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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH CASTILLO, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

PRIME HYDRATION LLC,

Defendant.

Case No. 3:23-cv-03885-AMO

**AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff, Elizabeth Castillo, brings this Amended Class Action Complaint (“Complaint”)
 2 against Defendant, Prime Hydration LLC (“Defendant” or “Prime”), individually and on behalf
 3 of all others similarly situated, and complains and alleges upon personal knowledge as to herself
 4 and her own acts and experiences and, as to all other matters, upon information and belief,
 5 including investigation conducted by her attorneys:

6 NATURE OF THE ACTION

7 1. Plaintiff brings this consumer class action lawsuit on behalf of similarly situated
 8 consumers (“Class Members”) who purchased for personal, family, or household use, Defendant’s
 9 Prime Hydration Grape Sports Drink (the “Product”¹), which is prominently labeled and marketed
 10 as a healthy drink with antioxidants, electrolytes, and vitamins to “refresh, replenish, and refuel,”
 11 when, in fact, Plaintiff’s testing has revealed that the Product contains per- and polyfluoralkyl
 12 substances (“PFAS”), a category of synthetic chemicals that are, by definition, artificial.

13 2. PFAS are a group of synthetic, man-made, chemicals known to be harmful to both
 14 humans and the environment. Because PFAS persist and accumulate over time, they are harmful
 15 even at very low levels. Indeed, “PFAS have been shown to have a number of toxicological effects
 16 in laboratory studies and have been associated with thyroid disorders, immunotoxicity effects, and
 17 various cancers in epidemiology studies.”²

18 3. In fact, scientists are studying—and are extremely concerned about—how PFAS
 19 affect human health. Consequently, the CDC outlined “a host of health effects associated with
 20 PFAS exposure, including cancer, liver damage, decreased fertility, and increased risk of asthma
 21 and thyroid disease.”³

22 4. Currently, there is no way to remove PFAS from the body. Therefore, given their
 23 pervasive nature, the only way for consumers to prevent the continued accumulation of these
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25 ¹ As alleged herein, Defendant conceals the presence of PFAS in the Product. Accordingly,
 26 discovery will reveal the exhaustive list of substantially similar products that are included in this
 action.

27 ² Nicholas J. Herkert, et al., Characterization of Per- and Polyfluorinated Alkyl Substances
 Present in Commercial Anti-fog Products and Their In Vitro Adipogenic Activity, (Jan. 5, 2022),
<https://pubs.acs.org/doi/10.1021/acs.est.1c06990>.

28 ³ Health risks of widely used chemicals may be underestimated (2018),
<https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/>.

1 dangerous chemicals in their bodies is to avoid exposure to products that contain PFAS.

2 5. Defendant formulates, manufactures, markets, and sells the Product, which they
3 uniformly represent as a healthy hydration drink that is the “perfect boost for every endeavor.”

4 6. Despite being on the market for less than two years, Prime already ranks sixth in
5 sports drink sales in the United States.⁴ Prime’s rapid success owes largely to its marketing and
6 labeling representations, which are designed to set its Product apart from the litany of competitors
7 in this space.

8 7. Defendant’s uniform marketing is intentionally designed to drive sales and increase
9 profits, including by targeting health-conscious consumers who reasonably believe that the
10 Product is a healthy hydration drink that contains nutritious ingredients such as vitamins and
11 antioxidants, and is free from ingredients which are known to be harmful to human health.

12 8. However, despite Defendant’s consistent and pervasive marketing representations,
13 Plaintiff’s independent testing has determined that the Product actually contains PFAS—a
14 category of man-made chemicals with a toxic, persistent, and bioaccumulative nature which are
15 associated with numerous health concerns.

16 9. Consumer concern over the health and environmental effects of PFAS continues to
17 grow, with recent data showing that more than 2/3 of American adults are aware of PFAS.⁵ Even
18 more telling, research conducted in July 2023, demonstrates that 53% of adults say they are at least
19 “somewhat concerned: about the effects of PFAS, an increase of 6% over the *prior month*.”⁶

21 10. The presence of PFAS is entirely inconsistent with Defendant’s uniform
22 representations regarding the “healthy” nature of the Product.

23 11. As a result of Defendant’s misconduct, Plaintiff and putative Class Members have
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25 ⁴ Andrew Cohen, After \$250M in Retail Sales, Prime Hydration Looks to Youth Sports, (April 12,
26 2023), <https://frontofficesports.com/logan-paul-ksi-prime-hydration-youth-sports/>.

27 ⁵ Danielle Comisso, Consumer Concern Over PFAS ‘Forever Chemicals’ Continues to Grow ,
28 (Aug. 1, 2023), <https://civicscience.com/consumer-concern-over-pfas-forever-chemicals-continues-to-grow/#:~:text=Short%20for%20per%2D%20and%20polyfluoroalkyl,of%20PFAS%20continues%20to%20grow.>

⁶ *Id.*

1 suffered injury in fact, including economic damages.

2 12. Accordingly, Plaintiff brings this suit to halt Defendant's dissemination of false and
3 misleading representations and to correct the false and misleading perceptions that Defendant's
4 representations have created in the minds of reasonable consumers.

5 13. Plaintiff seeks damages, injunctive relief, and other equitable remedies for herself
6 and for the proposed classes.

7 **PARTIES**

8 14. Plaintiff is a resident of Salinas, Monterey County, California, and was, at all times
9 relevant hereto, a citizen of California.

10 15. Defendant is a corporation organized under the laws of Kentucky with its corporate
11 headquarters located at 2858 Frankfort Ave, Louisville, Kentucky 40206.

12 16. Upon information and belief, none of Defendant's members are citizens of the state
13 of California.

14 **JURISDICTION**

15 17. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
16 1332 of the Class Action Fairness Act of 2005 because: (1) there are 100 or more proposed Class
17 Members, (ii) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest
18 and costs, and (iii) there is minimal diversity because a Plaintiff and Defendant are citizens of
19 different states.

20 18. This Court has personal jurisdiction over the Defendant because it transacts
21 business in this State and District, have substantial aggregate contacts with this State and District,
22 engaged in conduct that has and had a direct, substantial, reasonably foreseeable, and intended
23 effect of causing injury to persons in this State and District, and because it purposefully availed
24 itself of the laws of the state of California, and further because a Plaintiff purchased the Product
25 in this State and District.

26 **VENUE**

27 19. In accordance with 28 U.S.C. § 1391, venue is proper in this District because a
28 substantial part of the conduct giving rise to Plaintiff's claims occurred in this District.

1 Specifically, Plaintiff’s purchase occurred in this District.

2 **DIVISIONAL ASSIGNMENT**

3 20. Pursuant to Civil Local Rule 3-2(e), a substantial part of the events or omissions
4 giving rise to the claims asserted in this action occurred in Monterey County, California, and this
5 action should be assigned to the San Jose Division.

6 **FACTUAL ALLEGATIONS**

7 ***Defendant’s Business***

8 21. The Product is one of several sports beverages produced and sold by Prime, a
9 company founded by popular YouTube content creators Logan Paul and Olajide William Olatunji,
10 aka KSI.⁷

11 22. In its first year, Prime generated more than \$250 million in retail sales, owing
12 largely to the popularity of its founders, who have over 39 million subscribers on their YouTube
13 channels.⁸

14 23. Prime’s rapid success has led to strategic partnerships with Arsenal Football Club,⁹
15 the Ultimate Fighting Championship¹⁰, and various other professional sports organizations.

16 24. The Product at issue is part of Prime’s Hydration line, a line of sports drinks which
17 boast ingredients including 10% coconut water, branched-chain amino acids (“BCAAs”), B-
18 vitamins, electrolytes, and antioxidants. The Product is sugar-free, relying on acesulfame
19 potassium and sucralose as artificial sweeteners.

20 25. In the words of its founders, Prime was created “to fill the void where great taste
21 meets function.”¹¹

22 26. The Product is sold directly to consumers through Prime’s website, in addition to
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24 ⁷ Manish Pandey, Prime drink: How KSI and Loga Paul made it so popular,
25 <https://www.bbc.com/news/newsbeat-64145389> (last visited June 21, 2023).

26 ⁸ Hantian Zhang, Prime: a YouTuber expert explains how Logan Paul and KSI’s drink became so
27 popular, (Mar. 17, 2023), [https://theconversation.com/prime-a-youtuber-expert-explains-how-
28 logan-paul-and-ksis-drink-became-so-popular-201792](https://theconversation.com/prime-a-youtuber-expert-explains-how-logan-paul-and-ksis-drink-became-so-popular-201792).

29 ⁹ Arsenal partners with PRIME hydration drink, (July 27, 2022), [https://www.arsenal.com/arsenal-
30 prime-hydration-drink-partner-ksi-logan-paul-emirates-stadium](https://www.arsenal.com/arsenal-prime-hydration-drink-partner-ksi-logan-paul-emirates-stadium).

