

1 Charles C. Weller (SBN: 207034)
2 legal@cweller.com
3 CHARLES C. WELLER, APC
4 11412 Corley Court
5 San Diego, California 92126
6 Tel: 858.414.7465
7 Fax: 858.300.5137

8 Attorney for Plaintiff Jacob Scheibe

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,*)
16)
17 v.)
18)
19 LIFEAID BEVERAGE LLC, *a Delaware*)
20 *limited liability company,*)
21)
22 *Defendant.*)
23)
24)
25)
26)
27)
28)

No. **'23CV0840 BEN DEB**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

18 Jacob Scheibe (“Plaintiff”), individually and on behalf of all others similarly situated, by
19 and through undersigned counsel, hereby brings this action against LifeAid Beverage LLC
20 (“LifeAid”), alleging that its FITAID and FOCUSAID Beverages and its FITAID, FOCUSAID,
21 IMMUNITYAID, and PARTYAID Powder Stick Packs (“the Products”), which are dietary
22 supplements manufactured, packaged, labeled, advertised, distributed, and sold by Defendant,
23 are misbranded and falsely advertised, and upon information and belief and investigation of
24 counsel alleges as follows:
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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.

1 wires and mails, both directly and through electronic and print publications that are directed to
2 commercial and individual consumers in this district; and operating an e-commerce web site
3 that offers the Products for sale to commercial and individual consumers in this district, as well
4 as offering the Products for sale through third-party e-commerce websites, through both of
5 which commercial and individual consumers residing in this district have purchased the
6 Products.
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8 9. Defendant knowingly directs electronic activity and ships the Products into this
9 district with the intent to engage in business interactions for profit, and it has in fact engaged in
10 such interactions, including the sale of the Products to Plaintiff.
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12 10. Defendant also sells the Products to retailers and wholesalers in this district for
13 the purpose of making the Products available for purchase by individual consumers in this
14 district.
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16 11. Plaintiff's losses and those of other Class members were sustained in this district.
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18 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of
19 the events or omissions giving rise to Plaintiff's claims occurred within this district.
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21 13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court
22 maintains personal jurisdiction over Defendant.
23

24 **FACTUAL ALLEGATIONS**

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

26 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-
27 natural," minimally processed, or otherwise free of artificial flavors and preservatives.
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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: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-
natural" (66 percent). These were the three most attractive attributes in the consumer survey.

1 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean
2 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

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

8
9 17. On or about November 29, 2022 and again on December 7, 2022, Mr. Scheibe
10 purchased the FITAID, FOCUSAID, IMMUNITYAID, and PARTYAID Powder Stick Packs
11 from LifeAid’s website (Order No. 1001379643) and a multi-pack of the FITAID and
12 FOCUSAID Beverages from Amazon.com (Order No. 113-1579436-9075428).

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14 18. Mr. Scheibe is a student who has recently sought to lose weight and gain muscle.
15 He carefully reviews labels, including the Products’ labels, to ensure that he consumes only
16 natural ingredients and avoids artificial flavors and ingredients.

17 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

18 19. Defendant LifeAid formulates, manufactures, and sells dietary supplements—
19 both beverages and powders or hydration “sticks”—called FITAID, FOCUSAID,
20 IMMUNITYAID, and PARTYAID. These dietary supplements purport to make workouts more
21 effective and efficient by supporting hydration and to speed muscle recovery and growth,
22 improve memory and cognition, and strengthening the body’s immune response.

