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Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SYNDI TRACTON on behalf of herself, all
others similarly situated, and the general
public,

Plaintiff,

v.

VIVA LABS, INC.,

Defendant.

Case No: '16CV2772 BTM KSC

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 FOR BREACH OF
EXPRESS & IMPLIED
WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiff Syndi Tracton on behalf of herself, all others similarly situated, and the
2 general public, by and through her undersigned counsel, hereby sues Viva Labs, Inc. (“Viva
3 Labs” or “defendant”), and alleges the following upon her own knowledge, or where she lacks
4 personal knowledge, upon information and belief, including the investigation of her counsel.

5 **INTRODUCTION**

6 1. Viva Labs misleadingly labels and markets its Organic Extra Virgin Coconut Oil
7 (“Coconut Oil”) as healthy, and as a healthy alternative to butter and other cooking oils,
8 despite that it is actually inherently *unhealthy* and a *less healthy* alternative.

9 2. Plaintiff relied upon Viva Labs’ misleading claims when purchasing the Coconut
10 Oil and was damaged as a result. She brings this action challenging Viva Labs’ labeling and
11 marketing claims relating to the Coconut Oil on behalf of herself, all other similarly-situated
12 consumers in California, 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 Viva Labs breached express
16 and implied warranties under state law.

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

22 **JURISDICTION & VENUE**

23 4. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2)
24 (The Class Action Fairness Act) because the matter in controversy exceeds the sum or value
25 of \$5,000,000, exclusive of interest and costs, and because more than two-thirds of the
26 members of the Class reside in states other than the state of which defendant is a citizen.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because plaintiff resides in and suffered injuries as a result of defendant's acts in this District, many of the acts and transactions giving rise to this action occurred in this District, and defendant (1) is authorized to conduct business in this District, (2) has intentionally availed itself of the laws and markets of this District through the promotion, marketing, distribution, and sale of its products in this District, and (3) is subject to personal jurisdiction in this District.

7. Plaintiff Syndi Tracton is a resident of San Diego, California.

8. Defendant Viva Labs, Inc. is a New York Corporation with its principal place of business at 228 Park Avenue South, Suite 2400, New York, NY 10003.

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

9. 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.

10. LDL cholesterol is sometimes called “bad” cholesterol because it carries cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

11. 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

12. 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

13. 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.

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

15. 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 16. 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 17. 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 CHD, among other things, “increas[ing] total cholesterol and low
8 density lipoprotein (LDL) cholesterol.”⁴

9 18. 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 19. This linear relationship between saturated fat intake and risk of coronary heart
13 disease is well established and accepted in the scientific community.

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

18 21. 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-for-you.html>.

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

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

25 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 22. 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 23. 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 24. 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 25. Further, “[i]t is generally accepted that a reduction in the intake of SFA will
12 lower TC [total cholesterol] and LDL-cholesterol.”¹¹

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

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

21 ⁸ *Id.* at 422.

22 ⁹ *Id.*

23 ¹⁰ *Id.* at 460.

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

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

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

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

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

29. For many years, there has been a common misperception among consumers 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

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

31. 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

¹³ *Id.*

¹⁴ *Id.*

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.

32. 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

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

33. 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.

34. 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

35. 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

¹⁹ *Id.* (emphasis added).

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

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

1 At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and
2 an 11% mean reduction in LDL cholesterol.²⁵

3 36. The authors of the study noted that “[a] sustained reduction in blood cholesterol
4 concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et
5 al. 1994).” Further, “[i]n primary prevention, a reduction of cholesterol by 20% has produced
6 a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and
7 22% less total mortality (Grundy, 1997).”²⁶

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

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

13 39. The detrimental health effects of consuming coconut oil are not limited to long-
14 term consumption. To the contrary, a 2006 study published in the Journal of the American
15 College of Cardiology found that consuming a single high-fat meal containing fat from
16 coconut oil “reduces the anti-inflammatory potential of HDL and impairs arterial endothelial
17 function.”²⁹ In the study, researchers examined the effect of consuming a single isocaloric
18 meal that contained “1 g of fat/kg of body weight,” with “coconut oil (fatty acid composition:
19 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)” as the source of
20

21 ²⁵ *Id.* at 586.

22 ²⁶ *Id.* at 588.

23 ²⁷ *Id.*

24 ²⁸ *Id.* at 587.

25
26 ²⁹ Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory*
27 *Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio.
28 715 (2006).

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

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

41. 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

42. 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

43. 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

³⁰ *Id.*

³¹ *Id.*

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.*

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 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. Viva Labs’ Coconut Oil

A. Viva Labs’ Sale of the Coconut Oil

44. During at least the last several years, Viva Labs has distributed, marketed, and sold the Coconut Oil on a nationwide basis, including throughout California.

