California and the United States. The Product is sold in store and/or  
22 online at various retailers including, but not limited to, Ralphs, Target, Amazon,  
23 Walgreens, CVS, and Walmart.

24 17. At all relevant times, as depicted below, the Product contains the  
25 following conspicuous representation, or one substantially similar to it: “Made from  
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1 Real Ginger.”<sup>1</sup>



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17 18. Furthermore, Defendants have employed a number of television  
18 advertisements that reinforce Defendants’ representation that the Product is “Made  
19 from Real Ginger.” In one commercial, a little girl is seen selling the Product at a  
20 rural farm stand. When she runs out of the Product, she runs to the field and pulls out  
21 more Product, which is attached to ginger plant roots:<sup>2</sup>

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26 <sup>1</sup> <http://www.canadadry.com/products/ginger-ale> (last visited on March 14, 2017);  
27 [https://www.theeasymarket.com/canada-dry-ginger-ale-2-lt-plastic-bottle.html#.WMg5gG\\_yuUk](https://www.theeasymarket.com/canada-dry-ginger-ale-2-lt-plastic-bottle.html#.WMg5gG_yuUk)  
(last visited on March 14, 2017).

28 <sup>2</sup> <https://vimeo.com/47196454> (last visited on March 14, 2017).

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The commercial eventually cuts to the following image about the Product, with the voice-over then narrating that “For refreshingly real ginger taste, grab a Canada Dry Ginger Ale. Real Ginger. Real Taste.”



1 19. In another television commercial, people are seen on a ginger farm. One  
2 farmer is seen pulling on a ginger plant which is later shown to be attached to the  
3 Product by its root:<sup>3</sup>



17 20. In another commercial, a young lady opens her fridge to grab the  
18 Product, only to find resistance. The commercial cuts to a farmer on a ginger farm  
19 struggling to pull out one of his ginger plants. The farmer eventually pulls out the  
20 plant, which is attached to the Product in the lady's fridge. The voiceover then  
21 narrates "Find your way to relaxation with the crisp soothing taste of real ginger and  
22 bubbles. Canada Dry, the root of relaxation:"<sup>4</sup>

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27 <sup>3</sup> <https://vimeo.com/38249296> (last visited on March 14, 2017).

28 <sup>4</sup> [https://www.youtube.com/watch?v=nvQKChf\\_ooc](https://www.youtube.com/watch?v=nvQKChf_ooc) (last visited on March 14, 2017).

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1 **II. The Product Do Not Contain A Detectable Amount Of Ginger**

2 21. Despite Defendants' representations that the Product is "Made from Real  
3 Ginger," and their advertisements reinforcing such representations, the Product does  
4 not contain a detectable level of ginger.

5 22. In fact, independent testing by a laboratory determined that the Product  
6 does not contain a detectable amount of ginger.

7 23. Defendants knew or should have known that the Product does not  
8 contain a detectable amount of ginger because Defendants and/or its agents  
9 formulate, test, and manufacture the Product.

10 24. Defendants knew or should have known that Plaintiffs and other  
11 consumers, in purchasing the Product, would rely on Defendants' representations  
12 about the Product and would therefore reasonably believe that the Product contains at  
13 least a detectable amount of ginger.

14 25. In reasonable reliance on Defendants' representations about the Product,  
15 and believing that the Product contains at least a detectable amount of ginger,  
16 Plaintiffs and other consumers purchased the Product.

17 26. Plaintiffs and other consumers did not know, and had no reason to know,  
18 that the Product does not contain a detectable amount of ginger.

19 27. Because the Product does not contain a detectable amount of ginger, as  
20 represented by Defendants, and reasonably expected by Plaintiffs and other  
21 consumers, Defendants' uniform practice regarding the marketing and sale of the  
22 Product was and continues to be misleading and deceptive.

23 28. Each consumer has been exposed to the same or substantially similar  
24 deceptive practice, as at all relevant times (1) the Product uniformly represents that  
25 the Product is "Made from Real Ginger," and (2) the Product uniformly does not  
26 contain a detectable amount of ginger.

27 29. Plaintiffs and other consumers have paid an unlawful premium for the  
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1 Product. Plaintiffs and other consumers would have paid significantly less for the  
2 Product had they known that the Product do not contain a detectable amount of  
3 ginger. In the alternative, Plaintiffs and other consumers would not have purchased  
4 the Product at all had they known that the Product does not contain a detectable  
5 amount of ginger. Therefore, Plaintiffs and other consumers purchasing the Product  
6 suffered injury in fact and lost money as a result of Defendants' false, unfair, and  
7 fraudulent practices, as described herein.

8 30. Ginger is a premium ingredient which sells at wholesale for  
9 approximately \$1-2 per pound.<sup>5</sup> In contrast, high fructose corn syrup, the primary  
10 sweetener used in the Product, sells at wholesale for a fraction of that price.<sup>6</sup>

11 31. As a result of their misleading business practice, and the harm caused to  
12 Plaintiffs and other consumers, Defendants should be required to pay for all damages  
13 caused to consumers, including Plaintiffs. Furthermore, Defendants should be  
14 enjoined from engaging in these deceptive practices.

15 32. Despite being misled by Defendants, Plaintiffs would likely purchase the  
16 Product in the future if the Product was reformulated to include at least a detectable  
17 amount of ginger.

### 18 **CLASS ACTION ALLEGATIONS**

19 33. Plaintiffs bring this case as a class action that may be properly  
20 maintained under Federal Rule of Civil Procedure 23 on behalf of themselves and all  
21 persons in the United States, who within the relevant statute of limitations periods,  
22 purchased the Product ("Nationwide Class").

23 34. Plaintiffs Arash Hashemi and Natasha Safaradi (collectively the

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25 <sup>5</sup> <https://www.marketnews.usda.gov/mnp/fv-report-top-filters?locName=&commAbr=GNGRT&commName=GINGER%20ROOT&className=VEGETABLES&rowDisplayMax=25&startIndex=1&navClass=VEGETABLES&navType=byComm&repType=termPriceDaily&type=termPrice> (last visited on March 14, 2017).

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27 <sup>6</sup> [https://www.ers.usda.gov/webdocs/DataFiles/Sugar\\_and\\_Sweeteners\\_Yearbook\\_Tables\\_18015/TABLE09.XLS?v=42772](https://www.ers.usda.gov/webdocs/DataFiles/Sugar_and_Sweeteners_Yearbook_Tables_18015/TABLE09.XLS?v=42772) (last visited on March 14, 2017).

1 “California Plaintiffs”) also seek to represent a subclass defined as all California  
2 residents, who within the relevant statute of limitations periods, purchased the  
3 Product (“California Subclass”).

4 35. California Plaintiffs also seek to represent a subclass defined as all  
5 California residents, who within the relevant statute of limitations periods, purchased  
6 the Product for personal, family, or household purposes (“California Consumer  
7 Subclass”).

