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16 Attorneys for Plaintiffs and the Proposed Class

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 OAKLAND DIVISION

20 LYNN MOORE, SHANQUE KING, and  
21 JEFFREY AKWEI  
22 Plaintiffs,  
23 v.  
24 TRADER JOE’S COMPANY  
25 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

26 Plaintiffs LYNN MOORE, SHANQUE KING, and JEFFREY AKWEI (hereinafter,  
27 “Plaintiffs”), on behalf of themselves and others similarly situated, by and through their  
28 undersigned attorneys, hereby file this Class Action Complaint against Defendant,

1 TRADER JOE’S COMPANY (hereinafter “Defendant”), and allege as follows based upon  
2 their own personal knowledge and the investigation of their counsel:  
3

4 **NATURE OF THE ACTION**

5  
6 1. The therapeutic benefits of manuka honey are well-known. The especially  
7 high antibacterial properties of manuka honey, a type of honey from bees that pollinate the  
8 flowers of the manuka bush (*Leptospermum Scoparium*), indigenous to New Zealand, has  
9 received considerable attention from the scientific world. Research by an international  
10 network of laboratories has shown that New Zealand’s manuka honeys are one of the two  
11 major medicinal honeys that have exhibited high antibacterial potency relative to other  
12 honeys.<sup>1</sup> Its efficacy as dressing for wounds, burns, skin ulcers and in reducing  
13 inflammation has been well documented.<sup>2</sup>

14 2. Such research findings have spurred the commercial growth of New Zealand  
15 apiaries (places where beehives of honey bees are kept, also known as bee yards), whose  
16 manuka honey products have become increasingly sought-after by the health-conscious  
17 middle class in a number of Western countries, including the United States. While the  
18 demand for manuka honey has increased, the supply of natural manuka honey with high  
19 antibacterial potency remains limited. As a result, the price for a bottle of manuka honey  
20 can be as much as ten times higher than that of ordinary non-manuka honeys.  
21

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22  
23 <sup>1</sup> See Paulus H. S. Kwakman et al., *Two Major Medicinal Honeys Have Different Mechanisms of*  
24 *Bactericidal Activity*, PLOS ONE, Volume 6, Issue 3 (March 2011), available at  
25 <http://www.umf.org.nz/Modules/LSDocumentManager/DocumentDownload.aspx?DocumentId=36>; see  
26 also, Manisha Deb Mandal et al., *Honey: its medicinal property and antibacterial activity*, ASIAN PAC. J.  
27 TROP. BIOMED. Apr. 2011; 1(2): 154–160, available at  
28 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3609166/>; Alison Wallace et al., *Demonstrating the*  
*safety of manuka honey UMF® 20+ in a human clinical trial with healthy individuals*, p. 4, BRITISH  
JOURNAL OF NUTRITION (2009), available at  
<http://www.umf.org.nz/Modules/LSDocumentManager/DocumentDownload.aspx?DocumentId=34>.

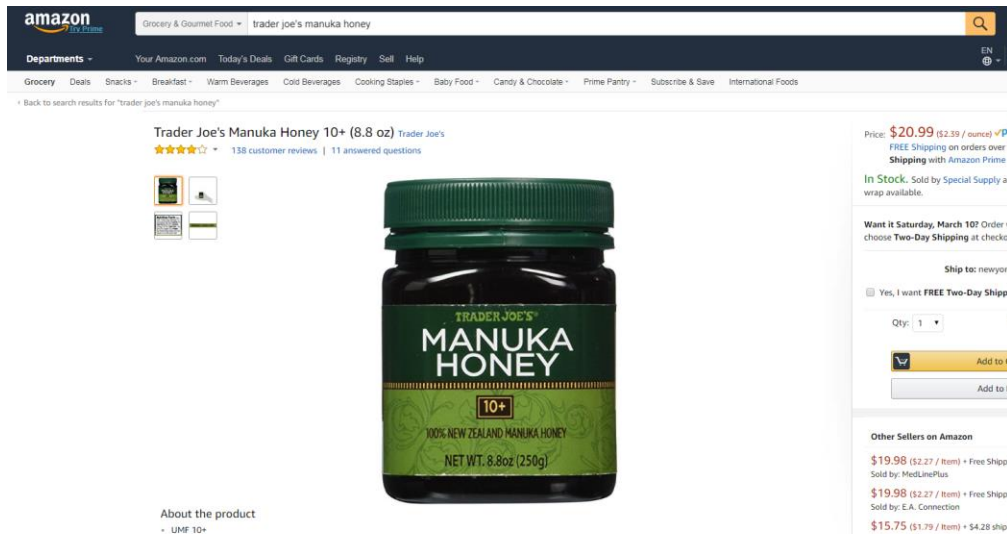
<sup>2</sup> Mandal at 154-155.

1           3.     Nearly 2,000 tons of manuka honey is consumed in the UK each year out of  
2 an estimated 11,000 tons globally. However, the production of authentic manuka honey is  
3 thought to be around 1,900 tons. By mathematical necessity, there is a wave of fake or  
4 adulterated manuka honey products on the market.<sup>3</sup>

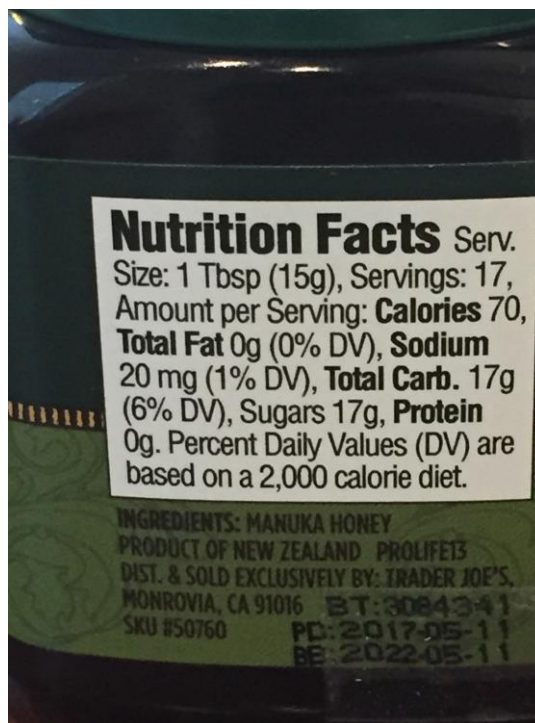
5           4.     Against this backdrop, this class action seeks redress for Defendant's  
6 misleading practices in its marketing, advertising, labeling and promotion of its 8.8 oz.  
7 Trader Joe's Manuka Honey product (hereinafter "Product"). Below are two images of the  
8 Product and its varying labels.



27  
28 <sup>3</sup> <http://www.independent.co.uk/life-style/food-and-drink/features/the-manuka-honey-scandal-9577344.html>



5. Some of Defendant's labels state that that Product is "100% New Zealand Manuka Honey" while others state only "New Zealand Manuka Honey." Regardless of how the Product is labeled, the ingredients statement lists only one ingredient, manuka honey:



1           6.       Whether or not the front of the label states that the Product is “100%” manuka  
2 honey, the ingredient statement would lead a reasonable consumer to conclude exactly this.  
3 Since manuka honey is the only ingredient listed, the mathematically irresistible inference  
4 is that the Product is entirely manuka honey.

