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*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**PATRICIA MEZA-SOLIVEN,  
MICHAEL BETZAG and LINDA  
ESOPA on behalf of themselves and  
all others similarly situated,**

**Plaintiffs,**

**v.**

**THE LIV GROUP, INC. and  
UNILEVER NORTH AMERICA**

**Defendants.**

**CASE NO.: '24CV0019 TWR DDL**  
**CLASS ACTION**

1 Plaintiffs Patricia Meza-Soliven, Michael Betzag, and Linda Esopa  
2 (“Plaintiffs”), individually and on behalf of themselves and all others similarly  
3 situated, bring this class action against Defendants The Liv Group, Inc. and Unilever  
4 North America (collectively “Defendants”), and on the basis of personal knowledge,  
5 information and belief, and the investigation of counsel, allege as follows:

6 **INTRODUCTION**

7  
8 1. This is a proposed class action on behalf of a nationwide, California and  
9 New York class (collectively, “Class”) of consumers seeking redress for Defendants’  
10 deceptive practices associated with the advertising, labeling, and sale of its Liquid I.V.  
11 hydration electrolyte drink powder stick mixes (“Mixes” or “Products”).<sup>1</sup>



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27 <sup>1</sup> Class Products include: Hydration Multiplier, Hydration Multiplier + Immune Support, Energy  
28 Multiplier, Sleep Multiplier.

1           2. Defendants claim to have developed “smart hydration technology” that  
2 “hydrate[s] better than water alone,” a system “ designed to enhance rapid absorption  
3 of water and other key ingredients.”<sup>2</sup> By using a “specific ratio of glucose, sodium,  
4 and potassium,” Liquid I.V. claims to deliver “water and key nutrients directly to [the]  
5 body faster and more efficiently than water alone.”<sup>3</sup>

6           3. Recognizing their audience consists of health-conscious consumers,  
7 Defendants dressed the Product a health halo and touted its clean label features  
8 promising that Liquid I.V. is “made with quality ingredients,” “free from” GMO,  
9 dairy, gluten, soy, artificial sweeteners, flavors, and colors.” Most prominent among  
10 their “free from” claims – the representation that their Products contain “No  
11 Preservatives.”

12           4. Unfortunately, the claim that their Products contain “No Preservatives” is  
13 false, as they each contain a significant amount of the preservatives including, most  
14 prominently, citric acid.

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27 <sup>2</sup> <https://www.liquid-iv.com/pages/science>, last visited October 1, 2023.

28 <sup>3</sup> <https://www.liquid-iv.com/pages/faq>, last visited October 1, 2023.

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GMO Non-GMO Gluten-Free Dairy-Free  
 Soy-Free Vegetarian Made in U.S.A.  
**No Preservatives**  
 No Artificial Sweeteners  
 No Artificial Flavors No Artificial Colors

**IMMUNE SUPPORT BLEND**

**VITAMIN C** 560% Daily Value  
**WELLMUNE®** Naturally Sourced Beta Glucan  
**ZINC** 90% Daily Value

**WHY LIQUID I.V. WITH IMMUNE SUPPORT?**

- Immune Support Blend**  
5x the daily value of Vitamin C combined with Zinc and Wellmune® designed to maintain and strengthen the immune system.
- The Power of CTT®**  
Designed to enhance rapid absorption of water and other nutrients.
- Convenient**  
Travel-friendly, single serving packets
- Great Taste**  
Natural Tangerine Flavor

**OUR MISSION**

We've partnered with you, the LIV community, to help save lives around the world. WITH EACH PURCHASE YOU MAKE, WE DONATE A SERVING OF LIQUID I.V. TO SOMEONE IN NEED. We are on a mission to help people live better lives everywhere, and we could not do it without you. Together, we will Change The World! #CTW

GMO Non-GMO Vegan Gluten-Free  
 Dairy-Free Soy-Free Made in U.S.A.  
**No Preservatives**  
 No Artificial Sweeteners  
 No Artificial Flavors No Artificial Colors

This leading science depends on **NON-GMO** sugar + mined salt strictly for function, not taste.

Nutrition Facts	
10 servings per container	
Serving Size 1 stick (16g)	
Amount Per Serving	
<b>Calories</b>	<b>45</b>
	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol 0mg	0%
Sodium 500mg	22%
<b>Total Carbohydrate</b> 11g	4%
Dietary Fiber 0g	0%
Total Sugars 11g	
Includes 11g Added Sugars	22%
Protein 0g	

**INGREDIENTS:** Pure Cane Sugar, Dextrose, Citric Acid, Salt, Potassium Citrate, Sodium Citrate, Dipotassium Phosphate, Silicon Dioxide, Rebudioside-A (Stevia Leaf Extract), Natural Flavors, Vitamin C (Ascorbic Acid), Vitamin B3 (Niacinamide), Vitamin B5 (D-Calcium Pantothenate), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B12 (Cyanocobalamin)

Pure Cane Sugar, Dextrose, **Citric Acid**, Salt, Potassium Citrate, Sodium Citrate, Vitamin C (Ascorbic Acid), Natural Flavors, Potassium Phosphate, Silicon Dioxide, BetaVia™ Beta Glucan, Stevia Leaf Extract (Rebudioside-A), Zinc Citrate, Vitamin B3 (Niacinamide), Vitamin B5 (D-Calcium Pantothenate), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B12 (Cyanocobalamin).

