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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 TIFFNI ALTES, on behalf of herself and all  
12 others similarly situated,

13 Plaintiff,

14 v.

15 BULLETPROOF 360, INC.,  
16

17 Defendant.

Case No: \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE UNFAIR  
COMPETITION LAW AND CONSUMER  
LEGAL REMEDIES ACT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Tiffni Altes, on behalf of herself, all others similarly situated, and the  
2 general public, by and through her undersigned counsel, hereby sues Bulletproof 360,  
3 Inc. (“Defendant” or “Bulletproof 360”) and upon information and belief and  
4 investigation of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. The Court has original jurisdiction over this action under 28 U.S.C. §  
7 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds  
8 the sum or value of \$5,000,000 exclusive of interest and costs and because more than  
9 two-thirds of the members of the class defined herein reside in states other than the state  
10 of which Defendant resides.

11 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff  
12 Tiffni Altes suffered injuries as a result of Defendant’s acts in this District, many of the  
13 acts and transactions giving rise to this action occurred in this District and Defendant: (1)  
14 is authorized to conduct business in this District and has intentionally availed itself of the  
15 laws and markets of this District through the distribution and sale of its products in this  
16 District; and (2) is subject to personal jurisdiction in this District.

17 **II. NATURE OF THE ACTION**

18 3. Defendant manufactures, markets, distributes, and sells the Bulletproof Cold  
19 Brew Coffee. Bulletproof Cold Brew Coffee is coffee with a large amount of added  
20 butter and coconut oil extract, and includes an extraordinary amount of saturated fat, in a  
21 quantity that increases risk of heart disease.<sup>1</sup>

22 4. Bulletproof Cold Brew products are widely-distributed and can be found at  
23 stores such as Target and Ralph’s. According to the company’s press release, they are the  
24  
25

26 <sup>1</sup> Tokle, et al. *Rise in Serum Lipids After Dietary Incorporation of “Bulletproof Coffee.”*  
27 9 J. OF CLINICAL LIPIDOLOGY, 462 (June 2015), available at  
28 [https://www.lipidjournal.com/article/S1933-2874\(15\)00170-1/pdf](https://www.lipidjournal.com/article/S1933-2874(15)00170-1/pdf).

1 best-selling ready-to-drink coffee products at Whole Foods and Sprouts. This popularity,  
2 however, is driven by Defendant’s unlawful and fraudulent claims.

3 5. Bulletproof 360 was founded by and is led by David Asprey. Mr. Asprey  
4 calls himself the “Father of Biohacking and New York Times bestselling science author,”  
5 though he has “no medical degree or nutritional training,”

6 Asprey happily shares his opinion on how often men should ejaculate (once  
7 a week, but have sex more often) and how long they should sleep (six hours  
8 is good; eight hours is too much). He thinks you should go to Burning Man  
9 (because it’ll activate your creativity) and stop eating kale (because it  
contains trace amounts of oxalic acid).<sup>2</sup>

10 Indeed,

11 Asprey dreams of a world where, instead of deferring to medical experts and  
12 profit-driven drug companies, we become experts in our own systems and  
13 experiment on them at will.

14 Unsurprisingly, this has made Asprey suspicious of regulation.  
15 “Regulation got us the food pyramid that causes heart disease, cancer, and  
16 diabetes in unprecedented numbers of people,” he told me. “It got us an  
17 incredibly slow-to-innovate medical system that’s now being disrupted. It is  
18 antihuman to tell someone that they do not have the choice to put whatever  
19 they want into their bodies. It’s a basic human freedom. I think it’s unethical  
that I need to spend \$150 and an hour of my life to get a permission slip to  
take a substance. There is no, no reason for that.”

20 *Id.*

21 6. Consistent with its founder’s contempt for the FDA as “antihuman” and  
22 violating “basic human freedom,” Bulletproof 360 casually ignores all FDA regulations  
23 in its marketing of the Bulletproof Cold Brew products, claiming they have positive  
24

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25 <sup>2</sup> Rachel Monroe, *The Bulletproof Coffee Founder Has Spent \$1 Million in His Quest to*  
26 *Live to 180*. Men's Health Magazine (January 23, 2019)  
27 *available at:* [www.menshealth.com/health/a25902826/bulletproof-dave-asprey-](http://www.menshealth.com/health/a25902826/bulletproof-dave-asprey-biohacking/)  
28 *biohacking/* (Accessed 21 May 2019).

