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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

**JIMY RUIZ on behalf of himself and
all others similarly situated,**

Plaintiff,

v.

CELSIUS HOLDINGS INC.

Defendant.

CASE NO.: '21CV128 JM KSC
CLASS ACTION

**COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY,
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Jimmy Ruiz (“Plaintiff”), individually and on behalf of himself and all
2 others similarly situated, brings this class action against Defendant Celsius Holdings
3 Inc. (“Celsius” or “Defendant”) and on the basis of personal knowledge, information
4 and belief, and the investigation of counsel, alleges as follows:

5
6 **INTRODUCTION**

7
8 ***“The difference between a product that contains a characterizing food ingredient
9 and a product that contains no such ingredient.... is very important to the value of
10 the product and thus to the consuming public.”¹***

11 1. This is a proposed class action on behalf of a nationwide class and a
12 California sub-class (collectively, “Class”) of consumers seeking redress for
13 Defendant’s deceptive practices associated with the advertising, labeling and sale of
14 its fitness beverages.

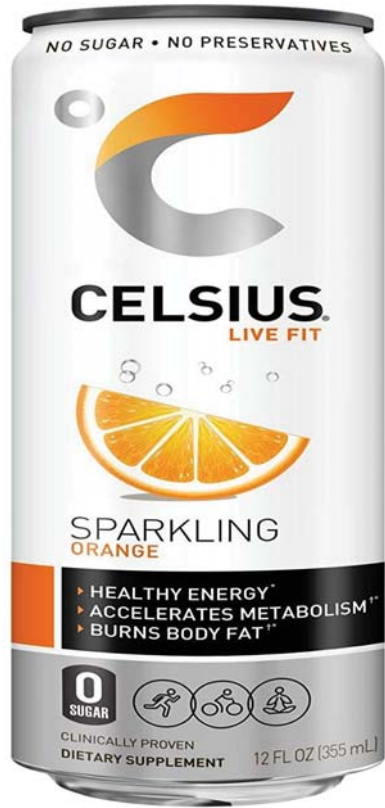
15 2. Defendant Celsius manufactures, markets, advertises, and sells a line of
16 fitness beverages that are touted as “healthy energy” drinks with “no preservatives
17 artificial colors or flavors.” The beverages are based on a proprietary formulation that
18 provides a number of vitamins, minerals and other healthful ingredients such as
19 guarana, ginger root and green tea (“Beverages” or “Products”).

20 3. Although the beverage market is highly competitive, Celsius successfully
21 markets its Products as being “healthier” and “as natural as possible” as compared to
22 other energy drinks.

23 4. The success of this marketing campaign is undeniable, and has resulted in
24 massive year to year revenue growth. In the third quarter of 2020 alone, Celsius
25 reported \$36.84 million in revenue, representing an 80.4% increase over revenue for
26 the same period a year earlier.

27 _____
28 ¹ Federal Register Vol. 38, No. 231, December 3, 1973.

1 5. Plaintiff was a frequent purchaser of Celsius Beverages including one
2 characterized as Sparkling Orange. The front label (aka “principal display panel”) of
3 the Beverage container characterizes it as “orange” by both name (set off in the color
4 orange) and by a large vignette of a sliced orange.



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20 6. Despite being characterized as an “orange” beverage, however, the
21 Product does not contain its characterizing ingredient (i.e., orange), but rather derives
22 its taste from a lab synthesized ingredient defined obtusely as “natural flavor.” By
23 characterizing the Product in this manner – failing to either include its characterizing
24 ingredient, or alternatively, clearly indicating on the Product’s principal display panel
25 that it is a “flavored” beverage, Celsius has falsely and misleadingly labeled its
26 Products, deceived its consumers, and violated the law.

27 7. Throughout the applicable class period, Defendant falsely represented the
28 nature of its fitness beverages and as a result of this false and misleading labeling, was

1 able to sell these Products to tens of thousands of unsuspecting consumers throughout
2 California and the United States, and to profit thereby.

3 8. Plaintiff alleges Defendant's conduct is in breach of warranty, violates
4 California's Business and Professions Code § 17200, *et. seq.*, California's Business &
5 Professions Code § 17500, *et. seq.*, California Civil Code § 1750, *et seq.*, and is
6 otherwise grounds for restitution on the basis of quasi-contract/unjust enrichment.

7
8 **JURISDICTION AND VENUE**

9 9. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2).
10 Diversity jurisdiction exists as Plaintiff Ruiz is a resident of Chula Vista, California
11 and Defendant Celsius is a Nevada corporation with its principal place of business in
12 Boca Raton Florida. The amount in controversy exceeds \$5,000,000 for the Plaintiff
13 and members of the Class collectively, exclusive of interest and costs, by virtue of the
14 combined purchase prices paid by Plaintiff and members of the putative Class, and the
15 profits reaped by Defendant from its transactions with Plaintiff and the Class, as a
16 direct and proximate result of the wrongful conduct alleged herein, and by virtue of
17 the injunctive and equitable relief sought.

18 10. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391
19 because a substantial portion of the underlying transactions and events complained of
20 occurred and affected persons and entities located in this judicial district, and
21 Defendant has received substantial compensation from such transactions and business
22 activity in this judicial district.

23 **PARTIES**

24
25 11. Plaintiff Jimmy Ruiz is a resident of Chula Vista, California.

26 12. Mr. Ruiz purchased a variety of Celsius Drink Products throughout the
27 applicable class period, including but not limited to Sparkling Orange, Peach Mango
28

1 Green Tea, and Sparkling Grape Rush. The purchases were made at several stores in
2 his surrounding area including, but not limited to, Walmart, Target, CVS and 7-11.

3 13. Mr. Ruiz believed the representations on the Products' principal display
4 panels -- that he was consuming beverages that contained the fruits depicted by name
5 and vignette.

6 14. He believed that Defendant lawfully marketed and sold the Products.

7 15. Mr. Ruiz relied on Defendant's labeling and was misled thereby.

8 16. Mr. Ruiz would not have purchased the Products, or would have
9 purchased the Products on different terms had he known the truth.

10 17. Mr. Ruiz was injured in fact and lost money as a result of Defendant's
11 improper conduct.

12 18. If Mr. Ruiz has occasion to believe that Defendant's marketing and
13 labeling is truthful, non-misleading, and lawful, he would purchase Celsius beverages
14 in the future.

15 19. Defendant Celsius Holdings Inc. manufactures, markets and sells a
16 variety of functional fitness beverages under the brand name Celsius. The Beverages
17 are sold across a variety of retail segments including supermarkets, convenience
18 stores, drug stores, nutritional stores, and mass merchants. Celsius is a Nevada
19 corporation that maintains its principal place of business at 2424 N Federal Highway,
20 Suite 208, Boca Raton, Florida 33431.

