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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 JACOB SCHEIBE, *individually and on*)
13 *behalf of all those similarly situated,*)
14)
15 *Plaintiff,*)

No. **'23CV998 RBM BLM**

16 v.)

CLASS ACTION COMPLAINT

17 ARIZONA BEVERAGES USA, LLC, *a*)
18 *Delaware limited liability company,*)
19)
20 *Defendant.*)

JURY TRIAL DEMANDED

21 _____
22
23 Jacob Scheibe (“Plaintiff”), individually and on behalf of all others in the state of
24 California similarly situated, by and through undersigned counsel, hereby brings this action
25 against Arizona Beverages USA, LLC (“Arizona Beverages”), alleging that its Arizona Fruit
26 Snacks; Arizona Green Tea Fruit Snacks; and Arizona Arnold Palmer Half & Half Fruit Snacks
27 (“the Products”), which are manufactured, packaged, labeled, advertised, distributed, and sold
28 by Defendant, are misbranded and falsely advertised as containing “No Preservatives,” and upon
information and belief and investigation of counsel alleges as follows:

PARTIES

1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state of
California, domiciled in San Diego, California.

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2. Defendant Arizona Beverages USA LLC is a Delaware limited liability company with its principal place of business and headquarters in Cincinnati, Ohio.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

4. Plaintiff seeks to represent Class members who are citizens of states or countries different from the Defendant.

5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate, exclusive of interests and costs.

6. In addition, “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

7. This Court has personal jurisdiction over Defendant because this action arises out of and relates to Defendant’s contacts with this forum.

8. Those contacts include but are not limited to sales of the Products directly to commercial and individual consumers located in this district, including Plaintiff; shipping the Products to commercial and individual consumers in this district, including Plaintiff; knowingly directing advertising and marketing materials concerning the Products into this district through wires and mails, both directly and through electronic and print publications that are directed to commercial and individual consumers in this district; and operating an e-commerce web site

1 that offers the Products for sale to commercial and individual consumers in this district, as well
2 as offering the Products for sale through third-party e-commerce websites, through both of
3 which commercial and individual consumers residing in this district have purchased the
4 Products.

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6 9. Defendant knowingly directs electronic activity and ships the Products into this
7 district with the intent to engage in business interactions for profit, and it has in fact engaged in
8 such interactions, including the sale of the Products to Plaintiff.

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10 10. Defendant also sells the Products to retailers and wholesalers in this district for
11 the purpose of making the Products available for purchase by individual consumers in this
12 district.

13 11. Plaintiff's losses and those of other Class members were sustained in this district.

14 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of
15 the events or omissions giving rise to Plaintiff's claims occurred within this district.

16 13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court
17 maintains personal jurisdiction over Defendant.

18 **FACTUAL ALLEGATIONS**

19 **A. Consumers Pay A Premium for "Clean Labels."**

20 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-
21 natural," minimally processed, or otherwise free of artificial flavors and preservatives.

22
23 15. For example, a 2018 survey by L.E.K. Consulting found that overwhelming
24 numbers of consumers were committed or casual adherents to so-called "clean label" food
25 attributes: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-
26 natural" (66 percent). These were the three most attractive attributes in the consumer survey.
27 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for "clean
28 label" foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

1 16. This consumer preference has led to an explosion in the category of “clean label”
2 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods
3 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
4 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
5 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.
6

7 17. On or about February 8, 2023, Mr. Scheibe ordered the Products from
8 Amazon.com (Order No. #112-6456667-7869838) for a total cost of \$11.91 inclusive of tax..

9 18. Mr. Scheibe is a student who has recently begun to eat for health and with
10 intentionality. He carefully reviews labels, including the Products’ labels, to ensure that he
11 consumes only natural ingredients and avoids artificial ingredients.
12

13 **B. Defendant’s Use of Citric Acid as a Preservative and Deceptive Labels.**

14 19. Defendant Arizona Beverages formulates, manufactures, and sells the Products.

15 20. The front label (or “principal display panel”) of the beverage Products
16 prominently state they contain “No Preservatives”:





21. These claims are repeated on the Amazon.com storefronts for the Products, which Defendant controls (*see, e.g.,* <https://www.amazon.com/AriZona-Snacks-Gluten-Individual-Single/dp/B08MCL7SQD>):

A screenshot of an Amazon product listing for "AriZona Green Tea Fruit Snacks, Gluten Free Mixed Fruit Gummy Chews 5 Ounce Individual Single Serve Bags, Green Tea, (Pack of 12)". The listing includes a share icon, the product title, a link to visit the AriZona Store, a 4.4-star rating with 1,517 ratings and 5 answered questions, and an "Amazon's Choice" badge for "arizona tea fruit snacks". The price is listed as \$24.10 (\$0.40 / Ounce) with fast, free shipping with Amazon Prime. The original price was \$31.79, and the savings is \$7.69 (24%). A promotional offer states: "Get \$60 off instantly: Pay \$0.00 \$24.10 upon approval for the Amazon Store Card. No annual fee." On the left side of the listing, there are several certification logos: "NO PRESERVATIVES", "NO SYNTHETIC COLOR", "NO ARTIFICIAL FLAVOR", "FAT FREE", "AN AMERICAN COMPANY FAMILY OWNED & OPERATED", and "GLUTEN FREE".