45. The Coconut Oil is available in a variety of sizes including at least 16-, 32-, and 54-fluid-ounce tubs.

B. The Composition of Viva Labs’ Coconut Oil

46. The Supplement Facts box and ingredient list for Viva Labs’ Coconut Oil is depicted below.

Supplement Facts		
Serving Size: 1 Tablespoon (14g)		
Servings Per Container: 34		
Amount Per Serving	% Daily Value	
Calories 125	Calories from Fat 125	
Total Fat 14g	22%*	
Saturated Fat 13g	65%*	
Polyunsaturated Fat 0.1g	†	
Monounsaturated Fat 0.7g	†	
Cholesterol 0mg	0%*	
Medium Chain Triglycerides (MCTs)		
Lauric Acid 7,210mg	†	
Caprylic Acid 906mg	†	
Capric Acid 836mg	†	
Omega-6 Polyunsaturated Fat		
Linoleic Acid (LA) 104mg	†	
Omega-9 Monounsaturated Fat		
Oleic Acid 714mg	†	
* Percent Daily Values are based on a 2,000 calorie diet.		
† Daily Value not established.		

Ingredients: 100% Organic Extra-Virgin Cold-Pressed Coconut Oil

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).

³⁷ *Id.*

47. Each 1 tablespoon, or 14 gram serving of Viva Labs' Coconut Oil contains 125 calories—all of which come from fat. In each 14-gram serving there are 14 grams of fat.

48. Further, the Coconut Oil contains 13 grams of saturated fat per 14-gram serving.

49. In other words, the coconut oil is 100% fat, 93% of which is saturated fat.

C. The Composition of Butter and Common Cooking Oils For Which Viva Labs Claims its Coconut Oil is a Healthy Substitute

50. 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 of which are saturated, 3 of which are monounsaturated, and 0.5 of which are polyunsaturated.³⁸

51. The USDA's National Nutrient Database for Standard Reference lists a 14-gram serving of Canola oil as being composed of 14 grams of fat, 1 of which is saturated, 9 of which are monounsaturated, and 4 of which are polyunsaturated.³⁹

52. The USDA's National Nutrient Database for Standard Reference lists a 1 tablespoon serving of Olive oil as being composed of 13.5 grams of fat, 2 of which are saturated, 10 of which are monounsaturated, and 1 of which is polyunsaturated.⁴⁰

53. Viva Labs Coconut Oil is higher in saturated fat, lower in monounsaturated fat, and lower in polyunsaturated fat, than all of these "alternatives."

54. Thus, using the Coconut Oil as a substitute for butter, canola oil, or olive oil would result in increased saturated fat consumption and increased risk of cardiovascular disease and other serious illnesses.

³⁸ 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>.

³⁹ *Id.* NDB No. 04582, Oil, canola.

⁴⁰ *Id.* NDB No. 04053, Oil, olive.

IV. Viva Labs Markets its Coconut Oil with Misleading Health and Wellness Claims

A. Viva Labs Strategically Markets its Coconut Oil as a Health Product

55. Viva Labs strategically markets its Coconut Oil as being healthy in order to increase sales.

56. It is well known that the average consumer is willing to pay more for healthier foods. Nielsen's 2015 Global Health & Wellness Survey, for instance, found that "88% of those polled are willing to pay more for healthier foods."⁴¹

57. Viva Labs is well aware of this and therefore employs a marketing strategy intended to convince consumers that the Coconut Oil is "healthy" despite that it is almost entirely composed of saturated fat.

B. Viva Labs Places Misleading Health and Wellness Claims Directly on the Coconut Oil's Label

58. Through statements placed directly on the Coconut Oil label, Viva Labs markets and advertises the product as both inherently healthy, and a healthy alternative to butter, despite that the Coconut Oil's total fat and saturated fat content make it unhealthy, and a less healthy alternative.

59. The front of the Coconut Oil label is depicted below.

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⁴¹ Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*, (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the world*, at 11 (Jan. 2015)).



60. The sides of the Coconut Oil label are depicted below.





1 61. Viva Labs deceptively markets its Coconut Oil with a variety of labeling claims
2 intended to convince consumers that the product is healthy, and to conceal or distract from
3 the fact the Coconut Oil is almost entirely saturated fat.

4 62. For example, on its label, Viva Labs claims that the Coconut Oil is healthy
5 because of its production process. Specifically, Viva Labs claims that “[e]very coconut that
6 goes into Viva Labs Organic Extra Virgin Coconut Oil is handpicked and cold-pressed at its
7 peak to ensure maximum nutritional value and freshness, making it a healthy addition to your
8 daily life through dietary supplementation [and] cooking” This misleadingly suggests
9 that the product is healthy and will only make positive health and nutritional contributions
10 when consumed, when in fact consuming the Coconut Oil increases risk of serious disease.

11 63. Viva Labs further labels the Coconut Oil with the phrase “[t]o learn more about
12 coconut oil, its uses and many health benefits, visit: www.VivaLabs.com.” This misleadingly
13 suggests that the product is healthy and will only make positive health and nutritional
14 contributions when consumed, when in fact consuming the Coconut Oil increases risk of
15 serious disease.

16 64. Viva Labs furthers this deceptive health messaging by touting its Coconut Oil
17 as “Free of . . . trans fats,” and providing “MCTs [Medium Chain Triglycerides] for energy
18 and weight management.” This misleadingly suggests that the product is healthy and
19 composed of healthy fats that will positively and not negatively impact health when
20 consumed, when in fact consuming the Coconut Oil increases risk of serious disease.

