

Exhibit A1

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**MIKHAIL GERSHZON on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

ZOA ENERGY, LLC

Defendant.

CASE NO.: 3:23-cv-5444-JD

CLASS ACTION

Plaintiff Mikhail Gershzon (“Plaintiff”), individually and on behalf of himself and all others similarly situated, bring this class action against Defendant ZOA Energy, LLC (“ZOA” or “Defendant”), and on the basis of personal knowledge, information and belief, and the investigation of counsel, alleges as follows:

INTRODUCTION

1. This is a proposed class action on behalf of a California and nationwide class (collectively, "Class") of consumers seeking redress for Defendant’s deceptive practices associated with the advertising, labeling, and sale of ZOA Energy drinks (“Drinks” or “Products”).¹



¹ Class Products include all flavors of ZOA Energy Drinks.

2. In 2021, the global energy drink market was valued at nearly \$85 billion and is predicted to more than double by 2030.²

3. While the broader energy drink market dominated by well-known brands such as Red Bull, Monster and Rockstar has been around for decades, segment growth is currently being driven by a shift towards healthier options as consumers become more conscious of the negative health effects associated with sugary, caffeinated beverages.³

4. “Consumers looking for an energy boost are becoming more discerning, with those drinkers seeking out ‘cleaner’ options and simpler recipes containing fewer and more natural ingredients. The so-called ‘clean label’ trend that’s had an impact on other food and beverage categories has started to shape product development and branding strategies in energy drinks, too.”⁴

5. In its 2022 Global Soft Drinks Performance and Outlook report, Global Data identified a “strong positive impact” on future value sales of energy drinks from consumers switching to clean-label and natural products. *Id.* “Clean label is meant to cut through the obfuscation and provide truth and transparency. That’s what clean energy provides.” Featured heavily in the demand for clean labels are the “lack of use of preservatives...” “Surveys continue to show the rising popularity of clean label

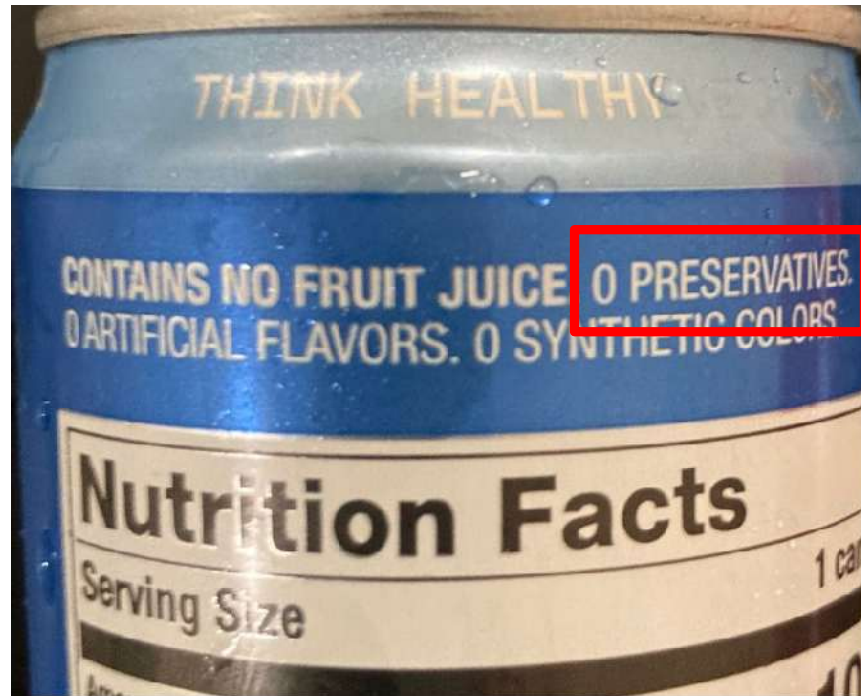
² Straits Research, Energy Drinks Market Size is projected to reach USD 176.15 Billion by 2030, growing at a CAGR of 8.47%: Straits Research, September 7, 2023. <https://www.globenewswire.com/en/news-release/2023/09/07/2739472/0/en/Energy-Drinks-Market-Size-is-projected-to-reach-USD-176-15-Billion-by-2030-growing-at-a-CAGR-of-8-47-Straits-Research.html#:~:text=The%20Global%20Energy%20Drinks%20Market,8.47%25%20from%202022%20to%202030.>

³ ZOA Energy: Dwayne Johnson’s All-Natural Boost for Body and Mind, Xtalks, May 3, 2023 <https://xtalks.com/zoa-energy-dwayne-johnsons-all-natural-boost-for-body-and-mind-3353/#:~:text=Unlike%20many%20other%20energy%20drinks,looking%20to%20avoid%20these%20ingredients.>

⁴ Health and wellness to give jolt to energy drinks, Just Drinks, August 31, 2023. Available at <https://www.just-drinks.com/features/health-and-wellness-to-give-jolt-to-energy-drinks/?cf-view>

claims. Food and beverage companies may take several avenues to achieve such claims: no artificial preservatives, flavors or colors; organic; and non-G.M.O. ‘No preservatives’ were the top clean label claim in two surveys.”⁵

