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

12 MARIO PALACIOS, *individually and on* )  
13 *behalf of all those similarly situated,* )  
14 )  
15 *Plaintiff,* )  
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No. **'24CV0288 MMAKSC**

v.

**CLASS ACTION COMPLAINT**

ROWDY BEVERAGE, INC., *a Delaware* )  
*corporation,* )  
*Defendant.* )

**JURY TRIAL DEMANDED**

18 Mario Palacios (“Plaintiff”), individually and on behalf of all other consumers similarly  
19 situated throughout the United States, by and through undersigned counsel, hereby brings this  
20 action against Rowdy Beverage, Inc. (“Rowdy”), alleging that its lemonade, passion dragonfruit,  
21 pineapple passionfruit, and watermelon flavors energy drinks (collectively, the “Products”),  
22 which are manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, are  
23 misbranded and deceptively labelled as set forth herein, and upon information and belief and  
24 investigation of counsel alleges as follows:  
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26 **PARTIES**

27 1. Plaintiff Mario Palacios is and at all times relevant was a citizen of the state of  
28 California, domiciled in San Diego, California.

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2. Defendant Rowdy Beverage, Inc. is a Delaware corporation with its principal place of business and headquarters in San Diego, California.

**JURISDICTION AND VENUE**

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

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

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

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

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

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

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

5  
6 9. Defendant knowingly directs electronic activity and ships the Products into this  
7 district with the intent to engage in business interactions for profit, and it has in fact engaged in  
8 such interactions, including the sale of the Products to Plaintiff.

9  
10 10. Defendant also sells the Products to retailers and wholesalers in this district for  
11 the purpose of making the Products available for purchase by individual consumers in this  
12 district.

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

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

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

## 18 **FACTUAL ALLEGATIONS**

### 19 **A. Consumers Pay A Premium for "Clean Label" Foods Free of Preservatives**

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

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

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

7           17. Plaintiff purchased the Products on or about June 10, 2023 purchased the Products  
8 on or about October 25, 2023 from Amazon.com (Order #113-2439757-6380263).

9           18. Palacios is a fitness enthusiast who attempts to “eat clean.” He reviews labels in  
10 attempt to avoid preservatives and artificial ingredients.

11 **B. Defendant’s Use of Preservatives.**

12           19. Defendant Rowdy Beverage, Inc. formulates, manufactures, and sells various food  
13 products, including the Products.  
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15           20. The front label (or “principal display panel”) of the Products state that they contain  
16 “No Preservatives Added,” as shown here:



1           21. This no preservatives claim is false. The Products contain citric acid, which is a  
2 commonly used and recognized preservative in food and beverage products.

3           22. Citric acid in foods, ***including as used in the Products***, is used to preserve foods  
4 by increasing acidity and thereby preventing the growth of bacteria and mold. Citric acid is a  
5 preservative as the term is defined at 21 C.F.R. §101.22(a)(5): a chemical that “when added to  
6 food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars,  
7 vinegars, spices, or oils extracted from spices, substances added to food by direct exposure  
8 thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal.”  
9

10           23. The United States Food and Drug Administration identifies citric acid as a  
11 preservative in “Types of Food Ingredients” at [https://www.fda.gov/food/food-additives-and-](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients)  
12 [gras-ingredients-information-consumers/types-food-ingredients](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients) (last viewed January 29, 2024).  
13 That publication notes that citric acid is among the preservatives used to “[p]revent food  
14 spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color,  
15 flavor, or texture and delay rancidity (antioxidants); [and] maintain freshness.”  
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17           24. Federal regulations also require that where a food contains a chemical preservative  
18 such as citric acid, a “statement of [that] chemical preservative shall be placed on the food [] as  
19 may be necessary to render such statement likely to be read by the ordinary person under  
20 customary conditions of purchase and use.” 21 C.F.R. §§ 101.22(a)(5), (c).  
21

22           25. Citric acid does not fall within any regulatory exemption to these requirements.

23           26. The FDA has repeatedly warned companies that products containing citric acid  
24 must disclose the use of preservatives on the label. *See, e.g.* October 6, 2010 FDA Warning  
25 Letter to Chiquita Brands Int’l, Inc. and Fresh Express, Inc. (warning that food products were  
26 mislabeled because they “contain the chemical preservatives ascorbic acid and citric acid but  
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1 their labels fail to declare these preservatives with a description of their functions,” citing 21  
2 CFR § 101.22).

