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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER JACKSON and APRIL DUE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

WM. BOLTHOUSE FARMS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Jennifer Jackson and April Due (“Plaintiffs”) bring this action on behalf of
2 themselves and all others similarly situated against Defendant Wm. Bolthouse Farms, Inc.
3 (“Bolthouse” or “Defendant”). Plaintiffs make the following allegations pursuant to the
4 investigation of their counsel and based upon information and belief, except as to the allegations
5 specifically pertaining to themselves, which are based on their personal knowledge.

6 **NATURE OF THE ACTION**

7 1. Defendant formulates, manufactures, advertises, and sells multiple types of juice
8 products (the “Products”)¹ throughout the United States, including in California and New York.
9 Defendant markets its Products in a systematically misleading manner by misrepresenting that their
10 Products do not contain preservatives, or/alternatively, artificial preservatives.

11 2. Defendant clearly lists “No Preservatives” or, alternatively, “No Artificial
12 Preservatives” on Products’ labels, capitalizing on the preference of health-conscious consumers to
13 purchase foods that are free from preservatives and artificial ingredients. However, Defendant’s
14 Products contain “ascorbic acid”—a well-known artificial preservative used in food products.

15 3. As a result of its deceptive conduct, Defendant violates state consumer protection
16 statutes and has been unjustly enriched at the expense of consumers.

17 4. Plaintiffs purchased Defendant’s Products and, on behalf of themselves and
18 similarly situated purchasers, assert claims for violations of California Unfair Competition Law,
19 Cal. Business & Professions Code § 17200, et seq., New York General Business Law § 349, et
20 seq., and New York General Business Law § 350, et seq., as well as for unjust enrichment and
21 breach of express warranty.

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¹ The Products encompass all of Defendant’s products that are advertised as containing “No
25 Preservatives” and/or “No Artificial Preservatives,” but contain ascorbic acid, including, but not
26 limited to: Daily Greens; Strawberry Banana; Blue Goodness®; Golden Goodness; Green
27 Goodness®; Red Goodness®; Berry Superfood Boost; Mango Cherry C-Boost®; Pineapple Kale
28 Ginger Boost; Pineapple Carrot Orange; Peach Carrot Mango; Grapefruit Carrot Orange; Mocha
Cappuccino; Vanilla Chai; Protein Plus® Nut Butter Blueberry Vanilla; Protein Plus® Chocolate
Peanut Butter Nut Butter; Protein Plus® Chocolate; Protein Plus® Coffee; Protein Plus® Dutch
Chocolate Banana; Protein Plus® Strawberry; Protein Plus® Vanilla Bean.

JURISDICTION AND VENUE

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2 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
3 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the
4 proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100
5 members of the putative class, and at least one class member is a citizen of a state different than
6 Defendant.

7 6. This Court has personal jurisdiction over Defendant Wm. Bolthouse Farms, Inc.
8 (“Defendant”) because Defendant is headquartered in California.

9 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because a
10 substantial portion of the events giving rise to this cause of action occurred here.

11 **PARTIES**

12 8. Plaintiff Jennifer Jackson is a citizen of California who resides in San Francisco,
13 California. Ms. Jackson purchased the Product for her personal use at various times during the
14 applicable statute of limitations. Most recently, in or around March 2022, Ms. Jackson purchased a
15 “Green Goodness” Bolthouse juice bottle from Amazon for \$6.49. In purchasing the Product, Ms.
16 Jackson relied on Defendant’s false, misleading, and deceptive marketing of the Product as
17 containing “No Preservatives.” Ms. Jackson understood that “No Preservatives” meant that the
18 Product did not contain any preservatives, but in fact the Product she purchased did contain
19 ascorbic acid, a preservative. Had Ms. Jackson known that the “No Preservatives” representation
20 was false and misleading, she would not have purchased the Product or would have only been
21 willing to purchase the Product at a lesser price.

22 9. Plaintiff April Due is a citizen of New York who resides in Wheatley Heights, New
23 York. Ms. Due purchased the Product for her personal use at various times during the applicable
24 statute of limitations. Most recently, in or around July 2023, Ms. Due purchased a “Green
25 Goodness” Bolthouse juice bottle from a Stop & Shop in Suffolk County, New York for
26 approximately \$7. In purchasing the Product, Ms. Due relied on Defendant’s false, misleading,
27 and deceptive marketing of the Product as containing “No Preservatives.” Ms. Due understood that
28 “No Preservatives” meant that the Product did not contain any preservatives, but in fact the Product