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22 **GENERAL ALLEGATIONS**

23 20. Celsius develops, markets, sells and distributes a line of "functional
24 calorie burning fitness beverages" under the Celsius brand name.² The brand consists
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27 ² Celsius Holdings, Inc, Annual Report Pursuant to Sections 13 or 15(D) of The
28 Securities Exchange Act of 1934 For the fiscal year ended December 31, 2019 on
Form 10-K ("Form 10-K").

1 of four product lines each of which offers several “fruit” beverages affected by the
2 same labeling infirmity described herein.³

3 21. Defendant operates in a crowded beverage space among a number of
4 well-established and well-funded competitors.

5 22. Over the last several years, consumers have increasingly moved towards
6 clean label products, abandoning beverages laden with sugars, flavorings and empty
7 calories in exchange for beverages that provide a range of health benefits.

8 23. To that end, Celsius created a niche within the fitness beverage
9 marketplace imbuing its Products with a health-halo based on a series of structure
10 function claims (e.g. “healthy energy” and “accelerates metabolism”), inclusion of
11 healthful ingredients (e.g. green team guarana, ginger root, vitamins and minerals),
12 and free-from claims (e.g. “no preservatives artificial colors or flavors”).⁴ “We seek
13 to combine nutritional science with mainstream beverages by using our proprietary
14 thermogenic (calorie-burning) MetaPlus ® formulation, while fostering the goal of
15 healthier everyday refreshment by being as natural as possible without the artificial
16 preservatives often found in many energy drinks and sodas.”⁵

17 24. Celsius subsequently undertook significant marketing efforts aimed at
18 building brand awareness and promoting its Beverages.

19
20 ³ The Celsius Product Line includes: Sparkling Peach Vibe, Sparkling Orange,
21 Sparkling Wild Berry, Sparkling Grape Rush, Raspberry Acai Green Tea, Grapefruit
22 Melon Green Tea, Sparkling Fuji Apple Pear, Sparkling Kiwi Guava, Sparkling
23 Watermelon, Peach Mango Green Tea. The Celsius Heat Product Line includes:
24 Jackfruit, Cherry Lime, Strawberry Dragon fruit, Blueberry Pomegranate. The Celsius
25 BCAA Product Line includes: Sparkling Blood Orange Lemonade. The Celsius Stevia
26 Product Line includes: Watermelon Berry, Sparkling Grapefruit, Sparkling Orange
27 Pomegranate, Sparkling Cucumber Lime (collectively referred to as “Class
28 Products”).

⁴ See, <https://www.celsius.com/>.

⁵ Form 10-K at 1.

1 25. Celsius’ efforts paid off handsomely as single year revenues grew from
2 \$38,905,235 in 2018 to \$59,659,320 in 2019.⁶ In the third quarter of 2020 alone, the
3 company reported \$36.84 million in revenue, representing an 80.4% increase over
4 revenue for the same period a year earlier.⁷

5 26. Significantly, Celsius is keenly aware of its labeling obligations noting
6 that, “[t]he production, distribution and sale of our products in the United States is
7 subject to the Federal Food, Drug and Cosmetic Act, the Dietary Supplement Health
8 and Education Act of 1994, various environmental statutes and various other federal,
9 state and local statutes and regulations applicable to the production, transportation,
10 sale, safety, advertising, labeling and ingredients of such products.”⁸

11 27. Despite its legal obligations, however, Celsius chose to deceptively label
12 its beverages, obfuscating the material fact that they did not contain real fruit, but
13 instead derived their flavor from highly processed, lab-synthesized flavoring packets.

14 28. By way of example, the Sparkling Orange Product’s principal display
15 panel undeniably presents “orange” as the beverage’s characterizing flavor by both
16 name and vignette.

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23 ⁶ *Id.* at 9.

24 ⁷ *Celsius Delivers Record Third Quarter Revenue of \$36.8M, up 80%*, Market Insider,
25 November 12, 2020, available at
26 [https://markets.businessinsider.com/news/stocks/celsius-delivers-record-third-quarter-](https://markets.businessinsider.com/news/stocks/celsius-delivers-record-third-quarter-revenue-of-36-8m-up-80-1029796679)
27 [revenue-of-36-8m-up-80-1029796679](https://markets.businessinsider.com/news/stocks/celsius-delivers-record-third-quarter-revenue-of-36-8m-up-80-1029796679).

28 ⁸ Form 10-K at 9.

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Other Ingredients: Carbonated Filtered Water, Citric Acid, Natural Flavor, Sucralose, Beta-carotene for Color.
Contains: 200mg total caffeine per serving.

29. Despite being labeled and characterized as an orange beverage, however, the Product contains no orange. Instead, it is flavored by an ingredient described only as “Natural Flavor,” and derives its orange color from a pigment (beta-carotene).

30. Failing to indicate, on the front label, that a product does not contain its characterizing ingredient, but rather, is flavored by lab synthesized chemicals, is deceptive, misleading and in violation of state and common laws designed to protect consumers and to promote consist, honest and transparent labeling.

1
2 **A. Flavoring in a Product is a Material Consideration to a Reasonable**
3 **Consumer**

4 31. Over the last decade, “Natural Flavors” have become ubiquitous
5 ingredients in food and beverage formulations. According to the Environmental
6 Working Group, which rates more than 80,000 foods on their degree of nutrition,
7 ingredient and processing concerns, “Natural Flavor” is the fourth most common
8 ingredient on food labels with only salt, water and sugar mentioned more frequently.⁹

9 32. The FDCA defines “natural flavor” as the “essential oil, oleoresin,
10 essence or extractive, protein hydrolysate, distillate, or any product of roasting,
11 heating or enzymolysis, which contains the flavoring constituents derived from a
12 spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud,
13 root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or
14 fermentation products thereof, whose significant function in food is flavoring rather
15 than nutritional.” 21 C.F.R. § 101.22(a)(3).

16 33. In elemental terms, a natural flavor is anything that can be extracted from
17 an animal or plant source. It is called “natural” because the original source of the
18 flavor additive is not man-made.¹⁰ Unfortunately, despite their name, natural flavors
19 are complex, highly processed, amalgams of chemicals, carrier solvents, and
20 preservatives.¹¹ Despite originating from a single natural source, the finalized flavor

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22 ⁹ *Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial Flavors*,
23 Environmental Working Group, available at
24 <https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/>.

25 ¹⁰ *Attention, Allergy Sufferers: Beware of Natural Flavors*, Food Safety News,
26 December 2, 2015, available at <https://www.foodsafetynews.com/2015/12/attention-allergy-sufferers-beware-of-natural-flavors/>.

27 ¹¹ *What are Natural Flavors?*, Food Revolution Network, available at
28 <https://foodrevolution.org/blog/natural-flavors/>.

