Cas	e 3:23-cv-01776-L-BLM Document 1 Filed 09/27/23 PageID.1 Page 1 of 15	
1 2 3 4 5 6 7	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	
8 9	FOR THE SOUTHERN DISTRICT OF CALIFORNIA	
10	JACOB SCHEIBE, <i>individually and on</i> ) behalf of all those similarly situated, )	
11	) Plaintiff, ) No. <b>'23CV1776 L BLM</b>	
12 13	<i>v</i> . ) CLASS ACTION COMPLAINT	
14	) CRAFTED BRAND COMPANY, LLC, a California limited liability company,	
15	Defendant.	
16	)	
17 18		
19	Jacob Scheibe ("Plaintiff"), individually and on behalf of all other consumers similarly situated throughout the United States, by and through undersigned counsel, hereby brings this	
20	action against Crafted Brand Company, LLC ("Crafted"), alleging that Crafted's Mai Tai and	
21	Pina Colada cocktails mixers ("the Products"), which are manufactured, packaged, labeled	
22	advertised, distributed, and sold by Defendant, are misbranded and deceptively labelled because	
23 24	they contain preservatives, and upon information and belief and investigation of counsel allege	
24	as follows:	-
26	PARTIES	
27	1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state o	f
28	California, domiciled in San Diego, California.	
	-1- CLASS ACTION COMPLAINT	—

1	2. Defendant Crafted Brand Company is a California limited liability company with
2	its principal place of business and headquarters in Las Vegas, Nevada.
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 7	United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original
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	4. Plaintiff seeks to represent Class members who are citizens of states or countries
13	different from the Defendant.
14	
15	
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 22	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
24	Products to commercial and individual consumers in this district, including Plaintiff; knowingly
25	directing advertising and marketing materials concerning the Products into this district through
26	wires and mails, both directly and through electronic and print publications that are directed to
27	commercial and individual consumers in this district; and operating an e-commerce web site
28	condition and marriadar consumers in this district, and operating an e commerce web site
	-2-
	CLASS ACTION COMPLAINT

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.

12 13

14

15

1

2

3

4

5

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.

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

## FACTUAL ALLEGATIONS

19

20

21

22

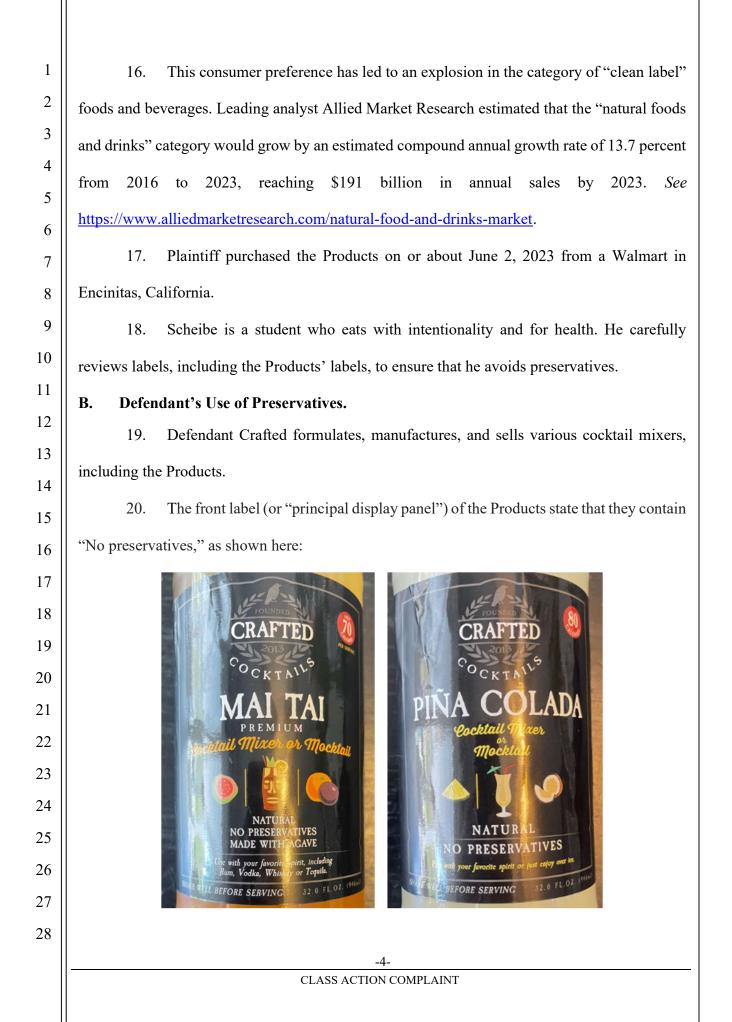
A.

