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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 JACOB SCHEIBE, *individually and on*)
13 *behalf of all those similarly situated,*)
14)
15 *Plaintiff,*)

No. **'23CV998 RBM BLM**

16 v.)

CLASS ACTION COMPLAINT

17 ARIZONA BEVERAGES USA, LLC, *a*)
18 *Delaware limited liability company,*)
19)
20 *Defendant.*)

JURY TRIAL DEMANDED

21 _____
22
23 Jacob Scheibe (“Plaintiff”), individually and on behalf of all others in the state of
24 California similarly situated, by and through undersigned counsel, hereby brings this action
25 against Arizona Beverages USA, LLC (“Arizona Beverages”), alleging that its Arizona Fruit
26 Snacks; Arizona Green Tea Fruit Snacks; and Arizona Arnold Palmer Half & Half Fruit Snacks
27 (“the Products”), which are manufactured, packaged, labeled, advertised, distributed, and sold
28 by Defendant, are misbranded and falsely advertised as containing “No Preservatives,” and upon
information and belief and investigation of counsel alleges as follows:

PARTIES

1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state of
California, domiciled in San Diego, California.

1 that offers the Products for sale to commercial and individual consumers in this district, as well
2 as offering the Products for sale through third-party e-commerce websites, through both of
3 which commercial and individual consumers residing in this district have purchased the
4 Products.

5
6 9. Defendant knowingly directs electronic activity and ships the Products into this
7 district with the intent to engage in business interactions for profit, and it has in fact engaged in
8 such interactions, including the sale of the Products to Plaintiff.

9
10 10. Defendant also sells the Products to retailers and wholesalers in this district for
11 the purpose of making the Products available for purchase by individual consumers in this
12 district.

13 11. Plaintiff's losses and those of other Class members were sustained in this district.

14 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of
15 the events or omissions giving rise to Plaintiff's claims occurred within this district.

16 13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court
17 maintains personal jurisdiction over Defendant.

18 **FACTUAL ALLEGATIONS**

19 **A. Consumers Pay A Premium for "Clean Labels."**

20 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-
21 natural," minimally processed, or otherwise free of artificial flavors and preservatives.

22
23 15. For example, a 2018 survey by L.E.K. Consulting found that overwhelming
24 numbers of consumers were committed or casual adherents to so-called "clean label" food
25 attributes: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-
26 natural" (66 percent). These were the three most attractive attributes in the consumer survey.
27 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for "clean
28 label" foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

1 16. This consumer preference has led to an explosion in the category of “clean label”
2 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods
3 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
4 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
5 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.
6

7 17. On or about February 8, 2023, Mr. Scheibe ordered the Products from
8 Amazon.com (Order No. #112-6456667-7869838) for a total cost of \$11.91 inclusive of tax..

9 18. Mr. Scheibe is a student who has recently begun to eat for health and with
10 intentionality. He carefully reviews labels, including the Products’ labels, to ensure that he
11 consumes only natural ingredients and avoids artificial ingredients.
12

13 **B. Defendant’s Use of Citric Acid as a Preservative and Deceptive Labels.**

14 19. Defendant Arizona Beverages formulates, manufactures, and sells the Products.

15 20. The front label (or “principal display panel”) of the beverage Products
16 prominently state they contain “No Preservatives”:





21. These claims are repeated on the Amazon.com storefronts for the Products, which Defendant controls (*see, e.g.*, <https://www.amazon.com/AriZona-Snacks-Gluten-Individual-Single/dp/B08MCL7SQD>):

