

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IN RE: PRIME ENERGY CONSUMER  
LITIGATION**

This document relates to:

All actions.

Civil Action No.: 1:24-CV-02657

**CONSOLIDATED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs, Lara Vera, Jemirria Thompson, and Bryant Preudhomme (together, “Plaintiffs”) bring this Consolidated Class Action Complaint against Defendant Prime Hydration LLC, individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

**NATURE OF THE ACTION**

1. Defendant formulates, manufactures, advertises, and sells the popular “PRIME Energy” drinks, which include Prime Energy Blue Raspberry, Prime Energy Ice Pop, Prime Energy Lemon Lime, Prime Energy Orange Mango, Prime Energy Strawberry Watermelon, and Prime Energy Tropical Punch (the “Products”) throughout the United States, including in New York. Defendant markets its Products in a systematically misleading manner, by misrepresenting that its Products have specific amounts of caffeine that they do not in fact contain (the “Misrepresentations”).

2. Plaintiffs and each member of the “Class” (defined below) accordingly suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth herein, and seek compensatory damages, statutory damages, and injunctive relief.

**JURISDICTION AND VENUE**

3. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(d). Plaintiffs' claims and the claims of the other members of the Class exceed \$5,000,000 exclusive of interest and costs, the number of Class members is over 100, and there are numerous of these Class members who are citizens of states other than Defendant's states of citizenship.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District and because Defendant transacts business and/or has agents within this District.

**PARTIES**

5. Plaintiff Vera (for purposes of this paragraph, "Plaintiff") is a citizen of New York who resides in Poughkeepsie, New York. In or around August 2022, Plaintiff received a case of the Product, which she believes was through a promotion. She kept it at her office and shared it with her co-workers. After receiving the case, Plaintiff purchased Defendant's Blue Raspberry Products several times in 2023 from Family Dollar and Dollar General stores located in Poughkeepsie, New York. The last time Plaintiff recalls purchasing the Product was in July or August 2023, when she purchased the Product from a QuickChek store while visiting a friend in White House Station, New Jersey. Plaintiff paid approximately \$3.00 or \$4.00 for each of the Products. Prior to purchase, Plaintiff read the Products' labeling and advertising, including the representation that they contained "200mg of caffeine." This was a material representation that Plaintiff understood to mean that the Products contained 200 milligrams of caffeine. Plaintiff relied on this representation in her purchases of the Products and either paid a price premium for the Product, or she would not have purchased the Products at all had she known that this representation was false and misleading.

6. Plaintiff Thompson (for purposes of this paragraph, “Plaintiff”) is a citizen of New York who resides in The Bronx, New York. Plaintiff purchased Defendant’s Products several times in 2023 from the Food Bazaar Supermarket located in The Bronx, New York, including on April 14, 2024, when she purchased two 24-count cases of Defendant’s Products and paid approximately \$1.45 for each of the Products (i.e., \$34.99 per 24-count case). Prior to purchase, Plaintiff read the Products’ labeling and advertising, including the representation that they contained “200mg of caffeine.” This was a material representation that Plaintiff understood to mean that the Products contained 200 milligrams of caffeine. Plaintiff relied on this representation in her purchases of the Products and either paid a price premium for the Product, or she would not have purchased the Products at all had she known that this representation was false and misleading.

7. Plaintiff Preudhomme (for purposes of this paragraph, “Plaintiff”) is a citizen and resident of the State of New York. During the applicable statute of limitations period, Plaintiff purchased in New York several of the Products that were manufactured and produced by Defendant that contained higher than advertised levels of caffeine. He paid up to the regular retail price for the Products. Plaintiff relied on the packaging in making his purchase, was unaware that the Products contained more caffeine than advertised and would not have purchased the Products if that were fully disclosed or he would have paid less than he did. As a result of Defendant’s deceptive conduct as alleged herein, Plaintiff was injured when he paid the purchase price and/or a price premium for the Products that did not deliver what Defendant promised. Plaintiff paid the above sum in reliance that the packaging of the Products was accurate and that there were no material omissions. Plaintiff would purchase the Products again if Defendant (i) lowered the amount of caffeine in the Products; and/or (ii) undertook corrective changes to the packaging. Damages can be calculated through expert testimony at trial.