**INGREDIENTS:** Pure Cane Sugar, Dextrose, **Citric Acid**, Salt, Potassium Citrate, Sodium Citrate, Dipotassium Phosphate, Silicon Dioxide, Rebudioside-A (Stevia Leaf Extract), Natural Flavors, Vitamin C (Ascorbic Acid), Vitamin B3 (Niacinamide), Vitamin B5 (D-Calcium Pantothenate), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B12 (Cyanocobalamin)





1 Esopa is a resident of Valley Stream, New York. Defendants The Liv Group, Inc. and  
2 Unilever are respectively California and Delaware corporations headquartered in New  
3 Jersey. The amount in controversy exceeds \$5,000,000 for the Plaintiff and members  
4 of the Class collectively, exclusive of interest and costs, by virtue of the combined  
5 purchase prices paid by Plaintiffs and members of the putative Class, and the profits  
6 reaped by Defendants from their transactions with Plaintiffs and the Class, as a direct  
7 and proximate result of the wrongful conduct alleged herein, and by virtue of the  
8 injunctive and equitable relief sought.

9 12. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391  
10 because a substantial portion of the underlying transactions and events complained of  
11 occurred and affected persons and entities located in this judicial district, and  
12 Defendants have received substantial compensation from such transactions and  
13 business activity in this judicial district.

14 **PARTIES**

15  
16 13. Plaintiff Meza-Soliven is a resident of San Diego, California.

17 14. Ms. Meza-Soliven purchased Defendants' Products throughout the  
18 applicable class periods. The purchases were made at local retail locations including  
19 but not limited to Walmart.

20 15. Ms. Meza-Soliven believed the representations on the Products' labels  
21 were accurate, particularly in that they did not contain preservatives.

22 16. Ms. Meza-Soliven believed that Defendants lawfully marketed and sold  
23 the Products.

24 17. Ms. Meza-Soliven relied on Defendants' labeling and was misled  
25 thereby.

26 18. Ms. Meza-Soliven would not have purchased the Products, or would have  
27 purchased the Products on different terms had she known the truth about their  
28 contents.

1           19. Ms. Meza-Soliven was injured in fact and lost money as a result of  
2 Defendants' improper conduct.

3           20. If Ms. Meza-Soliven had occasion to believe that Defendants' marketing  
4 and labeling are truthful, non-misleading, and lawful, she would purchase Defendants'  
5 Products in the future.

6           21. Plaintiff Michael Betzag is a resident of Rockville Center, New York.

7           22. Mr. Betzag purchased Defendants' Hydration Multiplier Product  
8 throughout the applicable class periods. The purchases were made at local retail  
9 locations including but not limited to CVS, Vitamin Shoppe and GNC.

10          23. Mr. Betzag believed the representations on the Products' labels were  
11 accurate, particularly in that they did not contain preservatives.

12          24. Mr. Betzag believed that Defendants lawfully marketed and sold the  
13 Products.

14          25. Mr. Betzag relied on Defendants' labeling and was misled thereby.

15          26. Mr. Betzag would not have purchased the Products, or would have  
16 purchased the Products on different terms had he known the truth about their contents.

17          27. Mr. Betzag was injured in fact and lost money as a result of Defendants'  
18 improper conduct.

19          28. If Mr. Betzag had occasion to believe that Defendants' marketing and  
20 labeling is truthful, non-misleading, and lawful, she would purchase Defendants'  
21 Products in the future.

22          29. Plaintiff Linda Esopa is a resident of Valley Stream, New York.

23          30. Ms. Esopa purchased Defendants' Hydration Multiplier Product  
24 throughout the applicable class periods. The purchases were made at local grocery  
25 stores.

26          31. Ms. Esopa believed the representations on the Products' labels were  
27 accurate, particularly in that they did not contain preservatives.

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1           32.     Ms. Esopa believed that Defendants lawfully marketed and sold the  
2 Products.

3           33.     Ms. Esopa relied on Defendants' labeling and was misled thereby.

4           34.     Ms. Esopa would not have purchased the Products, or would have  
5 purchased the Products on different terms had she known the truth about their  
6 contents.

7           35.     Ms. Esopa was injured in fact and lost money as a result of Defendants'  
8 improper conduct.

9           36.     If Ms. Esopa had occasion to believe that Defendants' marketing and  
10 labeling are truthful, non-misleading, and lawful, she would purchase Defendants'  
11 Products in the future.

12           37.     Defendant The Liv Group, Inc., manufactures, markets, and sells a line of  
13 hydrating electrolyte drink mixes. They are sold across a variety of retail segments  
14 including supermarkets, convenience stores, and mass merchants. The Liv Group, Inc.  
15 is a California corporation which, upon information and belief, was purchased by  
16 Defendant Unilever in or around 2020.<sup>4</sup>

17           38.     Defendant Unilever North America is one of the world's leading suppliers  
18 of beauty & personal care, home care, and foods & refreshment products with billions  
19 in yearly sales. It operates in over 190 countries, reaching 2.5 billion consumers a day.  
20 Among its diverse offerings is Liquid I.V. Unilever is a Delaware corporation  
21 headquartered in Englewood Cliffs, New Jersey.

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27 <sup>4</sup> <https://www.unilever.com/news/press-and-media/press-releases/2020/unilever-to-acquire-liquid-iv/>  
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**GENERAL ALLEGATIONS**

**A. Citric Acid is a Preservative**

39. The federal Food Drug & Cosmetic Act (“FDCA”) defines a chemical preservative as “any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5). “A food to which a chemical preservative(s) is added shall... bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., "preservative," "to retard spoilage," "a mold inhibitor," "to help protect flavor," or "to promote color retention." 21 C.F.R. §101.22(j).

