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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LILLIAN ELLIOT on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

KEURIG DR PEPPER, INC.,

Defendant.

Case No:

**CLASS ACTION COMPLAINT FOR VIOLATIONS
OF:**

1. CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,
CAL. CIV. CODE. §§ 1750
2. CALIFORNIA UNFAIR COMPETITION LAW, BUS. &
PROF. CODE §§17200
3. CALIFORNIA FALSE ADVERTISING LAW, BUS.
& PROF. CODE §§ 17500
4. MASSACHUSETTS CONSUMER PROTECTION LAW,
MASS. GEN. LAWS CHAPTER 93A
5. BREACH OF EXPRESS WARRANTY
6. BREACH OF IMPLIED WARRANTY
7. NEGLIGENT MISREPRESENTATION
8. FRAUD BY OMISSION
9. FRAUD IN THE INDUCEMENT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3 I. JURISDICTION AND VENUE 1
4 II. NATURE OF THE ACTION 2
5 III. PARTIES 4
6 IV. FACTUAL ALLEGATIONS 5
7 1. Federal and State Law Require All Food Products Sold to Consumers in the
8 United States to Disclose if the Product is Artificially Flavored. 5
9 2. The Products All Contain Artificial Flavoring. 7
10 3. The Products are Misbranded and Unlawfully and Misleadingly Labeled. 8
11 4. Plaintiff and the Class Were Injured by Defendant’s Unlawful Practices..... 13
12 5. Defendant’s Competitors Who Label Their Products Lawfully Are Also
13 Damaged by Defendant’s Unlawful Conduct..... 15
14 V. DELAYED DISCOVERY AND ACCRUAL..... 16
15 VI. CLASS ACTION ALLEGATIONS..... 16
16 VII. CAUSES OF ACTION..... 21
17 FIRST CAUSE OF ACTION: 21
18 Violation of the Consumers Legal Remedies Act (“CLRA”)..... 21
19 SECOND CAUSE OF ACTION: 22
20 Violation of the Unfair Competition Law (“UCL”), Unlawful and Unfair Prongs..... 22
21 THIRD CAUSE OF ACTION: 25
22 Violation of False Advertising Law (“FAL”)..... 25
23 FOURTH CAUSE OF ACTION: 26
24 Violation of Massachusetts Consumer Protection Law 26
25 FIFTH CAUSE OF ACTION: 29
26 Breach of Express Warranties..... 29
27 (on behalf of the California Subclass and multi-state warranty Subclass) 29
28 SIXTH CAUSE OF ACTION: 30
Breach of Implied Warranties 30
SEVENTH CAUSE OF ACTION: 32
Negligent Misrepresentation 32

1 EIGHTH CAUSE OF ACTION:34
2 Fraud by Omission34
3 NINTH CAUSE OF ACTION:35
4 Fraud in the Inducement.....35
5 VIII. PRAYER FOR RELIEF37
6 IX. JURY DEMAND38
7
8
9
10
11
12
13
14
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17
18
19
20
21
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1 Plaintiff Lillian Elliot (“Plaintiff”), on behalf of herself and all others similarly
2 situated, by and through undersigned counsel, hereby brings this action against Keurig Dr
3 Pepper, Inc. (“Keurig” or “Defendant”) and upon information and belief and investigation
4 of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. Plaintiff brings this proposed class action (the “Action”) in this Court
7 pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat.
8 4 (2005).

9 2. This Court has subject matter jurisdiction under CAFA, 28 U.S. Code §
10 1332(d), which provides federal courts with original jurisdiction over any class action in
11 which any member of the plaintiff class is a citizen of a state different from any defendant
12 and the matter in controversy exceeds \$5 million in the aggregate, exclusive of interest
13 and costs.

14 3. Minimal diversity as required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A) is
15 satisfied as Plaintiff as well as other members of the proposed Class are citizens of states
16 other than Delaware and Massachusetts and Defendant is a citizen of Delaware and
17 Massachusetts.

18 4. The jurisdictional amount in controversy is satisfied. Plaintiff alleges on
19 information and belief that total claims of proposed Class members exceed \$5 million in
20 the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

21 5. This matter is not a “local controversy.” *See*, 28 U.S.C. §1332(d)(5)(B).
22 Plaintiff alleges on information and belief that more than two-thirds of the members of the
23 proposed Class are citizens of states other than California and that the proposed Class
24 contains more than 100 persons.

25 6. This Court has both general and specific personal jurisdiction over the
26 Defendant.

1 7. This Court has personal jurisdiction over Defendant because Keurig has
2 affirmatively established and maintained contacts with the State of California and is
3 registered to do business in California.

4 8. This Court further has specific personal jurisdiction arising from Defendant's
5 decisions to market, distribute, and sell the products that are the subject of this action in
6 California.

7 9. Defendant has sufficient minimum contacts with this State and sufficiently
8 avails itself of the markets and legal protections of this State through Defendant's
9 promotion, marketing, sales, and distributing of the Products within the State to render the
10 exercise of jurisdiction by this Court reasonable and fair.

11 10. Venue is proper in this County and this judicial district pursuant to 28 U.S.C.
12 §1391(a) because, as set forth below, Defendant conducts business in this district and
13 Plaintiff purchased the subject products of this action in this judicial district. Defendant
14 conducts business and engages in substantial transactions here, and many of the
15 transactions complained of herein occurred in this district including specifically the
16 transactions between Plaintiff and Defendant.

17 **II. NATURE OF THE ACTION**

18 11. This is a consumer class action for the violation of state consumer protection
19 laws and statutes including unfair competition, false advertising, breach of warranty,
20 negligent misrepresentation, fraud by omission, and fraudulent inducement.

21 12. Defendant sells a variety of carbonated beverages described as "ginger ales"
22 and "diet ginger ales" under both its Schweppes and Canada Dry brand names.

23 13. Defendant's ginger ale beverages that are the subject of this action include
24 but are not limited to products labeled, "Schweppes Diet Ginger Ale," "Schweppes Diet
25 Raspberry Ginger Ale," "Schweppes Dry Grape Ginger Ale," "Schweppes Black Cherry
26 Ginger Ale," "Canada Dry Diet Ginger Ale," "Canada Dry Zero Sugar Ginger Ale,"
27 "Canada Dry Zero Sugar Ginger Ale and Lemonade" and "Canada Dry Diet Cranberry
28 Ginger Ale" (the "Products").

1 14. Defendant manufactures, labels, markets, advertises, distributes and sells the
2 Products through a variety of retail outlets across the United States.

3 15. Defendant sells the Products in a variety of sizes and configurations including
4 one-liter bottles, two-liter bottles, 10-ounce cans, and 12-ounce cans.

5 16. Defendant labels all of the Products as if they were solely naturally flavored.

6 17. The Products, however, all contain undisclosed artificial flavoring.

7 18. Federal and state laws require that all food products that contain artificial
8 flavors display prominent disclosures on the front-of-package labels and in the ingredient
9 statement informing consumers that those products are artificially flavored.

10 19. None of the Products disclose the presence of artificial flavors.

11 20. All of the Products are unlawfully labeled.

12 21. Several of the Products' labels, in fact, claim or claimed during the Class
13 period that they were flavored only with "Natural ginger flavor" or "Natural flavors," or
14 that they were "Naturally flavored" or "Naturally flavored with other natural flavors."

15 22. All of these labels are and were false and misleading. The Products all contain
16 undisclosed artificial flavors which must under federal and state law be disclosed to
17 consumers.

18 23. These labels are both intentionally misleading and unlawful under federal
19 and state law because they omit the material fact that the Products contain artificial
20 flavoring and the Products' characterizing flavor is simulated and reinforced by artificial
21 flavoring.

22 24. Defendant willfully conceals from consumers the fact that the Products
23 contain artificial flavoring chemicals that simulate and reinforce the characterizing flavor.

24 25. Because these labels conceal the fact that the Products are made with artificial
25 flavors, those labels are false and misleading and the Products are misbranded under
26 federal and state law.

1 **IV. FACTUAL ALLEGATIONS**

2 **1. Federal and State Law Require All Food Products Sold to Consumers in the**
3 **United States to Disclose if the Product is Artificially Flavored.**

4 34. Defendant manufactures, markets and sells a variety of so-called “ginger ale”
5 and “diet ginger ale” beverages under the “Schweppes” and “Canada Dry” brand names.

