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9 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 STEPHANIE ESCOBAR and
 13 ANNEMARIE NEWBOLD,
 14 individually and on behalf of all others
 15 similarly situated,

16 Plaintiffs,

17 vs.

18 SNAPPLE BEVERAGE CORP. and
 19 KEURIG DR. PEPPER INC.,

20 Defendants.

Case No.

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et. seq.*
4. UNJUST ENRICHMENT
5. BREACH OF EXPRESS WARRANTY

DEMAND FOR JURY TRIAL

25 Plaintiffs Stephanie Escobar and Annemarie Newbold (“Plaintiffs”),
 26 individually and on behalf of all other similarly situated purchasers (the “Class”),
 27 bring this class action lawsuit against Snapple Beverage Corp. and Keurig Dr. Pepper
 28 Inc. (collectively referred to herein as “Defendants”), and allege as follows:

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INTRODUCTION

1
2 1. Defendants peddle Snapple beverage products, including their Apple,
3 Watermelon Lemonade, Kiwi Strawberry, Mango Madness, Orangeade, Raspberry
4 Peach, Strawberry Pineapple Lemonade, Lemonade, and Pink Lemonade (the
5 “Products”) as “All Natural.” In reality, and unbeknownst to consumers who rely on
6 Defendants’ name and reputation, the Products contain added coloring, rendering the
7 “All Natural” labels false, misleading, and deceptive. True and correct representations
8 of the Products’ front labels are set forth below.



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1 Defendants’ labeling and advertising claims, namely, the “All Natural” label clearly
2 printed on the front of the bottles. These claims were prepared and approved by
3 Defendants and their agents and disseminated statewide and nationwide, to encourage
4 consumers to purchase the Products. If Plaintiffs had known that the Products were
5 not completely natural, they would not have purchased the Products.

6 7. Keurig Dr. Pepper Inc. is a corporation headquartered in Plano, Texas.
7 Keurig Dr. Pepper Inc. maintains its principal business office at 5301 Legacy Dr.
8 Plano, Texas 75024. Keurig Dr. Pepper Inc., directly and through its agents, has
9 substantial contacts with and receives substantial benefits and income from and
10 through the State of California. Keurig Dr Pepper Inc. is one of the owners,
11 manufacturers, and distributors of the Products, and is one of the companies that
12 created and/or authorized the false, misleading, and deceptive packaging of the
13 Products.

14 8. Snapple Beverage Corp. is a corporation headquartered in Plano, Texas.
15 Snapple Beverage Corp. maintains its principal business office at 5301 Legacy Dr.
16 Plano, Texas 75024. Snapple Beverage Corp., directly and through its agents, has
17 substantial contacts with and receives substantial benefits and income from and
18 through the State of California. Snapple Beverage Corp. is one of the owners,
19 manufacturers, and distributors of the Products, and is one of the companies that
20 created and/or authorized the false, misleading, and deceptive packaging of the
21 Products.

22 **JURISDICTION AND VENUE**

23 9. This Court has subject matter jurisdiction of this action pursuant to 28
24 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are
25 100 or more class members, (ii) there is an aggregate amount in controversy
26 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal
27 diversity because at least one Plaintiff and Defendants are citizens of different states.
28

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1 The Court has supplemental jurisdiction over any state law claims pursuant to 28
2 U.S.C. Section 1367.

3 10. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this
4 action because a substantial part of the events, omissions, and acts giving rise to the
5 claims herein occurred in this District: Plaintiff Stephanie Escobar is a citizen of
6 California who resides in this District; Defendants made the challenged false
7 representations to Plaintiff in this District; Ms. Escobar purchased the Products in this
8 District; and Ms. Escobar consumed the Products within this District. Moreover,
9 Defendants receive substantial compensation from sales in this District, and
10 Defendants made numerous misrepresentations which had a substantial effect in this
11 District involving their labeling and advertising representations.

12 11. Defendants are subject to personal jurisdiction in California based upon
13 sufficient minimum contacts which exist between Defendants and California.
14 Defendants are authorized to do and are doing business in California.

15 **FACTUAL ALLEGATIONS**

16 12. Defendants label and advertise their Products as “All Natural.” In reality,
17 the Products are not “All Natural” because they contain added color. The specific
18 food coloring agents in the Products are “vegetable and fruit juice concentrates,”
19 “vegetable juice concentrates,” “fruit juice concentrates,” and/or “beta carotene.”

20 13. The Food and Drug Administration (“FDA”) does not regard foods with
21 added coloring as natural, no matter the source of the coloring agent. According to
22 their guidelines, they “have considered ‘natural’ to mean that nothing artificial or
23 synthetic (including colors regardless of source) is included in, or has been added to,
24 the product that would not normally be expected to be there (56 FR 60421 at
25 60466).”¹

26 _____
27 ¹ Leslie Kux, *FDA Rulemaking Re Term Natural*, 12 November 2015.
28 <https://www.federalregister.gov/documents/2015/11/12/2015-28779/use-of-the-term-natural-in-the-labeling-of-human-food-products-request-for-information-and-comments>. (Last visited February 10, 2021).

