

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STACY NICOTRA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CAB ENTERPRISES INC. D/B/A
ELECTROLIT USA,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Stacy Nicotra (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendant CAB Enterprises Inc. d/b/a Electrolit USA (“Defendant” or “Electrolit USA”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which is based on her personal knowledge.

NATURE OF THE ACTION

1. This is a class action on behalf of purchasers of Defendant’s Electrolit Hydration Beverage Drink (the “Products”)¹ that claim to have “No Preservatives.” This representation is false and/or misleading because the Products contain citric acid—a well-known preservative commonly used in food products.

2. Defendant’s “No Preservatives” representation is featured on the Products’ labeling in order to induce health-conscious consumers to purchase foods that are free from preservatives. Defendant markets its Products in a systematically misleading manner by misrepresenting that the Products do not contain preservatives.

3. Defendant has profited unjustly as a result of its deceptive conduct. Plaintiff therefore asserts claims on behalf of herself and similarly situated purchasers for violation of

¹ The Products include all of Defendant’s products that are advertised as containing “No Preservatives” but contain citric acid.

New York General Business Law §§ 349 and 350, breach of express warranty, and unjust enrichment.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100 members of the putative class, and at least one class member is a citizen of a state different than Defendant.

5. This Court has personal jurisdiction over Defendant because a substantial portion of the events that gave rise to Plaintiff's claims occurred in New York.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events that gave rise to Plaintiff's claims occurred in this District.

PARTIES

7. Plaintiff Stacy Nicotra is a citizen of New York who resides in Patchogue, New York. Ms. Nicotra has purchased the Products on numerous occasions over the prior two years. Most recently, Plaintiff Nicotra purchased a Strawberry Kiwi flavored Product from a ShopRite store in Patchogue, New York in or around April 2024. In purchasing the Product, Ms. Nicotra relied on Defendant's false, misleading, and deceptive marketing of the Product containing "No Preservatives." Ms. Nicotra understood that "No Preservatives" meant the Product did not contain any preservatives. However, the Product she purchased contained the preservative citric acid. Had Ms. Nicotra known the "No Preservatives" representation was false and misleading, she would not have purchased the Product, or, at the very least, would have only been willing to purchase the Product at a lesser price.

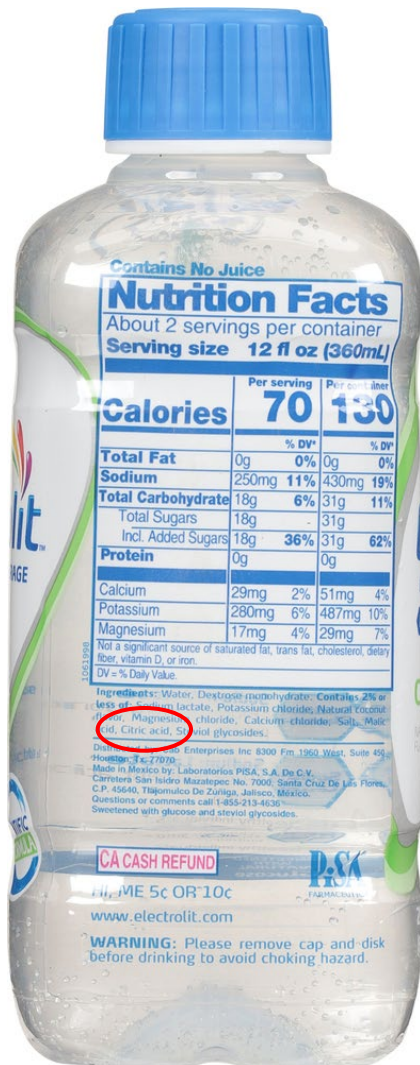
8. Defendant CAB Enterprises Inc. d/b/a Electrolit USA is a corporation organized under the laws of Delaware with its principal place of business located at 3201 Allen Parkway St 100 Houston, Texas 77019. Defendant imports, distributes, advertises, manufactures, and/or sells the Products throughout New York and the United States.

GENERAL ALLEGATIONS

9. **Defendant misrepresents that the Products contain “No Preservatives.”**

Defendant advertises on the label of the Products that they contain “No Preservatives.” Thus, reasonable consumers are led to believe the Products are free from preservatives. However, the Products contain citric acid, which is a well-known preservative. Examples of the Products’ labeling, along with their ingredient list, are depicted below:





10. **Citric acid is a preservative.** Citric acid is a preservative as the term is defined by the FDA in 21 C.F.R. §101.22(a)(5): “The term *chemical preservative* means any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.”

11. Food preservatives are classified into two main groups: antioxidants and antimicrobials. Food scientists agree that the chemical properties of citric acid makes it a

preservative.

12. In its “Overview of Food Ingredients & Colors,” the FDA lists citric acid as a preservative.² The FDA also recognizes that preservatives, like citric acid, are commonly used in packaged foods such as the Products.