31 ¹⁰ Rory Jones, UFC strikes global partnership with Logan Paul and KSI’s Prime, (Feb. 1, 2023),
32 [https://www.sportspromedia.com/news/ufc-prime-sponsor-logan-paul-ksi/?zephyr_sso_ott=
33 eEQrlo](https://www.sportspromedia.com/news/ufc-prime-sponsor-logan-paul-ksi/?zephyr_sso_ott=eEQrlo).

34 ¹¹ See <https://drinkprime.com/pages/about-prime> (last visited Oct. 13, 2023).

1 being sold at convenience stores, grocery stores, and other retailers nationwide.

2 27. Prime’s viral marketing campaign has made the Product extremely popular with
3 children and teens, who make up a large percentage of the brand’s 40 million social media
4 followers.

5 ***Defendant’s False and Deceptive Nutrition Representations***

6 28. Beginning with the front label, the Product is uniformly represented as a healthy
7 “hydration drink,” with no artificial colors or flavors that contains numerous beneficial ingredients.



1 29. The Product's side label boasts 250 mg BCAAs, B Vitamins, antioxidants, and 835
2 mg electrolytes.



1 30. BCAAs are the building blocks of protein. BCAA supplementation has become
2 popular in recent years because BCAAs have been shown to reduce delayed onset muscle soreness
3 following exercise, build muscle, limit fatigue, and help burn fat.¹²

4 31. Vitamin B12 has health benefits as it plays an essential role in red blood cell
5 formation, cell metabolism, nerve function, and the production of DNA.¹³

6 32. Antioxidants are man-made or natural substances that may prevent or delay some
7 types of cell damage and fight the free radicals in the body that are linked to diabetes, heart disease,
8 and cancer.¹⁴

9 33. Electrolytes are essential minerals that are vital to many key functions in the body,
10 such as regulating muscle contractions and keeping the body hydrated.¹⁵

11 34. Prime purposefully highlights these ingredients, which are known to contribute to
12 health and sports performance, in order to convince consumers that the Product is, in fact, a healthy
13 drink that is good for the body.

14 35. On the Product’s left side label, it represents that the Product is designed to help
15 consumers “refresh, replenish, and refuel,” and “is the perfect boost for every endeavor.” These
16 representations are carefully selected to convince consumers that the Product will replenish
17 depleted nutrients and otherwise restore the body to an optimized state. Nothing about these
18 representations would lead consumers to believe that the Product would actually *introduce* harmful
19 chemicals into the body.
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25 ¹² Edward Cooper, The Benefits of BCAAs: Everything You Need to Know, (May 16, 2023),
26 <https://www.menshealth.com/uk/nutrition/a26303726/bcaa-benefits-complete-guide/>.

27 ¹³ See <https://www.mayoclinic.org/drugs-supplements-vitamin-b12/art-20363663> (last visited
28 Oct. 13, 2023).

¹⁴ Atli Arnarson BSc, PhD, Antioxidants Explained in Simple Terms, (July 12, 2023),
<https://www.healthline.com/nutrition/antioxidants-explained>.

¹⁵ Kyle Beswick, What are Electrolytes?, (Oct. 16, 2019), <https://www.cedars-sinai.org/blog/electrolytes.html>.

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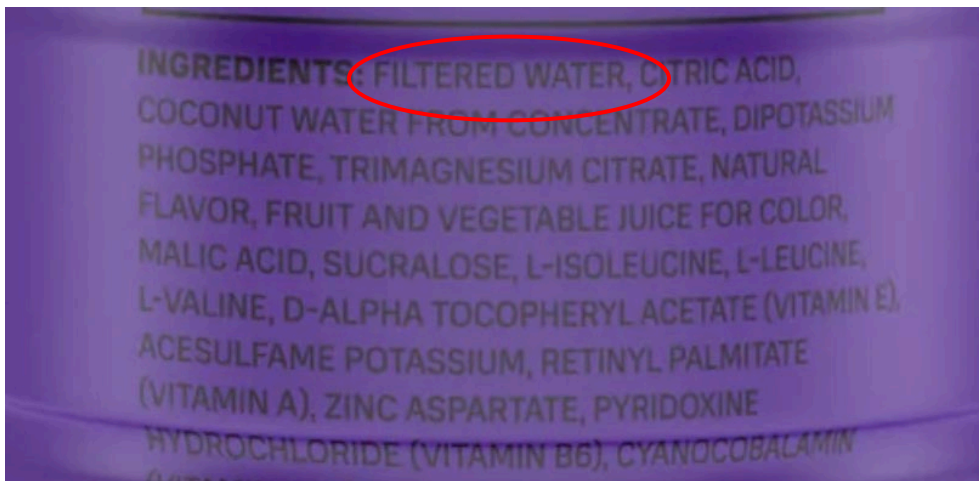
36. All of Prime’s uniform marketing is designed to convince reasonable consumers that the Product is a healthy hydration drink containing various minerals, vitamins, and supplements known to improve the body’s overall health and athletic performance.

37. Accordingly, reasonable consumers fairly believe that the Product is a healthy drink option that does not contain ingredients known to be harmful to the human body.



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2 38. Nothing on the Product’s label indicates the Product contains harmful PFAS
3 chemicals.

4 39. In fact, Prime further bolsters its health claims by highlighting “FILTERED
5 WATER” as its primary ingredient, leading reasonable consumers to believe that additional care
6 has been taken to remove any incidental chemicals or impurities that might otherwise contradict
7 their claims that the Product is a healthy sports beverage.



17 ***PFAS Chemicals and Associated Risks***

18 40. PFAS are a category of highly persistent and potentially harmful man-made
19 chemicals, which include Perfluorooctanoic acid (“PFOA”) and Perfluorooctanesulfonic acid
20 (PFOS”).¹⁶

21 41. PFAS are not naturally occurring.¹⁷ They were first developed by scientists in the
22 1940s.¹⁸ Thus, they are indisputably “artificial”.

23 42. The man-made PFAS chemicals, which are in the Product, are sometimes called
24 “forever chemicals” because they bioaccumulate, or build up in the body over time.

25 43. PFOS in particular is well-known to negatively impact the human body and the
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27 ¹⁶ See <https://www.epa.gov/pfas/pfas-explained> (last visited Oct. 13, 2023).

28 ¹⁷ See <https://www.atsdr.cdc.gov/pfas/resources/pfas-faqs.html> (last visited Oct. 13, 2023).

¹⁸ See <https://www.epa.gov/chemical-research/research-and-polyfluoroalkyl-substances-pfas> (last visited Oct. 13, 2023).

1 environment.

2 44. Given the deleterious effects of PFOS on the body and environment, it is one of the
3 most commonly studied¹⁹ and commonly regulated types of PFAS.

4 45. A November 2012 research report titled “Durable Water and Soil Repellent
5 Chemistry in the Textile Industry”²⁰ explained:

6 PFOA and PFOS, the most widely known and studied long-chain PFAAs, have
7 been shown to be persistent in the environment, have long elimination half-life in
8 wildlife and humans, and have toxicological properties of concern. Due to these
9 properties, regulatory actions have been put in place or are being considered in
10 several countries to manage these substances.

11 46. PFAS are a source of concern, due to various widespread environmental presence,
12 bio-accumulative properties, extreme persistence, and evidence of adverse health effects.²¹

13 47. Consequently, the recognition of these hazardous properties and global distribution
14 has led the scientific, regulatory, and industrial communities to engage in international efforts to
15 curb the production and uses of PFAS.²²

16 48. Importantly, PFOS and PFOA have been phased out of production²³ since the early
17 2000s, and *prohibited from manufacture and most uses in European Union countries since 2008*
18 (Directive 2006/122/EC).²⁴

19 49. Diet is considered a major route of PFAS exposure for humans, and reasonable
20 consumers purchasing the Product would not expect it to contain harmful man-made chemicals,
21 such as PFAS.²⁵

22 ¹⁹ See <https://www.atsdr.cdc.gov/pfas/health-effects/overview.html> (last visited Oct. 13, 2023).

23 ²⁰ Durable Water and Soil Repellent Chemistry in the Textile Industry – A Research Report,
(Nov. 2012), [https://uploads-
ssl.webflow.com/5c4065f2d6b53e08a1b03de7/5db6ecec578efb688bee2bed_DWR_Report.pdf](https://uploads-ssl.webflow.com/5c4065f2d6b53e08a1b03de7/5db6ecec578efb688bee2bed_DWR_Report.pdf).

24 ²¹ Raveena Dhore, Ganti S. Murthy, Per/polyfluoroalkyl substances production, applications and
environmental impacts, (Dec. 2021),
<https://www.sciencedirect.com/science/article/abs/pii/S0960852421011494>.

25 ²² Nicole Marie Brennan, et al., Trends in the Regulation of Per- and Polyfluoroalkyl Substances
(PFAS): A Scoping Review, (Oct. 17, 2021),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8536021/>.

26 ²³ *Id.*

27 ²⁴ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0122> (last visited
28 Oct. 13, 2023).