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1 14. On November 10, 2015, in response to citizen petitions and consumer
2 requests, the FDA announced the establishment of a docket to receive information
3 and comments on the use of the term “natural” in the labeling of human food products
4 to determine whether a definition of “natural” should be established.

5 15. Among the 7,687 public comments received by the FDA, not one
6 comment from the public stated that “natural” should be allowed in food labeling if
7 color is added to a food; rather, hundreds of comments stated “natural” should only
8 be used for foods which are free from added coloring. Some representative examples
9 include:

10 a. “When I see the word ‘Natural’ on packaging, I expect the contents
11 to have only ingredients as they are found in nature. No chemicals, no coloring, no
12 flavoring, no GMO’s.” (Comment from Kristine Milochik. Posted 02/23/2016)

13 b. “I think the term ‘Natural’ should be banned from food labeling. It
14 is too ambiguous! It should be removed from all descriptors, including: Natural
15 Flavor, Natural colors, All Natural and so on. I think for the interest of transparency
16 all food ingredients should be simply labeled. The consumer has the right to know
17 what they are eating or drinking.” (Comment from Daniel Kinkelaar. Posted
18 08/26/2016)

19 c. “I firmly believe that consumers should be made aware of what
20 they are purchasing when shopping for food and too many times companies are
21 fooling the public by using the word ‘Natural’ when in fact it is not. When I see the
22 word Natural on a food product, I consider this to mean that it is free from all
23 additives, GMOs, Preservatives, Drugs, or colors. It is in it’s natural state. I would
24 like to see the FDA put more stringent requirements on companies who wish to use
25 this term in their products.” (Comment from Artemis Hader. Posted on 02/18/2016)

26 d. “The term ‘Natural’ should only appear on foods that are organic
27 without any preservatives or man-made chemicals. The food should be GMO-free and
28 contain no added colors, flavors, or synthetic substances. If a food product fails to

1 meet any of these requirements, then it should not be allowed to have the label
2 ‘Natural’ on it.” (Comment from Sara Burr. Posted on 03/16/2016)

3 e. “Natural should indeed mean no preservatives, additives, GMO's
4 and or flavor or color enhancers...” (Comment from Roy Collicutt. Posted on
5 03/15/2016)

6 16. To date, the FDA has not announced its decision to further define or
7 regulate the term “natural” in food labeling.

8 17. The “All Natural” label is prominently and conspicuously printed on the
9 front of the Products. But the added coloring agents in the Products render the “All
10 Natural” label claims false. The added coloring agents, regardless of their source, are
11 not ingredients consumers would normally expect to be included products that are
12 labeled as “All Natural.”

13 18. There are market incentives for companies to label their products as
14 “natural.” According to a national representative survey, more than half of consumers
15 look for products with a “natural” food label, often under “the false belief that they’re
16 produced without...artificial ingredients.”² As stated *supra*, the FDA considers
17 “natural” to be defined as a product that includes nothing artificial “including colors
18 *regardless of source*” [emphasis added].³ The process by which naturally-sourced
19 food coloring is added to products alters their status and renders them as no longer
20 “natural.” Therefore, the reasonable consumer will pay a price premium for products
21 with an “All Natural” label because they believe these products are safer, more
22 nutritious, or otherwise have different attributes than products that do not have the
23 label, all things being equal. Thus, these market forces push producers, like
24 Defendants, to deceptively label their products as “All Natural” to give themselves a
25 market advantage.

26 _____
27 ² Andrea Rock, “Peeling Back the ‘Natural’ Food Label.” *Consumer Reports*, 27
28 January 2016. <https://www.consumerreports.org/food-safety/peeling-back-the-natural-food-label/> (Last visited February 10, 2021).

³ See Leslie Kux, *supra* note 1.

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1 19. Reasonable consumers do not expect a product prominently labeled as
2 “All Natural” to have added coloring. The Products’ labels have the “capacity,
3 likelihood, or tendency to deceive or confuse the public” into believing that they are
4 fully natural and are truthfully labeled. *Williams v. Gerber Prods. Co.*, 552 F.3d 934,
5 938 (9th Cir. 2008) (citing *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002) and *Leoni*
6 *v. State Bar*, 39 Cal. 3d 609, 626 (1985)) (The California Supreme Court has
7 recognized “that [consumer protection] laws prohibit ‘not only advertising which is
8 false, but also advertising which, although true, is either actually misleading or which
9 has a capacity, likelihood or tendency to deceive or confuse the public.’”).

10 20. Plaintiffs and other consumers purchased the Products due to their belief
11 that the Products are safer, more nutritious, or otherwise have different attributes than
12 do products that do not have the “All Natural” label.

13 21. Plaintiffs and the Class made their purchasing decisions in reliance upon
14 Defendants’ advertised claims that that Products are “All Natural.”

15 22. Plaintiffs reasonably and detrimentally relied upon the Products’ front
16 labels indicating that the Products are “All Natural.”

17 23. Plaintiffs would not have purchased the Products had they known that the
18 Products contained ingredients that were added for coloring, thus rendering the
19 Products no longer “All Natural.”

20 24. Defendants’ conduct threatens California consumers by using false,
21 deceptive, and misleading labels. Defendants’ conduct also threatens other
22 companies, large and small, who “play by the rules.” Defendants’ conduct stifles
23 competition, has a negative impact on the marketplace, and reduces consumer choice.