22. These “No Preservatives” claims are false. The Products all contain an ingredient identified as “citric acid.”

23. The FDA has stated that citric acid is an artificial and synthetic additive in multiple warning letters to the food industry. *See, e.g.,* Warning Letter to Oak Tree Farm Dairy, Food & Drug Admin. (Aug. 16, 2001) (use of the phrase “Nothing Artificial” on a label was misleading to consumers “because [the food] contains citric acid”); Warning Letter to Hirzel

1 Canning Co., Food & Drug Admin. (Aug. 29, 2001) (“[T]he addition of ... citric acid to
2 these products preclude the use of the term ‘natural’ to describe the product.”).

3 24. FDA also expressly classifies citric acid as a preservative in its “Overview of Food
4 Ingredients, Additives, and Colors/.” *See*
5 [http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/
6 ucm094211.htm](http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm094211.htm).

7
8 25. While citric acid is found naturally within fruits such as lemons and oranges, the
9 citric acid used by the food industry is universally produced using synthetic, chemical means.
10 This weak acid has been used as an additive in processed foods for more than a century as a
11 preservative.

12 26. Here, the Products use chemically produced citric acid as a preservative.

13 27. Citric acid is a chemical preservative, defined at 21 C.F.R. § 101.22(a)(5) as “any
14 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not
15 include common salt, sugars, vinegars, spices, oils extracted from spices, substances added to
16 food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or
17 herbicidal properties.”

18
19 28. Federal and identical state law require that where a food contains “any chemical
20 that, when added to food, tends to prevent or retard deterioration,” a “statement of [that]
21 chemical preservative shall be placed on the food [] as may be necessary to render such statement
22 likely to be read by the ordinary person under customary conditions of purchase and use.” 21
23 U.S.C. § 343(k), 21 C.F.R. §§ 101.22(a)(5) & 101.22(c).

24
25 29. Federal and state law require that “a food to which a chemical preservative(s) is
26 added shall [] bear a label declaration stating both the common or usual name of the ingredient(s)
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1 and a separate description of its function, *e.g.*, ‘preservative’, ‘to retard spoilage’, ‘a mold
2 inhibitor’, ‘to help protect flavor’ or ‘to promote color retention.’” *Id.* § 101.22(j).

3 30. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §
4 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.

5 31. The Products have none of the required disclosures regarding the use of
6 preservatives.

7 32. Plaintiff reserves the right to amend this Complaint to add further products that
8 contain similar label misrepresentations as investigation continues.

9 49. Labels are the chief means by which food product manufacturers convey critical
10 information to consumers, and consumers have been conditioned to rely on the accuracy of the
11 claims made on these labels. As the California Supreme Court stated in a case involving alleged
12 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based
13 on the premise that labels matter, that consumers will choose one product over another similar
14 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

15 50. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed
16 the “no preservatives” claims being made on those labels. He understood these label claims to
17 be a representation that the Products contained no preservatives and relied on it. This
18 representation was false.

19 51. By representing that the Products have “No Preservatives,” Defendant sought to
20 capitalize on consumers’ preference for less processed food products with fewer additives.
21 Consumers are willing to pay more for products with no additives because they are associated
22 with a healthy lifestyle and are perceived as being of higher quality.

23 52. Consumers, including Plaintiff, reasonably relied on Defendant’s statements such
24 that they would not have purchased the Products from Defendant if the truth about the Products
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1 was known, or would have only been willing to pay a substantially reduced price for the Products
2 had they known that Defendant's representations were false and misleading.

3 53. In the alternative, because of its deceptive and false labelling statements,
4 Defendant was enabled to charge a premium for the Products relative to key competitors'
5 products, or relative to the average price charged in the marketplace.
6

7 54. Consumers including Plaintiff especially rely on label claims made by food
8 product manufacturers such as Arizona Beverages, as they cannot confirm or disprove those
9 claims simply by viewing or even consuming the Products.

