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16 **UNITED STATES DISTRICT COURT**  
 17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 ALBERT RENN, on behalf of himself, all  
 19 others similarly situated, and the general  
 20 public,

21 Plaintiff,

22 v.

23 OTAY LAKES BREWERY, LLC,

24 Defendant.

Case No: 23-cv-1139-GPC-BLM

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR  
 VIOLATIONS OF CAL. BUS. &  
 PROF. CODE §§17200 *et seq.*; CAL.  
 BUS. & PROF. CODE §§17500 *et seq.*;  
 and CAL. CIV. CODE §§ 1750 *et seq.*;  
 BREACH OF EXPRESS & IMPLIED  
 WARRANTIES; NEGLIGENT AND  
 INTENTIONAL  
 MISREPRESENTATION; AND  
 UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Albert Renn, on behalf of himself, all others similarly situated, and the  
2 general public, by and through his undersigned counsel, brings this action against Otay  
3 Lakes Brewery, LLC (“OLB” or “Defendant”), and alleges the following upon his own  
4 knowledge, or where he lacks personal knowledge, upon information and belief, including  
5 the investigation of his counsel.

6 **INTRODUCTION**

7 1. OLB sells a line of “Nova” alcoholic kombucha (“Nova Kombucha” or the  
8 “Products”)<sup>1</sup> that it labels as being “good for you” and promoting “health, balance and  
9 goodness.”



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19 2. OLB labels Nova Kombucha with such claims because consumers are attracted  
20 to products they perceive as either healthy or “better for you” than alternatives.

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23 <sup>1</sup> During the relevant time period, the Products were sold in at least fifteen flavors,  
24 including: Sexy Piña Colada, Mint Watermelon, Cactus Fruit Agave Jalapeño, Peachy  
25 Lychee, Strawberry Coconut, Peach Passion Fruit, Sexy Mojito, Mango Ginger, Hibiscus  
26 Lavender, Acai Berry Guarana, Mango Chili, Orange Brunch, Tangerine-Turmeric-  
27 Cayenne Pepper-Ginger, Amarena Cherry, and La Ola Dragon Fruit. To the extent any  
28 additional flavors were sold during the Class Period, this complaint should be read to  
include rather than exclude such flavors.

1 3. OLB’s representations, however, are false and misleading because the Products  
2 are not healthy, as they contain 6-8% alcohol by volume and consuming alcohol causes a  
3 wide variety of health risks and problems, both in the short and long term. Further, it is  
4 misleading to suggest the Products are healthier than any other alcoholic beverages or hard  
5 kombuchas.

6 4. Plaintiff brings this action on behalf of himself, similarly-situated Class  
7 Members, and the general public, to enjoin OLB from deceptively marketing Nova  
8 Kombucha in this manner and to recover compensation for injured Class Members.

9 **JURISDICTION & VENUE**

10 5. This Court has original jurisdiction over this action under 28 U.S.C. §  
11 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the  
12 sum or value of \$5,000,000, exclusive of interest and costs, and at least one member of the  
13 class of plaintiffs is a citizen of a state different from Defendant. In addition, more than  
14 two-thirds of the members of the class reside in states other than the state in which  
15 Defendant is a citizen and in which this case is filed, and therefore any exceptions to  
16 jurisdiction under 28 U.S.C. § 1332(d) do not apply.

17 6. The Court has personal jurisdiction over Defendant because it has purposely  
18 availed itself of the benefits and privileges of conducting business activities within  
19 California, including by distributing and selling the Nova Kombucha in California.

20 7. Venue is proper in this Southern District of California pursuant to 28 U.S.C. §  
21 1391(b) and (c), because Defendant resides (*i.e.*, is subject to personal jurisdiction) in this  
22 district, and because a substantial part of the events giving rise to the claims occurred in this  
23 district.

24 **PARTIES**

25 8. Plaintiff Albert Renn presently resides and intends to continue to reside in San  
26 Diego County, California. Accordingly, he is a citizen of the State of California.

27 9. Defendant Otay Lakes Brewery, LLC, is incorporated in and has its principal  
28 place of business in California. Accordingly, it is a citizen of the state of California.

**FACTS**

**I. Traditional Kombucha Has Gained a Reputation for Being Healthy, and Some Hard Kombucha Products Have Attempted to Leverage this Health Halo**

10. Kombucha is a fermented tea that originated in China over two thousand years ago.

11. “Kombucha is touted by proponents as having a wide variety of benefits such as supporting gut health, boosting immunity and energy, reducing cravings and inflammation, and generally promoting overall health.”<sup>2</sup> Because it has been promoted this way, kombucha has acquired a health halo<sup>3</sup> among consumers, leading to huge increases in its popularity.<sup>4</sup>

12. While traditional kombucha only has trace amounts of alcohol (0.5% or less) from fermentation, hard kombucha has an alcohol percentage 10-15 times higher, ranging typically around 4-8% alcohol by volume.

13. It did not take long for alcohol manufacturers, like OLB, to realize kombucha can be “added to other alcoholic beverages *to lend its health halo*.”<sup>5</sup> In large part due to the traditional kombucha’s health halo, the market for hard kombucha has grown drastically in

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<sup>2</sup> Stephanie Clarke, *Is Kombucha Good for You?*, CONSUMER REPORTS (May 30, 2023), <https://www.consumerreports.org/health/nutrition-healthy-eating/is-kombucha-good-for-you-a5348241009/>.

<sup>3</sup> The “health halo” effect is a cognitive phenomenon, well-known among marketing professionals, that occurs “when one aspect of the food is portrayed as healthy, [leading] consumers [] to categorize the entire food item as healthy.” Chandon, Pierre, et al., *Does food marketing need to make us fat? A review and solutions*, NUTR. REV. Vol. 70(10) (Oct. 2012).

<sup>4</sup> Clarke, *Is Kombucha Good for You?*, *supra* n.2.