24 25. There is no practical reason for the false or misleading labeling and
25 advertising of the Products, other than to mislead consumers as to the actual
26 ingredients of the Products being purchased by consumers while simultaneously
27 providing Defendants with a financial windfall as a result of money saved from lower
28 supply costs.

1 a. Whether Defendants’ conduct constitutes an unfair method of
2 competition, or unfair or deceptive act or practice, in violation of Civil Code section
3 1750, *et seq.*;

4 b. Whether Defendants used deceptive representations in connection
5 with the sale of the Products in violation of Civil Code section 1750, *et seq.*;

6 c. Whether Defendants represented the Products as having
7 characteristics or qualities that they do not have in violation of Civil Code section
8 1750, *et seq.*;

9 d. Whether Defendants advertised the Products with intent not to sell
10 them as advertised in violation of Civil Code section 1750, *et seq.*;

11 e. Whether Defendants’ labeling and advertising of the Products are
12 untrue or misleading in violation of Business and Professions Code section 17500, *et*
13 *seq.*;

14 f. Whether Defendants knew or by the exercise of reasonable care
15 should have known their labeling and advertising was and is untrue or misleading in
16 violation of Business and Professions Code section 17500, *et seq.*;

17 g. Whether Defendants’ conduct is an unfair business practice within
18 the meaning of Business and Professions Code section 17200, *et seq.*;

19 h. Whether Defendants’ conduct is a fraudulent business practice
20 within the meaning of Business and Professions Code section 17200, *et seq.*;

21 i. Whether Defendants’ conduct is an unlawful business practice
22 within the meaning of Business and Professions Code section 17200, *et seq.*;

23 j. Whether Plaintiffs and the Class paid more money for the Products
24 than they actually received; and

25 k. How much more money Plaintiffs and the Class paid for the
26 Products than they actually received.

27 30. Plaintiffs’ claims are typical of the claims of the Class, and Plaintiffs will
28 fairly and adequately represent and protect the interests of the Class. Plaintiffs have

1 retained competent and experienced counsel in class action and other complex
2 litigation.

3 31. Plaintiffs and the Class have suffered injury in fact and have lost money
4 as a result of Defendants’ false representations and material omissions. Plaintiffs
5 purchased the Products under the false belief that they were “All Natural.” Plaintiffs
6 relied upon Defendants’ packaging and would not have purchased the Products if they
7 had known that the Products contained ingredients that were added for coloring.

8 32. A class action is superior to other available methods for fair and efficient
9 adjudication of this controversy. The expense and burden of individual litigation
10 would make it impracticable or impossible for the Class to prosecute their claims
11 individually.

12 33. The trial and litigation of Plaintiffs’ claims are manageable. Individual
13 litigation of the legal and factual issues raised by Defendants’ conduct would increase
14 delay and expense to all parties and the court system. The class action device presents
15 far fewer management difficulties and provides the benefits of a single, uniform
16 adjudication, economies of scale, and comprehensive supervision by a single court.

17 34. Defendants have acted on grounds generally applicable to the entire
18 Class, thereby making final injunctive relief and/or corresponding declaratory relief
19 appropriate with respect to the Class as a whole. The prosecution of separate actions
20 by individual Class members would create the risk of inconsistent or varying
21 adjudications with respect to individual Class members that would establish
22 incompatible standards of conduct for Defendants.

23 35. Absent a class action, Defendants will likely retain the benefits of their
24 wrongdoing. Because of the small size of the individual Class members’ claims, few,
25 if any, Class members could afford to seek legal redress for the wrongs complained
26 of herein. Absent a representative action, the Class will continue to suffer losses and
27 Defendants will be allowed to continue these violations of law and to retain the
28 proceeds of their ill-gotten gains.

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COUNT ONE

**Violation of California Consumers Legal Remedies Act,
California Civil Code Section 1750, et seq.**

36. Plaintiffs repeat and reallege all allegations of the previous paragraphs, and incorporate the same as if set forth herein at length.

37. Plaintiffs bring this cause of action pursuant to Civil Code section 1750, et seq., the Consumers Legal Remedies Act (“CLRA”), on their own behalf and on behalf of all other persons similarly situated.

38. The CLRA prohibits certain “unfair methods of competition and unfair or deceptive acts or practices” in connection with a sale of goods.

39. The sale of Defendant’s products to Plaintiffs and Class members constitutes “transaction” within the meaning of California Civil Code Section 1761(e).

40. Defendants products are “goods” within the meaning of California Civil Code Section 1761.

41. The CLRA prohibits certain “unfair methods of competition and unfair or deceptive acts or practices” in connection with a sale of goods and prohibits “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.” California Civil Code Section 1770 (a)(5).

42. The CLRA also prohibits representing that the products are of “a particular standard, quality, or grade” when it is of another. California Civil Code Section 1770(a)(7).

43. The CLRA prohibits advertising goods with the intent not to sell them as advertised and representing the goods have been supplied in accordance with a previous representation when the they have not. California Civil Code Section 1770(a)(9).

