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9 UNITED STATES DISTRICT COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA

12 GERALD P. LAKE, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 ROWDY BEVERAGE, INC.,

17 Defendant.

18 Case No.

19 **CLASS ACTION COMPLAINT**

20 Jury Trial Demanded

21 Plaintiff Gerald P. Lake, through the undersigned attorneys, brings this lawsuit against
22 Defendant Rowdy Beverage, Inc. (“Defendant”) as to Plaintiff’s own acts upon personal
23 knowledge, and as to all other matters upon information and belief.

24 **SUMMARY OF THE CASE**

25 1. Plaintiff alleges that Defendant’s misbranding caused Plaintiff and the proposed
26 class injury and damages. The label on Defendant’s Rowdy energy drinks (the “Products”) are
27 unlawful, misleading, deceptive, unfair and/or fraudulent because the labels affirmatively
28 represent that the products contain “*No Preservatives*” but in reality, they contain at least two
added synthetic and artificial ingredients known to be preservatives, citric acid and/or ascorbic
acid. The labels on the Products violate California’s Sherman Law and lead reasonable
consumers to believe that the Products do not contain preservatives.

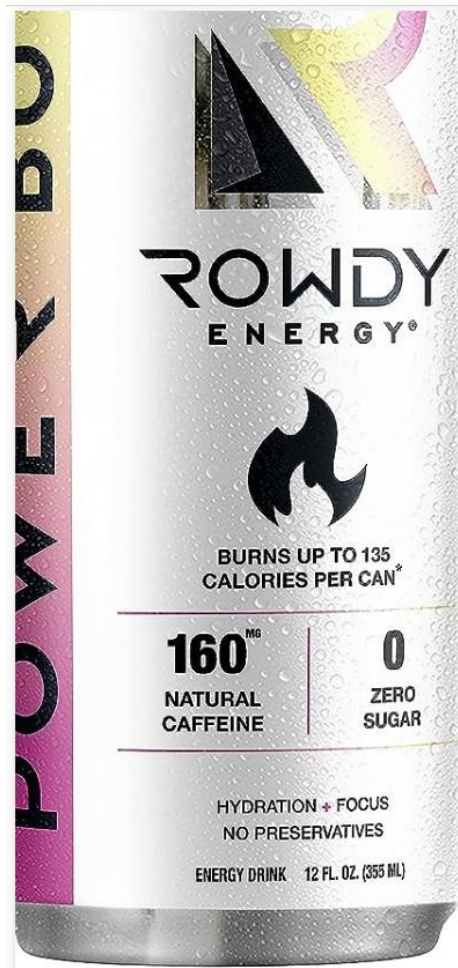
1 claims arise out of Defendant’s forum-related activities. Furthermore, a substantial portion of the
2 events giving rise to Plaintiffs’ claims occurred in this District.

3 9. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action
4 because a substantial part of the events, omissions, and acts giving rise to the claims herein
5 occurred in this District.

6 **FACTUAL ALLEGATIONS**

7 10. At all relevant times, Defendant has manufactured, packaged, labeled,
8 distributed, marketed, advertised, and sold its Products throughout California and the
9 United States. The Products are sold at grocery stores, online, and other retail outlets.

10 11. The Products labels all state “*No Preservatives*” in the same location on the label,
11 in the same size, and in the same font. It even states on the Defendant’s website:



1 12. The Product labels all list citric acid and ascorbic acid in the ingredient list.

2
3 **Ingredients** ^

4 Carbonated Water, Erythritol, Power Burn Energy Blend [L-Citrulline, L-Arginine-
5 Hydrochloride, L-Glutamine, Natural Caffeine from Green Tea, L-Theanine, Green Coffee
6 Bean Extract, Guarana Extract, Ascorbic Acid (Vitamin C), Niacinamide (Vitamin B3),
7 Pyridoxine Hydrochloride (Vitamin B6), Cyanocobalamin (Vitamin B12)], Natural Flavor, Citric
8 Acid, Potassium Citrate, Gluconic Acid, Malic Acid, Gum Arabic, Stevia Extract, Magnesium
9 Oxide, Monk Fruit Extract.

10 13. During the Class Period, Plaintiff spent more than \$25.00 on the Products.

