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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,* )  
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No. '23CV0632 JES BLM

v.

**CLASS ACTION COMPLAINT**

ULTIMA HEALTH PRODUCTS, INC., *a* )  
*Delaware corporation,* )  
*Defendant.* )

**JURY TRIAL DEMANDED**

\_\_\_\_\_

Jacob Scheibe (“Plaintiff”), individually and on behalf of all others similarly situated, by and through undersigned counsel, hereby brings this action against Ultima Health Products, Inc. (“Ultima”), alleging that its Replenisher Electrolyte Hydration Drink Mix (“the Products”), a dietary supplement manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, is misbranded and falsely advertised, and upon information and belief and investigation of counsel alleges as follows:

**PARTIES**

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



1 Products to commercial and individual consumers in this district, including Plaintiff; knowingly  
2 directing advertising and marketing materials concerning the Products into this district through  
3 wires and mails, both directly and through electronic and print publications that are directed to  
4 commercial and individual consumers in this district; and operating an e-commerce web site  
5 that offers the Products for sale to commercial and individual consumers in this district, as well  
6 as offering the Products for sale through third-party e-commerce websites, through both of  
7 which commercial and individual consumers residing in this district have purchased the  
8 Products.  
9

10 10. Defendant knowingly directs electronic activity and ships the Products into this  
11 district with the intent to engage in business interactions for profit, and it has in fact engaged in  
12 such interactions, including the sale of the Products to Plaintiff.  
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14 11. Defendant also sells the Products to retailers and wholesalers in this district for  
15 the purpose of making the Products available for purchase by individual consumers in this  
16 district.  
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18 12. Plaintiff's losses and those of other Class members were sustained in this district.

19 13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of  
20 the events or omissions giving rise to Plaintiff's claims occurred within this district.  
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22 14. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court  
23 maintains personal jurisdiction over Defendant.

24 **FACTUAL ALLEGATIONS**

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

26 15. 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.

28 16. 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

1 attributes: “No artificial ingredients” (69 percent); “No preservatives” (67 percent); or “All-  
2 natural” (66 percent). These were the three most attractive attributes in the consumer survey.  
3 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean  
4 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

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

11  
12 18. On or about August 16, 2022, Mr. Scheibe purchased Ultima’s Replenisher  
13 Electrolyte Mix, raspberry and watermelon flavors, from Amazon.com (Order No. 111-  
14 1926428-7355421) for \$47.41 inclusive of tax.

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

19  
20 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

21  
22 20. Defendant Ultima formulates, manufactures, and sells a dietary supplement called  
23 “Replenisher Electrolyte Mix.” These dietary supplement powders purport to hydrate the  
24 consumer to make workouts more effective and efficient and to speed muscle recovery and  
25 growth.

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27 21. The front label (or “principal display panel”) of the Products prominently state  
28 they contain “Natural Flavors with Other Natural Flavors”:

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

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

24. While there is a naturally occurring form of malic acid, it is extremely expensive to formulate in large quantities and is almost never used in mass-produced food products. Instead, testing by an independent third-party laboratory has confirmed that the malic acid that Defendant uses in these Products is DL malic acid, a synthetic substance derived from petrochemicals.<sup>1</sup>

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

26. Fruit flavors in a food are imparted by the interactions between sugars, acids, lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined

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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic  
2 acid.

3 27. The quality and consumer acceptability of fruit flavors is based on their perceived  
4 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such  
5 as raspberries and watermelon have their own natural ratio of sugars and acids.  
6

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

9 29. Defendant uses the petrochemical-derived DL malic acid in its Products to create  
10 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,  
11 misbranding the Products and deceiving consumers.  
12

13 30. The ingredients on the Products' label are declared in a way that is misleading and  
14 contrary to law, because Defendant designates the ingredient by its generic name, "malic acid,"  
15 instead of by its specific name, "DL malic acid."  
16

**C. Requirements for Labelling**

17 31. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act  
18 ("FDCA") require that a food's label accurately describe the nature of the food product and its  
19 characterizing flavors. 21 C.F.R. § 102.5(a).  
20

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

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

3 34. Any recognizable primary flavor identified directly or indirectly on the front label  
4 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to  
5 as a “characterizing flavor.” 21 C.F.R. § 101.22.  
6

7 35. Here, the Products’ labels both state the characterizing flavors and reinforce the  
8 claim that this characterizing flavor is achieved by using only natural flavors through use of  
9 depictions of fruits.