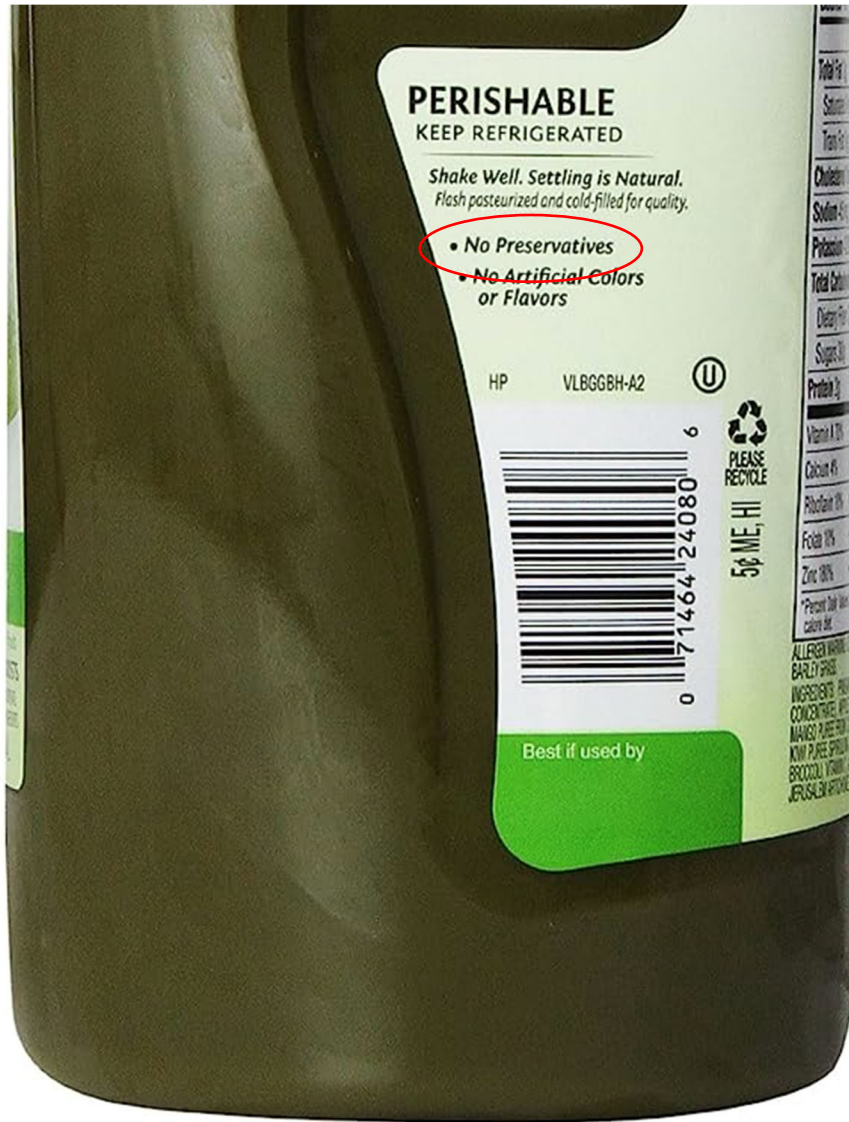
1 she purchased did contain ascorbic acid, a preservative. Had Ms. Due known that the “No
2 Preservatives” representation was false and misleading, she would not have purchased the Product
3 or would have only been willing to purchase the Product at a lesser price.

4 10. Defendant Wm. Bolthouse Farms, Inc., is a corporation organized under the laws of
5 Michigan with its headquarters at 7200 East Brundage Lane, Bakersfield, CA 93307 United States.

6 **GENERAL ALLEGATIONS**

7 11. **Defendant Misrepresents the Products.** Defendant advertises and displays on the
8 side of each of the Products’ that it contains “No Preservatives,” or alternatively, “No Artificial
9 Preservatives,” thereby misleading reasonable consumers into believing that the Products are free
10 from preservatives and artificial ingredients. However, the Products contain ascorbic acid, a well-
11 known and well-documented artificial preservative. Defendant’s most recent labeling of the
12 Products, along with their ingredient panels, are depicted below. The first set of images were
13 visible to Ms. Jackson when she purchased the Product on Amazon; these labels indicate that the
14 Product contains “No Preservatives.” The second set of images show how the Product appeared to
15 Ms. Due when she purchased the Product at Food Bazaar; these labels indicate that the Product
16 contains “No Preservatives,” or alternatively, “No Artificial Preservatives.” In either event, both
17 sets of labels clearly state that the Product contains ascorbic acid.

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ALLERGEN WARNING: CONTAINS WHEATGRASS, BARLEY GRASS. For questions or comments, call 1-800-467-4683, M-F 8 AM - 4 PM PST

INGREDIENTS: PINEAPPLE JUICE FROM CONCENTRATE (WATER, PINEAPPLE JUICE CONCENTRATE), APPLE JUICE FROM CONCENTRATE (WATER, APPLE JUICE CONCENTRATE), MANGO PUREE FROM CONCENTRATE (WATER, MANGO PUREE CONCENTRATE), BANANA PUREE, KIWI PUREE, SPIRULINA, NATURAL FLAVOR, CHLORELLA, ZINC SULPHATE, GREEN TEA, SPINACH, BROCCOLI, VITAMIN C (ASCORBIC ACID), BARLEY GRASS, WHEAT GRASS, ECHINACEA, GARLIC, JERUSALEM ARTICHOKE, LEMON BIOFLAVONOID, NOVA SCOTIA DULSE.