1 can contain as many as 250 chemically identified constituents, some of which are
2 artificial and synthetic.¹² Moreover, these additional chemicals can make up 80 to 90
3 percent of the flavor.¹³

4 34. In addition to incorporating synthetic solvents and carrier systems, the
5 base ingredient often times has no relation to the characterizing flavor of the product
6 at all.¹⁴

7 35. Natural flavors are added to foods and beverages for a variety of reasons
8 including to replace flavors that were eliminated in processing and pasteurizing, or to
9 help food taste fresh even when it is not. In Products where the characterizing
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11 ¹² *Is There Really Anything Natural About Natural Flavors?*, Suffolk University
12 Journal of Health and Biomedical Law, April 4, 2019 available at
13 <https://sites.suffolk.edu/jhbl/2019/04/04/is-there-really-anything-natural-about-natural-flavors/>.

14 ¹³ *Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors*,
15 EWG, available at <https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/#:~:text=Federal%20Food%20and%20Drug%20Administration,juice%2C%20vegetable%20or%20vegetable%20juice%2C>. (These flavor mixtures often include
16 amy acetate, amy butyrate, amy valerate, ethyl butyrate, various aliphatic acid ester,
17 ethyl acetate, ethyl valerate, ethyl isovalerate, ethyl pelargonate, vanillin, lemon
18 essential oil, citral, citronellal, rose absolute, geraniol, orange essential oil, geranium
19 essential oil, aldehyde C₁₀, ethyl heptanoate, acetaldehyde, aldehydes C₁₄ and C₁₆,
20 styralyl acetate, dimethyl benzyl carbinyl acetate, benzyl formate, phenyl ethyl
21 isobutyrate, cinnamyl isovalerate, anise essential oil, esters of colophony and
22 benzaldehyde and may contain terpenyl isovalerate, isopropyl isovalerate, citronellyl
23 isovalerate, geranyl isovalerate, benzyl isovalerate, cinnamyl formate, isopropyl
24 valerate, butyl valerate, methyl allyl butyrate and potentially the synthetic ingredients
25 cyclohexyl acetate, allyl butyrate, allyl cyclohexylvalerate, allyl isovalerate and
26 cyclohexyl butyrate).

27 ¹⁴ *Id.*; *What's inside natural flavors?*, Food Business News, December 3, 2020,
28 available at <https://www.foodbusinessnews.net/articles/17385-whats-inside-natural-flavors>.

1 ingredient was never intended to be in the formulation, and is therefore wholly absent,
2 flavors not only provide a taste and smell profile, but are specifically designed to
3 entice and addict the consumer to the product.¹⁵

4 36. “How a food tastes is largely determined by the volatile chemicals in the
5 food. Chemicals that give food a specific smell are extremely important because smell
6 makes up 80 to 90 percent of the sense of taste.”¹⁶ “A great deal of scientific
7 engineering and design time goes into crafting flavors for processed foods. This
8 specialized work is done by just 500 professional flavorists who are responsible for
9 the majority of flavors in nearly all food processed in the U.S.”¹⁷

10 37. As made plain in a 60 Minutes expose on food flavorists, one of their
11 primary goals is to create flavors that make foods and beverages addictive.¹⁸

12 38. Unfortunately for the consuming public, manufacturers are not required
13 to list the sub-ingredients that constitute these flavors – a fact which results in the
14 ability of manufacturers to obfuscate dozens of chemicals from disclosure.¹⁹

15 39. “On an ingredient label, “natural flavor” can be a sort of black box,
16 enclosing dozens of components, including flavor chemicals, flavor modifiers, and
17 solvents, none of which have to be individually disclosed. Many companies will use
18

19 ¹⁵ *What does ‘natural flavors’ really mean?*, Washington Post, July 25, 2017,
20 available at [https://www.washingtonpost.com/lifestyle/wellness/what-does-natural-
21 flavors-really-mean/2017/07/24/eccdc47e-67f7-11e7-a1d7-9a32c91c6f40_story.html](https://www.washingtonpost.com/lifestyle/wellness/what-does-natural-flavors-really-mean/2017/07/24/eccdc47e-67f7-11e7-a1d7-9a32c91c6f40_story.html).

22 ¹⁶ *Supra* at fn. 9.

23 ¹⁷ *Id.*

24 ¹⁸ *The Flavorists, Tweaking Tastes and Creating Cravings*, CBS News, November 27,
25 2011, available at <https://www.youtube.com/watch?v=a7Wh3uqlyTc>.

26 ¹⁹ *What are Natural Flavors? The Truth About This “Natural” Ingredient*, Public
27 Good, April 2, 2020, available at [https://blog.publicgoods.com/what-are-natural-
28 flavors/](https://blog.publicgoods.com/what-are-natural-flavors/).

1 additives like propylene glycol when they can disguise them under the benign-
2 sounding catchall “natural flavors”—even if they would reject them as individually
3 listed ingredients.”²⁰

4 40. This has resulted in a growing distrust of natural flavors by the
5 consuming public.²¹ A 2018 report from Label Insight and the Food Marketing
6 Institute found 93% of consumers find it important for brands and manufacturers “to
7 provide detailed information about what is in food and how it’s made” and “[t]hree
8 quarters of shoppers in 2018 would switch brands for transparency.”²²

9 41. Indeed, the most significant trend driving change in the food and
10 beverage industry right now is transparency. Consumers want to know and understand
11 what ingredients are going into their products, which is why so many products are
12 simplifying and shortening ingredient lists.²³ “Clean labels with high ethical values
13 are more important than ever, particularly to a growing segment of consumers with
14 special dietary needs, which means, lab-created artificial and natural flavors are not in
15 demand; consumers want real ingredients from nature.”²⁴ Moreover, today, brands are
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19 ²⁰ *Clean label’s dirty little secret*, The Counter, February 1, 2018, available at
20 <https://thecounter.org/clean-label-dirty-little-secret/>.

21 ²¹ *What are Natural Flavors? Get the Facts!*, Real Mom Nutrition, September 24,
22 2019, available at <https://www.realmomnutrition.com/natural-flavors/>.

23 ²² *The State of Transparency - 2016 vs 2018*, Label Insight, September 18, 2018,
24 available at <https://blog.labelinsight.com/the-state-of-transparency-2016-vs-2018>.

25 ²³ *Top Trends Driving Change In The Food Industry*, Forbes, February 16, 2019,
26 available at <https://www.forbes.com/sites/juliabolayanju/2019/02/16/top-trends-driving-change-in-the-food-industry/?sh=302c9e636063>.

27 ²⁴ *Id.*

1 also questioning whether natural flavors, preservatives and sweetener are really
2 clean.²⁵

3 42. In response, a number of food manufacturers have become more “honest
4 and real about what’s going into their food as consumers demand transparency and
5 clean labeling.”²⁶ Some Celsius competitors, such as Spindrift Seltzer, realized the
6 fallacy of natural flavors and changed their formulation to include real ingredients
7 (i.e., fruit). Prior to making the change, Spindrift CEO Bill Creelman had tried to get
8 to the bottom of what natural flavors were being used in his company’s drinks. “When
9 I asked our supplier, no one would tell me, he said. It was time to make a change.”²⁷

10 43. Ultimately, manufacturers have a choice on how to flavor their
11 beverages. While some will use real ingredients in their product formulations, others
12 will choose a variety of flavorings. They all will compete for consumers on the basis
13 of those choices.