18

## Consumers Pay A Premium for "Clean Label" Foods Free of Preservatives

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

15. 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, with 67 percent preferring foods with "No preservatives." (67 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*https://www.lek.com/insights/ei/next-generation-mindful-food-consumption.



1	21. This no preservatives claim is false. The Products contain citric acid, which is a
2	
3	commonly used and recognized preservative in food and beverage products.
4	22. Citric acid in foods, <i>including as used in the Products</i> , is used to preserve foods
5	by increasing acidity and preventing the growth of bacteria and mold when food is stored in
6	cans, jars, or other containers.
7	23. Under federal regulations, citric acid is a chemical preservative because it is a
8	"chemical that, when added to food, tends to prevent or retard deterioration thereof." 21 C.F.R.
9	§ 101.22(a)(5). This remains the case regardless of the subjective purpose for which citric acid
10	is introduced into a food product.
11	24. The United States Food and Drug Administration identifies citric acid as a
12	preservative in "Types of Food Ingredients" at https://www.fda.gov/food/food-additives-and-
13	gras-ingredients-information-consumers/types-food-ingredients (last viewed September 27,
14	2023).
15	
16	25. Federal regulations also require that where a food contains "any chemical that,
17	when added to food, tends to prevent or retard deterioration," a "statement of [that] chemical
18	preservative shall be placed on the food [] as may be necessary to render such statement likely
19 20	to be read by the ordinary person under customary conditions of purchase and use." 21 C.F.R.
20	§§ 101.22(a)(5), (c).
21 22	26. Citric acid does not fall within any regulatory exemption to these requirements.
23	27. These federal regulations are independently adopted as substantive state law
24	requirements under the Sherman Law, Cal. Health & Saf. Code § 109875, et seq.
25	28. As described above, a preservative as defined by federal regulation is a substance
26	that "tends" to prevent or retard the deterioration of food products. Thus, it is not necessary that
27	that tends to prevent of retard the deterioration of rood products. Thus, it is not necessary that
28	
	-5-
	CLASS ACTION COMPLAINT

1

2

3

4

5

12

13

28

the substance function as a preservative in every single instance for it to qualify as a preservative, so long as preservation is the general tendency of the substance.

29. However, on information and belief, citric acid does in fact function as a preservative in the Products.

30. Labels are the chief means by which food product manufacturers convey critical 6 information to consumers, and consumers have been conditioned to rely on the accuracy of the 7 claims made on these labels. As the California Supreme Court stated in a case involving alleged 8 9 violations of the UCL and FAL, "Simply stated: labels matter. The marketing industry is based 10 on the premise that labels matter, that consumers will choose one product over another similar 11 product based on its label." Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 328 (2011).

31. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed the "No preservatives" claim made on those labels. Consumers, including Plaintiff, who viewed 14 the Products' labels reasonably understood "No preservatives" claim to mean that the Products 15 16 do not contain preservatives such as citric acid. This representation was false.

17 32. Consumers, including Plaintiff, reasonably relied on Defendant's label claims 18 described herein such that they would not have purchased the Products from Defendant if the 19 truth about the Products was known, or would have only been willing to pay a substantially 20 reduced price for the Products had they known that Defendant's representations were false and 21 misleading. 22

33. In the alternative, because of its deceptive and false labelling statements, 23 24 Defendant was enabled to charge consumers including Plaintiff a premium for the Products 25 relative to key competitors' products, or relative to the average price charged in the marketplace. 26 27