6 35. Federal and state law require food and beverage manufacturers to disclose
7 to consumers prominently on the front-of-package product labels and product ingredient
8 lists if the product contains any artificial flavoring.

9 36. Federal regulations at 21 C.F.R. 101.22(c) require all foods containing
10 artificial flavoring to include a prominent statement of artificial flavoring to inform the
11 purchaser and consumer that the product is artificially flavored.

12 37. State consumer protection laws mirror the federal regulations or incorporate
13 those regulations by reference.

14 38. If a food or beverage product contains any artificial flavor that “simulates,
15 resembles or reinforces” a characterizing flavor in the product, the food must be
16 prominently labeled as “Artificially Flavored.” 21 C.F.R. 101.22(i) (3), (4).

17 39. Such statements must be in easily-readable print on the front display panel
18 and of sufficient size for an average consumer to notice.

19 40. An artificial flavor is “any substance, the function of which is to impart
20 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice,
21 edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs,
22 dairy Product, or fermentation Product thereof.” 21 CFR 101.22(a)(1).

23 41. These federal regulations are incorporated verbatim or by reference in
24 multiple state consumer protection laws including specifically California’s Food, Drug,
25 and Cosmetic Law. (Health & Saf. Code, § 109875 et seq. (“Sherman Law”)).

26 42. Product labeling that violates these FDA regulations by definition also
27 violates California’s Sherman Law.

28 43. Other state laws either incorporate these regulations and definitions by

1 reference or apply legally identical regulations.

2 44. U.S. Food, Drug, and Cosmetic Act regulations also require that a food’s
3 label accurately describe the food product, its characterizing flavors, and all ingredients.
4 *See*, 21 C.F.R. 102.5(a).

5 45. Under federal regulations, any recognizable primary flavor identified on the
6 front label of a food product is referred to as a “characterizing flavor.”

7 46. Federal regulations state that if “the label, labeling, or advertising of a food
8 makes any direct or indirect representations with respect to the primary recognizable
9 flavor(s), by word, vignette, e.g., depiction of a fruit, or other means” then “such flavor
10 shall be considered the characterizing flavor”. *See* 21 C.F.R. 101.22(i).

11 47. “Ginger,” which describes the Products’ flavor and is displayed on the
12 Products’ front-labels, is a primary recognizable flavor and is therefore the Products’
13 characterizing flavor.

14 48. If a food product’s characterizing flavor is not created exclusively by the
15 named ingredient, the product’s front label must state that the product contains either
16 natural flavorings or artificial flavorings or both as appropriate.

17 49. Under federal regulations and state consumer protection laws, the product
18 ingredient lists are also required to inform the consumer that the product contains artificial
19 flavorings.

20 50. None of the Product labels or Product ingredient lists inform consumers that
21 the Products contain artificial flavoring. Defendant conceals from consumers that all the
22 Products are artificially flavored.

23 51. California law also prohibits entities from making untrue or misleading
24 statements about goods, engaging in unethical practices injurious to California residents
25 or competing corporations and other entities, and from violating FDA and other federal
26 regulations and the laws of other states regarding consumer protections.

27 52. Massachusetts law further protects consumers by prohibiting persons from
28 using unfair or deceptive acts or practices in the conduct of trade or commerce and from

1 concealing, suppressing, or omitting material facts from consumers.

2 53. Other states' laws are similar; all prohibit and make unlawful the sale of food
3 products that contain artificial flavors unless the artificial flavoring is prominently
4 disclosed on product labels.

5 **2. The Products All Contain Artificial Flavoring.**

6 54. The Products all contain artificial flavoring.

7 55. All of the Products contain an ingredient identified in the product ingredient
8 lists as "malic acid."

9 56. The "malic acid" Defendant adds to the Products is actually a synthetic
10 compound called dl-malic acid, a racemic mixture of d- and l-malic acids.

11 57. Other chemical names for d-malic acid are d-hydroxybutanedioic acid or (R)-
12 (+)-2-Hydroxysuccinic acid.

13 58. This compound, informally known as d-malic acid, is not found in nature.

14 59. A commercial food industry testing lab confirmed through quantitative
15 analytical testing that the Products contained added dl-malic acid.

16 60. The different Products include different quantities of dl-malic acid.

17 61. For the Schweppes branded Products, malic acid (dl-malic acid) is the second
18 ingredient by weight after carbonated water.

19 62. The Canada Dry branded Products contain lesser quantities of dl-malic acid.

20 63. The dl-malic acid that Defendant adds to the Products is a synthetic
21 petrochemical that is made from benzene or butane in petrochemical factories.

22 64. Natural malic acid is a primary flavor component of natural ginger.^{1 2 3}
23

24 ¹ "Composition and Properties of Fresh Ginger (*Zingiber officinale*) Rhizome" by S. S.
25 Raghavan and R. K. Rana, published in the Journal of Food Science in 1981.

26 ² "Ginger: Chemistry, Technology, and Quality Evaluation" by D. L. McKenna, published
27 in the Critical Reviews in Food Science and Nutrition in 1994.

28 ³ "Effect of Processing on Malic Acid, Gingerol and Zingiberene Contents in Ginger
(*Zingiber officinale* Roscoe)" by H. Tang et al., published in the Journal of Food
Composition and Analysis in 2009.

1 65. Defendant adds synthetic dl-malic acid to the Products because without the
2 addition of this synthetic chemical the Products would not taste like “ginger ale.”

3 66. The dl-malic acid in the Products simulates, resembles, and reinforces the
4 Products’ characterizing flavor.

5 67. The synthetic dl-malic acid added to the Products functions as a flavoring in
6 the Products.

7 68. The dl-malic acid in the Products is not a natural flavoring material, it is a
8 synthetic chemical manufactured in a petrochemical factory from petroleum feedstocks.

9 69. The dl-malic acid Defendant adds to the Products is therefore an artificial
10 flavor under federal and state law.

11 **3. The Products are Misbranded and Unlawfully and Misleadingly Labeled.**

12 70. None of the Products’ packaging includes on either the front or back labels
13 any indication that the Products contain artificial flavoring.

14 71. Many of the Products’ labels expressly represent or represented during the
15 proposed Class period that they were made only with “Natural Flavors” or “Natural Ginger
16 Flavor,” or were “Naturally flavored” or “Naturally flavored with other natural flavors.”

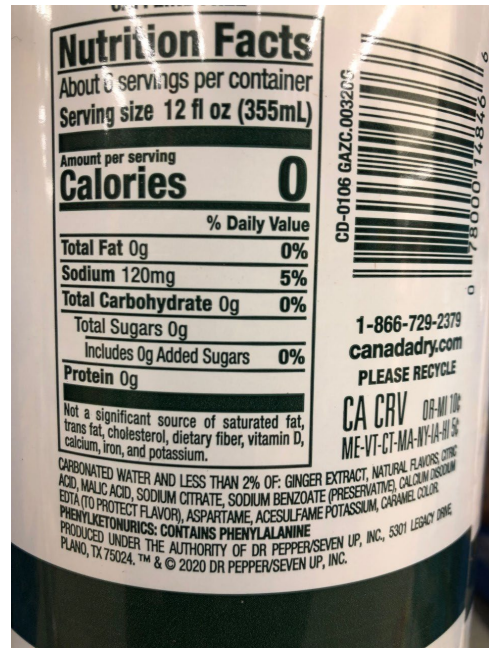
17 72. None of the Canada Dry- or Schweppes-branded Products lawfully disclose
18 to the consumer that they are artificially flavored.

19 73. Below (overleaf) is a true and accurate representation of an example of a
20 Canada Dry diet Ginger Ale product front label and packaging during the Class period.
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74. These Canada Dry Product labels fail to inform consumers that the Product is flavored with an artificial flavor.

75. Representative front and back label images for a two-liter bottle of the Canada Dry Zero Sugar Ginger Ale product are shown below:



76. Neither the front nor back labels show the required artificial-flavoring disclosures.

77. The Product ingredient lists also fails to identify the "malic acid" in the

1 Product as an artificial flavor as required by Federal and state law.

2 78. The Schweppes-branded Products similarly violate federal and state
3 consumer protection laws.