14 44. Recognizing that these choices (i.e., the difference between products with
15 real ingredients versus those that are flavored) are material to the reasonable
16 consumer, the law imposes strict rules regarding the labeling of products that have
17 been flavored. These laws ensure consistent labeling among competitive products and
18 are designed to clearly convey the nature of the product, minimize consumer
19 confusion, and enable informed purchasing decisions.

21 ²⁵ See, *Clean Label 2.0: Natural Flavors and preservatives, pesticide residues, and*
22 *Non-GMO in the spotlight*, Food Navigator USA, April 26, 2017, available at
23 [https://www.foodnavigator-usa.com/Article/2017/04/27/Clean-label-2.0-From-](https://www.foodnavigator-usa.com/Article/2017/04/27/Clean-label-2.0-From-natural-flavors-to-synbio-and-pesticide-residues)
[natural-flavors-to-synbio-and-pesticide-residues.](https://www.foodnavigator-usa.com/Article/2017/04/27/Clean-label-2.0-From-natural-flavors-to-synbio-and-pesticide-residues)

24 ²⁶ *The “Natural Flavors” Ingredient Is a Total Lie*, The Daily Meal, June 26, 2017,
25 available at [https://www.thedailymeal.com/healthy-eating/natural-flavors-ingredient-](https://www.thedailymeal.com/healthy-eating/natural-flavors-ingredient-total-lie)
26 [total-lie.](https://www.thedailymeal.com/healthy-eating/natural-flavors-ingredient-total-lie)

27 ²⁷ *Id.*

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2 **B. The Federal Food Drug & Cosmetic Act**

3 45. The Federal Food, Drug & Cosmetic Act (“FDCA”) broadly regulates
4 the sale of food and beverages to the consuming public. 21 U.S.C §301. It was
5 promulgated in significant part to prevent consumer deception and was principally
6 implemented through the creation of a uniform system of labeling on which
7 consumers could rely to make informed purchasing decisions.

8 46. By extensively regulating the labeling of foods and beverages, the FDCA
9 and its implementing regulations have identified the words and statements that must
10 or may be included on labeling and have specified how prominently and
11 conspicuously those words and statements must appear. These provisions ensure that
12 statements are presented on labels in such a way as to likely be read and understood
13 by the ordinary person. 21 U.S.C. §343(f). The FDCA consists of hundreds of sections
14 and subsections, the following of which bear direct relevance to the case at bar.

15 47. The FDCA prohibits the misbranding of any food. 21 U.S.C. §331(b).²⁸
16 Generally, a food is misbranded if, among other things, its labeling is false or
17 misleading. 21 U.S.C. §343.²⁹ In addition to this general mandate, the FDCA
18 contains specific rules which manufacturers must follow to ensure their products are
19 properly labeled and understood by the reasonable consumer. Among them, 21 C.F.R.
20 §101.22, which provides:

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23 ²⁸ The term food broadly means “articles used for food or drink for man...” 21 U.S.C
24 §321(f) and incorporates beverages such as the Products which are the subject of this
25 litigation.

26 ²⁹ California’s Sherman Food, Drug and Cosmetic Law (“Sherman Law”), which
27 adopts the FDCA in its entirety, identically provides that, “[a]ny food is misbranded if
28 its labeling is false or misleading in any particular.” California Health & Safety Code,
Article 6, §110660.

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(i) If the label, labeling, or advertising of a food makes any direct or indirect representations with respect to the primary recognizable flavor(s), by word, vignette, e.g., depiction of a fruit, or other means, or if for any other reason the manufacturer or distributor of a food wishes to designate the type of flavor in the food other than through the statement of ingredients, such flavor shall be considered the characterizing flavor and shall be declared in the following way:

(1) If the food contains no artificial flavor which simulates, resembles or reinforces the characterizing flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., "vanilla", in letters not less than one-half the height of the letters used in the name of the food, except that:

(i) If the food is one that is commonly expected to contain a characterizing food ingredient, e.g., strawberries in "strawberry shortcake", and the food contains natural flavor derived from such ingredient and an amount of characterizing ingredient insufficient to independently characterize the food, or the food contains no such ingredient, the name of the characterizing flavor may be immediately preceded by the word "natural" and shall be immediately followed by the word "flavored" in letters not less than one-half the height of the letters in the name of the characterizing flavor, e.g., "natural strawberry flavored shortcake," or "strawberry flavored shortcake."

(ii) If none of the natural flavor used in the food is derived from the product whose flavor is simulated, the food in which the flavor is used shall be labeled either with the flavor of the product from which the flavor is derived or as "artificially flavored."

(iii) If the food contains both a characterizing flavor from the product whose flavor is simulated and other natural flavor which simulates, resembles or reinforces the characterizing flavor, the food shall be labeled in accordance with the introductory text and paragraph (i) (1)(i) of this section and the name of the food shall be immediately followed by the

1 words "with other natural flavor" in letters not less than one-
2 half the height of the letters used in the name of the
3 characterizing flavor.

4 48. Class Products each bear a label which by word and/or word and vignette
5 characterizes the Beverage's primary recognizable flavor as one derived from a single
6 or combination of fruits. Despite conveying to the reasonable consumer that the
7 beverage contains the ingredient (i.e., fruit) from which its primary characterizing
8 flavor is derived, in truth, the Beverages are entirely devoid of such ingredients.
9 Instead, the primary recognizable flavor is derived from a lab synthesized flavoring
10 packet consisting of potentially hundreds of undisclosed sub-ingredients.

11 49. By law, if a product does not contain its characterizing ingredient, that
12 fact must be stated on the principal display panel in order to properly inform
13 consumers that this is a flavored product. To the extent that the "Natural Flavor" in
14 Class Products originate from their characterizing ingredient (e.g., the natural flavor is
15 derived from an orange), the front label must indicate that it is "Orange Flavored" or
16 "Natural Orange Flavored." However, to the extent that the "Natural Flavor" is
17 derived from a natural ingredient other than a Product's charactering ingredient, (i.e.,
18 something other than an orange), the front label must indicate that the product is
19 "Artificially Flavored." Finally, if the Product contains more than one 'natural
20 flavor,' then it must additionally indicate on the principal display panel that is has also
21 been flavored "with other natural flavors."

22 50. Under any scenario, Celsius has failed to indicate that its Products are
23 flavored – a failure that is in violation of the law and operates as deceit upon
24 consumers.

