

GOOD GUSTAFSON AUMAIS LLP

J. Ryan Gustafson (Cal. Bar No. 220802)
2330 Westwood Blvd., No. 103
Los Angeles, CA 90064
Tel: (310) 274-4663
jrg@ggallp.com

SHENAQ PC

Amir Shenaq, Esq.*
3500 Lenox Road, Ste. 1500
Atlanta GA 30326
Tel: (888) 909-9993
amir@shenaqpc.com

THE KEETON FIRM LLC

Steffan T. Keeton, Esq.*
100 S Commons, Ste 102
Pittsburgh PA 15212
Tel: (888) 412-5291
stkeeton@keetonfirm.com

**Pro hac vice forthcoming*

Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

Infinque Jamison, individually, and
on behalf of those similarly situated,

Plaintiff,

v.

Arizona Beverages USA LLC and
Hornell Brewing Co., Inc.,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiff Infinque Jamison brings this action on behalf of herself and all others similarly situated against Defendants Arizona Beverages USA LLC and Hornell Brewing Co., Inc. (collectively “Arizona” or “Defendants”). Plaintiff makes the following allegations pursuant to the investigation of counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This case arises from Defendants’ deceptive and misleading practices with respect to its marketing and sale of their fruit snack products (the “Products”).¹

2. Defendants manufacture, sell, and distribute the Products using a marketing and advertising campaign focused on claims that appeal to health-conscious consumers – specifically the lack of preservatives in the Products.

3. Defendants engage in a deceptive marketing campaign to convince consumers that the Products contain no preservatives in the marketing² and on the labeling³ of the Products.

4. Notably, the Product prominently states, “NO PRESERVATIVES” on the front and back:

¹ At the time of this filing, the following Arizona products are included in this definition: Mixed Fruit Fruit Snacks. This definition is not exhaustive, and shall include all of Defendants’ products that are similarly deceptively marketed.

² Variants of the words “marketing,” and “market” refer to all forms of advertising in all forms of media, including but not limited to print advertisements, television, and radio commercials, Products’ labels, viral marketing, incentives, and websites.

³ The term “labeling” encompasses other descriptive terms, including various forms of the words: labels, labeling, packages, and packaging.



5. The deception lies in the fact that the Products contain preservatives.

6. Thus, although Defendants market the Products as being preservative-free, they contain preservatives.

7. Reasonable consumers purchased the Products believing, among other things, that they were accurately represented. Specifically, reasonable consumers believed that the Products were free of preservatives. Reasonable consumers would not have purchased the Products if they had known about the misrepresentations and omissions, or would have purchased them on different terms.

8. Defendants violated the trust of Plaintiff and Class Members because the Products are not the preservative-free snack that Defendants' marketing and labeling represents.

9. Relying on Defendants' representations, consumers that seek preservative-free snacks only later realize that their purchase of Defendants' Products was a fruitless endeavor.

- 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

9

11
12
13
14
15

16
17
18
19
20
21
22
23
24

25
26
27
28

DIVISIONAL ASSIGNMENT

14. Pursuant to Civil Local Rule 3-2(c-d), a substantial part of the events giving rise to the claims arose in Alameda County, and this action should be assigned to the Oakland Division.

PARTIES

15. Plaintiff Infynque Jamison is a citizen of California.

- a. Prior to her purchase, Ms. Jamison saw and relied on Defendants' marketing and labeling representing that the Products contained no preservatives.
- b. Ms. Jamison wished to purchase the fruit snacks for personal consumption. When Ms. Jamison saw Defendants' misrepresentations prior to and at the time of purchase, she relied on Defendants' prominent representations and claims about the Products. Specifically, that it contained no preservatives.
- c. Ms. Jamison relied on the Defendants' representations, including but not limited to, that the Products contain "NO PRESERVATIVES."
- d. Ms. Jamison understood these representations to mean that the Products were preservative-free. Had Ms. Jamison known the truth – that the Products contained preservatives – Ms. Jamison would not have purchased the Products at a premium price. If Defendants removed preservatives, or the Products were no longer deceptively labeled, Ms. Jamison would purchase the Products again in the future. Ms. Jamison brings the claims below seeking damages, actual and statutory, as well as injunctive relief.

1 e. Ms. Jamison has purchased the Products on multiple occasions. Ms.
2 Jamison's most recent purchase of the Products occurred in December
3 2022, when she purchased the Product from a Lucky Supermarket
4 located in Hayward, CA.

5
6 16. Defendant Arizona Beverages USA LLC is a New York company with its
7 principal place of business in Woodbury, NY.

8 17. Defendant Hornell Brewing, Co., Inc. is a New York corporation with its
9 principal place of business in Woodbury, NY.

- 10 a. Defendant Hornell Brewing owns Defendant Arizona Beverages USA.
11
12 b. The marketing and labeling for the Products that Plaintiff and Class
13 Members relied upon in making their decisions to purchase the Products
14 was conceived, designed, prepared and/or approved by the Defendants
15 and was disseminated by Defendants and their agents through labeling,
16 marketing, and advertising containing the misrepresentations from
17 their New York headquarters.
18
19 c. In committing the wrongful acts alleged herein, Defendants, in
20 connection with their subsidiaries, affiliates, and/or other related
21 entities and their employees, planned, participated in and furthered a
22 common scheme to induce members of the public to purchase the
23 Products by means of false, misleading, deceptive and fraudulent
24 representations, and Defendants participated in the making of such
25 representations in that they disseminated those misrepresentations or
26 caused them to be disseminated.
27
28

1 18. Plaintiff reserves the right to amend this Complaint to add different or
2 additional defendants, including without limitation any officer, director, employee,
3 supplier, or distributor of Defendants who have knowingly and willfully aided,
4 abetted, or conspired in the false and deceptive conduct alleged herein.
5

6
7 **SUBSTANTIVE ALLEGATIONS**

8 **A. Defendants deceive consumers by misrepresenting that the**
9 **Products are preservative-free.**

10 19. Consumers increasingly and consciously seek out healthy foods and
11 snacks— placing value on healthy fruit snacks that are preservative-free. Consumers
12 seek these types of snacks for various reasons, including perceived benefits of
13 avoiding disease, and attaining health and wellness for themselves and their children
14 and families.
15

16 20. As a result, consumers are willing to pay, and have paid, a premium for
17 products that are preservative-free over products that contain preservatives.