²⁵ Herbert P. Susmann, et al., Dietary Habits Relate to Food Packaging and Population Exposure
to PFASs, (Oct. 9, 2019), <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP4092>.

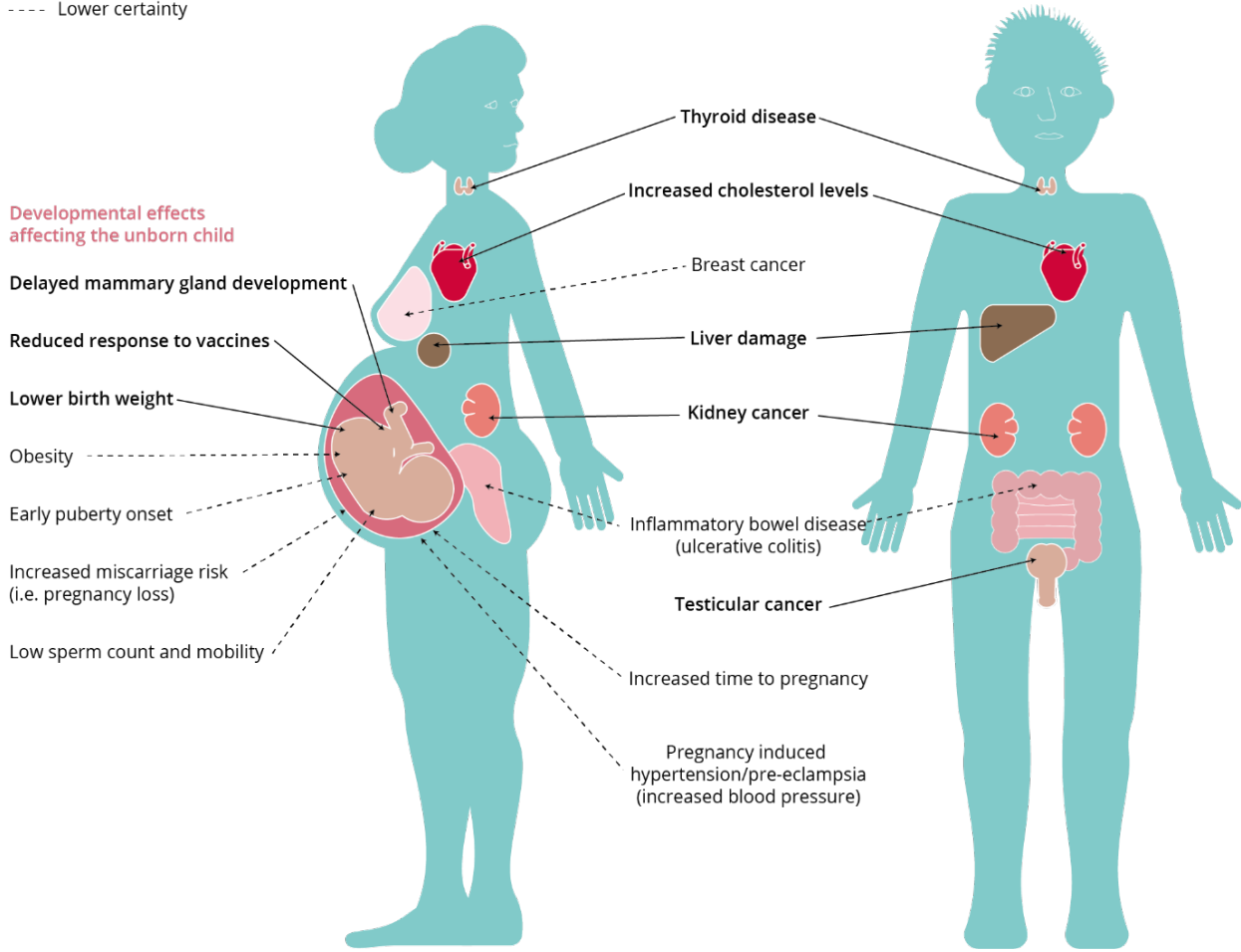
1 50. The Environmental Protection Agency (“EPA”) has identified that “[c]urrent peer-
2 reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:”²⁶

- 3 a. Reproductive effects such as decreased fertility or increased high blood
4 pressure in pregnant women.
- 5 b. Developmental effects or delays in children, including low birth weight,
6 accelerated puberty, bone variations, or behavioral changes.
- 7 c. Increased risk of some cancers, including prostate, kidney, and testicular
8 cancers.
- 9 d. Reduced ability of the body’s immune system to fight infections, including
10 e. reduced vaccine response.
- 11 f. Interference with the body’s natural hormones.
- 12 g. Increased cholesterol levels and/or risk of obesity.
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28 ²⁶ See <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited Oct. 13, 2023).

1 51. A figure from the European Environmental Agency (“EEA”) shows the “[e]ffects
2 of PFAS on human health.”²⁷

3 — High certainty
4 - - - - Lower certainty



19 52. The EEA article further explained that “[p]eople most at risk of adverse health
20 impacts are those exposed to high levels of PFAS, and vulnerable population groups such as
21 children and the elderly.”²⁸

22 53. The danger of PFAS chemicals is well known. On September 20, 2020, a *New York*
23 *Times* article titled, “These Everyday Toxins May Be Hurting Pregnant Women and Their Babies,”
24 reported on the dangers of PFAS—particularly during gestation and in early childhood
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27 ²⁷ See <https://www.eea.europa.eu/publications/emerging-chemical-risks-in-europe> (last visited Oct. 13, 2023).

28 ²⁸ *Id.*

1 development:²⁹

2 54. Scientists think these widely used industrial chemicals may harm pregnant women
3 and their developing babies by meddling with gene regulators and hormones that control two of
4 the body's most critical functions: metabolism and immunity.³⁰

5 55. According to the EPA, limiting exposure to PFAS can help protect individual
6 health. "Because certain PFAS are known to cause risks to human health, the most important steps
7 you and your family can take to protect your health is to understand how to limit your exposure to
8 PFAS by taking [steps to] reduce possible exposure during daily activities."³¹

9 56. There is no treatment to remove PFAS from the body. Because PFAS accumulates
10 in body tissues over time, the most obvious way to avoid exposure is for consumers to avoid
11 products which they know contain PFAS.³²

12 57. Defendant is well aware of consumers' desire to avoid potentially harmful
13 chemicals, which is exactly why it has engaged in an aggressive, uniform marketing campaign
14 intended to convince consumers that the Product is free from artificial ingredients like PFAS.

15 58. Defendant has engaged in this uniform marketing campaign in an effort to convince
16 reasonable consumers to believe that the Product is superior to other products that are not free
17 from "artificial flavors" or do not have the same purported health benefits.

18 59. Reasonable consumers purchasing the Product would believe, based on
19 Defendant's representations, that the Product does not contain artificial, synthetic, or man-made
20 chemicals that could adversely impact their health.

21 ***Plaintiff's Independent Testing Confirms the Presence of PFAS Chemicals in the Product***

22 60. Plaintiff sought independent third-party testing to determine whether the Product
23 contained PFAS chemicals.

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25 ²⁹ These Everyday Toxins May be Hurting Pregnant Women and Their Babies,
26 <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html> (last
27 visited Oct. 13, 2023).

28 ³⁰ *Id.*

³¹ See <https://www.epa.gov/pfas/meaningful-and-achievable-steps-you-can-take-reduce-your-risk>
(last visited Oct. 13, 2023).

³² Nancy Schimelpfening, How to Reduce your Exposure to PFAS: the Hidden Toxic "forever
Chemicals", (Oct. 13, 2021), <https://www.healthline.com/health-news/how-to-reduce-your-exposure-to-pfas-the-hidden-toxic-forever-chemicals#How-to-limit-PFAS-exposure>.

1 61. Plaintiff's independent testing was conducted in accordance with accepted industry
2 standards for detecting the presence of PFAS.

3 62. Plaintiff's testing detected material levels of PFAS in the Product, including
4 significant levels of Perfluoro-1-butanefulfonic acid (PFBS), Perfluoro-n-decanoic acids (PFDA),
5 Perfluoro-n-dodecanoic acid (PFDoA), Perfluoro-n-heptanoic acid (PFHpA), Perfluoro-n-
6 octanoic acid (PFOA), Perfluoro-n-tetradecanoic acid (PFTeDA), Perfluoro-n-undecanoic acid
7 (PFUdA), and Perfluorooctanesulfonic acid ("PFOS").

8 ***Ingestion of Any Amount of PFAS Creates Significant Health Risks***

9 63. Thus, Defendant's Product exposes hundreds of thousands of unsuspecting
10 consumers to toxic synthetic chemicals in direct contradiction to their uniform label claims.

