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13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 COLBY TUNICK, individually and on behalf  
of all others similarly situated,

17 Plaintiff,

18 v.

19 TAKARA SAKE USA INC.,

20 Defendant.

CASE NO.:

**CLASS ACTION COMPLAINT**

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *et seq.*)
2. VIOLATION OF FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)
3. VIOLATION OF UNFAIR COMPETITION LAW (CAL BUS. & PROF. CODE §§ 17200, *et seq.*)
4. BREACH OF EXPRESS WARRANTY (CAL. COM. CODE § 2313)
5. BREACH OF IMPLIED WARRANTY (CAL. COM. CODE § 2314)
6. UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

1 Plaintiff Colby Tunick (“Plaintiff”), on behalf of himself and all others similarly situated, by  
2 and through his attorneys, brings this Class Action Complaint against Takara Sake USA Inc.  
3 (“Defendant”), based upon personal knowledge as to himself, and upon information, investigation  
4 and belief of his counsel.

5 **INTRODUCTION**

6 1. This class action seeks to challenge Defendant’s false and deceptive practices in the  
7 marketing and sale of a number of its “Sho Chiku Bai” branded sakes (the “Products”).<sup>1</sup>

8 2. Defendant packages and labels the Products in a manner which creates the false and  
9 misleading impression that the Products are made in Japan. Specifically, all of the Products bear:  
10 (1) the “Sho Chiku Bai” Japanese brand name; (2) large, conspicuous Japanese lettering; and (3) a  
11 gold emblem on the front and center of the Products’ bottle which states “Licensed by TaKaRa  
12 Japan, Since 1851.”

13 3. Unbeknownst to consumers however, the Products are not made in Japan, but  
14 California.

15 4. By way of its false marketing and labeling, Defendant knowingly and intentionally  
16 capitalizes on consumers’ desire to purchase authentic Japanese sakes.

17 5. As a result of Defendant’s false labeling scheme, consumers seeking an authentic  
18 Japanese sake, including Plaintiff, are misled into believing that is what they are getting when they  
19 purchase the Products.

20 6. Because the Products are not made in Japan, Defendant’s deceptive marketing and  
21 labeling scheme violates well-established federal and state consumer protection laws aimed at  
22 preventing this exact type of fraudulent scheme.

23 7. Absent class relief, Defendant’s fraud will go unchecked to the detriment of  
24 consumers who are harmed financially and otherwise deprived of the ‘benefit of the bargain’ when  
25 they purchase an inauthentic product at a premium price when they otherwise would not have  
26 purchased the product.

27  
28 \_\_\_\_\_  
<sup>1</sup> The “Products” are further defined in Paragraph 28.

1 8. Defendant's illegal conduct will also continue to harm other law-abiding brands,  
2 including smaller companies in Japan who similarly seek to leverage consumer demand for authentic  
3 Japanese sake, but who play by the rules. Defendant's conduct stifles competition, reduces consumer  
4 choice, and leads to consumers paying higher prices at the cash register for inferior goods.

5 9. Plaintiff and other consumers purchased the Products and paid a premium price based  
6 upon their reliance on Defendant's advertising the Products as authentic Japanese-made sakes. Had  
7 Plaintiff and other consumers been aware that the Products were not made in Japan, they would not  
8 have purchased the Products or would have paid significantly less for them. Accordingly, Plaintiff  
9 and Class members have been injured by Defendant's deceptive business practices.

10 10. Plaintiff brings this action individually and on behalf of those similarly situated to  
11 represent a Nationwide Class, a California Class, and a California Consumer Subclass of consumers  
12 who purchased the Products for dual primary objectives. Plaintiff seeks, on Plaintiff's individual  
13 behalf and on behalf of the Classes, a monetary recovery of the price premium consumers overpaid  
14 for the Products due to the false and deceptive labeling, consistent with permissible law (including,  
15 for example, damages, restitution, disgorgement, and any applicable penalties/punitive damages,  
16 solely to the extent that those causes of action permit). More importantly, Plaintiff seeks injunctive  
17 relief in the form of an order requiring Defendant to change its unlawful advertising and labeling  
18 practices for the benefit of consumers, including Plaintiff and the Classes.

19 **JURISDICTION AND VENUE**

20 11. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act  
21 of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal  
22 Rules of Civil Procedure, there are thousands of proposed Class members, the aggregate amount in  
23 controversy exceeds \$5,000,000 exclusive of interest and costs, and Defendant is a citizen of a state  
24 different from at least some members of the proposed Classes.

25 12. This Court has personal jurisdiction over Defendant because Defendant has sufficient  
26 minimum contacts in California, or otherwise intentionally avails itself of the markets within  
27 California, through its sale of the goods and products, including the Products at issue here, in  
28 California and to California consumers.

1 13. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b)(1) because  
2 Defendant Takara Sake USA Inc. resides in this District.

3 **PLAINTIFF**

4 14. Plaintiff is a citizen of California and currently resides in San Diego, California. In  
5 or around August 2020, Plaintiff purchased the Sho Chiku Bai Nigori Unfiltered Sake Product from  
6 a Cheers Deli and Liquor store located in San Diego, California. Plaintiff reasonably believed the  
7 Product was made in Japan based on the “Sho Chiku Bai” brand name, Japanese lettering displayed  
8 on the front label of the Product, as well as the gold emblem stating “Licensed by TaKaRa Japan,  
9 Since 1851” on the front label of the Product. These labels were prepared and approved by  
10 Defendant and its agents and disseminated statewide and nationwide, as well as designed to  
11 encourage consumers like Plaintiff to purchase the Product. Had Plaintiff known the Product was  
12 not made in Japan, he would not have purchased it, or would have paid significantly less for it.  
13 Plaintiff spent money to purchase a product that was different from what he expected, and Plaintiff  
14 did not receive the benefit of the bargain. As such, Plaintiff has been injured as a direct result of  
15 Defendant’s conduct.