18 21. Companies such as the Defendants capitalize on the consumer's demand
19 for preservative-free snacks and generate increased unit sales, revenue, and profit by
20 making preservative-free representations.

21 22. Further, consumers rely on label representations and information in
22 making purchasing decisions.
23

24 23. Knowing this, Defendants prominently feature preservative-free
25 statements throughout its packaging.

26 24. Notably, the Product's principal display panel prominently states, "NO
27 PRESERVATIVES."
28



25. The back of the Product additionally states, “NO PRESERVATIVES”



26. This leads consumers to believe that the Product lacks preservatives.

27. Based on the representations that appear in the marketing and on the packaging of the Products, Plaintiff reasonably believed that the Products were preservative-free.

28. However, the Product contains Citric Acid, a preservative:

INGREDIENTS ▲

FRUIT JUICE AND PUREES FROM CONCENTRATE (PEAR, MANGO, WATERMELON, STRAWBERRY, PINEAPPLE, RED GRAPE, ORANGE), GLUCOSE SYRUP, SUGAR, MODIFIED FOOD STARCH (CORN), GELATIN, CITRIC ACID, NATURAL FLAVOR, DEXTROSE, FRUIT & VEGETABLE JUICE FOR COLOR, COLOR (PAPRIKA OREORESIN); ASCORBIC ACID (VITAMIN C), CARNAUBA WAX.

B. Citric Acid Acts as a Preservative in the Products.

29. The FDA classifies and identifies citric acid as a preservative in its Overview of Food Ingredients, Additives, and Colors, on the FDA's website and provides examples of uses of preservatives like citric acid, including, in beverages.⁴

30. Citric acid's classification as a preservative is further confirmed by a Warning Letter sent by the FDA to the manufacturer of Chiquita brand "Pineapple Bites with Coconut" and "Pineapple Bites," in which the FDA proclaimed the "Pineapple Bites" and "Pineapple Bites with Coconut" products are further misbranded within the meaning of Section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservative ascorbic acid and citric acid but their labels

⁴ See FDA website, <https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm094211.htm>.

1 fail to declare these preservatives with a description of their functions. 21 CFR
2 101.22.”⁵

3 31. Citric acid acts as a preservative in the Product regardless of the
4 subjective purpose or intent for why Defendant added citric acid to the Product,
5 including, as a flavoring agent.

6 32. Even if citric acid can be used as a flavoring agent in the Product, a
7 greater amount of citric acid is needed to act as a flavoring agent than to preserve the
8 Product because citric acid acts as a preservative even if very low levels are contained
9 in the Product.⁶

10 33. The quantity of citric acid therefore needed to affect the flavor of the
11 Product is more than sufficient to function as a preservative. Accordingly,
12 Defendant’s purported intent to use citric acid for flavoring has no bearing on the
13 actual function of citric acid as a preservative.

14 34. Citric acid functions as a preservative by serving as an acidulant and as
15 an indirect antioxidant, by infiltrating and then weakening or killing microorganisms
16 through direct antimicrobial effect lowering their pH-level and thereby combatting
17 microorganisms, and through sequestration. Citric acid serves these functions
18 regardless of whether they are also being used as flavorants.⁷

19
20
21
22
23 ⁵ See Letter to Chiquita Brands Int’l, Inc. and Fresh Express, Inc., Archived FDA Warning Letters
24 (2005-2012),
25 <https://web.archive.org/web/20211128074142/https://www.fdalabelcompliance.com/letters/ucm228663>.

26 ⁶ See Doores, S., Organic acids. In: Davidson, P.M., Branen, A.L. (Eds.), *Antimicrobials in Foods*.
27 Marcel Dekker, Inc., New York, pp. 95-136.
28 <http://base.dnsgb.com.ua/files/book/Agriculture/Foods/Antimicrobials-in-Food.pdf>.

⁷ See Deman, John M. “Acids as food additives serve a dual purpose, as acidulants and as preservatives.” *Principles of food chemistry*. AVI Publishing Co., Inc., 1999, p. 438.

35. Citric acid still acts as a preservative even if it was intended to be used for another purpose. Food and beverage manufacturers, like Defendant, seek to provide consumers with products that are palatable within a given shelf life. To help ensure this, manufacturers impose many hurdles to degradation when formulating a product. Therefore, if an ingredient has a preservative effect, like citric acid, it is considered a preservative because it acts as a hurdle to food degradation regardless of whether it was added to the Product for other reasons.⁸

C. Defendants perpetuate this deception in their advertising and marketing.

36. Defendants' deceptions are not limited to the packaging. They further the deception through marketing and advertising.

