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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

LYNETTE GONZALEZ, MICHAELA
FURDZOVA, LUCAS MARISCAL,
STEPHANIE PORTER, SEATON
COLLARD, JAMES COFFIN, LAWRENCE
EBEL, PATRICK ROJAS, SYMONE
SWEAZIE, SARAH COWART,
KYMBERLY LOVETT, KIM MILLER,
DAN SCALF, DAVID ULERY, RICKY
WRIGHT, MICHAEL MILLER, CLAUDE
VOGEL, ARLETA KORDYLEWSKA,
BROOKE TOLAN, KEISHA WALTON,
MICHELLE GROCHOWSKI, RAQUEL
PEREZ, and SANDRA NICLAS individually
and on behalf of all others similarly situated,

Plaintiff,

v.

HEALTH-ADE. LLC, a Delaware limited
liability company

Defendant.

CASE NO. 3:18-cv-01836-MMC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR**

- 1. FALSE AND MISLEADING
ADVERTISING IN VIOLATION OF
BUSINESS AND PROFESSIONS
CODE §17200, et seq.**
- 2. FALSE AND MISLEADING
ADVERTISING IN VIOLATION OF
BUSINESS AND PROFESSIONS
CODE §17500, et seq.**
- 3. VIOLATION OF CALIFORNIA
CIVIL CODE § 1750. et seq.**
- 4. UNJUST ENRICHMENT**
- 5. BREACH OF EXPRESS
WARRANTY**
- 6. BREACH OF IMPLIED
WARRANTY**
- 7. VIOLATION OF CONSUMER
FRAUD LAWS**
- 8. NEGLIGENT
MISREPRESENTATION**

JURY TRIAL DEMANDED

1 Plaintiffs Lynette Gonzalez, Michaela Furdzova, Lucas Mariscal, Stephanie Porter,
2 Seaton Collard, James Coffin, Lawrence Ebel, Patrick Rojas, Symone Sweazie, Sarah Cowart,
3 Kymberly Lovett, Kim Miller, Dan Scalf, David Ulery, Ricky Wright, Michael Miller, Claude
4 Vogel, Arleta Kordylewska, Brooke Tolan, Keisha Walton, Michelle Grochowski, Raquel Perez
5 and Sandra Niclas (“Plaintiffs”) allege the following based upon personal knowledge as to
6 themselves and their own acts, and upon information and belief and the investigation by Plaintiffs’
7 counsel which included, among other things, a review of public documents, marketing materials,
8 and announcements made by Health-Ade LLC. (“Defendant” or “Health-Ade”) as to all other
9 matters. Plaintiffs believe that substantial additional evidentiary support exists for the allegations
10 set forth herein and will be available after a reasonable opportunity for discovery.

11 **NATURE OF THE ACTION**

12 1. The recent spike in popular awareness that not all bacteria are evil—and that many
13 are good and beneficial for human health—has created a sort of fascination with live cultures and
14 fermented products. This idea has brought the centuries-old drink, Kombucha, roaring into upper-
15 middle class consciousness at upwards of \$5 per bottle.

16 2. The recent spike in popular awareness that not all bacteria are evil—and that many
17 are good and beneficial for human health—has created a sort of fascination with live cultures and
18 fermented products. This idea has brought the centuries-old drink, Kombucha, roaring into upper-
19 middle class consciousness at upwards of \$5 per bottle.

20 3. As Defendant’s website explains, “Kombucha is fermented tea that naturally
21 contains probiotics and healthy organic acids. It is delicious, effervescent, and refreshing – low
22 in sugar, caffeine and calories¹.”

23 4. Kombucha is generally derived from a sugar-sweetened tea (black or green) that
24 has been mixed with yeast and bacteria and then given time to ferment. The microbes are together
25 known as a SCOBY (symbiotic colony of bacteria and yeast). The result is an effervescent, tart,
26

27 ¹ <https://health-ade.com/what-is-kombucha/?v=7516fd43adaa#kQetTmJF83yJpZv3.97> (last
28 viewed March 8, 2017.) -2-

1 and slightly sweet beverage. Depending on the added flavors, kombucha can taste fruity, floral,
2 spicy, or herbaceous. It has a flavor profile similar to sparkling apple cider but with a more
3 pronounced sour taste.

4 5. Due to the fermentation process involved in creating kombucha, the resultant
5 beverage contains a large number of healthy bacteria known as probiotics. These bacteria line
6 your digestive tract and have been touted for their purported ability to support the immune system,
7 as they absorb nutrients and fight infection and illness.

8 6. Health-Ade manufactures, markets, distributes and sells kombucha beverage
9 products to consumers in the United States. Health-Ade produces various flavors of kombuchas
10 including but not limited to Ginger-Lemon, Pink Lady Apple, Pomegranate, Cayenne Cleanse,
11 Blood Orange-Carrot-Ginger, Maca-Berry, Power Greens, Beet, Reishi-Chocolate, Holiday
12 Cheers, Sweet Thorn, California Grape, and the “Original” (“Health-Ade Kombucha” of the
13 “Product(s)”).

14 7. Kombucha is considered to be a healthy beverage and Health-Ade advertises its
15 kombucha beverages as such. As part of its efforts to portray the product as healthy, Defendant
16 has falsely labeled its kombucha beverage products as fewer grams of sugar than the products
17 actually contain.

18 8. When purchasing the Product, Plaintiffs relied on Defendant’s misrepresentations
19 regarding the sugar content of the Health-Ade kombucha beverages. Plaintiffs would not have
20 purchased this product if they had known that Defendant’s representations were false and
21 misleading. Plaintiffs and the Classes paid a premium for Defendant’s kombucha beverages over
22 Kombucha beverages that did not contain as much sugar. Defendant’s kombucha beverages are
23 consistently more expensive per bottle than Kombucha beverage competitors, like GT Kombucha
24 and Kevita Master Brew Kombucha. Plaintiffs would not have purchased Defendant’s kombucha
25 beverage had they known the truth. Plaintiffs suffered an injury by purchasing the Product at
26 inflated prices. Plaintiffs also were harmed in that they did not receive the product they bargained
27 for.

1 throughout the State of California, including marketing, advertising, and sales directed to
2 California residents.

3 14. Defendant regularly conduct business in San Jose, because Plaintiff Furdzova lives
4 in San Jose, and because the conduct alleged herein which gives rise to the claims asserted
5 occurred within San Jose. Specifically, Plaintiff purchased the subject product at stores in Santa
6 Clara County.

7 15. Defendant has distributed, marketed, advertised, labeled, and sold the Products in
8 this District. Thus, under 28 U.S.C. §§1391(c)(2) and (d), Defendant is deemed to reside in this
9 District. As such, venue is proper in this judicial district under 28 U.S.C. §1391(b)(1) because
10 Defendant is deemed to reside in this District and under 28 U.S.C. §1391(b)(2), because
11 Defendant conduct business in this District and a substantial part of the acts or omissions giving
12 rise to the claims set forth herein occurred in this District.

13 **INTRADISTRICT ASSIGNMENT (NORTHERN DISTRICT CIVIL LOCAL RULE 3-2)**

14 16. This action is properly assigned to the San Jose Division of this District pursuant
15 to Northern District of California, Civil Local Rule 3-2 because a substantial part of the events or
16 omissions giving rise to Plaintiffs' claims arose in the counties of counties of Alameda, Contra
17 Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or
18 Sonoma. Defendant conducts substantial business in these counties served by this Division.
19 Defendant implemented its fraudulent marketing scheme (through e.g. marketing, advertising,
20 selling and/or leasing automobiles) in this district, as well as nationwide, through providers and
21 sales representatives who reside or transact business in this district, and thereby affecting Class
22 Members who similarly reside or transact business in this district. Additionally, multidistrict
23 litigation involving the similar claims of consumers who purchased the Product was assigned to
24 the San Jose Division of this district.

25 **PARTIES**

26 17. Plaintiff Lynette Gonzalez ("Plaintiff Gonzalez"), is a citizen of California and an
27 individual consumer. During the Class Period, Plaintiff Gonzalez purchased the Product at a
28 grocery stores such as Sprouts Market in or around San Ysidro California. Plaintiff Gonzalez has

1 purchased 2-3 bottles of Health-Ade kombucha per month since 2014. On average, the Product
2 had a represented sugar content of 6 grams per serving.

3 18. Prior to purchasing the Product, Plaintiff Gonzalez read and relied upon false and
4 misleading statements that were prepared by and/or approved by Defendant and its agents and
5 disseminated through the Products' packaging. For each purchase, she understood that she was
6 paying for a healthy beverage with a specific sugar content and was deceived when she received
7 a product that included far more sugar than represented by Defendant. Plaintiff does not know if
8 Defendant has remedied the issues resulting in the deceptive practices and thus considers
9 purchasing additional Products. As such, Plaintiff Gonzalez still faces potential injury from
10 Defendant's deceptive practices.

11 19. Plaintiff Michaela Furdzova ("Plaintiff Furdzova") is a resident of San Jose
12 California and an individual consumer. During the Class Period, Plaintiff Furdzova purchased the
13 Product at a grocery stores in and around San Jose California. In the last year, Plaintiff Furdzova
14 purchased the Product weekly for the last four years including flavors such as Pink Lady Apple,
15 and Pomegranate. On average, the Product had a represented sugar content of 6 grams per serving.

16 20. Prior to purchasing the Product, Plaintiff Furdzova read and relied upon false and
17 misleading statements that were prepared by and/or approved by Defendant and its agents and
18 disseminated through the Products' packaging. For each purchase, she understood that she was
19 paying for a healthy beverage with a specific sugar content and was deceived when she received
20 a product that included far more sugar than represented by Defendant.

21 21. Plaintiff Lucas Mariscal ("Plaintiff Mariscal") is a resident of Vancouver,
22 Washington and an individual consumer. During the Class Period, Plaintiff Mariscal purchased
23 the Product at grocery/big box stores such as Target and Costco in the States of Washington and
24 Oregon. Plaintiff Mariscal began drinking the product in or about 2016 and drank it almost daily.
25 He purchased many flavors including Cayenne Cleanse and Lemon-Ginger, both with a
26 represented sugar content of 5 grams per serving.

27 22. Prior to purchasing the Product, Plaintiff Mariscal read and relied upon false and
28 misleading statements that were prepared by and/or approved by Defendant and its agents and

1 disseminated through the Products' packaging. Plaintiff Mariscal was particularly concerned
2 about the sugar content of the products because he is working on weigh management. For each
3 purchase, he understood that he was paying for a healthy beverage with a specific sugar content
4 and was deceived when he received a product that included far more sugar than represented by
5 Defendant.