<sup>5</sup> Jessica Jacobsen, *Consumers drawn to kombucha’s health properties*, BEVERAGE INDUSTRY (July 12, 2016), <https://www.bevindustry.com/articles/89436-consumers-drawn-to-kombuchas-health-properties> (emphasis added).

1 the last few years. For example, “[i]n 2020, hard kombucha sales grew 2,134 percent over  
2 the previous year” as “hard kombucha consumers are attracted to the products’ ‘health-  
3 conscious attributes[.]’”<sup>6</sup>

4 **II. OLB Expressly Markets Nova Kombucha as Healthy and Healthier than**  
5 **Alternatives**

6 14. During the four years preceding the filing of this Complaint and continuing  
7 today, OLB has sold Nova Kombucha.

8 15. As OLB knows, consumers prefer, are willing to pay more for, and purchase  
9 more often, products marketed and labeled as being healthy or better for you.<sup>7</sup>

10 16. Accordingly, OLB’s marketing of Nova Kombucha leverages consumers’  
11 preference for healthy beverages.

12 17. For example, OLB advertises Nova Kombucha on billboards around San Diego  
13 with the phrase “Your Happy Healthy Hour,” as seen below in a photo that is posted on  
14 OLB’s Facebook page:

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24 <sup>6</sup> Bevalc Insights Team, *Category On the Rise: Hard Alternatives*,  
25 <https://bevalcinsights.com/bevalc-insights-2021-hard-alternatives-category-forecast/>.

26 <sup>7</sup> See, e.g., Nancy Gagliardi, *Consumers Want Healthy Foods—And Will Pay More For*  
27 *Them*, FORBES (Feb. 18, 2015) (“88% of those polled are willing to pay more for healthier  
28 foods”).





18. Tiago Carneiro, a founder of OLB, even displays this billboard artwork on his personal LinkedIn page as seen below.<sup>8</sup>

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<sup>8</sup> See <https://www.linkedin.com/in/tiago-carneiro-810ba0177> (last visited Sept. 28, 2023).



**Tiago Carneiro**

 NOVA Kombucha

Founder at NOVA Kombucha  
San Diego County, California, United States  
712 followers · 500+ connections

 See your mutual connections

[Sign in to connect](#)

19. In line with its off-label marketing, OLB promote the Products by labeling them with statements intended to convince consumers that Nova Kombucha is healthy, or at least healthier than it really is, and healthier than competing products.

20. The labeling of Nova Kombucha states: “Nova Easy Kombucha is one of those rare things where health, balance and goodness get a lot more interesting.”

21. Most flavors’<sup>9</sup> labeling also states: “Some things in life are good for you, other things in life are fun. They don’t meet each other very often, but when they do, life gets pretty brilliant, pretty quickly.”

22. Exemplars of the Products’ labeling, including the challenged language, appear below.

<sup>9</sup> During the Class Period, the following flavors and sizes bore both claims: Sexy Pina Colada (12 oz. and 16 oz.); Cactus Fruit Agave Jalapeno (12oz. and 16 oz.); Peachy Lychee (12oz.); Strawberry Coconut (12oz. and 16 oz.); Sexy Mojito (12 oz.); and Hibiscus Lavender (16 oz.).

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SOME THINGS IN LIFE ARE GOOD FOR YOU, OTHER THINGS IN LIFE ARE FUN. THEY DON'T MEET EACH OTHER VERY OFTEN, BUT WHEN THEY DO, LIFE GETS PRETTY BRILLIANT, PRETTY QUICKLY. NOVA EASY KOMBUCHA IS ONE OF THOSE RARE THINGS WHERE HEALTH, BALANCE AND GOODNESS GET A LOT MORE INTERESTING.



NOVA EASY KOMBUCHA IS ONE OF THOSE RARE THINGS WHERE HEALTH, BALANCE AND GOODNESS GET A LOT MORE INTERESTING. GLUTEN-FREE, TOTALLY NATURAL, PROBIOTIC, VEGAN-FRIENDLY, AND NATURALLY FERMENTED TO 6% ALC.





1 23. Through these labeling claims, OLB conveys to consumers that Nova  
2 Kombucha, despite being alcoholic, is nevertheless “good for you,” “health[y],” and  
3 “balance[d],” and healthier than similar alcoholic beverages.

4 24. But this health and wellness message is false and misleading because Nova  
5 Kombucha contains six to eight percent alcohol by volume, and alcohol consumption harms  
6 health and increases risk of disease.

7 **II. Consuming Alcohol is Detrimental to Health**

8 **A. Consuming Alcohol Causes Cancer and Numerous Other Chronic**  
9 **Diseases**

10 25. “Globally, alcohol is the seventh leading cause of death and disability-  
11 associated life years (DALYs) lost, and it caused 2.8 million deaths in 2016. In that year,  
12 among adults less than 50 years old, alcohol was the leading cause of death and DALYs  
13 lost.” Further, “[a]lcohol is causally implicated *in over 200 conditions*, including cancers of  
14 the digestive tract and liver.”<sup>10</sup>

