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14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

15
16 LAQUISHA SCOTT, on behalf of herself and
all others similarly situated,

17 Plaintiff,

18 v.

19 SARAYA USA, Inc.,

20 Defendant.
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CASE NO.: 5:22-cv-05232

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Laquisha Scott (“Plaintiff”), on behalf of herself and all others similarly situated,
2 brings this class action against Defendant Saraya USA, Inc. (“Defendant” or “Saraya”) based upon
3 personal knowledge as to herself, and upon information, investigation and belief of her counsel.

4 **INTRODUCTION**

5 1. This class action seeks to challenge Defendant’s false and deceptive practices in the
6 marketing and sale of several of its products, which are marketed as monk fruit sweetened items.

7 2. Monk fruit, also known as Luo Han Guo, is a premium fruit which consumers
8 value given its nutritional values, lack of impact on blood sugar, antioxidant levels, and more.

9 3. Specifically, Defendant has marketed the Products (fully defined in Paragraph 13,
10 below) as “Sweetened with Monk Fruit” or “Monk Fruit Sweetened” (together, the “Monk Fruit
11 Representations”), representing to consumers that its Products are entirely, or at the very least
12 predominantly, sweetened with monk fruit.

13 4. Despite the Monk Fruit Representations, and unbeknownst to consumers, the
14 Products are predominantly sweetened with *erythritol*. Erythritol is a highly processed sugar
15 alcohol which is a less premium sweetener than monk fruit. Erythritol is also known to cause a
16 host of problems for consumers, including being disruptive to gut health.

17 5. Plaintiff and other consumers purchased the Products and paid a premium price
18 based upon their reliance on the Monk Fruit Representations. Had Plaintiff and other consumers
19 been aware that the Monk Fruit Representations were false, they would not have purchased the
20 Products or would have paid significantly less for them. Accordingly, Plaintiff and Class members
21 have been injured by Defendant’s deceptive business practices.

22 **JURISDICTION AND VENUE**

23 6. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28
24 U.S.C. §1332(d) in that: (1) this is a class action involving more than 100 Class members; (2) the
25 parties are minimally diverse, as members of the proposed class are citizens of states different than
26 Defendant’s home state; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of
27 interests and costs.

28

1 members will continue to purchase the Products, reasonably but incorrectly, believing that the
2 Products are sweetened solely or predominantly with monk fruit.

3 **DEFENDANT**

4 11. Defendant Saraya USA, Inc. is a Utah corporation with its principal place of
5 business in Orem, Utah. Defendant operates “Lakanto”, the nation’s leading brand of products
6 marketed as being sweetened with monk fruit, including the Products challenged in this
7 Complaint. Defendant sells the Products throughout California, including in this District.

8 **FACTUAL ALLEGATIONS**

9 12. Defendant is responsible for the formulation, manufacturing, marketing, labeling,
10 advertising, and sale of “Lakanto” branded products, which are sold in retail stores across the
11 United States as well as directly on Defendant’s website.

12 13. The full list of the Products at issue in this case are as follows: (1) Sugar-Free
13 Maple Syrup; (2) Sugar-Free Suntella Chocolate Sunflower Spread; (3) Sugar-Free Drinking
14 Chocolate; (4) Sugar-Free Brownie Mix; (5) Sugar-Free Pancake & Baking Mix; (6) Sugar-Free
15 Blueberry Muffin Mix; (7) Keto Granola; (8) Sugar-Free Pumpkin Spice Muffin & Bread Mix; (9)
16 Sugar-Free Cookie Mix; (10) Sugar-Free Chocolate Syrup; (11) Sugar-Free Chocolate Chips; (12)
17 Sugar-Free Simple Flavoring Syrup; (13) Sugar-Free Chocolate Bark; (14) Sugar-Free Chocolate
18 Bars; (15) Sugar-Free Matcha Latte Drink Mix; (16) Chocolate Covered Almonds; (17) Peanut
19 Butter Powder; (18) Dark Chocolate Peanut Butter Cups; (19) Sugar-Free Lemon Poppy Seed
20 Muffin Mix; (20) Sugar-Free Chocolate Truffles; (21) Sugar-Free Banana Nut Muffin and Bread
21 Mix; (22) Sugar-Free Chocolate Chip Cookie Mix; (23) Sugar-Free Dark Chocolate Sunflower
22 Butter Cups; (24) Keto Candied Nuts; (25) Sugar-Free Double Chocolate Muffin Mix; (26) Sugar-
23 Free Double Chocolate Cookie Mix; (27) Keto Mini Crunchy Cookies; (28) Sugar-Free Cake Mix;
24 (29) Sugar-Free Chocolate Peppermint Cookie Mix; (30) Almond Butter Vanilla Flavored Spread;
25 (31) Chocolate Covered Peanuts; (32) All Purpose Bread Mix; (33) Peanut Butter Spread; (34)
26 Cookie Butter Sunflower Spread; (35) Simple Syrup Caramel; and (36) Chocolate Covered
27 Almonds (collectively, the “Products”).

