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8 **Counsel for Plaintiff**

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 Defendant.
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Case No: 2:19-cv-04409-ODW-SK

**FIRST AMENDED 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.¹

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 best-selling ready-to-drink coffee products at Whole Foods and Sprouts.² This popularity,

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

28 ² See <https://www.marketwatch.com/press-release/bulletproofs-retail-product-expansion->

1 however, is driven by Defendant's unlawful and fraudulent claims.

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

5 Asprey happily shares his opinion on how often men should ejaculate (once
6 a week, but have sex more often) and how long they should sleep (six hours
7 is good; eight hours is too much). He thinks you should go to Burning Man
8 (because it'll activate your creativity) and stop eating kale (because it
contains trace amounts of oxalic acid).³

9 Indeed,

10 Unsurprisingly, this has made Asprey suspicious of regulation. "Regulation
11 got us the food pyramid that causes heart disease, cancer, and diabetes in
12 unprecedented numbers of people," he told me. "It got us an incredibly
13 slow-to-innovate medical system that's now being disrupted. It is antihuman
14 to tell someone that they do not have the choice to put whatever they want
15 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."

16 *Id.*

17 6. Consistent with its CEO's contempt for the FDA as "antihuman" and
18 violating "basic human freedom," Bulletproof 360 **casually ignores all FDA regulations**
19 regarding nutrient content claims on its Bulletproof Cold Brew products.

20 7. Bulletproof 360 also unlawfully makes wild claims that adding large
21 amounts of butter and its proprietary "Brain Octane Oil" to coffee has a variety of
22 medical benefits, in a manner that renders the product an unapproved new drug.
23

24 to-reach-over-20000-new-stores-nationwide-2019-03-05 (last visited July 19, 2019).

25 ³ 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/](http://www.menshealth.com/health/a25902826/bulletproof-dave-asprey-biohacking/) (Accessed 21 May 2019).

8. In addition to Bulletproof 360's illegal label claims and illegal medical benefit marketing claims, it also promotes on its labels and through a multimedia campaign that coffee from other companies is dirty, unsafe, and full of "toxins" and only its "certified clean coffee" is truly safe to drink

9. These illegal tactics allow Bulletproof 360 to sell its products for well over double the price of other premium coffee brands such as Starbucks.

10. This action is brought to remedy Defendant's unfair, deceptive, and unlawful conduct. On behalf of the class defined herein, Plaintiff seeks an order compelling Bulletproof 360 to, *inter alia*: (1) cease marketing and selling Bulletproof Cold Brew using the false, misleading, deceptive, and unconscionable tactics complained of herein; (2) conduct a corrective advertising campaign; (3) destroy all misleading and deceptive materials and products; (4) award Plaintiff and the Class members restitution, actual damages, and punitive damages to the extent permitted under the law; and (5) pay costs, expenses, and reasonable attorney fees.

III. PARTIES

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

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

IV. SPECIFIC PRODUCT CLAIMS

13. In one label variation which was in use until at least October 2018, the flavors "Original", "Vanilla", and "Mocha" incorporate the following claims on the product label:

- "Certified Clean Coffee";
- "Brain Octane Oil"; and
- "It's clean coffee certified to be free of 27 energy-sapping toxins, plus grass-

fed butter and Bulletproof Brain Octane Oil—extracted from the most potent part of the coconut—to power your brain and body and give you steady, all day energy.”

14. The product label appears as follows:



15. Prior to October 2018, Bulletproof Cold Brew Coffee + Collagen Protein was also available in “Original,” “Dark Chocolate,” and “Vanilla Latte”, “Caramel”, and “Vanilla Latte” flavors. Each flavor repeats the claims listed above and adds the following additional claims:

- “All Day Energy + Protein”; and
- “Bulletproof® Coffee with collagen protein is delicious coffee plus grass-

- “Lasting Energy”; and
- “Fewer Cravings [¶] Brain Octane Oil Powers Your Brain and Curbs Snack Attacks”.

18. The product label appears as follows:



19. Since around October 2018, Bulletproof Cold Brew Coffee + Collagen Protein has also been available in “Original,” “Dark Chocolate,” and “Vanilla Latte,” “Caramel,” and “Vanilla Latte” flavors. Each flavor repeats the claims made on the post-October 2018 packaging and adds an additional claim: “Essential for Hair, Skin & Nails [¶] 15g of Collagen Protein Pack a Beautiful Punch.”

20. The product label appears as follows:



21. All versions of Bulletproof Cold Brew Coffee reference and thus incorporate by reference bulletproofcoffee.com or bulletproof.com, which include the following deceptive claims:

- “Our cold brew packs a punch. Made with clean beans and infused with Brain Octane® Oil and grass-fed butter, this zero-sugar cold brew gives you enough energy and focus to feel like a boss all day long.”
- “CERTIFIED CLEAN COFFEE Not all coffee is created equal. The best coffee is clean. Free of energy-sapping mold toxins that slow you down. Our beans are farmed, screened, and tested to be free of 27 common toxins to keep you mentally and physically feeling your best.”

