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13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 VERONICA BUSTAMANTE,
 16 individually, and on behalf of all others
 17 similarly situated,

18 Plaintiff,

19 v.

20 WELCH FOODS INC.,

21 Defendant.

Case No. '24CV0420 JES SBC

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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INTRODUCTION

1
2 1. Plaintiff Veronica Bustamante (“Plaintiff”) on behalf of herself, all
3 others similarly situated, and the general public, by and through her undersigned
4 counsel, hereby brings this action against Defendant Welch Foods, Inc.
5 (“Defendant” or “Welch’s”), and upon information and belief and investigation of
6 counsel, alleges as follows:

7 2. This is a California consumer class action for violations of the
8 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), Unfair
9 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), and for
10 breach of express warranty.

11 3. Defendant manufactures, distributes, advertises, markets, and sells
12 the Welch’s Light Grape Juice Product (the “Product”). The packaging
13 prominently displays on the side of the label the claim that this Product contains
14 **“No Artificial Flavors or Preservatives.”**

15 4. This statement is false. The product is made with ascorbic acid— an
16 artificial preservative ingredient used in beverage products.

17 5. Defendant’s packaging, labeling, and advertising scheme is intended
18 to give consumers the impression that they are buying a premium product that is
19 free from artificial preservatives.

20 6. Plaintiff, who purchased the Products in California, was deceived by
21 Defendant’s unlawful conduct and brings this action on her own behalf and on
22 behalf of California consumers to remedy Defendant’s unlawful acts.

JURISDICTION AND VENUE

23
24 7. This Court has original jurisdiction over this action pursuant to 28
25 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100
26 members in the proposed class; (2) members of the proposed class have a different
27 citizenship from Defendant; and (3) the claims of the proposed class members
28 exceed \$5,000,000 in the aggregate, exclusive of interest and costs.

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1 8. This Court has personal jurisdiction over Defendant because
2 Defendant conducts and transacts business in the State of California, contracts to
3 supply goods within the State of California, and supplies goods within the State of
4 California. Defendant, on its own and through its agents, is responsible for the
5 distribution, marketing, labeling, and sale of the Product in California, specifically
6 in this judicial district. The marketing of the Product, including the decision of
7 what to include and not include on the label, emanates from Defendant. Thus,
8 Defendant has intentionally availed itself of the markets within California through
9 its advertising, marketing, and sale of the Product to consumers in California,
10 including Plaintiff. The Court also has specific jurisdiction over Defendant as it
11 has purposefully directed activities towards the forum state, Plaintiff's claims arise
12 out of those activities, and it is reasonable for Defendant to defend this lawsuit
13 because it has sold a deceptively advertised Product to Plaintiff and members of
14 the Class in California. By distributing and selling the Product in California,
15 Defendant has intentionally and expressly aimed conduct at California which
16 caused harm to Plaintiff and the Class that Defendant knows is likely to be suffered
17 by Californians.

18 9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial
19 part of the events or omissions giving rise to the claim occurred in this District
20 because Plaintiff purchased the Product within this District.

21 PARTIES

22 10. Defendant Welch Foods, Inc. is a Michigan corporation that
23 maintains its principal place of business in Concord, Massachusetts. At all times
24 during the class period, Defendant was the manufacturer, distributor, marketer,
25 and seller of the Product.

26 11. Plaintiff Veronica Bustamante is a resident of San Diego County,
27 California. Plaintiff purchased the Product during the class period in California.
28 Plaintiff relied on Defendant's deceptive advertising and labeling claims as set
forth below.

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FACTUAL ALLEGATIONS

**“NO ARTIFICIAL FLAVORS OR PRESERVATIVES” IS PROMINENTLY DISPLAYED
ON THE LABEL OF THE PRODUCT**

12. The label for the Product prominently states that the Product contains “No Artificial Flavors or Preservatives” thereby misleading reasonable consumers into believing that the Product is free from artificial preservatives. However, the Product contains the artificial preservative ingredient ascorbic acid. The labels for the Product are shown below.



