

1 Michael D. Braun (SBN 167416)
2 **KUZYK LAW, LLP**
3 2121 Avenue of the Stars, Ste. 800
4 Los Angeles, California 90067
5 Telephone: (213) 401-4100
6 Facsimile: (213) 401-0311
7 Email: mdb@kuzykclassactions.com

8 Peter N. Wasylyk (pro hac vice pending)
9 **LAW OFFICES OF PETER N. WASYLYK**
10 1307 Chalkstone Avenue
11 Providence, RI 02908
12 Telephone: (401) 831-7730
13 Facsimile: (401) 861-6064
14 Email: pnwlaw@aol.com

15 *Counsel for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **PATRICIA MEZA-SOLIVEN,**
19 **MICHAEL BETZAG and LINDA**
20 **ESOPA on behalf of themselves and**
21 **all others similarly situated,**

22 **Plaintiffs,**

23 **v.**

24 **THE LIV GROUP, INC.**

25 **Defendant.**

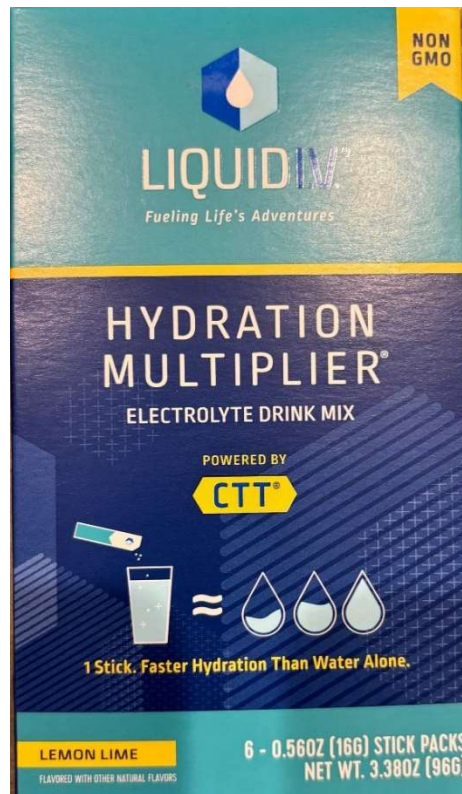
26 **CASE NO.: 3:24-CV-00019-TWR-DDL**
27 **CLASS ACTION**

28 **AMENDED COMPLAINT FOR**
DAMAGES, EQUITABLE,
DECLARATORY, AND INJUNCTIVE
RELIEF

1 Plaintiffs Patricia Meza-Soliven, Michael Betzag, and Linda Esopa
2 (“Plaintiffs”), individually and on behalf of themselves and all others similarly
3 situated, bring this class action against Defendant The Liv Group, Inc. (“Defendant”),
4 and on the basis of personal knowledge, information and belief, and the investigation
5 of counsel, allege as follows:

6 **INTRODUCTION**

7
8 1. This is a proposed class action on behalf of a nationwide, California and
9 New York class (collectively, “Class”) of consumers seeking redress for Defendant’s
10 deceptive practices associated with the advertising, labeling, and sale of its Liquid I.V.
11 hydration electrolyte drink powder stick mixes (“Mixes” or “Products”).¹



26
27 ¹ Class Products include: Hydration Multiplier, Hydration Multiplier + Immune Support, Energy
28 Multiplier. Label displayed in Paragraph 1 is LOT # DY303-23 22:44 (BBD 10-29-2025).
Additional label exemplars are attached as Exhibit A hereto.

1
2 2. Defendant claims to have developed “smart hydration technology” that
3 “hydrate[s] better than water alone,” a system “ designed to enhance rapid absorption
4 of water and other key ingredients.”² By using a “specific ratio of glucose, sodium,
5 and potassium,” Liquid I.V. claims to deliver “water and key nutrients directly to [the]
6 body faster and more efficiently than water alone.”³

7 3. Recognizing its audience consists of health-conscious consumers,
8 Defendant dressed the Product with a health halo and touted its clean label features
9 promising that Liquid I.V. is “made with quality ingredients,” “free from” “GMO,
10 dairy, gluten, soy, artificial sweeteners, flavors, and colors.” Most prominent among
11 its “free from” claims – the representation that its Products contain “**No**
12 **Preservatives.**”

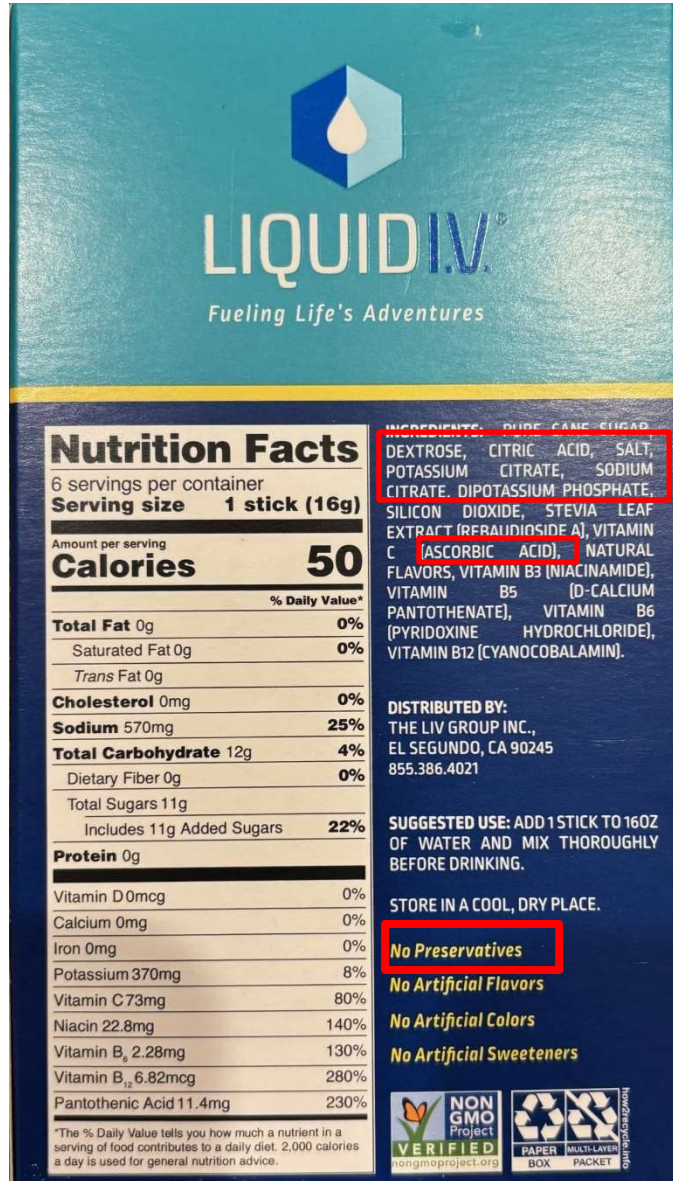


22 4. Unfortunately, the claim that its Products contain “**No Preservatives**” is
23 false and misleading, as they each contain a significant amount of preservatives
24 including, citric and ascorbic acids, among others.
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26
27 ² <https://www.liquid-iv.com/pages/science>, last visited October 1, 2023.

