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

RENEE YOUNG and JOYCETTE GOODWIN,
 individually and on behalf of all others similarly
 situated,

Plaintiffs,

v.

NEUROBRANDS, LLC, a Delaware limited
 liability company;

Defendant.

Case No:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Renee Young and Joycette Goodwin (collectively, “Plaintiffs”), hereby bring this
2 Action against Defendant Neurobrands, LLC (“Defendant”), alleging that certain products
3 manufactured, packaged, labeled, advertised, distributed and sold by Defendant are misbranded and
4 falsely advertised and otherwise violates consumer protection laws, and upon information and belief
5 and investigation of counsel alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action under the Class Action Fairness Act
8 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Defendant is a citizen of a state different from that of the
9 Plaintiffs, the putative class size is greater than 100 persons, and the amount in controversy in the
10 aggregate for the putative Class exceeds the sum or value of \$5 million exclusive of interest and costs.

11 2. This Court has both general and specific personal jurisdiction over the Defendant
12 because Defendant has conducted and continues to conduct substantial business in the State of
13 California and Defendant’s principal place of business is located in the State of California, County of
14 Los Angeles.

15 3. This Court has specific personal jurisdiction arising from Defendant’s decision to
16 advertise and sell the Products in California. Defendant has sufficient minimum contacts with this State
17 and sufficiently avails itself to the markets of this State through its manufacture, promotion, sales, and
18 marketing of the Products to consumers within the State to render the exercise of jurisdiction by this
19 Court reasonable.

20 4. Venue is proper in this Court because Defendant conducts substantial business in this
21 District. Plaintiff Young also purchased the Product within this District.

22 **NATURE OF THE ACTION**

23 5. This is a consumer class action for violations of warranty, negligent and intentional
24 misrepresentations/omissions and consumer protection laws, with a nationwide and California class for
25 violation of consumer protection laws.

26 6. Defendant manufactures, distributes, advertises, markets and sells a variety of
27 purportedly natural fruit flavored products known as the Neuro beverage products, including, without
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1 limitation, the neuroSONIC Energy Refreshed superfruit infusion, neuroBLISS white raspberry, and the
2 neuroPROTEIN watermelon mint products (collectively, the “Products”).

3 7. The labeling of the Products is false and misleading and the Products are thus misbranded
4 under consumer protection laws. Specifically, the Products are labeled as if they are flavored only with
5 natural ingredients when they in fact contain an undisclosed artificial flavor, malic acid, in violation of
6 state and federal law.

7 8. Defendant’s packaging, labeling, and advertising scheme is intended to give consumers
8 the impression that they are buying a premium, all-natural product with only natural flavoring
9 ingredients instead of a product that contains artificial chemicals and that is artificially flavored.

10 9. Plaintiffs, who were deceived by Defendant’s unlawful conduct and purchased the
11 Products in California, bring this action on their own behalf and on behalf of consumers to remedy
12 Defendant’s unlawful actions.

13 10. On behalf of the Class as defined herein, Plaintiffs seek an Order compelling Defendant
14 to, among other things: (1) cease packaging, distributing, advertising and selling the Neuro beverage
15 products in violation of U.S. FDA regulations and California consumer protection laws and state
16 common laws; (2) re-label or recall all existing deceptively packaged Neuro beverage products; (3)
17 conduct a corrective advertising campaign to inform consumers fully; (4) award Plaintiffs and other
18 Class members restitution, actual damages, and punitive damages; and (5) pay all costs of suit, expenses,
19 and attorneys’ fees.

20 **PARTIES**

21 11. Plaintiff Renee Young is a citizen of the State of California and resides in Windsor,
22 California.

23 12. Plaintiff Joycette Goodwin is a citizen of the State of California and resides in Torrance,
24 California.

25 13. Plaintiffs purchased the neuroSONIC Energy Refreshed superfruit infusion, neuroBLISS
26 white raspberry, and the neuroPROTEIN watermelon mint products for personal consumption several
27 times during the last three years in the State of California.

1 14. Plaintiffs are informed and believe, and upon such information and belief allege, that
2 Defendant Neurobrands, LLC is a Delaware limited liability company with its principal place of
3 business located in Sherman Oaks, California.

4 15. Plaintiffs are informed and believe, and upon such information and belief allege, that
5 Defendant, at all times relevant, conducted business in the State of California and within this District.

6 **FACTUAL BACKGROUND**

7 **Defendant Does Not Disclose that the Products Are Artificially Flavored.**

8 16. Defendant’s labeling and advertising scheme is deliberately intended to give consumers
9 the false impression that the Products are composed only of natural flavors, including, in the case of the
10 neuroSONIC Energy Refreshed superfruit infusion product purchased by Plaintiffs, “natural flavors”
11 and “no artificial colors or flavors.”

12 17. The image below is a reproduction of the front label of the neuroSONIC Energy
13 Refreshed superfruit infusion product.



1 18. As depicted, the neuroSONIC Energy Refreshed superfruit infusion product's front label
2 prominently displays a "natural flavors" designation with the notation "no artificial colors or flavors."
3 Defendant painstakingly and intentionally designed this product label and the other labels for its
4 Products to deceive consumers into believing that there are no artificial ingredients, including artificial
5 flavoring agents or artificial chemicals contained in the products.

