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By S. Trinh, Deputy Clerk

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION**

EUGENIA MCLAURIN, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

CVS PHARMACY, INC.,

Defendant.

Case No. **24STCV05082**

CLASS ACTION COMPLAINT FOR:

1. Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
2. Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§17200, *et seq.*; and
3. Breach of Express Warranty

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiff Eugenia McLaurin (“Plaintiff”) on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby brings this action against CVS Pharmacy, Inc. (“Defendant” or “CVS”), and upon information and belief and investigation of counsel, alleges as follows:

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

3. Defendant manufactures, distributes, advertises, markets, and sells CVS Hair, Skin & Nails Gummy Dietary Supplements (the “Products”) . The packaging prominently displays on the label the claim that these Products¹ contain “**No Artificial Preservatives.**”

4. This statement is false. Each of the Products are made with citric acid— a preservative ingredient used in edible products.

5. Defendant’s packaging, labeling, and advertising scheme is intended to give consumers the impression that they are buying a premium product that is free from preservatives.

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

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to Article VI, Section 10 of the California Constitution and California Code of Civil Procedure § 410.10.

8. This Court has personal jurisdiction over Defendant because Defendant conducts and transacts business in the State of California, contracts to supply goods within the State of California, and supplies goods within the State of California. Defendant, on its own and through its agents, is responsible for the distribution, marketing, labeling, and sale of the Products in

¹ “Products” means all CVS dietary supplement products sold as “gummies” or in gummy form and labeled as containing “No Artificial Preservatives” that include citric acid as an ingredient.

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1 California, specifically in this county. The marketing of the Products, including the decision of
2 what to include and not include on the labels, emanates from Defendant. Thus, Defendant has
3 intentionally availed itself of the markets within California through its advertising, marketing,
4 and sale of the Products to consumers in California, including Plaintiff. The Court also has
5 specific jurisdiction over Defendant as it has purposefully directed activities towards the forum
6 state, Plaintiff’s claims arise out of those activities, and it is reasonable for Defendant to defend
7 this lawsuit because it has sold deceptively advertised Products to Plaintiff and members of the
8 Class in California. By distributing and selling the Products in California, Defendant has
9 intentionally and expressly aimed conduct at California which caused harm to Plaintiff and the
10 Class that Defendant knows is likely to be suffered by Californians.

11 9. Venue is proper in this county pursuant to Cal. Civ Code. § 1780(c) because
12 Defendant is doing business in this county as the Products are offered for sale in this county.

13 **PARTIES**

14 10. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation that maintains its
15 principal place of business at 1 CVS Dr, Woonsocket, Rhode Island 02895. At all times during
16 the class period, Defendant was the manufacturer, distributor, marketer, and seller of the
17 Products.

18 11. Plaintiff Eugenia McLaurin is a resident of California. Plaintiff purchased the
19 Products during the class period in California. Plaintiff relied on Defendant’s deceptive
20 advertising and labeling claims as set forth below.

21 **FACTUAL ALLEGATIONS**

22 **“NO ARTIFICIAL PRESERVATIVES” IS PROMINENTLY DISPLAYED ON THE LABELS OF THE**
23 **PRODUCTS**

24 12. The labels for each of the Products prominently state that the Products contain
25 “No Artificial Preservatives” thereby misleading reasonable consumers into believing that the
26 Products are free from artificial preservatives. However, each of the Products contain the
27 artificial preservative citric acid. Below is are examples of the label for the Products.
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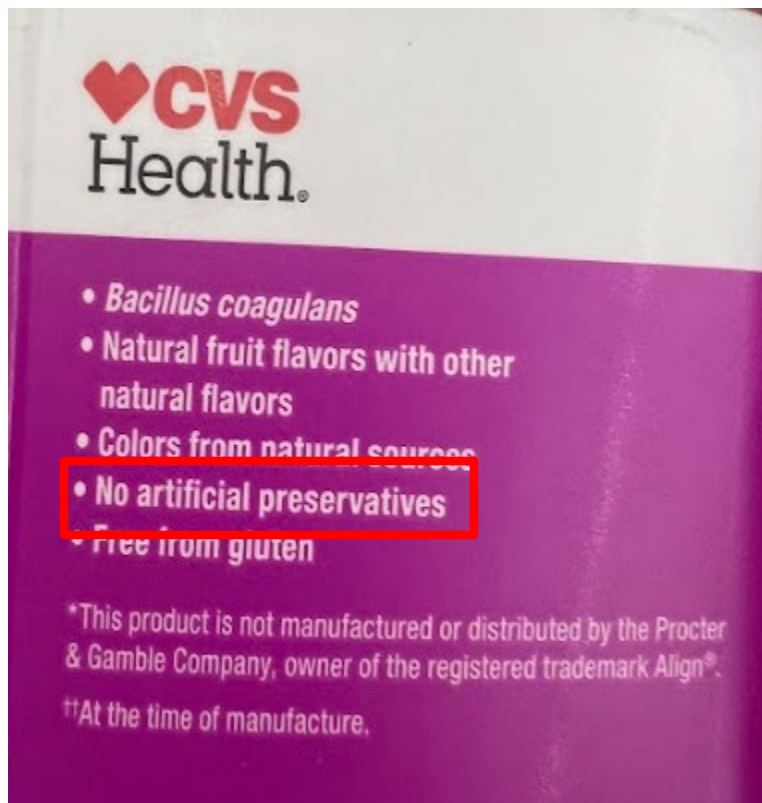
CVS Health Hair, Skin & Nails Assorted Gummies

