

**LAW OFFICES OF RONALD A. MARRON**

RONALD A. MARRON (SBN 175650)

*ron@consumersadvocates.com*

MICHAEL T. HOUCHIN (SBN 305541)

*mike@consumersadvocates.com*

LILACH HALPERIN (SBN 323202)

*lilach@consumersadvocates.com*

651 Arroyo Drive

San Diego, CA 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

**ELLIOT LAW OFFICE PC**

DAVID ELLIOT (270381)

2028 3rd Avenue

San Diego, CA 92101

Telephone: (619) 468-4865

*Attorneys for Plaintiffs and the Proposed Classes*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JESSICA AUGUSTINE, ADRIANA  
MCCLORIA, and MATTHEW  
RUTLEDGE, individually and on behalf  
of all others similarly situated,

*Plaintiffs,*

vs.

WELCH FOODS, INC., a cooperative;

*Defendant.*

Case No. '21CV332 GPC NLS

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. JURISDICTION AND VENUE ..... 1

II. NATURE OF THE ACTION ..... 2

III. PARTIES ..... 3

IV. FACTUAL ALLEGATIONS ..... 4

    A. Welch’s Does Not Disclose That Its Products Are Artificially Flavored .... 4

    B. Federal and State Laws Require Welch’s to Disclose Artificial Flavors in  
    Its Food Products ..... 11

    C. Welch’s Competitors Label Their Products Lawfully ..... 14

    D. Plaintiffs and the Class Paid a Price Premium for Misbranded Products.... 15

V. DELAYED DISCOVERY ..... 17

VI. CLASS ACTION ALLEGATIONS ..... 18

VII. CAUSES OF ACTION ..... 22

    FIRST CAUSE OF ACTION ..... 22

    SECOND CAUSE OF ACTION ..... 22

    THIRD CAUSE OF ACTION ..... 24

    FOURTH CAUSE OF ACTION ..... 27

    FIFTH CAUSE OF ACTION ..... 28

    SIXTH CAUSE OF ACTION ..... 29

    SEVENTH CAUSE OF ACTION ..... 31

    EIGHTH CAUSE OF ACTION ..... 32

    NINTH CAUSE OF ACTION ..... 33

VIII. PRAYER FOR RELIEF ..... 34

IX. DEMAND FOR JURY TRIAL ..... 35

1 Jessica Augustine, Adriane McCloria, and Matthew Rutledge (“Plaintiffs”),  
2 on behalf of themselves individually and all others similarly situated, by and  
3 through their undersigned counsel, hereby bring this action against Defendant  
4 Welch Foods, Inc., (“Welch’s”, or “Defendant”), and upon information and belief  
5 and investigation of counsel, allege as follows:

6 **I. JURISDICTION AND VENUE**

7 1. Plaintiffs bring this proposed class action in this Court pursuant to the  
8 Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005).

9 2. This Court has subject matter jurisdiction over this proposed class  
10 action under CAFA, which provides the Federal courts with original jurisdiction  
11 over any class action in which any member of the Plaintiff class is a citizen of a  
12 state different from any defendant and the matter in controversy exceeds \$5 million  
13 in the aggregate exclusive of interest and costs.

14 3. Minimal diversity as required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A) is  
15 satisfied as Plaintiffs are citizens of California and Defendant Welch’s is a citizen  
16 of Massachusetts.

17 4. The jurisdictional amount in controversy is satisfied. Plaintiffs allege  
18 on information and belief that the total claims of the members of the proposed Class  
19 in this action are in excess of \$5 million in the aggregate, exclusive of interest and  
20 costs, as required by 28 U.S.C. § 1332(d)(2), (5).

21 5. This matter is not a “local controversy” pursuant to 28 U.S.C. §  
22 1332(d)(5)(B). Plaintiffs allege on information and belief that more than two-thirds  
23 of the members of the proposed Class are citizens of states other than California  
24 where this action is filed, and that the proposed Class contains more than 100  
25 persons.

26 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a)  
27 because, as set forth below, Defendant conducts business in this district, and  
28 Plaintiffs purchased the subject Products of this action in this judicial district.

1 Defendant conducts business and engages in substantial transactions here, and  
2 many of the transactions complained of herein occurred in this district including  
3 specifically the transactions between Plaintiffs and Defendant.

4 7. This Court has both general and specific personal jurisdiction over the  
5 Defendant.

6 8. The Court has personal jurisdiction over Defendant because the  
7 company has affirmatively established and maintained contacts with the State of  
8 California and registered to do business in California.<sup>1</sup> This Court further has  
9 specific personal jurisdiction arising from Welch’s decision to advertise and sell the  
10 Products in California. Defendant has sufficient minimum contacts with this State  
11 and sufficiently avails itself of the markets of this State through the promotion,  
12 sales, and marketing of the Products within the State to render the exercise of  
13 jurisdiction by this Court reasonable.

14 9. Venue is proper in this County because Defendant Welch’s conducts  
15 business here, engages in substantial transactions in this County, and many of the  
16 transactions complained of herein occurred in this County including specifically the  
17 transactions between Plaintiffs and Defendant.

18 **II. NATURE OF THE ACTION**

19 10. This is a national consumer class action for violation of state consumer  
20 protection, unfair competition, and false advertising statutes and common-law  
21 warranty and consumer protection laws.

22 11. Defendant Welch’s manufactures, distributes, advertises, markets, and  
23 sells a variety of juices and juice-based beverage products.

24  
25 \_\_\_\_\_  
26 <sup>1</sup> Welch’s current corporate status in California is “FTB forfeited” according to the California  
27 Secretary of State. “FTB forfeited” means that the business entity registration “was . . . forfeited  
28 by the Franchise Tax Board for failure to meet tax requirements (e.g., failure to file a return, pay  
taxes, penalties, interest).” [https://www.sos.ca.gov/business-programs/business-entities/cbs-field-  
status-definitions](https://www.sos.ca.gov/business-programs/business-entities/cbs-field-status-definitions); last visited February 13, 2021.

1 12. Defendant labels and advertises one such juice-based beverage product  
2 as “Light Concord Grape Juice Beverage” and another such juice-based beverage  
3 product as “Light White Grape Juice Beverage”.

4 13. Both these products’ advertising claims that these products contain  
5 “*No Artificial Flavors*” (emphasis added).