21 65. Viva Labs’ “suggested use” of the Coconut Oil also misleads consumers into
22 believing the Coconut Oil is healthy. Specifically, Viva Labs suggests consumers use its
23 Coconut Oil “[a]s a supplement,” telling them to “take 1-4 tablespoons per day for best
24 results,” and that it “[c]an be added to your favorite foods to boost nutrition.” But if
25 consumers were to take Viva Labs suggestion and take 4 tablespoons a day, that would result
26 in consuming 52 grams of saturated fat, which, according to the Coconut Oil’s nutrition facts,
27 would constitute 260% of the recommended daily intake.

1 66. These claims, taken individually and in context of the label as a whole, are false
2 and misleading because the Coconut Oil is not “healthy,” nor does it positively “boost
3 nutrition” given its saturated fat content, which adversely affects cholesterol levels and
4 increases risk of CHD, stroke, and other morbidity.

5 67. Viva Labs’ “Suggested Use” also furthers the misleading and deceptive nature
6 of its “weight management” claim because consuming 260% of the recommended daily
7 intake of saturated fat is not helpful or effective in managing body weight.

8 68. In conjunction with these health and wellness claims, the Coconut Oil’s
9 packaging suggests using the product as a substitute for butter or other oils, suggesting that it
10 is a healthier alternative. Specifically, in conjunction with the express claim that the Coconut
11 Oil “Can be added to your favorite foods to boost nutrition,” Viva Labs suggests its Coconut
12 Oil be used “For Cooking,” is “Excellent for cooking up to 350°F (177°C),” and “Can be used
13 as dairy-free alternative to butter in baking.” Viva Labs also claims on the front of the
14 Coconut Oil that it is “Great for: Cooking & Baking.”

15 69. These claims, individually and in the context of the label as a whole, suggest
16 that replacing butter and other oils with the Coconut Oil is a healthy choice, despite that doing
17 so increases consumption of saturated fat and decreases consumption of unsaturated fat, and
18 despite that “Strong and consistent evidence from RCTs [randomized controlled trials] and
19 statistical modeling in prospective cohort studies shows that replacing SFA with PUFA
20 [polyunsaturated fat] reduces the risk of CVD events and coronary mortality.”⁴²

21 70. These claims taken individually and especially in context of the label as a whole
22 are false and misleading because the Coconut Oil is not healthy, and is not a healthy
23 alternative to butter or other cooking oils, but rather increases consumers’ risk of
24 cardiovascular diseases and other serious illness more than other oils or butter due to its
25 saturated fat content.

26
27
28 ⁴² USDA & HHS, Dietary Guidelines for Americans, supra n.16, Part D, Chapter 6 at 12.

1 71. In addition, Viva Labs makes omissions that are material to reasonable
2 consumers, especially in light of the affirmative representations made. For example, while
3 claiming that the Coconut oil is “healthy,” “boosts nutrition,” and provides “many health
4 benefits,” and highlighting that it contains “MCTs for energy and weight management” and
5 is trans fat free, giving the impression the Coconut Oil will only make positive contributions
6 to health, Viva Labs omits the scientific evidence that it’s consumption—especially in an
7 amount Viva Labs recommends—will increase risk of serious illnesses.

8 72. In sum, the totality of Viva Labs’ Coconut Oil label conveys the concrete
9 message to a reasonable consumer that the product is healthy and a more healthful alternative
10 to butter and other oils. Viva Labs intended consumers to rely upon this message, which is
11 false and misleading for the reasons stated herein.

12 **D. Viva Labs’ Website Contains Misleading Health and Wellness Claims**

13 73. The label of the Coconut Oil directs consumers to Viva Labs’ website,
14 www.vivalabs.com, which Viva Labs uses as a platform to repeat and bolster its health and
15 wellness marketing campaign.

16 74. Viva Labs maintains a webpage for each of its products, including the Coconut
17 Oil (vivalabs.com/products/coconut-oil). This webpage displays pictures of the full label for
18 the Coconut Oil, as well as making additional health and wellness claims, furthering
19 defendant’s false and misleading message that the Coconut Oil is healthy and a healthier
20 alternative to butter and other oils.

21 75. For example, Viva Labs claims on its Coconut Oil webpage that “Every coconut
22 that goes into Viva Labs Coconut Oil is hand-picked at its peak for optimal freshness and
23 nutritional value,” and that its “coconut oil is the pure choice to suit your natural lifestyle.”

24 76. Viva labs’ Coconut Oil webpage also encourages consumers to “Take 1-4
25 tablespoons per day for best results.” This is especially deceptive as taking 4 tablespoons of
26 coconut oil in one day would result in consuming 260% of the recommended daily intake of
27 saturated fat, which is known to cause CHD and other morbidity.
28

1 77. The webpage also repeats the misleading claim that the Coconut Oil “Can be
2 used as a dairy-free alternative to butter in baking and all your favorite foods,” which, both
3 by itself and in the context of the webpage as a whole, implies that the Coconut Oil is a
4 healthier alternative to butter.

5 78. Viva Labs also claims on its webpage that the Coconut Oil is “cold-pressed to
6 retain all of its natural health benefits” and so “delivers . . . health-promoting properties in
7 the cleanest form possible.”

8 79. Furthering its health messaging, Viva Labs also claims that the Coconut Oil is
9 “**Rich in Medium-Chain Triglycerides (MCTs):** . . . MCTs are a unique form of fatty acids
10 that are used by the body as a source of energy and have been shown to be beneficial in
11 helping to maintain a healthy weight, increase stamina and promote healthy metabolism of
12 nutrients.”