10 55. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive
11 conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and
12 Plaintiff's injury.
13

14 **CLASS ACTION ALLEGATIONS**

15 56. Plaintiff brings this action individually and as representative of all those similarly
16 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the state
17 of California who purchased the Products within four years prior to the filing of this Complaint.

18 57. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
19 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
20 this matter and the members of their immediate families and judicial staff.
21

22 58. Plaintiff reserves the right to alter the Class definition, and to amend this
23 Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.

24 59. Certification of Plaintiff's claims for class-wide treatment is appropriate because
25 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
26 individual Class members would use to prove those elements in individual actions alleging the
27 same claims.
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1 60. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
2 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
3 members geographically dispersed throughout California.

4 61. **Existence and Predominance of Common Questions of Law and Fact – Rule**
5 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
6 predominate over any questions that affect only individual Class members. Common legal and
7 factual questions and issues include but are not limited to:

- 8
- 9 a. Whether the marketing, advertising, packaging, labeling, and other
10 promotional materials for Defendant’s Products is misleading and deceptive;
 - 11 b. Whether a reasonable consumer would understand Defendant’s no
12 preservatives claims to indicate that the Products contained no preservatives,
13 and reasonably relied upon those representations;
 - 14 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and
15 Class members;
 - 16 d. the proper amount of damages and disgorgement or restitution;
 - 17 e. the proper scope of injunctive relief; and
 - 18 f. the proper amount of attorneys’ fees.
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21 62. Defendant engaged in a common course of conduct in contravention of the laws
22 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
23 of law, business practices, and injuries are involved. Individual questions, if any, pale by
24 comparison, in both quality and quantity, to the numerous common questions that predominate
25 this action. The common questions will yield common answers that will substantially advance
26 the resolution of the case.

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1 63. In short, these common questions of fact and law predominate over questions that
2 affect only individual Class members.

3 64. **Typicality – Rule 23(a)(3):** Plaintiff’s claims are typical of the claims of the Class
4 members because they are based on the same underlying facts, events, and circumstances
5 relating to Defendant’s conduct.

6 65. Specifically, all Class members, including Plaintiff, were harmed in the same way
7 due to Defendant’s uniform misconduct described herein; all Class members suffered similar
8 economic injury due to Defendant’s misrepresentations; and Plaintiff seeks the same relief as
9 the Class members.

10 66. There are no defenses available to Defendant that are unique to the named
11 Plaintiff.

12 49. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate
13 representative of the Class because Plaintiff’s interests do not conflict with the Class members’
14 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress
15 against Defendant.

16 50. Furthermore, Plaintiff has selected competent counsel who are experienced in
17 class action and other complex litigation. Plaintiff and Plaintiff’s counsel are committed to
18 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

19 51. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other
20 available means for the fair and efficient adjudication of this controversy for at least the
21 following reasons

22 a. the damages individual Class members suffered are small compared to the
23 burden and expense of individual prosecution of the complex and extensive
24 litigation needed to address Defendant’s conduct such that it would be
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virtually impossible for the Class members individually to redress the wrongs done to them. In fact, they would have little incentive to do so given the amount of damage each member has suffered when weighed against the costs and burdens of litigation;

- b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;
- c. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and
- d. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would be dispositive of the interests of other Class members or would substantively impair or impede their ability to protect their interests.

52. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

53. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products' advertising or labeling in the future, and so will not purchase the Products although he would like to.

1 54. **Ascertainability.** To the extent ascertainability is required, the Class members are
2 readily ascertainable from Defendant’s records and/or its agents’ records of retail and online
3 sales, as well as through public notice.

4 55. Defendant has acted on grounds applicable to the Class as a whole, thereby
5 making appropriate final injunctive and declaratory relief concerning the Class as a whole.
6

7 **COUNT 1**
8 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
9 **SECTION 17200 *et seq.* — “UNFAIR” CONDUCT**

10 56. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
11 extent necessary, pleads this cause of action in the alternative.

12 57. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
13 a result of Defendant’s actions as set forth herein.

14 58. Defendant’s actions as alleged in this Complaint constitute “unfair” conduct
15 within the meaning of California Business and Professions Code Section 17200, *et seq.*

16 59. Defendant’s business practices, as alleged herein, are “unfair” because it fails to
17 disclose accurately the preservative used in the Products.

18 60. As a result of this “unfair” conduct, Plaintiff expended money and engaged in
19 activities it would not otherwise have spent or conducted.

20 61. Defendant’s wrongful business practices alleged herein constituted, and continue
21 to constitute, a continuing course of unfair competition since it continues to market and sell its
22 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
23 oppressive, unscrupulous and/or substantially injurious to its customers.