40. Chemical preservation is the process of adding ingredients to a food for the purpose of preventing potential damage from oxidation, rancidity, microbial growth, or other undesirable changes. Chemical preservatives may be both natural or synthetic and function one of several ways — (a) as an antimicrobial agent to destroy bacteria or inhibit the growth of mold on foods; (b) as an antioxidant to inhibit oxidation and resulting rancidity; and (3) as a chelating agent which binds metal ions in certain foods to prevent oxidation.

41. Citric acid is a preservative within the meaning of 21 C.F.R. §101.22. Indeed, in a consumer facing publication, *Food Ingredients and Colors*, the Food and Drug Administration (“FDA”) unequivocally identifies “citric acid” as a preservative.<sup>5</sup>

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<sup>5</sup> *Food Ingredients and Colors*, International Food Information Council Foundation and U.S. Food and Drug Administration, specifically identifies the following as preservatives: **ascorbic acid, citric acid**, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E). Available at <https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf> (last visited October 2, 2023)

1 The sentiment is echoed in the Substances Added to Food database maintained by the  
2 FDA, in which the principal technical effects of citric acid are identified as  
3 preservative functions.<sup>6</sup> Finally, in a Warning Letter issued to Chiquita Brands  
4 International, Inc. and Fresh Express, Incorporated, October 6, 2010, the FDA made  
5 clear that citric acid was a preservative and needed to be identified as such. “The  
6 "Pineapple Bites" and "Pineapple Bites with Coconut" products are further  
7 misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that  
8 they contain the chemical preservatives ascorbic acid and citric acid but their labels  
9 fail to declare these preservatives with a description of their functions. 21 CFR  
10 101.22.”<sup>7</sup>

11 42. Citric acid’s primary use is as a preservative, despite potentially having  
12 additional functions.<sup>8</sup> It functions as a preservative in the Products, regardless of  
13 Defendants’ subjective purpose(s) for adding it to the Products, and regardless of any  
14 other functions citric acid may perform. This is even more the case here where  
15 Defendant has not declared a contrary purpose for adding citric acid and the Products  
16 separately contain flavorings (i.e., “natural flavor”) as an ingredient.

### 17 **B. Other Preservatives**

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19 43. Notwithstanding the fact that the inclusion of citric acid alone renders the  
20 “no preservatives” claim false, the claim is further belied by at least three other  
21 ingredients that also have preservative functions.

22  
23 <sup>6</sup> The Substances Added to Food Database formerly Everything Added to Foods in the United States,  
24 available at  
[https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm\\_ID&order=ASC&startrow=1&type=basic&search=citric%20acid](https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm_ID&order=ASC&startrow=1&type=basic&search=citric%20acid) (last visited October 2, 2023)

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26 <sup>7</sup> <http://fda-warning-letters.blogspot.com/2010/10/fresh-express-incorporated-10610.html> (last visited  
October 6, 2023).

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28 <sup>8</sup> See <https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/>  
(last visited October 6, 2023).

**Potassium Citrate**

Adding potassium hydroxide to citric acid results in the formation of potassium citrate crystals. These crystals are separated from the solution for use as a food additive. The primary reason for adding potassium citrate as a food preservative is to have a buffer to control PH. It has a natural pH between 7.5 and 9 depending on the concentration. Keeping the pH in this alkaline state can inhibit the function of certain enzymes and preserve food for longer.<sup>9</sup>

**Sodium citrate  
(Trisodium citrate)**

Trisodium citrate is often referred to as sodium citrate, though sodium citrate can refer to any of the three sodium salts of citric acid. Sodium citrate is primarily used as a food additive, usually for flavor or as a preservative.<sup>10</sup>

Several substances are used in the production, processing, treatment, packaging, transportation, and storage of food. In the meat industry, additives like citric acid and sodium citrate are widely applied for pH control, metal chelating, and preservation.<sup>11</sup>

**Ascorbic Acid**

“Ascorbic acid is often included in food products as a preservative.” Indeed, ascorbic acid is defined as a chemical preservative at 21 C.F.R. §182.3013.<sup>12</sup>

<sup>9</sup> Vynova, *Potassium Citrate, Keeping Your Food Fresh for Longer*, November 5, 2019. Available at <https://www.vynova-group.com/blog/potassium-citrate-keeping-food-fresh>

<sup>10</sup> *Sodium Citrate*, The Chemical Company. Available at <https://thechemco.com/chemical/sodium-citrate/#:~:text=Sodium%20citrate%20is%20primarily%20used,employed%20as%20a%20flavoring%20agent.>

<sup>11</sup> Sammel L. M., Claus J. R., Greaser M. L., Richards M. P. (2006). *Investigation of mechanisms by which sodium citrate reduces the pink color defect in cooked ground turkey*. Meat Sci. 72 585–595. 10.1016/j.meatsci.2005.09.008. Available at <https://www.sciencedirect.com/science/article/abs/pii/S030917400500344X> (last visited January 3, 2024).

<sup>12</sup> United States Department of Agriculture Agricultural Marketing Service, National Organic Program, *Technical Report on Ascorbic Acid*. <https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf> (last visited January 3, 2024).

