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

12 DEANA LOZANO, *individually and on*)
13 *behalf of all those similarly situated,*)
14)
15 *Plaintiff,*)
16)
17 v.)
18)
19 FERRARA CANDY COMPANY)
20 HOLDINGS, INC., *a Delaware*)
21 *corporation,*)
22)
23 *Defendant.*)

No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

24 _____
25 Deana Lozano (“Plaintiff”), individually and on behalf of all other California consumers
26 similarly situated, by and through undersigned counsel, hereby brings this action against Ferrara
27 Candy Company Holdings, Inc. (“Ferrara”), alleging that its Black Forest Juicy Burst Fruit
28 Flavored Berry Medley Snacks (“the Product(s)”), which are gummies manufactured, packaged,
labeled, advertised, distributed, and sold by Defendant, are misbranded and falsely advertised,
and upon information and belief and investigation of counsel alleges as follows:

PARTIES

1. Plaintiff Deana Lozano is and at all times relevant was a citizen of the state of
California, domiciled in Los Angeles, California.

1 wires and mails, both directly and through electronic and print publications that are directed to
2 commercial and individual consumers in this district; and operating an e-commerce web site
3 that offers the Products for sale to commercial and individual consumers in this district, as well
4 as offering the Products for sale through third-party e-commerce websites, through both of
5 which commercial and individual consumers residing in this district have purchased the
6 Products.
7

8 10. Defendant knowingly directs electronic activity and ships the Products into this
9 district with the intent to engage in business interactions for profit, and it has in fact engaged in
10 such interactions, including the sale of the Products to Plaintiff.
11

12 11. Defendant also sells the Products to retailers and wholesalers in this district for
13 the purpose of making the Products available for purchase by individual consumers in this
14 district.
15

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

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

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

21 **FACTUAL ALLEGATIONS**

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

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

25 16. For example, a 2018 survey by L.E.K. Consulting found that overwhelming
26 numbers of consumers were committed or casual adherents to so-called "clean label" food
27 attributes: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-
28 natural" (66 percent). These were the three most attractive attributes in the consumer survey.

1 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean
2 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

3 17. This consumer preference has led to an explosion in the category of “clean label”
4 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods
5 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
6 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
7 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.
8

9 18. On or about February 11, 2023, Ms. Lozano purchased Black Forest Juicy Burst
10 Fruit Flavored Berry Medley Snacks from a Walmart store on Inglewood Avenue in Hawthorne,
11 California.

12 19. Ms. Lozano is a health care administrator and amateur athlete who eats with
13 intentionality and for health. She carefully reviews labels, including the Products’ labels, to
14 ensure that she consumes only natural ingredients and avoids artificial flavors and ingredients.
15

16 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

17 20. Defendant Ferrara formulates, manufactures, and sells fruit snacks under the brand
18 name “Black Forest Juicy Burst.”

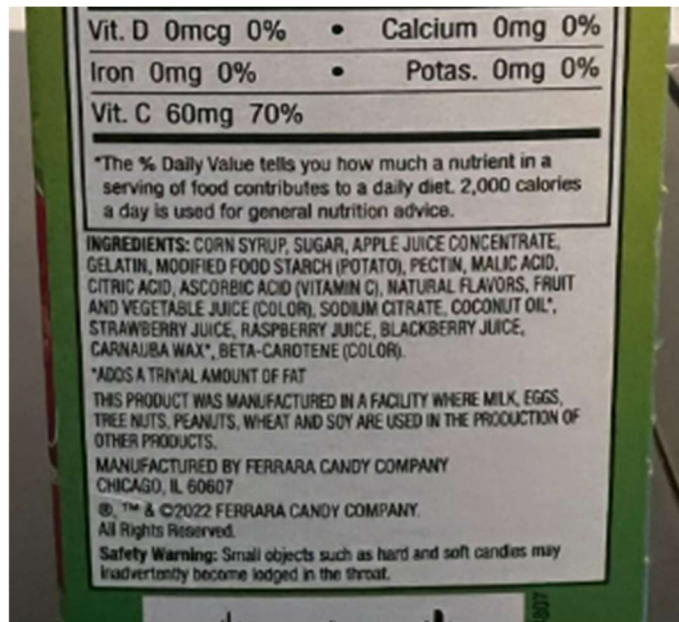
19 21. The front label (or “principal display panel”) of the Products (both the box and the
20 individually wrapped items contained therein) prominently state they are “Naturally Flavored”
21 and “Made With Real Fruit Juice,” with attention drawn to the claim through both stylized and
22 realistic depictions of fruits:
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22. These natural flavoring claims are false. The Products are flavored using an artificial flavoring, DL malic acid, that is derived from petrochemicals.

