

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

DAVID GILLUS, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

ARIZONA BEVERAGES USA LLC,
Defendant.

Class Action Complaint

Jury Trial Demanded

David Gillus ("Plaintiff"), through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. The last twenty years have seen an increase in consumers seeking foods which are natural.
2. This is due to increased public scrutiny about what goes into foods, and awareness of how that impacts personal health.
3. A Nielsen survey found that a significant majority of consumers are willing to pay more for foods with only natural ingredients.
4. The demand for natural foods is based, in large part, on the belief that "whole ingredients," which have not been highly processed or altered from their original state, are healthier than foods laden with "additives," and laboratory-made

ingredients.¹

5. “Additives” refers to non-food substances, created in laboratories, to fulfill various functions, such as facilitating processing (“processing aids”), improving appearance (“coal tar dyes,” rebranded as “colorants”), increasing bulk (“fillers” and “thickeners”), creating or enhancing taste (“flavorings”), facilitating the suspension of one liquid in another (“emulsifiers”), and extending shelf-life, concealing inferiority, and slowing deterioration (“preservatives”).

6. To prevent companies from exploiting “extrinsic cues such as visual information,”² when it comes to selecting natural foods, the Federal Food, Drug and Cosmetic Act (“FFDCA”), the model for this State’s identical Agriculture and Markets Law (“AGM”), prohibits “misbranding” and adulteration of foods promoted as “natural,” defined through a “negative” definition, to mean nothing

¹ Andrea Rock, “Peeling Back the ‘Natural’ Food Label,” Consumer Reports, 27 January 2016.

² Lancelot Miltgen et al., “Communicating Sensory Attributes and Innovation through Food Product Labeling,” *Journal of Food Products Marketing*, 22.2 (2016): 219-239; Helena Blackmore et al., “A Taste of Things to Come: The Effect of Extrinsic and Intrinsic Cues on Perceived Properties of Beer Mediated by Expectations,” *Food Quality and Preference*, 94 (2021): 104326; Okamoto and Ippeita, “Extrinsic Information Influences Taste and Flavor Perception: A Review from Psychological and Neuroimaging Perspectives,” *Seminars in Cell & Developmental Biology*, 24.3, Academic Press, 2013; Clement, J., Visual Influence on In-Store Buying Decisions: An Eye-Track Experiment on the Visual Influence of Packaging Design, *Journal of Marketing Management*, 23, 917-928 (2007); Gupta K, O. et al., Package Downsizing: Is it Ethical? 21 *AI & Society* 239-250 (2007).

artificial or synthetic has been included in, or added to a food, that would not normally be expected in that food.³ 21 U.S.C. § 301 *et seq*;⁴ AGM § 3.^{5 6}

7. This definition is illustrated by how the Food and Drug Administration (“FDA”), and its state counterpart, the Department of Agriculture and Markets (“Ag&Mkts”), do not consider any added color “natural” unless it is “natural to” the food product itself, such as coloring strawberry ice cream with strawberry juice.

8. When the FDA invited the public to weigh in, thousands of ordinary citizens agreed, with many sharing Kristine Milochik’s sentiment, how “When [he] see[s] the word ‘Natural’ on packaging, [he] expect the contents to have only ingredients as they are found in nature.”⁷

9. While each person’s understanding of the term “natural,” when applied

³ A “negative” definition is often used with difficult to define concepts, such as “darkness,” understood as the absence of light, and “vacuum,” recognized as the absence of air.

⁴ “Misbranded” is the statutory term for labeling that is false and/or misleading, while “adulterated” means to “render (something) poorer in quality by adding another substance, typically an inferior one.”

⁵ Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Title 1, Department of Agriculture and Markets, Chapter VI, Food Control, Subchapter C, Food and Food Products (Article 17, AGM), including 1 N.Y.C.R.R. § 250.1 (adopting federal standards of identify for foods), 1 N.Y.C.R.R. § 259.1(a) (adopting Parts 100, 101 and 102 of Title 21).

⁶ A “negative” definition is often used with difficult to define concepts, such as “darkness,” understood as the absence of light, and “vacuum,” recognized as the absence of air.

⁷ FDA, [Use of the Term Natural on Food Labeling](#), Oct. 2, 2018.

to a food, may be slightly different, the Federal Trade Commission (“FTC”) identified two major elements, (1) minimal processing, and (2) the absence of artificial or synthetic ingredients or additives, as integral to a “natural food.”

10. Thus, it was considered by many to be scientifically acceptable, as well as desirable, to use the term “natural” to describe foods which have been relatively untampered with and which closely resemble the original form in which they were grown or raised.

