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SUPERIOR COURT OF CALIFORNIA
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County of Tehama
Kevin Harrigan, Clerk of the Court
Patience Westphal

By _____, Deputy

FILED

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TEHAMA
UNLIMITED JURISDICTION**

MELISSA FURMAN, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

ARIZONA BEVERAGES USA, LLC

Defendant.

Case No. 25CI-000110

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.*)

Jury Trial Demanded

(Amount to Exceed \$35,000)

1 Now comes the Plaintiff, MELISSA FURMAN ("Plaintiff"), individually and on behalf
2 of all others similarly situated, by and through her attorneys, and for his class action Complaint
3 against the Defendant, ARIZONA BEVERAGES USA LLC ("Defendant"), Plaintiff alleges and
states as follows:

4 **PRELIMINARY STATEMENTS**

5 1. This is an action for damages, injunctive relief, and any other available legal or
6 equitable remedies, for violations of Unfair Competition Law (Cal. Business & Professions Code
7 §§ 17500 *et seq.*, and Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et*
8 *seq* resulting from the illegal actions of Defendant, in advertising and labeling its products as
9 containing "no preservatives" when the products contain citric acid and ascorbic acid. Plaintiffs
10 allege as follows upon personal knowledge as to themselves and their own acts and experiences,
11 and, as to all other matters, upon information and belief, including investigation conducted by
their attorneys.

12 **JURISDICTION AND VENUE**

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

15 3. This court has personal jurisdiction over Defendant, because Defendant does
16 business within the State of California and County of Tehama

17 4. Venue is proper in this Court because Defendant does business *inter alia* in the
18 county of Tehama and a significant portion of the conduct giving rise to Plaintiff's Claims
happened here.

19 **PARTIES**

20 5. Plaintiff Melissa Furman is an individual who was at all relevant times residing in
21 Tehama County, California.

22 6. Defendant is a Delaware limited liability company headquartered in New York,
New York.

23 7. At all times relevant hereto, Defendant was engaged in the manufacturing,
24 marketing, and sale of desserts.

25 **FACTS COMMON TO ALL COUNTS**

26 8. Defendant manufactures, advertises, markets, sells, and distributes products
27 throughout California and the United States under brand name Arizona.
28

1 9. During the Class Period Defendant labeled its Arizona brand Fruit Snacks (the
2 "Products") as containing "no preservatives" when they contain citric acid and ascorbic acid.

3 10. Citric acid acts as a preservative when added to food products, including the
4 Products at issue. The FDA has listed citric acid as a preservative in its "Overview of Food
5 Ingredients, Additives and Colors".¹

6 11. The United States Food and Drug Administration ("FDA") defines the term
7 chemical preservative as: "any chemical that, when added to food, tends to prevent or retard
8 deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted
9 from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals
10 applied for their insecticidal or herbicidal properties." 21 C.F.R. § 101.22.

11 12. Ascorbic acid is a preservative in foods or food ingredients. Examples include
12 preventing oxidative browning of cut fruit, scavenging oxygen in beer, fruit, or vegetable
13 products.²

14 13. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express,
15 Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and
16 Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and
17 Cosmetics Act because they "contain the *chemical preservatives ascorbic acid and citric acid* but
18 their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R. [§]
19 101.22" (emphasis added).³

20 14. The Agricultural Marketing Service of the United States Department of
21 Agriculture ("USDA") has also recognized the use of citric acid as a preservative stating that
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23

24 ¹ Overview of Food Ingredients, Additives & Colors, FOOD AND DRUG
25 ADMINISTRATION, available at
26 [https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-](https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors)
27 [packaging/overview-food-ingredients-additives-colors](https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors)

28 ² J. C. Bauernfeind, *Ascorbic Acid Technology in Agricultural, Pharmaceutical, Food, and Industrial Applications*, American Chemical Society, Gainesville, 1982, vol. 200; J. B. Gurtler and T. L. Mai, in *Encyclopedia of Food Microbiology: Second Edition*, Elsevier Inc., 2014, pp. 119–130.

³ See **Exhibit A** attached hereto.

1 “Citric acid has a wide variety of uses, some of which can provide preservative functions,
2 primarily though lowering the pH of the food.”⁴

3 15. The USDA’s Food Safety Inspection Service’s “Guideline for Label Approval”
4 states that “[s]ome common chemical preservatives include BHA, BHT, calcium propionate, citric
5 acid, natamycin and sodium propionate.”⁵

6 16. On or about February 11, 2025, Plaintiff purchased one of the Products from a
7 Walmart located in Tehama county, California.