6 14. This statement is false. Both these products include artificial flavoring  
7 chemicals that simulate the advertised fruit flavors.

8 15. Neither Product’s label discloses as required by federal and state law  
9 that the Products contain artificial flavoring.

10 16. Because these products’ labels conceal the fact that the products are  
11 made with artificial flavors, and Welch’s in fact falsely advertises that they contain  
12 no artificial flavors, that labeling and advertising is false and misleading. The  
13 Products are misbranded under Federal and state law.

14 17. Defendant’s packaging, labeling, and advertising scheme for these  
15 products is intended to give consumers the impression that they are buying a  
16 premium, all-natural juice product instead of a product that is artificially flavored.

17 18. Plaintiffs, who purchased selected Products multiple times and were  
18 deceived by Defendant’s unlawful conduct, bring this action on their own behalf  
19 and on behalf of consumers nationwide to remedy Defendant’s unlawful acts.

20 19. On behalf of the Class as defined herein, Plaintiffs seek an order  
21 compelling Defendant to, *inter alia*: (1) cease packaging, distributing, advertising  
22 and selling the Products in violation of U.S. FDA regulations and state consumer  
23 protection laws; (2) inform consumers regarding the Products’ misbranding; (3)  
24 award Plaintiffs and the other Class-members restitution, actual damages, and  
25 punitive damages; and (4) pay all costs of suit, expenses, and attorney fees.

26 **III. PARTIES**

27 20. Defendant Welch Foods, Inc. (“Welch’s”, or “Defendant”) is a  
28 Massachusetts corporation with its principal place of business at 300 Baker Avenue,

1 Suite 101, Concord, Massachusetts.

2 21. Welch’s is registered with the Massachusetts Secretary of State as  
3 corporate entity number 160998906.

4 22. Welch’s previously registered with the California Secretary of State to  
5 do business in California under entity number C0682290.<sup>2</sup>

6 23. Welch’s manufactures, advertises, markets, distributes, and sells the  
7 Products in California and Massachusetts and throughout the United States.

8 24. Plaintiff Jessica Augustine is a resident and citizen of San Diego  
9 County, California, who purchased the Products multiple times in San Diego  
10 County for personal and household consumption.

11 25. Plaintiff Adriane McCloria is a resident and citizen of San Bernardino  
12 County, California, who purchased the Products multiple times in San Bernardino  
13 County for personal and household consumption.

14 26. Plaintiff Matthew Rutledge is a resident and citizen of San Bernardino  
15 County, California, who purchased the Products multiple times in San Bernardino  
16 County for personal and household consumption.

17 **IV. FACTUAL ALLEGATIONS**

18 **A. Welch’s Does Not Disclose That Its Products Are Artificially**  
19 **Flavored**

20 27. Both Products’ labels show lifelike illustrations of fresh, ripe grapes  
21 and display labels specifically identifying the Products as “grape juice” varietal  
22 beverages.

23 28. The Light Concord Grape Juice product label shows lifelike  
24 illustrations of fresh, ripe, purple grapes. The Product’s name, “Light Concord  
25 Grape,” along with these representations conveys to the consumer by operation of  
26

27 \_\_\_\_\_  
28 <sup>2</sup> Welch’s forfeited their California corporate registration by order of the California Franchise Tax Board; see note 1, *supra*.

1 federal and state law that the Product is made exclusively from and is flavored only  
2 with natural fruit.

3 29. The Light White Grape Juice product label is similar.

4 30. Neither Product label discloses that the Product contains an artificial  
5 flavor.

6 31. Further reinforcing these false representations, Welch's product  
7 advertising states that the Products contain "*No artificial flavors.*"

8 32. Both Products, however, include a synthetic chemical flavoring  
9 ingredient identified in the products' ingredient lists as "malic acid".

10 33. The "malic acid" that Welch's puts in its Products is not a natural  
11 flavoring material; it is a synthetic chemical manufactured in a petrochemical  
12 factory from petroleum feedstocks.

13 34. The Products' labels therefore violate federal and California,  
14 Massachusetts, and other states' statutory and common-law consumer protection  
15 laws in a minimum of three different ways.

16 35. First, because the Products contains added flavoring ingredients that  
17 simulate and reinforce each Product's characterizing flavors, the product front label  
18 is required by law to disclose the presence of those additional flavorings rather than  
19 misleadingly suggest that the Product's flavor is conferred only by natural fruit  
20 juices. *See, e.g.,* Cal. Health & Saf. Code §109875 *et seq.*, (Sherman Law); 21 CFR  
21 101.22.<sup>3</sup>

22 36. Second, the Product ingredient list violates Federal and state law  
23  
24  
25

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26 <sup>3</sup> California's Sherman Food, Drug, and Cosmetic Act, Cal. Health & Saf. Code §109875 *et seq.*,  
27 like several other states' consumer protection laws, incorporates into California law all regulations  
28 enacted pursuant to the U.S. Food Drug and Cosmetic Act. Any act or omission that would violate  
an FDCA regulation will also violate California's Sherman Law. *Id.* at §110100. Other states'  
statutory or common-law consumer protection laws also reference, incorporate by reference, or  
are guided by FDA regulations.

1 because it misleadingly identifies the malic acid constituent only as a generic “malic  
2 acid” instead of using the correct, specific, non-generic chemical name of the  
3 ingredient as required by food labeling regulations. *See* 21 CFR 101.4(a)(1).  
4 Because Defendant uses a misleading and unlawful generic name for this  
5 ingredient, consumers have no chance to identify it as a synthetic chemical or to  
6 know that the Product is artificially flavored.

7 37. Third, and even more deceptive, is the fact that the Product advertising  
8 claims multiple times, in text and in symbols, that the Products contain “*No*  
9 *artificial flavors*”, even though both Products contain an undisclosed artificial  
10 flavor made from petrochemicals.

11 38. Below is a true and accurate photographic image of the Light Concord  
12 Grape Juice Beverage Product showing the Product’s front-label.  
13





1 39. As shown, the Product label nowhere discloses that the Product  
2 contains an artificial flavor.

3 40. The Concord Grape Product’s listed ingredients are: “Filtered Water,  
4 Concord Grape Juice, Malic Acid (For Tartness) [sic], Sodium Citrate, Ascorbic  
5 Acid (Vitamin C), Fruit Juice (For Color), Vegetable Juice (For Color), Natural  
6 Flavor, Sucralose, Acesulfame Potassium.”