13 **E. Viva Labs Provides E-Tailer Amazon with Further Health & Wellness**
14 **Claims, Which are Displayed on Amazon’s Coconut Oil Webpages**

15 80. Viva Labs Coconut Oil is available for purchase on Amazon.com (“Amazon”).

16 81. When viewing the product on Amazon, consumers are able to see pictures of the
17 full label for the Coconut Oil, as well as a section titled “About the Product,” a “Product
18 Description” and additional information “From the Manufacturer.”

19 82. On information and belief, Viva Labs provides this information to Amazon,
20 which it displays on the product page, wherein Viva Labs makes additional health and
21 wellness claims, furthering its false and misleading message that the Coconut Oil is healthy
22 and a healthier alternative to butter and other oils.

23 83. For example, Viva Labs provides the following claims, among others, to
24 Amazon.com, which are all displayed on the product webpage:

- 25 a. “Free of . . . trans fats”;
- 26 b. “Medium-chain triglycerides (MCTs) for weight management and
27 increased energy”;

1 c. “Great for: Cooking & Baking”;

2 d. “Our top-grade coconuts are selectively chosen and hand-picked at their
3 peak freshness and fragrance by skilled local farmers native to this sacred region. These
4 succulent coconuts are then cold-pressed at low temperatures using our proprietary
5 extraction method, preserving powerful nutrients and health-promoting antioxidants.”;

6 e. “Within only a few hours upon harvesting, our organic coconuts are gently
7 cold-pressed through a proprietary extraction process, retaining antioxidants [and]
8 essential nutrients”;

9 f. “Virgin coconut oil has a longer shelf-life than traditional oils due to
10 naturally-occurring MCTs which help preserve nutrients [and] antioxidants”;

11 g. “Coconut oil is a delicious and healthy alternative to conventional oils,
12 butter and other fats”;

13 h. “Customers love adding our coconut oil to baked goods to boost the
14 nutritional richness and flavor of their favorite desserts.”;

15 i. “Boost Metabolism and Manage Weight Naturally”; and

16 j. “Virgin coconut oil is naturally abundant in health-promoting saturated
17 fatty acids known as medium-chain triglycerides (MCTs). Unlike traditional long-
18 chain fatty acids, MCTs are immediately converted into energy by the liver and have
19 been shown to promote healthy weight management. Viva Labs Organic Extra Virgin
20 Coconut Oil contains high concentrations of MCTs per tablespoon, consisting of
21 7,210mg of lauric acid, 906mg of caprylic acid and 836mg of capric acid. Enjoy up to
22 four tablespoons per day to rev up your metabolism and manage weight naturally.”

23 84. Just as with the claims made on the label of Viva Labs’ Coconut Oil, these claims
24 both individually, and within the context of the webpage as a whole, misled consumers into
25 believing that the Coconut Oil is healthy, healthier than butter and other oils, would only
26 positively affect health, would not raise or otherwise detriment their blood cholesterol levels
27 or cause increased risk of CHD, stroke, or other morbidity.

V. Viva Labs' Coconut Oil Labeling Violates California and Federal Law

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

85. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has expressly adopted the federal food and supplement 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.”).

86. For the purposes of labeling, “a dietary supplement shall be deemed to be a food.” *See* 21 U.S.C. 321(ff).

87. The Federal Food, Drug, and Cosmetic Act (FDCA) 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.

88. Because the Sherman Law’s requirements are identical to the requirements of the FDCA and its implementing regulations, the Sherman law is explicitly authorized by the FDCA.

B. The Coconut Oil’s False and Misleading Labeling Claims Render it Misbranded

89. Viva Labs’ deceptive statements on the label of the Coconut Oil violate Health & Safety Code § 109875, and 21 U.S.C. § 343(a), which deem a food product misbranded when its label contains any statement that is “false or misleading in any particular.”

90. In addition, the Coconut Oil’s label is misleading, and thus misbranded, because “it fails to reveal facts that are material in light of other representations.” 21 C.F.R § 1.21.

C. The Viva Labs Coconut Oil is Misbranded Because it Makes Unauthorized Express Nutrient Content Claims

91. The Viva Labs Coconut Oil is misbranded because its label bears nutrient content claims even though it does not meet the requirements to make such claims.

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

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

94. The label of the Coconut Oil bears the phrases “Free of . . . trans fats” and “MCTs for energy”

95. These phrases meet the definition of nutrient content claims because they characterize the level of trans fat, and fatty acids, in the Coconut Oil, which are nutrients of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

96. Under 21 C.F.R. § 101.13(h), a food or supplement that bears an express or implied nutrient content claim, and 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).

97. Despite that the Coconut Oil Product contains 14 grams of total fat and 13 grams of saturated fat per serving, its label fails to bear the mandatory disclosure statements, which provide consumers with material nutrition information. Therefore, the Coconut Oil is misbranded.

