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10 **UNITED STATES DISTRICT COURT**
 11 **EASTERN DISTRICT OF CALIFORNIA**

13 DARLENE HARRIS, ANNEMARIE
 14 NEWBOLD, and STEPHANIE
 ESCOBAR, individually and on behalf
 15 of all others similarly situated,

16 Plaintiffs,

17 vs.

18 SNAPPLE BEVERAGE CORP. and
 19 KEURIG DR. PEPPER INC.,

20 Defendants.

Case No.

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et. seq.*
4. UNJUST ENRICHMENT
5. BREACH OF EXPRESS WARRANTY

DEMAND FOR JURY TRIAL

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1 Plaintiffs Darlene Harris, Stephanie Escobar, and Annemarie Newbold,
2 (“Plaintiffs”), individually and on behalf of all other similarly situated purchasers (the
3 “Class”), bring this class action lawsuit against Snapple Beverage Corp. and Keurig
4 Dr. Pepper Inc. (collectively referred to herein as “Defendants”), and allege as
5 follows:

6 **INTRODUCTION**

7 1. Defendants peddle Snapple beverage products, including their Apple,
8 Watermelon Lemonade, Kiwi Strawberry, Mango Madness, Orangeade, Raspberry
9 Peach, Strawberry Pineapple Lemonade, Lemonade, and Pink Lemonade (the
10 “Products”) as “All Natural.” In reality, and unbeknownst to consumers who rely on
11 Defendants’ name and reputation, the Products contain added coloring, rendering the
12 “All Natural” labels false, misleading, and deceptive. True and correct representations
13 of the Products’ front labels are set forth below:



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1 2. Plaintiffs bring this class action lawsuit on behalf of all purchasers of the
2 Products within the United States, or alternatively, within the State of California,
3 during the last four years.

4 3. Plaintiffs bring this class action against Defendants, who are among the
5 United States' leading producers of beverage products. Defendants have realized that,
6 based on the public's concern about natural and healthy foods, there is a financial
7 benefit to be derived in selling products claiming to be natural. Accordingly,
8 Defendants label their Products as "All Natural," even though the Products contain
9 added color in violation of California and federal advertising laws.

10 4. Plaintiffs seek to secure injunctive relief and restitution for the Class
11 against Defendants for false and misleading advertising in violation of California's
12 Business & Professions Code section 17200, *et seq.*, Business & Professions Code
13 section 17500, *et seq.*, and the Consumers Legal Remedies Act Civil Code section
14 1750, *et seq.* Defendants made and continue to make false and misleading statements
15 in their advertising of the Products. Specifically, Defendants label the Products as
16 "All Natural" and market them as such, even though the Products contain coloring
17 additives that are not expected to be found in natural fruit drinks.

18 5. By letter dated December 8, 2020, Plaintiffs advised Defendants of their
19 false and misleading claims pursuant to California Civil Code Section 1782(a).
20 Plaintiff has provided Defendant with notice of its violations of the CLRA pursuant
21 to Civil Code section 1782(a).

22 **PARTIES**

23 6. Plaintiffs are, and at all times relevant hereto were, citizens of the United
24 States.

25 7. **Plaintiff Darlene Harris** is a citizen of California, residing in
26 Sacramento. Plaintiff Darlene Harris purchased the All Natural Kiwi-Strawberry
27 Lemonade and the All Natural Mango Madness most frequently from a Walgreens
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1 store in Sacramento, California, but also at other grocery or convenient stores in
2 Sacramento, California, and bay area in late 2020, and early 2021.

3 8. **Plaintiff Stephanie Escobar** is a citizen of California. Plaintiff Stephanie
4 Escobar purchased the All Natural Snapple Apple from a Ralphs store in Culver City,
5 California in 2019.

6 9. **Plaintiff Annemarie Newbold** is a citizen of Kentucky. Plaintiff
7 Annemarie Newbold purchased the All Natural Snapple Apple from a Target store in
8 Louisville, Kentucky in 2019.

9 10. In making their purchases, Plaintiffs relied upon Defendants' labeling and
10 advertising claims, namely, the "All Natural" label clearly printed on the front of the
11 bottles. These claims were prepared and approved by Defendants and their agents and
12 disseminated statewide and nationwide, to encourage consumers to purchase the
13 Products. If Plaintiffs had known that the Products were not completely natural, they
14 would not have purchased the Products.

15 11. Keurig Dr. Pepper Inc. is a corporation headquartered in Plano, Texas.
16 Keurig Dr. Pepper Inc. maintains its principal business office at 5301 Legacy Dr.
17 Plano, Texas 75024. Keurig Dr. Pepper Inc., directly and through its agents, has
18 substantial contacts with and receives substantial benefits and income from and
19 through the State of California. Keurig Dr Pepper Inc. is one of the owners,
20 manufacturers, and distributors of the Products, and is one of the companies that
21 created and/or authorized the false, misleading, and deceptive packaging of the
22 Products.

23 12. Snapple Beverage Corp. is a corporation headquartered in Plano, Texas.
24 Snapple Beverage Corp. maintains its principal business office at 5301 Legacy Dr.
25 Plano, Texas 75024. Snapple Beverage Corp., directly and through its agents, has
26 substantial contacts with and receives substantial benefits and income from and
27 through the State of California. Snapple Beverage Corp. is one of the owners,
28

1 manufacturers, and distributors of the Products, and is one of the companies that
2 created and/or authorized the false, misleading, and deceptive packaging of the
3 Products.

4 **JURISDICTION AND VENUE**

5 13. This Court has subject matter jurisdiction of this action pursuant to 28
6 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are
7 100 or more class members, (ii) there is an aggregate amount in controversy
8 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal
9 diversity because at least one Plaintiff and Defendants are citizens of different states.
10 The Court has supplemental jurisdiction over any state law claims pursuant to 28
11 U.S.C. Section 1367.