1 medical benefits in a manner which requires FDA new drug approval. Defendant claims  
2 that Bulletproof Cold Brew Coffee products are intended to diagnose, treat, cure, or  
3 prevent disease, and to affect the structure and function of the body, rendering the  
4 products unapproved new drugs.

5 7. The products also fail to comply with several FDA regulations governing  
6 nutrient content claims.

7 8. This action is brought to remedy Defendant's unfair, deceptive, and  
8 unlawful conduct. On behalf of the class defined herein, Plaintiff seeks an order  
9 compelling Defendant to, *inter alia*: (1) cease marketing and selling Bulletproof Cold  
10 Brew using the false, misleading, deceptive, and unconscionable tactics complained of  
11 herein; (2) conduct a corrective advertising campaign; (3) destroy all misleading and  
12 deceptive materials and products; (4) award Plaintiff and the Class members restitution,  
13 actual damages, and punitive damages to the extent permitted under the law; and (5) pay  
14 costs, expenses, and reasonable attorney fees.

### 15 **III. PARTIES**

16 9. Plaintiff Tiffni Altes is a resident of Los Angeles County who purchased  
17 Bulletproof Coffee during the Class Period.

18 10. Defendant Bulletproof 360, Inc. is a Delaware corporation with its principal  
19 place of business in Seattle, Washington. Bulletproof 360, Inc. markets, distributes, and  
20 sells the Bulletproof Cold Brew products in California.

### 21 **IV. SPECIFIC PRODUCT CLAIMS**

22 11. Bulletproof Cold Brew Coffee comes in "Original," "Caramel," "Vanilla,"  
23 and "Mocha." Each flavor includes the following claims on the label:

- 24 • "Rainforest Alliance Certified";
- 25 • "Brain Octane Oil";
- 26 • "Fuel to Sustain Your Mind and Body";
- 27 • "0g Sugar";
- 28 • "Lasting Energy";

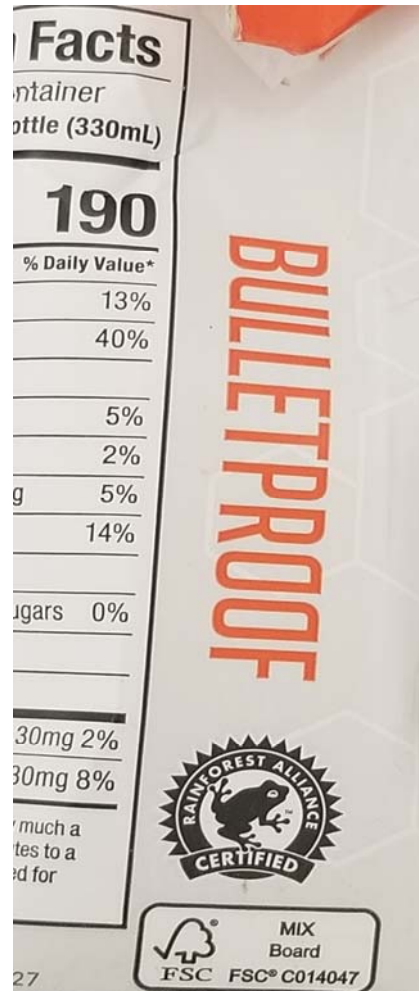
- 1 • “Fewer Cravings [¶] Brain Octane Oil Powers Your Brain and Curbs Snack
- 2 Attacks”
- 3 • “It’s clean coffee certified to be free of 27 energy-sapping toxins, plus grass-
- 4 fed butter and Bulletproof Brain Octane Oil—extracted from the most potent
- 5 part of the coconut—to power your brain and body and give you steady, all
- 6 day energy.”

7 12. In addition, Bulletproof Cold Brew Coffee + Collagen Protein comes in  
8 “Original,” “Dark Chocolate,” and “Vanilla Latte” flavors. Each flavor adds an additional  
9 claim: “Essential for Hair, Skin & Nails [¶] 15g of Collagen Protein Pack a Beautiful  
10 Punch.”