5           7.       However, Plaintiffs’ testing confirms that this is false, because the Product  
6 only contains between 57.3% to 62.6% manuka honey.

7           8.       As a result, the Product is mislabeled and is misleading to consumers. No  
8 matter which of the Defendant’s representations consumers encounter, they will have been  
9 deceived. Manuka honey is not the only ingredient in the Product. The Product is not 100%  
10 manuka honey.

11           9.       Throughout the advertising of the Product, Defendant has consistently  
12 conveyed its uniform and deceptive manuka honey purity claims to consumers through  
13 both the Product’s labeling and its website representations.

14           10.      Defendant has reaped enormous profits from its false, misleading and  
15 deceptive marketing and sale of the Product.

16           11.      This lawsuit seeks redress for the misleading manner in which the Defendant  
17 has marketed the Product and continues to market the Product. Plaintiffs bring this  
18 proposed consumer class action individually and on behalf of all other persons similarly  
19 situated, who, from the applicable limitations period up to and including the present (the  
20 “Class Period”), purchased the Product for consumption and not for resale.

21           12.      Through this action, Plaintiffs seek injunctive relief, actual damages,  
22 restitution and/or disgorgement of profits, statutory damages, attorneys’ fees, costs and all  
23 other relief available to the Class as a result of Defendant’s unlawful conduct.

24           13.      Defendant violated statutes enacted in each of the fifty states and the District  
25 of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent  
26 and unconscionable trade and business practices and false advertising. These statutes are:

27           1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. § 8-19-1, *et seq.*;

28

- 1 2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code §  
2 45.50.471, *et seq.*;
- 3 3) Arizona Consumer Fraud Act, Arizona Revised Statutes, § 44-1521, *et seq.*;
- 4 4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- 5 5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and  
6 California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- 7 6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- 8 7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- 9 8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 10 9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28  
11 3901, *et seq.*;
- 12 10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201,  
13 *et seq.*;
- 14 11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- 15 12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480  
16 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised  
17 Statutes § 481A-1, *et seq.*;
- 18 13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- 19 14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS  
20 Section 505/1, *et seq.*;
- 21 15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. § 24-5-0.5-0.1,  
22 *et seq.*;
- 23 16) Iowa Consumer Fraud Act, Iowa Code § 714.16, *et seq.*;
- 24 17) Kansas Consumer Protection Act, Kan. Stat. Ann § 50 626, *et seq.*;
- 25 18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*,  
26 and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et*  
27 *seq.*;
- 28

- 1 19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev.  
2 Stat. Ann. § 51:1401, *et seq.*;
- 3 20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and  
4 Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211,  
5 *et seq.*;
- 6 21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- 7 22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch.  
8 93A;
- 9 23) Michigan Consumer Protection Act, § 445.901, *et seq.*;
- 10 24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et*  
11 *seq.*, and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §  
12 325D.43, *et seq.*;
- 13 25) Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- 14 26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- 15 27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code  
16 §30-14-101, *et seq.*;
- 17 28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and  
18 the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301,  
19 *et seq.*;
- 20 29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, *et*  
21 *seq.*;
- 22 30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et*  
23 *seq.* ;
- 24 31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, *et seq.*;
- 25 32) New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57 12 1, *et seq.*;
- 26 33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et*  
27 *seq.*, and New York False Advertising, N.Y. Gen. Bus. Law § 350, *et seq.*;
- 28 34) North Dakota Consumer Fraud Act, N.D. Cent. Code § 51 15 01, *et seq.*;

- 1 35) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina  
2 General Statutes § 75-1, *et seq.*;
- 3 36) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. § 4165.01. *et*  
4 *seq.*;
- 5 37) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- 6 38) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- 7 39) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73  
8 Penn. Stat. Ann. § 201-1, *et seq.*;
- 9 40) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I.  
10 Gen. Laws § 6-13.1-1, *et seq.*;
- 11 41) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et*  
12 *seq.*;
- 13 42) South Dakota's Deceptive Trade Practices and Consumer Protection Law,  
14 S.D. Codified Laws § 37 24 1, *et seq.*;
- 15 43) Tennessee Trade Practices Act, Tennessee Code Annotated § 47-25-101, *et*  
16 *seq.*;
- 17 44) Texas Stat. Ann. § 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et*  
18 *seq.*;
- 19 45) Utah Unfair Practices Act, Utah Code Ann. § 13-5-1, *et seq.*;
- 20 46) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- 21 47) Virginia Consumer Protection Act, Virginia Code Ann. §59.1-196, *et seq.*;
- 22 48) Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.*;
- 23 49) West Virginia Consumer Credit and Protection Act, West Virginia Code §  
24 46A-6-101, *et seq.*;
- 25 50) Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100. 18, *et seq.*;
- 26 51) Wyoming Consumer Protection Act, Wyoming Stat. Ann. § 40-12-101, *et seq.*
- 27
- 28



1 **JURISDICTION AND VENUE**

2  
3 14. This Court has original jurisdiction over this matter pursuant to 28 U.S.C.  
4 § 1332(d). This is a putative class action whereby: (i) the proposed class consists of over  
5 100 class members; (ii) at least some of the proposed class members have a different  
6 citizenship from Defendant; and (iii) the amount in controversy exceeds the sum of value  
7 of \$5,000,000.00, excluding interest and costs.

8 15. The Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C.  
9 § 1332 because the matter is a controversy exceeds the sum or value of \$75,000.

10 16. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit  
11 to the Court's jurisdiction. This Court has personal jurisdiction over Defendant because  
12 they are headquartered and incorporated in California.

13 17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a  
14 substantial part of the events or omissions giving rise to these claims occurred in this  
15 District, the Defendant have caused harm to Class members residing in this District, and  
16 the Plaintiff is a resident of this District under 28 U.S.C. 1391(c)(2) because it is subject to  
17 personal jurisdiction in this district.

18 **PARTIES**

19 ***Plaintiffs***

20 18. Plaintiff LYNNE MOORE is a citizen of the State of California and resides  
21 in Contra Costa County. On January 17, 2018, Plaintiff MOORE viewed an image of the  
22 Product and its label on Amazon.com. The label described the Product as “100% New  
23 Zealand Manuka Honey.”

24 19. Relying on this misrepresentation, Plaintiff MOORE decided to purchase the  
25 Product for \$23.99 on Amazon.com that day. She would not have purchased this had she  
26 known that the Product was less than 65% manuka honey. As a result, Plaintiff MOORE  
27 was injured when she was denied the benefit of her bargain and paid a premium price for  
28 the Product, which did not deliver what its label promised.

1           20. Plaintiff JEFFREY AKWEI is a citizen of the State of New York and resides  
2 in New York County. On January 9<sup>th</sup>, 2018, Plaintiff AKWEI purchased the Product at  
3 Trader Joe's on 142 E. 14<sup>th</sup> Street New York, NY 10003 for \$13.99. Plaintiff AKWEI  
4 viewed the ingredients statement on the Product and from this inferred that manuka was  
5 the only ingredient, that the honey was pure manuka.