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1 44. The practices described herein, specifically Defendants’ packaging,
2 advertising, and sale of the Products, were intended to result and did result in the sale
3 of the Products to the consuming public and violated and continue to violate the
4 CLRA by (1) using deceptive representations in connection with the Products; and
5 (2) advertising and packaging the Products with intent not to sell them as advertised.

6 45. Defendants fraudulently deceived Plaintiffs and the Class by
7 misrepresenting the Products as having characteristics which they do not have, e.g.,
8 advertising the Products in such a way to represent them as “All Natural” when the
9 Products contain coloring additives. In doing so, Defendants misrepresented and
10 concealed material facts from Plaintiffs and the Class. Said misrepresentations and
11 concealment were done with the intention of deceiving Plaintiffs and the Class and
12 depriving them of their legal rights and money.

13 46. Defendants fraudulently deceived Plaintiffs and the Class by labeling and
14 advertising the Products with the intent not to sell them as advertised. Specifically,
15 Defendants intentionally labeled and misrepresented the Products as “All Natural,”
16 and failed to disclose the coloring agents in the Products. In doing so, Defendants
17 intentionally misrepresented and concealed material facts from Plaintiffs and the
18 Class. Said misrepresentations and concealment were done with the intention of
19 deceiving Plaintiffs and the Class and depriving them of their legal rights and money.

20 47. Defendants knew or should have known, through the exercise of
21 reasonable care, that the Products’ labeling and advertising were misleading.

22 48. Defendants’ actions as described herein were done with conscious
23 disregard of Plaintiffs’ rights, and Defendants were wanton and malicious in their
24 concealment of the same.

25 49. Defendants’ labeling and advertising of the Products were a material
26 factor in Plaintiffs’ and the Class’s decisions to purchase the Products. Based on
27 Defendants’ labeling and advertising of the Products, Plaintiffs and the Class
28 reasonably believed that they were purchasing products that were safer, more

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1 nutritious, or otherwise had different attributes than products that do not have the “All
2 Natural” label. Had they known the truth of the matter, Plaintiffs and the Class would
3 not have purchased the Products.

4 50. Plaintiffs and the Class have suffered injury in fact and have lost money
5 as a result of Defendants’ unfair, unlawful, and fraudulent conduct. Specifically,
6 Plaintiffs paid for beverages that were different from what they were reasonably
7 expecting to receive when they decided to make their purchases. Plaintiffs would not
8 have purchased the Products had they known that the Products contained coloring
9 agents that rendered them not natural.

10 51. Defendants’ false and misleading labeling and advertising should be
11 enjoined due to their false, misleading, and/or deceptive nature.

12 52. By letter dated December 8, 2020, Plaintiffs advised Keurig Dr. Pepper
13 Inc. and Snapple Beverage Corp. of their false and misleading claims pursuant to
14 California Civil Code Section 1782(a).

15 53. Pursuant to Section 1780(a) of the Act, Plaintiffs seek injunctive relief in
16 the form of an order enjoining the above-described wrongful acts and practices of
17 Defendants, including, but not limited to, an order enjoining Defendants from
18 continuing to make the label and advertising claims challenged herein. Plaintiffs also
19 request an order awarding Plaintiffs and the Class restitution of the money
20 wrongfully acquired by Defendants. Plaintiffs shall be irreparably harmed if such an
21 order is not granted.

22 54. Plaintiffs respectfully requests that the Court enjoin Defendants from
23 continuing to employ the unlawful methods, acts, and practices alleged herein
24 pursuant to § 1780(a)(2). In addition, Defendants should be compelled to provide
25 restitution and damages to consumers who paid for Products that are not what they
26 expected to receive due to Defendants’ misrepresentations.

27 a. Plaintiffs and members of the Class are entitled to equitable relief
28 as no adequate remedy at law exists.

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(1) Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class because Defendants continue to deceptively label the Products as “All Natural.” Injunctive relief is necessary to prevent Defendants from continuing to engage in the unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies. Further, injunctive relief, in the form of packaging or label modifications, is necessary to dispel public misperception about the Products that has resulted from years of Defendants’ unfair, fraudulent, and unlawful marketing efforts. Such modifications would include, reformulating the Products so they do not contain added coloring or removing the “All Natural” label claims. Such relief is also not available through a legal remedy as monetary damages may be awarded to remedy past harm (i.e., purchasers who have been misled), while injunctive relief is necessary to remedy future harm (i.e., prevent future purchasers from being misled), under the current circumstances where the dollar amount of future damages is not reasonably ascertainable at this time. Plaintiffs are, currently, unable to accurately quantify the damages caused by Defendants’ future harm (e.g., the dollar amount that Plaintiffs and Class members overpay pay for the underfilled Products), rendering injunctive relief a necessary remedy.

COUNT TWO

**Violation of California False Advertising Law,
Business & Professions Code Section 17500, et seq.**

55. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, and incorporate the same as if set forth herein at length.

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1 56. Plaintiffs bring this cause of action pursuant to Business and Professions
2 Code section 17500, *et seq.*, on their own behalf and on behalf of all other persons
3 similarly situated.

4 57. California’s False Advertising Law, California Business and Professions
5 Code section 17500, *et seq.*, makes it “unlawful for any person to make or disseminate
6 or cause to be made or disseminated before the public in this state, in any advertising
7 device or in any other manner or means whatever, including over the Internet, any
8 statement, concerning personal property or services, professional or otherwise, or
9 performance or disposition thereof, which is untrue or misleading and which is
10 known, or which by the exercise of reasonable care should be known, to be untrue or
11 misleading.”

12 58. Defendants knowingly disseminated misleading claims regarding the
13 Products in order to mislead the public about the ingredient makeup of the Products.

14 59. Defendants controlled the labeling, packaging, production and
15 advertising of the Products. Defendants knew or should have known, through the
16 exercise of reasonable care, that their representations and omissions about the
17 ingredients of the Products were untrue, deceptive, and misleading.

18 60. Defendants’ action of displaying misleading claims and omissions about
19 the ingredients of the Products in prominent type face on each of the Products’ front
20 labels is likely to deceive the general public.

21 61. Defendants’ actions in violation of Section 17500 were false and
22 misleading such that the general public is and was likely to be deceived.

23 62. As a direct and proximate result of Defendants’ conduct alleged herein in
24 violation of the FAL, Plaintiffs and members of the Class, pursuant to § 17535, are
25 entitled to an order of this Court enjoining such future wrongful conduct on the part
26 of Defendants, and requiring Defendants to disclose the true nature of their
27 misrepresentations.
28

1 b. Plaintiffs and members of the Class are entitled to equitable relief
2 as no adequate remedy at law exists.

3 (1) The scope of permissible plaintiffs under the FAL is broader
4 than the CLRA to include, for example, individuals or entities who
5 purchased the Products for non-personal, non-family, and non-household
6 purposes. Thus, Plaintiffs and class members may be entitled to
7 restitution under the FAL, while not entitled to damages under the
8 CLRA.

9 (2) Injunctive relief is appropriate on behalf of Plaintiffs and
10 members of the Class because Defendants continue to deceptively label
11 the Products and deliberately omit that the Products contain coloring
12 additives that render the Products no longer “All Natural.” Injunctive
13 relief is necessary to prevent Defendants from continuing to engage in
14 the unlawful conduct described herein and to prevent future harm—none
15 of which can be achieved through available legal remedies. Further,
16 injunctive relief, in the form of label modifications, is necessary to dispel
17 public misperception about the Products that has resulted from years of
18 Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such
19 modifications would include, but are not limited to, reformulating the
20 Products or removing the false “All Natural” labeling. Such relief is also
21 not available through a legal remedy as monetary damages may be
22 awarded to remedy past harm (i.e., purchasers who have been misled),
23 while injunctive relief is necessary to remedy future harm (i.e., prevent
24 future purchasers from being misled), under the current circumstances
25 where the dollar amount of future damages is not reasonably
26 ascertainable at this time. Plaintiffs are, currently, unable to accurately
27 quantify the damages caused by Defendants’ future harm (e.g., the dollar
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1 amount that Plaintiffs and Class members overpay pay for the falsely
2 labeled Products), rendering injunctive relief a necessary remedy.

3 63. Plaintiffs and the Class have suffered injury in fact and have lost money
4 as a result of Defendants’ false representations. Plaintiffs purchased the Products in
5 reliance upon the claims and omissions by Defendants that the Products are “All
6 Natural,” as represented by Defendants’ labeling and advertising. Plaintiffs would not
7 have purchased the Products if they had known that the claims and advertising as
8 described herein were false and misleading.

9 64. Plaintiffs and members of the Class also request an order requiring
10 Defendants to disgorge their ill-gotten gains and/or award full restitution of all monies
11 wrongfully acquired by Defendants by means of such acts of false advertising, plus
12 interests and attorneys’ fees.

13 **COUNT THREE**

14 **Violation of California Unfair Competition Law**

15 **Business and Professions Code § 17200 *et seq.***

16 65. Plaintiffs repeat and reallege the allegations set forth above, and
17 incorporate the same as if set forth herein at length.

18 66. Plaintiffs bring this cause of action pursuant to Business and Professions
19 Code § 17200, *et seq.*, on their own behalf and on behalf of all other persons similarly
20 situated. Plaintiffs seek to represent a Class consisting of “All persons who purchased
21 the Products in the United States, or alternatively, in the State of California personal
22 consumption and not for resale during the time period of four years prior to the filing
23 of the complaint through the present.” Excluded from the Class are Defendants’
24 officers, directors, and employees, and any individual who received remuneration
25 from Defendants in connection with that individual’s use or endorsement of the
26 Products.

27 67. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
28 practice.” Cal. Bus & Prof. Code § 17200.

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1 **A. “Unfair” Prong**

2 68. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
3 17200, *et. seq.*, a challenged activity is “unfair” when “any injury it causes outweighs
4 any benefits provided to consumers and the injury is one that the consumers
5 themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern*
6 *California*, 142 Cal. App. 4th 1394, 1403 (2006).

7 69. Defendants’ advertising and labeling of the Products as “All Natural,”
8 when the Products contain coloring additives, are false, misleading, and deceptive.

9 70. Defendants’ false advertising of the Products causes injuries to
10 consumers, who do not receive the promised benefits from the Products in proportion
11 to their reasonable expectations.

12 71. Through false, misleading, and deceptive labeling of the Products,
13 Defendants seek to take advantage of consumers’ desire for “All Natural” and pure
14 products, while reaping the financial benefits of manufacturing lower quality
15 Products.

16 72. When Defendants claim the Products are “All Natural,” they provide false
17 promises to consumers and stifle competition in the marketplace.

18 73. Consumers cannot avoid any of the injuries caused by Defendants’ false
19 and misleading advertising of the Products.

20 74. Some courts conduct a balancing test to decide if a challenged activity
21 amounts to unfair conduct under California Business and Professions Code Section
22 17200. The courts “weigh the utility of the Defendants’ conduct against the gravity
23 of the harm alleged to the victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F. 3d 1152,
24 1169 (9th Cir. 2012).

25 75. Defendants’ material omissions result in financial harm to consumers.
26 Thus, the utility of Defendants’ conduct is vastly outweighed by the gravity of its
27 harm.

28 76. Some courts require the “unfairness must be tethered to some legislative

1 declared policy or proof of some actual or threatened impact on competition.” *Lozano*
2 *v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

3 77. Defendants’ advertising of the Products, as alleged in the preceding
4 paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair
5 conduct.

6 78. Defendants knew or should have known of their unfair conduct.

7 79. As alleged in the preceding paragraphs, the material misrepresentations
8 by Defendants detailed above constitute an unfair business practice within the
9 meaning of California Business & Professions Code § 17200.

10 80. There were reasonably available alternatives to further Defendants’
11 legitimate business interests other than the conduct described herein. Defendants
12 could have marketed the Products without making any false statements about the
13 Products’ ingredients.

14 81. All of the conduct alleged herein occurs and continues to occur in
15 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
16 generalized course of conduct repeated on thousands of occasions daily.

17 82. Pursuant to Business & Professions Code Section 17203, Plaintiffs and
18 the Class seek an order of this Court enjoining Defendants from continuing to engage,
19 use, or employ their practice of false and deceptive advertising of the Products.
20 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
21 misrepresentations, and additionally request an order awarding Plaintiffs restitution
22 of the money wrongfully acquired by Defendants by means of responsibility attached
23 to Defendants’ failure to disclose the existence and significance of said
24 misrepresentations in an amount to be determined at trial.

25 83. Plaintiffs and the Class have suffered injury in fact and have lost money
26 as a result of Defendants’ unfair conduct. Plaintiffs paid an unwarranted premium for
27 the Products. Plaintiffs would not have purchased the Products if they had known that
28 the Products were not “All Natural” but instead contained added coloring.

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B. “Fraudulent” Prong

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84. California Business and Professions Code § 17200, *et seq.* considers conduct fraudulent and prohibits said conduct if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

85. Defendants’ advertising of the Products as “All Natural,” without referring to their actual characterization, is likely to deceive members of the public into believing that the Products are natural.

86. Defendants’ advertising of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable and constitutes fraudulent conduct.

87. Defendants knew or should have known of their fraudulent conduct.

88. As alleged in the preceding paragraphs, the material misrepresentations and omissions by Defendants detailed above constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

89. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein. Defendants could have refrained from labeling the Products as “All Natural.”

90. All of the conduct alleged herein occurs and continues to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

91. Pursuant to Business & Professions Code Section 17203, Plaintiffs and the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of false and deceptive advertising of the Products. Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such misrepresentations, and additionally request an order awarding Plaintiffs restitution of the money wrongfully acquired by Defendants by means of responsibility attached to Defendants’ failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

1 92. Plaintiffs and the Class have suffered injury in fact and have lost money
2 as a result of Defendants’ fraudulent conduct. Plaintiffs and the Class paid an
3 unwarranted premium for the Products. Plaintiffs and the Class would not have
4 purchased the Products if they had known that the Products were not “All Natural.”

5 **C. “Unlawful” Prong**

6 93. California Business and Professions Code Section 17200, *et seq.*,
7 identifies violations of other laws as “unlawful practices that the unfair competition
8 law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F.
9 Supp. 2d 1049, 1068 (C.D. Cal. 2008).

10 94. Defendants’ advertising of the Products, as alleged in the preceding
11 paragraphs, violates California Civil Code Section 1750, *et seq.*, California Business
12 and Professions Code Section 17500, *et seq.*

13 95. Defendants’ packaging, labeling, and advertising of the Products, as
14 alleged in the preceding paragraphs, are false, deceptive, misleading, and
15 unreasonable, and constitute unlawful conduct.

16 96. Defendants knew or should have known of their unlawful conduct.

17 97. As alleged in the preceding paragraphs, the misrepresentations by
18 Defendants detailed above constitute an unlawful business practice within the
19 meaning of California Business and Professions Code Section 17200.

20 98. There were reasonably available alternatives to further Defendants’
21 legitimate business interests other than the conduct described herein. Defendants
22 could have refrained from omitting the true characteristics of the Products.

23 99. All of the conduct alleged herein occurred and continues to occur in
24 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
25 generalized course of conduct repeated on thousands of occasions daily.