3 27. These federal regulations are independently adopted as substantive state law  
4 requirements under the Sherman Law, Cal. Health & Saf. Code § 109875, *et seq.*

5 28. As described above, a preservative as defined by federal regulation is a substance  
6 that “tends” to prevent or retard the deterioration of food products. Thus, it is not necessary that  
7 the substance function as a preservative in every single instance of its use for it to qualify as a  
8 preservative, so long as preservation is the general tendency of the substance.

9 29. However, on information and belief, citric acid does in fact function as a  
10 preservative in the Products.  
11

12 30. Labels are the chief means by which food product manufacturers convey critical  
13 information to consumers, and consumers have been conditioned to rely on the accuracy of the  
14 claims made on these labels. As the California Supreme Court stated in a case involving alleged  
15 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based  
16 on the premise that labels matter, that consumers will choose one product over another similar  
17 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).  
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19 31. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed  
20 the “No Preservatives Added” claim made on those labels. Consumers, including Plaintiff, who  
21 viewed the Products’ labels reasonably understood this claim to mean that the Products do not  
22 contain preservatives such as citric acid. This representation was false.  
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24 **C. Defendant’s Use of Artificial Flavoring.**

25 32. The Products also state on the back label that they contain “No Artificial ...  
26 Flavors”:  
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33. Likewise, the Amazon.com storefront for the Products, which Plaintiff viewed when making his purchase, states that the Products are “Clean” and contain “no artificial ... flavors... Just hearing the word artificial is triggering for us”:



- amino acids per 12 oz can, including L-Citrulline, L-Arginine HCl, and L-Glutamine, to promote lean muscle and support workout performance, stamina, and recovery
- NATURAL ENERGY: Crafted with 160mg of natural caffeine from green tea and green coffee beans so you can get a burst of energy, naturally
- HYDRATION & RECOVERY: Boosted with a serious dose of electrolytes for unmatched hydration (...and sometimes morning-after recovery). We've got a blend of over 500mg of potassium and magnesium, at levels greater than leading sports drink brands
- SUSTAINED FOCUS: Powered by the cognitive nootropic L-theanine for ruthless and lasting focus, without the jitters or crash that comes from other energy drinks
- CLEAN: Zero sugar, no sucralose, no artificial sweeteners, colors, or flavors. Just hearing the word artificial is triggering for us. Rowdy Energy has is gluten-free, keto-friendly, plant-based, and vegan

34. This natural flavoring claim is false. The Products are flavored using an artificial flavoring, DL malic acid, that is derived from petrochemicals.

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

3           36. Undersigned counsel sent the Product purchased by Plaintiff to be tested by an  
4 independent third-party laboratory. That testing detected the presence of the “D” isomer in the  
5 malic acid Defendant uses in these Product. The presence of the D isomer means that the  
6 ingredient used in the Product is DL malic acid, a synthetic substance derived from  
7 petrochemicals.<sup>1</sup> This is the industry-standard method of determining whether the malic acid  
8 used in a food product is artificially derived or naturally occurring. DL malic acid is used in the  
9 Products at concentrations that make it apparent that it is used as flavoring and not for any other  
10 purpose.  
11

12           37. DL malic acid is manufactured in petrochemical plants from benzene or butane—  
13 components of gasoline and lighter fluid, respectively—through a series of chemical reactions,  
14 some of which involve highly toxic chemical precursors and byproducts.  
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16           38. Federal regulations note explicitly that “DL-malic acid does not occur naturally.”  
17 21 C.F.R. § 184.1069(a).

18           39. Fruit flavors in a food are imparted by the interactions between sugars, acids,  
19 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined  
20 by the ratio between the sugars (mainly glucose and fructose) and acids, such as malic acid.  
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22           40. The quality and consumer acceptability of fruit flavors is based on their perceived  
23 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such  
24 as watermelons, cherries, and raspberries have their own natural ratio of sugars and acids.

25           41. The DL malic acid used in the Product is used to create, simulate, and/or reinforce  
26 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.  
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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.



1           42. Defendant uses the petrochemical-derived DL malic acid in its Product to create  
2 a sweet and tart flavor but pretends that it uses only natural flavorings, misbranding the Product  
3 and deceiving consumers.

4 **D. Requirements for Labelling Regarding Flavoring.**

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

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

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

16           46. Any recognizable primary flavor identified directly or indirectly on the front label  
17 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to  
18 as a “characterizing flavor.” 21 C.F.R. § 101.22.