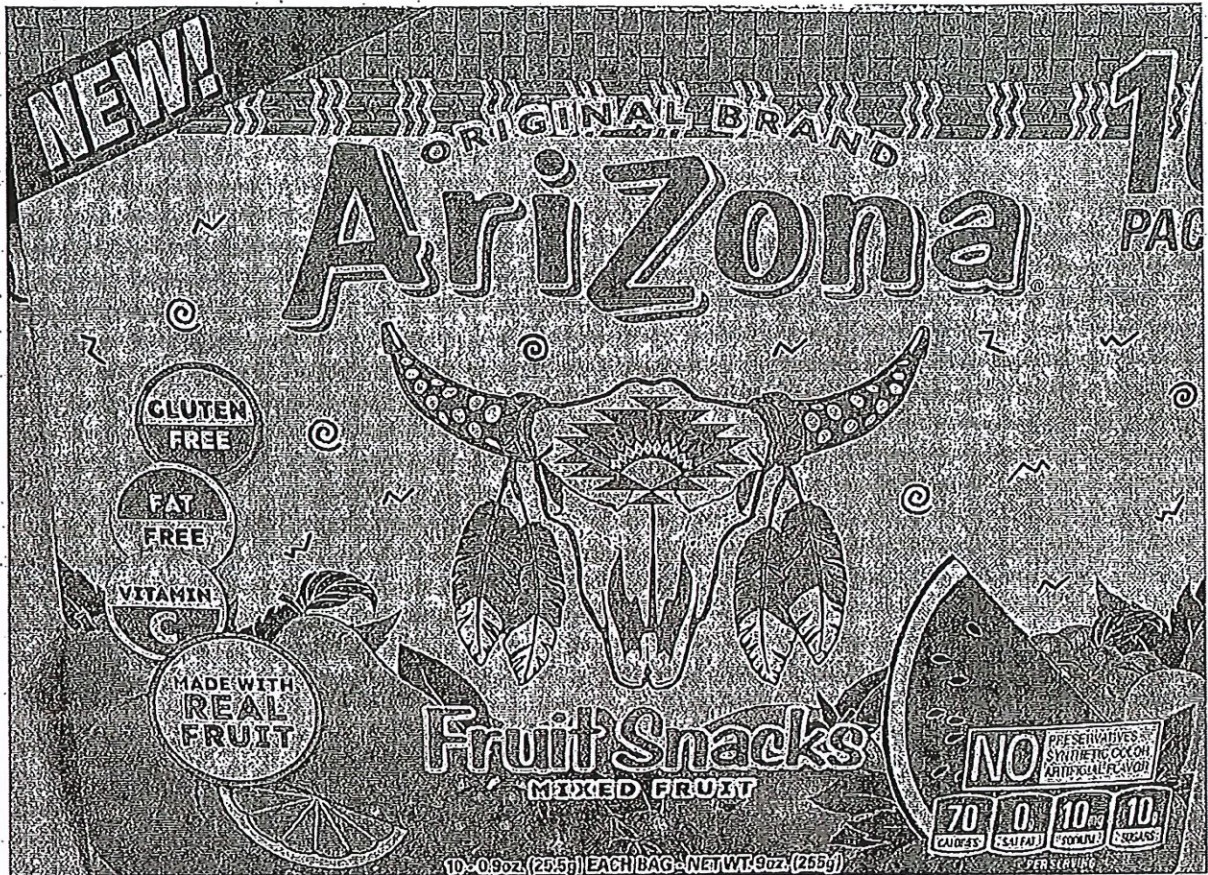
8 17. When purchasing the Products Plaintiff made her purchasing decision because of
9 the labeling on the Product that read “no preservatives”.

10 18. Persons, like Plaintiff herein, have an interest in purchasing products that do not
11 contain false and misleading claims.

12 19. The following photos include examples of the Products’ packaging including the
13 relevant labeling:

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26 ⁴ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at
<https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

27 ⁵ FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF AGRICULTURE,
28 available at https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf



20. Plaintiff has been deprived of her legally-protected interest to obtain true and accurate information about the consumer products she buys as required by California Law.

21. As a result, Plaintiffs and the class members have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products would not contain preservatives.