15 26. Alcohol is a human carcinogen. Its consumption has been shown to cause  
16 cancer of the mouth, pharynx, larynx, and esophagus.<sup>11</sup> Cohort and case-control  
17 epidemiological studies in a variety of human populations are consistent in reporting  
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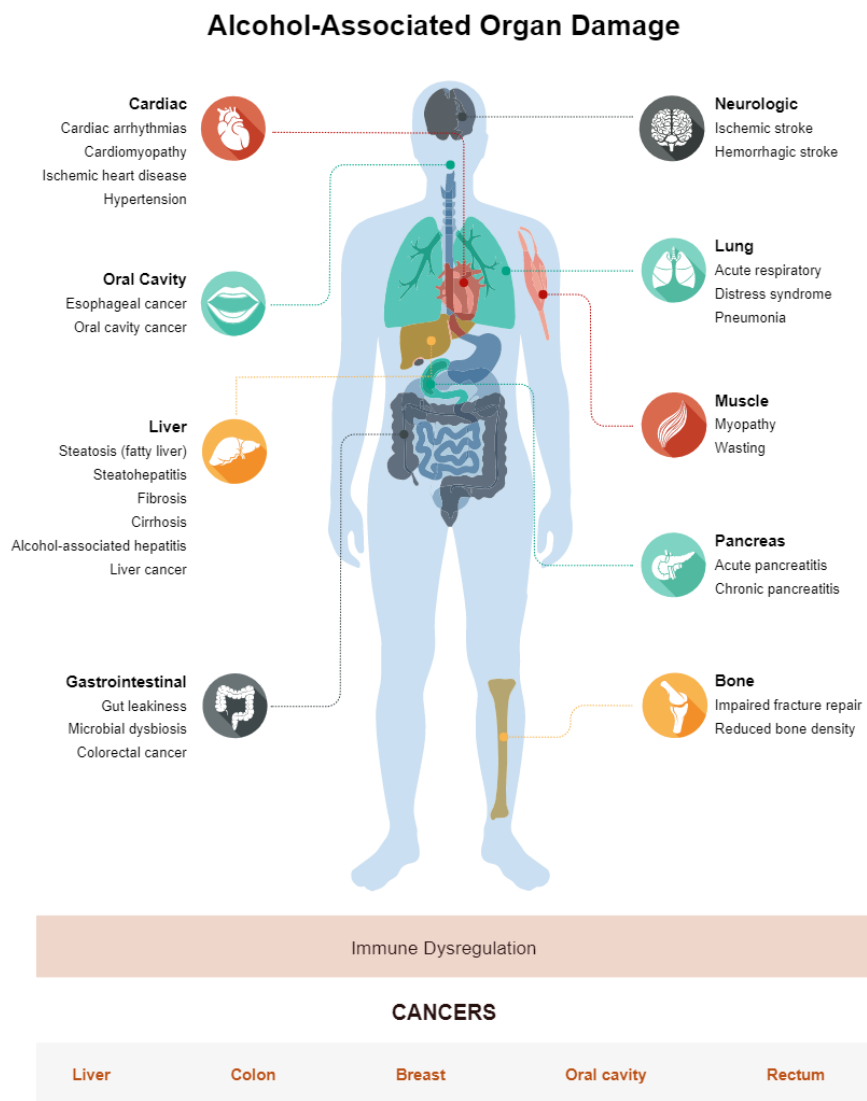
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20 <sup>10</sup> Pohl, K., et al., *Alcohol’s Impact on the Gut and Liver*, NUTRIENTS, 13(9), 3170 (2021),  
21 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8472839/> (emphasis added) [“Pohl et al.,  
22 *Alcohol’s Impact*”].

23 <sup>11</sup> Department of Health and Human Services—National Toxicology Program, *Alcoholic*  
24 *Beverage Consumption*, REPORT ON CARCINOGENS, FIFTEENTH EDITION (2021), available at  
25 <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/alcoholicbeverageconsumption.pdf>. See  
26 also Connor, J., *Alcohol consumption as a cause of cancer*, ADDICTION vol. 112,2 (2017):  
27 222-28, <https://pubmed.ncbi.nlm.nih.gov/27442501/> (“[E]pidemiological evidence can  
28 support the judgement that alcohol causes cancer of the oropharynx, larynx, oesophagus,  
liver, colon, rectum and breast. . . . There is strong evidence that alcohol causes cancer at  
seven sites in the body and probably others.”).

1 moderate to strong associations between alcohol consumption and cancer at these four sites,  
 2 and the risk of cancer increases with increasing consumption level.<sup>12</sup>

3 27. In addition, alcohol consumption damages nearly every major organ in the  
 4 body, as summarized in the graphic below.<sup>13</sup>



12 *Id.*

13 National Institute on Alcohol Abuse and Alcoholism, *Alcohol's Effects on the Body*, NIAAA.NIH.GOV (last visited May 22, 2023), <https://www.niaaa.nih.gov/alcohols-effects-health/alcohols-effects-body>.

1           28. One of the most harmful effects of consuming alcohol is damage to the liver.  
2 According to the American Liver Foundation (ALF), “Excessive alcohol consumption  
3 contributes to 3 types of liver disease: fatty liver, where excess fat builds up in the liver;  
4 alcoholic hepatitis, in which the liver cells become inflamed; and alcohol-related cirrhosis,  
5 in which normal liver tissue is replaced by non-living scar tissue.”<sup>14</sup>

6           29. In addition, while the alcohol industry has long perpetuated the myth that low  
7 levels of alcohol consumption is actually good for the heart, “[c]ontrary to popular opinion,  
8 alcohol is not good for the heart.”<sup>15</sup> “No randomized controlled trials (RCTs) have  
9 confirmed health benefits of alcohol.”<sup>16</sup> Further, “[a]lcohol increases the risk for  
10 hypertensive heart disease, cardiomyopathy, atrial fibrillation, flutter and strokes. Alcohol  
11 consumption (100gm/ week) is linearly associated with a higher risk of stroke, heart failure,  
12 fatal hypertensive disease and fatal aortic aneurysm, and has a borderline elevation in the  
13 risk of coronary heart disease, as compared to those consuming between 0-25g/ week.”<sup>17</sup>

14           30. As a final example, alcohol consumption “has been shown to alter this axis  
15 through the disruption of gut microbial composition, the metabolome and the gut epithelial  
16 barrier.”<sup>18</sup> “Alcohol-induced dysbiosis contributes to the development of both acute (e.g.,  
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19 <sup>14</sup> ALF, “Alcohol-Related Liver Disease,” *liverfoundation.org* (last updated Mar. 17, 2023),  
20 <https://liverfoundation.org/liver-diseases/alcohol-related-liver-disease/>.

21 <sup>15</sup> World Heart Federation, “The Impact of Alcohol Consumption on Cardiovascular Health:  
22 Myths and Measures,” at 8 (Jan. 2022), available at, [https://world-heart-  
23 federation/](https://world-heart-federation.org/news/no-amount-of-alcohol-is-good-for-the-heart-says-world-heart-federation/).