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INGREDIENTS: FILTERED WATER, CONCORD GRAPE JUICE, MALIC ACID (FOR TARTNESS), SODIUM CITRATE, ASCORBIC ACID (VITAMIN C), FRUIT JUICE (FOR COLOR), VEGETABLE JUICE (FOR COLOR), NATURAL FLAVOR, SUCRALOSE, ACESULFAME POTASSIUM

1 **THE ASCORBIC ACID IN THE PRODUCT IS AN ARTIFICIAL PRESERVATIVE**

2 13. Defendant uses artificial ascorbic acid in the Product. The United
3 States Department of Agriculture (“USDA”) has found that “all commercial
4 ascorbic acid [is] synthetically derived.”¹ Accordingly, the USDA classifies
5 ascorbic acid as a synthetic ingredient. *See* 7 C.F.R. § 205.605(b)(6). The ascorbic
6 acid that Defenant uses in the Product is produced by chemical synthesis with
7 substances like sulfuric acid and acetone.²

8 14. Ascorbic acid acts as a preservative when added to beverage products,
9 including the Product at issue. The Food and Drug Administration (“FDA”)
10 defines a preservative as “any chemical that, when added to food, tends to prevent
11 or retard deterioration thereof, but does not include common salt, sugars, vinegars,
12 spices, or oils extracted from spices, substances added to food by direct exposure
13 thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal
14 properties.” 21 C.F.R. §101.22(a)(5). The FDA has listed ascorbic acid as a
15 preservative in its “Overview of Food Ingredients, Additives and Colors” as shown
16 below:³

17 _____
18 ¹ *Ascorbic Acid*, UNITED STATES DEPARTMENT OF AGRICULTURE (2019) at p. 10,
19 *available at*
20 <https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf>

21 ² Han Asard, et al., *Vitamin C: Its Functions and Biochemistry in Animals and*
22 *Plants* (March 10, 2004) at pp. 55-56, *available at*
23 <https://books.google.com/books?hl=en&lr=&id=RyJWDwAAQBAJ&oi=fnd&pg=PA55&dq=ascorbic+acid+commercial+production&ots=aLqoNhzdMq&sig=4rSwkWAD2Vz5XaEIuM6RhURgBBs#v=onepage&q=ascorbic%20acid%20commercial%20production&f=false>

24 ³ *Overview of Food Ingredients, Additives & Colors*, FOOD AND DRUG
25 ADMINISTRATION, *available at*
26 <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>
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Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid , citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

15. Ascorbic acid is a chemically modified form of vitamin C and FDA regulations recognize that ascorbic acid is a preservative ingredient. *See* 21 C.F.R. § 182.3013.

16. The ascorbic acid in the Products functions as a preservative because it is an antioxidant that prevents microbial growth, thereby preserving color and freshness.

17. The Product is made from grape juice. The FDA states that ascorbic acid in the formulation of wine and juice is used “to prevent oxidation of color and flavor components of juice,” and it “may be added to grapes, other fruit (including berries), and other primary wine making materials or to the juice of such materials.” 27 C.F.R. § 24.246. Defendant adds ascorbic acid to the Product to prevent “oxidation of color and flavor.” *Id.*

18. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express, Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and Cosmetics Act because they “contain the *chemical preservatives ascorbic acid* and citric acid but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R. [§] 101.22” (emphasis added).⁴

⁴ *See* **Exhibit A** attached hereto.

19. The Encyclopedia Britanica also classifies ascorbic acid as a preservative because it has antioxidant properties, as shown below⁵:

Preservatives

Food preservatives are classified into two main groups: antioxidants and antimicrobials. Antioxidants are compounds that delay or prevent the deterioration of foods by oxidative mechanisms. Antimicrobial agents inhibit the growth of spoilage and pathogenic microorganisms in food.

Food preservatives	
chemical agent	mechanism of action
Antioxidants	
ascorbic acid	oxygen scavenger
butylated hydroxyanisole (BHA)	free radical scavenger
butylated hydroxytoluene (BHT)	free radical scavenger
citric acid	enzyme inhibitor/metal chelator
sulfites	enzyme inhibitor/oxygen scavenger
tertiary butylhydroquinone (TBHQ)	free radical scavenger
tocopherols	free radical scavenger

20. Ascorbic acid functions as a preservative in the Product regardless of whether Defendant intended to use ascorbic acid as a preservative. Ascorbic acid functions as a preservative even if it is also added to the Product for some other use. *See* 21 C.F.R. §101.22(a)(5) (defining preservatives as “any chemical that, when added to food, *tends to prevent or retard deterioration*”) (emphasis added); *see also* Merriam-Webster’s Dictionary (defining “preservative” as “something that preserves or *has the power of preserving*.”) (emphasis added).⁶

