

**FILED**  
Superior Court of California  
County of Los Angeles

JUN 25 2021

Sherri R. Carter, Executive Officer/Clerk of Court  
By Kristina Vargas Deputy

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THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

VERONIKA GUSLITSER, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

HORNELL BREWING CO., INC.

Defendant.

Case No.

**21STCV23850**

**CLASS ACTION COMPLAINT**

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et. seq.*
4. UNJUST ENRICHMENT
5. BREACH OF EXPRESS WARRANTY

**DEMAND FOR JURY TRIAL**

1 Plaintiff Veronika Guslitser, ("Plaintiff"), individually and on behalf of all other  
 2 similarly situated purchasers (the "Class"), brings this class action lawsuit against  
 3 Hornell Brewing Co., Inc. (referred to herein as "Defendant"), and alleges as follows:

#### 4 INTRODUCTION

5  
 6 1. Defendant falsely labels and advertises its AriZona beverage products,  
 7 including but not limited to, AriZona Kiwi Strawberry Fruit Juice Cocktail,  
 8 Lemonade Fruit Juice Cocktail, Mucho Mango Fruit Juice Cocktail, Fruit Punch Fruit  
 9 Juice Cocktail, Orangeade, Grapeade, Lemonade Drink Mix, Golden Bear Strawberry  
 10 Lemonade, and Rx Energy as being "All Natural," when in reality, they contain added  
 11 coloring, including but not limited to "beta carotene," "fruit and vegetable juices,"  
 12 "annatto," and "vegetable juice." The "All Natural" AriZona beverages are  
 13 collectively referred to as (the "Products"). See Figures 1-10, *infra*. The prominent  
 14 label "ALL NATURAL" is depicted on the front of the Product container, to mislead  
 15 consumers to believe that the Products are entirely natural.



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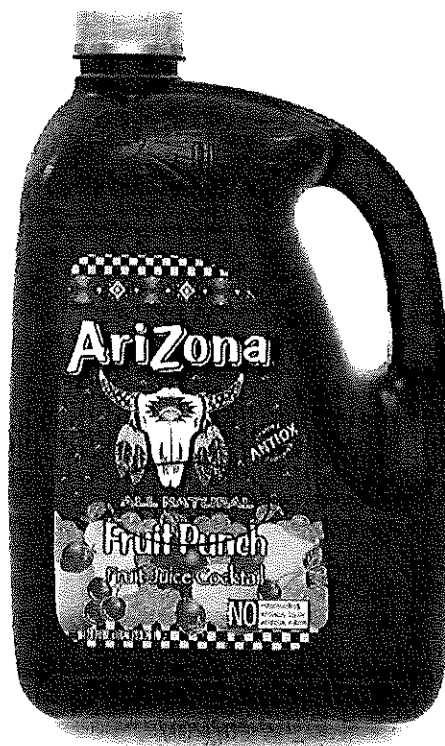
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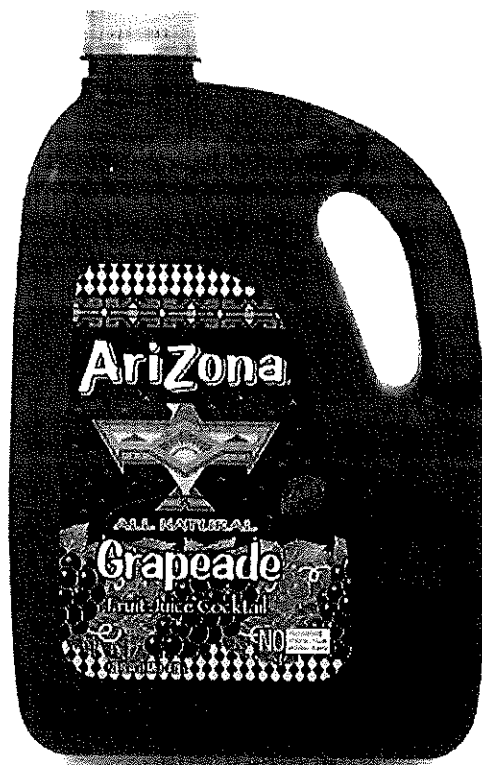
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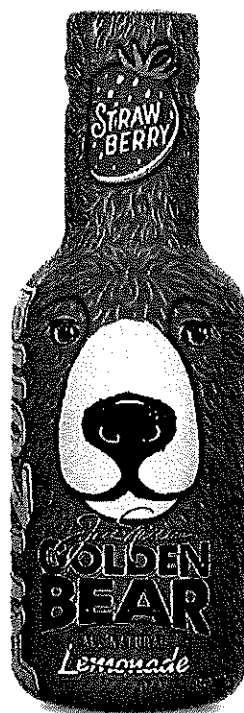
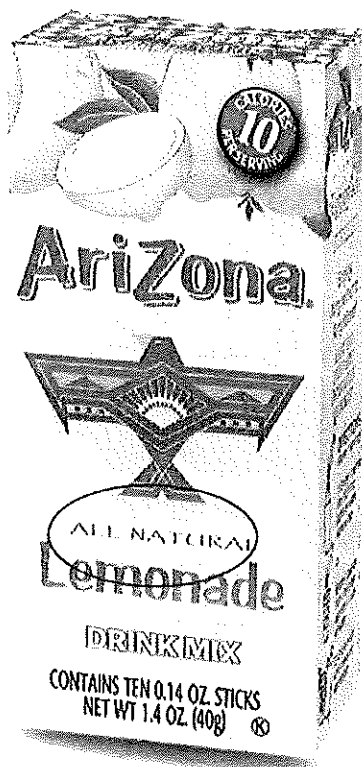
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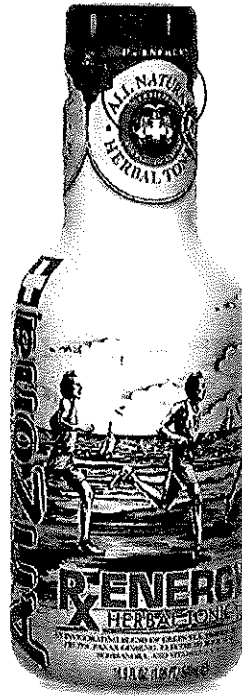


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2. Plaintiff brings this class action lawsuit on behalf of all purchasers of the Products within the United States, or alternatively, within the State of California, during the last four years.