- 1 • “BRAIN OCTANE OIL Completely flavorless and totally satisfying, this oil is
- 2 extracted from the most potent part of the coconut. It gives your body what it
- 3 needs—efficient high-energy fuel to power your body.”
- 4 • “GRASS-FED BUTTER Butter from grass-fed cows is higher in butyrate, a fatty
- 5 acid that aids in digestion as well as Vitamin K2, which helps push the calcium to
- 6 your bones—not your arteries.”
- 7 • “Bulletproof Brain Octane oil and XCT oil are MCT oils. But better. They contain
- 8 what you want in an MCT oil that actually works: pure, triple-distilled quality fats
- 9 that give you more energy, better mental performance and fewer cravings.”
- 10 • “Your body turns MCTs into molecules called ketones, which help burn fat, curb
- 11 cravings and power your brain. TLDR: Ketones give you incredible energy.”
- 12 • “That said, not all MCTs are the same. Brain Octane oil gives you four times more
- 13 ketone energy than coconut oil.^[7] That means you get more brain-powering, fat-
- 14 burning power than you would with generic MCT oil.”
- 15 • “C8 (caprylic acid): This is Brain Octane oil, and it’s the all-around best MCT for
- 16 ketogenic energy. It produces more ketones than coconut oil, which means more
- 17 ketone benefits like amplified energy, fat loss and metabolic burn.”
- 18 • “Bottom line: C8 and C10 are the best types of MCTs overall, whether you follow
- 19 the keto diet or just want more energy. Bulletproof only uses C8 and C10 MCT
- 20 oils. That matters.”

21 22. Further, the Bulletproof website contains a page titled “Weight Loss and

22 Diet” which includes the following misleading statements and provides links to purchase

23 the Bulletproof Cold Brew Coffee products, touting them as a “top selling product[] to

24 support the Bulletproof diet”:

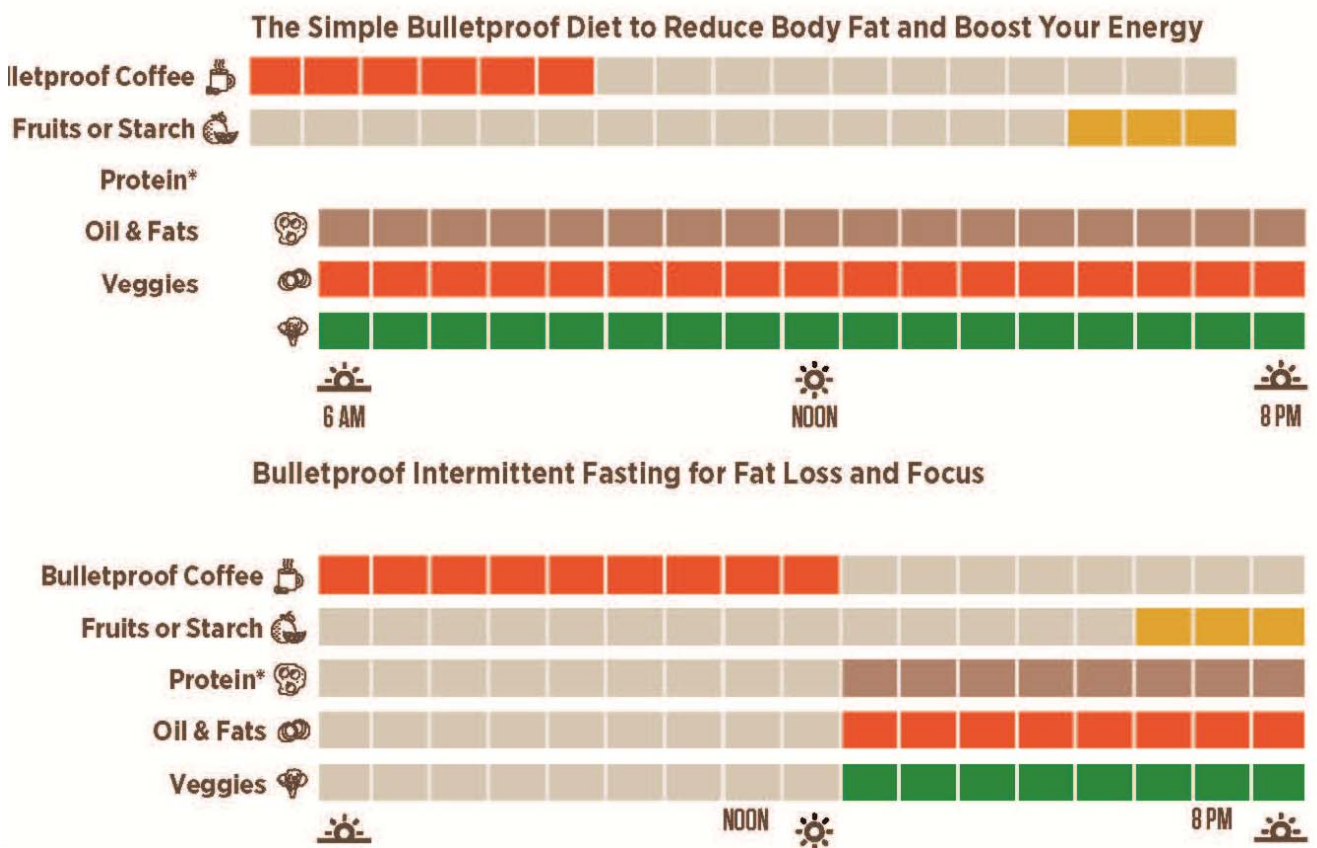
- 25 • “No More Cravings”
- 26 • “For more energy and fewer snack attacks, choose quality fats instead of sugar and
- 27 follow a low-carb or keto diet. You’ll be glad you did.”

