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1 2 3 4 5 6 7 8	Charles C. Weller (SBN: 207034) legal@cweller.com CHARLES C. WELLER, APC 11412 Corley Court San Diego, California 92126 Tel: 858.414.7465 Fax: 858.300.5137 Attorney for Plaintiff Jacob Scheibe IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA		
9 10	JACOB SCHEIBE, individually and on)		
11 12	behalf of all those similarly situated, Plaintiff,) No. <u>'23CV998 RBM BLM</u>		
13	v.) CLASS ACTION COMPLAINT		
14	ARIZONA BEVERAGES USA, LLC, <i>a</i>) JURY TRIAL DEMANDED		
15 16 17	Defendant.		
18	Jacob Scheibe ("Plaintiff"), individually and on behalf of all others in the state of		
19 20	California similarly situated, by and through undersigned counsel, hereby brings this action		
20 21	against Arizona Beverages USA, LLC ("Arizona Beverages"), alleging that its Arizona Fruit		
22	Snacks; Arizona Green Tea Fruit Snacks; and Arizona Arnold Palmer Half & Half Fruit Snacks		
23	("the Products"), which are manufactured, packaged, labeled, advertised, distributed, and sold		
24	by Defendant, are misbranded and falsely advertised as containing "No Preservatives," and upon		
25	information and belief and investigation of counsel alleges as follows:		
26	PARTIES		
27	1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state of		
28	California, domiciled in San Diego, California.		
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1	2. Defendant Arizona Beverages USA LLC is a Delaware limited liability company	
2	with its principal place of business and headquarters in Cincinnati, Ohio.	
3	JURISDICTION AND VENUE	
4	3. This Court has subject matter jurisdiction over this action pursuant to the Class	
5	Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the	
6	United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original	
7 8	jurisdiction of the federal district courts over "any civil action in which the matter in controversy	
9	exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class	
10	action in which any member of a class of plaintiffs is a citizen of a State different from any	
11	defendant." 28 U.S.C. § 1332(d)(2)(A).	
12		
13	4. Plaintiff seeks to represent Class members who are citizens of states or countries	
14	different from the Defendant.	
15	5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate,	
16	exclusive of interests and costs.	
17	6. In addition, "the number of members of all proposed plaintiff classes in the	
18	aggregate" is greater than 100. See 28 U.S.C. § 1332(d)(5)(B).	
19	7. This Court has personal jurisdiction over Defendant because this action arises out	
20	of and relates to Defendant's contacts with this forum.	
21	8. Those contacts include but are not limited to sales of the Products directly to	
22	commercial and individual consumers located in this district, including Plaintiff; shipping the	
23 24	Products to commercial and individual consumers in this district, including Plaintiff; knowingly	
24	directing advertising and marketing materials concerning the Products into this district through	
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27	wires and mails, both directly and through electronic and print publications that are directed to	
28	commercial and individual consumers in this district; and operating an e-commerce web site	
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that offers the Products for sale to commercial and individual consumers in this district, as well as offering the Products for sale through third-party e-commerce websites, through both of which commercial and individual consumers residing in this district have purchased the Products.

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

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

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

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

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

FACTUAL ALLEGATIONS

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A.

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Consumers Pay A Premium for "Clean Labels."

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

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

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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 2023, reaching \$191 billion in annual sales from 2016 to by 2023. See 5 https://www.alliedmarketresearch.com/natural-food-and-drinks-market. 6

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

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

B. Defendant's Use of Citric Acid as a Preservative and Deceptive Labels.

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

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





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 Fo	əd
4	Ingredients, Additives, and Colors/." S	'ee
5	http:///www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/	
6 7	ucm094211.htm.	
8	25. While citric acid is found naturally within fruits such as lemons and oranges, t	he
9	citric acid used by the food industry is universally produced using synthetic, chemical mear	
10	This weak acid has been used as an additive in processed foods for more than a century as	
11	preservative.	u
12	26. Here, the Products use chemically produced citric acid as a preservative.	
13		
14	27. Citric acid is a chemical preservative, defined at 21 C.F.R. § 101.22(a)(5) as "an	•
15	chemical that, when added to food, tends to prevent or retard deterioration thereof, but does n	
16	include common salt, sugars, vinegars, spices, oils extracted from spices, substances added	to
17	food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal	or
18	herbicidal properties."	
19 20	28. Federal and identical state law require that where a food contains "any chemic	al
20	that, when added to food, tends to prevent or retard deterioration," a "statement of [that	at]
22	chemical preservative shall be placed on the food [] as may be necessary to render such stateme	nt
23	likely to be read by the ordinary person under customary conditions of purchase and use."	21
24	U.S.C. § 343(k), 21 C.F.R. §§ 101.22(a)(5) & 101.22(c).	
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)
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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 The Products have none of the required disclosures regarding the use of 31. 6 preservatives. 7 32. Plaintiff reserves the right to amend this Complaint to add further products that 8 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 16 product based on its label." Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 328 (2011). 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 51. By representing that the Products have "No Preservatives," Defendant sought to 22 capitalize on consumers' preference for less processed food products with fewer additives. 23 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 -7-CLASS ACTION COMPLAINT