28 ³ <https://www.liquid-iv.com/pages/faq>, last visited October 1, 2023.

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5. Despite unequivocally and boldly claiming that its Products contain “**No Preservatives**,” the inclusion of citric and ascorbic acid belie this affirmation, rendering it false, misleading, and in violation of the law.

6. Defendant knows that consumers are willing to pay more for products that are labeled as preservative free because they perceive them to be healthier alternatives to similar products that contain preservatives. Indeed, Defendant advertises its Products with the intention that consumers rely on the representation made on the packaging that the Products contain “**No Preservatives**.”

1 21. If Ms. Meza-Soliven had occasion to believe that Defendant’s marketing
2 and labeling are truthful, non-misleading, and lawful, she would purchase Defendant’s
3 Products in the future.

4 22. Plaintiff Michael Betzag is a resident of Rockville Center, New York.

5 23. Mr. Betzag purchased Liquid I.V. Hydration Multiplier Electrolyte Drink
6 Mix on at least two occasions – once in January 2023 and once in April 2023. The
7 purchases were made at the CVS located at 155 Sunrise Hwy, Rockville Centre, NY
8 11570 and either The Vitamin Shoppe located at 3463 Long Beach Rd., Oceanside,
9 NY 11572 or the GNC located at 3549 B Long Beach Rd., Oceanside, NY 11572.

10 24. When Mr. Betzag purchased the Products he saw the representation on
11 their labels claiming that the Products contained “No Preservatives.” It was a material
12 representation on which he relied in making his decision to purchase the Products.

13 25. Mr. Betzag believed the representations on the Products’ labels were
14 accurate, particularly in that they contained “No Preservatives.”

15 26. Mr. Betzag believed that Defendant lawfully marketed and sold the
16 Products.

17 27. Mr. Betzag relied on Defendant’s labeling and was misled thereby.

18 28. Mr. Betzag would not have purchased the Products, or would have
19 purchased the Products on different terms had he known the truth about their contents.

20 29. Mr. Betzag was injured in fact and lost money as a result of Defendant’s
21 improper conduct.

22 30. If Mr. Betzag had occasion to believe that Defendant’s marketing and
23 labeling is truthful, non-misleading, and lawful, he would purchase Defendant’s
24 Products in the future.

25 31. Plaintiff Linda Esopa is a resident of Valley Stream, New York.

26 32. Ms. Esopa purchased Liquid I.V. Hydration Multiplier + Energy
27 Electrolyte Drink Mix directly from Liquid I.V. via their website on November 21,
28 2020 (Order #1053720). She subsequently purchased Liquid I.V. Hydration Multiplier

1 Electrolyte Drink Mix on approximately six occasions over the next three years, with
2 her final purchase in or about May 2023. The Products were purchased from the
3 following locations: CVS located at 44 N Central Ave, Valley Stream, NY 11580;
4 CVS located at 1 E Merrick Rd, Valley Stream, NY 11580; Target located at 500
5 Sunrise Hwy, Valley Stream, NY 11581; Walmart located at 77 Green Acres Rd. S,
6 Valley Stream, NY 11581; Walmart located at 2465 Hempstead Tpke, East Meadow,
7 NY 11554; and Walgreens 2474 Hempstead Tpke, East Meadow, NY 11554.

8 33. When Ms. Esopa purchased the Products she saw the representation on
9 their labels claiming that the Products contained “No Preservatives.” It was a material
10 representation on which she relied in making her decision to purchase the Products.

11 34. Ms. Esopa believed the representations on the Products’ labels were
12 accurate, particularly in that they contained “No Preservatives.”

13 35. Ms. Esopa believed that Defendant lawfully marketed and sold the
14 Products.

15 36. Ms. Esopa relied on Defendant’s labeling and was misled thereby.

16 37. Ms. Esopa would not have purchased the Products, or would have
17 purchased the Products on different terms had she known the truth about their
18 contents.

19 38. Ms. Esopa was injured in fact and lost money as a result of Defendant’s
20 improper conduct.

21 39. If Ms. Esopa had occasion to believe that Defendant’s marketing and
22 labeling are truthful, non-misleading, and lawful, she would purchase Defendant’s
23 Products in the future.

24 40. Defendant The Liv Group, Inc., manufactures, markets, and sells a line of
25 hydrating electrolyte drink mixes. They are sold across a variety of retail segments
26 including supermarkets, convenience stores, and mass merchants. The Liv Group, Inc.
27
28

1 is a California corporation which, upon information and belief, was purchased by
2 Unilever in or around 2020.⁴

3
4 **GENERAL ALLEGATIONS**

5 **A. Citric Acid and Ascorbic Acid are Preservatives**

6 41. The federal Food Drug & Cosmetic Act (“FDCA”) defines a chemical
7 preservative as “any chemical that, when added to food, tends to prevent or retard
8 deterioration thereof, but does not include common salt, sugars, vinegars, spices, or
9 oils extracted from spices, substances added to food by direct exposure thereof to
10 wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21
11 C.F.R. §101.22(a)(5). “A food to which a chemical preservative(s) is added shall....
12 bear a label declaration stating both the common or usual name of the ingredient(s)
13 and a separate description of its function, *e.g.*, "preservative," "to retard spoilage," "a
14 mold inhibitor," "to help protect flavor," or "to promote color retention." 21 C.F.R.
15 §101.22(j).

16 42. Chemical preservation is the process of adding ingredients to a food for
17 the purpose of preventing potential damage from oxidation, rancidity, microbial
18 growth, or other undesirable changes. Chemical preservatives may be both natural or
19 synthetic and function one of several ways — (a) as an antimicrobial agent to destroy
20 bacteria or inhibit the growth of mold on foods; (b) as an antioxidant to inhibit
21 oxidation and resulting rancidity; and/or (3) as a chelating agent which binds metal
22 ions in certain foods to prevent oxidation.
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26 ⁴ <https://www.unilever.com/news/press-and-media/press-releases/2020/unilever-to-acquire-liquid-iv/>
27 (last visited August 30, 2024).
28