- “Brain Octane oil is added for brain power and suppressing hunger, while the grass-fed butter boasts higher levels of omega-3 fatty acids.”

23. The Bulletproof website also contains a link to download “The Bulletproof Diet Road Map.” An excerpt of the “Diet Road Map” is as follows:

WHEN TO EAT AND FAST

Use this section of the Roadmap as a rough proportional guide. When in doubt, cover your plate with vegetables, add a few ounces of grass-fed meat and a generous amount of clean fats like butter, Brain Octane Oil, or ghee.



24. The graphic claims Bulletproof’s coffee allows consumers to “reduce body fat” and can assist with “fat loss.”

V. THE MAYO CLINIC’S EVALUATION OF BULLETPROOF COFFEE IS THAT IT IS BAD FOR HEART HEALTH

25. Contrary to Bulletproof 360’s misleading health claims, Katherine Zeratsky, a dietician at the Mayo Clinic, advises:

1 When you add things like butter and coconut oil to your coffee, you're
 2 adding a significant amount of saturated fat and a significant amount of
 3 calories . . . those extra calories and the imbalance it might be creating in
 4 your diet might not work for you and your long-term health.⁴

26. Further, Zeratsky warns that Bulletproof coffee contains a large quantity of
 5 saturated fat which "is known to raise our cholesterol, thus increasing our risk of heart
 6 disease and potentially other cardiovascular-related problems." *Id.*

7 **VI. BULLETPROOF 360'S HEALTH CLAIMS ARE MISLEADING.**

8 27. The claims made by Defendant on the Bulletproof Cold Brew Coffee
 9 product labels and website imply that the products are a healthy alternative to regular
 10 coffee.

11 28. However, these claims are deceptive and misleading.

12 29. For example, Defendant claims that "not all coffee is created equal," and
 13 that Bulletproof's coffee "beans are farmed, screened, and tested to be free of 27 common
 14 toxins to keep you mentally and physically feeling your best."

15 30. While mycotoxins may be present in some coffee beans, studies have shown
 16 that "coffee intake does not represent a potential risk for consumers with respect to
 17 individual mycotoxin contamination."⁵

18 31. Contrary to Defendant's implication that consuming competing coffee
 19 results in health risks, regular coffee consumption has been shown to be "inversely
 20 associated with total and cause-specific mortality."⁶

21
 22 ⁴ Blazer, D. *Mayo Clinic Minute: Why the 'bulletproof coffee' trend isn't a magic bullet.*
 23 The Mayo Clinic. December 6, 2018. Available at
 24 [https://newsnetwork.mayoclinic.org/discussion/mayo-clinic-minute-why-the-bulletproof-](https://newsnetwork.mayoclinic.org/discussion/mayo-clinic-minute-why-the-bulletproof-coffee-trend-isnt-a-magic-bullet/)
[coffee-trend-isnt-a-magic-bullet/](https://newsnetwork.mayoclinic.org/discussion/mayo-clinic-minute-why-the-bulletproof-coffee-trend-isnt-a-magic-bullet/) (last visited July 30, 2019).

25 ⁵ Garcia-Moralega, et al., *Analysis of mycotoxins in coffee and risk assessment in Spanish*
 26 *adolescents and adults*. 86 FOOD AND CHEMICAL TOXICOLOGY 225-233 (2015).

27 ⁶ Freedman, et al. *Association of Coffee Drinking with Total and Cause Specific*
 28 *Mortality*. 366 N. ENGL. J. MED. 1891-1904 (2012).

1 32. Further, Defendant claims that consuming its “Brain Octane Oil,” which is a
2 medium chain triglyceride oil (“MCT oil”),⁷ will result in “fewer cravings,” “curb[] snack
3 attacks,” and “power your brain.”

4 33. Bulletproof 360 further claims “ZERO SUGAR” and “0G SUGAR.” This
5 claim is deceptive and unlawful due to the products’ high content of calories, total fat,
6 and saturated fat, and Defendant’s failure to provide the “not a low calorie food”
7 disclaimer as required by 21 C.F.R. § 101.13(h)(1).