16 15. Despite Defendant’s misrepresentations, Plaintiff would purchase the Products, as  
17 advertised, if they were actually made in Japan. Absent an injunction of Defendant’s deceptive  
18 advertising, Plaintiff will be unable to rely with confidence on Defendant’s advertising of the  
19 Products in the future. Furthermore, while Plaintiff currently believes the Products’ labeling is  
20 inaccurate, he lacks personal knowledge as to Defendant’s specific business practices, and thus, he  
21 will not be able determine whether the Products are actually made in Japan. This leaves doubt in his  
22 mind as to the possibility that at some point in the future the Products could be made in accordance  
23 with the representations on the Products’ front labels. This uncertainty, coupled with Plaintiff’s  
24 desire to purchase the Products, is an ongoing injury that can and would be rectified by an injunction  
25 enjoining Defendant from making the alleged misleading representations. In addition, other Class  
26 members will continue to purchase the Products, reasonably but incorrectly believing that they are  
27 made in Japan.

28 **DEFENDANT**

1 16. Defendant Takara Sake USA Inc. is a corporation with its principal place of business  
2 in Berkeley, California. Defendant is responsible for the manufacturing, labeling, advertising,  
3 distribution and sale of the Products nationwide, including in this District. Based on information  
4 and belief, the manufacturing and decision-making behind the labeling of the Products takes place  
5 in Berkeley, California.

6 17. In committing the wrongful acts alleged herein, Defendant planned, participates in,  
7 and furthers a common scheme by means of false, misleading, deceptive, and fraudulent  
8 representations to induce members of the public to purchase the Products. Defendant participates in  
9 the making of such representations in that it disseminates or causes to be disseminated said  
10 misrepresentations.

11 18. Defendant, upon becoming involved with the manufacture, distribution, advertising,  
12 marketing, and sale of the Products, knew or should have known that the claims about the Products  
13 and, in particular the claims suggesting that the Products are “Japanese” products, are fraudulent.  
14 Defendant affirmatively misrepresents the nature and characteristics of the Products to convince the  
15 public to purchase and consume the Products, resulting in significant profits to Defendant, all to the  
16 damage and detriment of the consuming public.

17 **FACTUAL ALLEGATIONS**

18 **A. The Geographic Origin of a Product is Important to Consumers**

19 19. Manufacturers and marketers use origin claims to distinguish their products from  
20 other products, knowing consumers rely on the accuracy of those claims in making their purchasing  
21 decisions. In fact, consumers are willing to pay premium prices for products that are authentically  
22 connected to a significant geographical area. Some well-known examples of premium origin  
23 products are authentic Mexican tortillas, Belgian Chocolate, and Napa, California wines.

24 20. **Consumers Legal Remedies Act.** Due to the import consumers put on origin  
25 advertising claims, the California state legislature has outlawed using “deceptive representations or  
26 designations of geographic origin in connection with goods or services.” Cal. Civ. Code §  
27 1770(a)(4).

28 21. **FTC Guidelines.** The United States Federal Trade Commission (“FTC”) similarly

1 created standards regarding origin claims to help companies avoid making misleading and  
2 deceptive claims. For example, the FTC has deemed it an unfair or deceptive act or practice if a  
3 product is advertised as made in the United States, unless “all or virtually all” of the product is  
4 made in the United States. 16 C.F.R. § 323.2. The FTC guidelines further demonstrate that  
5 companies are aware that origin claims are material to consumers and may use such claims to  
6 deceive consumers, influence purchasing decisions, and unfairly gain advantage in the  
7 marketplace.

8       22.     **Case Law.** Courts around the country find cases involving false and deceptive origin  
9 advertising claims meritorious. *See, e.g., De Dios Rodriguez v. Ole Mexican Foods*, 2021 U.S. Dist.  
10 LEXIS 85725 (C.D. Cal. Apr. 22, 2021) (denying defendant’s motion to dismiss because the  
11 plaintiff plausibly alleged the statement “*A Taste of Mexico!*” and an image of a Mexican flag may  
12 reasonably convey the products are made in Mexico) (emphasis added); *Hesse v. Godiva*  
13 *Chocolatier, Inc.*, 463 F. Supp. 3d 453 (S.D.N.Y. 2020) (denying defendant’s motion to dismiss  
14 because the court could not conclude, as a matter of law, that no reasonable consumer would view  
15 the “Belgium 1926” label to mean the chocolate products were manufactured in Belgium); *Peacock*  
16 *v. Pabst Brewing Co., LLC*, 491 F. Supp. 3d 713 (E.D. Cal. Oct. 1, 2020) (holding defendant’s  
17 “*Olympia Beer*” brand name, coupled with an image of a waterfall that looked “just like” a waterfall  
18 from Olympia, Washington, could deceive reasonable consumers, even though the packaging did  
19 not contain a map pinpointing the alleged misrepresentation or an explicit statement regarding origin  
20 (emphasis added); “at this early stage, the Court must take Plaintiff’s allegations as true and draw  
21 all reasonable inferences in his favor. Although Olympia’s packaging does not contain a map  
22 pinpointing the alleged misrepresentation or an explicit statement regarding origin, Plaintiff alleges  
23 enough facts to draw a reasonable inference that a reasonable consumer would believe Olympia  
24 Beer is brewed with water from the Olympia area of Washington.”); *Broomfield v. Craft Brew*  
25 *Alliance, Inc.*, 2017 U.S. Dist. LEXIS 142572 (N.D. Cal. Sept. 1, 2017) (finding inexplicit  
26 packaging and labeling statements and imagery that related to Hawaii, when taken in context,  
27 “amount to specific and measurable representations that could deceive consumers into believing that  
28 they were purchasing beer made in Kona, Hawaii,” where such marketing claims included: a front

1 label image of the Hawaiian island chain alongside the phrase “*Liquid Aloha*” and packaging  
2 *imagery of hula dancers and nature* associated with Hawaii (such as orchids, flowers, volcanoes,  
3 palm trees, surfers, canoes, waterfalls); “*Hawaii is a state as well as a state of mind*”) (emphasis  
4 added).

5 23. California law, FTC guidelines, and the overwhelming majority of false advertising  
6 case law show that accurate origin claims are important to consumers and that consumers are willing  
7 to pay a premium for products labeled as such.

8 **B. Consumer Demand for Authentic Japanese Sake**

9 24. Japan is known for its cuisine, including its mastery in brewing and manufacturing  
10 sake, a Japanese alcoholic beverage made from fermented rice.