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Dietary Fiber 1g	4%
Total Sugars 25g	
Incl. 0g Added Sugars	0%
Percent Daily Values	
Amount in 1g	
0mcg	0% • Calcium 30mg 2%
1g	10% • Potassium 386mg 8%
1mg	10% • Riboflavin 0.3mg 25%
0.5mg	30% • Vit. B12 0.7mcg 30%
8mg	2% • Manganese 0.6mg 25%

Daily Value (DV) tells you how much a nutrient serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: PINEAPPLE JUICE FROM CONCENTRATE (WATER, PINEAPPLE JUICE CONCENTRATE), APPLE JUICE FROM CONCENTRATE (WATER, APPLE JUICE CONCENTRATE), MANGO PUREE FROM CONCENTRATE (WATER, MANGO PUREE CONCENTRATE), BANANA PUREE, CUCUMBER JUICE FROM CONCENTRATE (WATER, CUCUMBER JUICE CONCENTRATE), KIWI PUREE, CONTAINS 2% OR LESS NATURAL FLAVOR, SPIRULINA**, VITAMIN C (ASCORBIC ACID), GREEN TEA**, SPINACH**, BROCCOLI**, BARLEY GRASS**, WHEATGRASS**, GARLIC**, JERUSALEM ARTICHOKE**, NOVA SCOTIA DULSE**, **DRIED.

CONTAINS: WHEATGRASS, BARLEY.

†NOT A LOW CALORIE FOOD.

OLTHOUSE FARMS, INC.
FIELD, CA 93307
QUESTIONS OR COMMENTS CALL
467-4683, M-F 8 AM - 4 PM PT

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Best By

1 12. **Ascorbic Acid is a Preservative.** The FDA defines a chemical preservative as “any
2 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not
3 include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to
4 food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or
5 herbicidal properties.” 21 C.F.R. §101.22(a)(5).

6 13. Ascorbic acid is a chemical form of vitamin C, which, pursuant to FDA regulations,
7 is commonly used as a food preservative. In fact, the FDA lists “ascorbic acid” under the heading
8 “Subpart D - Chemical Preservatives.” 21 C.F.R. § 182.3013.

9 14. Ascorbic acid functions as an antioxidant that helps prevent microbial growth and
10 oxidation in food products, thereby preserving their color and freshness. Although Defendant
11 identifies ascorbic acid as a source of vitamin C, Defendant adds it for its preservative qualities as
12 well.

13 15. The FDA regulates the use of ascorbic acid in the formulation of wine and juice “to
14 prevent oxidation of color and flavor components of juice,” and it “may be added to grapes, other
15 fruit (including berries), and other primary wine making materials or to the juice of such
16 materials.” 27 C.F.R. § 24.246.

17 16. Based on industry standards, Defendant added ascorbic acid to the Products to
18 prevent their “oxidation of color and flavor”—something which happens so often to these juice
19 products that it prompted the FDA to promulgate the pertinent preservatives regulations set forth
20 above. *Id.*

21 17. On its website, the FDA also classifies and identifies ascorbic acid as a preservative
22 in its Overview of Food Ingredients, Additives, and Colors, as well as provides examples of how
23 ascorbic acid is used as a preservative in beverages and other products.²

24 18. The FDA’s view of this matter is further bolstered by a Warning Letter that it sent to
25 Chiquita Brands International, Inc., indicating that Chiquita’s “Pineapple Bites” products were
26 misbranded within the meaning of section 403(k) of the Food, Drug, and Cosmetic Act, 21 U.S.C.

27 ² [https://public4.pagefreezer.com/browse/FDA/31-12-2022T07:59/https://www.fda.gov/food/food-
28 ingredients-packaging/overview-food-ingredients-additives-colors](https://public4.pagefreezer.com/browse/FDA/31-12-2022T07:59/https://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors) (last accessed July 14, 2023).

1 § 343(k), because “they contain the chemical preservatives ascorbic acid and citric acid but their
2 labels fail to declare these preservatives with a description of their functions.”³

3 19. The USDA has also recognized that “[a]scorbic acid is most commonly used as a
4 preservative to prevent enzymatic browning reactions that occur during processing and post-
5 processing storage.”⁴ Based on the foregoing, Defendant’s use of ascorbic acid in its Products
6 renders its “No Preservatives,” and alternatively, “No Artificial Preservatives” representations false
7 and misleading.

8 20. **Subjective Intent of Use is Immaterial.** Ascorbic acid functions as a preservative
9 in the Products, and this is true regardless of Defendant’s subjective purpose or intent for adding it
10 to the Products, such as to impart flavor.⁵

11 21. Even if the Products’ ascorbic acid does not, in fact, function as a preservative in the
12 Products, it nonetheless qualifies as a preservative given that it has the capacity or tendency to do
13 so. See 21 C.F.R. §101.22(a)(5) (defining preservatives as “any chemical that, when added to
14 food, tends to prevent or retard deterioration”); *see also* Merriam-Webster’s Dictionary (defining
15 “preservative” as “something that preserves or has the power of preserving”);⁶ Oxford English
16 Dictionary (defining “preservative” as “[t]ending to preserve or capable of preserving”).⁷

18 ³ FDA, Warning Letter to Chiquita Brands International, Inc. and Fresh Express Incorporated (Oct.
19 6, 2010), available at
20 [http://web.archive.org/web/20101109083452/http://www.fda.gov/ICECI/EnforcementActions/War
ningLetters/ucm228663.htm](http://web.archive.org/web/20101109083452/http://www.fda.gov/ICECI/EnforcementActions/War ningLetters/ucm228663.htm) (last accessed July 5, 2023).

21 ⁴ U.S. Dep’t of Agric., USDA National Organic Program, *Ascorbic Acid 3* (2019),
<https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf>.