26 100. Pursuant to Business and Professions Code Section 17203, Plaintiffs and
27 the Class seek an order of this Court enjoining Defendants from continuing to engage,
28 use, or employ their practice of false and deceptive advertising of the Products.

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1 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
2 misrepresentations, and additionally request an order awarding Plaintiffs restitution
3 of the money wrongfully acquired by Defendants by means of responsibility attached
4 to Defendants’ failure to disclose the existence and significance of said
5 misrepresentations in an amount to be determined at trial.

6 101. Plaintiffs and the Class have suffered injury in fact and have lost money
7 as a result of Defendants’ unlawful conduct. Plaintiffs paid an unwarranted premium
8 for the Products. Plaintiffs would not have purchased the Products if they had known
9 that Defendants purposely deceived consumers into believing that the Products were
10 “All Natural.”

11 102. As a result of the business acts and practices described above, Plaintiffs
12 and members of the Class, pursuant to § 17203, are entitled to an order enjoining such
13 future wrongful conduct on the part of Defendants and such other orders and
14 judgments that may be necessary to disgorge Defendants’ ill-gotten gains and to
15 restore to any person in interest any money paid for the Products as a result of the
16 wrongful conduct of Defendants.

17 c. Plaintiffs and members of the Class are entitled to equitable relief
18 as no adequate remedy at law exists.

19 (1) The applicable limitations period is four years for claims
20 brought under the UCL, which is one year longer than the
21 applicable statute of limitations under the FAL and CLRA. Thus,
22 class members who purchased the Products between 3 and 4 years
23 prior to the filing of the complaint will be barred from the Class if
24 equitable relief were not granted under the UCL.

25 (2) The scope of actionable misconduct under the unfair prong
26 of the UCL is broader than the other causes of action asserted
27 herein to include, for example, the overall false and misleading
28 marketing scheme of labeling the Products as “All Natural.” Thus,

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Plaintiffs and class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct).

(3) Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class because Defendants continue to deceptively label the Products. Injunctive relief is necessary to prevent Defendants from continuing to engage in this unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies. Further, injunctive relief, in the form of packaging or label modifications, is necessary to dispel public misperception about the Products that has resulted from years of Defendant’s unlawful marketing efforts. Such modifications could include, but are not limited to, reformulating the Products so they do not contain added coloring, or remove the “All Natural” label claims. Such relief is not available through a legal remedy, as monetary damages may be awarded to remedy past harm (i.e., purchasers who have been misled), while injunctive relief is necessary to remedy future harm (i.e., prevent future purchasers from being misled), under the current circumstances where the dollar amount of future damages is not reasonably ascertainable at this time. Plaintiffs are, currently, unable to accurately quantify the damages caused by Defendants’ future harm (e.g., the dollar amount that

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Plaintiffs and Class members will pay for the falsely labeled Products), rendering injunctive relief a necessary remedy.

103. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant’s unfair and fraudulent business conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and the Class are entitled to interest in an amount according to proof.

COUNT FOUR

Unjust Enrichment

104. Plaintiffs repeat and reallege the allegations set forth above, and incorporate the same as if set forth herein at length.

105. By means of Defendants’ wrongful conduct alleged herein, Defendants knowingly sold the Products to Plaintiffs and members of the Class in a manner that was unfair, unconscionable, and oppressive.

106. Defendants knowingly received and retained wrongful benefits and funds from Plaintiffs and members of the Class. In so doing, Defendants acted with conscious disregard for the rights of Plaintiffs and members of the Class.

107. As a result of Defendants’ wrongful conduct as alleged herein, Defendants have been unjustly enriched at the expense of, and to the detriment of, Plaintiffs and members of the Class.

108. Defendants’ unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

109. Under the common law doctrine of unjust enrichment, it is inequitable for Defendants to be permitted to retain the benefits they received, without justification, from selling the Products to Plaintiffs and members of the Class in an unfair, unconscionable, and oppressive manner. Defendants’ retention of such funds under such circumstances making it inequitable to do so constitutes unjust enrichment.

110. The financial benefits derived by Defendants rightfully belong to

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1 Plaintiffs and members of the Class. Defendants should be compelled to return in a
2 common fund for the benefit of Plaintiffs and members of the Class all wrongful or
3 inequitable proceeds received by Defendants.

4 111. Plaintiffs and members of the Class have no adequate remedy at law.

5 **COUNT FIVE**

6 **Breach of Express Warranty**

7 112. Plaintiffs repeat and reallege all the allegations of the previous paragraphs
8 and incorporate the same as if set forth herein at length.

9 113. Defendants expressly warrant that the Products are “All Natural,” as set
10 forth above. Defendants’ claims constitute an affirmation of fact, promise, and/or
11 description of the goods that became part of the basis of the bargain and created an
12 express warranty that the goods would conform to the stated promise. Plaintiffs placed
13 importance on Defendants’ claims.

14 114. All conditions precedent to Defendants’ liability under this contract have
15 been performed by Plaintiffs and the Class.

16 115. Defendants breached the terms of the contract, including the express
17 warranties, with Plaintiffs and the Class by not providing Products that conform to
18 the advertising and label claims.

19 116. As a result of Defendants’ breach of contract, Plaintiffs and the Class have
20 been damaged in an amount to be determined at trial.

