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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12 115CV286907

13 SARAH SAMET, individually and on behalf of  
14 all others similarly situated,

15 Plaintiff,

16 v.

17 HEALTH-ADE, LLC,

18 Defendant.

19 CLASS ACTION COMPLAINT

20 JURY TRIAL DEMANDED

21 Plaintiff Sarah Samet ("Plaintiff"), individually, and on behalf of all similarly situated  
22 persons, by and through her attorneys, alleges the following against Defendant Health-Ade, Inc.  
23 ("Health-Ade" or "Defendant"), upon personal knowledge as to facts pertaining to herself, and  
24 upon information and belief as to all other matters.

25 INTRODUCTION

26 1. This is a statewide class action concerning the false and misleading labels  
27 promulgated by Health-Ade, one of the nation's largest manufacturers of kombucha. Specifically,  
28 this case concerns Health-Ade's significant and systematic understatement of the amount of sugars  
in its Kombuchas. While the nutrition panels on the Health-Ade Kombuchas claim that the products  
contain only two to four grams of sugars per serving, they in fact contain approximately four to six  
times the amount on their labels.

2. Kombucha has had a meteoric rise in popularity in the United States over the last

1 few years. Kombucha sales, which are increasing by about 30% annually, are estimated to be  
2 roughly \$500 million in 2015.

3 3. Kombucha is considered by many to be a healthy beverage, and Health-Ade  
4 advertises it as such. As part of its effort to portray its products as healthy, Health-Ade has falsely  
5 labeled its products as having far fewer grams of sugars than they actually contain. Thus,  
6 Defendant's deceptive labeling is critical to its ability to sell large quantities of its kombuchas at  
7 high prices.

8 4. The law of this state is well settled: labels matter. Consumers rely on labels in  
9 making their purchasing decisions, and are entitled to know the sugar content of beverages they  
10 purchase and consume. Indeed, it is not simply that some consumers would rather not consume  
11 products with high levels of sugar; for some, including diabetics, the consumption of significant  
12 amounts of sugar is dangerous to their health.

13 5. Defendant's labeling and advertising is misleading, deceptive, unfair, and fraudulent.  
14 Defendant also violates California law, including, but not limited to, California Civil Code §§ 1750,  
15 *et seq.*, California Business & Professions Code § 17200, *et seq.*, and California Business &  
16 Professions Code §§ 17500, *et seq.*

17 **PARTIES**

18 6. Plaintiff Sarah Samet is a resident of Santa Clara County, California, who purchased  
19 kombucha made by Health-Ade within four years of the filing of this action. Specifically, in or  
20 about 2014-2015, Plaintiff purchased 1) Health-Ade Kombucha: The Original, 2) Health-Ade  
21 Kombucha: Cayenne Cleanse, and 3) Health-Ade Kombucha: Ginger-Lemon ("the Purchased  
22 Kombuchas"). Plaintiff paid approximately \$3.00 for each Kombucha. In purchasing these  
23 Kombuchas, Plaintiff saw and relied upon the statement on the label that the Kombuchas contained  
24 only 2 grams of sugars per serving.

25 7. Defendant Health-Ade LLC is a Delaware limited liability company. Its principle  
26 place of business is 3347 Motor Ave., #200, Los Angeles, CA 90034. According to Defendant's  
27 website its product is "brewed 100% in Los Angeles, California." Health-Ade sells nine different  
28

1 flavors of kombucha. Together, they are referred to herein as “the Health-Ade Kombuchas” or “the  
2 Kombuchas.”

3 8. California law applies to all claims set forth in this Complaint, because Plaintiff lives  
4 in California and purchased Health-Ade Kombuchas there. Also, Defendant is based in California,  
5 manufactured and sold the Kombuchas in California, and availed itself of business opportunities in  
6 this state.

7 **JURISDICTION AND VENUE**

8 9. This Court has jurisdiction over Defendant, who is authorized to do business in this  
9 County, and markets, promotes, and distributes the Health-Ade Kombuchas in this county. Venue is  
10 proper under California Civil Code 1780(d), because Defendant is authorized to conduct business in  
11 this County, has intentionally availed itself of the laws and markets of this County through the  
12 promotion, marketing, distribution, and sale of its products in this County, and because a substantial  
13 part of the events or omissions giving rise to Plaintiff’s claims occurred in this County.