1 14. Specifically, for each of the Products, Defendant has labeled them as “Sweetened
2 with Monk Fruit” or “Monk Fruit Sweetened” (together, the “Monk Fruit Representations”),
3 representing to consumers that its Products are entirely, or at the very least predominantly,
4 sweetened with monk fruit. Representative examples are depicted below:
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1 15. However, despite the Monk Fruit Representations, and unbeknownst to consumers,
2 the Products are *not* solely, or even predominantly, sweetened with monk fruit. Instead, the
3 Products are predominantly sweetened with erythritol.

4 16. Erythritol is a sugar alcohol which is generally crafted from GMO cornstarch.¹
5 Ingestion of erythritol, like other sugar alcohols, can lead to multiple side effects, including
6 digestive problems, diarrhea, bloating, cramps, gas, nausea, and headaches.²

7 17. Conversely, monk fruit sweetener is not a sugar alcohol, but is made from an
8 extract of the Luo Han Guo fruit.³ Monk fruit is known to be high in antioxidants⁴ and is less
9 processed than erythritol. As such, Monk Fruit is considered to be a more premium sweetener than
10 erythritol. Indeed, dieticians recognize the fact that erythritol is more disruptive to the consumer's
11 gut.⁵

12 18. Further, pure monk fruit is much more expensive than pure erythritol, thus
13 providing Defendant with a financial motive in labeling the Products in a deceptive manner.

14 19. The reasonable belief that the Products are solely sweetened, or at the very least
15 predominantly sweetened, with monk fruit was a significant factor in Plaintiff and other class
16 members' decisions to purchase the Products. Monk fruit is considered to be one of the most
17 premium sweeteners available on the market, and consumers value monk fruit over the less
18 nutritious and cheaper erythritol found in the Products. Thus, Defendant promises premium
19 products, but provides consumers with cheaper, less premium alternatives.

20 _____
21 ¹Meritage Medical Network, *What Is Erythritol? Erythritol Side Effects And Danger*,
22 <https://meritagemed.com/erythritol/#:~:text=Erythritol%20side%20effects%20typically%20include,headac>
23 [hes%20may%20occur%20as%20well](https://meritagemed.com/erythritol/#:~:text=Erythritol%20side%20effects%20typically%20include,headac) (last visited September 7, 2022).

24 ² *Id.*

25 ³ Cleveland Clinic, *Is Monk Fruit A Healthy Sweetener?* [https://health.clevelandclinic.org/why-you-should-use-monk-fruit-](https://health.clevelandclinic.org/why-you-should-use-monk-fruit-sweetener/#:~:text=Monk%20fruit%20is%20a%20small,its%20mogroside%20from%20the%20juice)
26 [sweetener/#:~:text=Monk%20fruit%20is%20a%20small,its%20mogroside%20from%20the%20juice](https://health.clevelandclinic.org/why-you-should-use-monk-fruit-sweetener/#:~:text=Monk%20fruit%20is%20a%20small,its%20mogroside%20from%20the%20juice) (last
27 visited September 7, 2022).

28 ⁴ *Id.*

⁵ Tamara Duker Freuman, MS, RD, CDN, *The Best and Worst Sweeteners for Your Gut*,
[https://health.usnews.com/health-news/blogs/eat-run/articles/2018-04-17/the-best-and-worst-sweeteners-](https://health.usnews.com/health-news/blogs/eat-run/articles/2018-04-17/the-best-and-worst-sweeteners-for-your-gut)
for-your-gut (last visited September 7, 2022).