6 23. Plaintiff Stephanie Porter ("Plaintiff Porter") is a citizen of Oregon and an
7 individual consumer. During the Class Period, Plaintiff Porter purchased the Product at grocery
8 stores in or around Gladstone, Oregon. Plaintiff Porter is pre-diabetic and attempts to limit and
9 control her sugar intake. She does this by carefully reviewing and relying on product labels and
10 packaging. Plaintiff Porter began purchasing and consuming Health-Ade Products in 2003 and
11 purchased approximately two beverages per week.

12 24. Prior to purchasing the Product, Plaintiff Porter read and relied upon false and
13 misleading statements that were prepared by and/or approved by Defendant and its agents and
14 disseminated through the Products' packaging. For each purchase, she understood that she was
15 paying for a healthy beverage with a specific sugar content and was deceived when she received
16 a product that included far more sugar than represented by Defendant.

17 25. Plaintiff Seaton Collard ("Plaintiff Collard") is a citizen of Texas and an individual
18 consumer. During the Class Period, Plaintiff Collard purchased the Product at grocery stores in
19 or around Austin, Texas. Plaintiff Collard began purchasing and consuming Health-Ade Products
20 3-5 years ago. Plaintiff Collard purchased various favors including Original, Sweet Thorn and
21 Holiday Cheers. On average, the Product had a represented sugar content of 6 grams per serving.

22 26. Prior to purchasing the Product, Plaintiff Collard read and relied upon false and
23 misleading statements that were prepared by and/or approved by Defendant and its agents and
24 disseminated through the Products' packaging. For each purchase, he understood that he was
25 paying for a healthy beverage with a specific sugar content and was deceived when he received a
26 product that included far more sugar than represented by Defendant.

27 27. Plaintiff James Coffin ("Plaintiff Coffin") is a citizen of New York and an
28 individual consumer. During the Class Period, Plaintiff Coffin purchased the Product at a grocery

1 stores in or around Brooklyn, New York. In the last year, Plaintiff Coffin purchased and consumer
2 Health-Ade Products 2-3 times per week. On average, the Product had a represented sugar content
3 of 6 grams per serving. Plaintiff Coffin is a diabetic and attempts to limit and control his sugar
4 intake. He does this by carefully reviewing and relying on product labels and packaging.

5 28. Prior to purchasing the Product, Plaintiff Coffin read and relied upon false and
6 misleading statements that were prepared by and/or approved by Defendant and its agents and
7 disseminated through the Products' packaging. For each purchase, he understood that he was
8 paying for a healthy beverage with a specific sugar content and was deceived when he received a
9 product that included far more sugar than represented by Defendant.

10 29. Plaintiff Symone Sweazie ("Plaintiff Sweazie") is a citizen of New Jersey, and an
11 individual consumer. During the Class Period, Plaintiff Sweazie purchased the Product at a
12 grocery stores in or around Bridgeton, New Jersey. Plaintiff Sweazie has been diagnosed with
13 Psoriasis. Her condition worsens with sugar intake and thus, doctors have instructed her to watch
14 her sugar intake. Plaintiff Sweazie typically drinks Health-Ade Products once per week. Plaintiff
15 Sweazie recalls purchasing the California Grape flavor.

16 30. Prior to purchasing the Product, Plaintiff Sweazie read and relied upon false and
17 misleading statements that were prepared by and/or approved by Defendant and its agents and
18 disseminated through the Products' packaging. For each purchase, she understood that she was
19 paying for a healthy beverage with a specific sugar content and was deceived when she received
20 a product that included far more sugar than represented by Defendant.

21 31. Plaintiff Patrick Rojas ("Plaintiff Rojas") is a citizen of Florida and an individual
22 consumer. During the Class Period, Plaintiff Rojas purchased the Product at a grocery stores in
23 North Miami. Plaintiff Rojas generally drinks Health-Ade Products on a daily basis. Plaintiff
24 Rojas drank various flavors of Health-Ade including Beet and Blood Orange Carrot Ginger. On
25 average, the Product had a represented sugar content of 5.5 grams per serving.

26 32. Prior to purchasing the Product, Plaintiff Rojas read and relied upon false and
27 misleading statements that were prepared by and/or approved by Defendant and its agents and
28 disseminated through the Products' packaging. For each purchase, he understood that he was

1 paying for a healthy beverage with a specific sugar content and was deceived when he received a
2 product that included far more sugar than represented by Defendant.

3 33. Plaintiff Lawrence Ebel (“Plaintiff Ebel”) is a citizen of Hawaii and an individual
4 consumer. During the Class Period, Plaintiff Ebel purchased the Product at a convenience stores
5 in and around Wahiawa, Hawaii. Plaintiff Ebel is a quadriplegic who watches his sugar intake
6 because it causes inflammation in his body. Plaintiff Ebel generally drinks Health-Ade Products
7 weekly. On average, the Product had a represented sugar content of 6 grams per serving.

8 34. Prior to purchasing the Product, Plaintiff Ebel read and relied upon false and
9 misleading statements that were prepared by and/or approved by Defendant and its agents and
10 disseminated through the Products’ packaging. For each purchase, he understood that he was
11 paying for a healthy beverage with a specific sugar content and was deceived when he received a
12 product that included far more sugar than represented by Defendant.

13 35. Plaintiff Sarah Cowart (“Plaintiff Cowart”) is a citizen of Massachusetts and an
14 individual consumer. During the Class Period, Plaintiff Cowart purchased the Product at a grocery
15 stores included Market Basket in or around Middleton, Massachusetts. Plaintiff Cowart started
16 purchasing Health-Ade Products in October of 2017 and generally drinks the Products once per
17 week. Plaintiff Cowart recalls purchasing Health-Ade in the flavor of Ginger-Lemon.

18 36. Prior to purchasing the Product, Plaintiff Cowart read and relied upon false and
19 misleading statements that were prepared by and/or approved by Defendant and its agents and
20 disseminated through the Products’ packaging. For each purchase, she understood that she was
21 paying for a healthy beverage with a specific sugar content and was deceived when she received
22 a product that included far more sugar than represented by Defendant.

23 37. Plaintiff Kymberly Lovett (“Plaintiff Lovett”) is a citizen of Minnesota and an
24 individual consumer. During the Class Period, Plaintiff purchased the Product at a grocery stores
25 in or around Minneapolis, Minnesota. Plaintiff Lovett is a diabetic and carefully monitors her
26 sugar intake. Between 2014 and 2015, Plaintiff Lovett drank Health-Ade Products daily. Plaintiff
27 Lovett recalls purchasing Health-Ade in the flavor of Maca-Berry.

28 38. Prior to purchasing the Product, Plaintiff Lovett, Plaintiff read and relied upon false and

1 misleading statements that were prepared by and/or approved by Defendant and its agents and
2 disseminated through the Products' packaging. For each purchase, she understood that she was
3 paying for a healthy beverage with a specific sugar content and was deceived when she received
4 a product that included far more sugar than represented by Defendant.

5 39. Plaintiff Kim Miller ("Plaintiff Miller), is a citizen of Michigan and an individual
6 consumer. During the Class Period, Plaintiff Miller purchased the Product at a grocery stores such
7 as Whole Foods, Westborn Market and Trader Joes in and around Redford, Michigan. Since 2015
8 Plaintiff Miller has generally purchased and drank 2 Health-Ade Products per week. On average,
9 the Product had a represented sugar content of 6 grams per serving.

10 40. Prior to purchasing the Product, Plaintiff Miller read and relied upon false and
11 misleading statements that were prepared by and/or approved by Defendant and its agents and
12 disseminated through the Products' packaging. For each purchase, she understood that she was
13 paying for a healthy beverage with a specific sugar content and was deceived when she received
14 a product that included far more sugar than represented by Defendant.

15 41. Plaintiff Dan Scalf ("Plaintiff Scalf") is a citizen of Indiana. During the Class
16 Period, Plaintiff Scalf purchased the Product at grocery stores such as Whole Foods or
17 Georgetown Market in and around Indianapolis, Indiana. Plaintiff Scalf has been diagnosed with
18 rheumatoid arthritis and carefully monitors his sugar intake to avoid complications. Since 2015,
19 Plaintiff Scalf has generally purchased 1-2 bottles of the Health-Ade Product per week. On
20 average, the Product had a represented sugar content of 6 grams per serving.

21 42. Prior to purchasing the Product, Plaintiff Scalf read and relied upon false and
22 misleading statements that were prepared by and/or approved by Defendant and its agents and
23 disseminated through the Products' packaging. For each purchase, he understood that he was
24 paying for a healthy beverage with a specific sugar content and was deceived when he received a
25 product that included far more sugar than represented by Defendant.

26 43. Plaintiff David Ulery ("Plaintiff Ulery") is a citizen of Colorado. During the Class
27 Period, Plaintiff Ulery purchased the Product once a few months prior to the filing of this action
28 in Colorado Springs, Colorado. Plaintiff Ulery recalls purchasing the Cayenne Cleanse flavor of

1 Health-Ade.

2 44. Prior to purchasing the Product, Plaintiff Ulery read and relied upon false and
3 misleading statements that were prepared by and/or approved by Defendant and its agents and
4 disseminated through the Products' packaging. For each purchase, he understood that he was
5 paying for a healthy beverage with a specific sugar content and was deceived when he received a
6 product that included far more sugar than represented by Defendant.

7 45. Plaintiff Ricky Wright ("Plaintiff Wright") is a citizen of Georgia. During the
8 Class Period, Plaintiff Wright purchased the Product at grocery stores in and around Savannah,
9 Georgia and in the State of Florida. Since around 2014 or 2015 through to the present, Plaintiff
10 Wright purchased and consumed the Product a couple of times per week. On average, the Product
11 had a represented sugar content of 6 grams per serving.

12 46. Prior to purchasing the Product, Plaintiff Wright read and relied upon false and
13 misleading statements that were prepared by and/or approved by Defendant and its agents and
14 disseminated through the Products' packaging. For each purchase, he understood that he was
15 paying for a healthy beverage with a specific sugar content and was deceived when he received a
16 product that included far more sugar than represented by Defendant.

17 47. Plaintiff Michael Miller ("Plaintiff Miller"), is a citizen of Tennessee. During the
18 Class Period, Plaintiff Miller purchased the Product at grocery stores such as Whole Foods in or
19 around Nashville, Tennessee. Plaintiff Miller also purchased the product from Whole Foods in
20 Alabama. Plaintiff Miller would typically purchase and consume 2-6 bottles per month. On
21 average, the Product had a represented sugar content of 6 grams per serving.

