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11 *Attorneys for Plaintiff, RICHARD WINTERS, and all others similarly situated*

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

RICHARD WINTERS, individually, and on  
 behalf of other members of the general  
 public similarly situated,

Plaintiff,

vs.

TWO TOWNS CIDERHOUSE INC.,

Defendant.

Case No. **'20CV0468 BAS BGS**

**CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law  
 (Cal. Business & Professions Code  
 §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law  
 (Cal. Business & Professions Code  
 §§ 17200 *et seq.*)

**Jury Trial Demanded**

1 Plaintiff RICHARD WINTERS (“Plaintiff”), individually and on behalf of all other  
2 members of the public similarly situated, allege as follows:

3  
4 **PRELIMINARY STATEMENTS**

5 1. This is an action for damages, injunctive relief, and any other available legal or  
6 equitable remedies, for violations of Unfair Competition Law (Cal. Business & Professions Code  
7 §§ 17500 *et seq.*, and the Unfair Competition Law (Cal. Business & Professions Code §§ 17200  
8 *et seq.*, resulting from the illegal actions of Defendant, in intentionally labeling its drink products  
9 with false and misleading claims that they contain no artificial flavors, when Defendant’s products  
10 contain artificial Malic Acid. Malic Acid is a common food additive associated with tart and sour  
11 flavors. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and  
12 experiences, and, as to all other matters, upon information and belief, including investigation  
13 conducted by his attorneys.

14  
15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d), because the matter in  
17 controversy exceeds the sum or value of \$5,000,000 exclusive of interest or costs and is a class  
18 action in which the members of the class are citizens of a State different from the Defendant.

19  
20 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a  
21 substantial part of the events giving rise to this claim occurred in this District, and Defendant does  
22 business, inter alia, in the Southern District of California.

**PARTIES**

1  
2 4. Plaintiff is an individual who was at all relevant times residing in Mesa, Arizona.

3 5. On information and belief, Defendant is an Oregon corporation whose principal  
4 place of business is located in Corvallis, Oregon.

5 6. At all times relevant hereto, Defendant was engaged in the manufacturing,  
6 marketing, and sale of cider products.

7  
8 **FACTS COMMON TO ALL COUNTS**

9 7. Defendant manufactures, advertises, markets, sells, and distributes apple cider  
10 products throughout California and the United States under the brand name 2 Towns Cider.

11 8. During the Class Period the following list of products (the “Products”) were  
12 advertised as containing no artificial flavors when they in fact contained artificial Malic Acid:

- 13 a. Bright Cider;  
14 b. Easy Squeezy;  
15 c. Pacific Pineapple;  
16 d. Made Marion;  
17 e. Ginja Ninja;  
18 f. Outcider;

19  
20 9. During the Class Period Plaintiff purchased many of the Products.

21 10. Plaintiff’s most recent purchase was on November 18, 2019.

22 11. All of the Products contain artificial DL-Malic Acid; therefore, the apple flavors of  
23 Defendant’s products are at least partially artificial, but Defendant intentionally advertises and  
24 labels the Products as containing “Nothing Artificial: NO concentrates or refined sugars; NO  
25 essences or artificial flavors; NO velcorin or sorbate.”  
26

1           12.     Persons, like Plaintiff herein, have an interest in purchasing products that do not  
2 contain false and misleading claims with regards to the inclusion of artificial ingredients in those  
3 products.

4           13.     By making false and misleading claims about the ingredients contained in their  
5 products Defendant impaired Plaintiff's ability to choose the type and quality of products he chose  
6 to buy.

7           14.     Therefore, Plaintiff has been deprived of his legally-protected interest to obtain true  
8 and accurate information about his consumer products as required by California and Federal law.

9           15.     As a result Plaintiff has been misled into purchasing products he would not have  
10 otherwise purchased.

11           16.     A flavor is a substance the function of which is to impart taste. See 21 C.F.R. §  
12 101.22(a)(1),(a)(3).