### C. Consumer Demand For Preservative Free Products

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2 44. The clean label movement has been called “the largest shift in American  
3 food habits since World War II.”<sup>13</sup> The term encompasses many things, but is most  
4 often associated with foods that are natural, healthy, and devoid of additives and  
5 preservatives.<sup>14</sup>

6 45. By representing the Products have “No Preservatives,” Defendants seek  
7 to capitalize on consumer preference for clean label products. Indeed, “[foods bearing  
8 ‘free-from’ claims are increasingly relevant to Americans, as they perceive the  
9 products as closely tied to health.”<sup>15</sup> “84 percent of Americans buy “free-from” foods  
10 because they believe them to be more natural or less processed.” Among such  
11 consumers, preservative free ranks “[a]mong the top claims... deem[ed] most  
12 important.” *Id.*

13 46. In a survey undertaken by L.E.K, around 1600 consumers were asked  
14 which claims were the most important to them when buying food and drink products.  
15 Results indicated the most popular claim to be “no artificial ingredients” followed  
16 closely by a claim that a product contained “no preservatives.”<sup>16</sup>

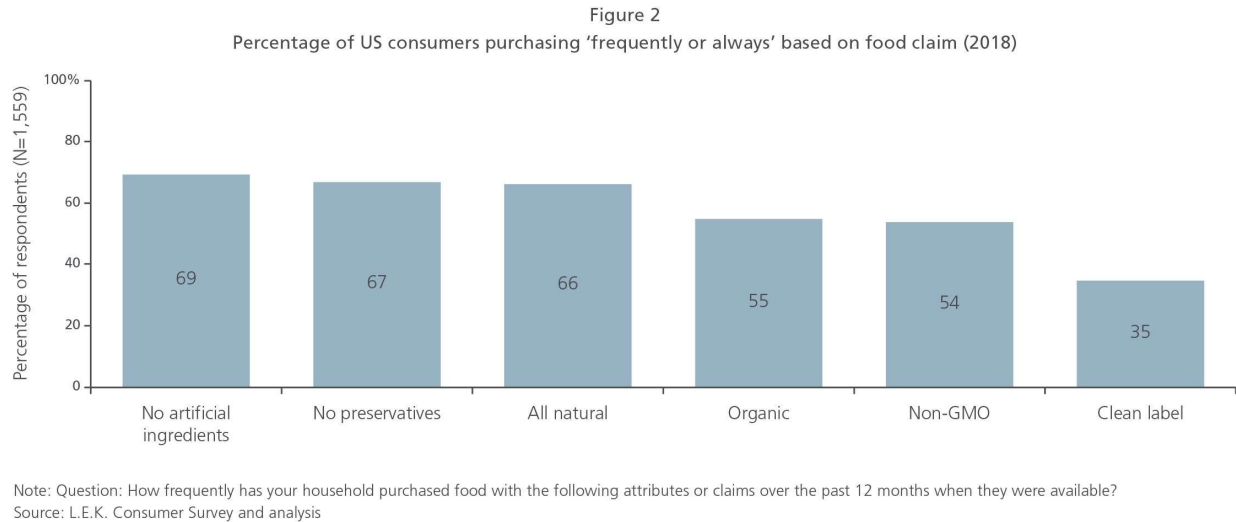
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21 <sup>13</sup> *Clean Labels, Public Relations or Public Health*, Center For Science in the Public Interest (2017),  
22 available <https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf> (last  
visited October 6, 2023).

23 <sup>14</sup> *Clean label trend is evolving - consumers still willing to pay a price premium*, Valio, May 29,  
24 2023. Available at [https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-  
25 evolving-and-consumers-willing-to-pay-a-price-premium/](https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/) (last visited October 6, 2023).

26 <sup>15</sup> *See, Free-from Food Trends US 2015 Report*, MINTEL, Available at  
27 [https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-  
because-they-believe-them-to-be-more-natural-or-less-processed](https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed) (last accessed November 30, 2022).

28 <sup>16</sup> <https://www.lek.com/insights/ei/clean-label-food-ingredients> (last visited January 3, 2024).

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47. By failing to properly label its Products, Defendants have misled and deceived consumers in violation of the laws pled herein.

48. As a result of Defendants' unlawful and deceptive conduct, Plaintiffs and members of the Class have been harmed.

**ECONOMIC INJURY**

49. Plaintiffs sought to buy Products that were lawfully labeled, marketed, and sold.

50. Plaintiffs saw and relied on Defendants' misleading labeling of its Products.

51. Plaintiffs believed that the purchased Products contained no preservatives.

52. Plaintiffs believed that the Products were lawfully marketed and sold.

53. In reliance on the claims made by Defendants regarding the qualities of their Products, Plaintiffs paid a price premium.

54. As a result of their reliance on Defendants' misrepresentations, Plaintiffs received Products that contained ingredients which they reasonably believed they did not contain.

55. Plaintiffs received Products that were unlawfully marketed and sold.



1           56. Plaintiffs lost money and thereby suffered injury as they would not have  
2 purchased these Products and/or paid as much for them absent the misrepresentation.

3           57. Defendant knows that the claim the Products are free of preservatives is  
4 material to a consumer's purchasing decision.

5           58. Plaintiffs altered their positions to their detriment and suffered damages  
6 in an amount equal to the amounts they paid for the Products they purchased, and/or in  
7 additional amounts attributable to the deception.

8           59. By engaging in the false and deceptive conduct alleged herein,  
9 Defendants reaped, and continue to reap financial benefits in the form of sales and  
10 profits from their Products.