⁵ *Preservatives*, BRITANICA, available at <https://www.britannica.com/topic/food-additive/Preservatives#ref502211>

⁶ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld

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1 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S FALSE LABELING**
2 **STATEMENT AND SUFFERED ECONOMIC INJURY**

3 21. Consumers, like Plaintiff, relied on Defendant’s “No Artificial
4 Flavors or Preservatives” labeling statement. The “No Artificial Flavors or
5 Preservatives” statement on the label of the Product is material to reasonable
6 consumers. “[F]oods bearing ‘free-from’ claims are increasingly relevant to
7 Americans, as they perceive the products as closely tied to health ... 84 percent of
8 American consumers buy free-from foods because they are seeking out more
9 natural or less processed foods. In fact, 43 percent of consumers agree that free-
10 from foods are healthier than foods without a free-from claim, while another three
11 in five believe the fewer ingredients a product has, the healthier it is (59 percent).
12 Among the top claims free-from consumers deem most important are trans-fat-free
13 (78 percent) and preservative-free (71 percent).”⁷

14 22. Plaintiff and the putative class members suffered economic injury as
15 a result of Defendant’s actions. Plaintiff and putative class members spent money
16 that, absent Defendant’s actions, they would not have spent. Plaintiff and putative
17 class members are entitled to damages and restitution for the purchase price of the
18 Products that were falsely labeled and advertised. Consumers, including Plaintiff,
19 would not have purchased Defendant’s Product, or would have paid less for the
20 Product, if they had known the Product actually contains an artificial preservative
21 ingredient.

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26 ⁷ 84% of Americans buy “free-from” foods because they believe them to be more
27 natural or less processed, Mintel (Sept. 3, 2015), available at
28 [https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-
because-they-believe-them-to-be-more-natural-or-less-processed/](https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/)

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PLAINTIFF’S PURCHASE OF THE PRODUCT

23. Plaintiff Veronica Bustamante purchased the Product with the “No Artificial Flavors or Preservatives” label claim during the class period at various retail stores located in San Diego County, California, including Vons and Albertsons stores. Plaintiff’s last purchase of the Product was in approximately November of 2023.

24. Plaintiff saw and relied on the “No Artificial Flavors or Preservatives” claim on the label of the Product. Plaintiff would not have purchased the Product, or would have paid less for the Product, had she known that the product actually contains an artificial preservative ingredient. As a result, Plaintiff suffered injury in fact when she spent money to purchase the Product she would not have purchased, or would have paid less for, absent Defendant’s misconduct. Plaintiff desires to purchase the Product again if the labels of the product were accurate and if the product actually contained “No Artificial Flavors or Preservatives.” However, as a result of Defendant’s ongoing misrepresentations, Plaintiff is unable to rely on the Product’s advertising and labeling when deciding in the future whether to purchase the Product.

NO ADEQUATE REMEDY AT LAW

25. Plaintiff and members of the class are entitled to equitable relief as no adequate remedy at law exists. The statutes of limitations for the causes of action pled herein vary. Class members who purchased the Product more than three years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL.

26. The scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes Defendant’s overall unfair marketing scheme to promote and brand the Product, across a multitude of media platforms, including the product labels, packaging, and online advertisements, over a long period of time, in order to gain an unfair

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1 advantage over competitor products. Plaintiff and class members may also be
2 entitled to restitution under the UCL, while not entitled to damages under other
3 causes of action asserted herein (e.g., the CLRA is limited to certain types of
4 plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or
5 services for personal, family, or household purposes) and other statutorily
6 enumerated conduct).

7 27. A primary litigation objective in this litigation is to obtain injunctive
8 relief. Injunctive relief is appropriate on behalf of Plaintiff and members of the
9 class because Defendant continues to misrepresent the Product as containing “No
10 Artificial Flavors or Preservatives” when the Product actually contain the artificial
11 preservative ingredient ascorbic acid. Injunctive relief is necessary to prevent
12 Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful
13 conduct described herein and to prevent future harm—none of which can be
14 achieved through available legal remedies (such as monetary damages to
15 compensate past harm). Injunctive relief, in the form of affirmative disclosures or
16 halting the sale of unlawful sold products is necessary to dispel the public
17 misperception about the Product that has resulted from years of Defendant’s
18 unfair, fraudulent, and unlawful marketing efforts. Such disclosures would
19 include, but are not limited to, publicly disseminated statements stating that the
20 Product actually contains an artificial preservative. An injunction requiring
21 affirmative disclosures to dispel the public’s misperception, and prevent the
22 ongoing deception and repeat purchases, is also not available through a legal
23 remedy (such as monetary damages). Further, because a public injunction is
24 available under the UCL, and damages will not adequately benefit the general
25 public in a manner equivalent to an injunction.