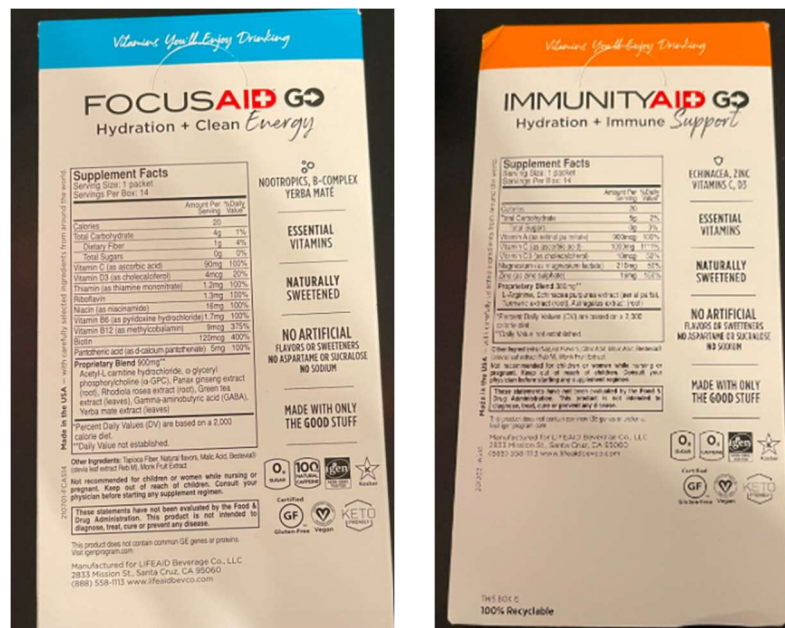
23
24 20. The front label (or “principal display panel”) of the beverage Products
25 prominently state they contain “Naturally Flavored” with attention drawn to the claim through
26 depictions of fruits:

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21. Likewise, the back labels of the powder Products, as well as each individually wrapped powder stick pack, state that they contain “No Artificial Flavors” and are “Made Only With the Good Stuff”:



1 22. These claims are repeated on the website for the Products (*see*
2 <https://www.lifeaidbevco.com/fitaid-zero-case>):

3	✓ Natural herbs, vitamins, and nutrients to support & boost health & fitness.	✗ Sucralose
4		✗ Preservatives
5	✓ Clean, quality ingredients that enhance your lifestyle.	✗ Artificial sweeteners or flavors
6		✗ Plastic or glass bottles
7	✓ Quick, functional hydration & vitamins that supplement your current lifestyle or diet.	✗ Synthetic packaging
8		✗ Chemicals

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16 23. These natural flavoring claims are false. The Products are flavored using an
17 artificial flavoring, DL malic acid, that is derived from petrochemicals.

18 24. All flavors of the Products state, on the back label, that they contain “malic acid”:

19 25. While there is a naturally occurring form of malic acid, it is extremely expensive
20 to formulate in large quantities and is almost never used in mass-produced food products.
21 Instead, testing by an independent third-party laboratory has confirmed that the malic acid that
22 Defendant uses in these Products is DL malic acid, a synthetic substance derived from
23 petrochemicals.¹
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28 ¹ DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 26. This type of malic acid is manufactured in petrochemical plants from benzene or
2 butane—components of gasoline and lighter fluid, respectively—through a series of chemical
3 reactions, some of which involve highly toxic chemical precursors and byproducts.

4 27. Fruit flavors in a food are imparted by the interactions between sugars, acids,
5 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined
6 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic
7 acid.

8 28. The quality and consumer acceptability of fruit flavors is based on their perceived
9 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits have
10 their own natural ratio of sugars and acids.

11 29. The DL malic acid used in the Products is used to create, simulate, and/or reinforce
12 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.

13 30. Defendant uses the petrochemical-derived DL malic acid in its Products to create
14 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,
15 misbranding the Products and deceiving consumers.

16 31. The ingredients on the Products’ label are declared in a way that is misleading and
17 contrary to law, because Defendant designates the ingredient by its generic name, “malic acid,”
18 instead of by its specific name, “DL malic acid.”

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22 **C. Requirements for Labelling**

23 32. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act
24 (“FDCA”) require that a food’s label accurately describe the nature of the food product and its
25 characterizing flavors. 21 C.F.R. § 102.5(a).

26 33. Artificial flavor is defined as “any substance, the function of which is to impart
27 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible
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1 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
2 products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).

3 34. Natural flavor is defined as “essential oil, oleoresin, essence or extractive, protein
4 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the
5 flavoring constituents” from fruits or vegetables, “whose significant function in food is flavoring
6 rather than nutritional.” 21 C.F.R § 101.22(a)(3).

