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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PRESTON JONES, on behalf of himself,
all others similarly situated, and the general
public,

Plaintiff,

vs.

NUTIVA, INC.,

Defendant.

Case No. 3:16-CV-00711

**DECLARATION OF MATTHEW R.
ORR IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL**

Complaint Filed: January 8, 2016
Trial Date: None Set

1 I, Matthew R. Orr, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and
3 before this Court and a shareholder with the law firm Call & Jensen, APC, the attorneys
4 for Defendant, Nutiva, Inc. ("Defendant"). I have personal knowledge of the following
5 matters and, if called to testify concerning them, could do so competently.

6 2. Attached as Exhibit 1 to the Notice of Removal is a true and correct copy
7 of the Complaint filed January 8, 2016, in the California Superior Court action.

8 3. Attached as Exhibit 2 to the Notice of Removal is a true and correct copy
9 of the executed Notice and Acknowledgement, reflecting a return date of January 15,
10 2016.

11 4. Attached as Exhibit 3 to the Notice of Removal is a true and correct copy
12 of the Answer to Complaint filed February 10, 2016, in the California Superior Court
13 action.

14 I declare under penalty of perjury under the laws of the United States of America
15 and the State of California that the foregoing is true and correct. This declaration was
16 executed on February 11, 2016, at Newport Beach, California.

17
18 /s/ Matthew R. Orr
19 Matthew R. Orr
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CALL &
JENSEN
EST. 1981

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JUDGE JOHN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: DEPUTY CLERK WEBER

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PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 17

Counsel for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

C16 - 00014

PRESTON JONES, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiff,

v.

NUTIVA, INC.,

Defendant.

Case No:

CLASS ACTION

COMPLAINT FOR:

**VIOLATIONS OF CAL. BUS. &
PROF. CODE §§17200 *et seq.*; CAL.
BUS. & PROF. CODE §§17500 *et seq.*;
CAL. CIV. CODE §§ 1750 *et seq.*; and
BREACH OF EXPRESS & IMPLIED
WARRANTIES.**

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Preston Jones, on behalf of himself, all others similarly situated, and the
2 general public, by and through his undersigned counsel, hereby sues defendant Nutiva, Inc.,
3 and alleges the following upon his own knowledge, or where he lacks personal knowledge,
4 upon information and belief, including through the investigation of his counsel.

5 **INTRODUCTION**

6 1. Nutiva misleadingly markets various coconut oil products as both inherently
7 healthy, and as a healthy alternative to butter and other oils, despite that coconut oil is actually
8 inherently *unhealthy*, and a *less healthy* option to these alternatives. Nutiva's coconut oil
9 labeling and advertising also violates several federal and California state food regulations.

10 2. Plaintiff relied upon Nutiva's misleading and unlawful claims when purchasing
11 Nutiva coconut oil, and was damaged as a result. He brings this action on behalf of himself,
12 all others similarly situated, and the general public, alleging violations of the California
13 Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), Unfair
14 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* ("UCL"), and False Advertising
15 Law, *id.* §§ 17500 *et seq.* ("FAL"). Plaintiff further alleges that Nutiva breached express and
16 implied warranties under state law.

17 3. Plaintiff seeks an order, *inter alia*, compelling Nutiva to (a) cease marketing its
18 coconut oil products using the misleading and unlawful tactics complained of herein, (b)
19 destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising
20 campaign, (d) restore the amounts by which it has been unjustly enriched, and (e) pay
21 restitution, damages, and punitive damages as allowed by law.

22 **PARTIES**

23 4. Plaintiff Preston Jones is a resident of Virginia Beach, Virginia.

24 5. Defendant Nutiva, Inc. is a California Corporation with its principal place of
25 business at 213 W. Cutting Boulevard, Richmond, California 94804.

JURISDICTION & VENUE

6. The California Superior Court has jurisdiction over this matter as a result of defendant's violations of the California Business and Professions Code, California Civil Code, and California common law principles.

7. The aggregate monetary damages and restitution sought herein exceed the minimum jurisdictional limits for the Superior Court and will be established at trial, according to proof.

8. The California Superior Court also has jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law.

9. The Court has personal jurisdiction over Nutiva because it is headquartered in California, has its principal place of business in California, and has purposely availed itself of the benefits and privileges of conducting business activities within California.

10. Venue is proper in Contra Costa County because Nutiva resides in Richmond, California, and a substantial part of the events or omissions giving rise to the claims occurred in Richmond.

FACTS

I. Saturated Fat Consumption Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

A. The Role of Cholesterol in the Human Body

11. Cholesterol is a waxy, fat-like substance found in the body's cell walls. The body uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL cholesterol, and high density lipoproteins, or HDL cholesterol.

12. LDL cholesterol is sometimes called "bad" cholesterol because it carries cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

13. HDL cholesterol is sometimes called “good” cholesterol because it takes excess cholesterol away from tissues to the liver, where it is removed from the body.

B. High Total and LDL Blood Cholesterol Levels are Associated with Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke

14. Total and LDL cholesterol blood levels are two of the most important risk factors in predicting coronary heart disease (CHD), with higher total and LDL cholesterol levels associated with increased risk of CHD.¹

15. High LDL cholesterol levels are dangerous because “[e]levated blood LDL cholesterol increases atherosclerotic lipid accumulation in blood vessels.”² That is, if there is too much cholesterol in the blood, some of the excess may become trapped along artery walls. Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque narrows vessels and makes them less flexible, a condition called atherosclerosis.

16. This process can happen to the coronary arteries in the heart and restricts the provision of oxygen and nutrients to the heart, causing chest pain or angina.

17. When atherosclerosis affects the coronary arteries, the condition is called coronary heart disease.

18. Cholesterol-rich plaques can also burst, causing a blood clot to form over the plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or debilitating heart attack or stroke.

¹ See, e.g., Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) (“Heart attack and stroke risk can be largely predicted based on total and LDL cholesterol levels in people” because “as cholesterol levels increase so does one’s risk of symptomatic and deadly heart disease.”), available at <http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html>.

² USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011) [hereinafter, “USDA, Review of the Evidence”], available at http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf.

1 19. Thus, “[f]or the health of your heart, lowering your LDL cholesterol is the single
2 most important thing to do.”³

3 **C. Saturated Fat Consumption Causes Increased Total and LDL Blood**
4 **Cholesterol Levels, Increasing the Risk of CHD and Stroke**

5 20. The consumption of saturated fat negatively affects blood cholesterol levels
6 because the body reacts to saturated fat by producing cholesterol. More specifically, saturated
7 fat consumption causes coronary heart disease by, among other things, “increas[ing] total
8 cholesterol and low density lipoprotein (LDL) cholesterol.”⁴

9 21. Moreover, “[t]here is a positive linear trend between total saturated fatty acid
10 intake and total and low density lipoprotein (LDL) cholesterol concentration and increased
11 risk of coronary heart disease (CHD).”⁵

12 22. This linear relationship between saturated fat intake and risk of coronary heart
13 disease is well established and accepted in the scientific community.