37. For example, Defendants' website reinforces the preservative-free characteristics of the Product in the Product's description:

DESCRIPTION



From your favorite beverage to your next healthier snack time staple. AriZona Fruit Snacks gives you 100% real fruit, packed with Vitamin C and only 90 calories per serving in the perfect little package. Enjoy Fruit Punch, Mucho Mango, Grapeade, Orangeade and Watermelon in this bite-size, fat free, gluten free, preservative free and 100% guilt free treat!

38. Instead, the Products contain preservatives.

⁸ See Biesta-Peters, E., et al. *Comparing Nonsynergistic Gamma Models with Interaction Models To Predict Growth Of Emetic Bacillus Cereus When Using Combinations Of Ph And Individual Undissociated Acids As Growth-Limiting Factors*, APPLIED AND ENVIRONMENTAL MICROBIOLOGY, AMERICAN SOCIETY FOR MICROBIOLOGY, (2010), <https://aem.asm.org/content/aem/76/17/5791.full.pdf>.

1 39. Defendants target their deceptions to consumers demanding health-
2 focused products.

3 40. Through targeted marketing and advertising, Defendants perpetuate
4 the misrepresentation that their Products contain “no preservatives.”

5 41. As a result of their unlawful, unfair, and fraudulent advertising and
6 marketing practices, Defendants have made millions at the expense of the public
7 health and trust, and continue to make millions through these unfair, unlawful and
8 fraudulent advertising and marketing practices.

9
10 **D. The Products are misbranded.**

11 42. Under FDCA section 403, a food is “misbranded” if “its labeling is false
12 or misleading in any particular.” *See* 21 U.S.C. §§ 343(a).

13 43. The presence of preservatives in the Products has a material bearing on
14 price and consumer acceptance.

15 44. Defendants’ Products contain preservatives.

16 45. Because the Defendants fail to reveal the basic nature and
17 characterizing properties of the Products (specifically, the presence of preservatives),
18 Defendants’ Products are not only sold with misleading labeling but also misbranded
19 under Sections 403(a) of the Food Drug & Cosmetic Act (“FDCA”), 21 U.S.C. §§
20 343(a), and cannot be legally manufactured, advertised, distributed, or sold in the
21 U.S. as it is currently labeled. *See* 21 U.S.C. § 331.

22 46. Moreover, California law forbids the misbranding of food in language
23 largely identical to that found in the FDCA.

24 47. The Products are misbranded under California’s Sherman Law, Cal.
25 Health & Safety Code §§ 109875-111915. The Sherman Law expressly incorporates
26
27
28

1 the food labeling requirements set forth in the FDCA, *see* Cal. Health & Safety Code §
 2 110100(a), and provides that any food is misbranded if its nutritional labeling does
 3 not conform to FDCA requirements. *See id.* § 110665; *see also id.* § 110670.

4 48. The Sherman Law further provides that a product is misbranded if its
 5 labeling is “false or misleading.” *Id.* § 110660. It is a violation of the Sherman Law to
 6 advertise any misbranded food, *id.* § 110398; to manufacture, sell, deliver, hold, or
 7 offer for sale any food that is misbranded, *id.* § 110760; to misbrand any food, *id.* §
 8 110765; or to receive in commerce any food that is misbranded or deliver or proffer it
 9 for delivery, *id.* § 110770.

10 49. By misrepresenting the basic nature and characterizing properties of the
 11 Products, Defendants violate these federal and state regulations and mislead Plaintiff
 12 and consumers alike.

13 **E. Defendants Deceive Consumers for Financial Gain.**

14 50. By representing the Product has “No Preservatives,” Defendant seeks to
 15 capitalize on consumers’ preference for less processed products with no preservatives.
 16 Indeed, “foods bearing ‘free-from’ claims are increasingly relevant to Americans, as
 17 they perceive the products as closely tied to health...84 percent of American free-from
 18 consumers buy free-from foods because they are seeking out more natural or less
 19 processed foods. In fact, 43 percent of consumers agree that free-from foods are
 20 healthier than foods without a free-from claim, while another three in five believe the
 21 fewer ingredients a product has, the healthier it is (59 percent). Among the top claims
 22
 23
 24
 25
 26
 27
 28

1 free-from consumers deem most important are trans-fat-free (78 percent) and
 2 preservative-free (71 percent).”⁹

3 51. Consumers are also willing to pay more for the Product with “no
 4 preservatives” because of the perceived higher quality, health and safety benefits
 5 associated with preservative-free foods. According to Nielsen’s 2015 Global Health &
 6 Wellness Survey that polled over 30,000 people online, 80 percent of Americans are
 7 willing to pay more for healthier foods.¹⁰ This, coupled with the fact that global sales
 8 of healthy food products reached \$1 trillion in 2017, according to Euromonitor, means
 9 consumers are eager and willing to pay more for food advertised and labeled as
 10 having “No Preservatives” like the Product.¹¹

11 52. Defendants’ practice of capitalizing on consumers’ preferences for
 12 healthier products is false and deceptive. This deception continues today, as
 13 consumers continue to purchase the Product under the mistaken belief that it is
 14 preservative-free based on Defendants’ false, deceptive, and misleading labeling and
 15 advertising of the Product as having “No Preservatives.”

16 53. Defendants’ conduct threatens consumers by using intentionally
 17 deceptive and misleading labels. Defendants’ conduct also threatens other companies,
 18

19
 20
 21
 22 ⁹ See, *Free-From Food Trends - US - May 2015*, Mintel: World’s Leading Market Intelligence
 23 Agency, [http://www.mintel.com/press-centre/food-and-drink/84-of-americans-buy-free-
 fromfoods-because-they-believe-them-to-be-more-natural-or-less-processed](http://www.mintel.com/press-centre/food-and-drink/84-of-americans-buy-free-fromfoods-because-they-believe-them-to-be-more-natural-or-less-processed).