12 14. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this
13 action because a substantial part of the events, omissions, and acts giving rise to the
14 claims herein occurred in this District: Plaintiff Darlene Harris is a citizen of
15 California who resides in this District; Defendants made the challenged false
16 representations to Plaintiff Harris and many other California consumers in this
17 District; Ms. Harris purchased the Products and consumed the Products within this
18 District, and thus, was injured in this District. Moreover, Defendants receive
19 substantial compensation from sales in this District, and Defendants made numerous
20 misrepresentations which had a substantial effect in this District involving their
21 labeling and advertising representations.

22 15. Defendants are subject to personal jurisdiction in California based upon
23 sufficient minimum contacts which exist between Defendants and California.
24 Defendants are authorized to do and are doing business in California.

25 **FACTUAL ALLEGATIONS**

26 16. Defendants label and advertise their Products as “All Natural.” In reality,
27 the Products are not “All Natural” because they contain added color. The specific
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1 food coloring agents in the Products are “vegetable and fruit juice concentrates,”
2 “vegetable juice concentrates,” “fruit juice concentrates,” and/or “beta carotene.”

3 17. The Food and Drug Administration (“FDA”) does not regard foods with
4 added coloring as natural, no matter the source of the coloring agent. According to
5 their guidelines, they “have considered ‘natural’ to mean that nothing artificial or
6 synthetic (including colors regardless of source) is included in, or has been added to,
7 the product that would not normally be expected to be there (56 FR 60421 at
8 60466).”¹

9 18. On November 10, 2015, in response to citizen petitions and consumer
10 requests, the FDA announced the establishment of a docket to receive information
11 and comments on the use of the term “natural” in the labeling of human food products
12 to determine whether a definition of “natural” should be established.

13 19. Among the 7,687 public comments received by the FDA, not one
14 comment from the public stated that “natural” should be allowed in food labeling if
15 color is added to a food; rather, hundreds of comments stated “natural” should only
16 be used for foods which are free from added coloring. Some representative examples
17 include:

18 a. “When I see the word ‘Natural’ on packaging, I expect the contents
19 to have only ingredients as they are found in nature. No chemicals, no coloring, no
20 flavoring, no GMO’s.” (Comment from Kristine Milochik. Posted 02/23/2016)

21 b. “I think the term ‘Natural’ should be banned from food labeling. It
22 is too ambiguous! It should be removed from all descriptors, including: Natural
23 Flavor, Natural colors, All Natural and so on. I think for the interest of transparency
24 all food ingredients should be simply labeled. The consumer has the right to know
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26 _____
27 ¹ Leslie Kux, *FDA Rulemaking Re Term Natural*, 12 November 2015.
28 <https://www.federalregister.gov/documents/2015/11/12/2015-28779/use-of-the-term-natural-in-the-labeling-of-human-food-products-request-for-information-and-comments>. (Last visited February 10, 2021).

1 what they are eating or drinking.” (Comment from Daniel Kinkelaar. Posted
2 08/26/2016)

3 c. “I firmly believe that consumers should be made aware of what
4 they are purchasing when shopping for food and too many times companies are
5 fooling the public by using the word ‘Natural’ when in fact it is not. When I see the
6 word Natural on a food product, I consider this to mean that it is free from all
7 additives, GMOs, Preservatives, Drugs, or colors. It is in it’s natural state. I would
8 like to see the FDA put more stringent requirements on companies who wish to use
9 this term in their products.” (Comment from Artemis Hader. Posted on 02/18/2016)

10 d. “The term ‘Natural’ should only appear on foods that are organic
11 without any preservatives or man-made chemicals. The food should be GMO-free and
12 contain no added colors, flavors, or synthetic substances. If a food product fails to
13 meet any of these requirements, then it should not be allowed to have the label
14 ‘Natural’ on it.” (Comment from Sara Burr. Posted on 03/16/2016)

15 e. “Natural should indeed mean no preservatives, additives, GMO's
16 and or flavor or color enhancers...” (Comment from Roy Collicutt. Posted on
17 03/15/2016)

18 20. To date, the FDA has not announced its decision to further define or
19 regulate the term “natural” in food labeling.

20 21. The “All Natural” label is prominently and conspicuously printed on the
21 front of the Products. But the added coloring agents in the Products render the “All
22 Natural” label claims false. The added coloring agents, regardless of their source, are
23 not ingredients consumers would normally expect to be included products that are
24 labeled as “All Natural.”

25 22. There are market incentives for companies to label their products as
26 “natural.” According to a national representative survey, more than half of consumers
27 look for products with a “natural” food label, often under “the false belief that they’re
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1 produced without...artificial ingredients.”² As stated *supra*, the FDA considers
2 “natural” to be defined as a product that includes nothing artificial “including colors
3 *regardless of source*” [emphasis added].³ The process by which naturally-sourced
4 food coloring is added to products alters their status and renders them as no longer
5 “natural.” Therefore, the reasonable consumer will pay a price premium for products
6 with an “All Natural” label because they believe these products are safer, more
7 nutritious, or otherwise have different attributes than products that do not have the
8 label, all things being equal. Thus, these market forces push producers, like
9 Defendants, to deceptively label their products as “All Natural” to give themselves a
10 market advantage.

11 23. Reasonable consumers do not expect a product prominently labeled as
12 “All Natural” to have added coloring. The Products’ labels have the “capacity,
13 likelihood, or tendency to deceive or confuse the public” into believing that they are
14 fully natural and are truthfully labeled. *Williams v. Gerber Prods. Co.*, 552 F.3d 934,
15 938 (9th Cir. 2008) (citing *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002) and *Leoni*
16 *v. State Bar*, 39 Cal. 3d 609, 626 (1985)) (The California Supreme Court has
17 recognized “that [consumer protection] laws prohibit ‘not only advertising which is
18 false, but also advertising which, although true, is either actually misleading or which
19 has a capacity, likelihood or tendency to deceive or confuse the public.’”).

20 24. Plaintiffs and other consumers purchased the Products due to their belief
21 that the Products are safer, more nutritious, or otherwise have different attributes than
22 do products that do not have the “All Natural” label.