1 43. Both citric acid and ascorbic acid are preservatives within the meaning of
2 21 C.F.R. §101.22. Indeed, in a consumer facing publication, *Food Ingredients and*
3 *Colors*, the Food and Drug Administration (“FDA”) unequivocally identifies both
4 citric acid and ascorbic acid as preservatives.⁵ The sentiment is reaffirmed in the
5 Substances Added to Food database maintained by the FDA, in which the principal
6 technical effects of citric acid are identified as preservative functions.⁶ Similarly, the
7 U.S. government notes that “ascorbic acid is often included in food products as a
8 preservative” and has defined it as a chemical preservative at 21 C.F.R. §182.3013.⁷
9 Finally, in a Warning Letter issued to Chiquita Brands International, Inc. and Fresh
10 Express, Incorporated, October 6, 2010, the FDA made clear that citric and ascorbic
11 acids are preservatives and needed to be identified as such. “The "Pineapple Bites"
12 and "Pineapple Bites with Coconut" products are further misbranded within the
13 meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the
14 chemical preservatives ascorbic acid and citric acid but their labels fail to declare
15 these preservatives with a description of their functions. 21 CFR §101.22.”⁸

17
18 ⁵ *Food Ingredients and Colors*, International Food Information Council Foundation and U.S. Food
19 and Drug Administration, specifically identifies the following as preservatives: **ascorbic acid, citric**
20 **acid**, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate,
21 potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E). Available at
<https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf> (last
22 visited August 30, 2024)

23 ⁶ The Substances Added to Food Database formerly Everything Added to Foods in the United States,
24 available at
https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm_ID&order=ASC&startrow=1&type=basic&search=citric%20acid (last visited August 30, 2024)

25 ⁷ United States Department of Agriculture Agricultural Marketing Service, National Organic
26 Program, *Technical Report on Ascorbic Acid*.
<https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf> (last visited
27 January 3, 2024).

28 ⁸ <http://fda-warning-letters.blogspot.com/2010/10/fresh-express-incorporated-10610.html> (last visited
August 30, 2024).

1 44. Citric acid’s primary use is as a preservative, despite potentially having
2 additional functions.⁹ It functions as a preservative in the Products, regardless of
3 Defendant’s subjective purpose(s) for adding it to the Products, and regardless of any
4 other functions citric acid may perform. This is even more the case here where
5 Defendant has not declared a contrary purpose for adding citric acid and the Products
6 separately contain flavorings (i.e., “natural flavor”) as an ingredient.

7 45. The same holds true for ascorbic acid – that functions as a preservative in
8 the Products, regardless of Defendant’s subjective purpose(s) for adding it to the
9 Products, and regardless of any other functions citric acid may perform. Its true nature
10 is obfuscated by the fact Defendant defines ascorbic acid as “Vitamin C” and
11 otherwise fails to reveal its preservative function.

12 **B. Other Preservatives**

13
14 46. Notwithstanding the fact that the inclusion of citric acid and ascorbic acid
15 alone or together renders the “No Preservatives” claim false, the claim is further
16 belied by at least two other ingredients that also have preservative functions.

17 **Potassium Citrate** Adding potassium hydroxide to citric acid results in the
18 formation of potassium citrate crystals. These crystals are
19 separated from the solution for use as a food additive. The
20 primary reason for adding potassium citrate as a food
21 preservative is to have a buffer to control PH. It has a
22 natural pH between 7.5 and 9 depending on the
23 concentration. Keeping the pH in this alkaline state can
24 inhibit the function of certain enzymes and preserve food
25 for longer.¹⁰

25 ⁹ See <https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/>
26 (last visited August 30, 2024).

27 ¹⁰ Vynova, *Potassium Citrate, Keeping Your Food Fresh for Longer*, November 5, 2019. Available
28 at <https://www.vynova-group.com/blog/potassium-citrate-keeping-food-fresh> (last visited August 30,
2024).

1
2 **Sodium citrate**
3 **(Trisodium citrate)**

Trisodium citrate is often referred to as sodium citrate, though sodium citrate can refer to any of the three sodium salts of citric acid. Sodium citrate is primarily used as a food additive, usually for flavor or as a preservative.¹¹

4
5 Several substances are used in the production, processing, treatment, packaging, transportation, and storage of food. In the meat industry, additives like citric acid and sodium citrate are widely applied for pH control, metal chelating, and preservation.¹²

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10 **C. Citric and Ascorbic Acids Operate as Preservatives in Defendant’s**
11 **Products**

12 47. Preservatives slow product spoilage caused by mold, air, bacteria, fungi
13 or yeast (antimicrobials) and slow or prevent changes in flavor and delay rancidity
14 (antioxidants). Citric and ascorbic acids act as preservatives by increasing the acidity
15 of a microbe's environment, making it harder for bacteria and mold to survive and
16 reproduce.

17 48. The FDA broadly defines a food additive as any substance added to food.
18 More specifically, the term refers to “any substance the intended use of which results
19 or may reasonably be expected to result — directly or indirectly — in its becoming a
20 component or otherwise affecting the characteristics of any food.”¹³ This definition

21
22 ¹¹ *Sodium Citrate*, The Chemical Company. Available at <https://thechemco.com/chemical/sodium-citrate/#:~:text=Sodium%20citrate%20is%20primarily%20used,employed%20as%20a%20flavoring%20agent> (last visited August 30, 2024).

24 ¹² Sammel L. M., Claus J. R., Greaser M. L., Richards M. P. (2006). *Investigation of mechanisms by which sodium citrate reduces the pink color defect in cooked ground turkey*. Meat Sci. 72 585–595. 10.1016/j.meatsci.2005.09.008. Available at <https://www.sciencedirect.com/science/article/abs/pii/S030917400500344X> (last visited August 30, 2024).

27
28 ¹³ *Understanding How the FDA Regulates Food Additives and GRAS Ingredients*, Current as of 07/06/23. Available at <https://www.fda.gov/food/food-additives-and-gras-ingredients-information->

1 includes any substance used in the production, processing, treatment, packaging,
2 transportation or storage of food. The citric and ascorbic acids identified in the
3 ingredient list of Defendant’s Product are not naturally occurring, but rather chemical
4 preservatives specifically added as part of the Products’ formulation.

5 49. Moreover, citric and ascorbic acids are effective as, and function as,
6 preservatives in Defendant’s Products even when used in relatively low quantities.
7 Thus, even if citric acid and ascorbic acids are present in the Products at low
8 quantities, Defendant’s “No Preservatives” representation is false, deceptive, and
9 misleading for two independent reasons: (1) they contain added citric and ascorbic
10 acids, which are undeniably chemical preservatives; and (2) they contain citric and
11 ascorbic acids in quantities that are sufficient individually and/or in combination to
12 have a tendency to preserve and otherwise function as preservatives in the Product.¹⁴

13 50. Plaintiffs conducted an independent chemical analysis of Defendant’s
14 Hydration Multiplier Electrolyte Drink Mix to determine the amounts of citric and
15 ascorbic acids, as well as the Product’s acidity reflected in terms of pH. The analysis
16 unequivocally demonstrates that Liquid I.V.’s Product employs a preservation system
17 in which the additional citric and ascorbic acids function as preservatives.