19           47. Here, the Products’ labels both state the characterizing flavors and reinforce the  
20 claim that this characterizing flavor is achieved by using only natural flavors through use of  
21 depictions of fruits.

22           48. If a food product’s characterizing flavor is not created exclusively by the named  
23 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or  
24 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present  
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1 which “simulates, resembles or reinforces” the characterizing flavor, the front label must  
2 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §  
3 101.22(i)(2).

4 49. A food product’s label also must include a statement of the “presence or absence  
5 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such  
6 ingredient(s) or component(s) in the food has a material bearing on price or consumer  
7 acceptance . . . and consumers may otherwise be misled about the presence or absence of the  
8 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.

9 50. Such statement must be in boldface print on the front display panel and of  
10 sufficient size for an average consumer to notice.

11 51. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §  
12 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA, making  
13 them independent requirements of state law.

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

17 53. DL malic acid is not a “natural flavor” as this term is defined by federal and state  
18 regulations and is not derived from a fruit or vegetable or any other natural source.

19 54. The Products therefore contain artificial flavorings.

20 55. Because the Products contain artificial flavoring, California law (incorporating  
21 federal regulations) requires the Products to display both front- and back-label disclosures to  
22 inform consumers that the Products are artificially flavored.

23 56. The Products have none of the required disclosures regarding the use of artificial  
24 flavors.

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1           57. Plaintiff reserves the right to amend this Complaint to add further products that  
2 contain similar label misrepresentations as testing continues.

3 **E. Plaintiff's Reliance.**

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

11           59. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed  
12 the claims made on those labels regarding the use of preservatives and natural flavorings.  
13 Consumers, including Plaintiff, who viewed the Products' labels reasonably understood those  
14 claims to mean that the Products do not contain preservatives such as citric acid or synthetic  
15 flavorings such as DL malic acid. These representations were false.  
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17           60. Consumers, including Plaintiff, reasonably relied on Defendant's label claims  
18 described herein such that they would not have purchased the Products from Defendant if the  
19 truth about the Products was known, or would have only been willing to pay a substantially  
20 reduced price for the Products had they known that Defendant's representations were false and  
21 misleading.  
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23           61. In the alternative, because of its deceptive and false labelling statements,  
24 Defendant was enabled to charge consumers including Plaintiff a premium for the Products  
25 relative to key competitors' products, or relative to the average price charged in the marketplace.  
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1 predominate over any questions that affect only individual Class members. Common legal and  
2 factual questions and issues include but are not limited to:

- 3 a. Whether the marketing, advertising, packaging, and labeling for Defendant's  
4 Products is misleading and deceptive;  
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6 b. Whether a reasonable consumer would understand Defendant's label claims to  
7 indicate that the Products contained no preservatives and no artificial flavors, and  
8 reasonably relied upon those representations;  
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10 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class  
11 members;  
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13 d. Whether Defendant breached an express warranty;  
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15 e. the proper amount of damages;  
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17 f. the proper scope of injunctive relief; and  
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19 g. the proper amount of attorneys' fees.

20 70. Defendant engaged in a common course of conduct in contravention of the laws  
21 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations  
22 of law, business practices, and injuries are involved. Individual questions, if any, pale by  
23 comparison, in both quality and quantity, to the numerous common questions that predominate  
24 this action. The common questions will yield common answers that will substantially advance  
25 the resolution of the case.

26 71. In short, these common questions of fact and law predominate over questions that  
27 affect only individual Class members.

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



1           73. Specifically, all Class members, including Plaintiff, were harmed in the same way  
2 due to Defendant’s uniform misconduct described herein; all Class members suffered similar  
3 economic injury due to Defendant’s misrepresentations; and Plaintiff seeks the same relief as  
4 the Class members.  
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6           74. There are no defenses available to Defendant that are unique to the named  
7 Plaintiff.

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

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

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

- 19           a. the damages individual Class members suffered are small compared to the burden  
20 and expense of individual prosecution of the complex and extensive litigation  
21 needed to address Defendant’s conduct such that it would be virtually impossible  
22 for the Class members individually to redress the wrongs done to them. In fact,  
23 they would have little incentive to do so given the amount of damage each member  
24 has suffered when weighed against the costs and burdens of litigation;  
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- 1           b. the class procedure presents fewer management difficulties than individual
- 2           litigation and provides the benefits of single adjudication, economies of scale, and
- 3           supervision by a single Court;
- 4
- 5           c. the prosecution of separate actions by individual Class members would create a
- 6           risk of inconsistent or varying adjudications, which would establish incompatible
- 7           standards of conduct for Defendant; and
- 8           d. the prosecution of separate actions by individual Class members would create a
- 9           risk of adjudications with respect to them that would be dispositive of the interests
- 10          of other Class members or would substantively impair or impede their ability to
- 11          protect their interests.