1 98. Further, even if the Coconut Oil label bore contained the required disclosures, it
 2 would still be misbranded because “Free of . . . trans fats” is an unauthorized nutrient content
 3 claim that may not be used in the labeling of any foods. *See Reid v. Johnston & Johnson*, 780
 4 F.3d 952, 962-63 (2015). The FDA similarly has no defined nutrient content claims for any
 5 statements about MCTs, but all such claims must, in any event, be not misleading. *See* 21
 6 C.F.R. § 101.13(i)(iii).

7 **D. The Coconut Oil is Misbranded Because it Bears a Prohibited Nutrient**
 8 **Content “Healthy” Claim**

9 99. The label of the Coconut Oil bears an implied nutrient content claim, because it
 10 bears a statement suggesting that because of its nutrient content, the product may help
 11 consumers maintain healthy dietary practices, and that statement is made in connection with
 12 an implicit claim or statement about nutrients.

13 100. Specifically, Viva Labs claims its Coconut Oil is “a healthy addition to your
 14 daily life” because, *inter alia*, it “is handpicked and cold-pressed at its peak to ensure
 15 maximum nutritional value,” “boosts nutrition” is “Free of . . . trans fats,” and contains
 16 “MCTs for energy and weight management.”⁴³

17 101. The Coconut Oil, however, does not meet the requirements for use of the implied
 18 nutrient content claim, “healthy,” which are set forth in 21 C.F.R. § 101.65(d).

19 102. Specifically, to “use the term ‘healthy or related terms (e.g., ‘health,’ ‘healthful,’
 20 ‘healthfully,’ ‘healthfulness,’ ‘healthier,’ ‘healthiest,’ ‘healthily,’ and ‘healthiness’)” as an
 21 implied nutrient content claim as Viva Labs does, foods must satisfy specific “conditions for
 22 fat, saturated fat, cholesterol, and other nutrients.” 21 C.F.R § 101.65(d)(2).

23
 24
 25 ⁴³ In a January 13, 2015 warning letter to Carrington Farms regarding its coconut oil, the FDA
 26 found that the statement “Our unrefined . . . coconut oil is simply pressed and bottled so it
 27 retains its original nutrient content . . . No Trans & Hydrogenated Fats” was sufficient to
 28 render “health” claims made in connection with that statement implied nutrient content
 claims.

1 103. The Coconut Oil, which is a food “not specifically listed” in the table contained
2 in 21 C.F.R. § 101.65(d)(2)(i), is therefore governed by section (F) of the table. *See*
3 101.65(d)(2)(i)(F).

4 104. Under 21 C.F.R. § 101.65(d)(2)(i)(F), to use the term “healthy” or related terms
5 as an implied nutrient content claim, a food must (1) be “Low fat as defined in §
6 101.62(b)(2),” (2) be “Low saturated fat as defined in § 101.62(c)(2),” and (3) contain “At
7 least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C,
8 calcium, iron, protein or fiber.” *See* 21 C.F.R. § 101.65(d)(2)(i)(F) (incorporating by
9 reference total fat requirement, 21 C.F.R. § 101.62(b)(2), and saturated fat requirement, 21
10 C.F.R. § 101.62(c)(2)).

11 105. Section 101.62(b)(2)(i)(B) provides the applicable definition of “low fat” for the
12 Coconut Oil because it has a RACC of less than 30 grams.

13 106. Under section 101.62(b)(2)(i)(B), a food is low fat only if it “contains 3 g or less
14 of fat per reference amount customarily consumed and per 50 g of food.”

15 107. The Coconut Oil contains 14 grams of total fat per RACC and 50 grams of total
16 fat per 50 grams.

17 108. Thus, the Coconut Oil does not meet the definition of low fat as required by
18 section 101.65(d)(2)(i)(F).

19 109. Under section 101.62(c)(2), a food is “low saturated fat” only if it “contains 1 g
20 or less of saturated fatty acids per reference amount customarily consumed and not more than
21 15 percent of calories from saturated fatty acids.”

22 110. The Coconut Oil contains 12 grams of saturated fat per RACC and
23 approximately 86% of calories come from saturated fat.

24 111. Thus, the Coconut Oil does not meet the definition of low saturated fat as
25 required by section 101.65(d)(2)(i)(F).

26 112. Further, the Coconut Oil does not contain “at least 10 percent of the RDI or the
27 DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or fiber.”
28

113. Therefore, the Coconut Oil cannot bear the term “healthy” on its label, and is accordingly misbranded.

VI. Plaintiff’s Purchase, Reliance and Injury

114. Plaintiff Syndi Tracton purchased the 54-fluid-ounce Coconut Oil in January 2015. Ms. Tracton purchased the Coconut Oil from Amazon for approximately \$25.

115. When deciding to purchase the Coconut Oil, plaintiff read the Coconut Oil’s label, which is displayed in full on Amazon, and relied upon at least the following labeling claims contained thereon, which were a substantial reason for plaintiff’s purchases:

- a. “Every coconut that goes into Viva Labs organic Extra Virgin Coconut Oil is handpicked and cold-pressed at its peak to ensure maximum nutritional value, making it a healthy addition to your daily life through dietary supplementation”;
- b. “To learn more about coconut oil, its uses and many health benefits, visit: www.VivaLabs.com”;
- c. “MCTs for energy and weight management”;
- d. “Free of . . . trans fats”;
- e. “take 1-4 tablespoons per day for best results”
- f. “Can be added to your favorite foods to boost nutrition”; and
- g. “For Cooking: Excellent for cooking Can be used as a dairy-free alternative to butter in baking”

116. When deciding to purchase the Coconut Oil, plaintiff also read and relied on the product description on Amazon, which is created and supplied to Amazon by Viva Labs,⁴⁴ including, *inter alia*, the following claims, which were a substantial reason for plaintiff’s purchases:

- a. “Free of . . . trans fats”;

⁴⁴ See Viva Labs Organic Extra Virgin Coconut Oil, 54 Ounce, available at <http://tinyurl.com/zr5gtq2>.