A screenshot of an Amazon product page for "AriZona Green Tea Fruit Snacks, Gluten Free Mixed Fruit Gummy Chews 5 Ounce Individual Single Serve Bags, Green Tea, (Pack of 12)". The page features several callouts: "NO PRESERVATIVES", "NO SYNTHETIC COLOR", and "NO ARTIFICIAL FLAVOR" in a green box; "FAT FREE" and "GLUTEN FREE" in separate boxes; and a circular seal that says "AN AMERICAN COMPANY FAMILY OWNED & OPERATED". The product title is "AriZona Green Tea Fruit Snacks, Gluten Free Mixed Fruit Gummy Chews 5 Ounce Individual Single Serve Bags, Green Tea, (Pack of 12)". Below the title, it says "Visit the AriZona Store", "4.4 ★★★★★ 1,517 ratings | 5 answered questions", and "Amazon's Choice for 'arizona tea fruit snacks'". The price is listed as "\$24.10 (\$0.40 / Ounce)" with a "Was: \$31.79" crossed out. It also mentions "Get Fast, Free Shipping with Amazon Prime" and "You Save: \$7.69 (24%)". At the bottom, it says "Get \$60 off instantly: Pay \$0.00 \$24.10 upon approval for the Amazon Store Card. No annual fee."

22. These “No Preservatives” claims are false. The Products all contain an ingredient identified as “citric acid.”

23. The FDA has stated that citric acid is an artificial and synthetic additive in multiple warning letters to the food industry. *See, e.g.*, Warning Letter to Oak Tree Farm Dairy, Food & Drug Admin. (Aug. 16, 2001) (use of the phrase “Nothing Artificial” on a label was misleading to consumers “because [the food] contains citric acid”); Warning Letter to Hirzel

1 Canning Co., Food & Drug Admin. (Aug. 29, 2001) (“[T]he addition of ... citric acid to
2 these products preclude the use of the term ‘natural’ to describe the product.”).

3 24. FDA also expressly classifies citric acid as a preservative in its “Overview of Food
4 Ingredients, Additives, and Colors/.” *See*
5 [http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/
6 ucm094211.htm](http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm094211.htm).
7

8 25. While citric acid is found naturally within fruits such as lemons and oranges, the
9 citric acid used by the food industry is universally produced using synthetic, chemical means.
10 This weak acid has been used as an additive in processed foods for more than a century as a
11 preservative.

12 26. Here, the Products use chemically produced citric acid as a preservative.

13 27. Citric acid is a chemical preservative, defined at 21 C.F.R. § 101.22(a)(5) as “any
14 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not
15 include common salt, sugars, vinegars, spices, oils extracted from spices, substances added to
16 food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or
17 herbicidal properties.”
18

19 28. Federal and identical state law require that where a food contains “any chemical
20 that, when added to food, tends to prevent or retard deterioration,” a “statement of [that]
21 chemical preservative shall be placed on the food [] as may be necessary to render such statement
22 likely to be read by the ordinary person under customary conditions of purchase and use.” 21
23 U.S.C. § 343(k), 21 C.F.R. §§ 101.22(a)(5) & 101.22(c).
24

25 29. Federal and state law require that “a food to which a chemical preservative(s) is
26 added shall [] bear a label declaration stating both the common or usual name of the ingredient(s)
27
28

1 and a separate description of its function, *e.g.*, ‘preservative’, ‘to retard spoilage’, ‘a mold
2 inhibitor’, ‘to help protect flavor’ or ‘to promote color retention.’” *Id.* § 101.22(j).

3 30. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §
4 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.
5

6 31. The Products have none of the required disclosures regarding the use of
7 preservatives.

8 32. Plaintiff reserves the right to amend this Complaint to add further products that
9 contain similar label misrepresentations as investigation continues.

10 49. Labels are the chief means by which food product manufacturers convey critical
11 information to consumers, and consumers have been conditioned to rely on the accuracy of the
12 claims made on these labels. As the California Supreme Court stated in a case involving alleged
13 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based
14 on the premise that labels matter, that consumers will choose one product over another similar
15 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).
16

17 50. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed
18 the “no preservatives” claims being made on those labels. He understood these label claims to
19 be a representation that the Products contained no preservatives and relied on it. This
20 representation was false.
21

22 51. By representing that the Products have “No Preservatives,” Defendant sought to
23 capitalize on consumers’ preference for less processed food products with fewer additives.
24 Consumers are willing to pay more for products with no additives because they are associated
25 with a healthy lifestyle and are perceived as being of higher quality.