11. With respect to “minimal processing,” this generally means the removal of inedible substances, following harvest, followed by the application of physical processes, such as cutting, grinding, drying, or pulping, which change only the form of the food, and/or processing necessary to make the food edible or safe for human consumption, or to preserve it.

12. The Association of Food and Drug Officials of the United States (“AFDOUS”) previously adopted a definition of “natural” as a food or a blend of foods derived entirely from components as they are found in nature (water lost on dehydration excepted).

13. This definition provided that the food or blend of foods may be processed to the extent that inedible or non-nutritive substances are removed.

14. Years later, the FTC continues to emphasize the importance of “natural” descriptions to consumers, prohibiting marketing products as “All Natural,” and

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“100% Natural,” where they contained synthetic ingredients.⁸

15. To protect consumers, the FTC reminded companies that they cannot misstate the extent to which any product contains natural or synthetic components.

I. “ALL NATURAL”

16. To appeal to the growing number of consumers seeking foods and beverages that are natural and/or contain only natural ingredients, Arizona Beverages USA LLC (“Defendant”) manufactures, distributes, sells, labels, markets, and/or packages, “Kiwi Strawberry Fruit Juice Cocktail,” with pictures of kiwis and strawberries, promoted as “All Natural,” in all capital letters, in the center (“Product”).

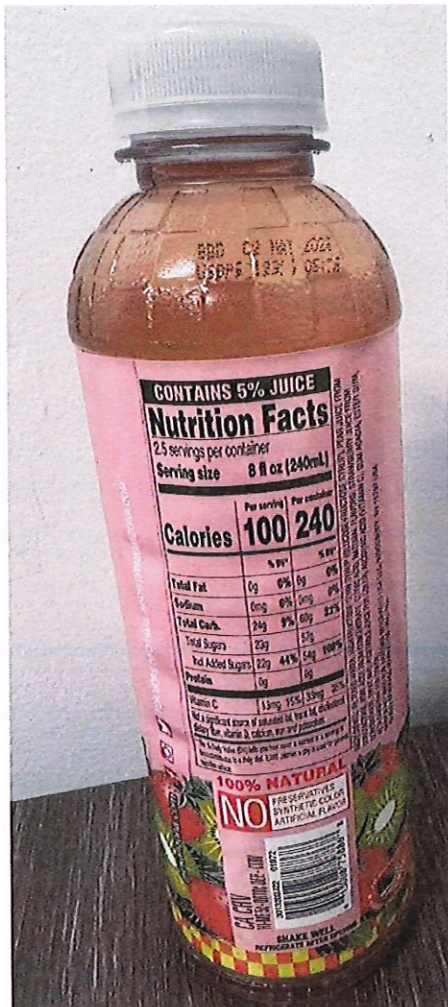
⁸ Lesley Fair, Are your “all natural” claims all accurate?, FTC, April 12, 2016.



17. The Product is “misbranded” and misleads consumers, because despite its representation as “All Natural,” such that purchasers will reasonably expect a combination of strawberry juice, kiwi juice, added water, and/or added sugar, it contains (1) numerous ingredients not normally expected in this type of food, (2) artificial or synthetic ingredients, and/or (3) highly processed ingredients, unlike anything available in nature, revealed from the fine print of the ingredient list, on the

back of the bottle. AGM § 201(1); 21 U.S.C. § 343(a)(1).

INGREDIENTS: FILTERED WATER, HIGH FRUCTOSE CORN SYRUP (GLUCOSE-FRUCTOSE SYRUP), PEAR JUICE FROM CONCENTRATE, KIWI JUICE FROM CONCENTRATE, CITRIC ACID, NATURAL FLAVORS, STRAWBERRY JUICE FROM CONCENTRATE, FRUIT AND VEGETABLE JUICE FOR COLOR, ASCORBIC ACID (VITAMIN C), GUM ACACIA, ESTER GUM, BETA CAROTENE FOR COLOR.
© 2022 BEVERAGE MANUFACTURER



INGREDIENTS: FILTERED WATER, **HIGH FRUCTOSE CORN SYRUP (GLUCOSE-FRUCTOSE SYRUP)**, PEAR JUICE FROM CONCENTRATE, KIWI JUICE FROM CONCENTRATE, **CITRIC ACID, NATURAL FLAVORS**, STRAWBERRY JUICE FROM CONCENTRATE, **FRUIT AND VEGETABLE JUICE FOR COLOR, ASCORBIC ACID (VITAMIN C), GUM ACACIA, ESTER GUM, BETA CAROTENE FOR COLOR.**

18. Beyond the first, third, fourth, and fifth ingredients, of “Filtered Water...Pear Juice from Concentrate, Kiwi Juice from Concentrate, [and] Strawberry Juice from Concentrate,” the remaining eight ingredients are (1) not natural, and/or (2) not expected in a beverage described as “Kiwi Strawberry Fruit

Juice Cocktail.”