26 28. It is premature to determine whether an adequate remedy at law
27 exists. This is an initial pleading and discovery has not yet commenced and/or is
28 at its initial stages. No class has been certified yet. No expert discovery has

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1 commenced and/or completed. The completion of fact/non-expert and expert
2 discovery, as well as the certification of this case as a class action, are necessary
3 to finalize and determine the adequacy and availability of all remedies, including
4 legal and equitable, for Plaintiff’s individual claims and any certified class or
5 subclass. Plaintiff therefore reserves her right to amend this complaint and/or
6 assert additional facts that demonstrate this Court’s jurisdiction to order equitable
7 remedies where no adequate legal remedies are available for either Plaintiff and/or
8 any certified class or subclass. Such proof, to the extent necessary, will be
9 presented prior to the trial of any equitable claims for relief and/or the entry of an
10 order granting equitable relief.

11 **CLASS ACTION ALLEGATIONS**

12 29. Plaintiff brings this action as a class action pursuant to Federal Rules
13 of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following Class:

14 All persons who purchased the Product for personal use in California
15 within the applicable statute of limitations until the date class notice is
16 disseminated.

17 30. Excluded from the class are: (i) Defendant and its officers, directors,
18 and employees; (ii) any person who files a valid and timely request for exclusion;
19 (iii) judicial officers and their immediate family members and associated court
20 staff assigned to the case; (iv) individuals who received a full refund of the Product
21 from Defendant.

22 31. Plaintiff reserves the right to amend or otherwise alter the class
23 definition presented to the Court at the appropriate time, or to propose or eliminate
24 subclasses, in response to facts learned through discovery, legal arguments
25 advanced by Defendant, or otherwise.

26 32. The Class is appropriate for certification because Plaintiff can prove
27 the elements of the claims on a classwide basis using the same evidence as would
28 be used to prove those elements in individual actions alleging the same claims.

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1 33. Numerosity: Class Members are so numerous that joinder of all
2 members is impracticable. Plaintiff believes that there are thousands of consumers
3 who are Class Members described above who have been damaged by Defendant’s
4 deceptive and misleading practices.

5 34. Commonality: There is a well-defined community of interest in the
6 common questions of law and fact affecting all Class Members. The questions of
7 law and fact common to the Class Members which predominate over any questions
8 which may affect individual Class Members include, but are not limited to:

9 a. Whether Defendant is responsible for the conduct alleged herein
10 which was uniformly directed at all consumers who purchased the Product;

11 b. Whether Defendant’s misconduct set forth in this Complaint
12 demonstrates that Defendant engaged in unfair, fraudulent, or unlawful business
13 practices with respect to the advertising, marketing, and sale of the Product;

14 c. Whether Defendant made misrepresentations concerning the
15 Products that were likely to deceive the public;

16 d. Whether Plaintiff and the Class are entitled to injunctive relief;

17 e. Whether Plaintiff and the Class are entitled to money damages and/or
18 restitution under the same causes of action as the other Class Members.

19 35. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to
20 represent. Plaintiff’s claims are typical of the claims of each Class Member in that
21 every member of the Class was susceptible to the same deceptive, misleading
22 conduct and purchased the Products. Plaintiff is entitled to relief under the same
23 causes of action as the other Class Members.

24 36. Adequacy: Plaintiff is an adequate Class representative because
25 Plaintiff’s interests do not conflict with the interests of the Class Members Plaintiff
26 seeks to represent; the consumer fraud claims are common to all other members of
27 the Class, and Plaintiff has a strong interest in vindicating the rights of the class;
28 Plaintiff has retained counsel competent and experienced in complex class action

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1 litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no
2 interests which conflict with those of the Class. The Class Members’ interests will
3 be fairly and adequately protected by Plaintiff and proposed Class Counsel.
4 Defendant has acted in a manner generally applicable to the Class, making relief
5 appropriate with respect to Plaintiff and the Class Members. The prosecution of
6 separate actions by individual Class Members would create a risk of inconsistent
7 and varying adjudications.