11 14. Plaintiff purchased the Products during the Class Period. As stated previously,
12 Defendant's Products were labeled "*No Preservatives*" and listed citric acid and ascorbic acid in
13 the ingredient list.

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

19 16. In its "Overview of Food Ingredients, Additives & Colors," the FDA describes the
20 use of citric acid and ascorbic acid as preservatives.¹ Under the "What They Do" table heading,
21 the FDA elaborates that preservatives help "prevent food spoilage from bacteria, molds, fungi or
22 yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity
23 (antioxidants); [and] maintain freshness."²

24 17. The FDA's view of these acids is exemplified in 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 § 343(k), because "they contain the chemical preservatives ascorbic acid and citric acid but their

28 ¹ See *Overview of Food Ingredients, Additives, and Colors*, FDA (2018),
<https://www.fda.gov/food/food-ingredients-packaging>.

² *Id.*

1 representations/statements fail to declare these preservatives with a description of their
2 functions.”³

3 18. Citric acid functions in beverages as a preservative by serving as an acidulant and
4 as an indirect antioxidant. Citric acid infiltrates and weakens or kills microorganisms through
5 direct antimicrobial effect, lowering a juice product’s pH level, thereby combatting and
6 sequestering microorganisms. Citric acid serves these functions regardless of whether it is being
7 added as a flavoring agent.⁴

8 19. Food preservatives are classified into two main groups: antioxidants and
9 antimicrobials. Food scientists agree that the chemical properties of citric acid make it a
10 preservative. Specifically, citric acid is classified as an antioxidant that delays or prevents the
11 deterioration of foods by so-called oxidative mechanisms.⁵

12 20. Citric acid acts as an antioxidant via two processes, inhibiting enzymes and
13 chelating metals. Certain enzymes naturally exist in food products that oxidize and breakdown the
14 food products’ molecules. Citric acid deactivates these enzymes, thereby functioning as a
15 preservative.⁶ Citric acid also chelates metal ions, which stabilizes and preserves food products by
16 bonding certain molecules in food products to centrally located metal atoms.⁷ Citric acid also has
17 antimicrobial properties and directly inhibits the growth of some bacteria and mold.⁸ This is yet
18 another reason why food scientists classify citric acid as a preservative.⁹

19 _____
20 ³ FDA, Warning Letter to Chiquita Brands International, Inc. and Fresh Express Incorporated
21 (Oct. 6, 2010), available at
[https://wayback.archiveit.org/7993/20170112194314/http://www.fda.gov/ICECI/EnforcementAct
22 ions/WarningLetters/2010/ucm228663.htm](https://wayback.archiveit.org/7993/20170112194314/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm228663.htm).

23 ⁴ Deman, John M. “Acids as food additives serve a dual purpose, as acidulants and as
24 preservatives.” Principles of food chemistry. AVI Publishing Co., Inc., 1999, p. 438.

25 ⁵ *Preservatives*, BRITANNICA, <https://www.britannica.com/topic/preservative>.

26 ⁶ *Id.*

27 ⁷ P. Davidson et al., *Chapter 20: Antimicrobial Agents*, in FOOD ADDITIVES, at 592 (A. Larry
28 Branen et al. eds., Marcel Dekker, Inc. 2d ed. 2002).

29 ⁸ L. Su et al., *Study on the Antimicrobial Properties of Citrate-Based Biodegradable Polymers*,
FRONTIERS IN BIOENGINEERING AND BIOTECHNOLOGY, 2, 23.
<https://doi.org/10.3389/fbioe.2014.00023>.

30 ⁹ *Citric Acid Compound Summary*, NAT’L CTR. FOR BIOTECHNOLOGY INFO.,
<https://pubchem.ncbi.nlm.nih.gov/compound/Citric-acid>

1 21. The food industry recognizes citric acid functions as a preservative. For example,
2 one food additives supplier states: “Citric acid is the most commonly used acidulant in the
3 industry. As a food additive or food grade product, citric acid is used as a flavoring and
4 preservative. The buffering properties of citrates are used to control pH and flavor.”¹⁰

5 22. Citric acid functions as a preservative in the Products, and this is true regardless of
6 Defendant’s subjective purpose or intent for adding it to the Products, such as to impart flavor.¹¹

