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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 JESSE HELEMS, *on behalf of all those*)
13 *similarly situated,*)
14)
15 *Plaintiff,*)

No. **'22CV674 L AGS**

16 v.)

CLASS ACTION COMPLAINT

17 GHOST LLC DBA GHOST LIFESTYLE, *a*)
18 *Delaware limited liability company,*)
19)
20 *Defendant.*)

JURY TRIAL DEMANDED

21 _____
22
23 Jesse Helems (“Plaintiff”), individually and on behalf of all others similarly situated, by
24 and through undersigned counsel, hereby brings this action against Ghost LLC dba Ghost
25 Lifestyle (“Defendant” or “Ghost”), alleging that certain products manufactured, packaged,
26 labeled, advertised, distributed and sold by Defendant are misbranded and falsely advertised in
27 California and nationwide and otherwise violate California law, and upon information and belief
28 and investigation of counsel alleges as follows:

PARTIES

1. Plaintiff Jesse Helems is and at all times relevant was a resident of San Diego,
California. On or about January 4, 2022, Helems purchased Ghost Greens Superfood
supplement, Lemonade Iced Tea flavor, from GNC Nutrition (Order No. 200008477878). Ghost

1 Greens (“the Product(s)”) is a dietary supplement meant to support muscle growth and probiotic
2 health.

3 2. Defendant Ghost LLC dba Ghost Lifestyle is a Delaware limited liability company
4 with its principal place of business in Chicago, Illinois.

5 **JURISDICTION AND VENUE**

6 3. This Court has subject matter jurisdiction over this action pursuant to the Class
7 Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the
8 United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original
9 jurisdiction of the federal district courts over “any civil action in which the matter in controversy
10 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class
11 action in which . . . any member of a class of plaintiffs is a citizen of a State different from any
12 defendant.” 28 U.S.C. § 1332(d)(2)(A).

13 4. Plaintiff seeks to represent Class members who are citizens of states different from
14 the Defendant.

15 5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate,
16 exclusive of interests and costs.

17 6. In addition, “the number of members of all proposed plaintiff classes in the
18 aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

19 7. In the alternative, the Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). The
20 amount in controversy exceeds \$75,000 exclusive of interest, fees, and costs.

21 8. This Court has personal jurisdiction over Defendant because this action arises out
22 of and relates to Defendant’s contacts with this forum.

23 9. Those contacts include but are not limited to sales of the Products directly to
24 commercial and individual consumers located in this district, including Plaintiff; shipping the
25

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.
13

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.
17

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 Will 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 18. According to Nielsen, more than 40 percent of consumers rate the absence of
12 artificial flavors in their foods as important to them when deciding between competing products,
13 and more than 60 percent try to avoid artificial flavors at least some of the time.

14
15 19. Consumers also have a specific sense of the attributes of “natural” foods. Research
16 by Consumer Reports indicates that nearly 90 percent of consumers believe and expect that
17 foods described as “natural” should contain no artificial ingredients.

18 **B. Defendant’s Use of Synthetic Flavorings.**

19 20. Defendant Ghost LLC formulates, manufactures, and sells a number of dietary
20 supplements and powders that are meant to support workout, bodybuilding, and other health and
21 fitness goals. Among those are Ghost Greens, a blend of “superfood” greens designed to support
22 workouts and gut health. It comes in three flavors: Lime, Guava, and Iced Tea Lemonade. These
23 Products are sold by some of the largest dietary supplement retailers in this country including
24 GNC and The Vitamin Shoppe.
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1 21. To appeal to consumers who seek out natural food products and are willing to pay
2 more for them, Defendant labels and advertises the Products as if they were exclusively naturally
3 flavored.

4 22. For example, the label of the Ghost Greens Product purchased by Plaintiff states
5 prominently that it is “Naturally Flavored”:
6



22 23. By identifying the Products as containing “Naturally Flavored,” consumers expect
23 only natural flavoring to be used in the Products, because that is what the labels say.

24 24. These label claims are false. The Products are artificially flavored.