6           21. Relying on the ingredients statement, Plaintiff AKWEI decided to purchase  
7 the Product. Had Plaintiff AKWEI known that the honey was not exclusively manuka, he  
8 would not have purchased the Product at the given price. As a result, Plaintiff AKWEI was  
9 injured when he was denied the benefit of his bargain and paid a premium price for the  
10 Product, which did not deliver what the ingredients label statement promised.

11           22. Plaintiff SHANQUA KING is a citizen of the State of North Carolina and  
12 resides in Carbarrus County. On January 14<sup>th</sup>, 2018, Plaintiff KING purchased the Product  
13 at a Trader Joe's on 1820 East Arbors Drive, Charlotte, NC 28262 for \$13.99. Before  
14 purchasing the Product, Plaintiff KING viewed the ingredients label and was thereby led  
15 to believe that manuka honey was the sole ingredient in the Product.

16           23. Plaintiff KING purchased the Product in reliance on this misrepresentation.  
17 Had he know the truth, he would not have purchased the Product at the given price. As a  
18 result, Plaintiff KING was injured when he was denied the benefit of his bargain and paid  
19 a premium price for the Product, which did not deliver what it promised.  
20

21  
22  
23  
24 ***Defendant***

25           24. Defendant TRADER JOE'S COMPANY is a corporation organized under the  
26 laws of the state of California, with its principal place of business at 800 S. Shamrock  
27 Avenue, Monrovia, CA 91016 and an address for service of process at Paracorp  
28 Incorporated, 2804 Gateway Oaks Dr. #100, Sacramento, CA 95833.

1 25. Defendant markets and sells honey products throughout the United States.

2 26. The Product can be purchased in brick and mortar Trader Joe's stores  
3 throughout the United States and online.

4  
5 **FACTUAL ALLEGATIONS**

6  
7 **The Defendant's Misleading Representations**

8 27. Defendant markets and sells the Product. The front label of the Product states  
9 either "100% New Zealand Manuka Honey" or "New Zealand Manuka Honey."

10 28. Irrespective of the front label, the ingredients statement lists manuka honey as  
11 the sole ingredient.

12 29. The ingredients statement and the "100% New Zealand Manuka Honey"  
13 representation both communicate the same message, which is the Product is pure manuka  
14 honey, not a blend of manuka honey and other honeys.

15  
16 **The GNS Science Report**

17 30. GNS Science is a research laboratory owned by the government of New  
18 Zealand. It "engage[s] in the full spectrum of science from basic research through to  
19 product development and consultancy services." Its revenues come from government  
20 research grants, research contracts, product development, and various consultancy  
21 services. GNS collaborates with research institutes and universities around the world. Its  
22 scientists publish in scientific and professional journals and present their research results  
23 at national and international scientific conferences. Additionally, many of its staff hold  
24 adjunct academic positions and supervise graduate students. *See Exhibit A.*

25 31. GNS Science conducted a test of the Product bought by Plaintiff MOORE and  
26 found that its manuka content was 62.6%. The remaining content was other honey types.  
27 *See Exhibit B (Sample 1 – CA).*  
28

1           32. GNS Science conducted a test of the Product purchased by Plaintiff AKWEI  
2 and found that its manuka content was 57.3%. The remaining content was other honey  
3 types. See **Exhibit B** (Sample 2 – NY).

4           33. Thus, the honey purchased by Plaintiff MOORE and Plaintiff AKWEI was far  
5 from 100% manuka honey. Manuka honey was far from being the only ingredient.  
6

7           **A Reasonable Consumer Would Be Deceived By Defendant’s Misrepresentations**  
8

9           34. Plaintiffs and Class members purchased the Product either online or from  
10 Trader Joe’s brick and mortar stores during the Class period.

11           35. They did so in reliance on Defendant’s uniform message that the Product was  
12 pure manuka honey, which was conveyed through either the “100% New Zealand Manuka  
13 Honey” representation or through the ingredients statement listing manuka honey as the  
14 only ingredient. Plaintiffs and the Class would not have purchased the Product at the given  
15 price had they known the truth about its contents.

16           36. Defendant’s deceptive misrepresentations were material to Plaintiffs’ and  
17 Class members’ decisions to purchase the Product because consumers of manuka honey  
18 care a great deal about the purity of the manuka honey they purchase. They purchase  
19 manuka honey, not only for its taste, but for its healthful properties, which depend on the  
20 specific purity level.

21           37. The manuka grower *Bees and Trees* explains the special problems of  
22 controlling manuka purity:

23           We watch closely as the season approaches and time the placement of their  
24 hives to maximize their exposure to the Manuka nectar flow... While  
25 fascinating creatures, the bees don’t listen very well, and we can’t tell them to  
26 only work the Manuka flowers.

27           Despite that, there are some techniques you can use when harvesting the  
28 honey to segregate honey coming from different areas of the hive to increase  
the concentration of Manuka Honey in a given batch. As experienced Manuka

1 Honey producers with our own extraction operation, we're quite good at  
2 maximizing our results.<sup>4</sup>

3 38. Reasonable consumers know that that the concentration of manuka as  
4 opposed to other honey pollens can vary significantly from brand to brand depending on  
5 what measures have been taken to maximize manuka purity. Accordingly, they attach  
6 importance to representations that communicate a higher purity level.

7 39. Reasonable consumers would be deceived by Defendant's misrepresentations  
8 because they would reasonably assume that Defendant is fulfilling its legal obligation to  
9 market its Product truthfully. They would reasonably assume that a producer would not  
10 represent a honey as pure manuka without first testing it to ensure that this was true.

11 40. Defendant knew that due to its materially misleading label and packaging, a  
12 reasonable customer would expect the Product to be authentic and possess the advertised  
13 manuka content.

14 41. As a result of Defendant's misleading representations, consumers – including  
15 Plaintiffs and members of the proposed Class – have purchased the Product in reliance on  
16 such representations.

17 42. Plaintiffs and members of the proposed Class have been and will continue to  
18 be materially misled by Defendant's misleading manuka ratings claims.

19  
20 **Plaintiff and the Class Were Injured As A Result of Defendant's Deceptive Practices**

21 43. As a result of the Defendant's false manuka purity claims, Plaintiffs and the  
22 Class members have been injured in their purchase of the Product. Plaintiffs and Class  
23 members have been deceived into purchasing the Product after they were misled into  
24 believing that the Product is pure manuka.

25  
26  
27  
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<sup>4</sup> <https://www.beesandtrees.com/>

1 44. A honey that has a higher manuka content is more valuable than honey with  
2 lesser manuka content, given the special qualities of manuka and the very limited supply  
3 of manuka in the world. The manuka harvester *True Honey* explains:  
4

5 It's a question we get asked a lot. "So, just why is Manuka honey so expensive?"...

6 The unique properties of Manuka Honey are well understood by consumers around the  
7 world... Manuka Honey has a very limited harvest period and can only be collected at  
8 certain times of the year. It is independently tested at New Zealand laboratories to ensure  
its true to label.