14 **HEALTH-ADE KOMBUCHAS AT ISSUE**

15 10. The Purchased Kombuchas and the other products listed in Paragraph 11 are  
16 similarly situated, in that each: (i) is the same basic product, kombucha; (ii) contains many of the  
17 same basic ingredients, including filtered water, kombucha culture, organic black tea, and sugar;  
18 and (iii) contains a nutrition panel that fraudulently and deceptively underreports the product’s  
19 sugar content.

20 11. The substantially similar products are:

- 21 A. Health-Ade Kombucha: The Original
- 22 B. Health-Ade Kombucha: Pink Lady Apple
- 23 C. Health-Ade Kombucha: Cayenne Cleanse
- 24 D. Health-Ade Kombucha: Beet
- 25 E. Health-Ade Kombucha: Ginger-Lemon
- 26 G. Health-Ade Kombucha: Plum
- 27 H. Health-Ade Kombucha: Carrot

- 1 I. Health-Ade Kombucha: California Grape  
2 J. Health-Ade Kombucha: Pomegranate  
3

4 **FACTUAL ALLEGATIONS**

5 12. Health-Ade is one of the nation's largest manufacturers of kombucha. Kombucha is  
6 a fermented tea made with sugar and a symbiotic colony of bacteria and yeast (or "SCOBY"). The  
7 Health-Ade Kombuchas are sold primarily at health food stores—including Whole Foods—and are  
8 targeted primarily to health-conscious consumers.

9 13. The nutrition panels of the Health-Ade Kombuchas claim that the Kombuchas  
10 contain between two to four grams of sugars per eight ounce serving of eight fluid ounces.

11 14. In fact, recent testing demonstrates that the Health-Ade Kombuchas contain far more  
12 grams of sugars than advertised. Specifically, the Health-Ade Kombuchas each contains between  
13 approximately 11 to 13 grams of sugars per serving, or about four to six times more grams sugars  
14 than is stated on its label.

15 15. The sugar content of a beverage is material to a reasonable consumer.

16 16. Defendant's systematic mislabeling of the sugar content of its Kombuchas is  
17 deceptive, fraudulent, unfair, and in violation of California's consumer laws.

18 17. Plaintiff, like other reasonable consumers, cares about her sugar intake. Plaintiff  
19 would not have purchased the Purchased Kombuchas had she known that they contained far more  
20 sugars than Defendant claimed on the nutrition panels.

21 18. Apart from being misleading and deceptive, Defendant's mislabeling of its  
22 Kombuchas runs afoul of California and federal law.

23 19. The definition of "food" under the FDCA includes "articles used for food or drink."  
24 21 U.S.C. § 321(f). The FDCA strictly prohibits the "misbranding" of food. 21 U.S.C. § 331. A  
25 food is misbranded if it has a label that is false and misleading in any particular. 21 U.S.C. § 343.

26 20. The FDA has determined that "[a] food with a label declaration of . . . sugars . . .  
27 shall be deemed to be misbranded under [the FDCA] if the nutrient content of the composite is  
28 greater than 20 percent in excess of the value for that nutrient declared on the label." 21 C.F.R. §

1 101.9(g)(5).

2 21. The Kombuchas are food products that have labels that are false and misleading. In  
3 addition, their actual sugar contents are far greater than 20 percent in excess of the value of sugars  
4 declared on their labels. Accordingly, the Kombuchas are misbranded under federal law.

5 22. California's Sherman Law expressly adopted the federal labeling requirements as its  
6 own, stating "[a]ll food labeling requirements and any amendments to those regulations adopted  
7 pursuant to the federal act . . . shall be the food regulations of this state." Cal. Health & Safety Code  
8 § 110100. *See also* Cal. Health & Safety Code §§ 110660, 110665 and 110670 prohibiting  
9 misbranded food. Accordingly, the Kombuchas are also misbranded under California law.

10 **CLASS ACTION ALLEGATIONS**

11 23. Plaintiff brings this action as a class action pursuant to California Rule of Civil  
12 Procedure 382, on behalf of the following class (the "Class"):

13 All persons in California who, from October 15, 2011, until the date of notice,  
14 purchased any kombucha beverage manufactured by Health-Ade, LLC.