11           60. Plaintiffs, however, would be willing to purchase Products again in the  
12 future should they be able to rely on Defendant's marketing as truthful and non-  
13 deceptive.

14    **CLASS ACTION ALLEGATIONS**

15           61. Plaintiffs bring this action on behalf of themselves and on behalf of  
16 classes of all others similarly situated consumers defined as follows:

- 17                   a. **National:** All persons in the United States who purchased Class  
18    Products in the United States during the Class Period.
- 19                   b. **California:** All persons in California who purchased the Class  
20    Products in California during the Class Period.
- 21                   c. **New York:** All persons in New York who purchased the Class  
22    Products in New York during the Class Period.
- 23                   d. **Class Period** is the maximum time allowable as determined by the  
24    statute of limitation periods accompanying each cause of action.

25           62. Plaintiffs bring this Class pursuant to Federal Rule of Civil Procedure  
26 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

1           63. Excluded from the Class are: (i) Defendants and their employees,  
2 principals, affiliated entities, legal representatives, successors and assigns; and (ii) the  
3 judges to whom this action is assigned.

4           64. Upon information and belief, there are tens of thousands of members of  
5 the Class. Therefore, individual joinder of all members of the Class would be  
6 impracticable.

7           65. There is a well-defined community of interest in the questions of law and  
8 fact affecting the parties represented in this action.

9           66. Common questions of law or fact exist as to all members of the Class.  
10 These questions predominate over the questions affecting only individual Class  
11 members. These common legal or factual questions include but are not limited to:

- 12           a. Whether Defendants marketed, packaged, or sold the Class  
13           Products to Plaintiffs and those similarly situated using false,  
14           misleading, or deceptive statements or representations;
- 15           b. Whether Defendants omitted or misrepresented material facts  
16           in connection with the sales of their Products;
- 17           c. Whether Defendants participated in and pursued the common  
18           course of conduct complained of herein;
- 19           d. Whether Defendants have been unjustly enriched as a result  
20           of its unlawful business practices;
- 21           e. Whether Defendants' actions violate the Unfair Competition  
22           Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");
- 23           f. Whether Defendants' actions violate the False Advertising  
24           Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the "FAL");
- 25           g. Whether Defendants' actions violate the Consumers Legal  
26           Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA");
- 27           h. Whether Defendants' actions violate N.Y. Gen. Bus. Law §  
28           349 *et seq.*

- 1 i. Whether Defendants' actions violate N.Y. Gen. Bus. Law §
- 2 350 et seq;
- 3 j. Whether Defendants should be enjoined from continuing the
- 4 above-described practices;
- 5 k. Whether Plaintiffs and members of the Class are entitled to
- 6 declaratory relief; and
- 7 l. Whether Defendants should be required to make restitution,
- 8 disgorge profits, reimburse losses, and pay damages as a
- 9 result of the above-described practices.

10 67. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs  
11 were consumers who purchased Defendants' Products. Plaintiffs are no different in  
12 any relevant respect from any other Class member who purchased the Products, and  
13 the relief sought is common to the Class.

14 68. Plaintiffs are adequate representatives of the Class because their interests  
15 do not conflict with the interests of the members of the Class they seek to represent,  
16 and they have retained counsel competent and experienced in conducting complex  
17 class action litigation. Plaintiffs and their counsel will adequately protect the interests  
18 of the Class.

19 69. A class action is superior to other available means for the fair and  
20 efficient adjudication of this dispute. The damages suffered by each individual Class  
21 member likely will be relatively small, especially given the relatively small cost of the  
22 Products at issue and the burden and expense of individual prosecution of the complex  
23 litigation necessitated by Defendants' conduct. Thus, it would be virtually impossible  
24 for members of the Class individually to effectively redress the wrongs done to them.  
25 Moreover, even if members of the Class could afford individual actions, it would still  
26 not be preferable to class-wide litigation. Individualized actions present the potential  
27 for inconsistent or contradictory judgments. By contrast, a class action presents far  
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1 fewer management difficulties and provides the benefits of single adjudication,  
2 economies of scale, and comprehensive supervision by a single court.

3 70. In the alternative, the Class may be certified because Defendants have  
4 acted or refused to act on grounds generally applicable to the Class, thereby making  
5 appropriate preliminary and final equitable relief with respect to each Class.

6 71. The requirements for maintaining a class action pursuant to Rule 23(b)(2)  
7 are also met, as Defendants have acted or refused to act on grounds generally  
8 applicable to the Class, thereby making appropriate final injunctive relief or  
9 corresponding declaratory relief with respect to the Class as a whole.

10  
11 **FIRST CAUSE OF ACTION**  
12 **(Breach of Express Warranty)**

13 72. Plaintiffs incorporate each and every allegation contained in the  
14 paragraphs above as if restated herein.

15 73. Plaintiffs' express warranty claims are based on violations of N.Y. CLS  
16 UCC § 2-313 and § 2-607 and Cal. Com. Code §2313. Defendants were afforded  
17 reasonable notice of this claim in advance of the filing of this complaint.

18 74. Defendant made express warranties to Plaintiffs and members of the  
19 Class that the Products contained "no preservatives."

20 75. The express warranties made to Plaintiffs and members of the Class appear  
21 on every Product label. This warranty regarding the nature of the Product marketed by  
22 Defendants specifically relates to the goods being purchased and became the basis of  
23 the bargain.

24 76. Plaintiffs and the Class purchased the Products in the belief that they  
25 conformed to the express warranties that were made on the Products' labels.