9 Authentic New Zealand Manuka honey is a very limited resource. We go to great lengths  
10 to find the best areas of dense Manuka bush, in New Zealand's remotest, greenest back  
11 country. This keeps any contaminants out of our honey, and makes sure that our bees have  
12 VIP access to all the Manuka nectar they can slurp. But these places are hard to get to. And  
with no roads for miles, bringing trucks in can be pretty hard on the native bush. So hives  
often need to be flown in by helicopter.<sup>5</sup>

13  
14 45. Plaintiffs were injured because Defendant's deceptive practices caused them  
15 to pay a premium price for the Product based on the content claims conveyed by the front  
16 label and/or ingredients statement.

17 46. As a result of Defendant's mislabeling of the Product, Plaintiffs were denied  
18 the benefit of their bargain.

19 47. The Product is supposed to have at least 100% manuka honey. According to  
20 GNS Science's test results, the Product contained on average 59.95% manuka honey. Thus  
21 Plaintiffs and Class members were denied approximately 40.05% of the benefit of their  
22 bargains. As a result, Plaintiff MOORE is entitled to a refund of \$9.61<sup>6</sup>, Plaintiff AKWEI  
23 is entitled to a refund of \$5.60<sup>7</sup>, and Plaintiff KING is entitled to a \$5.60<sup>8</sup> refund.  
24

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25  
26 <sup>5</sup> <https://www.truehoneyco.co.uk/en/2017/03/10/manuka-honey-expensive/>

27 <sup>6</sup> \$23.99 x .4005 = \$9.61

28 <sup>7</sup> \$13.99 x .4005 = \$5.60

<sup>8</sup> \$13.99 x .4005 = \$5.60

1  
2 **Plaintiffs’ and Class Members’ Claims Are Consistent with Federal Law**

3 48. Plaintiffs’ and Class members’ claims are consistent with federal law.

4 49. A (non-legally binding) February 2018 Guidance from the FDA states that  
5 honey producers may label honey with the name of a plant or blossom if they have  
6 “information to support the conclusion that that the plant or blossom designated on the  
7 label is the chief floral source of the honey.” *Proper Labeling of Honey and Honey*  
8 *Products: Guidance for Industry*, pg. 5<sup>9</sup>

9 50. However, Plaintiffs do not allege that merely labeling the Product “manuka  
10 honey” was deceptive and unlawful. Rather they allege that the message concerning the  
11 specific purity of the Product, communicated by the “100% New Zealand Manuka Honey”  
12 claim or by the ingredients statement, was deceptive and unlawful.

13 51. Calling the Product “manuka honey” merely places the Product in a general  
14 category. However, Defendant did more than just this with its false and deceptive purity  
15 claims, which represented the Product as superior to, and more valuable than, competing  
16 manuka honey products.

17  
18 **CLASS ACTION ALLEGATIONS**

19 52. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal  
20 Rules of Civil Procedure. They bring this class action against Defendant on behalf of  
21 themselves and all members of the following class of similarly situated individuals and  
22 entities:

23 All persons or entities in the United States who made retail  
24 purchases of the Product during the applicable limitations period  
25 and/or such subclasses as the Court may deem appropriate (the  
26 “Nationwide Class”).

27  
28 <sup>9</sup><https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM595961.pdf>

1           53. In the alternative, Plaintiff AKWEI seek to represent a class consisting in (the  
2 “New York Class”):

3  
4           All persons or entities that made retail purchases of the Product  
5 in New York during the applicable limitations period, and/or  
6 such subclasses as the Court may deem appropriate.

7           54. Also in the alternative, Plaintiff MOORE seeks to represent a class consisting  
8 in (the “California Class”):

9           All persons or entities that made retail purchases of the Product  
10 in California during the applicable limitations period, and/or  
11 such subclasses the Court may deem appropriate.

12           55. Also in the alternative, Plaintiff KING seeks to represent a class consisting in  
13 (the “North Carolina” Class):

14           All persons or entities that made retail purchases of the Product in North  
15 Carolina during the applicable limitations period, and/or such  
16 subclasses the Court may deem appropriate.

17           56. Excluded from the Classes are current and former officers and directors of the  
18 Defendant, members of the immediate families of the officers and directors of the  
19 Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity in  
20 which they have or have had a controlling interest. Also, excluded from the Class is the  
21 judicial officer to whom this lawsuit is assigned.

22           57. Plaintiffs reserve the right to revise the Class definition based on facts learned  
23 in the course of litigating this matter.

24           58. This action is proper for class treatment under Rules 23(b) (1) (B) and 23(b)  
25 (3) of the Federal Rules of Civil Procedure. While the exact number and identities of other  
26 Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe  
27 that there are thousands of Class members. Thus, the Class is so numerous that individual  
28 joinder of all Class members is impracticable.

          59. A class action is superior to other available methods for the fair and efficient  
adjudication of this controversy. Since the damages sustained by individual Class members



1 may be relatively small, the expense and burden of individual litigation make it  
2 impracticable for the members of the Class to individually seek redress for the wrongful  
3 conduct alleged herein. If Class treatment of these claims were not available, Defendant  
4 would likely unfairly receive millions of dollars or more in improper charges.

5 60. Questions of law and fact arise from the Defendant's conduct described  
6 herein. Such questions are common to all Class members and predominate over any  
7 questions affecting only individual Class members and include:

- 8 a. Whether labeling the Product as "100% New Zealand Manuka Honey" is  
9 false and misleading;
- 10 b. Whether listing manuka honey as the Product's only ingredient is false and  
11 misleading;
- 12 c. Whether Defendant deprived Plaintiffs and the Class of the benefit of their  
13 bargain because the Product purchased were different from, and has less  
14 value than, what Defendant warranted;
- 15 d. Whether Defendant's marketing, promotion, advertising and sale of the  
16 Product is and was a deceptive act or practice in the conduct of business  
17 directed at consumers, giving rise to a violation state consumer protection  
18 laws;
- 19 e. Whether Defendant must disgorge any and all profits it has made as a result  
20 of its conduct;
- 21 f. Whether Plaintiffs and members of the Class sustained injuries or damages  
22 as a result of Defendant's false advertising of the Product; and
- 23 g. Whether Defendant should be barred from marketing the Product as "100%  
24 New Zealand Manuka Honey" and listing manuka honey as the only  
25 ingredient in the Product.

26 61. The Class is readily definable, and prosecution of this action as a Class action  
27 will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which  
28

1 will be encountered in the management of this litigation which would preclude its  
2 maintenance as a Class action.

3 62. Plaintiffs' claims are typical of those of the Class members because Plaintiffs  
4 and the other Class members sustained damages arising out of the same wrongful conduct,  
5 as detailed herein. Plaintiffs purchased the Defendant's Product during the Class Period  
6 and sustained similar injuries arising out of the Defendant's conduct in violation state  
7 consumer protection laws listed above. The Defendant's unlawful, unfair and fraudulent  
8 actions concern the same business practices described herein irrespective of where they  
9 occurred or were experienced. The injuries of the Class were caused directly by the  
10 Defendant's wrongful misconduct. In addition, the factual underpinning of the Defendant's  
11 misconduct is common to all Class members and represents a common thread of  
12 misconduct resulting in injury to all Class members. Plaintiffs' claims arise from the same  
13 practices and course of conduct that give rise to the claims of all Class members and are  
14 based on the same legal theories.

