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David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10 **UNLIMITED JURISDICTION**

11 ANGELA MADATOVIAN,
12 individually, and on behalf of others
13 similarly situated,

14 Plaintiff,

15 vs.

16 BAYER HEALTHCARE LLC

17 Defendant.

Case No. **24STCV27825**

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)

(Amount to Exceed \$35,000)

Jury Trial Demanded

1 Now comes the Plaintiff, ANGELA MADATOVIAN (“Plaintiff”),
2 individually and on behalf of all others similarly situated, by and through her
3 attorneys, and for her class action Complaint against the Defendant, BAYER
4 HEALTHCARE LLC, (“Defendant”), Plaintiff alleges and states as follows:

5 **PRELIMINARY STATEMENTS**

6 1. This is an action for damages, injunctive relief, and any other available
7 legal or equitable remedies, for violations of Unfair Competition Law (Cal.
8 Business & Professions Code §§ 17500 *et seq.*, and Unfair Competition Law (Cal.
9 Business & Professions Code §§ 17200 *et seq* resulting from the illegal actions of
10 Defendant, in advertising and labeling its products as free of artificial flavors, when
11 the products contains dl-malic acid an artificial flavor in the products. Plaintiff
12 alleges as follows upon personal knowledge as to herself and her own acts and
13 experiences, and, as to all other matters, upon information and belief, including
14 investigation conducted by his attorneys.

15 **JURISDICTION AND VENUE**

16 2. This class action is brought pursuant to California Code of Civil
17 Procedure § 382. All causes of action in the instant complaint arise under California
18 statutes.

19 3. This court has personal jurisdiction over Defendant, because
20 Defendant does business within the State of California and County of Los Angeles

21 4. Venue is proper in this Court because Defendant does business *inter*
22 *alia* in the county of Los Angeles and a significant portion of the conduct giving
23 rise to Plaintiff’s Claims happened here.

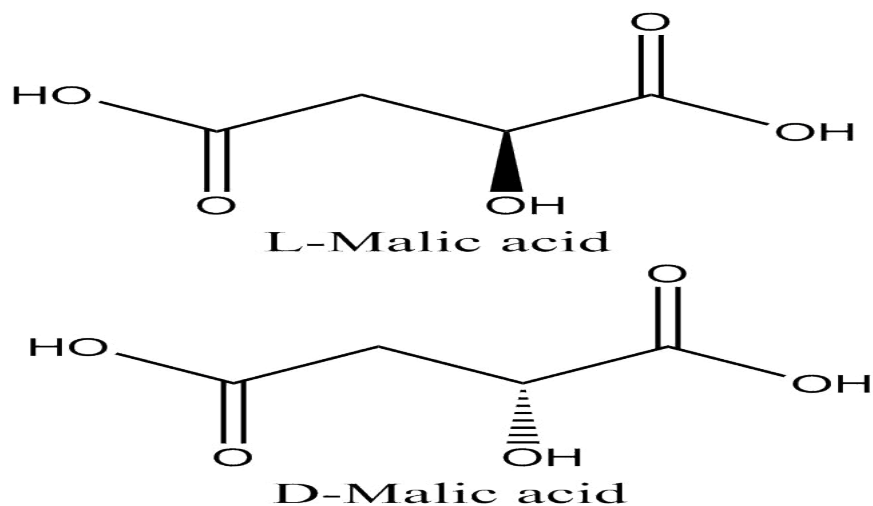
24 **PARTIES**

25 5. Plaintiff is an individual who was at all relevant times residing in
26 Glendale, California.

27 6. Defendant is a Delaware limited liability company whose principal
28 place of business is located in Berlin, Germany.

1 hand versions of the same molecular formula. D-Malic Acid and L-Malic Acid are
2 enantiomers.

3
4 12. The following are skeletal formulas of the enantiomers D-Malic Acid
5 and L-Malic Acid:



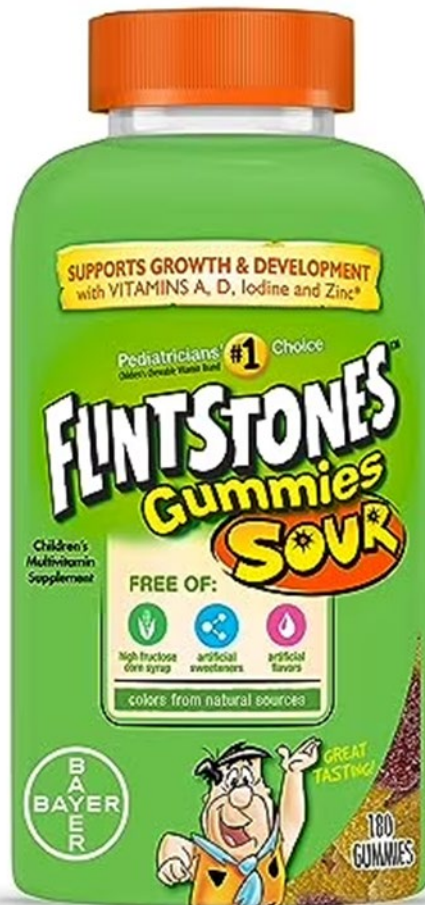
14 13. Taste is the combination of sensations arising from specialized
15 receptor cells located in the mouth. Gary Reineccius, *Flavor Chemistry and*
16 *Technology* § 1.2 (2d ed. 2005). Taste can be defined as sensations of sweet, sour,
17 salty, bitter, and umami. However, limiting taste to five categories suggests that
18 taste is simple, which is not true. *Id.* For example, the taste of sour includes the
19 sourness of vinegar (Acetic Acid), sour milk (Lactic Acid), lemons (Citric Acid),
20 apples (Malic Acid), and wines (Tartaric Acid). *Id.* Each of those acids is
21 responsible for unique sensory characteristics of sourness. *Id.*

22 14. Sweetness and tartness are important contributors to the states and
23 flavor perception of fruit juices. Y.H. Hui, *et al.*, *Handbook of Fruit and Vegetable*
24

25
26 ² The only structural difference between D-Malic Acid and L-Malic Acid is that one
27 Hydroxide (OH⁻) is attached to each different enantiomer at a different angle. The solid cone
28 and the dashed-line cone represent the stereochemical differences. Straight lines represent bonds
on the same plane as the paper, solid cones represent bonds pointed towards the observer, and
dashed-line cones represent bonds pointed away from the observer.

1 *Flavors*, p. 693 (2010). Organic acids such as Malic Acid in apples and pears, and
2 Tartaric and Malic Acid in grapes, contribute to the tartness of the fruits' juices. *Id.*
3 Malic Acid is a key organic acid in the sour taste and flavor of many fruits, as
4 evidenced by its high concentration in those fruits. *Id.*

6 15. Defendant labels the flavor of its Products as "Sour", as shown in the
7 example below:



25 16. As stated above, Malic acid is the sour component of many fruits, the
26 flavor of the Products is sour, and the Products' malic acid ingredients are synthetic
27 malic acid.

1 17. On August 5, 2024, Plaintiff purchased one of the Products from
2 Amazon.com.

3 18. Despite being labeled as free from artificial flavors, Plaintiff's sour
4 gummy vitamins contained synthetic malic acid.

5 19. When purchasing the Product Plaintiff made her purchasing decision
6 because of the labeling on the Product that read "free of artificial flavors".

7 20. Persons, like Plaintiff herein, have an interest in purchasing products
8 that do not contain false and misleading claims.

9 21. Plaintiff is interested in purchasing the Products again in the future,
10 and as a result he will be harmed if Defendant is not forced to correct the fraudulent
11 labeling or remove the synthetic malic acid.

12 22. Plaintiff has been deprived of her legally-protected interest to obtain
13 true and accurate information about the consumer products he buys as required by
14 California Law.

15 23. As a result, Plaintiff and the class members have been misled into
16 purchasing Products that did not provide them with the benefit of the bargain they
17 paid money for, namely that the Products were free of artificial flavors.

18 24. Plaintiff did not understand that the Products contained artificial
19 flavors and could not have known without an advanced understanding of chemistry.

20 25. Furthermore, due to Defendant's intentional, deceitful practice of
21 labeling the Products as free of artificial flavors Plaintiff could not have known that
22 the Products contained artificial flavors.

23 26. By making false and misleading claims about the qualities of the
24 Products, Defendant impaired Plaintiff's ability to choose the type and quality of
25 the Products she chose to buy.

26 27. Worse than the lost money, Plaintiff and the class members have been
27 deprived of their protected interest to choose the type and quality of the products
28 they ingest.

1 matter should be certified as a Class Action to assist in the expeditious litigation of
2 the matter.

3 33. The Class and Sub-Class are so numerous that the individual joinder
4 of all of their members is impractical. While the exact number and identities of their
5 members are unknown to Plaintiff at this time and can only be ascertained through
6 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
7 the Class and Sub-Class include thousands, if not millions of members. Plaintiff
8 alleges that the class members may be ascertained by the records maintained by
9 Defendant.

10 34. This suit is properly maintainable as a class action pursuant to Fed. R.
11 Civ. P. 23(a) because the Class and Sub-Class are so numerous that joinder of their
12 members is impractical and the disposition of their claims in the Class Action will
13 provide substantial benefits both to the parties and the Court.