3. Plaintiff brings this class action against Defendant, who is among the United States' leading producers of beverage products. Defendant has realized that, based on the public's concern about natural and healthy foods, there is a financial benefit to be derived in selling products claiming to be natural. Accordingly, Defendant labels its Products as "All Natural," even though the Products contain added coloring in violation of California and federal advertising laws.

4. Plaintiff seeks to secure injunctive relief and restitution for the Class against Defendant for false and misleading advertising in violation of California's Business & Professions Code section 17200, *et seq.*, Business & Professions Code section 17500, *et seq.*, and the Consumers Legal Remedies Act Civil Code section 1750, *et seq.* Defendant made and continues to make false and misleading statements in its advertising of the Products. Specifically, Defendant labels the Products as "All

1 Natural” (depicted in capital letters on the front label) and markets them as such, even  
2 though the Products contain coloring additives.

3 5. By letter dated January 8, 2021, Plaintiff advised Defendant of its false  
4 and misleading claims pursuant to California Civil Code Section 1782(a). Plaintiff  
5 has provided Defendant with notice of its violations of the CLRA pursuant to Civil  
6 Code section 1782(a).

### 7 PARTIES

8 6. Plaintiff is, and at all times relevant hereto was, a citizen of the United  
9 States. Plaintiff is a citizen of California. Plaintiff purchased the Kiwi Strawberry  
10 Fruit Juice Cocktail from a Walmart store in Burbank, California in 2020. Plaintiff  
11 paid approximately \$4 for the Product. In making her purchase, Plaintiff relied upon  
12 Defendant’s labeling and advertising claims, namely, the “All Natural” label clearly  
13 printed on the front of the Product. These claims were prepared and approved by  
14 Defendant and its agents and disseminated statewide and nationwide, to encourage  
15 consumers to purchase the Products. If Plaintiff had known that the Product was not  
16 completely natural, she would not have purchased the Product.

17 7. Hornell Brewing Co., Inc. is a corporation headquartered in Woodbury,  
18 New York. Hornell Brewing Co., Inc. maintains its principal business office at 60  
19 Crossways Park Drive W., Ste. 400, Woodbury, New York 11797. Hornell Brewing  
20 Co., Inc., directly and through its agents, has substantial contacts with and receives  
21 substantial benefits and income from and through the State of California. Hornell  
22 Brewing Co., Inc. is the owner, manufacturer, and distributor of the Products, and is  
23 the company that created and/or authorized the false, misleading, and deceptive  
24 packaging of the Products.

### 25 JURISDICTION AND VENUE

26 8. This Court has subject matter jurisdiction of this action pursuant to the  
27 Court’s general jurisdiction.  
28



1           9. This Court is the proper venue for this action because a substantial part of  
 2 the events, omissions, and acts giving rise to the claims herein occurred in Los  
 3 Angeles County; Plaintiff is a citizen of California who resides in Los Angeles  
 4 County; Defendant made the challenged false representations to Plaintiff in Los  
 5 Angeles County; Plaintiff purchased the Product in this District; and Plaintiff  
 6 consumed the Product in Los Angeles County. Moreover, Defendant receives  
 7 substantial compensation from sales in Los Angeles County, actively advertises and  
 8 sells Products in Los Angeles County, and Defendant made numerous  
 9 misrepresentations through its advertising and labeling of Products which had a  
 10 substantial effect in Los Angeles County.

11           10. Defendant is subject to personal jurisdiction in California based upon  
 12 sufficient minimum contacts which exist between Defendant and California.  
 13 Defendant is authorized to do and is doing business in California.

#### 14                                   **FACTUAL ALLEGATIONS**

15           11. Defendant labels and advertises its Products being "All Natural." In  
 16 reality, the Products cannot be labeled as "All Natural" because they contain added  
 17 coloring. The specific food coloring agents in the Products are "vegetable juice,"  
 18 "fruit and vegetable juices," "annatto," and "beta carotene."

19           12. Consumers are willing to pay more for all natural products because of the  
 20 association with a healthy and organic diet. According to Nielsen's 2015 Global  
 21 Health & Wellness Survey that polled over 30,000 people, 88% of Americans are  
 22 willing to pay more for healthier foods.<sup>1</sup> This sentiment is further evidenced by the  
 23  
 24  
 25

26  
 27 <sup>1</sup> See Global Health and Wellness Report 2015, NIELSON,  
 28 <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/Nielsen20Global20Health20and20Wellness20Report20-20January202015-1.pdf> (last visited February 16, 2021).

fact that global sales of health foods reached \$1 trillion in 2017, according to Euromonitor.<sup>2</sup>

13. By representing the Products to be “All Natural,” Defendant seeks to capitalize on consumers’ preference for food items with no artificial additives.

14. Defendant’s practice of capitalizing on consumers’ preferences for healthier products is deceptive. This deception continues today, as consumers continue to purchase the Products under the mistaken belief that they are all natural based on Defendant’s false, deceptive, and misleading label claims “All Natural.”

15. Plaintiff and other consumers of the Products made their purchase decisions in reliance upon Defendant’s advertised claims that that Products are “All Natural.”

16. By falsely labeling the Products as being “All Natural,” Defendant has profited from consumers’ preference for food products that are perceived to be healthier and made free from any added coloring.

#### A. Defendant’s “All Natural” Label Claim

17. The Food and Drug Administration (“FDA”) does not regard foods with added coloring as natural, no matter the source of the coloring agent. According to their guidelines, they “have considered ‘natural’ to mean that nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, the product that would not normally be expected to be there (56 FR 60421 at 60466).”<sup>3</sup>

18. On November 10, 2015, in response to citizen petitions and consumer requests, the FDA announced the establishment of a docket to receive information

<sup>2</sup> See Health and Wellness the Trillion Dollar Industry in 2017, EUROMONITOR, <https://blog.euromonitor.com/health-and-wellness-the-trillion-dollar-industry-in-2017-key-research-highlights/> (last visited February 16, 2021).

