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County of Los Angeles
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By J. Nunez, Deputy Clerk

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 Lakema Tate, on behalf of herself and all others
11 similarly situated and the public,

12 Plaintiffs,

13 vs.

14 PANERA, LLC, a Delaware limited liability
15 company; KYM KANOW, an individual; and
16 DOES 1 through 50, inclusive,

17 Defendants.

CASE NO.: 24STCV05676

CLASS ACTION COMPLAINT

- 1. Violations of the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 2. Violations of the False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- 3. Violations of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and

DEMAND FOR JURY TRIAL

22 Plaintiff Lakema Tate (“Plaintiff”), on behalf of herself and all others similarly situated, by
23 and through their attorneys, bring this Class Action Complaint against Panera, LLC (“Defendant”
24 or “Panera”) and Kym Kanow, (collectively, “Defendants”) based upon personal knowledge, and
25 upon information, investigation, and belief of her counsel.

INTRODUCTION

- 27 1. This class action challenges Defendants’ false and deceptive practices in the

1 marketing and sale of its Sprouted Grain Bagel Flat (the “Product”).

2 2. In particular, Defendants have promoted the Product as a “sprouted grain” bagel, a
3 representation that deceives consumers by leading them to believe that sprouted grains are the
4 primary or exclusive source of grain in the Product.

5 3. Unbeknownst to consumers, however, the Product is made primarily with common
6 and less healthy, non-sprouted grains, and only contains trace amounts of sprouted grains.

7 4. Plaintiff, along with other consumers, acquired the Product and paid a premium
8 price, guided by their trust in Defendants’ representation of the Product as “sprouted grain”. If
9 Plaintiff and other consumers had been informed that the Product predominantly consisted of
10 conventional, non-sprouted grains, and only trace amounts of sprouted grains, they would have
11 refrained from purchasing the Product or would have paid substantially less for it. As a result,
12 Plaintiff and members of the Class have suffered harm due to Defendants' deceptive business
13 practices.

14 **JURISDICTION AND VENUE**

15 5. Plaintiff brings this action on behalf of herself and all others similarly situated
16 pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over this
17 matter pursuant to California Constitution, Article VI, Section 10, because a case of this type is
18 not given by statute to other trial courts.

19 6. Venue is proper in this District pursuant to the California Code of Civil Procedure
20 section 395(b) because Plaintiff is a citizen and resident of Los Angeles, California, which is
21 located in this District. Venue is also proper in this Court because the transactions at issue
22 occurred in the County of Los Angeles. *See* Declaration of David A. Baldwin *re*: Venue Pursuant
23 to Cal. Civ. Code § 1780(d), filed concurrently herewith.

24 6. On information and belief, Panera is a limited liability company formed in Delaware
25 with its headquarters located in St. Louis, Missouri. Defendant operates over 150 locations in the
26 State of California, including locations in Los Angeles County. Defendant regularly and
27 systematically sells goods and provides services throughout the State of California, including in

1 this District. As such, it is subject to the personal jurisdiction of this Court.

2 7. On information and belief, Kym Kanow is an individual residing in Los Angeles
3 County and is the owner and/or general manager of the West Covina Panera Bread location at
4 which Plaintiff purchased the Product.

5 **PLAINTIFFS**

6 8. Plaintiff Tate is a citizen of California and currently resides in Los Angeles,
7 California. In or around March 2023, Plaintiff Tate purchased the Product from Panera in Los
8 Angeles County, California. Relying on the in-store advertising of the Product as a “sprouted
9 grain” bagel, Plaintiff Tate had a reasonable expectation that sprouted grain constituted the
10 primary, if not exclusive, source of grain in the Product. If Plaintiff Tate had been aware that the
11 Product was primarily composed of traditional, non-sprouted grains, and only contained trace
12 amounts of sprouted grain, she would have refrained from making the purchase or would have
13 paid considerably less for it. Consequently, Plaintiff Tate has suffered direct harm due to
14 Defendants’ actions.

15 **DEFENDANTS**

16 9. Defendant, Panera, LLC is a Delaware limited liability company with its principal
17 place of business in St. Louis, Missouri. Defendant owns and operates a national bakery chain
18 with over 150 locations in California, including in Los Angeles County. Defendant sells breads,
19 sandwiches, pastries, soups, salads, and other food and beverage items, such as the Product at
20 issue herein.