7 23. Additionally, Defendant also includes ascorbic acid as an ingredient in its
8 Products. Ascorbic acid is a chemically modified form of vitamin C, which, pursuant to FDA
9 regulations, is commonly used in foods as a preservative. 21 C.F.R. § 182.3013. Ascorbic acid,
10 like citric acid, functions as an antioxidant that helps prevent microbial growth and oxidation in
11 food products, thereby preserving their color and freshness. Although Defendant identifies
12 ascorbic acid as a source of vitamin C, they do so within the ingredient list of the Products rather
13 than their nutritional facts panel—thus falling outside the ambit of FDA regulations. 21 C.F.R. §
14 101.9(c)(8)(v).

15 24. Both ascorbic acid and citric acid can function as preservatives even when used
16 only in small amounts.¹²

17 25. Even if the citric acid and ascorbic acid within the Products do not, in fact,
18 function as a preservative in the Products, they nonetheless qualify as preservatives given that
19 they have the capacity or tendency to do so. *See* 21 C.F.R. §101.22(a)(5) (defining preservatives
20 as “any chemical that, when added to food, *tends* to prevent or retard deterioration”) (emphasis
21 added); *see also* Merriam-Webster’s Dictionary (defining “preservative” as “something that

22
23 ¹⁰ FBC Industries, Inc., Citrates, <https://fbcindustries.com/citrates/>

24 ¹¹ *Citric Acid* in KIRK-OTHMER FOOD & FEED TECH., at 262 (John Wiley & Sons, 2007); L.
25 Somogyi, *Chapter 13: Direct Food Additives in Fruit Processing*, in PROCESSING FRUITS:
26 SCI. & TECH., at 302 (D. Barrett et al. eds., CRC Press 2d ed. 2004); M. Abd-Elhady, *Effect of*
27 *citric acid, calcium lactate and low temperature prefreezing treatment on the quality of frozen*
28 *strawberry*, 59 ANNALS OF AGRIC. SCIS., 69-75 (2014); J. deMan, *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”).

¹² *See* Doores, S., 1993., *Antimicrobials in Food* CRC Press, pp. 95-136.
<http://base.dnsgb.com.ua/files/book/Agriculture/Foods/Antimicrobials-in-Food.pdf>

1 preserves or has the power of preserving.”),¹³ Oxford English Dictionary (defining “preservative”
2 as “[t]ending to preserve or *capable* of preserving”) (emphasis added).¹⁴

3 26. The FDA considers citric acid and ascorbic acid to be chemical preservatives. For
4 example, an October 6, 2010, Warning letter from the FDA to Chiquita Brands describes both
5 citric acid and ascorbic acid as chemical preservatives.

6 27. Citric acid and ascorbic acid are synthetic and artificial preservatives that are both
7 manufactured in a highly industrialized process.

8 28. After Plaintiff learned that Defendant’s Products were falsely labeled, Plaintiff
9 stopped purchasing the Products.

10 29. As a result of Defendant’s false and misleading misrepresentations, Plaintiff, and
11 thousands of others in California and throughout the United States purchased Defendant’s
12 Products.

13 30. Manufacturers are required to comply with identical California and federal laws
14 and regulations that govern the labeling of products. The federal regulations are contained in the
15 Food, Drug & Cosmetic Act (“FDCA”), 21 C.F.R. § 101 *et seq.*

16 31. California has also enacted a number of laws and regulations that adopt and
17 incorporate specific enumerated federal labeling laws and regulations. Defendant’s use of “*No*
18 *Preservatives*” claims on products containing synthetic preservatives violate the Sherman Law,
19 California Health & Safety Code § 110660 because such label claims are “false and misleading.”
20 Section 110660 is identical to the prohibition in 21 U.S.C. § 343(a) against labeling that is “false
21 or misleading in any particular.”

22 32. Defendant has nonetheless falsely labeled its Products as having “*No*
23 *Preservatives*” when its Products actually contain citric acid and ascorbic acid.

24 33. A reasonable consumer would expect that when Defendant labels its Products as
25 “*No Preservatives*” the product’s ingredients would not contain ingredients known to be synthetic
26 preservatives.