8 34. A single bottle of Bulletproof Cold Brew Coffee contains 8g of saturated fat.
9 The FDA recommends consumers limit their saturated fat consumption to 20g per day,
10 meaning each small bottle of Bulletproof Cold Brew Coffee contains 40% of the daily
11 value recommended by the FDA.

12 35. The American Heart Association (“AHA”) recommends consumers limit
13 their saturated fat consumption to 13g per day, meaning each small bottle contains 62%
14 of the total AHA limit for saturated fat.⁸

15 36. The average American adult obtains approximately 10.9% of their calories
16 from saturated fat.⁹ Based on a 2,000-calorie diet, this equates to about 24.2g of saturated
17 fat daily, which is significantly more than the amounts recommended by the FDA and
18 AHA.

19 37. Thus, Americans seeking to improve their health would not benefit from
20 consuming Bulletproof Cold Brew products due to their high saturated fat content.

21 ⁷ Brain Octane vs. MCT Oil: What’s The Difference?, *Bulletproof Blog*. Available at:
22 <https://blog.bulletproof.com/the-definitive-guide-to-mcts/> (Accessed 21 May 2019).

23 ⁸ American Heart Association, *Saturated Fat*; Available at:
24 <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/fats/saturated-fats>
(Accessed 21 May 2019).

25 ⁹ 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).

VII. BULLETPROOF IS AN UNAPPROVED NEW DRUG.

38. During the Class Period, the Bulletproof Cold Brew Coffee label and website made the following drug claims:

- “Fewer Cravings [¶] Brain Octane Oil Powers Your Brain and Curbs Snack Attacks.”
- “BRAIN OCTANE OIL Completely flavorless and totally satisfying, this oil is extracted from the most potent part of the coconut. It gives your body what it needs—efficient high-energy fuel to power your body.”
- “Our cold brew packs a punch. Made with clean beans and infused with Brain Octane® Oil and grass-fed butter, this zero-sugar cold brew gives you enough energy and focus to feel like a boss all day long.”
- “Bulletproof Brain Octane oil and XCT oil are MCT oils. But better. They contain what you want in an MCT oil that actually works: pure, triple-distilled quality fats that give you more energy, better mental performance and fewer cravings.”
- “Your body turns MCTs into molecules called ketones, which help burn fat, curb cravings and power your brain. TLDR: Ketones give you incredible energy.”
- “That said, not all MCTs are the same. Brain Octane oil gives you four times more ketone energy than coconut oil. That means you get more brain-powering, fat-burning power than you would with generic MCT oil.”
- “C8 (caprylic acid): This is Brain Octane oil, and it’s the all-around best MCT for ketogenic energy. It produces more ketones than coconut oil, which means more ketone benefits like amplified energy, fat loss and metabolic burn.”
- Bottom line: C8 and C10 are the best types of MCTs overall, whether you follow the keto diet or just want more energy. Bulletproof only uses C8 and C10 MCT oils. That matters.”
- Further, the Bulletproof website contains a page titled “Weight Loss and Diet” which includes the following misleading statements and provides links to purchase

1 the Bulletproof Cold Brew Coffee products, touting them as a “top selling
2 product[] to support the Bulletproof diet”:

- 3 • “No More Cravings”
- 4 • For more energy and fewer snack attacks, choose quality fats instead of sugar and
5 follow a low-carb or keto diet. You’ll be glad you did.”
- 6 • “Brain Octane oil is added for brain power and suppressing hunger, while the
7 grass-fed butter boasts higher levels of omega-3 fatty acids.”

8 39. The FDA recognizes such claims as drug claims. Attached hereto as **Exhibit**
9 1 are FDA Warning Letters relating to similar claims that the FDA considers to be
10 unapproved new drug claims.

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

14 41. “No person shall introduce or deliver for introduction into interstate
15 commerce any new drug . . .” without approval by the FDA. 21 U.S.C § 355(a); *see also*
16 21 U.S.C. § 331(d).

17 42. Bulletproof 360’s failure to comply with the FDA regulations its CEO
18 ridicules as “antihuman” endangers the health of its customers, and further gives it an
19 unfair advantage over competitors that do comply with state and federal law.

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

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

- 26 • The website and labels neither describe the role of any nutrient or dietary
27 ingredient intended to affect the structure or function in humans, characterize
28

the documented mechanism by which any nutrient or dietary ingredient acts to maintain such structure or function, nor describes general well-being from consumption of any nutrient or dietary ingredient. 21 U.S.C. § 343(r)(6)(A).

- The claims on the website and labels do not relate to any classical nutrient deficiency. 21 U.S.C. § 343(r)(6)(A).

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

VIII. BULLETPROOF FAILS TO CONTAIN THE REQUIRED WARNINGS FOR OVER THE COUNTER STIMULANTS.

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

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

- “Brain Octane Oil Powers Your Brain”
- “this zero-sugar cold brew gives you enough energy and focus to feel like a boss all day long.”
- “Lasting Energy”
- “Energize”
- “Drink. Energize. Perform.”
- “power your brain and body and give you steady, all-day energy.”
- “Zero sugar means zero sugar crashes”
- “Fuel to sustain your body and mind”

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

49. Here, Defendant fails to meet any of the requirements identified in 21 C.F.R.

§§ 330.1 & 340.50, and the Bulletproof Cold Brew products are therefore not generally recognized as safe and effective and are misbranded.