11 13. The product labels appear as follows:



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1 14. The Bulletproof Cold Brew Coffee label also refers consumers to the  
2 product website, bulletproofcoffee.com, which includes the following claims:

- 3 • “Our cold brew packs a punch. Made with clean beans and infused with Brain  
4 Octane® Oil and grass-fed butter, this zero-sugar cold brew gives you enough  
5 energy and focus to feel like a boss all day long.”
- 6 • “CERTIFIED CLEAN COFFEE Not all coffee is created equal. The best coffee is  
7 clean. Free of energy-sapping mold toxins that slow you down. Our beans are  
8 farmed, screened, and tested to be free of 27 common toxins to keep you mentally  
9 and physically feeling your best.”
- 10 • “BRAIN OCTANE OIL Completely flavorless and totally satisfying, this oil is  
11 extracted from the most potent part of the coconut. It gives your body what it  
12 needs—efficient high-energy fuel to power your body.”
- 13 • “GRASS-FED BUTTER Butter from grass-fed cows is higher in butyrate, a fatty  
14 acid that aids in digestion as well as Vitamin K2, which helps push the calcium to  
15 your bones—not your arteries.”

16 **V. BULLETPROOF 360’S HEALTH CLAIMS ARE MISLEADING.**

17 15. The claims made by Defendant on the Bulletproof Cold Brew Coffee  
18 product labels and website imply that the products are a healthy alternative to regular  
19 coffee.

20 16. However, these claims are deceptive and misleading.

21 17. For example, Defendant claims that “not all coffee is created equal,” and  
22 that Bulletproof’s coffee “beans are farmed, screened, and tested to be free of 27 common  
23 toxins to keep you mentally and physically feeling your best.”



1 18. While mycotoxins may be present in some coffee beans, studies have shown  
2 that “coffee intake does not represent a potential risk for consumers with respect to  
3 individual mycotoxin contamination.”<sup>3</sup>

4 19. Contrary to Defendant’s implication that consuming regular coffee results in  
5 health risks, regular coffee consumption has been shown to be “inversely associated with  
6 total and cause-specific mortality.”<sup>4</sup>

7 20. Further, Defendant claims that consuming its “Brain Octane Oil,” which is a  
8 medium chain triglyceride oil (“MCT oil”),<sup>5</sup> will result in “fewer cravings,” “curb[] snack  
9 attacks,” and “power your brain.”

10 21. Moreover, a single bottle of Bulletproof Cold Brew Coffee contains 8g of  
11 saturated fat. The FDA recommends consumers limit their saturated fat consumption to  
12 20g per day, meaning a single bottle of Bulletproof Cold Brew Coffee contains 40% of  
13 the daily value recommended by the FDA. The American Heart Association (“AHA”)  
14 recommends consumers limit their saturated fat consumption to 13g per day.<sup>6</sup>

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20 <sup>3</sup> Garcia-Moralega, et al., *Analysis of mycotoxins in coffee and risk assessment in Spanish*  
21 *adolescents and adults*. 86 FOOD AND CHEMICAL TOXICOLOGY 225-233 (2015).

22 <sup>4</sup> Freedman, et al. *Association of Coffee Drinking with Total and Cause Specific*  
23 *Mortality*. 366 N. ENGL. J. MED. 1891-1904 (2012).

24 <sup>5</sup> Brain Octane vs. MCT Oil: What’s The Difference?, *Bulletproof Blog*. Available at:  
25 <https://blog.bulletproof.com/the-definitive-guide-to-mcts/> (Accessed 21 May 2019).

26 <sup>6</sup> American Heart Association, *Saturated Fat*, Available at:  
27 <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats>  
28 (Accessed 21 May 2019).

1 22. The average American adult obtains approximately 10.9% of their calories  
2 from saturated fat.<sup>7</sup> Based on a 2,000-calorie diet, this equates to about 24.2g of saturated  
3 fat daily, which is significantly more than the amounts recommended by the FDA and  
4 AHA.

5 23. Thus, most Americans seeking to improve their health would not benefit  
6 from consuming Bulletproof Cold Brew products due to their high saturated fat content.

7 **VI. BULLETPROOF IS AN UNAPPROVED NEW DRUG.**

8 24. The Bulletproof Cold Brew Coffee label makes at least the following drug  
9 claims:

- 10 • “Fewer Cravings [¶] Brain Octane Oil **Powers Your Brain** and **Curbs Snack**  
11 **Attacks.**”
- 12 • “BRAIN OCTANE OIL Completely flavorless and totally satisfying, this oil  
13 is extracted from the most **potent** part of the coconut. It gives your body what  
14 **it needs—efficient high-energy fuel** to power your body.”
- 15 • “Our cold brew packs a punch. Made with clean beans and infused with Brain  
16 Octane® Oil and grass-fed butter, this zero-sugar cold brew gives you enough  
17 energy and **focus** to feel like a boss all day long.”