23 25. Plaintiffs and the Class made their purchasing decisions in reliance upon
24 Defendants’ advertised claims that that Products are “All Natural.”

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26 _____
27 ² Andrea Rock, “Peeling Back the ‘Natural’ Food Label.” *Consumer Reports*, 27
28 January 2016. <https://www.consumerreports.org/food-safety/peeling-back-the-natural-food-label/> (Last visited February 10, 2021).

³ See Leslie Kux, *supra* note 1.

1 26. Plaintiffs reasonably and detrimentally relied upon the Products’ front
2 labels indicating that the Products are “All Natural.”

3 27. Plaintiffs would not have purchased the Products had they known that the
4 Products contained ingredients that were added for coloring, thus rendering the
5 Products no longer “All Natural.”

6 28. Defendants’ conduct threatens California consumers by using false,
7 deceptive, and misleading labels. Defendants’ conduct also threatens other
8 companies, large and small, who “play by the rules.” Defendants’ conduct stifles
9 competition, has a negative impact on the marketplace, and reduces consumer choice.

10 29. There is no practical reason for the false or misleading labeling and
11 advertising of the Products, other than to mislead consumers as to the actual
12 ingredients of the Products being purchased by consumers while simultaneously
13 providing Defendants with a financial windfall as a result of money saved from lower
14 supply costs.

15 30. Plaintiffs make the allegations herein upon personal knowledge as to
16 themselves and their own acts and experiences, and as to all other matters, upon
17 information and belief, including investigation conducted by their attorneys.

18 **CLASS ALLEGATIONS**

19 31. Plaintiffs bring this action on their own behalf and on behalf of all other
20 persons similarly situated. The Class which Plaintiffs seek to represent comprises:

21 All persons who purchased the Products in the United States for
22 personal consumption and not for resale during the time period of four
23 years prior to the filing of the complaint through the present.

24 **California Subclass:**

25 All persons who purchased the Products in the State of California, for
26 personal consumption and not for resale during the time period of four
27 years prior to the filing of the complaint through the present.

28 **Kentucky Subclass:**

All persons who purchased the Products in the State of Kentucky, for

1 personal consumption and not for resale during the time period of four
2 years prior to the filing of the complaint through the present.

3 Said definition may be further defined or amended by additional pleadings,
4 evidentiary hearings, a class certification hearing, and orders of this Court.

5 32. The Class (and each Subclass) is so numerous that their individual joinder
6 is impractical. Plaintiffs believe that the Class and each Subclass consists of hundreds
7 of thousands of individuals.

8 33. There is a well-defined community of interest in the questions of law and
9 fact involved affecting the parties to be represented. The questions of law and fact
10 common to the Class predominate over questions which may affect individual Class
11 members. Common questions of law and fact include, but are not limited to, the
12 following:

13 a. Whether Defendants' conduct constitutes an unfair method of
14 competition, or unfair or deceptive act or practice, in violation of Civil Code section
15 1750, *et seq.*;

16 b. Whether Defendants used deceptive representations in connection
17 with the sale of the Products in violation of Civil Code section 1750, *et seq.*;

18 c. Whether Defendants represented the Products as having
19 characteristics or qualities that they do not have in violation of Civil Code section
20 1750, *et seq.*;

21 d. Whether Defendants advertised the Products with intent not to sell
22 them as advertised in violation of Civil Code section 1750, *et seq.*;

23 e. Whether Defendants' labeling and advertising of the Products are
24 untrue or misleading in violation of Business and Professions Code section 17500, *et*
25 *seq.*;

26 f. Whether Defendants knew or by the exercise of reasonable care
27 should have known their labeling and advertising was and is untrue or misleading in
28 violation of Business and Professions Code section 17500, *et seq.*;

1 g. Whether Defendants’ conduct is an unfair business practice within
2 the meaning of Business and Professions Code section 17200, *et seq.*;

3 h. Whether Defendants’ conduct is a fraudulent business practice
4 within the meaning of Business and Professions Code section 17200, *et seq.*;

5 i. Whether Defendants’ conduct is an unlawful business practice
6 within the meaning of Business and Professions Code section 17200, *et seq.*;

7 j. Whether Plaintiffs and the Class paid more money for the Products
8 than they actually received; and

9 k. How much more money Plaintiffs and the Class paid for the
10 Products than they actually received.

11 34. Plaintiffs’ claims are typical of the claims of the Class, and Plaintiffs will
12 fairly and adequately represent and protect the interests of the Class. Plaintiffs have
13 retained competent and experienced counsel in class action and other complex
14 litigation.

15 35. Plaintiffs and the Class have suffered injury in fact and have lost money
16 as a result of Defendants’ false representations and material omissions. Plaintiffs
17 purchased the Products under the false belief that they were “All Natural.” Plaintiffs
18 relied upon Defendants’ packaging and would not have purchased the Products if they
19 had known that the Products contained ingredients that were added for coloring.

20 36. A class action is superior to other available methods for fair and efficient
21 adjudication of this controversy. The expense and burden of individual litigation
22 would make it impracticable or impossible for the Class to prosecute their claims
23 individually.

24 37. The trial and litigation of Plaintiffs’ claims are manageable. Individual
25 litigation of the legal and factual issues raised by Defendants’ conduct would increase
26 delay and expense to all parties and the court system. The class action device presents
27 far fewer management difficulties and provides the benefits of a single, uniform
28 adjudication, economies of scale, and comprehensive supervision by a single court.

1 38. Defendants have acted on grounds generally applicable to the entire
2 Class, thereby making final injunctive relief and/or corresponding declaratory relief
3 appropriate with respect to the Class as a whole. The prosecution of separate actions
4 by individual Class members would create the risk of inconsistent or varying
5 adjudications with respect to individual Class members that would establish
6 incompatible standards of conduct for Defendants.

7 39. Absent a class action, Defendants will likely retain the benefits of their
8 wrongdoing. Because of the small size of the individual Class members' claims, few,
9 if any, Class members could afford to seek legal redress for the wrongs complained
10 of herein. Absent a representative action, the Class will continue to suffer losses and
11 Defendants will be allowed to continue these violations of law and to retain the
12 proceeds of their ill-gotten gains.