<sup>3</sup> Leslie Kux, *FDA Rulemaking Re Term Natural*, 12 November 2015, <https://www.federalregister.gov/documents/2015/11/12/2015-28779/use-of-the-term-natural-in-the-labeling-of-human-food-products-request-for-information-and-comments>. (Last visited February 16, 2021).

1 and comments on the use of the term “natural” in the labeling of human food products  
2 to determine whether a definition of “natural” should be established.

3 19. Among the 7,687 public comments received by the FDA, not one  
4 comment from the public stated that “natural” should be allowed in food labeling if  
5 color is added to a food; rather, hundreds of comments stated “natural” should only  
6 be used for foods which are free from added coloring. Some representative examples  
7 include:

8 a. “When I see the word ‘Natural’ on packaging, I expect the contents  
9 to have only ingredients as they are found in nature. No chemicals, no coloring, no  
10 flavoring, no GMO’s.” (Comment from Kristine Milochik. Posted 02/23/2016)

11 b. “I think the term ‘Natural’ should be banned from food labeling. It  
12 is too ambiguous! It should be removed from all descriptors, including: Natural  
13 Flavor, Natural colors, All Natural and so on. I think for the interest of transparency  
14 all food ingredients should be simply labeled. The consumer has the right to know  
15 what they are eating or drinking.” (Comment from Daniel Kinkelaar. Posted  
16 08/26/2016)

17 c. “I firmly believe that consumers should be made aware of what  
18 they are purchasing when shopping for food and too many times companies are  
19 fooling the public by using the word ‘Natural’ when in fact it is not. When I see the  
20 word Natural on a food product, I consider this to mean that it is free from all  
21 additives, GMOs, Preservatives, Drugs, or colors. It is in it’s natural state. I would  
22 like to see the FDA put more stringent requirements on companies who wish to use  
23 this term in their products.” (Comment from Artemis Hader. Posted on 02/18/2016)

24 d. “The term ‘Natural’ should only appear on foods that are organic  
25 without any preservatives or man-made chemicals. The food should be GMO-free and  
26 contain no added colors, flavors, or synthetic substances. If a food product fails to  
27 meet any of these requirements, then it should not be allowed to have the label  
28 ‘Natural’ on it.” (Comment from Sara Burr. Posted on 03/16/2016)

1 e. "Natural should indeed mean no preservatives, additives, GMO's  
2 and or flavor or color enhancers..." (Comment from Roy Collicutt. Posted on  
3 03/15/2016)

4 20. To date, the FDA has not announced its decision to further define or  
5 regulate the term "natural" in food labeling.

6 21. The "All Natural" label is prominently and conspicuously printed on the  
7 front of the Products. But the added coloring agents in the Products render the "All  
8 Natural" label claims false. The added coloring agents, regardless of their source, are  
9 not ingredients consumers would normally expect to be included products that are  
10 labeled as "All Natural."

11 22. There are market incentives for companies to label their products as  
12 "natural." According to a national representative survey, more than half of consumers  
13 look for products with a "natural" food label, often under "the false belief that they're  
14 produced without...artificial ingredients."<sup>4</sup> As stated *supra*, the FDA considers  
15 "natural" to be defined as a product that includes nothing artificial "including colors  
16 *regardless of source*" [emphasis added].<sup>5</sup> The process by which naturally-sourced  
17 food coloring is added to products alters their status and renders them as no longer  
18 "natural." Therefore, the reasonable consumer will pay a price premium for products  
19 with an "All Natural" label because they believe these products are safer, more  
20 nutritious, or otherwise have different attributes than products that do not have the  
21 label, all things being equal. Thus, these market forces push producers, like  
22 Defendant, to deceptively label their products as "All Natural" to give themselves a  
23 market advantage.

24 23. Reasonable consumers do not expect a product prominently labeled as  
25 "All Natural" to have added coloring. The Products' labels have the "capacity,

26  
27 <sup>4</sup> Andrea Rock, "Peeling Back the 'Natural' Food Label." *Consumer Reports*, 27  
28 January 2016. <https://www.consumerreports.org/food-safety/peeling-back-the-natural-food-label/> (Last visited February 16, 2021).

<sup>5</sup> See Leslie Kux, *supra* note 5.

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1 likelihood, or tendency to deceive or confuse the public” into believing that they are  
2 fully natural and are truthfully labeled. *Williams v. Gerber Prods. Co.*, 552 F.3d 934,  
3 938 (9th Cir. 2008) (citing *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002) and *Leoni*  
4 *v. State Bar*, 39 Cal. 3d 609, 626 (1985)) (The California Supreme Court has  
5 recognized “that [consumer protection] laws prohibit ‘not only advertising which is  
6 false, but also advertising which, although true, is either actually misleading or which  
7 has a capacity, likelihood or tendency to deceive or confuse the public.’”).

8 24. Reasonable consumers such as Plaintiff do not have specialized  
9 knowledge necessary to identify ingredients in the Products as being inconsistent with  
10 Defendant’s advertised claim of “being “All Natural.”

11 25. Defendant knows that consumers are willing to pay more for foods that  
12 are labeled “All Natural” because they perceive it to be a healthier alternative to  
13 similar products without any added coloring, and advertises the Products with the  
14 intention that consumers rely on the representation made on the front of the Products’  
15 packaging made in all capital letters with prominent bold font “All Natural.”

16 26. Plaintiff and other consumers purchased the Products due to their belief  
17 that the Products are safer, more nutritious, or otherwise have different attributes than  
18 do products that do not have the “All Natural” labels.

19 27. Plaintiff and the Class made their purchasing decisions in reliance upon  
20 Defendant’s advertised claims that that Products are “All Natural.”