8 36. Plaintiff Patrick Gilbert also seeks to represent a subclass defined as all  
9 Colorado residents, who within the relevant statute of limitations periods, purchased  
10 the Product (“Colorado Subclass”).

11 37. Excluded from the Classes are Defendants, the officers and directors of  
12 the Defendants at all relevant times, members of their immediate families and their  
13 legal representatives, heirs, successors or assigns and any entity in which Defendants  
14 has or had a controlling interest. Any judge and/or magistrate judge to whom this  
15 action is assigned and any members of such judges’ staffs and immediate families are  
16 also excluded from the Classes. Also excluded from the Classes are persons or  
17 entities that purchased the Product for sole purposes of resale.

18 38. Plaintiffs hereby reserve the right to amend or modify the class  
19 definitions with greater specificity or division after having had an opportunity to  
20 conduct discovery.

21 39. The California Plaintiffs are members of the Nationwide Class,  
22 California Subclass, and California Consumer Subclass.

23 40. Plaintiff Patrick Gilbert is a member of the Nationwide Class and the  
24 Colorado Subclass.

25 41. Numerosity: Defendants have sold millions of units of the Product. The  
26 Product is sold in store and/or online at various retailers including, but not limited to,  
27 Ralphs, Target, Amazon, Walgreens, CVS, and Walmart. Accordingly, members of  
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1 the Classes are so numerous that their individual joinder herein is impractical. While  
2 the precise number of class members and their identities are unknown to Plaintiffs at  
3 this time, the number may be determined through discovery.

4 42. Common Questions Predominate: Common questions of law and fact  
5 exist as to all members of the Classes and predominate over questions affecting only  
6 individual class members. Common legal and factual questions include, but are not  
7 limited to, the following:

- 8 a. Whether or not the Product contains a detectable amount of  
9 ginger; and
- 10 b. Whether consumers relied on the “Made from Real Ginger”  
11 representations in purchasing the Product.

12 43. Typicality: Plaintiffs’ claims are typical of the claims of the Classes  
13 they seek to represent in that Plaintiffs and members of the Classes were all exposed  
14 to the same or substantially similar false and misleading representations, purchased  
15 the Product relying on the uniform false and misleading representations, and suffered  
16 losses as a result of such purchases.

17 44. Adequacy: Plaintiffs are adequate representatives of the Classes they  
18 seek to represent because their interests do not conflict with the interests of the  
19 members of the Classes, they have retained competent counsel experienced in  
20 prosecuting class actions, and they intend to prosecute this action vigorously. The  
21 interests of the members of the Classes will be fairly and adequately protected by  
22 Plaintiffs and their counsel.

23 45. Superiority: A class action is superior to other available means for the  
24 fair and efficient adjudication of the claims of the members of the Classes. The size  
25 of each claim is too small to pursue individually and each individual Class member  
26 will lack the resources to undergo the burden and expense of individual prosecution  
27 of the complex and extensive litigation necessary to establish Defendants’ liability.  
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1 Individualized litigation increases the delay and expense to all parties and multiplies  
2 the burden on the judicial system presented by the complex legal and factual issues of  
3 this case. Individualized litigation also presents a potential for inconsistent or  
4 contradictory judgments. The class action mechanism is designed to remedy harms  
5 like this one that are too small in value, although not insignificant, to file individual  
6 lawsuits for.

7 46. This lawsuit is maintainable as a class action under Federal Rule of Civil  
8 Procedure 23(b)(2) because Defendants have acted or refused to act on grounds that  
9 are generally applicable to the Class members, thereby making final injunctive relief  
10 appropriate with respect to all Classes.

11 47. This lawsuit is maintainable as a class action under Federal Rule of Civil  
12 Procedure 23(b)(3) because the questions of law and fact common to the members of  
13 the Classes predominate over any questions that affect only individual members, and  
14 because the class action mechanism is superior to other available methods for the fair  
15 and efficient adjudication of the controversy.

16 **FIRST CLAIM FOR RELIEF**  
17 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
18 **California Civil Code §§ 1750, et seq.**  
19 ***(for the California Consumer Subclass)***  
20 ***(Injunctive relief only)***

21 48. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
22 fully set forth herein.

23 49. The California Plaintiffs bring this claim individually and on behalf of  
24 the members of the proposed California Consumer Subclass against Defendants.

25 50. The Product is a “good” pursuant to Cal. Civ. Code § 1761(a), and the  
26 purchases of the Product by California Plaintiffs and members of the California  
27 Consumer Subclass constitute “transactions” pursuant to Cal. Civ. Code § 1761(e).

28 51. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
services have sponsorship, approval, characteristics, ingredients, uses, benefits, or

1 quantities which they do not have . . . .” By representing that the Product is “Made from  
2 Real Ginger,” Defendants have represented and continue to represent that the Product  
3 contains at least a detectable level of an ingredient (ginger), when it does not.  
4 Therefore, Defendants have violated section 1770(a)(5) of the CLRA.

5 52. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services  
6 are of a particular standard, quality, or grade, or that goods are of a particular style of  
7 model, if they are another.” By representing that the Product is “Made from Real  
8 Ginger,” Defendants have represented and continue to represent that the Product is of a  
9 particular quality (made from real ginger) when it does not have this particular quality.  
10 Therefore Defendants have violated section 1770(a)(7) of the CLRA.

11 53. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
12 with intent not to sell them as advertised.” By representing that the Product is “Made  
13 from Real Ginger,” and then intentionally not selling the Product to meet the  
14 expectations that it contains at least a detectable amount of ginger, Defendants have  
15 violated section 1770(a)(9) of the CLRA.

16 54. At all relevant times, Defendants knew or reasonably should have known  
17 that the Product does not contain a detectable amount of ginger, and that California  
18 Plaintiffs and other members of the California Consumer Subclass would reasonably  
19 and justifiably rely on those representations about the Product in purchasing them.

20 55. California Plaintiffs and other members of the California Consumer  
21 Subclass reasonably and justifiably relied on Defendants’ misleading and fraudulent  
22 representations about the Product when purchasing them. Moreover, based on the  
23 very materiality of Defendants’ fraudulent and misleading conduct, reliance on such  
24 conduct as a material reason for the decision to purchase the Product may be  
25 presumed or inferred for the California Plaintiffs and members of California  
26 Consumer Subclass.

27 56. The California Plaintiffs and members of the California Consumer  
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1 Subclass suffered injuries caused by Defendants because they would not have  
2 purchased the Product or would have paid significantly less for the Product, had they  
3 known that Defendants’ conduct was misleading and fraudulent.

4 57. Under Cal. Civ. Code § 1780(a), the California Plaintiffs and members  
5 of the California Consumer Subclass seek damages, restitution, declaratory and  
6 injunctive relief, and all other remedies the court deems appropriate for Defendants’  
7 violations of the CLRA.