1 20. As the entity responsible for the development, labeling, manufacturing, advertising,
2 distribution and sale of the Products, Defendant knew or should have known that the Products’
3 Monk Fruit Representations are false and misleading.

4 21. Defendant also knew or should have known that Plaintiff and other consumers, in
5 purchasing the Products, would rely on Defendant’s false and misleading representations.
6 Nonetheless, Defendant deceptively advertises the Products in order to deceive consumers and
7 gain an unfair advantage in the market.

8 22. Consumers are willing to pay more for the Products based on the belief that the
9 Products are solely, or at the very least predominantly, sweetened with monk fruit. Plaintiff and
10 other consumers would have paid significantly less for the Products, or would not have purchased
11 them at all, had they known that the truth about them. Thus, through the use of misleading
12 representations, Defendant commands a price that Plaintiff and the Class would not have paid had
13 they been fully informed.

14 23. Therefore, Plaintiff and other consumers purchasing the Products have suffered
15 injury in fact and lost money as a result of Defendant’s false and deceptive practices, as described
16 herein.

17 **CLASS ACTION ALLEGATIONS**

18 24. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all other
19 applicable laws and rules, individually, and on behalf of all members of the following Classes:

20 **California Class**

21 All residents of California who purchased the Products within the applicable statute of
22 limitation (“California Class”).

23 **California Consumer Subclass**

24 All residents of California who purchased the Products for personal, family, or household
25 purposes, within the applicable statute of limitations period (“California Consumer
26 Subclass”) (together with the California Class, the “Classes”).

27 25. Excluded from the Classes are the following individuals and/or entities: Defendant
28 and its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any

1 entity in which Defendant has a controlling interest; all individuals who make a timely election to
2 be excluded from this proceeding using the correct protocol for opting out; and all judges assigned
3 to hear any aspect of this litigation, as well as their immediate family members.

4 26. Plaintiff reserves the right to modify or amend the definition of the proposed
5 Classes and/or add subclasses before the Court determines whether class certification is
6 appropriate.

7 27. Plaintiff is a member of all the Classes.

8 28. **Numerosity**: Members of each Class are so numerous and geographically
9 dispersed that individual joinder of all Class members is impracticable. The precise number of
10 Class members is unknown to Plaintiff but is likely to be ascertained by the Defendant's records
11 through its online marketplace, or through sales data obtained via third parties. At a minimum,
12 there likely are tens of thousands of Class members.

13 29. **Commonality**: There are questions of law and fact common to the proposed
14 class(es). Common questions of law and fact include, without limitations:

- 15 a. whether Defendant's course of conduct alleged herein violates the statutes and
16 other laws that are pled in this Complaint;
- 17 b. whether reasonable consumers would rely upon Defendant's representations
18 about the Products and reasonably believe the Products are solely sweetened, or
19 at very least primarily, with monk fruit;
- 20 c. whether Defendant knew or should have known its representations were false or
21 misleading;
- 22 d. whether Defendant was unjustly enriched by retaining monies from the sale of
23 the Products;
- 24 e. whether certification of each Class is appropriate under Rule 23;
- 25 f. whether Plaintiff and the members of each Class are entitled to declaratory,
26 equitable, or injunctive relief, and/or other relief, and the scope of such relief;
27 and

1 g. the amount and nature of the relief to be awarded to the Plaintiff and the Class,
2 including whether Plaintiff and the Class are entitled to punitive damages.

3 30. **Typicality:** Plaintiff's claims are typical of the other Class members because
4 Plaintiff, as well as Class members, purchased the Products. Plaintiff and the members of the
5 Classes relied on the representations made by the Defendant about the Products prior to
6 purchasing the Products. Plaintiff and the members of each Class paid for Defendant's Products
7 and would not have purchased them (or would have paid substantially less for them) had they
8 known that the Defendant's representations were untrue.