24 62. Defendant publicly disseminated untrue or misleading representations regarding
25 the preservative in its Products, which it knew, or in the exercise of reasonable care should have
26 known, were untrue or misleading.
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1 63. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
2 of this court enjoining Defendant from continuing to engage in “unfair” business practices and
3 any other act prohibited by law, including those acts set forth in this Complaint, and further seek
4 all other relief allowable under Business and Professions Code Section 17200, *et seq.*
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6 **COUNT 2**
7 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
8 **SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT**

9 64. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
10 extent necessary, plead this cause of action in the alternative.

11 65. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
12 a result of Defendant’s actions as set forth above.

13 66. Defendant’s actions as alleged in this Complaint constitute “fraudulent” conduct
14 within the meaning of California Business and Professions Code Section 17200 *et seq.*

15 67. Defendant’s business practices, as alleged herein, are “fraudulent” because it fails
16 to disclose accurately the preservative used in the Products.

17 68. As a result of this “fraudulent” conduct, Plaintiff expended money and engaged in
18 activities it would not otherwise have spent or conducted.

19 69. Defendant’s wrongful business practices alleged herein constituted, and continue
20 to constitute, a continuing course of unfair competition since it continues to market and sell its
21 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
22 oppressive, unscrupulous and/or substantially injurious to its customers.

23 70. Defendant publicly disseminated untrue or misleading representations regarding
24 the preservatives in its Products, which it knew, or in the exercise of reasonable care should
25 have known, were untrue or misleading.
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1 71. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an
2 order of this Court enjoining Defendant from continuing to engage in “fraudulent” business
3 practices and any other act prohibited by law, including those acts set forth in this Complaint,
4 and further seeks all other relief allowable under Business and Professions Code Section 17200,
5 *et seq.*
6

7 **COUNT 3**
8 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
9 **SECTION 17200 *et seq.* — “UNLAWFUL” CONDUCT**

10 72. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
11 extent necessary, pleads this cause of action in the alternative.

12 73. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
13 a result of Defendant’s actions as set forth above.

14 74. Defendant’s actions as alleged in this Complaint constitute “unlawful” conduct
15 within the meaning of California Business and Professions Code Section 17200, *et seq.*

16 75. Defendant’s business practices, as alleged herein, are “unlawful” because it fails
17 to disclose the preservative used in the Products.

18 76. As a result of this “unlawful” conduct, Plaintiff expended money and engaged in
19 activities he would not otherwise have spent or conducted.

20 77. Defendant’s business practices alleged herein constituted, and continue to
21 constitute, a continuing course of unfair competition since it continues to market and sell its
22 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
23 oppressive, unscrupulous and/or substantially injurious to its customers.

24 78. Defendant publicly disseminated untrue or misleading representations regarding
25 the preservative in its Products, which it knew, or in the exercise of reasonable care should have
26 known, were untrue or misleading.
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1 79. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
2 of this court enjoining Defendant from continuing to engage in “unlawful” business practices
3 and any other act prohibited by law, including those acts set forth in this Complaint, and further
4 seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*
5

6 **COUNT 4**
7 **VIOLATION OF CALIFORNIA BUSINESS &**
8 **PROFESSIONS CODE SECTION 17500 *et seq.***

9 80. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
10 extent necessary, pleads this cause of action in the alternative.

11 81. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
12 a result of Defendant’s actions as set forth above.

13 82. Defendant engaged in advertising and marketing to the public and offered for sale
14 advertising services on a nationwide basis, including in California.

15 83. Defendant engaged in the advertising and marketing alleged herein with the intent
16 to directly or indirectly induce the sale of the Products to consumers.

17 84. Defendant’s advertisements and marketing representations regarding the
18 characteristics of the Products were false, misleading, and deceptive as set forth above.

19 85. At the time it made and disseminated the statements alleged herein, Defendant
20 knew or should have known that the statements were untrue or misleading, and acted in violation
21 of Business and Professions Code Section 17500, *et seq.*
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23 86. Plaintiff seeks injunctive relief and all other relief allowable under Business and
24 Professions Code Section 17500, *et seq.*
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1 **COUNT 5**
2 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
3 **CIVIL CODE § 1750 *et seq.***

4 87. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
5 extent necessary, pleads this cause of action in the alternative.

6 88. Plaintiff is a “consumer” within the meaning of the Consumer Legal Remedies
7 Act (“CLRA”), Cal. Civ. Code § 1761(d).

8 106. The sale of Defendant’s Products to Plaintiff and Class members was a
9 “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

10 107. The Products purchased by Plaintiff and Class members are “goods” within the
11 meaning of the CLRA, Cal. Civ. Code § 1761(a).