13. Under the “What They Do” table heading, the FDA states that preservatives help “prevent food spoilage from bacteria, molds, fungi or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); [and] maintain freshness.”³

14. The FDA’s classification of citric acid as a preservative is also reflected in a warning letter sent to Chiquita Brands International, Inc. and Fresh Express, Inc. In the letter, the FDA deemed the “Pineapple Bites” and “Pineapple Bites with Coconut” products manufactured by the companies “misbranded within the meaning of Section 403(k) of the [Federal Food and Drug Cosmetic] Act [21 U.S.C. 343(k)] in that they contain the *chemical preservatives ascorbic acid and citric acid* but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R. [§] 101.22” (emphases added).⁴

15. **Citric acid has antioxidant and antimicrobial properties.** Citric acid acts as an antioxidant via two processes—inhibiting enzymes and chelating metals. Certain enzymes naturally exist in food products that oxidize and breakdown the food products’ molecules. Citric acid deactivates these enzymes, thereby functioning as a preservative.⁵ Citric acid also chelates

² See *Overview of Food Ingredients, Additives, and Colors*, U.S. FOOD & DRUG ADMIN. (2018), <https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf>.

³ *Id.*

⁴ See October 6, 2010 FDA Warning Letter to Chiquita Brands Int’l, Inc. and Fresh Express, Inc.

⁵ *Id.*

metal ions, which stabilizes and preserves food products by bonding certain molecules in food products to centrally located metal atoms.⁶

16. Citric acid also has antimicrobial properties and directly inhibits the growth of some bacteria and mold.⁷ This is yet another reason why food scientists classify citric acid as a preservative.⁸

17. **The subjective intent of use is immaterial.** Citric acid functions as a preservative in the Products, and this is true regardless of Defendant's subjective purpose or intent for adding them to the Products, such as to impart flavor.⁹

18. Even if the Products' citric acid does not function as a preservative in the Products, it nonetheless qualifies as a preservative given that it has the capacity or tendency to do so. *See* 21 C.F.R. §101.22(a)(5) (defining preservatives as “any chemical that, when added to food, tends to prevent or retard deterioration”); *see also* Merriam-Webster's Dictionary (defining “preservative” as “something that preserves or has the power of preserving.”);¹⁰ Oxford English

⁶ P. Davidson et al., *Chapter 20: Antimicrobial Agents*, in FOOD ADDITIVES, at 592 (A. Larry Branen et al. eds., Marcel Dekker, Inc. 2d ed. 2002).

⁷ L. Su et al., *Study on the Antimicrobial Properties of Citrate-Based Biodegradable Polymers*, FRONTIERS IN BIOENGINEERING AND BIOTECHNOLOGY, 2, 23. <https://doi.org/10.3389/fbioe.2014.00023>.

⁸ *Citric Acid Compound Summary*, NAT'L CTR. FOR BIOTECHNOLOGY INFO., <https://pubchem.ncbi.nlm.nih.gov/compound/Citric-acid>.

⁹ *Citric Acid* in KIRK-OTHMER FOOD & FEED TECH., at 262 (John Wiley & Sons, 2007); L. Somogyi, *Chapter 13: Direct Food Additives in Fruit Processing*, in PROCESSING FRUITS: SCI. & TECH., at 302 (D. Barrett et al. eds., CRC Press 2d ed. 2004); M. Abd-Elhady, *Effect of citric acid, calcium lactate and low temperature prefreezing treatment on the quality of frozen strawberry*, 59 ANNALS OF AGRIC. SCIS., 69-75 (2014); J. deMan, *Chapter 11: Additives and Contaminants*, in PRINCIPLES OF FOOD CHEMISTRY, at 438 (AVI Publishing Co., Inc. 3d ed. 1999) (“Acids as food additives serve a dual purpose, as acidulants and as preservatives”).

¹⁰ *Preservative*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld.

Dictionary (defining “preservative” as “[t]ending to preserve or capable of preserving”).¹¹

19. **The Products’ citric acid is chemically processed.** Citric acid is naturally occurring when derived from certain citrus fruits. That is not true of the citric acid contained in the Products. The citric acid contained in the Products is commercially manufactured and the result of extensive chemical processing.¹² In fact, more than 90 percent of commercially produced citric acid, including the citric acid contained in the Products, is manufactured through a processed derivative of black mold, *Aspergillus niger*, which can cause allergic reactions and diseases in humans.¹³ Negative side effects of consuming manufactured citric acid include: swelling and stiffness resulting in joint pain, muscle pain, stomach pain, and shortness of breath.¹⁴

20. **Defendant exploits consumer demand for preservative-free food.** Defendant’s misrepresentation seeks to capitalize on consumers’ preference for products with no preservatives. Indeed, “foods bearing ‘free-from’ claims are increasingly relevant to Americans, as they perceive the products as closely tied to health ... 84 percent of American consumers buy free-from foods because they are seeking out more natural or less processed foods. In fact, 43 percent of consumers agree that “free-from” foods are healthier than foods without a “free-from”

¹¹ *Preservative*, American Heritage Dictionary, <https://ahdictionary.com/word/search.html?q=preservative>.