13 **COUNT ONE**

14 **Violation of California Consumers Legal Remedies Act,**
15 **California Civil Code Section 1750, *et seq.***

16 40. Plaintiffs repeat and reallege all allegations of the previous paragraphs,
17 and incorporate the same as if set forth herein at length.

18 41. Plaintiffs bring this cause of action pursuant to Civil Code section 1750,
19 *et seq.*, the Consumers Legal Remedies Act ("CLRA"), on their own behalf and on
20 behalf of all other persons similarly situated.

21 42. The CLRA prohibits certain "unfair methods of competition and unfair or
22 deceptive acts or practices" in connection with a sale of goods.

23 43. The sale of Defendant's products to Plaintiffs and Class members
24 constitutes "transaction" within the meaning of California Civil Code Section
25 1761(e).

26 44. Defendants products are "goods" within the meaning of California Civil
27 Code Section 1761.
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1 45. The CLRA prohibits certain “unfair methods of competition and unfair or
2 deceptive acts or practices” in connection with a sale of goods and prohibits
3 “representing that goods or services have sponsorship, approval, characteristics,
4 ingredients, uses, benefits, or quantities that they do not have.” California Civil Code
5 Section 1770 (a)(5).

6 46. The CLRA also prohibits representing that the products are of “a
7 particular standard, quality, or grade” when it is of another. California Civil Code
8 Section 1770(a)(7).

9 47. The CLRA prohibits advertising goods with the intent not to sell them as
10 advertised and representing the goods have been supplied in accordance with a
11 previous representation when they have not. California Civil Code Section
12 1770(a)(9).

13 48. The practices described herein, specifically Defendants’ packaging,
14 advertising, and sale of the Products, were intended to result and did result in the sale
15 of the Products to the consuming public and violated and continue to violate the
16 CLRA by (1) using deceptive representations in connection with the Products; and
17 (2) advertising and packaging the Products with intent not to sell them as advertised.

18 49. Defendants fraudulently deceived Plaintiffs and the Class by
19 misrepresenting the Products as having characteristics which they do not have, e.g.,
20 advertising the Products in such a way to represent them as “All Natural” when the
21 Products contain coloring additives. In doing so, Defendants misrepresented and
22 concealed material facts from Plaintiffs and the Class. Said misrepresentations and
23 concealment were done with the intention of deceiving Plaintiffs and the Class and
24 depriving them of their legal rights and money.

25 50. Defendants fraudulently deceived Plaintiffs and the Class by labeling and
26 advertising the Products with the intent not to sell them as advertised. Specifically,
27 Defendants intentionally labeled and misrepresented the Products as “All Natural,”
28 and failed to disclose the coloring agents in the Products. In doing so, Defendants

1 intentionally misrepresented and concealed material facts from Plaintiffs and the
2 Class. Said misrepresentations and concealment were done with the intention of
3 deceiving Plaintiffs and the Class and depriving them of their legal rights and money.

4 51. Defendants knew or should have known, through the exercise of
5 reasonable care, that the Products' labeling and advertising were misleading.

6 52. Defendants' actions as described herein were done with conscious
7 disregard of Plaintiffs' rights, and Defendants were wanton and malicious in their
8 concealment of the same.

9 53. Defendants' labeling and advertising of the Products were a material
10 factor in Plaintiffs' and the Class's decisions to purchase the Products. Based on
11 Defendants' labeling and advertising of the Products, Plaintiffs and the Class
12 reasonably believed that they were purchasing products that were safer, more
13 nutritious, or otherwise had different attributes than products that do not have the "All
14 Natural" label. Had they known the truth of the matter, Plaintiffs and the Class would
15 not have purchased the Products.

16 54. Plaintiffs and the Class have suffered injury in fact and have lost money
17 as a result of Defendants' unfair, unlawful, and fraudulent conduct. Specifically,
18 Plaintiffs paid for beverages that were different from what they were reasonably
19 expecting to receive when they decided to make their purchases. Plaintiffs would not
20 have purchased the Products had they known that the Products contained coloring
21 agents that rendered them not natural.

22 55. Defendants' false and misleading labeling and advertising should be
23 enjoined due to their false, misleading, and/or deceptive nature.

24 56. By letter dated December 8, 2020, Plaintiffs advised Keurig Dr. Pepper
25 Inc. and Snapple Beverage Corp. of their false and misleading claims pursuant to
26 California Civil Code Section 1782(a).

27 57. Pursuant to Section 1780(a) of the Act, Plaintiffs seek injunctive relief in
28 the form of an order enjoining the above-described wrongful acts and practices of

1 Defendants, including, but not limited to, an order enjoining Defendants from
2 continuing to make the label and advertising claims challenged herein. Plaintiffs also
3 request an order awarding Plaintiffs and the Class restitution of the money
4 wrongfully acquired by Defendants. Plaintiffs shall be irreparably harmed if such an
5 order is not granted.

6 58. Plaintiffs respectfully request that the Court enjoin Defendants from
7 continuing to employ the unlawful methods, acts, and practices alleged herein
8 pursuant to § 1780(a)(2). In addition, Defendants should be compelled to provide
9 restitution and damages to consumers who paid for Products that are not what they
10 expected to receive due to Defendants’ misrepresentations.

11 a. Plaintiffs and members of the Class are entitled to equitable relief
12 as no adequate remedy at law exists.