11 64. Human epidemiology studies have found associations between PFOA exposure and
12 effects on the immune system, the cardiovascular system, human development (e.g., decreased
13 birth weight), and cancer. The most sensitive non-cancer effect and the basis for the updated health
14 advisories for PFOA is suppression of vaccine response in children.³³

15 65. The EPA recently confirmed that the levels at which negative health effects could
16 occur are much lower than previously understood— including **near zero** in some cases.³⁴

17 66. In other words, there is no "safe" level of exposure with regard to these chemicals,
18 and even "trace" levels of PFAS can pose a risk to humans.

19 67. Based on new data from human studies, which demonstrate the danger of extremely
20 low levels of exposure, the EPA recently tightened its lifetime health advisory levels for exposure
21 to certain PFAS in drinking water. For PFOA, the recommendation is 0.004 part per trillion (ppt).³⁵
22 For PFOS, the recommendation is 0.02 ppt.³⁶

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27 ³³ See <https://www.epa.gov/sdwa/questions-and-answers-drinking-water-health-advisories-pfoa-pfos-genx-chemicals-and-pfbs#q3> (last visited Oct. 13, 2023).

28 ³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

1 68. Furthermore, on March 14, 2023, the EPA announced that due to its new
2 understanding that almost no level of exposure to PFOA is sufficient to avoid substantial health
3 risks, the government intends to set enforceable limits that will require near-zero levels of PFOA
4 in the nation’s drinking water.³⁷

5 69. Thus, Defendant’s Product exposes hundreds of thousands of unsuspecting
6 consumers, many of whom are children, to toxic synthetic chemicals at levels far beyond what the
7 EPA deems safe.

8 70. In view of the serious health risks associated with exposure to PFAS, particularly
9 in children, the quantity of PFAS in the Product is significant and cannot reasonably be considered
10 de minimis.

11 71. In fact, the EPA recently tightened its lifetime health advisory levels for PFOA and
12 PFOS exposure in drinking water.

13 72. The amount of PFOS found within the Product from Plaintiff’s testing is
14 approximately **three times** the recommended lifetime health advisory for drinking water. The
15 amount of PFOA found within the Product is approximately **one and a half times** the
16 recommended lifetime health advisory.
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19 ***Defendant’s Unlawful Conduct***

20 73. At all times relevant to this action, Defendant knew, or at minimum should have
21 known, that its Product contains PFAS. Indeed, Defendant, as the manufacturer of the Product,
22 determines the ingredients contained therein, as well as all quality control processes. Defendant
23 should, and can, control for the PFAS chemicals that are contained in its Product.

24 74. There are steps that Defendant can take to reduce or eliminate PFAS chemicals in
25 the Product. As the EPA notes,
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28 ³⁷ Biden Administration to Restrict Cancer-Causing ‘Forever Chemicals’,
<https://www.nytimes.com/2023/03/14/climate/epa-water-pfas-chemicals.html> (last visited Oct.
13, 2023).

1 Certain technologies have been found to remove PFAS from drinking water,
2 especially Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid
3 (PFOS), which are the most studied of these chemicals. Those technologies include
4 activated carbon adsorption, ion exchange resins, and high-pressure membranes.
5 These technologies can be used in drinking water treatment facilities, in water
6 systems in hospitals or individual buildings, or even in homes at the point-of-entry,
7 where water enters the home, or the point-of-use, such as in a kitchen sink or a
8 shower.³⁸

9 Additionally, studies show that UV lights can be used to degrade or eliminate PFAS chemicals.
10 When combined with testing and processes to controls to prevent the introduction of PFAS
11 chemicals, these methods can drastically limit the PFAS chemicals in the Products.

12 75. Yet, despite claiming to use filtered water in the Product, the presence of PFAS
13 demonstrates that Defendant does not undertake any of the available mitigation efforts.

14 76. Defendant is well-aware that consumers are increasingly demanding beverage
15 options that support their wellness goals. Defendant's wellness-focused business strategy is
16 supported by current market research.

17 77. According to a recent survey, chemicals in food (including carcinogens or cancer-
18 causing chemicals) represents the most important food safety issue to consumers.³⁹ Consumers
19 ranked this concern higher than any other concern, including foodborne illness from bacteria and
20 use of pesticides.⁴⁰

21 78. At the same time, awareness of, and an inclination toward, safer products is guiding
22 consumer choices. One survey, for instance, found that "when asked to choose the top three factors
23 they prioritize when deciding between products, the majority of consumers surveyed said they
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26 ³⁸ See <https://www.epa.gov/sciencematters/reducing-pfas-drinking-water-treatment-technologies>
27 (last visited Oct. 13, 2023).

28 ³⁹ Tom Neltner, Chemicals in food continue to be a top food safety concern among consumers,
(Sept. 16, 2021), [https://blogs.edf.org/health/2021/09/16/chemicals-in-food-continue-to-be-a-
topfood-safety-concern-among-consumers/](https://blogs.edf.org/health/2021/09/16/chemicals-in-food-continue-to-be-a-topfood-safety-concern-among-consumers/).

⁴⁰ *Id.*

1 prioritize the health/safety of products (71%) and products free of certain toxic chemicals
2 (70%).”⁴¹

3 79. These findings extend to the packaging of products, with 82% of consumers
4 agreeing that “it is important for brands to balance safety and concern for the environment when
5 designing product packaging.”⁴²

6 80. Additionally, “[t]he majority of shoppers . . . are willing to spend more for a product
7 they know is safer, with 42% willing to spend 5-15% more, 36% willing to spend 16-25% more,
8 and 17% willing to spend 1-5% more.”⁴³

9 81. Consumers lack the expertise to ascertain the true ingredients in the Product prior
10 to purchase. Accordingly, reasonable consumers must, and do rely on Defendant to accurately
11 and honestly advertise its Product’s ingredients and health benefits. Further, consumers rely on
12 Defendant to not omit material facts regarding the presence of synthetic chemicals in its Product
13 that are known to pose a risk to human health. Such omissions are material to reasonable
14 consumers’ purchasing decisions.
15

16 82. Defendant’s representations about the Product’s numerous health benefits, as
17 described herein, are false and misleading because products containing toxic, man-made
18 ingredients like PFAS are not healthy or nutritious by definition.
19

20 83. Defendant’s representations are likely to mislead reasonable consumers, and indeed
21 did mislead Plaintiff and Class Members, regarding the presence of PFAS chemicals in its Product.
22 Accordingly, these acts and practices by Defendant are deceptive.
23
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26 ⁴¹ What Shoppers Want: Safe & Healthy Products,
27 [https://cdn.shopify.com/s/files/1/0612/4493/2266/files/MADE_SAFE_What-Shoppers-
28 Want_Survey.pdf?v=1669140340](https://cdn.shopify.com/s/files/1/0612/4493/2266/files/MADE_SAFE_What-Shoppers-Want_Survey.pdf?v=1669140340), at 3 (last visited Oct. 13, 2023).

⁴² New Consumer Packaging Trends Are Changing the Game for Food & Beverage Processors,
[https://www.gray.com/insights/new-consumer-packaging-trends-are-changing-the-game-for-
28 food-beverage-processors/](https://www.gray.com/insights/new-consumer-packaging-trends-are-changing-the-game-for-food-beverage-processors/) (last visited Oct. 13, 2023).

⁴³ See n.42, *supra*, at 3.

1 84. Consumers reasonably relied on Defendant's false statements and misleading
2 representations, and reasonably expected that Defendant's Product would conform with its
3 representations and, as such, would not contain harmful man-made PFAS chemicals.

4 85. Defendant's false statements, misleading representations and material omissions
5 are intentional, or otherwise entirely careless, and render its Product worthless or less valuable.

6 86. If Defendant had disclosed to Plaintiff and putative Class Members that its Product
7 contained PFAS chemicals, Plaintiff and putative Class Members would not have purchased
8 Defendant's Product or they would have paid less for it.

9 87. Plaintiff and Class Members were among the intended recipients of Defendant's
10 deceptive representations and omissions described herein.

11 88. Defendant's representations and omissions, as described herein, are material in that
12 a reasonable person would attach importance to such information and would be induced to act
13 upon such information in making purchase decisions.

14 89. The materiality of the representations described herein also establishes causation
15 between Defendant's conduct and the injuries Plaintiff and Class Members sustained.

16 90. Defendant is aware that consumers are concerned about the use of PFAS in
17 products, yet it has continued to market and advertise its Product using the health-focused
18 representations described herein in order to profit off of unsuspecting consumers, including
19 Plaintiff and Class Members.

20 91. The presence of PFAS chemicals in Defendant's Product is entirely inconsistent
21 with its uniform representations.

22 92. Defendant's knowingly false and misleading representations have the intended
23 result of convincing reasonable consumers that its Product is made with healthy ingredients that
24 are beneficial for the human body and therefore do not contain toxic chemicals which are known
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1 to be harmful to human health. No reasonable consumer would consider Defendant's Product a
2 healthy sports hydration drink if they knew it contained harmful, artificial PFAS chemicals.

3 93. Defendant's false, misleading, and deceptive representations, as described herein,
4 are likely to continue to deceive and mislead reasonable consumers and the general public. Indeed,
5 they have already deceived and misled Plaintiff and Class Members.