24 ¹⁰ See *We Are What We Eat: Healthy Eating Trends Around the World*, Nielson (Jan. 2015),
 25 [https://web.archive.org/web/20150421053626/https://www.nielsen.com/content/dam/nielsen/global/
 26 eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-
 %20January%202015.pdf](https://web.archive.org/web/20150421053626/https://www.nielsen.com/content/dam/nielsen/global/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf).

27 ¹¹ See *Health and Wellness the Trillion Dollar Industry in 2017: Key Research Highlights*,
 28 *Euromonitor International*,
[https://web.archive.org/web/20220831234425/https://www.euromonitor.com/article/health-
 andwellness-the-trillion-dollar-industry-in-2017-key-research-highlights](https://web.archive.org/web/20220831234425/https://www.euromonitor.com/article/health-andwellness-the-trillion-dollar-industry-in-2017-key-research-highlights).

1 large and small, who “play by the rules.” Defendants’ conduct stifles competition and
 2 has a negative impact on the marketplace, and reduces consumer choice.

3 54. There is no practical reason for false labeling and advertising of the
 4 Product, other than to mislead consumers as to the presence of preservatives in the
 5 Product while simultaneously providing Defendant with a financial windfall.
 6

7 **F. Reasonable consumers relied on Defendants’ misrepresentations to**
 8 **their detriment.**

9 55. Defendants’ deceptive representations and omissions are material in
 10 that a reasonable person would attach importance to such information and would be
 11 induced to act upon such information in making purchase decisions.

12 56. Plaintiff and the Class Members reasonably relied to their detriment on
 13 Defendants’ misleading representations and omissions.

14 57. Defendants’ false, misleading, and deceptive misrepresentations and
 15 omissions are likely to continue to deceive and mislead reasonable consumers and the
 16 general public, as they have already deceived and misled the Plaintiff and the Class
 17 Members.
 18

19 **G. Defendants’ wrongful conduct caused Plaintiff’s and the Class**
 20 **Members’ injuries.**

21 58. Defendants know that consumers are willing to pay more for
 22 preservative-free snacks due to the perception that the snacks are higher quality and
 23 a healthier alternative to the competition.
 24

25 59. As a result of these unfair and deceptive practices, Defendants have
 26 likely collected millions of dollars from the sale of the Products that they would not
 27 have otherwise earned. Plaintiff and Class Members paid money for fruit snacks that
 28 are not what they purported to be or what they bargained for. They paid a premium

1 for the Products when they could have instead bought other, less expensive products
2 that do not purport to be preservative-free.

3 60. In making the false and misleading representations described herein,
4 Defendants knew and intended that consumers would pay for, and/or pay a premium
5 for, a product labeled and advertised as containing “NO PRESERVATIVES.”
6

7 61. As an immediate, direct, and proximate result of Defendants' false and
8 misleading representations, Defendants injured the Plaintiff and the Class Members
9 in that they:

- 10 a. Paid a sum of money for Products that were not what Defendants
11 represented;
- 12 b. Paid a premium price for Products that were not what Defendants
13 represented;
- 14 c. Were deprived of the benefit of the bargain because the Products they
15 purchased were different from what Defendants warranted;
- 16 d. Were deprived of the benefit of the bargain because the Products they
17 purchased had less value than what Defendants represented;
- 18 e. Could not be used for the purpose for which they were purchased; and
19
- 20 f. Were of a different quality than what Defendants promised.
21

22 62. Had Defendants not made the false, misleading, and deceptive
23 representations, Plaintiff and the Class Members would not have been willing to pay
24 the same amount for the Products they purchased, and, consequently, Plaintiff and
25 the Class Members would not have been willing to purchase the Products.
26

27 63. Plaintiff and the Class Members paid for Products that were purported
28 to contain no preservatives but received Products that contained preservatives. The

1 products Plaintiff and the Class Members received were worth less than the products
2 for which they paid.

3 64. Based on Defendants' misleading and deceptive representations,
4 Defendants were able to, and did, charge a premium price for the Products over the
5 cost of competitive products not bearing the representations.
6

7 65. Plaintiff and the Class Members all paid money for the Products.
8 However, Plaintiff and the Class Members did not obtain the full value of the
9 advertised Products due to Defendants' misrepresentations. Plaintiff and the Class
10 Members purchased, purchased more of, and/or paid more for, the Products than they
11 would have had they known the truth about the Products. Consequently, Plaintiff
12 and the Class Members have suffered injury in fact and lost money as a result of
13 Defendants' wrongful conduct.
14

15 **CLASS DEFINITIONS AND ALLEGATIONS**

16 66. Plaintiff, pursuant to Federal Rule of Civil Procedure 23, brings this
17 action on behalf of the following classes:
18

- 19 a. California Class: All persons who purchased Defendants' Products
20 within the State of California and within the applicable statute of
21 limitations;
22
- 23 b. Nationwide Class: All persons who purchased Defendants' Products
24 within the United States and within the applicable statute of limitations
25 period (collectively, the "Class," "Classes," and "Class Members").

26 67. Excluded from the Classes are Defendants, its parents, subsidiaries,
27 affiliates, officers, and directors, those who purchased the Products for resale, all
28 persons who make a timely election to be excluded from the Classes, the judge to

1 whom the case is assigned and any immediate family members thereof, and those
2 who assert claims for personal injury.