13           17.     Taste is the combination of sensations arising from specialized receptor cells  
14 located in the mouth. Gary Reineccius, Flavor Chemistry and Technology 2<sup>nd</sup> edition, § 1.2 (2005).  
15 Taste can be defined as sensations of sweet, sour, salty, bitter, and umami; however, limiting taste  
16 to five categories suggests that taste is simple, which is not true. *Id.* For example, the taste of sour  
17 contains the sourness of vinegar (Acetic Acid), sour milk (Lactic Acid), lemons (Citric Acid),  
18 apples (Malic Acid), and wines (Tartaric Acid). *Id.* Each of those acids is responsible for unique  
19 sensory characteristics of sourness. *Id.*

20           18.     Fruit flavors are the sum of the interaction between sugars, acids, lipids, and a blend  
21 of volatile compounds. Hui, et. al., Handbook of Fruit and Vegetable Flavors, Ch. 36 p. 693 (2010).  
22 The content of sugars, mainly glucose and fructose, and its ratio to the content of acids, such as  
23 citric and malic acid, determine the sweetness of fruits. *Id.*

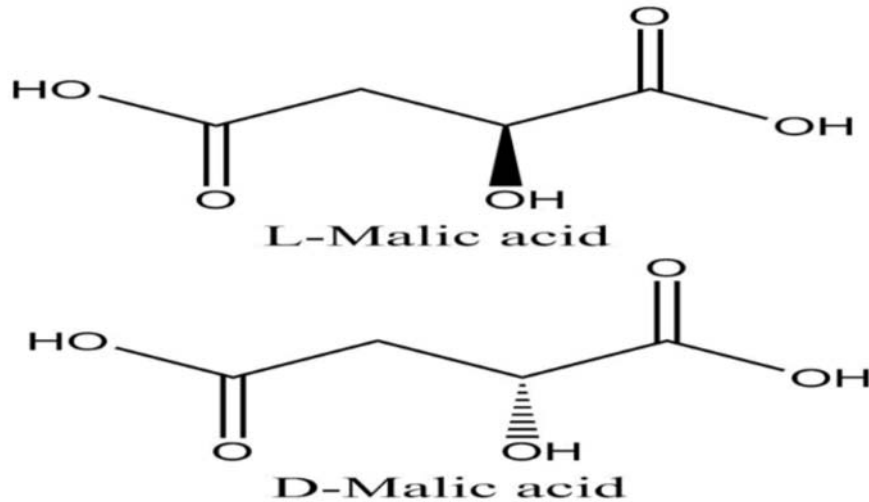
1           19.     Malic Acid (C<sub>4</sub>H<sub>6</sub>O<sub>5</sub>) is the common name for 1-hydroxy-1, 2-ethanedicarboxylic  
2 acid. Malic Acid has two isomers, or different arrangements of atoms in the molecule, L-Malic  
3 Acid, and D-Malic Acid. 21 C.F.R. § 184.1069. L-Malic Acid *occurs naturally* in various fruits.  
4 *Id* (Emphasis added). D-Malic Acid *does not occur naturally*. *Id* (emphasis added). D-Malic Acid  
5 is most commonly found in a Racemic Mixture, DL-Malic Acid, which is commercially made  
6 from petroleum products.

7           20.     An isomer is a molecule sharing the same atomic make up as another but differing  
8 in structural arrangements. Dan Chong and Johnathan Mooney, *Chirality and Stereoisomers*,  
9 (2019).<sup>1</sup> Stereoisomers contain different types of isomers each with distinct characteristics that  
10 separate each other as different chemical entities with different chemical properties. *Id*.  
11 Stereoisomers differ from each other by spatial arrangement, meaning different atomic particles  
12 and molecules are situated differently in any three-dimensional direction by even one degree. *Id*.  
13 Enantiomers are a type of stereoisomer that are mirror-images and cannot be superimposed. *Id*. It  
14 can be helpful to think of enantiomers as right-hand and left-hand versions of the same molecular  
15 formula. D-Malic Acid and L-Malic Acid are enantiomers.

16           21.     The following are skeletal formulas of the enantiomers D-Malic Acid and L-Malic  
17 Acid:  
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19  
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23  
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25

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26 <sup>1</sup>  
27 [https://chem.libretexts.org/Bookshelves/Organic\\_Chemistry/Supplemental\\_Modules\\_\(Organic\\_Chemistry\)/Chirality/Chirality\\_and\\_Stereoisomers](https://chem.libretexts.org/Bookshelves/Organic_Chemistry/Supplemental_Modules_(Organic_Chemistry)/Chirality/Chirality_and_Stereoisomers).



10 22. Sweetness and tartness are important contributors to the states and flavor  
11 perception of fruit juices. Hui, et. al., Handbook of Fruit and Vegetable Flavors, Ch. 24 p. 455  
12 (2010). Organic acids such as Malic Acid in apples and pears, and Tartaric and Malic Acid in  
13 grapes, contribute to the tartness of the juices. *Id.* The **sugar to acid ratio** have a **great impact** on  
14 the perceived sweetness and tartness of fruit juices, as well as the flavor perception and balance,  
15 and overall consumer acceptability. *Id.* (emphasis added).