13 (1) Injunctive relief is appropriate on behalf of Plaintiffs and
14 members of the Class because Defendants continue to deceptively
15 label the Products as “All Natural.” Injunctive relief is necessary
16 to prevent Defendants from continuing to engage in the unlawful
17 conduct described herein and to prevent future harm—none of
18 which can be achieved through available legal remedies. Further,
19 injunctive relief, in the form of packaging or label modifications,
20 is necessary to dispel public misperception about the Products that
21 has resulted from years of Defendants’ unfair, fraudulent, and
22 unlawful marketing efforts. Such modifications would include,
23 reformulating the Products so they do not contain added coloring
24 or removing the “All Natural” label claims. Such relief is also not
25 available through a legal remedy as monetary damages may be
26 awarded to remedy past harm (i.e., purchasers who have been
27 misled), while injunctive relief is necessary to remedy future harm
28 (i.e., prevent future purchasers from being misled), under the

1 current circumstances where the dollar amount of future damages
2 is not reasonably ascertainable at this time. Plaintiffs are,
3 currently, unable to accurately quantify the damages caused by
4 Defendants' future harm (e.g., the dollar amount that Plaintiffs and
5 Class members overpay pay for the underfilled Products),
6 rendering injunctive relief a necessary remedy.

7 **COUNT TWO**

8 **Violation of California False Advertising Law,**
9 **Business & Professions Code Section 17500, *et seq.***

10 59. Plaintiffs repeat and reallege the allegations set forth in the preceding
11 paragraphs, and incorporate the same as if set forth herein at length.

12 60. Plaintiffs bring this cause of action pursuant to Business and Professions
13 Code section 17500, *et seq.*, on their own behalf and on behalf of all other persons
14 similarly situated.

15 61. California's False Advertising Law, California Business and Professions
16 Code section 17500, *et seq.*, makes it "unlawful for any person to make or disseminate
17 or cause to be made or disseminated before the public in this state, in any advertising
18 device or in any other manner or means whatever, including over the Internet, any
19 statement, concerning personal property or services, professional or otherwise, or
20 performance or disposition thereof, which is untrue or misleading and which is
21 known, or which by the exercise of reasonable care should be known, to be untrue or
22 misleading."

23 62. Defendants knowingly disseminated misleading claims regarding the
24 Products in order to mislead the public about the ingredient makeup of the Products.

25 63. Defendants controlled the labeling, packaging, production and
26 advertising of the Products. Defendants knew or should have known, through the
27 exercise of reasonable care, that their representations and omissions about the
28 ingredients of the Products were untrue, deceptive, and misleading.

1 64. Defendants’ action of displaying misleading claims and omissions about
2 the ingredients of the Products in prominent type face on each of the Products’ front
3 labels is likely to deceive the general public.

4 65. Defendants’ actions in violation of Section 17500 were false and
5 misleading such that the general public is and was likely to be deceived.

6 66. As a direct and proximate result of Defendants’ conduct alleged herein in
7 violation of the FAL, Plaintiffs and members of the Class, pursuant to § 17535, are
8 entitled to an order of this Court enjoining such future wrongful conduct on the part
9 of Defendants, and requiring Defendants to disclose the true nature of their
10 misrepresentations.

11 b. Plaintiffs and members of the Class are entitled to equitable relief
12 as no adequate remedy at law exists.

13 (1) The scope of permissible plaintiffs under the FAL is broader
14 than the CLRA to include, for example, individuals or entities who
15 purchased the Products for non-personal, non-family, and non-household
16 purposes. Thus, Plaintiffs and class members may be entitled to
17 restitution under the FAL, while not entitled to damages under the
18 CLRA.

19 (2) Injunctive relief is appropriate on behalf of Plaintiffs and
20 members of the Class because Defendants continue to deceptively label
21 the Products and deliberately omit that the Products contain coloring
22 additives that render the Products no longer “All Natural.” Injunctive
23 relief is necessary to prevent Defendants from continuing to engage in
24 the unlawful conduct described herein and to prevent future harm—none
25 of which can be achieved through available legal remedies. Further,
26 injunctive relief, in the form of label modifications, is necessary to dispel
27 public misperception about the Products that has resulted from years of
28 Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such

1 modifications would include, but are not limited to, reformulating the
2 Products or removing the false “All Natural” labeling. Such relief is also
3 not available through a legal remedy as monetary damages may be
4 awarded to remedy past harm (i.e., purchasers who have been misled),
5 while injunctive relief is necessary to remedy future harm (i.e., prevent
6 future purchasers from being misled), under the current circumstances
7 where the dollar amount of future damages is not reasonably
8 ascertainable at this time. Plaintiffs are, currently, unable to accurately
9 quantify the damages caused by Defendants’ future harm (e.g., the dollar
10 amount that Plaintiffs and Class members overpay pay for the falsely
11 labeled Products), rendering injunctive relief a necessary remedy.

12 67. Plaintiffs and the Class have suffered injury in fact and have lost money
13 as a result of Defendants’ false representations. Plaintiffs purchased the Products in
14 reliance upon the claims and omissions by Defendants that the Products are “All
15 Natural,” as represented by Defendants’ labeling and advertising. Plaintiffs would not
16 have purchased the Products if they had known that the claims and advertising as
17 described herein were false and misleading.

18 68. Plaintiffs and members of the Class also request an order requiring
19 Defendants to disgorge their ill-gotten gains and/or award full restitution of all monies
20 wrongfully acquired by Defendants by means of such acts of false advertising, plus
21 interests and attorneys’ fees.

22 **COUNT THREE**

23 **Violation of California Unfair Competition Law**

24 **Business and Professions Code § 17200 *et seq.***

25 69. Plaintiffs repeat and reallege the allegations set forth above, and
26 incorporate the same as if set forth herein at length.

27 70. Plaintiffs bring this cause of action pursuant to Business and Professions
28 Code § 17200, *et seq.*, on their own behalf and on behalf of all other persons similarly

1 situated. Plaintiffs seek to represent a Class consisting of “All persons who purchased
2 the Products in the United States, or alternatively, in the State of California personal
3 consumption and not for resale during the time period of four years prior to the filing
4 of the complaint through the present.” Excluded from the Class are Defendants’
5 officers, directors, and employees, and any individual who received remuneration
6 from Defendants in connection with that individual’s use or endorsement of the
7 Products.

8 71. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
9 practice.” Cal. Bus & Prof. Code § 17200.