15 24. The following persons are expressly excluded from the Class: (1) Defendant and its  
16 subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the  
17 proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its  
18 staff.

19 25. This action can be maintained as a class action, because there is a well-defined  
20 community of interest in the litigation and the proposed Class is easily ascertainable.

21 26. Numerosity: It is estimated that the number of Class members is in the thousands.  
22 Joinder of all Class members is impracticable.

23 27. Common Questions Predominate: This action involves common questions of law  
24 and fact applicable to each Class member that predominate over questions that affect only  
25 individual Class members. Thus, proof of a common set of facts will establish the right of each  
26 Class member to recover. Questions of law and fact common to each Class member include, for  
27 example:

- a. Whether Defendant engaged in fraudulent, unfair, unlawful, or deceptive business practices by falsely representing on its Kombuchas' labels that they contained far fewer grams of sugars than they actually did;
- b. Whether Defendant engaged in fraudulent, unfair, unlawful, or deceptive business practices by misrepresenting the sugar contents in its Kombuchas;
- c. Whether Plaintiff and the Class are entitled to restitution, damages, equitable and/or injunctive relief;
- d. Whether Defendant's fraudulent unlawful, unfair, and deceptive practices harmed Plaintiff and the Class; and
- e. Whether Defendant was unjustly enriched by its deceptive practices.

28. Typicality: Plaintiff's claims are typical of the claims of the Class because Plaintiff bought Health-Ade Kombuchas during the class period. Health-Ade's unlawful, unfair, and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of each member of the Class were caused directly by Health-Ade's wrongful conduct.

29. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent Plaintiff's interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiff and Plaintiff's counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

30. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they are not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary

1 duplication of effort and expense that numerous individual actions would create.

2 31. The claims of the individual class members are small in relation to the expenses of  
3 litigation, making a class action the only procedure in which class members can, as a practical  
4 matter, recover. However, the claims of individual class members are large enough to justify the  
5 expense and effort in maintaining a class action.

6 32. Defendant has acted or refused to act on grounds generally applicable to the Class,  
7 thereby making appropriate injunctive or equitable relief with respect to the Class as a whole.

8 33. Questions of law or fact common to Class members predominate over any questions  
9 affecting only individual members, and a class action is superior to other available methods for  
10 fairly and efficiently adjudicating the controversy.

11 34. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be  
12 encountered in the management of this action that would preclude its maintenance as a class action.

13 35. There are no unique defenses that may be asserted against Plaintiff individually, as  
14 distinguished from the Class. The claims of Plaintiff are the same as those of the Class.

### 15 **FIRST CAUSE OF ACTION**

#### 16 **Violation of "Unlawful" Prong of the UCL**

17 36. Plaintiff repeats and re-alleges each of the above allegations.

18 37. California's Unfair Competition Law prohibits any "unlawful, unfair, or fraudulent"  
19 business practice. Cal. Bus. & Prof. Code § 17200. Defendant's misrepresentations on the labels of  
20 its Kombuchas are "unlawful" under California law.

21 38. A business practice is "unlawful" under the UCL if it violates any other law or  
22 regulation.

23 39. As explained herein, because the Kombuchas have greater than 20 percent in excess  
24 of the value of the sugars declared on their labels, the Kombuchas are misbranded in violation of  
25 the law. 21 U.S.C. § 331; 21 C.F.R. § 101.9(g)(5). By extension, Defendant's conduct runs afoul of  
26 California's Sherman Law. *See* Cal. Health & Safety Code § 110100.

27 40. Defendant's conduct also violates various provisions of California's Consumers  
28

1 *Legal Remedies Act, including Civil Code § 1770(a)(5), Civil Code § 1770(a)(7), and (3) Civil*  
2 *Code § 1770(a)(9).*

3 41. As a result of the conduct described above, Defendant has been, and will continue to  
4 be, unjustly enriched at the expense of Plaintiff and the other Class members. Specifically,  
5 Defendant has been unjustly enriched by obtaining revenues and profits it would not otherwise have  
6 obtained absent its false, misleading, and deceptive practices.

7 42. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
8 by Defendant, to obtain restitutionary disgorgement of all monies and revenues generated as a result  
9 of such practices, and to obtain all other relief allowed under California Business & Professions  
10 Code § 17200.