22. Plaintiffs and the Class Members expected to receive the benefit of avoiding the negative potential effects of consuming preservatives, however they have been deprived of that benefit because the Products contain citric acid.

23. Alternatively, Plaintiffs would not have purchased the Products in lieu of other similar Products without Defendant's misleading "no preservatives" label.

24. Plaintiffs and the Class Members paid a price premium to receive premium products that did not contain preservatives, instead Plaintiffs received non-premium products containing preservatives.

25. Plaintiff did not understand that the Products contained preservatives when she purchased them.

1 26. Furthermore, due to Defendant's intentional, deceitful practice of labeling the
2 Products as containing "no preservatives", Plaintiff could not have known that the Products
3 contained preservatives.

4 27. By making false and misleading claims about the qualities of the Products,
5 Defendant impaired Plaintiffs' ability to choose the type and quality of the Products they chose
6 to buy.

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

9 29. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should have known
10 that the Products included preservatives, and that Plaintiff, the Class, and Sub-Class members
11 would not be able to tell the Products contained preservatives unless Defendant expressly told
12 them, as required by law.

13 30. Plaintiffs regularly visit stores where the Products are sold and will likely be
14 exposed to Defendant's "no preservatives" labeling in the future. However, unless Defendant is
15 forced to correct the fraudulent labeling or remove the preservatives, Plaintiff will be unable to
16 determine if Defendant's "no preservatives" label accurately reflects the true contents of the
17 Products.

18 31. Plaintiffs believe that products without preservatives are superior in quality to
19 products that contain preservatives, and desires to purchase Products that do not contain
20 preservatives as Defendant advertised the Products to be.

21 32. Plaintiff may purchase the Products again in the future, and as a result they will be
22 harmed if Defendant is not forced to correct the fraudulent labeling or remove the preservatives.

23 33. As a result of Defendants' acts and omissions outlined above, Plaintiff has suffered
24 concrete and particularized injuries and harm, which include, but are not limited to, the following:

- 25 a. Lost money;
26 b. Wasting Plaintiff's time; and
27 c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of
28 confidence in product labeling.

CLASS ALLEGATIONS

29 34. Plaintiff brings this action on behalf of herself and all others similarly situated, as
30 members of the proposed class (the "Class"), defined as follows:

1 All persons within the United States who purchased the Products
2 within four years prior to the filing of the Complaint through to the
date of class certification.

3 35. Plaintiff also brings this action on behalf of herself and all others similarly situated,
4 as a member of the proposed California sub-class (the "Sub-Class"), defined as follows:

5 All persons within California who purchased the Products within
6 four years prior to the filing of the Complaint through to the date of
class certification.

7 36. Defendant, their employees and agents are excluded from the Class and Sub-Class.
8 Plaintiff does not know the number of members in the Class and Sub-Class, but believe the
9 members number in the thousands, if not more. Thus, this matter should be certified as a Class
10 Action to assist in the expeditious litigation of the matter.

11 37. The Class and Sub-Class are so numerous that the individual joinder of all of their
12 members is impractical. While the exact number and identities of their members are unknown to
13 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
14 informed and believes and thereon alleges that the Class and Sub-Class include thousands, if not
15 millions of members. Plaintiff alleges that the class members may be ascertained by the records
maintained by Defendant.

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

20 39. There are questions of law and fact common to the Class and Sub-Class affecting
21 the parties to be represented. The questions of law and fact common to the Class and Sub-Class
22 predominate over questions which may affect individual class members and include, but are not
necessarily limited to, the following:

- 23 a. Whether the Defendant intentionally, negligently, or recklessly
24 disseminated false and misleading information by labeling the Products as
25 containing "no preservatives" when the Products contain citric acid and
26 ascorbic acid;
- 27 b. Whether the Class and Sub-Class members were informed that the
28 Products contained citric acid and ascorbic acid;

- c. Whether the Products contained citric acid and ascorbic acid;
- d. Whether Plaintiff, the class, and sub-class members understood that citric acid and ascorbic acid are preservatives when they bought the Products;
- e. Whether Defendant's conduct was unfair and deceptive;
- f. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
- g. Whether the inclusion of citric acid and ascorbic acid in the Products is a material fact;
- h. Whether there should be a tolling of the statute of limitations; and
- i. Whether the Class and Sub-Class are entitled to restitution, actual damages, punitive damages, and attorney fees and costs.

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

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

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

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

44. The prosecution of separate actions by individual members of the Class and Sub-Class would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other class members not parties to such adjudications or that

1 would substantially impair or impede the ability of such non-party class members to protect their
2 interests.