> -6-CLASS ACTION COMPLAINT

1	34. Consumers including Plaintiff especially rely on label claims made by food
2	product manufacturers such as Crafted, as they cannot confirm or disprove those claims simply
3	by viewing or even consuming the Products.
4	35. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive
5	conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and
6 7	Plaintiff's injury.
8	CLASS ACTION ALLEGATIONS
9	36. Plaintiff brings this action individually and as representative of all those similarly
10	situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the United
11	States who purchased the Products within four years prior to the filing of this Complaint.
12	37. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
13	
14	employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
15	this matter and the members of their immediate families and judicial staff.
16	38. Plaintiff reserves the right to alter the Class definition, and to amend this
17	Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.
18	39. Certification of Plaintiff's claims for class-wide treatment is appropriate because
19	Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
20	individual Class members would use to prove those elements in individual actions alleging the
21 22	same claims.
23	40. Numerosity – Rule 23(a)(1): The size of the Class is so large that joinder of all
24	Class members is impracticable. Plaintiff believes and avers there are thousands of Class
25	members geographically dispersed throughout the nation.
26	41. Existence and Predominance of Common Questions of Law and Fact – Rule
27	23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions
28	
	-7- CLASS ACTION COMPLAINT

1	predominate over any questions that affect only individual Class members. Common legal and
2	factual questions and issues include but are not limited to:
3	a. Whether the marketing, advertising, packaging, and labeling for Defendant's
4	Products is misleading and deceptive;
5 6	b. Whether a reasonable consumer would understand Defendant's label claims to
7	indicate that the Products contained no preservatives, and reasonably relied upon
8	those representations;
9	c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class
10	members;
11	d. Whether Defendant breached an express warranty;
12	
13	e. the proper amount of damages;
14	f. the proper scope of injunctive relief; and
15	g. the proper amount of attorneys' fees.
16	42. Defendant engaged in a common course of conduct in contravention of the laws
17	Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
18	of law, business practices, and injuries are involved. Individual questions, if any, pale by
19 20	comparison, in both quality and quantity, to the numerous common questions that predominate
20 21	this action. The common questions will yield common answers that will substantially advance
21	the resolution of the case.
23	43. In short, these common questions of fact and law predominate over questions that
24	affect only individual Class members.
25	44. <b>Typicality – Rule 23(a)(3)</b> : Plaintiff's claims are typical of the claims of the Class
26	members because they are based on the same underlying facts, events, and circumstances
27	
28	relating to Defendant's conduct.
	-8- CLASS ACTION COMPLAINT

45. Specifically, all Class members, including Plaintiff, were harmed in the same way due to Defendant's uniform misconduct described herein; all Class members suffered similar economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as 4 the Class members.

46. There are no defenses available to Defendant that are unique to the named Plaintiff.

47. Adequacy of Representation – Rule 23(a)(4): Plaintiff is a fair and adequate 8 9 representative of the Class because Plaintiff's interests do not conflict with the Class members' 10 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress 11 against Defendant.

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

Superiority – Rule 23(b)(3): The class action mechanism is superior to other 49. available means for the fair and efficient adjudication of this controversy for at least the following reasons:

a. the damages individual Class members suffered are small compared to the burden 20 and expense of individual prosecution of the complex and extensive litigation 21 needed to address Defendant's conduct such that it would be virtually impossible 22 for the Class members individually to redress the wrongs done to them. In fact, 23 24 they would have little incentive to do so given the amount of damage each member 25 has suffered when weighed against the costs and burdens of litigation; 26

> -9-CLASS ACTION COMPLAINT

27 28

1

2

3

5

6

7

12

13

14

15

16

17

18

19

1	b. the class procedure presents fewer management difficulties than individual
2	litigation and provides the benefits of single adjudication, economies of scale, and
3	supervision by a single Court;
4	c. the prosecution of separate actions by individual Class members would create a
5	risk of inconsistent or varying adjudications, which would establish incompatible
6 7	standards of conduct for Defendant; and
8	d. the prosecution of separate actions by individual Class members would create a
9	risk of adjudications with respect to them that would be dispositive of the interests
10	of other Class members or would substantively impair or impede their ability to
11	protect their interests.
12	50. Unless the Class is certified, Defendant will retain monies received as a result of
13	its unlawful and deceptive conduct alleged herein.
14	
15	51. Unless a class-wide injunction is issued, Defendant will likely continue to
16	advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
17	described throughout this Complaint, and members of the Class will continue to be misled,
18	harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products'
19	advertising or labeling in the future, and so will not purchase the Products although he would
20	like to.
21	52. Ascertainability. To the extent ascertainability is required, the Class members are
22 23	readily ascertainable from Defendant's records and/or its agents' records of retail and online
24	sales, as well as through public notice.
25	53. Defendant has acted on grounds applicable to the Class as a whole, thereby
26	making appropriate final injunctive and declaratory relief concerning the Class as a whole.
27	
28	
	-10- CLASS ACTION COMPLAINT