25 25. Each of the Products contains an ingredient identified as “malic acid.” While there
26 is a naturally occurring form of malic acid, it is extremely expensive to formulate in the large
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28

1 quantities and is almost never used in mass-produced food products. Instead, the malic acid that
2 Defendant uses in these Products is d-l malic acid, a synthetic petrochemical.¹

3 26. This type of malic acid is manufactured in petrochemical plants from benzene or
4 butane—components of gasoline and lighter fluid, respectively—through a series of chemical
5 reactions, some of which involve highly toxic chemical precursors and byproducts.
6

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

10 28. The quality and consumer acceptability of fruit flavors is based on their perceived
11 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such
12 as lemons, limes, and guavas have their own natural ratio of sugars and acids.
13

14 29. The malic acid used in the Products is used to create, enhance, simulate, and/or
15 reinforce the sweet and tart taste that consumers associate with the characterizing fruit flavors,
16 such as lemons. As described below, it does so by changing the ratio between acids and sugars
17 in the Products.

18 30. Defendant uses the artificial petrochemically derived d-l malic acid in its Products
19 to create this sweet and tart flavor but pretends otherwise, conflating natural and artificial
20 flavorings, misbranding the Products and deceiving consumers.
21

22 31. The ingredients on the Products' label are declared in a way that is misleading and
23 contrary to law, because Defendant designates the ingredient by its generic name, "malic acid,"
24 instead of by its specific name, "d-l malic acid."

25 32. Even if the malic acid used in the Products is l-malic acid, it is still not a "natural"
26 flavoring. Almost all l-malic acid used in mass produced food products uses a substrate that is
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¹ D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 derived from petroleum products. For this reason, for example, organic food producers and
2 advocates have sought to have l-malic acid to be struck from the list of additives that can be
3 used in foods labelled “organic.”

4 **C. Requirements for Labelling**

5 33. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §
6 109875, *et seq.*, incorporates all food flavoring and additive regulations of the Federal Food,
7 Drug, and Cosmetic Act (“FDCA”). The regulations require that a food’s label accurately
8 describe the nature of the food product and its characterizing flavors. 21 C.F.R. § 102.5(a).
9

10 34. Artificial flavor is defined as “any substance, the function of which is to impart
11 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible
12 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
13 products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).
14

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

19 36. Any recognizable primary flavor identified directly or indirectly on the front label
20 of a food Product, whether by word, vignette, depiction of a fruit, or other means is referred to
21 as a “characterizing flavor.” 21 C.F.R. § 101.22.
22

23 37. Here, the Products’ labels state the characterizing flavors (lemon, lime, and
24 guava).

25 38. If a food product’s characterizing flavor is not created exclusively by the named
26 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or
27 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present
28

1 which “simulates, resembles or reinforces” the characterizing flavor, the front label must
2 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §
3 101.22(i)(2).

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

9 40. Such statement must be in boldface print on the front display panel and of
10 sufficient size for an average consumer to notice.

11 41. By changing the ratio between sugars and acids that is naturally found in fruits
12 such as lemons, limes, and guavas, the d-l malic acid used in the Product reinforces, stimulates,
13 or enhances the characterizing flavors, regardless of any other effect it may have or purpose for
14 which it was included.

15 42. D-l malic acid is not a “natural flavor” as this term is defined by federal and state
16 regulations and is not derived from a fruit or vegetable or any other natural source. Rather, it is
17 derived from petroleum products. The Products therefore contain artificial flavorings.

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

21 44. The Products have none of the required disclosures regarding the use of artificial
22 flavors.

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1 **D. All Flavors of the Deceptively Labeled Products are Substantially Similar.**

2 45. These Products are formulated into different flavors: Iced Tea Lemonade, Lime,
3 and Guava.

4 46. All of these Products are made with a base formulation that includes the same
5 “super greens,” antioxidant, and probiotic blends, as well as stevia leaf extract.

6 47. All of these Products purport to be “Naturally Flavored,” *i.e.*, free of artificial
7 flavors and preservatives.

8 48. These Products are also offered for sale on the Defendant’s website for the same
9 price: \$44.99 for a 30-serving container.

10 49. The Products also use similar labels, and the labels present the natural flavoring
11 claim in a similar manner.

12 50. Because of these similarities, the resolution of the asserted claims will be identical
13 as between the purchased and unpurchased Products.