19. The second most predominant ingredient, high fructose corn syrup (“HFCS”), is not “all natural,” because it is not an ingredient that exists in nature, as no natural corn exists with a high fructose content.

20. HFCS is prepared as a clear aqueous solution from high dextrose-equivalent corn starch hydrolysate, by partial enzymatic conversion of glucose (dextrose) to fructose using an insoluble glucose isomerase enzyme preparation.

21. The manufacture of HFCS occurs using specialized enzymes and fixing agents.

22. This utilizes a portion of glucose in corn sugar, converting it to fructose.

23. The manufacture of fructose is a chemical reaction process, that changes glucose, which was extracted from a naturally occurring plant material, i.e., corn, into fructose.

24. The fifth and ninth ingredients, citric acid and ascorbic acid, could be natural, if they were obtained from citrus fruits.

25. However, increase in demand for these ingredients, along with utilization of citrus fruits for direct consumption, means that citric acid and ascorbic acid are no longer commercially obtained from citrus fruits.

26. Today’s citric acid is “a major industrial chemical,” “made from *Aspergillus niger* (aka: black mold)...that comes [usually] from sugar sourced from

genetically modified corn or beets.”⁹ 21 C.F.R. § 184.1033.

27. Recovering citric acid requires numerous chemical reactions with synthetic mineral salts and reagents.

28. First, the filtrate is treated with lime solution or calcium carbonate.

29. This chemical reaction forms tri-calcium citrate tetra hydrate, treated with sulfuric acid in acidolysis reactors.

30. Then, the solution is purified by passing through activated charcoal columns and ion exchangers.

31. Finally, it is evaporated to recover citric acid.

32. A reviewer of this ingredient from the Agricultural Marketing Service (“AMS”) commented that though “[Citric acid] is a natural[ly] occurring substance [, it] commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic.”

33. While most associate vitamin C with oranges, commercially used ascorbic acid is the chemical, synthetic version of vitamin C, obtained not from oranges, but from genetically modified corn. 21 C.F.R. § 182.3013; 7 C.F.R. § 205.605(b)(6) (“Synthetics allowed.”).

34. The glucose from the corn undergoes chemical reactions including

⁹ Nelson, What is Citric Acid, and is it Harmful to Your Health?, Branch Basics, Nov. 11, 2020.

hydrogenation, with synthetic substances, then is converted to sorbitol, before ascorbic acid is made.

35. The FDA has even issued “Warning Letters” to companies that described their foods as “natural,” “100% natural,” and/or “all natural,” when they contained synthetically produced ingredients, like citric acid and/or ascorbic acid.

36. Though the sixth ingredient of “natural flavors” contains the word, “natural,” and is defined as “the essential oil, oleoresin, essence or extractive...which contains the flavoring constituents derived from a [] fruit [or juice],” many have noted how “There is little substantive difference in the chemical compositions of natural and artificial flavors.”¹⁰

37. This is because both are “blends [of] appropriate chemicals together in the right proportions.”¹¹ 21 C.F.R. § 101.22(a)(3) *compare with* 21 C.F.R. § 101.22(a)(1).

38. One Harvard Professor went further, by “unequivocally stat[ed], ‘One thing you can be sure of when you see ‘natural flavor’ on a package is that it is not

¹⁰ Roni Caryn Rabin, Are ‘Natural Flavors’ Really Natural?, New York Times, Feb. 1, 2019.

¹¹ Natasha Longo, [Food Labs Use an Average of 2000 Chemicals to Create 500 ‘Natural Flavors’ You Would Never Suspect are Artificial](#), Waking Times, Aug. 27, 2013.

‘natural.’”¹²

39. While the starting material for a “natural flavor” may include strawberries and kiwis, specialized chemists, called “flavorists,” then isolate, purify, distill, concentrate, and/or synthesize proteins and other components from their cells and tissue.

40. These modern day alchemists use “‘natural’ bioidentical chemicals,” molecularly identical to their synthetic counterparts used in “artificial flavors,” differing in only their source material, to imitate the taste strawberries, kiwis, and other fruits.

41. Beyond the specific molecules which impact taste, “natural flavors” are delivered through a “flavor system,” which can include up to a hundred non-flavor ingredients, comprising roughly eighty percent of its volume, broadly referred to as “adjuvants,” or “non-flavor ingredients.”