25 51. In January 1973, the FDA Commissioner published a proposal to revise
26 the requirements contained §1.12 of the FDCA (now §101.22) with respect to the
27 labeling of flavor contained in food. The FDA solicited public commentary, which it
28 subsequently summarized and responded to. Federal Register Vol. 38, No. 231,

1 December 3, 1973. Among other things, the FDA made clear that the purpose of these
2 regulations was to provide labeling uniformity among marketplace participants in
3 order to prevent consumer confusion and deception.

4 52. Setting forth the general standards applicable to the flavoring regulations,
5 the FDA recognized that although “[i]t is not possible to set out all the circumstances
6 under which a flavor representation is or is not implied, [a]ny use of a vignette
7 showing a fruit or vegetable clearly constitutes such a representation.... [Moreover,]
8 use of a specific fruit flavor in the food name, such as "orange soda," does constitute
9 such a representation and requires compliance with §1.12(i).” 38 Fed. Reg. at 33285.

10 53. Some stakeholders argued that flavor designations should not be required
11 on the front-of-package, but rather be limited to the statement of ingredients. While
12 the Commissioner agreed that in instances where the manufacturer makes no direct or
13 indirect representation with respect to the flavor of a product other than in the
14 ingredients statement, no designation was necessary on the principal display panel.
15 However, where flavor representations are made on the principal display panel ***“it is
16 necessary to establish a uniform system of flavor designation to dispel any
17 confusion or misrepresentation.”*** 38 Fed. Reg. at 33286. ***“The difference between a
18 product that contains a characterizing food ingredient and a product that contains
19 no such ingredient [] is not at all subtle, and is very important to the value of the
20 product and thus to the consuming public.”*** *Id.* at 33285 (emphasis added).

21 54. The Commissioner also confirmed that when an otherwise “natural flavor
22 [] is not derived from the product whose flavor is simulated...., the product is properly
23 labeled as artificially flavored.” *Id.* at 33285-6.

24 55. In 1993 the FDA once again considered amendments to certain
25 regulations of the FDCA. The FDA published the proposed amendments for public
26 comment and provided a similar commentary process as in 1973. While considering
27 the applicability of §101.22 in light of more specific regulations such as §102.3, the
28 FDA reconfirmed the function and importance of §101.22.

1 “Both §§ 101.22 and 102.33 are intended to ensure that the label communicates
2 essential information to consumers. These provisions are intended to provide
3 manufacturers with flexibility for labeling products while providing consumers
4 with information that they need to determine the nature of the product. The
5 agency concludes that both kinds of label information discussed here are
6 essential to adequately describe the nature of the product. One type of
7 information informs the consumer when flavoring substances have been added
8 to the product. The other type describes other aspects of the basic nature of the
9 product.” 58 FR 2897, *2919. **Ultimately, “....a consumer who wants the
10 food because of its particular.... flavor is entitled to examine a label that
11 reveals facts material in light of the representations made....”** 58 Fed. Reg.
12 2897 *2898 (emphasis added).

13 **C. Product Labels Matter to Consumers**

14
15 56. “Food is the most advertised commodity in the United States and food
16 corporations spend on average over \$36 billion a year on marketing and
17 advertising.”³⁰

18 57. Front-of-Package marketing has become ubiquitous in recent years as
19 marketplace competitors vie for consumer attention. It has become the most important
20 part of the food label as consumers attempt to make quick, yet informed purchasing
21 decisions.³¹ Indeed, a survey conducted by the FDA determined that 67% of
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23
24 ³⁰ Garavente, Angelina, *How Has The Food Industry Manipulated The Way*
25 *Consumers Perceive Food And Health?* (2018). Honors College Theses. 173.
Available at https://digitalcommons.pace.edu/honorscollege_theses/173.

26 ³¹ See, e.g. Mark Becker, et al, *Front of Pack Labels Enhance Attention to Nutrition*
27 *Information in Novel and Commercial Brands*, Food Policy Volume 56, October
28 2015, Pages 76-86. Available at <https://doi.org/10.1016/j.foodpol.2015.08.001> (“Our
results provide clear evidence that FOP labels are more effective at attracting attention

1 respondents used Front-of-Package labels when making purchasing decisions.³² This
2 is confirmed by numerous studies which similarly found that consumers often rely on
3 Front-of-Package claims to inform their purchasing decisions, and that Front-of-
4 Package claims can have a “strong impact on their food purchases.”³³

5 58. While manufacturers are generally free to add claims to the Front-of-
6 Package consistent with their obligations under the law, “[e]merging evidence
7 indicates that many labels are misleading in conveying properties of food products and
8 bear a wide array of confusing messages.”³⁴ This makes compliance with FDCA
9 labeling requirements even more critical in order to provide consumers with
10 recognizable standards and to prevent deception.

11 59. Not only has Defendant violated the clear letter of the FDCA, but it has
12 separately acted to deceive and mislead consumers into purchasing products with
13 qualities and attributes that they simply did not have in violation of the laws alleged
14 herein.

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18 than the traditional NFP [Nutrition Facts Panel], and that this advantage is attributable
19 to both the location”).

19 ³² Hawley, K. L., Roberto, C. A., Bragg, M. A., Liu, P. J., Schwartz, M. B., &
20 Brownell, K. D. (2013). *The Science On Front-Of-Package Food Labels*. Public
21 Health Nutrition, 16(3), 430–439. Available at
22 <http://doi.org/10.1017/S1368980012000754>.

23 ³³ *Healthy Through Presence or Absence, Nature or Science? A Framework for*
24 *Understanding Front-of-Package Food Claims*, Journal of Public Policy & Marketing
25 2019, Vol. 38(2) 172-191 available at
26 <https://journals.sagepub.com/doi/pdf/10.1177/0743915618824332>.

27 ³⁴ Jennifer L. Pomeranz, *Front-of-Package Food and Beverage Labeling New*
28 *Directions for Research and Regulation*, Am J Prev Med 2011;40(3):382–385
available at <https://pubmed.ncbi.nlm.nih.gov/21335274/>.

D. Competitor Products

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2 60. Celsius is fully aware of its labeling obligations under state and federal
3 laws as well as its overarching duty to honestly inform consumers about the products
4 it is selling.

5 61. It is axiomatic that “the marketing industry is based on the premise
6 that labels matter—that consumers will choose one product over another similar
7 product based on its label and various tangible and intangible qualities they may come
8 to associate with a particular source.”³⁵ The FDCA was promulgated in part to prevent
9 consumer deception by creating a uniform system of labeling on which consumers can
10 rely in comparing similar products and thereafter make informed purchasing
11 decisions. This is especially important with respect to the use of flavorings which have
12 rapidly become ubiquitous in food formulations. It is critical, therefore, that
13 manufacturers label their products consistently as prescribed law. A review of some
14 competitive product labels illustrates this clearly. By way of example, Gatorade Zero
15 (Fig. 1) and Powerade (Fig. 2), like Celsius, are flavored with “natural flavors. Unlike
16 Celsius, however, they each clearly convey to consumers on the principal display
17 panel that their products are flavored. In contrast, Spindrift (Fig. 3), an orange
18 sparkling water which does not contain flavorings and therefore does not require a
19 qualification on its principal display panel, properly conveys to the consumer that
20 their product contains its characterizing ingredients.