9 31. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the proposed
10 Classes as her interests do not conflict with the interests of the members of the proposed Classes
11 she seeks to represent, and she has retained counsel competent and experienced in class action
12 litigation. Thus, the interests of the members of the Classes will be fairly and adequately protected
13 by Plaintiff and her counsel.

14 32. **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law and fact
15 identified in this Complaint predominate over any other questions affecting only individual
16 members of the Classes. Class issues fully predominate over any individual issue because no
17 inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendant's
18 misconduct detailed at length in this Complaint.

19 33. **Superiority:** A class action is superior to all other available methods for the fair
20 and efficient adjudication of this litigation because individual litigation of each claim is
21 impractical. It would be unduly burdensome to have individual litigation of hundreds of thousands
22 of individual claims in separate lawsuits, every one of which would present the issues presented in
23 the Complaint/lawsuit. Further, because of the damages suffered by any individual Class member
24 may be relatively modest in relation to the cost of litigation, the expense and burden of individual
25 litigation make it difficult, if not impossible. Furthermore, many of the Class members may be
26 unaware that claims exist against the Defendant.

27 34. **Declaratory and Injunctive Relief:** Pursuant to Rule 23(b)(2), declaratory and
28 injunctive relief is appropriate in this matter. Defendant has acted or refused to act on grounds

1 generally applicable to Plaintiff and the other Class members, thereby making appropriate final
2 injunctive relief and declaratory relief, as described below, with respect to the Class members as a
3 whole. Unless a class-wide injunction is issued, Defendant will continue to advertise, market,
4 promote, and sell the Products in an unlawful and misleading manner, as described throughout this
5 Complaint, and members of the Classes will continue to be misled, harmed, and denied their rights
6 under the law.

7
8 **FIRST CLAIM FOR RELIEF**
9 **Violation of California’s Consumers Legal Remedies Act**
10 **California Civil Code § 1750, *et seq.***
11 **(For the California Consumer Subclass)**

12 35. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
13 forth herein.

14 36. Plaintiff brings this claim individually and on behalf of the members of the
15 proposed California Consumer Subclass against Defendant pursuant to California’s Consumers
16 Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

17 37. The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), and the
18 purchases of the Products by Plaintiff and members of the California Consumer Subclass
19 constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

20 38. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
21 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
22 have...” By representing the Products with the Monk Fruit Representations, Defendant has
23 represented and continues to represent that the Products have characteristics (i.e., that they are
24 solely, or at the very least primarily, sweetened with monk fruit) that they do not have. Therefore,
25 Defendant has violated section 1770(a)(5) of the CLRA.

26 39. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
27 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are
28 of another.” By representing the Products with the Monk Fruit Representations, Defendant has
represented and continues to represent that the Products are of a particular standard (i.e., that they

1 are solely, or at the very least primarily, sweetened with monk fruit) when they are not of that
2 standard. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

3 40. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent
4 not to sell them as advertised.” By advertising the Products with the Monk Fruit Representations,
5 Defendant has advertised the Products with characteristics it intended not to provide to consumers.
6 As such, Defendant has violated section 1770(a)(9) of the CLRA.

7 41. At all relevant times, Defendant has known or reasonably should have known that
8 the advertising of the Products’ Monk Fruit Representations is false and misleading, and that
9 Plaintiff and other members of the California Consumer Subclass would reasonably and justifiably
10 rely on the Monk Fruit Representations when purchasing the Products. Nonetheless, Defendant
11 deceptively advertises the Products as such in order to deceive consumers into believing that the
12 Products are solely, or at the very least primarily, sweetened with monk fruit when they are not.

13 42. Plaintiff and members of the California Consumer Subclass have justifiably relied
14 on Defendant’s misleading representations when purchasing the Products. Moreover, based on the
15 materiality of Defendant’s misleading and deceptive conduct, reliance may be presumed or
16 inferred for Plaintiff and members of California Consumer Subclass.

17 43. Plaintiff and members of the California Consumer Subclass have suffered and
18 continue to suffer injuries caused by Defendant because they would have paid significantly less for
19 the Products, or would not have purchased them at all, had they known that the Products are not
20 solely, or at the very least primarily, sweetened with monk fruit.