6 94. In making the false, misleading, and deceptive representations, Defendant knew
7 and intended consumers would pay a premium for the Product over comparable products that are
8 made from or contain synthetic or artificial ingredients.

9 95. Plaintiff and Class Members all paid money for the Product, however, they did not
10 obtain the full value of the advertised Product due to Defendant's omissions as detailed herein.
11 Plaintiff and Class Members purchased, purchased more of, or paid more for, the Product than
12 they would have had they known the truth about the Product's artificial, man-made, and harmful
13 ingredients. Thus, Plaintiff and Class Members have suffered injury in fact and lost money or
14 property as a result of Defendant's wrongful conduct.
15

16 96. If Defendant had disclosed to Plaintiff and putative Class Members that its Product
17 contained PFAS chemicals, Plaintiff and putative Class Members would not have purchased the
18 Product, or they would have paid less for it.

19 97. Defendant's widespread marketing campaign portraying the Product as containing
20 only healthy and natural ingredients as detailed herein, is misleading and deceptive to consumers
21 because the Product contains chemicals that are known to be harmful to humans. Plaintiff brings
22 this action on behalf of the proposed Classes to stop Defendant's misleading practices.
23

24
25 ***PFAS Renders the Product Adulterated, Misbranded, and Illegal to Sell***

26 98. The Product is used as a drink for humans and are therefore a "food" which is
27 regulated by the U.S. Food and Drug Administration. See 21 U.S.C. § 321(f).

28 99. The Federal Food, Drug & Cosmetic Act ("FDCA") establishes numerous

1 regulations regarding the safety of food that is sold to consumers, including by creating various
2 labeling requirements.

3 100. Under the FDCA, a food is deemed “adulterated” if it “bears or contains any
4 poisonous or deleterious substance which may render it injurious to health.” *See* 21 U.S.C. §
5 342(a)(1). Even if a poisonous or deleterious substance is not an “added” substance (such as in the
6 case of unintended contamination), food is still deemed adulterated if the quantity of the substance
7 renders it injurious to health. *Id.*

8 101. As detailed herein, PFAS, and specifically the PFOA and PFOS found in
9 Defendant’s Product, are indisputably linked to negative health consequences and is therefore a
10 “poisonous or deleterious substance.”

11 102. Furthermore, PFOA and PFOS were discovered in Defendant’s Product at levels
12 that exceed the EPA’s recommended limit for drinking water, which supports a finding that even
13 if the PFOA and PFOS are present due to contamination, they are still present in the Product at
14 levels that are injurious to health.

15 103. The FDA has not established any tolerances for PFAS in food. *See* 21 U.S.C. § 346.

16 104. The FDCA does permit the limited use of PFAS in food contact applications, such
17 as its use as a resin in forming gaskets, o-rings, and other parts of food processing equipment. This
18 is due, in part, to the minimal risk of PFAS migrating from food processing equipment into the
19 food itself.⁴⁴ However, as a result of studies that questioned the safety of long-chain PFAS such
20 as PFOA and PFOS, the FDA worked with manufacturers beginning in the early 2000s to
21 discontinue the use of long-chain PFAS chemicals in food contact applications.⁴⁵ In 2016, the
22 FDA revoked regulations authorizing the remaining use of PFOA and PFOS in food contact
23 applications. As of November 2016, long-chain PFAS like PFOA and PFOS are no longer used in
24 food contact applications sold in the United States.⁴⁶

25 104. Accordingly, there is no use of PFOA or PFOS that is currently permitted by the
26

27 ⁴⁴ *See* <https://www.fda.gov/food/process-contaminants-food/authorized-uses-pfas-food-contact-applications> (last visited Oct. 13, 2023).

28 ⁴⁵ *Id.*

⁴⁶ *Id.*

1 FDA.

2 106. Thus, regardless of the source of PFAS in the Product, it is nevertheless
3 “adulterated” by virtue of the significant levels of toxic PFOA and PFOS present.

4 107. Under the FDCA, a food is deemed “misbranded” if “its labeling is false or
5 misleading in any particular.” *See* 21 U.S.C. § 343(a).

6 108. While the FDA has established regulations for bottled water, there are no
7 established standards of identity for water when used as an ingredient in a food product. *See* 21
8 U.S.C. § 165.110 (exempting food ingredients that are declared as water in ingredient labeling).
9 Accordingly, Defendant was not required to use the term “filtered water” in order to comply with
10 FDA labeling requirements. The term “filtered water” on the Product’s label is false and
11 misleading because the Product contains multiple types of PFAS chemicals which may be removed
12 by water filtration systems. Thus, the Product is misbranded.

13 109. Food that is deemed “adulterated” or “misbranded” may not be manufactured,
14 distributed, or sold in the United States. *See* 21 U.S.C. § 331. Adulterated and misbranded products
15 thus have no economic value and are legally worthless.

16 110. California has expressly adopted the federal food labeling requirements as its own.
17 Thus, a violation of federal food labeling laws is an independent violation of California’s Sherman
18 Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*, and actionable as
19 such.

20 111. The mere presence of PFOA and PFOS in the Product renders it adulterated and
21 misbranded.

22 112. If Defendant had disclosed to Plaintiff and putative Class Members that the Product
23 contained or risked containing PFAS and thus risked users to PFAS exposure, Plaintiff and putative
24 Class Members would not have purchased the Product or they would have paid less for the Product.

25 113. As a seller of a food product, Defendant had and has a duty to ensure that its Product
26 did not and do not contain excessive (or any) level of toxic contaminants such as PFAS, including
27 through regular testing, especially before the Product are injected into the stream of commerce for
28 consumers to consume.

1 contain only natural and nutritious ingredients and are free of PFAS.
2

3 **INJURY TO THE PUBLIC AT-LARGE AND POTENTIAL FOR FUTURE HARM**

4 119. Defendant’s wrongful conduct harms the public-at-large.

5 120. PFAS chemicals, also known as “forever chemicals,” are a category of highly
6 persistent and toxic man-made chemicals that have been associated with numerous negative health
7 effects for humans.

8 121. PFAS chemicals are known to negatively impact the human body, including, but
9 not limited to, decreased fertility, developmental effects or delays in children, increased risk of
10 cancers, liver damage, increased risk of asthma and thyroid disease, adverse impacts on the
11 immune system, interference with hormones, and increased cholesterol levels.

12 122. Because Defendant’s deceptive advertising is ongoing and directed to the public,
13 and because Defendant continues to sell its Product containing PFAS chemicals, the deception
14 poses an ongoing risk to the public.

15 123. As such, a public injunction must be provided in order to enjoin Defendant’s
16 continued harm of consumers and the public-at-large.

17 **TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

18 124. Defendant had actual knowledge, or should have had actual knowledge, that its
19 Product contained artificial, man-made PFAS chemicals, which pose a risk of harm to human
20 health.

21 125. Although Defendant was aware of the deception in its advertising, marketing,
22 packaging, and sale of the Product given the inclusion of PFAS chemicals, it took no steps to
23 disclose to Plaintiff or Class Members that its Product contained PFAS chemicals.

24 126. Despite its knowledge, Defendant has represented the Product as having qualities
25 and characteristics it does not, while concealing the fact that its Product contains PFAS chemicals.

26 127. Defendant has made and continues to make material omissions to consumers that
27 that the Product contains PFAS, to promote sales of its Product.

28 128. Defendant has concealed and otherwise omitted material facts that would have been

1 important to Plaintiff and Class Members in deciding whether to purchase the Product.
2 Defendant's omissions were knowing, and it intended to, and did, deceive reasonable consumers,
3 including Plaintiff and Class Members. Accordingly, Plaintiff and Class Members reasonably
4 relied upon Defendant's concealment of these material facts and suffered injury as a proximate
5 result of that justifiable reliance.

6 129. The PFAS chemicals in the design and/or manufacture of Defendant's Product was
7 not reasonably detectible to Plaintiff and Class Members.

8 130. At all times, Defendant actively and intentionally omitted the qualities and
9 characteristics of the Product, while concealing the existence of the PFAS chemicals and failing
10 to inform Plaintiff or Class Members of the existence of the PFAS chemicals in its Product.
11 Accordingly, Plaintiff's and Class Members' lack of awareness was not attributable to a lack of
12 diligence on their part.

13 131. Defendant's statements, words, and acts were made for the purpose of deceiving
14 the public, and suppressing the truth that the Product contained artificial, man-made PFAS
15 chemicals.

16 132. Defendant omitted the Product and concealed the PFAS chemicals for the purpose
17 of delaying Plaintiff and Class Members from filing a complaint on their causes of action.

18 133. As a result of Defendant's omission and active concealment of the PFAS chemicals
19 and/or failure to inform Plaintiff and Class Members of the PFAS chemicals, any and all applicable
20 statutes of limitations otherwise applicable to the allegations herein have been tolled. Furthermore,
21 Defendant is estopped from relying on any statutes of limitations in light of its intentional
22 misrepresentations and active concealment of the inclusion of artificial, man-made PFAS
23 chemicals in the Product.