3 45. Defendants have acted or refused to act in respect generally applicable to the Class
4 and Sub-Class thereby making appropriate final and injunctive relief with regard to the members
5 of the Class and Sub-Class as a whole.

6 46. The size and definition of the Class and Sub-Class can be identified through
7 records held by retailers carrying and reselling the Products, and by Defendant's own records.

8 **COUNT I**
9 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING ACT**
10 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**
11 **On behalf of the Class and the Sub-Class**

12 47. Plaintiff incorporates by reference each allegation set forth above in paragraphs
13 1 through 46.

14 48. Pursuant to California Business and Professions Code section 17500, *et seq.*, it
15 is unlawful to engage in advertising "which is untrue or misleading, and which is known, or
16 which by the exercise of reasonable care should be known, to be untrue or misleading...or...to
17 so make or disseminate or cause to be so made or disseminated any such statement as part of a
18 plan or scheme with the intent not to sell that personal property or those services, professional
19 or otherwise, so advertised at the price stated therein, or as so advertised."

20 49. California Business and Professions Code section 17500, *et seq.*'s prohibition
21 against false advertising extends to the use of false or misleading written statements.

22 50. Defendant misled consumers by making misrepresentations and untrue
23 statements about the Class Products, namely, Defendant sold the Products with labeling
24 claiming the Products contained "no preservatives" and made false representations to Plaintiff
25 and other putative class members in order to solicit these transactions.

26 51. Specifically, Defendant claimed the Products "no preservatives" when the
27 Products contained citric acid and ascorbic acid.

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

53. As a direct and proximate result of Defendant's misleading and false advertising,
Plaintiff and the other Class Members have suffered injury in fact and have lost money or
property. Plaintiff reasonably relied upon Defendant's fraudulent statements regarding the

Products, namely that they did not know the Products contained preservatives. In reasonable reliance on Defendant's omissions of material fact and false advertisements, Plaintiff and other Class and Sub-Class Members purchased the Products. In turn Plaintiff and other Class Members ended up with products that turned out to actually be different than advertised, and therefore Plaintiff and other Class Members have suffered injury in fact.

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

55. Defendant advertised to Plaintiff and other putative class members, through written representations and omissions made by Defendant and its employees, that the Class Products contain "no preservatives"

56. Defendant knew that the Class Products did in fact contain citric acid and ascorbic acid.

57. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative class members that contained citric acid and ascorbic acid and were not as advertised.

58. The misleading and false advertising described herein presents a continuing threat to Plaintiff and the Class and Sub-Class Members in that Defendant persists and continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant to cease their false advertising, as well as disgorgement and restitution to Plaintiff and all Class Members Defendant's revenues associated with their false advertising, or such portion of those revenues as the Court may find equitable.

COUNT II
VIOLATIONS OF UNFAIR BUSINESS PRACTICES ACT
(Cal. Bus. & Prof. Code §§ 17200 et seq.)
On behalf of the Class and Sub-Class

59. Plaintiff incorporates by reference each allegation set forth above in paragraphs 1 through 46.

60. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendant's business practices and the

1 alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause
2 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
3 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
4 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

UNFAIR

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

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

16 63. Here, Defendant's conduct has caused and continues to cause substantial injury
17 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury
18 in fact due to Defendant's decision to sell them fraudulently labeled products (Class Products).
19 Thus, Defendant's conduct has caused substantial injury to Plaintiff and the members of the
Class and Sub-Class.

20 64. Moreover, Defendant's conduct as alleged herein solely benefits Defendant
21 while providing no benefit of any kind to any consumer. Such deception utilized by Defendant
22 convinced Plaintiff and members of the Class that the Class Products contained "no
23 preservatives" in order to induce them to spend money on said Class Products. In fact, knowing
24 that Class Products, by their objective terms contained citric acid and ascorbic acid, unfairly
25 profited from their sale, in that Defendant knew that the expected benefit that Plaintiff would
26 receive from this feature is nonexistent, when this is typically never the case in situations
27 involving consumer products. Thus, the injury suffered by Plaintiff and the members of the
28 Class and Sub-Class is not outweighed by any countervailing benefits to consumers.