21 44. Under Cal. Civ. Code § 1782, on April 20, 2022, counsel for Plaintiff mailed a
22 notice and demand letter by certified mail to Defendant, outlining that Defendant has violated the
23 CLRA for the reasons described herein. The letter was delivered on April 29, 2022. Defendant has
24 not responded to the letter, and as of yet, has not taken any action to rectify this misconduct.
25 Because Defendant has failed to fully rectify the issues within 30 days after receipt of the notice
26 and demand letter, Plaintiff timely filed this Class Action Complaint for a claim for damages
27 under the CLRA.

28

1 45. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a declaration of
2 venue, attached hereto as Exhibit A to this Complaint.

3 **SECOND CLAIM FOR RELIEF**
4 **Violation of California’s False Advertising Law**
5 **California Business & Professions Code § 17500, *et seq***
6 **(For the California Class)**

7 46. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
8 forth herein.

9 47. Plaintiff brings this claim individually and on behalf of the members of the
10 proposed California Class against Defendant pursuant to California’s False Advertising Law
11 (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq*.

12 48. The FAL makes it “unlawful for any person to make or disseminate or cause to be
13 made or disseminated before the public . . . in any advertising device . . . or in any other manner or
14 means whatever, including over the Internet, any statement, concerning . . . personal property or
15 services professional or otherwise, or performance or disposition thereof, which is untrue or
16 misleading and which is known, or which by the exercise of reasonable care should be known, to
17 be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

18 49. Defendant has represented and continues to represent to the public, including
19 Plaintiff and members of the proposed California Class, through its deceptive advertising, that the
20 Products are solely, or at the very least predominantly, sweetened with monk fruit when they are
21 not. Because Defendant has disseminated misleading information regarding the Products, and
22 Defendant knows, knew, or should have known through the exercise of reasonable care that the
23 representations were and continue to be misleading, Defendant has violated the FAL.

24 50. As a result of Defendant’s false advertising, Defendant has and continues to
25 unlawfully obtain money from Plaintiff and members of the California Class. Plaintiff therefore
26 requests that the Court cause Defendant to restore this fraudulently obtained money to them and
27 members of the proposed California Class, to disgorge the profits Defendant made on these
28 transactions, and to enjoin Defendant from violating the FAL or violating it in the same fashion in
the future as discussed herein. Otherwise, Plaintiff and members of the proposed California Class

1 may be irreparably harmed and/or denied an effective and complete remedy.

2 **THIRD CLAIM FOR RELIEF**
3 **Violation of California’s Unfair Competition Law (“UCL”),**
4 **California Business & Professions Code § 17200, *et seq.***
5 ***(For the California Class)***

6 51. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
7 forth herein.

8 52. Plaintiff brings this claim individually and on behalf of the members of the
9 proposed California Class against Defendant pursuant to California Business & Professions Code
10 § 17200 (“UCL”).

11 53. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part, that “unfair
12 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
13 deceptive, untrue or misleading advertising”

14 54. Under the UCL, a business act or practice is “unlawful” if it violates any
15 established state or federal law. Defendant’s false and misleading advertising of the Products was
16 and continues to be “unlawful” because it violates the CLRA, the FAL, and other applicable laws
17 as described herein. As a result of Defendant’s unlawful business acts and practices, Defendant
18 has unlawfully obtained money from Plaintiff and members of the proposed California Class.

19 55. Under the UCL, a business act or practice is “unfair” if its conduct is substantially
20 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and
21 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity
22 of the harm to the alleged victims. Defendant’s conduct was and continues to be of no benefit to
23 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who
24 rely on the Products’ advertising. Deceiving consumers into believing they will receive Products
25 solely or predominantly sweetened with monk fruit, but failing to provide the Products as
26 advertised, is of no benefit to consumers. Therefore, Defendant’s conduct was and continues to be
27 “unfair.” As a result of Defendant’s unfair business acts and practices, Defendant has and
28 continues to unfairly obtain money from Plaintiff and members of the proposed California Class.