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³⁵ *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328; *FTC v. Proctor & Gamble*
27 *Co.* (1967) 386 U.S. 568, 572 (noting the central role of advertising and sales
28 promotion in generating market share where the competing products are functionally
identical).

Fig.1



Water, citric acid, sodium citrate, salt, monopotassium phosphate, gum arabic, natural flavor, sucralose, acesulfame potassium, sucrose acetate isobutyrate, glycerol ester of rosin, yellow 6.

*Same electrolytes as regular Gatorade.

Fig.2.



Ingredients: Water, High Fructose Corn Syrup, less than 0.5% of: Citric Acid, Salt and Mono-Potassium Phosphate and Magnesium Chloride and Calcium Chloride (Electrolyte Sources), Gum Acacia, Natural Flavors, Glycerol Ester of Rosin, Yellow 5, Yellow 6, Vitamin B3 (Niacinamide), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B12, Ascorbic Acid (to protect taste), Calcium Disodium EDTA (to protect color).

Fig.3.



INGREDIENTS: CARBONATED WATER, ORANGE JUICE, ALPHONSO MANGO PUREE, CITRIC ACID.

NO SUGAR ADDED

62. By failing to properly label its products, Celsius has mislead and deceived consumers.

63. As a result of Defendant's unlawful and deceptive conduct, Plaintiff and members of the Class have been harmed.

ECONOMIC INJURY

64. Plaintiff sought to buy products that were lawfully labeled, marketed and sold.

65. Plaintiff saw and relied on Defendant's misleading labeling of its Products.

66. Plaintiff believed that the Products purchased contained real fruit.

67. Plaintiff believed that the Products were lawfully marketed and sold.

68. In reliance on the claims made by Defendant regarding the qualities of its Products, Plaintiff paid a price premium.

1 77. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure
2 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

3 78. Excluded from the Classes are: (i) Defendant and its employees,
4 principals, affiliated entities, legal representatives, successors and assigns; and (ii) the
5 judges to whom this action is assigned.

6 79. Upon information and belief, there are tens of thousands of members of
7 the Class. Therefore, individual joinder of all members of the Class would be
8 impracticable.

9 80. There is a well-defined community of interest in the questions of law and
10 fact affecting the parties represented in this action.

11 81. Common questions of law or fact exist as to all members of the Class.
12 These questions predominate over the questions affecting only individual Class
13 members. These common legal or factual questions include but are not limited to:

- 14 a. Whether Defendant marketed, packaged, or sold the Class
15 Products to Plaintiff and those similarly situated using false,
16 misleading, or deceptive statements or representations;
- 17 b. Whether Defendant omitted or misrepresented material facts
18 in connection with the sales of its Products;
- 19 c. Whether Defendant participated in and pursued the common
20 course of conduct complained of herein;
- 21 d. Whether Defendant has been unjustly enriched as a result of
22 its unlawful business practices;
- 23 e. Whether Defendant's actions violate the Unfair Competition
24 Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");
- 25 f. Whether Defendant's actions violate the False Advertising
26 Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the "FAL");
- 27 g. Whether Defendant's actions violate the Consumers Legal
28 Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA");

- 1 h. Whether Defendant should be enjoined from continuing the
- 2 above-described practices;
- 3 i. Whether Plaintiff and members of the Class are entitled to
- 4 declaratory relief; and
- 5 j. Whether Defendant should be required to make restitution,
- 6 disgorge profits, reimburse losses, and pay damages as a
- 7 result of the above-described practices.

8 82. Plaintiff's claims are typical of the claims of the Class, in that Plaintiff
9 was a consumer who purchased Defendant's Products. Plaintiff is no different in any
10 relevant respect from any other Class member who purchased the Products, and the
11 relief sought is common to the Class.

12 83. Plaintiff is an adequate representative of the Class because his interests
13 do not conflict with the interests of the members of the Class he seeks to represent,
14 and he has retained counsel competent and experienced in conducting complex class
15 action litigation. Plaintiff and his counsel will adequately protect the interests of the
16 Class.

17 84. A class action is superior to other available means for the fair and
18 efficient adjudication of this dispute. The damages suffered by each individual Class
19 member likely will be relatively small, especially given the relatively small cost of the
20 Products at issue and the burden and expense of individual prosecution of the complex
21 litigation necessitated by Defendant's conduct. Thus, it would be virtually impossible
22 for members of the Class individually to effectively redress the wrongs done to them.
23 Moreover, even if members of the Class could afford individual actions, it would still
24 not be preferable to class-wide litigation. Individualized actions present the potential
25 for inconsistent or contradictory judgments. By contrast, a class action presents far
26 fewer management difficulties and provides the benefits of single adjudication,
27 economies of scale, and comprehensive supervision by a single court.

28

1 85. In the alternative, the Class may be certified because Defendant has acted
2 or refused to act on grounds generally applicable to the Class, thereby making
3 appropriate preliminary and final equitable relief with respect to each Class.

4 86. The requirements for maintaining a class action pursuant to Rule 23(b)(2)
5 are also met, as Defendant has acted or refused to act on grounds generally applicable
6 to the Class, thereby making appropriate final injunctive relief or corresponding
7 declaratory relief with respect to the Class as a whole.

8
9 **FIRST CAUSE OF ACTION**
(Breach of Express Warranty, Cal. Com. Code §2313)

10 87. Plaintiff incorporates each and every allegation contained in the
11 paragraphs above as if restated herein.

12 88. Defendant made express warranties to Plaintiff and members of the Class
13 that the Products they purchased contained fruit characterized by name and vignette on
14 the Products' principal display panel.

15 89. The express warranties made to Plaintiff and members of the Class appear
16 on every Product label. This warranty regarding the nature of the Product marketed by
17 Defendant specifically relates to the goods being purchased and became the basis of the
18 bargain.

19 90. Plaintiff and the Class purchased the Products in the belief that they
20 conformed to the express warranties that were made on the Products' labels.

21 91. Defendant breached the express warranties made to Plaintiff and members
22 of the Class by failing to supply goods that conformed to the warranties it made. As a
23 result, Plaintiff and members of the Class suffered injury and deserve to be compensated
24 for the damages they suffered.

25 92. Plaintiff and the members of the Class paid money for the Products.
26 However, Plaintiff and the members of the Class did not obtain the full value of the
27 advertised Products. If Plaintiff and other members of the Class had known of the true
28

1 nature of the Products, they would not have purchased them or paid less for them.
2 Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost
3 money or property as a result of Defendant’s wrongful conduct.