IX. BULLETPROOF’S “ZERO SUGAR” AND “0G SUGAR” CLAIMS
VIOLATE 21 C.F.R. § 101.13(H)(1).

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

51. Bulletproof 360’s “Zero Sugar” and “0g Sugar” claims constitute expressed nutrient content claims pursuant to 21 C.F.R. § 101.13(b)(1).

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

53. Here, the Bulletproof Cold Brew products contain anywhere from 11-15g of fat, and 9-13g of saturated fat per labeled serving, far exceeding that threshold. Further, each label introduced in October 2018 included a nutrient content claim: “0G SUGAR.” Nevertheless, the labels fail to contain a statement disclosing that the fat or saturated fat exceed the specified level.

X. BULLETPROOF’S “ZERO SUGAR” AND “0G SUGAR” CLAIMS
VIOLATE 21 C.F.R. § 101.60

54. The “FDA has historically taken the position that consumers may associate claims regarding the absence of sugar with weight control and with foods that are low calorie or that have been altered to reduce calories significantly. Therefore, the definition

1 for ‘sugar free’ includes the requirement that any food that is not low or reduced in
 2 calorie disclose that fact. Without such information some consumers might think the food
 3 was offered for weight control.”¹⁰

4 55. “Consumers may reasonably be expected to regard terms that represent that
 5 the food contains no sugars or sweeteners e.g., ‘sugar free,’ or ‘no sugar,’ as indicating a
 6 product which is low in calories or significantly reduced in calories.” 21 C.F.R. § 101.60.

7 56. Food and drink products may not bear such claims unless:

8 (i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii),
 9 per reference amount customarily consumed and per labeled serving or, in the
 10 case of a meal product or main dish product, less than 0.5 g of sugars per labeled
 11 serving; and

12 (ii) The food contains no ingredient that is a sugar or that is generally
 13 understood by consumers to contain sugars unless the listing of the ingredient in
 14 the ingredient statement is followed by an asterisk that refers to the statement
 15 below the list of ingredients, which states “adds a trivial amount of sugar,” “adds
 16 a negligible amount of sugar,” or “adds a dietarily insignificant amount of sugar,”
 17 and

18 (iii)

19 (A) It is labeled “low calorie” or “reduced calorie” or bears a relative claim of
 20 special dietary usefulness labeled in compliance with paragraphs (b)(2),
 21 (b)(3), (b)(4), or (b)(5) of this section, or, if a dietary supplement, it meets the
 22 definition in paragraph (b)(2) of this section for “low calorie” but is prohibited
 23 by §§ 101.13(b)(5) and 101.60(a)(4) from bearing the claim; or

24 (B) Such term is immediately accompanied, each time it is used, by either the
 25 statement “not a reduced calorie food,” “not a low calorie food,” or “not for
 26 weight control.”

27 57. Since around October 2018, the packaging of Bulletproof Cold Brew Coffee
 28 products has included the claims that Bulletproof contains “ZERO SUGAR” and “0G
 29 SUGAR,” but the products do not meet the requirements set forth in 21 C.F.R. §

30 ¹⁰ Food and Drug Administration, *Guidance for Industry and FDA: Dear Manufacturer*
 31 *Letter Regarding Sugar Free Claims* (September 2007). Available at
 32 [https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims)
 33 [industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-and-fda-dear-manufacturer-letter-regarding-sugar-free-claims) (last visited July
 34 31, 2019).

1 101.60(c)(2)(i), (ii), or (iii).

2 58. Pursuant to 21 C.F.R. § 101.60(2)(iii)(b), the Bulletproof Cold Brew Coffee
3 products are required to bear the phrase “not a reduced calorie food,” “not a low calorie
4 food,” or “not for weight control” immediately after the “ZERO SUGAR” and “0G
5 SUGAR” claims.

6 59. Examples of products properly labeled in compliance with 21 C.F.R. §
7 101.60(2)(iii)(b) are as follows:







60. Bulletproof 360's failure to comply with 21 C.F.R. § 101.60 is deceptive because "[c]onsumers may reasonably be expected to regard terms that represent that the

1 food contains no sugars or sweeteners e.g., ‘sugar free,’ or ‘no sugar,’ as indicating a
2 product which is low in calories or significantly reduced in calories.” 21 C.F.R. § 101.60.

3 61. In truth, each flavor of the Bulletproof Cold Brew Coffee products, heavily
4 promoted as a weight loss product, contain at least as many calories as a 12-ounce can of
5 Coca-Cola.