15 63. Plaintiffs will fairly and adequately represent and pursue the interests of the  
16 Classes and have retained competent counsel experienced in prosecuting class actions.  
17 Plaintiffs understand the nature of their claims herein, have no disqualifying conditions,  
18 and will vigorously represent the interests of the Classes. Neither Plaintiffs nor Plaintiffs'  
19 counsel have any interests that conflict with or are antagonistic to the interests of the  
20 Classes. Plaintiffs have retained highly competent and experienced class action attorneys  
21 to represent their interests and those of the Classes. Plaintiffs and Plaintiffs' counsel have  
22 the necessary financial resources to adequately and vigorously litigate this class action, and  
23 Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will  
24 diligently discharge those duties by vigorously seeking the maximum possible recovery for  
25 the Class.

26 64. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy. The damages suffered by any individual Class member  
28 are too small to make it economically feasible for an individual class member to prosecute

1 a separate action, and it is desirable for judicial efficiency to concentrate the litigation of  
2 the claims in this forum. Furthermore, the adjudication of this controversy through a class  
3 action will avoid the potentially inconsistent and conflicting adjudications of the claims  
4 asserted herein. There will be no difficulty in the management of this action as a class  
5 action.

6 65. The prerequisites to maintaining a class action for injunctive relief or  
7 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant have acted or refused to  
8 act on grounds generally applicable to the Classes, thereby making appropriate final  
9 injunctive or equitable relief with respect to the Classes as a whole.

10 66. The prerequisites to maintaining a class action for injunctive relief or  
11 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to  
12 the Classes predominate over any questions affecting only individual members, and a class  
13 action is superior to other available methods for fairly and efficiently adjudicating the  
14 controversy.

15 67. The prosecution of separate actions by members of the Class would create a  
16 risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
17 Defendant. Additionally, individual actions may be dispositive of the interest of all Class  
18 members, although certain Class members are not parties to such actions.

19 68. Defendant's conduct is generally applicable to the Classes as a whole and  
20 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Classes as a whole. As  
21 such, Defendant's systematic policies and practices make declaratory relief with respect to  
22 the Classes as a whole appropriate.

23  
24 **CAUSES OF ACTION**

25  
26 **COUNT I**

27 **INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW**  
28 **§ 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

1                   **(brought individually and on behalf of the New York Class)**  
2

3           69. Plaintiff AKWEI alleges and incorporates herein by reference the allegations  
4 contained in all preceding paragraphs and further alleges as follows:

5           70. Plaintiff AKWEI brings this claim individually and on behalf of the other  
6 members of the New York Class for an injunction for Defendant’s violations of New  
7 York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349 (“NY GBL § 349”).

8           71. NY GBL § 349 provides that “deceptive acts or practices in the conduct of  
9 any business, trade or commerce or in the furnishing of any service in this state are ...  
10 unlawful.”

11           72. Under the New York Gen. Bus. Code § 349, it is not necessary to prove  
12 justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance  
13 requirement on General Business Law [§] 349 ... claims, it was error. Justifiable reliance  
14 by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit*  
15 *Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

16           73. The practices employed by Defendant, whereby Defendant advertised,  
17 promoted, and marketed that their Product as being made of only manuka honey are unfair,  
18 deceptive, and misleading and are in violation of NY GBL § 349.

19           74. The foregoing deceptive acts and practices were directed at consumers.

20           75. Defendant should be enjoined from misrepresenting that the Product is pure  
21 manuka.

22           76. Plaintiff AKWEI, on behalf of himself and all others similarly situated,  
23 respectfully demands a judgment enjoining Defendant’s conduct, awarding costs of this  
24 proceeding and attorneys’ fees, as provided by NY GBL § 349, and such other relief as this  
25 Court deems just and proper.  
26

27                                   **COUNT II**

28                   **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**

1                   **(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**  
2                   **(brought individually and on behalf of the New York Class)**  
3

4           77. Plaintiff AKWEI realleges and incorporates each and every allegation  
5 contained above as if fully set forth herein and further alleges as follows:

6           78. Plaintiff AKWEI brings this claim individually and on behalf of the other  
7 members of the New York Class for Defendant's violations of NY GBL § 349.

8           79. Any person who has been injured by reason of any violation of the NY GBL  
9 § 349 may bring an action in his own name to enjoin such unlawful act or practice, an  
10 action to recover his actual damages or fifty dollars, whichever is greater, or both such  
11 actions. The court may, in its discretion, increase the award of damages to an amount not  
12 to exceed three times the actual damages up to one thousand dollars, if the court finds the  
13 Defendant willfully or knowingly violated this section. The court may award reasonable  
14 attorney's fees to a prevailing plaintiff.

15           80. By the acts and conduct alleged herein, Defendant committed unfair or  
16 deceptive acts and practices by claiming that the Product is made entirely from manuka  
17 honey, leading Plaintiffs and the New York Class to believe Defendant's Product had a  
18 manuka content which it did not possess.

19           81. Defendant's deceptive and unlawful conduct was specifically directed to  
20 consumers and violate the NY GBL § 349 for, *inter alia*, one or more of the following  
21 reasons:

- 22           a. Defendant engaged in deceptive, unfair and unconscionable  
23 commercial practices in failing to reveal material facts and  
24 information about the Product, which did, or tended to, mislead  
25 Plaintiff AKWEI and the Class about facts that could not reasonably  
26 be known by them;

- 1           b. Defendant knowingly and falsely represented and advertised that the  
2           Product consisted solely in manuka honey with an intent to cause  
3           Plaintiff AKWEI and Class members to believe this;
- 4           c. Defendant caused Plaintiff AKWEI and the Class to suffer a  
5           probability of confusion and a misunderstanding of legal rights,  
6           obligations and/or remedies by and through its conduct;
- 7           d. Defendant made material representations and statements of fact to  
8           Plaintiff AKWEI and the New York Class that resulted in them  
9           reasonably believing the represented or suggested state of affairs to be  
10          other than what they actually were; and
- 11          e. Defendant intended that Plaintiff AKWEI and the members of the  
12          New York Class rely on their misrepresentations, so that Plaintiff  
13          AKWEI and the Class members would purchase the Product.

14          82. The foregoing deceptive acts and practices were directed at consumers.

15          83. The foregoing deceptive acts and practices are misleading in a material way  
16 because they fundamentally misrepresent the Product in that they misled Plaintiffs and the  
17 other Class members into believing that they were purchasing products which contained  
18 100% manuka honey, when they were not.

19          84. Under all of the circumstances, Defendant's conduct in employing these  
20 unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as  
21 to shock the conscience of the community and warrant the imposition of punitive damages.

22          85. Defendant's actions impact the public interest because Plaintiff AKWEI and  
23 members of the Class were injured in exactly the same way as thousands of others  
24 purchasing the Product as a result of and pursuant to Defendant's generalized course of  
25 deception.

26          86. By committing the acts alleged in this Complaint, Defendant has misled  
27 Plaintiff AKWEI and the Class into purchasing the Product, on the basis of the erroneous  
28

1 belief that the Product is made only from manuka honey. This is a deceptive business  
2 practice that violates NY GBL § 349.