1 65. Finally, the injury suffered by Plaintiff and members of the Class and California
2 Sub-Class is not an injury that these consumers could reasonably have avoided. After
3 Defendant, fraudulently labeled the Class Products as containing “no preservatives” the
4 Plaintiff, Class members, and Sub-Class Members suffered injury in fact due to Defendant’s
5 sale of Class Products to them. Defendant failed to take reasonable steps to inform Plaintiff and
6 Class and Sub-Class members that the Class Products contained citric acid and are not as
7 advertised as a result. As such, Defendant took advantage of Defendant’s position of perceived
8 power in order to deceive Plaintiff and the Class members to purchase the products. Therefore,
9 the injury suffered by Plaintiff and members of the Class is not an injury which these consumers
10 could reasonably have avoided.

11 66. Thus, Defendant’s conduct has violated the “unfair” prong of California Business
12 & Professions Code § 17200.

13 **FRAUDULENT**

14 67. California Business & Professions Code § 17200 prohibits any “fraudulent ...
15 business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a
16 consumer must allege that the fraudulent business practice was likely to deceive members of
17 the public.

18 68. The test for “fraud” as contemplated by California Business and Professions
19 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
20 17200 violation can be established even if no one was actually deceived, relied upon the
21 fraudulent practice, or sustained any damage.

22 69. Here, not only were Plaintiff and the Class and Sub-Class members likely to be
23 deceived, but these consumers were actually deceived by Defendant. Such deception is
24 evidenced by the fact that Plaintiff agreed to purchase Class Products at a price premium even
25 though the Products contained citric acid. Plaintiff’s reliance upon Defendant’s deceptive
26 statements is reasonable due to the unequal bargaining powers of Defendant and Plaintiff. For
27 the same reason, it is likely that Defendant’s fraudulent business practice would deceive other
28 members of the public.

 70. As explained above, Defendant deceived Plaintiff and other Class Members by
labeling the Products containing “no preservatives” when in fact the Products contain citric
acid and ascorbic acid.

71. Thus, Defendant's conduct has violated the "fraudulent" prong of California Business & Professions Code § 17200.

UNLAWFUL

72. California Business and Professions Code Section 17200, et seq. prohibits “any unlawful...business act or practice.”

73. As explained above, Defendant deceived Plaintiff and other Class Members by labeling the Products as containing “no preservatives” when in fact the Products contain citric acid.

74. Defendant used false advertising, marketing, and misrepresentations to induce Plaintiff and Class and Sub-Class Members to purchase the Class Products, in violation of California Business and Professions Code Section 17500, et seq.

75. Had Defendant not falsely advertised, marketed or misrepresented the Class Products, Plaintiff and Class Members would not have purchased the Class Products. Defendant's conduct therefore caused and continues to cause economic harm to Plaintiff and Class Members. These representations by Defendant are therefore an "unlawful" business practice or act under Business and Professions Code Section 17200 *et seq.*

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

MISCELLANEOUS

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

REQUEST FOR JURY TRIAL

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

PRAYER FOR RELIEF

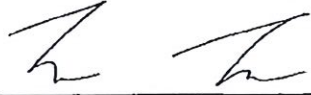
Plaintiff, on behalf of himself and the Class and Sub-Class, requests the following relief:

- 1 (a) An order certifying the Class and Sub-Class and appointing Plaintiff as
2 Representative of the Class and Sub-Class;
- 3 (b) An order certifying the undersigned counsel as Class and Sub-Class
4 Counsel;
- 5 (c) An order requiring Defendant to engage in corrective advertising
6 regarding the conduct discussed above;
- 7 (d) Actual damages suffered by Plaintiff and Class and Sub-Class Members
8 as applicable or full restitution of all funds acquired from Plaintiff and
9 Class and Sub-Class Members from the sale of misbranded Class
10 Products during the relevant class period;
- 11 (e) Punitive damages, as allowable, in an amount determined by the Court or
12 jury;
- 13 (f) Any and all statutory enhanced damages;
- 14 (g) All reasonable and necessary attorneys' fees and costs provided by
15 statute, common law or the Court's inherent power;
- 16 (h) Pre- and post-judgment interest; and
- 17 (i) All other relief, general or special, legal and equitable, to which Plaintiff
18 and Class and Sub-Class Members may be justly entitled as deemed by
19 the Court.

20
21 Dated: May 2, 2025

Respectfully submitted,

22 LAW OFFICES OF TODD M. FRIEDMAN, PC

23
24
25 By: 
26 TODD M. FRIEDMAN, Esq.
27 Attorney for Plaintiff
28