4 79. The labels on “Schweppes Diet Ginger Ale” Products, for example, in
5 addition to unlawfully failing to disclose to consumers that they are artificially flavored,
6 further misleading consumers with label statements that those Products are made with, for
7 example, “Natural Ginger Flavor” with “other natural flavors.”

8 80. Below is a true and accurate representation of Schweppes Diet Ginger Ale
9 products and labels.



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21 81. These label representations also convey to the consumer by operation of
22 federal and state law that the Products are flavored only with natural flavors.

23 82. All of the Products’ labeling omits the federal and state-required “Artificial
24 Flavor” or “Artificially Flavored” front-label statement.

25 83. Because the Products contain added artificial flavoring that simulates and
26 reinforces the Products’ characterizing ginger flavor, the Products’ front labels are
27 required by law to disclose the presence of those additional flavorings rather than
28 misleadingly and deceptively to suggest that the Products’ flavor is conferred only by

1 natural flavorings.

2 84. All are misleadingly labeled and warrant to the consumer that they contain
3 only natural flavors and are not artificially flavored.

4 85. Below are representative front labels and ingredients lists for two other of the
5 Products: Schweppes “Diet Ginger Ale” and Schweppes “Diet Raspberry Ginger Ale.”⁴



DIET GINGER ALE





 4.2 (49) Write a review Read reviews

CAFFEINE FREE
Serving Size: 12 fl. oz.

	Amount Per Serving	Daily Value*
Calories	0	
Total Fat	0 g	0%
Sodium	110 mg	5%
Total Carbohydrates	0 g	0%
Protein	0 g	

Not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, vitamin A, vitamin C, calcium and iron.
**Percent Daily Values are based on 2,000-calorie diet.*
 Ingredients: carbonated water, malic acid, sodium citrate, sodium benzoate (preservative), aspartame, natural flavors, caramel color, acesulfame potassium



DIET RASPBERRY GINGER ALE

Regionally available





 Write a review Read reviews

CAFFEINE FREE
Serving Size: 12 fl. oz.

	Amount Per Serving	Daily Value*
Calories	0	
Total Fat	0 g	0%
Sodium	120 mg	5%
Total Carbohydrates	0 g	0%
Protein	0 g	

Not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, vitamin A, vitamin C, calcium and iron.
**Percent Daily Values are based on 2,000-calorie diet.*
 Ingredients: carbonated water, malic acid, sodium citrate, sodium benzoate (preservative), aspartame, natural flavors, red 40

23
24 86. For both these Products, malic acid – actually artificial dl-malic acid - is the
25 first ingredient by weight after carbonated water.

26 87. None of these Products’ front or back labels include the required artificial-

27 ⁴ See <https://www.schweppesus.com/products/ginger-ale>, last visited April 23, 2024.

1 flavoring disclosures informing the consumer that the product contains artificial flavoring.

2 88. Defendant intentionally omits this legally-required labeling, choosing instead
3 to intentionally label the Products as if they are solely naturally flavored.

4 89. Defendant intentionally conceals from consumers the presence of artificial
5 flavoring in the Products.

6 90. Defendant unlawfully misleads consumers to believe that the Products are
7 naturally flavored when in fact they all contain artificial flavoring.

8 91. Food and beverage ingredient suppliers offer both the natural and artificial
9 versions of malic acid.

10 92. Defendant chose to use the artificial version, dl-malic acid, because it is less
11 expensive than using natural flavors, but falsely and unlawfully labels the Products as if
12 they contain only natural flavors.

13 93. Defendant, a sophisticated beverage manufacturer, made a conscious choice
14 to use the artificial version of the flavoring material but not label the Products in
15 accordance with federal and state law requirements.

16 94. Defendant knew or should have known that the Products are unlawfully
17 mislabeled and misbranded. Defendant willfully conceals from consumers, through the
18 Products' mislabeling and misleading advertising, the fact that the Products are artificially
19 flavored.

20 95. Defendant deceives consumers and violates federal regulations and the state
21 laws of California, Massachusetts, and other states.

22 96. Other states' laws similarly require that food product labels must disclose the
23 presence of artificial flavoring and be accurate and not misleading.

24 97. The Products are misbranded and illegal to distribute or sell in commerce in
25 California, Massachusetts, or anywhere in the U.S.

1 **4. Plaintiff and the Class Were Injured by Defendant’s Unlawful Practices.**

2 98. Plaintiff and Class members suffered an ascertainable loss of money as a result
3 of Defendant’s conduct because they purchased the Products containing undisclosed and
4 undesirable artificial flavors and purchased those Products at a price premium.

5 99. When purchasing the Products, Plaintiff and class members were seeking
6 products of particular qualities, characteristics, and benefits, specifically products that were
7 flavored only with the natural ingredients claimed on the labels and that did not contain
8 artificial flavors.

9 100. Plaintiff is not alone in these consumer preferences. Forbes Magazine reported
10 that 88% of consumers polled indicated they would pay more for foods perceived as natural
11 or healthy. “All demographics [of consumers]—from Generation Z to Baby Boomers—
12 say they would pay more” for such products, specifically including foods with no artificial
13 flavors.⁵

14 101. Defendant’s misleading labeling and marketing of the Products reflects this
15 knowledge of consumers’ preferences for natural products.

16 102. Plaintiff purchased one or more of the Products in California during the Class
17 Period as defined herein.

18 103. Plaintiff was unaware that the Products contained artificial flavors when they
19 purchased them.

20 104. Plaintiff purchased the Products at marked retail prices in various sized
21 bottles and cans and multi-packs, and from time to time at promotional prices.

22 105. Plaintiff and the Class relied upon and were deceived by the Products’
23 deceptive labeling, and specifically Defendant’s omission of the fact that the Products
24

25
26 _____
27 ⁵ “Consumers Want Healthy Foods--And Will Pay More For Them”;
28 <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; last visited May 24, 2024.

1 contained artificial flavorings and decision to label the Products as if they were solely
2 naturally flavored.

3 106. Plaintiff purchased the Products believing they were naturally flavored,
4 based on the Products' deceptive labeling and Defendant's failure to disclose the
5 artificially flavoring.

6 107. Plaintiff first discovered Defendant's unlawful conduct described herein in
7 2024, when she learned that the Products' characterizing flavor was deceptively simulated
8 using artificial flavors.

9 108. Plaintiff and the Class, as reasonable consumers, are not required to subject
10 consumer food and beverage products to laboratory analysis or to independently research
11 label information that state law and federal regulations require be accurately disclosed and
12 prominently displayed on product labeling.

13 109. Defendant, but not Plaintiff or the Class, knew or should have known that the
14 Products' labeling was unlawful, false, and misleading.

15 110. Plaintiff and Class members would not have purchased the Products were
16 they not fraudulently induced to do so by the Products' unlawful and misleading labels.

17 111. Because Plaintiff and the Class reasonably assumed the Products to be free
18 of artificial flavoring based on the Products' labels, when they were not, they did not
19 receive the full benefit of their purchases. Instead of receiving the benefit of products free
20 of artificial flavoring, Plaintiff and the Class purchased Products that were unlawfully
21 labeled to deceive consumers into believing that they were exclusively naturally flavored
22 and contained no artificial flavoring.

23 112. Products that consumers believe to be naturally flavored compete with and
24 sell at a price premium compared to products that contain artificial flavors.

25 113. Plaintiff and the Class would not have purchased the Products in the absence
26 of Defendant's misrepresentations and omissions. Had Defendant not violated state and
27 federal law, Plaintiff and the Class would not have been injured.

1 114. Alternatively, Plaintiff and the Class members would not have paid as much
2 for the Products absent Defendant's false and misleading statements and omissions.

3 115. The Products were worth less to Plaintiff and other Class members than they
4 paid for them.

5 116. Defendant's deceptive labeling practices and knowing and willful omissions
6 of material facts caused Plaintiff and the Class to lose money. Plaintiff, and each Class
7 member, altered their financial positions to their detriment and suffered losses equal to the
8 price of the Products they purchased or the price premium they paid believing the products
9 contained no artificial flavors.