26 77. Defendant breached the express warranties made to Plaintiffs and members  
27 of the Class by failing to supply goods that conformed to the warranties it made. As a  
28

1 result, Plaintiffs and members of the Class suffered injury and deserve to be  
2 compensated for the damages they suffered.

3 78. Plaintiffs and the members of the Class paid money for the Products.  
4 However, Plaintiffs and the members of the Class did not obtain the full value of the  
5 advertised Products. If Plaintiffs and other members of the Class had known of the true  
6 nature of the Products, they would not have purchased them or paid less for them.  
7 Accordingly, Plaintiffs and members of the Class have suffered injury in fact and lost  
8 money or property as a result of Defendants' wrongful conduct.

9 79. Plaintiffs and the Class are therefore entitled to recover damages, punitive  
10 damages, equitable relief such as restitution and disgorgement of profits, and  
11 declaratory and injunctive relief.

12  
13 **SECOND CAUSE OF ACTION**  
14 **(“Unlawful” Business Practices in Violation of**  
15 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§17200, *et seq.*)**  
16 **(On Behalf of the California Subclass)**

17 80. Plaintiffs incorporate each and every allegation contained in the  
18 paragraphs above as if restated herein.

19 81. The UCL defines unfair business competition to include any “unlawful,  
20 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or  
21 misleading” advertising. Cal. Bus. Prof. Code §17200.

22 82. A business act or practice is “unlawful” if it violates any established state  
23 or federal law.

24 83. Defendant's acts, omissions, misrepresentations, practices, and/or non-  
25 disclosures concerning the Products alleged herein, constitute “unlawful” business  
26 acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21  
27 U.S.C. §§301, *et seq.* and its implementing regulations, including, at least, the  
28 following sections:



- 1 a. 21 U.S.C. §343(a), which deems food misbranded when its
- 2 labeling contains a statement that is false or misleading in any
- 3 particular;
- 4 b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as
- 5 to create an erroneous impression about the presence or absence of
- 6 ingredient(s) or component(s) therein;
- 7 c. 21 U.S.C. §§331 and 333, which prohibits the introduction of
- 8 misbranded foods into interstate commerce.

9 84. California's Sherman Food, Drug, and Cosmetic Law (“Sherman Law”),  
10 Cal. Health & Safety Code §109875 *et seq.*, broadly prohibits the misbranding of  
11 food. Cal. Health & Safety Code §110765; *See, also* Cal. Health & Safety Code  
12 §110660 (“Any food is misbranded if its labeling is false or misleading in any  
13 particular.”). The Sherman Law incorporates all food labeling regulations and any  
14 amendments to those regulations adopted pursuant to the Food, Drug, and Cosmetic  
15 Act of 1938 as the food labeling regulations of California. Cal. Health & Safety Code  
16 §§110100(a), 110665, 110670.

17 85. As described in detail above, by failing to label the Products in a manner  
18 that accurately represents its contents, Defendant generally violates 21 U.S.C.  
19 §343(a)(1) (“a food shall be deemed to be misbranded if its labeling is false or  
20 misleading in any particular”) as incorporated by California’s Sherman Law.  
21 Independently, by mislabeling the Products, Defendant violates Cal. Health & Safety  
22 Code § 110660 (“any food is misbranded if its labeling is false or misleading in any  
23 particular.”)

24 86. Defendant violated and continues to violate the Sherman Law, Article 6,  
25 Section 110660, and hence has also violated and continues to violate the “unlawful”  
26 prong of the UCL through the false labeling of its Product.

27 87. Defendant’s identical conduct that violates the Sherman Law, also violates  
28 FDCA §403(a)(1), 21 U.S.C. §343(a)(1), which declares food misbranded under federal

1 law if its “labeling is false and misleading in any particular.” This identical conduct  
2 serves as the sole factual basis of each cause of action brought by this Complaint, and  
3 Plaintiff does not seek to enforce any of the state law claims to impose any standard of  
4 conduct that exceeds that which would violate FDCA.

5 88. By committing the unlawful acts and practices alleged above, Defendant  
6 has engaged, and continues to be engaged, in unlawful business practices within the  
7 meaning of California Business and Professions Code §§17200, *et seq.*

8 89. Through its unlawful acts and practices, Defendant has obtained, and  
9 continues to unfairly obtain, money from members of the Class. As such, Plaintiff  
10 requests that this Court cause Defendant to restore this money to Plaintiff and all  
11 members of the Class, to disgorge the profits Defendant made on these transactions,  
12 and to enjoin Defendant from continuing to violate the Unfair Competition Law or  
13 violating it in the same fashion in the future. Otherwise, the Class may be irreparably  
14 harmed and denied an effective and complete remedy if such an order is not granted.

15  
16 **THIRD CAUSE OF ACTION**  
17 **(“Unfair” Business Practices in Violation of**  
18 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**  
19 **(On Behalf of the California Subclass)**

20 90. Plaintiffs incorporate each and every allegation contained in the  
21 paragraphs above as if restated herein.

22 91. The UCL defines unfair business competition to include any “unlawful,  
23 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or  
24 misleading” advertising. Cal. Bus. Prof. Code §17200.

25 92. A business act or practice is “unfair” under the Unfair Competition Law if  
26 the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the  
27 gravity of the harm to the alleged victims.  
28



1 99. As a result of the conduct described above, Defendant has been, and will  
2 continue to be, unjustly enriched at the expense of Plaintiffs and members of the  
3 proposed Class. Specifically, Defendants have been unjustly enriched by the profits  
4 they have obtained from Plaintiffs and the Class from the purchases of their Products.