8 37. The Class is properly brought and should be maintained as a class
9 action because a class action is superior to traditional litigation of this controversy.
10 A class action is superior to the other available methods for the fair and efficient
11 adjudication of this controversy because:

12 a. The joinder of hundreds of individual Class Members is
13 impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or
14 litigation resources;

15 b. The individual claims of the Class Members may be relatively modest
16 compared with the expense of litigating the claim, thereby making it impracticable,
17 unduly burdensome, and expensive to justify individual actions;

18 c. When Defendant’s liability has been adjudicated, all Class Members’
19 claims can be determined by the Court and administered efficiently in a manner
20 far less burdensome and expensive than if it were attempted through filing,
21 discovery, and trial of all individual cases;

22 d. This class action will promote orderly, efficient, expeditious, and
23 appropriate adjudication and administration of Class claims;

24 e. Plaintiff knows of no difficulty to be encountered in the management
25 of this action that would preclude its maintenance as a class action;

26 f. This class action will assure uniformity of decisions among Class
27 Members;

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1 g. The Class is readily definable and prosecution of this action as a class
2 action will eliminate the possibility of repetitious litigation; and

3 h. Class Members’ interests in individually controlling the prosecution
4 of separate actions is outweighed by their interest in efficient resolution by single
5 class action;

6 38. Additionally or in the alternative, the Class also may be certified
7 because Defendant has acted or refused to act on grounds generally applicable to
8 the Class thereby making final declaratory and/or injunctive relief with respect to
9 the members of the Class as a whole, appropriate.

10 39. Plaintiff seeks preliminary and permanent injunctive and equitable
11 relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin
12 and prevent Defendant from engaging in the acts described, and to require
13 Defendant to provide full restitution to Plaintiff and the Class members.

14 40. Unless the Class is certified, Defendant will retain monies that were
15 taken from Plaintiff and Class members as a result of Defendant’s wrongful
16 conduct. Unless a classwide injunction is issued, Defendant will continue to
17 commit the violations alleged and the members of the Class and the general public
18 will continue to be misled.

19 **FIRST CLAIM FOR RELIEF**

20 **Violation of California’s Consumers Legal Remedies Act**

21 **Cal. Civ. Code § 1750 *et seq.***

22 41. Plaintiff realleges and incorporates by reference all allegations
23 contained in this complaint, as though fully set forth herein.

24 42. Plaintiff brings this claim under the CLRA individually and on behalf
25 of the Class against Defendant.

26 43. At all times relevant hereto, Plaintiff and the members of the Class
27 were “consumer[s],” as defined in California Civil Code section 1761(d).
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1 44. At all relevant times, Defendant was a “person,” as defined in
2 California Civil Code section 1761(c).

3 45. At all relevant times, the Product manufactured, marketed,
4 advertised, and sold by Defendant constituted “goods,” as defined in California
5 Civil Code section 1761(a).

6 46. The purchases of the Product by Plaintiff and the members of the
7 Class were and are “transactions” within the meaning of California Civil Code
8 section 1761(e).

9 47. Defendant disseminated, or caused to be disseminated, through its
10 advertising, false and misleading representations, including the Products’ labeling
11 that the Products contain “No Artificial Flavors or Preservatives.” Defendant
12 failed to disclose that the Products contain an artificial preservative ingredient
13 called ascorbic acid. This is a material misrepresentation and omission as
14 reasonable consumer would find the fact that the Product contains an artificial
15 preservative to be important to their decision in purchasing the Product.
16 Defendant’s representations violate the CLRA in the following ways:

17 a) Defendant represented that the Product has characteristics,
18 ingredients, uses, and benefits which it does not have (Cal. Civ. Code §
19 1770(a)(5));

20 b) Defendant represented that the Product is of a particular standard,
21 quality, or grade, which it is not (Cal. Civ. Code § 1770(a)(7));

22 c) Defendant advertised the Product with an intent not to sell the Product
23 as advertised (Cal. Civ. Code § 1770(a)(9)); and

24 d) Defendant represented that the subject of a transaction has been
25 supplied in accordance with a previous representation when it has not (Cal. Civ.
26 Code § 1770(a)(16)).