10 117. Plaintiff intends to, desires to, and will purchase the Products again when she
11 can do so with the assurance that the Products' labels, which warrant that the Products are
12 solely naturally flavored, are lawful and consistent with the Products' ingredients.

13 118. Plaintiff might purchase the misbranded and unlawfully labeled Products
14 again in the future, as she may forget or may reasonably but incorrectly assume the false
15 labeling was corrected.

16 119. Because human memory is imperfect, Plaintiff and class members may
17 mistakenly purchase the misbranded Products again, without realizing that those Products
18 are still misbranded and still deceptively packaged and labeled.

19 **5. Defendant's Competitors Label Their Products Lawfully and Are Also**
20 **Damaged by Defendant's Unlawful Conduct.**

21 120. Defendant not only deceives consumers but also gains an unfair commercial
22 advantage in the marketplace by deceptively labeling the Products.

23 121. Manufacturers of competing beverage products label their products lawfully.

24 122. Other manufacturers of artificially flavored beverages, for example,
25 accurately and lawfully label their products as "Artificially Flavored."

26 123. Other competing manufacturers, offering products whose labels suggest as
27 Defendant does that their products are naturally flavored, truly make their products only
28 with natural flavorings.

1 124. Defendant, however, conceals the use of artificial flavoring, thus deceiving
2 consumers, increasing sales, illegally cutting costs and increasing profits, and competing
3 unfairly and unlawfully in the marketplace.

4 125. Defendant's marketing of the Products injures competing manufacturers that
5 do not engage in the same illegal behavior.

6 126. Those manufacturers compete with Defendant for shelf-space and market
7 share. Defendant's competitors do so lawfully; Defendant does not.

8 **V. DELAYED DISCOVERY AND ACCRUAL**

9 127. Plaintiff did not discover that Defendant's labeling of the Products was false
10 and misleading until 2024 when she learned the Products contained undisclosed artificial
11 flavoring.

12 128. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence
13 in the purchase of the Products. Nevertheless, she would not have been able to discover
14 Defendant's deceptive practices and lacked the means to discover them given that, like
15 nearly all consumers, she relies on and is entitled to rely on the manufacturer's obligation
16 to label its products in compliance with federal regulations and state law.

17 129. Defendant's labeling practices and non-disclosures in failing to disclose that
18 the Products contained artificial flavoring and unlawfully labeling the Products as if they
19 were solely "naturally flavored" unfairly impeded Plaintiff's and the Class members'
20 abilities to discover the deceptive and unlawful labeling of the Products throughout the
21 Class Period.

22 130. Because Defendant actively concealed the illegal conduct, preventing
23 Plaintiff and the Class from discovering the violations of state law and federal regulations,
24 Plaintiff and the Class are entitled to delayed discovery and an extended Class Period
25 tolling the applicable statute of limitations.

26 **VI. CLASS ACTION ALLEGATIONS**

27 131. Plaintiff brings this action on behalf of herself and all others similarly situated
28 (the "Class") pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

1 132. The Class is defined as follows:

2 All U.S. citizens who purchased the Products in the United States on or after
3 November 1, 2018 and until the date the Class is certified by the Court,
4 excluding Defendant and Defendant's officers, directors, employees, agents,
5 and affiliates, and the Court and its staff.

6 133. The Plaintiff also intends to represent a proposed California Subclass.

7 134. The proposed California Subclass is defined as follows:

8 All California residents who purchased the Products in California on or after
9 November 1, 2018 and until the date the Subclass is certified by the Court,
10 excluding Defendant and Defendant's officers, directors, employees, agents,
11 and affiliates, and the Court and its staff.

12 135. Plaintiff also intends to represent a proposed multi-state breach of warranty
13 Subclass and a proposed breach of contract, fraud by omission, and fraud in the
14 inducement Subclass.

15 136. Such Subclasses are consistent with U.S. Supreme Court jurisprudence and
16 have previously been certified by federal district courts.

17 137. The multi-state express- and implied-warranty class is defined, as per prior
18 Eastern District of California class certification authority, as:

19 All residents of California, Delaware, District of Columbia, Kansas,
20 Missouri, New Jersey, Ohio, Utah, Virginia, or West Virginia, who
21 purchased the Products as defined herein in one of those states on or after
22 November 01, 2018, and until the date the Class is certified by the Court,
23 excluding Defendant and Defendant's officers, directors, employees, agents,
24 and affiliates, and the Court and its staff.

25 138. The multi-state breach of contract, fraud by omission and fraud in the
26 inducement Subclass is defined, per prior California federal court class certification
27 authority, as:

28 All residents of California, Alabama, Alaska, Colorado, Connecticut,

1 Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Missouri,
2 New Jersey, New York, North Dakota, Oregon, Texas, Utah, or West
3 Virginia, who purchased the Products as defined herein in one of those states
4 on or after November 01, 2018, and until the date the Class is certified by
5 the Court, excluding Defendant and Defendant's officers, directors,
6 employees, agents, and affiliates, and the Court and its staff.

7 139. During the Class Period, the Products all contained the undisclosed artificial
8 flavor dl-malic acid and were otherwise improperly labeled under state statutory and
9 common-law consumer protection laws.

10 140. During the Class Period, Class members purchased the Products and incurred
11 the same injuries as alleged herein for the Plaintiff.

12 141. The proposed Class meets all criteria for a class action, including numerosity,
13 commonality, typicality, superiority, and adequacy of representation; there is a well-
14 defined community of interest in questions of law and fact common to the Class.

15 142. The proposed Class satisfies numerosity. Defendant distributes the Products
16 through thousands of retail grocery stores across the United States and extensively through
17 e-commerce; the Class numbers at least in the tens of thousands of consumers. Individual
18 joinder of the Class members in this action is impractical. Addressing the Class members'
19 claims through this class action will benefit Class members, the parties, and the courts.

20 143. The proposed Class satisfies commonality. Multiple questions of fact and law
21 common to the Class will determine Defendant's liability to Class members and common
22 answers to these questions will drive the resolution of this litigation.

23 144. The proposed Class satisfies typicality. Plaintiff's claims are typical of and
24 are not antagonistic to the claims of other Class members. Plaintiff and the Class members
25 all purchased the Products, were deceived by the false and deceptive labeling, and lost
26 money as a result.

27 145. The proposed Class satisfies superiority. Common questions of law and fact
28 predominate over any individual issues, and class action is superior to any other means for

1 adjudication of the Class members' claims because each Class member's claim is modest,
2 based on the Products' retail purchase price which is generally under \$2.00 per individual
3 can or \$6.00 for a six-pack of 10-ounce bottles.

4 146. It would be impractical for individual Class members to bring individual
5 lawsuits to vindicate their claims. If this action is not brought as a class action, Defendant
6 can continue to deceive consumers, unfairly compete with other companies, and violate
7 federal and state law with impunity.

8 147. Because Defendant made misrepresentations on the labels of the Products
9 themselves, all Class members including Plaintiff were exposed to and continue to be
10 exposed to the omissions and affirmative misrepresentations.

11 148. The proposed Class representative satisfies adequacy of representation. The
12 Plaintiff is an adequate representative of the Class as they seek relief for the Class, their
13 interests do not conflict with the interests of the Class members, and they have no interests
14 antagonistic to those of other Class members. Plaintiff has retained counsel competent in
15 the prosecution of consumer fraud and class action litigation.

16 149. There is a well-defined community of interest in questions of law and fact
17 common to the Class, and these predominate over any individual questions affecting
18 individual Class members in this action.