24 134. Further, the causes of action alleged herein did not occur until Plaintiff and Class
25 Members discovered that the Product contained PFAS chemicals. Plaintiff and Class Members had
26 no realistic ability to discern that the Product contained PFAS chemicals until they learned of the
27 existence of the PFAS chemicals. In either event, Plaintiff and Class Members were hampered in
28 their ability to discover their causes of action because of Defendant's active concealment of the

1 existence and true nature of the Product.

2 **FEDERAL RULE OF CIVIL PROCEDURE 9(B) ALLEGATIONS**

3 135. Although Defendant is in the best position to know what content it placed on its
4 packaging, website(s), and other marketing and advertising during the relevant timeframe, and the
5 knowledge that it had regarding the PFAS chemicals and its failure to disclose the existence of
6 PFAS chemicals in the Product to Plaintiff and consumers, to the extent necessary, Plaintiff
7 satisfies the requirements of Rule 9(b) by alleging the following facts with particularity:

8 136. **WHO:** Defendant made representations on the Product’s packaging, online, and its
9 marketing and advertising of the Product.

10 137. **WHAT:** Defendant’s conduct here was, and continues to be, deceptive and
11 fraudulent because of its health-focused representations and omissions, which lead reasonable
12 consumers to believe that the Product is safe for human consumption and beneficial to human
13 health. Thus, Defendant’s conduct deceived Plaintiff and Class Members into believing that the
14 Product was manufactured and sold with the represented qualities. Defendant knew or should have
15 known this information is material to reasonable consumers, including Plaintiff and Class
16 Members in making their purchasing decisions, yet it continued to pervasively market the Product
17 as possessing qualities they do not have.

18 138. **WHEN:** Defendant made material omissions during the putative Class periods and
19 at the time Plaintiff and Class Members purchased the Product, prior to and at the time Plaintiff
20 and Class Members made claims after realizing the Product contained harmful man-made
21 chemicals, and continuously throughout the applicable Class periods.

22 139. **WHERE:** Defendant’s marketing message was uniform and pervasive, carried
23 through omissions on the Product’s packaging, as well as on website(s) and other media channels
24 used to market and advertise the Product.

25 140. **HOW:** Defendant made material omissions regarding the presence of PFAS
26 chemicals in the Product.

27 141. **WHY:** Defendant made material omissions detailed herein for the express purpose
28 of inducing Plaintiff, Class Members, and all reasonable consumers to purchase and/or pay for the

1 Product over other brands that did not make similar health-focused representations, the effect of
2 which was that Defendant profited by selling the Product to many thousands of consumers.

3 142. **INJURY:** Plaintiff and Class Members purchased, paid a premium, or otherwise
4 paid more for the Product when they otherwise would not have, absent Defendant’s omissions.

5 **CLASS ACTION ALLEGATIONS**

6 143. Plaintiff brings this action individually and as the representative of all those
7 similarly situated pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of herself and
8 the members of the following class:

9 **Nationwide Class:** During the fullest period allowed by law, all persons who
10 purchased the Product within the United States for personal use and not for
11 resale.

12 144. Plaintiff brings this action individually and as the representative of all those
13 similarly situated pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of herself and
14 the members of the following class:

15 **California Class:** During the fullest period allowed by law, all persons who
16 purchased the Product within the state of California for personal use and not for
17 resale.

18 145. Members of the Nationwide Class and California Classes are referred to herein as
19 “Class Members” or members of the “Class.”

20 146. Plaintiff reserves the right to amend the Class definitions or add a Class or Classes
21 if discovery and/or further investigation reveal that the Class definition(s) should be narrowed,
22 expanded or otherwise modified.

23 147. The following are excluded from the Class: (1) any Judge presiding over this action
24 and members of his or her family; (2) Defendant, Defendant’s subsidiaries, parents, successors,
25 predecessors, and any entity in which Defendant or its parents have a controlling interest (as well
26 as current or former employees, officers, and directors); (3) persons who properly execute and file
27 a timely request for exclusion from the Class; (4) persons whose claims in this matter have been
28 finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel and Defendant’s

1 counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

2 148. **Numerosity – Federal Rule of Civil Procedure 23(a)(a):** While Plaintiff does not
3 know at this time the exact number of proposed Class Members, given the nature of the claims and
4 the volume of sales of the Product nationally, the members of the Class are so numerous that their
5 individual joinder herein is impracticable. Plaintiff is informed and believe that there are tens of
6 thousands of members in the proposed Class, if not more, and a precise number can be ascertained
7 through discovery. The number of individuals who comprise the Class are so numerous that the
8 disposition of all such person’s claims in a class action, rather than in individual actions, will
9 benefit both the parties and the courts.

10 149. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
11 **and 23(b)(3):** Common questions of law and fact exist as to all members of each of the Class and
12 predominate over questions affecting only individual members of the Class. Such common
13 questions of law or fact include, but are not limited to, the following:

- 14 a. Whether Defendant omitted and/or failed to disclose material facts
15 concerning the Product;
- 16 b. Whether Defendant’s conduct was unlawful, unfair, fraudulent,
17 and/or deceptive;
- 18 c. Whether Defendant breached express and/or implied warranties to
19 Plaintiff and Class Members;
- 20 d. Whether Defendant’s conduct violates the Magnuson-Moss
21 Warranty Act, 15 U.S.C. § 2301, et seq.;
- 22 e. Whether Defendant’s conduct violates the California Consumer
23 Legal Remedies Act, Civil Code §§ 1750;
- 24 f. Whether Defendant’s conduct violates the California Unfair
25 Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.
- 26 g. Whether Defendant’s conduct violates the California False
27 Advertising Law, California Business and Professions Code §§
28 17500, et seq.

- 1 h. Whether Defendant’s conduct violates the Song-Beverly Act, Cal.
2 Civ. Code § 1790, et seq. and California Commercial Code § 2314;
- 3 i. Whether Defendant was unjustly enriched as a result of the unlawful
4 conduct alleged herein such that it would be inequitable for
5 Defendant to retain the benefits conferred upon it by Plaintiff and
6 the proposed Class; and
- 7 j. Whether Plaintiff and the Class have sustained damages with respect
8 to the claims asserted, and if so, the proper measure of their
9 damages.

10 Defendant engaged in a common course of conduct giving rise to the legal rights Plaintiff seeks to
11 enforce on behalf of herself and the other members of the proposed Class. Similar or identical
12 statutory and common law violations, business practices, and injuries are involved. Individual
13 questions, if any, pale in comparison, in both quality and quantity, to the numerous common
14 questions that predominate this action.

15 150. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s claims are
16 typical of the claims of the other Class Members because, among other things, all Class Members
17 were comparably injured through Defendant’s uniform misconduct described herein. Further, there
18 are no defenses available to Defendant that are unique to Plaintiff or to any particular Class
19 Members.

20 151. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
21 Plaintiff is an adequate Class representative because her interests do not conflict with the interests
22 of the other Class Members she seeks to represent; she has retained counsel competent and
23 experienced in complex class action litigation; and she will prosecute this action vigorously. The
24 interests of the Class will be fairly and adequately protected by Plaintiff and the undersigned
25 counsel.

26 152. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).**
27 Absent a representative class action, Class Members would continue to suffer the harm described
28 herein, for which they would have no remedy. Even if separate actions could be brought by

1 individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense
 2 for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications
 3 that might be dispositive of the interests of similarly situated purchasers, substantially impeding
 4 their ability to protect their interests, while establishing incompatible standards of conduct for
 5 Defendant. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

6 153. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior
 7 to any other available means for the fair and efficient adjudication of this controversy, and no
 8 unusual difficulties are likely to be encountered in the management of this class action. The
 9 damages or other financial detriment suffered by Plaintiff and the other Class Members are
 10 relatively small compared to the burden and expense that would be required to individually litigate
 11 their claims against Defendant, so it would be impracticable for Class Members to individually
 12 seek redress for Defendant’s wrongful conduct. Even if Class Members could afford individual
 13 litigation, the court system could not. Individualized litigation would create a potential for
 14 inconsistent or contradictory judgments and increase the delay and expense to all parties and the
 15 court system. By contrast, the class action device presents far fewer management difficulties, and
 16 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
 17 a single court.

CAUSES OF ACTION

COUNT I

Violation of Magnuson-Moss Warranty Act 15 U.S.C. § 2301, *et seq.* (On Behalf of Plaintiff and the Nationwide Class)

22 154. Plaintiff brings this count on behalf of herself and the Nationwide Class and repeats
 23 and re-alleges all previous paragraphs as if fully included herein.

24 155. As previously alleged, this Court has original jurisdiction over this matter based
 25 upon the requirements of CAFA; therefore, the Court has alternate jurisdiction over Plaintiff’s
 26 Magnuson-Moss claim.