17 23. Malic Acid is a key organic acid in the flavors of many fruits as is evidence by its  
18 high concentration in those fruits. The following are charts depicting the concentration of Malic  
19 Acid in the characterizing fruit flavors of Defendant's products:

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<sup>2</sup> The only structural difference between D-Malic Acid and L-Malic Acid is that one Hydroxide (OH<sup>-</sup>) is attached to each different enantiomer at a different angle. The solid cone and the dashed-line cone represent the stereochemical differences. Straight lines represent bonds on the same plane as the paper, solid cones represent bonds pointed towards the observer, and dashed-line cones represent bonds pointed away from the observer.

**Table 8.7.** Concentrations of malic acid (MA; mg g<sup>-1</sup> FW) in the flesh of some ripe temperate fruits and some leaves and roots. For leaves and roots, nitrate and ammonium refer to the form of nitrogen on which the plants were grown.

Fruits	MA level	Reference
Apple	4.8–14.7	Fuleki <i>et al.</i> 1994
Blackberry	0.5–6.0	Wrolstad <i>et al.</i> 1980
Blueberry (highbush)	0.47–0.50	Markakis <i>et al.</i> 1963
Blueberry (lowbush)	5.0	Kalt and McDonald 1996
Cherry (sweet)	5.0–8.5	Girard and Kopp 1998
Cherry (sweet)	8.5–10	Kelebek and Selli 2011
Cherry (sweet)	6.3–14	Ballistreri <i>et al.</i> 2013
Citrus (orange)	0.6–2.0	Ting and Attaway 1971
Citrus (tangerine)	1.8–2.1	Ting and Attaway 1971
Citrus (grapefruit)	0.4–0.6	Ting and Attaway 1971
Citrus (lemon)	1.7–2.6	Ting and Attaway 1971
Citrus (lime)	2.0	Ting and Attaway 1971
Currant (black)	0.7–1.7	Rodriguez <i>et al.</i> 1992
Currant (red)	0.5–2.1	Rodriguez <i>et al.</i> 1992
Currant (red)	0.3–0.5	Nour <i>et al.</i> 2011
Currant (white)	0.4	Rodriguez <i>et al.</i> 1992
Peach	8.0	Byrne <i>et al.</i> 1991
Peach	2.0–7.0	Dirlewanger <i>et al.</i> 1999
Pear	1.6–2.0	Drake and Eisele 1999
Plum (damson)	7.0	García-Mariño <i>et al.</i> 2008
Plum (European)	20.0	Lombardi-Boccia <i>et al.</i> 2004
Plum (Japanese)	7.6–15.9	Robertson <i>et al.</i> 1992
Plum (Japanese)	8.0–10.0	Singh <i>et al.</i> 2009
Raspberry	0.14–1.7	Rodriguez <i>et al.</i> 1992
Strawberry	1.5–2.8	Moing <i>et al.</i> 2001
<b>Leaves</b>		
Tobacco (nitrate)	11.0	Pucher and Vickery 1949
Tobacco (ammonium)	0.8	Pucher and Vickery 1949
Barley (nitrate)	4.3	Kandlbinder <i>et al.</i> 1997
Barley (ammonium)	0.3	Kandlbinder <i>et al.</i> 1997
<b>Roots</b>		
Barley (nitrate)	<0.13	Kandlbinder <i>et al.</i> 1997
Barley (ammonium)	<0.13	Kandlbinder <i>et al.</i> 1997

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<sup>3</sup> Robert Walker and Franco Famiani, *Horticultural Reviews, Organic Acids in Fruits*, (Vol. 45, Ch. 8 2018).