¹² A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020).

¹³ *See id.*; I. Sweis & B. Cressey, *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series for four case reports*, 5 TOXICOLOGY REPS., 808-12 (2018); R. Ciriminna et al., *Citric Acid: Emerging Applications of Key Biotechnology Industrial Product*, 11 CHEMISTRY CENT. J. 22 (2017), <https://doi.org/10.1186/s13065-017-0251-y>; K. Kirimura, Y. Honda, & T. Hattori, *Citric Acid*, 3 COMPREHENSIVE BIOTECHNOLOGY 135 (2011), <https://www.sciencedirect.com/science/article/pii/B9780080885049001690>.

¹⁴ *Id.*

claim, while another three in five believe the fewer ingredients a product has, the healthier it is (59 percent). Among the top claims free-from consumers deem most important are trans-fat-free (78 percent) and preservative-free (71 percent).”¹⁵

21. According to another study, when consumers were asked to choose a product that was the closest to their understanding of what “natural” means on product labels, on balance, they chose products with “No Preservatives” labels.¹⁶

22. Accordingly, Defendant’s misrepresentations are material to reasonable consumers. Reasonable consumers would attach importance to a representation that a product has “No Preservatives” because research demonstrates that a majority of consumers place importance on “preservative-free” claims.

23. The global sale of healthy food products is estimated to be \$4 trillion dollars and is forecasted to reach \$7 trillion by 2025.¹⁷ Thus, consumers are willing pay a premium for healthy, preservative-free food items, as they hoped for in purchasing the Products.

24. Defendant’s misleading and deceptive practices proximately caused harm to Plaintiff and the proposed class members who suffered an injury in fact and lost money or property as a result of Defendant’s deceptive conduct.

CLASS ACTION ALLEGATIONS

25. Plaintiff seeks to represent a class defined as all persons in the United States who,

¹⁵ See *Free-From Food Trends-US-May 2015*, MINTEL <https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed>.

¹⁶ Sajida Rahman, et al., Assessing consumers’ understanding of the term “Natural” on food labeling, *Journal of Food Science*, Vol. 85, No. 6, 1891-1896 (2020).

¹⁷ Global Wellness Institute, *The Global Wellness Economy Stands at \$4.4 Trillion Amidst the Disruptions of COVID-19; Is Forecast to Reach \$7 Trillion by 2025*, <https://www.hospitalitynet.org/news/4108643.html>.

during the applicable statute of limitations period, purchased Defendant's Products (the "Class").

26. Plaintiff seeks to represent a subclass defined as all Class members who reside in New York who purchased the Products (the "New York Subclass") (collectively with the Class, the "Classes").

27. Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

28. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: the true nature and presence of preservatives in the Products; whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive; whether Plaintiff and the members of the Classes have suffered damages as a result of Defendant's actions and the amount thereof; and whether Plaintiff and the members of the Classes are entitled to attorneys' fees and costs.

29. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant's false and misleading marketing, purchased Defendant's Products, and suffered a loss as a result of those purchases.

30. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this

action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

31. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In 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 on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

CAUSES OF ACTION

COUNT I

Violation of the New York General Business Law ("GBL") § 349 (On behalf of the New York Subclass)

32. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

33. Plaintiff brings this cause of action on behalf of herself and members of the New York Subclass against Defendant.

34. Plaintiff and New York Subclass members are "persons" within the meaning of the GBL § 349(h).

35. Defendant is a "person, firm, corporation or association or agent or employee

thereof” within the meaning of GBL § 349(b).

36. Under GBL § 349, “[d]eceptive acts or practices in the conduct of any business, trade or commerce are unlawful.”

37. Defendant made false and misleading statements by marketing the Products as containing “No Preservatives” when in fact they contain the preservative citric acid.

38. In doing so, Defendant engaged in deceptive acts or practices in violation of GBL § 349.

39. Defendant’s deceptive acts or practices were materially misleading. Defendant’s conduct was likely to and did deceive reasonable consumers, including Plaintiff, about the quality of its Products, as discussed throughout.

40. Plaintiff and New York Subclass members were unaware of, and lacked a reasonable means of discovering, the material facts that Defendant withheld.

41. Defendant’s actions set forth above occurred in the conduct of trade or commerce.

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

43. Defendant’s misleading conduct concerns widely-purchased consumer products and affects the public interest. Defendant’s conduct includes unfair and misleading acts or practices that have the capacity to deceive consumers and are harmful to the public at large. Defendant’s conduct is misleading in a material way because it fundamentally misrepresents the production and quality of the Products.

