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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/22/2018 at 11:16:40 AM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

Case No: 37-2018-00014504-CU-BC-CTL

SERENA WONG,

on behalf of herself and all others
similarly situated,

Plaintiff,

v.

TRADER JOE'S COMPANY;
T.A.C.T. HOLDING, INC.;
DOE DEFENDANTS 1-5;

Defendants.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF:**

- 1. CONSUMERS LEGAL REMEDIES ACT,
CAL. CAL. CIV. CODE §§1750 *et seq.***
- 2. UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§17200 *et seq.*
(*unlawful prong*)**
- 3. UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§17200 *et seq.*
(*unfair prong*)**
- 4. FALSE ADVERTISING LAW,
CAL. BUS. & PROF. CODE §§17500 *et seq.***
- 5. BREACH OF EXPRESS WARRANTY**
- 6. BREACH OF IMPLIED WARRANTY**
- 7. NEGLIGENT MISREPRESENTATION**

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | JURISDICTION AND VENUE | 1 |
| II. | PARTIES | 3 |
| III. | FACTUAL ALLEGATIONS | 4 |
| A. | Defendants unlawfully conceal that the Product contains artificial flavor. | 4 |
| B. | Defendant's competitors label their products lawfully. | 10 |
| C. | Plaintiff's and Class Purchases of the Product. | 11 |
| IV. | DELAYED DISCOVERY | 13 |
| V. | CLASS ACTION ALLEGATIONS | 13 |
| VI. | CAUSES OF ACTION | 16 |
| | First Cause of Action: Violation of the CLRA | 16 |
| | Second Cause of Action: Violation of the UCL, Unlawful Prong | 17 |
| | Third Cause of Action: Violation of the UCL, Unfair Prong | 18 |
| | Fourth Cause of Action: Violation of False Advertising Law | 20 |
| | Fifth Cause of Action: Breach of Express Warranty | 21 |
| | Sixth Cause of Action: Breach of Implied Warranty | 22 |
| | Seventh Cause of Action: Negligent Misrepresentation..... | 24 |
| VII. | PRAYER FOR RELIEF | 24 |
| VIII. | JURY DEMAND | 25 |

1 Serena Wong (“Plaintiff”), on behalf of herself and all others similarly situated, by
2 and through her undersigned counsel, hereby brings this action against Trader Joe’s
3 Company (“Trader Joe’s”) and Doe Defendants alleging that the Product described herein,
4 which was manufactured, packaged, labeled, advertised, distributed and sold by these
5 defendants, is falsely advertised in California and otherwise violates California law, and
6 upon information and belief and investigation of counsel alleges as follows:

7 **I. JURISDICTION AND VENUE**

8 1. Plaintiff brings this action pursuant to California Code of Civil Procedure
9 §382 and Cal. Civ. Code §1781. The Court has jurisdiction over this action pursuant to
10 California’s Code of Civil Procedure §410.10. The amount in controversy, exclusive of
11 interest, costs, and fees, exceeds the minimum jurisdictional amount for this Court.

12 2. This Court has personal jurisdiction over the Defendants because each has
13 affirmatively established contacts with the State of California and maintained those
14 contacts at all relevant times.

15 3. Trader Joe’s is a California corporation and sells the Product to California
16 consumers in Trader Joe’s retail outlets in California.

17 4. T.A.C.T. is a California corporation that wholly owns Trader Joe’s and is
18 headquartered and has its principal place of business in California.

19 5. Doe Defendants are other entities that are directly, jointly, or vicariously also
20 liable for the tortious conduct in California and are therefore also subject to the Court’s
21 jurisdiction in California.

22 6. Defendants each have sufficient minimum contacts with this State and
23 sufficiently avail themselves of the markets of this State through the promotion,
24 advertising, sales, and marketing of the Product within the State to render the exercise of
25 jurisdiction by this Court reasonable.

26 7. Venue is proper in this County because Defendants conduct business here,
27 engage in substantial transactions in this County, and many of the transactions complained
28

of herein occurred in this County including specifically the transactions between Plaintiff and Defendant Trader Joe's and transactions between Defendants and the Class.

NATURE OF THE ACTION

8. This is a California consumer class action for violations of California consumer protection laws.

9. Defendant Trader Joe's manufactures, packages, distributes, advertises, markets, and sells a Trader Joe's house-brand product identified as "Trader Joe's Ts & Js Sour Gummies" (the Product).

10. The Product is falsely advertised in California, violates express and implied product warranties, and otherwise violates California consumer protection law.

11. The Product's front label identifies it as "Trader Joe's Ts and Js Lemon Grapefruit Lime Tangerine Sour Gummies."

12. The Product contains an undisclosed artificial flavor.

13. Because consumers greatly prefer naturally-flavored food products to those with artificial flavors, and will pay more for the natural products, Defendants conceal the artificial flavor from consumers.

14. Under California law, any artificial flavor must be identified on both the front-of-package label and the product ingredient list.

15. Defendants fail to do either.

16. This Product is falsely advertised in California.

17. The Product is labeled as if it was flavored only with natural ingredients when in fact the Product is artificially flavored.