11 **SECOND CAUSE OF ACTION**

12 **Violation of “Unfair” Prong of the UCL**

13 43. Plaintiff repeats and re-alleges each of the above allegations.

14 44. California’s UCL prohibits any “unlawful, unfair, or fraudulent” business practice.  
15 Cal. Bus. & Prof. Code. § 17200. Defendant’s misrepresentations on the labels of its Kombuchas  
16 are “unfair” under California law.

17 45. A business practice is “unfair” under the UCL if the gravity of the harm to the victim  
18 outweighs the utility of the defendant’s conduct.

19 46. Defendant has violated, and continues to violate, the “unfair” prong of the UCL by  
20 misrepresenting to its customers the amount of sugar in its Kombuchas.

21 47. The gravity of the harm to Plaintiff and the other Class members resulting from  
22 these unfair acts and practices outweighs any conceivable utility of Defendant’s conduct.

23 48. As a result of the conduct described above, Defendant has been, and will continue to  
24 be, unjustly enriched at the expense of Plaintiff and the other Class members. Specifically,  
25 Defendant has been enriched by obtaining revenues and profits it would not otherwise have  
26 obtained absent its false, misleading, and deceptive practices.

27 49. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
28



1 by Defendant, to obtain restitutionary disgorgement of all monies and revenues generated as a result  
2 of such practices, and to obtain all other relief allowed under California Business & Professions  
3 Code § 17200.

### 4 **THIRD CAUSE OF ACTION**

#### 5 **Violation of "Fraudulent" Prong of the UCL**

6 50. Plaintiff repeats and re-alleges each of the above allegations.

7 51. California's UCL prohibits any "unlawful, unfair, or fraudulent" business practice.  
8 Cal. Bus. & Prof. Code. § 17200. Defendant's misrepresentations on the labels of its Kombuchas  
9 are "fraudulent" under California law.

10 52. A fraudulent business practice is one in which members of the public are likely to be  
11 deceived.

12 53. Defendant has violated, and continues to violate, the "fraudulent" prong of the UCL  
13 by misrepresenting them as having far fewer grams of sugars than they actually do. In so doing,  
14 Defendant deceives its customers into buying products they believe contain far fewer grams of  
15 sugars than they actually do.

16 54. As a result of the conduct described above, Defendant has been, and will continue to  
17 be, unjustly enriched at the expense of Plaintiff and the other Class members. Specifically,  
18 Defendant has been enriched by obtaining revenues and profits they would not otherwise have  
19 obtained absent its false, misleading, and deceptive practices.

20 55. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
21 by Defendant, to obtain restitutionary disgorgement of all monies and revenues generated as a result  
22 of such practices, and to obtain other relief allowed under California Business & Professions Code  
23 § 17200.

### 24 **FOURTH CAUSE OF ACTION**

#### 25 **Violation of the Consumers Legal Remedies Act**

26 56. Plaintiff repeats and re-alleges each of the above allegations.

27 57. This cause of action is brought under the Consumers Legal Remedies Act, California  
28

1 Civil Code §§ 1750, *et seq.*

2 58. Plaintiff, as well as each member of the Class, constitutes a “consumer” within the  
3 meaning of Civil Code § 1761(d).

4 59. Defendant’s sales of its Kombuchas constitute “transactions” within the meaning of  
5 Civil Code § 1761(e). The beverages purchased by Plaintiff and the Class members constitute  
6 “goods” under Civil Code § 1761(a).

7 60. As described above, Defendant’s representations to Plaintiff and other members of  
8 the Class were false, in violation of the CLRA. Specifically, Defendant’s conduct violated, among  
9 others, (1) Civil Code § 1770(a)(5), which prohibits “[r]epresenting that goods or services have  
10 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
11 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
12 does not have”; (2) Civil Code § 1770(a)(7), which prohibits “[r]epresenting that goods or services  
13 are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they  
14 are of another”; and (3) Civil Code § 1770(a)(9), which prohibits “[a]dvertising goods or services  
15 with intent not to sell them as advertised.”

16 61. Under Civil Code § 1780(a)(2), Plaintiff, on behalf of herself and the Class, requests  
17 that this Court enjoin Defendant from continuing to engage in these unlawful and deceptive  
18 practices.