42. These include solvents, such as ethyl alcohol, glycerin, or the most used, propylene glycol, a synthetic substance, stabilizers, dispersants, emulsifiers, preservatives, like butylated hydroxyanisole (“BHA”), tocopherols, and citric acid, among numerous others, to deliver, maintain, and/or enhance a flavor’s performance.

¹² Carol Kendig, [Xylitol by Any Other Name Would be as Deadly](#), Northwest Naturals, Mar. 21, 2022.

43. None of these non-flavor ingredients are required to be declared anywhere on a food's label, because they are considered "incidental additive[s] in a food, originating in a [] flavor used in the manufacture of the food." 21 C.F.R. § 101.22(h)(2).

44. Though the eighth and twelfth ingredients of "Fruit and Vegetable Juice For Color...[and] Beta Carotene For Color," are natural, their use in a kiwi and strawberry juice drink is not "natural," because the only types of colors considered "natural" are natural are those "natural to" the food itself. 21 C.F.R. § 70.3(f).

45. While it is possible that the listing of "Fruit [] Juice For Color" could be derived from strawberries and kiwis, this is unlikely because strawberry juice and kiwi juice are separately listed as their own ingredients.

46. Therefore, it would be unnecessary to add these again under the more generic name, "Fruit [] Juice For Color."

47. Based on the Product's description as a "Kiwi Strawberry Fruit Juice Cocktail," the addition of "[] Vegetable Juice For Color" would not be from the food itself, because it makes no representation that it is a vegetable juice product.

48. Beta-carotene is a strongly colored red-orange pigment, found in fruits and vegetables.

49. Natural beta-carotene is obtained from carrots, cantaloupes, oil of palm fruits, sweet potatoes, and pumpkins, among other sources.

50. Since the Product makes no representations that it contains any of these fruits and/or vegetables, the added beta-carotene is not “natural to” the Product, such that its addition for coloring purposes is not “natural,” nor “All Natural.”

51. Unlike the tenth ingredient, gum acacia, which is natural, the eleventh ingredient of ester gum, or glycerol ester of wood rosins (“GEWR”), is synthetic.

52. GEWR is a complex mixture of tri- and diglycerol esters of resin acids from wood rosin.

53. The rosin is obtained by the solvent extraction of aged pine stumps followed by a liquid-liquid solvent refining process, which involves esterifying the rosin with edible glycerol.

54. Consumers of a kiwi and strawberry juice beverage will not expect a “stabilizer” such as the synthetically produced, high density GEWR, nor any stabilizer ingredient, because this is inconsistent with their understanding of the term “natural,” and/or “All Natural.”

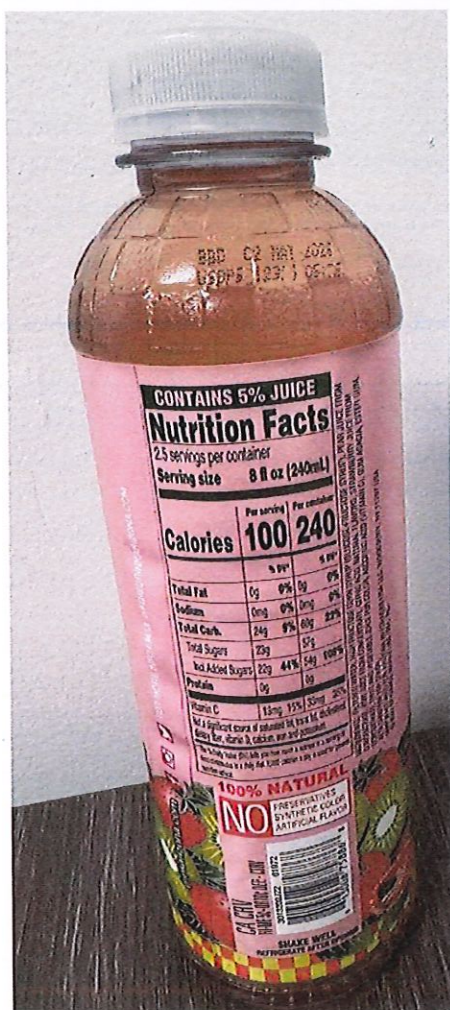
II. MAINLY PEAR JUICE

55. The Product is “adulterated” and misleads consumers, because despite its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, causing purchasers to expect the predominant and/or exclusive juice ingredients were from berries, kiwi juice and strawberry juice, “[the] valuable constituent[s] [of kiwi juice and strawberry juice] ha[ve] been in whole or in part

omitted or abstracted.” AGM § 200(7); 21 U.S.C. § 342(b)(1).

56. This is revealed through the fine print of the ingredient list, on the back of the bottle, listed in order of predominance by weight, showing that the amount of kiwi and strawberry ingredients are negligible, de minimis, and/or significantly less than expected. 21 C.F.R. § 101.4(a).