27 48. Defendant violated the CLRA because the Product was prominently
28 advertised as containing “No Artificial Flavors or Preservatives” but, in reality,

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1 the Product contains an artificial preservative ingredient called ascorbic acid.
2 Defendant knew or should have known that consumers would want to know that
3 the Product contains an artificial preservative.

4 49. Defendant’s actions as described herein were done with conscious
5 disregard of Plaintiff’s and the Class members’ rights and were wanton and
6 malicious.

7 50. Defendant’s wrongful business practices constituted, and constitute,
8 a continuing course of conduct in violation of the CLRA, since Defendant is still
9 representing that the Product has characteristics which it does not have.

10 51. Pursuant to California Civil Code section 1782(d), Plaintiff and the
11 members of the Class seek an order enjoining Defendant from engaging in the
12 methods, acts, and practices alleged herein.

13 52. Pursuant to California Civil Code section 1782, Plaintiff will notify
14 Defendant in writing by certified mail of the alleged violations of the CLRA and
15 will demand that Defendant rectify the problems associated with the actions
16 detailed above and give notice to all affected consumers of their intent to so act. If
17 Defendant fails to rectify or agree to rectify the problems associated with the
18 actions detailed herein and give notice to all affected consumers within 30 days of
19 the date of written notice pursuant to section 1782 of the CLRA, then Plaintiff will
20 amend her complaint to seek damages.

21 53. Pursuant to section 1780(d) of the CLRA, attached hereto is an
22 affidavit showing that this action was commenced in a proper forum.

23 **SECOND CLAIM FOR RELIEF**

24 **Violation of California’s Unfair Competition Law**

25 **Cal. Bus. & Prof. Code § 17200 *et seq.***

26 54. Plaintiff realleges and incorporates by reference all allegations
27 contained in this complaint, as though fully set forth herein.

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1 55. Plaintiff brings this claim under the UCL individually and on behalf
2 of the Class against Defendant.

3 56. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business
4 act or practice and any false or misleading advertising.

5 57. Defendant committed unlawful business acts or practices by making
6 the representations and omitted material facts (which constitutes advertising
7 within the meaning of California Business & Professions Code section 17200), as
8 set forth more fully herein, and by violating California’s Consumers Legal
9 Remedies Act, Cal. Civ. Code §§17500, *et seq.*, California’s False Advertising
10 Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by breaching express
11 and implied warranties. Plaintiff, individually and on behalf of the other Class
12 members, reserves the right to allege other violations of law, which constitute other
13 unlawful business acts or practices. Such conduct is ongoing and continues to this
14 date.

15 58. Defendant committed “unfair” business acts or practices by: (1)
16 engaging in conduct where the utility of such conduct is outweighed by the harm
17 to Plaintiff and the members of the a Class; (2) engaging in conduct that is
18 immoral, unethical, oppressive, unscrupulous, or substantially injurious to
19 Plaintiff and the members of the Class; and (3) engaging in conduct that
20 undermines or violates the intent of the consumer protection laws alleged herein.
21 There is no societal benefit from deceptive advertising. Plaintiff and the other
22 Class members paid for a Product that is not as advertised by Defendant. Further,
23 Defendant failed to disclose a material fact (that the Products contain an artificial
24 preservative) of which they had exclusive knowledge. While Plaintiff and the other
25 Class members were harmed, Defendant was unjustly enriched by its false
26 misrepresentations and material omissions. As a result, Defendant’s conduct is
27 “unfair,” as it offended an established public policy. There were reasonably
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1 available alternatives to further Defendant’s legitimate business interests, other
2 than the conduct described herein.

3 59. Defendant committed “fraudulent” business acts or practices by
4 making the representations of material fact regarding the Products set forth herein.
5 Defendant’s business practices as alleged are “fraudulent” under the UCL because
6 they are likely to deceive customers into believing the Products actually contain
7 no preservatives.

8 60. Plaintiff and the other members of the Class have in fact been
9 deceived as a result of their reliance on Defendant’s material representations and
10 omissions. This reliance has caused harm to Plaintiff and the other members of the
11 Class, each of whom purchased Defendant’s Products. Plaintiff and the other Class
12 members have suffered injury in fact and lost money as a result of purchasing the
13 Products and Defendant’s unlawful, unfair, and fraudulent practices.