19 150. Questions of law and fact common to Plaintiff and the Class include:

- 20 a. Whether Defendant failed to disclose the presence of an artificial
21 flavoring ingredient in the Products;
- 22 b. Whether Defendant violated U.S. Food and Drug Administration
23 labeling regulations and corresponding state law;
- 24 c. Whether Defendant's labeling omissions and representations
25 constituted false advertising under state and federal law;
- 26 d. Whether Defendant violated California's Consumers Legal Remedies
27 Act, Cal. Civ. Code §§1750, *et seq.*
- 28 e. Whether Defendant violated California's Unfair Competition Law,

1 Cal. Bus. & Prof. Code §§17200, *et seq.*

2 f. Whether Defendant violated California’s False Advertising law, Cal.
3 Bus. & Prof. Code §§ 17500, *et seq.*

4 g. Whether Defendant violated Massachusetts Consumer Protection
5 Law, Mass. Gen. Law Chapter 93A, and whether double or treble
6 damages are warranted;

7 h. Whether Defendant violated consumer protection statutes of
8 other states;

9 i. Whether Defendant violated state common-law consumer
10 protection and unfair competition statutes;

11 j. Whether Defendant’s advertising and label statements describing
12 solely natural flavoring were an affirmative representation of the
13 Products’ composition creating an express warranty;

14 k. Whether Defendant’s conduct constitutes breaches of implied
15 warranties under state statutes and common law;

16 l. Whether Defendant’s conduct constitutes negligent
17 misrepresentation;

18 m. Whether Defendant’s conduct constitutes fraud by omission;

19 n. Whether Defendant’s conduct constitutes fraud in the
20 inducement;

21 o. Whether the statute of limitations should be tolled on behalf of
22 the Class due to Defendant’s deceptive conduct in knowingly
23 concealing the presence of artificial flavoring ingredients in the
24 Products;

25 p. Whether Plaintiff and the Class are entitled to restitution,
26 rescission, actual damages, punitive damages, attorneys’ fees
27 and costs of suit, and injunctive relief; and

28 q. Whether Plaintiff and the Class are entitled to any such further

1 relief as the Court deems appropriate.

2 151. Class members lost money as a result of Defendant's unlawful behavior.

3 152. Class members altered their financial positions to their detriment and suffered
4 ascertainable individual losses in an amount equal to the price or the price premium they
5 paid for the Products as falsely labeled and advertised.

6 153. Further, Defendant has acted on grounds applicable to the entire Class,
7 making final injunctive relief or declaratory relief appropriate for the Class as a whole.

8 154. Class treatment is therefore appropriate for this Action.

9 **VII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION:**

11 **Violation of the Consumers Legal Remedies Act ("CLRA")**

12 Cal. Civ. Code §§ 1750, *et seq.* (on behalf of the California Subclass)

13 155. Plaintiff realleges and incorporates by reference the allegations made
14 elsewhere in the Complaint as if set forth in full herein.

15 156. The CLRA prohibits unfair, deceptive, unlawful, and unconscionable
16 commercial practices in connection with the sale of any goods or services to consumers.

17 157. The Products are goods as defined by Cal. Civ. Code §1761.

18 158. Plaintiff and the California Subclass members are consumers as defined by
19 Cal. Civ. Code §1761(d).

20 159. Defendant's failure to label the Products in accordance with federal
21 regulations and state labeling laws and its omission and concealment of the material fact
22 that the Products contain artificial flavoring constitute unfair, deceptive, unlawful, and
23 unconscionable commercial practices or acts.

24 160. Defendant's conduct violates the Consumer Legal Remedies Act.

25 161. As a result of Defendant's violations, Plaintiff and the Class suffered
26 ascertainable losses in the form of the prices or price premiums they paid for the
27 unlawfully labeled and marketed Products, which they would not have paid had Defendant
28 labeled the Products in accordance with federal regulations and California law, and in the

1 form of the reduced value of the Products purchased compared to the Products as labeled,
2 advertised, and warranted.

3 162. On or about June 19, 2024, Plaintiff sent a notice letter to Defendant which
4 complies with California Civil Code § 1782 (a). Plaintiff sent to Defendant, individually
5 and on behalf of the proposed Class, a letter via Certified Mail demanding that Defendant
6 rectify the actions described above by providing monetary relief, agreeing to be bound by
7 their legal obligations, and giving notice to all affected customers of their intent to do so.

8 163. Defendant did not comply with the notice letter within thirty (30) days.

9 164. Plaintiff and the proposed Class in this Complaint therefore seek both
10 injunctive relief and damages under § 1770 and § 1782.

11 **SECOND CAUSE OF ACTION:**

12 **Violation of the Unfair Competition Law (“UCL”), Unlawful and Unfair Prongs**

13 Cal. Bus. & Prof. Code §§ 17200, *et seq.* (on behalf of the California Subclass)

14 165. Plaintiff realleges and incorporates by reference each and every allegation
15 contained elsewhere in this Complaint, as if fully set forth herein.

16 166. The UCL prohibits “unlawful,” “unfair” or “fraudulent” business practices.
17 Section 17200 specifically prohibits any “unlawful . . . business act or practice.”

18 167. Under the UCL, conduct that violates other federal and state laws and statutes
19 but which occurs in California also constitutes a violation of California law.

20 168. Defendant’s practices as described herein were at all times during the Class
21 Period and continue to be unlawful under, *inter alia*, FDA regulations and California’s
22 Sherman Law.

23 169. Among other violations, Defendant’s conduct in unlawfully distributing and
24 selling the Products in California violated U.S. FDA packaging and labeling regulations.

25 170. The Products contain artificial dl-malic acid as a flavoring.

26 171. The dl-malic acid is an artificial flavoring material, and is included in the
27 Products to create, simulate, and reinforce the Products’ characterizing ginger flavor.

28 172. The dl-malic acid in the Products is not derived from any natural material as

1 defined in 21 CFR § 101.22 and is therefore by law an artificial flavor.

2 173. The Products’ front labels fail to disclose that the Products contain synthetic
3 artificial flavoring in violation of 21 CFR § 101.22 and California’s Sherman Law and are
4 therefore misbranded.

5 174. Defendant failed to inform consumers of the presence of the artificial flavor
6 in the Products, on either the front or back-label as required by law, and distributed the
7 Products in California and interstate commerce.

8 175. Defendant therefore violated Section 17200, *et seq.*, of the California Civil
9 Code.

10 176. Pursuant to California Business & Professions Code §17203, Plaintiff seek
11 an order requiring Defendant to immediately cease such acts of unlawful, unfair and
12 fraudulent business practices and requiring Defendant to return the full amount of money
13 improperly collected to all those who purchased the Products.

14 177. Defendant’s practices also violate the Unfair Competition Law “unfair”
15 prong in addition to the “unlawful” prong.

16 178. Defendant’s practices as described herein are “unfair” within the meaning of
17 the California UCL because the conduct is unethical and injurious to California residents
18 and the utility of the conduct to Defendant does not outweigh the gravity of the harm to
19 consumers.

20 179. Defendant’s distribution of misbranded Products in violation of federal and
21 state law may have some utility to Defendant in that it allowed Defendant to sell the
22 Products to consumers who otherwise would not purchase an artificially-flavored
23 beverage at the retail price or would not purchase the Product at all if it were labeled
24 correctly, and to realize higher profit margins than if the Products were either formulated
25 or labeled lawfully, but this utility is small and is far outweighed by the gravity of the
26 harm Defendant inflicted upon California consumers.

27 180. Moreover, Defendant’s practices violate public policy expressed by specific
28 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False

1 Advertising Law, and the FDA regulations cited herein.

2 181. Defendant labeled the Products in violation of federal regulations and
3 California law requiring truth in labeling.

4 182. Defendant consciously failed to disclose material facts to Plaintiff and the
5 California Subclass in Defendant's advertising and marketing of the Products.

6 183. Defendant's conduct is unconscionable because in addition to an egregious
7 breach of consumer trust, Defendant willfully violated 21 C.F.R. § 101.22(c), which
8 requires all foods containing artificial flavoring to include a "statement of artificial
9 flavoring . . . likely to be read by the ordinary person under customary conditions of
10 purchase and use of such food."

11 184. Defendant's conduct is "unconscionable" because it violates, *inter alia*, 21
12 C.F.R. § 101.22, which requires all food products distributed in commerce in the U.S. for
13 which artificial flavoring provides a characterizing flavor to disclose this fact prominently
14 on the product's front label.

15 185. Plaintiff's and California Subclass members' purchases of the Products took
16 place in California.

17 186. Defendant intended that Plaintiff and the Subclass rely on its acts or
18 omissions so that Plaintiff and the other Subclass members would purchase the Products
19 despite the fact they contain undisclosed artificial flavoring.

20 187. Had Defendant disclosed all material information regarding the Products in
21 their advertising and marketing, Plaintiff and the Subclass would not have purchased the
22 Products or would only have been willing to pay less for the Products than they did.