3 87. Defendant's manuka claims misled Plaintiff AKWEI and are likely in the  
4 future to mislead reasonable consumers. Had Plaintiff AKWEI and members of the Class  
5 known the truth about the Product, they would not have purchased it.

6 88. Plaintiff AKWEI and other members of the Class suffered a loss as a result of  
7 Defendant's deceptive and unfair trade acts. Specifically, as a result of Defendant's  
8 deceptive and unfair acts and practices, Plaintiff AKWEI and members of the Class  
9 suffered actual monetary losses associated with the purchase of the Product. Plaintiff  
10 AKWEI and members of the Class are entitled to recover such damages, together with  
11 equitable and declaratory relief, appropriate damages, including punitive damages,  
12 attorneys' fees and costs.

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20 **COUNT III**

21 **DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW**

22 **§ 350**

23 **(FALSE ADVERTISING LAW)**

24 **(brought individually and on behalf of the New York Class)**

25  
26 89. Plaintiff AKWEI realleges and incorporates herein by reference the  
27 allegations contained in all preceding paragraphs, and further alleges as follows:  
28

1 90. Plaintiff AKWEI brings this claim individually, as well as on behalf of  
2 members of the New York Class, for violations of NY GBL § 350.

3 91. Defendant has been and/or is engaged in the “conduct of . . . business, trade  
4 or commerce” within the meaning of N.Y. Gen. Bus. Law § 350.

5 92. New York Gen. Bus. Law § 350 makes unlawful “[f]alse advertising in the  
6 conduct of any business, trade or commerce.” False advertising includes “advertising,  
7 including labeling, of a commodity . . . if such advertising is misleading in a material  
8 respect,” taking into account “the extent to which the advertising fails to reveal facts  
9 material in light of . . . representations [made] with respect to the commodity . . . .” N.Y.  
10 Gen. Bus. Law § 350-a(1).

11 93. Defendant caused to be made or disseminated throughout New York, through  
12 advertising, marketing and other publications, statements that were untrue or misleading,  
13 and that were known, or which by the exercise of reasonable care should have been known  
14 to Defendant, to be untrue and misleading to consumers and the Class.

15 94. Defendant’s manuka misrepresentations as alleged herein were material and  
16 substantially uniform in content, presentation, and impact upon consumers at large.

17 95. Defendant has violated N.Y. Gen. Bus. Law § 350 because its manuka  
18 misrepresentations were material and likely to deceive a reasonable consumer.

19 96. Plaintiff AKWEI and Class members have suffered an injury, including the  
20 loss of money or property, as a result of Defendant’s false and misleading advertising.

21 97. Pursuant to N.Y. Gen. Bus. Law § 350-e, Plaintiff AKWEI and members of  
22 the Class seek monetary damages (including actual damages and minimum, punitive, or  
23 treble and/or statutory damages pursuant to GBL § 350-a(1)), injunctive relief, restitution  
24 and disgorgement of all monies obtained by means of Defendant’s unlawful conduct,  
25 interest, and attorneys’ fees and costs.

26  
27 **COUNT IV**

28 **VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,**



**CAL. CIV. CODE § 1750, et seq.**

**(brought individually and on behalf of the Nationwide Class or, in the alternative,  
the California Class)**

98. Plaintiff MOORE realleges and incorporates each and every allegation contained above as if fully set forth herein and further allege as follows:

99. Plaintiff MOORE brings this claim individually and on behalf of the other members of the California Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

100. Plaintiff MORE and California Class members are consumers who purchased the Product for personal, family or household purposes. Plaintiff MOORE and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff MOORE and the California Class members are not sophisticated experts with independent knowledge of the character, effectiveness, nature, grades, ratings of the manuka honey Product.

101. The Product that Plaintiff MOORE and other Class members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

102. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

103. Defendant's deceptive manuka ratings claims violate federal and California law because (i) the Product is not 100% New Zealand manuka honey (2) manuka honey is not the only ingredient in the Product.

104. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate

1 Section 1770(a) (5) of the CLRA, because Defendant's conduct constitutes unfair methods  
2 of competition and unfair or fraudulent acts or practices, in that it misrepresents the  
3 Product's real ingredients and characteristics.

4 105. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are  
5 of a particular standard, quality, or grade, or that goods are of a particular style or model,  
6 if they are of another. By engaging in the conduct set forth herein, Defendant violated and  
7 continues to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct  
8 constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that  
9 it misrepresents the particular standard, quality or grade of the goods.

10 106. Cal. Civ. Code § 1770(a) (9) further prohibits "[a]dvertising goods or services  
11 with intent not to sell them as advertised." By engaging in the conduct set forth herein,  
12 Defendant violated and continues to violate Section 1770(a)(9), because Defendant's  
13 conduct constitutes unfair methods of competition and unfair or fraudulent acts or  
14 practices, in that it advertises goods with the intent not to sell the goods as advertised.

15 107. Plaintiff MOORE and the California Class members are not sophisticated  
16 experts about the character, effectiveness, nature, level, grade, ratings of the Product.  
17 Plaintiff MOORE and the California Class acted reasonably when they purchased the  
18 Product based on their belief that Defendant's representations were true and lawful.

19 108. Plaintiff MOORE and the California Class suffered injuries caused by  
20 Defendant because (a) they would not have purchased the Product on the same terms absent  
21 Defendant's illegal and misleading conduct as set forth herein, or if the true facts were  
22 known concerning Defendant's representations; (b) they paid a price premium for the  
23 Product due to Defendant's misrepresentations and deceptive manuka ratings claims and  
24 were deprived the benefit of their bargain; and (c) the Product did not have the  
25 characteristics, benefits, or quantities promised.

26 109. On or about March 15, 2018, prior to filing this action, a CLRA notice letter  
27 was served on Defendant TRADER JOE'S COMPANY, which complies in all respects  
28 with California Civil Code § 1782(a). Plaintiff MOORE sent TRADER JOE'S COMPANY

1 on behalf of herself and the Cass, a letter via certified mail, return receipt requested,  
2 advising Defendant TRADER JOE’S COMPANY that it is in violation of the CLRA and  
3 demanding that it cease and desist from such violations and make full restitution by  
4 refunding the monies received therefrom. A true and correct (unsigned) copy of Plaintiff  
5 MOORE’s letter is attached hereto as **EXHIBIT C**.

6 110. Wherefore, Plaintiff MOORE and the Class seek damages, restitution, and  
7 injunctive relief for Defendant’s violations of the CLRA.

8  
9 **COUNT V**

10 **VIOLATION OF CALIFORNIA’S UNFAIR COMPEITION LAW,**  
11 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *et seq.***  
12 **(brought individually and on behalf of the Nationwide Class or, in the alternative,**  
13 **the California Class)**

14  
15 111. Plaintiff MOORE realleges and incorporates each and every allegation  
16 contained above as if fully set forth herein and further allege as follows:

17 112. Plaintiff MOORE brings this claim individually and on behalf of the members  
18 of the Class for Defendant’s violations of California’s Unfair Competition Law, Cal. Bus.  
19 & Prof. Code § 17200, *et seq.*

20 113. The UCL provides, in pertinent part: “Unfair competition shall mean and  
21 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
22 misleading advertising . . . .”