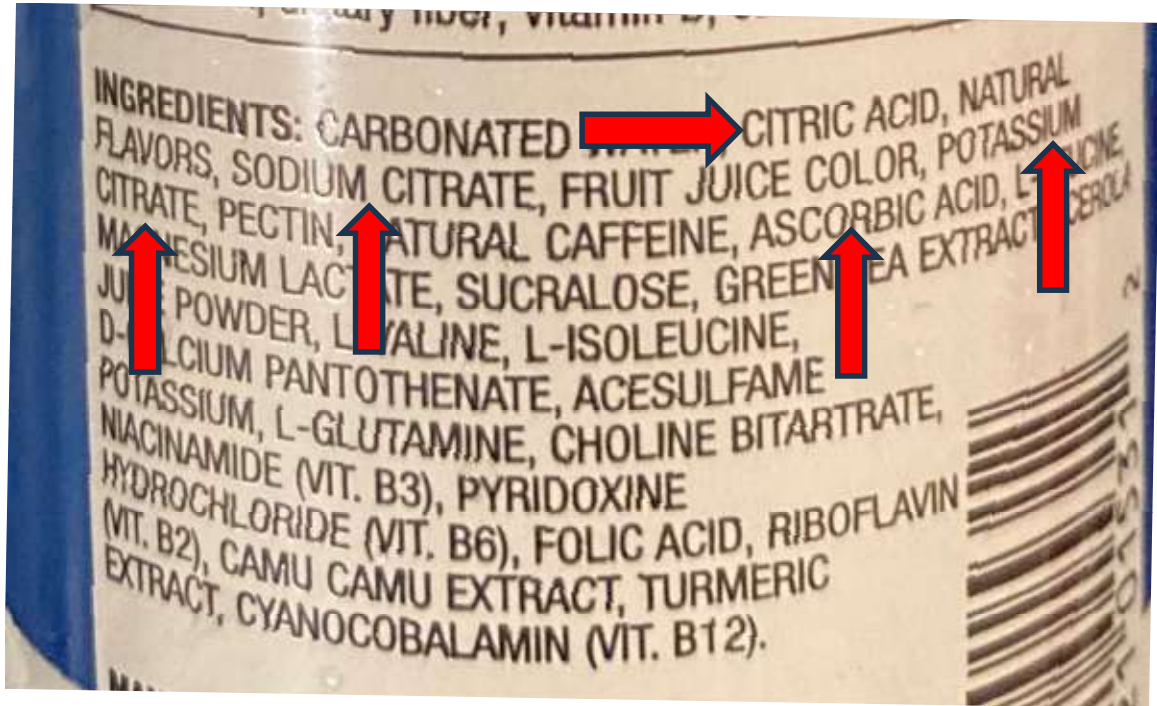
6. Recognizing the fact that it was marketing to a growing cohort of health-conscious consumers, ZOA fully embraced the concept of “clean label,” promising products with a “cleaner energy formula” free from “preservatives,” “artificial flavors” and “synthetic colors.”⁶



⁵ No preservatives’ stands out among clean label claims, Food Business News, July 30, 2019. Available at <https://www.foodbusinessnews.net/articles/14178-no-preservatives-stands-out-among-clean-label-claims>

⁶ <https://zoaenergy.com/pages/why-zoa>

7. Unfortunately, ZOA's claim that its Products contain **"0 Preservatives"** is false, as each contain a significant amount of the preservatives citric and ascorbic acids as well as buffering agents sodium citrate and potassium citrate to bolster the preservative system.



8. Despite unequivocally and boldly claiming that their Products contain **"0 Preservatives,"** the inclusion of citric and ascorbic acids along with their buffering agents, unequivocally belies this affirmation, rendering it false, misleading and in violation of the law.

9. Throughout the applicable class periods, Defendant has falsely represented the true nature of its Products and as a result of this false and misleading labeling, was able to sell these Products to hundreds of thousands of unsuspecting consumers throughout California and the United States.

10. Plaintiff alleges Defendants' conduct is in breach of warranty, violates California's Business and Professions Code § 17200, *et. seq.*, California's Business & Professions Code § 17500, *et. seq.*, California Civil Code § 1750, *et seq.*, is intentional

1 and negligent misrepresentation, fraudulent and is otherwise grounds for restitution on
2 the basis of quasi-contract/unjust enrichment.

4 **JURISDICTION AND VENUE**

5 11. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2).
6 Diversity jurisdiction exists as Plaintiff Mikhail Gershzon is a resident of San
7 Francisco, California. Defendant ZOA Energy, LLC is headquartered in Tampa,
8 Florida. The amount in controversy exceeds \$5,000,000 for the Plaintiff and members
9 of the Class collectively, exclusive of interest and costs, by virtue of the combined
10 purchase prices paid by Plaintiff and members of the putative Class, and the profits
11 reaped by Defendant from its transactions with Plaintiff and the Class, as a direct and
12 proximate result of the wrongful conduct alleged herein, and by virtue of the
13 injunctive and equitable relief sought.

14 12. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391
15 because a substantial portion of the underlying transactions and events complained of
16 occurred and affected persons and entities located in this judicial district, and
17 Defendant has received substantial compensation from such transactions and business
18 activity in this judicial district.

19 **PARTIES**

20
21 13. Plaintiff Gershzon is a resident of San Francisco, California.

22 14. Mr. Gershzon purchased Defendant's Wild Orange Product within the
23 applicable class periods, including but not limited to a purchase in or around June
24 2023 from Walmart in San Leandro.

25 15. Mr. Gershzon believed the representations on the Products' labels were
26 accurate, particularly in that they did not contain preservatives.

27 16. Mr. Gershzon believed that Defendant lawfully marketed and sold the
28 Products.

1 17. Mr. Gershzon relied on Defendant's labeling and was misled thereby.

2 18. Mr. Gershzon would not have purchased the Products or would have
3 purchased the Products on different terms had he known the truth about their contents.