10 **A. “Unfair” Prong**

11 72. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
12 17200, *et. seq.*, a challenged activity is “unfair” when “any injury it causes outweighs
13 any benefits provided to consumers and the injury is one that the consumers
14 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern*
15 *California*, 142 Cal. App. 4th 1394, 1403 (2006).

16 73. Defendants’ advertising and labeling of the Products as “All Natural,”
17 when the Products contain coloring additives, are false, misleading, and deceptive.

18 74. Defendants’ false advertising of the Products causes injuries to
19 consumers, who do not receive the promised benefits from the Products in proportion
20 to their reasonable expectations.

21 75. Through false, misleading, and deceptive labeling of the Products,
22 Defendants seek to take advantage of consumers’ desire for “All Natural” and pure
23 products, while reaping the financial benefits of manufacturing lower quality
24 Products.

25 76. When Defendants claim the Products are “All Natural,” they provide false
26 promises to consumers and stifle competition in the marketplace.

27 77. Consumers cannot avoid any of the injuries caused by Defendants’ false
28 and misleading advertising of the Products.

1 78. Some courts conduct a balancing test to decide if a challenged activity
2 amounts to unfair conduct under California Business and Professions Code Section
3 17200. The courts “weigh the utility of the Defendants’ conduct against the gravity
4 of the harm alleged to the victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F. 3d 1152,
5 1169 (9th Cir. 2012).

6 79. Defendants’ material omissions result in financial harm to consumers.
7 Thus, the utility of Defendants’ conduct is vastly outweighed by the gravity of its
8 harm.

9 80. Some courts require the “unfairness must be tethered to some legislative
10 declared policy or proof of some actual or threatened impact on competition.” *Lozano*
11 *v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

12 81. Defendants’ advertising of the Products, as alleged in the preceding
13 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair
14 conduct.

15 82. Defendants knew or should have known of their unfair conduct.

16 83. As alleged in the preceding paragraphs, the material misrepresentations
17 by Defendants detailed above constitute an unfair business practice within the
18 meaning of California Business & Professions Code § 17200.

19 84. There were reasonably available alternatives to further Defendants’
20 legitimate business interests other than the conduct described herein. Defendants
21 could have marketed the Products without making any false statements about the
22 Products’ ingredients.

23 85. All of the conduct alleged herein occurs and continues to occur in
24 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
25 generalized course of conduct repeated on thousands of occasions daily.

26 86. Pursuant to Business & Professions Code Section 17203, Plaintiffs and
27 the Class seek an order of this Court enjoining Defendants from continuing to engage,
28 use, or employ their practice of false and deceptive advertising of the Products.

1 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
2 misrepresentations, and additionally request an order awarding Plaintiffs restitution
3 of the money wrongfully acquired by Defendants by means of responsibility attached
4 to Defendants' failure to disclose the existence and significance of said
5 misrepresentations in an amount to be determined at trial.

6 87. Plaintiffs and the Class have suffered injury in fact and have lost money
7 as a result of Defendants' unfair conduct. Plaintiffs paid an unwarranted premium for
8 the Products. Plaintiffs would not have purchased the Products if they had known that
9 the Products were not "All Natural" but instead contained added coloring.

10 **B. "Fraudulent" Prong**

11 88. California Business and Professions Code § 17200, *et seq.* considers
12 conduct fraudulent and prohibits said conduct if it is likely to deceive members of the
13 public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

14 89. Defendants' advertising of the Products as "All Natural," without
15 referring to their actual characterization, is likely to deceive members of the public
16 into believing that the Products are natural.

17 90. Defendants' advertising of the Products, as alleged in the preceding
18 paragraphs, is false, deceptive, misleading, and unreasonable and constitutes
19 fraudulent conduct.

20 91. Defendants knew or should have known of their fraudulent conduct.

21 92. As alleged in the preceding paragraphs, the material misrepresentations
22 and omissions by Defendants detailed above constitute a fraudulent business practice
23 in violation of California Business & Professions Code Section 17200.

24 93. There were reasonably available alternatives to further Defendants'
25 legitimate business interests, other than the conduct described herein. Defendants
26 could have refrained from labeling the Products as "All Natural."

27 94. All of the conduct alleged herein occurs and continues to occur in
28 Defendants' business. Defendants' wrongful conduct is part of a pattern or

1 generalized course of conduct repeated on thousands of occasions daily.

2 95. Pursuant to Business & Professions Code Section 17203, Plaintiffs and
3 the Class seek an order of this Court enjoining Defendants from continuing to engage,
4 use, or employ their practice of false and deceptive advertising of the Products.
5 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
6 misrepresentations, and additionally request an order awarding Plaintiffs restitution
7 of the money wrongfully acquired by Defendants by means of responsibility attached
8 to Defendants' failure to disclose the existence and significance of said
9 misrepresentations in an amount to be determined at trial.

10 96. Plaintiffs and the Class have suffered injury in fact and have lost money
11 as a result of Defendants' fraudulent conduct. Plaintiffs and the Class paid an
12 unwarranted premium for the Products. Plaintiffs and the Class would not have
13 purchased the Products if they had known that the Products were not "All Natural."

14 **C. "Unlawful" Prong**

15 97. California Business and Professions Code Section 17200, *et seq.*,
16 identifies violations of other laws as "unlawful practices that the unfair competition
17 law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F.
18 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

19 98. Defendants' advertising of the Products, as alleged in the preceding
20 paragraphs, violates California Civil Code Section 1750, *et seq.*, California Business
21 and Professions Code Section 17500, *et seq.*

22 99. Defendants' packaging, labeling, and advertising of the Products, as
23 alleged in the preceding paragraphs, are false, deceptive, misleading, and
24 unreasonable, and constitute unlawful conduct.

25 100. Defendants knew or should have known of their unlawful conduct.

26 101. As alleged in the preceding paragraphs, the misrepresentations by
27 Defendants detailed above constitute an unlawful business practice within the
28 meaning of California Business and Professions Code Section 17200.