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

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

23 38. Such statement must be in boldface print on the front display panel and of  
24 sufficient size for an average consumer to notice.

25 39. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §  
26 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.  
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1           40. By changing the ratio between sugars and acids that is naturally found in fruits  
2 such as raspberries and watermelons, the DL malic acid used in the Products reinforces,  
3 simulates, or creates the characterizing flavors, regardless of any other effect it may have or  
4 purpose for which it was included.

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

8           42. Because the Products contain artificial flavoring, California law requires the  
9 Products to display both front- and back-label disclosures to inform consumers that the Products  
10 are artificially flavored.

11           43. The Products have none of the required disclosures regarding the use of artificial  
12 flavors.

13           44. Plaintiff reserves the right to amend this Complaint to add further products that  
14 contain similar label misrepresentations as testing continues.

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

21           50. Plaintiff reviewed the label on the Products prior to his purchase, and reviewed  
22 the “Natural Flavors With Other Natural Flavors” claim made there. Consumers including  
23 Plaintiff who viewed the Products’ labels reasonably understood these statements, as well as  
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1 Ultima’s failure to disclose the use of artificially derived malic acid in the Products, to mean  
2 that the Products contain only natural flavorings. This representation was false.

3 51. Consumers including Plaintiff reasonably relied on Defendant’s “Natural Flavor  
4 With Other Natural Flavors” statement such that they would not have purchased the Products  
5 from Defendant if the truth about the Products was known, or would have only been willing to  
6 pay a substantially reduced price for the Products had they known that Defendant’s  
7 representations were false and misleading.  
8

9 52. In the alternative, because of its deceptive and false labelling statements,  
10 Defendant was enabled to charge a premium for the Products relative to key competitors’  
11 products, or relative to the average price charged in the marketplace.  
12

13 53. Consumers including Plaintiff especially rely on label claims made by food  
14 product manufacturers such as Ultima, as they cannot confirm or disprove those claims simply  
15 by viewing or even consuming the Products.

16 54. Plaintiff suffered economic injury by Defendant’s fraudulent and deceptive  
17 conduct as stated herein, and there is a causal nexus between Defendant’s deceptive conduct and  
18 Plaintiff’s injury.

19 55. Plaintiff is entitled to an injunction to prohibit future deceptive statements on  
20 Defendant’s labels, because though he would wish to purchase Defendant’s Products in the  
21 future, he cannot do so out of concern that Defendant’s labelling cannot be trusted to be accurate  
22 and non-deceptive.  
23

24 **CLASS ACTION ALLEGATIONS**

25 56. Plaintiff brings this action individually and as representative of all those similarly  
26 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the state  
27 of California who purchased the Products within four years prior to the filing of this Complaint.  
28

1           57. 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           58. 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           59. 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           60. **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 state.  
14

15           61. **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 Flavor With Other Natural Flavors” claims to indicate that the Products  
23 contained only natural flavorings, and reasonably relied upon those  
24 representations;  
25           c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and  
26 Class members;  
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- 1 d. the proper amount of damages and disgorgement or restitution;
- 2 e. the proper scope of injunctive relief; and
- 3 f. the proper amount of attorneys' fees.

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

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

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

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

21  
22 66. There are no defenses available to Defendant that are unique to the named  
23 Plaintiff.

24 67. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate  
25 representative of the Class because Plaintiff's interests do not conflict with the Class members'  
26 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress  
27 against Defendant.