18 51. For a product to be shelf-stable it typically must have a pH value of 4.6
19 or below. This pH level inhibits the growth of harmful microorganisms, including
20 *Clostridium botulinum*, which can cause botulism, a serious foodborne illness. The
21 FDA's regulations for acidified foods and low-acid canned foods specify that
22

23
24 [consumers/understanding-how-fda-regulates-food-additives-and-gras-
25 ingredients#:~:text=A%20food%20additive%20is%20defined,the%20characteristics%20of%20any
26 %20food](#) (last visited March 12, 2024).

27 ¹⁴ *Olmos v. T. Marzetti Co.*, 2022 U.S. Dist. LEXIS 236205 *29 (finding Defendant’s argument
28 unpersuasive with respect to Plaintiffs’ claims that citric acid always functions as a preservative
even if it is at a very low level in the products).

1 maintaining a pH at or below this threshold is critical for ensuring the microbial
2 safety of the product during storage and distribution without refrigeration. 21 C.F.R.
3 §110.80 (b)(15).

4 52. Plaintiffs' testing reveals that Defendant's Product has a pH of 3.63.

5
6 53. Plaintiffs' testing further reveals that Defendant's Product has a citric
7 acid content of 18.6% (2.98 g/16 g). Suggested usage is to dissolve one stick in 16
8 ounces of water (473 mL). By calculation, the pH of a pure citric acid solution of this
9 concentration is 2.30.

10 54. This translates into a citric acid content of 186.25 mg/1 g and a pH value
11 of 3.63. By comparison, it takes only 5 mg of citric acid introduced into 1000 g of
12 water (0.005 mg/1 g) to reduce the solution pH from 7.0 to 4.6.¹⁵ The amount of
13 citric acid present in the Liquid IV Product is 37,250x larger in comparison to this
14 standard.

15 55. Plaintiffs' testing further reveals an ascorbic acid content of 4.85 mg/g,
16 for a total of 77.6 mg in a 16 g stick. By calculation, the pH of this amount of
17 ascorbic acid in 16 ounces of water would be 3.73.

18
19 56. The analyzed concentration of citric acid alone is sufficient to lower the
20 pH of the product to the measured value of 3.63 which can preserve the Product in
21 solution phase. As such, a citric acid/citrate buffer acts as a preservative in this
22 Product.

23 57. Additionally, the analyzed concentration of ascorbic acid is sufficient to
24 lower the pH of the product to below 4.6 in solution and offers protection against
25

26 _____
27 ¹⁵ Chemistry 2e, OpenStax, 2019, Ch. 14 Acid-Base Equilibria, p. 711, example 14.12 (Calculating
28 [Equilibrium Concentrations in a Weak Acid Solution](https://openstax.org/details/books/chemistry-2e)). Available at
<https://openstax.org/details/books/chemistry-2e> (last visited July 10, 2024).

1 oxidative degradation. As such, ascorbic acid also acts as a preservative in this
2 Product.

3 **D. Consumer Demand For Preservative Free Products**

4 58. The clean label movement has been called “the largest shift in American
5 food habits since World War II.”¹⁶ The term encompasses many things, but is most
6 often associated with foods that are natural, healthy, and devoid of additives and
7 preservatives.¹⁷

8 59. By representing the Products have “No Preservatives,” Defendant seeks
9 to capitalize on consumer preference for clean label products. Indeed, “[foods bearing
10 ‘free-from’ claims are increasingly relevant to Americans, as they perceive the
11 products as closely tied to health.”¹⁸ “84 percent of Americans buy “free-from” foods
12 because they believe them to be more natural or less processed.” Among such
13 consumers, preservative free ranks “[a]mong the top claims... deem[ed] most
14 important.” *Id.*

15 60. In a survey undertaken by L.E.K., around 1600 consumers were asked
16 which claims were the most important to them when buying food and drink products.
17 Results indicated the most popular claim to be “no artificial ingredients” followed
18 closely by a claim that a product contained “no preservatives.”¹⁹

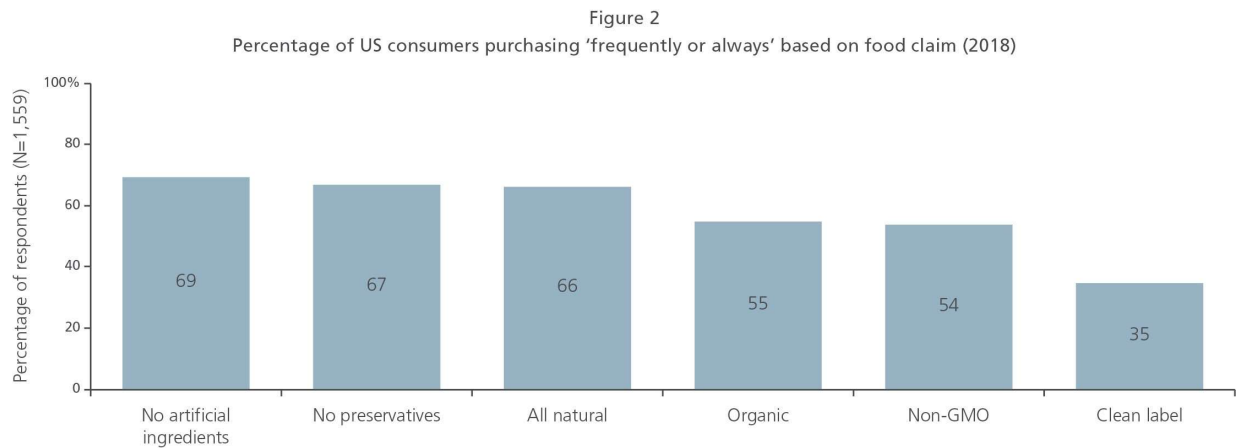
20 ¹⁶ *Clean Labels, Public Relations or Public Health*, Center For Science in the Public Interest (2017),
21 available <https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf> (last
22 visited August 30, 2024).

23 ¹⁷ *Clean label trend is evolving - consumers still willing to pay a price premium*, Valio, May 29,
24 2023. Available at [https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-
evolving-and-consumers-willing-to-pay-a-price-premium/](https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/) (last visited August 30, 2024).

25 ¹⁸ *See, Free-from Food Trends US 2015 Report*, MINTEL, Available at
26 [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](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) (last accessed August 30, 2024).

27 ¹⁹ L.E.K., <https://www.lek.com/insights/ei/clean-label-food-ingredients> (last visited August 30,
28 2024).

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Note: Question: How frequently has your household purchased food with the following attributes or claims over the past 12 months when they were available?
Source: L.E.K. Consumer Survey and analysis

61. By failing to properly label its Products, Defendant has misled and deceived consumers in violation of the laws pled herein.