1 56. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or
2 is likely to deceive members of the consuming public. Defendant’s conduct here was and
3 continues to be fraudulent because, due to the Products’ Monk Fruit Representations, the Products
4 have the effect of deceiving consumers into believing they will receive products solely or
5 predominantly sweetened with monk fruit when the Products are not manufactured as such.
6 Because Defendant misled Plaintiff and members of the California Class, Defendant’s conduct
7 was “fraudulent.” As a result of Defendant’s fraudulent business acts and practices, Defendant has
8 and continues to fraudulently obtain money from Plaintiff and members of the California Class.

9 57. Plaintiff requests that the Court cause Defendant to restore this unlawfully,
10 unfairly, and fraudulently obtained money to them, and members of the proposed California Class,
11 to disgorge the profits Defendant made on these transactions, and to enjoin Defendant from
12 violating the UCL or violating it in the same fashion in the future as discussed herein. Otherwise,
13 Plaintiff and members of the proposed California Class may be irreparably harmed and/or denied
14 an effective and complete remedy.

15 **FOURTH CLAIM FOR RELIEF**
16 **Breach of Express Warranty**
17 **Cal. Com. Code § 2313**
 (For the California Class)

18 58. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
19 forth herein.

20 59. Plaintiff brings this claim individually and on behalf of the members of the
21 California Class against Defendant for breach of express warranty under Cal. Com. Code § 2313.

22 60. California’s express warranty statutes provide that “(a) Any affirmation of fact or
23 promise made by the seller to the buyer which relates to the goods and becomes part of the basis
24 of the bargain creates an express warranty that the goods shall conform to the affirmation or
25 promise,” and “(b) Any description of the goods which is made part of the basis of the bargain
26 creates an express warranty that the goods shall conform to the description.” Cal. Com. Code §
27 2313.

1 61. Plaintiff and members of the Class formed a contract with Defendant at the time
2 they purchased the Products. As part of those contracts, Defendant represented that the Products
3 are “Sweetened with Monk Fruit” or “Monk Fruit Sweetened”, representing that the Products are
4 sweetened solely, or at the very least predominantly, with monk fruit.

5 62. The Products’ Monk Fruit Representations are: (a) an affirmation of fact or
6 promise made by Defendant to consumers that the Products are sweetened in a specific manner;
7 (b) became part of the basis of the bargain to purchase the Products when Plaintiff and other
8 consumers relied on the representations; and (c) created an express warranty that the Products
9 would conform to the affirmations of fact or promises. In the alternative, the representations about
10 the Products are descriptions of goods which were made as part of the basis of the bargain to
11 purchase the Products, and which created an express warranty that the Products would conform to
12 the product descriptions.

13 63. Plaintiff and members of the California Class reasonably and justifiably relied on
14 the foregoing express warranties, believing that the Products did in fact conform to those
15 warranties.

16 64. Defendant has breached the express warranties made to Plaintiff and members of
17 the California Class by failing to provide the Products in accordance with the Monk Fruit
18 Representations.

19 65. Plaintiff and members of the California Class paid a premium price for the Products
20 but did not obtain the full value of the Products as represented. If Plaintiff and members of the
21 California Class had known of the true nature of the Products, they would not have been willing to
22 pay the premium price associated with them. As a result, Plaintiff and members of the California
23 Class suffered injury and deserve to recover all damages afforded under the law.

24 **FIFTH CLAIM FOR RELIEF**
25 **Breach of Implied Warranty**
 Cal. Com. Code § 2313
26 ***(For the California Class)***

27 66. Plaintiff repeat the allegations contained in paragraphs 1-34 above as if fully set
28 forth herein.

1 67. Plaintiff brings this claim individually and on behalf of the members of the
2 California Class against Defendant for breach of implied warranty under Cal. Com. Code §2314.

3 68. California’s implied warranty of merchantability statute provides that “a warranty
4 that the goods shall be merchantable is implied in a contract for their sale if the seller is a
5 merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

6 69. California’s implied warranty of merchantability statute also provides that “[g]oods
7 to be merchantable must be at least such as . . . (f) conform to the promises or affirmations of fact
8 made on the container or label if any.” Cal. Com. Code § 2314(2)(f).

9 70. Defendant is a merchant with respect to the sale of Products. Therefore, a warranty
10 of merchantability is implied in every contract for sale of the Products to California consumers.