Table I. Acids Naturally Present in Fruits

Fruit	Predominant Acid	Secondary Acids
Apple	Malic Acid (95%*)	Tartaric Acid, Fumaric Acid
Apricot	Malic Acid (70%*)	Citric Acid, Tartaric Acid
Cherry	Malic Acid (94%*)	Tartaric Acid
Grape	Malic Acid (60%*)	Tartaric Acid
Grapefruit	Citric Acid	Malic Acid
Guava	Citric Acid	Malic Acid
Lime, Lemon	Citric Acid	Malic Acid
Mango	Citric Acid	Malic Acid, Tartaric Acid
Orange	Citric Acid	Malic Acid
Peach	Malic Acid (73%*)	Citric Acid
Pear	Malic Acid (77%*)	Citric Acid
Pineapple	Citric Acid	Malic Acid
Raspberry	Citric Acid	Malic Acid, Tartaric Acid
Strawberry	Citric Acid	Malic Acid, Tartaric Acid
Tamarind	Tartaric Acid	Citric Acid, Malic Acid
Watermelon	Malic Acid (99%*)	Fumaric Acid

\*% of the total acid in the fruit

For more information: Bartek Ingredients Inc. • 421 Seaman St. • Stoney Creek, Ontario L8E 3J4 • Canada  
Tel: (905) 662-3292 • (905) 662-1127 • Order desk: 1-800-263-4165 • Fax: (905) 662-8849  
www.bartek.on.ca • sales@bartek.on.ca

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24. Adding DL-Malic Acid to a fruit juice solution containing L-Malic Acid would change the concentration of Malic Acid in the solution and the ratio of total Malic Acid to sugars in that solution.

25. Natural sugars—like glucose, fructose, and sucrose—combined with artificial DL-Malic Acid in a ratio engineered to resemble the natural chemical combination of sugar and L-Malic Acid found in the characterizing fruits of Defendant’s products does not equal the natural flavor of those characterizing fruits. Likewise, a natural chemical combination of sugar and L-

<sup>4</sup> Daniel Sortwell and Anne Woo, *Improving the Flavor of Fruit Products with Acidulants*, p. 1 (1996), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.548.4424&rep=rep1&type=pdf>

1 Malic Acid altered by adding artificial DL-Malic Acid is no longer the original chemical  
2 combination of sugar and L-Malic Acid and therefore no longer the natural flavor.

3 26. Irrespective of the purpose Defendant claims DL-Malic Acid was added to its  
4 products, DL-Malic Acid has the same effect on the fruit flavors. Defendant does not have the  
5 ability to command DL-Malic Acid to only perform certain functions, and Defendant should not  
6 be allowed to decide which Malic Acid constitutes flavor and which Malic Acid constitutes only  
7 a flavor enhancer or Ph balancer.

8  
9 27. Defendant includes DL-Malic Acid to help make its products taste more like apple.

10 28. Defendant had the option to add naturally extracted L-Malic Acid to its products,  
11 or to add a naturally manufactured acid such as Citric Acid to its products, but it instead  
12 intentionally used artificial DL-Malic Acid because it was likely cheaper.

13 29. Wine and Cider beverages containing less than 7% alcohol by volume are subject  
14 to the labeling requirements of the Federal Food, Drug, and Cosmetic Act (“FFDCA”), labeling  
15 requirements. CPG Sec. 510.450.

16  
17 30. The Sherman Food, Drug, and Cosmetic Act (“SFDCA”) incorporates all food  
18 additive regulations of the Federal Food, Drug, and Cosmetic Act. Cal. Health & Safety Code §  
19 110100.

20 31. Under the Federal Food, Drug, and Cosmetic Act (“FFDCA”), artificial flavor is  
21 defined as “any substance, the function of which is to impart flavor, which is not derived from a  
22 spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or  
23 similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.”

24  
25 21 C.F.R § 101.22(a)(1).

1 32. DL-Malic Acid is not derived from a spice, fruit or fruit juice, vegetable or  
2 vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry,  
3 eggs, dairy products, or fermentation products thereof.

4 33. A combination of sugar and DL-Malic Acid in a ratio resembling a fruit flavor  
5 cannot be derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb,  
6 bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or  
7 fermentation products thereof.  
8

9 34. Likewise, a combination of sugar, natural L-Malic Acid, and artificial DL-Malic  
10 Acid combined in a way to resemble the natural ratio of sugar and L-Malic Acid found in the  
11 characterizing fruits of Defendant's products cannot be derived from a spice, fruit or fruit juice,  
12 vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat,  
13 fish, poultry, eggs, dairy products, or fermentation products thereof.