62. As a result of Defendant's unlawful and deceptive conduct, Plaintiffs and members of the Class have been harmed.

ECONOMIC INJURY

63. Plaintiffs sought to buy Products that were lawfully labeled, marketed, and sold.

64. Plaintiffs saw and relied on Defendant's misleading labeling of its Products.

65. Plaintiffs believed that the purchased Products contained no preservatives.

66. Plaintiffs believed that the Products were lawfully marketed and sold.

67. In reliance on the claims made by Defendant regarding the qualities of its Products, Plaintiffs paid a price premium.

68. As a result of their reliance on Defendant's misrepresentations, Plaintiffs received Products that contained ingredients which they reasonably believed they did not contain.

1 69. Plaintiffs received Products that were unlawfully marketed and sold.

2 70. Plaintiffs lost money and thereby suffered injury as they would not have
3 purchased these Products and/or paid as much for them absent the misrepresentation.

4 71. Defendant knows that the claim the Products are free of preservatives is
5 material to a consumer's purchasing decision.

6 72. Plaintiffs altered their positions to their detriment and suffered damages
7 in an amount equal to the amounts they paid for the Products they purchased, and/or in
8 additional amounts attributable to the deception.

9 73. By engaging in the false and deceptive conduct alleged herein, Defendant
10 reaped, and continues to reap financial benefits in the form of sales and profits from
11 its Products.

12 74. Plaintiffs, however, would be willing to purchase Products again in the
13 future should they be able to rely on Defendant's marketing as truthful and non-
14 deceptive.

15 **CLASS ACTION ALLEGATIONS**

16 75. Plaintiffs bring this action on behalf of themselves and on behalf of
17 classes of all others similarly situated consumers defined as follows:

- 18 a. **National:** All persons in the United States who purchased Class
19 Products in the United States during the Class Period.
20 b. **California:** All persons in California who purchased the Class
21 Products in California during the Class Period.
22 c. **New York:** All persons in New York who purchased the Class
23 Products in New York during the Class Period.
24 d. **Class Period** is the maximum time allowable as determined by the
25 statute of limitation periods accompanying each cause of action.²⁰
26

27 ²⁰ The statute of limitations for Plaintiffs' claims under California Civil Code § 1750, *et seq.*, N.Y.
28 Gen. Bus U. Law § 349 *et seq.*, N.Y. Gen. Bus. Law § 350 *et seq.*, and for unjust enrichment is 3
years. Accordingly for these claims the Class Period begins 3 years from the date of the initial filing

1 76. Plaintiffs bring this Class pursuant to Federal Rule of Civil Procedure
2 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

3 77. Excluded from the Class are: (i) Defendant and their employees,
4 principals, affiliated entities, legal representatives, successors and assigns; and (ii) the
5 judges to whom this action is assigned.

6 78. Upon information and belief, there are tens of thousands of members of
7 the Class. Therefore, individual joinder of all members of the Class would be
8 impracticable.

9 79. There is a well-defined community of interest in the questions of law and
10 fact affecting the parties represented in this action.

11 80. Common questions of law or fact exist as to all members of the Class.
12 These questions predominate over the questions affecting only individual Class
13 members. These common legal or factual questions include but are not limited to:

- 14 a. Whether Defendant marketed, packaged, or sold the Class
15 Products to Plaintiffs and those similarly situated using false,
16 misleading, or deceptive statements or representations;
- 17 b. Whether Defendant omitted or misrepresented material facts
18 in connection with the sales of its Products;
- 19 c. Whether Defendant participated in and pursued the common
20 course of conduct complained of herein;
- 21 d. Whether Defendant has been unjustly enriched as a result of
22 its unlawful business practices;
- 23 e. Whether Defendant's actions violate the Unfair Competition
24 Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");

25
26 or January 4, 2021 to the present. Plaintiffs' claims under California's Business and Professions
27 Code § 17200, *et seq.*, California's Business & Professions Code § 17500, *et seq.*, and for breach of
28 express warranty have a statute of limitations of 4 years. Accordingly the Class Period for these
claims begins January 4, 2020 to the present.

- 1 f. Whether Defendant’s actions violate the False Advertising
- 2 Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the “FAL”);
- 3 g. Whether Defendant’s actions violate the Consumers Legal
- 4 Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the “CLRA”);
- 5 h. Whether Defendant’s actions violate N.Y. Gen. Bus. Law §
- 6 349 *et seq.*;
- 7 i. Whether Defendant’s actions violate N.Y. Gen. Bus. Law §
- 8 350 *et seq.*;
- 9 j. Whether Defendant should be enjoined from continuing the
- 10 above-described practices;
- 11 k. Whether Plaintiffs and members of the Class are entitled to
- 12 declaratory relief; and
- 13 l. Whether Defendant should be required to make restitution,
- 14 disgorge profits, reimburse losses, and pay damages as a
- 15 result of the above-described practices.

16 81. Plaintiffs’ claims are typical of the claims of the Class, in that Plaintiffs
17 were consumers who purchased Defendant’s Products. Plaintiffs are no different in
18 any relevant respect from any other Class member who purchased the Products, and
19 the relief sought is common to the Class.

20 82. Plaintiffs are adequate representatives of the Class because their interests
21 do not conflict with the interests of the members of the Class they seek to represent,
22 and they have retained counsel competent and experienced in conducting complex
23 class action litigation. Plaintiffs and their counsel will adequately protect the interests
24 of the Class.

25 83. A class action is superior to other available means for the fair and
26 efficient adjudication of this dispute. The damages suffered by each individual Class
27 member likely will be relatively small, especially given the relatively small cost of the
28 Products at issue and the burden and expense of individual prosecution of the complex

1 litigation necessitated by Defendant’s conduct. Thus, it would be virtually impossible
2 for members of the Class individually to effectively redress the wrongs done to them.
3 Moreover, even if members of the Class could afford individual actions, it would still
4 not be preferable to class-wide litigation. Individualized actions present the potential
5 for inconsistent or contradictory judgments. By contrast, a class action presents far
6 fewer management difficulties and provides the benefits of single adjudication,
7 economies of scale, and comprehensive supervision by a single court.

8 84. In the alternative, the Class may be certified because Defendant has acted
9 or refused to act on grounds generally applicable to the Class, thereby making
10 appropriate preliminary and final equitable relief with respect to each Class.

11 85. The requirements for maintaining a class action pursuant to Rule 23(b)(2)
12 are also met, as Defendant has acted or refused to act on grounds generally applicable
13 to the Class, thereby making appropriate final injunctive relief or corresponding
14 declaratory relief with respect to the Class as a whole.

15
16 **FIRST CAUSE OF ACTION**
(Breach of Express Warranty)

17 86. Plaintiffs incorporate each and every allegation contained in the
18 paragraphs above as if restated herein.