5 100. Through their fraudulent acts and practices, Defendants have improperly  
6 obtained, and continue to improperly obtain, money from members of the Class. As  
7 such, Plaintiffs request that this Court cause Defendants to restore this money to  
8 Plaintiffs and the Class, to disgorge the profits Defendants have made, and to enjoin  
9 Defendants from continuing to violate the Unfair Competition Law or violating it in the  
10 same fashion in the future. Otherwise, the Class may be irreparably harmed and denied  
11 an effective and complete remedy if such an Order is not granted.

12  
13 **FIFTH CAUSE OF ACTION**  
14 **(False Advertising in Violation of**  
15 **California Business & Professions Code §§ 17500, *et seq.*)**  
16 **(On Behalf of the California Subclass)**

17 101. Plaintiffs incorporate each and every allegation contained in the  
18 paragraphs above as if restated herein.

19 102. Defendants use advertising and packaging to sell their Products.  
20 Defendants disseminate advertising regarding their Products which by its very nature is  
21 deceptive, untrue, or misleading within the meaning of California Business &  
22 Professions Code §§ 17500, *et seq.* because those advertising statements contained on  
23 the labels are misleading and likely to deceive, and continue to deceive, members of the  
24 putative Class and the general public.

25 103. In making and disseminating the statements alleged herein, Defendants  
26 knew or should have known that the statements were untrue or misleading, and acted in  
27 violation of California Business & Professions Code §§ 17500, *et seq.*

28





1           110. The purchases of the Products by consumers constitute “transactions”  
2 within the meaning of Civil Code §1761(e), and the Products constitute “goods” within  
3 the meaning of Civil Code §1761(a).

4           111. Defendants have violated, and continues to violate, the CLRA in at least  
5 the following respects:

- 6                   a. §1770(5) pertaining to misrepresentations regarding the  
7                   characteristics of goods sold—specifying that misleading  
8                   representations regarding ingredients violate the CLRA;  
9                   b. §1770(7) pertaining to misrepresentations regarding the standard,  
10                   quality, or grade of goods sold; and  
11                   c. § 1770(9) pertaining to goods advertised with the intent not to  
12                   provide what is advertised.

13           112. Defendants knew, or should have known, that the labeling of their Products  
14 violated consumer protection laws, and that these statements would be relied upon by  
15 Plaintiffs and the members of the Class.

16           113. The representations were made to Plaintiffs and all members of the Class.  
17 Plaintiffs relied on the accuracy of the representations on Defendants’ labels, which  
18 formed a material basis for his decision to purchase the Products. Moreover, based on  
19 the very materiality of Defendants’ misrepresentations uniformly made on or omitted  
20 from their Product labels, reliance may be presumed or inferred for all members of the  
21 Class.

22           114. Defendants carried out the scheme set forth in this Complaint willfully,  
23 wantonly, and with reckless disregard for the interests of Plaintiffs and the Class, and  
24 as a result, Plaintiffs and the Class have suffered an ascertainable loss of money or  
25 property.

26           115. Plaintiffs and the members of the Class request that this Court enjoin  
27 Defendants from continuing to engage in the unlawful and deceptive methods, acts and  
28 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless

1 Defendants are permanently enjoined from continuing to engage in such violations of  
2 the CLRA, future consumers of Defendants’ Products will be damaged by their acts and  
3 practices in the same way as Plaintiffs and California Subclass Members.

4 116. Plaintiffs served a CLRA demand pursuant to Civil Code §1782, via U.S.  
5 Certified Mail Return Receipt notifying Defendants of the conduct described herein and  
6 that such conduct was in violation of particular provisions of Civil Code §1770. Thirty  
7 days have passed, and Defendants have not addressed Plaintiffs’ demands.  
8 Accordingly, Plaintiffs seek the full measure of damages as provided under Civil Code  
9 §1780.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of New York’s Consumer Protection from Deceptive Acts and**  
12 **Practices Law N.Y. GEN. BUS. LAW § 349 *et seq.*)**  
13 **(On behalf of the New York Subclass)**

14 117. Plaintiffs incorporate each and every allegation contained in the  
15 paragraphs above as if restated herein. Plaintiffs bring this claim on behalf of the New  
16 York Subclass for violation of section 349 of New York’s Consumer Protection from  
17 Deceptive Acts and Practices Law, N.Y. GEN. BUS. LAW § 349 *et seq.*

18 118. Section 349 prohibits “[d]eceptive acts or practices in the conduct of any  
19 business, trade or commerce or in the furnishing of any service in [the State of New  
20 York].” N.Y. Gen. Bus. Law § 349(a).

21 119. Defendants’ labeling and marketing of the Products, as alleged herein,  
22 constitute “deceptive” acts and practices, as such conduct misled Plaintiffs and the  
23 New York Subclass as to the characteristics and value of the Products.

24 120. Subsection (h) of Section 349 grants private plaintiffs a right of action for  
25 violation of New York’s Consumer Protection from Deceptive Acts and Practices  
26 Law, as follows:  
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In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.

N.Y. Gen. Bus. Law § 349(h).