14 35. There are questions of law and fact common to the Class and Sub-Class
15 affecting the parties to be represented. The questions of law and fact common to the
16 Class and Sub-Class predominate over questions which may affect individual class
17 members and include, but are not necessarily limited to, the following:

- 18 a. Whether the Defendant intentionally, negligently, or recklessly
19 disseminated false and misleading information by labeling the
20 Products as free of artificial flavors when the Products contain
21 synthetic malic acid;
- 22 b. Whether the Class and Sub-Class members were informed that
23 the Products contained artificial flavors;
- 24 c. Whether the Products contained artificial flavors;
- 25 d. Whether Defendant's conduct was unfair and deceptive;
- 26 e. Whether Defendant unjustly enriched itself as a result of the
27 unlawful conduct alleged above;

- 1 f. Whether the inclusion of synthetic malic acid in the Products is
2 a material fact;
- 3 g. Whether there should be a tolling of the statute of limitations;
4 and
- 5 h. Whether the Class and Sub-Class are entitled to restitution,
6 actual damages, punitive damages, and attorney fees and costs.

7 36. As a resident of the United States and the State of California who
8 purchased the Products, Plaintiff is asserting claims that are typical of the Class and
9 Sub-Class.

10 37. Plaintiff has no interests adverse or antagonistic to the interests of the
11 other members of the Class and Sub-Class.

12 38. Plaintiff will fairly and adequately protect the interests of the members
13 of the Class and Sub-Class. Plaintiff has retained attorneys experienced in the
14 prosecution of class actions.

15 39. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims of
17 all Class and Sub-Class members is impracticable. Even if every Class and Sub-
18 Class member could afford individual litigation, the court system could not. It
19 would be unduly burdensome to the courts in which individual litigation of
20 numerous issues would proceed. Individualized litigation would also present the
21 potential for varying, inconsistent or contradictory judgments and would magnify
22 the delay and expense to all parties, and to the court system, resulting from multiple
23 trials of the same complex factual issues. By contrast, the conduct of this action as
24 a class action presents fewer management difficulties, conserves the resources of
25 the parties and of the court system and protects the rights of each class member.
26 Class treatment will also permit the adjudication of relatively small claims by many
27 class members who could not otherwise afford to seek legal redress for the wrongs
28 complained of herein.

1 46. Defendant misled consumers by making misrepresentations and
2 untrue statements about the Class Products, namely, Defendant sold the Products
3 with labeling claiming the Products were free of artificial flavors, and made false
4 representations to Plaintiff and other putative class members in order to solicit
5 these transactions.

6 47. Specifically, Defendant claimed the Products were free of artificial
7 flavors when the Products contained synthetic malic acid.

8 48. Defendant knew that their representations and omissions were untrue
9 and misleading, and deliberately made the aforementioned representations and
10 omissions in order to deceive reasonable consumers like Plaintiff and other Class
11 and Sub-Class Members.

12 49. As a direct and proximate result of Defendant's misleading and false
13 advertising, Plaintiff and the other Class Members have suffered injury in fact and
14 have lost money or property. Plaintiff reasonably relied upon Defendant's
15 fraudulent statements regarding the Products, namely that they did not know the
16 Products contained synthetic ingredients. In reasonable reliance on Defendant's
17 omissions of material fact and false advertisements, Plaintiff and other Class
18 Sub-Class Members purchased the Products. In turn Plaintiff and other Class
19 Members ended up with products that turned out to actually be different than
20 advertised, and therefore Plaintiff and other Class Members have suffered injury
21 in fact.

22 50. Plaintiff alleges that these false and misleading written
23 representations made by Defendant constitute a "scheme with the intent not to sell
24 that personal property or those services, professional or otherwise, so advertised
25 at the price stated therein, or as so advertised."

26 51. Defendant advertised to Plaintiff and other putative class members,
27 through written representations and omissions made by Defendant and its
28 employees, that the Class Products would be free of artificial flavors.

1 definition of unfair competition covers any single act of misconduct, as well as
2 ongoing misconduct.

3 UNFAIR

4 57. California Business & Professions Code § 17200 prohibits any
5 “unfair ... business act or practice.” Defendant’s acts, omissions,
6 misrepresentations, and practices as alleged herein also constitute “unfair”
7 business acts and practices within the meaning of the UCL in that its conduct is
8 substantially injurious to consumers, offends public policy, and is immoral,
9 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
10 any alleged benefits attributable to such conduct. There were reasonably available
11 alternatives to further Defendant’s legitimate business interests, other than the
12 conduct described herein. Plaintiff reserves the right to allege further conduct
13 which constitutes other unfair business acts or practices. Such conduct is ongoing
14 and continues to this date.