8. Defendant is a limited liability company organized under the laws of Delaware, with its principal place of business located at 2858 Frankfort Ave., Louisville, Kentucky 40206.

9. Upon information and belief, none of Defendant's members are citizens of the state of New York.

### **GENERAL ALLEGATIONS**

#### ***The Products***

10. In 2022, Logan Paul and KSI, two YouTube personalities with a combined following of over 140 million subscribers, announced their collaboration on a new beverage company, Prime Hydration LLC.<sup>1</sup> Their involvement in the project generated significant social media hype, driving demand for the Products, particularly among school-age children and teenage boys.<sup>2</sup>

11. Defendant reportedly generated \$250 million in retail sales worldwide in its first year, with \$45 million in January 2023 alone.<sup>3</sup>

12. Defendant sells hydration drinks that do not contain caffeine, as well as energy drinks (the Products) that, according to Defendant, contain 200 milligrams of caffeine.<sup>4</sup> Both come in brightly colored packaging. For example, the "Ice Pop" flavored Hydration Drink and Energy Drink look nearly identical:

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<sup>1</sup> <https://www.therichest.com/rich-powerful/the-prime-hydration-story-how-it-became-a-big-name-in-the-beverage-business/> (last visited Sept. 6, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *See* [www.drinkprime.com](http://www.drinkprime.com) (last visited Sept. 6, 2023).



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13. The Products have generated controversy due to Defendant's marketing campaign, which has been criticized for targeting children and adolescents despite their high concentration of caffeine. Several countries, jurisdictions, and primary and secondary schools have banned or restricted the Products due to their caffeine content exceeding legal limits, or otherwise being deemed unsafe for children to consume.<sup>6</sup>

14. In contrast to a 12-ounce can of Red Bull energy drink, which contains 114 milligrams of caffeine, or a cup of coffee, which contains around 100 milligrams of caffeine, the Products are labeled and advertised to contain 200 milligrams of caffeine per 12-ounce can.<sup>7</sup> This is the equivalent to about half a dozen Coke cans or nearly two Red Bulls.<sup>8</sup>

15. There is no proven safe dose of caffeine for children.<sup>9</sup> Side effects for kids consuming caffeine could include rapid or irregular heartbeats, headaches, seizures, shaking,

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<sup>5</sup> See *id.*

<sup>6</sup>[https://en.wikipedia.org/wiki/Prime\\_\(drink\)#:~:text=Prime%20Hydration%2C%20LLC%20is%20affiliated,is%20now%20manufactured%20by%20Refresco](https://en.wikipedia.org/wiki/Prime_(drink)#:~:text=Prime%20Hydration%2C%20LLC%20is%20affiliated,is%20now%20manufactured%20by%20Refresco) (last visited Sept. 6, 2023).

<sup>7</sup> <https://www.nytimes.com/2023/07/12/business/prime-drink-fda-caffeine.html> (last visited Sept. 6, 2023).

<sup>8</sup> <https://www.usatoday.com/story/money/2023/07/09/schumer-seeks-fda-probe-caffeine-prime-drink/70395708007/> (last visited Sept. 6, 2023)

<sup>9</sup> <https://www.reuters.com/business/healthcare-pharmaceuticals/rising-caffeine-levels-spark-calls-ban-energy-drink-sales-children-2023-08-30/> (last visited Sept. 6, 2023).

stomach upset and adverse emotional effects on mental health.<sup>10</sup>

16. Accordingly, pediatricians and parents are calling for the U.S. to ban the sale of high-caffeine energy drinks like the Products to minors.<sup>11</sup>