6 19. All of the Products, however, contain a synthetic chemical flavoring compound
7 identified as "malic acid." Specifically, the neuroSONIC Energy Refreshed superfruit infusion
8 product's back label states that the ingredients include: "Ingredients: reverse osmosis filtered water,
9 crystalline fructose, natural flavors, reduced sugar fruit extracts (acai, pomegranate, blueberry), caffeine,
10 L-theanine (L-TeaActive®), citric acid, *malic acid*, fruit & vegetable juice (for color), sodium benzoate
11 & potassium sorbate (to preserve freshness), sucralose, alpha GPC, pyridoxine HCL, ergocalciferol,
12 cyanocobalamin." (Emphasis added).

13 20. This "malic acid" is an inexpensive synthetic chemical used in processed food products
14 to make the taste like tangy fresh fruits – like blueberries, lemons, mangos, or cherries, and in the
15 Products Plaintiffs purchased, like the "superfruit" flavors advertised.

16 21. Under these circumstances, the labels of the Neuro Products violate California and
17 federal statutes and state common law in multiple respects.

18 22. First, because each of the Products contains additional flavoring ingredients that simulate
19 and reinforce the characterizing flavor, the front label is required by law to disclose those additional
20 flavors rather than misleadingly suggest that the product is flavored only by natural fruit juices.
21 (California Health & Safety Code § 109875 *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.)¹

22 23. Second, the Products' ingredient lists violate federal and state law because they identify,
23 misleadingly, the malic acid flavoring only as the general "malic acid" instead of using the specific,
24 non-generic name of the ingredient. (*See* 21 C.F.R. § 101.4(a)(1).)

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26 ¹ California's Sherman Food, Drug and Cosmetic Act, California Health & Safety Code § 109875 *et*
27 *seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food Drug and
28 Cosmetic Act. An act or omission that would violate an FDCA regulation necessarily violates
California's Sherman Law. (Health & Safety Code, § 110100.) Regulatory citations in the text are to
California's Sherman Law and reference the corresponding federal regulation for convenience.

1 24. Even more deceptive, however, is the fact that the Products, rather than being flavored
2 only with natural juices and flavors as the labels suggest, contain an undisclosed artificial flavor made
3 from petrochemicals. Defendant conceals this from consumers.

4 25. There is a different, naturally-occurring form of malic acid found in some fruits and
5 vegetables. Defendant does not use this type of malic acid; it instead adds a synthetic industrial chemical
6 called d-l malic acid,² in the form of a racemic mixture of d- and l-isomers, to flavor the Products and
7 make them taste like fresh fruit.

8 26. This type of “malic acid” is not naturally-occurring but is in fact manufactured in
9 petrochemical plants from benzene or butane – components of gasoline and lighter fluid, respectively –
10 through a series of chemical reactions, some of which involve highly toxic chemical precursors and
11 byproducts.

12 27. Both the natural and unnatural forms of malic acid are considered “GRAS” (generally
13 recognized as safe) for use as flavorings in foods marketed to adults³; the d-malic acid form, however,
14 has never been extensively studied for its health effects in human beings. Both forms confer a “tart,
15 fruity” flavor to food products.⁴

16 28. Defendant uses this artificial petrochemical, d-l malic acid, in its Products but pretends
17 otherwise, conflating the natural and artificial flavorings and deceiving consumers.

18 29. Because they contain artificial flavor, both federal and state law require the Products to
19 display both front- and back-label disclosures to inform consumer that they are artificially flavored. (21
20 C.F.R. § 101.22.)

21 30. These Products have neither front-label nor back-label disclosures. Defendant
22 intentionally designed these Product labels without the required disclosure of “Artificial Flavoring” on
23 the front or back of the label for the purpose of deceiving consumers into believing that there are no
24 artificial ingredients, artificial flavoring agents or artificial chemicals contained in the Products. It is

25 ² D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

26 ³ The d-l form of malic acid, the one used by Defendant, is forbidden for use in baby foods out of health
27 concerns if consumed by infants.

28 ⁴ <https://thechemco.com/chemical/malic-acid/> (last visited September 26, 2018).

1 currently unknown whether the Products are also contaminated with precursor chemicals used in the
2 manufacture of d-1 malic acid.

3 31. California law, incorporating and identically mirroring U.S. Food, Drug and Cosmetic
4 Act regulations by reference, requires that a food's label accurately describe the nature of the food
5 product and its characterizing flavors. (21 C.F.R. § 102.5(a).)

6 32. Under FDA regulations, a recognizable primary flavor identified on the front label of a
7 food product is referred to as a "characterizing flavor." (21 C.F.R. § 101.22.)

8 33. FDA regulations and California law establish that if "the label, labeling, or advertising
9 of a food makes any direct or indirect representations with respect to the primary recognizable flavors
10 by word, vignette, e.g., description of a fruit, or other means" then "such flavor shall be considered the
11 characterizing flavor." (California's Sherman Law, incorporating 21 C.F.R. § 101.22(i).)

12 34. "[W]atermelon Mint" and "natural flavors" are primary recognizable flavors identified
13 on the neuroPROTEIN beverage products' front labels. These are characterizing flavors under
14 California and federal regulations.