7 41. The Product ingredient list also fails to identify that the “malic acid”  
8 in the Product is an artificial flavor.

9 42. Below is a true and accurate photographic image of the front-label of  
10 the Light White Grape Juice Beverage Product.



1           43. This Product label fails as well to disclose that the Product contains an  
2 artificial flavor.

3           44. The White Grape Product’s listed ingredients are: “Filtered Water,  
4 White Grape Juice, Sodium Citrate, Malic Acid (For Tartness) [sic], Ascorbic Acid  
5 (Vitamin C), Natural Flavor, Sucralose, Potassium Metabisulfite (Preservative),  
6 Acesulfame Potassium Contains Sulfites To Maintain Flavor And Freshness.”

7           45. The Product ingredient list also fails to identify that the “malic acid”  
8 in the Product is an artificial flavor.

9           46. Federal and state consumer protection law requires all food products  
10 that contain artificial flavor to disclose this fact to consumers prominently on both  
11 the front and back labels.

12           47. Defendant fails to do so, deceptively and unlawfully persuading  
13 consumers that these Products are “naturally-flavored” when they in fact contain  
14 artificial flavors.

15           48. Further, Defendant expressly advertises these Products as containing  
16 “No Artificial Flavors.”<sup>4</sup>

17           49. Below is a true and accurate representation of Defendant’s current  
18 advertising for the Products, disseminated by Welch’s on its own Product website.  
19 The Product advertisements expressly claim, in two locations, in text and  
20 pictogram, that the Products contain “No Artificial Flavors.”  
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<sup>4</sup> <https://www.welchs.com/juices/light/concord-grape>, last visited February 23, 2021.

# Light Concord Grape Juice Beverage

Delicious flavor of Welch's Concord grapes, with only 45 calories per serving! No artificial flavors, or preservatives. 100% daily value of Vitamin C. Refreshingly fruity. 100% of profits go to Welch's American family farmers.



Made With  
USA Grown  
Grapes



No  
Preservatives



2/3 Less  
Calories



Excellent  
Source of  
Vitamin C



No Artificial  
Flavors

50. The Products are even advertised to consumers with the additional false assurances that they contain, “NOTHING YOU DON'T WANT: We never add artificial flavors or preservatives to our Concord Grape Light.”<sup>5</sup> (emphasis added).

51. Defendant’s advertising is the clearest evidence that Defendant fully understands that the consumers that buy the Products do not want artificial flavors in their juice beverages (“*Nothing you don’t want.*”)

52. The exact same advertising copy is displayed for these Products on

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<sup>5</sup> This advertising copy is from Product advertisements located on a major retailer’s website: <https://www.walmart.com/ip/Welch-s-Light-Concord-Grape-Juice-64-Fl-Oz/16504449>; last visited February 23, 2021. This advertising copy is provided by the “manufacturer, supplier, or others” according to the retailer.

1 other major U.S. national retailers' websites.<sup>6</sup>

2 53. Defendant, in its labeling, advertising, and website promotional copy,  
3 intentionally conceals from consumers the fact that its Products are artificially  
4 flavored.

5 54. There is a naturally-occurring compound sometimes referred to  
6 informally as malic acid.

7 55. Natural malic acid is identified by its proper scientific name, "l-malic  
8 acid." L-malic acid is found naturally in grapes and other fruits; it provides the  
9 signature characterizing tart flavor of grapes.

10 56. Welch's, however, uses instead in its Products a synthetic  
11 manufactured flavoring chemical called dl-malic acid,<sup>7</sup> a racemic mixture of d- and  
12 l-isomers.

13 57. This kind of 'malic acid' is not naturally-occurring but is in fact made  
14 in petrochemical plants from benzene or butane—components of gasoline and  
15 lighter fluid, respectively—after an intermediate conversion to maleic anhydride  
16 through a series of chemical reactions involving toxic chemical precursors and  
17 byproducts.

18 58. Maleic anhydride, also called 2,5-Furandione, is a common chemical  
19 precursor used in the industrial manufacture of various other chemicals and  
20 intermediaries as well as malic acid. It is also commonly used as a feedstock in  
21 chemical manufacturing processes to make paints, polymeric plastic resins,  
22 industrial coatings, pesticides and agricultural chemicals<sup>8</sup> — or, in this case, to  
23 make the artificial flavor that Defendant uses in the Products.  
24  
25

26 <sup>6</sup> See, e.g., <https://www.target.com/p/welch-s-light-concord-grape-juice-64-fl-oz-bottle/-/A-13352722>;

27 <sup>7</sup> D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

28 <sup>8</sup> Maleic anhydride, CAS No. 108-31-6; <https://www.epa.gov/sites/production/files/2016-09/documents/maleic-anhydride.pdf>, visited August 28, 2017.

1           **B. Federal and State Laws Require Welch’s to Disclose Artificial**  
2           **Flavors in Its Food Products**

3           59. Federal and state consumer protection laws define as an artificial flavor  
4 “any substance, the function of which is to impart flavor, which is not derived from  
5 a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark,  
6 bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or  
7 fermentation products thereof.”<sup>9</sup>

8           60. The dl-malic acid that Welch’s puts in these Products is derived from  
9 petrochemicals, not from “a spice, fruit or fruit juice, vegetable or vegetable juice,  
10 edible yeast, herb, bark, bud, root, leaf or similar plant material. . .”, and it provides  
11 a characterizing tart grape flavor for the Products. The “malic acid” that Welch’s  
12 puts in its Products is therefore an artificial flavor under federal and state consumer  
13 protection laws.

14           61. Both the natural and unnatural forms of malic acid are used as  
15 flavorings and are considered GRAS (generally recognized as safe) for that use. The  
16 dl-malic acid form, used by Welch’s, however, has never been thoroughly studied  
17 for its health effects in humans despite repeated cautions from health organizations  
18 that it should be.

19           62. Both forms of malic acid give a “tart, fruity” flavor to food products.

20           63. Welch’s uses the artificial petrochemical dl-malic acid in its Product  
21 to simulate the “tart, fruity” flavor of grapes but pretends otherwise, improperly  
22 conflating the natural and the artificial flavorings and deceiving consumers.

23           64. Because it contains an artificial flavor, federal and state law require the  
24 Products to display both front- and back-label disclosures to inform consumers that  
25 they are artificially flavored.