6 **XI. BULLETPROOF + COLLAGEN PROTEIN MAKES UNAUTHORIZED**
7 **NUTRIENT CONTENT CLAIMS.**

8 62. In addition to the prior unlawful claims, the packaging of the post-October
9 2018 Bulletproof Cold Brew + Collagen Protein products included the following claim:
10 “Essential for Hair, Skin & Nails 15g of Collagen Protein Pack a Beautiful Punch.”
11 However, there is no regulation that permits such a nutrient content claim, and its use is
12 unlawful. Moreover, even if this claim were authorized, it would still require a disclosure
13 statement regarding the high level of fat in the product.

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

20 64. No such disclosure statement is made.

21 **XII. BULLETPROOF MAKES UNAUTHORIZED HEALTH CLAIMS.**

22 65. Products containing at least 4g per serving of saturated fat are
23 “disqualify[ed] from making a health claim” unless they meet the exceptions identified in
24 21 C.F.R. § 101.14(e). The Bulletproof Coffee Cold Brew products contain 8g of
25 saturated fat per serving and do not qualify for the exceptions identified in 21 C.F.R. §
26 101.14(e).

27 66. The Bulletproof website makes the following claim relating to heart health:
28 “GRASS-FED BUTTER Butter from grass-fed cows is higher in butyrate, a

1 fatty acid that aids in digestion as well as Vitamin K2, which helps push the
2 calcium to your bones—not your arteries.”

3 67. Pursuant to 21 C.F.R. § 101.14(a), a

4 [h]ealth claim means any claim made on the label or in labeling of a food,
5 including a dietary supplement, that expressly or by implication, including
6 “third party” references, written statements (e.g., a brand name including a
7 term such as “heart”), symbols (e.g., a heart symbol), or vignettes,
8 characterizes the relationship of any substance to a disease or health-related
9 condition. Implied health claims include those statements, symbols,
10 vignettes, or other forms of communication that suggest, within the context
11 in which they are presented, that a relationship exists between the presence
12 or level of a substance in the food and a disease or health-related condition

13 68. This claim constitutes a “health claim” within the meaning of 21 C.F.R. §
14 101.14(a)(1). It claims an ingredient in the product reduces the risk of heart disease and
15 osteoporosis by “push[ing] calcium to your bones—not your arteries.”

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

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

25 **XIII. BULLETPROOF IS FALSE, MISLEADING, AND MISBRANDED.**

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

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

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

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

75. Further, Defendant uses health claims to deceptively market the Bulletproof Cold Brew Products as products which will aide in weight-loss, which is deceptive due to the product’s high saturated fat content high calorie content and lack of nutrients.

76. The Bulletproof Cold Brew Product purchased by Plaintiff bear the following claims on the product label: “fewer cravings”, “fuel to sustain your body and mind”, as well as “Brain octane oil powers your brain and curbs against snack attacks.”

77. These label claims lead a reasonable consumer to believe that they are purchasing a product beneficial for their health and that will assist in weight-loss, when in fact these claims are deceptive, and the product’s high saturated fat content can adversely impact health.

78. Multiple studies show consumption of Bulletproof coffee causes a “rise cholesterol levels” and “worsening lipid levels” which represents a “cardiovascular risk factor.”¹¹

79. In 2014, Dr. Karl Nodolsky of Walter Reed Medical Center and the American Board of Obesity Medicine reported a “a 39-year-old male” patient “with no previous cardiovascular risk factors developed elevated and at-risk levels of LDL

¹¹ Tokle, et al. *Rise in Serum Lipids After Dietary Incorporation of “Bulletproof Coffee.”* 9 J. OF CLINICAL LIPIDOLOGY 462 (June 2015), available at [https://www.lipidjournal.com/article/S1933-2874\(15\)00170-1/pdf](https://www.lipidjournal.com/article/S1933-2874(15)00170-1/pdf).

1 cholesterol (198) and apolipoprotein B (133)” after “drinking ‘bulletproof coffee’” “every
 2 morning” for a “few months.”¹² During that time, the patient’s “total cholesterol jumped
 3 from 248 to 282, HDL from 59 to 66, LDL from 180 to 198, and triglycerides from 41 to
 4 73. The apolipoprotein scan revealed a level of 133, which was high-risk.” *Id.* Dr.
 5 Nadolsky “attributed it to the bulletproof coffee intake.” *Id.*

6 80. Dr. Nadolsky and his co-authors provide the following synopsis regarding
 7 the consumption of Bulletproof Coffee products:

8 There has been recent renewed interest in supplementation with medium-
 9 chain triglyceride (MCT) oils and coconut oils in addition to consumption of
 10 organic grass-fed butter due to proposed alleged health benefits by those
 11 who recommend and practice high-fat diets within the health and wellness
 12 community. Suggested benefits include weight loss, increased energy, and
 13 cardiometabolic improvements of lipoproteins, inflammation and insulin
 14 sensitivity. The basis of this pro-saturated fatty acid campaign is
 purposefully contradictory to many mainstream federal health and medical
 dietary recommendations including the FDA.¹³

15 81. Nadolsky warns:

16 there have . . . recently been anecdotally reported cases of significantly
 17 increased atherogenic lipidemia in otherwise healthy patients who have
 18 added butter and/or MCT to their baseline diet. This is concerning from a
 19 public health perspective because measures of atherogenic lipoproteins may
 20 be significantly increased as demonstrated by the patient presented who’s
 21 non-HDLc rose from 155 mg/dL (<50th %ile) prior to a higher SFA diet to
 22 189 mg/dL then jumped to 216 mg/dL after adding butter and MCT oil along
 with apoB of 133 mg/dL (both > 80th %ile) concerning for increasing his
 risk of atherosclerotic cardiovascular disease. *Id.*

23 82. Defendant’s false and misleading conduct also violates California’s several
 24

25 ¹² ‘Bulletproof’ Coffee May Hike Lipids. MedPage Today. May 26, 2014. Available at
 26 www.medpagetoday.com/MeetingCoverage/AACE/45810 (last visited July 30, 2019).

27 ¹³ Nadolsky, K. et al. *Does the “B” in ‘Bulletproof Coffee’ stand for ApoB*; AACE 2014.
 28

1 consumer protection laws. *See* Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Civ. Code §
2 1750, *et seq.*

3 **XIV. PLAINTIFF'S PURCHASES OF BULLETPROOF COFFEE**

4 83. Plaintiff Tiffni Altes purchased Bulletproof Cold Brew Coffee at least twice
5 in the last two years at Whole Foods Market located at 24130 Valencia Blvd., Santa
6 Clarita. Her most recent purchase was in December 2018. Plaintiff purchased Bulletproof
7 Cold Brew Coffee products in both the pre-October 2018 and post-October packaging
8 variations pictured *supra*. Plaintiff would not have purchased Bulletproof Cold Brew
9 products had she known that they were unlawfully labeled, misbranded, contained false
10 claims, and an unapproved new drug.

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

15 **XV. RELIANCE AND INJURY**

16 85. When purchasing Bulletproof Cold Brew Coffee, Plaintiff was seeking a
17 product that was beneficial to her health. She lost money as a result of Defendant's
18 conduct because she purchased products that were detrimental to her health and were
19 unfairly offered for sale in violation of federal and California law. Had Defendant not
20 violated the law, Plaintiff would not have suffered these injuries.

21 86. In deciding to purchase Bulletproof Cold Brew Coffee, Mrs. Altes relied on
22 the label as a whole and, *inter alia*, the following deceptive claims:
23

- 24 • "Brain Octane Oil";
- 25 • "Fuel to Sustain Your Mind and Body";
- 26 • "0G SUGAR";
- 27 • "ZERO SUGAR"

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

8 87. Mrs. Altes, on at least one occasion, would not have purchased Bulletproof
 9 Cold Brew Coffee absent these misleading claims, and never would have purchased
 10 Bulletproof had she known it was misbranded, deceptively marketed, an unapproved new
 11 drug, and sold in violation of California and federal law.

12 **XVI. CLASS ACTION ALLEGATIONS**

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

16 89. 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 90. Questions of law and fact common to Plaintiff and the Classes include:

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

1 the gravity of the harm the conduct causes to their victims;

- 2 • Whether Defendant's conduct violated public policy as declared by specific
- 3 constitutional, statutory, or regulatory provisions;
- 4 • Whether the Bulletproof Cold Brew products are unapproved new drugs;
- 5 • Whether the product label fails to comply with FDA regulations;
- 6 • Whether Defendant fraudulently omitted material information in advertising
- 7 Bulletproof Cold Brew Coffee as safe and effective;
- 8 • Whether Defendant sold and distributed Bulletproof Cold Brew Coffee to the
- 9 public in packaging that was false, at variance with the truth, or likely to deceive
- 10 reasonable consumer;
- 11 • Whether the Class is entitled to actual damages, restitution, punitive damages,
- 12 fees and costs, and injunctive relief;
- 13 • Whether Defendant's conduct was knowing, or whether Defendant reasonably
- 14 should have known of the conduct;
- 15 • Whether Defendant acted willfully, recklessly, negligently, or with gross
- 16 negligence in violation of the law as alleged herein; and
- 17 • Whether the injury to consumers from Defendant's practices is substantial;

18 91. By purchasing the Bulletproof Cold Brew products, all Class members were
19 subjected to the same wrongful conduct and the same economic injury.

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

23 93. The Class is sufficiently numerous, as it includes thousands of individuals
24 who purchased Bulletproof Cold Brew products throughout California during the Class
25 Period.

26 94. The relief sought for each Class member is small. Absent the availability of
27 class action procedures, it would be infeasible for Class members to redress the wrongs
28

1 done to them.

2 95. Defendant has acted on grounds applicable to the Class, thereby making
3 final injunctive relief or declaratory relief appropriate concerning the Class as a whole.

4 **XVII. CAUSES OF ACTION**

5 **First Cause of Action**

6 **Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.***

7 96. In this and every cause of action, Plaintiff realleges and incorporates by
8 reference each and every allegation contained elsewhere in this Complaint, as if fully set
9 forth herein.