8 58. Pursuant to Cal. Civ. Code § 1782, on February 28, 2017, counsel for  
9 Plaintiffs mailed a notice and demand letter by certified mail, with return receipt  
10 requested, to Defendants.<sup>7</sup> Defendants received the notice and demand letter on  
11 March 6, 2017. If Defendants fail to remedy the alleged violations and fail to provide  
12 notice to all affected consumers within thirty (30) days of receipt of Plaintiffs’ written  
13 notice, Plaintiffs will amend this Class Action Complaint to add claims for damages  
14 under the CLRA.

15 **SECOND CLAIM FOR RELIEF**  
16 **Violation of California’s Unfair Competition Law (“UCL”),**  
17 **California Business & Professions Code §§ 17200, et seq.**  
*(for the California Subclass and California Consumer Subclass)*

18 59. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
19 fully set forth herein.

20 60. The California Plaintiffs bring this claim individually and on behalf of  
21 the members of the proposed California Subclass and California Consumer Subclass  
22 against Defendants.

23 61. UCL §17200 provides, in pertinent part, that “unfair competition shall  
24 mean and include unlawful, unfair or fraudulent business practices and unfair,  
25 deceptive, untrue or misleading advertising . . . .”

26 62. Under the UCL, a business act or practice is “unlawful” if it violates any  
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28 <sup>7</sup> See Exhibit “A.”

1 established state or federal law.

2 63. Defendants' false and misleading advertising of the Product therefore  
3 was and continues to be "unlawful" because it violates the CLRA, California's False  
4 Advertising Law ("FAL"), and other applicable laws as described herein.

5 64. As a result of Defendants' unlawful business acts and practices,  
6 Defendants have unlawfully obtained money from the California Plaintiffs, and  
7 members of both the California Subclass and California Consumer Subclass.

8 65. Under the UCL, a business act or practice is "unfair" if the defendants'  
9 conduct is substantially injurious to consumers, offends public policy, and is  
10 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such  
11 acts or practices are outweighed by the gravity of the harm to the alleged victims.

12 66. Defendants' conduct was and continues to be of no benefit to purchasers  
13 of the Product, as it is misleading, unfair, unlawful, and is injurious to consumers  
14 who rely on the representations about the Product but do not get what they were  
15 expecting. Deceiving consumer about the composition of the Product is of no benefit  
16 to the consumers, especially when they are paying a premium for the Product.  
17 Therefore, Defendants' conduct was and continues to be "unfair."

18 67. As a result of Defendants' unfair business acts and practices, Defendants  
19 have and continue to unfairly obtain money from the California Plaintiffs, and  
20 members of both the California Subclass and California Consumer Subclass.

21 68. Under the UCL, a business act or practice is "fraudulent" if it actually  
22 deceives or is likely to deceive members of the consuming public.

23 69. Defendants' conduct here was and continues to be fraudulent because it  
24 has and will continue to deceive consumers into believing that the Product contains a  
25 detectable amount of ginger, when it does not. Because Defendants misled and will  
26 likely continue to mislead the California Plaintiffs and members of both the  
27 California Subclass and California Consumer Subclass, Defendants' conduct is  
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1 “fraudulent.”

2 70. As a result of Defendants’ fraudulent business acts and practices,  
3 Defendants have and continue to fraudulently obtain money from the California  
4 Plaintiffs, and members of both the California Subclass and California Consumer  
5 Subclass.

6 71. The California Plaintiffs requests that this Court cause Defendants to  
7 restore this unlawfully, unfairly, and fraudulently obtained money to the California  
8 Plaintiffs, and members of both the California Subclass and California Consumer  
9 Subclass, to disgorge the profits Defendants made on these transactions, and to enjoin  
10 Defendants from violating the UCL or violating it in the same fashion in the future as  
11 discussed herein. Otherwise, the California Plaintiffs and members of both the  
12 California Subclass and California Consumer Subclass may be irreparably harmed  
13 and/or denied an effective and complete remedy if such an order is not granted.

14 **THIRD CLAIM FOR RELIEF**  
15 **Violation of California’s False Advertising Law (“FAL”),**  
16 **California Business & Professions Code §§ 17500, et seq**  
*(for the California Subclass and California Consumer Subclass)*

17 72. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
18 fully set forth herein.

19 73. The California Plaintiffs bring this claim individually and on behalf of  
20 the members of the proposed California Subclass and California Consumer Subclass  
21 against Defendants.

22 74. California’s FAL makes it “unlawful for any person to make or  
23 disseminate or cause to be made or disseminated before the public . . . in any  
24 advertising device . . . or in any other manner or means whatever, including over the  
25 Internet, any statement, concerning . . . personal property or services professional or  
26 otherwise, or performance or disposition thereof, which is untrue or misleading and  
27 which is known, or which by the exercise of reasonable care should be known, to be  
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1 untrue or misleading.”

2 75. Defendants have represented and continue to represent to the public,  
3 including the California Plaintiffs and members of both the California Subclass and  
4 California Consumer Subclass, that the Product is “Made from Real Ginger”.  
5 Defendants’ representations are false and misleading because the Product does not  
6 contain a detectable amount of ginger. Because Defendants have disseminated false  
7 and misleading information regarding their Product, and Defendants knew, or should  
8 have known through the exercise of reasonable care, that the information was and  
9 continues to be false and misleading, Defendants have violated the FAL and continue  
10 to do so.

11 76. As a result of Defendants’ false advertising, Defendants have and  
12 continue to fraudulently obtain money from California Plaintiffs and members of  
13 both the California Subclass and California Consumer Subclass.

14 77. The California Plaintiffs requests that this Court cause Defendants to  
15 restore this fraudulently obtained money to the California Plaintiffs and members of  
16 both the California Subclass and California Consumer Subclass, to disgorge the  
17 profits Defendants made on these transactions, and to enjoin Defendants from  
18 violating the FAL or violating it in the same fashion in the future as discussed herein.  
19 Otherwise, the California Plaintiffs and members of both the California Subclass and  
20 California Consumer Subclass may be irreparably harmed and/or denied an effective  
21 and complete remedy if such an order is not granted.

22 **FOURTH CLAIM FOR RELIEF**  
23 **Breach of Express Warranty,**  
24 **California Commercial Code § 2313**

25 *(for the California Subclass and California Consumer Subclass)*

26 78. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
27 fully set forth herein.

28 79. The California Plaintiffs bring this claim individually and on behalf of

1 the members of the proposed California Subclass and California Consumer Subclass  
2 against Defendants.

3 80. California Commercial Code § 2313 provides that “(a) Any affirmation  
4 of fact or promise made by the seller to the buyer which relates to the goods and  
5 becomes part of the basis of the bargain creates an express warranty that the goods  
6 shall conform to the affirmation or promise,” and “(b) Any description of the goods  
7 which is made part of the basis of the bargain creates an express warranty that the  
8 goods shall conform to the description.” Cal. Com. Code § 2313.