27 156. The Product is a consumer product as defined in 15 U.S.C. § 2301(1).

28 157. Plaintiff and the Nationwide Class Members are consumers as defined in 15 U.S.C.

1 § 2301(3) and utilized the Product for personal and household use and not for resale or commercial
2 purposes.

3 158. Plaintiff purchased the Product costing more than \$5 and her individual claim is
4 greater than \$25 as required by 15 U.S.C. §§ 2302€ and 2310(d)(3)(A).

5 159. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

6 160. The federal Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301-2312,
7 is a consumer protection regime designed to supplement state warranty law.

8 161. The MMWA provides a cause of action for breach of warranty, including implied
9 warranty of merchantability, or other violations of the MMWA. 15 U.S.C. § 2310(d)(1).

10 162. The Defendant has breached the implied warranties of merchantability by failing to
11 provide merchantable goods. The Product at issue is not merchantable or fit for its ordinary
12 purposes because the Product contains ingredients that render it adulterated and not fit to be
13 consumed as a sports hydration drink.

14 163. Therefore, Defendant’s Product is not merchantable or fit for its ordinary purposes,
15 given it contains man-made and synthetic PFAS, which renders the Product not nutritious or good
16 for human health.

17 164. In its capacity as warrantor, and by the conduct described herein, any attempt by
18 Defendant to limit the warranties is not permitted by law.

19 165. By Defendant’s conduct as described herein, Defendant has failed to comply with
20 its obligations under its implied promises, warranties, and representations.

21 166. Plaintiff and the Nationwide Class fulfilled their obligations under the implied
22 warranties and express warranties for the Product.

23 167. As a result of Defendant’s breach of warranties, Plaintiff and the Nationwide Class
24 are entitled to revoke their acceptance of the Product, obtain damages, punitive damages, equitable
25 relief, and attorneys’ fees and costs pursuant to 15 U.S.C. § 2301.

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COUNT II
Violation of the California Consumer Legal Remedies Act
(“CLRA”), Civil Code §§ 1750, *et seq.*
(On Behalf of Plaintiff and the California Class)

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2
3 168. Plaintiff brings this count on behalf of herself and the California Class and repeats
4 and re-alleges all previous paragraphs as if fully included herein.

5 169. The conduct described herein took place in the state of California and constitutes
6 unfair methods of competition or deceptive acts or practices in violation of the Consumers Legal
7 Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*

8 170. The CLRA applies to all claims of all California Class Members because the
9 conduct that constitutes violations of the CLRA by Defendant occurred within the state of
10 California.

11 171. Plaintiff and California Class Members are “consumers” as defined by Civil Code
12 § 1761(d).

13 172. Defendant is a “person” as defined by Civil Code § 1761I.

14 173. The Product qualifies as “goods” as defined by Civil Code § 1761(a).

15 174. Plaintiff and California Class Members’ purchases of the Product are “transactions”
16 as defined by Civil Code § 1761(e).

17 175. As set forth below, the CLRA deems the following unfair methods of competition
18 and unfair or deceptive acts or practices undertaken by any person in a transaction intended to
19 result or which does result in the sale or lease of goods or services to any consumer as unlawful:

20 (a) “Representing that goods ... have sponsorship, approval,
21 characteristics, ingredients, uses, benefits, or quantities that they do
22 not have.” Civil Code § 1770(a)(5);

23 (b) “Representing that goods ... are of a particular standard, quality, or
24 grade, or that goods are of a particular style or model, if they are of
25 another.” Civil Code § 1770(a)(7);

26 (c) “Advertising goods or services with intent not to sell them as
27 advertised.” Civil Code § 1770(a)(9); and

28 (d) “Representing that the subject of a transaction has been supplied in

1 accordance with a previous representation when it has not.” Civil
2 Code § 1770(a)(16).

3 176. Defendant engaged in unfair competition or unfair or deceptive acts or practices in
4 violation of Civil Code §§ 1770(a)(5), (a)(7), (a)(9) and (a)(16) when it represented, through its
5 advertising and other express representations, that the Product had benefits or characteristics that
6 they did not actually have.

7 177. As detailed in the body of this Complaint, Defendant has repeatedly engaged in
8 conduct deemed a violation of the CLRA and has made representations regarding the Product’s
9 benefits or characteristics that they did not in fact have, and represented the Product to be of a
10 quality that was not true. Indeed, Defendant concealed this information from Plaintiff and
11 California Class Members.

12 178. The Product is not healthy or safe for human consumption, and therefore is of an
13 inferior quality and trustworthiness compared to other products in the industry. As detailed above,
14 Defendant further violated the CLRA when it falsely represented that the Product meets a certain
15 standard or quality.

16 179. As detailed above, Defendant violated the CLRA when it advertised the Product
17 with the intent not to sell it as advertised and knew that the Product was not as represented.

18 180. Specifically, Defendant marketed and represented the Product and omitted
19 information that no reasonable consumer would believe the Product to be safe or healthy if they
20 knew they contained a potentially harmful chemical such as PFAS.

21 181. Defendant’s deceptive practices were specifically designed to induce Plaintiff and
22 California Class Members to purchase or otherwise acquire the Product.

23 182. Defendant engaged in uniform marketing efforts to reach California Class
24 Members, their agents, and/or third parties upon whom they relied, to persuade them to purchase
25 and use the Product manufactured by Defendant. Defendant’s packaging, advertising, marketing,
26 website and retailer product identification and specifications contain numerous false and
27 misleading statements regarding the quality, safety, and reliability of the Product.

28 183. Defendant omitted and concealed information and material facts from Plaintiff and

1 California Class Members.

2 184. In their purchase of the Product, Plaintiff and California Class Members relied on
3 Defendant's representations and omissions of material fact that the Product contained harmful
4 PFAS.

5 185. These business practices are misleading and/or likely to mislead consumers and
6 should be enjoined.

7 186. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing by
8 certified mail sent on May, 22, 2023, of its violations of § 1770 described above and demanded
9 that it correct the problems associated with the actions detailed above and give notice to all affected
10 consumer of Defendant's intent to do so. Defendant never responded to Plaintiff's letter and
11 Plaintiff seeks all damages and remedies available to it under the CLRA.

12 187. Further, in accordance with Civil Code § 1780(a), Plaintiff and the other California
13 Class Members seek injunctive and equitable relief for Defendant's violations of the CLRA,
14 including an injunction to enjoin Defendant from continuing its deceptive advertising and sales
15 practices.

16 **COUNT III**
17 **Violations of the California Unfair Competition Law**
18 **("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.***
19 **(On Behalf of Plaintiff and the California Class)**

20 188. Plaintiff brings this count on behalf of herself and the California Class and repeats
21 and re-alleges all previous paragraphs as if fully included herein.

22 189. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17201.

23 190. Plaintiff and California Class Members who purchased Defendant's Product
24 suffered an injury by virtue of buying products in which Defendant omitted the Product's true
25 quality, reliability, safety, and use. Had Plaintiff and California Class Members known that
26 Defendant omitted material information regarding the Product, they would not have purchased the
27 Product.

28 191. Defendant's conduct, as alleged herein, violates the laws and public policies of
California and the federal government, as set out in this Complaint.

1 192. There is no benefit to consumers or competition by allowing Defendant to
2 deceptively label, market, and advertise its Product.

3 193. Plaintiff and California Class Members who purchased Defendant’s Product had no
4 way of reasonably knowing that the Product was deceptively packaged, marketed, advertised, and
5 labeled, was not safe for human consumption, and was unsuitable for its intended use as a sports
6 hydration beverage. Thus, Plaintiff and California Class Members could not have reasonably
7 avoided the harm they suffered.

8 194. Specifically, Defendant marketed, labeled, and represented the Product with the
9 representations described herein, when in fact the Product contains PFAS, which no reasonable
10 consumer would believe was in Product, which was represented as nutritious, healthy, and
11 containing significant health benefits.

12 195. The gravity of the harm suffered by Plaintiff and California Class Members who
13 purchased Defendant’s Product outweighs any legitimate justification, motive, or reason for
14 packaging, marketing, advertising, and labeling the Product in a deceptive and misleading manner.
15 Accordingly, Defendant’s actions are immoral, unethical, unscrupulous and offend the established
16 public policies as set out in federal regulations and are substantially injurious to Plaintiff and
17 California Class Members.

18 196. The above acts of Defendant in disseminating said misleading and deceptive
19 statements to consumers throughout the state of California, including to Plaintiff and California
20 Class Members, were and are likely to deceive reasonable consumers by obfuscating the true
21 nature of Defendant’s Product and, thus, were violations of Cal. Bus. & Prof. Code §§ 17500, *et*
22 *seq.*

23 197. Defendant has violated the UCL’s proscription against engaging in unlawful
24 business practices as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7),
25 and (a)(9) as alleged below, violations of California’s Song-Beverly Act, violations of the FDCA,
26 and violations of California’s False Advertising Law, in addition to breaches of warranty and
27 violations of common law.