14 35. A combination of sugars and artificial DL-Malic Acid engineered to resemble the  
15 natural ratio of sugars and natural L-Malic Acid that make up the natural flavor of the  
16 characterizing fruit of Defendants' products is not a natural flavor. Put more simply, the natural  
17 flavor of the fruits in controversy is heavily dependent on a specific ratio of sugar and L-Malic  
18 Acid, while Defendants flavors depend upon a ratio of sugar and DL-Malic Acid.  
19

20 36. Under the FFDCA, a flavor enhancer is a substance "added to supplement, enhance,  
21 or modify the original taste and or aroma of a food without imparting a characteristic taste or aroma  
22 of its own." 21 C.F.R. § 170.3(o)(11).  
23

24 37. Under the FFDCA, PH balancers are "substances added to change or maintain  
25 active acidity or basicity, including buffers, acids, alkalis, and neutralizing agents." 21 C.F.R. §  
26 170.3(o)(23).  
27

1 38. DL-Malic Acid under other circumstances could function as a flavor enhancer or  
2 PH balancer, such as when Malic Acid is not a core component of the natural flavor of the food.  
3 For example, Malic Acid added to vinegar (Ascectic Acid) dishes like barbecue pork, coleslaw, or  
4 pickled eggs would most likely not fundamentally alter the underlying vinegar flavors.

5 39. Under the circumstances in this case, artificial DL-Malic Acid fundamentally alters  
6 the original combination of sugar and natural L-Malic Acid core to apple flavors, so that the flavor  
7 of the Products are no longer a natural combination of sugar and L-Malic Acid but instead are an  
8 artificial combination of sugar and DL-Malic Acid.  
9

10 40. Under the FFDCA, a primary flavor identified on the front of a food product label  
11 is referred to as a “characterizing flavor.” 21 C.F.R. § 101.22.

12 41. The FFDCA further defines a “characterizing flavor” as flavors identified by “...  
13 labeling, or advertising of a food [making] any direct or indirect representations with respect to  
14 the primary recognizable flavor, by word, vignette, e.g., depiction of a fruit or other means.” 21  
15 C.F.R. § 101.22(i).  
16

17 42. If the food products contain any artificial flavor that simulates, resembles or  
18 reinforces the characterizing flavor, the name of the characterizing flavor “shall be accompanied  
19 by the word(s) ‘artificial’ or ‘artificially flavored’... e.g., ‘artificial vanilla’, ‘artificially flavored  
20 strawberry’, or ‘grape artificially flavored.’ 21 C.F.R. § 101.22(i)(2).

21 43. Under the SFDCA, a food is misbranded if its labeling is false or misleading in any  
22 particular, including if it contains any artificial flavoring, coloring, or chemical preservative,  
23 unless it bears labeling stating that fact. Cal. Health & Safety Code § 110660; Cal. Health & Safety  
24 Code § 110740.  
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44. The following are examples of the Products' labeling that explicitly violate FFDC and SFDC regulations:



45. The Products' apple flavors containing DL-Malic Acid resemble the natural characterizing apple flavors Defendant claims are in its products.

46. Plaintiff purchased Defendant's products because Defendant's packaging claims that their products do not contain artificial flavors.

47. Plaintiff would not have been able to understand that the Products contained artificial flavoring without an advanced understanding of organic chemistry and without performing chemical analysis on the Products.

48. Furthermore, due to Defendant's intentional, deceitful practice of falsely labeling the Products as containing no artificial flavors, Plaintiff could not have known that the Products contained artificial flavors.

49. Plaintiff was unaware that the Products contained artificial DL-Malic Acid when he purchased them.

1           50. Plaintiff and the Class were deceived into paying money for products they did not  
2 want because the Products were labeled as containing “Nothing Artificial: NO concentrates or  
3 refined sugars; NO essences or artificial flavors; NO velcorin or sorbate.”

4           51. Worse than the lost money, Plaintiff, the Class, and Sub-Class were deprived of  
5 their protected interest to choose the foods and ingredients they ingest.

6           52. Plaintiff, the Class, and Sub-Class members, are not, and should not be, required to  
7 chemically test the food products they purchase to know the true contents of those products.

8           53. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should have known  
9 that the Products’ express labeling stating “no artificial flavors” was false, deceptive, and  
10 misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the  
11 Products’ contained artificial DL-Malic Acid unless Defendant expressly told them, as required  
12 by law.

13           54. Defendant employs professional chemists or brewers to create the chemical flavor  
14 formulas of Defendant’s products. Therefore, Defendant through its employees knew or should  
15 have known that DL-Malic Acid is not naturally occurring, and that by adding DL-Malic Acid to  
16 its products the natural flavoring, if any was ever actually added to the products, would be  
17 fundamentally changed.