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 54. Consumers including Plaintiff especially rely on label claims made by food 7 product manufacturers such as Arizona Beverages, as they cannot confirm or disprove those 8 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 **CLASS ACTION ALLEGATIONS** 14 56. Plaintiff brings this action individually and as representative of all those similarly 15 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the state 16 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 58. Plaintiff reserves the right to alter the Class definition, and to amend this 22 Complaint to add Subclasses, as necessary to the full extent permitted by applicable law. 23 Certification of Plaintiff's claims for class-wide treatment is appropriate because 59. 24 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 -8-

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 7	predominate over any questions that affect only individual Class members. Common legal and		
8	factual questions and issues include but are not limited to:		
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		
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13	preservatives claims to indicate that the Products contained no preservatives,		
14	and reasonably relied upon those representations;		
15	c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and		
16	Class members;		
17	d. the proper amount of damages and disgorgement or restitution;		
18	e. the proper scope of injunctive relief; and		
19	f. the proper amount of attorneys' fees.		
20	62. Defendant engaged in a common course of conduct in contravention of the laws		
21 22	Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations		
22	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		
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27	the resolution of the case.		
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	CLASS ACTION COMPLAINT		

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 6	relating to Defendant's conduct.	
7	65. Specifically, all Class members, including Plaintiff, were harmed in the same way	
8	due to Defendant's uniform misconduct described herein; all Class members suffered similar	
9	economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as	
10	the Class members.	
11	66. There are no defenses available to Defendant that are unique to the named	
12 13	Plaintiff.	
13	49. Adequacy of Representation – Rule 23(a)(4): Plaintiff is a fair and adequate	
15	representative of the Class because Plaintiff's interests do not conflict with the Class members'	
16	interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress	
17	against Defendant.	
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 21	prosecuting this action vigorously on behalf of the Class and have the resources to do so.	
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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	CLASS ACTION COMPLAINT	

1	virtually impossible for the Class members individually to redress the wrongs
2	done to them. In fact, they would have little incentive to do so given the
3	amount of damage each member has suffered when weighed against the costs
4	and burdens of litigation;
5	b. the class procedure presents fewer management difficulties than individual
6	
7	litigation and provides the benefits of single adjudication, economies of scale,
8	and supervision by a single Court;
9	c. the prosecution of separate actions by individual Class members would create
10	a risk of inconsistent or varying adjudications, which would establish
11	incompatible standards of conduct for Defendant; and
12	d. the prosecution of separate actions by individual Class members would create
13 14	a risk of adjudications with respect to them that would be dispositive of the
15	interests of other Class members or would substantively impair or impede their
16	ability to protect their interests.
17	52. Unless the Class is certified, Defendant will retain monies received as a result of
18	its unlawful and deceptive conduct alleged herein.
19	53. Unless a class-wide injunction is issued, Defendant will likely continue to
20	advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
21	
22	described throughout this Complaint, and members of the Class will continue to be misled,
23	harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products'
24	advertising or labeling in the future, and so will not purchase the Products although he would
25	like to.
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1	54. Ascertainability. To the extent ascertainability is required, the Class members are
2	readily ascertainable from Defendant's records and/or its agents' records of retail and online
3	sales, as well as through public notice.
4	55. Defendant has acted on grounds applicable to the Class as a whole, thereby
5	making appropriate final injunctive and declaratory relief concerning the Class as a whole.
6 7	COUNT 1
8	VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 <i>et seq.</i> — "UNFAIR" CONDUCT
9	56. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
10	extent necessary, pleads this cause of action in the alternative.
11	57. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
12	a result of Defendant's actions as set forth herein.
13 14	58. Defendant's actions as alleged in this Complaint constitute "unfair" conduct
15	within the meaning of California Business and Professions Code Section 17200, et seq.
16	59. Defendant's business practices, as alleged herein, are "unfair" because it fails to
17	disclose accurately the preservative used in the Products.
18	60. As a result of this "unfair" conduct, Plaintiff expended money and engaged in
19	activities it would not otherwise have spent or conducted.
20	61. Defendant's wrongful business practices alleged herein constituted, and continue
21 22	to constitute, a continuing course of unfair competition since it continues to market and sell its
22	products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
24	oppressive, unscrupulous and/or substantially injurious to its customers.
25	62. Defendant publicly disseminated untrue or misleading representations regarding
26	the preservative in its Products, which it knew, or in the exercise of reasonable care should have
27	known, were untrue or misleading.
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CLASS ACTION COMPLAINT