3 68. The members of the Classes are so numerous that joinder of all Class
4 Members is impracticable. Defendants have sold, at a minimum, hundreds of
5 thousands of units of the Products to Class Members.
6

7 69. There is a well-defined community of interest in the questions of law and
8 fact involved in this case. Questions of law and fact common to the members of the
9 putative classes that predominate over questions that may affect individual Class
10 Members include, but are not limited to the following:

- 11 a. whether Defendants misrepresented material facts concerning the
12 Products on the packaging of every product;
- 13 b. whether Defendants misrepresented material facts concerning the
14 Products in print and digital marketing of every product;
- 15 c. whether Defendants' conduct was unfair and/or deceptive;
- 16 d. whether Defendants have been unjustly enriched as a result of the
17 unlawful, fraudulent, and unfair conduct alleged in this Complaint such
18 that it would be inequitable for Defendants to retain the benefits
19 conferred upon them by Plaintiff and the Class;
- 20 e. whether Plaintiff and the Class are entitled to equitable and/or
21 injunctive relief;
- 22 f. whether Defendants breached implied and express warranties to
23 Plaintiff and the Class; and
- 24 g. whether Plaintiff and the Class have sustained damages with respect to
25 the claims asserted, and if so, the proper measure of their damages.
26
27
28

1 70. Plaintiff's claims are typical of those of other Class Members because
2 Plaintiff, like all members of the classes, purchased Defendants' Products bearing the
3 preservative-free representations and Plaintiff sustained damages from Defendants'
4 wrongful conduct.

5 71. Plaintiff will fairly and adequately protect the interests of the Classes
6 and has retained counsel that is experienced in litigating complex class actions.
7

8 72. Plaintiff has no interests which conflict with those of the Classes.

9 73. A class action is superior to any other available means for the fair and
10 efficient adjudication of this controversy, and no unusual difficulties are likely to be
11 encountered in the management of this class action. The damages or other financial
12 detriment suffered by Plaintiff and the other Class Members are relatively small
13 compared to the burden and expense that would be required to individually litigate
14 their claims against Defendants, making it impracticable for Class Members to
15 individually seek redress for Defendants' wrongful conduct. Even if Class Members
16 could afford individual litigation, the court system could not. Individualized litigation
17 creates a potential for inconsistent or contradictory judgments, and increases the
18 delay and expense to all parties and the court system. By contrast, the class action
19 device presents far fewer management difficulties, and provides the benefits of single
20 adjudication, economies of scale, and comprehensive supervision by a single court.
21
22

23 74. The prerequisites to maintaining a class action for equitable relief are
24 met as Defendants have acted or refused to act on grounds generally applicable to the
25 classes, thereby making appropriate equitable relief with respect to the classes as a
26 whole.
27
28

75. The prosecution of separate actions by members of the Classes would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. For example, one court might enjoin Defendants from performing the challenged acts, whereas another might not. Additionally, individual actions could be dispositive of the interests of the classes even where certain Class Members are not parties to such actions.

CAUSES OF ACTION

COUNT I

Violation of California's Unfair Competition Law ("UCL") Business and Professions Code § 17200 et seq. (On Behalf of the California Class)

76. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

77. Plaintiff brings this cause of action pursuant to the UCL on her own behalf and on behalf of all other persons similarly situated.

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

A. Unfair Prong

79. Under the UCL a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

1 80. Defendants' advertising and labeling of the Products as being made with
2 no preservatives when the Products contain no preservatives, is false, misleading,
3 and deceptive.

4 81. Defendants' false advertising of the Products causes injuries to
5 consumers, who do not receive the promised benefits from the Products in proportion
6 to their reasonable expectations.

7 82. Through false, misleading, and deceptive labeling of the Products,
8 Defendants seek to take advantage of consumers' desire for preservative-free food
9 products, while reaping the financial benefits of manufacturing lower quality
10 Products.

11 83. When Defendants label and market the Products as being made with "no
12 preservatives" it provides false promises to consumers and stifles competition in the
13 marketplace.

14 84. Consumers cannot avoid any of the injuries caused by Defendants' false
15 and misleading advertising of the Products.

16 85. Some courts conduct a balancing test to decide if a challenged activity
17 amounts to unfair conduct under the UCL. The courts "weigh the utility of the
18 defendant's conduct against the gravity of the harm alleged to the victim." *Davis v.*
19 *HSBC Bank Nevada, N.A.*, 691 F. 3d 1152, 1169 (9th Cir. 2012).

20 86. Defendants' material misrepresentations and omissions result in
21 financial harm to consumers. Thus, the utility of Defendants' conduct is vastly
22 outweighed by the gravity of its harm.

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

4 88. As described herein, Defendants’ conduct impacts the public health of
5 California citizens and the competitive landscape for Defendants’ competitors that act
6 as good faith market participants.
7

8 89. Defendants’ advertising and labeling of the Products, as alleged in the
9 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and
10 constitutes unfair conduct.

11 90. Defendants knew or should have known of their unfair conduct.
12

13 91. As alleged in the preceding paragraphs, the material misrepresentations
14 by Defendants detailed above constitute an unfair business practice within the
15 meaning of the UCL.

16 92. There were reasonably available alternatives to further Defendants’
17 legitimate business interests other than the conduct described herein. Defendants
18 could have marketed the Products without making any false and deceptive
19 statements about the Products’ ingredients.
20

21 93. All of the conduct alleged herein occurs and continues to occur in
22 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
23 generalized course of conduct repeated on hundreds of occasions daily.
24

25 94. Pursuant to Business & Professions Code Section 17203, Plaintiff and
26 the California Class seek an order of this Court enjoining Defendants from continuing
27 to engage, use, or employ its practice of false and deceptive advertising and labeling
28 of the Products. Plaintiff and California Class Members additionally request an order

1 awarding Plaintiff and California Class Members restitution of the money wrongfully
2 acquired by Defendants by means of responsibility attached to Defendants' failure to
3 disclose the existence and significance of said misrepresentations in an amount to be
4 determined at trial.