21 10. Defendant, Kym Kanow is an individual residing in Los Angeles County who is the
22 Joint Venture General Manager and/or owner of the Panera Bread location in West Covina at
23 which Plaintiff purchased the Product.

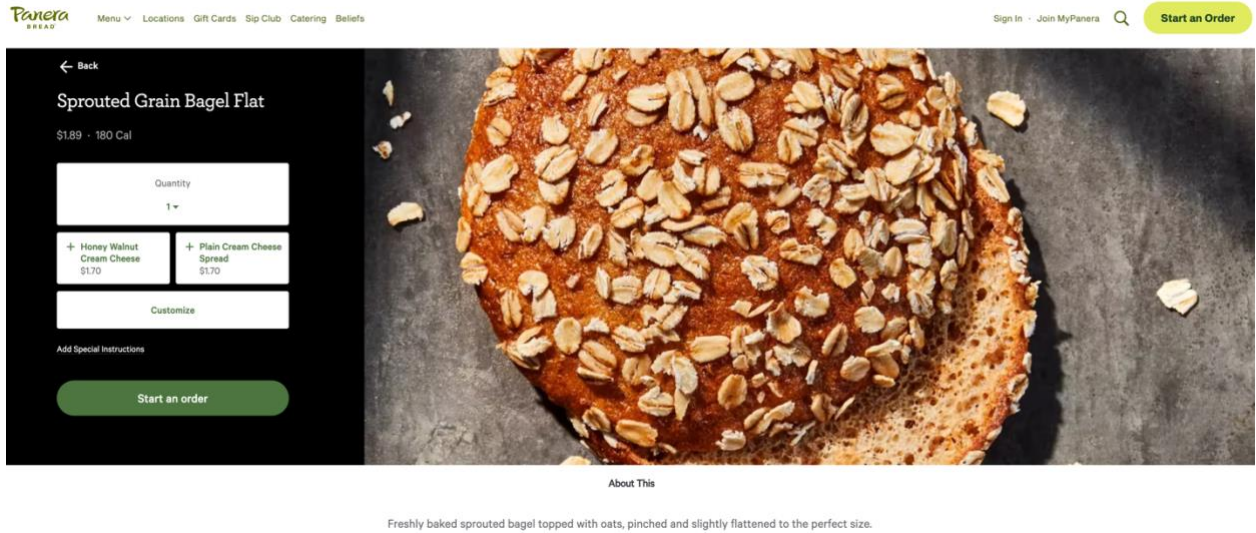
24 **FACTUAL ALLEGATIONS**

25 11. Panera is a national food and beverage restaurant chain, with over 2,000 brick and
26 mortar stores in the country. Panera stores offer a variety of products, including pastries, bagels,
27 soups, salads, sandwiches, and beverages.

1 12. The Product challenged here is the Sprouted Grain Bagel Flat offered by Panera.

2 13. Regrettably, Panera has engaged in misleading and deceitful advertising practices to
3 drive up sales and enhance profits from the Product, all to the detriment of unknowing consumers.

4 14. Specifically, Panera markets the Product with online and in-store advertising
5 claiming that the Product is a Sprouted Grain Bagel Flat. *See* website image below:



16

17 15. Based on this representation, reasonable consumers purchased the Product believing
18 that sprouted grains, such as sprouted wheat, are used as the sole, or at least primary source of
19 grain in the Product.

20 20. Unbeknownst to consumers, the Product is made primarily with traditional, non-
21 sprouted grains and contains only trace amounts of sprouted grain.

22 21. The ingredients of the Product are:

23 **Sprouted Grain Bagel Flat** (Water, Enriched Flour (Wheat Flour, Malted Barley
24 Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Enzyme [Corn].
25 Folic Acid), White Whole Wheat Flour, Rolled Oats (May Contain Wheat), Honey,
26 Brown Sugar, Vital Wheat Gluten, Canola Oil, Salt, Bread Base (Enriched
27 Pregelatinized Wheat Flour [Niacin, Reduced Iron, Thiamine Mononitrate,

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Riboflavin, Folic Acid]. Wheat Fiber, Wheat Gluten, Malted Wheat Flour, Ascorbic Acid, Microbial Enzymes), Yeast (Yeast, Sorbitan Monostearate, Ascorbic Acid), *Sprouted Grain Blend (Sprouted Wheat, Sprouted Spelt, Sprouted Rye, Sprouted Oats)*. See website image below:

Detailed Ingredients

Sprouted Grain Bagel Flat (Water, Enriched Flour (Wheat Flour, Malted Barley Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Enzyme [Corn], Folic Acid), White Whole Wheat Flour, Rolled Oats (May Contain Wheat), Honey, Brown Sugar, Vital Wheat Gluten, Canola Oil, Salt, Bread Base (Enriched Pregelatinized Wheat Flour [Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid], Wheat Fiber, Wheat Gluten, Malted Wheat Flour, Ascorbic Acid, Microbial Enzymes), Yeast (Yeast, Sorbitan Monostearate, Ascorbic Acid), Sprouted Grain Blend (Sprouted Wheat, Sprouted Spelt, Sprouted Rye, Sprouted Oats)



18. It is widely known and accepted in the culinary arts that all breads, including bagels, consist of controlled ratios between the primary ingredients of flour, water, salt, and yeast – in descending order of proportion.¹

19. In general, yeast constitutes 0.4% of a standard white bread dough, with ratios similar in all breads, including a bagel dough.

20. As noted in Defendants’ ingredient list for the Product, the “*Sprouted Grain Blend*” is listed last in the ingredient list, thus confirming that the Product consists of more salt and yeast than actual sprouted grain flour. See 21CFR101.

21. Based on information and belief, the Product is likely to consist of less than 0.4% of actual sprouted grains.

22. As such, the advertising of the Product as “sprouted grain” is false and deceptive.

¹ A standard baker’s percentage of yeast in a white bread is 0.4%. Forkish, K., & Weiner, A. (. (2012). *Flour Water Salt Yeast: The Fundamentals of Artisan Bread and Pizza*. Berkeley [Calif]., Ten Speed Press. Pg. 89.

1 23. The deceptive impression that the Product primarily relies on sprouted grains as its
2 source of grain is crucial to consumers when making purchasing decisions. This is because
3 sprouted grains offer a premium and more desirable quality compared to conventional non-
4 sprouted grains. As the term suggests, sprouted grains undergo a germination process before being
5 incorporated into bread and other food products. Consequently, sprouted grains contain fewer
6 starches, possess a lower carbohydrate content, are easier to digest, and have a lower glycemic
7 index when compared to regular grains. The sprouting process also results in higher levels of
8 essential nutrients, including protein, fiber, and vitamins in the grains before their use. Moreover,
9 sprouting effectively breaks down phytic acid, which ordinarily hinders the absorption of vitamins
10 and minerals in the body. In contrast, the processed wheat and white flour, primarily used in the
11 Product by Panera, is stripped of its nutritional components, including fiber, vitamins, and
12 minerals, thus offering minimal nutritional value. Therefore, consumers place a higher value on
13 sprouted grains compared to traditional non-sprouted grains.

14 24. The belief that the Product predominantly utilizes sprouted grains as its primary
15 source of grain is even more justified when considering that other sprouted bread products
16 available in the market, including sprouted bagels, primarily consist of sprouted grains. For
17 example, Alvarado St. Bakery's Sprouted Wheat Everything Bagel, which contains sprouted whole
18 wheat lists sprouted organic whole wheat berries as the first and primary grain ingredient.²



Sprouted Wheat Everything Bagels

Category: Bagels

Highlights: Vegan

Ingredients: Sprouted Organic Whole Wheat Berries, Organic Unbleached Wheat Flour, Filtered Water, Organic Barley Malt, Organic Cultured Wheat Flour, Organic Minced Onion, Organic Vinegar, Yeast, Sea Salt, Organic Minced Garlic, Organic Whole Wheat Flour, Organic Poppy Seeds, Organic Flax Seeds, Organic Sunflower Seeds, Organic Rolled Oats, Organic Pumpkin Seeds, Organic White Hulled Sesame Seeds, Organic White Quinoa, Organic Black Sesame Seeds, Organic Chia Seeds, Organic Millet, Organic Red Quinoa, Organic Rye Flakes, Enzymes, Ascorbic Acid.