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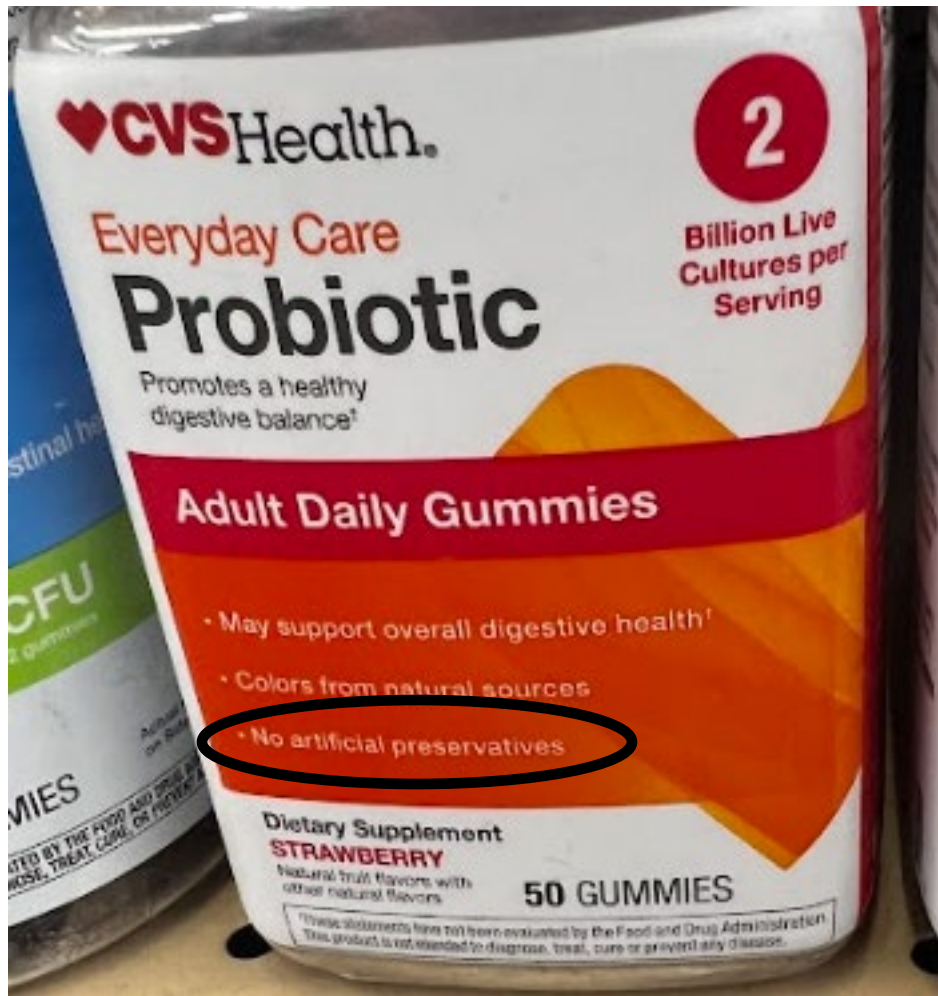
CVS Health Prebiotic + Probiotic Gummies