44. Plaintiff and New York Subclass members suffered ascertainable loss as a direct and proximate result of Defendant’s GBL violations in that (a) they would not have purchased the Products had they known the truth, and (b) they overpaid for the Products on account of the “No Preservatives” misrepresentation, as described herein.

45. On behalf of themselves and other members of the New York Subclass, Plaintiff seeks to enjoin Defendant's unlawful acts and practices described herein, to recover their actual damages or \$50, whichever is greater, reasonable attorney's fees and costs, and any other just and proper relief available under GBL § 349.

COUNT II
Violation of the New York General Business Law § 350
(On behalf of the New York Subclass)

46. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

47. Plaintiff brings this claim individually and on behalf of the members of the New York Subclass against Defendant.

48. GBL § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

49. Defendant's labeling and advertisement of the Products was false and misleading in a material way. Specifically, Defendant advertised the Products as containing “No Preservatives” when in fact they contain the preservative citric acid.

50. Plaintiff and reasonable consumers understand Defendant's misrepresentations to mean that the Products do not contain preservatives.

51. This misrepresentation was consumer-oriented and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

52. This misrepresentation has resulted in consumer injury or harm to the public interest.

53. As a result of this misrepresentation, Plaintiff and New York Subclass members have suffered economic injury because (a) they would not have purchased the Product had they

known the truth, and (b) they overpaid for the Products on account of the “No Preservatives” misrepresentation, as described herein.

54. By reason of the foregoing and as a result of Defendant’s conduct, Plaintiff and New York Subclass members seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, reasonable attorneys’ fees and costs, and any other just and proper relief available under GBL § 350.

COUNT III
Breach of Express Warranty
(On behalf of the Class and the New York Subclass)

55. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

56. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

57. Defendant, as the producer, marketer, distributor, and/or seller, expressly warranted that the Products contain “No Preservatives.”

58. Defendant’s representations and warranties were part of the description of the goods and the bargain upon which the Products were offered for sale and purchased by Plaintiff and members of the Classes.

59. In fact, the Products do not conform to Defendant’s representations and warranties because the Products contain citric acid, a well-known preservative. By falsely representing the Products in this way, Defendant breached its express warranty.

60. As a direct and proximate cause of Defendant’s breach of express warranty, Plaintiff and members of the Classes have been injured and harmed in an amount to be proven at

trial because they would not have purchased the Products, or would have paid substantially less for them, had they known they contained a preservative.

COUNT IV
Unjust Enrichment
(In the Alternative)

61. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

62. Plaintiff brings this claim individually and on behalf of members of the Class against Defendant.

63. Plaintiff and Class members conferred benefits on Defendant by paying money to Defendant for the purchase of the Products.

64. Defendant has knowledge of such benefits.

65. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class members' purchase of the Products. Retention of those moneys under these circumstances is unjust and inequitable because Defendant misrepresented that the Products contain "No Preservatives" when in fact they contain citric acid, which is a known preservative.

66. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Class and New York Subclass under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class and New York Subclass, and naming Plaintiff's attorneys as Class Counsel to represent the Class and New York Subclass;

- (b) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;
- (c) For compensatory and statutory damages in amounts to be determined by the Court and/or jury;
- (d) For prejudgment interest on all amounts awarded;
- (e) For an order of restitution and all other forms of equitable monetary relief;
- (f) For an order enjoining Defendant from continuing the illegal practices detailed herein and compelling Defendant to undertake a corrective advertising campaign; and
- (g) For an order awarding reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable as of right.

Dated: August 23, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Julian C. Diamond
Julian C. Diamond

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* *Pro Hac Vice* application forthcoming

Attorneys for Plaintiff

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

STACY NICOTRA, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Julian C. Diamond Bursor & Fisher, P.A. 1330 Avenue of the Americas New York, NY 10019 646-837-7150 (tel)

DEFENDANTS

CAB ENTERPRISES INC. D/B/A ELECTROLIT USA

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State PTF DEF 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332
Brief description of cause: False Claims

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/23/2024 SIGNATURE OF ATTORNEY OF RECORD Julian C. Diamond

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Julian C. Diamond, counsel for Stacy Nicotra, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(d)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: Julian Diamond

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

STACY NICOTRA, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

CAB ENTERPRISES INC. D/B/A ELECTROLIT USA

Defendant(s)

Civil Action No. 2:24-cv-5907

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CAB Enterprises Inc. d/b/a Electrolit USA
3201 Allen Parkway St 100.
Houston, Texas 77019

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Julian C. Diamond
Bursor & Fisher, P.A.
1330 Avenue of the Americas
New York, NY 10019
646-837-7150 (tel)

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

BRENNA B. MAHONEY
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: