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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

CLAUDIA AGUILAR, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

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1 INTRODUCTION

2 1. Plaintiff Claudia Aguilar (“Plaintiff”) on behalf of herself, all others
3 similarly situated, and the general public, by and through her undersigned counsel,
4 hereby brings this action against Defendant Church & Dwight Co., Inc.
5 (“Defendant”), and upon information and belief and investigation of counsel,
6 alleges as follows:

7 2. This is a California consumer class action for violations of the
8 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), Unfair
9 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), and for
10 breach of express warranty.

11 3. Defendant manufactures, distributes, advertises, markets, and sells
12 the L’il Critters Gummy Supplements.¹ The labels for the Products prominently
13 display on the side of the label, the claim that these Products contain “**No Artificial**
14 **Flavors.**” This statement is false. The Products are made with DL-malic acid—
15 an artificial flavoring ingredient used in food and beverage products.

16 4. Defendant’s packaging, labeling, and advertising scheme is intended
17 to give consumers the impression that they are buying a premium product that is
18 free from artificial flavors.

19 5. Plaintiff, who purchased the Products in California, was deceived by
20 Defendant’s unlawful conduct and brings this action on her own behalf and on
21 behalf of California consumers to remedy Defendant’s unlawful acts.

22 JURISDICTION AND VENUE

23 6. This Court has original jurisdiction over this action pursuant to 28
24 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100

25 _____
26 ¹ The Products include all L’il Critters Gummy Supplements labeled as containing
27 “No Artificial Flavors” that contain malic acid as an ingredient (collectively “the
28 Products”).

1 members in the proposed class; (2) members of the proposed class have a different
2 citizenship from Defendant; and (3) the claims of the proposed class members
3 exceed \$5,000,000 in the aggregate, exclusive of interest and costs.

4 7. This Court has personal jurisdiction over Defendant because
5 Defendant conducts and transacts business in the State of California, contracts to
6 supply goods within the State of California, and supplies goods within the State of
7 California. Defendant, on its own and through its agents, is responsible for the
8 distribution, marketing, labeling, and sale of the Products in California,
9 specifically in this judicial district. The marketing of the Products, including the
10 decision of what to include and not include on the labels, emanates from
11 Defendant. Thus, Defendant has intentionally availed itself of the markets within
12 California through its advertising, marketing, and sale of the Products to
13 consumers in California, including Plaintiff. The Court also has specific
14 jurisdiction over Defendant as it has purposefully directed activities towards the
15 forum state, Plaintiff's claims arise out of those activities, and it is reasonable for
16 Defendant to defend this lawsuit because it has sold deceptively advertised
17 Products to Plaintiff and members of the Class in California. By distributing and
18 selling the Products in California, Defendant has intentionally and expressly aimed
19 conduct at California which caused harm to Plaintiff and the Class that Defendant
20 knows is likely to be suffered by Californians.

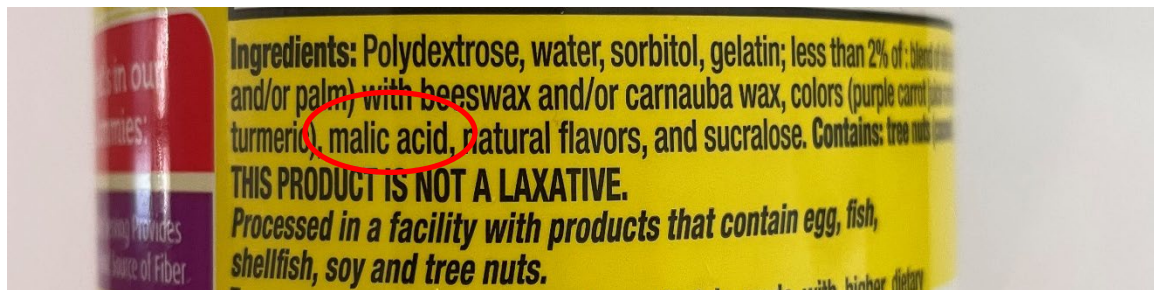
21 8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial
22 part of the events or omissions giving rise to the claim occurred in this District
23 because Plaintiff purchased one of the Products within this District.