9 81. Defendants have expressly warranted that the Product is “Made from  
10 Real Ginger.” This representation about the Product: (1) is an affirmation of fact or  
11 promise made by Defendants, to consumers, that the Product contain at least a  
12 detectable amount of ginger, (2) became part of the basis of the bargain to purchase  
13 the Product; and (3) created an express warranty that the Product would conform to  
14 the affirmation of fact or promise. In the alternative, the representation is a  
15 description of a good, which was made as part of the basis of the bargain to purchase  
16 the Product, and which created an express warranty that the Product would conform  
17 to the Product description.

18 82. The California Plaintiffs and members of both the California Subclass  
19 and California Consumer Subclass reasonably and justifiably relied on the foregoing  
20 express warranty, believing that the Product did in fact conform to the warranty.

21 83. Defendants have breached the express warranty made to the California  
22 Plaintiffs and members of both the California Subclass and California Consumer  
23 Subclass by failing to formulate, manufacture, and sell the Product to satisfy that  
24 express warranty.

25 84. California Plaintiffs and members of both the California Subclass and  
26 California Consumer Subclass paid a premium price for the Product but did not  
27 obtain the full value of the Product as represented. If Plaintiffs and members of both  
28

1 the California Subclass and California Consumer Subclass had known of the true  
2 nature of the Product, they would not have purchased the Product or would not have  
3 been willing to pay the premium price associated with the Product.

4 85. As a result, the California Plaintiffs and members of both the California  
5 Subclass and California Consumer Subclass suffered injury and deserve to recover all  
6 damages afforded under the law.

7 **FIFTH CLAIM FOR RELIEF**  
8 **Breach of Implied Warranty of Merchantability,**  
9 **California Commercial Code § 2314**  
*(for the California Subclass and California Consumer Subclass)*

10 86. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
11 fully set forth herein.

12 87. Plaintiffs bring this claim individually and on behalf of the members of  
13 the proposed California Subclass and California Consumer Subclass against  
14 Defendants.

15 88. California Commercial Code § 2314(1) provides that “a warranty that  
16 the goods shall be merchantable is implied in a contract for their sale if the seller is a  
17 merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

18 89. Furthermore, California Commercial Code § 2314(2) provides that  
19 “[g]oods to be merchantable must... (f)[c]onform to the promises or affirmations of  
20 fact made on the container or label if any.” Cal. Com. Code § 2314(2)(f).

21 90. Defendants are merchants with respect to the sale of carbonated  
22 beverages, including the Product. Therefore, a warranty of merchantability is implied  
23 in every contract for sale of the Product to California consumers.

24 91. In representing on the Product that the Product is “Made from Real  
25 Ginger,” Defendants have provided a promise or affirmation of fact to California  
26 consumers.

27 92. However, the Product does not conform to the promises or affirmations  
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1 of fact, as the Product does not contain a detectable amount of ginger.

2 93. Therefore, Defendants have breached their implied warranty of  
3 merchantability in regard to the Product.

4 94. If the California Plaintiffs and members of both the California Subclass  
5 and California Consumer Subclass had known that the Product does not conform to  
6 Defendants' promises or affirmations of fact, they would not have purchased the  
7 Product or would not have been willing to pay the premium price associated with  
8 Product. Therefore, as a direct and/or indirect result of Defendants' breach, the  
9 California Plaintiffs and members of both the California Subclass and California  
10 Consumer Subclass have suffered injury and deserve to recover all damages afforded  
11 under the law.

12 **SIXTH CLAIM FOR RELIEF**  
13 **Violation of Colorado Consumer Protection Act,**  
14 **Colo. Rev. Stat. §§ 6-1-105**  
***(for the Colorado Class)***

15 95. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
16 fully set forth herein.

17 96. Plaintiff Patrick Gilbert brings this claim individually and on behalf of  
18 the members of the Colorado Subclass against Defendants.

19 97. Colo. Rev. Stat. § 6-1-105(e) states that a defendant engages in  
20 deceptive trade practices when it “[k]nowingly makes a false representation as to  
21 the characteristics, ingredients, uses, benefits, alterations, or quantities of goods,  
22 food, services, or property . . . .” By representing that the Product is “Made from Real  
23 Ginger,” Defendants have made and continue to make false representations as to the  
24 Product’s ingredients (ginger) because the Product does not contain a detectable  
25 amount of ginger. Therefore, Defendants have violated § 6-1-105(e).

26 98. Colo. Rev. Stat. § 6-1-105(g) states that a defendant engages in  
27 deceptive trade practices when it “[r]epresents that goods, food, services, or property  
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1 are of a particular standard, quality, or grade, or that goods are of a particular style or  
2 model, if he knows or should know that they are of another.” By representing that the  
3 Product is “Made from Real Ginger,” Defendants have represented and continue to  
4 represent that the Product is of a particular quality (made from real ginger) when  
5 Defendants know or should have known that it does not have this particular quality.  
6 Therefore Defendants have violated § 6-1-105(g).

7 99. Colo. Rev. Stat. § 6-1-105(i) states that a defendant engages in deceptive  
8 trade practices when it “[a]dvertises goods, services, or property with intent not to  
9 sell them as advertised.” By representing that the Product is “Made from Real Ginger,”  
10 and then intentionally not selling the Product to meet the expectations that it contains at  
11 least a detectable amount of ginger, Defendants have violated § 6-1-105(i).

12 100. At all relevant times, Defendants knew or reasonably should have known  
13 that the Product does not contain a detectable amount of ginger, and that Plaintiff  
14 Patrick Gilbert and other members of the Colorado Subclass would reasonably and  
15 justifiably rely on those representations about the Product in purchasing them.

16 101. Plaintiff Patrick Gilbert and other members of the Colorado Subclass  
17 reasonably and justifiably relied on Defendants’ misleading and fraudulent  
18 representations about the Product when purchasing them. Moreover, based on the  
19 very materiality of Defendants’ fraudulent and misleading conduct, reliance on such  
20 conduct as a material reason for the decision to purchase the Product may be  
21 presumed or inferred for Plaintiff Patrick Gilbert and members of the Colorado  
22 Subclass.

23 102. Plaintiff Patrick Gilbert and members of the Colorado Subclass suffered  
24 injuries caused by Defendants because they would not have purchased the Product or  
25 would have paid significantly less for the Product, had they known that Defendants’  
26 conduct was misleading and fraudulent.

27 103. Pursuant to Colo. Rev. Stat. § 6-1-113, the Plaintiff Patrick Gilbert and  
28

1 members of the Colorado Subclass seek damages, restitution, declaratory and  
2 injunctive relief, and all other remedies the court deems appropriate for Defendants’  
3 violations.

4 **SEVENTH CLAIM FOR RELIEF**  
5 **Breach of Express Warranty,**  
6 **Colo. Rev. Stat. § 4-2-313**  
7 ***(for the Classes)***

8 104. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
9 fully set forth herein.

10 105. Plaintiff Patrick Gilbert brings this claim individually and on behalf of  
11 the members of the Colorado Subclass against Defendants.