21 28. Plaintiff and the Class reasonably and detrimentally relied upon the  
22 Products’ front labels indicating that the Products are “All Natural.”

23 29. Plaintiff and the Class would not have purchased the Products had they  
24 known that the Products contained ingredients that were added for coloring, thus  
25 rendering the Products no longer as being “All Natural.”

26 30. Defendant’s conduct threatens California consumers by using false,  
27 deceptive, and misleading labels. Defendant’s conduct also threatens other  
28



1 companies, large and small, who "play by the rules." Defendant's conduct stifles  
2 competition, has a negative impact on the marketplace, and reduces consumer choice.

3 31. There is no practical reason for the false or misleading labeling and  
4 advertising of the Products, other than to mislead consumers as to the actual  
5 ingredients of the Products being purchased by consumers while simultaneously  
6 providing Defendant with a financial windfall as a result of money saved from lower  
7 supply costs.

8 32. Plaintiff makes the allegations herein upon personal knowledge as to  
9 herself and her own acts and experiences, and as to all other matters, upon information  
10 and belief, including investigation conducted by her attorneys.

### 11 CLASS ALLEGATIONS

12 33. Plaintiff brings this action on her behalf and on behalf of all other persons  
13 similarly situated. The Class which Plaintiff seeks to represent comprises:

14 All persons who purchased the Products in the State of California, for  
15 personal consumption and not for resale during the time period of four  
16 years prior to the filing of the complaint through the present.

17 Said definition may be further defined or amended by additional pleadings,  
18 evidentiary hearings, a class certification hearing, and orders of this Court.

19 34. The class is so numerous and likely consists of hundreds of thousands of  
20 individuals, the joinder of whom is impracticable.

21 35. There is a well-defined community of interest in the questions of law and  
22 fact involved affecting the parties to be represented. The questions of law and fact  
23 common to the Class predominate over questions which may affect individual Class  
24 members. Common questions of law and fact include, but are not limited to, the  
25 following:

26 a. Whether Defendant's conduct constitutes an unfair method of  
27 competition, or unfair or deceptive act or practice, in violation of Civil Code section  
28 1750, *et seq.*;

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b. Whether Defendant used deceptive representations in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;

c. Whether Defendant represented the Products as having characteristics or qualities that they do not have in violation of Civil Code section 1750, *et seq.*;

d. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;

e. Whether Defendant's labeling and advertising of the Products are untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;

f. Whether Defendant knew or by the exercise of reasonable care should have known its labeling and advertising was and is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;

g. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;

h. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;

i. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;

j. Whether Plaintiff and the Class paid more money for the Products than they actually received; and

k. How much more money Plaintiff and the Class paid for the Products than they actually received.

36. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained competent and experienced counsel in class action and other complex litigation.

1           37. Plaintiff and the Class have suffered injury in fact and have lost money as  
2 a result of Defendant's false representations and material omissions. Plaintiff  
3 purchased the Product under the false belief that they were "All Natural." Plaintiff  
4 relied upon Defendant's packaging and would not have purchased the Products if she  
5 had known that the Product contained ingredients that were added for coloring.

6           38. A class action is superior to other available methods for fair and efficient  
7 adjudication of this controversy. The expense and burden of individual litigation  
8 would make it impracticable or impossible for the Class to prosecute their claims  
9 individually.

10           39. The trial and litigation of Plaintiff's claims are manageable. Individual  
11 litigation of the legal and factual issues raised by Defendant's conduct would increase  
12 delay and expense to all parties and the court system. The class action device presents  
13 far fewer management difficulties and provides the benefits of a single, uniform  
14 adjudication, economies of scale, and comprehensive supervision by a single court.

15           40. Defendant has acted on grounds generally applicable to the entire Class,  
16 thereby making final injunctive relief and/or corresponding declaratory relief  
17 appropriate with respect to the Class as a whole. The prosecution of separate actions  
18 by individual Class members would create the risk of inconsistent or varying  
19 adjudications with respect to individual Class members that would establish  
20 incompatible standards of conduct for Defendant.

21           41. Absent a class action, Defendant will likely retain the benefits of its  
22 wrongdoing. Because of the small size of the individual Class members' claims, few,  
23 if any, Class members could afford to seek legal redress for the wrongs complained  
24 of herein. Absent a representative action, the Class will continue to suffer losses and  
25 Defendant will be allowed to continue these violations of law and to retain the  
26 proceeds of its ill-gotten gains.

**COUNT ONE**

**Violation of California Consumers Legal Remedies Act,  
California Civil Code Section 1750, *et seq.***

42. Plaintiff repeats and realleges all allegations of the previous paragraphs, and incorporate the same as if set forth herein at length.

43. Plaintiff brings this cause of action pursuant to Civil Code section 1750, *et seq.*, the Consumers Legal Remedies Act ("CLRA"), on her own behalf and on behalf of all other persons similarly situated.

44. Plaintiff and the Class members are "consumers" within the meaning of California Civil Code Section 1761(d).

45. The sale of Defendant's products to Plaintiff's and Class members constitutes a "transaction" within the meaning of California Civil Code Section 1761(e).

46. Defendants products are "goods" within the meaning of California Civil Code Section 1761(a).

47. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive acts or practices" in connection with a sale of goods and prohibits "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have." California Civil Code Section 1770 (d)(5).

48. The CLRA also prohibits representing that the products are of "a particular standard, quality, or grade" when it is of another. California Civil Code Section 1770(a)(7).

49. The CLRA prohibits advertising goods with the intent not to sell them as advertised and representing the goods have been supplied in accordance with a previous representation when they have not. California Civil Code Section 1770(a)(9) and (a)(16).

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1           51. The practices described herein, specifically Defendant's packaging,  
2 advertising, and sale of the Products, were intended to result and did result in the sale  
3 of the Products to the consuming public and violated and continue to violate the  
4 CLRA by (1) using deceptive representations in connection with the Products,  
5 including representing them as having characteristics, benefits and qualities they do  
6 not have; (2) representing them to be of a particular quality and standard as "All  
7 Natural" while they were not "all natural" and contained added coloring; and (3)  
8 advertising and packaging the Products with intent not to sell them as advertised –  
9 specifically as being "All Natural."