10 97. Defendant's conduct described here is unfair because it is

- 11 • immoral, unethical, unscrupulous, and offends public policy;
- 12 • the gravity of its conduct outweighs any benefit; and
- 13 • the injury to consumers is substantial, not outweighed by any countervailing
14 benefits to competition, and not one that consumers themselves could
15 reasonably have avoided.

16 98. Defendant's conduct is "unlawful" because it violated the following portions
17 of the Food, Drug, and Cosmetic Act:

- 18 • 21 U.S.C. § 331(a), prohibiting the "introduction or delivery for introduction into
19 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is
20 adulterated or misbranded";
- 21 • 21 U.S.C. § 331(b), prohibiting the "adulteration or misbranding of any food, drug,
22 device, tobacco product, or cosmetic in interstate commerce";
- 23 • 21 U.S.C. § 355(a), prohibiting the sale of unapproved new drugs.

24 99. Defendant's conduct is further "unlawful" because Defendant made a
25 "health claim" as defined by 21 C.F.R. § 101.14(a) despite containing a disqualifying
26 level of saturated fat pursuant to 21 C.F.R. § 101.14(d) and failing to meet any of the
27 exceptions identified in 21 C.F.R. § 101.14(e).

1 100. Bulletproof also violates 21 C.F.R. § 101.60 because the Bulletproof Cold
2 Brew Coffee products contain the nutrient content claim “0g Sugar,” but they do not meet
3 the requirements set forth in 21 C.F.R. § 101.60(c)(2)(i), (ii), or (iii).

4 101. Specifically, the Bulletproof Coffee Cold Brew products were required to,
5 but do not, bear the phrase “not a reduced calorie food,” “not a low calorie food,” or “not
6 for weight control” immediately after the “0g Sugar” claim.

7 102. Further, Bulletproof 360 violates 21 C.F.R. § 101.13 because the packaging
8 of the Bulletproof Cold Brew Coffee products bears a nutrient content claim, “0g Sugar,”
9 and the products “contain[] more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams
10 (mg) of cholesterol, or 480 mg of sodium . . . per labeled serving,” but do not bear a
11 statement disclosing that the nutrient exceeding the specified level is present in the food
12 as follows: ‘See nutrition information for ____ content’ with the blank filled in with the
13 identity of the nutrient exceeding the specified level, e.g., ‘See nutrition information for
14 fat content.’” 21 C.F.R. § 101.13(h)(1).

15 103. Defendant’s conduct also violates other provisions of California law
16 including, *inter alia*:

- 17 • Health & Safety Code § 110100 et seq., which adopts all FDA regulations as state
18 regulations;
- 19 • *Id.* § 110398, “It is unlawful for any person to advertise any food, drug, device, or
20 cosmetic that is adulterated or misbranded”;
- 21 • *Id.* §§ 111330, 111440, 111445, 111450, prohibiting manufacture, distribution, and
22 sale of misbranded drugs;
- 23 • *Id.* §§ 110660, 110765, 110770, prohibiting manufacture, distribution, and sale of
24 misbranded food;
- 25 • *Id.* § 111550, prohibiting sale of new drug unless approved under 21 U.S.C. § 355;
- 26 • Civil Code § 1770(a), prohibiting misleading practices in relation to the sale of
27 goods; and
28

- Bus. & Prof. Code § 17200 *et seq.*, prohibiting fraudulent business activity.

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

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

Second Cause of Action

Consumer Legal Remedies Act, Civil Code §§ 1750 *et seq.*

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

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

- § 1770(a)(3), misrepresenting the affiliation, connection with, or association with, or certification by, another;
- § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;
- § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;
- § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- § 1770(a)(16): representing the subject of a transaction has been supplied in

1 accordance with a previous representation when it has not.

2 108. As a result, Plaintiff and the Class have suffered irreparable harm and are
3 entitled to injunctive relief and restitution.

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

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

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

19 **XVIII. PRAYER FOR RELIEF**

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

- 22 A. A preliminary and final injunction prohibiting all of Defendant's ongoing
23 illegal conduct;
- 24 B. An order confirming that this class action is properly maintainable as a class
25 action as defined above, appointing Mrs. Altes and her undersigned counsel to
26 represent the Class, and requiring Defendant to bear the cost of class notice;
- 27 C. An order requiring Defendant to pay restitution to Plaintiff and class members
28 of \$15,000,000, or such greater amount to be determined at trial;

- 1 D. An award of actual and punitive damages to the extent allowable by law in an
2 amount to be proved at trial;
3 E. A corrective advertising campaign;
4 F. Pre-judgment and post-judgment interest;
5 G. Attorney fees and costs; and
6 H. Such other and further relief as this Court may deem just, equitable or proper.

7 **XIX. JURY DEMAND**

8 Plaintiff requests a trial by jury.

9
10 DATED: August 5, 2019

Respectfully Submitted,

11
12 s/ Gregory S. Weston
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28 **Counsel for Plaintiff**