28 198. Defendant has also violated the UCL’s proscription against engaging in unfair

1 business practices. Defendant’s acts, omissions, and non-disclosures as alleged herein also
2 constitute “unfair” business acts and practices within the meaning of Business & Professions Code
3 § 17200 *et seq.* in that its conduct is substantially injurious to consumers, offends public policy,
4 and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs
5 any alleged benefits attributable to such conduct.

6 199. Defendant has further violated the UCL’s proscription against engaging in
7 fraudulent business practices. Defendant’s claims, nondisclosures, and misleading statements with
8 respect to the Product, as more fully set forth above, were false, misleading and/or likely to deceive
9 the consuming public within the meaning of Business & Professions Code § 17200.

10 200. Plaintiff and the other California Class Members suffered a substantial injury by
11 virtue of buying the Product that they would not have purchased absent Defendant’s unlawful,
12 fraudulent, and unfair marketing, advertising, packaging, and omission about the defective nature
13 of the Product.

14 201. As a result of Defendant’s above unlawful, unfair, and fraudulent acts and practices,
15 Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on behalf of the
16 general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful
17 practices.

18 202. Additionally, Plaintiff seeks restitution if monetary damages are not available.
19 Indeed, restitution under the UCL can be awarded in situations where the entitlement to damages
20 may prove difficult. But even if damages were available, such relief would not be adequate to
21 address the injury suffered by Plaintiff and other California Class Members. Unlike damages, the
22 Court’s discretion in fashioning equitable relief is very broad. Thus, restitution would allow
23 recovery even when normal consideration associated with damages would not.

24
25 **COUNT IV**

26 **Violation of the California False Advertising Law (“FAL”)**
27 **California Business and Professions Code §§ 17500, *et seq.***
28 **(On Behalf of Plaintiff and the California Class)**

203. Plaintiff brings this count on behalf of herself and the California Class and repeats
and re-alleges all previous paragraphs as if fully included herein.

1 204. The conduct described herein took place within the state of California and
2 constitutes deceptive or false advertising in violation of California Business and Professions Code
3 § 17500.

4 205. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
5 association, or any employee thereof with intent directly or indirectly to dispose of real or personal
6 property or to perform services” to disseminate any statement “which is untrue or misleading, and
7 which is known, or which by the exercise of reasonable care should be known, to be untrue or
8 misleading.” Cal. Bus. & Prof. Code § 17500.

9 206. Defendant violated the FAL by failing to disclose the Product contained harmful
10 PFAS, which is a material fact to reasonable consumers.

11 207. At the time of its misrepresentations, Defendant was either aware the Product
12 contained PFAS, which no reasonable consumer would expect would be in the Product, given it is
13 not included anywhere in the Product’s label, or was aware that it lacked the information and/or
14 knowledge required to make such a representation truthfully. Defendant concealed, omitted, and
15 failed to disclose this information to Plaintiff and California Class Members.

16 208. Defendant’s descriptions of the Product were false, misleading, a material
17 omission, and likely to deceive Plaintiff and other reasonable consumers.

18 209. Defendant’s conduct therefore constitutes deceptive or misleading advertising.

19 210. Plaintiff has standing to pursue claims under the FAL, as she reviewed and relied
20 on Defendant’s packaging, advertising, representations, and marketing materials regarding the
21 Product when selecting and purchasing the Product.

22 211. In reliance on the statements made in Defendant’s advertising and marketing
23 materials and Defendant’s omissions and concealment of material facts regarding the quality and
24 use of the Product, Plaintiff and California Class Members purchased the Product.

25 212. Had Defendant disclosed the true nature of the Product (that it contains or risks
26 containing PFAS), Plaintiff and California Class Members would not have purchased the Product
27 or would have paid substantially less for it.

28 213. As a direct and proximate result of Defendant’s actions, as set forth herein,

1 Defendant has received ill-gotten gains and/or profits, including but not limited to money from
2 Plaintiff and California Class Members who paid for the Product, which contained harmful
3 chemicals and was therefore not healthy or nutritious.

4 214. As a result of Defendant’s above unlawful, unfair, and fraudulent acts and practices,
5 Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on behalf of the
6 general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful
7 practices.

8 215. Additionally, Plaintiff seeks restitution if monetary damages are not available.
9 Indeed, restitution under the UCL can be awarded in situations where the entitlement to damages
10 may prove difficult. But even if damages were available, such relief would not be adequate to
11 address the injury suffered by Plaintiff and other Class Members. Unlike damages, the Court’s
12 discretion in fashioning equitable relief is very broad. Thus, restitution would allow recovery even
13 when normal consideration associated with damages would not.

14
15 **COUNT V**
16 **Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code § 1790, et seq. and**
17 **California Commercial Code § 2314**
18 **(On Behalf of Plaintiff and the California Class)**

19 216. Plaintiff brings this count on behalf of herself and the California Class and repeats
20 and re-alleges all previous paragraphs as if fully included herein.

21 217. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790. et seq.,
22 and California Commercial Code § 2314, every sale of consumer goods in the state of California
23 is accompanied by both a manufacturer’s and retail seller’s implied warranty that the goods are
24 merchantable, as defined in that Act. In addition, every sale of consumer goods in California is
25 accompanied by both a manufacturer’s and retail seller’s implied warranty of fitness when the
26 manufacturer or retailer has reason to know that the goods as represented have a particular purpose
27 and that the buyer is relying on the manufacturer’s or retailer’s skill or judgment to furnish suitable
28 goods consistent with that represented purpose.

29 218. The Product at issue here is a “consumer good[]” within the meaning of Cal. Civ.
30 Code § 1791(a).

1 219. Plaintiff and California Class Members who purchased the Product are “retail
2 buyers” within the meaning of Cal. Civ. Code § 1791.

3 220. Defendant is in the business of manufacturing and/or producing the Product and
4 therefore is a “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

5 221. Defendant impliedly warranted to retail buyers that the Product was merchantable
6 in that it would: (a) pass without objection in the trade or industry under the contract description,
7 and (b) was fit for the ordinary purposes for which the Product is used. For a consumer good to be
8 “merchantable” under the Song-Beverly Act, it must satisfy both of these elements. Defendant
9 breached these implied warranties because the Product was unsafe for consumption due to its
10 inclusion of PFAS. Therefore, the Product would not pass without objection in the trade or industry
11 and were not fit for the ordinary purpose for which they are used.

12 222. Plaintiff and California Class Members purchased the Product in reliance upon
13 Defendant’s skill and judgment in properly packaging and labeling the Product.

14 223. The Product was not altered by Plaintiff or California Class Members.

15 224. The Product was defective at the time of sale. The issue as described in this
16 Complaint was latent in the Product and not discoverable at the time of sale.

17 225. Defendant knew the Product would be purchased and used without additional
18 testing by Plaintiff and California Class Members.

19 226. As a direct and proximate cause of Defendant’s breach of the implied warranty,
20 Plaintiff and California Class Members have been injured and harmed because they would not
21 have purchased the Product if they knew the truth about the Product, namely, that it was unfit for
22 use and posed a significant safety risk.

23 227. On May 22, 2023, prior to the filing of this Complaint, Plaintiff’s counsel sent
24 Defendant a notice letter, apprising Defendant of its breach of warranties. The letter was sent via
25 certified mail, return receipt requested, advising Defendant that it was in breach of its warranties
26 and demanding that they cease and desist from such violations. The letter stated that it was sent on
27 behalf of all other similarly situated purchasers. Plaintiff waited 30 days and never heard back
28 from the Defendant.

1 228. Plaintiff and the California Class seek compensatory damages, attorney's fees,
2 costs, and any other just and proper relief available under law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays
5 for relief and judgment, including entry of an order, as follows:

- 6 (a) Declaring that this action is properly maintained as a class action, certifying the
7 proposed Classes, appointing Plaintiff as Class Representatives and appointing
8 Plaintiff's counsel as Class Counsel;
- 9 (b) Directing that Defendant bear the costs of any notice sent to the Classes;
- 10 (c) Ordering Defendant to pay restitution to Plaintiff and the Classes;
- 11 (d) A jury trial and damages according to proof;
- 12 (e) Awarding actual damages to Plaintiff and the Classes;
- 13 (f) Awarding Plaintiff and members of the Classes statutory damages, as provided by
14 the applicable state consumer protection statutes invoked above;
- 15 (g) Awarding attorneys' fees and litigation costs to Plaintiff and members of the
16 Classes;
- 17 (h) Civil penalties, prejudgment interest, and punitive damages as permitted by law;
18 and
- 19 (i) Ordering such other and further relief as the Court deems just and proper.

20 **JURY TRIAL DEMAND**

21 Plaintiff hereby demands a jury trial of the claims asserted in this Class Action
22 Complaint.

23 Dated: October 13, 2023.

Respectfully submitted,

24 By: /s/ Trenton R. Kashima
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* *Pro Hac Vice* application forthcoming

*Attorneys for Plaintiff and the Proposed
Class*