22 ⁵ L. Somogyi, *Chapter 13: Direct Food Additives in Fruit Processing*, in PROCESSING
23 FRUITS: SCI. & TECH., at 302 (D. Barrett et al. eds., CRC Press 2d ed. 2004); J. deMan,
24 *Chapter 11: Additives and Contaminants*, in PRINCIPLES OF FOOD CHEMISTRY, at 438
(AVI Publishing Co., Inc. 3d ed. 1999) (“Acids as food additives serve a dual purpose, as
acidulants and as preservatives”).

25 ⁶ *Preservative*, Merriam-Webster Dictionary, [https://www.merriam-
webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)
26 (last accessed July 5, 2023).

27 ⁷ *Preservative*, American Heritage Dictionary,
28 <https://ahdictionary.com/word/search.html?q=preservative> (last accessed July 6, 2023).

1 22. **Products’ Ascorbic Acid is Artificially Synthesized.** The ascorbic acid contained
2 in the Products is commercially produced, manufactured, and the result of extensive chemical
3 processing. In fact, the USDA found that “all commercial ascorbic acid [is] synthetically
4 derived.”⁸ The reason for this is that, “[w]hile ascorbic acid is naturally produced ... its reactive
5 nature makes isolation of the substance from natural sources challenging, which has resulted in all
6 commercial ascorbic acid being synthetically derived.”⁹ Defendant’s Products contain commercial
7 ascorbic acid; therefore, the ascorbic acid in question is artificial.

8 23. **Defendant Exploits Consumer Demand for Preservative-Free Food.** By
9 representing that the Products contain “No Preservatives,” or alternatively, “No Artificial
10 Preservatives,” Defendant seeks to capitalize on consumers’ preference for products with no
11 preservatives and no artificial ingredients. Indeed, “foods bearing ‘free-from’ claims are
12 increasingly relevant to Americans, as they perceive the products as closely tied to health ... 84
13 percent of American consumers buy free-from foods because they are seeking out more natural or
14 less processed foods. In fact, 43 percent of consumers agree that free-from foods are healthier than
15 foods without a free-from claim, while another three in five believe the fewer ingredients a product
16 has, the healthier it is (59 percent). Among the top claims free-from consumers deem most
17 important are trans-fat-free (78 percent) and preservative-free (71 percent).”¹⁰

18 24. According to another study, when consumers were asked to choose a product that
19 was the closest to their understanding of what “natural” means on product labels, they often chose
20 products with “No Preservatives” labels.¹¹

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24 ⁸ U.S. Dep’t of Agric., USDA National Organic Program, *Ascorbic Acid 3* (2019),
<https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf>.

25 ⁹ *Id.*

26 ¹⁰ See *Free-From Food Trends-US-May 2015*, MINTEL [https://www.mintel.com/press-](https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed)
27 [-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-](https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed)
more-natural-or-less-processed (last accessed July 5, 2024).

28 ¹¹ Sajida Rahman, et al., Assessing consumers’ understanding of the term “Natural” on food
labeling, *Journal of Food Science*, Vol. 85, No. 6, 1891-1896 (2020).

1 damages as a result of Defendant's actions and the amount thereof; whether Plaintiffs and the
2 members of the Classes are entitled to statutory damages; and whether Plaintiffs and the members
3 of the Classes are entitled to attorneys' fees and costs.

4 32. The claims of the named Plaintiffs are typical of the claims of the Class in that the
5 named Plaintiffs were exposed to Defendant's false and misleading marketing, purchased
6 Defendant's Products, and suffered a loss as a result of those purchases.

7 33. Plaintiffs are adequate representatives of the Classes because their interests do not
8 conflict with the interests of the Class members they seek to represent, they have retained
9 competent counsel experienced in prosecuting class actions, and they intend to prosecute this
10 action vigorously. The interests of Class members will be fairly and adequately protected by
11 Plaintiffs and their counsel.

12 34. The class mechanism is superior to other available means for the fair and efficient
13 adjudication of the claims of Class members. Each individual Class member may lack the
14 resources to undergo the burden and expense of individual prosecution of the complex and
15 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases
16 the delay and expense to all parties and multiplies the burden on the judicial system presented by
17 the complex legal and factual issues of this case. Individualized litigation also presents a potential
18 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
19 management difficulties and provides the benefits of single adjudication, economy of scale, and
20 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment
21 of the liability issues will ensure that all claims and claimants are before this Court for consistent
22 adjudication of the liability issues.

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **Violation of California Unfair Competition Law,
26 Cal. Business & Professions Code § 17200, et seq (UCL)
27 (On behalf of the Nationwide Class and the California Subclass)**

28 35. Plaintiffs reallege the foregoing paragraphs and incorporate them as if fully set forth
herein.

36. At all relevant times, the UCL was in full force and effect.

1 37. The UCL prohibits the use of “any unlawful, unfair or fraudulent business act or
2 practice.” (Bus. & Prof. Code §17200).

3 38. Section 17203 of the UCL empowers the Court to enjoin any conduct that violates
4 the UCL and “make such orders or judgments, including the appointment of a receiver, as may be
5 necessary to restore to any person in interest any money or property, real or personal, which may
6 have been acquired by means of such unfair competition.”