121. In accordance with subsection (h) of Section 349, Plaintiffs seek an order enjoining Defendants from continuing the unlawful deceptive acts and practices set out above. Absent a Court order enjoining the unlawful, deceptive acts and practices, Defendants will continue its deceptive and misleading marketing campaign and, in doing so, irreparably harm each of the New York Subclass members. As a consequence of Defendants’ deceptive acts and practices, Plaintiffs and other members of the New York Subclass suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs and other members of the New York Subclass also seek actual damages or statutory damages of \$50 per violation, whichever is greater, as well as punitive damages. N.Y. GEN. BUS. LAW § 349(h).

**EIGHTH CAUSE OF ACTION**

**(Violation of New York’s Consumer Protection from Deceptive Acts and Practices Law, N.Y. GEN. BUS. LAW § 350 *et seq.*)  
(On Behalf of the New York Subclass)**

122. Plaintiffs incorporate each and every allegation contained in the paragraphs above as if restated herein. Plaintiffs bring this claim on behalf of the New York Subclass for violation of section 350 of New York’s Consumer Protection from Deceptive Acts and Practices Law, N.Y. Gen. Bus. Law § 350.

1           123. Section 350 prohibits “[f]alse advertising in the conduct of any business,  
2 trade or commerce or in the furnishing of any service in [the State of New York].”  
3 N.Y. Gen. Bus. Law § 350.

4           124. New York General Business Law Section 350-a defines “false  
5 advertising” as “advertising, including labeling, of a commodity, or of the kind,  
6 character, terms or conditions of any employment opportunity if such advertising is  
7 misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a.1. The section also  
8 provides that advertising can be false by omission, as it further defines “false  
9 advertising” to include “advertising [that] fails to reveal facts material in the light of  
10 such representations with respect to the commodity . . . to which the advertising  
11 relates.” *Id.*

12           125. Defendants’ labeling, marketing, and advertising of its Products, as  
13 alleged herein, are “misleading in a material respect” and, thus, constitute “false  
14 advertising,” as they falsely represent the Products as consisting of characteristics and  
15 lawfulness that they do not possess.

16           126. Plaintiffs seek an order enjoining Defendants from continuing this false  
17 advertising. Absent enjoining this false advertising, Defendants will continue to  
18 mislead Plaintiffs and the other members of the New York Subclass as to the  
19 characteristics of their Products, and in doing so, irreparably harm each of the New  
20 York Subclass members.

21           127. As a direct and proximate result of Defendants’ violation of New York  
22 General Business Law §350, Plaintiffs and the other members of the New York  
23 Subclass have also suffered an ascertainable loss of monies. By reason of the  
24 foregoing, Plaintiffs and other members of the New York Subclass also seek actual  
25 damages or statutory damages of \$500 per violation, whichever is greater, as well as  
26 punitive damages. N.Y. GEN. BUS. LAW § 350-e.

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**NINTH CAUSE OF ACTION**

**(Restitution Based On Quasi-Contract/Unjust Enrichment)  
By Plaintiffs on Behalf of the Nationwide Class**

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2  
3 128. Plaintiffs incorporate each and every allegation contained in the  
4 paragraphs above as if restated herein.

5 129. Defendants’ conduct in enticing Plaintiffs and the Class to purchase  
6 Products with false and misleading packaging is unlawful because the statements  
7 contained on the Defendants’ Product labels are untrue.

8 130. Defendants took monies from Plaintiffs and the Class for these Products  
9 and have been unjustly enriched at the expense of Plaintiffs and the Class as a result of  
10 their unlawful conduct alleged herein, thereby creating a quasi-contractual obligation  
11 on Defendants to restore these ill-gotten gains to Plaintiffs and the Class.

12 131. It is against equity and good conscience to permit Defendants to retain the  
13 ill-gotten benefits received from Plaintiffs and Class members.

14 132. As a direct and proximate result of Defendants’ unjust enrichment,  
15 Plaintiffs and the Class are entitled to restitution or restitutionary disgorgement in an  
16 amount to be proved at trial.

17 **PRAYER FOR RELIEF**

18 THEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other  
19 members of the Class and for the Counts so applicable on behalf of the general public  
20 request an award and relief as follows:

21 A. An order certifying that this action is properly brought and may be  
22 maintained as a class action, that Plaintiffs be appointed Class Representatives, and  
23 Plaintiffs’ counsel be appointed Lead Counsel for the Class.

24 B. Restitution in such amount that Plaintiffs and all members of the Class  
25 paid to purchase Defendants’ Product or restitutionary disgorgement of the profits  
26 Defendant obtained from those transactions, for Causes of Action for which they are  
27 available.  
28



1 C. Compensatory damages for Causes of Action for which they are  
2 available.

3 D. Other statutory penalties for Causes of Action for which they are  
4 available.

5 E. Punitive Damages for Causes of Action for which they are available.

6 F. A declaration and Order enjoining Defendants from marketing and  
7 labeling its Product deceptively, in violation of laws and regulations as specified in  
8 this Complaint.

9 G. An Order awarding Plaintiffs their costs of suit, including reasonable  
10 attorneys' fees and pre and post judgment interest.

11 H. An Order requiring an accounting for, and imposition of, a constructive  
12 trust upon all monies received by Defendants as a result of the unfair, misleading,  
13 fraudulent, and unlawful conduct alleged herein.

14 I. Such other and further relief as may be deemed necessary or appropriate.  
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all causes of action or issues so triable.

DATED: January 3, 2024

Respectfully submitted,



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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Liquid I.V. Drink Mixes Falsely Labeled as Free From Preservatives, Class Action Claims](#)

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