24 <sup>16</sup> *Id.*

25 <sup>17</sup> *Id.* (citing Wood AM, et al., *Risk thresholds for alcohol consumption: combined analysis*  
26 *of individual-participant data for 599 912 current drinkers in 83 prospective studies*. Vol.  
391 LANCET. (2018)).

27 <sup>18</sup> Pohl et al., *Alcohol’s Impact*, *supra* n.10.  
28

1 alcoholic hepatitis) and chronic (e.g., alcohol-related cirrhosis) liver diseases through its  
2 pathological effect on gut integrity.”<sup>19</sup>

3 **B. Authoritative Bodies Recommend Excluding or Minimizing Alcohol**  
4 **Consumption for Good Health**

5 31. The 2020-2025 Dietary Guidelines for Americans (“2020 DGAs”) states  
6 “[a]lcohol has been found to increase risk for cancer, and for some types of cancer, the risk  
7 increases even at low levels of alcohol consumption (less than 1 drink in a day).”<sup>20</sup>

8 32. Further, “[e]merging evidence suggests that even drinking within the  
9 recommended limits may increase the overall risk of death from various causes, such as  
10 from several types of cancer and some forms of cardiovascular disease.”<sup>21</sup>

11 33. The Centers for Disease Control and Prevention (CDC) reiterates the 2020  
12 DGAs, and adds:

13 Although past studies have indicated that moderate alcohol consumption has  
14 protective health benefits (e.g., reducing risk of heart disease), recent studies  
15 show this may not be true. While some studies have found improved health  
16 outcomes among moderate drinkers, it’s impossible to conclude whether these  
17 improved outcomes are due to moderate alcohol consumption or other  
18 differences in behaviors or genetics between people who drink moderately and  
19 people who don’t.<sup>22</sup>

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21 <sup>19</sup> *Id.*

22 <sup>20</sup> U.S. Dep’t of Health & Human Servs. and U.S. Dept. of Agric., “Dietary Guidelines for  
23 Americans 2020 –2025,” at 49 (8th ed.), *available at*  
24 [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf).

25 <sup>21</sup> *Id.*

26 <sup>22</sup> Centers for Disease Control and Prevention, *Dietary Guidelines for Alcohol*, CDC.GOV  
27 (last reviewed April 19, 2022), *available at* <https://www.cdc.gov/alcohol/fact-sheets/moderate-drinking.htm> (internal citations omitted).



1 34. The CDC also aptly states: “The less alcohol you drink, the lower your risk for  
2 cancer. . . . The more you drink, the higher your cancer risk.”<sup>23</sup>

3 35. In a January 2023 press release for a recently published article in *The Lancet*,  
4 WHO explained “there are no studies that would demonstrate that the potential beneficial  
5 effects of light and moderate drinking on cardiovascular diseases and type 2 diabetes  
6 outweigh the cancer risk associated with these same levels of alcohol consumption for  
7 individual consumers.”<sup>24</sup> “As such, no safe amount of alcohol consumption for cancers and  
8 health can be established.”<sup>25</sup>

9 36. “It doesn’t matter how much you drink – the risk to the drinker’s health starts  
10 from the first drop of any alcoholic beverage. The only thing that we can say for sure is that  
11 the more you drink, the more harmful it is – or, in other words, the less you drink, the safer  
12 it is,” according to Dr. Carina Ferreira-Borges, the Noncommunicable Disease Management  
13 and Regional Advisor for Alcohol and Illicit Drugs in the WHO Regional Office for  
14 Europe.<sup>26</sup>

15 37. In short, there is no safe level of alcohol consumption, and any increase in  
16 consumption increases risk of disease.

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21 <sup>23</sup> CDC, *Alcohol and Cancer*, CDC.GOV (last reviewed Mar. 13, 2023), available at  
<https://www.cdc.gov/cancer/alcohol/index.htm>.

22 <sup>24</sup> WHO Europe, *No level of alcohol consumption is safe for our health*, WHO.INT (Jan. 4,  
23 2023), [https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-](https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-consumption-is-safe-for-our-health)  
24 [consumption-is-safe-for-our-health](https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-consumption-is-safe-for-our-health).

25 <sup>25</sup> Anderson et al., *Health and cancer risks associated with low levels of alcohol*  
26 *consumption*, THE LANCET, Vol. 8 (Jan. 2023), available at  
[https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(22\)00317-6/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(22)00317-6/fulltext).

27 <sup>26</sup> WHO Europe, *No level of alcohol consumption is safe for our health*, *supra* n.24.  
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1 **IV. Nova Kombucha’s Labeling Violates State and Federal Regulations**

2 38. While the labeling of most alcohols is regulated by the Alcohol and Tobacco  
3 Tax and Trade Bureau (TTB), “certain beers do not meet the definition of a ‘malt beverage’  
4 under the Federal Alcohol Administration Act (FAA Act)” and “are subject to the food  
5 labeling provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C.  
6 341-350; the Fair Packaging and Labeling Act (FPLA), 15 U.S.C. 1451-1461; and FDA’s  
7 implementing regulations.”<sup>27</sup>

8 39. In 2008, TTB clarified that certain beers “not made from both malted barley  
9 and hops but [ ] instead made from substitutes for malted barley (such as sorghum, rice, or  
10 wheat) or [ ] made without hops, do not meet the definition of a ‘malt beverage’ under the  
11 FAA Act.”<sup>28</sup>

12 40. Nova Kombucha does not meet the definition of a “malt beverage,” and is  
13 therefore subject to the food labeling provisions of the FD&C Act, 21 U.S.C. §§ 341-350,  
14 the FPLA, 15 U.S.C. §§ 1451-1461, and FDA’s implementing regulations.