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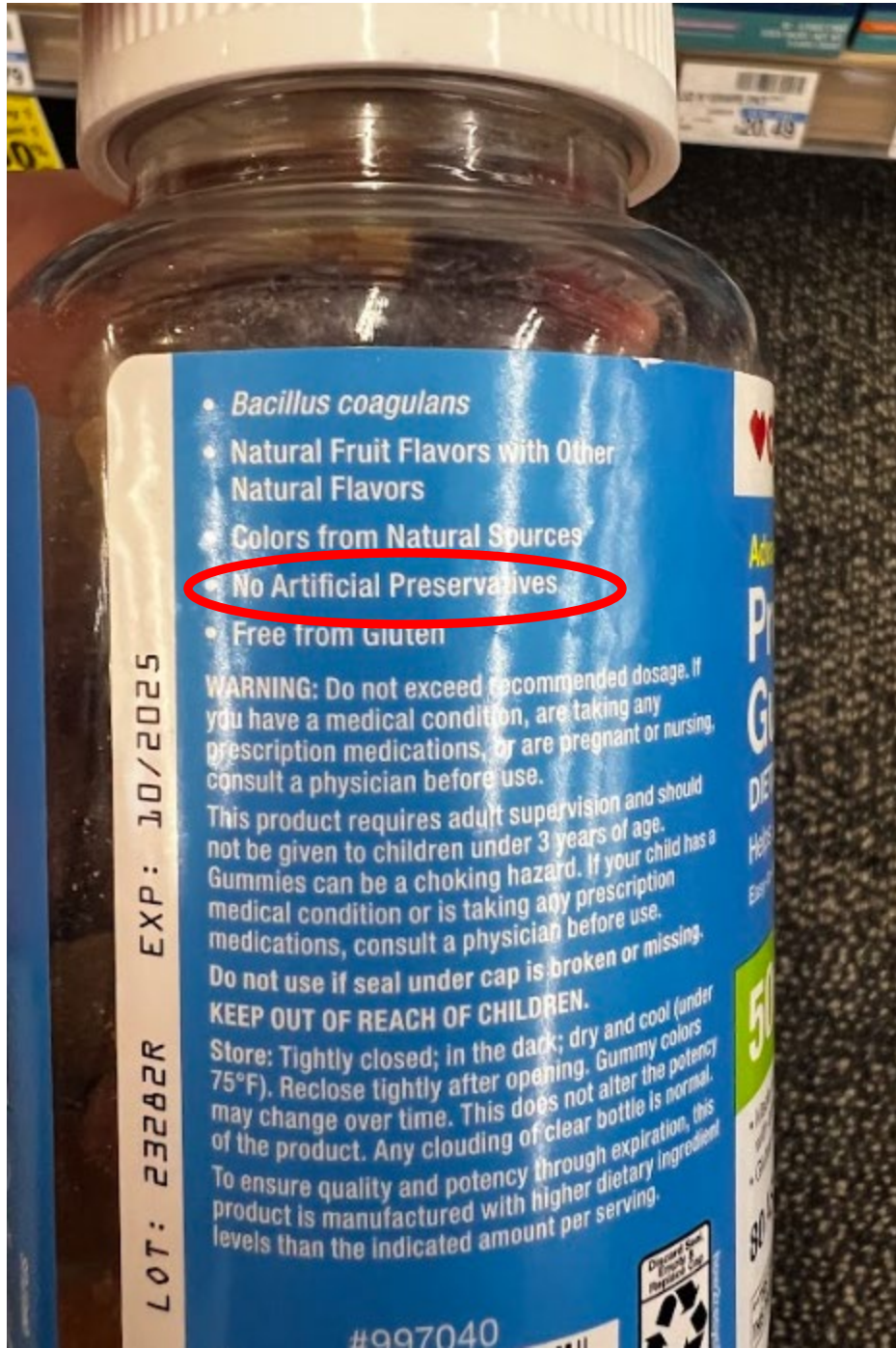
CVS Health Everyday Care Probiotic Adult Daily Gummies



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CVS Health Advanced Probiotic Gummies



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THE CITRIC ACID IN THE PRODUCTS IS AN ARTIFICIAL PRESERVATIVE

13. Many commercial manufacturers use a synthetic form of citric acid that is derived from heavy chemical processing.² Commercially produced citric acid is manufactured using a

² A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by*

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1 type of black mold called *Aspergillus niger*.³ Consumption of manufactured citric acid has been
 2 associated with adverse health events like joint pain with swelling and stiffness, muscular and
 3 stomach pain, as well as shortness of breath.⁴ Defendant uses artificial manufactured citric acid
 4 in the Products.

5 14. Citric acid acts as a preservative when added to food products and supplements,
 6 including the Products at issue. The Food and Drug Administration (“FDA”) defines a
 7 preservative as “any chemical that, when added to food, tends to prevent or retard deterioration
 8 thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices,
 9 substances added to food by direct exposure thereof to wood smoke, or chemicals applied for
 10 their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5). The FDA has listed citric
 11 acid as a preservative in its “Overview of Food Ingredients, Additives and Colors” as shown
 12 below:⁵

Types of Ingredients	What They Do	Examples of Uses	Names Found on Product Labels
Preservatives	Prevent food spoilage from bacteria, molds, fungi, or yeast (antimicrobials); slow or prevent changes in color, flavor, or texture and delay rancidity (antioxidants); maintain freshness	Fruit sauces and jellies, beverages, baked goods, cured meats, oils and margarines, cereals, dressings, snack foods, fruits and vegetables	Ascorbic acid, citric acid, sodium benzoate, calcium propionate, sodium erythorbate, sodium nitrite, calcium sorbate, potassium sorbate, BHA, BHT, EDTA, tocopherols (Vitamin E)

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21 *Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>

22 ³ *Id*; Pau Loke Show, et al., *Overview of citric acid production from Aspergillus niger*,
 23 FRONTIERS IN LIFE SCIENCE, 8:3, 271-283 (2015), available at <https://www.tandfonline.com/doi/full/10.1080/21553769.2015.1033653>

24 ⁴ Iliana E. Sweis, et al., *Potential role of the common food additive manufactured citric acid in*
 25 *eliciting significant inflammatory reactions contributing to serious disease states: A series of*
 26 *four case reports*, TOXICOL REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>

27 ⁵ *Overview of Food Ingredients, Additives & Colors*, FOOD AND DRUG ADMINISTRATION,
 28 available at <https://web.archive.org/web/20220901032454/http://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives-colors>

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1 15. In a warning letter sent to Chiquita Brands International, Inc. and Fresh Express,
2 Inc., the FDA warned that certain products were misbranded under the Federal Food Drug and
3 Cosmetics Act because they “contain the *chemical preservatives ascorbic acid and citric acid*
4 but their labels fail to declare these *preservatives* with a description of their functions. 21 C.F.R.
5 [§] 101.22” (emphasis added).⁶

6 16. Additionally, the FDA sent warning letters to Hirzel Canning Company and Oak
7 Tree Farm Dairy, Inc., for similar violations, saying that the FDA’s policy involving the use of
8 the word natural means that nothing artificial or synthetic has been added to the product, and
9 that a product that labels itself “100% Natural” or “All Natural” violates that policy if it contains
10 citric acid, that the presence of citric acid precludes the use of the term natural to describe the
11 product.⁷

12 17. The Encyclopedia Britannica also classifies citric acid as a preservative because it
13 has antioxidant properties, as shown below⁸:

25 _____
⁶ See **Exhibit A** attached hereto.

26 ⁷ See **Exhibit B** and **Exhibit C** attached hereto.

27 ⁸ *Preservatives*, BRITANICA, available at [https://www.britannica.com/topic/food-](https://www.britannica.com/topic/food-additive/Preservatives#ref502211)
28 [additive/Preservatives#ref502211](https://www.britannica.com/topic/food-additive/Preservatives#ref502211)

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Preservatives

Food preservatives are classified into two main groups: antioxidants and antimicrobials. Antioxidants are compounds that delay or prevent the deterioration of foods by oxidative mechanisms. Antimicrobial agents inhibit the growth of spoilage and pathogenic microorganisms in food.

Food preservatives	
chemical agent	mechanism of action
Antioxidants	
ascorbic acid	oxygen scavenger
butylated hydroxyanisole (BHA)	free radical scavenger
butylated hydroxytoluene (BHT)	free radical scavenger
citric acid	enzyme inhibitor/metal chelator
sulfites	enzyme inhibitor/oxygen scavenger
tertiary butylhydroquinone (TBHQ)	free radical scavenger
tocopherols	free radical scavenger

18. The Agricultural Marketing Service of the United States Department of Agriculture (“USDA”) has also recognized the use of citric acid as a preservative stating that “Citric acid has a wide variety of uses, some of which can provide preservative functions, primarily though lowering the pH of the food.”⁹

⁹ *Citric Acid and Salts*, UNITED STATES DEPARTMENT OF AGRICULTURE, available at <https://www.ams.usda.gov/sites/default/files/media/Citric%20Acid%20TR%202015.pdf>.