18 25. The FDA recognizes such claims as drug claims. Attached hereto as **Exhibit**  
19 **1** are FDA Warning Letters relating to similar claims that the FDA considers to be “drug  
20 claims.”

21 26. Bulletproof Cold Brew Coffee is not generally recognized, among experts  
22 qualified by scientific training and experience to evaluate the safety and effectiveness of  
23 drugs, as safe and effective for use under the condition recommended by its labeling.

24 \_\_\_\_\_  
25 <sup>7</sup> U.S. Dept. of Health and Human Services and U.S. Dept. of Agriculture, *2015–2020*  
26 *Dietary Guidelines for Americans*. 8th Edition. December 2015. Available at:  
27 [https://health.gov/dietaryguidelines/2015/guidelines/chapter-2/a-closer-look-at-current-](https://health.gov/dietaryguidelines/2015/guidelines/chapter-2/a-closer-look-at-current-intakes-and-recommended-shifts/#callout-solidfats)  
28 [intakes-and-recommended-shifts/#callout-solidfats](https://health.gov/dietaryguidelines/2015/guidelines/chapter-2/a-closer-look-at-current-intakes-and-recommended-shifts/#callout-solidfats) (Accessed 21 May 2019).

1 27. “No person shall introduce or deliver for introduction into interstate  
2 commerce any new drug . . .” without approval by the FDA. 21 U.S.C § 355(a); *see also*  
3 21 U.S.C. § 331(d).

4 28. Defendant’s failure to comply with the FDA regulations its CEO ridicules as  
5 “antihuman” endangers the health of its customers, and further gives it an unfair  
6 advantage over competitors that do comply with state and federal law.

7 29. In addition, Bulletproof Cold Brew Coffee products are misbranded because  
8 they are foods intended for human consumption which are offered for sale and for which  
9 a claim is made on the labeling which expressly and by implication characterizes the  
10 relationship of any nutrient to a disease or a health-related condition.

11 30. The Bulletproof Cold Brew Coffee products do not qualify for the reduced  
12 level of regulation applicable to certain nutrition supplement products for several reasons:

- 13 a. The website and labels neither describe the role of any nutrient or dietary  
14 ingredient intended to affect the structure or function in humans, characterize  
15 the documented mechanism by which any nutrient or dietary ingredient acts to  
16 maintain such structure or function, nor describes general well-being from  
17 consumption of any nutrient or dietary ingredient. 21 U.S.C. § 343(r)(6)(A).  
18 b. The claims on the website and labels do not relate to any classical nutrient  
19 deficiency. 21 U.S.C. § 343(r)(6)(A).

20 31. California similarly prohibits the sale of unapproved new drugs. Cal. Health  
21 & Saf. Code § 111550(a)(1).

22 **VII. BULLETPROOF FAILS TO CONTAIN THE REQUIRED WARNINGS**  
23 **FOR OVER THE COUNTER STIMULANTS.**

24 32. “Stimulant” means a “drug which helps restore mental alertness or  
25 wakefulness during fatigue or drowsiness.” 21 C.F.R. § 340.3.

26 33. Defendant’s claims render the Bulletproof Cold Brew products over-the-  
27 counter stimulant drugs:

- 28 • “Brain Octane Oil Powers Your Brain”

- 1 • “this zero-sugar cold brew gives you enough energy and focus to feel like a boss  
2 all day long.”

3 34. “An over-the-counter stimulant drug product in a form suitable for oral  
4 administration is generally recognized as safe and effective and is not misbranded if it  
5 meets each of the conditions in this part and each of the general conditions established in  
6 § 330.1.” 21 C.F.R. § 340.1(a).

7 35. Here, Defendant fails to meet any of the requirements identified in 21 C.F.R.  
8 §§ 330.1 & 340.50, and the Bulletproof Cold Brew products are therefore not generally  
9 recognized as safe and effective and are misbranded.

## 10 **VIII. BULLETPROOF MAKES UNAUTHORIZED NUTRIENT CONTENT**

### 11 **CLAIMS.**

12 36. “A claim that expressly or implicitly characterizes the level of a nutrient . . .  
13 may not be made on the label or in labeling of foods unless the claim is made in  
14 accordance with this regulation . . . .” 21 C.F.R. § 101.13(b). “An expressed nutrient  
15 content claim is any direct statement about the level (or range) of a nutrient in the food,  
16 e.g., ‘low sodium’ or ‘contains 100 calories.’” 21 C.F.R. § 101.13(b)(1).