27 _____
¹³ *Preservative*, Merriam-Webster Dictionary, <https://www.merriam-webster.com>

28 ¹⁴ *Preservative*, American Heritage Dictionary, <https://ahdictionary.com>

1 43. This action involves common questions of law and fact applicable to each Class
2 member that predominate over questions that affect only individual Class members. Thus, proof
3 of a common set of facts will establish the right of each Class member to recover. Questions of
4 law and fact common to each Class member include:

- 5 a. Whether Defendant engaged in unfair or deceptive business practices by
6 failing to properly package and label Products sold to consumers;
- 7 b. Whether Defendant made false and misleading “*No Preservatives*” claims
8 with respect to their Products sold to consumers;
- 9 c. Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
10 *seq.*, California Bus. & Prof. Code § 17500, *et seq.*, the Consumers Legal
11 Remedies Act, Cal. Civ. Code §1750, *et seq.*, California Civ. Code § 1790,
12 *et seq.*, 15 U.S.C. § 2301, *et seq.*, and the Sherman Law;
- 13 d. Whether Plaintiff and the Class are entitled to equitable and/or injunctive
14 relief; and
- 15 e. Whether Defendant’s unlawful, unfair and/or deceptive practices harmed
16 Plaintiff and the Class.

17 44. Plaintiff’s claims are typical of the claims of the Class because Plaintiff bought
18 Products during the Class Period. Defendant’s unlawful, unfair and/or fraudulent actions concern
19 the same business practice described herein irrespective of where they occurred or were
20 experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant’s conduct
21 in violation of California law. The injuries of each member of the Class were caused directly by
22 Defendant’s wrongful conduct. In addition, the factual underpinning of Defendant’s misconduct
23 is common to all Class members and represents a common thread of misconduct resulting in
24 injury to all members of the Class. Plaintiff’s claims arise from the same practices and course of
25 conduct that give rise to the claims of the Class members and are based on the same legal
26 theories.

27 45. Plaintiff will fairly and adequately protect the interests of the Class. Neither
28 Plaintiff nor Plaintiff’s counsel have any interests that conflict with or are antagonistic to the
interests of the Class members. Plaintiff has retained highly competent and experienced class
action attorneys to represent his interests and those of the members of the Class. Plaintiff and
Plaintiff’s counsel have the necessary financial resources to adequately and vigorously litigate

1 this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class
2 members and will diligently discharge those duties by vigorously seeking the maximum possible
3 recovery for the Class.

4 46. There is no plain, speedy or adequate remedy other than by maintenance of this
5 class action. The prosecution of individual remedies by members of the Class will tend to
6 establish inconsistent standards of conduct for Defendant and result in the impairment of Class
7 members' rights and the disposition of their interests through actions to which they were not
8 parties. Class action treatment will permit a large number of similarly situated persons to
9 prosecute their common claims in a single forum simultaneously, efficiently and without the
10 unnecessary duplication of effort and expense that numerous individual actions would engender.
11 Further, as the damages suffered by individual members of the Class may be relatively small, the
12 expense and burden of individual litigation would make it difficult or impossible for individual
13 members of the Class to redress the wrongs done to them, while an important public interest will
14 be served by addressing the matter as a class action. Class treatment of common questions of law
15 and fact would also be superior to multiple individual actions or piecemeal litigation in that class
16 treatment will conserve the resources of the Court and the litigants and will promote consistency
17 and efficiency of adjudication.

18 47. The prerequisites to maintaining a class action for injunctive or equitable relief are
19 met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby
20 making appropriate final injunctive or equitable relief with respect to the Class as a whole.

21 48. The prerequisites to maintaining a class are met as questions of law or fact
22 common to class members predominate over any questions affecting only individual members,
23 and a class action is superior to other available methods for fairly and efficiently adjudicating the
24 controversy.

25 49. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be
26 encountered in the management of this action that would preclude its maintenance as a class
27 action.

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CAUSES OF ACTION

**Violation of Business and Professions Code § 17200, *et seq.*
Unlawful Business Acts and Practices**

50. Plaintiff incorporates by reference each allegation set forth above.

51. Defendant’s conduct as set forth herein constitutes unlawful business acts and practices.

52. Defendant is a corporation and, therefore, a “person” within the meaning of the Sherman Law.

53. Defendant’s business practices are unlawful under § 17200, *et seq.* by virtue of Defendant’s violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

54. Defendant’s business practices are unlawful under § 17200, *et seq.* by virtue of Defendant’s violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

55. Defendant’s unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiff and the Class.

56. As a result of Defendant’s conduct, Plaintiff and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant’s net profits from the sale and distribution of Products in California during the Class Period.