15 41. Nova Kombucha and its challenged labeling statements violate California  
16 Health and Safety Code §§109875, *et. seq.* (the “Sherman Law”), which has expressly  
17 adopted the federal food labeling requirements as its own. *See, e.g., id.* § 110100; *id.* §  
18 110670 (“Any food is misbranded if its labeling does not conform with the requirements for  
19 nutrition labeling as set forth in Section 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and  
20 the regulation adopted pursuant thereto.”)).

21 42. First, the challenged claims are false and misleading for the reasons described  
22 herein, in violation of 21 U.S.C. § 343(a), which deems misbranded any food or beverage  
23 whose “label is false or misleading in any particular.” Defendant accordingly also violated

24 <sup>27</sup> U.S. FDA, “Guidance for Industry: Labeling of Certain Beers Subject to the Labeling  
25 Jurisdiction of the Food and Drug Administration,” at 3 (Apr. 2023),  
26 [https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-  
industry-labeling-certain-beers-subject-labeling-jurisdiction-food-and-drug-administration](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-labeling-certain-beers-subject-labeling-jurisdiction-food-and-drug-administration).

27 <sup>28</sup> *Id.*

1 California's parallel provision of the Sherman Law. *See* Cal. Health & Safety Code §  
2 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").

3 43. Second, despite making the challenged claims, Defendant "fail[ed] to reveal  
4 facts that are material in light of other representations made or suggested by the  
5 statement[s], word[s], design[s], device[s], or any combination thereof," in violation of 21  
6 C.F.R. § 1.21(a)(1). Such facts include the detrimental health consequences of consuming  
7 Nova Kombucha at typical levels, including increased risk of multiple forms of cancer, liver  
8 disease, and cardiovascular disease, and harms to bone and gut health.

9 44. Third, Defendant failed to reveal facts that were "[m]aterial with respect to the  
10 consequences which may result from use of the article under" both "[t]he conditions  
11 prescribed in such labeling," and "such conditions of use as are customary or usual," in  
12 violation of § 1.21(a)(2). Namely, Defendant failed to disclose the increased risk of cancer  
13 and serious chronic disease and death that is likely to result from the usual consumption of  
14 the Products, including in the customary and prescribed manners, such as regular  
15 consumption of a single serving per day.

#### 16 **V. Plaintiff's Purchase, Reliance, and Injury**

17 45. As best as he can recall, Plaintiff Albert Renn purchased Nova Kombucha,  
18 approximately once per month, beginning in or around 2022. Mr. Renn recalls purchasing  
19 Nova Kombucha in Cactus Fruit, Agave, Jalapeno; Mint, Watermelon; Peach, Passion  
20 Fruit; and Strawberry Coconut. He typically purchased the Products from local stores such  
21 as the Vons located at 3610 Adams Ave., San Diego, California and the Ralphs located at  
22 1020 University Ave., San Diego, California.

23 46. When purchasing the Products, Mr. Renn was seeking a kombucha beverage  
24 that was healthy.

25 47. In purchasing Nova Kombucha, Mr. Renn was exposed to, read, and relied on  
26 OLB's health and wellness representations, including those described in paragraphs 20 and  
27 21. Based on OLB's health and wellness representations, he believed the Products were  
28 healthy despite the alcoholic content, and healthier than competing alternatives.

1 48. These representations, however, were and are deceptive because the Nova  
2 Kombucha is not healthy or healthier than other hard kombuchas, and its consumption  
3 increases risk of disease including cancer and extensive organ damage.

4 49. Mr. Renn is a lay consumer, like other average consumers, who did not know  
5 the Products' exact processing and formulation or the health effects of consuming the  
6 Products. When purchasing Nova Kombucha, Mr. Renn believed it was healthy based on  
7 the labeling claims and was unaware of the degree or extent to which the Nova Kombucha  
8 adversely affects health or what amount of Nova Kombucha might have such an effect.

9 50. Mr. Renn acted reasonably in relying on the challenged labeling claims, which  
10 OLB intentionally placed on the Nova Kombucha labeling with the intent to induce average  
11 consumers into purchasing the Nova Kombucha.

12 51. Mr. Renn would not have purchased, or would not have been willing to pay as  
13 much for, the Nova Kombucha if he knew that the challenged labeling claims were false  
14 and misleading in that the Nova Kombucha is not as healthy as conveyed and in fact is  
15 detrimental to health.

16 52. The Products cost more than similar products without misleading labeling and  
17 would have cost less absent OLB's false and misleading statements.

18 53. Through the misleading labeling claims, OLB was able to gain a greater share  
19 of the market than it would have otherwise and was able to increase the size of the market.

20 54. Mr. Renn paid more for the Nova Kombucha, and would only have been  
21 willing to pay less, or unwilling to purchase it at all, absent the false and misleading  
22 labeling complained of herein.

23 55. Mr. Renn would not have purchased the Nova Kombucha if he had known it  
24 was misbranded pursuant to California and FDA regulations, or that the challenged claims  
25 were false or misleading.

26 56. For these reasons, the Products were worth less than what Mr. Renn and the  
27 Class paid for them.  
28



1 57. Instead of receiving products that are healthful, the Products Mr. Renn and the  
2 Class received were likely to lead to increased risk of disease and are not materially  
3 healthier than competing alternatives with similar levels of alcohol.

4 58. Mr. Renn still sees the Products at stores when he shops, and would purchase  
5 Nova Kombucha if it were reformulated so that the voluntary health and wellness labeling  
6 statements on the label were true.

7 59. If Mr. Renn could be assured the challenged claims were true through an  
8 injunction such as he is requesting, he would purchase the Products in the future, but absent  
9 such an injunction, he may not be able to tell whether the Products were reformulated in  
10 such a way that makes the representations true.

11 60. Mr. Renn's substantive right to a marketplace free of fraud, where he is  
12 entitled to rely with confidence on representations such as those made by OLB, continues to  
13 be violated every time Mr. Renn is exposed to the misleading labeling claims.

14 61. Mr. Renn's legal remedies are inadequate to prevent these future injuries.