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² <https://www.alvaradostreetbakery.com/breads/Sprouted%20Wheat%20Everything%20Bagel>

25. Another example is Bread of Heaven Sprouted Sourdough Bagel, which contains sprouted whole wheat flour as the first ingredient in the bagel.³

He... filleth thee with the finest of wheat. Psalm 147:14

Sprouted Sourdough Bagels

Made Fresh With Whole Grains
Local. Family Owned
NO Soy
NO Cholesterol
NO Artificial Flavors, Colors, or Preservatives
NO Mold Inhibitors
NO Dough Conditioners
NO Added Vital Wheat Gluten

Nutrition Facts	
12 servings per container	
Serving size	1/2 Bagel (56g)
Amount Per Serving	
Calories	130
% Daily Value*	
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Sodium 150mg	7%
Total Carbohydrate 28g	10%
Dietary Fiber 1g	4%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Protein 4g	8%

Not a significant source of cholesterol, vitamin D, calcium, iron, and potassium.

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

NO ADDED YEAST

Contains: Wheat
ORGANIC IS NON-GMO & MORE
 CRC Kasher 106258

Organic Bread of Heaven
 2700 W. 5th Ave. Gary, IN 46404
 Certified Organic by CCOF
 NET WT. 24 OZ (672 Grams) 6 PK
breadofheaven.com

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26. Further, Franz Organic Sprouted Grain Plan Bagel also contains sprouted whole wheat as the first ingredient in bagel in their sprouted grain bagel product.⁴

³ <https://ovenfreshdelivery.com/collections/all-products/products/sprouted-sourdough-bagels-6-pk/>

⁴ <https://www.safeway.com/shop/product-details.960459686.html>

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Organic Sprouted Whole Wheat Flour, Organic Enriched Unbleached Wheat Flour (Organic Wheat Flour, Niacin, Reduced Iron, Thiamin Mononitrate, Riboflavin and Folic Acid), Water, Organic Cane Sugar, Organic Vital Wheat Gluten, Organic Soybean Oil, Contains 2% or Less of Each of the Following: Organic Distilled Vinegar, Yeast, Sea Salt, Ascorbic Acid, Cultured Wheat Flour, Enzymes.

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27. As the party accountable for the creation, ingredients, production, marketing, and distribution of the Product, Defendants possessed knowledge or ought to have been aware of the false and deceptive nature of the Product's advertising. Furthermore, Defendants were aware or should have reasonably anticipated that Plaintiff and other consumers, when purchasing the Product, would place their trust in Defendants' marketing and the Product's nomenclature, ultimately leading to their deception.

28. As outlined above, consumers are willing to pay more for the Product based on the belief that sprouted grains are used as the sole, or at least primary, source of grain in the Product. Plaintiffs and other consumers would have paid significantly less for the Product, or would not have purchased it at all, had they known the truth about it. Thus, through the use of misleading representations, Defendants command a price that Plaintiffs and the Class would not have paid had they been fully informed. Similarly, Plaintiff and the Class purchased the Product because they are health conscious and if Defendants augmented the ingredients of the Product to contain a

1 substantial amount of sprouted grain, they would purchase it in the future.

2 29. Therefore, Plaintiffs and other consumers purchasing the Product have suffered injury
3 in fact and lost money as a result of Defendants' false and deceptive practices, as described herein.

4 **CLASS ACTION ALLEGATIONS**

5 30. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

6 31. Plaintiff brings this action on behalf of herself and all other similarly situated Class
7 members pursuant to Code of Civil Procedure section 382, in which the class is defined as
8 follows:

9 All California residents who, within the applicable statute of limitations from the
10 date of filing this Class Complaint ("Class Period"), purchased a Sprouted Grain
11 Bagel Flat from Panera (the "Class").

12 32. Excluded from the Class are Defendants, as well as their officers, employees, agents
13 or affiliates, and any judge who presides over this action, as well as all past and present
14 employees, officers and directors of Panera. Plaintiff reserves the right to expand, limit, modify,
15 or amend this class definition, including the addition of one or more subclasses, in connection
16 with their motion for class certification, or at any other time, based upon, *inter alia*, changing
17 circumstances and/or new facts obtained during discovery.

18 33. **Numerosity:** The members of the Class are so numerous that joinder of all members
19 is impractical. While the exact number of Class members is unknown to Plaintiff at this time, such
20 information can be ascertained through appropriate discovery from records obtained from
21 Defendants and their agents.

22 34. **Commonality:** Defendants' practices were applied uniformly to all members of the
23 Class, so that the questions of law and fact are common to all members of the Class. All members
24 of the putative Class were and are similarly affected by having purchased deceptively labeled
25 dietary supplements from Defendants, and the relief sought herein is for the benefit of Plaintiff
26 and members of the Class.

27 35. **Predominance:** The common questions of law and fact, which arise from

1 Defendants' uniform pattern and practice of prohibited conduct, predominate over any individual
2 issues affecting the members of the Class. Thus, among the questions of law and fact common to
3 the Class are as follows:

- 4 a. Whether, during the Class Period, Defendants' label representations regarding
5 supplement quantity are likely to deceive reasonable consumers;
- 6 b. Whether Defendants' representations concerning product quantity were material
7 misrepresentations;
- 8 c. Whether Defendants engaged in unfair, unlawful and/or fraudulent business
9 practices under the laws asserted;
- 10 d. Whether Defendants engaged in false or misleading advertising;
- 11 e. Whether Plaintiff and Class members are entitled to damages and/or restitution and
12 the proper measure of that loss; and,
- 13 f. Whether an injunction is necessary to prevent Defendants from continuing their
14 false and deceptive practices;

15 36. All Class members, including Plaintiff, were exposed to one or more of Defendants'
16 misrepresentations of material fact regarding the quantity of sprouted grains contained in the
17 Product marketed and sold by Defendants. Due to the scope and extent of Defendants' consistent
18 misleading product, it reasonably can be inferred that such misrepresentations of material fact
19 were uniformly made to all members of the Class. In addition, it reasonably can be presumed that
20 all Class members, including Plaintiff, affirmatively acted in response to the representations
21 contained in Defendants' deceptive marketing scheme.

22 37. **Superiority:** A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy because the likelihood of individual Class members
24 prosecuting separate claims is remote and individual Class members do not have a significant
25 interest in individually controlling the prosecution of separate actions.

26 38. This action will promote an orderly and expeditious adjudication of the Class
27 claims, and will promote and foster the uniformity of decision.

1 47. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or services are of a
2 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another.” By representing the Product as a “sprouted grain” bagel, Defendants have represented
4 that the Product is of a particular standard (i.e., is made solely or predominantly with sprouted grain)
5 that it does not meet. Therefore, Defendants have violated section 1770(a)(7) of the CLRA.

6 48. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent
7 not to sell them as advertised.” By representing the Product as a “sprouted grain” bagel, Defendants
8 have represented the Product with characteristics it intended not to provide to consumers. As such,
9 Defendants have violated section 1770(a)(9) of the CLRA.

10 49. At all relevant times, Defendants have known or reasonably should have known that
11 the “sprouted grain” representation is misleading or likely to mislead reasonable consumers, and
12 that Plaintiff Tate and other members of the Class would reasonably and justifiably rely on it when
13 purchasing the Product. Nonetheless, Defendants deceptively advertised the Product as such in
14 order to deceive consumers into believing it is a healthier, more premium bagel.

15 50. Plaintiff Tate and members of the Class have justifiably relied on Defendants’
16 misleading representation when purchasing the Product. Moreover, based on the materiality of
17 Defendants’ misleading and deceptive conduct, reliance may be presumed or inferred for Plaintiff
18 Tate and members of Class.

19 51. Plaintiff Tate and members of the Class have suffered injuries caused by Defendants
20 because they would have paid significantly less for the Product, or would not have purchased it at
21 all, had they known the truth about it.

22 51. Concurrent with filing this complaint, Plaintiff sent Defendants notice advising
23 Defendants they violated and continues to violate, Section 1770 of the CLRA (the “Notice”). The
24 Notice complies in all respects with Section 1782 of the CLRA. Plaintiff sent the Notice by
25 Certified U.S. Mail, return-receipt requested to Defendants at Defendants’ principal place of
26 business or residence. Plaintiff’s Notice advised Defendants that they must correct, repair, replace
27 or otherwise rectify its conduct alleged to be in violation of Section 1770. However, Plaintiffs
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1 advised Defendants that if they fail to respond to Plaintiff’s demand within thirty (30) days of
2 receipt of this notice, pursuant to Sections 1782(a) and (d) of the CLRA, Plaintiff will amend this
3 complaint to also seek actual damages and punitive damages.

4 **SECOND CAUSE OF ACTION**

5 **Violation of California’s False Advertising Law California Business & Professions**

6 **(“FAL”), Code § 17500, *et seq.***

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

9 53. Plaintiff Tate brings this claim individually and on behalf of the members of the
10 proposed Class against Defendants.

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

17 55. Defendants have represented to the public, including Plaintiff Tate and members of
18 the proposed Class, through its deceptive naming and advertising, that the Product is a “sprouted
19 grain” bagel. However, this representation is misleading because the Product contains primarily
20 traditional, non-sprouted grain and contains only trace amounts of sprouted grain. Because
21 Defendants have disseminated misleading information regarding the Product, and Defendants
22 knows, knew, or should have known through the exercise of reasonable care that the representation
23 is false and misleading, Defendants have violated the FAL.

24 56. As a result of Defendants’ misleading advertising, Defendants have unlawfully
25 obtained money from Plaintiff Tate and members of the Class. Plaintiff therefore requests that the
26 Court cause Defendants to restore this fraudulently obtained money to her and members of the
27 proposed Class, to disgorge the profits Defendants made on these transactions, and to enjoin

1 Defendants from violating the FAL or violating it in the same fashion in the future as discussed
2 herein. Otherwise, Plaintiff Tate and members of the proposed Class may be irreparably harmed
3 and/or denied an effective and complete remedy.

4 **THIRD CAUSE OF ACTION**

5 **Violation of California’s Unfair Competition Law (“UCL”),**
6 **California Business & Professions (“FAL”), Code § 17200, *et seq.***

7 57. Plaintiff repeats the allegations contained in paragraphs 1-56 above as if fully set
8 forth herein.

9 58. Plaintiff Tate brings this claim individually and on behalf of the members of the
10 proposed Class against Defendants.

11 59. 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 60. Under the UCL, a business act or practice is “unlawful” if it violates any established
15 state or federal law. Defendants’ false and misleading advertising of the Product was “unlawful”
16 because it violates the CLRA, the FAL, and other applicable laws as described herein. As a result
17 of Defendants’ unlawful business acts and practices, Defendants have unlawfully obtained money
18 from Plaintiff Tate and members of the proposed Class.

19 61. Under the UCL, a business act or practice is “unfair” if its conduct is substantially
20 injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and
21 unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity
22 of the harm to the alleged victims. Defendants’ conduct was of no benefit to purchasers of the
23 Product, as it is misleading, unfair, unlawful, and injurious to consumers who rely on the naming
24 and advertising of the Product. Deceiving unsuspecting consumers into believing the Product is
25 made solely or primarily with sprouted grain is of no benefit to consumers. Therefore, the
26 Defendants’ conduct was “unfair.” As a result of Defendants’ unfair business acts and practices,
27 Defendants have unfairly obtained money from Plaintiff Tate and members of the proposed Class.

- 1 E. An award of nominal, punitive, and statutory damages;
- 2 F. An award to Plaintiff and their counsel of reasonable expenses and attorneys' fees;
- 3 G. An award to Plaintiff and the proposed Class of pre and post-judgment interest, to
- 4 the extent allowable; and
- 5 H. For such further relief that the Court may deem just and proper.

6 **JURY TRIAL DEMAND**

7 Plaintiff, on behalf of themselves and the proposed Class, hereby demand a jury trial for all
8 issues triable of right by jury.

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12 Dated: March 6, 2024

LAW OFFICE OF DAVID BALDWIN

13
14 By: 

David A. Baldwin

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16 Attorneys for Plaintiff
and the Proposed Class