1	63. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
2	of this court enjoining Defendant from continuing to engage in "unfair" business practices and
3	any other act prohibited by law, including those acts set forth in this Complaint, and further seek
4 5	all other relief allowable under Business and Professions Code Section 17200, et seq.
6	COUNT 2
7	VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 et seq. — "FRAUDULENT" CONDUCT
8	64. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
9	extent necessary, plead this cause of action in the alternative.
10	65. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
11	a result of Defendant's actions as set forth above.
12	66. Defendant's actions as alleged in this Complaint constitute "fraudulent" conduct
13 14	within the meaning of California Business and Professions Code Section 17200 et seq.
15	67. Defendant's business practices, as alleged herein, are "fraudulent" because it fails
16	to disclose accurately the preservative used in the Products.
17	68. As a result of this "fraudulent" conduct, Plaintiff expended money and engaged in
18	activities it would not otherwise have spent or conducted.
19	69. Defendant's wrongful business practices alleged herein constituted, and continue
20	to constitute, a continuing course of unfair competition since it continues to market and sell its
21 22	products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
22	oppressive, unscrupulous and/or substantially injurious to its customers.
24	70. Defendant publicly disseminated untrue or misleading representations regarding
25	the preservatives in its Products, which it knew, or in the exercise of reasonable care should
26	have known, were untrue or misleading.
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	-13- CLASS ACTION COMPLAINT

1	71. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an
2	order of this Court enjoining Defendant from continuing to engage in "fraudulent" business
3	practices and any other act prohibited by law, including those acts set forth in this Complaint,
4	and further seeks all other relief allowable under Business and Professions Code Section 17200,
5	et seq.
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7	COUNT 3 VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
8	SECTION 17200 et seq. — "UNLAWFUL" CONDUCT
9	72. Plaintiff reallege the preceding paragraphs as if fully set forth herein and, to the
10	extent necessary, pleads this cause of action in the alternative.
11	73. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
12	a result of Defendant's actions as set forth above.
13	74. Defendant's actions as alleged in this Complaint constitute "unlawful" conduct
14	within the meaning of California Business and Professions Code Section 17200, <i>et seq</i> .
15	within the including of Curronna Dusiness and Professions Code Section 17200, et seq.
16	75. Defendant's business practices, as alleged herein, are "unlawful" because it fails
17	disclose the preservative used in the Products.
18	76. As a result of this "unlawful" conduct, Plaintiff expended money and engaged in
19	activities he would not otherwise have spent or conducted.
20	77. Defendant's business practices alleged herein constituted, and continue to
21	
22	constitute, a continuing course of unfair competition since it continues to market and sell its
23	products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
24	oppressive, unscrupulous and/or substantially injurious to its customers.
25	78. Defendant publicly disseminated untrue or misleading representations regarding
26	the preservative in its Products, which it knew, or in the exercise of reasonable care should have
27	known, were untrue or misleading.
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CLASS ACTION COMPLAINT