10           52. Defendant fraudulently deceived Plaintiff and the Class by  
11 misrepresenting the Products as having characteristics which they do not have, e.g.,  
12 advertising the Products in such a way to represent them being "All Natural" when  
13 the Products contain coloring additives. In doing so, Defendant misrepresented and  
14 concealed material facts from Plaintiff and the Class. Said misrepresentations and  
15 concealment were done with the intention of deceiving Plaintiff and the Class and  
16 depriving them of their legal rights and money.

17           53. Defendant fraudulently deceived Plaintiff and the Class by labeling and  
18 advertising the Products with the intent not to sell them as advertised. Specifically,  
19 Defendant intentionally labeled and misrepresented the Products as being "All  
20 Natural," and failed to disclose the coloring agents in the Products. In doing so,  
21 Defendant intentionally misrepresented and concealed material facts from Plaintiff  
22 and the Class. Said misrepresentations and concealment were done with the intention  
23 of deceiving Plaintiff and the Class and depriving them of their legal rights and  
24 money.

25           54. Defendant knew or should have known, through the exercise of  
26 reasonable care, that the Products' labeling and advertising were misleading.

27           55. Defendant's actions as described herein were done with conscious  
28 disregard of Plaintiff's rights, and Defendant was wanton and malicious in its



1 concealment of the same.

2 56. Defendant's labeling and advertising of the Products were a material  
3 factor in Plaintiff's and the Class's decisions to purchase the Products. Based on  
4 Defendant's labeling and advertising of the Products, Plaintiff and the Class  
5 reasonably believed that they were purchasing products that were safer, more  
6 nutritious, or otherwise had different attributes than products that do not have the "All  
7 Natural" labels. Had they known the truth of the matter, Plaintiff and the Class would  
8 not have purchased the Products.

9 57. Plaintiff and the Class have suffered injury in fact and have lost money as  
10 a result of Defendant's unfair, unlawful, and fraudulent conduct. Specifically,  
11 Plaintiff paid for a beverage that was different from what she reasonably expected to  
12 receive when she decided to make her purchase. Plaintiff would not have purchased  
13 the Product had she known that the Products contained coloring agents that rendered  
14 the natural claims false.

15 58. Defendant's false and misleading labeling and advertising should be  
16 enjoined due to its false, misleading, and/or deceptive nature.

17 59. By letter dated January 8, 2021, Plaintiff advised Hornell Brewing Co.,  
18 Inc. of its false and misleading claims pursuant to California Civil Code Section  
19 1782(a).

20 60. Pursuant to Section 1780(a) of the Act, Plaintiff seeks injunctive relief in  
21 the form of an order enjoining the above-described wrongful acts and practices of  
22 Defendant, including, but not limited to, an order enjoining Defendant from  
23 continuing to make the label and advertising claims challenged herein. Plaintiff also  
24 requests an order awarding Plaintiff and the Class restitution of the money  
25 wrongfully acquired by Defendant. Plaintiff shall be irreparably harmed if such an  
26 order is not granted.

27 61. Plaintiff respectfully requests that the Court enjoin Defendant from  
28 continuing to employ the unlawful methods, acts, and practices alleged herein

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1 pursuant to § 1780(a)(2). In addition, Defendant should be compelled to provide  
 2 restitution and damages to consumers who paid for Products that are not what they  
 3 expected to receive due to Defendant's misrepresentations.

4 a. Plaintiff and members of the Class are entitled to equitable relief  
 5 as no adequate remedy at law exists.

6 (1) Injunctive relief is appropriate on behalf of Plaintiff and  
 7 members of the Class because Defendant continues to deceptively  
 8 label the Products as being "All Natural." Injunctive relief is  
 9 necessary to prevent Defendant from continuing to engage in the  
 10 unlawful conduct described herein and to prevent future harm—  
 11 none of which can be achieved through available legal remedies.  
 12 Further, injunctive relief, in the form of packaging or label  
 13 modifications, is necessary to dispel public misperception about  
 14 the Products that has resulted from years of Defendant's unfair,  
 15 fraudulent, and unlawful marketing efforts. Such modifications  
 16 would include, reformulating the Products so they do not contain  
 17 added coloring or removing the "All Natural" label claims. Such  
 18 relief is also not available through a legal remedy as monetary  
 19 damages may be awarded to remedy past harm (i.e., purchasers  
 20 who have been misled), while injunctive relief is necessary to  
 21 remedy future harm (i.e., prevent future purchasers from being  
 22 misled), under the current circumstances where the dollar amount  
 23 of future damages is not reasonably ascertainable at this time.  
 24 Plaintiff is, currently, unable to accurately quantify the damages  
 25 caused by Defendant's future harm (e.g., the dollar amount that  
 26 Plaintiff and Class members overpay pay for the falsely labeled  
 27 Products), rendering injunctive relief a necessary remedy.  
 28

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**COUNT TWO**

**Violation of California False Advertising Law,  
Business & Professions Code Section 17500, *et seq.***

62. Plaintiff repeats and reallege the allegations set forth in the preceding paragraphs, and incorporate the same as if set forth herein at length.

63. Plaintiff brings this cause of action pursuant to Business and Professions Code section 17500, *et seq.*, on her own behalf and on behalf of all other persons similarly situated.

64. California's False Advertising Law, California Business and Professions Code section 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

65. Defendant knowingly disseminated misleading claims regarding the Products in order to mislead the public about the ingredient makeup of the Products.

66. Defendant controlled the labeling, packaging, production and advertising of the Products. Defendant knew or should have known, through the exercise of reasonable care, that its representations and omissions about the ingredients of the Products were untrue, deceptive, and misleading.

67. Defendant's action of displaying misleading claims and omissions about the ingredients of the Products in prominent type face on each of the Products' front labels is likely to deceive the general public.