17 37. “If a food . . . contains more than 13.0 g of fat, 4.0 g of saturated fat, 60  
18 milligrams (mg) of cholesterol, or 480 mg of sodium . . . per labeled serving . . . , **then**  
19 **that food must bear a statement disclosing that the nutrient exceeding the specified**  
20 **level is present in the food** as follows: ‘See nutrition information for \_\_\_\_ content’ with  
21 the blank filled in with the identity of the nutrient exceeding the specified level, e.g., ‘See  
22 nutrition information for fat content.’” 21 C.F.R. § 101.13(h)(1).

23 38. Here, the Bulletproof Cold Brew products contain anywhere from 11-15g of  
24 fat, and 9-13g of saturated fat per labeled serving, far exceeding that threshold. Further,  
25 each label includes a nutrient content claim: “0g Sugar.” Nevertheless, the labels fail to  
26 contain a statement disclosing that the fat or saturated fat exceed the specified level.

1 **IX. BULLETPROOF + COLLAGEN PROTEIN MAKES UNAUTHORIZED**  
2 **NUTRIENT CONTENT CLAIMS.**

3 39. In addition to the prior unlawful claims, Bulletproof Cold Brew + Collagen  
4 Protein also add “Essential for Hair, Skin & Nails 15g of Collagen Protein Pack a  
5 Beautiful Punch.” However, there is no regulation that permits such a nutrient content  
6 claim, and its use is unlawful. Moreover, even if this claim were authorized, it would still  
7 require a disclosure statement regarding the high level of fat in the product. No such  
8 disclosure statement is made.

9 **X. BULLETPROOF MAKES UNAUTHORIZED HEALTH CLAIMS.**

10 40. Products containing at least 4g per serving of saturated fat are “disqualifi[ed]  
11 from making a health claim” unless they meet the exceptions identified in 21 C.F.R. §  
12 101.14(e). The Bulletproof Coffee Cold Brew products contain 8g of saturated fat per  
13 serving and do not qualify for the exceptions identified in 21 C.F.R. § 101.14(e).

14 41. The Bulletproof website makes the following claim relating to heart health:  
15 “GRASS-FED BUTTER Butter from grass-fed cows is higher in butyrate, a fatty  
16 acid that aids in digestion as well as Vitamin K2, which helps push the calcium to  
17 your bones—not your arteries.”

18 42. This claim constitutes a “health claim” within the meaning of 21 C.F.R. §  
19 101.14(a)(1).

20 43. Bulletproof 360 violated 21 C.F.R. § 101.14 because it made a claim relating  
21 to heart health despite containing disqualifying levels of saturated fat pursuant to 21  
22 C.F.R. § 101.14(d) and (e).

23 44. The same claim is misleading as there is no evidence that “butter from grass  
24 fed cows” causes calcium to accumulate in the bones rather than the arteries. In fact, all  
25 types of butter are very high in saturated fat and result in increases in “bad” LDL blood  
26 cholesterol levels. Indeed, because butter is a highly refined source of saturated fat, the  
27 effect on blood and heart health is stronger than similar, less refined and unrefined  
28 sources of saturated fat, such as cheese, cream, and avocado.

1 **XI. BULLETPROOF IS FALSE, MISLEADING, AND MISBRANDED.**

2 45. It is unlawful to manufacture or sell any food or drug that is misbranded. 21  
3 U.S.C. § 331(a), (b), (c), & (g).

4 46. A food or drug is misbranded “[i]f its labeling is false or misleading in any  
5 particular.” 21 U.S.C. § 352(a)(1) (misbranded drugs); 21 U.S.C. § 343(a) (misbranded  
6 food).

7 47. Because Bulletproof Cold Brew Coffee claims to treat conditions not  
8 amenable to self-diagnosis, directions cannot be written such that a layperson can safely  
9 use these products to treat those conditions. The labels therefore lack “adequate  
10 directions for use,” and are misbranded under 21 U.S.C. § 352(f)(1); Cal. Health & Saf.  
11 Code § 111375(a).

12 48. In addition, the products are deceptively labeled and misbranded because  
13 they bear the seal “Rainforest Alliance Certified.” The Rainforest Alliance website  
14 reveals that neither Defendant nor the Bulletproof Cold Brew products are certified by  
15 the Rainforest Alliance, though more than 100 other coffee companies are listed as  
16 certified. Defendant claims that it purchases its coffee beans from certified farms,  
17 however simply doing this is not enough to earn the Rainforest Alliance Seal. This  
18 practice also violates specific provisions of the CLRA relating to false claims of  
19 certification by third parties. *See* Cal. Civ. Code § 1770(2), (3), & (5).