7 39. Plaintiffs have “suffered injury in fact and [have] lost money or property as a result
8 of the unfair competition” as complained of herein. Bus & Prof. Code §17204. Plaintiffs have
9 paid money for Defendant’s products that contained ascorbic acid and which were “misbranded.”
10 As such, the products could not legally be sold in interstate commerce. The monies that Plaintiffs
11 and the class members paid for the products resulted from Defendant’s unfair competition, and
12 Plaintiffs and the class members are entitled to an order restoring those monies to them and an
13 order enjoining Defendant from selling ascorbic acid containing products under its misleading
14 label. Additionally, even if Defendant’s Products could have legally been sold in interstate
15 commerce, Plaintiffs overpaid compared to what they would have if the same products did not
16 contain ascorbic acid.

17 40. Defendant’s conduct violates the unfair practices prong of the UCL. Defendant’s
18 conduct violates both California and federal public policy, as shown by their respective
19 prohibitions on introducing misbranded products into interstate commerce. The conduct is also
20 anticompetitive and puts competitors who follow the law at a disadvantage. Defendant’s conduct
21 suppresses competition and has a negative impact on the marketplace, decreasing consumer choice
22 and obfuscating the nutritional and safety profile of consumers’ products. Further, Defendant’s
23 conduct causes significant aggregate harm to consumers, causing them to overpay.

24 41. Defendant’s violations of the UCL entitle Plaintiffs and the class members to
25 injunctive relief and full restitution.

26 42. Plaintiffs have no adequate remedy at law for this claim. There is no commensurate
27 legal remedy for Plaintiff’s requested relief under this count. Alternatively, legal remedies
28 available to Plaintiffs are inadequate because they are not “equally prompt and certain and in other

ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937); see also *U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) (“the ‘mere existence’ of a possible legal remedy is not sufficient to warrant denial of equitable relief”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there may be a remedy at law does not oust the jurisdiction of a court of equity. To have this effect, the remedy must also be speedy, adequate, and efficacious to the end in view ... It must reach the whole mischief and secure the whole right of the party in a perfect manner at the present time and not in the future”). Furthermore:

- (a) To the extent damages are available here, damages are not equally certain as restitution because the standard that governs ordering restitution is different than the standard that governs damages. Hence, the Court may award restitution even if it determines that Plaintiffs fail to sufficiently adduce evidence to support an award of damages.
- (b) Damages and restitution are not necessarily the same amount. Unlike damages, restitution is not limited to the amount of money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Plaintiffs seek such relief here.
- (c) Legal claims for damages are not equally certain as restitution because claims under the UCL and unjust enrichment entail few elements.

43. Plaintiffs also lack an adequate remedy at law to prevent future harm.

COUNT II

Violation of New York General Business Law, New York General Business Law § 349, et seq. (On behalf of the New York Subclass)

44. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs and incorporate the same as if set forth herein at length.

45. Plaintiff Due brings this cause of action pursuant to New York General Business Law (“GBL”), Section 349, et seq., on her own behalf and on behalf of the New York Subclass.

1 46. New York General Business Law Section 349, et seq., declares unlawful
2 “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the
3 furnishing of any service in this state.”

4 47. Defendant, in its advertising and packaging of the Products, made false and
5 misleading statements and fraudulent omissions regarding the quality and characteristics of the
6 Products—specifically, the “No Preservatives,” or alternatively, “No Artificial Preservatives”
7 representation—despite the fact the Products are made with ascorbic acid, a well-established
8 artificial preservative. Such claims and omissions appear on the label and packaging of the
9 Products, which are sold at retail stores throughout New York, the United States, and over the
10 internet.

11 48. Defendant used the “No Preservatives,” or alternatively, “No Artificial
12 Preservatives” representation with the intent to sell the Products to consumers, including to
13 Plaintiff Due as well as the New York Subclass. Defendant knew or should have known of its
14 falsity. The “No Preservatives,” or alternatively, “No Artificial Preservatives” representation is
15 likely to deceive consumers into purchasing the Products because it is material to the average,
16 ordinary, and reasonable consumer. Defendant knew consumers would purchase the Products
17 and/or pay more for them under the false – but reasonable – belief that the Products do not contain
18 any artificial preservatives when they actually do. By advertising that the Products contain “No
19 Preservatives,” or alternatively, “No Artificial Preservatives” on the product label and throughout
20 its deceptive marketing, Defendant proves that a “No Preservatives,” or alternatively, “No
21 Artificial Preservatives” representation is material to consumers. As a result of its deceptive acts
22 and practices, Defendant has sold millions of Products to unsuspecting consumers across the
23 United States and within New York. If Defendant had advertised its Products truthfully and in a
24 non-misleading fashion, Plaintiff Due and other class members would not have purchased the
25 Products or would have paid less for them.

26 49. Defendant’s false and deceptive labeling and advertising of the Products constitute a
27 deceptive act and practice in the conduct of business, thereby violating N.Y. GBL § 349(a).
28 Plaintiff Due and the New York Subclass have accordingly been damaged.

1 50. Defendant does not have any reasonable basis for the claims about the Products
2 made in Defendant’s advertising and on Defendant’s packaging or labeling because the Products
3 are made with the artificial preservative ascorbic acid. Defendant knows and knew that the
4 Products are not truly free of preservatives and/or artificial preservatives, yet Defendant
5 intentionally advertises and markets the Products to deceive reasonable consumers into believing
6 that the Products contain no preservatives and/or artificial preservatives.