15 35. If a product's characterizing flavor is not created exclusively by the characterizing flavor
16 ingredient, the product's front label must state that the product's flavor was simulated or reinforced with
17 either or both of natural or artificial flavorings. If any artificial flavor is present which "simulates,
18 resembles or reinforces" the characterizing flavor, the food must be prominently labeled as "Artificially
19 Flavored." (California's Sherman Law, incorporating 21 C.F.R. § 101.22(i)(3), (4).)

20 36. A food product's label also must include a statement of the "presence or absence of any
21 characterizing ingredient(s) or component(s) ... when the presence or absence of such ingredient(s) or
22 component(s) in the food has a material bearing on price or consumer acceptance ... and consumers
23 may otherwise be misled about the presence or absence of the ingredient(s) or component(s) in the
24 food." (California's Sherman Law, incorporating 21 C.F.R. § 102.5(c).) Such statements must be in
25 boldface print on the front display panel and of sufficient size for an average consumer to notice. (*Id.*)

26 37. The synthetic d-1 malic acid in the Products simulates, resembles, and reinforces the
27 characterizing fruit flavors for the Products. Under these regulations, Defendant was required to place
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1 prominently on the Products' front labels a notice sufficient to allow California consumers to understand
2 that the Products contained artificial flavorings.

3 38. Defendant failed to do so, deceiving consumers and violating California law, federal law,
4 and corresponding state common laws.

5 39. Accordingly, Plaintiffs and the Class were unaware that the Products contained artificial
6 flavoring when they purchased them.

7 40. When purchasing the Products, Plaintiffs and Class Members were seeking products of
8 particular qualities that were flavored only with the natural ingredients claimed on the label and which
9 did not contain artificial flavoring.

10 41. Plaintiffs are not alone in these purchasing preferences. As reported in Forbes Magazine,
11 88% of consumers polled recently indicated they would pay more for foods perceived as natural or
12 healthy. "All demographics [of consumers] – from Generation Z to Baby Boomers – say they would
13 pay more" for such products, specifically including foods with no artificial flavors.⁵ Forty-one percent
14 (41%) of consumers rated the absence of artificial flavors in food products as "Very Important," and
15 eighty percent (80%) of North American consumers are willing to pay a premium for foods with no
16 artificial ingredients.⁶

17 42. John Compton, the CEO of a beverage manufacturer, spoke to investors at the Morgan
18 Stanley Consumer & Retail Conference, stating: "We have talked extensively to consumers about this
19 idea, and they come back and tell us the number one motivation for purchase is products that claim to
20 be natural." Defendant's labeling and advertising reflect these consumer preferences – not by making
21 the Products solely with natural ingredients, but instead by concealing the fact that the Products are
22 artificially flavored.

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24 _____
25 ⁵ *Consumers Want Healthy Foods - And Will Pay More For Them*"; Forbes Magazine, February 15,
26 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; (last visited September 26, 2018).

27 ⁶ The Nielsen Company, Global Health and Wellness Survey, "Healthy Eating Habits Around the
28 World," 2015; <https://www.nielsen.com/content/dam/niensenglobal/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>; (last visited September 26, 2018)

1 43. California’s Health & Safety Code states that “[a]ny food is misbranded if it bears or
2 contains any artificial flavoring, artificial coloring, or chemical preservative, unless its labelling states
3 that fact.” (California Health & Safety Code, § 110740.)

4 44. California law requires Defendant to include sufficient notice on the Products’ labels to
5 alert California consumers that the Products are artificially flavored. Defendant failed to do so.
6 Accordingly, Defendant’s Products were misbranded and illegal to distribute or sell in California.
7 (California Health & Safety Code, §§ 110740, 110760, 110765.)

8 45. Because the Products violated California law, they were misbranded when offered for
9 sale in California.

10 46. Plaintiffs and the Class lost money as a result of Defendant’s conduct because they
11 purchased Products that contained undisclosed artificial flavors and were illegal to sell.

12 **Plaintiffs’ Purchase of the Neurobrand Beverage Products**

13 47. Plaintiff Renee Young purchased the neuroPROTEIN watermelon mint products in
14 Windsor, California during the Class Period defined herein.

15 48. Plaintiff Joycette Goodwin purchased the neuroSONIC superfruit infusion,
16 neuroPROTEIN watermelon mint, and neuroBLISS white raspberry products in Torrance, California
17 during the Class Period defined herein.

18 49. Plaintiff Renee Young’s most recent purchase was in July 2016 at Wal-Mart located at
19 6650 Hembree Lane, Windsor, CA 95492.

20 50. Plaintiff Joycette Goodwin’s most recent purchase was in July 2018 at Wal-Mart located
21 at 19503 Normandie Avenue, Torrance, CA 90501.

22 51. Plaintiffs subsequently discovered Defendant’s unlawful acts as described herein, when
23 they learned that the Neurobrand beverage Products’ characterizing flavors were deceptively created or
24 reinforced using artificial flavoring even though Defendant failed to disclose that fact on the Neurobrand
25 labels.

26 52. Plaintiffs were deceived by and relied upon the Products’ deceptive labeling, and
27 specifically the omission of the legally-required notice that it contained artificial flavorings. Plaintiffs
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1 purchased the Neurobrand Products believing it was naturally flavored, based on the Products' deceptive
2 labelling and failure to disclose that it was artificially flavored.

3 53. Plaintiffs, as reasonable consumers, are not required to subject consumer food products
4 to laboratory analysis, to scrutinize the back of the label to discover that the product's front label is false
5 and misleading, or to search the label for information that federal regulations require be displayed
6 prominently on the front – and, in fact, under state law are entitled to rely on statements that Defendant
7 deliberately places on the Neurobrand products' labelling. Defendant, but not Plaintiffs, knew or should
8 have known that this labelling was in violation of federal regulations and state law.

9 54. Because Plaintiffs reasonably assumed that the Neurobrand Products would be free of
10 artificial flavoring, based on the Products' labels, when it was not, they did not receive the benefit of
11 their purchase. Instead of receiving the benefit of products free of artificial flavoring, they received
12 Products that were unlawfully labeled to deceive the consumer into believing that they were exclusively
13 naturally flavored and contained no artificial flavoring, in violation of federal and state labelling
14 regulations.

15 55. Plaintiffs would not have purchased the Products in the absence of Defendant's
16 misrepresentations and omissions. Had Defendant not violated California law, Plaintiffs would not have
17 been injured.

18 56. The Neurobrand beverage products were worth less than what Plaintiffs paid for it and
19 Class members would not have paid as much as they have for the Products absent Defendant's false and
20 misleading statements and omissions.

21 57. Plaintiffs and the Class therefore lost money as a result of Defendant's unlawful
22 behavior. Plaintiffs and the Class altered their position to their detriment and suffered loss in an amount
23 equal to the amounts they paid for the Products.

24 58. Plaintiffs intend to, seek to, and will purchase the neuroSONIC Energy Refreshed
25 superfruit infusion, neuroprotein watermelon mint, and neuroBLISS white raspberry products again
26 when they can do so with the assurance that the Products' labels, which indicates that the Products are
27 naturally flavored, is lawful and consistent with the Products' ingredients.

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CLASS ACTION ALLEGATIONS

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2 59. Plaintiffs bring this action on behalf of themselves and all others similarly situated
3 pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

4 60. The Nationwide Class is defined as follows:

5 All U.S. citizens who purchased the Products in their respective state of citizenship on
6 or after January 1, 2012 and until the Class is certified, for personal use and not for resale,
7 excluding Defendant and Defendant’s officers, directors, employees, agents and
8 affiliates, and the Court and its staff.

9 61. The California Class is defined as follows:

10 All California citizens who made retail purchases of the Products in California on or after
11 January 1, 2012 and until the Class is certified, for personal use and not for resale,
12 excluding Defendant and Defendant’s officers, directors, employees, agents and
13 affiliates, and the Court and its staff.

14 62. During the Class Period, the Products unlawfully contained the undisclosed artificial
15 flavors d-malic acid or d-l malic acid and were otherwise improperly labeled. Defendant failed to label
16 the Products as required by California law.

17 63. During the Class Period, Class members purchased the misbranded Products, paying a
18 price premium for those Products compared to similar products lawfully labeled.

19 64. The proposed Classes meet all criteria for a class action, including numerosity,
20 commonality, typicality, predominance, superiority, and adequacy of representation.

21 65. This action has been brought and may properly be maintained as a class action against
22 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiffs at
23 this time, Plaintiffs are informed and believe that there are hundreds of thousands of Members in the
24 Class. The Members of the Class are so numerous that joinder of all Members is impracticable and the
25 disposition of their claims in a class action rather than in individual actions will benefit the parties and
26 the courts.

27 66. The proposed Classes satisfy typicality. Plaintiffs’ claims are typical of and are not
28 antagonistic to the claims of other Class members. Plaintiffs and the Class members all purchased the

1 Products, were deceived by the false and deceptive labeling, and lost money as a result, purchasing
2 Products that were illegal to sell in California.

3 67. The proposed Class satisfies superiority. A class action is superior to any other means
4 for adjudication of the Class members' claims because each Class member's claim is modest, based on
5 the Products' retail purchase prices which are generally under \$5.00 per unit. It would be impractical
6 for individual Class members to bring individual lawsuits to vindicate their claims.

7 68. Because Defendant's misrepresentations were made on the label of the Products, all
8 Class members including Plaintiffs were exposed to and continue to be exposed to the omissions and
9 affirmative misrepresentations. If this action is not brought as a class action, Defendant can continue to
10 deceive consumers and violate California law with impunity.

11 69. The proposed Class representative satisfies adequacy of representation. Plaintiffs are an
12 adequate representative of the Class as they seek relief for the Class, their interests do not conflict with
13 the interests of the Class members, and they have no interests antagonistic to those of other Class
14 members. Plaintiffs have retained counsel competent in the prosecution of consumer fraud and class
15 action litigation.

16 70. The proposed Classes satisfy commonality and predominance. There is a well-defined
17 community of interest in questions of law and fact common to the Class, and these predominate over
18 any individual questions affecting individual Class members in this action.

19 71. Questions of law and fact common to Plaintiffs and the Class include:

20 a. Whether Defendant failed to disclose the presence of the artificial flavoring ingredient
21 d-l malic acid in the Product;

22 b. Whether Defendant's labeling omissions and representations constituted false
23 advertising under California law;

24 c. Whether Defendant's conduct constituted a violation of California's Unfair Competition
25 Law;

26 d. Whether Defendant's conduct constituted a violation of California's Consumer Legal
27 Remedies Act;

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1 e. Whether Defendant's label statements claiming solely natural flavorings was an
2 affirmative representation of the Product's composition and conveyed an express warranty;

3 f. Whether Defendant's conduct constitutes a breach of implied warranties under
4 California's Commercial Code;

5 g. Whether the statute of limitations should be tolled on behalf of the Class;

6 h. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages,
7 attorney fees and costs of suit, and injunctive relief; and

8 i. Whether members of the Class are entitled to any such further relief as the Court deems
9 appropriate.

10 72. Plaintiffs will fairly and adequately protect the interests of the Class, have no interests
11 that are incompatible with the interests of the Class, and have retained counsel competent and
12 experienced in class litigation.

13 73. Defendant has acted on grounds applicable to the entire Class, making final injunctive
14 relief or declaratory relief appropriate for the Class as a whole.

15 74. Class treatment is therefore appropriate under Federal Rule of Civil Procedure 23.

16 75. Class damages will be adduced at trial through expert testimony and other competent
17 evidence.

18 76. California law holds that the price-premium consumers paid for the falsely-advertised
19 Products, as a percentage of the Products' retail prices, is a proper measure of Class damages.

20 77. Food-industry consumer research is consistent and readily supports such estimates of
21 that price-premium, as consumers quantitatively report that they seek out, value, and are willing to pay
22 a premium for food products with no artificial flavors.

23 78. On information and belief, based on publicly-available information, Plaintiffs allege that
24 the total amount in controversy exclusive of fees, costs, and interest, based on the estimated price
25 premium and Product revenues for sales to the Class in California during the proposed Class Period,
26 exceeds \$5 million.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FRAUD BY OMISSION

CAL. CIV. CODE §§ 1709-1710

and the common law of all states

(on behalf of the Nationwide Class and the California Class)

79. Plaintiffs re-allege and incorporate by reference the allegations made elsewhere in the Complaint as if set forth in full herein.

80. Plaintiffs bring this claim for fraud by omission pursuant to California Civil Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of fraud are substantially similar from state to state, thus making nationwide class certification appropriate.

81. Defendant actively concealed material facts, in whole or in part, with the intent to induce Plaintiffs and members of the Class to purchase the Products. Specifically, Defendant actively concealed the truth about the Products by not disclosing the existence of artificial flavoring ingredients on the front label of the Products as is required by California and federal law.

82. Plaintiffs and the Class were unaware of these omitted material facts and would not have purchased the Products, or would have paid less for the Products, if they had known of the concealed facts.

83. Plaintiffs and the Class suffered injuries that were proximately caused by Defendant's active concealments and omissions of material facts.

84. Defendant's fraudulent concealments and omissions were a substantial factor in causing the harm suffered by Plaintiffs and the Class members as they would not have purchased the products at all if all material facts were properly disclosed.

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SECOND CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

CAL. CIV. CODE §§ 1709-1710

and the common law of all states

(on behalf of the Nationwide Class and the California Class)

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6 85. Plaintiffs re-allege and incorporate by reference the allegations made elsewhere in the
7 Complaint as if set forth in full herein.

8 86. Plaintiffs bring this claim for negligent misrepresentation pursuant to California Civil
9 Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of negligent
10 misrepresentation are substantially similar from state to state, thus making nationwide class
11 certification appropriate.

12 87. Defendant had a duty to disclose to Plaintiffs and the Class members the existence of
13 artificial flavoring ingredients on the front labels of the Products pursuant to California and federal
14 law. Defendant was in a superior position than Plaintiffs and the Class members such that reliance by
15 Plaintiffs and the Class members was justified. Defendant possessed the skills and expertise to know
16 the type of information that would influence a consumer’s purchasing decision.

17 88. During the applicable Class period, Defendant negligently or carelessly misrepresented,
18 omitted, and concealed from consumers material facts regarding the products, including the existence
19 of artificial flavoring ingredients.

20 89. Defendant was careless in ascertaining the truth of their representations in that it knew
21 or should have known that Plaintiffs and the Class members would not have realized the true existence
22 of artificial flavoring ingredients in the Products.

23 90. Plaintiffs and the Class members were unaware of the falsity of Defendant’s
24 misrepresentations and omissions and, as a result, justifiably relied on them when making the decision
25 to purchase the Products.

26 91. Plaintiffs and the Class members would not have purchased the Products, or would have
27 paid less for the Products, if the true facts had been known.
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THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT

CAL. CIV. CODE §§ 1750, *et seq.*

(on behalf of the California Class)

92. Plaintiffs re-allege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

93. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable commercial practices in connection with the sale of any goods or services to consumers.

94. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code § 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

95. Defendant’s failure to label the Products in compliance with federal and state labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial practice.

96. Defendant’s conduct violates the CLRA, including but not limited to, the following provisions:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

97. As a result of Defendant’s violations, Plaintiffs and the Class suffered ascertainable losses in the form of the price premiums they paid for the deceptively labeled and marketed Products, which they would not have paid had these Products been labeled truthfully, and in the form of the reduced value of the Products purchased compared to the Products as labeled and advertised.