23 188. Plaintiff and the California Subclass suffered injury in fact and lost money or
24 property as a result of Defendant's deceptive advertising: they were denied the benefit of
25 the bargain when they purchased the Products based on Defendant's violation of the
26 applicable laws and regulations and purchased the Products rather than competitors'
27 products which are lawfully labeled and contain no artificial flavoring.

28 189. Plaintiff and the Subclass suffered an ascertainable loss of money.

1 Defendant's acts, omissions and practices detailed herein proximately caused Plaintiff and
2 other members of the Subclass to suffer an ascertainable loss in the form of, *inter alia*,
3 monies spent to purchase the Products they otherwise would not have, and they are entitled
4 to recover such damages, together with appropriate penalties, including restitution,
5 damages, attorneys' fees and costs of suit.

6 190. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading
7 advertising." For the reasons set forth above, Defendant violated this section of California
8 Business & Professions Code § 17200 with its deceptive advertising.

9 191. Defendant's conduct also injures competing producers, distributors, and
10 sellers of beverages who do not engage in the same unfair and unethical behavior.

11 192. Pursuant to California Business & Professions Code §17203, Plaintiff seeks
12 an order requiring Defendant to immediately cease such acts of unlawful, unfair and
13 fraudulent business practices and requiring Defendant to return the full amount of money
14 improperly collected from the California Subclass.

15 **THIRD CAUSE OF ACTION:**

16 **Violation of False Advertising Law ("FAL")**

17 Cal. Bus. & Prof. Code §§ 17500, *et seq.* (on behalf of the California Subclass)

18 193. Plaintiff realleges and incorporates by reference each and every allegation
19 contained elsewhere in this Complaint as if fully set forth herein.

20 194. Defendant distributed, in California and in interstate commerce, Products
21 whose labels expressly represent that they are "Ginger Ale" and are flavored with, for
22 example, "Natural Ginger Flavor with Other Natural Flavors," but fail to disclose that they
23 are artificially flavored even though they contain artificial dl-malic acid, a flavoring agent.

24 195. Defendant distributed, in California and in interstate commerce, Products that
25 failed to disclose the presence of artificial flavoring on their packaging and labels as
26 required by federal and state food labeling regulations.

27 196. The Products' labeling and advertising falsely represent the Products as if
28 they are solely naturally flavored.

1 197. Under California’s False Advertising Law, Business and Professions Code
2 §17500 *et seq*,

3 “It is unlawful for any person, firm, corporation or association, or any employee
4 thereof with intent directly or indirectly to dispose of real or personal property . . .
5 to make or disseminate or cause to be made or disseminated before the public in
6 this state, or to make or disseminate or cause to be made or disseminated from this
7 state before the public in any state, in any newspaper or other publication, or any
8 advertising device . . . any statement, concerning that real or personal property . . .
9 which is untrue or misleading, and which is known, or which by the exercise of
10 reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. & Prof.
11 Code §17500.

12 198. Defendant’s labeling and advertising statements conceal from consumers the
13 material fact that the Products contain an artificial flavor, and Defendant, at a minimum
14 by the exercise of reasonable care, should have known that the labeling was false and
15 misleading.

16 199. Defendant profited from this false and deceptive advertising to the detriment
17 of consumers and its competitors.

18 200. Defendant’s conduct, therefore, violates California’s False Advertising Law.

19 201. Plaintiff, the Class, and the California Subclass are therefore entitled to the
20 return of money collected from all those who were exposed to the above-described false
21 advertising and who purchased the Products when they otherwise would not have or who
22 paid a price premium for the falsely advertised Products.

23 **FOURTH CAUSE OF ACTION:**

24 **Violation of Massachusetts Consumer Protection Law**

25 Massachusetts General Law Chapter 93A (“MGL 93A”)

26 202. Plaintiff realleges and incorporates by reference the allegations made
27 elsewhere in the Complaint as if set forth in full herein.
28

1 203. Defendant’s deceptive and unfair conduct also violated the Massachusetts
2 Consumer Protection Law, Massachusetts General Law Chapter 93A (“MGL 93A”).

3 204. Section 2 of MGL 93A declares unlawful unfair methods of competition and
4 unfair or deceptive acts or practices by any person in the conduct of trade or commerce.

5 205. Plaintiff, members of the Class, and Defendant are “persons” within the
6 meaning of MGL 93A.

7 206. Defendant engages in “trade” and “commerce” within the meaning of MGL
8 93A by advertising, distributing, offering for sale, and selling the Products.

9 207. The Products constitute tangible property within the meaning of MGL 93A.

10 208. Plaintiff and the Class are consumers and purchased the Products for
11 personal, family, or household purposes.

12 209. Defendant’s manufacture, packaging, labeling, advertising, distribution and
13 selling of the Products in Massachusetts and elsewhere directly affected the people of
14 Massachusetts.

15 210. Massachusetts consumer law expressly rejects a presumption against
16 extraterritoriality.

17 211. Many of the decisions, acts, and practices which resulted in injury to
18 Plaintiff and to the Class occurred at and emanated from Defendant’s corporate
19 headquarters in Massachusetts.

20 212. Massachusetts consumer protection law therefore applies to Defendant’s
21 conduct affecting the Plaintiff and Class members in other states.

22 213. Defendant engaged in unfair or deceptive acts or practices in trade and
23 commerce by failing to label the Products lawfully and concealing from Plaintiff and the
24 Class that the Products contain artificial flavoring and the Products’ characterizing
25 flavors were simulated and reinforced with artificial flavor.

26 214. Defendant deceptively and unfairly represented that the Products contained
27 only natural flavors when in fact they contained artificial flavoring.
28

1 215. Defendant falsely advertised the Products by concealing, suppressing, or
2 omitting the material fact that the Products contained artificial flavoring and intended that
3 consumers would rely upon this concealment, suppression, or omission when deciding
4 whether to purchase and how much to pay for the Products.

5 216. As a sophisticated actor in the beverage industry, Defendant knew or
6 through the exercise of due care should have known they were engaging in unfair and
7 deceptive acts or practices.

8 217. Defendant knowingly and willfully represented the Products as possessing
9 ingredients, characteristics, benefits, or qualities that they did not have. Defendant knew
10 the Products contained undisclosed artificial flavoring. Defendant is liable for up to treble
11 the actual damages that Plaintiff and Class members suffered pursuant to Section 9 of the
12 MGL Ch. 93A.

13 218. Plaintiff and the Class suffered ascertainable loss of money when they
14 purchased the Products because they would not have bought or would have paid less
15 money for the Products but for Defendant's deceptive and unfair acts and practices.

16 219. Plaintiff and the Class did not get the benefit of the bargain with Defendant
17 when purchasing the Products.

18 220. Plaintiff and the Class suffered loss of money proximately caused by their
19 reasonable reliance on Defendant's employment of false, deceptive, or unfair advertising,
20 marketing, and labeling of the Products and their packaging.

21 221. Plaintiff and the Class were injured because they purchased products based
22 on false advertising or paid more to Defendant than the Products were worth.

23 222. Defendant's deceptive acts also constitute unfair methods of competition
24 because Defendant's competitors do not mislabel their beverages, omit or conceal
25 material facts about the ingredients they put into their beverages, and otherwise do not
26 use unfair or deceptive practices to compete in the marketplace.

27 223. As required by MGL 93A, Plaintiff sent Defendant a written demand for
28 relief on or about June 19, 2024 that identified Plaintiff and their contact information,

1 described the unfair or deceptive acts and practices upon which Plaintiff relied, detailed
2 the injuries that Plaintiff suffered as a proximate result of Defendant's unfair and
3 deceptive acts and practices, and included a request for relief.

4 224. Defendant did not respond to Plaintiff's demand letter with any proposed
5 remedial actions within thirty days of its transmission nor otherwise communicate any
6 settlement offer to Plaintiff.

7 **FIFTH CAUSE OF ACTION:**

8 **Breach of Express Warranties**

9 Cal. Comm. Code § 2313 & similar state laws including those of Delaware, District of
10 Columbia, Kansas, Missouri, New Jersey, Ohio, Utah, Virginia, and West Virginia
11 (on behalf of the California Subclass and multi-state warranty Subclass)

12 225. Plaintiff realleges and incorporates by reference the allegations found
13 elsewhere in the Complaint as if set forth in full herein.