7 51. Defendant’s improper consumer-oriented conduct—including labeling and
8 advertising the Products as containing “No Preservatives,” or alternatively, “No Artificial
9 Preservatives,” when in fact they contain the well-documented artificial preservative ascorbic acid,
10 is misleading in a material way in that it, inter alia, induced Plaintiff Due and the New York
11 Subclass to purchase and pay a premium for Defendant’s Products and to use the Products when
12 they otherwise would not have. Defendant made these untrue and/or misleading statements and
13 representations willfully, wantonly, and with reckless disregard for the truth.

14 52. Plaintiff Due and the New York Subclass reasonably relied on the material and false
15 “No Preservatives,” or alternatively, “No Artificial Preservatives” representation to their detriment
16 in that they purchased the Products.

17 53. Plaintiff Due and the New York Subclass paid a premium for Products that—
18 contrary to Defendant’s representations—were not free of artificial preservatives. Accordingly,
19 Plaintiff Due and New York Subclass members received less than what they bargained and/or paid
20 for.

21 54. Plaintiff Due and the New York Subclass have suffered injury in fact and have lost
22 money as a result of Defendant’s unlawful conduct—namely, Plaintiff Due and New York
23 Subclass members lost the premium they paid for (i.e., that Products are free of artificial
24 preservatives).

25 55. Defendant’s conduct as alleged herein constitutes recurring, unlawful deceptive acts
26 and practices in violation of N.Y. GBL § 349, and as such, Plaintiff Due and the New York
27 Subclass seek monetary damages and the entry of preliminary and permanent injunctive relief,
28 including without limitation, public injunctive relief, against Defendant, enjoining them from

1 inaccurately describing, labeling, marketing, and promoting the Products.

2 56. All of the consumer-oriented conduct alleged herein occurred and continues to
3 occur in Defendant's businesses. Defendant's wrongful conduct is part of a pattern, practice and/or
4 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily
5 alters its conduct or Defendant is otherwise ordered to do so.

6 57. Plaintiff Due and the New York Subclass seek an order of this Court enjoining
7 Defendant from continuing to engage, use, or employ their practice of labeling and advertising the
8 sale and use of the Products as alleged herein. Likewise, Plaintiff Due and New York Subclass
9 members seek an order requiring Defendant to disclose such misrepresentations, and to preclude
10 Defendant's failure to disclose the existence and significance of said misrepresentations.

11 58. As a direct and proximate result of Defendant's misconduct in violation of GBL §
12 349, Plaintiff Due and New York Subclass members were harmed when they paid a premium for
13 the Products. Further, Plaintiff Due and New York Subclass members have suffered and continue
14 to suffer economic losses and other damages including, but not limited to, the premium paid for the
15 Products, and any interest that would have accrued on those monies, in an amount to be proven at
16 trial. Accordingly, Plaintiff Due seeks a monetary award for Defendant's violation of GBL § 349
17 in the form of damages to compensate Plaintiff Due and the New York Subclass for said monies.
18 Plaintiff Due seeks to recover her actual damages or fifty (50) dollars, whichever is greater, three
19 times actual damages, and attorneys' fees, as well as injunctive relief, including without limitation,
20 public injunctive relief, to enjoin Defendant's misconduct to prevent ongoing and future harm that
21 will result.

22 59. Injunctive relief is necessary to prevent Defendant from continuing to engage in the
23 unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of
24 which can be achieved through available legal remedies (such as monetary damages to compensate
25 past harm). Absent an order enjoining Defendant's unlawful conduct as described herein, Plaintiff
26 Due and New York Subclass members will be unable to rely on the representations on the
27 Products' labels, and the general public will be subjected to a persistent threat of future harm.
28

COUNT III

**Violation of New York General Business Law § 350, *et seq.*
(On behalf of the New York Subclass)**

1
2
3 60. Plaintiffs repeat and realleges the allegations set forth in the preceding paragraphs
4 and incorporates the same as if set forth herein at length.

5 61. Plaintiff Due brings this cause of action pursuant to Section 350, *et seq.*, New York
6 General Business Law, on her own behalf and on behalf of the New York Subclass.

7 62. New York General Business Law Section 350 declares unlawful “[f]alse advertising
8 in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

9 63. GBL § 350-a(1) provides, in part, as follows:

10 The term “false advertising” means advertising, including labeling, of a
11 commodity, or of the kind, character, terms or conditions of any
12 employment opportunity if such advertising is misleading in a material
13 respect. In determining whether any advertising is misleading, there shall
14 be taken into account (among other things) not only representations made
15 by statement, word, design, device, sound or any combination thereof, but
16 also the extent to which the advertising fails to reveal facts material in the
17 light of such representations with respect to the commodity or employment
18 to which the advertising relates under the conditions prescribed in said
19 advertisement, or under such conditions as are customary or usual. . .

17 64. Defendant’s labeling, packaging, and advertising contain untrue and materially
18 misleading statements concerning the Products inasmuch as they misrepresent that the Products
19 contain “No Preservatives,” or alternatively, “No Artificial Preservatives,” when they actually
20 contain the artificial preservative ascorbic acid.

21 65. The “No Preservatives,” or alternatively, “No Artificial Preservatives”
22 misrepresentation is material because consumers prefer foods that are free of preservatives and/or
23 artificial preservatives, and the misrepresentation is likely to mislead reasonable consumers into
24 purchasing the Products.