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8 35. Any recognizable primary flavor identified directly or indirectly on the front label
9 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to
10 as a “characterizing flavor.” 21 C.F.R. § 101.22.

11 36. Here, the Products’ labels both state the characterizing flavors and reinforce the
12 claim that this characterizing flavor is achieved by using only natural flavors through use of
13 depictions of fruits.

14
15 37. If a food product’s characterizing flavor is not created exclusively by the named
16 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or
17 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present
18 which “simulates, resembles or reinforces” the characterizing flavor, the front label must
19 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §
20 101.22(i)(2).

21
22 38. A food product’s label also must include a statement of the “presence or absence
23 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such
24 ingredient(s) or component(s) in the food has a material bearing on price or consumer
25 acceptance . . . and consumers may otherwise be misled about the presence or absence of the
26 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.

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1 39. Such statement must be in boldface print on the front display panel and of
2 sufficient size for an average consumer to notice.

3 40. 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 41. By changing the ratio between sugars and acids that is naturally found in fruits,
6 the DL malic acid used in the Products reinforces, simulates, or creates the characterizing
7 flavors, regardless of any other effect it may have or purpose for which it was included.

8 42. DL malic acid is not a “natural flavor” as this term is defined by federal and state
9 regulations and is not derived from a fruit or vegetable or any other natural source. The Products
10 therefore contain artificial flavorings.

11 43. Because the Products contain artificial flavoring, California law requires the
12 Products to display both front- and back-label disclosures to inform consumers that the Products
13 are artificially flavored.

14 44. The Products have none of the required disclosures regarding the use of artificial
15 flavors.

16 45. Plaintiff reserves the right to amend this Complaint to add further products that
17 contain similar label misrepresentations as testing continues.

18 49. Labels are the chief means by which food product manufacturers convey critical
19 information to consumers, and consumers have been conditioned to rely on the accuracy of the
20 claims made on these labels. As the California Supreme Court stated in a case involving alleged
21 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based
22 on the premise that labels matter, that consumers will choose one product over another similar
23 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).
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1 50. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed
2 the natural flavoring claims being made on those labels. Consumers such as Plaintiff who viewed
3 the Products' labels reasonably understood Defendant's "Naturally Flavored" and "No Artificial
4 Flavors" statements, as well as its failure to disclose the use of artificially derived malic acid, to
5 mean that the Products contain only natural flavorings. This representation was also false.
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7 51. Consumers including Plaintiff reasonably relied on Defendant's statements such
8 that they would not have purchased the Products from Defendant if the truth about the Products
9 was known, or would have only been willing to pay a substantially reduced price for the Products
10 had they known that Defendant's representations were false and misleading.

11 52. In the alternative, because of its deceptive and false labelling statements,
12 Defendant was enabled to charge a premium for the Products relative to key competitors'
13 products, or relative to the average price charged in the marketplace.
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15 53. Consumers including Plaintiff especially rely on label claims made by food
16 product manufacturers such as LifeAid, as they cannot confirm or disprove those claims simply
17 by viewing or even consuming the Products.
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19 54. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive
20 conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and
21 Plaintiff's injury.

22 **CLASS ACTION ALLEGATIONS**

23 55. Plaintiff brings this action individually and as representative of all those similarly
24 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the United
25 States who purchased the Products within four years prior to the filing of this Complaint.
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1 56. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
2 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
3 this matter and the members of their immediate families and judicial staff.

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

6 58. Certification of Plaintiff's claims for class-wide treatment is appropriate because
7 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
8 individual Class members would use to prove those elements in individual actions alleging the
9 same claims.
10

11 59. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
12 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
13 members geographically dispersed throughout the United States.
14

15 60. **Existence and Predominance of Common Questions of Law and Fact – Rule**
16 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
17 predominate over any questions that affect only individual Class members. Common legal and
18 factual questions and issues include but are not limited to:

- 19 a. Whether the marketing, advertising, packaging, labeling, and other
20 promotional materials for Defendant's Products is misleading and deceptive;
21 b. Whether a reasonable consumer would understand Defendant's natural
22 flavorings claims to indicate that the Products contained only natural
23 flavorings, and reasonably relied upon those representations;
24 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and
25 Class members;
26 d. the proper amount of damages and disgorgement or restitution;
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- 1 e. the proper scope of injunctive relief; and
- 2 f. the proper amount of attorneys' fees.