28

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

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

- 7
- 8           a. the damages individual Class members suffered are small compared to the  
9 burden and expense of individual prosecution of the complex and extensive  
10 litigation needed to address Defendant's conduct such that it would be  
11 virtually impossible for the Class members individually to redress the wrongs  
12 done to them. In fact, they would have little incentive to do so given the  
13 amount of damage each member has suffered when weighed against the costs  
14 and burdens of litigation;
  - 15           b. the class procedure presents fewer management difficulties than individual  
16 litigation and provides the benefits of single adjudication, economies of scale,  
17 and supervision by a single Court;
  - 18           c. the prosecution of separate actions by individual Class members would create  
19 a risk of inconsistent or varying adjudications, which would establish  
20 incompatible standards of conduct for Defendant; and
  - 21           d. the prosecution of separate actions by individual Class members would create  
22 a risk of adjudications with respect to them that would be dispositive of the  
23 interests of other Class members or would substantively impair or impede their  
24 ability to protect their interests.  
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70. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

71. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law.

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

73. Defendant has acted on grounds applicable to the Class as a whole, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

**COUNT 1  
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE  
SECTION 17200 et seq. — “UNFAIR” CONDUCT**

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

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

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

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

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

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

6           80. Defendant publicly disseminated untrue or misleading representations regarding  
 7 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care  
 8 should have known, were untrue or misleading.

9           81. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order  
 10 of this court enjoining Defendant from continuing to engage in “unfair” business practices and  
 11 any other act prohibited by law, including those acts set forth in this Complaint, and further seek  
 12 all other relief allowable under Business and Professions Code Section 17200, *et seq.*

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 14                                   **COUNT 2**  
 15                                   **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**  
 16                                   **SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT**

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

19           83. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
 20 a result of Defendant’s actions as set forth above.

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

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

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



1 95. Defendant’s business practices alleged herein constituted, and continue to  
2 constitute, a continuing course of unfair competition since it continues to market and sell its  
3 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,  
4 oppressive, unscrupulous and/or substantially injurious to its customers.  
5

6 96. Defendant publicly disseminated untrue or misleading representations regarding  
7 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care  
8 should have known, were untrue or misleading.

9 97. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order  
10 of this court enjoining Defendant from continuing to engage in “unlawful” business practices  
11 and any other act prohibited by law, including those acts set forth in this Complaint, and further  
12 seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*  
13

14 **COUNT 4**  
15 **VIOLATION OF CALIFORNIA BUSINESS &**  
16 **PROFESSIONS CODE SECTION 17500 *et seq.***

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

19 99. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
20 a result of Defendant’s actions as set forth above.

21 100. Defendant engaged in advertising and marketing to the public and offered for sale  
22 advertising services on a nationwide basis, including in California.

23 101. Defendant engaged in the advertising and marketing alleged herein with the intent  
24 to directly or indirectly induce the sale of the Products to consumers.

25 102. Defendant’s advertisements and marketing representations regarding the  
26 characteristics of the Products were false, misleading, and deceptive as set forth above.  
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1 103. At the time it made and disseminated the statements alleged herein, Defendant  
2 knew or should have known that the statements were untrue or misleading, and acted in violation  
3 of Business and Professions Code Section 17500, *et seq.*

4 104. Plaintiff seeks injunctive relief and all other relief allowable under Business and  
5 Professions Code Section 17500, *et seq.*

6  
7 **COUNT 5**  
8 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT,**  
9 **CAL. CIV. CODE § 1750 ET SEQ.**

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

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

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

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

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

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

- 23 a. Defendant’s acts and practices constitute misrepresentations that its Products have
- 24 characteristics, benefits, or uses which they do not have;
- 25 b. Defendant misrepresented that its Products are of a particular standard, quality,
- 26 and/or grade, when they are of another;
- 27
- 28

- 1 c. Defendant’s acts and practices constitute the advertisement of goods, without the
- 2 intent to sell them as advertised;
- 3 d. Defendant’s acts and practices fail to represent that transactions involving its
- 4 Products involve actions that are prohibited by law, particularly the use of
- 5 misleading nutritional labelling; and
- 6
- 7 e. Defendant’s acts and practices constitute representations that its Products have
- 8 been supplied in accordance with previous representations when they were not.

