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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 SHAIANNE STARKS, on behalf of
13 herself and all others similarly
14 situated,

15 Plaintiff,

16 v.

17 CELSIUS HOLDINGS, INC.,

18 Defendant.
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Case No: '24CV0185 GPC BLM

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF: THE UNFAIR
COMPETITION LAW AND THE
CONSUMER LEGAL REMEDIES ACT**

No Jury Demand

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PRAYER FOR RELIEF 20

NO JURY DEMAND 20

1 Plaintiff Shaienne Starks, on behalf of herself, all others similarly situated, and the
2 general public, by and through her undersigned counsel, hereby sues Defendant Celsius
3 Holdings, Inc. (“Celsius” or “Defendant”) and upon information and belief and
4 investigation of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under 28 U.S.C. §
7 1332(d)(2) (the Class Action Fairness Act) because the matter in controversy exceeds the
8 sum or value of \$5,000,000 exclusive of interest and costs and because more than two-
9 thirds of the members of the class defined herein reside in states other than the states of
10 which Defendant is a resident.

11 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of
12 the acts and transactions giving rise to this action occurred in this District; and Defendant
13 (1) is authorized to conduct business in this District and has intentionally availed itself of
14 the laws and markets of this District through the distribution and sale of its products in
15 this District, and (2) is subject to personal jurisdiction in this District.

16 **II. NATURE OF THE ACTION**

17 3. Celsius markets, distributes, and sells “energy drinks,” including Celsius Live
18 Fit (“Live Fit”), which are marketed with claims that render them unapproved new drugs.

19 4. Celsius aggressively markets Live Fit with deceptive efficacy claims that
20 suggest the product has medical benefits akin to prescription weight loss drugs.

21 5. In truth, Live Fit fails to deliver the advertised benefits.

22 6. Further, these claims are prohibited by the Food, Drug, and Cosmetic Act, 21
23 U.S.C. § 301 *et seq.* (“FDCA”), and subject any individual manufacturing or selling Live
24 Fit to liability for the sale of an unapproved new drug.

25 7. Defendant’s representations mislead consumers into believing that Live Fit is
26 safe, legal, and effective for its intended purposes.

27 8. Plaintiff Shaienne Starks purchased and used Live Fit, one of Defendant’s
28 unapproved drugs, with the belief that the product was safe and effective and sold in

1 compliance with state and federal regulations.

2 9. This action is brought to remedy Defendant’s unfair and unlawful conduct.
3 On behalf of the class defined herein, Plaintiff seeks an order compelling Celsius to, *inter*
4 *alia*: (1) cease marketing and selling Live Fit as an illegal unapproved new drug; (2)
5 conduct a corrective advertising campaign; (3) destroy all misleading and deceptive
6 materials and products; (4) award Plaintiff and the Class members damages, punitive
7 damages, interest, and restitution; and (5) pay costs, expenses, and attorney fees.

8 **III. PARTIES**

9 10. Defendant Celsius is a Florida corporation which maintains its principal
10 business office at 2424 North Federal Hwy, Suite 208, Boca Raton, FL 33431.

11 11. During the class period, Celsius owned, manufactured, marketed, distributed,
12 and sold Live Fit, an unapproved weight loss drug marketed with deceptive efficacy
13 claims. Defendant marketed Live Fit with deceptive claims which suggest the product can
14 provide prescription weight loss drugs benefits.

15 12. Plaintiff Shaienne Starks is a citizen of California who purchased Live Fit
16 during the class period for personal consumption.

17 **IV. REGULATORY BACKGROUND**

18 13. “The term ‘drug’ means . . . (B) articles intended for use in the diagnosis,
19 cure, mitigation, treatment, or prevention of disease in man or other animals; and (C)
20 articles (other than food) intended to affect the structure or any function of the body of
21 man or other animals.” 21 U.S.C. § 321(g)(1).

22 14. A “new drug” is any drug “not generally recognized, among experts qualified
23 by scientific training and experience to evaluate the safety and effectiveness of drugs, as
24 safe and effective for use under the condition prescribed, recommended, or suggested in
25 the labeling thereof” 21 U.S.C. § 321(p)(1).

26 15. Pursuant to 21 U.S.C § 355(a), “No person shall introduce or deliver for
27 introduction into interstate commerce any new drug . . .” without approval by the FDA.

28 16. Further, 21 U.S.C. § 331(a) prohibits the “introduction or delivery for

1 introduction into interstate commerce of any food, drug, device, tobacco product, or
2 cosmetic that is adulterated or misbranded.”

3 17. Pursuant to 21 U.S.C. § 352(f), drugs are required to have adequate
4 instructions for safe use.

5 **V. THE SALE OF UNAPPROVED DRUGS HARMS THE PUBLIC.**

6 18. “Unapproved prescription drugs pose significant risks to patients because
7 they have not been reviewed by FDA for safety, effectiveness or quality.”¹

8 19. “Without FDA review, there is no way to know if these drugs are safe and
9 effective for their intended use, whether they are manufactured in a way that ensures
10 consistent drug quality or whether their label is complete and accurate.” Id.

11 20. “Unapproved drugs have resulted in patient harm, and the [FDA] works to
12 protect patients from the risks posed by these drugs.” Id.

13 21. Unapproved drugs lack “labels and prescribing information that has” “been
14 reviewed by FDA for accuracy and completeness.”²

15 22. Consumers using unapproved drugs run the risk of “unexpected and
16 undocumented safety concerns due to lack of rigorous pre- and postmarket safety
17 surveillance.” Id.

18 23. Unapproved drugs lead consumers in need of medical treatment to forego
19 medically proven therapies.

20 **VI. CELSIUS’S SPECIFIC MISREPRESENTATIONS, MATERIAL**
21 **OMISSIONS, AND DRUG CLAIMS.**

22 24. During the Class Period, Defendant manufactured, marketed, distributed, and
23 sold Live Fit in packaging bearing misleading claims relating to the product’s purported

24 _____
25 ¹ U.S. Food & Drug Admin., Unapproved Drugs (June 2, 2021), available at
<https://www.fda.gov/drugs/enforcement-activities-fda/unapproved-drugs>.

26 ² U.S. Food & Drug Admin., Unapproved Drugs and Patient Harm (June 2, 2021),
27 [https://www.fda.gov/drugs/enforcement-activities-fda/unapproved-drugs-and-patient-](https://www.fda.gov/drugs/enforcement-activities-fda/unapproved-drugs-and-patient-harm)
28 [harm](https://www.fda.gov/drugs/enforcement-activities-fda/unapproved-drugs-and-patient-harm).

1 efficacy as a weight loss aid, appetite suppressant, and fat burner. Defendant also made
2 misleading representations relating to Live Fit’s efficacy on its website and Amazon.com
3 product pages.

4 25. These claims are not only false and misleading, but also show that the
5 product is intended to affect the structure and function of the body, and to cure, mitigate,
6 treat, or prevent disease.

7 26. Further, these claims render Live Fit a “drug” within the meaning of 21
8 U.S.C. § 321(g).

9 27. However, Celsius failed to obtain FDA approval to market and distribute
10 Live Fit in violation 21 U.S.C. § 355 and Health & Safety Code § 111550.

11 28. Specifically, Live Fit’s label claims the product can “accelerate[]
12 metabolism” and “burn[] body fat.” The Live Fit label further claims that the product
13 “turns on thermogenesis, a process that boosts your body’s metabolic rate.” Moreover, the
14 label claims that “drinking Celsius prior to fitness activities is proven to energize,
15 accelerate metabolism, burn body fat and calories.”

16 29. These claims are both deceptive and also render Live Fit a “drug” as defined
17 by 21 U.S.C. § 321(g).

18 30. [continued on next page]
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1 31. During the class period Celsius also advertised Live Fit with deceptive claims
2 that the product provides prescription weight loss drug benefits.

3 32. The Live Fit label, website, and Amazon page contained the following
4 deceptive efficacy claims, which show that the product is intended to affect the structure
5 and function of the body, and to cure, mitigate, treat, or prevent disease, during the Class
6 Period:

- 7 • “Accelerates Metabolism”
- 8 • “Burns Body Fat”
- 9 • “clinically proven to boost your metabolism and help you burn body fat.”
- 10 • “turns on thermogenesis, a process that boosts your body’s metabolic rate”
- 11 • “Drinking CELSIUS prior to fitness activities helps energize, accelerate
12 metabolism, burn body fat and calories”
- 13 • “BACKED BY SCIENTIFIC STUDIES”
- 14 • “Six published university studies have been conducted on CELSIUS by U.S.
15 accredited scientific research facilities rendering strict scientific standards. To
16 ensure consumer confidence, trust, and industry independence, the studies were all
17 presented at scientific conferences and published in peer reviewed publications.
18 Each one of these studies showed that CELSIUS has thermogenic properties.”
- 19 • “Thermogenic properties are proven to increase metabolism and make the nervous
20 system more active. In turn, this causes your body to burn more calories and body
21 fat than you normally would with exercise alone.”
- 22 • “drinking just one great-tasting CELSIUS before exercise can help reduce body fat,
23 increase your endurance, and provide greater resistance to fatigue”
- 24 • “Green Tea Extract The extract used contains a specific ratio of EGCG
25 (epigallocatechin gallate)—the compound that scientists have found boosts your
26 metabolism and helps your body burn more calories.”
- 27 • “Ginger Root Ginger root has a wonderful spicy flavor, and it's known to help
28 support the process of thermogenesis as well as create a positive effect on digestive
systems.”
- “Chromium Known to help control hunger, chromium is an essential trace mineral
that normalizes blood sugar levels and helps enhance the metabolism of proteins,
carbohydrates, and lipids.”

33. These claims suggest Live Fit is a safe and effective drug which can treat

1 obesity and affect the structure and function of the human body by increasing metabolism,
2 reducing body fat, reducing hunger, and increasing weight loss. These claims render Live
3 Fit a “drug” within the meaning of 21 U.S.C. § 321(g)(1).

4 34. However, Live Fit fails to deliver the advertised benefits.

5 35. A true and correct copy of the Live Fit page from Defendant’s website is
6 attached hereto as **Exhibit 1**.

7 36. A true and correct copy of the Live Fit Amazon product page is attached
8 hereto as **Exhibit 2**.

9 37. The FDA maintains a database of drugs which it has approved at
10 <https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm>.

11 38. Attached hereto as **Exhibit 3** are search results from this FDA database,
12 showing that the search term “Celsius” “did not return any results.”

13 39. Thus, Celsius failed to obtain FDA approval prior to marketing, distributing,
14 and selling Live Fit.

15 **VII. LIVE FIT IS AN UNAPPROVED NEW DRUG.**

16 40. “The term ‘drug’ means . . . (B) articles intended for use in the diagnosis,
17 cure, mitigation, treatment, or prevention of disease in man or other animals; and (C)
18 articles (other than food) intended to affect the structure or any function of the body of
19 man or other animals.” 21 U.S.C. § 321(g)(1).

20 41. Here, Live Fit is a “drug” because it is advertised as a product which will
21 affect the structure or function of the body and cure, mitigate, treat, or prevent disease.

22 42. The claims on the packaging of Live Fit, Defendant’s website, and
23 Defendant’s Amazon pages for Live Fit render it an unapproved new drug.

24 43. The FDA has determined that the following claims, which are similar to
25 those Defendant made regarding Live Fit constitute unlawful un approved new drug
26 claims:

- 27 • “Our natural blend of ingredients can benefit you by . . . [s]uppressing your
28 appetite . . . [b]oosts your metabolism . . . [b]urn fat & calories . . . [i]ncrease energy
levels . . .” (**Exhibit 4**, FDA Warning Letter to Genesis Nutrition Ultra Slim);

- 1 • “Benefits . . . appetite suppression . . . reduce bloating . . . burns fat . . . reduce
2 inches . . . potentiates weight loss . . . improves metabolism” (Exhibit 4, FDA
Warning Letter to Genesis Nutrition Ultra Slim);
- 3 • “It is a totally natural herbal supplement [. . .] that” “inhibits appetite, burns
4 fat,” “accelerates metabolism” “and increase your energy.” (Exhibit 5, FDA
5 Warning Letter to Je Dois Lavoir LLC);
- 6 • “How does this capsule work? . . . Appetite Control . . . Accelerates metabolism . . .
7 Increase your energy . . . Causes satiety . . . Burn fat” (Exhibit 5, FDA Warning
Letter to Je Dois Lavoir LLC);
- 8 • “Green Coffee Beans ... use of chlorogenic acid from green coffee bean extracts as
9 an important inhibitor of diet-related obesity and obesity-related metabolic
10 syndrome ... [and] promote significant weight loss in individuals who suffer from
morbid obesity.” (Exhibit 6, FDA Warning Letter to TEK Naturals).

11 44. A “new drug” is any drug “not generally recognized, among experts qualified
12 by scientific training and experience to evaluate the safety and effectiveness of drugs, as
13 safe and effective for use under the condition prescribed, recommended, or suggested in
14 the labeling thereof” 21 U.S.C. § 321(p)(1). Here, Live Fit is a “new drug” within the
15 meaning of the FDCA because it is not generally recognized as safe and effective for its
16 intended uses. See 21 C.F.R. § 330.1.

17 45. Celsius has not received approval from the FDA to sell Live Fit.

18 46. The sale of unapproved new drugs is illegal and dangerous. First, consumers
19 risk purchasing and using a product that will endanger their health. Second, consumers
20 risk purchasing a product that will not effectively treat their condition, forgoing actual
21 treatment of that condition in lieu of an unapproved new drug which may not treat their
22 condition. The FDA’s regulatory regimen ensures that such products are not illegally
23 marketed

24 47. Defendant’s failure to comply with these regulations puts consumers at risk
25 and gives Celsius an unfair advantage over competitors that do commit the time and
26 expense of complying with FDA statutes and regulations.

27 48. Live Fit does not qualify for the reduced level of regulation applicable to
28 certain nutrition supplement products for several reasons. Live Fit’s label, website, and

1 marketing materials neither describe the role of any nutrient or dietary ingredient intended
2 to affect the structure or function in humans, characterize the documented mechanism by
3 which any nutrient or dietary ingredient acts to maintain such structure or function, nor
4 describe general well-being from consumption of any nutrient or dietary ingredient. 21
5 U.S.C. § 343(r)(6)(A).

6 49. California similarly prohibits the sale of unapproved new drugs. Health &
7 Safety Code § 111550.

8 **VIII. DEFENDANT’S ADVERTISING FOR LIVE FIT IS FALSE AND**
9 **MISLEADING, RENDERING THE PRODUCTS MISBRANDED.**

10 50. It is unlawful to manufacture or sell any drug that is misbranded. 21 U.S.C. §
11 331(a), (b), (c), & (g).

12 51. A drug is misbranded “[i]f its labeling is false or misleading in any
13 particular.” 21 U.S.C. § 352(a)(1).

14 If an article is alleged to be misbranded because the labeling or advertising is
15 misleading, then in determining whether the labeling or advertising is
16 misleading there shall be taken into account (among other things) not only
17 representations made or suggested by statement, word, design, device, or any
18 combination thereof, but also the extent to which the labeling or advertising
19 fails to reveal facts material in the light of such representations or material with
20 respect to consequences which may result from the use of the articles to which
21 the labeling or advertising relates under the conditions of use prescribed in the
22 labeling or advertising thereof or under such conditions of use as are customary
23 or usual.

21 U.S.C. § 321(n).

23 52. Defendant’s deceptive efficacy representations regarding Live mean the
24 product is misbranded under 21 U.S.C. § 352(a)(1) and also violated Cal. Health & Safety
25 Code § 110100 (adopting all FDA labeling regulations as state regulations), § 110398 (“It
26 is unlawful for any person to advertise any food, drug, device, or cosmetic that is
27 adulterated or misbranded.”), § 111330 (drug label misbranded if false or misleading in
28 any particular), and further violated Cal. Bus. & Prof. Code § 17200 (Unfair Competition

1 Law “Fraudulent” Prong) and Cal. Civ. Code § 1750 (CLRA).

2 53. Plaintiff used Live Fit, as directed, but it failed to deliver the advertised
3 benefits.

4 54. Because Live Fit claims to treat conditions not amenable to self-diagnosis,
5 directions are not and likely cannot be written such that a layperson can safely use this
6 product to treat those conditions. The label of Live Fit therefore lacks “adequate directions
7 for use,” rendering the products misbranded. 21 U.S.C. § 352(f)(1); see also 21 C.F.R. §
8 201.5 (“Adequate directions for use’ means directions under which the layman can use a
9 drug safely and for the purposes for which it is intended.”).

10 **IX. DEFENDANT SOLD LIVE FIT IN PACKAGING BEARING**
11 **UNPERMITTED HEALTH CLAIMS.**

12 55. In addition to marketing Live Fit with deceptive and unlawful “drug” claims,
13 Defendant labels and markets Live Fit with an unpermitted health claim.

14 56. Specifically, Defendant claims that Live Fit contains “Chromium,” which
15 Defendant asserts is “[k]nown to help control hunger” and which “normalizes blood sugar
16 levels and helps enhance the metabolism of proteins, carbohydrates, and lipids.”

17 57. “Based on the review of the strength of the total body of publicly available
18 scientific evidence,” the FDA has concluded that “there is no credible scientific evidence
19 for the” claim that chromium “may reduce the risk of insulin resistance.”³

20 58. Further, the FDA has determined that the only health claim a manufacturer
21 may make, with respect to Chromium, is:

22 One small study suggests that chromium picolinate may reduce the risk of
23 insulin resistance, and therefore possibly may reduce the risk of type 2 diabetes.
24 FDA concludes, however, that the existence of such a relationship between
25 chromium picolinate and either insulin resistance or type 2 diabetes is highly

26 ³ U.S. Food & Drug Admin., Qualified Health Claims: Letter of Enforcement Discretion -
27 Chromium Picolinate and Insulin Resistance (Docket No. 2004Q-0144),
28 <https://tinyurl.com/2s4c9m5c>.

1 uncertain.

2 *Id.*

3 59. Here, Defendant’s chromium claim is unsupported and unpermitted. Further,
4 the claim fails to include the FDA’s language.

5 **X. DEFENDANT’S PRACTICES WERE “UNFAIR” WITHIN THE**
6 **MEANING OF THE UNFAIR COMPETITION LAW.**

7 60. Defendant’s practices as described herein are “unfair” within the meaning of
8 the California Unfair Competition Law because Celsius’s conduct is immoral, unethical,
9 unscrupulous, and substantially injurious to consumers, and the utility of this conduct to
10 Defendant does not outweigh the gravity of the harm to Defendant’s victims.

11 61. In particular, while Defendant’s marketing of Live Fit with deceptive
12 efficacy and “drug” claims as defined by 21 U.S.C. § 321(g) and absent FDA approval to
13 do so allowed Celsius to realize higher profit margins than if it did not use unlawful
14 marketing tactics, this utility is small and far outweighed by the gravity of the economic
15 harm and potential physical harm Defendant inflicts upon consumers. Further, the injury
16 to consumers from Defendant’s practices is substantial, not outweighed by benefits to
17 consumers or competition, and not an injury that consumers themselves could reasonably
18 have avoided.

19 62. At all relevant times, Celsius was aware that its marketing of Live Fit
20 violated FDA regulations and California law.

21 63. As a supplement producer, Defendant had a continuing and affirmative moral
22 and legal obligation to refrain from marketing and selling supplements with claims that
23 violate FDA regulations and California law.

24 64. Class members had no duty and no reason to inquire as to whether Live Fit
25 was marketed in violation of state and federal food and supplement safety laws.
26 California, as a matter of economic regulation, places the burden of ensuring that
27 supplements are safe, effective, and sold in compliance with FDA regulations and
28 California law, on their manufacturers, not the general public.

1 65. Reasonable consumers, including Plaintiff, had no reason to suspect Celsius’s
2 unfair competition and violations of federal and state law prohibiting the sale of
3 unapproved and misbranded drugs.

4 66. Celsius owed a special duty to Plaintiff and all Class Members, akin to a
5 fiduciary duty, which it violated by marketing Live Fit with claims that suggest the
6 products can affect the structure or function of the human body or can treat, mitigate, or
7 cure disease without obtaining FDA approval to do so.

8 67. During the entire Class Period, Celsius was aware that its conduct was
9 oppressive and cruel, causing economic injury and discouraging consumers from seeking
10 medically proven treatments, yet consciously continued these acts for years while
11 knowing the extent of the harm it was causing. Equity and the public policy of California,
12 embodied in its statutes, jointly demand, in such circumstance, that laches and tolling
13 cannot apply in such a way to permit Defendant to continue to enjoy the fruits of its
14 intentional, cruel, oppressive, and unlawful acts.

15 **XI. DEFENDANT’S PRACTICES WERE “UNLAWFUL” WITHIN THE**
16 **MEANING OF THE CALIFORNIA UNFAIR COMPETITION LAW.**

17 68. Defendant’s practices as described herein are “unlawful” within the meaning
18 of the California Unfair Competition Law because the marketing, sale, and distribution of
19 Live Fit violates the Federal Food, Drug, and Cosmetic Act, as well as California’s
20 Sherman Food, Drug, and Cosmetic Law.

21 69. Celsius’s unlawful marketing and advertising of Live Fit constitutes a
22 violation of the FDCA and California food and drug law and, as such, violated the
23 “unlawful” prong of the UCL.

24 70. Defendant’s unlawful acts allowed it to sell more units of Live Fit than it
25 would have otherwise, and at a higher price and higher margin.

26 71. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
27 enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or
28 fraudulent acts and practices and to commence a corrective advertising campaign.

1 72. Plaintiff also seeks an order for the disgorgement and restitution of all
2 revenue received by Defendant from the sale of Live Fit.

3 **XII. PLAINTIFF'S PURCHASE OF LIVE FIT AND RELATED INJURY.**

4 73. Plaintiff Shaienne Starks purchased Celsius Live Fit from Sam's Club during
5 the class period, including on March 18, 2023.

6 74. When Plaintiff purchased Live Fit, she was seeking a safe and effective
7 weight loss and fat burning solution which was sold in compliance with FDA regulations
8 and California law.

9 75. Plaintiff read and relied on, for her purchases, the product's packaging and
10 the misrepresentations made by Defendant and the efficacy messages they conveyed,
11 which were substantial factors in Plaintiff's purchases.

12 76. Plaintiff purchased Live Fit with the natural assumption that products sold in
13 stores and online by large companies would be sold in compliance with FDA regulations
14 and California law.