20 49. Neither the labels nor the website state in boldface type that “This statement  
21 has not been evaluated by the Food and Drug Administration. This product is not  
22 intended to diagnose, treat, cure, or prevent any disease.” 21 U.S.C. § 343(r)(6)(C).

23 50. Defendant’s false and misleading conduct also violates California’s several  
24 consumer protection laws. *See* Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Civ. Code §  
25 1750, *et seq.*

1                   **XII. PLAINTIFF’S PURCHASES OF BULLETPROOF COFFEE**

2           51. Plaintiff Tiffni Altes purchased Bulletproof Cold Brew Coffee at least twice  
3 in the last two years at Whole Foods Market located at 24130 Valencia Blvd., Santa  
4 Clarita.

5           52. Plaintiff would not have purchased Bulletproof Cold Brew products had she  
6 known that they were unlawfully labeled, misbranded, contained false claims, and an  
7 unapproved new drug.

8           53. Plaintiff suffered injury in fact and lost money or property as a result of  
9 Defendant’s deceptive advertising. She was denied the benefit of the bargain when she  
10 decided to purchase Bulletproof Cold Brew products instead of other coffee products  
11 which are neither unlawful or falsely advertised.

12                                   **XIII. CLASS ACTION ALLEGATIONS**

13           54. Plaintiff brings this action on behalf of herself and all others similarly  
14 situated (the “Class”), excluding Defendants’ officers, directors, and employees, and the  
15 Court, their officers, and their families.

16           55. The Class is defined as follows:

17 All citizens of California who purchased Bulletproof Cold Brew Coffee  
18 products in California from May 21, 2015 to the time when class notice is  
19 issued.

20           56. Questions of law and fact common to Plaintiff and the Classes include:

- 21           a. Whether Defendant’s conduct constitutes a violation of the California  
22 Consumer Legal Remedies Act;
- 23           b. Whether Defendant’s conduct constitutes a violation of the unlawful  
24 prong of California’s Unfair Competition Law;
- 25           c. Whether Defendant’s conduct was immoral, unethical, unscrupulous, or  
26 substantially injurious to consumers;
- 27           d. Whether the slight utility Defendant realizes as a result of its conduct  
28 outweighs the gravity of the harm the conduct causes to their victims;

- e. Whether Defendant's conduct violated public policy as declared by specific constitutional, statutory, or regulatory provisions;
- f. Whether the Bulletproof Cold Brew products are unapproved new drugs;
- g. Whether the product label fails to comply with FDA regulations;
- h. Whether Defendant fraudulently omitted material information in advertising Bulletproof Cold Brew Coffee as safe and effective;
- i. Whether Defendant sold and distributed Bulletproof Cold Brew Coffee to the public in packaging that was false, at variance with the truth, misleading, likely to deceive, and/or had the capacity to deceive the public and/or a reasonable consumer;
- j. Whether the Class is entitled to actual damages, restitution, rescission, punitive damages, attorneys' fees and costs, injunctive, and/or any other relief;
- k. Whether Defendant's conduct was knowing, or whether Defendant reasonably should have known of the conduct;
- l. Whether Defendant acted willfully, recklessly, negligently, or with gross negligence in violation of the law as alleged herein;
- m. Whether the injury to consumers from Defendant's practices is substantial;
- n. Whether any applicable statute of limitations should be tolled on behalf of the Class;
- o. Whether members of the Class are entitled to restitution and, if so, the correct measure of restitution;
- p. Whether members of the Class are entitled to an injunction and, if so, its terms; and
- q. Whether members of the Class are entitled to any further relief.

57. By purchasing the Bulletproof Cold Brew products, all Class members were subjected to the same wrongful conduct.



1 58. All Class members were subjected to the same economic harm when they  
2 purchased Bulletproof Cold Brew products and suffered economic injury.

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

6 60. The Class is sufficiently numerous, as it includes thousands of individuals  
7 who purchased Bulletproof Cold Brew products throughout California during the Class  
8 Period.

9 61. The relief sought for each Class member is small. Absent the availability of  
10 class action procedures, it would be infeasible for Class members to redress the wrongs  
11 done to them.

12 62. Defendant has acted on grounds applicable to the Class, thereby making  
13 final injunctive relief or declaratory relief appropriate concerning the Class as a whole.