68. Defendant's actions in violation of Section 17500 were false and misleading such that the general public is and was likely to be deceived.

1           69. As a direct and proximate result of Defendant's conduct alleged herein in  
2 violation of the FAL, Plaintiff and members of the Class, pursuant to § 17535, are  
3 entitled to an order of this Court enjoining such future wrongful conduct on the part  
4 of Defendant, and requiring Defendant to disclose the true nature of its  
5 misrepresentations.

6           b. Plaintiff and members of the Class are entitled to equitable relief  
7 as no adequate remedy at law exists.

8           (1) The scope of permissible plaintiffs under the FAL is broader  
9 than the CLRA to include, for example, individuals or entities who  
10 purchased the Products for non-personal, non-family, and non-household  
11 purposes. Thus, Plaintiff and class members may be entitled to restitution  
12 under the FAL, while not entitled to damages under the CLRA.

13           (2) Injunctive relief is appropriate on behalf of Plaintiff and  
14 members of the Class because Defendant continues to deceptively label  
15 the Products and deliberately omit that the Products contain coloring  
16 additives that render the Products no longer as being "All Natural."  
17 Injunctive relief is necessary to prevent Defendant from continuing to  
18 engage in the unlawful conduct described herein and to prevent future  
19 harm—none of which can be achieved through available legal remedies.  
20 Further, injunctive relief, in the form of label modifications, is necessary  
21 to dispel public misperception about the Products that has resulted from  
22 years of Defendant's unfair, fraudulent, and unlawful marketing efforts.  
23 Such modifications would include, but are not limited to, reformulating  
24 the Products or removing the false "All Natural" labeling. Such relief is  
25 also not available through a legal remedy as monetary damages may be  
26 awarded to remedy past harm (i.e., purchasers who have been misled),  
27 while injunctive relief is necessary to remedy future harm (i.e., prevent  
28 future purchasers from being misled), under the current circumstances

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1 where the dollar amount of future damages is not reasonably  
2 ascertainable at this time. Plaintiff is, currently, unable to accurately  
3 quantify the damages caused by Defendant's future harm (e.g., the dollar  
4 amount that Plaintiff and Class members overpay for the falsely labeled  
5 Products), rendering injunctive relief a necessary remedy.

6 70. Plaintiff and the Class have suffered injury in fact and have lost money as  
7 a result of Defendant's false representations. Plaintiff purchased the Products in  
8 reliance upon the claims and omissions by Defendant that the Products are "All  
9 Natural," as represented by Defendant's labeling and advertising. Plaintiff would not  
10 have purchased the Products if she had known that the claims and advertising as  
11 described herein were false and misleading.

12 71. Plaintiff and members of the Class also request an order requiring  
13 Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies  
14 wrongfully acquired by Defendant by means of such acts of false advertising, plus  
15 interests and attorneys' fees.

### 16 **COUNT THREE**

#### 17 **Violation of California Unfair Competition Law**

#### 18 **Business and Professions Code § 17200 *et seq.***

19 72. Plaintiff repeats and realleges the allegations set forth above, and  
20 incorporate the same as if set forth herein at length.

21 73. Plaintiff brings this cause of action pursuant to Business and Professions  
22 Code § 17200, *et seq.*, on her own behalf and on behalf of all other persons similarly  
23 situated.

24 74. The UCL prohibits "any unlawful, unfair... or fraudulent business act or  
25 practice." Cal. Bus. & Prof. Code § 17200.

#### 26 **A. "Unfair" Prong**

27 75. Under California's Unfair Competition Law, Cal. Bus. & Prof. Code §  
28 17200, *et seq.*, a challenged activity is "unfair" when "any injury it causes outweighs



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1 any benefits provided to consumers and the injury is one that the consumers  
2 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern*  
3 *California*, 142 Cal. App. 4th 1394, 1403 (2006).

4 76. Defendant’s advertising and labeling of the Products as being “All  
5 Natural,” when the Products contain coloring additives, is false, misleading, and  
6 deceptive.

7 77. Defendant’s false advertising of the Products causes injuries to  
8 consumers, who do not receive the promised benefits from the Products in proportion  
9 to their reasonable expectations.

10 78. Through false, misleading, and deceptive labeling of the Products,  
11 Defendant seeks to take advantage of consumers’ desire for “All Natural” products,  
12 while reaping the financial benefits of manufacturing lower quality Products.

13 79. When Defendant labels the Products as being “All Natural,” it provides  
14 false promises to consumers and stifles competition in the marketplace.

15 80. Consumers cannot avoid any of the injuries caused by Defendant’s false  
16 and misleading advertising of the Products.

17 81. Some courts conduct a balancing test to decide if a challenged activity  
18 amounts to unfair conduct under California Business and Professions Code Section  
19 17200. The courts “weigh the utility of the Defendant’s conduct against the gravity  
20 of the harm alleged to the victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F. 3d 1152,  
21 1169 (9th Cir. 2012).

22 82. Defendant’s material omissions result in financial harm to consumers.  
23 Thus, the utility of Defendant’s conduct is vastly outweighed by the gravity of its  
24 harm.

25 83. Some courts require the “unfairness must be tethered to some legislative  
26 declared policy or proof of some actual or threatened impact on competition.” *Lozano*  
27 *v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

28 84. Defendant’s advertising of the Products, as alleged in the preceding

1 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair  
2 conduct.

3 85. Defendant knew or should have known of its unfair conduct.

4 86. As alleged in the preceding paragraphs, the material misrepresentations  
5 by Defendant detailed above constitute an unfair business practice within the meaning  
6 of California Business & Professions Code § 17200.

7 87. There were reasonably available alternatives to further Defendant's  
8 legitimate business interests other than the conduct described herein. Defendant could  
9 have marketed the Products without making any false statements about the Products'  
10 ingredients.

11 88. All of the conduct alleged herein occurs and continues to occur in  
12 Defendant's business. Defendant's wrongful conduct is part of a pattern or  
13 generalized course of conduct repeated on thousands of occasions daily.