19 87. Plaintiffs’ express warranty claims are based on violations of N.Y. CLS
20 UCC § 2-313 and § 2-607 and Cal. Com. Code §2313. Defendant was afforded
21 reasonable notice of this claim in advance of the filing of the original complaint.

22 88. Defendant made express warranties to Plaintiffs and members of the
23 Class that the Products contained “No Preservatives.”

24 89. The express warranties made to Plaintiffs and members of the Class appear
25 on every Product label. This warranty regarding the nature of the Product marketed by
26 Defendant specifically relates to the goods being purchased and became the basis of the
27 bargain.
28

1 97. Defendant’s acts, omissions, misrepresentations, practices, and/or non-
2 disclosures concerning the Products alleged herein, constitute “unlawful” business
3 acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21
4 U.S.C. §§301, et seq. and its implementing regulations, including, at least, the
5 following sections:

- 6 a. 21 U.S.C. §343(a), which deems food misbranded when its
7 labeling contains a statement that is false or misleading in any
8 particular;
- 9 b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as
10 to create an erroneous impression about the presence or absence of
11 ingredient(s) or component(s) therein;
- 12 c. 21 U.S.C. §§331 and 333, which prohibits the introduction of
13 misbranded foods into interstate commerce.

14 98. California's Sherman Food, Drug, and Cosmetic Law (“Sherman Law”),
15 Cal. Health & Safety Code §109875 *et seq.*, broadly prohibits the misbranding of
16 food. Cal. Health & Safety Code §110765; *See, also* Cal. Health & Safety Code
17 §110660 (“Any food is misbranded if its labeling is false or misleading in any
18 particular.”). The Sherman Law incorporates all food labeling regulations and any
19 amendments to those regulations adopted pursuant to the Food, Drug, and Cosmetic
20 Act of 1938 as the food labeling regulations of California. Cal. Health & Safety Code
21 §§110100(a), 110665, 110670.

22 99. As described in detail above, by failing to label the Products in a manner
23 that accurately represents its contents, Defendant generally violates 21 U.S.C.
24 §343(a)(1) (“a food shall be deemed to be misbranded if its labeling is false or
25 misleading in any particular”) as incorporated by California’s Sherman Law.
26 Independently, by mislabeling the Products, Defendant violates Cal. Health & Safety
27 Code § 110660 (“any food is misbranded if its labeling is false or misleading in any
28 particular.”)

1 100. Defendant violated and continues to violate the Sherman Law, Article 6,
2 Section 110660, and hence has also violated and continues to violate the “unlawful”
3 prong of the UCL through the false labeling of its Product.

4 101. Defendant’s identical conduct that violates the Sherman Law, also violates
5 FDCA §403(a)(1), 21 U.S.C. §343(a)(1), which declares food misbranded under federal
6 law if its “labeling is false and misleading in any particular.” This identical conduct
7 serves as the sole factual basis of each cause of action brought by this Complaint, and
8 Plaintiff does not seek to enforce any of the state law claims to impose any standard of
9 conduct that exceeds that which would violate FDCA.

10 102. By committing the unlawful acts and practices alleged above, Defendant
11 has engaged, and continues to be engaged, in unlawful business practices within the
12 meaning of California Business and Professions Code §§17200, *et seq.*

13 103. Through its unlawful acts and practices, Defendant has obtained, and
14 continues to unfairly obtain, money from members of the Class. As such, Plaintiff
15 requests that this Court cause Defendant to restore this money to Plaintiff and all
16 members of the Class, to disgorge the profits Defendant made on these transactions,
17 and to enjoin Defendant from continuing to violate the Unfair Competition Law or
18 violating it in the same fashion in the future. Otherwise, the Class may be irreparably
19 harmed and denied an effective and complete remedy if such an order is not granted.

20 104. In accordance with California Business & Professions Code section
21 17203, and as Plaintiffs lack an adequate remedy at law, they seek an order enjoining
22 Defendant from continuing to conduct business through unlawful, unfair, and/or
23 fraudulent acts and practices and to commence a corrective advertising campaign.

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THIRD CAUSE OF ACTION
(“Unfair” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)
(On Behalf of the California Subclass)

105. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if restated herein.

106. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code §17200.

107. A business act or practice is “unfair” under the Unfair Competition Law if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

108. Defendant has violated, and continues to violate, the “unfair” prong of the UCL through its misleading description of the Products. The gravity of the harm to members of the Class resulting from such unfair acts and practices outweighs any conceivable reasons, justifications, or motives of Defendant for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Defendant engaged, and continues to engage, in unfair business practices within the meaning of California Business and Professions Code §§17200, *et seq.*

109. Through its unfair acts and practices, Defendant obtained, and continue to unfairly obtain, money from members of the Class. As such, Plaintiffs have been injured and request that this Court cause Defendant to restore this money to Plaintiffs and the members of the Class, to disgorge the profits Defendant made on its Products, and to enjoin Defendant from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future. Otherwise, the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

110. In accordance with California Business & Professions Code section 17203, and as Plaintiffs lack an adequate remedy at law, they seek an order enjoining Defendant

1 from continuing to conduct business through unlawful, unfair, and/or fraudulent acts
2 and practices and to commence a corrective advertising campaign.

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4 **FOURTH CAUSE OF ACTION**
5 **(“Fraudulent” Business Practices in Violation of**
6 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**
7 **(On Behalf of the California Subclass**

8 111. Plaintiffs incorporate each and every allegation contained in the
9 paragraphs above as if restated herein.

10 112. The UCL defines unfair business competition to include any “unlawful,
11 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
12 misleading” advertising. Cal. Bus. & Prof. Code §17200.

13 113. A business act or practice is “fraudulent” under the Unfair Competition
14 Law if it actually deceives or is likely to deceive members of the consuming public.

15 114. Defendant’s acts and practices of mislabeling its Products in a manner to
16 suggest they contained no preservatives.

17 115. As a result of the conduct described above, Defendant has been, and will
18 continue to be, unjustly enriched at the expense of Plaintiffs and members of the
19 proposed Class. Specifically, Defendant has been unjustly enriched by the profits they
20 have obtained from Plaintiffs and the Class from the purchases of their Products.

21 116. Through its fraudulent acts and practices, Defendant has improperly
22 obtained, and continue to improperly obtain, money from members of the Class. As
23 such, Plaintiffs request that this Court cause Defendant to restore this money to
24 Plaintiffs and the Class, to disgorge the profits Defendant has made, and to enjoin
25 Defendant from continuing to violate the Unfair Competition Law or violating it in the
26 same fashion in the future. Otherwise, the Class may be irreparably harmed and denied
27 an effective and complete remedy if such an Order is not granted.