15 58. In order to satisfy the “unfair” prong of the UCL, a consumer must
16 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
17 benefits to consumers or competition; and, (3) is not one that consumers
18 themselves could reasonably have avoided.

19 59. Here, Defendant’s conduct has caused and continues to cause
20 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
21 the Class have suffered injury in fact due to Defendant’s decision to sell them
22 fraudulently labeled products (Class Products). Thus, Defendant’s conduct has
23 caused substantial injury to Plaintiff and the members of the Class and Sub-Class.

24 60. Moreover, Defendant’s conduct as alleged herein solely benefits
25 Defendant while providing no benefit of any kind to any consumer. Such
26 deception utilized by Defendant convinced Plaintiff and members of the Class that
27 the Class Products were free of artificial flavors, in order to induce them to spend
28 money on said Class Products. In fact, knowing that Class Products, by their

1 objective terms contained synthetic malic acid, unfairly profited from their sale,
2 in that Defendant knew that the expected benefit that Plaintiff would receive from
3 this feature is nonexistent, when this is typically never the case in situations
4 involving consumer products. Thus, the injury suffered by Plaintiff and the
5 members of the Class and Sub-Class is not outweighed by any countervailing
6 benefits to consumers.

7 61. Finally, the injury suffered by Plaintiff and members of the Class and
8 California Sub-Class is not an injury that these consumers could reasonably have
9 avoided. After Defendant, fraudulently labeled the Class Products as free of
10 artificial flavors, the Plaintiff, Class members, and Sub-Class Members suffered
11 injury in fact due to Defendant's sale of Class Products to them. Defendant failed
12 to take reasonable steps to inform Plaintiff and Class and Sub-Class members that
13 the Class Products contained synthetic malic acid and are not free of artificial
14 flavors as a result. As such, Defendant took advantage of Defendant's position of
15 perceived power in order to deceive Plaintiff and the Class members to purchase
16 the products. Therefore, the injury suffered by Plaintiff and members of the Class
17 is not an injury which these consumers could reasonably have avoided.

18 62. Thus, Defendant's conduct has violated the "unfair" prong of
19 California Business & Professions Code § 17200.

20 **FRAUDULENT**

21 63. California Business & Professions Code § 17200 prohibits any
22 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
23 prong of the UCL, a consumer must allege that the fraudulent business practice
24 was likely to deceive members of the public.

25 64. The test for "fraud" as contemplated by California Business and
26 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
27 common law fraud, a § 17200 violation can be established even if no one was
28 actually deceived, relied upon the fraudulent practice, or sustained any damage.

1 therefore an “unlawful” business practice or act under Business and Professions
2 Code Section 17200 *et seq.*

3 72. Defendant has thus engaged in unlawful, unfair, and fraudulent
4 business acts entitling Plaintiff and Class and Sub-Class Members to judgment and
5 equitable relief against Defendant, as set forth in the Prayer for Relief.
6 Additionally, pursuant to Business and Professions Code section 17203, Plaintiff
7 and Class and Sub-Class Members seek an order requiring Defendant to
8 immediately cease such acts of unlawful, unfair, and fraudulent business practices
9 and requiring Defendant to correct its actions.

10 MISCELLANEOUS

11 101. Plaintiff and Classes Members allege that they have fully complied
12 with all contractual and other legal obligations and fully complied with all
13 conditions precedent to bringing this action or all such obligations or conditions
14 are excused.

15 REQUEST FOR JURY TRIAL

16 102. Plaintiff requests a trial by jury as to all claims so triable.

17 PRAYER FOR RELIEF

18 103. Plaintiff, on behalf of himself and the Class and Sub-Class, requests
19 the following relief:

- 20 (a) An order certifying the Class and Sub-Class and appointing
21 Plaintiff as Representative of the Class and Sub-Class;
- 22 (a) An order certifying the undersigned counsel as Class and Sub-
23 Class Counsel;
- 24 (b) An order requiring Defendant to engage in corrective
25 advertising regarding the conduct discussed above;
- 26 (c) Actual damages suffered by Plaintiff and Class and Sub-Class
27 Members as applicable or full restitution of all funds acquired
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- from Plaintiff and Class and Sub-Class Members from the sale of misbranded Class Products during the relevant class period;
- (d) Punitive damages, as allowable, in an amount determined by the Court or jury;
 - (e) Any and all statutory enhanced damages;
 - (f) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
 - (g) Pre- and post-judgment interest; and
 - (h) All other relief, general or special, legal and equitable, to which Plaintiff and Class and Sub-Class Members may be justly entitled as deemed by the Court.

Dated: October 23, 2024

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By: 

TODD M. FRIEDMAN, ESQ.

Attorney for Plaintiff Michael Dotson