3 61. Defendant engaged in a common course of conduct in contravention of the laws
4 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
5 of law, business practices, and injuries are involved. Individual questions, if any, pale by
6 comparison, in both quality and quantity, to the numerous common questions that predominate
7 this action. The common questions will yield common answers that will substantially advance
8 the resolution of the case.

10 62. In short, these common questions of fact and law predominate over questions that
11 affect only individual Class members.

12 63. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class
13 members because they are based on the same underlying facts, events, and circumstances
14 relating to Defendant's conduct.

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

20 65. There are no defenses available to Defendant that are unique to the named
21 Plaintiff.

23 49. These Products are formulated into different flavors, but each is derived from a
24 base formulation that is substantially similar across all the Products.

25 50. The Products all make the same natural flavorings claims, which are deceptive in
26 the same way across all of the Products as they all concern a single flavoring, DL malic acid.

27 51. The Products are also priced and packaged similarly.

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1 52. Because of these similarities, the resolution of the asserted claims will be identical
2 as between purchased and unpurchased Products.

3 53. Because both the products and alleged misrepresentations are substantially
4 similar, Plaintiff's claims related to the Products that he purchased are typical of the claims
5 available to all purchasers of the Products. As such, Plaintiff is an adequate class representative
6 for a class of purchasers of all of the Products, regardless whether Plaintiff purchased every
7 flavor of the Products.
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9 54. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate
10 representative of the Class because Plaintiff's interests do not conflict with the Class members'
11 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress
12 against Defendant.
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14 55. Furthermore, Plaintiff has selected competent counsel who are experienced in
15 class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to
16 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

17 56. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other
18 available means for the fair and efficient adjudication of this controversy for at least the
19 following reasons
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- 21 a. the damages individual Class members suffered are small compared to the
22 burden and expense of individual prosecution of the complex and extensive
23 litigation needed to address Defendant's conduct such that it would be
24 virtually impossible for the Class members individually to redress the wrongs
25 done to them. In fact, they would have little incentive to do so given the
26 amount of damage each member has suffered when weighed against the costs
27 and burdens of litigation;
28

- 1 b. the class procedure presents fewer management difficulties than individual
- 2 litigation and provides the benefits of single adjudication, economies of scale,
- 3 and supervision by a single Court;
- 4
- 5 c. the prosecution of separate actions by individual Class members would create
- 6 a risk of inconsistent or varying adjudications, which would establish
- 7 incompatible standards of conduct for Defendant; and
- 8
- 9 d. the prosecution of separate actions by individual Class members would create
- 10 a risk of adjudications with respect to them that would be dispositive of the
- 11 interests of other Class members or would substantively impair or impede their
- 12 ability to protect their interests.

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

15 58. 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 59. **Ascertainability.** To the extent ascertainability is required, the Class members are
22 readily ascertainable from Defendant’s records and/or its agents’ records of retail and online
23 sales, as well as through public notice.

24 60. Defendant has acted on grounds applicable to the Class as a whole, thereby
25 making appropriate final injunctive and declaratory relief concerning the Class as a whole.
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1 **COUNT 1**
2 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
3 **SECTION 17200 *et seq.* — “UNFAIR” CONDUCT**

4 61. 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 62. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
7 a result of Defendant’s actions as set forth herein.

8 63. Defendant’s actions as alleged in this Complaint constitute “unfair” conduct
9 within the meaning of California Business and Professions Code Section 17200, *et seq.*

10 64. Defendant’s business practices, as alleged herein, are “unfair” because it fails to
11 disclose accurately the synthetic flavoring used in the Products.

12 65. As a result of this “unfair” conduct, Plaintiff expended money and engaged in
13 activities it would not otherwise have spent or conducted.

14 66. Defendant’s wrongful business practices alleged herein constituted, and continue
15 to constitute, a continuing course of unfair competition since it continues to market and sell its
16 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
17 oppressive, unscrupulous and/or substantially injurious to its customers.