12 106. Colo. Rev. Stat. § 4-2-313(1) provides that “(a) Any affirmation of fact  
13 or promise made by the seller to the buyer which relates to the goods and becomes  
14 part of the basis of the bargain creates an express warranty that the goods shall  
15 conform to the affirmation or promise,” and “(b) Any description of the goods which  
16 is made part of the basis of the bargain creates an express warranty that the goods  
17 shall conform to the description.” Colo. Rev. Stat. § 4-2-313(1).

18 107. Defendants have expressly warranted that the Product is “Made from  
19 Real Ginger.” This representation about the Product: (1) is an affirmation of fact or  
20 promise made by Defendants, to consumers, that the Product contain at least a  
21 detectable amount of ginger, (2) became part of the basis of the bargain to purchase  
22 the Product; and (3) create an express warranty that the Product will conform to the  
23 affirmation of fact or promise. In the alternative, the representation is a description of  
24 a good, which was made as part of the basis of the bargain to purchase the Product,  
25 and which created an express warranty that the Product would conform to the Product  
26 description.

27 108. Plaintiff Patrick Gilbert and members of the Colorado Subclass  
28 reasonably and justifiably relied on the foregoing express warranty, believing that

1 that the Product did in fact conform to the warranty.

2 109. Defendants have breached the express warranty made to Plaintiff Patrick  
3 Gilbert and members of the Colorado Subclass by failing to formulate, manufacture,  
4 and sell the Product to satisfy that express warranty.

5 110. Plaintiff Patrick Gilbert and members of the Colorado Subclass paid a  
6 premium price for the Product but did not obtain the full value of the Product as  
7 represented. If they had known of the true nature of the Product, they would not have  
8 purchased the Product or would not have been willing to pay the premium price  
9 associated with the Product.

10 111. As a result, Plaintiff Patrick Gilbert and members of the Colorado  
11 Subclass have suffered injury and deserve to recover all damages afforded under the  
12 law.

13 **EIGHTH CLAIM FOR RELIEF**  
14 **Breach of Implied Warranty of Merchantability,**  
15 **Colo. Rev. Stat. § 4-2-314**  
*(for the Classes)*

16 112. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
17 fully set forth herein.

18 113. Plaintiff Patrick Gilbert brings this claim individually and on behalf of  
19 the members of the Colorado Subclass against Defendants.

20 114. Colo. Rev. Stat. § 4-2-314(1) provides that “a warranty that the goods  
21 shall be merchantable is implied in a contract for their sale if the seller is a merchant  
22 with respect to goods of that kind.” Colo. Rev. Stat. § 4-2-314(1).

23 115. Furthermore, Colo. Rev. Stat. § 4-2-314(2) provides that “[g]oods to be  
24 merchantable must... (f)[c]onform to the promises or affirmations of fact made on the  
25 container or label if any.” Colo. Rev. Stat. § 4-2-314(2).

26 116. Defendants are merchants with respect to the sale of carbonated  
27 beverages, including the Product. Therefore, a warranty of merchantability is implied  
28

1 in every contract for sale of the Product to Colorado consumers.

2 117. In representing on the Product that the Product is “Made from Real  
3 Ginger,” Defendants have provided a promise or affirmation of fact to Colorado  
4 consumers.

5 118. However, the Product does not conform to the promises or affirmations  
6 of fact, as the Product does not contain a detectable amount of ginger.

7 119. Therefore, Defendants have breached their implied warranty of  
8 merchantability in regard to the Product.

9 120. If Plaintiff Patrick Gilbert and members of the Colorado Subclass had  
10 known that the Product does not conform to Defendants’ promises or affirmations of  
11 fact, they would not have purchased the Product or would not have been willing to  
12 pay the premium price associated with Product. Therefore, as a direct and/or indirect  
13 result of Defendants’ breach, Plaintiff Patrick Gilbert and members of the Colorado  
14 Subclass have suffered injury and deserve to recover all damages afforded under the  
15 law.

16 **NINTH CLAIM FOR RELIEF**  
17 **Common Law Fraud**  
*(for the Classes)*

18 121. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
19 fully set forth herein.

20 122. Plaintiffs bring this claim individually and on behalf of the members of  
21 the Classes against Defendants.

22 123. Defendants have willfully, falsely, and knowingly formulated the  
23 Product without any detectable amount of ginger. Despite this, Defendants continue  
24 to intentionally represent that the Product is “Made from Real Ginger.” Therefore,  
25 Defendants have made, and continue to make, a misrepresentations as to the Product.

26 124. Defendants’ misrepresentations are material (i.e., the type of  
27 misrepresentations to which a reasonable person would attach importance and would  
28

1 be induced to act thereon in making purchase decisions), because they relate to the  
2 composition of the Product.

3 125. Defendants knew or recklessly disregarded the fact that the Product does  
4 not contain a detectable amount of ginger.

5 126. Defendants intend that consumers rely on these representations, as the  
6 representations are made prominently on the Product, and are reinforced throughout  
7 Defendants' television advertisement campaign.

8 127. Plaintiffs and members of the Classes have reasonably and justifiably  
9 relied on Defendants' misrepresentations when purchasing the Product and had the  
10 correct facts been known, would not have purchased the Product or would not have  
11 purchased it at the prices at which it was offered.

12 128. Therefore, as a direct and proximate result of Defendants' fraud,  
13 Plaintiffs and members of the Classes have suffered economic losses and other  
14 general and specific damages, including but not limited to the amounts paid for the  
15 Product, and any interest that would have accrued on those monies, all in an amount  
16 to be proven at trial.

17 **TENTH CLAIM FOR RELIEF**  
18 **Intentional Misrepresentation**  
19 ***(for the Classes)***

20 129. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
21 fully set forth herein.

22 130. Plaintiffs bring this claim individually and on behalf of the members of  
23 the Classes against Defendants.

24 131. Defendants have marketed the Product in a manner indicating that the  
25 Product contains at least a detectable level of ginger. However, the Product does not  
26 contain a detectable level of ginger. Therefore Defendants have made  
27 misrepresentations as to the Product.

1 132. Defendants' representations regarding the Product are material to a  
2 reasonable consumer because they relate to the composition of the Product purchased  
3 by the consumer. A reasonable consumer would attach importance to such  
4 representations and would be induced to act thereon in making purchase decisions.

5 133. At all relevant times when such representations were made, Defendants  
6 knew that the representation were false and misleading, or has acted recklessly in  
7 making the representations and without regard to the truth.

8 134. Defendants intend that Plaintiffs and other consumers rely on the  
9 representations made about the Product, as the representations are made prominently  
10 on the Product, and are reinforced throughout Defendants' television advertisement  
11 campaign.

12 135. Plaintiffs and members of the Classes have reasonably and justifiably  
13 relied on Defendants' intentional misrepresentation when purchasing the Product, and  
14 had the correct facts been known, would not have purchased the Product or would not  
15 have purchased it at the prices at which it was offered.

16 136. Therefore, as a direct and proximate result of Defendants' intentional  
17 misrepresentation, Plaintiffs and members of the Classes have suffered economic  
18 losses and other general and specific damages, including but not limited to the  
19 amounts paid for the Product, and any interest that would have accrued on those  
20 monies, all in an amount to be proven at trial.