5 95. Plaintiff and the California Class have suffered injury in fact and have
6 lost money as a result of Defendants' unfair conduct. Plaintiff paid an unwarranted
7 premium for the Products.
8

9 **B. Fraudulent Prong**

10 96. The UCL considers conduct fraudulent and prohibits said conduct if it is
11 likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th
12 1254, 1267 (1992).
13

14 97. Defendants' labeling and advertising of the Products as being made with
15 no preservatives is likely to deceive members of the public into believing that the
16 Products contain no preservatives.
17

18 98. Defendants' advertising of the Products, as alleged in the preceding
19 paragraphs, is false, deceptive, misleading, and unreasonable and constitutes
20 fraudulent conduct.

21 99. Defendants knew or should have known of their fraudulent conduct.

22 100. As alleged in the preceding paragraphs, the material misrepresentations
23 and omissions by Defendants detailed above constitute a fraudulent business practice
24 in violation of the UCL.
25

26 101. There were reasonably available alternatives to further Defendants'
27 legitimate business interests, other than the conduct described herein. Defendants
28

1 could have refrained from marketing and labeling the Products as being made with
2 no preservatives.

3 102. All of the conduct alleged herein occurs and continues to occur in
4 Defendants' business. Defendants' wrongful conduct is part of a pattern or
5 generalized course of conduct repeated on hundreds of occasions daily.

6
7 103. Pursuant to Business & Professions Code Section 17203, Plaintiff and
8 the California Class seek an order of this Court enjoining Defendants from continuing
9 to engage, use, or employ its practice of false and deceptive advertising of the
10 Products. Likewise, Plaintiff and the California Class seek an order requiring
11 Defendants to disclose such misrepresentations, and additionally request an order
12 awarding Plaintiff restitution of the money wrongfully acquired by Defendants by
13 means of responsibility attached to Defendants' failure to disclose the existence and
14 significance of said misrepresentations in an amount to be determined at trial.

15
16 104. Plaintiff and the California Class have suffered injury in fact and have
17 lost money as a result of Defendants' fraudulent conduct. Plaintiff and the California
18 Class paid an unwarranted premium for the Products. Plaintiff and the California
19 Class would not have purchased the Products if they had known that the Products
20 contained preservatives.

21
22 **C. Unlawful Prong**

23 105. The UCL identifies violations of other laws as "unlawful practices that
24 the unfair competition law makes independently actionable." *Velazquez v. GMAC*
25 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

26
27 106. Defendants' labeling and advertising of the Products, as alleged in the
28 preceding paragraphs, violates California Civil Code Section 1750, et seq. (Consumer

1 Legal Remedies Act), California Business and Professions Code Section 17500, et seq.
2 (False Advertising Law), Cal. Heath & Saf. Code § 110765 et seq. (the “Sherman
3 Law”), and the common law as described herein.

4 107. Defendants’ packaging, labeling, and advertising of the Products, as
5 alleged in the preceding paragraphs, is false, deceptive, misleading, and
6 unreasonable, and constitutes unlawful conduct.
7

8 108. Defendants knew or should have known of their unlawful conduct.

9 109. As alleged in the preceding paragraphs, the misrepresentations by
10 Defendants detailed above constitute an unlawful business practice within the
11 meaning of the UCL.
12

13 110. There were reasonably available alternatives to further Defendants’
14 legitimate business interests other than the conduct described herein. Defendants
15 could have refrained from misrepresenting the true characteristics of the Products.
16

17 111. All of the conduct alleged herein occurred and continues to occur in
18 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
19 generalized course of conduct repeated on thousands of occasions daily.

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

1 existence and significance of said misrepresentations in an amount to be determined
2 at trial.

3 113. Plaintiff and the California Class have suffered injury in fact and have
4 lost money as a result of Defendants' unlawful conduct. Plaintiff paid an
5 unwarranted premium for the Products. Plaintiff would not have purchased the
6 Products if she had known that Defendants purposely deceived consumers into
7 believing that the Products contained no preservatives.

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

16 115. Pursuant to Civil Code § 3287(a), Plaintiff and the California Class are
17 further entitled to prejudgment interest as a direct and proximate result of
18 Defendants' unfair and fraudulent business conduct. The amount on which interest is
19 to be calculated is a sum certain and capable of calculation, and Plaintiff and the
20 California Class are entitled to interest in an amount according to proof.

22 **COUNT II**
23 **Violation of California's False Advertising Law ("FAL")**
24 **Business and Professions Code § 17500 et seq.**
25 **(On Behalf of the California Class)**

26 116. Plaintiff repeats and realleges each and every allegation contained in
27 the foregoing paragraphs as if fully set forth herein.
28

1 117. Plaintiff brings this cause of action pursuant to the FAL on her own
2 behalf and on behalf of all other persons similarly situated.