14 23. For example, the Institute of Medicine’s Dietary Guidelines Advisory
15 Committee “concluded there is strong evidence that dietary [saturated fatty acids] SFA
16 increase serum total and LDL cholesterol and are associated with increased risk of
17 [cardiovascular disease] CVD.”⁶

18 24. In addition, “[s]everal hundred studies have been conducted to assess the effect
19 of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake
20

21 ³ Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, available at
22 [https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-](https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html)
23 [for-you.html](https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html).

24 ⁴ USDA Review of the Evidence, *supra* n.2.

25 ⁵ Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat,*
26 *Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter “IOM, Dietary
27 Reference Intakes”], available at http://www.nap.edu/catalog.php?record_id=10490.

28 ⁶ USDA Review of the Evidence, *supra* n.2.

1 of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL)
2 cholesterol concentrations.”⁷

3 25. Importantly, there is “no safe level” of saturated fat intake because “any
4 incremental increase in saturated fatty acid intake increases CHD risk.”⁸

5 26. For this reason, while the Institute of Medicine sets tolerable upper intake levels
6 (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse
7 health effects to almost all individuals in the general population, “[a] UL is not set for
8 saturated fatty acids.”⁹

9 27. In addition, “[t]here is no evidence to indicate that saturated fatty acids are
10 essential in the diet or have a beneficial role in the prevention of chronic diseases.”¹⁰

11 28. Further, “[i]t is generally accepted that a reduction in the intake of SFA
12 [saturated fatty acids] will lower TC [total cholesterol] and LDL-cholesterol.”¹¹

13 29. For these reasons, “reduction in SFA intake has been a key component of dietary
14 recommendations to reduce risk of CVD.”¹²

15 30. The Institute of Medicine’s Dietary Guidelines for Americans, for example,
16 “recommend reducing SFA intake to less than 10 percent of calories.”¹³ And “lowering the
17 percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD.”¹⁴

18
19 ⁷ IOM, Dietary Reference Intakes, *supra* n.5, at 481.

20 ⁸ *Id.* at 422.

21 ⁹ *Id.*

22 ¹⁰ *Id.* at 460.

23 ¹¹ Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement*
24 *with unsaturated fats*, 85 Brit. J. Nutr. 583, 583 (2001) [hereinafter “Mendis, Coconut fat”].

25 ¹² USDA Review of the Evidence, *supra* n.2.

26 ¹³ *Id.*

27 ¹⁴ *Id.*

31. In short, consuming saturated fat increases the risk of CHD and stroke.¹⁵

D. In Contrast to Saturated Fat, the Consumption of Dietary Cholesterol has No Impact on Blood Cholesterol Levels

32. For many years, there has been a common misperception that dietary cholesterol affects blood cholesterol levels. According to the USDA and Department of Health and Human Services (DHHS), however, “available evidence shows no appreciable relationship between consumption of dietary cholesterol and serum cholesterol.”¹⁶

33. In fact, the USDA and DHHS have concluded that “Cholesterol is not a nutrient of concern for overconsumption.”¹⁷

34. In contrast, the USDA and DHHS state that “[s]trong and consistent evidence from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats, especially [polyunsaturated fats], significantly reduces total and LDL cholesterol.”¹⁸

35. Therefore, the USDA and DHHS specifically recommend replacing “tropical oils (e.g., palm, palm kernel, *and coconut oils*)” with “vegetable oils that are high in unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils).”¹⁹

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¹⁵ See Mendis, Coconut fat, *supra* n.11, at 583.

¹⁶ USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015) [hereinafter “USDA & DHHS, Dietary Guidelines”], *available at* <http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf>.

¹⁷ *Id.*

¹⁸ *Id.* Part D, Chapter 6, at 12.

¹⁹ *Id.* (emphasis added).

II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil Increases the Risk of Cardiovascular Heart Disease and Other Morbidity

36. Although it is well established that diets generally high in saturated fatty acids increase the risk of CHD,²⁰ several studies have specifically shown that consuming coconut oil—which is approximately 90 percent saturated fat—increases the risk of CHD and stroke.

37. For example, in 2001 the British Journal of Nutrition published a 62-week intervention study that examined the “effect of reducing saturated fat in the diet . . . on the serum lipoprotein profile of human subjects.”²¹ The study had two intervention phases. In Phase 1 (8 weeks), “the total fat subjects consumed was reduced from 31 to 25 % energy . . . by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake.”²² “At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in LDL and no significant change in HDL and triacylglycerol.”²³

38. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.²⁴ At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and an 11% mean reduction in LDL cholesterol.²⁵

39. The authors of the study noted that “[a] sustained reduction in blood cholesterol concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et al. 1994).” Further, “[i]n primary prevention, a reduction of cholesterol by 20% has produced

²⁰ See Mendis, Coconut fat, *supra* n.11, at 583.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 586.

a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and 22% less total mortality (Grundy, 1997).”²⁶

40. Based on these relationships, the researchers estimated that “the reduction in coronary morbidity and mortality brought about by the current dietary intervention would be of the order of about 6-8 %.”²⁷

41. Simply put, the results of the yearlong study showed that reducing coconut oil consumption “results in a lipid profile that is associated with a low cardiovascular risk.”²⁸

42. The detrimental health effects of consuming coconut oil are not limited to long-term consumption. To the contrary, a 2006 study published in the Journal of the American College of Cardiology found that consuming a single high-fat meal containing fat from coconut oil “reduces the anti-inflammatory potential of HDL and impairs arterial endothelial function.”²⁹ In the study, researchers examined the effect of consuming a single isocaloric meal that contained “1 g of fat/kg of body weight,” with “coconut oil (fatty acid composition: 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)” as the source of fat.³⁰ They found that consuming the coconut oil meal significantly “reduces the anti-inflammatory potential of HDL and impairs arterial endothelial function.”³¹ In contrast, when the fat from the same isocaloric meal came from “safflower oil (fatty acid composition: 75%

²⁶ *Id.* at 588.

²⁷ *Id.*

²⁸ *Id.* at 587.

²⁹ Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio. 715 (2006).