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1 117. In accordance with California Business & Professions Code section 17203,
2 and as Plaintiffs lack an adequate remedy at law, they seek an order enjoining Defendant
3 from continuing to conduct business through unlawful, unfair, and/or fraudulent acts
4 and practices and to commence a corrective advertising campaign.

5
6 **FIFTH CAUSE OF ACTION**
7 **(False Advertising in Violation of**
8 **California Business & Professions Code §§ 17500, *et seq.*)**
9 **(On Behalf of the California Subclass)**

10 118. Plaintiffs incorporate each and every allegation contained in the
11 paragraphs above as if restated herein.

12 119. Defendant uses advertising and packaging to sell its Products. Defendant
13 disseminates advertising regarding its Products which by its very nature is deceptive,
14 untrue, or misleading within the meaning of California Business & Professions Code
15 §§17500, *et seq.* because those advertising statements contained on the labels are
16 misleading and likely to deceive, and continue to deceive, members of the putative Class
17 and the general public.

18 120. In making and disseminating the statements alleged herein, Defendant
19 knew or should have known that the statements were untrue or misleading, and acted in
20 violation of California Business & Professions Code §§17500, *et seq.*

21 121. The misrepresentations and non-disclosures by Defendant of the material
22 facts detailed above constitute false and misleading advertising and therefore constitute
23 a violation of California Business & Professions Code §§17500, *et seq.*

24 122. Through their deceptive acts and practices, Defendant has improperly and
25 illegally obtained money from Plaintiffs and the members of the Class. As such,
26 Plaintiffs request that this Court cause Defendant to restore this money to Plaintiffs and
27 the members of the Class, and to enjoin Defendant from continuing to violate California
28 Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise,

1 Plaintiffs and those similarly situated will continue to be harmed by Defendant’s false
2 and/or misleading advertising.

3 123. Pursuant to California Business & Professions Code §17535, Plaintiffs
4 seek an Order of this Court ordering Defendant to fully disclose the true nature of its
5 misrepresentations. Plaintiffs additionally request an Order: (1) requiring Defendant to
6 disgorge its ill-gotten gains, (2) award full restitution of all monies wrongfully acquired
7 by Defendant, and (3) interest and attorneys’ fees. Plaintiffs and the Class may be
8 irreparably harmed and denied an effective and complete remedy if such an Order is not
9 granted.

10 124. As a result, and as they lack an adequate remedy at law, Plaintiffs and the
11 Class are entitled to equitable relief, restitution, and an order for the disgorgement of
12 the funds by which Defendant was unjustly enriched, and pray for relief as set forth
13 below.

14 **SIXTH CAUSE OF ACTION**

15 **(Violation of the Consumers Legal Remedies Act,**
16 **California Civil Code §§ 1750, *et seq.*)**
17 **(On Behalf of the California Subclass)**

18 125. Plaintiffs incorporate each and every allegation contained in the
19 paragraphs above as if restated herein.

20 126. This cause of action is brought pursuant to the Consumers Legal Remedies
21 Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

22 127. Plaintiffs and each member of the proposed Class are “consumers” within
23 the meaning of Civil Code §1761(d).

24 128. The purchases of the Products by consumers constitute “transactions”
25 within the meaning of Civil Code §1761(e), and the Products constitute “goods” within
26 the meaning of Civil Code §1761(a).

27 129. Defendant has violated, and continues to violate, the CLRA in at least the
28 following respects:

- 1 a. §1770(5) pertaining to misrepresentations regarding the
- 2 characteristics of goods sold—specifying that misleading
- 3 representations regarding ingredients violate the CLRA;
- 4 b. §1770(7) pertaining to misrepresentations regarding the standard,
- 5 quality, or grade of goods sold; and
- 6 c. § 1770(9) pertaining to goods advertised with the intent not to
- 7 provide what is advertised.

8 130. Defendant knew, or should have known, that the labeling of its Products
9 violated consumer protection laws, and that these statements would be relied upon by
10 Plaintiffs and the members of the Class.

11 131. The representations were made to Plaintiffs and all members of the Class.
12 Plaintiffs relied on the accuracy of the representations on Defendant’s labels, which
13 formed a material basis for their decisions to purchase the Products. Moreover, based
14 on the very materiality of Defendant’s misrepresentations uniformly made on or omitted
15 from their Product labels, reliance may be presumed or inferred for all members of the
16 Class.

17 132. Defendant carried out the scheme set forth in this Complaint willfully,
18 wantonly, and with reckless disregard for the interests of Plaintiffs and the Class, and
19 as a result, Plaintiffs and the Class have suffered an ascertainable loss of money or
20 property.

21 133. Plaintiffs and the members of the Class request that this Court enjoin
22 Defendant from continuing to engage in the unlawful and deceptive methods, acts and
23 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless
24 Defendant is permanently enjoined from continuing to engage in such violations of the
25 CLRA, future consumers of Defendant’s Products will be damaged by their acts and
26 practices in the same way as Plaintiffs and California Subclass Members.

27 134. Plaintiffs served a CLRA demand pursuant to Civil Code §1782, via U.S.
28 Certified Mail Return Receipt notifying Defendant of the conduct described herein and

1 that such conduct was in violation of particular provisions of Civil Code §1770. Thirty
2 days have passed, and Defendant has not addressed Plaintiffs’ demands. Accordingly,
3 Plaintiffs seek the full measure of damages as provided under Civil Code §1780.

4 135. Plaintiffs request that this Court enjoin Defendant from continuing to
5 employ the unlawful methods, acts and practices alleged herein pursuant to California
6 Civil Code § 1782. If Defendant is not restrained from engaging in these types of
7 practices in the future, Plaintiffs and the other members of the class will continue to
8 suffer harm. Plaintiffs and those similarly situated have no adequate remedy at law to
9 stop Defendant’s continuing practices.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of New York’s Consumer Protection from Deceptive Acts and**
12 **Practices Law N.Y. GEN. BUS. LAW § 349 *et seq.*)**
13 **(On behalf of the New York Subclass)**

14 136. Plaintiffs incorporate each and every allegation contained in the
15 paragraphs above as if restated herein. Plaintiffs bring this claim on behalf of the New
16 York Subclass for violation of section 349 of New York’s Consumer Protection from
17 Deceptive Acts and Practices Law, N.Y. GEN. BUS. LAW § 349 *et seq.*

18 137. Section 349 prohibits “[d]eceptive acts or practices in the conduct of any
19 business, trade or commerce or in the furnishing of any service in [the State of New
20 York].” N.Y. Gen. Bus. Law § 349(a).

21 138. Defendant’s labeling and marketing of the Products, as alleged herein,
22 constitute “deceptive” acts and practices, as such conduct misled Plaintiffs and the
23 New York Subclass as to the characteristics and value of the Products.