1 98. On or about September 25, 2018, prior to filing this action, Plaintiffs sent a CLRA notice
2 letter to Defendant which complies with California Civil Code § 1782(a). Plaintiffs sent Defendant,
3 individually and on behalf of the proposed Class, a letter via Certified Mail, advising Defendant that it
4 is in violation of the CLRA and demanding that it cease and desist from such violations and make full
5 restitution by refunding the monies received therefrom.

6 99. Wherefore, Plaintiffs seeks injunctive relief for Defendant’s violations of the CLRA. If
7 Defendant fails to take the corrective action detailed in Plaintiffs’ CLRA letter within thirty days of the
8 date of the letter, then Plaintiffs will seek leave to amend their complaint to add a claim for damages
9 under the CLRA.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW, (UNLAWFUL PRONG)**

12 **CAL. BUS. & PROF. CODE §§ 17200, et seq.**

13 **(on behalf of the California Class)**

14 100. Plaintiffs re-allege and incorporate by reference each and every allegation contained
15 elsewhere in this Complaint as if fully set forth herein.

16 101. Section 17200 of the California Business & Professions Code (“Unfair Competition
17 Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent” business practice. Section 17200
18 specifically prohibits any “unlawful . . . business act or practice.”

19 102. The UCL borrows violations of other laws and statutes and considers those violations
20 also to constitute violations of California law.

21 103. Defendant’s practices as described herein were at all times during the Class Period and
22 continue to be unlawful under, *inter alia*, FDA regulations and California’s Sherman Law.

23 104. Among other violations, Defendant’s conduct in unlawfully packaging and labeling and
24 distributing the Product in commerce in California violated U.S. FDA and California packaging and
25 labeling regulations.

26 105. The Products’ front labels fail to disclose that they contain synthetic artificial flavoring
27 and are not flavored with and do not contain any or all of the natural fruits named on the labels, in
28 violation of 21 C.F.R. § 101.22 and California’s Sherman Law.

1 106. The “neuroPROTEIN watermelon mint” Product, for example, contains the synthetic
2 dl-malic acid flavoring ingredient and does not contain any watermelon juice.

3 107. The dl-malic acid is a synthetic flavoring material which creates, simulates, or reinforces
4 the characterizing “Watermelon” flavor of the Product.

5 108. The dl-malic acid in the neurobrand Products are not derived from any natural material
6 as defined in the applicable state regulations and is therefore, by law, an artificial flavoring.

7 109. Defendant fails to inform consumers of the presence of artificial flavors in the Products
8 on the front label as required by law.

9 110. Defendant’s packaging, labeling, advertising, and marketing of high-sugar juice
10 beverages are intentionally designed to give consumers the impression that they are buying an all-
11 natural product instead of a product that contains artificial flavors and large amounts of added sugar,
12 and are therefore likely to deceive reasonable consumers.

13 111. Defendant’s conduct further violates other applicable California and federal regulations
14 as alleged herein.

15 112. Defendant’s practices are therefore unlawful under Section 17200 *et seq.* of the
16 California Civil Code.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE UNFAIR COMPETITION LAW (UNFAIR PRONG)**

19 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

20 **(on behalf of the California Class)**

21 113. Plaintiffs re-allege and incorporate by reference each and every allegation contained
22 elsewhere in this Complaint as if fully set forth herein.

23 114. Section 17200 of the California Business & Professions Code (“Unfair Competition
24 Law” or “UCL”) prohibits any “unfair . . . business act or practice.” Defendant’s practices violate the
25 Unfair Competition Law “unfair” prong as well.

26 115. Defendant’s practices as described herein are “unfair” within the meaning of the
27 California Unfair Competition Law because the conduct is unethical and injurious to California
28 residents and the utility of the conduct to Defendant does not outweigh the gravity of the harm to

1 consumers.

2 116. While Defendant's decision to label the Products deceptively and in violation of
3 California law may have some utility to Defendant in that it allows Defendant to sell the Products to
4 consumers who otherwise would not purchase an artificially-flavored food product at the premium
5 retail price, or at all, if it were labeled correctly, and to realize higher profit margins than if they
6 formulated or labeled the Products lawfully, this utility is small and far outweighed by the gravity of
7 the harm inflicted on California consumers.

8 117. Defendant's conduct with respect to the labeling, advertising, and sale of Defendant's
9 high-sugar juice beverages was also unfair to consumers because it allows Defendant to sell the
10 Products to consumers who otherwise would not purchase a product high in added sugars that
11 contributes to excessive sugar consumption. The consumer injury was substantial, not outweighed by
12 benefits to consumers or competition, and not one that consumers themselves could reasonably have
13 avoided.

14 118. Defendant's conduct also injures competing food product manufacturers, distributors,
15 and sellers, that do not engage in the same unfair and unethical behavior.

16 119. Moreover, Defendant's practices violate public policy expressed by specific
17 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False Advertising
18 Law, and the FDA regulations cited herein.

19 120. Plaintiffs' purchases and all Class members' purchases of the Products all took place in
20 California.

21 121. Defendant labeled the Products in violation of federal regulations and California law
22 requiring truth in labeling.

23 122. Defendant consciously failed to disclose material facts to Plaintiffs and the Class in
24 Defendant's advertising and marketing of the Products.

25 123. Defendant's conduct is unconscionable because, among other reasons, it violates 21
26 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to include:

27 A statement of artificial flavoring . . . [which] shall be placed on the food or on its
28 container or wrapper, or on any two or all three of these, as may be necessary to render

1 such a statement likely to be read by the ordinary person under customary conditions of
2 purchase and use of such food.