11 71. By advertising the Products with the Monk Fruit Representations, Defendant made
12 an implied promise in the Products’ labeling that the Products are solely, or at the very least
13 predominantly, sweetened with monk fruit. The Products, however, have not conformed to these
14 promises because the Products are predominantly sweetened with erythritol. Plaintiff, as well as
15 other California consumers, did not receive the goods as impliedly warranted by Defendant to be
16 merchantable. Therefore, the Products are not merchantable under California law and Defendant
17 has breached its implied warranty of merchantability in regard to the Products.

18 72. If Plaintiff and members of the California Class had known that the Products’
19 Monk Fruit Representations were false and misleading, they would not have been willing to pay
20 the premium price associated with them. Therefore, as a direct and/or indirect result of
21 Defendant’s breach, Plaintiff and members of the California Class have suffered injury and
22 deserve to recover all damages afforded under the law.

23 **SIXTH CLAIM FOR RELIEF**
24 **Quasi Contract/Unjust Enrichment/Restitution**
25 ***(for the Classes)***

26 73. Plaintiff repeats the allegations contained in paragraphs 1-34 above as if fully set
27 forth herein.

28 74. Plaintiff brings this claim individually and on behalf of the members of the
proposed California Class against Defendant for unjust enrichment.

1 81. Defendant has willfully, falsely, and knowingly misrepresented the Products
2 through the Products' Monk Fruit Representations, as it knew that the Products were not solely or
3 predominantly sweetened with monk fruit.

4 82. Defendant has therefore made knowing, fraudulent misrepresentations as to the
5 Products.

6 83. Defendant's misrepresentations were material (i.e., they affected Plaintiff and
7 members of the Classes' purchasing decisions given their importance), and are central to the
8 Products' functionality because the Products are advertised as monk fruit based sweeteners, but do
9 not solely or predominantly contain monk fruit as the sweetener.

10 84. Defendant knew or recklessly disregarded the fact that the Products' Monk Fruit
11 Representations were false and deceptive.

12 85. Defendant intended that Plaintiff and members of the Classes rely on the Products'
13 advertising, as if they had known the truth that the Products' Monk Fruit Representations were
14 false and misleading, they would have paid less for the Products or would not have purchased
15 them at all.

16 86. Plaintiff and members of the Classes have reasonably and justifiably relied on
17 Defendant's misrepresentations when purchasing the Products, and if Plaintiff and members of the
18 Classes had known the truth about the Products, they would not have paid monies for the Products
19 or would have paid less monies for the Products.

20 87. For these reasons, Plaintiff and members of the Classes have suffered monetary
21 losses, including interest they would have accrued on these monies, as a direct and proximate
22 result of Defendant's fraudulent conduct.

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PRAYER FOR RELIEF

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2 **WHEREFORE**, Plaintiff, individually and on behalf of the proposed Classes, respectfully
3 prays for following relief:

4 A. Certification of this case as a class action on behalf of the proposed Classes defined
5 above, appointment of Plaintiff as Class representative, and appointment of her counsel as Class
6 counsel;

7 B. A declaration that Defendant’s actions, as described herein, violate the claims
8 described herein;

9 C. An award of injunctive and other equitable relief as is necessary to protect the
10 interests of Plaintiff and the proposed Classes, including, *inter alia*, an order prohibiting
11 Defendant from engaging in the unlawful act described above;

12 D. An award to Plaintiff and the proposed Classes of restitution and/or other equitable
13 relief, including, without limitation, restitutionary disgorgement of all profits and unjust
14 enrichment that Defendant obtained from Plaintiff and the proposed Classes as a result of its
15 unlawful, unfair and fraudulent business practices described herein;

16 E. An award of all economic, monetary, actual, consequential, and compensatory
17 damages caused by Defendant’s conduct;

18 F. An award of nominal, punitive, and statutory damages;

19 H. An award to Plaintiff and her counsel of reasonable expenses and attorneys’ fees;

20 I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest,
21 to the extent allowable; and

22 J. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

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Plaintiff, on behalf of herself and the proposed Classes, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: September 13, 2022

CUSTODIO & DUBEY, LLP

By: /s/ Robert Abiri

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*Attorney for Plaintiff and the
Putative Classes*