15 77. Plaintiff suffered economic injury when she purchased Live Fit because the
16 product was sold in violation of federal regulations and California law and because Live
17 Fit fails to deliver the advertised benefits.

18 78. Plaintiff would not have purchased Live Fit had she known that that product
19 was not safe and effective and was sold in violation of federal and California law.

20 79. Live Fit was offered for sale in violation of California and federal law and
21 has a value of \$0 because it is both illegal and ineffective.

22 80. Plaintiff would consider purchasing Live Fit in the future if she could be
23 assured that the product is (1) safe and effective and (2) sold in compliance with all FDA
24 regulations and California law.

25 **XIII. CLASS ACTION ALLEGATIONS**

26 81. Plaintiff brings this action on behalf of herself, and all others similarly
27 situated (the "Class"), excluding Defendant's officers, directors, and employees, and the
28 Court, its officers, and their families. The Class is defined as:

1 All individuals who purchased Live Fit in the United States for their own
2 personal or household use, and not for resale, from November 24, 2022 to the
3 present.

4 82. Questions of law and fact common to Plaintiff and the Class include:

- 5 i. Whether Celsius communicated efficacy messages through Live Fit's
6 labeling, packaging, website, and Amazon page;
- 7 ii. Whether those messages were material, or likely to be material, to a
8 reasonable consumer;
- 9 iii. Whether those messages were false, at variance with the truth, misleading,
10 likely to deceive, and/or had the capacity to deceive the public and/or a
11 reasonable consumer;
- 12 iv. Whether Celsius fraudulently omitted material information in advertising
13 Live Fit as safe and effective;
- 14 v. Whether Celsius sold and distributed Live Fit to the public in misleading
15 packaging that was likely to deceive the public;
- 16 vi. Whether Live Fit is an unapproved new drug;
- 17 vii. Whether Celsius's advertising for Live Fit violates the CLRA;
- 18 viii. Whether Defendant's conduct was immoral, unethical, unscrupulous, or
19 substantially injurious to consumers;
- 20 ix. Whether Defendant's conduct violated public policy as declared by
21 specific constitutional, statutory, or regulatory provisions;
- 22 x. Whether the injury to consumers from Defendant's practices is substantial;
- 23 xi. Whether Defendant's conduct constituted a violation of the unfair prong of
24 California's Unfair Competition Law;
- 25 xii. Whether Defendant's conduct constituted a violation of the unlawful prong
26 of California's Unfair Competition Law;
- 27 xiii. Whether Defendant's conduct constituted a violation of the fraudulent
28 prong of California's Unfair Competition Law;
- xiv. Whether the slight utility Defendant realized as a result of its conduct
outweighs the gravity of the harm the conduct caused to its victims;
- xv. Whether the injury to consumers from Defendant's practices is outweighed
by benefits to consumers or competition;

1 xvi. Whether Class members are entitled to restitution and/or damages;

2 xvii. Whether Class members are entitled to an injunction and, if so, its terms;
3 and

4 xviii. Whether Class members are entitled to any further relief.

5 83. By purchasing Live Fit, all Class members were subjected to the same
6 wrongful conduct.

7 84. Plaintiff's claims are typical of the Class's claims because all Class members
8 were subjected to the same economic harm when they purchased Live Fit and suffered
9 economic injury.

10 85. Plaintiff will fairly and adequately protect the interests of the Class, has no
11 interests that are incompatible with the interests of the Class, and has retained counsel
12 competent and experienced in class litigation.

13 86. The Class is sufficiently numerous, as it includes thousands of individuals
14 who purchased Live Fit during the Class Period.

15 87. Class representation is superior to other options for the resolution of the
16 controversy. The relief sought for each Class member is small, as little as \$3 for some
17 Class members. Absent the availability of class action procedures, it would be infeasible
18 for Class members to redress the wrongs done to them.

19 88. Questions of law and fact common to the Class predominate over any
20 questions affecting only individual members.

21 **First Cause of Action**

22 **Unfair Competition Law, Unfair Prong**

23 **Bus. & Prof. Code §§ 17200 *et seq.***

24 89. In each of her causes of action, Plaintiff realleges and incorporates by
25 reference each and every allegation contained elsewhere in the Complaint, as if fully set
26 forth herein.

27 90. The business practices and omissions of Defendant as alleged herein
28 constitute "unfair" business acts and practices in that Defendant's conduct is immoral,

1 unethical, unscrupulous, and substantially injurious to consumers and the utility of its
2 conduct, if any, does not outweigh the gravity of the harm to Defendant’s victims.