15 **CLASS ACTION ALLEGATIONS**

16 62. While reserving the right to redefine or amend the class definition prior to  
17 seeking class certification, Plaintiff seeks to represent a class of all persons the in United  
18 States, and separately a Subclass of all persons in California, who, at any time from June  
19 20, 2019 to the time a class is notified (the "Class Period"), purchased, for personal or  
20 household use, Nova Kombucha (the "Class" and "California Subclass").

21 63. The members in the proposed Class are so numerous that individual joinder of  
22 all members is impracticable, and the disposition of the claims of all Class Members in a  
23 single action will provide substantial benefits to the parties and Court.

1 64. Questions of law and fact common to Plaintiff and the Class include:

2 a. whether OLB communicated a message regarding the healthfulness of  
3 Nova Kombucha through its packaging and advertising;

4 b. whether that message was material, or likely to be material, to a  
5 reasonable consumer;

6 c. whether the challenged claims are false, misleading, or reasonably likely  
7 to deceive a reasonable consumer;

8 d. whether OLB's conduct is unfair or violates public policy;

9 e. whether OLB's conduct violates state or federal food and beverage  
10 labeling statutes or regulations;

11 f. whether OLB made and breached warranties;

12 g. the proper amount of damages, including punitive damages;

13 h. the proper amount of restitution;

14 i. the proper scope of injunctive relief; and

15 j. the proper amount of attorneys' fees.

16 65. These common questions of law and fact predominate over questions that  
17 affect only individual Class Members.

18 66. Plaintiff's claims are typical of Class Members' claims because they are based  
19 on the same underlying facts, events, and circumstances relating to OLB's conduct.  
20 Specifically, all Class Members, including Plaintiff, were subjected to the same misleading  
21 and deceptive conduct when they purchased the Products and suffered economic injury  
22 because the Products are misrepresented. Absent OLB's business practice of deceptively  
23 and unlawfully labeling the Products, Plaintiff and other Class Members would not have  
24 purchased them or would have paid less for them.

25 67. Plaintiff will fairly and adequately represent and protect the interests of the  
26 Class, has no interests incompatible with the interests of the Class, and has retained counsel  
27 competent and experienced in class action litigation involving the false and misleading  
28 advertising of foods and beverages.

1 68. Class treatment is superior to other options for resolution of the controversy  
2 because the relief sought for each Class Member is small, such that, absent representative  
3 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

4 69. OLB has acted on grounds applicable to the Class, thereby making appropriate  
5 final injunctive and declaratory relief concerning the Class as a whole.

6 70. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ.  
7 P. 23(a), 23(b)(2), and 23(b)(3).

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.***

11 71. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
12 as if set forth fully herein.

13 72. The UCL prohibits any “unlawful, unfair or fraudulent business act or  
14 practice.” Cal. Bus. & Prof. Code § 17200.

15 73. The acts, misrepresentations, practices, and non-disclosures as alleged herein  
16 constitute business acts and practices.

17 **Fraudulent**

18 74. A statement or practice is fraudulent under the UCL if it is likely to deceive a  
19 significant portion of the public, applying an objective reasonable consumer test.

20 75. As set forth herein, the challenged labeling claims relating to the Products are  
21 likely to deceive reasonable consumers and the public as to the healthfulness of the  
22 Products.

**Unlawful**

1  
2 76. The acts alleged herein are “unlawful” under the UCL in that they violate at  
3 least the following laws:

- 4 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 5 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 6 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*;
- 7 and
- 8 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health &  
9 Safety Code §§ 110100 *et seq.*

10 **Unfair**

11 77. OLB’s conduct with respect to the labeling, advertising, and sale of Nova  
12 Kombucha was unfair because OLB’s conduct was immoral, unethical, unscrupulous, or  
13 substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh  
14 the gravity of the harm to its victims.

15 78. OLB’s conduct with respect to the labeling, advertising, and sale of Nova  
16 Kombucha was and is also unfair because it violates public policy as declared by specific  
17 constitutional, statutory or regulatory provisions, including but not necessarily limited to the  
18 False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions  
19 of the California Sherman Food, Drug, and Cosmetic Law.

20 79. OLB’s conduct with respect to the labeling, advertising, and sale of the  
21 Products was and is also unfair because the consumer injury was substantial, not  
22 outweighed by benefits to consumers or competition, and not one that consumers  
23 themselves could reasonably have avoided. Specifically, the increase in profits obtained by  
24 OLB through the misleading labeling does not outweigh the harm to Class Members who  
25 were deceived into purchasing the Products, believing they were healthy and healthier than  
26 other alcoholic kombuchas, when in fact they are not.

27 80. OLB profited from the sale of the falsely, deceptively, and unlawfully  
28 advertised Nova Kombucha to unwary consumers.



1 81. Plaintiff and Class Members are likely to continue to be damaged by OLB’s  
2 deceptive trade practices because OLB continues to disseminate misleading information.  
3 Thus, injunctive relief enjoining OLB’s deceptive practices is proper.

4 82. OLB’s conduct caused and continues to cause substantial injury to Plaintiff and  
5 other Class Members. Plaintiff has suffered injury in fact as a result of OLB’s unlawful  
6 conduct.

7 83. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order  
8 enjoining OLB from continuing to conduct business through unlawful, unfair, and/or  
9 fraudulent acts and practices, and to commence a corrective advertising campaign.

10 84. Plaintiff and the Class also seek an order for the restitution of all monies from  
11 the sale of the Products, which were unjustly acquired through acts of unlawful competition.

12 85. Because Plaintiff’s claims under the “unfair” prong of the UCL sweep more  
13 broadly than his claims under the FAL, CLRA, or UCL’s “fraudulent” prong, Plaintiff’s  
14 legal remedies are inadequate to fully compensate Plaintiff for all of OLB’s challenged  
15 behavior.

## 16 SECOND CAUSE OF ACTION

### 17 **Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.***

18 86. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
19 as if set forth fully herein.