**Violation of Business and Professions Code § 17200, *et seq.*
Unfair Business Acts and Practices**

57. Plaintiff incorporates by reference each allegation set forth above.

58. Defendant’s conduct as set forth herein constitutes unfair business acts and practices.

59. Plaintiff and members of the Class suffered a substantial injury by virtue of buying Defendant’s Products that they would not have purchased absent Defendant’s illegal conduct.

60. Defendant’s deceptive marketing, advertising, packaging and labeling of their Products and their sale of Products caused harm to both consumers and competition and is substantial.

1 61. Plaintiff and the Class who purchased Defendant's Products had no way of
2 reasonably knowing that the products were not properly marketed, advertised, packaged and
3 labeled, and thus could not have reasonably avoided the injury each of them suffered.

4 62. The consequences of Defendant's conduct as set forth herein outweigh any
5 justification, motive or reason, therefore. Defendant's conduct is and continues to be immoral,
6 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and
7 the Class.

8 63. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business
9 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
10 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
11 net profits from the sale and distribution of Products in California during the Class Period.

12 **Violation of Business and Professions Code § 17200, *et seq.***
13 **Fraudulent Business Acts and Practices**

14 64. Plaintiff incorporates by reference each allegation set forth above.

15 65. Defendant's conduct as set forth herein constitutes fraudulent business practices
16 under California Business and Professions Code sections § 17200, *et seq.*

17 66. Defendant's misleading marketing, advertising, packaging and labeling of the
18 Products were likely to deceive reasonable consumers, and in fact, Plaintiff and members of the
19 Class were deceived. Defendant has engaged in fraudulent business acts and practices.

20 67. Defendant's fraud and deception caused Plaintiff and the Class to purchase
21 Products that they would otherwise not have purchased had they known the true nature of those
22 products.

23 68. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business
24 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
25 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
26 net profits from the sale and distribution of Products in California during the Class Period.

27 **Violation of Business and Professions Code § 17500, *et seq.***
28 **Misleading and Deceptive Advertising**

 69. Plaintiff incorporates by reference each allegation set forth above.

1 70. Plaintiff asserts this cause of action for violations of California Business and
2 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

3 71. Defendant engaged in a scheme of offering Defendant's Products for sale to
4 Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling. The
5 labels misrepresented and/or omitted the true contents and nature of Defendant's Products.
6 Defendant's advertisements and inducements were made within California and come within the
7 definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that
8 such product packaging and labeling were intended as inducements to purchase Defendant's
9 Products and are statements disseminated by Defendant to Plaintiff and the Class that were
10 intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care
11 should have known, that its labels were misleading and deceptive as set forth herein.

12 72. In furtherance of its plan and scheme, Defendant prepared and distributed within
13 California label statements that misleadingly and deceptively represented the composition and the
14 nature of Defendant's Products. Plaintiff and the Class necessarily and reasonably relied on
15 Defendant's materials and were the intended targets of such representations.

16 73. Defendant's conduct in disseminating misleading and deceptive statements in
17 California to Plaintiff and the Class was and is likely to deceive reasonable consumers by
18 obfuscating the true composition and nature of Defendant's Products in violation of the
19 "misleading prong" of California Business and Professions Code § 17500, *et seq.*

20 74. As a result of Defendant's violations of the "misleading prong" of California
21 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
22 expense of Plaintiff and the Class. Plaintiff and the Class, pursuant to Business and Professions
23 Code § 17535, are entitled to an order enjoining such future conduct by Defendant, and such
24 other orders and judgments which may be necessary to disgorge Defendant's net profits from the
25 sale and distribution of Products in California during the Class Period.

26 **Violation of Business and Professions Code § 17500, *et seq.***
27 **Untrue Advertising**

28 75. Plaintiff incorporates by reference each allegation set forth above.