11 25. Sake is Japan’s national beverage and plays an important role in Japanese culture.<sup>2</sup>

12 26. Consumer demand for sake is high and continues to grow. Indeed, there is “evidence  
13 that the number of Americans who appreciate sake is on the rise. Japan’s total sake exports to the  
14 U.S. were worth \$45 million in the year to March 2016 and are growing fast: The trade was up 21  
15 percent compared with the previous year, according to Japan’s tax agency.”<sup>3</sup>

16 **C. The Products are not Made in “Japan”**

17 27. Defendant’s labeling and advertising campaign of the Products is overloaded with  
18 references to Japan. Through this false and deceptive labeling scheme, Defendant intentionally and  
19 strategically misleads consumers into believing that the Products are made in Japan.

20 28. The Products at issue in this action include the following: (1) Sho Chiku Bai Nigori  
21 Unfiltered Sake (depicted above); (2) Sho Chiku Bai Classic Junmai; and (3) Sho Chiku Bai  
22 Tokubetsu Junmai.

23 29. To capitalize on consumer demand for authentic Japanese sake and create the  
24 impression that the Products are Japanese-made sakes, Defendant markets and sells the Products  
25 with large, bold Japanese lettering throughout the Products’ front labels. Directly above the Japanese  
26

27 <sup>2</sup> Ashley Owen, *A Handy Guide To Sake - Japan's National Drink*, Japan Today,  
28 <https://japantoday.com/category/features/food/a-handy-guide-to-sake-japan's-national-drink> (last  
visited January 2, 2023)

<sup>3</sup> <https://www.nbcnews.com/news/world/japan-falls-out-love-sake-brewers-look-west-n847916>

1 lettering, Defendant places a gold emblem which states “Licensed by TaKaRa Japan, Since 1851.”  
2 Further, all of the Products utilize the brand name “Sho Chiku Bai,” a Japanese phrase meaning “the  
3 Three Friends of Winter.” Together, these representations are referred to as the “Japanese  
4 Representations.” A representative example of the Products is depicted below:





1 30. Consumers expect to receive truthfully labeled goods. Defendant, however,  
2 intentionally misleads consumers in California and nationwide to believe the Products are Japanese-  
3 made.

4 31. Based on Defendant’s Japanese Representations, consumers purchasing the Products  
5 reasonably expect that the Products are brewed in Japan.

6 32. Unfortunately for consumers, Defendant engages in false and misleading labeling to  
7 boost sales for the Products, all at the expense of unsuspecting consumers. Indeed, the Products are  
8 not made in Japan, but Berkeley, California.

9 33. As such, the labeling of the Products is false and deceptive.

10 34. Notably, Defendant also manufactures and sells sake products *actually made in*  
11 *Japan*, with substantially similar labeling. For example, Defendant’s Sho Chiku Bai Shirakabegura  
12 Mio Sparkling Sake, depicted below, is made in Nara, Japan:<sup>4</sup>



27 \_\_\_\_\_  
28 <sup>4</sup> <https://www.takarasake.com/products/sake/sho-chiku-bai-shirakabegura-mio-sparkling-sake?id=33>. Plaintiff did not visit the Takara website prior to his purchase of the Product.

1           35. As with the authentic Japanese sake made by Defendant depicted above, the Products  
2 at issue also implement Japanese lettering throughout the front labeling, as well as the Japanese  
3 word “Mio”, which means “Beautiful.” The Products here go one step further in representing to be  
4 from Japan, as Defendant includes a gold emblem which warrants that the Products are licensed  
5 Japanese products.

6           36. As the entity responsible for developing, manufacturing, labeling, advertising,  
7 distributing and selling the Products, Defendant knew or should have known that the Products are  
8 falsely and deceptively advertised as authentic Japanese sake made in Japan. Moreover, Defendant  
9 knew or should have known that Plaintiff and other consumers, in purchasing the Products, would  
10 rely on Defendant’s front label representations and be deceived. Nonetheless, Defendant deceptively  
11 advertises the Products with the Japanese Representations in order to capitalize on demand for  
12 authentic Japanese sake and gain an unfair advantage in the market.

13           37. Further, as one of the leading manufacturers of sake sold in the United States,  
14 Defendant also knew or should have known that *similar representations have found to be plausibly*  
15 *deceptive by a California district court*. Specifically, in *Shalihar v. Asahi Beer U.S.A., Inc.*, No.  
16 LACV1702713JAKJPRX, 2017 WL 9362139 (C.D. Cal. Oct. 16, 2017), Judge John A. Kronstadt  
17 denied defendant’s motion to dismiss when plaintiff plausibly alleged that the “Asahi” brand name,  
18 combined with various Japanese letters and phrases, “could give rise to a reasonable inference or  
19 belief that the Product was produced in Japan,” even though the product label does not directly state  
20 “Made in Japan.” Here, the Products not only also utilize a significant amount of Japanese lettering  
21 throughout the front label and bear the Japanese brand name “Sho Chiku Bai,” but the Products also  
22 include a gold emblem which warrants that the Products are licensed Japanese products.

23           38. Consumers are willing to pay more for the Products based on the belief that the  
24 Products are made in Japan. Plaintiff and other consumers would have paid significantly less for the  
25 Products, or would not have purchased them at all, had they known the truth about them. Thus,  
26 through the use of misleading representations, Defendant commands a price that Plaintiff and the  
27 Classes would not have paid had they been fully informed.

28

1 39. Therefore, Plaintiff and other consumers purchasing the Products have suffered  
2 injury in fact and lost money as a result of Defendant’s false and deceptive practices, as described  
3 herein.

4 **D. The Products are Substantially Similar**

5 40. As described herein, Plaintiff purchased the Sho Chiku Bai Nigori Unfiltered Sake  
6 Product (the “Purchased Product”). The additional Products (collectively, the “Unpurchased  
7 Products”) are substantially similar to the Purchased Product.

- 8 a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled,  
9 and packaged by Defendant.
- 10 b. **Brand.** All Products are sold under the same brand name: Sho Chiku Bai.
- 11 c. **Purpose.** All Products are sake.
- 12 d. **Deceptive Labeling.** All Products implement the same deceptive labeling—(1)  
13 the “Sho Chiku Bai” Japanese brand name; (2) large, conspicuous Japanese  
14 lettering; and (3) a gold emblem on the front and center of the Products’ bottle  
15 which states “Licensed by TaKaRa Japan, Since 1851. Yet none of the Products  
16 are made in Japan.
- 17 e. **Misleading Effect.** The misleading effect of the labeling and marketing on  
18 consumers is the same for all Products—consumers over-pay a premium for  
19 authentic Japanese products but receive Products that are not made in Japan, in  
20 violation of well-established state and federal law.