3 118. The FAL makes it “unlawful for any person to make or disseminate or
4 cause to be made or disseminated before the public in this state, in any advertising
5 device or in any other manner or means whatever, including over the Internet, any
6 statement, concerning personal property or services, professional or otherwise, or
7 performance or disposition thereof, which is untrue or misleading and which is
8 known, or which by the exercise of reasonable care should be known, to be untrue or
9 misleading.”
10

11 119. Defendants knowingly disseminated misleading claims regarding the
12 Products in order to mislead the public about the presence of preservatives in the
13 Products.
14

15 120. Defendants controlled the labeling, packaging, production and
16 advertising of the Products. Defendants knew or should have known, through the
17 exercise of reasonable care, that its representations and omissions about the
18 characteristics and ingredients of the Products were untrue, deceptive, and
19 misleading.
20

21 121. Defendants understand that the public values preservative-free
22 representations, and this is shown by the numerous preservative-free statements
23 that are prominently featured throughout the Products’ packaging.
24

25 122. Defendants’ actions in violation of the FAL were false and misleading
26 such that the general public is and was likely to be deceived.

27 123. As a direct and proximate result of Defendants’ conduct alleged herein
28 in violation of the FAL, Plaintiff and members of the California Class, pursuant to §

17535, are entitled to an order of this Court enjoining such future wrongful conduct on the part of Defendants, and requiring Defendants to disclose the true nature of its misrepresentations.

124. Plaintiff and the California Class have suffered injury in fact and have lost money as a result of Defendants' false representations. Plaintiff purchased the Products in reliance upon the claims and omissions by Defendants that the Products contain "no preservatives," as represented by Defendants' labeling and advertising. Plaintiff would not have purchased the Products if she had known that the claims and advertising as described herein were false and misleading.

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

COUNT III
Violation of California's Consumer Legal Remedies Act ("CLRA")
Business and Professions Code § 1750 et seq.
(Injunctive Relief Only)
(On Behalf of the California Class)

126. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

127. Plaintiff brings this claim individually and on behalf of the members of the proposed California Class against the Defendants.

128. At all times relevant hereto, Plaintiff and members of the California Class were "consumer[s]," as defined in Civil Code section 1761(d).

129. At all times relevant hereto, Defendants each constituted a "person," as defined in Civil Code section 1761(c).

1 130. At all times relevant hereto, the Products manufactured, marketed,
2 advertised, and sold by Defendants constituted “goods,” as defined in Civil Code
3 section 1761(a).

4 131. The purchases of the Products by Plaintiff and members of the
5 California Class were and are “transactions” within the meaning of Civil Code section
6 1761(e).
7

8 132. Defendants disseminated, or caused to be disseminated, through its
9 packaging, labeling, marketing and advertising misrepresentations that the Products
10 contained “NO PRESERVATIVES.”

11 133. Defendants’ representations violate the CLRA in at least the following
12 respects:
13

- 14 a. In violation of Civil Code § 1770(a)(5), Defendants represented that the
15 Products have characteristics, ingredients, uses, benefits, and quantities
16 which they do not have;
- 17 b. In violation of Civil Code § 1770(a)(7), Defendants represented that the
18 Products are of a particular standard, quality, or grade, which they are
19 not; and
- 20 c. In violation of Civil Code § 1770(a)(9), Defendants advertised the
21 Products with an intent not to sell the products as advertised.

22 134. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff provided
23 notice to Defendants of their alleged violations of the CLRA, demanding that
24 Defendants correct such violations, and providing them with the opportunity to
25 correct its business practices. Notice was sent via certified mail, return receipt
26 requested on February 3, 2023. As of the date of filing this complaint, Defendants
27 have not responded. Accordingly, if after 30 days no satisfactory response to resolve
28

1 this litigation on a class-wide basis has been received, Plaintiff will seek leave to
2 amend this request to seek restitution and actual damages as provided by the CLRA.

3 135. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive
4 relief, reasonable attorneys' fees and costs, and any other relief that the Court deems
5 proper.

6 136. Defendants knew or should have known that their Products did not
7 contain the claimed characteristics because Defendants manufactured, marketed and
8 sold their Products without those characteristics that they claimed. Defendants knew
9 or should have known that their representations about their products as described
10 herein violated consumer protection laws, and that these statements would be relied
11 upon by Plaintiff and members of the California Class.

12 137. Defendants' actions as described herein were done with conscious
13 disregard of Plaintiff's and California Class Members' rights and was wanton and
14 malicious.

15 138. Defendants' wrongful business practices constituted, and constitute, a
16 continuing course of conduct in violation of the CLRA since Defendants are still
17 representing that their Products have characteristics which they do not have.

18 **COUNT IV**
19 **Unjust Enrichment**
20 **(On Behalf of the National Class)**

21 139. Plaintiff repeats and realleges each and every allegation contained in
22 the foregoing paragraphs as if fully set forth herein.

23 140. By means of Defendants' wrongful conduct alleged herein, Defendants
24 knowingly sold the Products to Plaintiff and Class Members in a manner that was
25 unfair, unconscionable, and oppressive.

26 141. Defendants knowingly received and retained wrongful benefits and
27 funds from Plaintiff and the Class Members. In so doing, Defendants acted with
28 conscious disregard for the rights of Plaintiff and members of the Class.

1 142. As a result of Defendants' wrongful conduct as alleged herein,
 2 Defendants have been unjustly enriched at the expense of, and to the detriment of,
 3 Plaintiff and members of the Class.

4 143. Defendants' unjust enrichment is traceable to, and resulted directly and
 5 proximately from, the conduct alleged herein.
 6

7 144. Under the common law doctrine of unjust enrichment, it is inequitable
 8 for Defendants to be permitted to retain the benefits they received, without
 9 justification, from selling the Products to Plaintiff and members of the Class in an
 10 unfair, unconscionable, and oppressive manner. Defendants' retention of such funds
 11 under such circumstances making it inequitable to do so constitutes unjust
 12 enrichment.
 13

14 145. The financial benefits derived by Defendants rightfully belong to
 15 Plaintiff and members of the Class. Defendants should be compelled to return in a
 16 common fund for the benefit of Plaintiff and members of the Class all wrongful or
 17 inequitable proceeds received by Defendants.
 18

19 **RELIEF DEMANDED**

20 WHEREFORE, Plaintiff, individually and on behalf the Class Members, seeks
 21 judgment and relief against Defendants, as follows:

- 22 a) For an order declaring: (i) this is a class action pursuant to Rule 23 of
 23 the Federal Rules of Civil Procedure on behalf of the proposed Classes
 24 described herein; and (ii) appointing Plaintiff to serve as a
 25 representative for the Classes and Plaintiff's counsel to serve as Class
 26 Counsel;
 27
 28

GOOD GUSTAFSON AUMAIS LLP

- b) For an order enjoining Defendants from continuing to engage in the unlawful conduct set forth herein;
- c) For an order awarding restitution of the monies Defendants wrongfully acquired by their illegal and deceptive conduct;
- d) For an order requiring disgorgement of the monies Defendants wrongfully acquired by their illegal and deceptive conduct;
- e) For compensatory and punitive damages, including actual and statutory damages, arising from Defendants' wrongful conduct and illegal conduct;
- f) For an award of reasonable attorneys' fees and costs and expenses incurred in the course of prosecuting this action; and
- g) For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all causes of action so triable.

Dated: February 3, 2023

Good Gustafson Aumais LLP

/s/ J. Ryan Gustafson
 J. Ryan Gustafson (Cal. Bar No. 220802)
 2330 Westwood Blvd., No. 103
 Los Angeles, CA 90064
 Tel: (310) 274-4663
jrg@ggallp.com

SHENAQ PC
 Amir Shenaq, Esq.*
 3500 Lenox Road, Ste 1500
 Atlanta, GA 30326
 Tel: (888) 909-9993
amir@shenaqpc.com

THE KEETON FIRM LLC
Steffan T. Keeton, Esq.*
100 S Commons Ste 102
Pittsburgh PA 15212
Tel: (888) 412-5291
stkeeton@keetonfirm.com

**Pro hac vice forthcoming*

Counsel for Plaintiff and the Proposed Class

GOOD GUSTAFSON AUMAIS LLP

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Infinque Jamison, individually, and on behalf of those similarly situated

(b) County of Residence of First Listed PlaintiffAlameda (CA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
GOOD | GUSTAFSON | AUMAIS LLP
2330 Westwood Boulevard, Suite 103
Los Angeles, California 90064
Telephone: (310) 274-4663
The Keeton Firm LLC
100 S Commons, Ste. 102
Pittsburgh, PA 15212
Telephone: (888) 412-5291
SHENAQ PC
3500 Lenox Road, Ste. 1500
Atlanta GA 30326
Telephone: (888) 909-9993

DEFENDANTS
Arizona Beverages USA LLC and Hornell Brewing Co., Inc.,

County of Residence of First Listed DefendantOrange (NY)
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

☐ 1 U.S. Government Plaintiff

☐ 3 Federal Question
(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div>	<div>PERSONAL INJURY</div> <div>310 Airplane</div> <div>315 Airplane Product Liability</div> <div>320 Assault, Libel & Slander</div> <div>330 Federal Employers' Liability</div> <div>340 Marine</div> <div>345 Marine Product Liability</div> <div>350 Motor Vehicle</div> <div>355 Motor Vehicle Product Liability</div> <div>360 Other Personal Injury</div> <div>362 Personal Injury -Medical Malpractice</div> <div>PERSONAL INJURY</div> <div>365 Personal Injury – Product Liability</div> <div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div> <div>368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div><input checked="" type="checkbox"/> 370 Other Fraud</div> <div>371 Truth in Lending</div> <div>380 Other Personal Property Damage</div> <div>385 Property Damage Product Liability</div> <div>CIVIL RIGHTS</div> <div>440 Other Civil Rights</div> <div>441 Voting</div> <div>442 Employment</div> <div>443 Housing/ Accommodations</div> <div>445 Amer. w/Disabilities–Employment</div> <div>446 Amer. w/Disabilities–Other</div> <div>448 Education</div> <div>PRISONER PETITIONS</div> <div>HABEAS CORPUS</div> <div>463 Alien Detainee</div> <div>510 Motions to Vacate Sentence</div> <div>530 General</div> <div>535 Death Penalty</div> <div>OTHER</div> <div>540 Mandamus & Other</div> <div>550 Civil Rights</div> <div>555 Prison Condition</div> <div>560 Civil Detainee–Conditions of Confinement</div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div>720 Labor/Management Relations</div> <div>740 Railway Labor Act</div> <div>751 Family and Medical Leave Act</div> <div>790 Other Labor Litigation</div> <div>791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>835 Patent–Abbreviated New Drug Application</div> <div>840 Trademark</div> <div>880 Defend Trade Secrets Act of 2016</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSID Title XVI</div> <div>865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS–Third Party 26 USC § 7609</div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced & Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>485 Telephone Consumer Protection Act</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

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

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation–Transfer

☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332(d)(2) (Diversity Jurisdiction)
Brief description of cause:
Consumer Fraud - Deceptive, Misleading, and Fraudulent Marketing of Food Products

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 5,000,001.00

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

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 02/03/2023

SIGNATURE OF ATTORNEY OF RECORD /s/ J. Ryan Gustafson

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.