18           55. Defendant intentionally labeled its products as containing “Nothing Artificial: NO  
19 concentrates or refined sugars; NO essences or artificial flavors; NO velcorin or sorbate” to  
20 capitalize on consumers growing interest in high quality products. Defendant also advertises on its  
21 website that its products do not contain “Artificial ‘apple’ and other flavorings, sugar and Carmel  
22 color added to attempt to restore the look & flavor of a hard cider.”<sup>5</sup>

23  
24  
25  
26  
27 <sup>5</sup> <https://2townsciderhouse.com/ourmission/quality/>



1           61.     The Class and Sub-Class are so numerous that the individual joinder of all of their  
2 members is impractical. While the exact number and identities of their members are unknown to  
3 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
4 informed and believes and thereon alleges that the Class and Sub-Class include thousands, if not  
5 millions of members. Plaintiff alleges that the class members may be ascertained by the records  
6 maintained by Defendant.

7           62.     This suit is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a)  
8 because the Class and Sub-Class are so numerous that joinder of their members is impractical and  
9 the disposition of their claims in the Class Action will provide substantial benefits both to the  
10 parties and the Court.

11           63.     There are questions of law and fact common to the Class affecting the parties to be  
12 represented. The questions of law and fact common to the Class predominate over questions which  
13 may affect individual class members and include, but are not necessarily limited to, the following:  
14

- 15           a.     Whether the Defendant intentionally, negligently, or recklessly  
16                 disseminated false and misleading information by including the statement  
17                 “Nothing Artificial: NO concentrates or refined sugars; NO essences or  
18                 artificial flavors; NO velcorin or sorbate” on the Products’ packaging;  
19           b.     Whether the Class and Sub-Class members were informed of the artificial  
20                 nature of the ingredients in the Products;  
21           c.     Whether the Products contain artificial flavoring;  
22           d.     Whether Defendant’s conduct was unfair and deceptive;  
23           e.     Whether Defendant unjustly enriched itself as a result of the unlawful  
24                 conduct alleged above;  
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1 f. Whether the statement “Nothing Artificial: NO concentrates or refined  
2 sugars; NO essences or artificial flavors; NO velcorin or sorbate” is  
3 misleading or false;

4 g. Whether there should be a tolling of the statute of limitations; and

5 h. Whether the Class and Sub-Class are entitled to restitution, actual damages,  
6 punitive damages, and attorney fees and costs.

7  
8 64. As a resident of the United States and the State of California who purchased the  
9 Products, Plaintiff is asserting claims that are typical of the Class and Sub-Class.

10 65. Plaintiff has no interests adverse or antagonistic to the interests of the other  
11 members of the Class and Sub-Class.

12 66. Plaintiff will fairly and adequately protect the interests of the members of the Class  
13 and Sub-Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

14 67. A class action is superior to other available methods of fair and efficient  
15 adjudication of this controversy, since individual litigation of the claims of all Class and Sub-Class  
16 members is impracticable. Even if every Class and Sub-Class member could afford individual  
17 litigation, the court system could not. It would be unduly burdensome to the courts in which  
18 individual litigation of numerous issues would proceed. Individualized litigation would also  
19 present the potential for varying, inconsistent or contradictory judgments and would magnify the  
20 delay and expense to all parties, and to the court system, resulting from multiple trials of the same  
21 complex factual issues. By contrast, the conduct of this action as a class action presents fewer  
22 management difficulties, conserves the resources of the parties and of the court system and protects  
23 the rights of each class member. Class treatment will also permit the adjudication of relatively  
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1 small claims by many class members who could not otherwise afford to seek legal redress for the  
2 wrongs complained of herein.

3 68. The prosecution of separate actions by individual members of the Class and Sub-  
4 Class would create a risk of adjudications with respect to them that would, as a practical matter,  
5 be dispositive of the interests of the other class members not parties to such adjudications or that  
6 would substantially impair or impede the ability of such non-party class members to protect their  
7 interests.

8  
9 69. Plaintiff's claims and injuries are identical to the claims and injuries of all class and  
10 sub-class members, because all claims and injuries of all class and sub-class members are based  
11 on the same false labeling, same addition of DL-Malic Acid to apple flavored products, and same  
12 legal theory. All allegations arise from the identical, false, affirmative written statements made by  
13 Defendants when they claimed the Products contained "Nothing Artificial: NO concentrates or  
14 refined sugars; NO essences or artificial flavors; NO velcorin or sorbate," when in reality the  
15 Products contained a combination of sugars and artificial DL-Malic Acid engineered to resemble  
16 the natural ratio of sugars and natural L-Malic Acid of the apple flavors in controversy.