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INGREDIENTS: FILTERED WATER, HIGH FRUCTOSE CORN SYRUP (GLUCOSE-FRUCTOSE SYRUP), PEAR JUICE FROM CONCENTRATE, KIWI JUICE FROM CONCENTRATE, CITRIC ACID, NATURAL FLAVORS, STRAWBERRY JUICE FROM CONCENTRATE, FRUIT AND VEGETABLE JUICE FOR COLOR, ASCORBIC ACID (VITAMIN C), GUM ACACIA, ESTER GUM, BETA CAROTENE FOR COLOR.

57. The Product is “adulterated” and misleads consumers, because despite its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, causing purchasers to expect the predominant and/or exclusive juice ingredients were kiwi juice and strawberry juice, “[pear juice] has been substituted wholly or in part [] for [kiwi juice and/or strawberry juice].” AGM § 200(8); 21 U.S.C. § 342(b)(2).

58. The Product is “adulterated” and misleads consumers, because despite its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, causing purchasers to expect the predominant and/or exclusive juice ingredients were kiwi juice and strawberry juice, “[pear juice] has been added thereto or mixed or packed therewith so as to increase its bulk or weight.” AGM § 200(10); 21 U.S.C. § 342(b)(4).

59. The use of pear juice as a “base juice” in the juice industry is a common practice, because it costs significantly less than juices from other fruits, such as kiwi juice and/or strawberry juice.

60. The Product is “adulterated” and misleads consumers, because despite its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, causing purchasers to expect the predominant and/or exclusive juice ingredients were kiwi juice and strawberry juice, the “substance [of ‘Natural Flavors’] has been added thereto or mixed or packed therewith so as to...make it

appear better than it is or of greater value than its true value.” AGM § 200(10); 21 U.S.C. § 342(b)(4).

61. The added “Natural Flavors” contributes, enhances, resembles, provides, and/or simulates, the taste of kiwis and/or strawberries, causing consumers to believe what they are consuming is due to a greater amount of kiwi juice and/or strawberry juice.

62. The Product is “misbranded” and mislead consumers, because despite its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, causing purchasers to expect the predominant and/or exclusive juice ingredients were kiwi juice and strawberry juice, or at least that kiwi juice and strawberry juice were present in a relatively significant amount, compared to other fruits, when this was false. AGM § 201(1); 21 U.S.C. § 343(a)(1).

63. The Product is “misbranded” and misleads consumers, because its name, “Kiwi Strawberry Fruit Juice Cocktail,” and pictures of kiwis and strawberries, “fails to reveal facts material in light of such representations,” because in place of an absolute and relatively greater amount of juices from kiwis and/or strawberries, it has substituted pear juice. AGM § 201(1); 21 U.S.C. § 343(a)(1); 15 U.S.C. § 55(a)(1).

64. Substituting pear juice for kiwi juice and strawberry juice, is of material interest to consumers, because (1) juice from berries, such as kiwi juice and

strawberry juice, cost more than pear juice, (2) juice from berries, such as kiwi juice and strawberry juice, contain more, and/or higher quality nutrients than pear juice, (3) juice from berries, such as kiwi juice and strawberry juice, are more appealing and novel ingredients purchasers are seeking out, because they are not used as extensively, as opposed to pear juice, and/or (4) juice from berries, such as kiwi juice and strawberry juice, has a sweeter, tangier, and/or sharper taste, compared to pear juice, which has a relatively bland taste, which is why it is used as a “base juice.”

65. The Product is “misbranded” and misleads consumers, because “Kiwi Strawberry Fruit Juice Cocktail” is not a truthful and non-misleading “statement of identity,” either (1) a specific name required by federal law, or by regulation, (2) a common or usual name established by regulations in Part 102, or (3) an appropriately descriptive term. AGM § 201(9); 21 U.S.C. § 343(i); 21 C.F.R. § 101.3(a); 21 C.F.R. § 101.3(b); 1 N.Y.C.R.R. § 259.1(a).

66. The failure to label juices with a truthful “common or usual name” is the type of conduct which has resulted in a “Warning Letter” from the FDA.

67. For example, one such letter described how a company’s “Sour Cherry Juice [] and Sour Grape Juice [] products [we]re misbranded within the meaning of [] [21 U.S.C. § 343(i)(1)] because the[ir] statement[s] of identity d[id] not bear [] accurate common or usual name[s],” consistent with the requirements of truthful

disclosure, including 21 C.F.R. § 102.33(a).¹³

68. Although labeling mixtures of various juices can be challenging, identical federal and state regulations provide instructions and flexibility, so manufacturers can convey truthful and non-misleading information to consumers. 21 C.F.R. § 102.33.