26           65. The Products have none of the required disclosures.

27           66. The Products violate federal and state consumer protection laws.

28 \_\_\_\_\_  
<sup>9</sup> Cal. Health & Saf. Code §109875, *e.g.*; 21 CFR 101.22(a)(1).

1           67. California law, for example, incorporating and mirroring U.S. Food,  
2 Drug, and Cosmetic Act regulations by reference, requires that a food’s label  
3 accurately describe the food product and its characterizing flavors. *See*, 21 C.F.R.  
4 102.5(a).

5           68. Under California’s Sherman Law, adopting FDA regulations as  
6 California law, a recognizable primary flavor identified on the front label of a food  
7 Product is referred to as a “characterizing flavor”.

8           69. California law, like other states’ laws that reference the Federal  
9 regulations, requires that if “the label, labeling, or advertising of a food makes any  
10 direct or indirect representations with respect to the primary recognizable flavor(s),  
11 by word, vignette, e.g., depiction of a fruit, or other means” then “such flavor shall  
12 be considered the characterizing flavor”. *See* 21 C.F.R. 101.22(i).

13           70. “Grape”, “Concord Grape”, and “White Grape” are primary  
14 recognizable flavors identified on the Products’ front labels. These are therefore by  
15 law considered characterizing flavors.

16           71. If a product’s characterizing flavor is not created exclusively by the  
17 named flavor ingredient, the product’s front label must state that the product’s  
18 flavor was simulated or reinforced with either natural or artificial flavorings or both.  
19 If any artificial flavor is present which “simulates, resembles or reinforces” the  
20 characterizing flavor, the food must be prominently labeled as “Artificially  
21 Flavored.” 21 C.F.R. 101.22(i) (3), (4).

22           72. Federal regulations at 21 C.F.R. 101.22(c) require all foods containing  
23 artificial flavoring to include:

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

1           73. A food product’s label must also include a statement of the “presence  
2 or absence of any characterizing ingredient(s) or component(s) . . . when the  
3 presence or absence of such ingredient(s) or component(s) in the food has a material  
4 bearing on price or consumer acceptance . . . and consumers may otherwise be  
5 misled about the presence or absence of the ingredient(s) or component(s) in the  
6 food.” 21 C.F.R. 102.5(c).

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

9           75. Welch’s Product labels do not include any of the required label  
10 statements.

11           76. The Product labels therefore violate Federal and California law.

12           77. California’s Health & Safety Code, for example, also states that “Any  
13 food is misbranded if it bears or contains any artificial flavoring, artificial coloring,  
14 or chemical preservative, unless its labeling states that fact.” Cal. Health & Saf.  
15 Code §110740.

16           78. Other states’ laws similarly require that food product labels be accurate  
17 and complete and not misleading.

18           79. California state law, like other states’ laws, therefore required  
19 Defendant to place on the Products’ labels a notice to inform consumers that the  
20 Products are artificially flavored.

21           80. Defendant failed to do so.

22           81. Defendant failed to accurately label the Products, deceiving consumers  
23 and violating Federal and state law.

24           82. Accordingly, Welch’s Products are misbranded and illegal to distribute  
25 or sell in commerce in the U.S.

26           83. Plaintiffs were unaware that the Products contained artificial flavors  
27 when they purchased them.

28

1 84. When purchasing the Products, Plaintiffs were seeking products of  
2 particular qualities, specifically products that were flavored only with the natural  
3 ingredients claimed on the label and which did not contain artificial flavors.

4 85. Plaintiffs are not alone in these purchasing preferences. Forbes  
5 Magazine reported that 88% of consumers polled recently indicated they would pay  
6 more for foods perceived as natural or healthy. “All demographics [of consumers]—  
7 from Generation Z to Baby Boomers—say they would pay more” for such products,  
8 specifically including foods with no artificial flavors.<sup>10</sup>

9 86. Plaintiffs lost money as a result of Defendant’s conduct because they  
10 purchased Products that contained undisclosed and undesirable artificial flavors, and  
11 purchased those Products at a price premium.

12 87. Defendant’s marketing of the Products reflects this knowledge of  
13 consumers’ preferences for natural products — not by making the Products only  
14 with natural ingredients, but by concealing from consumers that the Products  
15 contain artificial flavors.

16 **C. Welch’s Competitors Label Their Products Lawfully**

17 88. Defendant Welch’s not only deceives consumers but also gains an  
18 unfair commercial advantage in the marketplace by labeling the Products  
19 deceptively.

20 89. Manufacturers of competing beverage products label their products  
21 lawfully.

22 90. Other manufacturers of artificially-flavored fruit drink products, for  
23 example, accurately label their products as “Artificially Flavored.”

24 91. Other competing manufacturers, offering products whose labels  
25 suggest just as Welch’s does that their products are naturally flavored, truly are  
26

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27 <sup>10</sup> “Consumers Want Healthy Foods--And Will Pay More For Them”; Forbes Magazine, February  
28 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; visited April 7, 2017.



1 made only with natural ingredients.

2 92. Defendant, however, conceals the use of artificial flavoring, deceiving  
3 consumers, illegally cutting costs and increasing profits, and competing unfairly  
4 and unlawfully in the marketplace, hurting their competitors and the marketplace as  
5 well as consumers.

6 93. Defendant's conduct injures competing manufacturers that do not  
7 engage in the same illegal behavior. Those manufacturers compete for market share  
8 and limited shelf space, as well as for consumers' buying preferences and dollars.  
9 Welch's competitors do so lawfully. Welch's does not.

10 **D. Plaintiffs and the Class Paid a Price Premium for Misbranded**  
11 **Products**

12 94. Plaintiff Augustine purchased the Products in California during the  
13 Class Period as defined herein.

14 95. Augustine purchased the Products multiple times annually since 2015  
15 at various locations in California, most recently in December 2020 at a Walmart  
16 located in Eastlake, California.

17 96. Plaintiff McCloria purchased the Products in California during the  
18 Class Period as defined herein.

19 97. McCloria purchased the Products multiple times annually since 2015  
20 at various locations in California, most recently in approximately January 2021 at  
21 the Winco Store located in Fontana, California.

22 98. Plaintiff Rutledge purchased the Products in California during the  
23 Class Period as defined herein.