18 67. Defendant publicly disseminated untrue or misleading representations regarding
19 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care
20 should have known, were untrue or misleading.

21 68. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
22 of this court enjoining Defendant from continuing to engage in “unfair” business practices and
23 any other act prohibited by law, including those acts set forth in this Complaint, and further seek
24 all other relief allowable under Business and Professions Code Section 17200, *et seq.*
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1 **COUNT 2**
2 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
3 **SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT**

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

6 70. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
7 a result of Defendant’s actions as set forth above.

8 71. Defendant’s actions as alleged in this Complaint constitute “fraudulent” conduct
9 within the meaning of California Business and Professions Code Section 17200 *et seq.*

10 72. Defendant’s business practices, as alleged herein, are “fraudulent” because it fails
11 to disclose accurately the synthetic flavoring used in the Products.

12 73. As a result of this “fraudulent” conduct, Plaintiff expended money and engaged in
13 activities it would not otherwise have spent or conducted.

14 74. Defendant’s wrongful business practices alleged herein constituted, and continue
15 to constitute, a continuing course of unfair competition since it continues to market and sell its
16 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
17 oppressive, unscrupulous and/or substantially injurious to its customers.

18 75. Defendant publicly disseminated untrue or misleading representations regarding
19 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care
20 should have known, were untrue or misleading.

21 76. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an
22 order of this Court enjoining Defendant from continuing to engage in “fraudulent” business
23 practices and any other act prohibited by law, including those acts set forth in this Complaint,
24 and further seeks all other relief allowable under Business and Professions Code Section 17200,
25 *et seq.*
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1 **COUNT 3**
2 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
3 **SECTION 17200 *et seq.* — “UNLAWFUL” CONDUCT**

4 77. 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 78. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
7 a result of Defendant’s actions as set forth above.

8 79. Defendant’s actions as alleged in this Complaint constitute “unlawful” conduct
9 within the meaning of California Business and Professions Code Section 17200, *et seq.*

10 80. Defendant’s business practices, as alleged herein, are “unlawful” because it fails
11 disclose accurately the synthetic flavoring used in the Products.

12 81. As a result of this “unlawful” conduct, Plaintiff expended money and engaged in
13 activities he would not otherwise have spent or conducted.

14 82. Defendant’s business practices alleged herein constituted, and continue to
15 constitute, a continuing course of unfair competition since it continues to market and sell its
16 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
17 oppressive, unscrupulous and/or substantially injurious to its customers.

18 83. Defendant publicly disseminated untrue or misleading representations regarding
19 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care
20 should have known, were untrue or misleading.

21 84. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
22 of this court enjoining Defendant from continuing to engage in “unlawful” business practices
23 and any other act prohibited by law, including those acts set forth in this Complaint, and further
24 seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*
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1 **COUNT 4**
2 **VIOLATION OF CALIFORNIA BUSINESS &**
3 **PROFESSIONS CODE SECTION 17500 *et seq.***

4 85. 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 86. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
7 a result of Defendant's actions as set forth above.

8 87. Defendant engaged in advertising and marketing to the public and offered for sale
9 advertising services on a nationwide basis, including in California.

10 88. Defendant engaged in the advertising and marketing alleged herein with the intent
11 to directly or indirectly induce the sale of the Products to consumers.

12 89. Defendant's advertisements and marketing representations regarding the
13 characteristics of the Products were false, misleading, and deceptive as set forth above.

14 90. At the time it made and disseminated the statements alleged herein, Defendant
15 knew or should have known that the statements were untrue or misleading, and acted in violation
16 of Business and Professions Code Section 17500, *et seq.*

17 91. Plaintiff seeks injunctive relief and all other relief allowable under Business and
18 Professions Code Section 17500, *et seq.*

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20 **COUNT 5**
21 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
22 **CIVIL CODE § 1750 *et seq.***

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

25 93. Plaintiff is a "consumer" within the meaning of the Consumer Legal Remedies
26 Act ("CLRA"), Cal. Civ. Code § 1761(d).
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1 106. The sale of Defendant’s Products to Plaintiff and Class members was a
2 “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

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

5 108. As alleged herein, Defendant’s business practices are a violation of the CLRA
6 because Defendant deceptively failed to reveal facts that are material in light of the flavoring
7 representations that were made by Defendant on the labels of its Products.