25 66. Plaintiff Due and the New York Subclass have suffered injury in fact and have lost
26 money as a result of Defendant’s unlawful conduct when they paid a premium for Products that are
27 free of artificial preservatives and received Products that contained the artificial preservative
28 ascorbic acid.

1 67. Plaintiff Due and the New York Subclass relied upon the labeling, packaging, and
2 advertising of, and paid a premium for, the Products which—contrary to Defendant’s
3 representations—were not free of artificial preservatives. Accordingly, Plaintiff Due and Subclass
4 members received less than what they bargained and/or paid for.

5 68. Defendant’s labeling and advertising as alleged herein was specifically designed to
6 induce—and did, indeed, induce—reasonable consumers, like Plaintiff Due and Subclass members,
7 to purchase the Products.

8 69. Plaintiff Due and the New York Subclass reasonably relied on the material and false
9 “No Preservatives,” or alternatively, “No Artificial Preservatives” representation to their detriment
10 in that they purchased the Products.

11 70. Defendant violated GBL § 350 when it labeled and advertised the Products in an
12 unfair, deceptive, untrue, and materially misleading way and disseminated these misrepresentations
13 to the public through the Products’ labeling, packaging, and advertising.

14 71. Defendant’s consumer-oriented conduct as alleged herein constitutes recurring,
15 unlawful false advertising in violation of N.Y. GBL § 350.

16 72. As a direct and proximate result of Defendant’s misconduct in violation of GBL §
17 350, Plaintiff Due and the New York Subclass were harmed when they paid a premium for the
18 Products based on Defendant’s misrepresentations. Further, Plaintiff Due and the New York
19 Subclass have suffered and continue to suffer economic losses and other damages including, but
20 not limited to, the amounts paid for the Products, and any interest that would have accrued on those
21 monies, in an amount to be proven at trial. Accordingly, Plaintiff Due seeks a monetary award for
22 Defendant’s violation of GBL § 350 in the form of damages to compensate Plaintiff Due and the
23 Subclass for said monies. Plaintiff Due seeks to recover her actual damages or five hundred (500)
24 dollars, whichever is greater, three times actual damages, and attorneys’ fees, as well as injunctive
25 relief, including without limitation, public injunctive relief, to enjoin Defendant’s misconduct to
26 prevent ongoing and future harm that will result.

27 73. Injunctive relief is necessary to prevent Defendant from continuing to engage in the
28 unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of

1 which can be achieved through available legal remedies (such as monetary damages to compensate
2 past harm). Absent an order enjoining Defendant’s unlawful conduct as described herein, Plaintiff
3 Due and Subclass members will be unable to rely on the representations on the Products’ labels,
4 and the general public will be subject to a persistent threat of future harm.

5 **COUNT IV**
6 **Unjust Enrichment or Restitution**
7 **(On behalf of the Nationwide Class)**

8 74. Plaintiffs incorporate by reference and re-allege each and every allegation set forth
9 above as though fully set forth herein.

10 75. Plaintiffs bring this claim pursuant to California law.

11 76. Plaintiffs bring this claim in the alternative.

12 77. Plaintiffs bring this claim individually and on behalf of the Nationwide Class
13 against Defendant.

14 78. Plaintiffs and class members conferred benefits on Defendant by paying money to
15 Defendant for the purchase of the Products.

16 79. Defendant has knowledge of such benefits.

17 80. Defendant has been unjustly enriched in retaining the revenues derived from
18 Plaintiffs’ and Class members’ purchase of the Products. Retention of those monies under these
19 circumstances is unjust and inequitable because Defendant misrepresented that the Products
20 contain “No Preservatives,” or alternatively, “No Artificial Preservatives,” when in fact it contains
21 ascorbic acid, a well-documented artificial preservative.

22 81. Because Defendant’s retention of the non-gratuitous benefits conferred on it by
23 Plaintiffs and class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs
24 and the class members for their unjust enrichment, as ordered by the Court.

25 82. Plaintiffs have no adequate remedy at law for this claim. There is no commensurate
26 legal remedy for Plaintiff’s requested relief under this count. Alternatively, legal remedies
27 available to Plaintiffs are inadequate because they are not “equally prompt and certain and in other
28 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937);
see also U.S. v. Bluit, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) (“the ‘mere existence’ of a

1 possible legal remedy is not sufficient to warrant denial of equitable relief”); *Quist v. Empire Water*
2 *Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there may be a remedy at law does not oust the
3 jurisdiction of a court of equity. To have this effect, the remedy must also be speedy, adequate, and
4 efficacious to the end in view ... It must reach the whole mischief and secure the whole right of the
5 party in a perfect manner at the present time and not in the future”). Furthermore:

- 6 (a) To the extent damages are available here, damages are not equally certain as
7 restitution because the standard that governs ordering restitution is different
8 than the standard that governs damages. Hence, the Court may award
9 restitution even if it determines that Plaintiffs fail to sufficiently adduce
10 evidence to support an award of damages.
- 11 (b) Damages and restitution are not necessarily the same amount. Unlike
12 damages, restitution is not limited to the amount of money defendant
13 wrongfully acquired plus the legal rate of interest. Equitable relief, including
14 restitution, entitles the plaintiff to recover all profits from the wrongdoing,
15 even where the original funds taken have grown far greater than the legal
16 rate of interest would recognize. Plaintiffs seek such relief here.
- 17 (c) Legal claims for damages are not equally certain as restitution because
18 claims under the UCL and unjust enrichment entail few elements.