20 87. The FAL provides that “[i]t is unlawful for any person, firm, corporation or  
21 association, or any employee thereof with intent directly or indirectly to dispose of real or  
22 personal property or to perform services” to disseminate any statement “which is untrue or  
23 misleading, and which is known, or which by the exercise of reasonable care should be  
24 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

25 88. It is also unlawful under the FAL to disseminate statements concerning  
26 property or services that are “untrue or misleading, and which is known, or which by the  
27 exercise of reasonable care should be known, to be untrue or misleading.” *Id.*  
28

1 89. As alleged herein, the advertisements, labeling, policies, acts, and practices of  
2 Defendant relating to Nova Kombucha were likely to mislead consumers acting reasonably,  
3 as to the healthfulness of Nova Kombucha.

4 90. Plaintiff suffered injury in fact as a result of Defendant's actions as set forth  
5 herein because Plaintiff purchased Nova Kombucha in reliance on Defendant's false and  
6 misleading marketing claims stating or suggesting that Nova Kombucha is healthful,  
7 healthier than it really is, and healthier than competing products.

8 91. Defendant's business practices as alleged herein constitute unfair, deceptive,  
9 untrue, and misleading advertising pursuant to the FAL because Defendant has advertised  
10 Nova Kombucha in a manner that is untrue and misleading, which Defendant knew or  
11 reasonably should have known, and omitted material information from Nova Kombucha's  
12 labeling.

13 92. OLB profited from the sale of the falsely and deceptively advertised Nova  
14 Kombucha to unwary consumers.

15 93. As a result, Plaintiff, the Class, and the general public are entitled to injunctive  
16 and equitable relief, restitution, and an order for the disgorgement of all monies from the  
17 sale of Nova Kombucha by which OLB was unjustly enriched.

18 94. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of himself  
19 and the Class, seeks an order enjoining OLB from continuing to engage in deceptive  
20 business practices, false advertising, and any other act prohibited by law, including those  
21 set forth in this Complaint.

22 95. Because the Court has broad discretion to award restitution under the FAL and  
23 could, when assessing restitution under the FAL, apply a standard different than that applied  
24 to assessing damages under the CLRA or commercial code (for Plaintiff's breach of  
25 warranty claims), and restitution is not limited to returning to Plaintiff and class members  
26 monies in which they have an interest, but more broadly serves to deter the offender and  
27 others from future violations, the legal remedies available under the CLRA and commercial  
28

1 code are more limited than the equitable remedies available under the FAL, and are  
2 therefore inadequate.

### 3 **THIRD CAUSE OF ACTION**

#### 4 **Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***

5 96. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
6 as if set forth fully herein.

7 97. The CLRA prohibits deceptive practices in connection with the conduct of a  
8 business that provides goods, property, or services primarily for personal, family, or  
9 household purposes.

10 98. OLB's false and misleading labeling and other policies, acts, and practices  
11 were designed to, and did, induce the purchase and use of the Products for personal, family,  
12 or household purposes by Plaintiff and Class Members, and violated and continue to violate  
13 the following sections of the CLRA:

14 a. § 1770(a)(5): representing that goods have characteristics, uses, or  
15 benefits which they do not have;

16 b. § 1770(a)(7): representing that goods are of a particular standard,  
17 quality, or grade if they are of another;

18 c. § 1770(a)(9): advertising goods with intent not to sell them as  
19 advertised; and

20 d. § 1770(a)(16): representing the subject of a transaction has been  
21 supplied in accordance with a previous representation when it has not.

22 99. OLB profited from the sale of the falsely, deceptively, and unlawfully  
23 advertised Products to unwary consumers.

24 100. OLB's wrongful business practices constituted, and constitute, a continuing  
25 course of conduct in violation of the CLRA.

26 101. Pursuant to California Civil Code § 1782, more than 30 days before filing this  
27 lawsuit, Plaintiff sent to OLB by certified mail, return receipt requested, written notice of  
28

1 his claims and OLB's particular violations of the Act, but OLB has failed to implement  
2 remedial measures.

3 102. Plaintiff and the Class have suffered harm, and therefore seek actual damages  
4 resulting from purchases of Nova Kombucha sold throughout the Class Period to all Class  
5 Members, punitive damages, injunctive relief in the form of modified advertising and a  
6 corrective advertising plan, restitution, and attorneys' fees and costs. *See* Cal. Civ. Code §  
7 1782(d).

8 103. In compliance with Cal. Civ. Code § 1780(d), an affidavit of venue is filed  
9 concurrently herewith.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **Breaches of Express Warranties, Cal. Com. Code § 2313(1)**

12 104. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
13 as if set forth fully herein.

14 105. Through the Products' labeling, OLB made affirmations of fact or promises, or  
15 description of goods, that, *inter alia*, the Products are beneficial to health and healthier than  
16 competing alternative products, as described in paragraphs 20 and 21.

17 106. These representations were part of the basis of the bargain in that Plaintiff and  
18 the Class purchased Nova Kombucha in reasonable reliance on those statements. Cal. Com.  
19 Code § 2313(1).

20 107. OLB breached its express warranties by selling Nova Kombucha that, for the  
21 reasons described herein, is not healthy but rather harms health.

22 108. That breach actually and proximately caused injury in the form of the lost  
23 purchase price that Plaintiff and Class Members paid for the Nova Kombucha.

24 109. As a result, Plaintiff seeks on behalf of himself and other Class Members,  
25 actual damages arising as a result of OLB's breaches of express warranties, including,  
26 without limitation, expectation damages.

1 **FIFTH CAUSE OF ACTION**

2 **Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314**

3 110. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
4 as if set forth fully herein.

5 111. OLB, through its acts set forth herein, in the sale, marketing, and promotion of  
6 the Products, made representations, including those described in paragraphs 20 and 21,  
7 stating the Products are healthy and healthier than alternatives.

8 112. OLB is a merchant with respect to the goods of this kind which were sold to  
9 Plaintiff and the Class, and there were, in the sale to Plaintiff and the Class, implied  
10 warranties that those goods were merchantable.