17. In a letter to the U.S. Food and Drug Administration, U.S. Senate Majority Leader Chuck Schumer called for the investigation of the Products, outlining four major areas he deemed worthy of investigating: the Products' claims to boost athletic performance and focus, Defendant's social-media heavy advertising, the Products' labels and warnings and "eye-popping caffeine content."<sup>12</sup>

18. It is axiomatic that the amount of reported caffeine contained within Defendant's Products (or any energy drink product) is material to any consumer seeking to purchase an energy drink, particularly where there is the possibility of an adverse reaction to caffeine, such as with children.

19. Defendant labels and advertises its Products to contain 200 milligrams of caffeine on its website,<sup>13</sup> through third-party retailer websites like Amazon.com,<sup>14</sup> and on the side and back of the Products themselves. Such representations constitute an express warranty regarding the Products' caffeine content.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> <https://www.npr.org/2023/07/11/1186818826/logan-paul-ksi-prime-energy-drink-caffeine#:~:text=On%20Sunday%2C%20Schumer%20held%20a,serious%20health%20concerns%22%20for%20kids.>

<sup>13</sup> <https://drinkprime.com/products/tropical-punch-energy> (last visited Aug. 6, 2023).

<sup>14</sup> [https://www.amazon.com/Tropical-Naturally-Flavored-Caffeine-Electrolytes/dp/B0BRDGBDX8/ref=sr\\_1\\_5?crd=1YB6FVL6D903S&keywords=prime+energy+tropical+punch&qid=1694017142&srefix=prime+energy+tropical+punch%2Caps%2C121&sr=8-5](https://www.amazon.com/Tropical-Naturally-Flavored-Caffeine-Electrolytes/dp/B0BRDGBDX8/ref=sr_1_5?crd=1YB6FVL6D903S&keywords=prime+energy+tropical+punch&qid=1694017142&srefix=prime+energy+tropical+punch%2Caps%2C121&sr=8-5) (last visited Aug. 6, 2023).



21. However, based upon testing commissioned by Plaintiffs' attorneys, the Products actually contain between 215-225 milligrams of caffeine rather than the advertised 200 milligrams.

***Defendant's False, Deceptive, and Misleading Advertising of the Products' Caffeine Content is Unlawful***

22. Pursuant to 21 U.S.C. § 321(f), Defendant's Products constitute a "food" regulated by the FDCA, 21 U.S.C. § 301, *et seq.*, and other FDCA regulations.

23. Defendant's false, deceptive, and misleading label statements violate 21 U.S.C. § 343(a)(1) and the so-called "little FDCA" statutes adopted by many states<sup>15</sup>, which deem food misbranded when "its labeling is false or misleading in any particular."

24. Defendant's false, deceptive, and misleading label statements are unlawful under state unfair and deceptive acts and practices statutes and/or consumer protection acts, which prohibit unfair, deceptive, or unconscionable acts in the conduct of trade or commerce.

25. New York has expressly adopted the federal food labeling requirements as its own. Thus, a violation of federal food labeling laws is an independent violation of New York law and actionable as such.

26. The introduction of misbranded food into interstate commerce is prohibited under the FDCA and all state parallel statutes cited in this Complaint.

27. Defendant intended for Plaintiffs and the Class members to be misled.

28. Defendant's misleading and deceptive practices proximately caused harm to Plaintiffs and the Class.

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<sup>15</sup> See, e.g., New York Consolidated Laws, Agriculture and Markets Law - AGM § 201.

**CLASS ACTION ALLEGATIONS**

29. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of herself and the below-defined National Class, Consumer Fraud Multi-State Class, and New York Subclass (collectively referred to herein as the “Class” or “Classes”):

**National Class:** All persons in the United States that purchased the Products within the applicable limitations period.

**Consumer Fraud Multi-State Class:** All persons in the states of California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington that purchased the Products within the applicable limitations period.<sup>16</sup>

**New York Subclass:** All persons in the state of New York that purchased the Products within the applicable limitations period.

Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

30. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

31. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, Class members number in the thousands to millions. The precise number of Class members

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<sup>16</sup> The states in the Consumer Fraud Multi-State Class are limited to those states with similar consumer fraud laws under the facts of this case: California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. §407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law §§ 349, 350 *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

and their addresses are presently unknown to Plaintiffs, but may be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

32. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Such common questions of law or fact include:

- a. The true caffeine content in the Products;
- b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;
- c. Whether Defendant's actions violate the state consumer fraud statutes invoked below;
- d. Whether Defendant breached an express warranty to Plaintiffs and Class members;  
and
- e. Whether Defendant was unjustly enriched at the expense of the Plaintiffs and Class members.

33. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of herself and the other Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

34. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other members of the Classes because, among other things, all Class

members were comparably injured through Defendant's uniform misconduct described above. Further, there are no defenses available to Defendant that are unique to Plaintiff.

35. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class members they seek to represent, they have retained counsel competent and experienced in complex class action litigation, and they will prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

36. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendant. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

37. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole.

38. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The

damages or other financial detriment suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**COUNT I**  
**Violation of State Consumer Fraud Acts**  
**(On Behalf of Consumer Fraud Multi-State Class)**

39. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

40. Plaintiffs bring this claim individually and on behalf of the members of the Consumer Fraud Multi-State Class against Defendant.

41. The Consumer Fraud Acts of the states in the Consumer Fraud Multi-State Class<sup>17</sup> prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

42. Defendant intended that Plaintiffs and each of the other members of the Consumer Fraud Multi-State Class would rely upon their deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

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<sup>17</sup> California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law §§ 349, 350, *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

43. As a result of the Defendant's use or employment of unfair or deceptive acts or business practices, Plaintiffs and each of the other members of the Consumer Fraud Multi-State Class have sustained damages in an amount to be proven at trial.

44. In addition, Defendant's conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

**COUNT II**  
**Deceptive Acts or Practices, New York GBL § 349**  
**(In the Alternative to Count I and on Behalf of the New York Subclass)**

45. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

46. Plaintiffs bring this claim individually and on behalf of the members of the New York Subclass against Defendant.

47. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by making the Misrepresentations.

48. The foregoing deceptive acts and practices were directed at consumers.

49. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics, ingredients, and benefits of the Products to induce consumers to purchase same.

50. Plaintiffs and members of the New York Subclass were injured because: (a) they paid a price premium for the Products based on Defendant's Misrepresentations; and (b) the Products do not have the characteristics, uses, or benefits as promised, namely the represented caffeine content. Namely, the Products contain levels of caffeine in excess of that represented on the Products labels and advertising. As a result, Plaintiffs and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Products or in the difference in value between the Products as warranted and the Products as actually sold.

51. On behalf of herself and other members of the New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover her actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

**COUNT III**  
**False Advertising, New York GBL § 350**  
**(In the Alternative to Count I and on Behalf of the New York Subclass)**

52. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

53. Plaintiffs bring this claim individually and on behalf of the members of the New York Subclass against Defendant.

54. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York GBL.

55. Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to, the Misrepresentations, were and are directed to consumers.

56. Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

57. Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

58. Plaintiffs and members of the New York Subclass have been injured because: (a) they paid a price premium for the Products based on Defendant's Misrepresentations; and (b) the Products do not have the characteristics, uses, or benefits as promised, namely the represented caffeine content. Namely, the Products contain levels of caffeine in excess of that represented on

the Products labels and advertising. As a result, Plaintiffs and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Products or in the difference in value between the Products as warranted and the Products as actually sold.

59. As a result of Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiffs have suffered and will continue to suffer economic injury.

60. Plaintiffs and members of the New York Subclass suffered an ascertainable loss caused by Defendant's Misrepresentations because they paid more for the Products than they would have had they known the truth about the Products.