1 76. Plaintiff asserts this cause of action against Defendant for violations of California
2 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

3 77. Defendant engaged in a scheme of offering Defendant's Products for sale to
4 Plaintiff and the Class by way of product packaging and labeling, and other promotional
5 materials. These materials misrepresented and/or omitted the true contents and nature of
6 Defendant's Products. Defendant's advertisements and inducements were made in California and
7 throughout the United States and come within the definition of advertising as contained in
8 Business and Professions Code §17500, *et seq.* in that the product packaging and labeling, and
9 promotional materials were intended as inducements to purchase Defendant's Products, and are
10 statements disseminated by Defendant to Plaintiff and the Class. Defendant knew, or in the
11 exercise of reasonable care should have known, that these statements were untrue.

12 78. In furtherance of its plan and scheme, Defendant prepared and distributed in
13 California and nationwide via product packaging and labeling, and other promotional materials,
14 statements that falsely advertise the composition of Defendant's Products, and falsely
15 misrepresented the nature of those products. Plaintiff and the Class were the intended targets of
16 such representations and would reasonably be deceived by Defendant's materials.

17 79. Defendant's conduct in disseminating untrue advertising throughout California
18 deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of
19 Defendant's Products in violation of the "untrue prong" of California Business and Professions
20 Code § 17500.

21 80. As a result of Defendant's violations of the "untrue prong" of California Business
22 and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of
23 Plaintiff and the Class. Misbranded products cannot be legally sold or held and are legally
24 worthless. Plaintiff and the Class paid a premium price for the Products.

25 81. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
26 entitled to an order enjoining such future conduct by Defendant, and such other orders and
27 judgments which may be necessary to disgorge Defendant's net profits from the sale and
28 distribution of Products sold in California during the Class Period.

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**Violation of Consumers Legal Remedies Act,
Cal. Civ. Code §1750, et seq.**

82. Plaintiff incorporates by reference each allegation set forth above.

83. This cause of action is brought pursuant to the CLRA. Defendant’s violations of the CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive damages.

84. Plaintiff and the Class are entitled to actual and punitive damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys’ fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

85. Defendant’s actions, representations and conduct have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale of goods or services to consumers.

86. Plaintiff and members of the Class are “consumers” as that term is defined by the CLRA in Cal. Civ. Code §1761(d).

87. Defendant’s Products were and are “goods” within the meaning of Cal. Civ. Code §1761(a).

88. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5), of the CLRA, because Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents the particular ingredients, characteristics, uses, benefits and quantities of the goods.

89. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9) of the CLRA, because Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

90. Plaintiff requests that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If

1 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class
2 will continue to suffer harm.

3 91. Pursuant to Section 1782(a) of the CLRA, prior to filing this Complaint, Plaintiff's
4 counsel served Defendant with notice of violations of the CLRA.

5 92. Defendant has failed to provide appropriate relief for its violations of the CLRA
6 within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to Sections
7 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages, punitive damages,
8 attorneys' fees and costs, and any other relief the Court deems proper.

9 93. Plaintiff will demonstrate that the violations of the CLRA by Defendant were
10 willful, oppressive, and fraudulent, thus supporting an award of punitive damages.

11 94. Consequently, Plaintiff and the Class will be entitled to actual and punitive
12 damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ.
13 Code § 1782(a)(2), Plaintiff and the Class will be entitled to an order enjoining the above-
14 described acts and practices, providing restitution to Plaintiff and the Class, ordering payment of
15 costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court
16 pursuant to Cal. Civ. Code § 1780.

17 **Unjust Enrichment**

18 95. Plaintiff incorporates by reference each allegation set forth above.

19 96. As a result of Defendant's fraudulent and misleading labeling, advertising,
20 marketing and sales, Defendant was unjustly enriched at the expense of Plaintiff and the Class.
21 Defendant realized net profits from the sale and distribution of misbranded Products in California
22 during the Class Period.

23 97. It would be against equity and good conscience to permit Defendant to retain the
24 ill-gotten benefits it received from Plaintiff and the Class, in light of the fact that the products
25 were not what Defendant purported them to be. Thus, it would be unjust and inequitable for
26 Defendant to retain net profits from the sale and distribution of misbranded Products in California
27 during the Class Period, without disgorging those net profits.
28

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

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

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

DEFENDANTS

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)

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

- 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)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with columns: 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):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

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

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

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

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

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

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