24 99. Rutledge purchased the Products multiple times annually since 2015  
25 at various locations in California, most recently in 2020 at the Target Store located  
26 in Apple Valley, California.

1 100. The Products were purchased at the marked retail prices, typically  
2 \$3.99 for a 64-ounce plastic bottle and from time to time at other promotional  
3 prices.

4 101. Plaintiffs first discovered Defendant's unlawful conduct described  
5 herein in 2021, when they learned the Products' characterizing flavors were  
6 deceptively simulated and reinforced using artificial flavoring even though  
7 Defendant failed to disclose that fact on the Products' labels.

8 102. Plaintiffs were deceived by and relied upon the Products' deceptive  
9 labeling, and specifically Defendant's omission of the fact that the Products  
10 contained artificial flavorings. Plaintiffs purchased the Products believing they were  
11 naturally-flavored, based on the Products' deceptive labeling and failure to disclose  
12 the artificially flavoring.

13 103. Plaintiffs, as reasonable consumers, are not required to subject  
14 consumer food products to laboratory analysis, to scrutinize the back of the label to  
15 discover that the product's front label is false and misleading, or to search the label  
16 for information that state law and federal regulations require be displayed  
17 prominently on the front.

18 104. Defendant, but not Plaintiffs, knew or should have known that the  
19 Products' labeling was false and in violation of federal regulations and state law.

20 105. Because Plaintiffs reasonably assumed the Products to be free of  
21 artificial flavoring, based on the Products' labels, when they were not, they did not  
22 receive the benefit of their purchases. Instead of receiving the benefit of products  
23 free of artificial flavoring, they received a Product that was unlawfully labeled to  
24 deceive the consumer into believing that it is exclusively naturally flavored and  
25 contains no artificial flavoring, in violation of federal and state labeling regulations.

26 106. Plaintiffs would not have purchased the Products in the absence of  
27 Defendant's misrepresentations and omissions. Had Defendant not violated state and  
28 federal law, Plaintiffs would not have been injured.

1 107. As described above, products the consumer believes to be naturally-  
2 flavored sell at a price premium compared to products that contain artificial flavors.

3 108. The Products were therefore worth less than Plaintiffs and the other  
4 Class members paid for them; both they and the class members would not have paid  
5 as much as they did for the Products absent Defendant's false and misleading  
6 statements and omissions.

7 109. Plaintiffs and the Class lost money as a result of Defendant's unlawful  
8 acts. Plaintiffs, and each Class member, altered her or his position to their detriment  
9 and suffered loss in an amount equal to the price premium paid for the Products as  
10 falsely labeled and advertised.

11 110. Plaintiffs intend to, desire to, and will purchase the Products again  
12 when they can do so with the assurance that Products' labels, which indicate that  
13 the Products are solely naturally-flavored, are lawful and consistent with the  
14 Products' ingredients.

15 **V. DELAYED DISCOVERY**

16 111. Plaintiffs did not discover that Defendant's labeling of the Products was  
17 false and misleading until February 2021 when they learned the Products contained  
18 undisclosed artificial flavoring.

19 112. Plaintiffs are reasonably diligent consumers who exercised reasonable  
20 diligence in their purchase and consumption of the Products. Nevertheless, they  
21 would not have been able to discover Defendant's deceptive practices and lacked the  
22 means to discover them given that, like nearly all consumers, they rely on and are  
23 entitled to rely on the manufacturer's obligation to label its products in compliance  
24 with federal regulations and state law. Furthermore, Defendant's labeling practices  
25 and non-disclosures—in particular, misnaming and failing to correctly identify the  
26 artificial flavors in the ingredient list, or to disclose that the Products contained  
27 artificial flavoring, or to accurately identify the kind of malic acid that Welch's puts  
28

1 in the Products, impeded Plaintiffs’ and the Class members’ abilities to discover the  
2 deceptive and unlawful labeling of the Products throughout the Class Period.

3 113. Because Defendant actively concealed the illegal conduct, preventing  
4 Plaintiffs and the Class from discovering their violations of state law, Plaintiffs and  
5 the Class are entitled to delayed discovery and an extended Class Period tolling the  
6 applicable statute of limitations.

7 **VI. CLASS ACTION ALLEGATIONS**

8 114. Plaintiffs bring this action on behalf of themselves and all others  
9 similarly situated (the “Class”) pursuant to the Class Action Fairness Act, 28 U.S.C.  
10 § 1332(d).

11 115. The Class is defined as follows:

12 All U.S. citizens who purchased the Products in the United States on  
13 or after February 1, 2015, and until the date the Class is certified by  
14 the Court, excluding Defendant and Defendant’s officers, directors,  
15 employees, agents, and affiliates, and the Court and its staff.

16 116. The Plaintiffs also represent a proposed California sub-class.

17 117. The proposed California sub-class is defined as follows:

18 All California residents who purchased the Products in California on  
19 or after February 1, 2015, and until the date the Class is certified by  
20 the Court, excluding Defendant and Defendant’s officers, directors,  
21 employees, agents, and affiliates, and the Court and its staff.

22 118. During the Class Period, the Products unlawfully contained the  
23 undisclosed artificial flavors d-malic acid or dl-malic acid and were otherwise  
24 improperly labeled. Defendant failed to label the Products to disclose the presence  
25 of artificial flavors as required by federal and state law.

26 119. During the Class Period, Class members purchased either or both of the  
27 Products and incurred the same injuries as alleged herein for the Plaintiff.  
28

1           120. The legal violations, false advertising, and consumer and market  
2 injuries resulting from Defendant’s false, misleading, and unlawful advertising,  
3 marketing, labeling, and sales of the Products are sufficiently similar to those  
4 associated with Defendant’s identical conduct with respect to the Products purchased  
5 by Plaintiffs to make it reasonable to include Class members’ purchases of all the  
6 Products in this Class Action.

7           121. All Class members’ purchases of these Products are therefore included  
8 herein.

9           122. The proposed Class meets all criteria for a class action, including  
10 numerosity, typicality, superiority, and adequacy of representation; there is a well-  
11 defined community of interest in questions of law and fact common to the Class.

12           123. The proposed Class satisfies numerosity. The Products are offered for  
13 sale at several thousand supermarkets; the Class numbers at minimum in the tens of  
14 thousands. Individual joinder of the class members in this action is impractical.  
15 Addressing the class members’ claims through this class action will benefit Class  
16 members, the parties, and the courts.