23. The Products state, on the back label, that they contain “malic acid”:



12 24. While there is a naturally occurring form of malic acid, it is extremely expensive
13 to formulate in large quantities and is almost never used in mass-produced food products.

14 25. Undersigned counsel sent the Products purchased by Plaintiff to be tested by an
15 independent third-party laboratory. That testing detected the presence of the “D” isomer in the
16 malic acid Defendant uses in these Products. The presence of the D isomer means that the
17 ingredient used in the Products is DL malic acid, a synthetic substance derived from
18 petrochemicals.¹

19 26. DL malic acid is manufactured in petrochemical plants from benzene or butane—
20 components of gasoline and lighter fluid, respectively—through a series of chemical reactions,
21 some of which involve highly toxic chemical precursors and byproducts.

22 27. Fruit flavors in a food are imparted by the interactions between sugars, acids,
23 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined
24 by the ratio between the sugars (mainly glucose and fructose) and acids, such as malic acid.
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¹ DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 28. The quality and consumer acceptability of fruit flavors is based on their perceived
2 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such
3 as strawberries, blackberries, and raspberries have their own natural ratio of sugars and acids.

4 29. The DL malic acid used in the Products is used to create, simulate, and/or reinforce
5 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.
6

7 30. Defendant uses the petrochemical-derived DL malic acid in its Products to create
8 a sweet and tart flavor but pretends that it uses only natural flavorings, misbranding the Products
9 and deceiving consumers.

10 **C. Requirements for Labelling**

11 31. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act
12 (“FDCA”) require that a food’s label accurately describe the nature of the food product and its
13 characterizing flavors. 21 C.F.R. § 102.5(a).
14

15 32. Artificial flavor is defined as “any substance, the function of which is to impart
16 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible
17 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
18 products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).

19 33. Natural flavor is defined as “essential oil, oleoresin, essence or extractive, protein
20 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the
21 flavoring constituents” from fruits or vegetables, “whose significant function in food is flavoring
22 rather than nutritional.” 21 C.F.R § 101.22(a)(3).
23

24 34. Any recognizable primary flavor identified directly or indirectly on the front label
25 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to
26 as a “characterizing flavor.” 21 C.F.R. § 101.22.
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1 35. Here, the Products’ labels both state the characterizing flavors and reinforce the
2 claim that this characterizing flavor is achieved by using only natural flavors through use of
3 depictions of fruits.

4 36. If a food product’s characterizing flavor is not created exclusively by the named
5 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or
6 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present
7 which “simulates, resembles or reinforces” the characterizing flavor, the front label must
8 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §
9 101.22(i)(2).
10

11 37. A food product’s label also must include a statement of the “presence or absence
12 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such
13 ingredient(s) or component(s) in the food has a material bearing on price or consumer
14 acceptance . . . and consumers may otherwise be misled about the presence or absence of the
15 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.
16

17 38. Such statement must be in boldface print on the front display panel and of
18 sufficient size for an average consumer to notice.

19 39. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §
20 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.
21

22 40. By changing the ratio between sugars and acids that is naturally found in fruits,
23 the DL malic acid used in the Products reinforces, simulates, or creates the characterizing
24 flavors, regardless of any other effect it may have or purpose for which it was included.

25 41. DL malic acid is not a “natural flavor” as this term is defined by federal and state
26 regulations and is not derived from a fruit or vegetable or any other natural source. Indeed, FDA
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1 regulations distinguish malic acid from DL malic, which it states “does not occur naturally.” 21
2 C.F.R. § 184.1069(a).

3 42. The Products therefore contain artificial flavorings.

4 43. Because the Products contain artificial flavoring, federal and California law
5 requires the Products to display both front- and back-label disclosures to inform consumers that
6 the Products are artificially flavored.

7
8 44. The Products have none of the required disclosures regarding the use of artificial
9 flavors.

10 45. Plaintiff reserves the right to amend this Complaint to add further products that
11 contain similar label misrepresentations as testing continues.

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

18
19 50. Plaintiff reviewed the labels on the Products prior to her purchase, and reviewed
20 the natural flavoring claims being made on those labels. Consumers such as Plaintiff who viewed
21 the Products’ labels reasonably understood Defendant’s “Naturally Flavored” statement, as well
22 as its failure to disclose the use of artificially derived malic acid, to mean that the Products
23 contain only natural flavorings. This representation and material omission were both false and
24 deceptive.