4 19. Mr. Gershzon was injured in fact and lost money as a result of
5 Defendant's improper conduct.

6 20. If Mr. Gershzon had occasion to believe that Defendant's marketing and
7 labeling is truthful, non-misleading, and lawful, he would purchase Defendant's
8 Products in the future.

9 21. Defendant ZOA Energy, LLC, manufactures, markets and sells a line of
10 energy drinks. ZOA reported more than \$100 million in sales in 2022 and 138% year-
11 over-year growth.⁷ The Drinks are sold across a variety of retail segments including
12 supermarkets, convenience stores and mass merchants.

13 14 **GENERAL ALLEGATIONS**

15 **A. Citric and Ascorbic Acids are Preservatives**

16 22. The federal Food Drug & Cosmetic Act ("FDCA") defines a chemical
17 preservative as "any chemical that, when added to food, tends to prevent or retard
18 deterioration thereof, but does not include common salt, sugars, vinegars, spices, or
19 oils extracted from spices, substances added to food by direct exposure thereof to
20 wood smoke, or chemicals applied for their insecticidal or herbicidal properties." 21
21 C.F.R. §101.22(a)(5). "A food to which a chemical preservative(s) is added shall....
22 bear a label declaration stating both the common or usual name of the ingredient(s)
23 and a separate description of its function, e.g., "preservative," "to retard spoilage," "a
24 mold inhibitor," "to help protect flavor" or "to promote color retention." 21 C.F.R.
25 §101.22(j).
26

27 ⁷ <https://ir.molsoncoors.com/news/news-details/2023/Molson-Coors-Beverage-Company-Expands-Partnership-With-ZOA-Energy-Through-Increased-Investment/default.aspx>
28

23. Chemical preservation is the process of adding ingredients to a food for the purpose of preventing potential damage from oxidation, rancidity, microbial growth or other undesirable changes. Chemical preservatives may be both natural or synthetic and function one of several ways — (a) as an antimicrobial agent to destroy bacteria or inhibit the growth of mold on foods; (b) as an antioxidant to inhibit oxidation and resulting rancidity; and (3) as a chelating agent which binds metal ions in certain foods to prevent oxidation.

24. Citric and ascorbic acids are preservatives within the meaning of 21 C.F.R. §101.22. Indeed, in a consumer facing publication, *Food Ingredients and Colors*, the Food and Drug Administration (“FDA”) unequivocally identifies both “citric acid” and “ascorbic acids” as preservatives.⁸ The sentiment is echoed in the Substances Added to Food database maintained by the FDA in which the principal technical effects of citric acid are identified as preservative functions.⁹ Finally, in a Warning Letter issued to Chiquita Brands International, Inc. and Fresh Express, Incorporated, October 6, 2010, the FDA made clear that both citric and ascorbic acids were preservatives and needed to be identified as such. “The “Pineapple Bites” and “Pineapple Bites with Coconut” products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical

⁸ *Food Ingredients and Colors*, International Food Information Council Foundation and U.S. Food and Drug Administration, specifically identifies the following as preservatives: ascorbic acid, **citric acid**, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E). Available at <https://www.fda.gov/files/food/published/Food-Ingredients-and-Colors-%28PDF%29.pdf> (last visited October 2, 2023)

⁹ The Substances Added to Food Database formerly Everything Added to Foods in the United States, available at https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=FoodSubstances&sort=Sortterm_ID&order=ASC&startrow=1&type=basic&search=citric%20acid (last visited October 2, 2023)

1 preservatives ascorbic acid and citric acid, but their labels fail to declare these
 2 preservatives with a description of their functions. 21 CFR 101.22.”¹⁰

3 25. Citric and ascorbic acid’s primary use is as a preservative, despite
 4 potentially having additional functions.¹¹ They function as preservatives in the
 5 Products, regardless of Defendants’ subjective purpose(s) for adding it to the
 6 Products, and regardless of any other functions citric acid may perform. This is even
 7 more the case here where Defendant has not declared a contrary purpose for adding
 8 citric and ascorbic acids and the Products separately contain flavorings (i.e., “natural
 9 flavor”) as a separate ingredient.

10 **B. The Preservative System in ZOA’s Product**

11
 12 26. Plaintiff conducted an independent chemical analysis of ZOA’s Product
 13 to determine the amounts of citric acid, ascorbic acid, as well as the product’s acidity
 14 reflected in terms of pH. The analysis unequivocally demonstrates that ZOA’s Product
 15 employs a preservation system in which both citric acid and ascorbic acid function as
 16 preservatives.

17 27. For a beverage to be shelf-stable and not require refrigeration, it must
 18 have a pH value of 4.6 or below. This pH level inhibits the growth of harmful
 19 microorganisms, including *Clostridium botulinum*, which can cause botulism, a
 20 serious foodborne illness. The FDA’s regulations for acidified foods and low-acid
 21 canned foods specify that maintaining a pH at or below this threshold is critical for
 22 ensuring the microbial safety of the product during storage and distribution without
 23 refrigeration. 21 C.F.R. 110.80 (b)(15).

24
 25
 26 ¹⁰ <http://fda-warning-letters.blogspot.com/2010/10/fresh-express-incorporated-10610.html> (last visited
 October 6, 2023).

27 ¹¹ See <https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/>
 28 (last visited October 6, 2023).

1 28. ZOA's Product has a pH value of 3.41, indicating that it is shelf-stable,
2 does not require refrigeration, and significantly, has a preservative system operating to
3 ensure its pH remains below 4.6

4 29. Citric acid is listed as the second most abundant ingredient in the Product
5 which also contains two other citrate species - sodium citrate and potassium citrate.
6 Sodium and potassium citrate commonly accompany citric acid as buffering agents. A
7 buffering agent is a substance that helps maintain a stable pH level in a solution by
8 neutralizing small amounts of added acid or base. Buffering agents typically consist of
9 a weak acid and its conjugate base or a weak base and its conjugate acid. These agents
10 are crucial in various chemical, biological, and industrial processes to ensure that the
11 pH remains within a specific range, which is important for the stability and
12 functionality of the system. In ZOA's Product citric acid is the weak acid and the
13 citrates are included to ensure it maintains its intended pH.

14 30. Analysis shows the Product contains 1.120g of citric acid in 355 mL.
15 This corresponds to a concentration of 0.016M or 16 millimolar citric acid. For
16 reference, a pure 10 millimolar citric acid solution exhibits a pH of approximately 2.6.
17 In other words, there is more than a sufficient amount of citric acid in the Product to
18 maintain a pH below 4.6.

19 31. Analysis also shows the Product contains 112 mg ascorbic acid in 355
20 mL, 24% more than the 90 mg claimed on the label. This corresponds to a 1.79
21 millimolar concentration of ascorbic acid. For reference, a pure 1 millimolar of
22 ascorbic acid solution exhibits a pH of approximately 3.6. Again, more than enough to
23 function as a preservative in the ZOA Drink.

24 32. At bottom, the concentration of citric acid in the beverage is high enough
25 to serve as the dominant contributor to the overall pH of the Product. The pH of 3.41
26 is low enough to preserve the beverage in a shelf stable, non-refrigerated state. As
27 such, citric acid acts as a preservative in this formulation. Similarly, the concentration
28

1 of ascorbic acid in the beverage is sufficient to reduce the pH of the solution to below
2 4.6, and as such, ascorbic acid also acts as a preservative in this formulation.

3 C. Consumer Demand For Preservative Free Products

4
5 33. The clean label movement has been called “the largest shift in American
6 food habits since World War II.”¹² The term encompasses many things, but is most
7 often associated with foods that are natural, healthy and devoid of additives and
8 preservatives.¹³

9 34. By representing the Products have “No Preservatives,” Defendants seek
10 to capitalize on consumer preference for clean label products. Indeed, “[foods bearing
11 ‘free-from’ claims are increasingly relevant to Americans, as they perceive the
12 products as closely tied to health.”¹⁴ “84 percent of Americans buy “free-from” foods
13 because they believe them to be more natural or less processed.” Among such
14 consumers, preservative free ranks “[a]mong the top claims... deem[ed] most
15 important.”

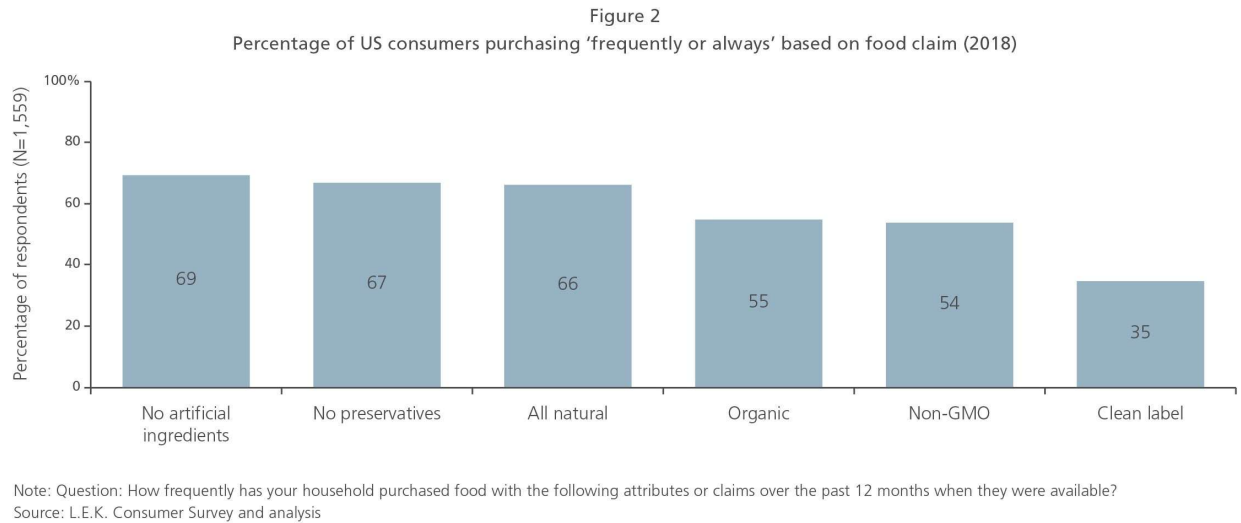
16 35. In a survey undertaken by L.E.K, around 1600 consumers were asked
17 which claims were the most important to them when buying food and drink products.
18 Results indicated the most popular claim to be 'no artificial ingredients'. This was
19 followed closely by 'no preservatives'....”¹⁵

20
21 ¹² Clean Labels, Public Relations or Public Health, Center For Science in the Public Interest (2017),
22 available <https://www.cspinet.org/sites/default/files/2022-03/Clean%20Label%20report.pdf> (last
visited October 6, 2023).

23 ¹³ Clean label trend is evolving - consumers still willing to pay a price premium, Valio, May 29,
24 2023. Available at <https://www.valio.com/food-solutions-for-companies/articles/clean-label-trend-is-evolving-and-consumers-willing-to-pay-a-price-premium/> (last visited October 6, 2023).

25 ¹⁴ See, *Free-from Food Trends US 2015 Report*, MINTEL, Available at
26 <https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed> (last accessed November 30, 2022).

27 ¹⁵ <https://www.lek.com/insights/ei/clean-label-food-ingredients>
28



36. By failing to properly label its Products, ZOA has misled and deceived consumers in violation of the law.

37. As a result of Defendant's unlawful and deceptive conduct, Plaintiff and members of the Class have been harmed.

ECONOMIC INJURY

38. Plaintiff sought to buy products that were lawfully labeled, marketed and sold.

39. Plaintiff saw and relied on Defendant's misleading labeling of its Products.

40. Plaintiff believed that the purchased Products contained no preservatives.

41. Plaintiff believed that the Products were lawfully marketed and sold.

42. In reliance on the claims made by Defendant regarding the qualities of its Products, Plaintiff paid a price premium.

43. As a result of their reliance on Defendant's misrepresentations, Plaintiff received Products that lacked the promised ingredients which they reasonably believed they contained.

44. Plaintiff received Products that were unlawfully marketed and sold.

1 45. Plaintiff lost money and thereby suffered injury as they would not have
2 purchased these Seltzers and/or paid as much for them absent the misrepresentation.

3 46. Defendant knows that the claim the Products are free of preservatives are
4 material to a consumer's purchasing decision.

5 47. Plaintiff altered his position to his detriment and suffered damages in an
6 amount equal to the amounts he paid for the Products he purchased, and/or in
7 additional amounts attributable to the deception.

8 48. By engaging in the false and deceptive conduct alleged herein, Defendant
9 reaped and continues to reap financial benefits in the form of sales and profits from its
10 Products.

11 49. Plaintiff, however, would be willing to purchase Products again in the
12 future should he be able to rely on Defendant's marketing as truthful and non-
13 deceptive.

14 **CLASS ACTION ALLEGATIONS**

15 50. Plaintiff brings this action on behalf of himself and on behalf of classes
16 of all others similarly situated consumers defined as follows:

17 a. **National:** All persons in the United States who purchased Class
18 Products in the United States during the Class Period.

19 b. **California:** All persons in California who purchased the Class
20 Products in California during the Class Period.

21 c. **Class Period** is the maximum time allowable as determined by the
22 statute of limitation periods accompanying each cause of action.

23 51. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure
24 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

25 52. Excluded from the Class are: (i) Defendant and its employees, principals,
26 affiliated entities, legal representatives, successors and assigns; and (ii) the judges to
27 whom this action is assigned.
28

1 53. Upon information and belief, there are tens of thousands of members of
2 the Class. Therefore, individual joinder of all members of the Class would be
3 impracticable.

4 54. There is a well-defined community of interest in the questions of law and
5 fact affecting the parties represented in this action.

6 55. Common questions of law or fact exist as to all members of the Class.
7 These questions predominate over the questions affecting only individual Class
8 members. These common legal or factual questions include but are not limited to:

- 9 a. Whether Defendant marketed, packaged, or sold the Class
10 Products to Plaintiff and those similarly situated using false,
11 misleading, or deceptive statements or representations;
- 12 b. Whether Defendant omitted or misrepresented material facts
13 in connection with the sales of their Products;
- 14 c. Whether Defendant participated in and pursued the common
15 course of conduct complained of herein;
- 16 d. Whether Defendant has been unjustly enriched as a result of
17 its unlawful business practices;
- 18 e. Whether Defendant's actions violate the Unfair Competition
19 Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");
- 20 f. Whether Defendant's actions violate the False Advertising
21 Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the "FAL");
- 22 g. Whether Defendant's actions violate the Consumers Legal
23 Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA");
- 24 h. Whether Defendant's actions give rise to a cause of action for
25 negligent misrepresentation;
- 26 i. Whether Defendant's actions give rise to a cause of action for
27 intentional misrepresentation;
- 28 j. Whether Defendant's actions are fraudulent;

- k. Whether Defendant should be enjoined from continuing the above-described practices;
- l. Whether Plaintiff and members of the Class are entitled to declaratory relief; and
- m. Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, and pay damages as a result of the above-described practices.

56. Plaintiff's claims are typical of the claims of the Class, in that Plaintiff was a consumer who purchased Defendant's Products. Plaintiff is no different in any relevant respect from any other Class Member who purchased the Products, and the relief sought is common to the Class.

57. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent, and he has retained counsel competent and experienced in conducting complex class action litigation. Plaintiff and his counsel will adequately protect the interests of the Class.

58. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual Class member likely will be relatively small, especially given the relatively small cost of the Products at issue and the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's conduct. Thus, it would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Moreover, even if members of the Class could afford individual actions, it would still not be preferable to class-wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

59. In the alternative, the Class may be certified because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate preliminary and final equitable relief with respect to each Class.

60. The requirements for maintaining a class action pursuant to Rule 23(b)(2) are also met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

(“Unlawful” Business Practices in Violation of The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§17200, *et seq.*)

61. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.

62. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code §17200.

63. A business act or practice is “unlawful” if it violates any established state or federal law.

64. Defendant’s acts, omissions, misrepresentations, practices, and/or non-disclosures concerning the Products alleged herein, constitute “unlawful” business acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301, *et seq.* and its implementing regulations, including, at least, the following sections:

- a. 21 U.S.C. §343(a), which deems food misbranded when its labeling contains a statement that is false or misleading in any particular;

- b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as to create an erroneous impression about the presence or absence of ingredient(s) or component(s) therein;
- c. 21 CFR §101.22 pertaining to the labeling requirements when products do not contain their characterizing ingredients but instead are flavored;
- d. 21 U.S.C. §§331 and 333, which prohibits the introduction of misbranded foods into interstate commerce.

65. California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Cal. Health & Safety Code §109875 *et seq.*, broadly prohibits the misbranding of food. Cal. Health & Safety Code §110765; *See, also* Cal. Health & Safety Code §110660 ("Any food is misbranded if its labeling is false or misleading in any particular."). The Sherman Law incorporates all food labeling regulations and any amendments to those regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 as the food labeling regulations of California. Cal. Health & Safety Code §§110100(a), 110665, 110670.

66. As described in detail above, by failing to label the Products in a manner that accurately represents its contents, Defendant generally violates 21 U.S.C. §343(a)(1) ("a food shall be deemed to be misbranded if its labeling is false or misleading in any particular") as incorporated by California's Sherman Law. Independently, by mislabeling the Products, Defendant violates Cal. Health & Safety Code § 110660 ("any food is misbranded if its labeling is false or misleading in any particular.")

67. Defendant violated and continues to violate the Sherman Law, Article 6, Section 110660 and hence has also violated and continues to violate the "unlawful" prong of the UCL through the false labeling of its Product.

68. Defendant's identical conduct that violates the Sherman Law, also violates FDCA §403(a)(1), 21 U.S.C. §343(a)(1), which declares food misbranded under federal

1 law if its “labeling is false and misleading in any particular.” This identical conduct
 2 serves as the sole factual basis of each cause of action brought by this Complaint, and
 3 Plaintiff does not seek to enforce any of the state law claims to impose any standard of
 4 conduct that exceeds that which would violate FDCA.

5 69. By committing the unlawful acts and practices alleged above, Defendant
 6 has engaged, and continues to be engaged, in unlawful business practices within the
 7 meaning of California Business and Professions Code §§17200, *et seq.*

8 70. Through its unlawful acts and practices, Defendant has obtained, and
 9 continues to unfairly obtain, money from members of the Class. As such, Plaintiff
 10 requests that this Court cause Defendant to restore this money to Plaintiff and all
 11 members of the Class, to disgorge the profits Defendant made on these transactions,
 12 and to enjoin Defendant from continuing to violate the Unfair Competition Law or
 13 violating it in the same fashion in the future. Otherwise, the Class may be irreparably
 14 harmed and denied an effective and complete remedy if such an order is not granted.

15
 16 **SECOND CAUSE OF ACTION**
 17 **(“Unfair” Business Practices in Violation of**
 18 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

19 71. Plaintiff incorporates each and every allegation contained in the
 20 paragraphs above as if restated herein.

21 72. The UCL defines unfair business competition to include any “unlawful,
 22 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
 23 misleading” advertising. Cal. Bus. Prof. Code §17200.

24 73. A business act or practice is “unfair” under the Unfair Competition Law if
 25 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the
 26 gravity of the harm to the alleged victim.

27 74. Defendant has violated, and continues to violate, the “unfair” prong of the
 28 UCL through its misleading description of the Products. The gravity of the harm to

1 members of the Class resulting from such unfair acts and practices outweighs any
 2 conceivable reasons, justifications, or motives of Defendant for engaging in such
 3 deceptive acts and practices. By committing the acts and practices alleged above,
 4 Defendant engaged, and continues to engage, in unfair business practices within the
 5 meaning of California Business and Professions Code §§17200, *et seq.*

6 75. Through its unfair acts and practices, Defendant obtained, and continues
 7 to unfairly obtain, money from members of the Class. As such, Plaintiff has been injured
 8 and requests that this Court cause Defendant to restore this money to Plaintiff and the
 9 members of the Class, to disgorge the profits Defendant made on its Products, and to
 10 enjoin Defendant from continuing to violate the Unfair Competition Law or violating it
 11 in the same fashion in the future. Otherwise, the Class may be irreparably harmed and
 12 denied an effective and complete remedy if such an Order is not granted.

13
 14 **THIRD CAUSE OF ACTION**
 15 **(“Fraudulent” Business Practices in Violation of**
 16 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**

17 76. Plaintiff incorporates each and every allegation contained in the
 18 paragraphs above as if restated herein.

19 77. The UCL defines unfair business competition to include any “unlawful,
 20 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
 21 misleading” advertising. Cal. Bus. & Prof. Code §17200.

22 78. A business act or practice is “fraudulent” under the Unfair Competition
 23 Law if it actually deceives or is likely to deceive members of the consuming public.

24 79. Defendant’s acts and practices of mislabeling its Products in a manner to
 25 suggest they principally contained their characterizing ingredients.

26 80. As a result of the conduct described above, Defendant has been, and will
 27 continue to be, unjustly enriched at the expense of Plaintiff and members of the
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1 proposed Class. Specifically, Defendant has been unjustly enriched by the profits they
2 have obtained from Plaintiff and the Class from the purchases of their Products.

3 81. Through its fraudulent acts and practices, Defendant has improperly
4 obtained, and continues to improperly obtain, money from members of the Class. As
5 such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff
6 and the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from
7 continuing to violate the Unfair Competition Law or violating it in the same fashion in
8 the future. Otherwise, the Class may be irreparably harmed and denied an effective and
9 complete remedy if such an Order is not granted.

10
11 **FOURTH CAUSE OF ACTION**
12 **(False Advertising in Violation of**
13 **California Business & Professions Code §§ 17500, *et seq.*)**

14 82. Plaintiff incorporates each and every allegation contained in the
15 paragraphs above as if restated herein.