8 109. Defendant’s ongoing failure to provide material facts about its Products on its
9 labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:
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- 11 a. Defendant’s acts and practices constitute misrepresentations that its Products have
12 characteristics, benefits, or uses which they do not have;
- 13 b. Defendant misrepresented that its Products are of a particular standard, quality,
14 and/or grade, when they are of another;
- 15 c. Defendant’s acts and practices constitute the advertisement of goods, without the
16 intent to sell them as advertised;
- 17 d. Defendant’s acts and practices fail to represent that transactions involving its
18 Products involve actions that are prohibited by law, particularly the use of
19 misleading nutritional labelling; and
- 20 e. Defendant’s acts and practices constitute representations that its Products have
21 been supplied in accordance with previous representations when they were not.
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24 110. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,
25 entitling them to injunctive relief, disgorgement, and restitution.

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

4
5 112. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled
6 to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such
7 damages include, without limitation, monetary losses and actual, punitive, and consequential
8 damages, in an amount to be proven at trial.

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

12
13 **COUNT 6**
UNJUST ENRICHMENT

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

16 115. Defendant, through its marketing and labeling of the Products, misrepresented and
17 deceived consumers regarding the flavoring in the Products.

18 116. Defendant did so for the purpose of enriching itself and it in fact enriched itself
19 by doing so.

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

23 118. Defendant continues to possess monies paid by consumers to which Defendant is
24 not entitled.
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1 119. Under the circumstances it would be inequitable for Defendant to retain the benefit
2 conferred upon it and Defendant's retention of the benefit violates fundamental principles of
3 justice, equity, and good conscience.

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

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

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11 **COUNT 7**
12 **BREACH OF EXPRESS WARRANTY**

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

15 123. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
16 expressly warranted that the Products were "Naturally Flavored" and contained "No Artificial
17 Flavors."

18 124. Defendant's express warranties, and its affirmations of fact and promises made to
19 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain
20 between Defendant and Plaintiff and the Class, which creates an express warranty that the
21 Products would conform to those affirmations of fact, representations, promises, and
22 descriptions.

23 125. The Products do not conform to the express warranty that the Products are
24 "Naturally Flavored" and contained "No Artificial Flavors," because they are flavored by and
25 contain ingredients that are unnatural and synthetic, *i.e.*, DL malic acid.
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1 126. As a direct and proximate cause of Defendant's breach of express warranty,
2 Plaintiff and Class members have been injured and harmed because: (a) they would not have
3 purchased the Products on the same terms if they knew the truth about the Products' unnatural
4 ingredients; (b) they paid a price premium based on Defendant's express warranties; and (c) the
5 Products do not have the characteristics, uses, or benefits that were promised.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully request the Court grant the following relief against
9 Defendant:

- 10 a. Certifying the Class;
- 11 b. Declaring that Defendant violated the CLRA, UCL, and FAL;
- 12 c. Awarding actual and other damages as permitted by law, and/or ordering an
13 accounting by Defendant for any and all profits derived by Defendant from the
14 unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;
- 15 d. Ordering an awarding of injunctive relief as permitted by law or equity, including
16 enjoining Defendant from continuing the unlawful practices as set forth herein, and
17 ordering Defendant to engage in a corrective advertising campaign;
- 18 e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;
- 19 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
20 awarded; and
- 21 g. Such other relief as the Court may deem just and proper.
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TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

/s/ Charles C. Weller
Charles C. Weller (Cal. SBN: 207034)
Attorney for Plaintiff

CHARLES C. WELLER, APC
11412 Corley Court
San Diego, California 92126
Tel: 858.414.7465
Fax: 858.300.5137

May 8, 2023

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [LifeAid Drinks, Powder Sticks Not as Naturally Flavored as Advertised, Class Action Alleges](#)