3 124. Defendant's conduct is also "unconscionable" because it violates, *inter alia*, 21 C.F.R.
4 § 101.22, which requires all food products for which artificial flavoring provides a characterizing flavor
5 to disclose this fact prominently on the product's front label.

6 125. Defendant intended that Plaintiffs and the Class rely on Defendant's acts and omissions
7 to induce them to purchase the Products.

8 126. Had Defendant disclosed all material information regarding the Products, Plaintiffs and
9 the Class would not have purchased the Products or would only have been willing to pay less for the
10 Products than they did.

11 127. Plaintiffs suffered injury in fact and lost money or property as a result of Defendant's
12 deceptive advertising: they were denied the benefit of the bargain when they purchased the Products
13 based on Defendant's violation of the applicable laws and regulations, and purchased the Products in
14 favor of competitors' products, which are less expensive, contain no artificial flavoring, or are lawfully
15 labeled.

16 128. The acts, omissions, and practices of Defendant detailed herein proximately caused
17 Plaintiffs and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, the
18 price premium of monies spent to purchase the Products they otherwise would not have, and they are
19 entitled to recover such damages, together with appropriate penalties, including restitution, damages,
20 attorneys' fees and costs of suit.

21 129. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading advertising."
22 For the reasons set forth above, Defendant engaged in unfair, deceptive, untrue and misleading
23 advertising in violation of California Business & Professions Code § 17200.

24 130. Pursuant to California Business & Professions Code § 17203, Plaintiffs seek an order
25 requiring Defendant to immediately cease such acts of unlawful, unfair, and fraudulent business
26 practices and requiring Defendant to return to the Class the amount of money improperly collected.

SIXTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW

CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

(on behalf of the California Class)

131. Plaintiffs re-allege and incorporate by reference each and every allegation contained elsewhere in this Complaint as if fully set forth herein.

132. Defendant made and distributed, in California and in interstate commerce, Products that unlawfully fail to disclose the presence of artificial flavoring as required by federal and state food labeling regulations.

133. The Products’ labeling and advertising in California presents the Products as if they were solely naturally-flavored and contain the natural fruit(s) shown on the labels.

134. Under California’s False Advertising Law (“FAL”), Business and Professions Code § 17500 *et seq.*,

“It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property . . . to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device . . . any statement, concerning that real or personal property . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. & Prof. Code § 17500.

135. Defendant’s labeling and advertising statements on the Products’ labels and in advertising and marketing materials are “advertising device[s]” under the FAL.

136. Defendant’s labeling and advertising statements, which communicated to consumers that the Products contain the identified natural fruit(s) and concealed the fact that they contain synthetic artificial flavor, were untrue and misleading, and Defendant at a minimum by the exercise of reasonable care should have known those actions were false or misleading.

137. Defendant’s labeling and advertising for Products as natural fruit juice beverages which

1 actually contain substantial amounts of added sugar is deceptive in light of the strong evidence that
2 excessive sugar consumption greatly increases risk of chronic disease.

3 138. Defendant's conduct violated California's False Advertising Law.

4 **SEVENTH CAUSE OF ACTION**

5 **BREACH OF EXPRESS WARRANTIES**

6 **CAL. COMM. CODE § 2313**

7 **(on behalf of the California Class and all states with substantially similar laws)**

8 139. Plaintiffs re-allege and incorporate by reference each and every allegation contained
9 elsewhere in this Complaint as if fully set forth herein.

10 140. The Products' front label representations misleadingly suggest that the Products are
11 flavored only with natural fruits such as watermelon or raspberries and contain no artificial flavors.

12 141. Defendant's front label statement of contents, for example, "Watermelon Mint", was an
13 affirmative representation of the Product's composition creating an express warranty.

14 142. These promises became part of the basis of the bargain between the parties and thus
15 constituted an express warranty, which Defendant breached: The Products are artificially flavored.

16 143. Defendant sold the goods to Plaintiffs and the other Class members who bought the
17 goods from Defendant.

18 144. Plaintiffs and the Class did not receive goods as warranted by Defendant.

19 145. Within a reasonable amount of time after Plaintiffs discovered that the Products
20 contained synthetic flavorings, Plaintiffs notified Defendant of such breach.

21 146. As a proximate result of this breach of warranty by Defendant, Plaintiffs and the Class
22 have been damaged in an amount to be determined at trial.

23 **EIGHT CAUSE OF ACTION**

24 **BREACH OF IMPLIED WARRANTIES**

25 **CAL. COMM. CODE § 2314**

26 **(on behalf of the California Class and all states with substantially similar laws)**

27 147. Plaintiffs re-allege and incorporate the allegations made elsewhere in the Complaint as
28 if set forth in full herein.

1 148. Defendant's label representations also created implied warranties that the product was
2 suitable for a particular purpose, specifically as an exclusively naturally-flavored food product
3 containing the advertised fruit juice(s). Defendant breached this warranty.

4 149. The Products' front labels misleadingly imply that they are flavored only with the
5 natural ingredients comprising the characterizing flavors.

6 150. The Products also made representations that the products are natural and healthy and
7 not filled with added sugars.

8 151. As alleged in detail above, at the time of purchase Defendant had reason to know that
9 Plaintiffs, as well as all members of the Class, intended to use the Products as naturally-flavored food
10 products.

11 152. This became part of the basis of the bargain between the parties.

12 153. Based on that implied warranty, Defendant sold the goods to Plaintiffs and other Class
13 members who bought the goods from Defendant.

14 154. At the time of purchase, Defendant knew or had reason to know that Plaintiffs and the
15 Class members were relying on Defendant's skill and judgment to select or furnish a product that was
16 suitable for this particular purpose, and Plaintiffs and the Class justifiably relied on Defendant's skill
17 and judgment.

18 155. The Products were not suitable for this purpose.

19 156. Plaintiffs purchased the Products believing they had the qualities Plaintiffs sought,
20 based on the deceptive advertising and labeling, but the Products were actually unsatisfactory to
21 Plaintiffs for the reasons described herein.

22 157. The Products were not merchantable in California, as they were not of the same quality
23 as other products in the category generally acceptable in the trade.

24 158. The Products would not pass without objection in the trade when packaged with the
25 existing labels, because the Products were misbranded and illegal to sell in California. Cal. Comm.
26 Code 2314(2)(a).

27 159. The Products also were not acceptable commercially and breached the implied warranty
28 because they were not adequately packaged and labeled as required. Cal. Comm. Code 2314(2)(e).

1 160. The Products also were not acceptable commercially and breached the implied warranty
2 because they did not conform to the promises or affirmations of fact made on the container or label,
3 Cal. Comm. Code 2314(2)(f), and other grounds as set forth in Commercial Code section 2314(2).

4 161. By offering the Products for sale and distributing the Products in California, Defendant
5 also warranted that the Products were not misbranded and were legal to purchase in California. Because
6 the Products were misbranded in several regards and were therefore illegal to sell or offer for sale in
7 California, Defendant breached this warranty as well.

8 162. As a result of this breach, Plaintiffs and the other California consumers in the Class did
9 not receive goods as impliedly warranted by Defendant.

10 163. Within a reasonable amount of time after the Plaintiffs discovered that the Products
11 breached these warranties, Plaintiffs notified Defendant of such breach.

12 164. As a proximate result of this breach of warranty, Plaintiffs and other California
13 consumers have been damaged in an amount to be determined at trial.

14 165. As a result, Plaintiffs, the Class, and the general public are entitled to injunctive and
15 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was
16 unjustly enriched.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the general
19 public, pray for judgment against Defendant as follows:

- 20 A. An order confirming that this action is properly maintainable as a class action as defined
21 above;
- 22 B. An order appointing Plaintiffs as class representatives and The Law Office of Ronald
23 A. Marron as counsel for the Class;
- 24 C. An order requiring Defendant to bear the cost of Class notice;
- 25 D. An order declaring that the conduct complained of herein violates the CLRA;
- 26 E. An order declaring that the conduct complained of herein violates the UCL;
- 27 F. An order declaring that the conduct complained of herein violates the FAL;
- 28 G. An order declaring that the conduct complained of herein breached express warranties,

1 implied warranties, or both;

2 H. An order requiring Defendant to disgorge any benefits received from Plaintiffs and any
3 unjust enrichment realized as a result of the improper and misleading labeling,
4 advertising, and marketing of the Products;

5 I. An order requiring Defendant to pay restitution and damages to Plaintiffs and Class
6 members so that they may be restored any money which was acquired by means of any
7 unfair, deceptive, unconscionable or negligent acts;

8 J. An award of punitive damages in an amount to be proven at trial;

9 K. An order enjoining Defendant's deceptive and unfair practices;

10 L. An order requiring Defendant to conduct corrective advertising;

11 M. An award of pre-judgment and post-judgment interest;

12 N. An award of attorney fees and costs; and

13 O. Such other and further relief as this Court may deem just, equitable, or proper.

14 **JURY DEMAND**

15 Plaintiffs demands a trial by jury on all claims for damages. Plaintiffs do not seek a jury trial for
16 claims sounding in equity.

17 DATED: September 26, 2018

Respectfully Submitted,

18
19 /s/ Ronald A. Marron

20 Ronald A. Marron

21 **LAW OFFICES OF RONALD A. MARRON**

22 Ronald A. Marron

23 *ron@consumersadvocates.com*

Michael T. Houchin

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***Counsel for Plaintiffs and the Proposed
Class***

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JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Renee Young and Joycette Goodwin

(b) County of Residence of First Listed Plaintiff Sonoma
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Ronald A. Marron
 651 Arroyo Drive, San Diego, CA 92103 (619) 696-9006

DEFENDANTS
 Neurobrands, LLC

County of Residence of First Listed Defendant Los Angeles
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|---|---|---|--|---|
| 110 Insurance | PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice | PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability | 625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions | 422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent—Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC § 7609 | 375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes |
| 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise | CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities—Employment 446 Amer. w/Disabilities—Other 448 Education | HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee—Conditions of Confinement | | | |
| REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property | | | | | |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation—Transfer 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. sec. 1332(d)
 Brief description of cause:
 Diversity case brought under the Class Action Fairness Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 500,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
 (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/26/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Neurobrands Misleadingly Claims Beverages are Flavored with Only Natural Ingredients](#)