16 83. Defendant uses advertising and packaging to sell its Products. Defendant
17 disseminates advertising regarding its Products which by its very nature is deceptive,
18 untrue, or misleading within the meaning of California Business & Professions Code
19 §§17500, *et seq.* because those advertising statements contained on the labels are
20 misleading and likely to deceive, and continue to deceive, members of the putative Class
21 and the general public.

22 84. In making and disseminating the statements alleged herein, Defendant
23 knew or should have known that the statements were untrue or misleading, and acted in
24 violation of California Business & Professions Code §§17500, *et seq.*

25 85. The misrepresentations and non-disclosures by Defendant of the material
26 facts detailed above constitute false and misleading advertising and therefore constitute
27 a violation of California Business & Professions Code §§17500, *et seq.*
28

86. Through their deceptive acts and practices, Defendant has improperly and illegally obtained money from Plaintiff and the members of the Class. As such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and the members of the Class, and to enjoin Defendant from continuing to violate California Business & Professions Code §§17500, *et seq.*, as discussed above. Otherwise, Plaintiff and those similarly situated will continue to be harmed by Defendant's false and/or misleading advertising.

87. Pursuant to California Business & Professions Code §17535, Plaintiff seeks an Order of this Court ordering Defendant to fully disclose the true nature of its misrepresentations. Plaintiff additionally requests an Order: (1) requiring Defendant to disgorge its ill-gotten gains, (2) award full restitution of all monies wrongfully acquired by Defendant and (3), interest and attorneys' fees. Plaintiff and the Class may be irreparably harmed and denied an effective and complete remedy if such an Order is not granted.

FIFTH CAUSE OF ACTION

(Violation of the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*)

88. Plaintiff incorporates each and every allegation contained in the paragraphs above as if restated herein.

89. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.* (the "CLRA").

90. Plaintiff and each member of the proposed Class are "consumers" within the meaning of Civil Code §1761(d).

91. The purchases of the Products by consumers constitute "transactions" within the meaning of Civil Code §1761(e) and the Products constitute "goods" within the meaning of Civil Code §1761(a).

92. Defendant has violated, and continues to violate, the CLRA in at least the following respects:

- a. §1770(5) pertaining to misrepresentations regarding the characteristics of goods sold—specifying that misleading representations regarding ingredients violate the CLRA;
- b. §1770(7) pertaining to misrepresentations regarding the standard, quality, or grade of goods sold; and
- c. § 1770(9) pertaining to goods advertised with the intent not to provide what is advertised.

93. Defendant knew, or should have known, that the labeling of their Products violated consumer protection laws, and that these statements would be relied upon by Plaintiff and the members of the Class.

94. The representations were made to Plaintiff and all members of the Class. Plaintiff relied on the accuracy of the representations on Defendant's labels which formed a material basis for his decision to purchase the Products. Moreover, based on the very materiality of Defendant's misrepresentations uniformly made on or omitted from their Product labels, reliance may be presumed or inferred for all members of the Class.

95. Defendant carried out the scheme set forth in this Complaint willfully, wantonly, and with reckless disregard for the interests of Plaintiff and the Class, and as a result, Plaintiff and the Class have suffered an ascertainable loss of money or property.

96. Plaintiff and the members of the Class request that this Court enjoin Defendant from continuing to engage in the unlawful and deceptive methods, acts and practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless Defendant is permanently enjoined from continuing to engage in such violations of the CLRA, future consumers of Defendants' Products will be damaged by their acts and practices in the same way as Plaintiff and California Subclass Members.

97. Plaintiff served a CLRA demand pursuant to Civil Code §1782, via U.S. Certified Mail Return Receipt notifying Defendant of the conduct described herein and that such conduct was in violation of particular provisions of Civil Code §1770. If

1 Defendants do not accede to the demands in the letter within 30 days, Plaintiff will
2 amend this complaint to seek damages as provided under Civil Code §1780.

3
4 **SIXTH CAUSE OF ACTION**
5 **(Breach of Express Warranty)**

6 98. Plaintiff incorporates each and every allegation contained in the
7 paragraphs above as if restated herein.

8 99. Defendant made express warranties to Plaintiff and members of the Class
9 that the Products they purchased contained fruit characterized by name and vignette
10 on the Products' principal display panel.

11 100. The express warranties made to Plaintiff and members of the Class appear
12 on every Product label. This warranty regarding the nature of the Product marketed by
13 Defendant specifically relates to the goods being purchased and became the basis of the
14 bargain.

15 101. Plaintiff and the Class purchased the Products in the belief that they
16 conformed to the express warranties that were made on the Products' labels.

17 102. Defendant breached the express warranties made to Plaintiff and members
18 of the Class by failing to supply goods that conformed to the warranties it made. As a
19 result, Plaintiff and members of the Class suffered injury and deserve to be compensated
20 for the damages they suffered.

21 103. Plaintiff and the members of the Class paid money for the Products.
22 However, Plaintiff and the members of the Class did not obtain the full value of the
23 advertised Products. If Plaintiff and other members of the Class had known of the true
24 nature of the Products, they would not have purchased them or paid less for them.
25 Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost
26 money or property as a result of Defendant's wrongful conduct.

1 104. Plaintiff and the Class are therefore entitled to recover damages, punitive
2 damages, equitable relief such as restitution and disgorgement of profits, and
3 declaratory and injunctive relief.

4
5 **SEVENTH CAUSE OF ACTION**
6 **(Common Law Fraud)**

7 105. Plaintiff incorporates each and every allegation contained in the
8 paragraphs above as if restated herein.