24 PARTIES

25 9. Defendant Church & Dwight Co., Inc. is a Delaware corporation that
26 maintains its principal place of business in Ewing, New Jersey. At all times during
27 the class period, Defendant was the manufacturer, distributor, marketer, and seller
28 of the Products.

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1 **THE PRODUCTS CONTAIN ARTIFICIAL DL-MALIC ACID**

2 12. Malic acid is a dicarboxylic acid that is commonly used in food and
3 beverage products. Malic acid has two stereoisomeric forms. L-malic acid occurs
4 naturally in various foods. 21 CFR § 184.1069(a). However, “Racemic DL-malic
5 acid does not occur naturally. It is made commercially by hydration of fumaric
6 acid or maleic acid.” *Id.* “The primary commercial production of malic acid is
7 currently based on petrochemical routes, such as the hydration of maleic anhydride
8 generated from the oxidation of benzene or butane at high temperature and high
9 pressure, yielding a racemic mixture of D- and L-malic acid.”²

10 13. Defendant uses synthetic DL-malic acid in the Products. On March
11 26, 2024, a reputable independent food laboratory tested one of the Products for
12 the presence of DL-malic acid. The Product tested positive for both the D- and L-
13 isomers of malic acid indicating that Defendant uses synthetic DL- malic acid in
14 the Products.³

15 **DL-MALIC ACID IS AN ARTIFICIAL FLAVORING INGREDIENT IN THE PRODUCTS**

16 14. The Food and Drug Administration (“FDA”) defines an artificial
17 flavor as “any substance, the function of which is to impart flavor, which is not
18 derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast,
19 herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
20 products, or fermentation products thereof.” 21 CFR § 101.22(a)(1). DL-malic
21 acid meets the definition of an artificial flavor because its function is to impart
22 flavor in the Products and it is not derived from a natural source like a spice, fruit,
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25 _____
26 ² Zhen Wei, et al., *Microbial Biosynthesis of L-Malic Acid and Related Metabolic*
27 *Engineering Strategies: Advances and Prospects*, FRONT. BIOENG. BIOTECHNOL.
28 (Sept. 29, 2021), available at
<https://www.frontiersin.org/articles/10.3389/fbioe.2021.765685/full>

³ See **Exhibit A** attached hereto.

1 or vegetable. Because malic acid is an artificial flavoring ingredient, Defendant's
2 "No Artificial Flavors" labeling statement is false and misleading.

3 15. FDA regulations recognize that malic acid is used as an artificial
4 "flavoring agent" in food and beverage products. 21 CFR § 184.106(c). The
5 Flavoring Extract Manufacturer's Association also recognizes that malic acid is a
6 flavoring ingredient.⁴ Indeed, the "main use" of acidulants like malic acid "is to
7 provide and enhance flavor of foods and beverages."⁵

8 16. Malic acid has a distinct flavor profile and it provides a sour taste
9 when added to food and beverage products.⁶ This flavor profile has been described
10 as "mellow, smooth, persistent sourness reminiscent of fruit."⁷ For this reason,
11 malic acid is often used in beverage products to simulate the flavor of apple juice
12 as well as other fruit juices.⁸ Acidulants like citric acid, malic acid, and tartaric
13 acid "are responsible for the authentic taste and flavor" of certain fruits.⁹

14
15 ⁴ Richard L. Hall, et al., *Progress in the Consideration of Flavoring Ingredients*
16 *Under the Food Additives Amendments*, J. OF THE INST. OF FOOD TECHNOLOGIES,
17 *available at*
https://www.femaflavor.org/sites/default/files/3.%20GRAS%20Substances%282001-3124%29_0.pdf

18 ⁵ E. Ramos Da Conceicao Neta et al., *The Chemistry and Physiology of Sour*
19 *Taste—A Review*, J. OF FOOD SCIENCE (Mar. 12, 2007), *available at*
<https://ift.onlinelibrary.wiley.com/doi/full/10.1111/j.1750-3841.2007.00282.x>

20 ⁶ P. Hartwig, et al., *Flavor Characteristics of Lactic, Malic, Citric, and Acetic*
21 *Acids at Various pH Levels*, J. OF FOOD SCIENCE (March 1995), *abstract available*
22 *at* <https://ift.onlinelibrary.wiley.com/doi/abs/10.1111/j.1365-2621.1995.tb05678.x>

23 ⁷ *Self-Teaching Guide for Food Acidulants*, BARTEK.