69. First, while the addition of natural flavors is not required to be part of a juice's name, unless the declared juices alone do not characterize the juice, prior to the addition of the added flavors, the Product's ingredients list "Natural Flavors" ahead of "Strawberry Juice From Concentrate." 21 C.F.R. § 102.33(b).

70. That the Product has a greater amount and/or quantity of "Natural Flavors," compared to one of its declared juices, strawberry juice, means that the strawberry juice is unable to characterize it, before the addition of these added flavors.

71. Based on information and belief, and the investigation of Counsel, based on review of trade literature and/or treatises, added flavorings seldom make up more than two percent of a food or beverage's formulation, by weight or volume, and such allegation is likely to have evidentiary support, following opportunity for discovery.

72. Moreover, natural flavors are highly concentrated solutions, consisting only of aroma and flavor compounds, whereas the juices themselves consist mainly

¹³ FDA [Warning Letter](#) to Shemshad Food Products, Inc., Mar. 11, 2011.

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of water, and compounds which do not affect their flavor.

73. Since one of the declared juices, strawberry juice, is present in a smaller amount than “Natural Flavors,” it would not be possible and/or likely for the Product to get its strawberry taste only from strawberry juice, and such allegation is likely to have evidentiary support, following opportunity for discovery.

74. Upon information and belief, and/or the investigation of Counsel, the “natural flavors” ingredient provides, contributes, and/or enhances the Product’s kiwi and strawberry taste, such that its common or usual name should be (1) “Natural Kiwi Strawberry Flavored Fruit Juice Cocktail,” (2) “Natural Kiwi Strawberry Flavored With Other Natural Flavors Fruit Juice Cocktail,” or (3) “Kiwi Strawberry Flavored With Other Natural Flavors Fruit Juice Cocktail.” 21 C.F.R. § 102.33(b) citing § 101.22(i)(1)(iii).

75. The Product is “misbranded,” and misleads consumers, because since it is a diluted multiple-juice beverage, containing kiwi juice and strawberry juice, named on the label (“represented juices”), and contains pear juice, a juice other than the named juices (“non-represented juice”), its common or usual name is required to indicate that the represented juices are not the only juices present. 21 C.F.R. § 102.33(c).

76. Although it appears the label may intend for the ambiguous “Fruit Juice” statement, which precedes “Cocktail,” to satisfy this requirement of disclosing the

non-represented juice, pear juice, and/or indicate to purchasers the Product contains juice other than the represented juices, “Fruit Juice Cocktail” does not adequately inform purchasers that (1) the non-represented juice, pear juice, is the predominant juice, and/or (2) it contains any juices other than the represented juices, because “Fruit Juice,” without more, merely affirms what consumers reading “Kiwi Strawberry” above it already know, since these are fruit juices.

77. The FDA provides an example of how to inform consumers in a non-deceptive way, such as “apple juice in a blend of two other fruit juices,” with the word “other” sufficient to indicate juices beyond the represented juices. 21 C.F.R. § 102.33(c).

78. The Product is “misbranded,” and misleads consumers, because as a diluted multiple-juice beverage, where kiwi juice and strawberry juice are named on the label, other than in the ingredient statement, but kiwi juice and strawberry juice are not the predominant juices, its common or usual name is required to indicate that the named juices, kiwi juice and strawberry juice, are present as a flavor or flavoring, such as Kiwi and Strawberry Flavored Juice Cocktail. 21 C.F.R. § 102.33(d)(1) (providing examples as “‘Raspcranberry,’ raspberry and cranberry flavored juice drink”).

79. The Product is “misbranded,” and misleads consumers, because Kiwi

Strawberry Fruit Juice Cocktail¹⁴ is required to disclose that all of its component juices, kiwi juice, strawberry juice, and pear juice, are made from concentrate, such that its common or usual name must include a term indicating this fact, such as “from concentrate,” or “reconstituted.” 21 C.F.R. § 102.33(g)(1).

80. A non-misleading common or usual name could be (1) Kiwi Juice From Concentrate and Strawberry Juice From Concentrate, Blended With Pear Juice From Concentrate, or (2) Kiwi Juice in a blend of two other juices (from concentrate). 21 C.F.R. § 102.33(g)(1).

81. As a result of the false and misleading representations, the Product is sold at a premium price, approximately \$1.99 for a twenty ounce bottle, higher than similar products, represented in a non-misleading way, and higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions, when these factors are taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, and/or other similar methods, to evaluate a product’s attributes and/or features.