21 **COUNT SIX**

22 **Violation of Kentucky False Advertising Law,**

23 **Kentucky Revised Statutes 367.110 and 367.170 *et seq.***

24 117. Plaintiffs repeat and reallege the allegations set forth in the preceding
25 paragraphs, and incorporate the same as if set forth herein at length.

26 118. Plaintiffs bring this cause of action pursuant to Kentucky Consumer
27 Protection Act (“KCPA”) 367.110 and 170., *et seq.*, on their own behalf and on behalf
28 of all other persons similarly situated.

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1 119. KCPA prohibits unlawful any “unfair, false, misleading, or deceptive acts
2 or practices in the conduct of any trade or commerce.” (367.170)

3 120. Here, each Plaintiff and putative class member purchased goods
4 (Defendants’ Products) primarily for personal, family, and household purposes, and
5 as a result of Defendants’ misrepresentations suffered an ascertainable loss of money
6 which they paid for the Products.

7 121. Defendants knowingly disseminated misleading claims regarding the
8 Products in order to mislead the public about the ingredient makeup of the Products.

9 122. Defendants controlled the labeling, packaging, production and
10 advertising of the Products. Defendants knew or should have known, through the
11 exercise of reasonable care, that their representations and omissions about the
12 ingredients of the Products were untrue, deceptive, and misleading.

13 123. Defendants’ action of displaying misleading claims and omissions about
14 the ingredients of the Products in prominent type face on each of the Products’ front
15 labels is likely to deceive the general public.

16 124. Defendants’ actions in violation of Section 367.170 were false and
17 misleading such that the general public is and was likely to be deceived.

18 125. As a direct and proximate result of Defendants’ conduct alleged herein in
19 violation of the FAL, Plaintiffs and members of the Class, pursuant to § 367.170, are
20 entitled to an order of this Court enjoining such future wrongful conduct on the part
21 of Defendants, and requiring Defendants to disclose the true nature of their
22 misrepresentations.

23 d. Plaintiffs and members of the Class are entitled to equitable relief
24 as no adequate remedy at law exists.

25 (1) Restitution;

26 (2) Injunctive relief is appropriate on behalf of Plaintiffs and
27 members of the Class because Defendants continue to deceptively label
28 the Products and deliberately omit that the Products contain coloring

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1 additives that render the Products no longer “All Natural.” Injunctive
2 relief is necessary to prevent Defendants from continuing to engage in
3 the unlawful conduct described herein and to prevent future harm—none
4 of which can be achieved through available legal remedies. Further,
5 injunctive relief, in the form of label modifications, is necessary to dispel
6 public misperception about the Products that has resulted from years of
7 Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such
8 modifications would include, but are not limited to, reformulating the
9 Products or removing the false “All Natural” labeling. Such relief is also
10 not available through a legal remedy as monetary damages may be
11 awarded to remedy past harm (i.e., purchasers who have been misled),
12 while injunctive relief is necessary to remedy future harm (i.e., prevent
13 future purchasers from being misled), under the current circumstances
14 where the dollar amount of future damages is not reasonably
15 ascertainable at this time. Plaintiffs are, currently, unable to accurately
16 quantify the damages caused by Defendants’ future harm (e.g., the dollar
17 amount that Plaintiffs and Class members overpay pay for the falsely
18 labeled Products), rendering injunctive relief a necessary remedy.

19 (3) Attorneys’ fees and costs

20 (4) Punitive damages.

21 126. Plaintiffs and the Class have suffered injury in fact and have lost money
22 as a result of Defendants’ false representations. Plaintiffs purchased the Products in
23 reliance upon the claims and omissions by Defendants that the Products are “All
24 Natural,” as represented by Defendants’ labeling and advertising. Plaintiffs would not
25 have purchased the Products if they had known that the claims and advertising as
26 described herein were false and misleading.

27 127. Plaintiffs and members of the Class also request an order requiring
28 Defendants to disgorge their ill-gotten gains and/or award full restitution of all monies

1 wrongfully acquired by Defendants by means of such acts of false advertising, plus
2 interests and attorneys’ fees.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
5 situated, pray for judgment and relief on all Causes of Action as follows:

- 6 A. This action be certified as a class action;
- 7 B. Plaintiffs be appointed as the representatives of the Class and any
8 Subclasses;
- 9 C. Defendant’s conduct be declared unlawful;
- 10 D. An order enjoining Defendants from continuing to label and
11 advertise the Products as challenged herein;
- 12 E. For an award of restitutionary damages in an amount according to
13 proof at trial;
- 14 F. An order that Defendants engage in corrective advertising
15 campaign;
- 16 G. An order of disgorgement of all profits and unjust enrichment that
17 Defendants obtained as a result of their practices;
- 18 H. Punitive damages;
- 19 I. For pre-judgment interest from the date of filing this suit;
- 20 J. Reasonable attorneys’ fees;
- 21 K. Costs of this suit; and
- 22 L. Such other and further relief as the Court may deem necessary or
23 appropriate.

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JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all triable issues.

DATED: May 10, 2021

CLARKSON LAW FIRM, P.C.

/s/ Yana Hart

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