1 102. There were reasonably available alternatives to further Defendants’
2 legitimate business interests other than the conduct described herein. Defendants
3 could have refrained from omitting the true characteristics of the Products.

4 103. All of the conduct alleged herein occurred and continues to occur in
5 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
6 generalized course of conduct repeated on thousands of occasions daily.

7 104. Pursuant to Business and Professions Code Section 17203, Plaintiffs and
8 the Class seek an order of this Court enjoining Defendants from continuing to engage,
9 use, or employ their practice of false and deceptive advertising of the Products.
10 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
11 misrepresentations, and additionally request an order awarding Plaintiffs restitution
12 of the money wrongfully acquired by Defendants by means of responsibility attached
13 to Defendants’ failure to disclose the existence and significance of said
14 misrepresentations in an amount to be determined at trial.

15 105. Plaintiffs and the Class have suffered injury in fact and have lost money
16 as a result of Defendants’ unlawful conduct. Plaintiffs paid an unwarranted premium
17 for the Products. Plaintiffs would not have purchased the Products if they had known
18 that Defendants purposely deceived consumers into believing that the Products were
19 “All Natural.”

20 106. As a result of the business acts and practices described above, Plaintiffs
21 and members of the Class, pursuant to § 17203, are entitled to an order enjoining such
22 future wrongful conduct on the part of Defendants and such other orders and
23 judgments that may be necessary to disgorge Defendants’ ill-gotten gains and to
24 restore to any person in interest any money paid for the Products as a result of the
25 wrongful conduct of Defendants.

26 c. Plaintiffs and members of the Class are entitled to equitable relief
27 as no adequate remedy at law exists.
28

1 (1) The applicable limitations period is four years for claims
2 brought under the UCL, which is one year longer than the
3 applicable statute of limitations under the FAL and CLRA. Thus,
4 class members who purchased the Products between 3 and 4 years
5 prior to the filing of the complaint will be barred from the Class if
6 equitable relief were not granted under the UCL.

7 (2) The scope of actionable misconduct under the unfair prong
8 of the UCL is broader than the other causes of action asserted
9 herein to include, for example, the overall false and misleading
10 marketing scheme of labeling the Products as “All Natural.” Thus,
11 Plaintiffs and class members may be entitled to restitution under
12 the UCL, while not entitled to damages under other causes of
13 action asserted herein (e.g., the FAL requires actual or constructive
14 knowledge of the falsity; the CLRA is limited to certain types of
15 plaintiffs (an individual who seeks or acquires, by purchase or
16 lease, any goods or services for personal, family, or household
17 purposes) and other statutorily enumerated conduct).

18 (3) Injunctive relief is appropriate on behalf of Plaintiffs and
19 members of the Class because Defendants continue to deceptively
20 label the Products. Injunctive relief is necessary to prevent
21 Defendants from continuing to engage in this unfair, fraudulent,
22 and/or unlawful conduct described herein and to prevent future
23 harm—none of which can be achieved through available legal
24 remedies. Further, injunctive relief, in the form of packaging or
25 label modifications, is necessary to dispel public misperception
26 about the Products that has resulted from years of Defendant’s
27 unlawful marketing efforts. Such modifications could include, but
28 are not limited to, reformulating the Products so they do not

1 contain added coloring, or remove the “All Natural” label claims.
2 Such relief is not available through a legal remedy, as monetary
3 damages may be awarded to remedy past harm (i.e., purchasers
4 who have been misled), while injunctive relief is necessary to
5 remedy future harm (i.e., prevent future purchasers from being
6 misled), under the current circumstances where the dollar amount
7 of future damages is not reasonably ascertainable at this time.
8 Plaintiffs are, currently, unable to accurately quantify the damages
9 caused by Defendants’ future harm (e.g., the dollar amount that
10 Plaintiffs and Class members will pay for the falsely labeled
11 Products), rendering injunctive relief a necessary remedy.

12 107. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further
13 entitled to pre-judgment interest as a direct and proximate result of Defendant’s unfair
14 and fraudulent business conduct. The amount on which interest is to be calculated is
15 a sum certain and capable of calculation, and Plaintiff and the Class are entitled to
16 interest in an amount according to proof.

17 **COUNT FOUR**

18 **Unjust Enrichment**

19 108. Plaintiffs repeat and reallege the allegations set forth above, and
20 incorporate the same as if set forth herein at length.

21 109. By means of Defendants’ wrongful conduct alleged herein, Defendants
22 knowingly sold the Products to Plaintiffs and members of the Class in a manner
23 that was unfair, unconscionable, and oppressive.

24 110. Defendants knowingly received and retained wrongful benefits and funds
25 from Plaintiffs and members of the Class. In so doing, Defendants acted with
26 conscious disregard for the rights of Plaintiffs and members of the Class.

27 111. As a result of Defendants’ wrongful conduct as alleged herein,
28 Defendants have been unjustly enriched at the expense of, and to the detriment of,

1 Plaintiffs and members of the Class.

2 112. Defendants' unjust enrichment is traceable to, and resulted directly and
3 proximately from, the conduct alleged herein.

4 113. Under the common law doctrine of unjust enrichment, it is inequitable for
5 Defendants to be permitted to retain the benefits they received, without justification,
6 from selling the Products to Plaintiffs and members of the Class in an unfair,
7 unconscionable, and oppressive manner. Defendants' retention of such funds under
8 such circumstances making it inequitable to do so constitutes unjust enrichment.

9 114. The financial benefits derived by Defendants rightfully belong to
10 Plaintiffs and members of the Class. Defendants should be compelled to return in a
11 common fund for the benefit of Plaintiffs and members of the Class all wrongful or
12 inequitable proceeds received by Defendants.

13 115. Plaintiffs and members of the Class have no adequate remedy at law.

14 **COUNT FIVE**

15 **Breach of Express Warranty**

16 116. Plaintiffs repeat and reallege all the allegations of the previous paragraphs
17 and incorporate the same as if set forth herein at length.