#### 14 **XIV. CAUSES OF ACTION**

##### 15 **First Cause of Action**

##### 16 **California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.***

##### 17 **Unfair Conduct**

18 63. In this and every cause of action, Plaintiff realleges and incorporates by  
19 reference each and every allegation contained elsewhere in this Complaint, as if fully set  
20 forth herein.

21 64. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or  
22 fraudulent business act or practice.”

23 65. Defendant’s unlawful and deceptive advertising allowed it to sell more units  
24 of the Bulletproof Cold Brew products, and at a higher price.

25 66. The acts, omissions, misrepresentations, practices, and non-disclosures of  
26 Defendant as alleged herein constitute “unfair” business acts and practices because  
27 Defendant’s conduct is:

- 28 a. immoral, unethical, unscrupulous, and offends public policy;

1 b. the gravity of Defendant’s conduct outweighs any conceivable benefit of such  
2 conduct; and

3 c. the injury to consumers caused by Defendant’s conduct is substantial, not  
4 outweighed by any countervailing benefits to consumers or competition, and  
5 not one that consumers themselves could reasonably have avoided.

6 67. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order  
7 enjoining Defendant from continuing to conduct business through unfair acts and  
8 practices and to commence a corrective advertising campaign; requiring Defendant to  
9 commence a corrective advertising campaign; and awarding restitution of all monies  
10 from the sale of the Bulletproof Cold Brew products in an amount of \$15 million or a  
11 greater amount to be proven at trial.

12 **Unlawful Conduct**

13 68. Defendant made and distributed, throughout California and in this County,  
14 products that were fraudulently advertised and illegally offered for sale. The Bulletproof  
15 Cold Brew Coffee products were placed into commerce by Defendant and sold  
16 throughout California.

17 69. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or  
18 fraudulent business act or practice.”

19 70. Defendant’s conduct is “unlawful” because it violated the following portions  
20 of the Federal Food, Drug, and Cosmetic Act (“FDCA”):

- 21 • 21 U.S.C. § 331(a), prohibiting the “introduction or delivery for introduction  
22 into interstate commerce of any food, drug, device, tobacco product, or  
23 cosmetic that is adulterated or misbranded”;
- 24 • 21 U.S.C. § 331(b), prohibiting the “adulteration or misbranding of any food,  
25 drug, device, tobacco product, or cosmetic in interstate commerce”;
- 26 • 21 U.S.C. § 355(a), prohibiting the sale of unapproved new drugs.

27 71. Defendant’s conduct is further “unlawful” because Defendant made a  
28 “health claim” as defined by 21 C.F.R. § 101.14(a) despite containing a disqualifying

1 level of saturated fat pursuant to 21 C.F.R. § 101.14(d) and failing to meet any of the  
2 exceptions identified in 21 C.F.R. § 101.14(e).

3 72. Defendant’s conduct also violates other provisions of California law  
4 including, *inter alia*:

- 5 • Cal. Health & Saf. Code § 110100 et seq., which adopts all FDA regulations as  
6 state regulations;
- 7 • Cal. Health & Saf. Code § 110398, “It is unlawful for any person to advertise  
8 any food, drug, device, or cosmetic that is adulterated or misbranded”;
- 9 • Cal. Health & Saf. Code §§ 111330, 111440, 111445, 111450, prohibiting  
10 manufacture, distribution, and sale of misbranded drugs;
- 11 • Cal. Health & Saf. Code §§ 110660, 110765, 110770, prohibiting manufacture,  
12 distribution, and sale of misbranded food;
- 13 • Cal. Health & Saf. Code § 111550, prohibiting sale of new drug unless  
14 approved under 21 U.S.C. § 355;
- 15 • Cal. Civ. Code § 1770(a), prohibiting misleading practices in relation to the sale  
16 of goods;
- 17 • Cal. Bus. & Prof. Code § 17200 et seq., prohibiting fraudulent business activity.

18 73. The unlawful and fraudulent marketing and advertising of the Bulletproof  
19 Cold Brew products constitutes a violation of the FDCA and the Sherman Law and, as  
20 such, violated the “unlawful” prong of the UCL.

21 74. Defendant’s unlawful and deceptive advertising allowed it to sell more units  
22 of the Bulletproof Cold Brew products, and at a higher price.