21 **E. No Adequate Remedy at Law.**

22 41. Plaintiff and members of the Class are entitled to equitable relief as no adequate  
23 remedy at law exists.

- 24 a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of  
25 action pled herein vary. The limitations period is four years for claims brought  
26 under the UCL, which is one year longer than the statutes of limitations under  
27 the FAL and CLRA. In addition, the statutes of limitations vary for certain  
28 states’ laws for breach of warranty and unjust enrichment/restitution, between

1 approximately 2 and 6 years. Thus, California class members who purchased  
2 the Products more than 3 years prior to the filing of the complaint will be barred  
3 from recovery if equitable relief were not permitted under the UCL. Similarly,  
4 Nationwide Class members who purchased the Products prior to the furthest  
5 reach-back under the statute of limitations for breach of warranty, will be  
6 barred from recovery if equitable relief were not permitted for restitution/unjust  
7 enrichment.

8 b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct  
9 under the unfair prong of the UCL is broader than the other causes of action  
10 asserted herein. It includes, for example, Defendant's overall unfair marketing  
11 scheme to promote and brand the Products as Japanese products, across a  
12 multitude of media platforms, including the Products' labels and packaging,  
13 over a long period of time, in order to gain an unfair advantage over competitor  
14 products and to take advantage of consumers' desire for products that comport  
15 with the labeling and advertising. The UCL also creates a cause of action for  
16 violations of law (such as statutory or regulatory requirements and court orders  
17 related to similar representations and omissions made on the type of products at  
18 issue). Thus, Plaintiff and Class members may be entitled to restitution under  
19 the UCL, while not entitled to damages under other causes of action asserted  
20 herein (e.g., the FAL requires actual or constructive knowledge of the falsity;  
21 the CLRA is limited to certain types of plaintiffs (an individual who seeks or  
22 acquires, by purchase or lease, any goods or services for personal, family, or  
23 household purposes) and other statutorily enumerated conduct). Similarly,  
24 unjust enrichment/restitution is broader than breach of warranty. For example,  
25 in some states, breach of warranty may require privity of contract or pre-lawsuit  
26 notice, which are not typically required to establish unjust  
27 enrichment/restitution. Thus, Plaintiff and Class members may be entitled to  
28 recover under unjust enrichment/restitution, while not entitled to damages

1 under breach of warranty, because they purchased the products from third-party  
2 retailers or did not provide adequate notice of a breach prior to the  
3 commencement of this action.

4 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive  
5 relief is appropriate on behalf of Plaintiff and members of the Class because  
6 Defendant continues to misrepresent the Products as alleged herein. Injunctive  
7 relief is necessary to prevent Defendant from continuing to engage in the unfair,  
8 fraudulent, and/or unlawful conduct described herein and to prevent future  
9 harm—none of which can be achieved through available legal remedies (such  
10 as monetary damages to compensate past harm). Further, injunctive relief, in  
11 the form of affirmative disclosures is necessary to dispel the public  
12 misperception about the Products that has resulted from years of Defendant’s  
13 unfair, fraudulent, and unlawful marketing efforts. Such disclosures would  
14 include, but are not limited to, publicly disseminated statements that the  
15 Products labeling and advertising is not true and providing accurate information  
16 about the Products’ true nature; and/or requiring prominent qualifications  
17 and/or disclaimers on the Products’ front label concerning the Products’ true  
18 nature. An injunction requiring affirmative disclosures to dispel the public’s  
19 misperception, and prevent the ongoing deception and repeat purchases based  
20 thereon, is also not available through a legal remedy (such as monetary  
21 damages). In addition, Plaintiff is *currently* unable to accurately quantify the  
22 damages caused by Defendant’s future harm, because discovery and Plaintiff’s  
23 investigation has not yet completed, rendering injunctive relief all the more  
24 necessary. For example, because the court has not yet certified any class, the  
25 following remains unknown: the scope of the class, the identities of its  
26 members, their respective purchasing practices, prices of past/future Product  
27 sales, and quantities of past/future Product sales.

28 d. **Public Injunction.** Further, because a “public injunction” is available under the

1 UCL, damages will not adequately “benefit the general public” in a manner  
2 equivalent to an injunction.

3 e. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this  
4 is an initial pleading in this action and discovery has not yet commenced and/or  
5 is at its initial stages. No class has been certified yet. No expert discovery has  
6 commenced and/or completed. The completion of fact/non-expert and expert  
7 discovery, as well as the certification of this case as a class action, are necessary  
8 to finalize and determine the adequacy and availability of all remedies, including  
9 legal and equitable, for Plaintiff’s individual claims and any certified class or  
10 subclass. Plaintiff therefore reserves his right to amend this complaint and/or  
11 assert additional facts that demonstrate this Court’s jurisdiction to order equitable  
12 remedies where no adequate legal remedies are available for either Plaintiff  
13 and/or any certified class or subclass. Such proof, to the extent necessary, will be  
14 presented prior to the trial of any equitable claims for relief and/or the entry of  
15 an order granting equitable relief.

16 **CLASS ACTION ALLEGATIONS**

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

19 **Nationwide Class**

20 All residents of the U.S. who purchased any of the Products within the applicable statute of  
21 limitations period (“Nationwide Class”).

22 **California Class**

23 All residents of California who purchased any of the Products within the applicable statute  
24 of limitations period (“California Class”).

25 **California Consumer Subclass**

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

43. Excluded from the Classes are the following individuals and/or entities: Defendant  
and their parents, subsidiaries, affiliates, officers and directors, current or former employees, and

1 any entity in which Defendant has a controlling interest; all individuals who make a timely election  
2 to 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 44. Plaintiff reserves the right to modify or amend the definition of the proposed Classes  
5 and/or add subclasses before the Court determines whether class certification is appropriate.

6 45. Plaintiff is a member of all the Classes.

7 46. **Numerosity**: Members of each Class are so numerous and geographically dispersed  
8 that individual joinder of all Class members is impracticable. The precise number of Class members  
9 is unknown to Plaintiff but is likely to be ascertained by the Defendant's records. At a minimum,  
10 there likely are at least tens of thousands of Class members.

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

- 13 a. whether Defendant's course of conduct alleged herein violates the statutes and  
14 other laws that are pled in this Complaint;
- 15 b. whether reasonable consumers would rely upon Defendant's representations  
16 about the Products and reasonably believe the Products are made in Japan;
- 17 c. whether Defendant knew or should have known its representations were false or  
18 misleading;
- 19 d. whether Defendant was unjustly enriched by retaining monies from the sale of  
20 the Products;
- 21 e. whether certification of each Class is appropriate under Rule 23;
- 22 f. whether Plaintiff and the members of each Class are entitled to declaratory,  
23 equitable, or injunctive relief, and/or other relief, and the scope of such relief;  
24 and
- 25 g. the amount and nature of the relief to be awarded to the Plaintiff and the Classes,  
26 including whether Plaintiff and the Classes are entitled to punitive damages.

27 48. **Typicality**: Plaintiff's claims are typical of the other Class members because  
28 Plaintiff, as well as Class members, purchased the Products. Plaintiff and members of the Classes

1 relied on the representations made by the Defendant about the Products prior to purchasing the  
2 Products. Plaintiff and the members of each Class paid for Defendant's Products and would not have  
3 purchased them (or would have paid substantially less for them) had they known that the  
4 Defendant's representations were untrue.

5 49. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the proposed  
6 Classes as their interests do not conflict with the interests of the members of the proposed Classes  
7 they seek to represent, and they have retained counsel competent and experienced in class action  
8 litigation. Thus, the interests of the members of the Classes will be fairly and adequately protected  
9 by Plaintiff and his counsel.

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

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

23 52. **Inconsistent Rulings**. Because Plaintiff seeks relief for all members of the Class, the  
24 prosecution of separate actions by individual members would create a risk of inconsistent or varying  
25 adjudications with respect to individual members of the Class, which would establish incompatible  
26 standards of conduct for Defendant.

27 53. **Injunctive/Equitable Relief**. The prerequisites to maintaining a class action for  
28 injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or



1 refused to act on grounds generally applicable to the Class, thereby making appropriate final  
2 injunctive or equitable relief with respect to the Class as a whole.

3 54. **Manageability.** Plaintiff and Plaintiff’s counsel are unaware of any difficulties that  
4 are likely to be encountered in the management of this action that would preclude its maintenance  
5 as a class action.

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of California’s Consumers Legal Remedies Act**

8 **California Civil Code § 1750, et seq.**

9 ***(For the Nationwide Class, or in the alternative, the California Consumer Subclass)***

10 55. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
11 and incorporates the same as if set forth herein at length.

12 56. Plaintiff brings this claim individually and on behalf of the members of the proposed  
13 Nationwide Class, or in the alternative, the California Consumer Subclass against Defendant  
14 pursuant to California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq.

15 57. The Products are “good[s]” within the meaning of Cal. Civ. Code § 1761(a), and the  
16 purchases of the Products by Plaintiff and members of the California Consumer Subclass constitute  
17 “transactions” within the meaning of Cal. Civ. Code § 1761(e).

18 58. Cal. Civ. Code § 1770(a)(4) prohibits “[u]sing deceptive representations or  
19 designations of geographic origin in connection with goods or services.” By labeling the Products  
20 with the Japanese Representations, Defendant has used a deceptive representation of geographic  
21 origin in connection with goods. Therefore, Defendant has violated section 1770(a)(4) of the CLRA.

22 59. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
23 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
24 have...” By labeling the Products with the Japanese Representations, Defendant has represented and  
25 continues to represent that the Products have characteristics (i.e., are made in Japan) that they do  
26 not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

27 60. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of  
28 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of

1 another.” By labeling the Products with the Japanese Representations, Defendant has represented  
2 and continues to represent that the Products are of a particular standard (i.e., made in Japan) that  
3 they do not meet. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

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

8 62. At all relevant times, Defendant has known or reasonably should have known that  
9 the Japanese Representations on the Products are false and deceptive, and that Plaintiff and other  
10 members of the Classes would reasonably and justifiably rely on these representations when  
11 purchasing them. Nonetheless, Defendant deceptively advertises the Products as such in order to  
12 deceive consumers into believing they are purchasing sake from Japan.

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

17 64. 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 were not  
20 made in Japan.

21 65. Under Cal. Civ. Code § 1782, on October 27, 2022, Plaintiff sent a notice letter by  
22 certified mail to Defendant, notifying it of his intent to pursue a claim for damages under the CLRA  
23 (as well as other statutes) on behalf of himself and all others similarly situated, and gave Defendant  
24 an opportunity to cure, consistent with Cal. Civ. Code § 1782. Defendant received the letter on  
25 October 31, 2022. More than 30 days has passed since Defendant’s receipt of the notice letter, yet  
26 Defendant has not cured their deceptive conduct. As such, Plaintiff seeks damages under the CLRA,  
27 as well as injunctive relief and all other available remedies.

28

1 66. Attached hereto as Exhibit A is a venue declaration executed by Plaintiff pursuant to  
2 Cal. Civ. Code 1780(d).

3 **SECOND CLAIM FOR RELIEF**

4 **Violation of California’s False Advertising Law**

5 **California Business & Professions Code § 17500, *et seq***

6 ***(For the Nationwide Class, or in the alternative, the California Class)***

7 67. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
8 and incorporates the same as if set forth herein at length.

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

12 69. 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 70. Defendant has represented and continues to represent to the public, including  
19 Plaintiff and members of the proposed Classes, through its deceptive labeling, that the Products are  
20 made in Japan. Because Defendant has disseminated false and misleading information regarding the  
21 Products, and Defendant knows, knew, or should have known through the exercise of reasonable  
22 care that the representations were and continue to be false and misleading, Defendant has violated  
23 the FAL.

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

1 and members of the proposed Classes may be irreparably harmed and/or denied an effective and  
2 complete remedy.

3 **THIRD CLAIM FOR RELIEF**

4 **Violation of California’s Unfair Competition Law (“UCL”),**

5 **California Business & Professions Code § 17200, *et seq.***

6 ***(For the Nationwide Class, or in the alternative, the California Class)***

7 72. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
8 and incorporates the same as if set forth herein at length.

9 73. Plaintiff brings this claim individually and on behalf of the members of the proposed  
10 Nationwide Class, or in the alternative, the proposed California Class against Defendant.

11 74. 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 75. **False Advertising Claims.** Defendant in its advertising and packaging of the  
15 Products makes false and misleading statements regarding the quality and characteristics of the  
16 Products, particularly marketing and representing the Products as Japanese-made sake. Such claims  
17 appear on the label, packaging, and advertising of the Products, which are sold at retailers in the  
18 state of California and across the nation, as well as on Defendant’s official website.

19 76. **Deliberately False and Misleading.** Defendant does not have any reasonable basis  
20 for its claims about the Products because the Products are not made in Japan. Defendant knew and  
21 knows that the Products are not truly or manufactured in Japan, yet Defendant intentionally  
22 advertised and marketed the Products to deceive reasonable consumers into believing that Products  
23 are made in Japan.

24 77. **False Advertising Claims Cause Purchase of Products.** Defendant’s labeling and  
25 advertising of the Products led to, and continues to lead to, reasonable consumers, including  
26 Plaintiff, believing that the Products are made in Japan.

27 78. **Injury in Fact.** Plaintiff, the Nationwide Class, and the California Class have  
28 suffered injury in fact and have lost money or property as a result of and in reliance upon

1 Defendant’s False Advertising Claims—namely Plaintiff, the Nationwide Class, and the California  
2 Class lost the purchase price for the Products they bought from the Defendant.

3 79. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes  
4 unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair  
5 competition and provides, in pertinent part, that “unfair competition shall mean and include  
6 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
7 advertising.” Cal. Bus & Prof. Code § 17200. In addition, Defendant’s use of various forms of  
8 advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise  
9 that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue or  
10 misleading advertising, and an unlawful business practice within the meaning of Business and  
11 Professions Code Sections 17200 and 17531, which advertisements have deceived and are likely to  
12 deceive the consuming public, in violation of Business and Professions Code Section 17200.

13 80. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant  
14 failed to avail itself of reasonably available, lawful alternatives to further its legitimate business  
15 interests.

16 81. **Business Practice.** All of the conduct alleged herein occurred and continues to occur  
17 in Defendant’s business. Defendant’s wrongful conduct is part of a pattern, practice and/or  
18 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily alters  
19 its conduct or Defendant is otherwise ordered to do so.

20 82. **Injunction.** Pursuant to Business and Professions Code Sections 17203 and 17535,  
21 Plaintiff, the Nationwide Class, and the California Class seek an order of this Court enjoining  
22 Defendant from continuing to engage, use, or employ its practice of labeling and advertising the  
23 sale and use of the Products. Likewise, Plaintiff, the Nationwide Class, and the California Class seek  
24 an order requiring Defendant to disclose such misrepresentations, and to preclude Defendant’s  
25 failure to disclose the existence and significance of said misrepresentations.

26 83. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in  
27 violation of the UCL, Plaintiff, the Nationwide Class, and the California Class were harmed in the  
28 amount of the purchase price they paid for the Products. Further, Plaintiff, the Nationwide Class,

1 and the California Class have suffered and continue to suffer economic losses and other damages  
2 including, but not limited to, the amounts paid for the Products, and any interest that would have  
3 accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary  
4 award for violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to  
5 compensate Plaintiff, the Nationwide Class, and the California Class for said monies, as well as  
6 injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will  
7 result.

8           84.     **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action  
9 for violation of the UCL on behalf of Plaintiff, the Nationwide Class, and the California Class.  
10 Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious,  
11 oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by  
12 law. Defendant's misconduct is malicious as Defendant acted with the intent to cause Plaintiff and  
13 consumers to pay for Products that they were not, in fact, receiving. Defendant willfully and  
14 knowingly disregarded the rights of Plaintiff and consumers as Defendant was, at all times, aware  
15 of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading  
16 consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all relevant times, said  
17 conduct was so vile, base, and/or contemptible that reasonable people would look down upon it  
18 and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and  
19 consumers to cruel and unjust hardship in knowing disregard of their rights. Defendant's misconduct  
20 is fraudulent as Defendant intentionally misrepresented and/or concealed material facts with the  
21 intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression,  
22 and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors,  
23 and/or managing agents of Defendant.

#### 24                                 **A. "Unfair" Prong**

25           85.     **Unfair Standard.** Under California's Unfair Competition Law, Cal. Bus. & Prof.  
26 Code Section 17200, *et seq.*, a challenged activity is "unfair" when "any injury it causes outweighs  
27 any benefits provided to consumers and the injury is one that the consumers themselves could not  
28 reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403

1 (2006).

2 86. **Injury.** Defendant’s action of labeling and advertising the Products as if they were  
3 made in Japan when they were not does not confer any benefit to consumers. Defendant’s action of  
4 labeling and advertising the Products as if they were made in Japan when they were not causes  
5 injuries to consumers who do not receive Products they reasonably expected.

6 87. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged  
7 activity amounts to unfair conduct under California Business and Professions Code Section 17200.  
8 In so doing, they “weigh the utility of the Defendant’s conduct against the gravity of the harm to the  
9 alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

10 88. **No Utility.** Here, Defendant’s conduct of labeling the Products as alleged herein  
11 when the Products are not made or manufactured in Japan has no utility and financially harms  
12 purchasers. Thus, the utility of Defendant’s conduct is vastly outweighed by the gravity of harm.

13 89. **Legislative Declared Policy.** Some courts hold that “unfairness must be tethered to  
14 some legislative declared policy or proof of some actual or threatened impact on competition.”  
15 *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

16 90. The California Legislature has outlawed making misleading claims of origin in  
17 connection with consumer goods. Cal. Civ. Code § 1770(a)(4). Therefore, Defendant’s unfair  
18 conduct is tethered to the legislative declared policy regarding misleading claims of geographic  
19 origin.

20 91. **Unfair Conduct.** Defendant’s labeling and advertising of the Products, as alleged  
21 herein, is false, deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendant  
22 knew or should have known of its unfair conduct. Defendant’s misrepresentations constitute an  
23 unfair business practice within the meaning of California Business and Professions Code Section  
24 17200.

25 92. **Reasonably Available Alternatives.** There existed reasonably available alternatives  
26 to further Defendant’s legitimate business interests, other than the conduct described herein.  
27 Defendant could have refrained from labeling the Products as alleged herein.