18 117. Defendants expressly warrant that the Products are "All Natural," as set
19 forth above. Defendants' claims constitute an affirmation of fact, promise, and/or
20 description of the goods that became part of the basis of the bargain and created an
21 express warranty that the goods would conform to the stated promise. Plaintiffs placed
22 importance on Defendants' claims.

23 118. All conditions precedent to Defendants' liability under this contract have
24 been performed by Plaintiffs and the Class.

25 119. Defendants breached the terms of the express warranties, with Plaintiffs
26 and the Class by not providing Products that conform to the advertising and label
27 claims.

28 120. As a result of Defendants' breach of contract, Plaintiffs and the Class have

1 been damaged in an amount to be determined at trial.

2 **COUNT SIX**

3 **Violation of Kentucky False Advertising Law,**
4 **Kentucky Revised Statutes 367.110 and 367.170 *et seq.***
5 ***(Kentucky Class Only)***

6 121. Plaintiffs repeat and reallege the allegations set forth in the preceding
7 paragraphs, and incorporate the same as if set forth herein at length.

8 122. Plaintiffs bring this cause of action pursuant to Kentucky Consumer
9 Protection Act (“KCPA”) 367.110 and 170., *et seq.*, on their own behalf and on behalf
10 of all other persons similarly situated.

11 123. KCPA prohibits unlawful any “unfair, false, misleading, or deceptive acts
12 or practices in the conduct of any trade or commerce.” (367.170)

13 124. Here, each Plaintiff and putative class member purchased goods
14 (Defendants’ Products) primarily for personal, family, and household purposes, and
15 as a result of Defendants’ misrepresentations suffered an ascertainable loss of money
16 which they paid for the Products.

17 125. Defendants knowingly disseminated misleading claims regarding the
18 Products in order to mislead the public about the ingredient makeup of the Products.

19 126. Defendants controlled the labeling, packaging, production and
20 advertising of the Products. Defendants knew or should have known, through the
21 exercise of reasonable care, that their representations and omissions about the
22 ingredients of the Products were untrue, deceptive, and misleading.

23 127. Defendants’ action of displaying misleading claims and omissions about
24 the ingredients of the Products in prominent type face on each of the Products’ front
25 labels is likely to deceive the general public.

26 128. Defendants’ actions in violation of Section 367.170 were false and
27 misleading such that the general public is and was likely to be deceived.
28

1 129. As a direct and proximate result of Defendants’ conduct alleged herein in
2 violation of the FAL, Plaintiffs and members of the Class, pursuant to § 367.170, are
3 entitled to an order of this Court enjoining such future wrongful conduct on the part
4 of Defendants, and requiring Defendants to disclose the true nature of their
5 misrepresentations.

6 d. Plaintiffs and members of the Class are entitled to equitable relief
7 as no adequate remedy at law exists.

8 (1) Restitution;

9 (2) Injunctive relief is appropriate on behalf of Plaintiffs and
10 members of the Class because Defendants continue to deceptively label
11 the Products and deliberately omit that the Products contain coloring
12 additives that render the Products no longer “All Natural.” Injunctive
13 relief is necessary to prevent Defendants from continuing to engage in
14 the unlawful conduct described herein and to prevent future harm—none
15 of which can be achieved through available legal remedies. Further,
16 injunctive relief, in the form of label modifications, is necessary to dispel
17 public misperception about the Products that has resulted from years of
18 Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such
19 modifications would include, but are not limited to, reformulating the
20 Products or removing the false “All Natural” labeling. Such relief is also
21 not available through a legal remedy as monetary damages may be
22 awarded to remedy past harm (i.e., purchasers who have been misled),
23 while injunctive relief is necessary to remedy future harm (i.e., prevent
24 future purchasers from being misled), under the current circumstances
25 where the dollar amount of future damages is not reasonably
26 ascertainable at this time. Plaintiffs are, currently, unable to accurately
27 quantify the damages caused by Defendants’ future harm (e.g., the dollar
28

1 amount that Plaintiffs and Class members overpay pay for the falsely
2 labeled Products), rendering injunctive relief a necessary remedy.

3 (3) Attorneys' fees and costs

4 (4) Punitive damages.

5 130. Plaintiffs and the Class have suffered injury in fact and have lost money
6 as a result of Defendants' false representations. Plaintiffs purchased the Products in
7 reliance upon the claims and omissions by Defendants that the Products are "All
8 Natural," as represented by Defendants' labeling and advertising. Plaintiffs would not
9 have purchased the Products if they had known that the claims and advertising as
10 described herein were false and misleading.

11 131. Plaintiffs and members of the Class also request an order requiring
12 Defendants to disgorge their ill-gotten gains and/or award full restitution of all monies
13 wrongfully acquired by Defendants by means of such acts of false advertising, plus
14 interests and attorneys' fees.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
17 situated, pray for judgment and relief on all Causes of Action as follows:

- 18 A. This action be certified as a class action;
- 19 B. Plaintiffs be appointed as the representatives of the Class and any
20 Subclasses;
- 21 C. Defendant's conduct be declared unlawful;
- 22 D. An order enjoining Defendants from continuing to label and
23 advertise the Products as challenged herein;
- 24 E. For an award of restitutionary damages in an amount according to
25 proof at trial;
- 26 F. An order that Defendants engage in corrective advertising
27 campaign;
- 28

- 1 G. An order of disgorgement of all profits and unjust enrichment that
2 Defendants obtained as a result of their practices;
3 H. Punitive damages;
4 I. For pre-judgment interest from the date of filing this suit;
5 J. Reasonable attorneys' fees;
6 K. Costs of this suit; and
7 L. Such other and further relief as the Court may deem necessary or
8 appropriate.

9 **JURY TRIAL DEMANDED**

10 Plaintiffs demand a jury trial on all triable issues.

11
12 DATED: June 30, 2021

CLARKSON LAW FIRM, P.C.

/s/ Yana Hart

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Yana Hart, Esq.

Attorneys for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumers Unaware 'All Natural' Snapple Products Contain Added Coloring, Class Action Says](#)