12 108. As alleged herein, Defendant’s business practices are a violation of the CLRA
13 because Defendant deceptively failed to reveal facts that are material in light of the “No
14 Preservatives” representation made by Defendant on the labels of its Products.

15 109. Defendant’s ongoing failure to provide material facts about its Products on its
16 labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- 17
- 18 a. Defendant’s acts and practices constitute misrepresentations that its Products have
19 characteristics, benefits, or uses which they do not have;
 - 20 b. Defendant misrepresented that its Products are of a particular standard, quality,
21 and/or grade, when they are of another;
 - 22 c. Defendant’s acts and practices constitute the advertisement of goods, without the
23 intent to sell them as advertised;
 - 24 d. Defendant’s acts and practices fail to represent that transactions involving its
25 Products involve actions that are prohibited by law, particularly the use of
26 misleading nutritional labelling; and
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1 e. Defendant's acts and practices constitute representations that its Products have
2 been supplied in accordance with previous representations when they were not.

3 110. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,
4 entitling them to injunctive relief, disgorgement, and restitution.

5 111. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the
6 particular violations of the CLRA described herein and demanded Defendant rectify the actions
7 described above by providing complete monetary relief, agreeing to be bound by their legal
8 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this
9 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.
10

11 112. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled
12 to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such
13 damages include, without limitation, monetary losses and actual, punitive, and consequential
14 damages, in an amount to be proven at trial.
15

16 113. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin
17 publication of misleading and deceptive labels on Defendant's Products and to recover
18 reasonable attorneys' fees and costs.
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20 **COUNT 6**
UNJUST ENRICHMENT

21 114. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
22 extent necessary, pleads this cause of action in the alternative.

23 115. Defendant, through its marketing and labeling of the Products, misrepresented and
24 deceived consumers regarding the use of preservatives in the Products.
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26 116. Defendant did so for the purpose of enriching itself and it in fact enriched itself
27 by doing so.
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1 117. Consumers conferred a benefit on Defendant by purchasing the Products,
2 including an effective premium above their true value. Defendant appreciated, accepted, and
3 retained the benefit to the detriment of consumers.

4 118. Defendant continues to possess monies paid by consumers to which Defendant is
5 not entitled.

6 119. Under the circumstances it would be inequitable for Defendant to retain the benefit
7 conferred upon it and Defendant's retention of the benefit violates fundamental principles of
8 justice, equity, and good conscience.

9 120. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of
10 Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed
11 appropriate by the Court, and such other relief as the Court deems just and proper to remedy
12 Defendant's unjust enrichment.

13 121. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
14 a result of Defendant's actions as set forth above.

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17 **COUNT 7**
18 **BREACH OF EXPRESS WARRANTY**

19 122. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
20 extent necessary, pleads this cause of action in the alternative.

21 123. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
22 expressly warranted that the Products contained "No Preservatives."

23 124. Defendant's express warranties, and its affirmations of fact and promises made to
24 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain
25 between Defendant and Plaintiff and the Class, which creates an express warranty that the
26 Products would conform to those affirmations of fact, representations, promises, and
27 descriptions.
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125. The Products do not conform to the express warranty that the Products contained “No Preservatives,” because they contain citric acid used as a preservative.

126. As a direct and proximate cause of Defendant’s breach of express warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Products on the same terms if they knew the truth about the Products’ ingredients; (b) they paid a price premium based on Defendant’s express warranties; and (c) the Products do not have the characteristics, uses, or benefits that were promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request the Court grant the following relief against Defendant:

- a. Certifying the Class;
- b. Declaring that Defendant violated the CLRA, UCL, and FAL;
- c. Awarding actual and other damages as permitted by law, and/or ordering an accounting by Defendant for any and all profits derived by Defendant from the unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;
- d. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
- e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff;
- f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- g. Such other relief as the Court may deem just and proper.

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TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

/s/ Charles C. Weller
Charles C. Weller (Cal. SBN: 207034)
Attorney for Plaintiff

CHARLES C. WELLER, APC
11412 Corley Court
San Diego, California 92126
Tel: 858.414.7465
Fax: 858.300.5137

May 30, 2023

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Jacob Scheibe, on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

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

Charles C. Weller APC, 11412 Corley Ct. San Diego, CA 92126, 858.414.7465

DEFENDANTS

Arizona Beverages USA, LLC

County of Residence of First Listed Defendant Hamilton County, OH (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'23CV998 RBM BLM

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

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, 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 USC 1332

Brief description of cause: Consumer fraud action for deceptively mislabelled and misbranded food products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

5/30/2023 /s/ Charles C. Weller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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