14 61. Defendant’s wrongful business practices and violations of the UCL
15 are ongoing.

16 62. Plaintiff and the Class seek pre-judgment interest as a direct and
17 proximate result of Defendant’s unfair and fraudulent business conduct. The
18 amount on which interest is to be calculated is a sum certain and capable of
19 calculation, and Plaintiff and the Class seek interest in an amount according to
20 proof.

21 63. Unless restrained and enjoined, Defendant will continue to engage in
22 the above-described conduct. Accordingly, injunctive relief is appropriate.
23 Pursuant to California Business & Professions Code section 17203, Plaintiff,
24 individually and on behalf of the Class, seeks (1) restitution from Defendant of all
25 money obtained from Plaintiff and the other Class members as a result of unfair
26 competition; (2) an injunction prohibiting Defendant from continuing such
27 practices in the State of California that do not comply with California law; and (3)

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1 all other relief this Court deems appropriate, consistent with California Business
2 & Professions Code section 17203.

3 **THIRD CLAIM FOR RELIEF**

4 **Breach of Express Warranty**

5 64. Plaintiff realleges and incorporates by reference all allegations
6 contained in this complaint, as though fully set forth herein.

7 65. Plaintiff brings this claim for breach of express warranty individually
8 and on behalf of the Class against Defendant.

9 66. As the manufacturer, marketer, distributor, and seller of the Product,
10 Defendant issued an express warranty by representing to consumers at the point of
11 purchase that the Product contains “No Artificial Flavors or Preservatives.”

12 67. Plaintiff and the Class reasonably relied on Defendant’s
13 misrepresentations, descriptions and specifications regarding the Product,
14 including the representation that the Product contains “No Artificial Flavors or
15 Preservatives.”

16 68. Defendant’s representations were part of the description of the goods
17 and the bargain upon which the goods were offered for sale and purchased by
18 Plaintiff and Members of the Class.

19 69. In fact, the Products do not conform to Defendant’s representations
20 because the Products contain an artificial preservative ingredient called ascorbic
21 acid. By falsely representing the Product in this way, Defendant breached express
22 warranties.

23 70. Plaintiff relied on Defendant’s (the manufacturer) representations on
24 the Product’s label and advertising materials which provide the basis for an express
25 warranty under California law.

26 71. As a direct and proximate result of Defendant’s breach, Plaintiff and
27 Members of the Class were injured because they: (1) paid money for the Product
28 that was not what Defendant represented; (2) were deprived of the benefit of the
bargain because the Product they purchased was different than Defendant

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1 advertised; and (3) were deprived of the benefit of the bargain because the Product
2 they purchased had less value than if Defendant’s representations about the
3 characteristics of the Product were truthful. Had Defendant not breached the
4 express warranty by making the false representations alleged herein, Plaintiff and
5 Class Members would not have purchased the Product or would not have paid as
6 much as they did for it.

7 **REQUEST FOR RELIEF**

8 Plaintiff, individually, and on behalf of all others similarly situated, request
9 for relief pursuant to each claim set forth in this complaint, as follows:

10 a. Declaring that this action is a proper class action, certifying the Class
11 as requested herein, designating Plaintiff as the Class Representative and
12 appointing the undersigned counsel as Class Counsel;

13 b. Ordering restitution and disgorgement of all profits and unjust
14 enrichment that Defendant obtained from Plaintiff and the Class members as a
15 result of Defendant’s unlawful, unfair, and fraudulent business practices;

16 c. Ordering injunctive relief as permitted by law or equity, including
17 enjoining Defendant from continuing the unlawful practices as set forth herein,
18 and ordering Defendant to engage in a corrective advertising campaign;

19 d. Ordering damages in amount which is different than that calculated
20 for restitution for Plaintiff and the Class;

21 e. Ordering Defendant to pay attorneys’ fees and litigation costs to
22 Plaintiff and the other members of the Class;

23 f. Ordering Defendant to pay both pre- and post-judgment interest on
24 any amounts awarded; and

25 g. Ordering such other and further relief as may be just and proper.

26 **JURY DEMAND**

27 Plaintiff hereby demands a trial by jury of all claims in this Complaint so
28 triable.

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Dated: March 1, 2024

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin

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