21 **ELEVENTH CLAIM FOR RELIEF**  
22 **Negligent Misrepresentation**  
23 ***(for the Classes)***

24 137. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
25 fully set forth herein.

26 138. Plaintiffs bring this claim individually and on behalf of the members of  
27 the Classes against Defendants.  
28

1 139. Defendants have marketed the Product in a manner indicating that the  
2 Product contains at least a detectable amount of ginger. However, the Product does  
3 not contain a detectable amount of ginger. Therefore Defendants have made  
4 misrepresentations as to the Product.

5 140. Defendants' representations regarding the Product are material to a  
6 reasonable consumer because they relate to the composition of the Product purchased  
7 by consumers. A reasonable consumer would attach importance to such  
8 representations and would be induced to act thereon in making purchase decisions.

9 141. At all relevant times when such misrepresentations were made,  
10 Defendants knew or has been negligent in not knowing that the representations were  
11 false and misleading. Defendants had no reasonable grounds for believing their  
12 representations were not false and misleading.

13 142. Defendants intend that Plaintiffs and others consumers rely on the  
14 representations made about the Product, as the representations are made prominently  
15 on the Product, and are reinforced throughout Defendants' television advertisement  
16 campaign.

17 143. Plaintiffs and members of the Classes have reasonably and justifiably  
18 relied on Defendants' negligent misrepresentation when purchasing the Product, and  
19 had the correct facts been known, would not have purchased the Product or would not  
20 have purchased it at the prices at which it was offered.

21 144. Therefore, as a direct and proximate result of Defendants' negligent  
22 misrepresentation, Plaintiffs and members of the Classes have suffered economic  
23 losses and other general and specific damages, including but not limited to the  
24 amounts paid for the Product, and any interest that would have accrued on those  
25 monies, all in an amount to be proven at trial.

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1 **TWELFTH CLAIM FOR RELIEF**  
2 **Breach of Contract**  
3 ***(for the Classes)***

4 145. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
5 fully set forth herein.

6 146. Plaintiffs bring this claim individually and on behalf of the members of  
7 the Classes against Defendants.

8 147. In purchasing the Product, Plaintiffs and members of the Classes have  
9 formed valid contracts that are supported by sufficient consideration, pursuant to  
10 which Defendants are obligated to provide a Product that is “Made from Real  
11 Ginger.”

12 148. Defendants materially breached their contracts with Plaintiffs and  
13 members of the Classes by selling the Product that does not contain a detectable  
14 amount of ginger.

15 149. As a direct and proximate result of Defendants’ breaches, Plaintiffs and  
16 members of the Classes were damaged in that they received the Product with less  
17 value than the amounts paid. Moreover, Plaintiffs and members of the Classes have  
18 suffered economic losses and other general and specific damages, including but not  
19 limited to the amounts paid for the Product, and any interest that would have accrued  
20 on those monies, all in an amount to be proven at trial.

21 **THIRTEENTH CLAIM FOR RELIEF**  
22 **Quasi Contract/Unjust Enrichment/Restitution**  
23 ***(for the Classes)***

24 150. Plaintiffs repeat the allegations contained in paragraphs 1-47 above as if  
25 fully set forth herein.

26 151. Plaintiffs bring this claim individually and on behalf of the members of  
27 the Classes against Defendants.

28 152. As alleged herein, Defendants intentionally and recklessly made a

1 misleading representation about the Product to Plaintiffs and members of the Classes  
2 to induce them to purchase the Product. Plaintiffs and members of the Classes have  
3 reasonably relied on the misleading representations and have not received all of the  
4 benefits promised by Defendants. Plaintiffs and members of the Classes therefore  
5 have been induced by Defendants' misleading and false representations about the  
6 Product, and paid for them when they would and/or should not have, or paid more  
7 money to Defendants for the Product than they otherwise would and/or should have  
8 paid.

9 153. Plaintiffs and members of the Classes have conferred a benefit upon  
10 Defendants as Defendants has retained monies paid to them by Plaintiffs and  
11 members of the Classes.

12 154. The monies received were obtained under circumstances that were at the  
13 expense of Plaintiffs and members of the Classes – i.e., Plaintiffs and members of the  
14 Classes did not receive the full value of the benefit conferred upon Defendants.

15 155. Therefore, it is inequitable and unjust for Defendants to retain the profit,  
16 benefit, or compensation conferred upon it without paying Plaintiffs and the members  
17 of the Classes back for the difference of the full value of the benefit compared to the  
18 value actually received.

19 156. As a direct and proximate result of Defendants' unjust enrichment,  
20 Plaintiffs and members of the Classes are entitled to restitution, disgorgement, and/or  
21 the imposition of a constructive trust upon all profits, benefits, and other  
22 compensation obtained by Defendants from their deceptive, misleading, and unlawful  
23 conduct as alleged herein.

24  
25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
27 situated, seeks judgment against Defendants, as follows:  
28

1 a) For an order certifying the Nationwide Class, the California Subclass,  
2 the California Consumer Subclass, and the Colorado Subclass under Rule 23 of the  
3 Federal Rules of Civil Procedure; naming Plaintiffs as representatives of all  
4 Classes; and naming Plaintiffs' attorneys as Class Counsel to represent all Classes.

5 b) For an order declaring that Defendants' conduct violates the statutes  
6 and laws referenced herein;

7 c) For an order finding in favor of Plaintiffs, and all Classes, on all  
8 counts asserted herein;

9 d) For an order awarding all damages, not including those under the  
10 California Consumers Legal Remedies Act, on behalf of the California Consumer  
11 Subclass, in amounts to be determined by the Court and/or jury;

12 e) For prejudgment interest on all amounts awarded;

13 f) For interest on the amount of any and all economic losses, at the  
14 prevailing legal rate;

15 g) For an order of restitution and all other forms of equitable monetary  
16 relief;

17 h) For injunctive relief as pleaded or as the Court may deem proper;

18 i) For an order awarding Plaintiffs and all Classes their reasonable  
19 attorneys' fees, expenses and costs of suit, including as provided by statute such as  
20 under California Code of Civil Procedure section 1021.5; and

21 j) For any other such relief as the Court deems just and proper.

22  
23 **DEMAND FOR TRIAL BY JURY**

24 Plaintiffs demand a trial by jury on all issues so triable.

25 Dated: March 14, 2017

**FARUQI & FARUQI, LLP**

27 By: /s/ Barbara A. Rohr  
28 Barbara A. Rohr, Bar No. 273353

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bheikali@faruqilaw.com

*Attorneys for Plaintiffs Arash Hashemi,  
Natasha Safaradi, and Patrick Gilbert*

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

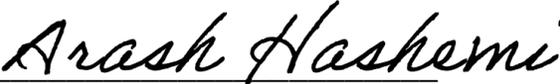
I, Arash Hashemi, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place for trial because I purchased Canada Dry Ginger in the Central District of California (“District”), and Defendant conducts a substantial amount of business in this District.