24 139. Subsection (h) of Section 349 grants private plaintiffs a right of action for
25 violation of New York’s Consumer Protection from Deceptive Acts and Practices
26 Law, as follows:
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1 In addition to the right of action granted to the attorney general
2 pursuant to this section, any person who has been injured by
3 reason of any violation of this section may bring an action in his
4 own name to enjoin such unlawful act or practice, an action to
5 recover his actual damages or fifty dollars, whichever is greater,
6 or both such actions. The court may, in its discretion, increase
7 the award of damages to an amount not to exceed three times the
8 actual damages up to one thousand dollars, if the court finds the
9 defendant willfully or knowingly violated this section. The court
10 may award reasonable attorney's fees to a prevailing plaintiff.

11 N.Y. Gen. Bus. Law § 349(h).

12 140. In accordance with subsection (h) of Section 349, Plaintiffs seek an order
13 enjoining Defendant from continuing the unlawful deceptive acts and practices set out
14 above. Absent a Court order enjoining the unlawful, deceptive acts and practices,
15 Defendant will continue its deceptive and misleading marketing campaign and, in
16 doing so, irreparably harm each of the New York Subclass members. As a
17 consequence of Defendant's deceptive acts and practices, Plaintiffs and other
18 members of the New York Subclass suffered an ascertainable loss of monies. By
19 reason of the foregoing, Plaintiffs and other members of the New York Subclass also
20 seek actual damages or statutory damages of \$50 per violation, whichever is greater,
21 as well as punitive damages. N.Y. GEN. BUS. LAW § 349(h).

22 **EIGHTH CAUSE OF ACTION**

23 **(Violation of New York's Consumer Protection from Deceptive Acts and
24 Practices Law, N.Y. GEN. BUS. LAW § 350 *et seq.*)
25 (On Behalf of the New York Subclass)**

26 141. Plaintiffs incorporate each and every allegation contained in the
27 paragraphs above as if restated herein. Plaintiffs bring this claim on behalf of the New
28 York Subclass for violation of section 350 of New York's Consumer Protection from
Deceptive Acts and Practices Law, N.Y. Gen. Bus. Law § 350.

1 142. Section 350 prohibits “[f]alse advertising in the conduct of any business,
2 trade or commerce or in the furnishing of any service in [the State of New York].”
3 N.Y. Gen. Bus. Law § 350.

4 143. New York General Business Law Section 350-a defines “false
5 advertising” as “advertising, including labeling, of a commodity, or of the kind,
6 character, terms or conditions of any employment opportunity if such advertising is
7 misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a.1. The section also
8 provides that advertising can be false by omission, as it further defines “false
9 advertising” to include “advertising [that] fails to reveal facts material in the light of
10 such representations with respect to the commodity . . . to which the advertising
11 relates.” *Id.*

12 144. Defendant’s labeling, marketing, and advertising of its Products, as
13 alleged herein, are “misleading in a material respect” and, thus, constitute “false
14 advertising,” as they falsely represent the Products as consisting of characteristics and
15 lawfulness that they do not possess.

16 145. Plaintiffs seek an order enjoining Defendant from continuing this false
17 advertising. Absent enjoining this false advertising, Defendant will continue to
18 mislead Plaintiffs and the other members of the New York Subclass as to the
19 characteristics of their Products, and in doing so, irreparably harm each of the New
20 York Subclass members.

21 146. As a direct and proximate result of Defendant’s violation of New York
22 General Business Law §350, Plaintiffs and the other members of the New York
23 Subclass have also suffered an ascertainable loss of monies. By reason of the
24 foregoing, Plaintiffs and other members of the New York Subclass also seek actual
25 damages or statutory damages of \$500 per violation, whichever is greater, as well as
26 punitive damages. N.Y. GEN. BUS. LAW § 350-e.

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NINTH CAUSE OF ACTION

**(Restitution Based On Quasi-Contract/Unjust Enrichment)
By Plaintiffs on Behalf of the Nationwide Class**

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3 147. Plaintiffs incorporate each and every allegation contained in the
4 paragraphs above as if restated herein.

5 148. Defendant’s conduct in enticing Plaintiffs and the Class to purchase
6 Products with false and misleading packaging is unlawful because the statements
7 contained on the Defendant’s Product labels are untrue.

8 149. Defendant took monies from Plaintiffs and the Class for these Products
9 and have been unjustly enriched at the expense of Plaintiffs and the Class as a result of
10 their unlawful conduct alleged herein, thereby creating a quasi-contractual obligation
11 on Defendant to restore these ill-gotten gains to Plaintiffs and the Class.

12 150. It is against equity and good conscience to permit Defendant to retain the
13 ill-gotten benefits received from Plaintiffs and Class members.

14 151. As a direct and proximate result of Defendant’s unjust enrichment,
15 Plaintiffs and the Class are entitled to restitution or restitutionary disgorgement in an
16 amount to be proved at trial.

17 **PRAYER FOR RELIEF**

18 THEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other
19 members of the Class and for the Counts so applicable on behalf of the general public
20 request an award and relief as follows:

21 A. An order certifying that this action is properly brought and may be
22 maintained as a class action, that Plaintiffs be appointed Class Representatives, and
23 Plaintiffs’ counsel be appointed Lead Counsel for the Class.

24 B. Restitution in such amount that Plaintiffs and all members of the Class
25 paid to purchase Defendant’s Product or restitutionary disgorgement of the profits
26 Defendant obtained from those transactions, for Causes of Action for which they are
27 available.
28

1 C. Compensatory damages for Causes of Action for which they are
2 available.

3 D. Other statutory penalties for Causes of Action for which they are
4 available.

5 E. Punitive Damages for Causes of Action for which they are available.

6 F. A declaration and Order enjoining Defendant from marketing and
7 labeling its Product deceptively, in violation of laws and regulations as specified in
8 this Complaint.

9 G. An Order awarding Plaintiffs their costs of suit, including reasonable
10 attorneys' fees and pre and post judgment interest.

11 H. An Order requiring an accounting for, and imposition of, a constructive
12 trust upon all monies received by Defendant as a result of the unfair, misleading,
13 fraudulent, and unlawful conduct alleged herein.

14 I. Such other and further relief as may be deemed necessary or appropriate.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all causes of action or issues so triable.

DATED: September 3, 2024

Respectfully submitted,



Michael D. Braun

KUZYK LAW, LLP

2121 Avenue of the Stars, Ste. 800

Los Angeles, California 90067

Telephone: (213) 401-4100

Facsimile: (213) 401-0311

Email: mdb@kuzykclassactions.com

Peter N. Wasylyk

LAW OFFICES OF PETER N.

WASYLYK

1307 Chalkstone Avenue

Providence, RI 02908

Telephone: (401) 831-7730

Facsimile: (401) 861-6064

Email: pnwlaw@aol.com

Counsel for Plaintiffs