23 114. Defendant’s manuka ratings claims violate federal and California law because  
24 (i) the Product is not 100% New Zealand manuka honey, (ii) manuka honey is not the only  
25 ingredient in the Product.

26 115. Defendant’s business practices, described herein, violated the “unlawful”  
27 prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and Cosmetic  
28

1 Act, 21 U.S.C. 343(r)(1)(a), California Health & Safety Code § 110670, the CLRA, and  
2 other applicable law as described herein.

3 116. Defendant's business practices, described herein, violated the "unfair" prong  
4 of the UCL in that their conduct is substantially injurious to consumers, offends public  
5 policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the  
6 conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to  
7 consumers, and its failure to comply with the FDCA and California law offends the public  
8 policy advanced by the FDCA "to protect the public health" by ensuring that "foods are  
9 safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A).

10 117. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiff  
11 MOORE and the Class to believe that the manuka ratings claims made about the Product  
12 were lawful, true, and not intended to deceive or mislead the consumers.

13 118. Plaintiff MOORE and the Class members are not sophisticated experts about  
14 the character, effectiveness, nature, level, grade, ratings or the antibacterial potency of the  
15 Product. Plaintiff MOORE and the California Class acted reasonably when they purchased  
16 the Product based on their belief that Defendant's representations were true and lawful.

17 119. Plaintiff MOORE and the Class lost money or property as a result of  
18 Defendant's UCL violations because (a) they would not have purchased the Product on the  
19 same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were  
20 known concerning Defendant's representations; (b) they paid a price premium for the  
21 Product due to Defendant's misrepresentations and deprived the benefit of their bargain;  
22 and (c) the Product did not have the characteristics, benefits, or quantities promised.

23  
24 **COUNT VI**

25 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,**  
26 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500, *et seq.***  
27 **(brought individually and on behalf of the Nationwide Class or, in the alternative,**  
28 **the California Class)**

1  
2 120. Plaintiff MOORE realleges and incorporate each and every allegation  
3 contained above as if fully set forth herein and further alleges as follows:

4 121. Plaintiff MOORE brings this claim individually and on behalf of the Class for  
5 Defendant's violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof.  
6 Code § 17500, *et seq.*

7 122. Under the FAL, the State of California makes it "unlawful for any person to  
8 make or disseminate or cause to be made or disseminated before the public in this state,  
9 . . . in any advertising device . . . or in any other manner or means whatever, including over  
10 the Internet, any statement, concerning . . . personal property or services, professional or  
11 otherwise, or performance or disposition thereof, which is untrue or misleading and which  
12 is known, or which by the exercise of reasonable care should be known, to be untrue or  
13 misleading."

14 123. Defendant engaged in a scheme of offering misbranded manuka honey  
15 Product for sale to Plaintiff MOORE and the Class members by way of product packaging,  
16 labeling, and other promotional materials, including the Internet. These materials  
17 misrepresented the true content and nature of the misbranded manuka honey Product.  
18 Defendant's advertisements and inducements were made in California and come within the  
19 definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the  
20 product packaging, labeling, and promotional materials were intended as inducements to  
21 purchase Defendant's Product, and are statements disseminated by Defendant to Plaintiff  
22 MOORE and Class members. Defendant knew that these statements were unauthorized,  
23 inaccurate, and misleading.

24 124. Defendant's deceptive manuka ratings claims violate federal and California  
25 law because (i) the Product is not 100% New Zealand manuka honey and (ii) manuka honey  
26 is not the only ingredient in the Product.  
27  
28

1 125. Defendant violated § 17500, *et seq.* by misleading Plaintiff MOORE and the  
2 Class to believe that the manuka content claims made about the Product were true as  
3 described herein.

4 126. Defendant knew or should have known, through the exercise of reasonable  
5 care that the Product was and continue to be misbranded, and that their representations  
6 about the manuka ratings were untrue and misleading.

7 127. Plaintiff MOORE and the Class lost money as a result of Defendant's FAL  
8 violations because (a) they would not have purchased the Product on the same terms absent  
9 Defendant's illegal conduct as set forth herein, or if the true facts were known concerning  
10 Defendant's representations; (b) they paid a price premium for the Product due to  
11 Defendant's misrepresentations and were deprived of the benefit of their bargain; and (c)  
12 the Product did not have the characteristics, benefits, or quantities promised.

13  
14 **COUNT VII**  
15 **VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE**  
16 **TRADE PRACTICES ACT**  
17 **N.C. Gen. Stat. § 75-1.1, *et seq.***  
18 **(brought individually and on behalf of the North Carolina Class)**  
19

20 128. Plaintiff KING realleges and incorporates herein by reference the allegations  
21 contained in all preceding paragraphs, and further alleges as follows:

22 129. Plaintiff KING brings this claim individually and on behalf of the other  
23 members of the Class for violations of North Carolina's Unfair and Deceptive Trade  
24 Practices Act, N.C. Gen. Stat. § 75-1.1 (the "NCUDTPA").

25 130. The NCUDTPA provides that "Unfair methods of competition in or affecting  
26 commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared  
27 unlawful." N.C. Gen. Stat. § 75-1.1.  
28

1 131. Defendant advertises, promotes, markets and sells its Product with labeling  
2 and/or ingredient statements that communicate that the product is pure manuka.

3 132. The foregoing deceptive acts and practices were directed at consumers.

4 133. Any person who has been injured by reason of any violation of North Carolina  
5 General Statutes section 75-1.1 may bring an action to recover up to 5,000 dollars for each  
6 violation. N.C. Gen. Stat. § 75-15.2. The court may, in its discretion, increase the award of  
7 damages to an amount not to exceed three times the actual damages amount fixed by the  
8 verdict. N.C. Gen. Stat. § 75-16. The court may award reasonable attorney's fees to a  
9 prevailing plaintiff. N.C. Gen. Stat. § 75-16.1.

10 134. By the acts and conduct alleged herein, Defendant committed unfair or  
11 deceptive acts and practices by mislabeling the Product or misrepresenting its ingredients.

12 135. Plaintiff KING and the other Class members suffered a loss as a result of  
13 Defendant's deceptive and unfair trade practices. Specifically, as a result of Defendant's  
14 deceptive and unfair acts and practices, Plaintiff KING and the other Class members  
15 suffered monetary losses from the purchase of Product, i.e., receiving less manuka honey  
16 than advertised. Plaintiff KING, on behalf of herself and all others similarly situated,  
17 respectfully demands a judgment enjoining Defendant's conduct, awarding costs of this  
18 proceeding and attorneys' fees, as provided by N.C. Gen. Stat. § 75-16.1, actual damages,  
19 treble damages, and such other relief as this Court deems just and proper.

20  
21  
22 **COUNT VIII**

23 **VIOLATIONS OF THE NORTH CAROLINA FRAUDULENT AND DECEPTIVE**  
24 **ADVERTISING LAW**

25 **N.C. Gen. Stat. § 14-117, *et seq.***

26 **(brought individually and on behalf of the North Carolina Class)**  
27  
28

1           136. This claim is brought on behalf of Plaintiff KING and members of the North  
2 Carolina Class against Defendant.