19 83. Plaintiffs also lack an adequate remedy at law to prevent future harm.

20 **COUNT V**
21 **Violation of California’s False Advertising Law**
22 **California Business and Professions Code §§ 17500, *et seq.***
23 **(On behalf of the California Subclass)**

24 84. Plaintiffs incorporate by reference the allegations contained in all preceding
25 paragraphs of this complaint.

26 85. Plaintiff Jackson brings this claim individually and on behalf of the members of the
27 California Subclass against Defendant.

28 86. This count is brought under the laws of the State of California.

1 87. Defendant has engaged in false or misleading advertising in violation of California's
2 statutory False Advertising Law ("FAL").

3 88. Defendant's conduct as described herein is misleading, and/or has a capacity,
4 likelihood or tendency to deceive reasonable consumers.

5 89. Defendant, with intent directly or indirectly to dispose of personal property or to
6 perform services, or to induce the public to enter into any obligation relating thereto, makes,
7 disseminates, has made or disseminated, causes to be made or disseminated, and/or has caused to
8 be made or disseminated, before the public in California, in newspaper or other publication, or
9 other advertising device, or by public outcry or by proclamation, or in any other manner or means,
10 including over the internet, statements concerning that personal property or those services, and/or
11 concerning any circumstance or matter of fact connected with the proposed performance or
12 disposition thereof, which are untrue or misleading and which are known (or which by the exercise
13 of reasonable care should be known) to be untrue or misleading.

14 90. Defendant made, disseminated, makes, disseminates, caused to be made or
15 disseminated and/or causes to be made or disseminated any statements concerning the disposition
16 of personal property or the performance of services, and/or concerning any circumstance or matter
17 of fact connected with such statement as part of a plan or scheme with the intent not to sell that
18 personal property or those services, professional or otherwise, as advertised.

19 91. With respect to omissions, Defendant at all relevant times had a duty to disclose the
20 information in question because, *inter alia*: (a) Defendant had exclusive knowledge of material
21 information that was not known to Plaintiff Jackson and the California Subclass; (b) Defendant
22 concealed material information from Plaintiff Jackson and the California Subclass; and/or (c)
23 Defendant made partial representations which were false and misleading absent the omitted
24 information.

25 92. Defendant committed such violations of the FAL with actual knowledge that its
26 advertising was misleading, or Defendant, in the exercise of reasonable care, should have known
27 that its advertising was misleading.
28

1 93. Plaintiff Jackson and the California Subclass reasonably relied on Defendant's
2 representations and/or omissions made in violation of the FAL.

3 94. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent
4 conduct, Plaintiff Jackson and each member of the California Subclass suffered injury-in-fact and
5 lost money.

6 95. But for Defendant's deceptive conduct and omissions of material facts, Plaintiff
7 Jackson and the California Subclass would not have purchased the Products and/or would have
8 purchased the Product from one of Defendant's competitors instead.

9 96. Defendant should be ordered to disgorge or make restitution of all monies
10 improperly accepted, received, or retained.

11 97. Defendant's conduct has caused substantial injury to Plaintiff Jackson, members of
12 the California Subclass, and the public. Defendant's conduct is ongoing and will continue and recur
13 absent a permanent injunction. Accordingly, Plaintiff Jackson seeks an order enjoining Defendant
14 from committing such violations of the FAL. Plaintiff Jackson further seeks an order granting
15 restitution to Plaintiff Jackson and the California Subclass in an amount to be proven at trial.
16 Plaintiff Jackson further seeks an award of attorneys' fees and costs under Cal. Code Civ. Proc. §
17 1021.5.

18 98. Plaintiff Jackson, on behalf of herself and the California Subclass, seeks injunctive
19 relief to require Defendant to: (1) provide notice to every class member that the Products she
20 purchased are not suited for its intended purpose; and (2) either provide a refund to Plaintiff and
21 the California Subclass for their Products in an amount to be determined at trial.

22 99. Absent injunctive relief, Defendant will continue to injure Plaintiff Jackson and the
23 California Subclass members. Even if such conduct were to cease, it is behavior that is capable of
24 repetition or reoccurrence by Defendant yet evades review.

25 100. In order to prevent injury to the general public, Plaintiff Jackson, in her individual
26 capacity, seeks a public injunction requiring Defendant to stop advertising, and to instruct its
27 resellers to stop advertising, any Product that contains ascorbic acid as containing "No
28 Preservatives."

1 Dated: September 21, 2023

Respectfully submitted,

2
3 **BURSOR & FISHER, P.A.**

4 By: /s/ Frederick J. Klorczyk III
Frederick J. Klorczyk III

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10 *Attorneys for Plaintiffs*

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

JENNIFER JACKSON and APRIL DUE, individually and on behalf of all others similarly situated,

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

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

Frederick J. Klorczyk III, Bursor & Fisher, P.A., 1330 Avenue of the Americas 32nd Floor New York, NY 10019 Tel.: (646) 837-7150

DEFENDANTS

WM. BOLTHOUSE FARMS, INC.,

County of Residence of First Listed Defendant (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. § 1332(d)

Brief description of cause:

Defendant fraudulently advertises their products as containing no preservatives.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00+

CHECK YES only if demanded in complaint: JURY DEMAND: X 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) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/21/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Frederick J. Klorczyk III