24 ⁸ M.Y. CoSeteng, *Influence of Titratable Acidity and pH on Intensity of Sourness*
25 *of Citric, Malic, Tartaric, Lactic and Acetic Acids Solutions and on the Overall*
26 *Acceptability of Imitation Apple Juice*, CANADIAN INST. OF FOOD SCI. AND TECH.
J. (Feb. 1989), *abstract available at*
<https://www.sciencedirect.com/science/article/abs/pii/S031554638970300X>

27 ⁹ *Acidulants- Technical Bulletin*, BRENNTAG FOODS, *available at*
28 https://www.brenntag.com/media/documents/denmark/technical_bulletin_acidulants.pdf

1 17. Malic acid functions as a flavoring ingredient in the Products
 2 regardless of whether Defendant intended to use malic acid as a flavoring
 3 ingredient. This is because malic acid imparts a flavor that is reminiscent of fruit
 4 when used in the Products. Defendant's Products— which depict ripe fresh fruit
 5 on the labels— utilize malic acid to impart flavor.

6 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT'S FALSE "NO**
 7 **ARTIFICIAL FLAVORS" LABELING STATEMENT AND SUFFERED ECONOMIC**
 8 **INJURY**

9 18. Consumers, like Plaintiff, relied on Defendant's "No Artificial
 10 Flavors" labeling statement. The "No Artificial Flavors" statement on the labels
 11 of the Products is material to reasonable consumers. "Consumer desire for
 12 naturally flavored products is an emerging trend and one that may have staying
 13 power" according to Paul Manning, chairman, chief executive officer and
 14 president of Sensient Technologies.¹⁰ Consumers perceive products that are
 15 naturally flavored to be healthier.¹¹ According to Forbes, 88% of consumers are
 16 willing to pay more for healthier foods.¹² "A 2014 study from the marketing
 17 research firm Nielsen showed that more than 60 percent of Americans said the
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 19
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21 _____
 22 ¹⁰ K. Nunes, *Using natural ingredients to create authentic, fresh flavors*, FOOD
 23 BUS. NEWS (Sept. 20, 2018), available at
[https://www.foodbusinessnews.net/articles/12478-using-natural-ingredients-to-
 create-authentic-fresh-flavors](https://www.foodbusinessnews.net/articles/12478-using-natural-ingredients-to-create-authentic-fresh-flavors)

24 ¹¹ L. Dornblaser, *Colors and flavors help drive consumer trend of health*, FOOD
 25 AND BEVERAGE INSIDER (Sept. 20, 2022), available at
[https://www.foodbeverageinsider.com/colors-flavors/colors-and-flavors-help-
 drive-consumer-trend-of-health](https://www.foodbeverageinsider.com/colors-flavors/colors-and-flavors-help-drive-consumer-trend-of-health)

26 ¹² N. Gagliardi, *Consumers Want Healthy Foods--And Will Pay More For Them*,
 27 FORBES (Feb. 18, 2015), available at
 28 [https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-
 healthy-foods-and-will-pay-more-for-them/?sh=769abecb75c5](https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/?sh=769abecb75c5)

1 absence of artificial colors or flavors is important to their food purchase
2 decisions.”¹³

3 19. Plaintiff and the putative class members suffered economic injury as
4 a result of Defendant’s actions. Plaintiff and putative class members spent money
5 that, absent Defendant’s actions, they would not have spent. Plaintiff and putative
6 class members are entitled to damages and restitution for the purchase price of the
7 Products that were falsely labeled and advertised. Consumers, including Plaintiff,
8 would not have purchased Defendant’s Products, or would have paid less for the
9 Products, if they had known the Products actually contain an artificial flavoring
10 ingredient.

11 **PLAINTIFF’S PURCHASE OF THE PRODUCTS**

12 20. Plaintiff Claudia Aguilar purchased one of the Products during the
13 class period from a retail store located in California.