18. Defendants' packaging, labeling, and advertising scheme is intended to give consumers the impression that they are buying a premium, 'all natural' product with only natural flavoring instead of a product that is artificially flavored.

19. Plaintiff, who was deceived by Defendants' unlawful conduct and purchased the Product multiple times in California during the proposed Class Period, brings this

1 action, on her own behalf and on behalf of California consumers similarly situated, to
2 remedy Defendants' unlawful acts.

3 20. On behalf of the Class as defined herein, Plaintiff seeks an order compelling
4 Defendants to, *inter alia*: (1) cease packaging, distributing, advertising and selling the
5 Product in violation of California consumer protection law; (2) re-label or recall all
6 existing deceptively packaged Product; (3) conduct a corrective advertising campaign to
7 fully inform California consumers; (4) award Plaintiff and other Class-members
8 restitution, actual damages, and punitive damages; and (5) pay all costs of suit, expenses,
9 and attorney fees.

10 II. PARTIES

11 21. Defendant Trader Joe's Company ("Trader Joe's" or "Defendant")
12 manufactures, packages, labels, advertises, markets, distributes, and sells the Product in
13 California and throughout the United States.

14 22. Trader Joe's is a California corporation with its headquarters and principal
15 place of business at 800 S. Shamrock Avenue in Monrovia, California. Trader Joe's is
16 registered with the California Secretary of State under entity number C0353027.

17 23. Defendant T.A.C.T. Holding, Inc. ("T.A.C.T.") is a California corporation
18 with its headquarters and principal place of business at 800 S. Shamrock Avenue in
19 Monrovia, California. T.A.C.T., a holding company, is the sole owner of Trader Joe's
20 Company. T.A.C.T. has failed to maintain sufficient formal corporate separation to avoid
21 legal responsibility for tortious acts committed by Trader Joe's. T.A.C.T. is registered
22 with the California Secretary of State under entity number C0880025.

23 24. Trader Joe's and T.A.C.T., along with any Doe Defendants later identified in
24 the litigation, are jointly responsible for the violations of California law described herein.

25 25. Plaintiff Serena Wong ("Plaintiff") is a resident and citizen of San Diego
26 County, California, who purchased the Product multiple times during the Class Period in
27 San Diego and southern California for personal and household consumption.

III. FACTUAL ALLEGATIONS

26. The Product is falsely advertised as if it were an all-natural food product containing only natural ingredients when in fact the Product is artificially flavored.

27. This is false advertising and food fraud and violates California statutory consumer protection law.

A. Defendants unlawfully conceal that the Product contains artificial flavor.

28. The Product is a Trader Joe's private-label sour gummy candy assortment.

29. The Product's front-of-package label claims that the package contains Lemon, Lime, Grapefruit, and Tangerine flavored sour candies.

30. The label nowhere discloses that the Product contains artificial flavors.

31. In fact, Trader Joe's maintains a pervasive national marketing campaign guaranteeing that all its house-brand products are only naturally-flavored.

32. Trader Joe's advertises all its house-brand products with the following guarantee:¹

"When you see our name on a label, you can be assured that the product contains:

• *YES quality ingredients*

• *NO artificial flavors*"

33. Trader Joe's advertising defines artificial flavors as follows, further reinforcing its purported guarantee to consumers:

"Artificial flavors are synthetic chemical mixtures that mimic a natural flavor in some way. We use only "natural flavors" in our products" ²

34. Trader Joe's does not honor its guarantee to consumers. Trader Joe's adds a synthetic flavoring chemical mixture to the Product that mimics and reinforces the Product's advertised "natural flavors."

¹ <https://www.traderjoes.com/faqs/general-information?categoryid=2>; (last visited January 17, 2018).

² Id.

35. California consumers, like American consumers nationwide, seek out natural food products and are willing to pay substantially more for such products compared to food products with artificial ingredients.³ Food products made exclusively with natural ingredients command a price premium compared to similar products that contain synthetic ingredients such as artificial flavors.

36. To appeal to consumers who seek out natural food products and are willing to pay more for them, Defendants label and advertise the Product as if it was exclusively naturally-flavored.

37. Below is a true and accurate representation of the Product front label.



³ “Consumers Want Healthy Foods - And Will Pay More For Them”; Forbes Magazine, February 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; (last visited November 22, 2017.)

1
2 38. Defendant advertises four citrus flavors on the label in addition to the generic
3 “Sour” flavor.

4 39. By operation of California law, identifying these flavors by name on the
5 Product label without any qualifying language warrants to the consumer that the Product
6 is flavored only with natural flavors.

7 40. This advertising too is false. The Product contains artificial flavor.

8 41. Laboratory testing of commercial samples of the Product showed that the
9 Product is flavored with a synthetic petrochemical, d-l malic acid.

10 42. Defendant adds this synthetic chemical to the Product to create the overall
11 “Sour” flavor and to simulate and reinforce the Product’s four characteristic fruit flavors.

12 43. Because Defendant fails to properly disclose this artificial flavor on the label,
13 the Product’s labeling and advertising violate California law in multiple ways.

14 44. First, because the Product contains an artificial flavoring ingredient that
15 simulates and reinforces the Product’s characterizing flavors, the front labels are required
16 by law to prominently disclose the artificial flavoring.