³⁰ *Id.*

³¹ *Id.*

polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat),” “the anti-inflammatory activity of HDL improve[d].”³²

43. Other studies have similarly demonstrated that coconut oil consumption negatively affects blood plasma markers when compared to other fats.

44. A 2011 study published in the American Journal of Clinical Nutrition found that consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular disease.³³

45. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and safflower oil found that coconut oil consumption had the worst effect on subjects’ blood lipid profiles.³⁴ The authors noted that “[o]f these fats, only CO [coconut oil] appears to consistently elevate plasma cholesterol when compared with other fats.”³⁵

46. Finally, in another study, researchers found that that subjects who consumed 30 percent of energy from fat, with 66.7% coming from coconut oil, had “increased serum cholesterol, LDL, and apo B.”³⁶ (Apo B is a protein involved in the metabolism of lipids and is the main protein constituent of VLDL (very low-density lipoproteins) and LDL. Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the

³² *Id.* at 715.

³³ P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0), or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and inflammatory markers in healthy Malaysian adults*, 94 Am. J. Clin. Nutr. 1451 (2011).

³⁴ Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat, coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

³⁵ *Id.*

³⁶ V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103 (Mar. 1996).

greater the risk of heart disease.) In sum, the study found that consuming coconut oil increased all three cholesterol markers, signifying an increased risk of cardiovascular disease.³⁷

III. Nutiva's Manufacture, Marketing, and Sale of Coconut Oil

A. Nutiva's History and Sale of Coconut Oil

47. Nutiva was founded in 1999 as a seller of hempseed-based food products.

48. In approximately early 2004, Nutiva began selling coconut oil, and has distributed, marketed, and sold various coconut oil products on a nationwide, and indeed international basis for at least the past several years. According to Nutiva's website, its products are sold in 20,000 retail stores, and are the "#1 selling Coconut Oil in North America."

49. Nutiva coconut oil products challenged in this lawsuit include at least the following, which are depicted below: (a) Organic Extra Virgin Coconut Oil, (b) Organic Virgin Coconut Oil, and (c) Refined Coconut Oil.



50. Nutiva "Extra Virgin" and "Virgin" Coconut Oil are in fact the identical product. Nutiva previously sold the product labeled as "Extra Virgin," but later revised the name to simply "Virgin Coconut Oil" in order to comply with certain regulations.

³⁷ *Id.*

51. As partially depicted below with respect to Nutiva Virgin Coconut Oil, Nutiva's coconut oil products are available in multiple sizes, ranging from 14 fluid ounces to 1 gallon, and sell for between approximately \$10 and \$73.



B. The Composition of Nutiva's Virgin Coconut Oil

52. The Nutrition Facts box and Ingredients list on Nutiva Virgin Coconut Oil, and Nutiva Extra Virgin Coconut Oil, respectively, are pictured below. Each 1 tablespoon (or 15mL) serving of Nutiva coconut oil (whether "Extra Virgin," "Virgin," or "Refined") contains 130 calories, all of which come from fat: in each 14-gram serving there are 14 grams of fat. Further, each 14-gram serving contains 13 grams of saturated fat. In other words, Nutiva's Coconut Oil is 100 percent fat, 93 percent of which is saturated fat.



C. Nutiva Markets its Coconut Oil Products with Misleading Health and Wellness Claims

53. Consumers are generally willing to pay more for foods they perceive as being healthy, or healthier than other alternatives. For instance, Nielsen’s 2015 Global Health & Wellness Survey found that “88% of those polled are willing to pay more for healthier foods.”³⁸

54. Nutiva is well aware of consumer preference for healthful foods, and therefore employs and has employed a strategic marketing campaign intended to convince consumers that its coconut oil products are “healthy,” despite that they are almost entirely composed of saturated fat.

55. More specifically, Nutiva’s health marketing strategy focuses on highlighting that the coconut oil products are “cholesterol-free” and contain some medium chain triglycerides.

1. The Nutiva Coconut Oil Labels Contain Misleading Health & Wellness Claims

56. Through statements placed directly on the labels of its coconut oil products, Nutiva markets and advertises the products as both inherently healthy, and as healthy alternatives to butter, even though the products’ total and saturated fat content render them both inherently unhealthy, and less healthy alternatives to butter. Moreover, Nutiva’s labeling claims are designed to conceal or distract consumers from noticing that its coconut oils are pure fat, almost all of which is unhealthy saturated fat.

57. For example, Nutiva prominently labels its coconut oil products with the phrase “NURTURE VITALITY,” and describes them as “SUPERFOOD[S],” which is a marketing

³⁸ Nancy Gagliardi, Forbes, Consumers Want Healthy Foods--And Will Pay More For Them (Feb. 18, 2015) (citing Neilson, 2015 Global Health & Wellness Survey, at 11 (Jan. 2015)).

term for “food[s] considered to be especially beneficial for health and well-being.”³⁹ These statements, which appear directly on the front of the products’ labels, taken individually and in context of the labels as a whole, are false and misleading because the products are actually unhealthy due to their high saturated fat content.

58. Nutiva further misleadingly labels the products as “one of the world’s most nourishing foods.” This claim, taken individually and in context of the labels as a whole, is false and misleading because the products are unhealthy due to their high saturated fat content.

59. Nutiva further claims, on the front of the products’ labels, that the product have “100% less cholesterol than butter.” This claim, taken individually and in context of the label as a whole, while perhaps literally true, misleadingly implies that the products are healthy, when they are not, and that the products are healthier or more nutritious than butter, which they are not, because while the high amount of saturated fat in the Nutiva coconut oils has a pernicious effect on blood total and LDL cholesterol levels, the consumption of the dietary cholesterol in butter has little or no such effect. This claim thus plays on the common misconception that dietary cholesterol negatively affects blood cholesterol levels.

60. Nutiva also labels the coconut oil products as “better than butter” and “a nutritious substitute in baking.” These claims misleadingly suggest that replacing butter with the Nutiva coconut oils is a healthy choice, when in reality, doing so would increase consumption of saturated fat and decrease consumption unsaturated fat,⁴⁰ resulting in increased total and LDL blood cholesterol levels, and despite that “[s]trong and consistent

³⁹ Oxford Online American English Dictionary, *available at* http://www.oxforddictionaries.com/us/definition/american_english/superfood.

⁴⁰ The USDA’s National Nutrient Database for Standard Reference lists a 14 gram serving of butter as being composed of 12 grams of fat, 7 grams of which are saturated, 3 of which are monounsaturated, and 0.5 of which are polyunsaturated. *See* USDA Agricultural Research Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001, Butter, salted, *available at* <http://ndb.nal.usda.gov/ndb/foods>.

evidence from RCTs and statistical modeling in prospective cohort studies shows that replacing SFA [saturated fatty acids] with PUFA [polyunsaturated fatty acids] reduces the risk of CVD events and coronary mortality.”⁴¹

61. These claims, taken individually and in context of the label as a whole, misleadingly imply the Nutiva coconut oil products are healthy, when they are not, and that the products are healthier or more nutritious than butter, which they are not.

62. In an attempt to reinforce these misleading health claims, Nutiva claims that the coconut oil products “contain[] 62% medium chain triglycerides (MCTs) along with lauric and caprylic acids.” This claim, taken individually and in context of the label as a whole, misleadingly implies that the Nutiva coconut oil products are healthy, when in fact they are not.

63. In sum, the totality of the Nutiva coconut oil product labels and packaging, an example of which is set forth below, conveys the concrete message to a reasonable consumer that the products are healthy, and a more healthful alternative to butter. Nutiva intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.



⁴¹ USDA & DHHS, Dietary Guidelines, *supra* n.16, Part D, Chapter 6, at 12.

2. The Nutiva Website Contains Misleading Health & Wellness Claims

64. The labels of Nutiva's coconut oil products direct consumers to Nutiva's website (www.nutiva.com), which Nutiva uses as a platform for its health marketing campaign.

65. When Nutiva first began selling coconut oil in approximately early 2004, as depicted below, its website claimed that its coconut oil is a "healthy fat," "one of the most healthy super foods in the world," and "a healthy substitute for shortening in baking, and a 'better than butter' replacement on bread and veggies."



Organic Extra-Virgin Coconut Oil

Enjoy this healthy fat with the creamy taste of the tropics. Why is it that baby formulas often include coconut oil as an ingredient? Because coconut is one of the most healthy super foods in the world. Ideal as a high-heat cooking oil, a healthy substitute for shortening in baking, and a "better-than-butter" replacement on bread and veggies.

Not all saturated fat is bad! Coconut oil is cholesterol- and trans fat free, and rich in medium-chain "good fats" that doctors recommend. We suggest three tablespoons of extra-virgin coconut oil a day. To learn more about coconut oil myths, nutrition, and more visit coconut info.

66. This version of the Nutiva website contained a variety of additional pages claiming that coconut oil is healthy, and disparaging health concerns about its consumption as "myths."

67. Today, Nutiva's website claims that "Nutiva's Organic Virgin Coconut Oil is quite beneficial to your body's health and well-being," and "is cholesterol-free and contains medium-chain good fats."⁴²

68. Nutiva further encourages consumers to consume extremely unhealthy amounts of its coconut oil products, claiming that "[h]ealth practitioners suggest three tablespoons of organic, extra-virgin coconut oil per day," which would result in the consumption of 42 grams of total fat, and 36 grams of saturated fat per day from the Nutiva coconut oil products alone.

⁴² <http://nutiva.com/company/faq/coconut-faq> (last visited Dec. 12, 2015).

69. Nutiva further claims that “[c]oconut oil makes a great replacement for less healthy alternatives like vegetable oils and shortening,” despite that most vegetable oils are composed primarily of healthier unsaturated fats.

70. A “Frequently Asked Questions” portion of Nutiva’s website answers the question, “I have heard that coconut oil is not good for you. Is this true?,” with the statement “This is commonly heard but not true. Nutiva’s Organic Virgin Coconut Oil is quite beneficial to your body’s health and well-being. It is cholesterol-free and contains medium-chain good fats and 50-55% Lauric Acid.”

71. Nutiva even suggests that consumers can “lose weight by using coconut oil” by referring consumers to an industry funded website that claiming that coconut oil “[p]romotes loss of excess weight by increasing metabolic rate” and “[h]elps prevent obesity and overweight problems.”

72. These and similar statements on the Nutiva website, the URL of which is expressly set forth on the Nutiva coconut oil product labels, are false and misleading because the Nutiva coconut oils are in fact unhealthy, contributing to increased risk of CHD and other mortality, due to their high saturated fat content.

IV. The Labeling of Nutiva’s Virgin Coconut Oil Violates California and Federal Law

A. Any Violation of Federal Food Labeling Statutes or Regulations is a Violation of California Law

73. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has adopted the federal food labeling requirements as its own, *see id.* § 110665 (“Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant thereto.”).

74. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes state regulations, such as the Sherman Law, that are “identical to the requirement[s]” of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

1 75. Because the Sherman Law's requirements are identical to the requirements of
 2 the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly
 3 authorized by the FDCA.

4 **B. The Nutiva Coconut Oil Products' False and Misleading Labeling Claims**
 5 **Render the Products Misbranded Under California and Federal Law**

6 76. Nutiva's deceptive statements described herein violate Cal. Health & Safety
 7 Code § 109875, and 21 U.S.C. § 343(a), which deem a food misbranded if its labeling is
 8 "false or misleading in any particular."

9 77. In addition, the labeling is misleading, and thus misbranded, because "it fails to
 10 reveal facts that are material in light of other representations." 21 C.F.R § 1.21.

11 **C. The Nutiva Coconut Oils are Misbranded Because They Make**
 12 **Unauthorized Nutrient Content Claims**

13 78. The Nutiva coconut oils are misbranded because their labels bear nutrient
 14 content claims even though the products do not meet the requirements to make such claims.

15 79. Under 21 U.S.C. § 343(r)(1)(A), a claim that characterizes the level of a nutrient
 16 which is of the type required to be in the labeling of the food must be made in accordance
 17 with a regulation promulgated by the Secretary (or, by delegation, FDA) authorizing the use
 18 of such a claim. *See also* Cal. Health & Safety Code § 110670 ("Any food is misbranded if
 19 its labeling does not conform with the requirements for nutrient content or health claims" set
 20 by federal law.).

21 80. Characterizing the level of a nutrient on food labels and labeling of a product
 22 without complying with the specific requirements pertaining to nutrient content claims for
 23 that nutrient renders the product misbranded under 21 U.S.C. § 343(r)(1)(A).

24 81. The Nutiva coconut oils (other than Nutiva's Refined Coconut Oil) are
 25 misbranded because they bear the claim "100% less cholesterol than butter," but do not meet
 26 the requirements for making this claim.

27 82. Under 21 C.F.R. § 101.62(d)(4)(ii), to bear the nutrient content claim "less
 28 cholesterol," a food must, among other things, contain less than 2 grams of saturated fat per

Reference Amount Customarily Consumed (RACC), *id.* § 101.62(d)(4)(ii)(C), and must disclose the level of total fat in a serving immediate proximity to such to the claim, *id.* § 101.62(d)(4)(ii)(D).

83. The RACC for oils, including the Nutiva coconut oils, is 1 tablespoon, or 15ml. 21 C.F.R. § 101.12(b) (Reference Amount Customarily Consumed for specific foods, “Fats and Oils: Butter, margarine, oil, shortening).

84. According to the products’ labels, they contain 14 grams of total fat and 13 grams of saturated fat per 1 tablespoon serving.

85. Further, the required disclosure statement regarding total fat is not present anywhere on the products’ labels.

86. Accordingly, the Nutiva coconut oil products do not meet the saturated fat requirement, instead containing a disqualifying amount of saturated fat, and do not make the mandatory total fat disclosure, making the products ineligible for a “less cholesterol” claim under 21 C.F.R. § 101.62(d)(4)(ii), and rendering them misbranded. 21 U.S.C. § 343(r)(1)(A). *See also* 21 C.F.R. § 101.62(f) (“Any label or labeling containing any statement concerning fat, fatty acids, or cholesterol that is not in conformity with this section shall be deemed to be misbranded.”).

87. In addition, the Nutiva coconut oil products are misbranded because their labels bear the “less cholesterol” nutrient content claim, but fails to bear the disclosure statement required by 21 C.F.R. § 101.13(h).

88. Like the less cholesterol claim, the phrases “0g Trans Fat” and “non-hydrogenated,” meet the definition of a nutrient content claim because they characterize the products’ level of trans fat, which is a nutrient of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

89. In addition, the products’ labels bear additional “implied” nutrient content claims because they displays statements suggesting the product may be useful in maintaining healthy dietary practices, and those statements are made in connection with claims or statements about nutrients. 21 C.F.R. § 101.13(b)(2).

90. Specifically, the Nutiva coconut oil labels bear the claims, among others that the products are “one of the world’s most nourishing foods,” “better than butter” and “a nutritious substitute in baking.” These statements are made in connection with the statements “100% less cholesterol than butter,” “0g Trans Fat,” and “non-hydrogenated.”

91. Under 21 C.F.R. § 101.13(h), a food that bears a nutrient content claim, express or implied, that contains more than 13 grams of total fat or 4 grams of saturated fat per serving, must also bear a disclosure statement on the label, immediately adjacent to the claim, referring the consumer to nutrition information for that nutrient, *e.g.*, “See nutrition information for total fat and saturated fat content.” 21 C.F.R. § 101.13(h)(1).

92. Despite that the Nutiva coconut oils contain 14 grams of total fat and 13 grams of saturated fat, the products fail to bear these mandatory disclosure statements which provide consumers with material nutrition information. Therefore, the products are misbranded.

V. Plaintiff’s Purchase, Reliance and Injury

93. Plaintiff Preston Jones has purchased Nutiva coconut oil products approximately two times. To the best of his recollection, plaintiff purchased Nutiva Virgin Coconut Oil in or around January 2013, from Heritage Natural Market located at 984 Laskin Road, in Virginia Beach, Virginia. Plaintiff believes he paid approximately \$13 to \$15 for a 15 ounce jar. Plaintiff believes he also purchased a 15 ounce jar of Nutiva Virgin Coconut Oil in or around February 2014 from the same Heritage Natural Market for approximately \$15.

94. When deciding to purchase Nutiva Virgin Coconut Oil, plaintiff read and relied on the following claims contained on Nutiva Virgin Coconut Oil’s label:

- a. “Nurture Vitality”
- b. “Organic Superfood”
- c. “100% less cholesterol than butter”
- d. “Coconut is one of the world’s most nourishing foods”
- e. “Contains 62% medium chain triglycerides (MCTs) along with lauric and caprylic acids”
- f. “is ‘better than butter’”

1 g. “A nutritious substitute in baking”

2 h. “0g trans fat” and “non-hydrogenated.”

3 95. Based on these representations, plaintiff believed Nutiva Virgin Coconut Oil
4 was healthy, healthier than butter, and would not raise or otherwise detriment his blood
5 cholesterol levels.

6 96. When purchasing Nutiva Virgin Coconut Oil, plaintiff was seeking a product
7 that had the qualities described on the product’s label, namely, a nourishing, nutritious
8 superfood that was better than butter, the consumption of which would not increase his risk
9 of CHD, stroke, and other morbidity.

10 97. These representations, however, were false and misleading, and had the
11 capacity, tendency, and likelihood to confuse or confound plaintiff and other consumers
12 acting reasonably (including the putative Class members) because, as described in detail
13 herein, the Nutiva coconut oils are not healthy, but instead their consumption increases the
14 risk of CHD, stroke, and other morbidity.

15 98. Plaintiff is not a nutritionist, food expert, or food scientist, but rather lay
16 consumer who did not have the specialized knowledge that Nutiva had regarding the nutrients
17 present in its coconut oils.

18 99. Plaintiff acted reasonably in relying on the health and wellness claims that
19 Nutiva intentionally placed on the Virgin Coconut Oil’s packaging with the intent to induce
20 average consumers into purchasing the product.

21 100. Nutiva coconut oils cost more than similar products without misleading labeling,
22 and/or would have cost less in the marketplace (i.e., would have demanded a lower price)
23 absent the false and misleading statements complained of herein.

24 101. Plaintiff paid more for Nutiva Virgin Coconut Oil, and would only have been
25 willing to pay less, or unwilling to purchase the product at all, absent the false and misleading
26 labeling complained of herein.

27 102. For these reasons, Nutiva Virgin Coconut Oil was worth less than what plaintiff
28 paid for it.

103. Instead of receiving a product that had actual healthful qualities, the products that plaintiff and the Class received were not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

104. Plaintiff would not have purchased Nutiva Virgin Coconut Oil if he knew the product was misbranded pursuant to California and FDA regulations, or that its claims were false and misleading.

105. Plaintiff lost money as a result of Nutiva's deceptive claims and practices in that he did not receive what they paid for when purchasing Nutiva Virgin Coconut Oil.

106. Plaintiff detrimentally altered his position and suffered damages in an amount equal to the amount he paid for the product.

107. The senior officers and directors of Nutiva allowed the Nutiva coconut oil products to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

CLASS ACTION ALLEGATIONS

108. California Code of Civil Procedure section 382 provides that "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

109. While reserving the right to redefine or amend the class definition prior to seeking class certification, plaintiff brings this suit as a class action pursuant to Cal. Code Civ. P. § 382 on behalf of himself and a Class of all persons in the United States who, on or after from January 7, 2011 (the "Class Period"), purchased, for personal or household use, and not for resale or distribution purposes, Nutiva Extra Virgin Coconut Oil, Nutiva Virgin Coconut Oil, or Nutiva Refined Coconut Oil (the "Class").

110. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class Members in a single action will provide substantial benefits to the parties and Court.

111. Questions of law and fact common to plaintiff and the Class include:

- a. whether Nutiva communicated a message regarding healthfulness of the Product through its packaging and advertising;
- b. whether that message was material, or likely to be material to a reasonable consumer;
- c. whether the challenged claims discussed above are false, misleading, or reasonably likely to deceive a reasonable consumer, because of the high saturated fat content of the Nutiva coconut oils;
- d. whether Nutiva's conduct violates public policy;
- e. whether Nutiva's conduct violates state or federal food statutes or regulations;
- f. the proper amount of damages, including punitive damages;
- g. the proper amount of restitution;
- h. the proper injunctive relief, including a corrective advertising campaign; and
- i. the proper amount of attorneys' fees.

112. These common questions of law and fact predominate over questions that affect only individual Class Members.

113. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Nutiva's conduct. Specifically, all Class Members, including plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the challenged products, and suffered economic injury because the products were and are misrepresented. Absent Nutiva's business practice of deceptively and unlawfully labeling its coconut oil products, plaintiff and Class Members would not have purchased the Nutiva coconut oil products.

114. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods.

115. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

116. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

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

118. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

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

120. The acts, omissions, misrepresentations, practices, and non-disclosures of Nutiva as alleged herein constitute business acts and practices.

Fraudulent

121. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

122. As set forth herein, Nutiva’s claims relating to its coconut oil products are likely to deceive reasonable consumers and the public.

Unlawful

123. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and

- The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

Unfair

124. Nutiva's conduct with respect to the labeling, advertising, and sale of its coconut oil products was and is unfair because Nutiva's conduct was and is immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

125. Nutiva's conduct with respect to the labeling, advertising, and sale of the coconut oil products was and is also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

126. Nutiva's conduct with respect to the labeling, advertising, and sale of the coconut oil products was and is also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

127. Nutiva profited from its sales of the falsely, deceptively, and unlawfully advertised products to unwary consumers.

128. Plaintiff and Class Members are likely to continue to be damaged by Nutiva's deceptive trade practices because Nutiva continues to disseminate misleading information. Thus, injunctive relief enjoining Nutiva's deceptive practices is proper.

129. Nutiva's conduct caused and continues to cause substantial injury to plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a result of Nutiva's unlawful conduct.

130. In accordance with Bus. & Prof. Code § 17203, plaintiff seeks an order enjoining Nutiva from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

131. Plaintiff, on behalf of himself and the Class, also seeks an order for restitution of all monies from the sale of Nutiva's coconut oils, which were unjustly acquired through acts of unlawful competition.

SECOND CAUSE OF ACTION

Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*

132. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

133. The FAL provides that "[i]t 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 or to perform services" to disseminate any statement "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.

134. It is also unlawful under the FAL to disseminate statements concerning property or services that are "untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." *Id.*

135. As alleged herein, the advertisements, labeling, policies, acts, and practices of Nutiva relating to its coconut oils misled consumers acting reasonably as to the healthfulness of the products.

136. Plaintiff suffered injury in fact as a result of Nutiva's actions as set forth herein because plaintiff purchased the Nutiva coconut oil in reliance on Nutiva's false and misleading marketing claims that the product, among other things, is healthy, healthier than butter, and does not negatively affect blood cholesterol levels.

137. Nutiva's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Nutiva has advertised its products in a manner that is untrue and misleading, which Nutiva knew or reasonably should have known, and omitted material information from its advertising.

138. Nutiva profited from its sales of the falsely and deceptively advertised coconut oil products to unwary consumers.

139. As a result, plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Nutiva was unjustly enriched.

140. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff, on behalf of himself and the Class, seeks an order enjoining Nutiva from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

THIRD CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

141. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

142. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

143. Nutiva's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of its products for personal, family, or household purposes by plaintiff and other members of the Class, and thereby violated and continue to violate at least the following sections of the CLRA:

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

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

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

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

144. Nutiva profited from its sales of the falsely, deceptively and unlawfully advertised coconut oil products to unwary consumers.

145. As a result, plaintiff and the Class have suffered harm, and therefore seek (a) actual damages in the amount of the total retail sales price of the Nutiva coconut oils sold throughout the Class Period to all Class Members, (b) punitive damages in an amount sufficient to deter and punish, (c) injunctive relief in the form of modified advertising and a corrective advertising plan, and (d) restitution.

146. Nutiva's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

147. Pursuant to California Civil Code § 1782, on October 22, 2015, plaintiff sent written notice to Nutiva of his claims, but Nutiva failed to remedy the violations within 30 days thereafter. Because Nutiva failed to implement remedial measures, plaintiff, on behalf of himself and the Class, seeks injunctive relief under Civil Code § 1782(d), as well as actual and punitive damages, including attorneys' fees.

148. In compliance with Cal. Civ. Code § 1780(d), Plaintiff's affidavit(s) of venue is filed concurrently herewith, attached to the Complaint.

FOURTH CAUSE OF ACTION

Breach of Express Warranties,

Cal. Com. Code § 2313(1)

149. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

150. Through the Nutiva coconut oil product labels, Nutiva made affirmations of fact or promises, and made descriptions of goods, that formed part of the basis of the bargain, in that plaintiff and the Class purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1). These affirmations include, *inter alia*, "Superfood," "Coconut is

one of the world's most nourishing foods," "is 'better than butter,'" and "A nutritious substitute in baking."

151. Nutiva breached its express warranties by selling products that are not healthy, not healthier than butter, and that negatively affects cholesterol levels increasing risk of CHD and stroke.

152. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiff and Class members paid for the Nutiva coconut oil products.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

153. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

154. Nutiva, through its acts and omissions set forth herein, in the sale, marketing and promotion of the Nutiva coconut oil products, made representations to plaintiff and the Class that, among other things, the product is healthy. Plaintiff and the Class bought the Nutiva coconut oil manufactured, advertised, and sold by Nutiva, as described herein.

155. Nutiva is a merchant with respect to the goods of this kind which were sold to plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an implied warranty that those goods were merchantable.

156. However, Nutiva breached that implied warranty in that Nutiva coconut oil products are not healthy, as set forth in detail herein.

157. As an actual and proximate result of Nutiva's conduct, plaintiff and the Class did not receive goods as impliedly warranted by Nutiva to be merchantable in that they did not conform to promises and affirmations made on the container or label of the goods.