19 62. Plaintiff also reserves the right to amend this Complaint to include a request for  
20 damages under the CLRA after complying with Civil Code § 1782(a) within thirty days after the  
21 commencement of this cause of action for injunctive relief.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of the False Advertising Law**

24 63. Plaintiff repeats and re-alleges each of the above allegations.

25 64. This cause of action is brought under California’s False Advertising Law, California  
26 Business & Professions Code §§ 17500, *et seq.*

27 65. The FAL prohibits the dissemination of any advertising which is untrue or

1 misleading, and which is known, or which by the exercise of reasonable care should be known, to  
2 be untrue or misleading. Cal. Bus. & Prof. Code § 17500.

3 66. Defendant engaged in a scheme of offering the Health-Ade Kombuchas for sale to  
4 Plaintiff and the members of the Class by way of product packaging and labeling, and other  
5 promotional materials. These materials misrepresented and/or omitted the true contents and nature  
6 of Defendant's Kombuchas.

7 67. As is explained herein, Defendant advertised, and continues to advertise, its products  
8 in a manner that was, and is, untrue and misleading.

9 68. Defendant knew or should have known that its advertisements were and are  
10 misleading or likely to mislead for the reasons set forth above.

11 69. Defendant's advertisements and inducements were made within California and come  
12 within the definition of advertising as contained in Business and Professions Code §17500, *et seq.*  
13 in that such product packaging and labeling, and promotional materials were intended as  
14 inducements to purchase Defendant's Kombuchas and are statements disseminated by Defendant to  
15 Plaintiff and the members of the Class that were intended to reach the members of the Class.

16 70. Plaintiff suffered injuries in fact and losses of money or property as a result of  
17 Defendant's acts and practices, which violate §§ 17500, *et seq.*

## 18 SIXTH CAUSE OF ACTION

### 19 Breach of Express Warranty

20 71. Plaintiff repeats and re-alleges each of the above allegations.

21 72. Defendant provided Plaintiff and other members of the Class with written express  
22 warranties, including warranties that its Health-Ade Kombuchas contained only between two to  
23 four grams of sugars per serving.

24 73. Defendant breached these warranties by providing Kombuchas sugar contents far in  
25 excess of what they warranted.

26 74. These breaches resulted in damages to Plaintiff and other members of the Class who  
27 bought Health-Ade Kombuchas but did not receive the good as warranted.



1 *UNJUSTLY, BY REASON WHEREOF, Plaintiff and the other Class members have suffered damages in an*  
2 amount to be proved at trial.

3 **NINTH CAUSE OF ACTION**

4 **Restitution or Disgorgement Based on Unjust Enrichment/Quasi-Contract**

5 85. Plaintiff brings this claim in the alternative, and repeats and re-alleges each of the  
6 above allegations.

7 86. As a result of Defendant's unlawful, fraudulent and misleading labeling, advertising,  
8 marketing, and sales of the Health-Ade Kombuchas, Defendant was unjustly enriched at the  
9 expense of Plaintiff and the Class.

10 87. Defendant sold the Health-Ade Kombuchas to Plaintiff and the Class that were not  
11 capable of being sold or held legally and which were legally worthless. Plaintiff and the Class paid  
12 a premium for the Kombuchas. It would be against equity and good conscience to permit Defendant  
13 to retain the ill-gotten benefits Defendant received from Plaintiff and the Class, in light of the fact  
14 that the products were not what Defendant purported them to be. Thus, it would be unjust and  
15 inequitable for Defendant to retain the benefit without restitution to Plaintiff and the Class of all  
16 monies paid to Defendant for the products at issue.

17 **JURY DEMAND**

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

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons,  
21 prays for judgment against Defendant as follows:

22 A. For an order certifying this case as a class action and appointing Plaintiff and  
23 Plaintiff's counsel to represent the Class;

24 B. For an order awarding, as appropriate, damages, restitution, and/or disgorgement to  
25 Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled  
26 pursuant to under California law;

27 C. For an order requiring Defendant to immediately cease and desist from all  
28

1 fraudulent, deceptive, unlawful, and illegal conduct outlined above;

2 D. For an order awarding attorneys' fees and costs;

3 E. For an order awarding punitive damages;

4 F. For an order awarding pre-judgment and post-judgment interest; and

5 G. For an order providing such further relief as this Court deems just and proper.

6 Dated: October 15, 2015

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