3. In 2017, I purchased the Canada Dry Ginger Ale from a store located in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on February 21, 2017 at Los Angeles, California.

  
Arash Hashemi  
Arash Hashemi

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Natasha Safaradi, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place for trial because I purchased Canada Dry Ginger in the Central District of California (“District”), and Defendant conducts a substantial amount of business in this District.

3. In 2016, I purchased the Canada Dry Ginger Ale from a store located in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on March 14, 2017 at Los Angeles, California.

A handwritten signature in black ink, consisting of the initials 'N.' followed by a stylized, cursive 'S' that extends into a long horizontal flourish.

---

Natasha Safaradi

**Consumer Venue Declaration**

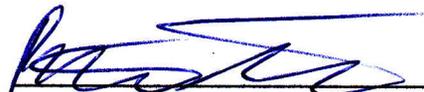
I, Patrick Gilbert, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of Colorado. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place for trial because I purchased one of the Products in the District of Colorado, and Defendant conducts a substantial amount of business in this District.

3. In recent years I have purchased Canada Dry Ginger Ale from Kroger stores located in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on February 13, 2017 at Denver, Colorado.

  
Patrick Gilbert

# EXHIBIT A



**FARUQI & FARUQI**  
LLP  
ATTORNEYS AT LAW

NEW YORK

CALIFORNIA

DELAWARE

FLORIDA

PENNSYLVANIA

BARBARA A. ROHR  
brohr@faruqilaw.com

February 28, 2017

**Via Certified U.S. Mail**  
**Return Receipt Requested**

Dr Pepper Snapple Group, Inc.  
5301 Legacy Drive  
Plano, TX 75024

Dr Pepper/Seven Up, Inc.  
5301 Legacy Drive  
Plano, TX 75024

Re: *Class Action Notification and Pre-Lawsuit Demand Pursuant to California Civil Code Section 1782, Colorado Revised Statutes Section 4-2-607 and All Other Applicable Laws Requiring Pre-Suit Notice Concerning Canada Dry Ginger Ale*

To Whom It May Concern:

Please be advised that Faruqi & Faruqi, LLP represents Natasha Safaradi, Arash Hashemi, and Patrick Gilbert (“Clients”), purchasers of Canada Dry Ginger Ale (“Product”). Our Clients seek to represent a class of consumers (“Class”) who, within the relevant time period,<sup>1</sup> purchased the Product. This letter provides Dr Pepper Snapple Group, Inc and Dr Pepper/Seven Up, Inc. (“Defendants”) with notice and demand for corrective action. All further communications intended for our Clients must be directed through this office. Furthermore, this demand and notice letter is meant to comply with the requirements of *California Civil Code* §1782, *Colorado Revised Statutes* § 4-2-607 and all other laws requiring a pre-suit demand and notice prior to litigation, on behalf of our Clients and all others similarly situated should this matter proceed to litigation.

During the relevant time period, Defendants have manufactured, marketed, advertised, and labeled the Product as being “Made from Real Ginger.” However, independent testing has shown that the Product does not contain detectable levels of ginger.

Ms. Safaradi and Mr. Hashemi, consumers residing in California, purchased the Product in Los Angeles, California. Mr. Gilbert, a consumer residing in Colorado, purchased the Product in Denver, Colorado. Based on the representation that the Product is “Made from Real Ginger,” our Clients reasonably believed that the Product would contain ginger.

---

<sup>1</sup> From the applicable statutes of limitations for claims asserted in a prospective complaint filed by our Clients.

Exhibit A.  
pg. 2



**FARUQI & FARUQI**  
LLP  
ATTORNEYS AT LAW

Dr Pepper Snapple Group, Inc.  
Dr Pepper/Seven Up, Inc.  
Page 2  
February 28, 2017

These business practices violate several California and Colorado consumer protection statutes and laws. Pursuant to *California Civil Code* §1782(a)(1), our Clients and the Class further provide notice that they believe Defendants have violated, and continue to violate the California Consumers Legal Remedies Act (“CLRA”), and specifically *California Civil Code* §1770, in at least the following manner:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have (Section 1770(a)(5));
2. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another (Section 1770(a)(7)); and
3. Advertising goods or services with intent not to sell them as advertised (Section 1770(a)(9)).

It is our opinion that Defendants have also violated and continue to violate California Business and Professions Code Sections 17200 and 17500, and other California and Colorado common law and other statutory violations.

This letter not only serves as notification of Defendants’ alleged violations of *California Civil Code* §1770 as outlined above, but also as our Clients’ demand, and all others similarly situated, that Defendants immediately correct, repair, refund and otherwise rectify the violations of § 1770 and the other California and Colorado statutes and causes of action referenced above, on a class-wide basis.

To cure the harmful conduct noted herein, we demand that Defendants: (1) cease and desist from advertising and selling of the Product in a false and misleading manner; (2) issue an immediate recall of the Product; and (3) make full restitution to the Class of all money obtained from the sales thereof.

We further demand that Defendants preserve all documents, emails, other electronically stored information and other evidence which refer or relate to any of the above-described practices, including, but not limited to:

1. All documents concerning the development and/or testing of the Product;
2. All documents concerning the manufacturing, packaging, labeling, advertisement, promotion, marketing and sale of the Product;



**FARUQI & FARUQI**  
LLP  
ATTORNEYS AT LAW

Dr Pepper Snapple Group, Inc.  
Dr Pepper/Seven Up, Inc.  
Page 3  
February 28, 2017

3. All documents concerning communications with any individual involved in the development, testing, packaging, labeling, advertisement, promotion, marketing and sale of the Product;
4. All documents concerning communications with purchasers of the Product;
5. All documents concerning the sales volume of the Product (in units and/or dollars), and the revenues derived therefrom; and
6. All documents concerning the identities and location of potential class members who purchased the Product.

Further, this letter serves as a thirty (30) day notice and demand requirement under §1782 for damages. Accordingly, should Defendants fail to rectify the unfair and deceptive scheme within thirty (30) days of receipt of this letter, our Clients will amend their class action complaint for actual damages, punitive damages, and all other damages permitted under the CLRA and the other California and Colorado statutes and causes of action available to them, along with interest, attorneys' fees and costs for Defendants' violations.

We are willing to discuss an appropriate way to remedy the demands asserted in this letter. If Defendants wish to enter into such a discussion, please contact our firm immediately. If we do not hear from Defendants promptly, we will conclude that Defendants are not interested in resolving this dispute short of litigation in the form of a class action lawsuit. If Defendants contend that any statement in this letter is inaccurate in any respect, please provide our firm with Defendants' contentions and supporting documents promptly.

Please contact the undersigned if there are any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Rohr', written in a cursive style.