28 93. **Defendant’s Wrongful Conduct.** All of the conduct alleged herein occurs and

1 continues to occur in Defendant’s business. Defendant’s wrongful conduct is part of a pattern or  
2 generalized course of conduct repeated on thousands of occasions daily.

3 94. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff,  
4 the Nationwide Class, and the California Class seek an order from this Court enjoining Defendant  
5 from continuing to engage, use, or employ its practices of labeling the Products as alleged herein.

6 95. **Causation/Damages.** Plaintiff, the Nationwide Class, and the California Class have  
7 suffered injury in fact and have lost money as a result of Defendant’s unfair conduct. Plaintiff, the  
8 Nationwide Class, and the California Class paid an unwarranted premium for these Products.  
9 Specifically, Plaintiff, the Nationwide Class, and the California Class paid for the Products, which  
10 are not made in Japan. Plaintiff, the Nationwide Class, and the California Class would not have  
11 purchased the Products, or would have paid substantially less for the Products, if they had known  
12 that the Products’ advertising and labeling were deceptive. Accordingly, Plaintiff seeks damages,  
13 restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

14 **B. “Fraudulent” Prong**

15 96. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said  
16 conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal.  
17 4th 1254, 1267 (1992).

18 97. **Fraudulent & Material Challenged Representations.** Defendant labeled and  
19 advertised the Products as alleged herein with the intent to sell the Products to consumers, including  
20 Plaintiff, the Nationwide Class, and the California Class. The labeling and advertising as alleged  
21 herein is false, and Defendant knew or should have known of its falsity. The labeling and advertising  
22 are likely to deceive consumers into purchasing the Products because they are material to the  
23 average, ordinary, and reasonable consumer.

24 98. **Fraudulent Business Practice.** As alleged herein, the misrepresentations by  
25 Defendant constitute a fraudulent business practice in violation of California Business & Professions  
26 Code Section 17200.

27 99. **Reasonable and Detrimental Reliance.** Plaintiff, the Nationwide Class, and the  
28 California Class reasonably and detrimentally relied on the material and false labeling and



1 advertising to their detriment in that they purchased the Products.

2 100. **Reasonably Available Alternatives.** Defendant had reasonably available  
3 alternatives to further its legitimate business interests, other than the conduct described herein.  
4 Defendant could have refrained from labeling the Products in a way that suggests the Products are  
5 from Japan.

6 101. **Business Practice.** All of the conduct alleged herein occurs and continues to occur  
7 in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of  
8 conduct.

9 102. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff,  
10 the Nationwide Class, and the California Class seek an order of this Court enjoining Defendant from  
11 continuing to engage, use, or employ its practice of labeling the Products as alleged herein.

12 103. **Causation/Damages.** Plaintiff, the Nationwide Class, and the California Class have  
13 suffered injury in fact and have lost money as a result of Defendant's fraudulent conduct. Plaintiff  
14 paid an unwarranted premium for the Products. Specifically, Plaintiff, the Nationwide Class, and  
15 the California Class paid for products that they believed were made in Japan, when, in fact, the  
16 Products are made or manufactured in California. Plaintiff, the Nationwide Class, and the California  
17 Class would not have purchased the Products if they had known the truth. Accordingly, Plaintiff  
18 seeks damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

19 **C. "Unlawful" Prong**

20 104. **Unlawful Standard.** The UCL identifies violations of other laws as "unlawful  
21 practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC*  
22 *Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

23 105. **Violations of CLRA and FAL.** Defendant's labeling of the Products, as alleged  
24 herein, violates California Civil Code sections 1750, *et seq.* (the "CLRA") and California Business  
25 and Professions Code sections 17500, *et seq.* (the "FAL") as set forth above in the sections regarding  
26 those causes of action.

27 106. **Additional Violations.** Defendant's conduct in making the false representations  
28 described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence

1 to applicable laws, as set forth herein, all of which are binding upon and burdensome to their  
 2 competitors. This conduct engenders an unfair competitive advantage for Defendant, thereby  
 3 constituting an unfair, fraudulent and/or unlawful business practice under California Business &  
 4 Professions Code sections 17200-17208. Additionally, Defendant’s misrepresentations of material  
 5 facts, as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, 1711, and  
 6 1770, as well as the common law.

7 107. **Unlawful Conduct.** Defendant’s packaging, labeling, and advertising of the  
 8 Products, as alleged herein, are false, deceptive, misleading, and unreasonable, and constitute  
 9 unlawful conduct. Defendant knew or should have known of its unlawful conduct.

10 108. **Reasonably Available Alternatives.** Defendant had reasonably available  
 11 alternatives to further its legitimate business interests, other than the conduct described herein.  
 12 Defendant could have refrained from labeling the Products as alleged herein.

13 109. **Business Practice.** All of the conduct alleged herein occurs and continues to occur  
 14 in Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized course of  
 15 conduct.

16 110. **Injunction.** Pursuant to Business and Professions Code Section 17203, Plaintiff, the  
 17 Nationwide Class, and the California Class seek an order of this Court enjoining Defendant from  
 18 continuing to engage, use, or employ its practice of false and deceptive advertising of the Products.

19 111. **Causation/Damages.** Plaintiff, the Nationwide Class, and the California Class have  
 20 suffered injury in fact and have lost money as a result of Defendant’s unlawful conduct. Plaintiff,  
 21 the Nationwide Class, and the California Class paid an unwarranted premium for the Products.  
 22 Plaintiff, the Nationwide Class, and the California Class would not have purchased the Products if  
 23 they had known that Defendant’s purposely deceived consumers into believing that the Sho Chiku  
 24 Bai Products are truly authentic Japanese sake. Accordingly, Plaintiff seeks damages, restitution  
 25 and/or disgorgement of ill-gotten gains pursuant to the UCL.

26 **FOURTH CLAIM FOR RELIEF**

27 **Breach of Express Warranty**

**Cal. Com. Code § 2313**

***(For the Nationwide Class, or in the alternative, the California Class)***

1  
2  
3 112. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
4 and incorporates the same as if set forth herein at length.

5 113. Plaintiff brings this claim individually and on behalf of the members of the California  
6 Class against Defendant.