3           137. Plaintiff KING realleges and incorporates by reference the allegations  
4 contained in all preceding paragraphs, and further alleges as follows:

5           138. N.C. Gen. Stat. § 14-117 makes unlawful “[f]alse advertising in the conduct  
6 of any business, trade or commerce.” False advertising means “. . . [A]n advertisement of  
7 any sort regarding merchandise, securities, service or any other thing so offered to the  
8 public, which advertisement contains any assertion, representation or statement of fact  
9 which is untrue, deceptive or misleading . . .” N.C. Gen. Stat. § 14-117.

10           139. Defendant’s false advertising was known, or through the exercise of  
11 reasonable care should have been known, by Defendant to be deceptive and misleading to  
12 consumers.

13           140. Defendant’s affirmative misrepresentations were material and substantially  
14 uniform in content, presentation, and impact upon consumers at large. Consumers  
15 purchasing the Product were, and continue to be, exposed to Defendant’s material  
16 misrepresentations.

17           141. Defendant violates N.C. Gen. Stat. § 14-117 because its misrepresentations  
18 and/or omissions regarding the Product, as set forth above, were material and likely to  
19 deceive a reasonable consumer.

20           142. Plaintiff KING and members of the North Carolina Class have suffered an  
21 injury, including the loss of money or property, as a result of Defendant’s false and  
22 misleading advertising. In purchasing the Product, Plaintiff KING and members of the  
23 Class relied on the misrepresentations regarding the ingredients in the product. Those  
24 representations were false and/or misleading because around 40.05% of the Product is not  
25 manuka honey. Plaintiff KING and the Class were deprived of the benefit of their bargains  
26 when they purchased the Product and did not receive a product that was pure manuka  
27 honey.

28



1 143. Pursuant to N.C. Gen. Stat. § 14-117, Plaintiff KING and members of the  
2 Class seek monetary damages (including actual, minimum, punitive, treble, and/or  
3 statutory damages), injunctive relief, restitution and disgorgement of all monies obtained  
4 by means of Defendant’s unlawful conduct, interest, and attorneys' fees and costs.

5  
6 **COUNT IX**

7 **COMMON LAW FRAUD**

8 **(brought individually and on behalf of the Nationwide Class under California**  
9 **common law or, in the alternative, on behalf of the New York, California, and North**  
10 **Carolina Classes under those states’ respective laws)**

11  
12 144. Plaintiffs reallege and incorporate herein by reference the allegations  
13 contained in all preceding paragraphs, and further alleges as follows:

14 145. Defendant intentionally made materially false and misleading claims through  
15 its representations that its products were purely manuka honey, intending that Plaintiffs  
16 and the Class rely on them.

17 146. Plaintiffs and Class members reasonably relied on Defendant’s false and  
18 misleading representations and omissions. They did not know, and had no reason to know,  
19 the truth about the Product as the time they purchased it. They would not have purchased  
20 the Product had they known the truth—viz., that the Product is not pure manuka.

21 147. Plaintiffs and members of the Class have been injured as a result of  
22 Defendant’s fraudulent conduct and must be compensated in an amount to be determined  
23 at trial.

24 **COUNT X**

25 **BREACH OF EXPRESS WARRANTIES**

26 **(brought individually and on behalf of the Nationwide Class under California**  
27 **express warranty law or, in the alternative, on behalf of the New York, California,**  
28 **and North Carolina Classes under those states’ respective laws)**

1  
2 148. Plaintiffs reallege and incorporates herein by reference the allegations  
3 contained in all preceding paragraphs, and further allege as follows:

4 149. Defendant provided Plaintiff and other Class members with written express  
5 warranties that i) the only ingredient in the Product was manuka honey ii) the product  
6 contained 100% New Zealand Manuka Honey.

7 150. These claims were affirmations of fact. These affirmations of fact became  
8 part of the basis of the bargain and created an express warranty that the good would  
9 conform to the stated promise. Plaintiff and Class members attached importance to  
10 Defendant's claims.

11 151. Defendant breached the terms of its express warranty to Plaintiffs and the  
12 Class by not providing Products with the qualities promised.

13 152. As a proximate result of Defendant's breach of warranties, Plaintiffs and Class  
14 members suffered damages in an amount to be determined by the Court and/or jury, in that  
15 they purchased and paid for Products that did not conform to what Defendant promised in  
16 its promotion, marketing and advertising. They were deprived of the benefit of their  
17 bargain and spent money on products that did not have any value nor had less value than  
18 was warranted.

19 **PRAYER FOR RELIEF**

20  
21 WHEREFORE, Plaintiffs, themselves and on behalf of all other similarly situated,  
22 pray for relief and judgment against Defendant, as follows:

- 23 a. For an order certifying the Nationwide Class, appointing Plaintiffs AKWEI,  
24 MOORE, and KING as representatives of the Nationwide Class, and  
25 designating their counsel as counsel for the Nationwide Class;
- 26 b. In the alternative, for an order certifying the New York Class, appointing  
27 Plaintiff AKWEI as representative of the New York Class, and designating  
28 his counsel as counsel for the New York Class;

- 1 c. Also in the alternative, for an order certifying the California Class,  
2 appointing Plaintiff MOORE as representative of the California Class, and  
3 designating her counsel as counsel for the California Class;
- 4 d. Also in the alternative, for an order certifying the California Class,  
5 appointing Plaintiff KING as representative of the North Carolina Class, and  
6 designating her counsel as counsel for the North Carolina Class;
- 7 e. For all recoverable compensatory and other damages sustained by Plaintiffs  
8 and the Classes;
- 9 f. For an Order declaring Defendant's conduct violates the statutes referenced  
10 herein;
- 11 g. For an Order finding in favor of Plaintiffs and the Classes;
- 12 h. For actual and/or statutory damages for injuries suffered by Plaintiff and the  
13 Class and in the maximum amount permitted by applicable law;
- 14 i. For an Order (1) requiring Defendant to immediately cease its wrongful  
15 conduct as set forth in this Complaint; (2) enjoining Defendant from  
16 continuing to misrepresent and conceal material information and conduct  
17 business via the unlawful, unfair and deceptive business acts and practices  
18 complained of herein; (3) ordering Defendant to engage in a corrective  
19 advertising campaign; and (4) requiring Defendant to reimburse Plaintiffs  
20 and all members of the Class for their injuries;
- 21 j. For compensatory and punitive damages in amounts to be determined by the  
22 Court and/or jury;
- 23 k. For an Order of restitution and all other forms of equitable monetary relief;
- 24 l. For injunctive relief as pleaded or as the Court may deem proper;
- 25 m. For an Order awarding Plaintiffs and the Class their reasonable attorneys'  
26 fees and expenses and costs of suit; and
- 27 n. For such other and further relief as the Court deems just and proper.  
28

1 **DEMAND FOR TRIAL BY JURY**

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3 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf  
4 of himself and all others similarly situated, hereby demand a jury trial on all claims so  
5 triable.

6  
7 Dated:

8  
9 Respectfully submitted,

10  
11 /s/ C.K. Lee  
12 C.K. Lee, Esq.

13  
14 /s/ David A. Makman  
15 David A. Makman, Esq.

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