1	79. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order			
2	of this court enjoining Defendant from continuing to engage in "unlawful" business practices			
3	and any other act prohibited by law, including those acts set forth in this Complaint, and further			
4				
5	seeks all other relief allowable under Business and Professions Code Section 17200, et seq.			
6 7	COUNT 4 VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17500 <i>et seq</i> .			
8	80. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the			
9	extent necessary, pleads this cause of action in the alternative.			
10	81. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as			
11	a result of Defendant's actions as set forth above.			
12	82. Defendant engaged in advertising and marketing to the public and offered for sale			
13 14	advertising services on a nationwide basis, including in California.			
15	83. Defendant engaged in the advertising and marketing alleged herein with the intent			
16	to directly or indirectly induce the sale of the Products to consumers.			
17	84. Defendant's advertisements and marketing representations regarding the			
18	characteristics of the Products were false, misleading, and deceptive as set forth above.			
19	85. At the time it made and disseminated the statements alleged herein, Defendant			
20	knew or should have known that the statements were untrue or misleading, and acted in violation			
21 22	of Business and Professions Code Section 17500, et seq.			
22	86. Plaintiff seeks injunctive relief and all other relief allowable under Business and			
24	Professions Code Section 17500, et seq.			
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1 2	VIOLA	COUNT 5 FION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CIVIL CODE § 1750 et seq.
3	87.	Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
4	extent necess	ary, pleads this cause of action in the alternative.
5	88.	Plaintiff is a "consumer" within the meaning of the Consumer Legal Remedies
6 7	Act ("CLRA ³	"), 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 th	he CLRA, Cal. Civ. Code § 1761(a).
12	108.	As alleged herein, Defendant's business practices are a violation of the CLRA
13 14	because Defendant deceptively failed to reveal facts that are material in light of the "No	
15	Preservatives" representation made by Defendant on the labels of its Products.	
16	109.	Defendant's ongoing failure to provide material facts about its Products on its
17	labels violate	es the following subsections of Cal. Civ. Code § 1770(a) in these respects:
18	a.	Defendant's acts and practices constitute misrepresentations that its Products have
19		characteristics, benefits, or uses which they do not have;
20 21	b.	Defendant misrepresented that its Products are of a particular standard, quality,
21		and/or grade, when they are of another;
23	с.	Defendant's acts and practices constitute the advertisement of goods, without the
24		intent to sell them as advertised;
25	d.	Defendant's acts and practices fail to represent that transactions involving its
26		Products involve actions that are prohibited by law, particularly the use of
27		misleading nutritional labelling; and
28		-16-
		CLASS ACTION COMPLAINT

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 8	described above by providing complete monetary relief, agreeing to be bound by their legal	
8 9		
10	obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this	
11	notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.	
12	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	
14	damages include, without limitation, monetary losses and actual, punitive, and consequential	
15	damages, in an amount to be proven at trial.	
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.	
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	CLASS ACTION COMPLAINT	

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 6	not entitled.							
7	119. Under the circumstances it would be inequitable for Defendant to retain the bene							
8	conferred upon it and Defendant's retention of the benefit violates fundamental principles o							
9	justice, equity, and good conscience.							
10	120. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of							
11	Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed							
12	appropriate by the Court, and such other relief as the Court deems just and proper to remedy							
13	Defendant's unjust enrichment.							
14	121. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as							
15 16								
17	a result of Defendant's actions as set forth above.							
18	COUNT 7 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 26	between Defendant and Plaintiff and the Class, which creates an express warranty that the							
26 27	Products would conform to those affirmations of fact, representations, promises, and							
28	descriptions.							
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	125. The Products do not conform to the express warranty that the Products contained							
2	"No Preservatives," because they contain citric acid used as a preservative.							
	 3 126. As a direct and proximate cause of Defendant's breach of express war 							
4	Plaintiff and Class members have been injured and harmed because: (a) they would not hav							
6	purchased the Products on the same terms if they knew the truth about the Products' ingredients;							
7	(b) they paid a price premium based on Defendant's express warranties; and (c) the Products do							
8	not have the characteristics, uses, or benefits that were promised.							
9	PRAYER FOR RELIEF							
10	WHEREFORE, Plaintiff respectfully request the Court grant the following relief against							
11	Defendant:							
12	a. Certifying the Class;							
13	 b. Declaring that Defendant violated the CLRA, UCL, and FAL; 							
14								
15	c. Awarding actual and other damages as permitted by law, and/or ordering an							
16	accounting by Defendant for any and all profits derived by Defendant from the							
17	unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;							
18	d. Ordering an awarding of injunctive relief as permitted by law or equity, including							
19	enjoining Defendant from continuing the unlawful practices as set forth herein, and							
20	ordering Defendant to engage in a corrective advertising campaign;							
21	e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;							
22 23	f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts							
23 24	awarded; and							
24								
26	g. Such other relief as the Court may deem just and proper.							
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2	TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.							
3	<u>/s/ Charles C. Weller</u> Charles C. Weller (Cal. SBN: 207034) Attorney for Plaintiff							
4			Charles C. Well Attorney for Pla	er (Cal. SBN: aintiff	207034)			
5			CHARLES C. V	VELLER. AP				
6			11412 Corley C San Diego, Cali Tel: 858.414.74	ourt fornia 92126				
7			Tel: 858.414.74 Fax: 858.300.51	65 137				
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