22 48. Prior to purchasing the Product, Plaintiff Miller read and relied upon false and
23 misleading statements that were prepared by and/or approved by Defendant and its agents and
24 disseminated through the Products' packaging. For each purchase, she understood that she was
25 paying for a healthy beverage with a specific sugar content and was deceived when she received
26 a product that included far more sugar than represented by Defendant.

27 49. Plaintiff Claude Vogel ("Plaintiff Vogel") is a citizen of Illinois. During the Class
28 Period, Plaintiff Vogel purchased the Product at grocery stores such as Jewels in or around

1 Chicago, Illinois. Plaintiff Vogel began drinking the Product in about March of 2015. Plaintiff
2 Vogel purchased the Product 5-10 times. On average, the Product had a represented sugar content
3 of 6 grams per serving.

4 50. Prior to purchasing the Product, Plaintiff Vogel read and relied upon false and
5 misleading statements that were prepared by and/or approved by Defendant and its agents and
6 disseminated through the Products' packaging. For each purchase, he understood that he was
7 paying for a healthy beverage with a specific sugar content and was deceived when he received a
8 product that included far more sugar than represented by Defendant.

9 51. Plaintiff Arleta Kordylewska ("Plaintiff Kordylewska") is a citizen of
10 Connecticut. During the Class Period, Plaintiff Kordylewska purchased the Product at grocery
11 stores such as Whole Foods in or around Windsor, Connecticut. Plaintiff Kordylewski believes
12 she purchased and consumed all of the fruit-based flavors offered by Health-Ade as she did not
13 like the taste of the original product. Plaintiff Kordylewska would typically purchase the Products
14 by the case. On average, the Product had a represented sugar content of 6 grams per serving.

15 52. Prior to purchasing the Product, Plaintiff Kordylewska read and relied upon false
16 and misleading statements that were prepared by and/or approved by Defendant and its agents
17 and disseminated through the Products' packaging. For each purchase, she understood that she
18 was paying for a healthy beverage with a specific sugar content and was deceived when she
19 received a product that included far more sugar than represented by Defendant.

20 53. Brooke Tolan ("Plaintiff Tolan") is a citizen of Ohio. During the Class Period,
21 Plaintiff Tolan purchased the Product at stores in or around Dayton, Ohio. Plaintiff Tolan began
22 drinking the Product in 2017 and, on average, drank 2 bottles of the Product per day. On average,
23 the Product had a represented sugar content of 6 grams per serving.

24 54. Prior to purchasing the Product, Plaintiff Tolan read and relied upon false and
25 misleading statements that were prepared by and/or approved by Defendant and its agents and
26 disseminated through the Products' packaging. Plaintiff Tolan recalls purchasing the Ginger-
27 Lemon flavor of Health-Ade. For each purchase, she understood that she was paying for a healthy
28 beverage with a specific sugar content and ~~was~~ deceived when she received a product that

1 included far more sugar than represented by Defendant.

2 55. Plaintiff Keisha Walton (“Plaintiff Walton”) is a citizen of Maryland. During the
3 Class Period, Plaintiff Walden purchased the Product at stores in the State of Maryland and in
4 Washington, D.C. Plaintiff Walton recalls purchasing Health-Ade in the flavors of Pomegranate
5 and Ginger-Lemon. Plaintiff Walden started drinking the Product approximately six months ago
6 and purchased and consumes the product three times per week. On average, the Product had a
7 represented sugar content of 6 grams per serving.

8 56. Prior to purchasing the Product, Plaintiff Walton read and relied upon false and
9 misleading statements that were prepared by and/or approved by Defendant and its agents and
10 disseminated through the Products’ packaging. For each purchase, she understood that she was
11 paying for a healthy beverage with a specific sugar content and was deceived when she received
12 a product that included far more sugar than represented by Defendant.

13 57. Plaintiff Michelle Grochowski (“Plaintiff Grochowski”) is currently a citizen of
14 North Carolina, however, during the Class Period, Plaintiff Grochowski was also a citizen of
15 Iowa. Plaintiff Grochowski recalls purchasing Health-Ade in Pink Lady Apple and Ginger-
16 Lemon flavors. During the Class Period, Plaintiff Grochowski purchased the Product at stores in
17 Iowa and North Carolina. Plaintiff Grochowski began purchasing and consuming the Product in
18 2017 and estimates that she typically purchases and consumes the Product 3-4 times per week.
19 On average, the Product had a represented sugar content of 6 grams per serving.

20 58. Prior to purchasing the Product, Plaintiff Grochowski read and relied upon false
21 and misleading statements that were prepared by and/or approved by Defendant and its agents
22 and disseminated through the Products’ packaging. For each purchase, she understood that she
23 was paying for a healthy beverage with a specific sugar content and was deceived when she
24 received a product that included far more sugar than represented by Defendant.

25 59. Plaintiff Raquel Perez (“Plaintiff Perez”) is a citizen of New Hampshire. During
26 the Class Period, Plaintiff Perez purchased the Product at grocery stores such as Whole Foods in
27 or around Merrimack, New Hampshire. Plaintiff Perez has fibromyalgia and is on a low sugar
28 diet. Plaintiff Perez began purchasing the Product about a year to a year and a half ago. Plaintiff

1 Perez purchases and consumed approximately 3-12 bottles per month. Plaintiff Perez recalls
2 purchasing Health-Ade in the Ginger-Lemon flavor.

3 60. Prior to purchasing the Product, Plaintiff Perez read and relied upon false and
4 misleading statements that were prepared by and/or approved by Defendant and its agents and
5 disseminated through the Products' packaging. For each purchase, she understood that she was
6 paying for a healthy beverage with a specific sugar content and was deceived when she received
7 a product that included far more sugar than represented by Defendant.

8 61. Plaintiff Sandra Niclas ("Plaintiff Niclas") is a citizen of New York. During the
9 Class Period, Plaintiff Niclas purchased the Product at grocery stores in and around Montauk,
10 New York. Plaintiff Niclas began purchasing the Product in 2014 or 2015. She purchases and
11 consumes the Product 4 times per week. On average, the Product had a represented sugar content
12 of 6 grams per serving. Plaintiff Niclas is a diabetic and closely monitors her sugar intake and
13 insulin levels. When drinking Health-Ade Plaintiff Niclas noticed that her levels were much
14 higher which she believes is attributable in large part to her consumption.

15 62. Prior to purchasing the Product, Plaintiff Niclas read and relied upon false and
16 misleading statements that were prepared by and/or approved by Defendant and its agents and
17 disseminated through the Products' packaging. For each purchase, she understood that she was
18 paying for a healthy beverage with a specific sugar content and was deceived when she received
19 a product that included far more sugar than represented by Defendant.

20 63. Defendant Health-Ade LLC is a Delaware limited liability company. Its principal
21 place of business is 3347 Motor Ave#200, Los Angeles, California 90034. According to Health-
22 Ade LLC's website, the subject kombucha beverages are brewed "100% in Los Angeles,
23 California." Health-Ade sells nine different flavors of kombucha ("Health-Ade Kombucha")

24 **ALLEGATIONS OF FACT**

25 **A. HISTORY OF KOMBUCHA**

26 64. Although the origins are a bit murky, it is believed that Kombucha originated in
27
28

1 Northeast China (historically referred to as Manchuria) around 220 B.C.². Since Kombucha has
2 been prized for its healing properties³.

3 65. The word “kombucha” is likewise of uncertain etymology. The American Heritage
4 Dictionary suggests that it is probably from the “Japanese kombucha, tea made from kombu (the
5 Japanese word for kelp perhaps being used by English speakers to designate fermented tea due to
6 confusion or because the thick gelatinous film produced by the kombucha culture was thought to
7 resemble seaweed).” Other sources report that the name “kombucha” is derived from Dr. Kombu,
8 a Korean physician who brought the fermented tea to Japan as a curative for Emperor Inkyo,
9 although others attribute it to the

10 66. According to a Russian fable, the original kombucha culture originated from an
11 ant. As the story goes, a monk with healing powers was summoned to help an ailing emperor.
12 The monk promises to treat the emperor’s sickness with an ant, and then drops it in the emperor’s
13 tea, advising him to wait for the jellyfish to grow and transform the tea to a healing portion before
14 drinking. The emperor followed the monks advise and was healed.

15 67. An alternative theory of origin was put forth by Bachinskaya, the Russian scientist
16 who first studied kombucha at the turn of the century. Bachinskaya based her origin theory on the
17 fact that fruit flies can turn a batch of wine or beer to vinegar simply by landing on it. When
18 acetobacter bacteria that live on the flies’ legs are transferred to the liquid they quickly begin
19 multiplying and converting the sugars to acetic acid.

20 68. Regardless of how the culture originated, the kombucha was eventually brought
21 to Europe because of trade route expansions in the early 20th century, most notably appearing in
22 Russia (as “Kambucha”) and Germany (as “Kombuchaschwamm”). Despite a dip in international
23 popularity during WWII due to the shortage of tea and sugar supplies, kombucha regained
24 popularity following a 1960s study in Switzerland comparing its health benefits to those of
25 yogurt⁴. The beverage enjoyed a resurgence of popularity in the United States in the 1990’s.

26 ² <https://www.forbes.com/sites/christinatroitino/2017/02/01/kombucha-101-demystifying-the-past-present-and-future-of-the-fermented-tea-drink/#1ece08fa4ae2>

27 ³ <https://www.forbes.com/sites/christinatroitino/2017/02/01/kombucha-101-demystifying-the-past-present-and-future-of-the-fermented-tea-drink/#1ece08fa4ae2>

28 ⁴ <https://www.forbes.com/sites/christinatroitino/2017/02/01/kombucha-101-demystifying-the-past-present-and-future-of-the-fermented-tea-drink/#43be7c914ae2>

1 **B. RISE IN CONTEMPORARY CONSUMER INTEREST IN KOMBUCHA**

2 69. In the last decade, United States consumers have developed an insatiable thirst for
3 kombucha beverages.

4 70. Kombucha has the fastest-growing segment of the “functional beverage” market
5 in the U.S.—a category vaguely defined by one industry publication as “drinks with added
6 functionality, such as ingredients and associated health benefits and functional positioning.”⁵

7 71. 57% of consumers in a recent study aged 25-34 demonstrated engagement in all
8 segments within the functional beverage category from sports to weight loss to meal replacement.⁶

9 72. Such demand has catapulted the fringe kombucha market into a multimillion dollar
10 industry. The kombucha business has grown up, turning into an industry that could reach \$656.7
11 million in U.S. sales by 2019, according to research firm Euromonitor International⁷.