14 21. Plaintiff saw and relied on the “No Artificial Flavors” claim on the
15 labels of the Products. Plaintiff would not have purchased the Products, or would
16 have paid less for the Products, had she known that the products actually contain
17 an artificial flavoring ingredient. As a result, Plaintiff suffered injury in fact when
18 she spent money to purchase the Products she would not have purchased, or would
19 have paid less for, absent Defendant’s misconduct. Plaintiff desires to purchase
20 the Products again if the labels of the products were accurate and if the products
21 actually contained “No Artificial Flavors.” However, as a result of Defendant’s
22 ongoing misrepresentations, Plaintiff is unable to rely on the Products’ advertising
23 and labeling when deciding in the future whether to purchase the Products.

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27 ¹³ C. Doering, *Demand for natural foods is changing iconic products*, DES
28 *MOINES REGISTER* (April 5, 2015), available at
<https://www.desmoinesregister.com/story/money/agriculture/2015/04/05/demand-natural-food-ingredients-easter-candy-confection-iconic-brands/25335383/>

NO ADEQUATE REMEDY AT LAW

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2 22. Plaintiff and members of the class are entitled to equitable relief as
3 no adequate remedy at law exists. The statutes of limitations for the causes of
4 action pled herein vary. Class members who purchased the Products more than
5 three years prior to the filing of the complaint will be barred from recovery if
6 equitable relief were not permitted under the UCL.

7 23. The scope of actionable misconduct under the unfair prong of the
8 UCL is broader than the other causes of action asserted herein. It includes
9 Defendant's overall unfair marketing scheme to promote and brand the Products,
10 across a multitude of media platforms, including the product labels, packaging,
11 and online advertisements, over a long period of time, in order to gain an unfair
12 advantage over competitor products. The UCL also includes an "unlawful prong."
13 This is important here because Plaintiff alleges that Defendant failed to comply
14 with federal state regulations (see below in "Second Claim for Relief" section)
15 regarding the labeling of "artificially flavored" foods. Thus, Plaintiff's unlawful-
16 prong UCL claim is different than the CLRA in that it provides a different type of
17 allegation and provides a different type of relief than other claims. There is not
18 adequate remedy at law for Plaintiff's unlawful prong UCL claim. Plaintiff and
19 class members may also be entitled to restitution under the UCL, while not entitled
20 to damages under other causes of action asserted herein (e.g., the CLRA is limited
21 to certain types of plaintiffs (an individual who seeks or acquires, by purchase or
22 lease, any goods or services for personal, family, or household purposes) and other
23 statutorily enumerated conduct).

24 24. A primary litigation objective in this litigation is to obtain injunctive
25 relief. Injunctive relief is appropriate on behalf of Plaintiff and members of the
26 class because Defendant continues to misrepresent the Products as containing "No
27 Artificial Flavors" when the Products actually contain the artificial flavoring
28 ingredient DL-malic acid. Injunctive relief is necessary to prevent Defendant from

1 continuing to engage in the unfair, fraudulent, and/or unlawful conduct described
2 herein and to prevent future harm—none of which can be achieved through
3 available legal remedies (such as monetary damages to compensate past harm).
4 Injunctive relief, in the form of affirmative disclosures or halting the sale of
5 unlawful sold products is necessary to dispel the public misperception about the
6 Products that has resulted from years of Defendant’s unfair, fraudulent, and
7 unlawful marketing efforts. Such disclosures would include, but are not limited to,
8 publicly disseminated statements stating that the Products actually contain an
9 artificial flavoring ingredient. An injunction requiring affirmative disclosures to
10 dispel the public’s misperception, and prevent the ongoing deception and repeat
11 purchases, is also not available through a legal remedy (such as monetary
12 damages). In addition, Plaintiff is currently unable to accurately quantify the
13 damages caused by Defendant’s future harm, because discovery and Plaintiff’s
14 investigation has not yet completed, rendering injunctive relief necessary. Further,
15 because a public injunction is available under the UCL, and damages will not
16 adequately benefit the general public in a manner equivalent to an injunction.

17 25. It is premature to determine whether an adequate remedy at law
18 exists. This is an initial pleading and discovery has not yet commenced and/or is
19 at its initial stages. No class has been certified yet. No expert discovery has
20 commenced and/or completed. The completion of fact/non-expert and expert
21 discovery, as well as the certification of this case as a class action, are necessary
22 to finalize and determine the adequacy and availability of all remedies, including
23 legal and equitable, for Plaintiff’s individual claims and any certified class or
24 subclass. Plaintiff therefore reserves her right to amend this complaint and/or
25 assert additional facts that demonstrate this Court’s jurisdiction to order equitable
26 remedies where no adequate legal remedies are available for either Plaintiff and/or
27 any certified class or subclass. Such proof, to the extent necessary, will be
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1 presented prior to the trial of any equitable claims for relief and/or the entry of an
2 order granting equitable relief.

3 **CLASS ACTION ALLEGATIONS**

4 26. Plaintiff brings this action as a class action pursuant to Federal Rules
5 of Civil Procedure 23(b)(3) and 23(b)(2) on behalf of the following Class:

6 All persons who purchased the Products for personal use in California
7 within the applicable statute of limitations until the date class notice is
8 disseminated.

9 27. Excluded from the class are: (i) Defendant and its officers, directors,
10 and employees; (ii) any person who files a valid and timely request for exclusion;
11 (iii) judicial officers and their immediate family members and associated court
12 staff assigned to the case; (iv) individuals who received a full refund of the
13 Products from Defendant.

14 28. Plaintiff reserves the right to amend or otherwise alter the class
15 definition presented to the Court at the appropriate time, or to propose or eliminate
16 subclasses, in response to facts learned through discovery, legal arguments
17 advanced by Defendant, or otherwise.

18 29. The Class is appropriate for certification because Plaintiff can prove
19 the elements of the claims on a classwide basis using the same evidence as would
20 be used to prove those elements in individual actions alleging the same claims.

21 30. Numerosity: Class Members are so numerous that joinder of all
22 members is impracticable. Plaintiff believes that there are thousands of consumers
23 who are Class Members described above who have been damaged by Defendant's
24 deceptive and misleading practices.

25 31. Commonality: There is a well-defined community of interest in the
26 common questions of law and fact affecting all Class Members. The questions of
27 law and fact common to the Class Members which predominate over any questions
28 which may affect individual Class Members include, but are not limited to:

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1 a. Whether Defendant is responsible for the conduct alleged herein
2 which was uniformly directed at all consumers who purchased the Products;

3 b. Whether Defendant’s misconduct set forth in this Complaint
4 demonstrates that Defendant engaged in unfair, fraudulent, or unlawful business
5 practices with respect to the advertising, marketing, and sale of the Products;

6 c. Whether Defendant made misrepresentations concerning the
7 Products that were likely to deceive the public;

8 d. Whether Plaintiff and the Class are entitled to injunctive relief;

9 e. Whether Plaintiff and the Class are entitled to money damages and/or
10 restitution under the same causes of action as the other Class Members.

11 32. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to
12 represent. Plaintiff’s claims are typical of the claims of each Class Member in that
13 every member of the Class was susceptible to the same deceptive, misleading
14 conduct and purchased the Products. Plaintiff is entitled to relief under the same
15 causes of action as the other Class Members.

16 33. Adequacy: Plaintiff is an adequate Class representative because
17 Plaintiff’s interests do not conflict with the interests of the Class Members Plaintiff
18 seeks to represent; the consumer fraud claims are common to all other members of
19 the Class, and Plaintiff has a strong interest in vindicating the rights of the class;
20 Plaintiff has retained counsel competent and experienced in complex class action
21 litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no
22 interests which conflict with those of the Class. The Class Members’ interests will
23 be fairly and adequately protected by Plaintiff and proposed Class Counsel.
24 Defendant has acted in a manner generally applicable to the Class, making relief
25 appropriate with respect to Plaintiff and the Class Members. The prosecution of
26 separate actions by individual Class Members would create a risk of inconsistent
27 and varying adjudications.
28

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1 34. The Class is properly brought and should be maintained as a class
2 action because a class action is superior to traditional litigation of this controversy.
3 A class action is superior to the other available methods for the fair and efficient
4 adjudication of this controversy because:

5 a. The joinder of hundreds of individual Class Members is
6 impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or
7 litigation resources;

8 b. The individual claims of the Class Members may be relatively modest
9 compared with the expense of litigating the claim, thereby making it impracticable,
10 unduly burdensome, and expensive to justify individual actions;

11 c. When Defendant’s liability has been adjudicated, all Class Members’
12 claims can be determined by the Court and administered efficiently in a manner
13 far less burdensome and expensive than if it were attempted through filing,
14 discovery, and trial of all individual cases;

15 d. This class action will promote orderly, efficient, expeditious, and
16 appropriate adjudication and administration of Class claims;

17 e. Plaintiff knows of no difficulty to be encountered in the management
18 of this action that would preclude its maintenance as a class action;

19 f. This class action will assure uniformity of decisions among Class
20 Members;

21 g. The Class is readily definable and prosecution of this action as a class
22 action will eliminate the possibility of repetitious litigation; and

23 h. Class Members’ interests in individually controlling the prosecution
24 of separate actions is outweighed by their interest in efficient resolution by single
25 class action;

26 35. Additionally or in the alternative, the Class also may be certified
27 because Defendant has acted or refused to act on grounds generally applicable to
28

1 the Class thereby making final declaratory and/or injunctive relief with respect to
2 the members of the Class as a whole, appropriate.

3 36. Plaintiff seeks preliminary and permanent injunctive and equitable
4 relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin
5 and prevent Defendant from engaging in the acts described, and to require
6 Defendant to provide full restitution to Plaintiff and the Class members.

7 37. Unless the Class is certified, Defendant will retain monies that were
8 taken from Plaintiff and Class members as a result of Defendant's wrongful
9 conduct. Unless a classwide injunction is issued, Defendant will continue to
10 commit the violations alleged and the members of the Class and the general public
11 will continue to be misled.

12 **FIRST CLAIM FOR RELIEF**

13 **Violation of California's Consumers Legal Remedies Act**

14 **Cal. Civ. Code § 1750 *et seq.***

15 38. Plaintiff realleges and incorporates by reference all allegations
16 contained in this complaint, as though fully set forth herein.

17 39. Plaintiff brings this claim under the CLRA individually and on behalf
18 of the Class against Defendant.

19 40. At all times relevant hereto, Plaintiff and the members of the Class
20 were "consumer[s]," as defined in California Civil Code section 1761(d).

21 41. At all relevant times, Defendant was a "person," as defined in
22 California Civil Code section 1761(c).

23 42. At all relevant times, the Products manufactured, marketed,
24 advertised, and sold by Defendant constituted "goods," as defined in California
25 Civil Code section 1761(a).

26 43. The purchases of the Products by Plaintiff and the members of the
27 Class were and are "transactions" within the meaning of California Civil Code
28 section 1761(e).

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1 44. Defendant disseminated, or caused to be disseminated, through its
2 advertising, false and misleading representations, including the Products’ labeling
3 that the Products contain “No Artificial Flavors.” Defendant failed to disclose that
4 the Products contain an artificial flavoring ingredient called DL-malic acid. This
5 is a material misrepresentation and omission as reasonable consumer would find
6 the fact that the Products contain an artificial flavoring ingredient to be important
7 to their decision in purchasing the Products. Defendant’s representations violate
8 the CLRA in the following ways:

9 a) Defendant represented that the Products have characteristics,
10 ingredients, uses, and benefits which they do not have (Cal. Civ. Code §
11 1770(a)(5));

12 b) Defendant represented that the Products are of a particular standard,
13 quality, or grade, which they are not (Cal. Civ. Code § 1770(a)(7));

14 c) Defendant advertised the Products with an intent not to sell the
15 Products as advertised (Cal. Civ. Code § 1770(a)(9)); and

16 d) Defendant represented that the subject of a transaction has been
17 supplied in accordance with a previous representation when it has not (Cal. Civ.
18 Code § 1770(a)(16)).

19 45. Defendant violated the CLRA because the Products were
20 prominently advertised as containing “No Artificial Flavors” but, in reality, the
21 Products contain an artificial flavoring ingredient called DL-malic acid. Defendant
22 knew or should have known that consumers would want to know that the Products
23 contain an artificial flavoring ingredient.

24 46. Defendant’s actions as described herein were done with conscious
25 disregard of Plaintiff’s and the Class members’ rights and were wanton and
26 malicious.

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1 47. Defendant’s wrongful business practices constituted, and constitute,
2 a continuing course of conduct in violation of the CLRA, since Defendant is still
3 representing that the Products have characteristics which they do not have.

4 48. Pursuant to California Civil Code section 1782(d), Plaintiff and the
5 members of the Class seek an order enjoining Defendant from engaging in the
6 methods, acts, and practices alleged herein.

7 49. Pursuant to California Civil Code section 1782, Plaintiff notified
8 Defendant in writing by certified mail of the alleged violations of the CLRA and
9 demanded that Defendant rectify the problems associated with the actions detailed
10 above. More than 30 days have passed since Defendant’s receipt of Plaintiff’s
11 CLRA letter. Accordingly, Plaintiff seeks damages, punitive damages, injunctive
12 relief, and attorneys’ fees and costs for Defendant’s violations of the CLRA.

13 50. Pursuant to section 1780(d) of the CLRA, attached hereto is an
14 affidavit showing that this action was commenced in a proper forum.

15 **SECOND CLAIM FOR RELIEF**

16 **Violation of California’s Unfair Competition Law**

17 **Cal. Bus. & Prof. Code § 17200 *et seq.***

18 51. Plaintiff realleges and incorporates by reference all allegations
19 contained in this complaint, as though fully set forth herein.

20 52. Plaintiff brings this claim under the UCL individually and on behalf
21 of the Class against Defendant.

22 53. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business
23 act or practice and any false or misleading advertising.

24 54. Defendant committed unlawful business acts or practices by making
25 the representations and omitted material facts (which constitutes advertising
26 within the meaning of California Business & Professions Code section 17200), as
27 set forth more fully herein, and by violating California’s Consumers Legal
28 Remedies Act, Cal. Civ. Code §§17500, *et seq.*, California’s False Advertising

1 Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, 21 CFR § 101.22(i)(1)(iii),
2 California Health & Saf. Code § 110100, and by breaching express and implied
3 warranties. Plaintiff, individually and on behalf of the other Class members,
4 reserves the right to allege other violations of law, which constitute other unlawful
5 business acts or practices. Such conduct is ongoing and continues to this date.

6 55. Defendant committed “unfair” business acts or practices by: (1)
7 engaging in conduct where the utility of such conduct is outweighed by the harm
8 to Plaintiff and the members of the a Class; (2) engaging in conduct that is
9 immoral, unethical, oppressive, unscrupulous, or substantially injurious to
10 Plaintiff and the members of the Class; and (3) engaging in conduct that
11 undermines or violates the intent of the consumer protection laws alleged herein.
12 There is no societal benefit from deceptive advertising. Plaintiff and the other
13 Class members paid for a Product that is not as advertised by Defendant. Further,
14 Defendant failed to disclose a material fact (that the Products contain an artificial
15 flavoring ingredient) of which they had exclusive knowledge. While Plaintiff and
16 the other Class members were harmed, Defendant was unjustly enriched by its
17 false misrepresentations and material omissions. As a result, Defendant’s conduct
18 is “unfair,” as it offended an established public policy. There were reasonably
19 available alternatives to further Defendant’s legitimate business interests, other
20 than the conduct described herein.

21 56. Defendant committed “fraudulent” business acts or practices by
22 making the representations of material fact regarding the Products set forth herein.
23 Defendant’s business practices as alleged are “fraudulent” under the UCL because
24 they are likely to deceive customers into believing that the Products are actually
25 naturally flavored.

26 57. Plaintiff and the other members of the Class have in fact been
27 deceived as a result of their reliance on Defendant’s material representations and
28 omissions. This reliance has caused harm to Plaintiff and the other members of the

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1 Class, each of whom purchased Defendant’s Products. Plaintiff and the other Class
2 members have suffered injury in fact and lost money as a result of purchasing the
3 Products and Defendant’s unlawful, unfair, and fraudulent practices.

4 58. Defendant’s wrongful business practices and violations of the UCL
5 are ongoing.

6 59. Plaintiff and the Class seek pre-judgment interest as a direct and
7 proximate result of Defendant’s unfair and fraudulent business conduct. The
8 amount on which interest is to be calculated is a sum certain and capable of
9 calculation, and Plaintiff and the Class seek interest in an amount according to
10 proof.