JURISDICTION

¹⁴ The use of this term for illustrative purposes is not meant as an acknowledgement that “Fruit Juice Cocktail” following “Kiwi Strawberry” is not a misleading and/or unlawful descriptive term, for the reasons identified.

82. Plaintiff Gillus is a resident of New York.

83. The Court has jurisdiction over Defendant because it transacts business within New York and sells the Product to consumers within New York, through its sale and/or distribution from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

84. Defendant transacts business in New York, through the sale of the Product to citizens of New York, from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

85. Defendant has committed tortious acts within this State through the distribution and sale of the Product, which is misleading to consumers in this State.

86. Defendant has committed tortious acts outside this State by labeling, packaging, representing, and/or selling the Product in a manner which causes injury to consumers within this State, by misleading them as to its contents, production practices, type, origins, quantity, amount, and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of conduct to sell the Product to consumers in this State, and/or derives substantial revenue from the sale

of the Product in this State.

87. Defendant has committed tortious acts outside this State by labeling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, ingredients, production practices, type, origins, amount, and/or quality, through causing the Product to be distributed throughout this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

VENUE

88. Venue is in this Court because Plaintiff Gillus' residence is in Kings County.

PARTIES

89. Plaintiff Gillus is a consumer, and resident of Kings County, New York.

90. Defendant Arizona Beverages USA LLC is a New York limited liability company.

91. Plaintiff is like most consumers and looks and/or cannot avoid viewing the front label of foods, to see what he is buying, and to learn basic information about them.

92. Plaintiff is like most consumers, who prefers to buy foods which are natural, contain only or mostly natural ingredients, understood as those which were

free from additives, and/or the use of industrial chemistry.

93. Plaintiff is like most consumers, who believes that foods labeled as natural are better and/or healthier than those not so identified.

94. Plaintiff is like most consumers, who prefer juices based on novel and more interesting ingredients, like kiwis and strawberries, compared to pears.

95. Plaintiff read, saw, and/or relied on the packaging and labeling, including “All Natural,” and/or “Kiwi Strawberry Fruit Juice Cocktail,” with pictures of kiwis and strawberries, to believe the Product (1) did not contain synthetic and/or highly processed ingredients, (2) contained ingredients which either exist in nature or undergo minimal processing, and/or (3) kiwi juice and strawberry juice were the exclusive or predominant juice ingredients, or at least that kiwi juice and strawberry juice were present in a relatively significant amount, compared to other fruits.

96. Plaintiff bought the Product with the labeling and packaging identified here, at or around the above-referenced price.

97. Plaintiff purchased the Product between October 2021 and October 2024, at third-parties, which may include grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, and/or other similar locations, in New York.

98. The Product was worth less than what Plaintiff paid, and/or he would not

have paid as much, absent Defendant's false and misleading statements, and/or omissions.

CLASS ALLEGATIONS

99. Plaintiff is a consumer, not a re-seller or merchant, and seeks to represent other consumers, in the class identified below, against a big business:

All persons in New York who purchased the twenty ounce kiwi strawberry fruit juice cocktail in New York during the statutes of limitations for each cause of action alleged.

100. Plaintiff's claims are based upon New York General Business Law ("GBL") §§ 349 and 350, passed by the legislature to protect unsophisticated consumers, against large and sophisticated commercial entities.

101. Excluded from the Class are (a) Defendant, Defendant's board members, executive-level officers, members, and attorneys, and immediate family members of any of the foregoing persons, (b) governmental entities, (c) the Court, the Court's immediate family, and Court staff and (d) any person that timely and properly excludes himself or herself from the Class.

102. Common questions of issues, law, and fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

103. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair, misleading, and deceptive

representations, omissions, and actions.

104. Plaintiff is an adequate representative because his interests do not conflict with other members.

105. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

106. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

107. The class is sufficiently numerous, with over one hundred members, because the Product has or had been sold throughout the State for several years, with the representations, omissions, packaging, and/or labeling identified here, from third-parties, including grocery stores, big box stores, dollar stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, ethnic food stores, gas station convenience stores, other similar locations, and/or online, to citizens of this State.

108. Plaintiff's Counsel is competent and experienced in complex class action litigation, and intends to protect class members' interests adequately and fairly.

CAUSES OF ACTION

COUNT I

General Business Law ("GBL") §§ 349 and 350

109. To the extent required, this section incorporates by reference other paragraphs, as necessary.

110. The purpose of the GBL is to protect consumers against unfair and deceptive practices.

111. This includes making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

112. The GBL considers false advertising, unfair acts, and deceptive practices in the conduct of any trade or commerce to be unlawful.