1 b. “Medium-chain triglycerides (MCTs) for weight management and
2 increased energy”;

3 c. “Our top-grade coconuts are selectively chosen and hand-picked at their
4 peak freshness and fragrance by skilled local farmers native to this sacred region. These
5 succulent coconuts are then cold-pressed at low temperatures using our proprietary
6 extraction method, preserving powerful nutrients and health-promoting antioxidants.”;

7 d. “Within only a few hours upon harvesting, our organic coconuts are gently
8 cold-pressed through a proprietary extraction process, retaining antioxidants [and]
9 essential nutrients”;

10 e. “Virgin coconut oil has a longer shelf-life than traditional oils due to
11 naturally-occurring MCTs which help preserve nutrients [and] antioxidants”;

12 117. Based on these representations, individually and especially in the context of the
13 label and Amazon webpage as a whole, plaintiff believed the Coconut Oil was healthy,
14 healthier than butter and other oils, would only make positive contributions to health, and
15 would not increase her risk of serious disease. Plaintiff understood the label’s health claims
16 to be directed to the product’s purported nutritional health benefits, rather than, or at least in
17 addition to relating to other potential uses, such as on skin and hair.

18 118. When purchasing the Coconut Oil, plaintiff was seeking a product that had the
19 qualities described on the Coconut Oil label, namely, a healthy oil that was healthier than
20 butter, which would only make positive contributions to health and therefore would not
21 increase risk of CHD, stroke, and other morbidity.

22 119. These representations, however, were false and misleading, and had the
23 capacity, tendency, and likelihood to confuse or confound plaintiff and other consumers
24 acting reasonably (including the putative Class members) because, as described in detail
25 herein, the Coconut Oil is not healthy, but instead negatively impacts health as its
26 consumption increases the risk of CHD, stroke, and other morbidity.

1 120. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay
2 consumer who did not have the specialized knowledge that Viva Labs had. Plaintiff acted
3 reasonably in relying on the health and wellness claims that Viva Labs intentionally placed
4 on the Coconut Oil's label with the intent to induce average consumers into purchasing the
5 product.

6 121. Viva Labs' Coconut Oil costs more than similar products without misleading
7 labeling, and would have cost less absent the false and misleading statements complained of
8 herein.

9 122. Plaintiff paid more for the Coconut Oil, and would only have been willing to pay
10 less, or unwilling to purchase it at all, absent the false and misleading labeling.

11 123. For these reasons, Viva Labs' Coconut Oil was worth less than what plaintiff
12 paid for it, and may have been worth nothing given its high total fat and saturated fat content,
13 subjecting plaintiff to increased risk of CHD, stroke, and other morbidity.

14 124. By use of its misleading labeling, Viva Labs created increased marketplace
15 demand for the Coconut Oil, and increased its market share, relative to what its demand and
16 share would have been had Viva Labs labeled the Coconut Oil truthfully.

17 125. By use of its misleading labeling, Viva Labs was able to charge more for the
18 Coconut Oil than its true value in a fair and honest marketplace.

19 126. Instead of receiving a product that had actual healthful qualities, plaintiff and
20 the Class received a coconut oil which is not healthy, but rather its consumption causes
21 increased risk of CHD, stroke, and other morbidity.

22 127. Plaintiff lost money as a result of Viva Labs' deceptive claims and practices in
23 that she did not receive what she paid for when purchasing the Coconut Oil.

24 128. Plaintiff detrimentally altered her position and suffered damages in an amount
25 equal to the amount she paid for the Coconut Oil, or at least some portion thereof.

26 129. If plaintiff could be assured that any health and wellness labeling on the Coconut
27 Oil was lawful and not misleading, she would consider purchasing the product in the future,
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including for uses other than direct consumption, if she could be assured that its price matched its true value in a fair and honest marketplace. Thus, were Viva Labs to remove the false and misleading claims, plaintiff may desire to purchase the Coconut Oil in the future for cosmetic or purposes other than direct consumption if the subsequent marketplace pricing was based on fair and honest labeling.

130. Even aware of Viva Labs' misleading labeling, plaintiff's substantive rights continue to be violated every time plaintiff is exposed to the misleading Coconut Oil label.

131. The senior officers and directors of Viva Labs allowed the Coconut Oil to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

CLASS ACTION ALLEGATIONS

132. While reserving the right to redefine or amend the class definition prior to seeking class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent a class of all persons in California who, at any time from four years preceding the date of this Complaint to the time a class is notified, (the "Class Period"), purchased, for personal or household use, and not for resale or distribution, Viva Labs' Coconut Oil (the "Class").

133. 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.