7 114. California’s express warranty statutes provide that “(a) Any affirmation of fact or  
8 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of  
9 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,”  
10 and “(b) Any description of the goods which is made part of the basis of the bargain creates an  
11 express warranty that the goods shall conform to the description.” Cal. Com. Code § 2313.

12 115. Defendant has expressly warranted on the Products’ front labeling that the Products  
13 are made in Japan through the gold emblem located on the front of the Products’ bottles, as the gold  
14 emblem warrants that the Products are licensed Japanese products. However, as alleged herein, this  
15 promise is false and misleading because the Products are not made in Japan.

16 116. The Products’ gold emblems and their representations are therefore: (a) an  
17 affirmation of fact or promise made by Defendant to consumers that the Products are made in Japan;  
18 (b) became part of the basis of the bargain to purchase the Products when Plaintiff and other  
19 consumers relied on the representation; and (c) created an express warranty that the Products would  
20 conform to the affirmation of fact or promise. In the alternative, the representation is a description  
21 of goods which was made as part of the basis of the bargain to purchase the Products, and which  
22 created an express warranty that the Products would conform to the product description.

23 117. Plaintiff and members of the proposed Classes reasonably and justifiably relied on  
24 the foregoing express warranties, believing that the Products did in fact conform to those warranties.

25 118. Defendant has breached the express warranties made to Plaintiff and members of the  
26 proposed Classes because the Products are not made in Japan, as promised.

27 119. Plaintiff and members of the proposed Classes paid a premium price for the Products  
28 but did not obtain the full value of the Products as represented. If Plaintiff and members of the

1 proposed Classes had known of the true nature of the Products, they would not have been willing to  
2 pay the premium price associated with it. As a result, Plaintiff and members of the proposed Classes  
3 suffered injury and deserve to recover all damages afforded under the law.

4 120. In or around October 2022, Plaintiff discovered this breach of express warranty, and  
5 on October 27, 2022, Plaintiff sent a notice letter by certified mail to Defendant, notifying Defendant  
6 of the breach. Defendant received the letter on October 31, 2022. Defendant has not yet remedied  
7 its breach.

8 **FIFTH CLAIM FOR RELIEF**

9 **Breach of Implied Warranty**

10 **Cal. Com. Code § 2314**

11 ***(For the Nationwide Class, or in the alternative, the California Class)***

12 121. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
13 and incorporates the same as if set forth herein at length.

14 122. Plaintiff brings this claim individually and on behalf of the members of the  
15 Nationwide Class, or in the alternative, the California Class against Defendant.

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

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

22 125. Defendant is a merchant with respect to the sale of the Products. Therefore, a  
23 warranty of merchantability is implied in every contract for sale of the Products to consumers.

24 126. By advertising the Products with the Japanese Representations outlined herein,  
25 Defendant made an implied promise that the Products were made in Japan. However, the Products  
26 have not “conformed to the promises . . . made on the container or label” because the Products are not  
27 from Japan. Plaintiff, as well as other consumers, did not receive the goods as impliedly warranted  
28 by Defendant to be merchantable. Therefore, the Products are not merchantable under California

1 law and Defendant has breached its implied warranty of merchantability in regard to the Products.

2 127. If Plaintiff and members of the proposed Classes had known that the Products’  
3 Japanese representations were false and misleading, they would not have been willing to pay the  
4 premium price associated with them. Therefore, as a direct and/or indirect result of Defendant’s  
5 breach, Plaintiff and members of the proposed Classes have suffered injury and deserve to recover  
6 all damages afforded under the law.

7 128. In or around October 2022, Plaintiff discovered this breach of express warranty, and  
8 on October 27, 2022, Plaintiff sent a notice letter by certified mail to Defendant, notifying Defendant  
9 of the breach. Defendant received the letter on October 31, 2022. Defendant has not yet remedied  
10 its breach.

11 **SIXTH CLAIM FOR RELIEF**

12 **Quasi Contract/Unjust Enrichment/Restitution**

13 ***(for the Nationwide Class, or in the alternative, for the California Class)***

14 129. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs  
15 and incorporates the same as if set forth herein at length.

16 130. Plaintiff brings this claim individually and on behalf of the members of the proposed  
17 Nationwide Class against Defendant. Alternatively, Plaintiff brings this claim individually and on  
18 behalf of the members of the proposed California Class against Defendant.

19 131. As alleged herein, Defendant has intentionally and recklessly made misleading  
20 representations to Plaintiff and members of the Classes to induce them to purchase the Products.  
21 Plaintiff and members of the Classes have reasonably relied on the misleading representations and  
22 have not received all of the benefits promised by Defendant through the Products’ representations.  
23 Plaintiff and members of the proposed Classes have therefore been induced by Defendant’s  
24 misleading and deceptive representations about the Products, and paid more money to Defendant  
25 for the Products than they otherwise would and/or should have paid.

26 132. Plaintiff and members of the proposed Classes have conferred a benefit upon  
27 Defendant as Defendant has retained monies paid to them by Plaintiff and members of the proposed  
28 Classes.

1 133. The monies received were obtained under circumstances that were at the expense of  
2 Plaintiff and members of the proposed Classes—i.e., Plaintiff and members of the proposed Classes  
3 did not receive the full value of the benefit conferred upon Defendant. Therefore, it is inequitable  
4 and unjust for Defendant to retain the profit, benefit, or compensation conferred upon them.

5 134. As a direct and proximate result of Defendant’s unjust enrichment, Plaintiff and  
6 members of the proposed Classes are entitled to restitution, disgorgement, and/or the imposition of  
7 a constructive trust upon all profits, benefits, and other compensation obtained by Defendant from  
8 their deceptive, misleading, and unlawful conduct as alleged herein.

9 **PRAYER FOR RELIEF**

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

12 A. Certification of this case as a class action on behalf of the proposed Classes defined  
13 above, appointment of Plaintiff as Class representative, and appointment of his counsel as Class  
14 Counsel;

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

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

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

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

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

27 G. An award to Plaintiff and his counsel of reasonable expenses and attorneys’ fees;

28

1 H. An award to Plaintiff and the proposed Classes of pre- and post-judgment interest, to  
2 the extent allowable; and

3 I. For such further relief that the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

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

7  
8 DATED: February 8, 2023

**TREEHOUSE LAW, LLP**

9  
10   
11 By: \_\_\_\_\_

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