11 60. Unless restrained and enjoined, Defendant will continue to engage in
12 the above-described conduct. Accordingly, injunctive relief is appropriate.
13 Pursuant to California Business & Professions Code section 17203, Plaintiff,
14 individually and on behalf of the Class, seeks (1) restitution from Defendant of all
15 money obtained from Plaintiff and the other Class members as a result of unfair
16 competition; (2) an injunction prohibiting Defendant from continuing such
17 practices in the State of California that do not comply with California law; and (3)
18 all other relief this Court deems appropriate, consistent with California Business
& Professions Code section 17203.

19 **THIRD CLAIM FOR RELIEF**

20 **Breach of Express Warranty**

21 61. Plaintiff realleges and incorporates by reference all allegations
22 contained in this complaint, as though fully set forth herein.

23 62. Plaintiff brings this claim for breach of express warranty individually
24 and on behalf of the Class against Defendant.

25 63. As the manufacturer, marketer, distributor, and seller of the Products,
26 Defendant issued an express warranty by representing to consumers at the point of
27 purchase that the Products contain “No Artificial Flavors.”
28

1 64. Plaintiff and the Class reasonably relied on Defendant's
2 misrepresentations, descriptions and specifications regarding the Products,
3 including the representation that the Products contain "No Artificial Flavors."

4 65. Defendant's representations were part of the description of the goods
5 and the bargain upon which the goods were offered for sale and purchased by
6 Plaintiff and Members of the Class.

7 66. In fact, the Products do not conform to Defendant's representations
8 because the Products contain an artificial flavoring ingredient called DL-malic
9 acid. By falsely representing the Products in this way, Defendant breached express
10 warranties.

11 67. Plaintiff relied on Defendant's (the manufacturer) representations on
12 the Products' labels and advertising materials which provide the basis for an
13 express warranty under California law.

14 68. As a direct and proximate result of Defendant's breach, Plaintiff and
15 Members of the Class were injured because they: (1) paid money for the Products
16 that were not what Defendant represented; (2) were deprived of the benefit of the
17 bargain because the Products they purchased were different than Defendant
18 advertised; and (3) were deprived of the benefit of the bargain because the
19 Products they purchased had less value than if Defendant's representations about
20 the characteristics of the Products were truthful. Had Defendant not breached the
21 express warranty by making the false representations alleged herein, Plaintiff and
22 Class Members would not have purchased the Products or would not have paid as
23 much as they did for them.

REQUEST FOR RELIEF

24 Plaintiff, individually, and on behalf of all others similarly situated, request
25 for relief pursuant to each claim set forth in this complaint, as follows:

26 a. Declaring that this action is a proper class action, certifying the Class
27 as requested herein, designating Plaintiff as the Class Representative and
28 appointing the undersigned counsel as Class Counsel;

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1 b. Ordering restitution and disgorgement of all profits and unjust
2 enrichment that Defendant obtained from Plaintiff and the Class members as a
3 result of Defendant’s unlawful, unfair, and fraudulent business practices;

4 c. Ordering injunctive relief as permitted by law or equity, including
5 enjoining Defendant from continuing the unlawful practices as set forth herein,
6 and ordering Defendant to engage in a corrective advertising campaign;

7 d. Ordering damages in amount which is different than that calculated
8 for restitution for Plaintiff and the Class;

9 e. Ordering Defendant to pay attorneys’ fees and litigation costs to
10 Plaintiff and the other members of the Class;

11 f. Ordering Defendant to pay both pre- and post-judgment interest on
12 any amounts awarded; and

13 g. Ordering such other and further relief as may be just and proper.

14 **JURY DEMAND**

15 Plaintiff hereby demands a trial by jury of all claims in this Complaint so
16 triable.

17

18 Dated: June 13, 2024

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19

By: /s/ Michael T. Houchin

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MICHAEL T. HOUCHIN

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*Attorneys for Plaintiff and the Proposed
Class*

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Affidavit Pursuant to Civil Code Section 1780(d)

I, MICHAEL T. HOUCHIN, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am one of the counsel of record for Plaintiff.

2. This declaration is made pursuant to § 1780(d) of the California Consumers Legal Remedies Act.

3. Defendant Church & Dwight Co., Inc. has done, and is doing, business in California, including in this District. Such business includes the marketing, promotion, distribution, and sale of the Products within the State of California. Plaintiff alleges that she purchased the Products in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 13, 2024 at San Diego, California.

CROSNER LEGAL, P.C.

By: /s/ Michael T. Houchin

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