17 45. Omitting this disclosure falsely informs the consumer, by operation of law,
18 that the Product is flavored only with natural juices or flavors. Cal. Health & Saf. Code
19 §109875 *et seq.*, (Sherman Law), incorporating 21 CFR 101.22.⁴

20 46. Second, the Product violates California and federal law because the labels
21 incorrectly identify the artificial flavoring ingredient only as a generic “malic acid” instead
22 of using the specific, non-generic name of the ingredient, d-l malic acid. *See* 21 CFR
23 101.4(a)(1). Defendant’s label deliberately conflates the natural and artificial forms of

24
25 ⁴ California’s Sherman Food, Drug, and Cosmetic Act, Cal. Health & Saf. Code §109875
26 *et seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food
27 Drug and Cosmetic Act. An act or omission that would violate FDCA regulations
28 necessarily therefore violates California’s Sherman Law. *Id.* at §110100. Regulatory
citations in the text are to California’s Sherman Law and reference the corresponding
federal regulation for convenience.

1 malic acid.

2 47. There is a naturally-occurring malic acid found in some fruits and vegetables;
3 that compound is correctly identified as “l-malic acid.”

4 48. Defendants do not use the natural form of malic acid, but instead use the
5 industrial chemical d-l malic acid,⁵ in the form of a racemic mixture of d- and l-isomers.
6 This type of ‘malic acid’ is not naturally-occurring but is in fact manufactured in
7 petrochemical plants from benzene or butane—components of gasoline and lighter fluid,
8 respectively—through a series of chemical reactions, some of which involve highly toxic
9 chemical precursors and byproducts.

10 49. Both the natural and unnatural forms of malic acid are considered “GRAS”
11 (generally recognized as safe) for use as flavorings; the d-malic acid form, however, has
12 never been extensively studied for its health effects in human beings. Both forms confer a
13 “tart, fruity” flavor to food products. According to The Chemical Company, an industrial
14 chemical supplier, d-l malic acid gives foods a “persistent sour” flavor.⁶

15 50. Because the Product contains artificial flavoring, California law requires the
16 Product to display both front- and back-label disclosures to inform consumers that the
17 Product is artificially flavored.

18 51. The Product has neither of the required disclosures.

19 52. California law, incorporating U.S. Food, Drug, and Cosmetic Act regulations
20 by reference, further requires that a food’s label accurately describe the nature of the food
21 product and its characterizing flavors. 21 C.F.R. 102.5(a).

22 53. Any recognizable primary flavor identified directly or indirectly on the front
23 label of a food Product, whether by word, vignette, depiction of a fruit, or other means, is
24 referred to as a “characterizing flavor”.

25 54. Any flavor components identified on the Product’ front labels, either in text
26

27 ⁵ D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

28 ⁶ <https://thechemco.com/chemical/malic-acid/>; last visited 04/12/17.

1 or in recognizable pictures, are considered primary recognizable flavors and are therefore
2 characterizing flavors for each Product.

3 55. For Defendant's "Ts and Js Sour Gummies" product, the "Sour" flavor and
4 the four specifically-identified fruits are all considered characterizing flavors.

5 56. If any characterizing flavor is not created exclusively by the named flavor
6 ingredient, the product's front label must state that the product's flavor was simulated or
7 reinforced with either or both natural or artificial flavorings. If any artificial flavor is
8 present which "simulates, resembles or reinforces" the characterizing flavor, the label
9 must prominently inform consumers that the product is "Artificially Flavored."⁷

10 57. Further, a food product's label also must include a statement of the "presence
11 or absence of any characterizing ingredient(s) or component(s) . . . when the presence or
12 absence of such ingredient(s) or component(s) in the food has a material bearing on price
13 or consumer acceptance . . . and consumers may otherwise be misled about the presence
14 or absence of the ingredient(s) or component(s) in the food."⁸

15 58. Such statement must be in boldface print on the front display panel and of
16 sufficient size for an average consumer to notice. *Id.*

17 59. In addition, a food product that does not contain any of the natural fruit
18 comprising the advertised fruit flavors must disclose on the front label that the product is
19 "flavored."

20 60. The synthetic d-l malic acid in the Product simulates, resembles, and
21 reinforces the characterizing "Sour" flavor and all the characterizing named fruit flavors.

22 61. The Product violated both state and federal food labeling laws.

23 62. Under California statutory labeling requirements as well, Defendants were
24 required to place prominently on the Product's front and back labels a notice sufficient to
25 allow California consumers to understand that the Product contained artificial flavorings.

27 ⁷ California's Sherman Law, incorporating 21 C.F.R. 101.22(i) (3), (4).

28 ⁸ California's Sherman Law, incorporating 21 C.F.R. 102.5(c).

63. Defendants failed to do so, deceiving consumers and violating California law.

64. Plaintiff and the Class were unaware that the Product contained artificial flavoring when they purchased them.

65. When purchasing the Product, Plaintiff and the Class were seeking a product of particular qualities, that were flavored only with the natural ingredients claimed on the label and which did not contain artificial flavoring.