14 51. Because both the products and alleged misrepresentations are substantially
15 similar, Plaintiff’s claims related to the Products that he purchased are typical of the claims
16 available to all purchasers of the Products. As such, Plaintiff is an adequate class representative
17 for a class of purchasers of all of the Products, regardless of whether Plaintiff purchased every
18 flavor of the Products.

19 52. Plaintiff reserves the right to amend this Complaint to add further products that
20 contain similar label misrepresentations as testing continues.

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

3 54. Given the Defendant’s labels, consumers including Plaintiff would reasonably
4 understand Defendant’s statements to mean that each Products were free of artificial flavorings
5 as advertised and represented. These statements were false.
6

7 55. Consumers including Plaintiff would reasonably rely on Defendant’s statements
8 such that they would not have purchased the Products from Defendant if the truth about the
9 products’ flavoring were known, or would have only been willing to pay a substantially reduced
10 price for the Products had they known that Defendant’s representations were false and
11 misleading.
12

13 56. Consumers including Plaintiff especially rely on the “Naturally Flavored” label
14 claims made by food product manufacturers such as Ghost LLC, as they cannot confirm or
15 disprove those claims simply by viewing or even consuming the Product.

16 57. 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

20 **CLASS ACTION ALLEGATIONS**

21 58. Plaintiff brings this action individually and as representative of all those similarly
22 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons with the State
23 of California who purchased the Products within four years prior to the filing of this Complaint.

24 59. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
25 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
26 this matter and the members of their immediate families and judicial staff.
27
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1 60. Plaintiff reserves the right to alter the Class definition, and to amend this
2 Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.

3 61. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
4 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
5 individual Class members would use to prove those elements in individual actions alleging the
6 same claims.

7
8 62. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
9 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
10 members geographically dispersed throughout the State.

11 63. **Existence and Predominance of Common Questions of Law and Fact – Rule**
12 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
13 predominate over any questions that affect only individual Class members. Common legal and
14 factual questions and issues include but are not limited to:
15

- 16 a. Whether the marketing, advertising, packaging, labeling, and other promotional
17 materials for the Products is misleading and deceptive;
- 18 b. Whether a reasonable consumer would understand Defendant’s “Naturally
19 Flavored” claims to indicate that the Products contained only natural flavorings,
20 and reasonably relied upon those representations;
- 21 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class
22 members;
- 23 d. the proper amount of damages and disgorgement or restitution;
- 24 e. the proper scope of injunctive relief; and
25 f. the proper amount of attorneys’ fees.
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1 64. Defendant engaged in a common course of conduct in contravention of the laws
2 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
3 of law, business practices, and injuries are involved. Individual questions, if any, pale by
4 comparison, in both quality and quantity, to the numerous common questions that predominate
5 this action. The common questions will yield common answers that will substantially advance
6 the resolution of the case.
7

8 65. In short, these common questions of fact and law predominate over questions that
9 affect only individual Class members.

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

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

18 68. There are no defenses available to Defendant that are unique to the named
19 Plaintiff.
20

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

25 70. Furthermore, Plaintiff has selected competent counsel who are experienced in
26 class action and other complex litigation. Plaintiff and Plaintiff’s counsel are committed to
27 prosecuting this action vigorously on behalf of the Class and have the resources to do so.
28

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

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

20 72. Unless the Class is certified, Defendant will retain monies received as a result of
21 its unlawful and deceptive conduct alleged herein.

22 73. Unless a class-wide injunction is issued, Defendant will likely continue to
23 advertise, market, promote, and sell the Products in an unlawful and misleading manner, as
24

1 described throughout this Complaint, and members of the Class will continue to be misled,
2 harmed, and denied their rights under the law.

3 74. **Ascertainability.** To the extent ascertainability is required, the Class members are
4 readily ascertainable from Defendant’s records and/or its agents’ records of retail and online
5 sales, as well as through public notice.
6

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

9 **COUNT 1**
10 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION**
11 **17200 ET SEQ. — “UNFAIR” CONDUCT**

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

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

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

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

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

22 81. Defendant’s wrongful business practices alleged herein constituted, and continue
23 to constitute, a continuing course of unfair competition since it continues to market and sell its
24 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
25 oppressive, unscrupulous and/or substantially injurious to its customers.
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1 82. Defendant publicly disseminated untrue or misleading representations regarding
2 the flavoring and other label claims of its Products, which it knew, or in the exercise of
3 reasonable care should have known, were untrue or misleading.