158. Plaintiff and Class have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of the products' purchase price.

PRAYER FOR RELIEF

159. Wherefore, plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for judgment against Nutiva as to each and every cause of action, and the following remedies:

A. An Order declaring this action to be a proper class action and appointing undersigned counsel as class counsel;

B. An Order requiring Nutiva to bear the cost of class notice;

C. An Order compelling Nutiva to conduct a corrective advertising campaign;

D. An Order compelling Nutiva to destroy all misleading and deceptive advertising materials and product labels;

E. An Order requiring Nutiva to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

F. An Order requiring Nutiva to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, plus pre-and post-judgment interest thereon;

G. An Order requiring Nutiva to pay actual and punitive damages where permitted under law;

H. An award of attorneys' fees and costs; and

I. Any other and further relief that Court deems necessary, just, or proper.

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 7, 2016

/s/ Paul K. Joseph

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Attorneys for Plaintiff and the Proposed Class

TO (insert name of party being served): NUTIVA, INC.

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

FILED

2016 FEB 10 P 2:09

STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: A.J. GAMBOLE
DEPUTY CLERK

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA

11 PRESTON JONES, on behalf of himself, all
others similarly situated, and the general public,

12 Plaintiff,

13 vs.

14 NUTIVA, INC.,

15 Defendant.

Case No. C16-00014

Assigned for all purposes to:
Hon. Barry B. Goode, Department 17

ANSWER OF DEFENDANT NUTIVA, INC.
TO PLAINTIFF'S COMPLAINT

[DEMAND FOR JURY TRIAL]

Complaint Filed: January 8, 2016
Trial Date: None Set

21 Defendant Nutiva, Inc. ("Defendant") answering for itself alone and no others, in response to
22 Plaintiff Preston Jones' ("Plaintiff") Class Action Complaint for Violations of the Consumers Legal
23 Remedies Act (Civil Code §§ 1750 *et seq.*); Statutory Unfair Competition (Business and Professions
24 Code §§ 17200, *et seq.*; Statutory False Advertising (Business and Professions Code §§ 17500, *et seq.*;
25 and Breach of Express and Implied Warranties ("Complaint"), hereby answers the allegations of the
26 Complaint as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies, generally and specifically, conjunctively and disjunctively, each and every allegation of the Complaint, and each and every cause of action contained and asserted therein. Defendant further denies that it is or will be liable to Plaintiff in any sum whatsoever. Defendant further denies, generally and specifically, that Plaintiff has suffered damages in the amount alleged, or in any sum, or that Plaintiff is entitled to any relief at all, by reason of any wrongful act or omission or purported act or omission of Defendant. By alleging the defenses below, Defendant is not in any way agreeing or conceding that it has the burden of proof or persuasion on any of these issues.

FIRST SEPARATE AND ADDITIONAL DEFENSE

1. Defendant is informed and believes and on that basis alleges that the Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any relief whatsoever from Defendant.

SECOND SEPARATE AND ADDITIONAL DEFENSE

2. Defendant is informed and believes and on that basis alleges that Plaintiff's claims are barred by the applicable statutes of limitations, including, but not limited to, California Civil Code Section 1783 and Code of Civil Procedure Sections 337(1), 338(a), 338(d), 339, 340(1), 340(2), 340(3), and/or 343, and Business & Professions Code Section 17208.

THIRD SEPARATE AND ADDITIONAL DEFENSE

3. The Complaint and facts alleged therein fail to establish the necessary criteria for class certification.

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1 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

2 4. Defendant is informed and believes and on that basis alleges that, at all relevant times
3 herein, Plaintiff's alleged damages, which Defendant denies exist, were aggravated by the failure of
4 Plaintiff to use reasonable diligence to mitigate the same. Therefore, Plaintiff's recovery, if any,
5 should be barred or decreased by reason of his failure to mitigate alleged losses.

6
7 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

8 5. Defendant is informed and believes and on that basis alleges that any recovery herein
9 by Plaintiff would be inequitable and constitute unjust enrichment.

10
11 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

12 6. Defendant is informed and believes and on that basis alleges that the Complaint, and
13 each and every allegation contained therein, is barred because if Plaintiff were damaged, which
14 Defendant specifically denies, then the damages were caused in whole or in part by the acts or
15 omissions of others, whether individual, corporate, or otherwise, whether named or unnamed in the
16 Complaint, for whose conduct Defendant is not responsible.

17
18 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

19 7. Plaintiff and/or those he seeks to represent have no standing to initiate or maintain this
20 action, including without limitation the standing requirements under Business and Professions Code
21 §§ 17200 *et seq.*, and 17500 *et seq.*

22
23 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

24 8. Defendant's comments, statements, advertising, promotion, and/or conduct concerning
25 the manufacture, distribution, warning, labeling, advertising, and sale of the products identified in the
26 Complaint were never misleading, unlawful, fraudulent or unfair.

27 ///

28 ///

NINTH SEPARATE AND ADDITIONAL DEFENSE

9. The alleged deceptive statements were such that no reasonable person in the position of Plaintiff and/or the persons Plaintiff purports to represent would have been misled by Defendant's marketing and/or advertising material. Anecdotal evidence of confusion on Plaintiff's part will not suffice; rather, Plaintiff must show that a statistically significant percentage of the target audience was confused. Plaintiff has to show that confusion was probable and not just possible. (*Shvarts v. Budget Group*, 81 Cal.4th 1153 (2000); *Moore v. California State Bd Of Accountancy*, 4 Cal.4th 999 (1992)).

TENTH SEPARATE AND ADDITIONAL DEFENSE

10. Any alleged act or omission by Defendant concerning the manufacture, distribution, warning, labeling, advertising, and sale of the product identified in the Complaint at all times constituted puffery and was not unfair, unlawful, misleading, untrue, or deceptive.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

11. Plaintiff is not entitled to equitable relief because, among other reasons, he has adequate remedies at law.

TWELFTH SEPARATE AND ADDITIONAL DEFENSE

12. Defendant is entitled to any setoffs or reductions in liability from collateral sources available to Plaintiff. Defendant is entitled to a setoff for all payments made by any and all alleged joint tortfeasors. Defendant is entitled to a setoff of the value of services provided or funds already provided, if any.

THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE

13. The Complaint is precluded by actions and determinations of Federal and State regulatory agencies, including, without limitation, the Federal Trade Commission ("FTC") and Food and Drug Administration ("FDA"). The manufacture, distribution, labeling, advertising, and sale of the products referred to in the Complaint complied at all times with the applicable provisions of the

1 federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 300 *et seq.* and the Federal Trade Commission
 2 Act 15 U.S.C. §§ 41 *et seq.* Consequently, the Complaint is preempted by these Acts and Defendant's
 3 compliance with these acts constitutes a complete or partial defense to the allegations of the
 4 Complaint.