66. Plaintiff is not alone in these purchasing preferences. As reported in Forbes Magazine, 88% of consumers polled recently indicated they would pay more for foods perceived as natural or healthy. “All demographics [of consumers]—from Generation Z to Baby Boomers—say they would pay more” for such Product, specifically including foods with no artificial flavors.⁹ Forty-one percent (41%) of consumers rated the absence of artificial flavors in food Product as “Very Important,” and 80% of North American consumers are willing to pay a premium for foods with no artificial ingredients.¹⁰

67. John Compton, a Fortune 50 food and beverage industry CEO, spoke to investors at the Morgan Stanley Consumer & Retail Conference, stating, “We have talked extensively to consumers about this idea, and they come back and tell us the number one motivation for purchase is products that claim to be all natural.”

68. Defendants’ labelling and advertising reflects these consumer preferences — not by making the Product only with natural ingredients, but instead by concealing the fact that the Product contains artificial flavors.

⁹ “Consumers Want Healthy Foods - And Will Pay More For Them”; Forbes Magazine, February 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; (last visited April 7, 2017.)

¹⁰ The Nielsen Company, Global Health and Wellness Survey, “Healthy Eating Habits Around the World,” 2015; <https://www.nielsen.com/content/dam/nielsen-global/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>; (last visited November 17, 2017)

69. The Product's label deceived consumers into paying a price premium for an artificially-flavored product. That product was worth less than the naturally-flavored product promised by the labels.

70. California's Health & Safety Code states that "Any food is misbranded if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless its labeling states that fact." Cal. Health & Saf. Code §110740.

71. California law therefore required Defendants to include on the Product's label a notice alerting California consumers that the Product are artificially flavored.

72. Defendants failed to do so.

73. Because the Product violated California law, it was misbranded and illegal to advertise, transport, distribute, or to sell in California. Cal. Health & Saf. Code §110740; §110760; §110765.

74. Plaintiff and the Class lost money as a result of Defendants' conduct because they paid a price premium for a product that was artificially flavored when they sought to purchase a naturally-flavored product.

B. Defendant's competitors label their products lawfully.

75. Trader Joe's not only deceives consumers but also gains an unfair commercial advantage in the marketplace by labeling the Product deceptively.

76. Manufacturers of competing sour and fruit candy products label those products lawfully.

77. Competing manufacturers accurately label their artificially-flavored fruit candies as "Artificially Flavored."

78. Other competing manufacturers, offering products whose labels suggest just as Defendants' do that their products are naturally flavored, truly are flavored only with natural ingredients.

79. Defendants, however, conceals their use of artificial flavoring, deceiving consumers, illegally cutting costs and increasing profits, and competing unfairly and unlawfully in the marketplace, hurting competitors as well as consumers.

1 80. Defendants' conduct injures competing manufacturers that do not engage in
2 the same illegal behavior. These manufacturers compete for market share and limited shelf
3 space, as well as for consumers' buying preferences and dollars. Defendants' competitors
4 do so lawfully. Defendants do not.

5 C. Plaintiff's and Class Purchases of the Product.

6 81. Plaintiff purchased the Product in California during the Class Period as
7 defined herein.

8 82. Plaintiff purchased the Product multiple times since January 2012, most
9 recently at the Trader Joe's store located in Grossmont Center at 5495 Grossmont Center
10 Drive in La Mesa, California.

11 83. The Product was purchased at the marked retail price, typically \$1.99 for a
12 7-ounce package.

13 84. Plaintiff first discovered Defendants' unlawful acts described herein in late
14 2017 when she learned that the Product contained an artificial flavoring ingredient even
15 though Defendants failed to disclose that fact on the Product's labels.

16 85. Plaintiff was deceived by and relied upon the Product's deceptive labeling,
17 and specifically the omission of the fact that this Product contained artificial flavoring.
18 Plaintiff purchased this Product believing it was naturally-flavored, based on the Product's
19 deceptive labeling and failure to disclose that it was artificially flavored.

20 86. Neither Plaintiff nor any of the Class Members, as reasonable consumers, are
21 required to subject consumer food products to laboratory analysis, to scrutinize the back
22 of the label to discover that a product's front label is false and misleading, or to search the
23 label for information that federal and state regulations require be displayed prominently
24 on the front – and, in fact, under state law are entitled to rely on statements that Defendants
25 deliberately place on the Product's labeling.

26 87. Defendants, but not Plaintiff or the Class, knew that this labeling was in
27 violation of state law.

1 88. Because Plaintiff reasonably assumed the Product to be free of artificial
2 flavoring, based on the Product labels, when it was not, she did not receive the benefit of
3 her purchases. Instead of receiving the benefit of Product free of artificial flavoring, she
4 received a Product that was unlawfully labeled to deceive the consumer into believing that
5 it was exclusively naturally flavored and contained no artificial flavoring, in violation of
6 federal and state labeling regulations.

7 89. Plaintiff would not have purchased the Product in the absence of Defendants'
8 misrepresentations and omissions. Had Defendants not violated California law, Plaintiff
9 would not have been injured.

10 90. The Product was worth less than what Plaintiff paid for it and class members
11 would not have paid as much as they have for the Product absent Defendants' false and
12 misleading statements and omissions.