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

- a. whether Viva Labs communicated a message regarding healthfulness of the Coconut Oil through its packaging and advertising;
- b. whether that message was material to reasonable consumers;
- c. whether the challenged claims are false, misleading, or reasonably likely to deceive the public or consumers acting reasonably because of the high total and saturated fat content of the Coconut Oil;

- d. whether Viva Labs' conduct violates public policy;
- e. whether Viva Labs' 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 scope of injunctive relief; and
- i. the proper amount of attorneys' fees.

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

136. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Viva Labs' conduct. Specifically, all Class Members, including plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the Coconut Oil, and suffered economic injury because the Coconut Oil product is misrepresented. Absent Viva Labs' business practice of deceptively and unlawfully labeling the Coconut Oil, plaintiff and Class members would not have purchased the product.

137. 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, including in litigation involving the false and misleading advertising of coconut oil as healthy.

138. 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.

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

140. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law,

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

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

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

143. The acts, omissions, misrepresentations, practices, and non-disclosures of Viva Labs as alleged herein constitute business acts and practices.

Fraudulent

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

145. As set forth herein, the Viva Labs’ claims relating to the Coconut Oil are likely to deceive reasonable consumers and the public.

Unlawful

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

- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*
- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and
- The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

Unfair

147. Viva Labs' conduct with respect to the labeling, advertising, and sale of the Coconut Oil was also unfair because it violated 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.

148. Viva Labs' conduct with respect to the labeling, advertising, and sale of the Coconut Oil was 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.

149. Viva Labs' conduct with respect to the labeling, advertising, and sale of the Coconut Oil was unfair because Viva Labs' conduct was 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.

150. The harm to consumers health caused by increased consumption of the Coconut Oil due to the deceptive claims is not outweighed by the benefit of increased profits gained from the deceptive claims.

151. Viva Labs profited from its sale of the falsely, deceptively, and unlawfully advertised the Coconut Oil to unwary consumers.

152. Plaintiff and Class Members are likely to be damaged by Viva Labs' deceptive trade practices, as Viva Labs continues to disseminate misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

153. Viva Labs' conduct caused and continues to cause substantial injury to plaintiff and the other Class Members, who have suffered injury in fact as a result of Viva Labs' unlawful conduct.

154. In accordance with Bus. & Prof. Code § 17203, plaintiff, on behalf of herself, the Class, and the general public, seeks an order enjoining Viva Labs from continuing to

1 conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to
2 commence a corrective advertising campaign.

3 155. Plaintiff, on behalf of herself and the Class also seeks an order for disgorgement
4 and restitution of all monies from the sale of the Coconut Oil, which were unjustly acquired
5 through acts of unlawful competition.

6 **SECOND CAUSE OF ACTION**

7 **Violations of the False Advertising Law,** 8 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

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

11 157. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association,
12 or any employee thereof with intent directly or indirectly to dispose of real or personal
13 property or to perform services” to disseminate any statement “which is untrue or misleading,
14 and which is known, or which by the exercise of reasonable care should be known, to be
15 untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

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

19 159. As alleged herein, the advertisements, labeling, policies, acts, and practices of
20 Viva Labs relating to its the Coconut Oil misled consumers acting reasonably as to the
21 healthfulness of the Coconut Oil.

22 160. Plaintiff suffered injury in fact as a result of Viva Labs’ actions as set forth herein
23 because plaintiff purchased the Coconut Oil in reliance on Viva Labs’ false and misleading
24 marketing claims that it, among other things, is inherently healthy, is healthier than butter and
25 other oils, and only makes positive contributions to health rather than harming health.

26 161. Viva Labs’ business practices as alleged herein constitute unfair, deceptive,
27 untrue, and misleading advertising pursuant to the FAL because Viva Labs has advertised
28

1 the Coconut Oil in a manner that is untrue and misleading, which Viva Labs knew or
2 reasonably should have known.

3 162. Viva Labs profited from its sales of the falsely and deceptively advertised the
4 Coconut Oil to unwary consumers.

5 163. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff and the Class
6 are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement
7 of the funds by which Viva Labs was unjustly enriched.

8 **THIRD CAUSE OF ACTION**

9 **Violations of the Consumer Legal Remedies Act,**

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

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

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

16 166. Viva Labs' false and misleading labeling and other policies, acts, and practices
17 described herein were designed to, and did, induce the purchase and use of Viva Labs'
18 Coconut Oil for personal, family, or household purposes by plaintiff and other Class
19 Members, and violated and continue to violate at least the following sections of the CLRA:

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

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

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

26 d. § 1770(a)(16): representing the subject of a transaction has been supplied
27 in accordance with a previous representation when it has not.
28

1 167. Viva Labs profited from its sales of the falsely, deceptively, and unlawfully
2 advertised the Coconut Oil to unwary consumers.

3 168. Viva Labs' wrongful business practices regarding the Coconut Oil constituted,
4 and constitute, a continuing course of conduct in violation of the CLRA.

5 169. Pursuant to California Civil Code § 1782, on or around September 12, 2016,
6 plaintiff Syndi Tracton notified Viva Labs in writing by certified mail, return receipt
7 requested of their claims and the particular violations of § 1770 of the Act, but Viva Labs
8 failed to remedy the violations within 30 days thereafter. Because Viva Labs failed to
9 implement remedial measures, plaintiff, on behalf of herself and the Class, seeks actual and
10 punitive damages, including attorneys' fees.

11 170. Plaintiff, on behalf of herself and the Class, seeks injunctive relief under Civil
12 Code § 1782(d).

13 171. Filed concurrently with the Complaint is a venue of affidavit as required under
14 Civil Code § 1782.

15 **FOURTH CAUSE OF ACTION**

16 **Breaches of Express Warranties,**

17 **Cal. Com. Code § 2313(1)**

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

20 173. Through the Coconut Oil label, Viva Labs made affirmations of fact or promises,
21 or description of goods, that, *inter alia*, the product is "a healthy addition to your daily life
22 through dietary supplementation, [and] cooking," will "boost nutrition" and provides "many
23 health benefits." These and other representations were "part of the basis of the bargain," in
24 that plaintiff and the Class purchased the product in reasonable reliance on those statements.
25 Cal. Com. Code § 2313(1).

1 174. Viva Labs breached its express warranties by selling a product that is not
2 healthy, does not boost nutrition or provide many health benefits but rather increases risk of
3 serious disease.

4 175. That breach actually and proximately caused injury in the form of the lost
5 purchase price that plaintiff and Class members paid for the Coconut Oil.

6 176. Plaintiff notified Viva Labs of the breach prior to filing the suite, but Viva Labs
7 did not rectify the breach.

8 177. As a result, plaintiff seeks, on behalf of herself and other Class Members, her
9 actual damages arising as a result of Viva Labs' breaches of express warranty.

10 **FIFTH CAUSE OF ACTION**

11 **Breach of Implied Warranty of Merchantability,**

12 **Cal. Com. Code § 2314**

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

15 179. Viva Labs, through its acts set forth herein, in the sale, marketing, and promotion
16 of the Coconut Oil, made representations to plaintiff and the Class that, among other things,
17 the product is healthy.

18 180. Viva Labs is a merchant with respect to the goods of this kind which were sold
19 to plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an
20 implied warranty that those goods were merchantable.

21 181. However, Viva Labs breached that implied warranty in that the Coconut Oil is
22 not healthy, is not healthier than butter or other oils, and negatively affects cholesterol levels,
23 increasing risk of CHD and stroke, as set forth in detail herein.

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

1 183. Plaintiff notified Viva Labs of the breach prior to filing the suite, but Viva Labs
2 did not rectify the breach.

3 184. Plaintiff and the Class have sustained damages as a proximate result of the
4 foregoing breach of implied warranty in the amount of the Coconut Oil's purchase price.

5 **PRAYER FOR RELIEF**

6 185. Wherefore, plaintiff, on behalf of herself, all others similarly situated, and the
7 general public, pray for judgment against Viva Labs as to each and every cause of action, and
8 the following remedies:

9 A. An Order declaring this action to be a proper class action, appointing
10 plaintiff as class representative, and appointing undersigned counsel as class counsel;

11 B. An Order requiring Viva Labs to bear the cost of class notice;

12 C. An Order enjoining Viva Labs from using any challenged labeling or
13 marketing claim that is found to be false, misleading, or unlawful;

14 D. An Order compelling Viva Labs to conduct a corrective advertising
15 campaign;

16 E. An Order compelling Viva Labs to destroy all misleading and deceptive
17 advertising materials and the Coconut Oil labels;

18 F. An Order requiring Viva Labs to pay restitution to restore all funds
19 acquired by means of any act or practice declared by this Court to be an unlawful,
20 unfair, or fraudulent business act or practice, or untrue or misleading advertising;

21 G. An Order requiring Viva Labs to pay statutory, compensatory, and
22 punitive damages where permitted by law;

23 H. Pre- and post-judgment interest where available;

24 I. An award of attorneys' fees and costs;

25 J. Any other and further relief that Court deems necessary, just, or proper.
26
27
28

JURY DEMAND

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

Dated: November 10, 2016

/s/ Jack Fitzgerald

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Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SYNDI TRACTON on behalf of herself, all
others similarly situated, and the general
public,

Plaintiff,
v.

VIVA LABS, INC.,

Defendant.

**CONSUMERS LEGAL REMEDIES
ACT VENUE AFFIDAVIT**

1 I, Syndi Tracton, declare as follows:


2 1. I am the Plaintiff in this action. I make this affidavit as required by California
3 Civil Code § 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because defendant is doing business in this county.

6 3. The Complaint in this action is further filed in a proper place for the trial of this
7 action because the transactions that are the subject of the action occurred in this county.

8
9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct.

11 Executed this 1st day of November, 2016, at North Miami, FLA

12
13 
14 Syndi Tracton

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SYNDI TRACTON on behalf of herself, all others similarly situated, and the general public

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Law Office of Jack Fitzgerald, PC, Jack Fitzgerald (SBN 257370),
3636 Fourth Ave., Ste. 202, San Diego, CA 92103

DEFENDANTS

VIVA LABS, INC.

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'16CV2772 BTM KSC

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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 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 checked="" 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
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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. 1332

Brief description of cause:

Class Action Fairness Act and Diversity of Citizenship

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/10/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jack Fitzgerald

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 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.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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 Rule 23, F.R.Cv.P.
- 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.