14 226. The Products' front labels misleadingly claim, by operation of California
15 law and legally-identical laws of multiple other states, that the Products are flavored solely
16 with natural flavor.

17 227. Product labels expressly state that the Product is a "Ginger Ale" or represent
18 that they are made with "Natural Flavors," "Natural Ginger Flavor," or "Natural Flavor
19 with Other Natural Flavors."

20 228. These labels, by operation of Federal and state law, guarantee that a product
21 so labeled contains no artificial flavors and is flavored exclusively with natural flavoring
22 ingredients.

23 229. The Products' front labels intentionally fail to disclose the use of artificial
24 flavoring, in violation of federal and state law. *See, e.g.*, 21 C.F.R. 101.22(i)(3).

25 230. Such disclosures are mandatory under federal and state law.

26 231. Defendant's intentional choice to label the Products as if they contained only
27 natural flavors warranties to consumers that the Products contain no artificial flavors.

28 232. Defendant's affirmations of fact, promises, and warranties that the Products

1 contained only natural flavors became part of the basis of the bargain between the parties
2 and thus constituted express warranties.

3 233. The Products did not conform to Defendant’s affirmations of fact, promises,
4 and warranties because they contain artificial flavors.

5 234. Defendant breached its express warranties that the Products contained only
6 natural flavors.

7 235. Defendant sold the goods to Plaintiff, the California Subclass, and other U.S.
8 consumers who bought the goods from Defendant.

9 236. As a result, Plaintiff, the California Subclass, the multi-state warranty class,
10 and other U.S. consumers did not receive goods as warranted by Defendant.

11 237. Within a reasonable amount of time after Plaintiff discovered that the
12 Products contained artificial flavoring, Plaintiff notified Defendant of the breach of
13 warranties.

14 238. As a proximate result of this breach of express warranties, Defendant
15 damaged Plaintiff, the California Subclass, and other U.S. consumers in an amount to be
16 determined at trial.

17 **SIXTH CAUSE OF ACTION:**

18 **Breach of Implied Warranties**

19 Cal. Comm. Code § 2314 & similar state laws including those of Delaware, District of
20 Columbia, Kansas, Missouri, New Jersey, Ohio, Utah, Virginia, and West Virginia

21 (on behalf of the California Subclass and multi-state warranty Subclass)

22 239. Plaintiff realleges and incorporates all of the allegations elsewhere in the
23 complaint as if set forth in full herein.

24 240. Defendant’s label representations also create implied warranties that the
25 Products are suitable for a particular purpose, specifically as naturally-flavored beverages
26 containing no artificial flavors. Defendant breached these warranties as well.

27 241. Because the Products do not display any “Artificially Flavored” disclosure
28 as required by law, and all claim to be “Ginger Ale,” and some of the Products variously

1 claim to be made with “Natural Flavors,” “Natural Ginger Flavor,” or “Natural Flavor
2 with Other Natural Flavors,” the Products’ front labels falsely guarantee that the Products
3 contain no artificial flavoring ingredients and are flavored solely with natural flavors.

4 242. At the time of purchase Defendant had reason to know that Plaintiff as well
5 as all members of the California Subclass and other U.S. consumers sought to buy
6 naturally-flavored beverage products, lawfully labeled and free of artificial flavoring.

7 243. This became part of the basis of the bargain between the parties.

8 244. Based on that implied warranty, Plaintiff and Class and Subclass members
9 bought the Products from Defendant.

10 245. At the time of purchase, Defendant knew or had reason to know that Plaintiff,
11 Subclass members, and other U.S. consumers were relying on Defendant’s skill and
12 judgment to select or furnish products that were suitable for this particular purpose, and
13 justifiably relied on Defendant’s skill and judgment.

14 246. The Products were not suitable for this purpose.

15 247. Plaintiff, Subclass members, and other U.S. consumers purchased the
16 Products reasonably believing they had the qualities they sought, based on the deceptive
17 advertising and labeling, but the Products were actually unsatisfactory for the intended
18 uses for the reasons described herein.

19 248. In addition, Defendant breached the implied warranty of merchantability
20 because the Products were not merchantable in California since they were not of the same
21 quality as other products in the category generally acceptable in the trade.

22 249. The Products would not pass without objection in the trade when packaged
23 with their existing labels because the Products were misbranded and illegal to sell in
24 California. *See* Cal. Comm. Code 2314(2)(a).

25 250. The Products also are not acceptable commercially and Defendant breached
26 their implied warranty because the Products are inadequately packaged and labeled. Cal.
27 Comm. Code 2314(2)(e).

28 251. The Products also were not acceptable commercially and breached their

1 implied warranty because they did not conform to the promises or affirmations of fact
2 made on the containers or labels, Cal. Comm. Code 2314(2)(f), and other grounds as set
3 forth in Commercial Code section 2314(2).

4 252. Defendant breached the implied warranty of merchantability.

5 253. By offering the Products for sale and distributing the Products in California,
6 Defendant also warranted that the Products were not misbranded and were legal to sell in
7 California.

8 254. Because the Products were misbranded and were therefore illegal to sell or
9 offer for sale in California, Defendant breached this warranty as well.

10 255. Defendant's conduct violated all similar state warranty laws in states other
11 than California.

12 256. As a result of this breach, Plaintiff, Subclass members, and other U.S.
13 consumers did not receive goods as impliedly warranted by Defendant.

14 257. After the Plaintiff discovered that the Products contained artificial flavoring,
15 Plaintiff notified Defendant of such breach.

16 258. As a proximate result of Defendant's breach of warranty, Plaintiff and other
17 California and other states' consumers have been damaged in an amount to be determined
18 at trial.

19 259. As a result, Plaintiff, Subclass members, and other U.S. consumers are
20 entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of
21 the funds by which Defendant was unjustly enriched.

22 **SEVENTH CAUSE OF ACTION:**

23 **Negligent Misrepresentation**

24 Cal. Civ. Code §§ 1709-1710 and the common law of all states
25 (on behalf of the Nationwide Class and the California Subclass)

26 260. Plaintiff realleges and incorporates the allegations elsewhere in the
27 Complaint as if set forth in full herein.

28 261. Defendant had a duty under California, Massachusetts, federal law and state

1 common law to disclose to Plaintiff, Subclass members, and other U.S. consumers that the
2 Products contained artificial flavoring.

3 262. Defendant was in a superior position regarding both this information and its
4 expertise such that reliance by Plaintiff, the Subclass, and other U.S. consumers was
5 justified. Defendant possessed the skill and expertise to know the type of information that
6 would influence a consumer's purchasing decision and that the Products contained
7 artificial flavoring.

8 263. Defendant made express statements that convey by operation of law that
9 some or all Products were made solely with natural flavors despite knowing or not having
10 a reasonable belief that these representations were true.

11 264. During the Class Period, Defendant also negligently or carelessly
12 misrepresented, omitted, and concealed from consumers material facts regarding the
13 Products, specifically the use of and presence of artificial flavoring in the Products.

14 265. Defendant was negligent in distributing the Products labeled as if they were
15 exclusively naturally flavored and in failing to identify the Products as artificially
16 flavored.

17 266. Defendant intended for Plaintiff, Subclass members, and other U.S.
18 consumers to rely on these representations.

19 267. Defendant's representations were not true.

20 268. Defendant's Products are not exclusively naturally flavored but in fact
21 contain artificial flavor.

22 269. Defendant failed to secure a reasonable factual basis for believing that the
23 Products were solely naturally flavored at any time relevant to this action.

24 270. Defendant was careless in ascertaining the truth of its representations in that
25 Defendant knew or should have known that Plaintiff, Subclass members, and other U.S.
26 consumers would not discover the use of artificial flavoring ingredients in the Products.

27 271. Plaintiff, Subclass members, and other U.S. consumers reasonably relied on
28 this representation. They were unaware of Defendant's misrepresentations and omissions

1 and, as a result, justifiably relied on them when making the decision to purchase the
2 Products.

3 272. Defendant thereby harmed Plaintiff, Subclass members, and other U.S.
4 consumers as alleged herein. Plaintiff, the Subclass, and other U.S. consumers would not
5 have purchased the Products, or would have paid less for the Products, if they had known
6 the Products contained artificial flavor.