13 91. Plaintiff and the Class members paid a price premium for each of the Products
14 that they purchased. That price premium will be determined by the fact finder at trial based
15 on evidence adduced then. The anticipated price premium is significantly less than the full
16 retail price of the Product. Relevant existing consumer survey data supports an inference
17 that the price premium may be in the range of 10% to 15%; the fact finder may determine
18 a price premium in this range or a different price premium at trial.

19 92. Plaintiff and the Class therefore lost money in the amount of the price-
20 premium they paid due to Defendants' unlawful behavior. Plaintiff and class members
21 altered their position to their detriment and suffered loss in an amount equal to the amount
22 of the price premium when they paid for the Product.

23 93. Plaintiff intends to, desires to, and will purchase the Product again when she
24 can do so with the assurance that Product's labels, which indicate that the Product is
25 naturally-flavored, are lawful and consistent with the Product's ingredients.

IV. DELAYED DISCOVERY

94. Plaintiff did not discover that Defendants' labeling of the Product was false and misleading until December 2017 when she learned the Product contained undisclosed artificial flavoring.

95. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence in her purchase and consumption of the Product. Nevertheless, she would not have been able to discover Defendants' deceptive practices and lacked the means to discover them given that, like nearly all consumers, she relies on and is entitled to rely on the manufacturer's obligation to label its Product in compliance with state law. Furthermore, Defendants' labeling practices and non-disclosures—in particular, failing to identify the artificial flavor in the ingredient list, or to disclose that the Product contained artificial flavoring, or to accurately identify the kind of malic acid that Defendants put in the Product—impeded Plaintiff's and Class members' abilities to discover the deceptive and unlawful labeling of the Product throughout the Class Period.

96. Because Defendants actively concealed their illegal conduct, preventing Plaintiff and the Class from discovering their violations of state law, Plaintiff and the Class are entitled to delayed discovery and an extended Class Period tolling the applicable statute of limitations.

V. CLASS ACTION ALLEGATIONS

97. Plaintiff brings this action on behalf of herself and all others similarly situated (the "Class") pursuant to Cal. Civ. Proc. Code§ 382, Cal. Civ. Code§ 1781, and Cal. Bus. & Prof. Code § 17203.

98. The nationwide Class is defined as follows:

All U.S. citizens who purchased the Product in their respective state of citizenship on or after January 1, 2012 and until the Class is certified, for personal use and not for resale, excluding Defendants and Defendants' officers, directors, employees, agents and affiliates, and the Court and its staff.

1 99. The California sub-Class is defined as follows:

2 All California citizens who purchased the Product in California on or
3 after January 1, 2012 and until the Class is certified, for personal use
4 and not for resale, excluding Defendants and Defendants' officers,
5 directors, employees, agents and affiliates, and the Court and its staff.

6 100. During the Class Period, the Product unlawfully contained undisclosed
7 artificial flavors and was otherwise improperly labeled as required by California law.

8 101. During the Class Period, Class Members purchased the misbranded Product,
9 paying a price premium for those Product compared to similar Product lawfully labeled.

10 102. The proposed Class meets all criteria for a class action, including numerosity,
11 typicality, superiority, and adequacy of representation; there is a well-defined community
12 of interest in the proposed Class.

13 103. The proposed Class satisfies numerosity. The Product are offered for sale at
14 over 100 supermarkets and other stores in California alone; the Class numbers at minimum
15 in the tens of thousands. Individual joinder of the class members in this action is
16 impractical. Addressing class members' claims through this class action will benefit Class
17 members, the parties, and the courts.

18 104. The proposed Class satisfies typicality.

19 105. Plaintiff's claims are typical of and are not antagonistic to the claims of other
20 Class members. Plaintiff and the class members all purchased the Product, were deceived
21 by the false and deceptive labeling, and lost money as a result, purchasing Product that
22 were illegal to sell in California.

23 106. The proposed Class satisfies superiority.

24 107. A class action is superior to any other means for adjudication of the Class
25 members' claims because each class member's claim is modest, based on the Product's
26 retail purchase price which is under \$5.00 per unit. It would be impractical for individual
27 class members to bring individual lawsuits to vindicate such claims.

28 108. Because Defendants' misrepresentations were made on the label of the

Product, all Class members including Plaintiff were exposed to and continue to be exposed to the omissions and affirmative misrepresentations. If this action is not brought as a class action, Defendants can continue to deceive consumers and violate California law with impunity.

109. The proposed Class representative satisfies adequacy of representation. Plaintiff is an adequate representative of the Class as she seeks relief for the Class, her interests do not conflict with the interests of the Class members, and she has no interests antagonistic to those of other class members. Plaintiff has retained counsel competent in the prosecution of consumer fraud and class action litigation.

110. There is a well-defined community of interest in questions of law and fact common to the Class, and these predominate over any individual questions affecting individual Class members in this action.

111. Questions of law and fact common to Plaintiff and the Class include:

- a. Whether Defendants failed to disclose the presence of the artificial flavoring ingredient d-l malic acid in the Product;
- b. Whether Defendants' labeling omissions and representations constituted false advertising under California law;
- c. Whether Defendants' conduct constituted a violation of California's Unfair Competition Law;
- d. Whether Defendants' conduct constituted a violation of California's Consumer Legal Remedies Act;
- e. Whether Defendants' label statements claiming solely natural flavorings was an affirmative representation of the Product's composition and conveyed an express warranty;
- f. Whether Defendants' conduct constitutes a breach of implied warranties under California's Commercial Code;
- g. Whether Defendants' conduct constitutes a breach of express or implied warranties under as defined by each respective state law;

- h. Whether Defendants' conduct constituted state common law negligent misrepresentation as defined by each state;
- i. Whether the statute of limitations should be tolled on behalf of the Class;
- j. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages, attorney fees and costs of suit, and injunctive relief; and
- k. Whether members of the Class are entitled to any such further relief as the Court deems appropriate.

112. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that are incompatible with the interests of the Class, and has retained counsel competent and experienced in class litigation.

113. Defendants have acted on grounds applicable to the entire Class, making final injunctive relief or declaratory relief appropriate for the Class as a whole.

114. Class treatment is therefore appropriate.

VI. CAUSES OF ACTION

First Cause of Action: Violation of the CLRA

115. Plaintiff realleges and incorporates by reference the allegations made elsewhere in the Complaint as if set forth in full herein.

116. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750 et seq. prohibits any unfair, deceptive and unlawful practices, and unconscionable commercial practices in connection with the sale of any goods or services to consumers.

117. Plaintiff and the Class are "consumers" as defined by Cal. Civ. Code §1761(d). The Product is a "good" as defined by Cal. Civ. Code §1761.

118. Defendants' failure to label the Product in accord with federal and state labeling regulations, omitting the required information that the Product contains artificial flavoring, was an unfair, deceptive, unlawful and unconscionable commercial practice.

119. Defendants' conduct violates the Consumers Legal Remedies Act.

120. As a result of Defendants' violations, Plaintiff and the Class suffered ascertainable losses in the form of the price premium they paid for the unlawfully labeled and marketed Product, which they would not have paid had the Product been labeled correctly, and in the form of the reduced value of the Product in relation to the Product as advertised.

121. Pursuant to §1782 of the CLRA, Plaintiff will notify Defendants in writing of the particular requirements of §1770 of the CLRA and demand that Defendants rectify the actions described above by providing monetary relief, agreeing to be bound by their legal obligations, and giving notice to all affected customers of their intent to do so. Plaintiff will provide this notice by certified mail, return receipt requested, to Defendants' principal places of business at least 30 days prior to amending this Action so as to demand corresponding damages under the CLRA.

Second Cause of Action: Violation of the UCL, Unlawful Prong

122. Plaintiff realleges and incorporates by reference each and every allegation contained elsewhere in this Complaint, as if fully set forth herein.

123. Section 17200 of the California Business & Professions Code ("Unfair Competition Law" or "UCL") prohibits any "unlawful," "unfair" and "fraudulent" business practice. Section 17200 specifically prohibits any "unlawful . . . business act or practice."

124. The UCL borrows violations of other laws and statutes and considers those violations also to constitute violations of California law.

125. Defendants' practices as described herein were at all times during the Class Period and continue to be unlawful under, *inter alia*, California's Sherman Law as it incorporates U.S. FDA regulations as well as California food labeling regulations.

126. Among other violations, Defendants' conduct in unlawfully packaging and distributing the Product in commerce in California violated Sherman Law packaging and labeling regulations.

127. The Product's label fails to disclose that each contains a synthetic artificial

1 flavoring in violation of 21 CFR 101.22 and California's Sherman Law.

2 128. The Product contains d-l malic acid.

3 129. The d-l malic acid is a flavoring material; it is included in the Product to
4 create, simulate and reinforce the characterizing fruit flavors.

5 130. The d-l malic acid in the Product is not derived from a natural material as
6 defined in 21 CFR 101.22 and is therefore by law an artificial flavor.

7 131. Defendants fail to inform consumers of the presence of the artificial flavor
8 in the Product, on either the front or back-labels as required by law.

9 132. Defendants' practices are therefore unlawful as defined in Section 17200 of
10 the California Civil Code.

11 **Third Cause of Action: Violation of the UCL, Unfair Prong**

12 133. Plaintiff realleges and incorporates by reference each and every allegation
13 contained elsewhere in this Complaint as if fully set forth herein.

14 134. Section 17200 of the California Business & Professions Code ("Unfair
15 Competition Law" or "UCL") prohibits any "unfair . . . business act or practice."
16 Defendant's practices violate the Unfair Competition Law "unfair" prong as well.

17 135. The Defendants' practices as described herein are "unfair" within the
18 meaning of the California Unfair Competition Law because the conduct is unethical and
19 injurious to California residents and the utility of the conduct to Defendants does not
20 outweigh the gravity of the harm to consumers.

21 136. While Defendants' decision to label the Product deceptively and in violation
22 of California law may have some utility to Defendant in that it allows Defendant to sell
23 the Product to consumers who otherwise would not purchase an artificially-flavored food
24 product at the retail price or at all if it were labeled correctly, and to realize higher profit
25 margins than if they formulated or labeled the Product lawfully, this utility is small and
26 far outweighed by the gravity of the harm Defendants inflict upon California consumers.

27 137. Defendants' conduct also injures competing food product manufacturers,
28 distributors, and sellers that do not engage in the same unlawful, unfair, and unethical

1 behavior.

2 138. Moreover, Defendants' practices violate public policy expressed by specific
3 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False
4 Advertising Law, and the FDA regulations cited herein.

5 139. Plaintiff's and all class members' purchases of the Product all took place in
6 California.

7 140. Defendants labeled the Product in violation of federal regulations and
8 California law requiring truth in labeling.

9 141. Defendants consciously failed to disclose material facts to Plaintiff and the
10 Class in Defendants' advertising and marketing of the Product.

11 142. Defendants' conduct is unconscionable because, among other reasons, it
12 violates 21 C.F.R. 101.22(c), which requires all foods containing artificial flavoring to
13 include:

14 A statement of artificial flavoring . . . [which] shall be placed on the food or
15 on its container or wrapper, or on any two or all three of these, as may be
16 necessary to render such a statement likely to be read by the ordinary person
17 under customary conditions of purchase and use of such food.

18 143. Defendants' conduct is "unconscionable" because it violates, inter alia, 21
19 C.F.R. 101.22(c), which requires all food Product for which artificial flavoring provides a
20 characterizing flavor to disclose this fact prominently on the product's front label.

21 144. Defendants intended that Plaintiff and the Class rely on Defendants' acts of
22 omissions so that Plaintiff and the other Class members would purchase the Product.

23 145. Had Defendants disclosed all material information regarding the Product in
24 product advertising and marketing, Plaintiff and the Class would not have purchased the
25 Product or would have paid less for the Product than they did.

26 146. Plaintiff and the Class suffered injury in fact and lost money or property as a
27 result of Defendants' deceptive advertising: they were denied the benefit of the bargain
28 when they decided to purchase the Product based on Defendants' violation of the

1 applicable laws and regulations, or to purchase the Product in favor of competitors'
2 Product, which are less expensive, contain no artificial flavoring, or are lawfully labeled.

3 147. Plaintiff and the Class suffered an ascertainable loss of money. The acts,
4 omissions and practices of Defendants detailed herein proximately caused Plaintiff and
5 the other members of the Class to suffer an ascertainable loss in the form of, *inter alia*,
6 excess monies spent to purchase the Product they otherwise would not have and the price
7 premium they paid for those Product, and they are entitled to recover such damages,
8 together with appropriate penalties, including restitution, damages, attorneys' fees and
9 costs of suit.

10 148. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading
11 advertising." For the reasons set forth above, Defendant engaged in unfair, deceptive,
12 untrue and misleading advertising in violation of California Business & Professions Code
13 §17200.

14 149. Pursuant to California Business & Professions Code §17203, Plaintiff will
15 seek an order requiring Defendants to immediately cease such acts of unlawful, unfair and
16 fraudulent business practices and requiring Defendants to return the amount of money
17 improperly collected to all those who purchased the Product.

18 **Fourth Cause of Action: Violation of False Advertising Law**

19 150. Plaintiff realleges and incorporates by reference each and every allegation
20 contained elsewhere in this Complaint as if fully set forth herein.

21 151. Defendants manufactured, packaged, labeled, advertised, and distributed, in
22 California and in interstate commerce, Product that unlawfully fail to disclose included
23 artificial flavor as required by state and federal food labeling regulations.

24 152. The Product's labeling and advertising in California falsely describe the
25 Product as if it were naturally-flavored.

26 153. Under California's False Advertising Law, Business and Professions Code
27 §17500 *et seq*,

28 "It is unlawful for any person, firm, corporation or association, or any employee

1 thereof with intent directly or indirectly to dispose of real or personal property . . .
 2 to make or disseminate or cause to be made or disseminated before the public in
 3 this state, or to make or disseminate or cause to be made or disseminated from this
 4 state before the public in any state, in any newspaper or other publication, or any
 5 advertising device . . . any statement, concerning that real or personal property . . .
 6 which is untrue or misleading, and which is known, or which by the exercise of
 7 reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. & Prof.
 8 Code §17500.

9 154. Defendants’ labeling and advertising statements, communicating to
 10 consumers that the Product contains no artificial flavors and concealing the fact that the
 11 Product contains a synthetic artificial flavor, were untrue and misleading, and Defendants
 12 at a minimum by the exercise of reasonable care should have known those actions were
 13 false or misleading.

14 155. Defendants’ conduct violated California’s False Advertising Law.

15 **Fifth Cause of Action: Breach of Express Warranty**

16 156. Plaintiff realleges and incorporates by reference the allegations found
 17 elsewhere in the Complaint as if set forth in full herein.

18 157. The Product’s front label misleadingly claims by operation of California law
 19 that the Product is flavored only with the listed natural flavors.

20 158. Further, Defendants explicitly warrant that the Product contains “No artificial
 21 flavors.”

22 159. These promises became part of the basis of the bargain between the parties
 23 and thus constituted an express warranty, which Defendants breached; the Product is not
 24 “All natural” but is artificially flavored.

25 160. Defendants sold the goods to Plaintiff and Class members who bought the
 26 goods from Defendants.

27 161. As a result, Plaintiff and the Class members did not receive goods as
 28 warranted by Defendants.