26 52. Consumers, including Plaintiff, reasonably relied on Defendant’s statements such
27 that they would not have purchased the Products from Defendant if the truth about the Products
28

1 was known, or would have only been willing to pay a substantially reduced price for the Products
2 had they known that Defendant’s representations were false and misleading.

3 53. In the alternative, because of its deceptive and false labelling statements,
4 Defendant was enabled to charge a premium for the Products relative to key competitors’
5 products, or relative to the average price charged in the marketplace.
6

7 54. Consumers including Plaintiff especially rely on label claims made by food
8 product manufacturers such as Arizona Beverages, as they cannot confirm or disprove those
9 claims simply by viewing or even consuming the Products.

10 55. Plaintiff suffered economic injury by Defendant’s fraudulent and deceptive
11 conduct as stated herein, and there is a causal nexus between Defendant’s deceptive conduct and
12 Plaintiff’s injury.
13

14 **CLASS ACTION ALLEGATIONS**

15 56. Plaintiff brings this action individually and as representative of all those similarly
16 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the state
17 of California who purchased the Products within four years prior to the filing of this Complaint.

18 57. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
19 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
20 this matter and the members of their immediate families and judicial staff.
21

22 58. Plaintiff reserves the right to alter the Class definition, and to amend this
23 Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.

24 59. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
25 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
26 individual Class members would use to prove those elements in individual actions alleging the
27 same claims.
28

1 60. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
2 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
3 members geographically dispersed throughout California.

4 61. **Existence and Predominance of Common Questions of Law and Fact – Rule**
5 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
6 predominate over any questions that affect only individual Class members. Common legal and
7 factual questions and issues include but are not limited to:

- 8
- 9 a. Whether the marketing, advertising, packaging, labeling, and other
10 promotional materials for Defendant’s Products is misleading and deceptive;
 - 11 b. Whether a reasonable consumer would understand Defendant’s no
12 preservatives claims to indicate that the Products contained no preservatives,
13 and reasonably relied upon those representations;
 - 14 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and
15 Class members;
 - 16 d. the proper amount of damages and disgorgement or restitution;
 - 17 e. the proper scope of injunctive relief; and
 - 18 f. the proper amount of attorneys’ fees.
- 19
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21 62. Defendant engaged in a common course of conduct in contravention of the laws
22 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
23 of law, business practices, and injuries are involved. Individual questions, if any, pale by
24 comparison, in both quality and quantity, to the numerous common questions that predominate
25 this action. The common questions will yield common answers that will substantially advance
26 the resolution of the case.

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1 63. In short, these common questions of fact and law predominate over questions that
2 affect only individual Class members.

3 64. **Typicality – Rule 23(a)(3):** Plaintiff’s claims are typical of the claims of the Class
4 members because they are based on the same underlying facts, events, and circumstances
5 relating to Defendant’s conduct.

6 65. Specifically, all Class members, including Plaintiff, were harmed in the same way
7 due to Defendant’s uniform misconduct described herein; all Class members suffered similar
8 economic injury due to Defendant’s misrepresentations; and Plaintiff seeks the same relief as
9 the Class members.
10

11 66. There are no defenses available to Defendant that are unique to the named
12 Plaintiff.

13 49. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate
14 representative of the Class because Plaintiff’s interests do not conflict with the Class members’
15 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress
16 against Defendant.
17

18 50. Furthermore, Plaintiff has selected competent counsel who are experienced in
19 class action and other complex litigation. Plaintiff and Plaintiff’s counsel are committed to
20 prosecuting this action vigorously on behalf of the Class and have the resources to do so.
21

22 51. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other
23 available means for the fair and efficient adjudication of this controversy for at least the
24 following reasons

25 a. the damages individual Class members suffered are small compared to the
26 burden and expense of individual prosecution of the complex and extensive
27 litigation needed to address Defendant’s conduct such that it would be
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virtually impossible for the Class members individually to redress the wrongs done to them. In fact, they would have little incentive to do so given the amount of damage each member has suffered when weighed against the costs and burdens of litigation;

- b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;
- c. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and
- d. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would be dispositive of the interests of other Class members or would substantively impair or impede their ability to protect their interests.

52. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

53. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products' advertising or labeling in the future, and so will not purchase the Products although he would like to.

1 **COUNT 5**
2 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
3 **CIVIL CODE § 1750 *et seq.***

4 87. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
5 extent necessary, pleads this cause of action in the alternative.

6 88. Plaintiff is a “consumer” within the meaning of the Consumer Legal Remedies
7 Act (“CLRA”), Cal. Civ. Code § 1761(d).

8 106. The sale of Defendant’s Products to Plaintiff and Class members was a
9 “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

10 107. The Products purchased by Plaintiff and Class members are “goods” within the
11 meaning of the CLRA, Cal. Civ. Code § 1761(a).

12 108. As alleged herein, Defendant’s business practices are a violation of the CLRA
13 because Defendant deceptively failed to reveal facts that are material in light of the “No
14 Preservatives” representation made by Defendant on the labels of its Products.

15 109. Defendant’s ongoing failure to provide material facts about its Products on its
16 labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- 17
- 18 a. Defendant’s acts and practices constitute misrepresentations that its Products have
19 characteristics, benefits, or uses which they do not have;
 - 20 b. Defendant misrepresented that its Products are of a particular standard, quality,
21 and/or grade, when they are of another;
 - 22 c. Defendant’s acts and practices constitute the advertisement of goods, without the
23 intent to sell them as advertised;
 - 24 d. Defendant’s acts and practices fail to represent that transactions involving its
25 Products involve actions that are prohibited by law, particularly the use of
26 misleading nutritional labelling; and
27
28

1 e. Defendant's acts and practices constitute representations that its Products have
2 been supplied in accordance with previous representations when they were not.

3 110. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,
4 entitling them to injunctive relief, disgorgement, and restitution.

5 111. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the
6 particular violations of the CLRA described herein and demanded Defendant rectify the actions
7 described above by providing complete monetary relief, agreeing to be bound by their legal
8 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this
9 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.
10

11 112. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled
12 to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such
13 damages include, without limitation, monetary losses and actual, punitive, and consequential
14 damages, in an amount to be proven at trial.
15

16 113. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin
17 publication of misleading and deceptive labels on Defendant's Products and to recover
18 reasonable attorneys' fees and costs.

19 **COUNT 6**
20 **UNJUST ENRICHMENT**

21 114. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
22 extent necessary, pleads this cause of action in the alternative.

23 115. Defendant, through its marketing and labeling of the Products, misrepresented and
24 deceived consumers regarding the use of preservatives in the Products.
25

26 116. Defendant did so for the purpose of enriching itself and it in fact enriched itself
27 by doing so.
28

1 117. Consumers conferred a benefit on Defendant by purchasing the Products,
2 including an effective premium above their true value. Defendant appreciated, accepted, and
3 retained the benefit to the detriment of consumers.

4 118. Defendant continues to possess monies paid by consumers to which Defendant is
5 not entitled.

6 119. Under the circumstances it would be inequitable for Defendant to retain the benefit
7 conferred upon it and Defendant's retention of the benefit violates fundamental principles of
8 justice, equity, and good conscience.

9 120. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of
10 Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed
11 appropriate by the Court, and such other relief as the Court deems just and proper to remedy
12 Defendant's unjust enrichment.

13 121. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
14 a result of Defendant's actions as set forth above.

15
16
17 **COUNT 7**
18 **BREACH OF EXPRESS WARRANTY**

19 122. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
20 extent necessary, pleads this cause of action in the alternative.

21 123. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
22 expressly warranted that the Products contained "No Preservatives."

23 124. Defendant's express warranties, and its affirmations of fact and promises made to
24 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain
25 between Defendant and Plaintiff and the Class, which creates an express warranty that the
26 Products would conform to those affirmations of fact, representations, promises, and
27 descriptions.
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TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

/s/ Charles C. Weller
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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: [Certain AriZona Fruit Snacks Falsely Advertised as Preservative-Free, Class Action Says](#)