14 89. Pursuant to Business & Professions Code Section 17203, Plaintiff and the  
15 Class seek an order of this Court enjoining Defendant from continuing to engage, use,  
16 or employ its practice of false and deceptive advertising of the Products. Likewise,  
17 Plaintiff and the Class seek an order requiring Defendant to disclose such  
18 misrepresentations, and additionally request an order awarding Plaintiff restitution of  
19 the money wrongfully acquired by Defendant by means of responsibility attached to  
20 Defendant's failure to disclose the existence and significance of said  
21 misrepresentations in an amount to be determined at trial.

22 90. Plaintiff and the Class have suffered injury in fact and have lost money as  
23 a result of Defendant's unfair conduct. Plaintiff paid an unwarranted premium for the  
24 Product. Plaintiff would not have purchased the Product if she had known that the  
25 Product's "All Natural" label claims were false.

#### 26 **B. "Fraudulent" Prong**

27 91. California Business and Professions Code § 17200, *et seq.* considers  
28 conduct fraudulent and prohibits said conduct if it is likely to deceive members of the

1 public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

2 92. Defendant's advertising of the Products as being "All Natural," without  
3 referring to their actual characterization, is likely to deceive members of the public  
4 into believing that the Products are natural.

5 93. Defendant's advertising of the Products, as alleged in the preceding  
6 paragraphs, is false, deceptive, misleading, and unreasonable and constitutes  
7 fraudulent conduct.

8 94. Defendant knew or should have known of its fraudulent conduct.

9 95. As alleged in the preceding paragraphs, the material misrepresentations  
10 and omissions by Defendant detailed above constitute a fraudulent business practice  
11 in violation of California Business & Professions Code Section 17200.

12 96. There were reasonably available alternatives to further Defendant's  
13 legitimate business interests, other than the conduct described herein. Defendant  
14 could have refrained from labeling the Products as being "All Natural."

15 97. All of the conduct alleged herein occurs and continues to occur in  
16 Defendant's business. Defendant's wrongful conduct is part of a pattern or  
17 generalized course of conduct repeated on thousands of occasions daily.

18 98. Pursuant to Business & Professions Code Section 17203, Plaintiff and the  
19 Class seek an order of this Court enjoining Defendant from continuing to engage, use,  
20 or employ its practice of false and deceptive advertising of the Products. Likewise,  
21 Plaintiff and the Class seek an order requiring Defendant to disclose such  
22 misrepresentations, and additionally request an order awarding Plaintiff restitution of  
23 the money wrongfully acquired by Defendant by means of responsibility attached to  
24 Defendant's failure to disclose the existence and significance of said  
25 misrepresentations in an amount to be determined at trial.

26 99. Plaintiff and the Class have suffered injury in fact and have lost money as  
27 a result of Defendant's fraudulent conduct. Plaintiff and the Class paid an  
28 unwarranted premium for the Products. Plaintiff and the Class would not have

1 purchased the Products if they had known that the Products were not "All Natural."

2 **C. "Unlawful" Prong**

3 100. California Business and Professions Code Section 17200, *et seq.*,  
4 identifies violations of other laws as "unlawful practices that the unfair competition  
5 law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F.  
6 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

7 101. Defendant's advertising of the Products, as alleged in the preceding  
8 paragraphs, violates California Civil Code Section 1750, *et seq.*, California Business  
9 and Professions Code Section 17500, *et seq.*

10 102. Defendant's packaging, labeling, and advertising of the Products, as  
11 alleged in the preceding paragraphs, are false, deceptive, misleading, and  
12 unreasonable, and constitute unlawful conduct.

13 103. Defendant knew or should have known of its unlawful conduct.

14 104. As alleged in the preceding paragraphs, the misrepresentations by  
15 Defendant detailed above constitute an unlawful business practice within the meaning  
16 of California Business and Professions Code Section 17200.

17 105. There were reasonably available alternatives to further Defendant's  
18 legitimate business interests other than the conduct described herein. Defendant could  
19 have refrained from omitting the true characteristics of the Products.

20 106. All of the conduct alleged herein occurred and continues to occur in  
21 Defendant's business. Defendant's wrongful conduct is part of a pattern or  
22 generalized course of conduct repeated on thousands of occasions daily.

23 107. Pursuant to Business and Professions Code Section 17203, Plaintiff and  
24 the Class seek an order of this Court enjoining Defendant from continuing to engage,  
25 use, or employ its practice of false and deceptive advertising of the Products.  
26 Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such  
27 misrepresentations, and additionally request an order awarding Plaintiff restitution of  
28 the money wrongfully acquired by Defendant by means of responsibility attached to

1 Defendant's failure to disclose the existence and significance of said  
2 misrepresentations in an amount to be determined at trial.

3 108. Plaintiff and the Class have suffered injury in fact and have lost money as  
4 a result of Defendant's unlawful conduct. Plaintiff paid an unwarranted premium for  
5 the Product. Plaintiff would not have purchased the Product if she had known that  
6 Defendant purposely deceived consumers into believing that the Products were "All  
7 Natural."

8 109. As a result of the business acts and practices described above, Plaintiff  
9 and members of the Class, pursuant to § 17203, are entitled to an order enjoining  
10 such future wrongful conduct on the part of Defendant and such other orders and  
11 judgments that may be necessary to disgorge Defendant's ill-gotten gains and to  
12 restore to any person in interest any money paid for the Products as a result of the  
13 wrongful conduct of Defendant.

14 c. Plaintiff and members of the Class are entitled to equitable relief  
15 as no adequate remedy at law exists.

16 (1) The applicable limitations period is four years for claims  
17 brought under the UCL, which is one year longer than the  
18 applicable statute of limitations under the FAL and CLRA. Thus,  
19 class members who purchased the Products between 3 and 4  
20 years prior to the filing of the complaint will be barred from the  
21 Class if equitable relief were not granted under the UCL.