1 162. Within a reasonable amount of time after Plaintiff discovered that the Product
2 contained synthetic ingredients, Plaintiff notified the Defendants of such breach.

3 163. As a proximate result of this breach of warranty by Defendants, Plaintiff and
4 the class members have been damaged in an amount to be determined at trial.

5 164. As a result, Plaintiff and the Class are entitled to injunctive and equitable
6 relief, restitution, and an order for the disgorgement of the funds by which Defendants
7 were unjustly enriched.

8 **Sixth Cause of Action: Breach of Implied Warranty**

9 165. Plaintiff realleges and incorporates the allegations elsewhere in the
10 Complaint as if set forth in full herein.

11 166. Defendants' label representations also created implied warranties that the
12 product was suitable for a particular purpose, specifically as a naturally-flavored food
13 product, and created implied warranties by operation of California statute.

14 167. Defendants breached these warranties as well.

15 168. The Product's front label misleadingly implies that the Product is flavored
16 only with the natural ingredients comprising the characterizing flavors.

17 169. As alleged in detail above, at the time of purchase Defendants had reason to
18 know that Plaintiff, as well as all members of the Class, intended to use the Product as a
19 naturally-flavored food product.

20 170. This became part of the basis of the bargain between the parties.

21 171. Based on that implied warranty, Defendants sold the goods to Plaintiff and
22 other Class members who bought the goods from Defendants.

23 172. At the time of purchase, Defendants knew or had reason to know that Plaintiff
24 and the Class members were relying on Defendants' skill and judgment to select or furnish
25 a product that was suitable for this particular purpose, and Plaintiff justifiably relied on
26 Defendants' skill and judgment.

27 173. The Product was not suitable for this purpose.
28

1 174. Plaintiff purchased the Product believing it had the qualities Plaintiff sought,
2 based on the deceptive advertising and labeling, but the Product was actually
3 unsatisfactory to Plaintiff for the reasons described herein.

4 175. Further, the Product was not merchantable in California because it was not
5 of the same quality as other products in the category generally acceptable in the trade.

6 176. The Product would not pass without objection in the trade when packaged
7 with the existing labels, because the Product was misbranded and illegal to sell in
8 California. Cal. Comm. Code 2314(2)(a).

9 177. The Product also was not acceptable commercially and breached its implied
10 warranty because the Product was not adequately packaged and labeled as required. Cal.
11 Comm. Code 2314(2)(e).

12 178. The Product also was not acceptable commercially and breached the implied
13 statutory warranty because it did not conform to the promises or affirmations of fact made
14 on the container or label, Cal. Comm. Code 2314(2)(f), and other grounds as set forth in
15 Commercial Code section 2314(2).

16 179. By offering the Product for sale and distributing the Product in California,
17 Defendants also warranted that the Product was not misbranded and was legal to purchase
18 in California. Because the Product was misbranded in several regards and was therefore
19 illegal to sell or offer for sale in California, Defendants breached this warranty as well.

20 180. As a result of this breach, Plaintiff and the Class members did not receive
21 goods as impliedly warranted by Defendants.

22 181. Within a reasonable amount of time after the Plaintiff discovered that the
23 Product contained synthetic flavoring ingredients, Plaintiff notified the Defendants of such
24 breach.

25 182. As a proximate result of this breach of warranty, Plaintiff and the Class have
26 been damaged in an amount to be determined at trial.

183. As a result, Plaintiff and the Class are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were unjustly enriched.

Seventh Cause of Action: Negligent Misrepresentation

184. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

185. Defendants' label representations negligently misrepresented the Product as if it were exclusively naturally flavored.

186. The Product is not exclusively naturally flavored but is instead artificially flavored as described herein.

187. Defendants were negligent in labeling the Product as if it were exclusively naturally labeled and in failing to identify the Product as artificially flavored.

188. As a result, Plaintiff and the Class are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were unjustly enriched.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated in California, prays for judgment against Defendants as follows:

- A. An order confirming that this action is properly maintainable as a class action as defined above, appointing Plaintiff and her undersigned counsel to represent the Class, and requiring Defendants to bear the cost of class notice;
- B. An order declaring that the conduct complained of herein violates the CLRA;
- C. An order declaring that the conduct complained of herein violates the UCL;
- D. An order declaring that the conduct complained of herein violates the FAL;
- E. An order declaring that the conduct complained of herein breached express warranties, implied warranties, or both;
- F. An order requiring Defendants to disgorge any benefits received from Plaintiff and any unjust enrichment realized as a result of the improper and

misleading labeling, advertising, and marketing of the Product;

- G. An order requiring Defendants to pay restitution and damages to Plaintiff and Class members so that they may be restored any money which was acquired by means of any unfair, deceptive, unconscionable or negligent acts;
- H. An award of punitive damages in an amount to be proven at trial;
- I. An order enjoining Defendants' deceptive and unfair practices;
- J. An order requiring Defendants to conduct corrective advertising;
- K. An award of pre-judgment and post-judgment interest;
- L. An award of attorney fees and costs; and
- M. Such other and further relief as this Court may deem just, equitable, or proper.

VIII. JURY DEMAND

Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a jury trial for claims sounding in equity.

DATED: March 22, 2018

Respectfully Submitted,

/s/ Ron Marron

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