7 273. Plaintiff's, Subclass members', and other U.S. consumers' reliance on
8 Defendant's misrepresentations was a substantial factor in that harm.

9 274. As a result, Plaintiff, Subclass members, and other U.S. consumers are
10 entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of
11 funds by which Defendant was unjustly enriched.

12 **EIGHTH CAUSE OF ACTION:**

13 **Fraud by Omission**

14 Cal Civ. Code §§ 1709-1710 and the common law of all states
15 (on behalf of the Nationwide Class and the California Subclass)

16 275. Plaintiff realleges and incorporates the allegations elsewhere in the
17 Complaint as if set forth in full herein.

18 276. Plaintiff brings this claim for fraud by omission pursuant to California Civil
19 Code §§ 1709-1710 *et seq.*, Massachusetts law, and the common law of all states. The
20 elements of fraud by omission are substantially similar from state to state, thus making
21 nationwide class certification appropriate.

22 277. Defendant omitted material facts, in whole or in part, with the intent to induce
23 Plaintiff and the members of the Class, Subclass members, and other U.S. consumers to
24 purchase the Products and pay premium prices. Specifically, Defendant failed to provide
25 an "Artificially Flavored" disclosure on the front label of the Products as is required by
26 California law, the laws of other states, and federal regulations.

27 278. Defendant was under a legal obligation to disclose this fact on Product labels.

28 279. Plaintiff, the Class, Subclass members, and other U.S. consumers were

1 unaware of this omitted material fact and would not have purchased the Products or would
2 not have purchased the Products at the prices paid if they had known of the omitted fact.

3 280. Plaintiff, the Class, Subclass members, and other U.S. consumers suffered
4 injuries that were proximately caused by Defendant's omissions of material facts.

5 281. Defendant's omissions were a substantial factor in causing the harm suffered
6 by Plaintiff, the Class, the Subclass members, and other U.S. consumers as they would not
7 have purchased the Products at all, or at the prices paid, if Defendant had disclosed the
8 material fact that the Products were artificially flavored.

9 282. As a result, Plaintiff, the Class, the Subclass, and other U.S. consumers are
10 entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of
11 the funds by which Defendant was unjustly enriched.

12 **NINTH CAUSE OF ACTION:**

13 **Fraud in the Inducement**

14 MGL 93A; Cal Civ. Code §§ 1709-1710; and all similar state laws

15 (Nationwide and Multi-State Subclasses and California Subclass)

16 283. Plaintiff realleges and incorporates the allegations elsewhere in the
17 Complaint as if set forth in full herein.

18 284. Defendant intentionally failed to label the Products lawfully and to disclose
19 to consumers that the Products contain artificial flavors; such disclosures are and were
20 legally-required under federal and state law.

21 285. Defendant labeled the Products as if the Products were free of artificial
22 flavors although Defendant knew that the Products contain the artificial flavoring
23 ingredient dl-malic acid that functioned as a flavoring in the Products.

24 286. Defendant represented to Plaintiff and the Class via the Product labeling that
25 the Products contained no artificial flavors and that the Products therefore were flavored
26 solely with natural flavors.

27 287. These representations were false; the Products contain artificial flavoring.

28 288. The false representations and omissions were seen by Plaintiff and by all

1 Class members.

2 289. These representations and omissions were material to Plaintiff's and Class
3 members' decisions to purchase the Products.

4 290. Plaintiff and Class members reasonably relied on those representations in
5 purchasing the Products.

6 291. Plaintiff's and the Class's reliance on Defendant's misrepresentations were a
7 substantial factor in causing their harm.

8 292. Plaintiff and the Class purchased the Products based on those false
9 representations and omissions.

10 293. As a sophisticated manufacturer of foods and beverages, Defendant knew
11 that those representations were false.

12 294. Defendant willfully deceived Plaintiff and the Class by failing to disclose the
13 fact that the Products were artificially flavored and labeling the Products as if they were
14 solely naturally flavored.

15 295. Defendant knew that the presence or absence of artificial flavoring is
16 important to American consumers and concealed the fact the Products contained an
17 artificial flavor and represented the Products as solely naturally flavored.

18 296. As a sophisticated manufacturer, Defendant knew that whether a beverage
19 contains artificial flavoring is a material fact to American consumers which influences
20 which beverages they purchase and how much they are willing to pay.

21 297. Defendant intended that Plaintiff and other consumers would rely on these
22 false representations when deciding to purchase the Products rather than those of
23 competing beverage manufacturers.

24 298. Defendant intended that this deceit would influence consumer purchasing
25 decisions to the detriment of those purchasing the Products.

26 299. Defendant's unlawful affirmative representations and fraudulent omissions
27 induced Plaintiff and the Class to purchase the Products at the listed retail prices.

28 300. Plaintiff and the Class were financially harmed when they purchased the

1 Products or paid more for the beverages than they would have paid had Defendant
2 disclosed the presence of artificial flavoring as was legally required.

3 301. Because Plaintiff and the Class were fraudulently induced to provide monies
4 in exchange for the misbranded and misrepresented Products, Plaintiff and Class members
5 were injured financially.

6 **VIII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated in
8 California, in Massachusetts, and all others similarly situated in the U.S., prays for
9 judgment against Defendant as follows:

- 10 A. An order confirming that this action is properly maintainable as a class action
11 as defined above, appointing Plaintiff and their undersigned counsel to
12 represent the Class and the Subclasses, and requiring Defendant to bear the
13 cost of class notice;
- 14 B. An order declaring that the conduct complained of herein violates the
15 California CLRA;
- 16 C. An order declaring that the conduct complained of herein violates the
17 California UCL;
- 18 D. An order declaring that the conduct complained of herein violates the
19 California FAL;
- 20 E. An order declaring that the conduct complained of herein violates the
21 Massachusetts General Laws and warrants treble damages;
- 22 F. An order declaring that the conduct complained of herein violates
23 corresponding consumer protection laws in states other than California,
24 including the states included in the multi-state Subclasses;
- 25 G. An order declaring that the conduct complained of herein breached express
26 warranties, implied warranties, or both;
- 27 H. An order declaring that the conduct complained of herein constituted fraud
28 in the inducement;

- 1 I. An order requiring Defendant to disgorge any benefits received from Plaintiff
2 and the Class and any unjust enrichment realized as a result of the improper
3 and misleading labeling, advertising, and marketing of the Products;
4 J. An order requiring Defendant to pay restitution and damages to Plaintiff and
5 Class members so that they may be restored any money which was acquired
6 by means of any unfair, deceptive, unconscionable or negligent acts;
7 K. An award to Plaintiff and the Classes of compensatory, exemplary, and
8 statutory damages, including interest, in an amount to be proven at trial;
9 L. An award of punitive damages in an amount to be proven at trial;
10 M. An order enjoining Defendant's deceptive and unfair practices;
11 N. An order requiring Defendant to conduct corrective advertising;
12 O. An award of pre-judgment and post-judgment interest;
13 P. An award of attorney fees and costs; and
14 Q. Such other and further relief as this Court may deem just, equitable, or proper.

15 **IX. JURY DEMAND**

16 Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a jury
17 trial for claims sounding in equity.

18 Respectfully Submitted,

19 DATED: October 29, 2024

GLANCY PRONGAY & MURRAY LLP

21 By: /s/ Marc S. Godino

Kevin F. Ruf

Marc L. Godino

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26 Email: info@glancylaw.com

27 *Attorneys for Plaintiff and the Proposed Class and*
28 *Subclass*

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

LILLIAN ELLIOT on behalf of herself and all others similarly situated,

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

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

Marc L. Godino, Glancy Prongay & Murray LLP 1925 Century Park East, Ste 2100 Los Angeles, CA 90067

DEFENDANTS

KEURIG DR PEPPER, INC.,

County of Residence of First Listed Defendant Burlington, MA (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, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, 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, Labor, 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, 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): Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005)

Brief description of cause: Allegations of violations of various consumer laws; Breaches of Express and Implied Warranties; Negligent Misrepresentation; and Fraud by Omis

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/29/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Marc L. Godino

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 2:24-cv-02966-DC-JDP Document 1-1 Filed 10/29/24 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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