17  
18 70. Defendants have acted or refused to act in respect generally applicable to the Class  
19 and Sub-Class thereby making appropriate final and injunctive relief with regard to the members  
20 of the Class and Sub-Class as a whole.

21 71. The size and definition of the Class and Sub-Class can be identified through records  
22 held by retailers carrying and reselling the Products, and by Defendant's own records.

23  
24 **FIRST CAUSE OF ACTION**  
25 **Violation of the California False Advertising Act**  
26 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

27 72. Plaintiff incorporates by reference each allegation set forth above.

1           73. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is  
2 unlawful to engage in advertising “which is untrue or misleading, and which is known, or which  
3 by the exercise of reasonable care should be known, to be untrue or misleading...or...to so make  
4 or disseminate or cause to be so made or disseminated any such statement as part of a plan or  
5 scheme with the intent not to sell that personal property or those services, professional or  
6 otherwise, so advertised at the price stated therein, or as so advertised.”

7           74. California Business and Professions Code section 17500, *et seq.*’s prohibition  
8 against false advertising extends to the use of false or misleading written statements.

9           75. Defendant misled consumers by making misrepresentations and untrue statements  
10 about the Class Products, namely, Defendant sold the Products advertised to have “Nothing  
11 Artificial: NO concentrates or refined sugars; NO essences or artificial flavors; NO velcorin or  
12 sorbate” fully knowing the Products contained D-Malic Acid, and made false representations to  
13 Plaintiff and other putative class members in order to solicit these transactions.

14           76. Specifically, Defendant wrote on the packages of these Products that they  
15 contained “Nothing Artificial: NO concentrates or refined sugars; NO essences or artificial  
16 flavors; NO velcorin or sorbate.”

17           77. Defendant knew that their representations and omissions were untrue and  
18 misleading, and deliberately made the aforementioned representations and omissions in order to  
19 deceive reasonable consumers like Plaintiff and other Class Members.

20           78. As a direct and proximate result of Defendant’s misleading and false advertising,  
21 Plaintiff and the other Class Members have suffered injury in fact and have lost money or  
22 property. Plaintiff reasonably relied upon Defendant’s representations regarding the Products,  
23 namely that they contained “No Artificial Flavors”. In reasonable reliance on Defendant’s false  
24 advertisements, Plaintiff and other Class Members purchased the Products. In turn Plaintiff and  
25 other Class Members ended up with cider products that turned out to actually be different than  
26 advertised, and therefore Plaintiff and other Class Members have suffered injury in fact.



1 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
2 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of  
3 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

4 **UNFAIR**

5 86. California Business & Professions Code § 17200 prohibits any “unfair ... business  
6 act or practice.” Defendant’s acts, omissions, misrepresentations, and practices as alleged herein  
7 also constitute “unfair” business acts and practices within the meaning of the UCL in that its  
8 conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical,  
9 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
10 attributable to such conduct. There were reasonably available alternatives to further Defendant’s  
11 legitimate business interests, other than the conduct described herein. Plaintiff reserves the right  
12 to allege further conduct which constitutes other unfair business acts or practices. Such conduct  
13 is ongoing and continues to this date.

14 87. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the  
15 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or  
16 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

17 88. Here, Defendant’s conduct has caused and continues to cause substantial injury  
18 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury  
19 in fact due to Defendant’s decision to sell them misbranded cider products (Class Products).  
20 Thus, Defendant’s conduct has caused substantial injury to Plaintiff and the members of the Sub-  
21 Class.

22 89. Moreover, Defendant’s conduct as alleged herein solely benefits Defendant while  
23 providing no benefit of any kind to any consumer. Such deception utilized by Defendant  
24 convinced Plaintiff and members of the Class that the Class Products contained “No Artificial  
25 Flavors”, in order to induce them to spend money on said Class Products. In fact, knowing that  
26 Class Products, by their objective terms contained artificial flavors, unfairly profited from their  
27

1 sale, in that Defendant knew that the expected benefit that Plaintiff would receive from this  
2 feature is nonexistent, when this is typically never the case in situations involving flavors said  
3 to be contained with a product. Thus, the injury suffered by Plaintiff and the members of the  
4 Sub-Class is not outweighed by any countervailing benefits to consumers.

5 90. Finally, the injury suffered by Plaintiff and members of the Class and Sub-Class  
6 is not an injury that these consumers could reasonably have avoided. After Defendant, falsely  
7 represented that Class Products would contain “No Artificial Flavors”, the Plaintiff, Class  
8 members, and Sub-Class Members suffered injury in fact due to Defendant’s sale of Class  
9 Products to them. Defendant failed to take reasonable steps to inform Plaintiff and class  
10 members that the Class Products contained artificial flavors, including intentionally misbranding  
11 the Products by labeling them as containing “Nothing Artificial: NO concentrates or refined  
12 sugars; NO essences or artificial flavors; NO velcorin or sorbate.” As such, Defendant took  
13 advantage of Defendant’s position of perceived power in order to deceive Plaintiff and the Class  
14 members to purchase drink products containing artificial flavors. Therefore, the injury suffered  
15 by Plaintiff and members of the Class is not an injury which these consumers could reasonably  
16 have avoided.

17 91. . Thus, Defendant’s conduct has violated the “unfair” prong of California  
18 Business & Professions Code § 17200.

19 **FRAUDULENT**

20 92. California Business & Professions Code § 17200 prohibits any “fraudulent ...  
21 business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a  
22 consumer must allege that the fraudulent business practice was likely to deceive members of the  
23 public.

24 93. The test for “fraud” as contemplated by California Business and Professions Code  
25 § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200  
26 violation can be established even if no one was actually deceived, relied upon the fraudulent  
27

1 practice, or sustained any damage.

2 94. Here, not only were Plaintiff and the Class members likely to be deceived, but  
3 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact  
4 that Plaintiff agreed to purchase Class Products under the basic assumption that they contained  
5 “No Artificial Flavors” even though the Products contained DL-Malic Acid. Plaintiff’s reliance  
6 upon Defendant’s deceptive statements is reasonable due to the unequal bargaining powers of  
7 Defendant and Plaintiff. For the same reason, it is likely that Defendant’s fraudulent business  
8 practice would deceive other members of the public.

9 95. As explained above, Defendant deceived Plaintiff and other Class Members by  
10 representing the Class Products as containing “No Artificial Flavors” when the Products  
11 contained DL-Malic Acid.

12 96. Thus, Defendant’s conduct has violated the “fraudulent” prong of California  
13 Business & Professions Code § 17200.

14 **UNLAWFUL**

15 97. California Business and Professions Code Section 17200, et seq. prohibits “any  
16 unlawful...business act or practice.”

17 98. As explained above, Defendant deceived Plaintiff and other Class Members by  
18 representing the Class Products as containing “Nothing Artificial: NO concentrates or refined  
19 sugars; NO essences or artificial flavors; NO velcorin or sorbate” when the Products contained  
20 DL-Malic Acid.

21 99. Defendant used false advertising, marketing, and misrepresentations to induce  
22 Plaintiff and Class Members to purchase the Class Products, in violation of California Business  
23 and Professions Code Section 17500, et seq. Had Defendant not falsely advertised, marketed or  
24 misrepresented the Class Products, Plaintiff and Class Members would not have purchased the  
25 Class Products. Defendant’s conduct therefore caused and continues to cause economic harm to  
26 Plaintiff and Class Members.



- 1 (e) Punitive damages, as allowable, in an amount determined by the Court or
- 2 jury;
- 3 (f) Any and all statutory enhanced damages;
- 4 (g) All reasonable and necessary attorneys' fees and costs provided by statute,
- 5 common law or the Court's inherent power;
- 6 (h) Pre- and post-judgment interest; and
- 7 (i) All other relief, general or special, legal and equitable, to which Plaintiff
- 8 and Class Members may be justly entitled as deemed by the Court.

9  
10 Dated: March 12, 2020

Respectfully submitted,

11 LAW OFFICES OF TODD M. FRIEDMAN , PC

12 By: /s/ Todd M. Friedman

13 TODD M. FRIEDMAN, ESQ.

14 Attorney for Plaintiff Richard Winters

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RICHARD WINTERS, individually, and on behalf of other members of the general public similarly situated

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd M. Friedman, Law Offices of Todd M. Friedman, P.C. 21550 Oxnard Street, Ste 780, Woodland Hills, CA 91367 (877) 619-8966

DEFENDANTS

TWO TOWNS CIDERHOUSE INC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'20CV0468 BAS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Cal. Business & Professions Code §§ 17500 et seq

Brief description of cause:

Violation of Unfair Competition Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/12/2020

/s/ Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.