113. Violations of the GBL can be based on (1) other laws and standards related to consumer deception, (2) public policy, established through statutes, laws, or regulations, (3) principles of the Federal Trade Commission Act ("FTC Act"), (4) FTC decisions with respect to those principles, (5) any rules promulgated pursuant to the FTC Act, and/or (6) standards of unfairness and deception set forth and interpreted by the FTC or the federal courts relating to the FTC Act. 15 U.S.C. §§ 41, 45, *et seq.*

114. Defendant's false and deceptive representations and omissions with respect to the Product's quantity of contents, level of fill, contents, origins, nutrient values, servings, ingredients, flavoring, type, functionality, and/or quality, are material in that they are likely to influence consumer purchasing decisions.

115. The packaging and labeling of the Product violated the FTC Act, thereby violating the GBL, because the representations, omissions, design, markings, and/or other elements, including "All Natural," and/or "Kiwi Strawberry Fruit Juice

Cocktail,” with pictures of kiwis and strawberries, caused purchasers to expect it (1) did not contain synthetic and/or highly processed ingredients, (2) contained ingredients which either exist in nature or undergo minimal processing, and/or (3) kiwi juice and strawberry juice were the exclusive or predominant juice ingredients, or at least that kiwi juice and strawberry juice were present in a relatively significant amount, compared to other fruits, which was unfair and deceptive to consumers.

116. The packaging and labeling of the Product violates laws, statutes, rules, regulations, and/or norms, which prohibit unfair, deceptive, and/or unconscionable conduct, against the public.

117. The packaging and labeling of the Product violated the GBL, because the representations, omissions, design, markings, and/or other elements, including “All Natural,” and/or “Kiwi Strawberry Fruit Juice Cocktail,” with pictures of kiwis and strawberries, caused purchasers to expect it (1) did not contain synthetic and/or highly processed ingredients, (2) contained ingredients which either exist in nature or undergo minimal processing, and/or (3) kiwi juice and strawberry juice were the exclusive or predominant juice ingredients, or at least that kiwi juice and strawberry juice were present in a relatively significant amount, compared to other fruits, which was contrary to statutes and/or regulations, which prohibit consumer deception by companies in the labeling of food products.

State

Federal

<u>AGM § 200(7)</u>	<u>21 U.S.C. § 342(b)(1)</u>
<u>AGM § 200(8)</u>	<u>21 U.S.C. § 342(b)(2)</u>
<u>AGM § 200(9)</u>	<u>21 U.S.C. § 342(b)(3)</u>
<u>AGM § 200(10)</u>	<u>21 U.S.C. § 342(b)(4)</u>
<u>AGM § 201(1)</u>	<u>21 U.S.C. § 343(a)(1)</u>
<u>AGM § 201(9)</u>	<u>21 U.S.C. § 343(i)</u>
<u>1 N.Y.C.R.R. § 259.1(a)</u>	<u>21 C.F.R. § 102.33</u>

118. Plaintiff believed “All Natural,” and/or “Kiwi Strawberry Fruit Juice Cocktail,” with pictures of kiwis and strawberries, meant the Product (1) did not contain synthetic and/or highly processed ingredients, (2) contained ingredients which either exist in nature or undergo minimal processing, and/or (3) kiwi juice and strawberry juice were the exclusive or predominant juice ingredients, or at least that kiwi juice and strawberry juice were present in a relatively significant amount, compared to other fruits.

119. Plaintiff paid more for the Product, would not have paid as much, and would have paid less, if he knew that it (1) contained synthetic and/or highly processed ingredients, (2) contained ingredients which do not exist in nature, that were subject to more than minimal processing, and/or (3) kiwi juice and strawberry juice were not the exclusive or predominant juice ingredients, nor present in a relatively significant amount, compared to other fruits.

120. Plaintiff seeks to recover for economic injury and/or loss he sustained,

based on the misleading labeling and packaging of the Product, a deceptive practice under the GBL.

121. Plaintiff may produce evidence showing how he and consumers paid more than they would have paid for the Product, relying on Defendant's representations, omissions, packaging, and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, and/or other advanced methodologies.

122. This means individual damages will be based on the value attributed to the challenged claims and/or omissions, a percentage of the total price paid.

123. As a result of Defendant's misrepresentations and omissions, Plaintiff was injured and suffered damages, by payment of a price premium for the Product, which is the difference between what he paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much it would have been sold for without the misleading labeling, packaging, representations, statements, omissions, and/or marketing, identified here.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative, and the undersigned as Counsel for the class;

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2. Awarding monetary damages and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: November 15, 2024

Respectfully submitted,

/s/ Spencer Sheehan

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Lead Counsel for Plaintiff

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