17           124. The proposed Class satisfies typicality. Plaintiffs’ claims are typical of  
18 and are not antagonistic to the claims of other Class members. Plaintiffs and the  
19 class members all purchased the Products, were deceived by the false and deceptive  
20 labeling, and lost money as a result.

21           125. The proposed Class satisfies superiority. A class action is superior to  
22 any other means for adjudication of the Class members’ claims because each class  
23 member’s claim is modest, based on the Product’s retail purchase price which is  
24 generally under \$5.00. It would be impractical for individual class members to bring  
25 individual lawsuits to vindicate their claims. If this action is not brought as a class  
26 action, Defendant can continue to deceive consumers and violate federal and state  
27 law with impunity.

28           126. Because Defendant’s misrepresentations were made on the label of the

1 Product itself, all Class members including Plaintiffs were exposed to and continue  
2 to be exposed to the omissions and affirmative misrepresentations.

3 127. The proposed Class representative satisfies adequacy of  
4 representation. The Plaintiffs are adequate representatives of the Class as they seek  
5 relief for the Class, their interests do not conflict with the interests of the Class  
6 members, and they have no interests incompatible with those of other class  
7 members. Plaintiffs have retained counsel competent in the prosecution of  
8 consumer fraud and class action litigation.

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

12 129. Questions of law and fact common to Plaintiffs and the Class include:

- 13 a. Whether Defendant failed to disclose the presence of an  
14 artificial flavoring ingredient in the Products;
- 15 b. Whether Defendant’s advertising and label statement, “No  
16 Artificial Flavors” was a false or misleading statement of  
17 fact;
- 18 c. Whether Defendant’s labeling omissions and  
19 representations constituted false advertising under state  
20 and federal law;
- 21 d. Whether Defendant’s conduct constituted a violation of  
22 state consumer protection statutes including, for example,  
23 and without limitation, California’s Consumer Legal  
24 Remedies Act, California’s Unfair Competition Law,  
25 California’s False Advertising Law, and other states’  
26 similar statutes;
- 27 e. Whether Defendant’s conduct constituted a violation of  
28 state common law consumer protection laws;

- 1 f. Whether Defendant’s advertising and label statements,  
2 “No Artificial Flavors” was an affirmative representation  
3 of the Product’s composition creating an express warranty;  
4 g. Whether Defendant’s conduct constitutes a breach of  
5 implied warranties under state law;  
6 h. Whether Defendant’s conduct violates U.S. Food and  
7 Drug Administration labeling regulations and  
8 corresponding state law;  
9 i. Whether the statute of limitations should be tolled on  
10 behalf of the Class due to Defendant’s deceptive conduct  
11 in concealing the presence of artificial ingredients in its  
12 products;  
13 j. Whether the Class is entitled to restitution, rescission,  
14 actual damages, punitive damages, attorney fees and costs  
15 of suit, and injunctive relief; and  
16 k. Whether members of the Class are entitled to any such  
17 further relief as the Court deems appropriate.

18 130. Class members lost money as a result of Defendant’s unlawful  
19 behavior.

20 131. Class members altered their position to their detriment and suffered loss  
21 in an amount equal to the price premium they paid for the Products as falsely labeled  
22 and advertised.

23 132. Further, Defendant has acted on grounds applicable to the entire Class,  
24 making final injunctive relief or declaratory relief appropriate for the Class as a  
25 whole.

26 133. Class treatment is therefore appropriate for this Action.  
27  
28

1  
2 **VII. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **Violation of Massachusetts False Advertising Law**

5 **Massachusetts General Laws Chapter 266, §91:**

6 **(on behalf of the nationwide class)**

7 134. Plaintiffs reallege and incorporate by reference each and every  
8 allegation contained elsewhere in this Complaint as if fully set forth herein.

9 135. Welch’s made and distributed, in Massachusetts and in interstate  
10 commerce, Products that unlawfully fail to disclose the presence of artificial  
11 flavoring as required by federal and state food-labeling regulations.

12 136. The Products’ labeling and advertising portrays the Products as if they  
13 were solely naturally-flavored, and in addition the Product advertising falsely  
14 claims that the Products contain “No Artificial Flavors.”

15 137. Defendant’s labeling and advertising statements, which communicated  
16 to consumers that the Products contain “No Artificial Flavors” and concealed the  
17 fact that they contain a synthetic artificial flavor, were untrue and misleading, and  
18 Defendant knew or at a minimum by the exercise of reasonable care should have  
19 known those actions were false or misleading.

20 138. Defendant’s conduct violated Massachusetts false advertising law,  
21 MGL Ch. 266, §91.

22 **SECOND CAUSE OF ACTION**

23 **Violations of California’s Consumers Legal Remedies Act (“CLRA”)**

24 **California Civil Code §§ 1750, *et seq.***

25 **(on behalf of the California class)**

26 139. Plaintiffs reallege and incorporate by reference the allegations made  
27 elsewhere in the Complaint as if set forth in full herein.

28 140. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750



1 *et seq.*, prohibits any unfair, deceptive and unlawful practices, and unconscionable  
2 commercial practices in connection with the sale of any goods or services to  
3 consumers.

4 141. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code  
5 §1761(d). The Products are a “good” as defined by Cal. Civ. Code §1761.

6 142. Defendant’s failure to label the Products in accord with federal and  
7 state labeling regulations, omitting the required information that the Products  
8 contain artificial flavoring, and Product advertising falsely claiming that the  
9 Products contained “No artificial flavors” was an unfair, deceptive, unlawful and  
10 unconscionable commercial practice.

11 143. Defendant’s conduct violates the Consumer Legal Remedies Act.

12 144. As a result of Defendant’s violations, Plaintiffs and the Class suffered  
13 ascertainable losses in the form of the price premiums they paid for the deceptively  
14 labeled and marketed Products, which they would not have paid had these Products  
15 been labeled truthfully, and in the form of the reduced value of the Product  
16 purchased compared to the Product as advertised.

17 145. Plaintiffs currently seek injunctive relief only for Welch’s violations  
18 of the CLRA.