11 113. OLB breached that implied warranty because, for the reasons discussed herein,  
12 the Products were and are not healthy or healthier than alternatives.

13 114. As an actual and proximate result of OLB's conduct, Plaintiff and the Class did  
14 not receive goods as impliedly warranted by OLB to be merchantable in that they did not  
15 conform to promises and affirmations made on the container or label of the goods.

16 115. As a result, Plaintiff seeks on behalf of himself and other Class Members,  
17 actual damages arising as a result of OLB's breaches of implied warranties, including,  
18 without limitation, expectation damages.

19 **SIXTH CAUSE OF ACTION**

20 **Negligent Misrepresentation**

21 116. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
22 as if fully set forth herein.

23 117. As alleged above, Defendant misrepresented the healthfulness of the Nova  
24 Kombucha because its alcoholic content renders it unhealthy. These misrepresentations  
25 constituted a material fact in that a consumer's decision to purchase the Products would be  
26 influenced by the healthfulness of the Products.



1 118. Defendant's misrepresentations were made in the course of business  
2 transactions (the marketing, advertisement, sale, and purchase of the Products) in which  
3 both Plaintiff and Defendant have a pecuniary interest.

4 119. Defendant knew or should have known that these representations were false or  
5 misleading and it failed to exercise reasonable care in dissemination of its labels and in its  
6 marketing and advertising.

7 120. Defendant's misrepresentations regarding the Products are material to a  
8 reasonable consumer because they relate to bodily health, and reasonable consumers would  
9 attach importance to such representations which would influence their purchasing decision.

10 121. In selling the Products, Defendant acted in the ordinary course of its business  
11 and had a pecuniary interest in Plaintiff and Class Members purchasing the Products.

12 122. Defendant owed a duty of care to Plaintiff and the Class, not to provide false  
13 or incomplete information when they were making their purchase decisions regarding the  
14 Products.

15 123. Plaintiff and Class Members have reasonably and justifiably relied on  
16 Defendant's misrepresentations when purchasing the Products; had the correct facts been  
17 known, they would not have purchased the Products, or at least not at the prices at which  
18 the Products were offered.

19 124. Therefore, as a direct and proximate result of Defendant's negligent  
20 misrepresentations, Plaintiff and Class Members have suffered actual damages and any  
21 interest that would have accrued on those monies, all in an amount to be proven at trial.

## 22 SEVENTH CAUSE OF ACTION

### 23 Intentional Misrepresentation

24 125. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
25 as if set forth in full herein.

26 126. Defendant marketed Nova Kombucha in a manner conveying to reasonable  
27 consumers that the Products are healthy. Therefore, Defendant has made misrepresentations  
28 about the healthfulness of the Products.

1 127. Defendant’s misrepresentations regarding the Products are material to a  
2 reasonable consumer because they relate to bodily health. A reasonable consumer would  
3 attach importance to such representations and would be induced to act thereon in making  
4 purchasing decisions.

5 128. At all relevant times, Defendant knew that the misrepresentations were  
6 misleading, or has acted recklessly in making the misrepresentations, without regard to their  
7 truth.

8 129. Defendant intended that Plaintiff and other consumers rely on these  
9 misrepresentations on Nova Kombucha’s labeling.

10 130. Plaintiff and the Class have reasonably and justifiably relied on Defendant’s  
11 intentional misrepresentations when purchasing the Products; had the correct facts been  
12 known, they would not have purchased the Products, or at least not at the prices at which  
13 the Products were offered.

14 131. Therefore, as a direct and proximate result of Defendant’s intentional  
15 misrepresentations, Plaintiff and Class Members have suffered actual damages and any  
16 interest that would have accrued on those monies, all in an amount to be proven at trial.

17 **EIGHTH CAUSE OF ACTION**

18 **Unjust Enrichment**

19 132. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
20 as if fully set forth herein.

21 133. Plaintiff and Class Members conferred upon Defendant an economic benefit, in  
22 the form of profits resulting from the purchase and sale of Nova Kombucha.

23 134. Defendant’s financial benefits resulting from its unlawful and inequitable  
24 conduct are economically traceable to Plaintiff’s and Class Members’ purchases of the  
25 Products, and the economic benefits conferred on Defendant are a direct and proximate  
26 result of its unlawful and inequitable conduct.

1 135. It would be inequitable, unconscionable, and unjust for Defendant to be  
2 permitted to retain these economic benefits because the benefits were procured as a direct  
3 and proximate result of its wrongful conduct.

4 136. As a result, Plaintiff and Class Members are entitled to equitable relief  
5 including restitution and/or disgorgement of all revenues, earnings, profits, compensation  
6 and benefits which may have been obtained by Defendant as a result of such business  
7 practices.

8 **PRAYER FOR RELIEF**

9 137. Wherefore, Plaintiff, on behalf of himself, all others similarly situated, and the  
10 general public, prays for judgment against OLB as to each and every cause of action, and  
11 the following remedies:

12 a. An Order declaring this action to be a proper class action, appointing  
13 Plaintiff as Class Representative, and appointing Plaintiff's undersigned counsel as  
14 Class Counsel;

15 b. An Order requiring OLB to bear the cost of Class Notice;

16 c. An Order compelling OLB to conduct a corrective advertising  
17 campaign;

18 d. An Order compelling OLB to destroy all misleading and deceptive  
19 advertising materials and product labels, and to recall all offending products;

20 e. An Order requiring OLB to disgorge all monies, revenues, and profits  
21 obtained by means of any wrongful act or practice;

22 f. An Order requiring OLB to pay restitution to restore all funds acquired  
23 by means of any act or practice declared by this Court to be an unlawful, unfair, or  
24 fraudulent business act or practice, or untrue or misleading advertising, plus pre-and  
25 post-judgment interest thereon;

26 g. An Order requiring OLB to pay compensatory damages and punitive  
27 damages as permitted by law;  
28