Barbara A. Rohr

cc: Timothy J. Peter  
Ben Heikali

7016 2710 0000 6371 5143

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

PLANO, TX 75024

**CERTIFIED MAIL**

Certified Mail Fee \$3.35

Extra Services & Fees (check one)

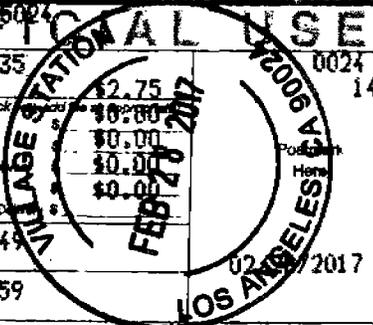
- Return Receipt (hardcopy) \$2.75
- Return Receipt (electronic) \$0.00
- Certified Mail Restricted Delivery \$0.00
- Adult Signature Required \$0.00
- Adult Signature Restricted Delivery \$0.00

Postage \$0.49

Total Postage and Fees \$6.59

Sent To  
 DR. PEPPER SNAPPLE GROUP, INC  
 Street and Apt. No., or PO Box No.  
 5301 LEGACY DRIVE  
 City, State, ZIP+4®  
 PLANO, TX 75024

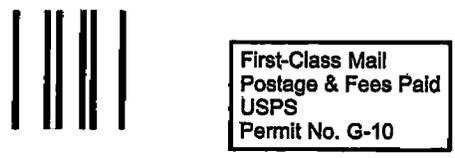
PS Form 3800, April 2015 PSN 7530-02-000-9053 See reverse for Instructions



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature                  X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)                  Jonathan Hernandez C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No                  If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>DR PEPPER SNAPPLE GROUP, INC.                  5301 LEGACY DRIVE                  PLANO, TX 75024</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adult Signature</li> <li><input type="checkbox"/> Adult Signature Restricted Delivery</li> <li><input type="checkbox"/> Certified Mail®</li> <li><input type="checkbox"/> Certified Mail Restricted Delivery</li> <li><input type="checkbox"/> Collect on Delivery</li> <li><input type="checkbox"/> Collect on Delivery Restricted Delivery</li> <li><input type="checkbox"/> Insured Mail</li> <li><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</li> <li><input type="checkbox"/> Priority Mail Express®</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input type="checkbox"/> Return Receipt for Merchandise</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> </ul>
<p>2. Article Number (Transfer from service label)</p> <p>2710 0000 6371 5143</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9053

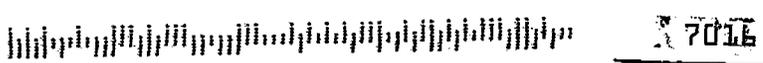
Domestic Return Receipt



United States  
 Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Faruqi & Faruqi, LLP, Ste 1470  
 10866 Wilshire Boulevard  
 Los Angeles, CA 90024





Still Have Questions?  
Browse our FAQs >



Get Easy Tracking Updates >  
Sign up for My USPS.

Tracking Number: 70162710000063715143

### Product & Tracking Information

**Postal Product:** First-Class Mail®  
**Features:** Certified Mail™ Return Receipt  
**See tracking for related item:** 9590940225296306182855

### Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
March 6, 2017 , 6:17 am	Delivered, To Agent	PLANO, TX 75025
Your item has been delivered to an agent at 6:17 am on March 6, 2017 in PLANO, TX 75025.		
March 4, 2017 , 6:01 am	In Transit to Destination	
March 3, 2017 , 5:55 am	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
March 2, 2017 , 12:13 pm	Arrived at USPS Destination Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
March 2, 2017 , 7:22 am	In Transit to Destination	
March 1, 2017 , 12:22 am	Departed USPS Origin Facility	LOS ANGELES, CA 90052
February 28, 2017 , 9:46 pm	Arrived at USPS Origin Facility	LOS ANGELES, CA 90052
February 28, 2017 , 4:29 pm	Acceptance	LOS ANGELES, CA 90024

### Track Another Package

Tracking (or receipt) number

Track It

### Manage Incoming Packages

Track all your packages from a dashboard.  
No tracking numbers necessary.

Sign up for My USPS >



**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

7016 2710 0000 6371 5365

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

PLANO, TX 75074

**OFFICIAL USE**

Certified Mail Fee \$3.00 0024  
 \$2.75 14

Extra Services & Fees (check box, add fee or percentage)  
 Return Receipt (hard copy) \$0.00  
 Return Receipt (electronic) \$0.00  
 Certified Mail Restricted Delivery \$0.00  
 Adult Signature Required \$0.00  
 Adult Signature Restricted Delivery \$0.00

Postage \$1.49  
 Total Postage and Fees \$4.49

Postmark Here  
 FEB 28 2017  
 LOS ANGELES, CA 90024

Sent To DR. PEPPER / SEVEN UP, INC.  
 Street and Apt. No., or PO Box No. 5301 LEGACY DRIVE  
 City, State, ZIP+4® PLANO, TX 75024

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DR. PEPPER / SEVEN UP, INC.  
5301 LEGACY DRIVE  
PLANO, TX 75024



2. Article Number (Transfer from sender label)  
710 0000 6371 5365

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Jonathan Hernandez  Addressee

B. Received by (Printed Name) Jonathan Hernandez C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  Priority Mail Express®  
 Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restricted Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  Signature Confirmation  
 Collect on Delivery  Signature Confirmation Restricted Delivery  
 Collect on Delivery Restricted Delivery  Insured Mail (over \$500)  
 Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

USPS TRACKING#



9590 9402 2529 6306 1828 62

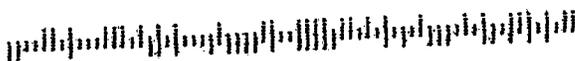


First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

United States  
 Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box\*

Faruqi & Faruqi, LLP, Ste 1470  
10866 Wilshire Boulevard  
Los Angeles, CA 90024





Still Have Questions?  
Browse our FAQs >



Get Easy Tracking Updates >  
Sign up for My USPS.

Tracking Number: 70162710000063715365

### Product & Tracking Information

**Postal Product:** First-Class Mail®  
**Features:** Certified Mail™ Return Receipt  
**See tracking for related item:** 9590940225296306182862

### Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
March 6, 2017 , 6:17 am	Delivered, To Agent	PLANO, TX 75025
March 4, 2017 , 6:01 am	In Transit to Destination	
March 3, 2017 , 5:55 am	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
March 2, 2017 , 12:00 pm	Arrived at USPS Destination Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
March 2, 2017 , 6:16 am	In Transit to Destination	
February 28, 2017 , 11:16 pm	Departed USPS Origin Facility	LOS ANGELES, CA 90052
February 28, 2017 , 10:11 pm	Arrived at USPS Origin Facility	LOS ANGELES, CA 90052
February 28, 2017 , 4:29 pm	Acceptance	LOS ANGELES, CA 90024

Your item has been delivered to an agent at 6:17 am on March 6, 2017 in PLANO, TX 75025.

### Track Another Package

Tracking (or receipt) number

Track It

### Manage Incoming Packages

Track all your packages from a dashboard.  
No tracking numbers necessary.

Sign up for My USPS >