12           78. Unless the Class is certified, Defendant will retain monies received as a result of

13 its unlawful and deceptive conduct alleged herein.

14

15           79. Unless a class-wide injunction is issued, Defendant will likely continue to

16 advertise, market, promote, and sell its Products in an unlawful and misleading manner, as

17 described throughout this Complaint, and members of the Class will continue to be misled,

18 harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products’

19 advertising or labeling in the future, and so will not purchase the Products although he would

20 like to.

21

22           80. **Ascertainability.** To the extent ascertainability is required, the Class members are

23 readily ascertainable from Defendant’s records and/or its agents’ records of retail and online

24 sales, as well as through public notice.

25           81. Defendant has acted on grounds applicable to the Class as a whole, thereby

26 making appropriate final injunctive and declaratory relief concerning the Class as a whole.

27

28

1 **COUNT 1**  
2 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**  
3 **CIVIL CODE § 1750 *et seq.***

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

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

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

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

12 86. As alleged herein, Defendant’s business practices are a violation of the CLRA  
13 because Defendant deceptively failed to reveal facts that are material in light of the “No  
14 preservatives” and “No artificial flavors” representations that were made by Defendant on the  
15 labels of its Products.  
16

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

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

4 e. Defendant’s acts and practices constitute representations that its Products have  
5 been supplied in accordance with previous representations when they were not.

6  
7 88. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,  
8 entitling them to injunctive relief, disgorgement, and restitution.

9 89. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the  
10 particular violations of the CLRA described herein and demanded Defendant rectify the actions  
11 described above by providing complete monetary relief, agreeing to be bound by their legal  
12 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this  
13 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.  
14

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

19 91. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin  
20 publication of misleading and deceptive nutritional labels on Defendant’s Products and to  
21 recover reasonable attorneys’ fees and costs.  
22

23 **COUNT 2**  
24 **UNJUST ENRICHMENT UNDER CALIFORNIA LAW**

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

27 93. Defendant, through its marketing and labeling of the Products, misrepresented and  
28 deceived consumers regarding the use of preservatives and artificial flavors in the Products.





1 between Defendant and Plaintiff and the Class, which creates an express warranty that the  
2 Products would conform to those affirmations of fact, representations, promises, and  
3 descriptions.

4 103. The Products do not conform to the express warranty that the Products contain  
5 “No preservatives” and “No artificial flavors” because they contain citric acid, a preservative,  
6 and DL malic acid, an artificial flavor.

7  
8 104. As a direct and proximate cause of Defendant’s breach of express warranty,  
9 Plaintiff and Class members have been injured and harmed because: (a) they would not have  
10 purchased the Products on the same terms if they knew the truth about the Products’ unnatural  
11 ingredients; (b) they paid a price premium based on Defendant’s express warranties; and (c) the  
12 Products do not have the characteristics, uses, or benefits that were promised.

13  
14 **PRAYER FOR RELIEF**

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

- 17 a. Certifying the Class;
- 18 b. Declaring that Defendant violated the CLRA and/or was unjustly enriched and/or  
19 breached an express warranty;
- 20 c. Awarding actual and other damages as permitted by law;
- 21 d. Ordering an awarding of injunctive relief as permitted by law, including enjoining  
22 Defendant from continuing the unlawful practices as set forth herein, and ordering  
23 Defendant to engage in a corrective advertising campaign;
- 24 e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff;
- 25 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts  
26 awarded; and  
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g. Such other relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

Respectfully submitted,

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

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

February 13, 2024

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Mario Palacios, individually and on behalf of those similarly situated

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

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

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

DEFENDANTS

Rowdy Beverage, Inc.

County of Residence of First Listed Defendant San Diego, CA (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'24CV0288 MMAKSC

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

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

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

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

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

Click here for: Nature of Suit Code Descriptions.

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

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC section 1331. Brief description of cause: Consumer fraud action for mislabeled foos products

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 2/13/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Charles C. Weller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

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

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

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