4 93. Plaintiff and the Class are therefore entitled to recover damages, punitive
5 damages, equitable relief such as restitution and disgorgement of profits, and
6 declaratory and injunctive relief.

7
8 **SECOND CAUSE OF ACTION**
9 **(“Unlawful” Business Practices in Violation of**
10 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§17200, *et seq.*)**

11 94. Plaintiff incorporates each and every allegation contained in the
12 paragraphs above as if restated herein.

13 95. The UCL defines unfair business competition to include any “unlawful,
14 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
15 misleading” advertising. Cal. Bus. Prof. Code §17200.

16 96. A business act or practice is “unlawful” if it violates any established state
17 or federal law.

18 97. Defendant’s acts, omissions, misrepresentations, practices, and/or non-
19 disclosures concerning the Products alleged herein, constitute “unlawful” business
20 acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21
21 U.S.C. §§301, *et seq.* and its implementing regulations, including, at least, the
22 following sections:

- 23 a. 21 U.S.C. §343(a), which deems food misbranded when its
24 labeling contains a statement that is false or misleading in any
25 particular;
26 b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as
27 to create an erroneous impression about the presence or absence of
28 ingredient(s) or component(s) therein;

1 c. 21 CFR §101.22 pertaining to the labeling requirements when
2 products do not contain their characterizing ingredients but instead
3 are flavored;

4 d. 21 U.S.C. §§331 and 333, which prohibits the introduction of
5 misbranded foods into interstate commerce.

6 98. California's Sherman Food, Drug, and Cosmetic Law (“Sherman Law”),
7 Cal. Health & Safety Code §109875 *et seq.*, broadly prohibits the misbranding of food.
8 Cal. Health & Safety Code §110765; *See, also* Cal. Health & Safety Code §110660
9 (“Any food is misbranded if its labeling is false or misleading in any particular.”). The
10 Sherman Law incorporates all food labeling regulations and any amendments to those
11 regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 as the food
12 labeling regulations of California. Cal. Health & Safety Code §§110100(a), 110665,
13 110670.

14 99. As described in detail above, by failing to label the Products in a manner
15 that accurately represents its contents, Defendant generally violates 21 U.S.C.
16 §343(a)(1) (“a food shall be deemed to be misbranded if its labeling is false or
17 misleading in any particular”) as incorporated by California’s Sherman Law.
18 Independently, by mislabeling the Products, Defendant violates Cal. Health & Safety
19 Code § 110660 (“any food is misbranded if its labeling is false or misleading in any
20 particular.”)

21 100. Defendant violated and continues to violate the Sherman Law, Article 6,
22 Section 110660 and hence has also violated and continues to violate the “unlawful”
23 prong of the UCL through the false labeling of its Product.

24 101. Defendant’s identical conduct that violates the Sherman Law, also violates
25 FDCA §403(a)(1), 21 U.S.C. §343(a)(1), which declares food misbranded under federal
26 law if its “labeling is false and misleading in any particular.” This identical conduct
27 serves as the sole factual basis of each cause of action brought by this Complaint, and
28

1 Plaintiff does not seek to enforce any of the state law claims to impose any standard of
2 conduct that exceeds that which would violate FDCA.

3 102. By committing the unlawful acts and practices alleged above, Defendant
4 has engaged, and continues to be engaged, in unlawful business practices within the
5 meaning of California Business and Professions Code §§17200, *et seq.*

6 103. Through its unlawful acts and practices, Defendant has obtained, and
7 continues to unfairly obtain, money from members of the Class. As such, Plaintiff
8 requests that this Court cause Defendant to restore this money to Plaintiff and all
9 members of the Class, to disgorge the profits Defendant made on these transactions,
10 and to enjoin Defendant from continuing to violate the Unfair Competition Law or
11 violating it in the same fashion in the future. Otherwise, the Class may be irreparably
12 harmed and denied an effective and complete remedy if such an order is not granted.

13
14 **THIRD CAUSE OF ACTION**
15 **(“Unfair” Business Practices in Violation of**
16 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

17 104. Plaintiff incorporates each and every allegation contained in the
18 paragraphs above as if restated herein.

19 105. The UCL defines unfair business competition to include any “unlawful,
20 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
21 misleading” advertising. Cal. Bus. Prof. Code §17200.

22 106. A business act or practice is “unfair” under the Unfair Competition Law if
23 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the
24 gravity of the harm to the alleged victims.

25 107. Defendant has violated, and continues to violate, the “unfair” prong of the
26 UCL through its misleading description of the Products. The gravity of the harm to
27 members of the Class resulting from such unfair acts and practices outweighs any
28 conceivable reasons, justifications, or motives of Defendant for engaging in such

1 deceptive acts and practices. By committing the acts and practices alleged above,
2 Defendant had engaged, and continued to engage, in unfair business practices within
3 the meaning of California Business and Professions Code §§17200, *et seq.*

4 108. Through its unfair acts and practices, Defendant obtained, and continued
5 to unfairly obtain, money from members of the Class. As such, Plaintiff has been injured
6 and requests that this Court cause Defendant to restore this money to Plaintiff and the
7 members of the Class, to disgorge the profits Defendant had made on its Products, and
8 to enjoin Defendant from continuing to violate the Unfair Competition Law or violating
9 it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and
10 denied an effective and complete remedy if such an Order is not granted.

11
12 **FOURTH CAUSE OF ACTION**
13 **(“Fraudulent” Business Practices in Violation of**
14 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

15 109. Plaintiff incorporates each and every allegation contained in the
16 paragraphs above as if restated herein.

17 110. The UCL defines unfair business competition to include any “unlawful,
18 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
19 misleading” advertising. Cal. Bus. & Prof. Code §17200.

20 111. A business act or practice is “fraudulent” under the Unfair Competition
21 Law if it actually deceives or is likely to deceive members of the consuming public.

22 112. Defendant’s acts and practices of mislabeling its Products in a manner to
23 suggest they principally contained their characterizing ingredients.

24 113. As a result of the conduct described above, Defendant has been, and will
25 continue to be, unjustly enriched at the expense of Plaintiff and members of the
26 proposed Class. Specifically, Defendant has been unjustly enriched by the profits they
27 have obtained from Plaintiff and the Class from the purchases of their Products.
28

1 114. Through its fraudulent acts and practices, Defendant has improperly
2 obtained, and continues to improperly obtain, money from members of the Class. As
3 such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff
4 and the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from
5 continuing to violate the Unfair Competition Law or violating it in the same fashion in
6 the future. Otherwise, the Class may be irreparably harmed and denied an effective and
7 complete remedy if such an Order is not granted.

8
9 **FIFTH CAUSE OF ACTION**
10 **(False Advertising in Violation of**
11 **California Business & Professions Code §§ 17500, *et seq.*)**

12 115. Plaintiff incorporates each and every allegation contained in the
13 paragraphs above as if restated herein.