9 51. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,  
10 entitling them to injunctive relief, disgorgement, and restitution.

11 52. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the  
12 particular violations of the CLRA described herein and demanded Defendant rectify the actions  
13 described above by providing complete monetary relief, agreeing to be bound by their legal  
14 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this  
15 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.  
16

17 53. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled  
18 to recover actual damages sustained as a result of Defendant’s violations of the CLRA. Such  
19 damages include, without limitation, monetary losses and actual, punitive, and consequential  
20 damages, in an amount to be proven at trial.  
21

22 54. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin  
23 publication of misleading and deceptive nutritional labels on Defendant’s Products and to  
24 recover reasonable attorneys’ fees and costs.

25 **COUNT 6**  
26 **UNJUST ENRICHMENT**

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

1 56. Defendant, through its marketing and labeling of the Products, misrepresented and  
2 deceived consumers regarding the flavoring in the Products.

3 57. Defendant did so for the purpose of enriching itself and it in fact enriched itself  
4 by doing so.  
5

6 58. Consumers conferred a benefit on Defendant by purchasing the Products,  
7 including an effective premium above their true value. Defendant appreciated, accepted, and  
8 retained the benefit to the detriment of consumers.

9 59. Defendant continues to possess monies paid by consumers to which Defendant is  
10 not entitled.

11 60. Under the circumstances it would be inequitable for Defendant to retain the benefit  
12 conferred upon it and Defendant's retention of the benefit violates fundamental principles of  
13 justice, equity, and good conscience.  
14

15 61. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of  
16 Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed  
17 appropriate by the Court, and such other relief as the Court deems just and proper to remedy  
18 Defendant's unjust enrichment.

19 62. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
20 a result of Defendant's actions as set forth above.  
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22 **COUNT 7**  
**BREACH OF EXPRESS WARRANTY**

23 63. 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

26 64. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,  
27 expressly warranted that the Products contain "Natural Flavor With Other Natural Flavors."  
28

1 65. The front labeling with the representations of fruits is also misleading and further  
2 creates an express warranty to support the representation that the Products contain “Natural  
3 Flavor With Other Natural Flavors.”

4 66. Defendant’s express warranties, and its affirmations of fact and promises made to  
5 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain  
6 between Defendant and Plaintiff and the Class, which creates an express warranty that the  
7 Products would conform to those affirmations of fact, representations, promises, and  
8 descriptions.  
9

10 67. The Products do not conform to the express warranty that the Products contain  
11 “Natural Flavor With Other Natural Flavors,” because they are flavored by and contain  
12 ingredients that are unnatural and synthetic, *i.e.*, DL malic acid.  
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14 68. As a direct and proximate cause of Defendant’s breach of express warranty,  
15 Plaintiff and Class members have been injured and harmed because: (a) they would not have  
16 purchased the Products on the same terms if they knew the truth about the Products’ unnatural  
17 ingredients; (b) they paid a price premium based on Defendant’s express warranties; and (c) the  
18 Products do not have the characteristics, uses, or benefits that were promised.  
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20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully request the Court grant the following relief against  
22 Defendant:

- 23 a. Certifying the Class;  
24 b. Declaring that Defendant violated the CLRA, UCL, and FAL;  
25 c. Awarding actual and other damages as permitted by law, and/or ordering an  
26 accounting by Defendant for any and all profits derived by Defendant from the  
27 unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;  
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- d. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
- e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff;
- f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- g. Such other relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

/s/ Charles C. Weller  
Charles C. Weller (Cal. SBN: 207034)  
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April 7, 2023

# ClassAction.org

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

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