9 106. Defendant has misrepresented the Product by willfully, falsely, and
10 knowingly labeling and advertised the Products as containing “0 Preservatives”
11 despite the fact they contain chemical preservatives in the form of citric and ascorbic
12 acids.

13 107. Defendant’s misrepresentations are and were material (i.e., the type of
14 misrepresentations to which a reasonable person would attach importance and would
15 be induced to act thereon in making purchase decisions), because they relate to the
16 quality of Products the consumer is receiving.

17 108. Defendant knew or recklessly disregarded the fact that the Products
18 contained known preservatives.

19 109. Defendant intended that Plaintiff, and other consumers rely on these
20 representations, as evidenced by Defendant intentionally labeling and advertising the
21 Products as having “0 Preservatives” despite containing preservatives in the form of
22 citric and ascorbic acids.

23 110. Plaintiff and members of the Class have reasonably and justifiably relied
24 on Defendant’s misrepresentations when purchasing the Products and had the true
25 facts been known, would not have purchased the Products or would not have
26 purchased them at the prices at which they were offered.

27 111. As a direct and proximate result of Defendant’s fraud, Plaintiff and
28 members of the Class have suffered economic losses and other general and specific

1 damages, including but not limited to the amounts paid for the Products, and any
2 interest that would have accrued on those monies, all in an amount to be proven at
3 trial.

4 **EIGHTH CAUSE OF ACTION**
5 **(Intentional Misrepresentation)**

6 112. Plaintiff incorporates each and every allegation contained in the
7 paragraphs above as if restated herein.

8 113. Defendant labeled and advertised the Products as containing “0
9 Preservatives” despite the fact the Products contain chemical preservatives in the
10 form of citric and ascorbic acids.

11 114. Defendant’s misrepresentations regarding the Products are material to a
12 reasonable consumer as they relate to the quality of product received by consumers.

13 115. Reasonable consumers would attach importance to such representations
14 and would be induced to act thereon in making purchasing decisions.

15 116. At all relevant times when such misrepresentations were made,
16 Defendant knew that the representations were misleading or acted recklessly in
17 making the representations without regard to the truth.

18 117. Defendant intended that Plaintiff and other similarly situated consumers
19 rely on the claim that the Product contained “0 Preservatives” as evidenced by
20 Defendant’s intentionally manufacturing, marketing, and selling the Product with that
21 claim on the label.

22 118. Plaintiff and members of the Class have reasonably and justifiably relied
23 on Defendant’s intentional misrepresentations when purchasing the Products, and had
24 the correct facts been known, would not have purchased the Products or would not
25 have purchased them at the prices at which they were offered.

26 119. As a direct and proximate result of Defendant’s intentional
27 misrepresentations, Plaintiff and members of the Class have suffered economic losses
28 and other general and specific damages, including but not limited to the amounts paid

1 for the Products, and any interest that would have accrued on those monies, all in an
2 amount to be proven at trial.

3
4 **NINTH CAUSE OF ACTION**
5 **Negligent Misrepresentation**

6 120. Plaintiff incorporates each and every allegation contained in the
7 paragraphs above as if restated herein.

8 121. Defendant labeled and advertised the Products as containing “0
9 Preservatives” despite containing chemical preservatives in the form of citric acid and
10 ascorbic acids and therefore made misrepresentations as to the Products.

11 122. Defendant’s misrepresentations regarding the Products are material to a
12 reasonable consumer because they relate to the quality of product received by the
13 consumer.

14 123. A reasonable consumer would attach importance to such representations
15 and would be induced to act thereon in making purchasing decisions.

16 124. At all relevant times when such misrepresentations were made,
17 Defendant knew or has been negligent in not knowing that that the Products are not
18 preservative-free and instead contain the preservatives citric and ascorbic acid.

19 125. Defendant had no reasonable grounds for believing its misrepresentation
20 is not false and misleading.

21 126. Defendant intended that Plaintiff and other similarly situated consumers
22 rely on the “0 Preservatives” representation, as evidenced by their inclusion of the
23 representation on Product labels.

24 127. Plaintiff and members of the Class have reasonably and justifiably relied
25 on Defendant’s negligent misrepresentations when purchasing the Products, and had
26 the correct facts been known, would not have purchased the Products or would not
27 have purchased them at the prices at which they were offered.
28

1 A. An order certifying that this action is properly brought and may be
2 maintained as a class action, that Plaintiff be appointed Class Representatives, and
3 Plaintiff' counsel be appointed Lead Counsel for the Class.

4 B. Restitution in such amount that Plaintiff and all members of the Class
5 paid to purchase Defendant's Product or restitutionary disgorgement of the profits
6 Defendant obtained from those transactions, for Causes of Action for which they are
7 available.

8 C. Compensatory damages for Causes of Action for which they are
9 available.

10 D. Other statutory penalties for Causes of Action for which they are
11 available.

12 E. Punitive Damages for Causes of Action for which they are available.

13 F. A declaration and Order enjoining Defendant from marketing and
14 labeling its Product deceptively, in violation of laws and regulations as specified in
15 this Complaint.

16 G. An Order awarding Plaintiff their costs of suit, including reasonable
17 attorneys' fees and pre and post judgment interest.

18 H. An Order requiring an accounting for, and imposition of, a constructive
19 trust upon all monies received by Defendant as a result of the unfair, misleading,
20 fraudulent and unlawful conduct alleged herein.

21 I. Such other and further relief as may be deemed necessary or appropriate.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury on all causes of action or issues so triable.

DATED: May 13, 2025

Respectfully submitted,



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