12 73. Sales of ready-to-drink carbonated tea, which includes many kombucha brands,
13 jumped from \$127.8 million in 2009 to \$529.1 million in 2014, according to Euromonitor.

14 74. “It fits right into that health and wellness trend,” said Duane Stanford, editor of
15 Beverage Digest, a trade publication for the U.S. nonalcoholic beverage industry. “People are
16 looking for healthier beverages, they’re looking at ingredients and because there’s a segment of
17 consumers that are really interested in that, kombucha just kind of becomes one of those niche
18 products that is able to get a following.”

19 75. Kombucha is the symbiosis of a number of bacteria and special yeast cultures. In
20 simple terms, kombucha starts out as a sugary tea, which is then fermented with the help of a
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22
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26 ⁵ <https://www.theatlantic.com/health/archive/2016/12/the-promises-of-kombucha/509786/>

27 ⁶ <https://www.fona.com/resource-center/blog/millennials-functional-beverages>

28 ⁷ <http://www.latimes.com/business/la-fi-kombucha-makers-20160102-story.html>

1 SCOBY.

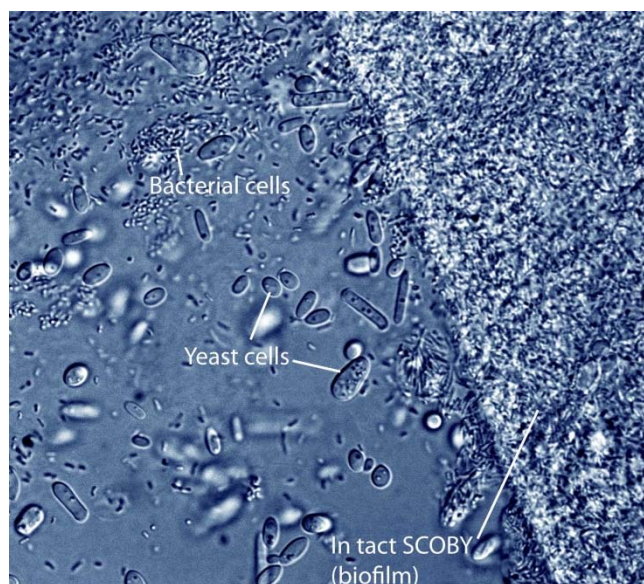


12 76. “SCOBY” is an acronym for “symbiotic culture of bacteria and yeast.” It is a
13 zoogeleal mat—that is, a mass of bacteria and yeast tied together with cellulose nanofibers. The
14 most visible aspect of the SCOBY, also called the “mother”, is an off-white or brownish mat that
15 looks like a slimy Frisbee or a calamari steak.

16 77. The SCOBY mat floats on top of a fermenting batch of kombucha. The growth of
17 the mat regulates the liquid’s access to oxygen.

18 78. The primary bacteria in a SCOBY is *komatagaeibacter xylinum* (aka
19 *Acetobacterxylinum*), although there could be other strains. In addition to building the SCOBY,
20 the bacteria are responsible for converting the ethanol produced by the yeast into healthy acids.

21 In a mutually beneficial cycle, the ethanol produced by the yeast in the SCOBY becomes
22 food for the bacteria which converts the ethanol to acetic acid.



10 79. At room temperature, the yeast and bacteria feed on the sugar in the tea and
 11 ferment it. It's a similar process to making wine, and a small amount of alcohol is produced in
 12 the fermentation process. Vinegar and carbonation are also produced, which give kombucha its
 13 distinct sour flavor and effervescence.

14 **C. THE PURPORTED BENEFITS OF KOMBUCHA**

15 80. As far back as 460-370 B.C., Hippocrates is attributed with the saying "all disease
 16 begins in the gut." Thousands of years later, health-conscious consumers are guzzling Kombucha
 17 in an effort to increase gastrointestinal health and overall well-being. Kombucha has become the
 18 "apple-a-day" of millennials.

19 81. "The probiotic content [of kombucha] is certainly a component to appreciate,"
 20 says Caroline Cederquist, MD, founder of BistroMD. "[Prebiotics] and probiotics consistently
 21 demonstrate improvements in digestive health with evidence supporting its use in treating
 22 diarrhea and irritable bowel syndrome and fighting against intestinal infections."⁸

23 82. According to the National Institute of Diabetes and Digestive and Kidney
 24 Diseases, upward of 60 million to 70 million Americans are affected by digestive diseases. In
 25 addition, digestive disease and disorders cost the U.S. over \$100 billion per year."

26 83. Since 80 percent of your immune system is located in your gut, and the digestive

27

28 ⁸ <https://www.wellandgood.com/good-food/how-to-read-kombucha-label/>

1 system is the second largest part of your neurological system, it's no surprise that the gut is
2 considered the "second brain."

3 84. Probiotics are bacteria that line your digestive tract and support your body's ability
4 to absorb nutrients and fight infection. There are actually 10 times more probiotics in your gut
5 than cells in your body.

6 85. Due to the fermentation process involved in creating kombucha, the resultant
7 beverage contains a large number these probiotics.

8 **D. HEALTH-ADE**

9 86. Health-Ade is one of the nation's largest manufacturers of kombucha. Health-Ade
10 produces the following kombucha beverages:

- 11 • Original (with a represented sugar content of 6 grams per serving)
- 12 • Pink Lady Apple (with a represented sugar content of 7 grams per serving)
- 13 • Cayenne Cleanse (with a represented sugar content of 5 grams per serving)
- 14 • Beet (with a represented sugar content of 6 grams per serving)
- 15 • Ginger-Lemon (with a represented sugar content of 5 grams per serving)
- 16 • California Grape (with a represented sugar content of 7 grams per serving)
- 17 • Pomegranate (with a represented sugar content of 7 grams per serving)
- 18 • Blood Orange-Carrot-Ginger (with a represented sugar content of 5 grams per
19 serving)
- 20 • Maca-Berry (with a represented sugar content of 6 grams per serving)
- 21 • Power Greens (with a represented sugar content of 6 grams per serving)
- 22 • Sweet Thorn (with a represented sugar content of 7 grams per serving)
- 23 • Holiday Cheers (with a represented sugar content of 7 grams per serving)
- 24 • Reishi Chocolate (with a represented sugar content of 7 grams per serving)

25 87. The nutrition panels of Health-Ade Kombuchas claim that the beverages contain
26 between two and four grams of sugar per eight ounces serving of eight fluid ounces. Given that
27 the information appears on the products' label, all consumers are exposed to the same message.

28 88. Testing has consistently demonstrated that the Health-Ade Kombucha beverages

1 actually each contain between 11 and 13 grams of sugars per serving, which, on average,
2 translates to two times more sugar than is stated on the products' label.

3 89. Said differently, each bottle of Health-Ade has roughly the same grams of sugar
4 as:

5
6 2 Ring Pops (the ring pops have less)

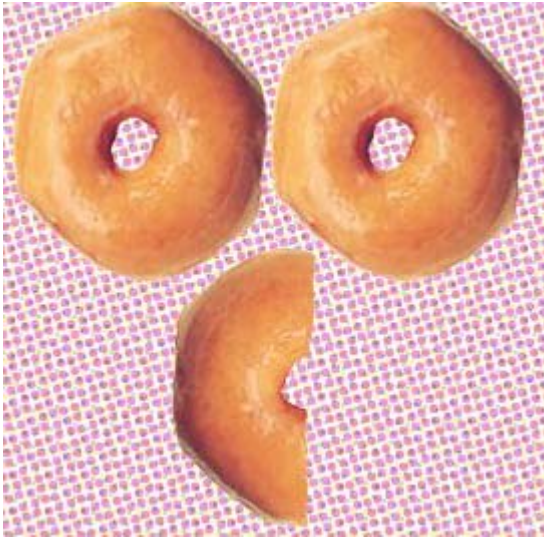


14 Approximately 5 3/4 teaspoons sugar



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A little more than ½ a Sprinkles cupcake



2 and 1/3 Krispy Kreme doughnuts

90. American consumers are health conscious and look for wholesome, natural foods to keep a healthy diet. Product package labels are vehicles that convey food quality and nutrition information to consumers that they can and do use to make purchasing decisions.

91. The sugar content is material to a reasonable consumer and is particularly material to the health-conscious consumers to whom Defendant markets the Health-Ade Kombuchas.

92. Indeed, a consistent theme throughout Defendant’s uniform advertising and marketing campaign are the touted health benefits – particularly the benefits of the probiotics and acids on digestive and overall health. Indeed, Defendant’s motto is “FOLLOW YOUR GUT”. Yet, Defendant knows that sugar has been linked to the overgrowth of bad bacteria and Candida in the intestinal tract. Imbalances in digestive flora have been linked to disease such as arthritis and autoimmune disease.

1 93. Moreover, the misrepresentations can have dire effects on the health and wellness
2 of consumers who have health-issues such as diabetes, arthritis, and other conditions that are
3 complicated by increased sugar intake.

4 94. Defendant Consumers lack the meaningful ability to test or independently
5 ascertain the truthfulness of food and beverage labeling claims especially at the point of sale.
6 Consumers would not know the true nature and quantity of the ingredients merely by reading the
7 ingredient label; its discovery requires investigation beyond the grocery store and knowledge of
8 food chemistry as well as internal manufacturing habits beyond that of the average consumer.
9 Thus, reasonable consumers must, and do, rely on food companies such as Defendant to honestly
10 report the nature and quantity of a beverage's ingredients, and beverage companies such as
11 Defendant intends and knows that consumers rely upon food labeling statements in making their
12 purchasing decisions. Such reliance by consumers is also eminently reasonable, since food
13 companies are prohibited from making false or misleading statements on its products under
14 federal law.

15 95. Defendant's systematic mislabeling of the sugar content of Health-Ade
16 kombuchas is deceptive, fraudulent, unfair in violation of California's consumer laws.

17 96. During the Class Period, Plaintiffs were introduced to the Product through its
18 labeling and advertising. Plaintiffs, like other reasonable consumers, cares about their sugar intake
19 and would not have purchased the Health-Ade Kombuchas and/or would not have paid a premium
20 price for the products had they known they actually contained more sugar than what was disclosed
21 on the nutritional panel.

22 97. Defendant unscrupulously capitalize on consumers' heightened demand for
23 natural products by deceptively labeling, advertising, and marketing Health-Ade.

24 **DAMAGES TO PLAINTIFFS AND THE CLASSES**

25 98. Plaintiffs purchased the Product based on Defendant's labeling, advertising, and
26 marketing that the Product was unpasteurized.

27 99. Defendant manufactured, distributed, and sold products that are misbranded.
28 Misbranded products cannot be legally manufactured, distributed, sold, or held, and have no
economic value and are legally worthless as a matter of law.

1 100. Moreover, Plaintiffs and the members of the Classes would not have purchased
2 and/or paid a premium to purchase the Product over comparable products that do not purport to
3 be natural.

4 101. As set forth in the chart below, the Product costs more than comparable products
5 that do not contain comparably high sugar levels.

6 Product	Price per bottle	Premium paid per bottle versus ...
7 Health-Ade	\$3.99	
8 KeVita	\$2.99	\$1.00
9 SUJA	\$3.29	\$.70

11
12 **TOLLING OF THE STATUTE OF LIMITATIONS,**
13 **FRAUDULENT CONCEALMENT, EQUITABLE TOLLING,**
14 **AND CONTINUING VIOLATIONS**

15 102. Plaintiffs did not discover and could not have discovered through the exercise of
16 reasonable diligence, the existence of the claims sued upon herein until immediately prior to
17 commencing this civil action.

18 103. Any applicable statutes of limitation have been tolled by Defendant's affirmative
19 acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above
20 reveal.

21 104. Because of the self-concealing nature of Defendant's actions and its affirmative
22 acts of concealment, Plaintiffs and the Classes assert the tolling of any applicable statutes of
23 limitations affecting the claims raised herein.

24 105. Defendant continues to engage in the deceptive practice, and consequently,
25 unwary consumers are injured on a daily basis by Defendant's unlawful conduct. Therefore,
26 Plaintiffs and the Classes submit that each instance that Defendant engaged in the conduct
27 complained of herein and each instance that a member of any Class purchased Health-Ade
28 Kombuchas constitutes part of a continuing violation and operates to toll the statutes of limitation

1 in this action.

2 106. Defendant is estopped from relying on any statute of limitations defense because
3 of its unfair or deceptive conduct.

4 107. Defendant's conduct was and is, by its nature, self-concealing. Still, Defendant,
5 through a series of affirmative acts or omissions, suppressed the dissemination of truthful
6 information regarding its illegal conduct, and actively have foreclosed Plaintiffs and the Classes
7 from learning of its illegal, unfair, and/or deceptive acts. These affirmative acts included
8 mislabeling the products by significantly undervaluing the sugar content of the beverages.

9 108. By reason of the foregoing, the claims of Plaintiffs and the Classes are timely
10 under any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling
11 doctrine, and fraudulent concealment.

12 109. Plaintiffs bring this action individually and on behalf of all other persons similarly
13 situated. The Classes which Plaintiffs seek to represent comprise:

14 **California Class**

15 All persons in California who purchased Health-Ade
16 Kombuchas from March 23, 2014 until the date of judgment in
17 this action for personal or household use, and not for resale or
18 distribution purposes. Specifically excluded from this Class is
19 Defendant; the officers, directors, or employees of Defendant;
20 any entity in which Defendant has a controlling interest; and any
21 affiliate, legal representative, heir, or assign of Defendant
22 ("California Class"). Also excluded are those who assert claims
23 for personal injury as well as any federal, state, or local
24 governmental entities, any judicial officer presiding over this
25 action and the members of his/her immediate family and judicial
26 staff, and any juror assigned to this action.

27 **National Class**

28 All persons in the United States who purchased Health-Ade
Kombuchas from March 23, 2014, until the date of judgment in
this action for personal or household use, and not for resale or
distribution purposes. Specifically excluded from this Class is
Defendant; the officers, directors, or employees of Defendant;
any entity in which Defendant has a controlling interest; and any
affiliate, legal representative, heir, or assign of Defendant
("National Class"). Also excluded are those who assert claims
for personal injury as well as any federal, state, or local
governmental entities, any judicial officer presiding over this

1 action and the members of his/her immediate family and judicial
2 staff, and any juror assigned to this action.

3 **Consumer Protection Class**

4 All persons who reside in states in the United States with similar
5 consumer protection laws, breach of express warranty laws and
6 breach of implied warranty law, who purchased Health-Ade
7 Kombuchas from March 23, 2014, until the date of judgment in
8 this action, for personal or household use, and not for resale or
9 distribution purposes (“Consumer Protection Class”).
10 Specifically excluded from this Class are Defendant; the
11 officers, directors, or employees of Defendant; any entity in
12 which Defendant has a controlling interest; and any affiliate,
13 legal representative, heir, or assign of Defendant. Also excluded
14 are those who assert claims for personal injury as well as any
15 federal, state, or local governmental entities, any judicial officer
16 presiding over this action and the members of his/her immediate
17 family and judicial staff, and any juror assigned to this action.

18 110. The Classes are sufficiently numerous, as each includes thousands of persons who
19 have purchased the Product. Thus, joinder of such persons in a single action or bringing all
20 members of the Classes before the Court is impracticable for purposes of Rule 23(a)(1). The
21 question is one of a general or common interest of many persons and it is impractical to bring
22 them all before the Court. The disposition of the claims of the members of the Classes in this class
23 action will substantially benefit both the parties and the Court.

24 111. There are questions of law and fact common to each Class for purposes of Rule
25 23(a)(2), whether Defendant’s labels and packaging include uniform misrepresentations and
26 omissions that misled Plaintiffs and the other members of the Classes to believe the Product was
27 healthier and contained less sugar than actually the case. The members of each Class were and
28 are similarly affected by having purchased the Product for its intended and foreseeable purpose
as promoted, marketed, advertised, packaged, and labeled by Defendant as set forth in detail
herein, and the relief sought herein is for the benefit of Plaintiffs and other members of the
Classes. Thus, there is a well-defined community of interest in the questions of law and fact
involved in this action and affecting the parties.

112. Plaintiffs assert claims that are typical of the claims of each respective Classes for
purposes of Rule 23(a)(3). Plaintiffs and all members of each respective Class have been
subjected to the same wrongful conduct because they have purchased that Product, which contains

1 vastly more grams of sugar than represented on the products' label. Plaintiffs paid a premium for
2 the Health-Ade Kombuchas, on the belief the products contained between two and four grams of
3 sugar per serving, over similar alternatives that did not make such representations. Plaintiffs and
4 the members of each Class have thus all overpaid for the Product.

5 113. Plaintiffs will fairly and adequately represent and protect the interests of the other
6 members of each respective Class for purposes of Rule 23(a)(4). Plaintiffs have no interests
7 antagonistic to those of other members of each respective Class. Plaintiffs are committed to the
8 vigorous prosecution of this action and has retained counsel experienced in litigation of this nature
9 to represent them. Plaintiffs anticipate no difficulty in the management of this litigation as a class
10 action.

11 114. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted
12 on grounds that apply generally to each Class, so that final injunctive relief or corresponding
13 declaratory relief is appropriate respecting each Class as a whole. Defendant utilizes an integrated,
14 nationwide messaging campaign that includes uniform misrepresentations that misled Plaintiffs
15 and the other members of each Class.

16 115. Class certification is appropriate under Rule 23(b)(3) because common questions
17 of law and fact substantially predominate over any questions that may affect only individual
18 members of each Class. Among these common questions of law and fact are:

- 19 a. whether Defendant misrepresented or omitted material facts in connection with
20 the promotion, marketing, advertising, packaging, labeling, and sale of the Health-
21 Ade Kombuchas;
- 22 b. whether Defendant's labeling of the Health-Ade Kombuchas are likely to deceive
23 the members of each Class;
- 24 c. whether Defendant's conduct is unethical, oppressive, unscrupulous, and/or
25 substantially injurious to consumers;
- 26 d. whether Defendant represented that the Health-Ade Kombuchas have
27 characteristics, benefits, uses, or qualities that it does not have;
- 28 e. whether Defendant's acts and practices in connection with the promotion,

1 marketing, advertising, packaging, labeling, distribution, and sale of the Health-
2 Ade Kombuchas violated the laws alleged herein;

3 f. whether Plaintiffs and members of the Classes are entitled to injunctive and other
4 equitable relief; and

5 g. whether Defendant was unjustly enriched by its conduct.

6 116. Defendant engaged in a common course of conduct giving rise to the legal rights
7 sought to be enforced by the members of each respective Class. Similar or identical statutory and
8 common law violations and deceptive business practices are involved. Individual questions, if
9 any, pale by comparison to the numerous common questions that predominate.

10 117. The injuries sustained by Plaintiffs and the members of each Class flow, in each
11 instance, from a common nucleus of operative facts – Defendant’s misconduct.

12 118. Plaintiffs and the members of each Class have been damaged by Defendant’s
13 misconduct. The members of each Class have paid for a product that would not have been
14 purchased in the absence of Defendant’s deceptive scheme, or, alternatively, would have been
15 purchased at a lesser price.

16 119. Proceeding as a class action provides substantial benefits to both the parties and
17 the Court because this is the most efficient method for the fair and efficient adjudication of the
18 controversy. Members of each Class have suffered and will suffer irreparable harm and damages
19 as a result of Defendant’s wrongful conduct. Because of the nature of the individual claims of the
20 members of each Class, few, if any, could or would otherwise afford to seek legal redress against
21 Defendant for the wrongs complained of herein, and a representative class action is therefore the
22 appropriate, superior method of proceeding and essential to the interests of justice insofar as the
23 resolution of claims of the members of each Class is concerned. Absent a representative class
24 action, members of each Class would continue to suffer losses for which they would have no
25 remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate
26 actions could be brought by individual members of each Class, the resulting multiplicity of
27 lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well
28 as create a risk of inconsistent rulings, which might be dispositive of the interests of the other

1 members of each Class who are not parties to the adjudications and/or may substantially impede
2 their ability to protect their interests.

3 **FIRST CAUSE OF ACTION**

4 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**
5 **PROFESSIONS CODE § 17200, *et seq.***

6 **(By Plaintiffs and California Class against all Defendant)**

7 120. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 118 above,
8 and incorporate the same as if set forth herein at length.

9 121. This cause of action is brought pursuant to *Business and Professions Code* §
10 17200, *et seq.*

11 122. In the advertising of the Product, Defendant makes false and misleading
12 statements. Specifically, as set forth above, Defendant labels its Health-Ade Kombucha products
13 as having between two and four grams of sugar per eight ounces serving.

14 123. In fact, the Health-Ade Kombuchas contain a far greater sugar content per serving.

15 124. Defendant is aware that the claims that it makes about the Health-Ade Kombucha
16 are false, misleading and unsubstantiated.

17 125. As alleged in the preceding paragraphs, the misrepresentations and omissions by
18 Defendant of the material facts detailed above constitute an unfair and fraudulent business
19 practice within the meaning of California *Business & Professions Code* § 17200.

20 126. In addition, Defendant's use of various forms of advertising media to advertise,
21 call attention to or give publicity to the sale of goods or merchandise which are not as represented
22 in any manner constitute unfair competition, unfair, deceptive, untrue or misleading advertising,
23 and an unlawful business practice within the meaning of *Business & Professions Code* §§ 17531
24 and 17200, which advertisements have deceived and are likely to deceive the consuming public,
25 in violation of *Business & Professions Code* § 17500.

26 127. There were reasonably available alternatives to further Defendant's legitimate
27 business interests, other than the conduct described herein.

1 128. All of the conduct alleged herein occurs and continues to occur in Defendant's
2 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
3 repeated on hundreds of occasions daily.

4 129. Pursuant to *Business & Professions Code* §§ 17203 and 17535, Plaintiffs and the
5 members of the Classes seek an order of this Court enjoining Defendant from continuing to
6 engage, use, or employ its practice of advertising the sale and use of the Health-Ade Kombucha.
7 Likewise, Plaintiffs and the members of the Classes seek an order requiring Defendant to disclose
8 such misrepresentations, and additionally request an order awarding Plaintiffs restitution of the
9 money wrongfully acquired by Defendant by means of responsibility attached to Defendant's
10 failure to disclose the existence and significance of said misrepresentations.

11 **SECOND CAUSE OF ACTION**

12 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**
13 **PROFESSIONS CODE § 17500, et seq.**

14 **(By Plaintiffs and California Class against all Defendant)**

15 130. Plaintiffs repeat and reallege the allegations set forth in paragraph 1 through 118
16 above, and incorporate the same as if set forth herein at length.

17 131. This cause of action is brought pursuant to *Business and Professions Code* §
18 17500, et seq. (known as California's False Advertising Law or "FAL").

19 132. The FAL prohibits the dissemination of any advertisement which is untrue or
20 misleading, and which is known, or which by exercise of reasonable care should be known, to be
21 untrue or misleading. Cal. Bus. & Prof. Code §17500.

22 133. In its advertising of Health-Ade Kombucha, Defendant makes false and
23 misleading statements. Specifically, as set forth above, Defendant labels its product as having a
24 sugar content of between two and four grams of sugar per serving.

25 134. In fact, the Health-Ade Kombuchas contain between 11 and 13 grams of sugar per
26 serving.

27 135. As alleged in the preceding paragraphs, the misrepresentations by Defendant of
28 the material facts detailed above constitute an unfair and fraudulent business practice within the

1 meaning of California *Business & Professions Code* § 17500.

2 136. In addition, Defendant’s use of various forms of advertising media to advertise,
3 call attention to or give publicity to the sale of goods or merchandise which are not as represented
4 in any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising,
5 and an unlawful business practice within the meaning of *Business & Professions Code* §§ 17531
6 and 17200, which advertisements have deceived and are likely to deceive the consuming public,
7 in violation of *Business & Professions Code* § 17500.

8 137. Pursuant to *Business & Professions Code* §§ 17203 and 17535, Plaintiffs and the
9 members of the Classes seek an order of this Court enjoining Defendant from continuing to
10 engage, use, or employ its practice of advertising the sale and use of the Health-Ade Kombuchas.
11 Likewise, Plaintiffs and the members of the Classes seek an order requiring Defendant to disclose
12 such misrepresentations, and additionally request an order awarding Plaintiffs restitution of the
13 money wrongfully acquired by Defendant by means of responsibility attached to Defendant’s
14 failure to disclose the existence and significance of said misrepresentations.

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.***

17 **(By Plaintiffs and California Class against all Defendant)**

18 138. Plaintiffs repeat and reallege the allegations as set forth in paragraphs 1 through
19 120 above, and incorporate the same as if set forth herein at length.

20 139. This cause of action is brought pursuant to *Civil Code* § 1750, *et seq.*, the
21 Consumers Legal Remedies Act.

22 140. Plaintiffs, as well as each member of the Consumer Class, constitutes a
23 “consumer” within the meaning of California *Civil Code* § 1761(d).

24 141. Defendant’s sales of Health-Ade kombuchas constitutes “transactions” within the
25 meaning of California *Civil Code* § 1761(e).

26 142. The Health-Ade Kombucha beverages purchased by Plaintiffs and the Consumer
27 Class constitute “goods” under California *Civil Code* § 1761(a).

28 143. The Consumer Class consists of thousands of persons, the joinder of whom is

1 impracticable.

2 144. There are questions of law and fact common to the classes, which questions are
3 substantially similar and predominate over questions affecting the individual members, including
4 but not limited to:

5 (a) Whether Defendant represented that Health-Ade Kombucha has characteristics,
6 ingredients, benefits, uses or quantities which it does not have;

7 (b) Whether the existence, extent and significance of the major misrepresentations,
8 concealments and omissions regarding the purported benefits, characteristics and
9 efficacy of the Health-Ade Kombucha violate the Act; and

10 (c) Whether Defendant knew of the existence of these misrepresentations,
11 concealments and omissions.

12 145. The policies, acts, and practices heretofore described were intended to result in the
13 sale of Health-Ade Kombucha to the consuming public and violated and continue to violate: (1)
14 Section 1770(a)(5) of the Act which prohibits, *inter alia*, “[r]epresenting that goods or services
15 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they
16 do not have;” (2) Section 1770(a)(7) of the Act, which prohibits, “[r]epresenting that goods or
17 services are of a particular standard, quality, grade, or that goods are of a particular style or model
18 , if they are of another;” (3) Section 1770(a)(9), which prohibits, “[a]dvertising goods or services
19 with intent not to sell them as advertised;” and section 1770(a)(14) which bars KeVita from
20 “representing that a transaction confers or involves rights, remedies, or obligations which it does
21 not have or involve.”

22 146. Defendant fraudulently deceived Plaintiffs and the Classes by representing that
23 Product has certain characteristics, benefits, uses and qualities which it does not have. In doing
24 so, Defendant intentionally misrepresented and concealed material facts from Plaintiffs and the
25 Classes, specifically and not limited to the sugar content of the Health-Ade Kombucha beverages.
26 Said misrepresentations and concealment were done with the intention of deceiving Plaintiffs and
27 the Classes and depriving them of their legal rights and money.

28 147. Defendant’s actions as described hereinabove were done with conscious disregard

1 of Plaintiffs' rights and Defendant was wanton and malicious in its concealment of the same.

2 148. Pursuant to § 1780(a) of the Act, Plaintiffs seek injunctive relief in the form of an
3 order enjoining the above-described wrongful acts and practices of Defendant including, but not
4 limited to, an order enjoining Defendant from distributing such false advertising and
5 misrepresentations. Plaintiffs shall be irreparably harmed if such an order is not granted.

6 Plaintiffs reserve the right to amend this complaint to include a request for damages under the
7 CLRA after complying with *Civil Code* 1782(a) within thirty days after the commencement of

8 this action. **FOURTH CAUSE OF ACTION**

9 **UNJUST ENRICHMENT**

10 **(By Plaintiffs, California Class and National Class**

11 **Against all Defendant)**

12 149. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 118
13 above, and incorporate the same as if set forth herein at length.

14 150. Plaintiffs brings this claim individually, as well as, on behalf of members of the
15 National Class and California Class pursuant California law. Although there are numerous
16 permutations of the elements of the unjust enrichment cause of action in the various states, there
17 are few real differences. In all states, the focus of an unjust enrichment claim is whether the
18 defendant was unjustly enriched. At the core of each state's law are two fundamental elements
19 – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant
20 to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in
21 each state. Since there is no material conflict relating to the elements of unjust enrichment
22 between the different jurisdictions from which class members will be drawn, California law
23 applies to the claims of the Class.

24 151. In the alternative, Plaintiffs bring this claim individually as well as on behalf of
25 the California Class.

26 152. At all times relevant hereto, Defendant deceptively labeled, marketed, advertised,
27 and sold Health-Ade Kombucha to Plaintiffs and the Classes.

28 153. Plaintiffs and members of the Classes conferred upon Defendant non-gratuitous

1 payments for Health-Ade Kombucha that they would not have due to Defendant's deceptive
2 labeling, advertising, and marketing. Defendant accepted or retained the non-gratuitous benefits
3 conferred by Plaintiffs and members of the Classes, with full knowledge and awareness that, as
4 a result of Defendant's deception, Plaintiffs and members of the Class were not receiving a
5 product of the quality, nature, fitness, or value that had been represented by Defendant and
6 reasonable consumers would have expected.

7 154. Defendant has been unjustly enriched in retaining the revenues derived from
8 purchases of Health-Ade Kombucha by Plaintiffs and members of the Classes, which retention
9 under these circumstances is unjust and inequitable because Defendant misrepresented the
10 quantity of sugar in the beverages, which caused injuries to Plaintiffs and members of the Classes
11 because they paid a price premium due to the mislabeling of the Health-Ade Kombucha.

12 155. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and
13 members of the Classes under these circumstances made Defendant's retention of the non-
14 gratuitous benefits unjust and inequitable. Thus, Defendant must pay restitution to Plaintiffs and
15 members of the Classes for its unjust enrichment, as ordered by the Court.

16 **FIFTH CAUSE OF ACTION**

17 **BREACH OF EXPRESS WARRANTY**

18 **(By Plaintiffs, on behalf of themselves, the California Class and**
19 **Consumer Protection Class Against all Defendant)**

20 156. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 118
21 above, and incorporate the same as if set forth herein at length.

22 157. Plaintiffs bring this Count individually under the laws of the state where they
23 purchased Health-Ade Kombucha and on behalf of the California Class and Consumer
24 Protection Class (in states having similar laws regarding express warranties).

25 158. Defendant's representations, as described herein, are affirmations by Defendant
26 that Health-Ade Kombucha beverages contained only between two and four grams of sugar per
27 serving. Defendant's representations regarding Health-Ade Kombucha are made to Plaintiffs
28 and the other members of the Classes at the point of purchase and are part of the description of

1 the goods. Those promises constituted express warranties and became part of the basis of the
2 bargain, between Defendant on the one hand, and Plaintiffs and the Classes on the other.

3 159. In addition, or in the alternative, Defendant made each of its above-described
4 representations to induce Plaintiffs and the Classes to rely on such representations, and they each
5 did so rely on Defendant's representations as a material factor in its decisions to purchase Health-
6 Ade Kombucha. Plaintiffs and other members of the Classes would not have purchased Health-
7 Ade Kombucha but for these representations and warranties.

8 160. The Health-Ade Kombucha did not, in fact, meet the representations Defendant
9 made about Product, as described herein, because Health-Ade Kombucha contains sugar
10 contents far in excess of the amount Defendant warranted.

11 161. At all times relevant to this action, Defendant made false representations in
12 breach of the express warranties and in violation of state express warranty laws, including:

- 13 a. Alaska St. §45.02.313;
- 14 b. Ariz. Rev. Stat. Ann. §47-2313;
- 15 c. Ark. Code Ann. §4-2-313;
- 16 d. Cal. Com. Code §2313;
- 17 e. Colo. Rev. Stat. §4-2-313;
- 18 f. Conn. Gen. Stat. Ann. §42a-2-313;
- 19 g. D.C. Code §28:2-313;
- 20 h. Fla. Stat. §672.313;
- 21 i. Haw. Rev. Stat. §490:2-313;
- 22 j. 810 Ill. Comp. Stat. 5/2-313;
- 23 k. Ind. Code §26-1-2-313;
- 24 l. Kan. Stat. Ann. §84-2-313;
- 25 m. La. Civ. Code. Ann. art. 2520;
- 26 n. Maine Rev. Stat. Ann. 11 §2-313;
- 27 o. Mass. Gen. Laws Ann. 106 §2-313;
- 28 p. Minn. Stat. Ann. §336.2-313; -34-

- 1 q. Miss. Code Ann. §75-2-313;
- 2 r. Mo. Rev. Stat. §400.2-313;
- 3 s. Mont. Code Ann. §30-2-313;
- 4 t. Neb. Rev. Stat. §2-313;
- 5 u. Nev. Rev. Stat. §104.2313;
- 6 v. N.H. Rev. Stat. Ann. §382-A:2-313;
- 7 w. N.J. Stat. Ann. §12A:2-313;
- 8 x. N.M. Stat. Ann. §55-2-313;
- 9 y. N.Y. U.C.C. Law §2-313;
- 10 z. N.C. Gen. Stat. Ann. §25-2-313;
- 11 aa. Okla. Stat. Ann. tit. 12A, §2-313;
- 12 bb. Or. Rev. Stat. §72.3130;
- 13 cc. Pa. Stat. Ann. tit. 13, §2313;
- 14 dd. R.I. Gen. Laws §6A-2-313;
- 15 ee. S.C. Code Ann. §36-2-313;
- 16 ff. S.D. Codified Laws. §57A-2-313;
- 17 gg. Tenn. Code Ann. §47-2-313;
- 18 hh. Tex. Bus. & Com. Code Ann. §2.313;
- 19 ii. Utah Code Ann. §70A-2-313;
- 20 jj. Vt. Stat. Ann. tit. 9A§2-313;
- 21 kk. Wash. Rev. Code §62A.2-313;
- 22 ll. W. Va. Code §46-2-313;
- 23 mm. Wyo. Stat. Ann. §34.1-2-313;

24 162. The above statutes do not require privity of contract in order to recover for breach
25 of express warranty.

26 163. As a proximate result of this breach of warranty by Defendant, Plaintiffs and
27 other members of the Classes have been damaged in an amount to be determined at trial because:

1 (a) they paid a price premium due to the deceptive labeling of Health-Ade Kombucha; and (b)
2 Health-Ade Kombucha did not have the composition, attributes, characteristics, nutritional
3 value, health qualities, or value promised.

4 164. Wherefore, Plaintiffs and the Classes demand judgment against Defendant for
5 compensatory damages, plus interest, costs, and such additional relief as the Court may deem
6 appropriate or to which Plaintiffs and the Classes may be entitled.

7 **SIXTH CAUSE OF ACTION**

8 **BREACH OF IMPLIED WARRANTY**

9 **(By Plaintiffs, on Behalf of Themselves, the California Class, the California Class and**
10 **Consumer Protection Class Against Defendant)**

11 165. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 118
12 above, and incorporate the same as if set forth herein at length.

13 166. Plaintiffs bring this Count individually under the laws of the state where they
14 purchased Health-Ade Kombucha and on behalf of the California Class and Consumer
15 Protection Class (in states having similar laws regarding implied warranties).

16 167. The Uniform Commercial Code §2-314 provides that unless excluded or
17 modified, a warranty that the goods shall be merchantable is implied in a contract for their sale
18 if the seller is a merchant with respect to goods of that kind. This implied warranty of
19 merchantability acts as a guarantee by the seller that his goods are fit for the ordinary purposes
20 for which they are to be used.

21 168. The Uniform Commercial Code §2-314 provides that “[g]oods to be
22 merchantable must be at least such as.... Are adequately contained, packaged, and labeled as the
23 agreement may require...[and] conform to the promises or affirmations of fact made on the
24 container or label if any.” Cal.Com.Code § 2314(2)(f).

25 169. Defendant developed, manufactured, advertised, marketed, sold, and/or
26 distributed Health-Ade Kombucha and represented that Health-Ade Kombucha had a sugar
27 content below the actual sugar content of the beverages.

28 170. At all times, the following states listed below, including the District of Columbia,

1 have codified and adopted the provisions of the Uniform Commercial Code governing the
2 implied warranty of merchantability:

- 3 a. Ala. Code §7-2-314;
- 4 b. Alaska Stat. §45.02.314;
- 5 c. Ariz. Rev. Stat. Ann. §47-2314;
- 6 d. Ark. Code Ann. §4-2-314;
- 7 e. Cal. Com. Code §2314;
- 8 f. Colo. Rev. Stat. §4-2-314;
- 9 g. Conn. Gen. Stat. Ann. §42a-2-314;
- 10 h. Del. Code Ann. tit. 6 §2-314;
- 11 i. D.C. Code §28:2-314;
- 12 j. Fla. Stat. §672.314;
- 13 k. Ga. Code Ann. §11-2-314;
- 14 l. Haw. Rev. Stat. §490:2-314;
- 15 m. Idaho Code §28-2-314;
- 16 n. 810 Ill. Comp. Stat. Ann. 5/2-314;
- 17 o. Ind. Code Ann. §26-1-2-314;
- 18 p. Iowa Code Ann. §554.2314;
- 19 q. Kan. Stat. Ann. §84-2-314;
- 20 r. Ky. Rev. Stat. Ann. §355.2-314;
- 21 s. La. Civ. Code Ann. art. §2520;
- 22 t. Me. Rev. Stat. Ann. 11 §2-314;
- 23 u. Md. Code Ann. Com. Law §2-314;
- 24 v. Mass. Gen. Laws Ch. 106 §2-314;
- 25 w. Mich. Comp. Laws Ann. §440.2314;
- 26 x. Minn. Stat. Ann. §336.2-314;
- 27 y. Miss. Code Ann. §75-2-314;

- 1 z. Mo. Rev. Stat. §400.2-314;
- 2 aa. Mont. Code Ann. §30-2-314;
- 3 bb. Nev. Rev. Stat. §104.2314;
- 4 cc. N.H. Rev. Stat. Ann. §382-A:2-314;
- 5 dd. N.J. Stat. Ann. §12A:2-314;
- 6 ee. N.M. Stat. Ann. §55-2-314;
- 7 ff. N.Y. U.C.C. Law §2-314;
- 8 gg. N.C. Gen. Stat. Ann. §25-2-314;
- 9 hh. N.D. Cent. Code §41-02-314;
- 10 ii. Ohio Rev. Code Ann. §1302.27;
- 11 jj. Okla. Stat. Ann. tit. 12A §2-314;
- 12 kk. Or. Rev. Stat. §72.3140;
- 13 ll. Pa. Stat. Ann. tit. 13 §2314;
- 14 mm. R.I. Gen. Laws §6A-2-314;
- 15 nn. S.C. Code Ann. §36-2-314;
- 16 oo. S.D. Codified Laws §57A-2-314;
- 17 pp. Tenn. Code Ann. §47-2-314;
- 18 qq. Tex. Bus. & Com. Code Ann. §2-314;
- 19 rr. Utah Code Ann. §70A-2-314;
- 20 ss. Va. Code Ann. §8.2-314;
- 21 tt. Vt. Stat. Ann. tit. 9A §2-314;
- 22 uu. W. Va. Code §46-2-314;
- 23 vv. Wash. Rev. Code §62A 2-314;
- 24 ww. Wis. Stat. Ann. §402.314; and
- 25 xx. Wyo. Stat. Ann. §34.1-2-314.

26 171. As developer, manufacturer, producer, advertiser, marketer, seller and/or
27 distributor of beverage products, Defendant is a “merchant” within the meaning of the various

1 states' commercial codes governing the implied warranty of merchantability.

2 172. Further, Defendant is a merchant with respect to Health-Ade Kombucha.
3 Defendant developed, manufactured, produced, advertised, marketed, sold, and/or distributed
4 Health-Ade Kombucha and represented to Plaintiffs and the Classes that the beverages had
5 between 2 and 4 grams of sugar per serving, as described herein. Further, Defendant, by selling
6 Health-Ade Kombucha to Plaintiffs and the Classes, have held themselves out as retailers of
7 Health-Ade Kombucha and, in fact, have derived a substantial amount of revenues from the sale
8 of Health-Ade Kombucha.

9 173. Health-Ade Kombucha can be classified as "goods," as defined in the various
10 states' commercial codes governing the implied warranty of merchantability.

11 174. As a merchant of Health-Ade Kombucha, Defendant knew that purchasers relied
12 upon them to develop, manufacture, produce, sell, and distribute a kombucha beverage, as
13 promised.

14 175. Defendant developed, manufactured, produced, sold, and distributed Health-Ade
15 Kombucha to consumers such as Plaintiffs and the Classes. They knew that the Product would
16 be used as a kombucha beverage, as promised.

17 176. Defendant specifically represented in its labeling of Health-Ade Kombucha that
18 the beverages contained between 2 and 4 grams of sugar per serving.

19 177. Defendant breached its implied warranties in connection with the sale of Health-
20 Ade Kombucha to Plaintiffs and members of the Classes. Health-Ade Kombuchas are neither
21 adequately labeled nor conform to the promises or affirmations of at made on the container or
22 label.

23 178. Defendant had actual knowledge that Health-Ade Kombucha contained sugar
24 levels far in excess of its warranties and thus was the low sugar beverage marketed and not fit
25 for its ordinary purpose and Plaintiffs therefore were not required to notify Defendant of its
26 breach. If notice is required, Plaintiffs and the Classes adequately have provided Defendant of
27 such notice through the filing of this lawsuit.

28 179. Heath-Ade contracted with retailers so that the retailers could sell its Health-Ade

1 beverages to consumers. Health-Ade intended that consumers would be the end users of Health-
2 Ade kombucha beverages and that consumers would be the beneficiaries of its contracts with
3 retailers to sell Health-Ade kombucha beverages to consumers.

4 180. As a direct and proximate result of Defendant's breach of implied warranties,
5 Plaintiffs and other members of the Classes have been injured. Plaintiffs and the other members
6 of the Classes would not have purchased Health-Ade Kombucha but for Defendant's
7 representations and warranties. Defendant misrepresented the character of Health-Ade
8 Kombucha, which caused injuries to Plaintiffs and the other members of the Classes because
9 either they paid a price premium due to the deceptive labeling or they purchased products that
10 were not of a character and fitness as promised and therefore had no value to Plaintiffs and the
11 other members of the Classes.

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATIONS OF CONSUMER FRAUD LAWS**

14 **(By Plaintiffs, on Behalf of Themselves, the California Class, and Consumer Protection**
15 **Class against Defendant)**

16 181. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 118
17 above and incorporate the same as if set forth herein at length.

18 182. Plaintiffs bring this Count individually under the laws of the state where they
19 purchased Health-Ade Kombucha and on behalf of all other persons who purchased Health-Ade
20 Kombucha in states having similar laws regarding consumer fraud and deceptive trade practices.

21 183. Plaintiffs and each of the other members of the Classes are consumers,
22 purchasers, or other persons entitled to the protection of the consumer protection laws of the
23 state in which they purchased the Product.

24 184. The consumer protection laws of the State in which Plaintiffs and the other
25 members of the Classes purchased Health-Ade Kombucha declare that unfair or deceptive acts
26 or practices, in the conduct of trade or commerce, are unlawful.

27 185. Forty states and the District of Columbia have enacted statutes designed to protect
28 consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices

1 and false advertising and that allow consumers to bring private and/or class actions. These
2 statutes are found at:

- 3 a. Alabama Deceptive Trade Practices Act, Ala. Code §8-19-1 *et seq.*;
- 4 b. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Code
5 §45.50.471 *et seq.*;
- 6 c. Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101 *et seq.*;
- 7 d. California Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*, and
8 California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.*;
- 9 e. Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-101 *et seq.*;
- 10 f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a *et seq.*;
- 11 g. Delaware Deceptive Trade Practices Act, Del. Code tit. 6§2511 *et seq.*;
- 12 h. District of Columbia Consumer Protection Procedures Act, D.C. Code §28 3901
13 *et seq.*;
- 14 i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §501.201 *et seq.*;
- 15 j. Georgia Fair Business Practices Act, Ga. Code Ann. §10-1-390 *et seq.*;
- 16 k. California Unfair and Deceptive Practices Act, California Revised Statues §480-1
17 *et seq.*, and California Uniform Deceptive Trade Practices Act, Haw. Rev. Stat.
18 §481A-1 *et seq.*;
- 19 l. Idaho Consumer Protection Act, Idaho Code Ann. §48-601 *et seq.*;
- 20 m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp.
21 Stat. Ann. 505/1 *et seq.*;
- 22 n. Kansas Consumer Protection Act, Kan. Stat. Ann §50 626 *et seq.*;
- 23 o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §367.110 *et seq.*, and the
24 Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §365.020 *et seq.*;
- 25 p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat.
26 Ann. §51:1401 *et seq.*;

- 1 q. Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5 §205A *et seq.*, and Maine
- 2 Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. tit. 10, §1211 *et seq.*,
- 3 r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 4 s. Michigan Consumer Protection Act, Mich. Comp. Laws §445.901 *et seq.*;
- 5 t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. Ann. §325F.68 *et seq.*,
- 6 and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §325D.43 *et*
- 7 *seq.*;
- 8 u. Mississippi Consumer Protection Act, Miss. Code Ann. §§75-24-1 *et seq.*;
- 9 v. Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010 *et seq.*;
- 10 w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann.
- 11 §30-14-101 *et seq.*;
- 12 x. Nebraska Consumer Protection Act, Neb. Rev. Stat. §59-1601 *et seq.*, and the
- 13 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §87-301 *et seq.*;
- 14 y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §598.0903 *et seq.*;
- 15 z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. §358-A:1 *et seq.*;
- 16 aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §56:8 1 *et seq.*;
- 17 bb. New Mexico Unfair Practices Act, N.M. Stat. Ann. §57 12 1 *et seq.*;
- 18 cc. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §349 *et seq.*;
- 19 dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §51 15 01 *et seq.*;
- 20 ee. Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §1345.02 and 1345.03;
- 21 Ohio Admin. Code §109:4-3-02, 109:4-3-03, and 109:4-3-10;
- 22 ff. Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 §751 *et seq.*;
- 23 gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat §646.608(e) & (g);
- 24 hh. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen.
- 25 Laws §6-13.1-1 *et seq.*;
- 26 ii. South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10 *et seq.*;
- 27
- 28

- 1 jj. South Dakota’s Deceptive Trade Practices and Consumer Protection Law, S.D.
- 2 Codified Laws §§37 24 1 *et seq.*;
- 3 kk. Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*;
- 4 ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, §2451 *et seq.*;
- 5 mm. Washington Consumer Fraud Act, Wash. Rev. Code §19.86.010 *et seq.*;
- 6 nn. West Virginia Consumer Credit and Protection Act, West Virginia Code §46A-6-
- 7 101 *et seq.*; and
- 8 oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §100.18 *et seq.*

9 186. Health-Ade Kombucha constitutes a product to which these consumer protection
10 laws apply.

11 187. In the conduct of trade or commerce regarding its production, marketing, and sale
12 of Health-Ade Kombucha, Defendant engaged in one or more unfair or deceptive acts or
13 practices including, but not limited to, uniformly representing to Plaintiffs and each member of
14 the Classes by means of its packaging and labeling of Health-Ade Kombucha that the beverages
15 contained between 2 and 4 grams of sugar when, in fact they contained between 11 and 13 grams,
16 as described herein.

17 188. Defendant’s representations and omissions were false, untrue, misleading,
18 deceptive, and/or likely to deceive.

19 189. Defendant knew, or should have known, that its representations and omissions
20 were false, untrue, misleading, deceptive, and/or likely to deceive.

21 190. Defendant used or employed such deceptive and unlawful acts or practices with
22 the intent that Plaintiffs and members of the Classes rely thereon.

23 191. Plaintiffs and the other members of the Classes did so rely.

24 192. Plaintiffs and the other members of the Classes purchased Health-Ade Kombucha
25 produced by Defendant which misrepresented the characteristics and nature of Health-Ade
26 Kombucha.

27 193. Plaintiffs and the other members of the Classes would not have purchased Health-

1 Ade Kombucha but for Defendant's deceptive and unlawful acts.

2 194. As a result of Defendant's conduct, Plaintiffs and the other members of the
3 Classes sustained damages in amounts to be proven at trial.

4 195. Defendant's conduct showed complete indifference to, or conscious disregard
5 for, the rights and safety of others such that an award of punitive and/or statutory damages is
6 appropriate under the consumer protection laws of those states that permit such damages to be
7 sought and recovered.

8 **EIGHTH CAUSE OF ACTION**

9 **NEGLIGENT MISREPRESENTATION**

10 **(By Plaintiffs, on Behalf of Themselves, and the California Class against all Defendant)**

11 196. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 118
12 above, and incorporate the same as if set forth herein at length.

13 197. In making representations of fact to Plaintiffs and the California Class members
14 about Health-Ade Kombucha, Defendant failed to fulfill its duty to disclose the material facts
15 alleged above. Such failure to disclose on the part of Defendant amounts to negligent
16 misrepresentation.

17 198. Plaintiffs and the other members of the California Class reasonably relied upon
18 such representations and omissions to their detriment.

19 199. Plaintiffs and the other members of the California Class, as a direct and proximate
20 cause of Defendant's negligent misrepresentations, reasonably relied upon such
21 misrepresentations to their detriment. By reason thereof, Plaintiffs and the other Class members
22 have suffered damages in an amount to be proven at trial.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows
25 (cause of action number three is excluded from the below to the extent the remedy includes
26 monetary damages):

1 A. That the Court certify the nationwide Class and the California Class under Rule
2 23 of the Federal Rules of Civil Procedure and appoint Plaintiffs as Class Representatives and
3 their attorneys as Class Counsel to represent the members of the Classes;

4 B. That the Court declare that Defendant's conduct violates the statutes referenced
5 herein;

6 C. That the Court preliminarily and permanently enjoin Defendant from conducting
7 its business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and
8 misleading labeling and marketing and other violations of law described in this Complaint;

9 D. That the Court order Defendant to conduct a corrective advertising and
10 information campaign advising consumers that Health-Ade Kombucha does not have the
11 characteristics, uses, benefits, and quality Defendant has claimed;

12 E. That the Court order Defendant to implement whatever measures are necessary to
13 remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading
14 advertising, and other violations of law described in this Complaint (excluded from this request
15 is cause of action number three to the extent the remedy includes monetary damages);

16 F. That the Court order Defendant to notify each and every individual and/or business
17 who purchased Health-Ade Kombucha of the pendency of the claims in this action in order to
18 give such individuals and businesses an opportunity to obtain restitution from Defendant
19 (excluded from this request is cause of action number three);

20 G. That the Court order Defendant to pay restitution to restore to all affected persons
21 all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair,
22 or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing,
23 plus pre- and post-judgment interest thereon (excluded from this request is cause of action number
24 three);

25 H. That the Court order Defendant to disgorge all monies wrongfully obtained and all
26 revenues and profits derived by Defendant as a result of its acts or practices as alleged in this
27 Complaint (excluded from this request is cause of action number three);

1 I. That the Court award damages to Plaintiffs and the Classes (excluded from this
2 request is cause of action number three);

3 J. The common fund doctrine, and/or any other appropriate legal theory (excluded
4 from this request is cause of action number three); and

5 K. that the Court grant such other and further relief as may be just and proper
6 (excluded from this request is cause of action number three to the extent the remedy includes
7 monetary damages).

8 DATED: June 1, 2018

BRADLEY/GROMBACHER, LLP

9
10 By: /S/ Kiley Lynn Grombacher
11 Marcus J. Bradley, Esq.
12 Kiley Lynn Grombacher, Esq.
13 Attorneys for Plaintiff
14

15 **JURY DEMAND**

16 Plaintiffs demand a trial by jury on all causes of action so triable.

17 DATED: June 1, 2018

BRADLEY/GROMBACHER, LLP

18
19 By: /S/ Kiley Lynn Grombacher
20 Marcus J. Bradley, Esq.
21 Kiley Lynn Grombacher, Esq.
22 Attorneys for Plaintiff
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