23 75. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order  
24 enjoining Defendant from continuing to conduct business through unlawful acts and  
25 practices and to commence a corrective advertising campaign; requiring Defendant to  
26 commence a corrective advertising campaign; and awarding restitution of all monies  
27 from the sale of the Bulletproof Cold Brew products in an amount of \$15 million or a  
28 greater amount to be proven at trial.

1 **Fraudulent Conduct**

2 76. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or  
3 fraudulent business act or practice.”

4 77. The acts, omissions, misrepresentations, practices, and non-disclosures of  
5 Defendant as alleged herein constitute “fraudulent” business acts and practices in that  
6 Defendant’s conduct has a likelihood, capacity or tendency to deceive Plaintiff, the Class,  
7 and the general public.

8 78. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order  
9 enjoining Defendant from continuing to conduct business through fraudulent acts and  
10 practices and to commence a corrective advertising campaign; requiring Defendant to  
11 commence a corrective advertising campaign; and awarding restitution of all monies  
12 from the sale of the Bulletproof Cold Brew products in an amount of \$15 million or a  
13 greater amount to be proven at trial.

14 **Second Cause of Action**

15 **Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***

16 79. The CLRA prohibits deceptive practices in connection with the conduct of a  
17 business that provides goods, property, or services primarily for personal, family, or  
18 household purposes.

19 80. Defendant’s policies, acts and practices were designed to, and did, result in  
20 the purchase and use of the Bulletproof Cold Brew products primarily for personal,  
21 family, or household purposes, and violated and continue to violate the following sections  
22 of the CLRA:

- 23 a. § 1770(a)(3), misrepresenting the affiliation, connection with, or association with,  
24 or certification by, another;
- 25 b. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
26 they do not have;
- 27 c. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade  
28 if they are of another;

- 1 d. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and  
2 e. § 1770(a)(16): representing the subject of a transaction has been supplied in  
3 accordance with a previous representation when it has not.

4 81. As a result, Plaintiff and the Class have suffered irreparable harm and are  
5 entitled to injunctive relief and restitution.

6 82. As a further result, Plaintiff and the Class have suffered damages, and  
7 because the conduct was deliberate, immoral, oppressive, made with malice and/or  
8 contrary to public policy, they are entitled to punitive or exemplary damages.

9 83. In compliance with Civ. Code § 1782, Plaintiff sent Defendant written notice  
10 of her claims on April 11, 2019. Defendant received Plaintiff's written notice on April  
11 15, 2019 and replied on May 8, 2019. Pursuant to section 1782 *et seq.* of the CLRA,  
12 Plaintiff notified Defendant in writing by certified mail of the particular violations of §  
13 1770 of the Act as to the Bulletproof Cold Brew products and demanded that Defendant  
14 rectify the problems associated with the actions detailed above and give notice to all  
15 affected consumers of its intent to so act.

16 84. Defendant's wrongful business practices regarding the Bulletproof Cold  
17 Brew products constituted, and constitute, a continuing course of conduct in violation of  
18 the CLRA since Defendant is still representing that the Bulletproof Cold Brew products  
19 have characteristics, uses, benefits, and abilities which are false and misleading, and have  
20 injured Plaintiff and the Class.

21 **XV. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the  
23 general public, prays for judgment against Defendant as follows:

- 24 A. An order confirming that this class action is properly maintainable as a class  
25 action as defined above, appointing Plaintiff Tiffni Altes and her undersigned  
26 counsel to represent the Class, and requiring Defendants to bear the cost of  
27 class notice;
- 28 B. An order requiring Defendants pay restitution and damages to Plaintiff and

- 1 class members of \$15,000,000, or such greater amount to be determined at trial;
- 2 C. An award of punitive damages to the extent allowable by law in an amount to
- 3 be proved at trial;
- 4 D. An order requiring Defendant to cease and desist their deceptive,
- 5 unconscionable, and fraudulent practices; and engage in a corrective advertising
- 6 campaign;
- 7 E. An award of pre-judgment and post-judgment interest;
- 8 F. An award of attorney fees and costs; and
- 9 G. Such other and further relief as this Court may deem just, equitable or proper.

10 **XVI. JURY DEMAND**

11 Plaintiff requests a trial by jury.

12  
13 DATED: May 21, 2019

Respectfully Submitted,

14  
15 s/ Gregory S. Weston  
**THE WESTON FIRM**  
 16 GREGORY S. WESTON  
 17 1405 Morena Blvd., Suite 201  
 18 San Diego, CA 92110  
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 19 Facsimile: (619) 343-2789

20 **Counsel for Plaintiff**