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

3 52. 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 53. Consumers including Plaintiff especially rely on label claims made by food
8 product manufacturers such as Ferrara, as they cannot confirm or disprove those claims simply
9 by viewing or even consuming the Products.

10 54. 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 55. 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 California
17 who purchased the Products within four years prior to the filing of this Complaint.

18 56. 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 57. 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 58. 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.
28

1 59. **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 the United States.

4 60. **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 natural
12 flavorings claims to indicate that the Products contained only natural
13 flavorings, 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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- 20

21 61. 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 62. In short, these common questions of fact and law predominate over questions that
2 affect only individual Class members.

3 63. **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

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

11 65. There are no defenses available to Defendant that are unique to the named
12 Plaintiff.
13

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

18 67. Furthermore, Plaintiff has selected competent counsel who are experienced in
19 class action and other complex litigation. Plaintiff and Plaintiff’s counsel are committed to
20 prosecuting this action vigorously on behalf of the Class and have the resources to do so.
21

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

- 25 a. the damages individual Class members suffered are small compared to the burden
26 and expense of individual prosecution of the complex and extensive litigation
27 needed to address Defendant’s conduct such that it would be virtually impossible
28

1 for the Class members individually to redress the wrongs done to them. In fact,
2 they would have little incentive to do so given the amount of damage each member
3 has suffered when weighed against the costs and burdens of litigation;

4 b. the class procedure presents fewer management difficulties than individual
5 litigation and provides the benefits of single adjudication, economies of scale, and
6 supervision by a single Court;

7 c. the prosecution of separate actions by individual Class members would create a
8 risk of inconsistent or varying adjudications, which would establish incompatible
9 standards of conduct for Defendant; and

10 d. the prosecution of separate actions by individual Class members would create a
11 risk of adjudications with respect to them that would be dispositive of the interests
12 of other Class members or would substantively impair or impede their ability to
13 protect their interests.
14

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

18 70. Unless a class-wide injunction is issued, Defendant will likely continue to
19 advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
20 described throughout this Complaint, and members of the Class will continue to be misled,
21 harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products'
22 advertising or labeling in the future, and so will not purchase the Products although she would
23 like to.
24

25 71. **Ascertainability.** To the extent ascertainability is required, the Class members are
26 readily ascertainable from Defendant's records and/or its agents' records of retail and online
27 sales, as well as through public notice.
28

1 any other act prohibited by law, including those acts set forth in this Complaint, and further seek
2 all other relief allowable under Business and Professions Code Section 17200, *et seq.*

3
4 **COUNT 2**
5 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
6 **SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT**

7 81. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
8 extent necessary, plead this cause of action in the alternative. This claim is pleaded in the
9 alternative in the event that discovery reveals that Plaintiff has an inadequate legal remedy.

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

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

14 84. Defendant’s business practices, as alleged herein, are “fraudulent” because it fails
15 to disclose accurately the synthetic flavoring used in the Products.

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

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

22 87. Defendant publicly disseminated untrue or misleading representations regarding
23 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care
24 should have known, were untrue or misleading.

25 88. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an
26 order of this Court enjoining Defendant from continuing to engage in “fraudulent” business
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1 practices and any other act prohibited by law, including those acts set forth in this Complaint,
2 and further seeks all other relief allowable under Business and Professions Code Section 17200,
3 *et seq.*

4
5 **COUNT 3**
6 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
7 **SECTION 17200 *et seq.* — “UNLAWFUL” CONDUCT**

8 89. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
9 extent necessary, pleads this cause of action in the alternative. This claim is pleaded in the
10 alternative in the event that discovery reveals that Plaintiff has an inadequate legal remedy.

11 90. 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 91. Defendant’s actions as alleged in this Complaint constitute “unlawful” conduct
14 within the meaning of California Business and Professions Code Section 17200, *et seq.*

15 92. Defendant’s business practices, as alleged herein, are “unlawful” because it fails
16 to disclose accurately the synthetic flavoring used in the Products.

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

19 94. Defendant’s business practices alleged herein constituted, and continue to
20 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 95. Defendant publicly disseminated untrue or misleading representations regarding
24 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care
25 should have known, were untrue or misleading.
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1 **COUNT 5**
2 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
3 **CIVIL CODE § 1750 *et seq.***

4 104. 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.

6 105. 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 flavoring
14 representations that were 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
27
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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 nutritional labels on Defendant's Products and to
18 recover reasonable attorneys' fees and costs.

19 **COUNT 6**
20 **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 flavoring in the Products.

25 116. Defendant did so for the purpose of enriching itself and it in fact enriched itself
26 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 were "Naturally Flavored."

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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Respectfully submitted,

/s/ Charles C. Weller
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