19 146. Pursuant to §1782 of the CLRA, on February 16, 2021, Plaintiffs  
20 notified Defendant Welch’s in writing of the particular violations of §1770 of the  
21 CLRA and demanded Defendant rectify the actions described above by providing  
22 monetary relief, agreeing to be bound by their legal obligations, and giving notice  
23 to all affected customers of their intent to do so. If Welch’s declines to take adequate  
24 corrective within 30 days of the mailing of Plaintiffs’ demand letter, then Plaintiffs  
25 will seek leave to amend this complaint to add a claim for damages, restitution, and  
26 attorneys’ fees and costs pursuant to the CLRA.

1  
2 **THIRD CAUSE OF ACTION**

3 **Violations of California’s Unfair Competition Law (“UCL”)**

4 **California Business and Professions Code §§ 17200, *et seq.***

5 **(on behalf of the California class)**

6 147. Plaintiffs reallege and incorporate by reference here each and every  
7 allegation contained elsewhere in this Complaint, as if fully set forth herein.

8 148. Section 17200 of the California Business & Professions Code (“Unfair  
9 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent”  
10 business practice. Section 17200 specifically prohibits any “unlawful . . . business  
11 act or practice.”

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

14 150. Defendant’s practices as described herein were at all times during the  
15 Class Period and continue to be unlawful under, *inter alia*, FDA regulations adopted  
16 into California’s Sherman Law.

17 151. Defendant’s conduct in unlawfully packaging, labeling, advertising,  
18 and distributing the Product in commerce in California violated California law.

19 152. The Products’ labels fail to disclose that the Products contain synthetic  
20 artificial flavoring, in violation of California’s Sherman Law among others.

21 153. The Products contain synthetic dl-malic acid.

22 154. The dl-malic acid is a synthetic flavoring material which creates,  
23 simulates or reinforces the characterizing grape flavors of the Products.

24 155. The dl-malic acid in the Products is not derived from any natural  
25 material as defined in the applicable state regulations and is therefore, by law, an  
26 artificial flavoring.

27 156. Defendant fails to inform consumers of the presence of artificial  
28 flavors in the Products, on either the front or back-label as required by law.

1 157. Defendant’s conduct further violates other applicable California and  
2 federal regulations as alleged herein.

3 158. Defendant’s practices are therefore unlawful under Section 17200 et  
4 seq of the California Civil Code.

5 (Unfair Prong)

6 159. Section 17200 of the California Business & Professions Code (“Unfair  
7 Competition Law” or “UCL”) also prohibits any “unfair . . .business act or  
8 practice.” Defendant’s practices violate the Unfair Competition Law “unfair”  
9 prong as well.

10 160. Defendant’s practices as described herein are “unfair” within the  
11 meaning of the California Unfair Competition Law because the conduct is unethical  
12 and injurious to California citizens and the utility of the conduct to Defendant does  
13 not outweigh the gravity of the harm to consumers.

14 161. While Defendant’s decision to label the Products deceptively and in  
15 violation of California law may have some utility to Defendant in that it allows  
16 Welch’s to sell the Products to consumers who otherwise would not purchase an  
17 artificially-flavored food product at the premium retail price, or at all, if it were  
18 labeled correctly, and to realize higher profit margins than if they formulated or  
19 labeled the Products lawfully, this utility is small and far outweighed by the gravity  
20 of the harm inflicted on California consumers.

21 162. Defendant’s conduct also injures competing food product  
22 manufacturers, advertisers, and sellers, that do not engage in the same unfair and  
23 unethical behavior.

24 163. Moreover, Defendant’s practices violate public policy expressed by  
25 specific constitutional, statutory, or regulatory provisions, including the Sherman  
26 Law, the False Advertising Law, and the FDA regulations cited herein.

27 164. Plaintiffs’ purchases and all California sub-class members’ purchases  
28 of the Products all took place in California.

1           165. Defendant labeled the Products in violation of federal regulations and  
2 California law requiring truth in labeling.

3           166. Defendant failed to disclose material facts to Plaintiffs and the Class  
4 in Defendant’s advertising and marketing of the Product.

5           167. Defendant’s conduct is unconscionable because, among other reasons,  
6 it violates 21 C.F.R. 101.22(c), which requires all foods containing artificial  
7 flavoring to include:

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

13           168. Defendant’s conduct is also “unconscionable” because it violates, inter  
14 alia, 21 C.F.R. 101.22, which requires all food products for which artificial  
15 flavoring provides a characterizing flavor to disclose this fact prominently on the  
16 product’s front label.

17           169. Defendant intended that Plaintiffs and the Class rely on Defendant’s  
18 acts and omissions to induce them to purchase the Products.

19           170. Had Defendant disclosed all material information regarding the  
20 Products, Plaintiffs and the Class would not have purchased the Products or would  
21 only have been willing to pay less for the Products than they did.

22           171. Plaintiffs and class members suffered injury in fact and lost money or  
23 property as a result of Defendant’s deceptive advertising: they were denied the  
24 benefit of the bargain when they purchased the Products based on Defendant’s  
25 violation of the applicable laws and regulations, and purchased the Products in favor  
26 of competitors’ products, which are less expensive, contain no artificial flavoring,  
27 or are lawfully labeled.

28           172. Defendant’s acts, omissions and practices detailed herein proximately

1 caused Plaintiffs and other members of the Class to suffer an ascertainable loss in  
2 the form of, *inter alia*, the price premium of monies spent to purchase the Products  
3 they otherwise would not have, and they are entitled to recover such damages,  
4 together with appropriate penalties, including restitution, damages, attorneys’ fees  
5 and costs of suit.

6 173. Section 17200 also prohibits any “unfair, deceptive, untrue or  
7 misleading advertising.” For the reasons set forth above, Defendant engaged in  
8 unfair, deceptive, untrue and misleading advertising in violation of California  
9 Business & Professions Code §17200.

10 174. Pursuant to California Business & Professions Code §17203, Plaintiffs  
11 seeks an order requiring Defendant to immediately cease such acts of unlawful,  
12 unfair and fraudulent business practices and requiring Defendant to return to the  
13 Class the amount of money improperly collected.

14 **FOURTH CAUSE OF ACTION**

15 **Violations of California’s False Advertising Law (“FAL”)**

16 **California Business and Professions Code §§ 17500, *et seq.***

17 **(on behalf of the California class)**

18 175. Plaintiffs reallege and incorporate by reference each and every  
19 allegation contained elsewhere in this Complaint as if fully set forth herein.