14 116. Defendant uses advertising and packaging to sell its Products. Defendant
15 disseminates advertising regarding its Products which by its very nature is deceptive,
16 untrue, or misleading within the meaning of California Business & Professions Code
17 §§17500, *et seq.* because those advertising statements contained on the labels are
18 misleading and likely to deceive, and continue to deceive, members of the putative Class
19 and the general public.

20 117. In making and disseminating the statements alleged herein, Defendant
21 knew or should have known that the statements were untrue or misleading, and acted in
22 violation of California Business & Professions Code §§17500, *et seq.*

23 118. The misrepresentations and non-disclosures by Defendant of the material
24 facts detailed above constitute false and misleading advertising and therefore constitute
25 a violation of California Business & Professions Code §§17500, *et seq.*

26 119. Through its deceptive acts and practices, Defendant has improperly and
27 illegally obtained money from Plaintiff and the members of the Class. As such, Plaintiff
28 requests that this Court cause Defendant to restore this money to Plaintiff and the

1 members of the Class, and to enjoin Defendant from continuing to violate California
2 Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise, Plaintiff
3 and those similarly situated will continue to be harmed by Defendant’s false and/or
4 misleading advertising.

5 120. Pursuant to California Business & Professions Code §17535, Plaintiff
6 seeks an Order of this Court ordering Defendant to fully disclose the true nature of its
7 misrepresentations. Plaintiff additionally requests an Order: (1) requiring Defendant to
8 disgorge its ill-gotten gains, (2) award full restitution of all monies wrongfully acquired
9 by Defendant and (3), interest and attorneys’ fees. Plaintiff and the Class may be
10 irreparably harmed and denied an effective and complete remedy if such an Order is not
11 granted.

12
13 **SIXTH CAUSE OF ACTION**

14 **(Violation of the Consumers Legal Remedies Act,
15 California Civil Code §§ 1750, *et seq.*)**

16 121. Plaintiff incorporates each and every allegation contained in the
17 paragraphs above as if restated herein.

18 122. This cause of action is brought pursuant to the Consumers Legal Remedies
19 Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

20 123. Plaintiff and each member of the proposed Class are “consumers” within
21 the meaning of Civil Code §1761(d).

22 124. The purchases of the Products by consumers constitute “transactions”
23 within the meaning of Civil Code §1761(e) and the Products constitute “goods” within
24 the meaning of Civil Code §1761(a).

25 125. Defendant has violated, and continues to violate, the CLRA in at least the
26 following respects:
27
28

- 1 a. §1770(5) pertaining to misrepresentations regarding the
- 2 characteristics of goods sold—specifying that misleading
- 3 representations regarding ingredients violate the CLRA;
- 4 b. §1770(7) pertaining to misrepresentations regarding the standard,
- 5 quality, or grade of goods sold; and
- 6 c. § 1770(9) pertaining to goods advertised with the intent not to
- 7 provide what is advertised.

8 126. Defendant knew, or should have known, that the labeling of their Products
9 violated consumer protection laws, and that these statements would be relied upon by
10 Plaintiff and the members of the Class.

11 127. The representations were made to Plaintiff and all members of the Class.
12 Plaintiff relied on the accuracy of the representations on Defendant’s labels which
13 formed a material basis for his decision to purchase the Products. Moreover, based on
14 the very materiality of Defendant’s misrepresentations uniformly made on or omitted
15 from their Product labels, reliance may be presumed or inferred for all members of the
16 Class.

17 128. Defendant carried out the scheme set forth in this Complaint willfully,
18 wantonly, and with reckless disregard for the interests of Plaintiff and the Class, and as
19 a result, Plaintiff and the Class have suffered an ascertainable loss of money or property.

20 129. Plaintiff and the members of the Class request that this Court enjoin
21 Defendant from continuing to engage in the unlawful and deceptive methods, acts and
22 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless
23 Defendant is permanently enjoined from continuing to engage in such violations of the
24 CLRA, future consumers of Defendant’s Products will be damaged by their acts and
25 practices in the same way as have Plaintiff and the members of the proposed Class.

26 130. Plaintiff served a CLRA demand pursuant to Civil Code §1782, via U.S.
27 Certified Mail Return Receipt notifying Defendant of the conduct described herein and
28 that such conduct was in violation of particular provisions of Civil Code §1770. The

1 demand was received by Defendant on November 30, 2020. More than thirty days have
2 since elapsed without Defendant providing the requested relief thereby enabling
3 Plaintiff to properly seek damages as provided under Civil Code §1780.

4 131. Pursuant to Civil Code § 1780(a), Plaintiff and members of the class seek
5 compensatory damages, punitive damages, restitution, disgorgement of profits, and an
6 order enjoining Defendant from deceptively marketing the Products.

7
8 **SEVENTH CAUSE OF ACTION**
9 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

10 132. Plaintiff incorporates each and every allegation contained in the
11 paragraphs above as if restated herein.

12 133. Defendant's conduct in enticing Plaintiff and the Class to purchase is
13 Products with false and misleading packaging is unlawful because the statements
14 contained on the Defendant's Product labels are untrue.

15 134. Defendant took monies from Plaintiff and the Class for these Products and
16 have been unjustly enriched at the expense of Plaintiff and the Class as result of their
17 unlawful conduct alleged herein, thereby creating a quasi-contractual obligation on
18 Defendant to restore these ill-gotten gains to Plaintiff and the Class.

19 135. It is against equity and good conscience to permit Defendant to retain the
20 ill-gotten benefits received from Plaintiff and Class members.

21 136. As a direct and proximate result of Defendant's unjust enrichment,
22 Plaintiff and the Class are entitled to restitution or restitutionary disgorgement in an
23 amount to be proved at trial.
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PRAYER FOR RELIEF

THEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the Class and for the Counts so applicable on behalf of the general public request an award and relief as follows:

A. An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed Class Representative, and Plaintiff's counsel be appointed Lead Counsel for the Class.

B. Restitution in such amount that Plaintiff and all members of the Class paid to purchase Defendant's Product or restitutionary disgorgement of the profits Defendant obtained from those transactions, for Causes of Action for which they are available.

C. Compensatory damages for Causes of Action for which they are available.

D. Other statutory penalties for Causes of Action for which they are available.

E. Punitive Damages for Causes of Action for which they are available.

F. A declaration and Order enjoining Defendant from marketing and labeling its Product deceptively, in violation of laws and regulations as specified in this Complaint.

G. An Order awarding Plaintiff his costs of suit, including reasonable attorneys' fees and pre and post judgment interest.

H. An Order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein.

I. Such other and further relief as may be deemed necessary or appropriate.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action or issues so triable.

DATED: January 22, 2021

Respectfully submitted,



s/ Michael D. Braun

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