3 91. Further, Defendant’s practices were unfair because they violated public
4 policy as declared by specific constitutional, statutory, or regulatory provisions, including
5 those embodied in the FDCA and the California Health and Safety Code.

6 92. Moreover, Defendant’s practices were unfair because the injury to consumers
7 from Defendant’s practices was substantial, not outweighed by benefits to consumers or
8 competition, and not one that consumers themselves could reasonably have avoided or
9 should be obligated to avoid.

10 **Second Cause of Action**

11 **Unfair Competition Law, Unlawful Prong**

12 **Bus. & Prof. Code §§ 17200 et seq.**

13 93. Defendant has made and distributed, in interstate commerce and in this
14 county, products that were marketed with unlawful “drug claims” without obtaining FDA
15 approval to do so.

16 94. Defendant’s conduct violated the following portions of the Federal Food,
17 Drug, and Cosmetic Act (“FDCA”):

- 18
- 19 • **21 U.S.C. § 331(a)**, prohibiting the “introduction or delivery for introduction into
20 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is
adulterated or misbranded”;
 - 21 • **21 U.S.C. § 331(b)**, prohibiting the “adulteration or misbranding of any food, drug,
22 device, tobacco product, or cosmetic in interstate commerce”;
 - 23 • **21 U.S.C. § 352(f)(1)**, requiring drugs to have adequate directions for use; and
 - 24 • **21 U.S.C. § 355(a)**, prohibiting the sale of unapproved new drugs.

25 95. Defendant’s conduct also violates other provisions of California law
including, *inter alia*:

- 26
- 27 • **Health & Safety Code § 110100 et seq.**, which adopts all FDA regulations as state
28 regulations;

- 1 • **Health & Safety Code § 111330**, “Any drug or device is misbranded if its labeling
2 is false or misleading in any particular.”;
- 3 • **Health & Safety Code § 110398**, “It is unlawful for any person to advertise any
4 food, drug, device, or cosmetic that is adulterated or misbranded.”;
- 5 • **Health & Safety Code § 111440**, “It is unlawful for any person to manufacture,
6 sell, deliver, hold, or offer for sale any drug or device that is misbranded.”;
- 7 • **Health & Safety Code § 111445**, “It is unlawful for any person to misbrand any
8 drug or device.”;
- 9 • **Health & Safety Code § 111450**, “It is unlawful for any person to receive in
10 commerce any drug or device that is misbranded or to deliver or proffer for delivery
11 any drug or device.”;
- 12 • **Health & Safety Code § 111550**, prohibiting sale of new drug unless approved
13 under 21 U.S.C. § 355;
- 14 • **Civ. Code § 1770(a)**, prohibiting misleading practices in relation to the sale of
15 goods;
- 16 • **Bus. & Prof. Code § 17200 et seq.**, prohibiting unfair, unlawful, and fraudulent
17 business activity.

18 96. The fraudulent marketing and advertising of Live Fit described herein
19 constituted violations of the FDCA and the Sherman Law and, as such, violated the
20 “unlawful” prong of the UCL.

21 97. Defendant employed unlawful marketing tactics to induce Plaintiff and
22 members of the Class to purchase products that were of lesser value and quality than
23 advertised and which were not safe and effective, or FDA approved.

24 98. Had Plaintiff known that Live Fit was offered for sale in violation of
25 California and federal regulations, she would not have purchased Live Fit.

26 99. Had class members known that Live Fit was offered for sale in violation of
27 California and federal regulations, they would not have Live Fit.

28 100. Plaintiff suffered injury in fact and lost money or property as a result of
Defendant’s unlawful conduct: she was denied the benefit of the bargain when she
decided to purchase Live Fit over competing products, which are legal, less expensive,
and do not make drug claims on their packaging and web properties.

1 101. Defendant’s unlawful acts allowed it to sell more units of Live Fit than it
2 would have otherwise, and at a higher price, and higher margin.

3 102. Had Plaintiff been aware of Defendant’s unlawful marketing tactics, she
4 would not have purchased Live Fit, and had Defendant not advertised Live Fit in an
5 unlawful manner, Plaintiff would have paid less for them.

6 103. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order
7 enjoining Defendant from continuing to conduct business through unlawful, unfair, and
8 fraudulent acts and practices; requiring Defendant to commence a corrective advertising
9 campaign; and awarding the class restitution of all monies Defendant obtained from the
10 sale of Live Fit.

11 **Third Cause of Action**

12 **Unfair Competition Law, Fraudulent Prong**

13 **Bus. & Prof. Code §§ 17200, *et seq.***

14 104. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent
15 business act or practice.”