20 176. Welch’s made and distributed in California and in interstate commerce  
21 Products that unlawfully fail to disclose the presence of artificial flavoring as  
22 required by federal and state food-labeling regulations.

23 177. The Products’ labeling and advertising portrays the Products as if they  
24 were solely naturally-flavored, and in addition the Product advertising falsely  
25 claims that the Products contain “No artificial flavors.”

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

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

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

10 179. Defendant’s labeling and advertising statements on the Products’  
11 labels and in advertising and marketing materials are “advertising device[s]” under  
12 the FAL.

13 180. Defendant’s labeling and advertising statements, which communicated  
14 to consumers that the Products contain “No artificial flavors” and concealed the fact  
15 that they contain a synthetic artificial flavor, were untrue and misleading, and  
16 Defendant knew or at a minimum by the exercise of reasonable care should have  
17 known those actions were false or misleading.

18 181. Defendant’s conduct violated California’s False Advertising Law.

19 **FIFTH CAUSE OF ACTION**

20 **Breach of Express Warranty**

21 **(on behalf of the Nationwide Class and California Class)**

22 182. Plaintiffs reallege and incorporate by reference the allegations found  
23 elsewhere in the Complaint as if set forth in full herein.

24 183. The Products’ labels warrant by operation of federal law that those  
25 products contain no artificial flavors.

26 184. The Products’ front label representations also misleadingly warrant  
27 that the Products are flavored only with natural grapes with no artificial flavors.  
28

1 185. These promises became part of the basis of the bargain between the  
2 parties and thus constituted an express warranty, which Welch's breached: the  
3 Products are artificially flavored.

4 186. Welch's sold the goods to Plaintiffs and the other Class members who  
5 bought the goods from Welch's.

6 187. Plaintiffs and the Class did not receive goods as warranted by  
7 Defendant.

8 188. Within a reasonable amount of time after Plaintiffs discovered that the  
9 Products contained synthetic flavorings and are not solely naturally-flavored,  
10 Plaintiffs notified Welch's of such breach.

11 189. As a proximate result of this breach of warranty by Welch's, Plaintiffs  
12 and the Class have been damaged in an amount to be determined at trial.

13 190. Defendant's conduct constituted a breach of state common law express  
14 warranties for the Products.

15 191. As a proximate result of this breach of warranty, Plaintiffs and other  
16 Class members have been damaged in an amount to be determined at trial.

17 192. As a result, Plaintiffs and the Class are entitled to injunctive and  
18 equitable relief, restitution, and an order for the disgorgement of the funds by which  
19 Welch's was unjustly enriched.

20 **SIXTH CAUSE OF ACTION**

21 **Breach of Implied Warranty**

22 **(on behalf of the Nationwide Class and California Class)**

23 193. Plaintiffs reallege and incorporate the allegations made elsewhere in  
24 the Complaint as if set forth in full herein.

25 194. Welch's label representations also created statutory implied warranties  
26 under California law and other states' similar statutory warranties, and under  
27 common law implied warranty, that the Products were suitable for a particular  
28

1 purpose, specifically as naturally-flavored food products. Welch's breached these  
2 warranties as well.

3 195. The Products' front labels misleadingly and by operation of federal  
4 law assure consumers that the Products are flavored only with natural ingredients  
5 comprising the characterizing flavors.

6 196. As alleged in detail above, at the time of purchase Welch's had reason  
7 to know that Plaintiffs, as well as all members of the Class, intended to use the  
8 Products specifically as naturally-flavored food products.

9 197. This became part of the basis of the bargain between the parties.

10 198. Based on that implied warranty, Welch's sold the goods to Plaintiffs  
11 and other Class members who bought the goods from Defendant.

12 199. At the time of purchase, Welch's knew or had reason to know that  
13 Plaintiffs and the Class members were relying on Defendant's skill and judgment  
14 to select or furnish a product that was suitable for this particular purpose, and  
15 Plaintiffs and Class members justifiably relied on Defendant's skill and judgment.  
16

17 200. Because of the multiple false and deceptive statements and  
18 misrepresentations alleged herein, and because the Products contained artificial  
19 flavoring chemicals, the Products were not suitable for this purpose.

20 201. Plaintiffs purchased the Products believing they had the qualities  
21 Plaintiffs sought, based on the deceptive advertising and labeling, but the Products  
22 were actually unsatisfactory to Plaintiffs for the reasons described herein.

23 202. The Products were not merchantable as they were not of the same  
24 quality as other products in the category generally acceptable in the trade.

25 203. The Products would not pass without objection in the trade when  
26 packaged with the existing labels, because the Products were misbranded and illegal  
27 to sell in California, for example, under Cal. Comm. Code 2314(2)(a), and in other  
28 states with similar implied warranty statutes and common law.











1 Plaintiffs and the Class, and any unjust enrichment realized as a result  
2 of the improper and misleading labeling, advertising, marketing, and  
3 sale of the Products;

4 G. An order requiring Defendant to pay restitution and damages to  
5 Plaintiffs and Class members so that they may be restored any money  
6 which was acquired by means of any unfair, deceptive, unconscionable  
7 or negligent acts;

8 H. An award of punitive damages in an amount to be proven at trial;

9 I. An order enjoining Defendant's deceptive and unfair practices;

10 J. An order requiring Defendant to conduct corrective advertising;

11 K. An award of pre-judgment and post-judgment interest;

12 L. An award of attorney fees and costs; and

13 M. Such other and further relief as this Court may deem just, equitable, or  
14 proper.

15 **IX. DEMAND FOR JURY TRIAL**

16 Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not  
17 seek a jury trial for claims sounding in equity.

18  
19 DATED: February 24, 2021

*/s/ Ronald A. Marron*  
Ronald A. Marron

21 **LAW OFFICES OF RONALD A.  
22 MARRON**

23 RONALD A. MARRON

*ron@consumersadvocates.com*

24 MICHAEL T. HOUCHIN

*mike@consumersadvocates.com*

25 LILACH HALPERIN

*lilach@consumersadvocates.com*

26 651 Arroyo Drive

27 San Diego, California 92103

28 Telephone: (619) 696-9006

Facsimile: (619) 564-6665

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**ELLIOT LAW OFFICE PC**  
DAVID ELLIOT  
2028 3rd Avenue  
San Diego, CA 92101  
Telephone: (619) 468-4865  
*Attorneys for Plaintiffs and the Proposed  
Classes*