22 (2) The scope of actionable misconduct under the unfair prong  
23 of the UCL is broader than the other causes of action asserted  
24 herein to include, for example, the overall false and misleading  
25 marketing scheme of labeling the Products as being "All  
26 Natural." Thus, Plaintiff and class members may be entitled to  
27 restitution under the UCL, while not entitled to damages under  
28 other causes of action asserted herein (e.g., the FAL requires



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1 actual or constructive knowledge of the falsity; the CLRA is  
2 limited to certain types of plaintiffs (an individual who seeks or  
3 acquires, by purchase or lease, any goods or services for  
4 personal, family, or household purposes) and other statutorily  
5 enumerated conduct).

6 (3) Injunctive relief is appropriate on behalf of Plaintiff and  
7 members of the Class because Defendant continues to  
8 deceptively label the Products. Injunctive relief is necessary to  
9 prevent Defendant from continuing to engage in this unfair,  
10 fraudulent, and/or unlawful conduct described herein and to  
11 prevent future harm—none of which can be achieved through  
12 available legal remedies. Further, injunctive relief, in the form of  
13 packaging or label modifications, is necessary to dispel public  
14 misperception about the Products that has resulted from years of  
15 Defendant's unlawful marketing efforts. Such modifications  
16 could include, but are not limited to, reformulating the Products  
17 so they do not contain added coloring, or remove the "All  
18 Natural" label claims. Such relief is not available through a legal  
19 remedy, as monetary damages may be awarded to remedy past  
20 harm (i.e., purchasers who have been misled), while injunctive  
21 relief is necessary to remedy future harm (i.e., prevent future  
22 purchasers from being misled), under the current circumstances  
23 where the dollar amount of future damages is not reasonably  
24 ascertainable at this time. Plaintiff is, currently, unable to  
25 accurately quantify the damages caused by Defendant's future  
26 harm (e.g., the dollar amount that Plaintiff and Class members  
27 will pay for the falsely labeled Products), rendering injunctive  
28 relief a necessary remedy.

1 110. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further  
 2 entitled to pre-judgment interest as a direct and proximate result of Defendant's  
 3 unfair and fraudulent business conduct. The amount on which interest is to be  
 4 calculated is a sum certain and capable of calculation, and Plaintiff and the Class are  
 5 entitled to interest in an amount according to proof.

#### 6 COUNT FOUR

#### 7 **Unjust Enrichment**

8 111. Plaintiff repeats and realleges the allegations set forth above, and  
 9 incorporates the same as if set forth herein at length.

10 112. By means of Defendant's wrongful conduct alleged herein, Defendant  
 11 knowingly sold the Products to Plaintiff and members of the Class in a manner that  
 12 was unfair, unconscionable, and oppressive.

13 113. Defendant knowingly received and retained wrongful benefits and funds  
 14 from Plaintiff and members of the Class. In so doing, Defendant acted with conscious  
 15 disregard for the rights of Plaintiff and members of the Class.

16 114. As a result of Defendant's wrongful conduct as alleged herein, Defendant  
 17 has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and  
 18 members of the Class.

19 115. Defendant's unjust enrichment is traceable to, and resulted directly and  
 20 proximately from, the conduct alleged herein.

21 116. Under the common law doctrine of unjust enrichment, it is inequitable for  
 22 Defendant to be permitted to retain the benefits it received, without justification, from  
 23 selling the Products to Plaintiff and members of the Class in an unfair,  
 24 unconscionable, and oppressive manner. Defendant's retention of such funds under  
 25 such circumstances making it inequitable to do so constitutes unjust enrichment.

26 117. The financial benefits derived by Defendant rightfully belong to Plaintiff  
 27 and members of the Class. Defendant should be compelled to return in a common  
 28 fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable

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1 proceeds received by Defendant.

2 118. Plaintiff and members of the Class have no adequate remedy at law.

3 **COUNT FIVE**

4 **Breach of Express Warranty**

5 119. Plaintiff repeats and realleges all the allegations of the previous  
6 paragraphs and incorporate the same as if set forth herein at length.

7 120. Defendant expressly warrants that the Products are "All Natural," as set  
8 forth above. Defendant's claims constitute an affirmation of fact, promise, and/or  
9 description of the goods that became part of the basis of the bargain and created an  
10 express warranty that the goods would conform to the stated promise. Plaintiff placed  
11 importance on Defendant's claims.

12 121. All conditions precedent to Defendant's liability under this contract have  
13 been performed by Plaintiff and the Class.

14 122. Defendant breached the terms of the contract, including the express  
15 warranties, with Plaintiff and the Class by not providing Products that conform to the  
16 advertising and label claims.

17 123. As a result of Defendant's breach of contract, Plaintiff and the Class have  
18 been damaged in an amount to be determined at trial.

19  
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
22 situated, pray for judgment and relief on all Causes of Action as follows:

- 23 A. This action be certified as a class action;  
24 B. Plaintiff be appointed as the representative of the Class;  
25 C. Defendant's conduct be declared unlawful;  
26 D. An order enjoining Defendant from continuing to label and  
27 advertise the Products as challenged herein;  
28 E. An order for Defendant to issue a corrective advertising campaign;

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- 1 F. For an award of restitutionary damages in an amount according to  
2 proof at trial;  
3 G. An order of disgorgement of profits for Defendant's unjust  
4 enrichment obtained as a result of its unlawful, unfair, and  
5 fraudulent practices;  
6 H. For pre-judgment interest from the date of filing this suit;  
7 I. Punitive damages;  
8 J. Reasonable attorneys' fees;  
9 K. Costs of this suit; and  
10 L. Such other and further relief as the Court may deem necessary or  
11 appropriate.

12 **JURY TRIAL DEMANDED**

13 Plaintiff demands a jury trial on all triable issues.

14  
15 DATED: May 28, 2021



16  
17 Ryan J. Clarkson, Esq.  
18 Shireen Clarkson, Esq.  
19 Yana Hart, Esq.  
Celine Cohan, Esq.

20 *Attorneys for Plaintiff*  
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