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1 19. The USDA’s Food Safety Inspection Service’s “Guideline for Label Approval”
2 states that “[s]ome common chemical preservatives include BHA, BHT, calcium propionate,
3 citric acid, natamycin and sodium propionate.”¹⁰

4 20. Dictionary definitions define “artificial” as something made by man. For
5 example, “artificial” is defined as “made by human skill; produced by humans ...”¹¹ Merriam-
6 Webster’s online dictionary states that “artificial” means “humanly contrived ...”¹² Cambridge
7 Dictionary states that “artificial” means “made by people, often as a copy of something
8 natural.”¹³

9 Below are images of the process used to create citric acid for use in food – a process that
10 is visibly not natural.



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23 ¹⁰ FSIS Guideline for Label Approval, UNITED STATES DEPARTMENT OF AGRICULTURE,
24 *available at* https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2023-0001.pdf

25 ¹¹ *Artificial*, DICTIONARY.COM, *available at* <https://www.dictionary.com/browse/artificial>

26 ¹² *Artificial*, MERRIAM-WEBSTER’S DICTIONARY, *available at* <https://www.merriam-webster.com/dictionary/artificial>

27 ¹³ *Artificial*, CAMBRIDGE DICTIONARY, *available at*
28 <https://dictionary.cambridge.org/us/dictionary/english/artificial>

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21. Several academic journals also note the use of citric acid as a preservative.¹⁴ Indeed, “Citric acid acts as a preservative in many processed foods, keeping them fresh. It does

¹⁴ K. Kirimura, et al., *Citric Acid*, COMPREHENSIVE BIOTECHNOLOGY (SECOND EDITION) (2011), available at <https://www.sciencedirect.com/science/article/abs/pii/B9780080885049001690?via%3Dihub>; K.M.S. Islam, *Use of citric acid in broiler diets*, WORLD’S POULTRY SCIENCE JOURNAL VOL. 68, ISSUE 1 (Feb. 21, 2012), available at <https://www.cambridge.org/core/journals/world-s-poultry-science-journal/article/abs/use-of-citric-acid-in-broiler->

1 this by slowing or helping prevent the formation of bacteria, mold, yeast, and fungus.”¹⁵ “Today,
2 citric acid is one of the most common and widely-used preservatives in the world[.]”¹⁶

3 22. Citric acid functions as a preservative in the Products regardless of whether
4 Defendant intended to use citric acid as a preservative. Citric acid functions as a preservative
5 even if it is also added to the Products for some other use. *See* 21 C.F.R. §101.22(a)(5) (defining
6 preservatives as “any chemical that, when added to food, *tends to prevent or retard*
7 *deterioration*”) (emphasis added); *see also* Merriam-Webster’s Dictionary (defining
8 “preservative” as “something that preserves or *has the power of preserving.*”) (emphasis
9 added).¹⁷

10 **REASONABLE CONSUMERS ARE DECEIVED BY DEFENDANT’S FALSE LABELING**

11 **STATEMENT AND SUFFERED ECONOMIC INJURY**

12 23. Consumers, like Plaintiff, relied on Defendant’s “No Artificial Preservatives”
13 labeling statement. The “No Artificial Preservatives” statement on the labels of the Products is
14 material to reasonable consumers. “[F]oods bearing ‘free-from’ claims are increasingly relevant
15 to Americans, as they perceive the products as closely tied to health ... 84 percent of American
16 consumers buy free-from foods because they are seeking out more natural or less processed
17 foods. In fact, 43 percent of consumers agree that free-from foods are healthier than foods
18 without a free-from claim, while another three in five believe the fewer ingredients a product

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22 [diets/DA15C2C1F90667525BF2414DF3BFF646](https://www.medicalnewstoday.com/articles/citric-acid-diets/DA15C2C1F90667525BF2414DF3BFF646) (“Citric Acid (CA) is a weak organic acid
which is a natural preservative and can add an acidic or sour taste to foods and soft drinks.”).

23 ¹⁵ *What is citric acid, and what is it used for?*, MEDICAL NEWS TODAY (July 23, 2021), available
24 at <https://www.medicalnewstoday.com/articles/citric-acid>

25 ¹⁶ *Citric Acid: One of the Most Important Preservatives in The World*, FBC INDUSTRIES, INC.
26 (Feb. 5, 2019), available at <https://fbcindustries.com/citric-acid-one-of-the-most-important-preservatives-in-the-world/>

27 ¹⁷ *Preservative*, MERRIAM-WEBSTER’S DICTIONARY, available at [https://www.merriam-](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
28 [webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)
[nld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jso)

1 has, the healthier it is (59 percent). Among the top claims free-from consumers deem most
 2 important are trans-fat-free (78 percent) and preservative-free (71 percent).”¹⁸

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

10 PLAINTIFF’S PURCHASE OF THE PRODUCTS

11 25. Plaintiff purchased the CVS Health Hair, Skin & Nails Assorted Gummies
 12 Product with the “No Artificial Preservatives” label claim in approximately January 2024 from
 13 CVS retail store located in Lancaster, California. When purchasing the Product, Plaintiff didn’t
 14 expect that the “No Artificial Preservatives” statement on the label was false. Plaintiff did not
 15 expect Defendant to publicly place false statements about the contents of its Products on the
 16 front label of the Product.

17 26. Plaintiff saw and relied on the “No Artificial Preservatives” claim on the labels
 18 of the Product. Plaintiff would not have purchased the Product, or would have paid less for the
 19 Product, had she known that they in fact contain an artificial preservative ingredient. As a result,
 20 Plaintiff suffered injury in fact when she spent money to purchase the Products she would not
 21 have purchased, or would have paid less for, absent Defendant’s misconduct. Plaintiff desires to
 22 purchase the Products again if the labels of the products were accurate and if the products
 23 actually contained “No Artificial Preservatives.” However, as a result of Defendant’s ongoing
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26 _____
 27 ¹⁸ 84% of Americans buy “free-from” foods because they believe them to be more natural or
 28 [less processed](https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/), Mintel (Sept. 3, 2015), available at <https://www.mintel.com/press-centre/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed/>

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1 misrepresentations, Plaintiff is unable to rely on the Products’ advertising and labeling when
2 deciding in the future whether to purchase the Products.

3 **NO ADEQUATE REMEDY AT LAW**

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

8 28. The scope of actionable misconduct under the unfair prong of the UCL is broader
9 than the other causes of action asserted herein. It includes Defendant’s overall unfair marketing
10 scheme to promote and brand the Products, across a multitude of media platforms, including the
11 product labels, packaging, and online advertisements, over a long period of time, in order to gain
12 an unfair advantage over competitor products. Plaintiff and class members may also be entitled
13 to restitution under the UCL, while not entitled to damages under other causes of action asserted
14 herein (e.g., the CLRA is limited to certain types of plaintiffs (an individual who seeks or
15 acquires, by purchase or lease, any goods or services for personal, family, or household
16 purposes) and other statutorily enumerated conduct).

17 29. A primary litigation objective in this litigation is to obtain injunctive relief.
18 Injunctive relief is appropriate on behalf of Plaintiff and members of the class because Defendant
19 continues to misrepresent the Products as containing “No Artificial Preservatives” when the
20 Products actually contain the artificial preservative ingredient citric acid. Injunctive relief is
21 necessary to prevent Defendant from continuing to engage in the unfair, fraudulent, and/or
22 unlawful conduct described herein and to prevent future harm—none of which can be achieved
23 through available legal remedies (such as monetary damages to compensate past harm).
24 Injunctive relief, in the form of affirmative disclosures or halting the sale of unlawful sold
25 products is necessary to dispel the public misperception about the Products that has resulted
26 from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts. Such disclosures
27 would include, but are not limited to, publicly disseminated statements stating that the Products
28 actually contain an artificial preservative. An injunction requiring affirmative disclosures to

1 dispel the public's misperception, and prevent the ongoing deception and repeat purchases, is
2 also not available through a legal remedy (such as monetary damages). Further, because a public
3 injunction is available under the UCL, and damages will not adequately benefit the general
4 public in a manner equivalent to an injunction.

5 30. It is premature to determine whether an adequate remedy at law exists. This is an
6 initial pleading and discovery has not yet commenced and/or is at its initial stages. No class has
7 been certified yet. No expert discovery has commenced and/or completed. The completion of
8 fact/non-expert and expert discovery, as well as the certification of this case as a class action,
9 are necessary to finalize and determine the adequacy and availability of all remedies, including
10 legal and equitable, for Plaintiff's individual claims and any certified class or subclass. Plaintiff
11 therefore reserves her right to amend this complaint and/or assert additional facts that
12 demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal
13 remedies are available for either Plaintiff and/or any certified class or subclass. Such proof, to
14 the extent necessary, will be presented prior to the trial of any equitable claims for relief and/or
15 the entry of an order granting equitable relief.

16 CLASS ACTION ALLEGATIONS

17 31. Plaintiff brings this action as a class action pursuant to Cal. Code. Civ. Proc. §
18 382 on behalf of the following Class:

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

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

25 33. Plaintiff reserves the right to amend or otherwise alter the class definition
26 presented to the Court at the appropriate time, or to propose or eliminate subclasses, in response
27 to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.
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1 34. The Class is appropriate for certification because Plaintiff can prove the elements
2 of the claims on a classwide basis using the same evidence as would be used to prove those
3 elements in individual actions alleging the same claims.

4 35. Numerosity: Class Members are so numerous that joinder of all members is
5 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
6 described above who have been damaged by Defendant’s deceptive and misleading practices.

7 36. Commonality: There is a well-defined community of interest in the common
8 questions of law and fact affecting all Class Members. The questions of law and fact common
9 to the Class Members which predominate over any questions which may affect individual Class
10 Members include, but are not limited to:

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

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

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

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

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

21 37. Typicality: Plaintiff is a member of the Class that Plaintiff seeks to represent.
22 Plaintiff’s claims are typical of the claims of each Class Member in that every member of the
23 Class was susceptible to the same deceptive, misleading conduct and purchased the Products.
24 Plaintiff is entitled to relief under the same causes of action as the other Class Members.

25 38. Adequacy: Plaintiff is an adequate Class representative because Plaintiff’s
26 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the
27 consumer fraud claims are common to all other members of the Class, and Plaintiff has a strong
28 interest in vindicating the rights of the class; Plaintiff has retained counsel competent and

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1 experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this
2 action. Plaintiff has no interests which conflict with those of the Class. The Class Members’
3 interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel.
4 Defendant has acted in a manner generally applicable to the Class, making relief appropriate
5 with respect to Plaintiff and the Class Members. The prosecution of separate actions by
6 individual Class Members would create a risk of inconsistent and varying adjudications.

7 39. The Class is properly brought and should be maintained as a class action because
8 a class action is superior to traditional litigation of this controversy. A class action is superior to
9 the other available methods for the fair and efficient adjudication of this controversy because:

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

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

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

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

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

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

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

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

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

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

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

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

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of California’s Consumers Legal Remedies Act**

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

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

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

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

20 46. At all relevant times, Defendant was a “person,” as defined in California Civil
21 Code section 1761(c).

22 47. At all relevant times, the Products manufactured, marketed, advertised, and sold
23 by Defendant constituted “goods,” as defined in California Civil Code section 1761(a).

24 48. The purchases of the Products by Plaintiff and the members of the Class were
25 and are “transactions” within the meaning of California Civil Code section 1761(e).

26 49. Defendant disseminated, or caused to be disseminated, through its advertising,
27 false and misleading representations, including the Products’ labeling that the Products contain
28 “No Artificial Preservatives.” Defendant failed to disclose that the Products contain an artificial

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1 preservative ingredient called citric acid. This is a material misrepresentation and omission as
2 reasonable consumer would find the fact that the Products contain an artificial preservative to
3 be important to their decision in purchasing the Products. Defendant’s representations violate
4 the CLRA in the following ways:

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

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

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

11 d) Defendant represented that the subject of a transaction has been supplied
12 in accordance with a previous representation when it has not (Cal. Civ. Code §
13 1770(a)(16)).

14 50. Defendant violated the CLRA because the Products were prominently advertised
15 as containing “No Artificial Preservatives” but, in reality, the Products contain an artificial
16 preservative ingredient called citric acid. Defendant knew or should have known that consumers
17 would want to know that the Products contain an artificial preservative.

18 51. Defendant’s actions as described herein were done with conscious disregard of
19 Plaintiff’s and the Class members’ rights and were wanton and malicious.

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

23 53. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of
24 the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices
25 alleged herein.

26 54. Pursuant to California Civil Code section 1782, Plaintiff will notify Defendant in
27 writing by certified mail of the alleged violations of the CLRA and will demand that Defendant
28 rectify the problems associated with the actions detailed above and give notice to all affected

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1 consumers of their intent to so act. If Defendant fails to rectify or agree to rectify the problems
2 associated with the actions detailed herein and give notice to all affected consumers within 30
3 days of the date of written notice pursuant to section 1782 of the CLRA, then Plaintiff will
4 amend her complaint to seek damages.

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

7 **SECOND CLAIM FOR RELIEF**

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

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

10 56. Plaintiff realleges and incorporates by reference all allegations contained in this
11 complaint, as though fully set forth herein.

12 57. Plaintiff brings this claim under the UCL individually and on behalf of the Class
13 against Defendant.

14 58. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
15 practice and any false or misleading advertising.

16 59. Defendant committed unlawful business acts or practices by making the
17 representations and omitted material facts (which constitutes advertising within the meaning of
18 California Business & Professions Code section 17200), as set forth more fully herein, and by
19 violating California’s Consumers Legal Remedies Act, Cal. Civ. Code §§17500, *et seq.*,
20 California’s False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C. § 45, and by
21 breaching express and implied warranties. Plaintiff, individually and on behalf of the other Class
22 members, reserves the right to allege other violations of law, which constitute other unlawful
23 business acts or practices. Such conduct is ongoing and continues to this date.

24 60. Defendant committed “unfair” business acts or practices by: (1) engaging in
25 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
26 of the a Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
27 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct
28 that undermines or violates the intent of the consumer protection laws alleged herein. There is

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1 no societal benefit from deceptive advertising. Plaintiff and the other Class members paid for a
2 Product that is not as advertised by Defendant. Further, Defendant failed to disclose a material
3 fact (that the Products contain an artificial preservative) of which they had exclusive knowledge.
4 While Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by
5 its false misrepresentations and material omissions. As a result, Defendant’s conduct is “unfair,”
6 as it offended an established public policy. There were reasonably available alternatives to
7 further Defendant’s legitimate business interests, other than the conduct described herein.

8 61. Defendant committed “fraudulent” business acts or practices by making the
9 representations of material fact regarding the Products set forth herein. Defendant’s business
10 practices as alleged are “fraudulent” under the UCL because they are likely to deceive customers
11 into believing the Products actually contain no preservatives.

12 62. Plaintiff and the other members of the Class have in fact been deceived as a result
13 of their reliance on Defendant’s material representations and omissions. This reliance has caused
14 harm to Plaintiff and the other members of the Class, each of whom purchased Defendant’s
15 Products. Plaintiff and the other Class members have suffered injury in fact and lost money as a
16 result of purchasing the Products and Defendant’s unlawful, unfair, and fraudulent practices.

17 63. Defendant’s wrongful business practices and violations of the UCL are ongoing.

18 64. Plaintiff and the Class seek pre-judgment interest as a direct and proximate result
19 of Defendant’s unfair and fraudulent business conduct. The amount on which interest is to be
20 calculated is a sum certain and capable of calculation, and Plaintiff and the Class seek interest
21 in an amount according to proof.

22 65. Unless restrained and enjoined, Defendant will continue to engage in the above-
23 described conduct. Accordingly, injunctive relief is appropriate. Pursuant to California Business
24 & Professions Code section 17203, Plaintiff, individually and on behalf of the Class, seeks (1)
25 restitution from Defendant of all money obtained from Plaintiff and the other Class members as
26 a result of unfair competition; (2) an injunction prohibiting Defendant from continuing such
27 practices in the State of California that do not comply with California law; and (3) all other relief
28

1 this Court deems appropriate, consistent with California Business & Professions Code section
2 17203.

3 **THIRD CLAIM FOR RELIEF**

4 **Breach of Express Warranty**

5 66. Plaintiff realleges and incorporates by reference all allegations contained in this
6 complaint, as though fully set forth herein.

7 67. Plaintiff brings this claim for breach of express warranty individually and on
8 behalf of the Class against Defendant.

9 68. As the manufacturer, marketer, distributor, and seller of the Products, Defendant
10 issued an express warranty by representing to consumers at the point of purchase that the
11 Products contain “No Artificial Preservatives.”

12 69. Plaintiff and the Class reasonably relied on Defendant’s misrepresentations,
13 descriptions and specifications regarding the Products, including the representation that the
14 Products contain “No Artificial Preservatives.”

15 70. Defendant’s representations were part of the description of the goods and the
16 bargain upon which the goods were offered for sale and purchased by Plaintiff and Members of
17 the Class.

18 71. In fact, the Products do not conform to Defendant’s representations because the
19 Products contain an artificial preservative ingredient called citric acid. By falsely representing
20 the Products in this way, Defendant breached express warranties.

21 72. Plaintiff relied on Defendant’s (the manufacturer) representations on the
22 Products’ labels and advertising materials which provide the basis for an express warranty under
23 California law.

24 73. As a direct and proximate result of Defendant’s breach, Plaintiff and Members
25 of the Class were injured because they: (1) paid money for the Products that were not what
26 Defendant represented; (2) were deprived of the benefit of the bargain because the Products
27 they purchased were different than Defendant advertised; and (3) were deprived of the benefit
28 of the bargain because the Products they purchased had less value than if Defendant’s
representations about the characteristics of the Products were truthful. Had Defendant not

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1 breached the express warranty by making the false representations alleged herein, Plaintiff and
2 Class Members would not have purchased the Products or would not have paid as much as they
3 did for them.

4 **REQUEST FOR RELIEF**

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

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

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

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

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

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

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

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

23 **JURY DEMAND**


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

25 Dated: February 28, 2024

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By:



27

CRAIG STRAUB

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Attorney for Plaintiff and the Proposed Class

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Civil Code Section 1780(d) Affidavit

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. This declaration is made pursuant to § 1780(d) of the California Consumers Legal Remedies Act. Defendant has done, and is doing, business in California, including in this county. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 28, 2024 at San Diego, California.

By: /s/ Craig W. Straub

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CVS Health Gummy Supplements Falsely Advertised as Containing 'No Artificial Preservatives,' Class Action Alleges](#)