1	COUNT 1
2	VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CIVIL CODE § 1750 et seq.
3	54. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
4	extent necessary, pleads this cause of action in the alternative.
5 6	55. Plaintiff is a "consumer" within the meaning of the Consumer Legal Remedies
7	Act ("CLRA"), Cal. Civ. Code § 1761(d).
8	56. 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	57. The Products purchased by Plaintiff and Class members are "goods" within the
11	meaning of the CLRA, Cal. Civ. Code § 1761(a).
12	58. 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" representations that were made by Defendant on the labels of its Products.
16	59. Defendant's ongoing failure to provide material facts about its Products on its
17	labels violates 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	b. Defendant misrepresented that its Products are of a particular standard, quality,
21	and/or grade, when they are of another;
22 23	c. Defendant's acts and practices constitute the advertisement of goods, without the
23	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	
	-11- 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 60. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed, 4 entitling them to injunctive relief, disgorgement, and restitution. 5 61. 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 9 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this 10 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint. 11 62. 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 63. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin 17 publication of misleading and deceptive nutritional labels on Defendant's Products and to 18 recover reasonable attorneys' fees and costs. 19 COUNT 2 20 **UNJUST ENRICHMENT** 21 64. 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 65. Defendant, through its marketing and labeling of the Products, misrepresented and 24 deceived consumers regarding the use of preservatives in the Products. 25 66. Defendant did so for the purpose of enriching itself and it in fact enriched itself 26 by doing so. 27 28 -12-CLASS ACTION COMPLAINT

1	67. 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 5	68. Defendant continues to possess monies paid by consumers to which Defendant is
6	not entitled.
7	69. Under the circumstances it would be inequitable for Defendant to retain the benefit
8	conferred upon it and Defendant's retention of the benefit violates fundamental principles of
9	justice, equity, and good conscience.
10	70. 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 14	Defendant's unjust enrichment.
14	71. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
16	a result of Defendant's actions as set forth above.
17	COUNT 3
18	BREACH OF EXPRESS WARRANTY
19	72. 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	73. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
22	expressly warranted that the Products contain "No preservatives."
23	74. 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
20	Products would conform to those affirmations of fact, representations, promises, and
28	descriptions.
	-13-
	CLASS ACTION COMPLAINT

1	75. The Products do not conform to the express warranty that the Products contain
2	"No preservatives" because they contain citric acid, a preservative.
3	76. As a direct and proximate cause of Defendant's breach of express warranty,
4	Plaintiff and Class members have been injured and harmed because: (a) they would not have
5	purchased the Products on the same terms if they knew the truth about the Products' unnatural
6 7	ingredients; (b) they paid a price premium based on Defendant's express warranties; and (c) the
8	Products do 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 and/or was unjustly enriched and/or
14	breached an express warranty;
15 16	c. Awarding actual and other damages as permitted by law;
17	d. Ordering an awarding of injunctive relief as permitted by law, including enjoining
18	Defendant from continuing the unlawful practices as set forth herein, and ordering
19	Defendant to engage in a corrective advertising campaign;
20	<ul><li>e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;</li></ul>
21	
22	
23	awarded; and
24	g. Such other relief as the Court may deem just and proper.
25 26	TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.
20	
28	
	CLASS ACTION COMPLAINT

## Case 3:23-cv-01776-L-BLM Document 1 Filed 09/27/23 PageID.15 Page 15 of 15

1	
2	Respectfully submitted,
3	/s/ Charles C. Weller
4	/s/ Charles C. Weller Charles C. Weller (Cal. SBN: 207034) Attorney for Plaintiff
5	CHARLES C. WELLER, APC
6	CHARLES C. WELLER, APC 11412 Corley Court San Diego, California 92126 Tel: 858.414.7465
7	Fax: 858.300.5137
8	September 27, 2023
9 10	
10	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	-15-
	CLASS ACTION COMPLAINT

## **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>'Natural' Crafted Mai Tai, Pina Colada</u> <u>Cocktail Mixers Contain Preservative Citric Acid, Class Action Says</u>