61. On behalf of herself and other members of the New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover her actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

**COUNT IV**  
**Breach Of Express Warranty**  
**(On Behalf of The National Class)**

62. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

63. Plaintiffs bring this claim individually and on behalf of the members of the National Class against Defendant.

64. Plaintiff, and each member of the National Class, formed a contract with Defendant at the time Plaintiffs and the other National Class members purchased the Products. The terms of these contracts included the promises and affirmations of fact made by Defendant on the Products' packaging and throughout its marketing and advertising representing the total caffeine content of the Products as 200 milligrams. This labeling, marketing and advertising constitute express

warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiffs and members of the National Class and Defendant.

65. Defendant purports, through its advertising, labeling, marketing, and packaging, to create an express warranty that the Products contained a specific caffeine content.

66. Plaintiffs and the National Class performed all conditions precedent to Defendant's liability under this contract when they purchased the Products.

67. Defendant breached express warranties concerning the Products and their qualities because Defendant's statements about the Products were false and the Products do not conform to Defendant's affirmations and promises described above.

68. Plaintiffs and each member of the National Class would not have purchased the Products had they known the true nature of the Products' ingredients and what the Products did and did not contain—specifically, the actual caffeine content of the Products.

69. As a result of Defendant's breach of express warranty, Plaintiffs and each member of the National Class have been damaged in the amount of the purchase price of the Products and any consequential damages resulting from the purchases.

70. On March 4, 2024, Plaintiffs' counsel sent Defendant a pre-suit notice letter, via certified mail return receipt requested, that complied in all respects with U.C.C. §§ 2-313, 2-607. Plaintiffs' counsel sent Defendant a letter advising that it breached an express warranty and demanded that it cease and desist from such breaches and make full restitution by refunding the monies received therefrom.

**COUNT V**  
**Unjust Enrichment**  
**(In the Alternative to Count IV and on Behalf of the National Class)**

71. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

72. Plaintiffs bring this claim individually and on behalf of the members of the National Class, in the alternative to Count IV for breach of express warranty.

73. Plaintiffs and the other members of the National Class conferred benefits on Defendant by purchasing the Products.

74. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs and the other members of the National Class's purchases of the Products. Retention of those monies under these circumstances is unjust and inequitable because Defendant's labeling of the Products was misleading to consumers, which caused injuries to Plaintiffs and the other members of the National Class because they would have not purchased the Products if the true facts would have been known.

75. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and the other members of the National Class is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the other members of the National Class for their unjust enrichment, as ordered by the Court.

## **COUNT VI**

### **Fraud**

#### **(On Behalf of The National Class and the New York Subclass)**

76. Plaintiffs incorporate paragraphs 1-38 as if fully set forth herein.

77. Plaintiffs bring this claim individually and on behalf of the members of the proposed National Class and the New York Subclass against Defendant.

78. As discussed above, Defendant provided Plaintiffs and Class members with false or misleading material information about the Products, including but not limited to the fact that the Products contain more caffeine than what is represented on the Products' packaging. These Misrepresentations were made with knowledge of their falsehood.

79. The Misrepresentations made by Defendant, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase the Products.

80. The fraudulent actions of Defendant caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

81. In addition, Defendant's conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the other Class members respectfully request that the Court:

- A. Certify the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Award damages, including compensatory, exemplary, statutory, incidental, consequential, actual, and punitive damages to Plaintiffs and the Classes in an amount to be determined at trial;
- C. Award Plaintiffs and the Classes their expenses and costs of the suit, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees;
- D. Grant restitution to Plaintiffs and the Classes and require Defendant to disgorge their ill-gotten gains;
- E. Permanently enjoin Defendant from engaging in the unlawful conduct set forth herein; and
- F. Grant any and all such other relief as the Court deems appropriate.

Dated: September 17, 2024

Respectfully submitted,

/s/ Mason Barney

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