5
 6 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

7 14. The Complaint is precluded by the Doctrine of Federal Preemption.

8
 9 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

10 15. The Complaint is precluded by the Doctrine of Abstention.

11
 12 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 16. The Complaint is precluded based on the Doctrine of Primary Jurisdiction.

14
 15 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 17. Defendant's comments, statements, advertising, promotion, and/or conduct concerning
 17 the manufacture, distribution, labeling, advertising, and sale of the products identified in the
 18 Complaint never constituted any act prohibited by Business and Professions Code §§ 17200 *et seq.*
 19 and/or 17500 *et seq.*

20
 21 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

22 18. Defendant did not act with scienter, and thus did not violate Business and Professions
 23 Code §§ 17500 *et seq.*

24
 25 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

26 19. Plaintiff and/or those persons Plaintiff purports to represent received and in the future
 27 will receive all or substantially all of the benefit from the products identified in the Complaint that
 28 Plaintiff and/or those persons Plaintiff purports to represent hoped and intended they would receive.

1 To that extent, any damages that Plaintiff and/or those persons that Plaintiff purports to represent
2 might be entitled to recover from Defendant must be correspondingly reduced.

3 4 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

5 20. Any alleged act or omission by Defendant concerning the manufacture, distribution,
6 labeling, advertising, and sale of the product identified in the Complaint was at all times unintentional
7 and Defendant acted in good faith concerning the manufacture, distribution, labeling, advertising, and
8 sale of such products.

9 10 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

11 21. The manufacture, distribution, labeling, advertising, and sale of the products identified
12 in the Complaint had a reasonable basis.

13 14 **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

15 22. Any alleged acts or omissions by Defendant concerning the manufacture, distribution,
16 labeling, advertising, and sale of the products identified in the Complaint had reasonable business
17 justification.

18 19 **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

20 23. The benefit of any alleged acts or omissions by Defendant concerning the manufacture,
21 distribution, labeling, advertising, and sale of the products identified in the Complaint outweigh any
22 harm or damage alleged in the Complaint, and as such were not unfair. (*Motors Inc. v. Times-Mirror*
23 *Co.*, 102 Cal.App.3d 735, 740 (1980)).

24 25 **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

26 24. To the extent the class definition includes claims of non “Consumers” or claims that do
27 not involve “goods” or “services” (as those terms are defined under California Civil Code Section
28

1761), the CLRA does not apply to such claims, and therefore any such individuals have no claim under the CLRA.

TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE

25. Some or all of the conduct complained of is protected under the “safe harbor” provided under California Civil Code Section 1784.

TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE

26. Plaintiff has failed to adequately notify Defendant of the method, act, or practice declared unlawful under California Civil Code Section 1782.

TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE

27. Plaintiff’s causes of action are barred because Plaintiff did not reasonably or justifiably rely on the representations of Defendant.

TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE

28. Any alleged act or omission by Defendant concerning the manufacture, distribution, labeling, advertising, and sale of the products identified in the Complaint was never a deceptive practice under California Civil Code Section 1770.

TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE

29. Plaintiff fails to plead with the required particularity his claims for false advertising, unfair competition, and violations of the Consumers Legal Remedies Act. This failure has denied Defendant due process and proper notice of the specific claims and damages asserted against them.

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THIRTIETH SEPARATE AND ADDITIONAL DEFENSE

30. Defendant alleges that Plaintiff's claims for damages constitute an impermissible restriction on speech in violation of the California Constitution and the First Amendment to the United States Constitution.

THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE

31. Defendant alleges that the imposition of punitive and/or exemplary damages, if ever alleged or asserted in this case, would violate Defendant's rights to due process.

THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE

32. To the extent Plaintiff fails to demonstrate that every putative class member was damaged in violation of the law, any finding of liability on a class-wide basis would violate Defendant's rights under the due process clause of the United States Constitution and the California Constitution.

THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE

33. To the extent Plaintiff fails to demonstrate that every putative class member sustained cognizable monetary, personal and/or property damages as a result of Defendant's actions, any finding of liability on a class-wide basis would violate Defendant's rights under the due process of the United States Constitution and the California Constitution.

THIRTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE

34. Defendant is informed and believes and on that basis alleges that Defendant has not knowingly or intentionally waived any applicable affirmative defenses and reserve the right to assert and rely on such other applicable affirmative defenses as may become available or apparent during discovery proceedings. Defendant further reserves the right to amend its answer and/or affirmative defenses accordingly and/or to delete affirmative defenses that it determines are not applicable during the course of subsequent discovery.

THIRTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE

35. Plaintiff's causes of action are barred because at the time Defendant made the representations complained of, if any such representations were made, Defendant reasonably believed the representations were true.

THIRTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE

36. Plaintiff's causes of action are barred because Defendant did not know, and could not reasonably have been expected to know, that any statements made by them were false.

THIRTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE

37. Plaintiff's causes of action are barred because the representations complained of, if any such representations were made, were not material and did not induce Plaintiff to enter into the transaction.

THIRTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE

38. Plaintiff's causes of action are barred because the alleged representations made by Defendant, if any such representations were made, were not the proximate cause of Plaintiff's damages.

PRAYER

WHEREFORE, Defendant prays judgment as follows:

1. That Plaintiff take nothing by way of his Complaint;
2. That Judgment be rendered in favor of Defendant and against Plaintiff and that the Complaint be dismissed with prejudice;
3. That Defendant be awarded its costs and attorneys' fees incurred in the defense of this action;
4. For a jury trial on all issues so triable; and

5. For such other relief as this Court deems proper.

Dated: February 10, 2016

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
William P. Cole

By: 
Matthew R. Orr

Attorneys for Defendant Nutiva, Inc.

DEMAND FOR JURY TRIAL

Defendant Nutiva Inc. hereby demands a jury on all issues, claims, allegations, and/or causes of action raised or referred to in the Complaint by Plaintiff Preston Jones.

Dated: February 10, 2016

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
William P. Cole

By: 
Matthew R. Orr

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On February 10, 2016, I served the foregoing document described as **ANSWER OF DEFENDANT NUTIVA, INC. TO PLAINTIFF'S COMPLAINT** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

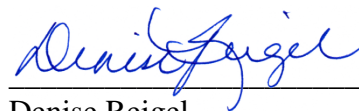
☒ (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of _____ the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on February 10, 2016, at Newport Beach,
3 California.

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