16 105. The acts, omissions, misrepresentations, practices, and non-disclosures of
17 Defendant as alleged herein constitute “fraudulent” business acts and practices in that
18 Defendant’s conduct has a likelihood, capacity or tendency to deceive Plaintiff, the Class,
19 and the general public.

20 106. Defendant leveraged its deception to induce Plaintiff and members of the
21 Class to purchase products that were of lesser value and quality than advertised.

22 107. Plaintiff suffered injury in fact and lost money or property as a result of
23 Defendant’s deceptive advertising: she was denied the benefit of the bargain when she
24 decided to purchase Live Fit over competing products, which are legal, less expensive,
25 and do not make misleading or false drug claims on their packaging.

26 108. Had Plaintiff been aware of Defendant’s false and misleading advertising
27 tactics, she would not have purchased Live Fit, and had Defendant not advertised Live Fit
28 in a fraudulent manner, Plaintiff would have paid less for it.

1 109. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order
2 enjoining Defendant from continuing to conduct business through unlawful, unfair, and
3 fraudulent acts and practices; requiring Defendant to commence a corrective advertising
4 campaign; and awarding the Class restitution of all monies Defendant obtained from the
5 sale of Live Fit.

6 **Fourth Cause of Action**
7 **Consumer Legal Remedies Act**
8 **Civil Code §§ 1750, et seq.**

9 110. The CLRA prohibits deceptive practices in connection with the conduct of a
10 business that provides goods, property, or services primarily for personal, family, or
11 household purposes.

12 111. Defendant's policies, acts and practices were designed to, and did, result in
13 the purchase and use of Live Fit for personal, family, or household purposes, and violated
14 and continue to violate the following sections of the CLRA:

- 15
- 16 • **Civil Code § 1770(a)(5)**, representing that goods have characteristics, uses, or
benefits which they do not have;
 - 17 • **Civil Code § 1770(a)(7)**, representing that goods are of a particular standard,
18 quality, or grade if they are of another;
 - 19 • **Civil Code § 1770(a)(9)**, advertising goods with intent not to sell them as
advertised; and
 - 20 • **Civil Code § 1770(a)(16)**, representing the subject of a transaction has been
21 supplied in accordance with a previous representation when it has not.

22 112. As a result, Plaintiff, the Class, and the general public are entitled to
23 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
24 by which Defendant was unjustly enriched.

25 113. As a further result, Plaintiff and the Class have suffered damages, and
26 because the conduct was deliberate, immoral, oppressive, made with malice and contrary
27 to public policy, they are entitled to punitive or exemplary damages.

28 114. Pursuant to section 1782 et seq. of the CLRA, Plaintiff notified Defendant in

1 writing by certified mail of the particular violations of § 1770 of the Act as to Live Fit and
2 demanded that Defendant rectify the problems associated with the actions detailed above
3 and give notice to all affected consumers of its intent to so act.

4 115. Defendant received Plaintiff's written notice on October 6, 2023.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the
7 general public, prays for judgment against Celsius as follows:

- 8 A. An order confirming that this class action is properly maintainable as a class
9 action as defined above, appointing Plaintiff and her undersigned counsel to
10 represent the Class, and requiring Celsius to bear the cost of class notice;
11 B. An order requiring Defendants pay \$500 in restitution, damages, and interest to
12 Plaintiff;
13 C. An order requiring Defendants pay \$60 million or a greater amount to be proven
14 at trial in restitution to Class members, and \$4,000 to Plaintiff as an incentive
15 award, or such greater amount the Court deems fair and reasonable;
16 D. An order requiring Defendant to pay punitive damages in an amount to be
17 determined at trial;
18 E. An order requiring Defendant to disgorge any benefits received from Plaintiff
19 and the Class and its unjust enrichment realized as a result of Defendant's
20 improper and misleading advertising, marketing, sale, and distribution of Live
21 Fit;
22 F. An Order declaring the conduct complained of herein violates the Unfair
23 Competition Law;
24 G. An order requiring Defendant to cease and desist its deceptive, unconscionable,
25 fraudulent, and unlawful practices;
26 H. An order requiring Celsius to conduct a corrective advertising campaign;
27 I. Declaratory relief that the conduct alleged herein is unlawful;
28 J. Pre-judgment, and post-judgment interest; and
K. An award of attorney fees and costs.

NO JURY DEMAND

Plaintiff makes no jury demand.

1 DATED: January 26, 2024

Respectfully Submitted,

2 s/Gregory S. Weston

3 GREGORY S. WESTON

4 **Counsel for Plaintiff**

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Celsius Live Fit Drinks Are Misbranded, Lack FDA Approval](#)