4 83. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
5 of this court enjoining Defendant from continuing to engage in “unfair” business practices and
6 any other act prohibited by law, including those acts set forth in this Complaint, and further seek
7 all other relief allowable under Business and Professions Code Section 17200, *et seq.*
8

9 **COUNT 2**
10 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**
11 **SECTION 17200 *ET SEQ.* — “FRAUDULENT” CONDUCT**

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

14 85. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
15 a result of Defendant’s actions as set forth above.

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

18 87. Defendant’s business practices, as alleged herein, are “fraudulent” because it fails
19 to disclose accurately that the Products contained artificial flavorings.

20 88. As a result of this “fraudulent” conduct, Plaintiff expended money and engaged in
21 activities he would not otherwise have spent or conducted.
22

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

3 98. Defendant publicly disseminated untrue or misleading representations regarding
4 the “all-natural” status of the flavorings in its Products, which it knew, or in the exercise of
5 reasonable care should have known, were untrue or misleading.
6

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

12 **COUNT 4**
13 **VIOLATION OF CALIFORNIA BUSINESS &**
14 **PROFESSIONS CODE SECTION 17500 *ET SEQ.***

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

17 101. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
18 a result of Defendant’s actions as set forth above.

19 102. Defendant engaged in advertising and marketing to the public and offered for sale
20 advertising services on a nationwide basis, including in California.

21 103. Defendant engaged in the advertising and marketing alleged herein with the intent
22 to directly or indirectly induce the sale of the Products to consumers.

23 104. Defendant’s advertisements and marketing representations regarding the
24 characteristics of the Products were false, misleading, and deceptive as set forth above.

25 105. At the time it made and disseminated the statements alleged herein, Defendant
26 knew or should have known that the statements were untrue or misleading, and acted in violation
27 of Business and Professions Code Section 17500, *et seq.*
28

1 106. Plaintiff seeks injunctive relief and all other relief allowable under Business and
2 Professions Code Section 17500, *et seq.*

3 **COUNT 5**
4 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT,**
5 **CAL. CIV. CODE § 1750 *ET SEQ.***

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

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

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

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

14 111. As alleged herein, Defendant’s business practices are a violation of the CLRA
15 because Defendant deceptively failed to reveal facts that are material in light of the “Natural
16 Flavoring” representations that were made by Defendants on the labels and associated website
17 and marketing materials of its Products.

18 112. Defendant’s ongoing failure to provide material facts about its Products on its
19 labels and associated advertising material violates the following subsections of Cal. Civ. Code
20 § 1770(a) in these respects:
21

22
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
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- 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 e. Defendant's acts and practices constitute representations that its Products have
7 been supplied in accordance with previous representations when they were not.
8

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

11 114. 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

17 115. 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

22 116. 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**

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

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

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

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

8 121. Defendant continues to possess monies paid by consumers to which Defendant is
9 not entitled.

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

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

17 124. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
18 a result of Defendant's actions as set forth above.

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21
22 **PRAYER FOR RELIEF**

23 125. WHEREFORE, Plaintiff respectfully request the Court grant the following relief
24 against Defendant:

25 a. Certifying the Class;

26 b. Declaring that Defendant violated the CLRA, UCL, and FAL;

27
28

- 1 c. Awarding actual and other damages as permitted by law, and/or ordering an
2 accounting by Defendant for any and all profits derived by Defendant from the
3 unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;
4
5 d. Ordering an awarding of injunctive relief as permitted by law or equity, including
6 enjoining Defendant from continuing the unlawful practices as set forth herein, and
7 ordering Defendant to engage in a corrective advertising campaign;
8
9 e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff pursuant to
10 California Code of Civil Procedure Section 1021.5 and the common-law private-
11 attorney-general doctrine;
12
13 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
14 awarded; and
15
16 g. Such other relief as the Court may deem just and proper.

15 TRIAL BY JURY IS DEMANDED.

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

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21 May 13, 2022