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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12
13 SISSY MCCONNON, on behalf of herself and
all others similarly situated,
14
Plaintiff,
15
v.
16 THE KROGER CO., a corporation; and DOES
17 1 through 10, inclusive,
18
Defendant.

CASE NO.: **24STCV04525**

CLASS ACTION COMPLAINT

- 1. Violation of California False Advertising Law
- 2. Violation of California Unfair Competition Law
- 3. Violation of California Consumers Legal Remedies Act
- 4. Breach of Express Warranty (Cal. Com. Code § 2313)
- 5. Breach of Implied Warranty (Cal. Com. Code § 2314)
- 6. Intentional Misrepresentation

DEMAND FOR JURY TRIAL

1 Plaintiff Sissy McConnon (“Plaintiff”), on behalf of herself and all others similarly situated,
2 brings this class action against Defendant The Kroger Co. (“Kroger” or “Defendant”), and Does 1
3 through 10, based on Kroger’s false and deceptive advertising and labeling regarding its Private
4 Selection Avocado Oil Products. Plaintiff makes the following allegations based on the investigation
5 of her counsel, and on information and belief, except as to allegations pertaining to Plaintiff
6 individually, which are based on her personal knowledge.

7 **INTRODUCTION**

8 1. During the statute of limitations period, Kroger has marketed, labeled, advertised,
9 and sold its Private Selection Avocado Oil (the “Class Products”) to consumers with packaging that
10 has prominently represented that it is avocado oil.

11 2. The packaging of the Class Products unequivocally states that the oil is “Avocado
12 Oil” (the “*Avocado Oil Representation*”).

13 3. Reasonable consumers take the *Avocado Oil Representation* at face value—i.e., the
14 Class Products are pure avocado oil. However, unbeknownst to consumers, the Class Products are
15 adulterated with other oils.

16 4. Plaintiff seeks relief in this action individually, and on behalf of all other similarly
17 situated individuals who purchased the falsely and deceptively labeled Class Products during the
18 statute of limitations period, for violations of California’s False Advertising Law, Cal. Bus. & Prof.
19 Code § 17500, *et seq.*, California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*
20 *seq.*, California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, breach of express
21 and implied warranty (Cal. Com. Code §§ 2313-2314), and intentional misrepresentation (i.e.,
22 common law fraud).

23 **JURISDICTION AND VENUE**

24 5. This Court has personal jurisdiction over Kroger because Kroger has sufficient
25 minimum contacts in California, or otherwise intentionally avails itself of the markets within
26 California, through its sale of the goods and Class Products in California, including in this County.

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1 such, injunctive relief requiring Kroger to cease its false and deceptive labeling practices with
2 respect to the Class Products is necessary and appropriate.

3 **DEFENDANT**

4 11. Kroger is an Ohio corporation with its headquarters and principal place of business
5 in Cincinnati, Ohio. Kroger is one of the largest grocery retailers in the United States.

6 12. Kroger has labeled, advertised, distributed, and sold the Class Product for sale at its
7 Ralphs, Food 4 Less, and Foods Co. retail stores and via its ecommerce website, in California, during
8 the statute of limitations period under its private label brand “Private Selection.”

9 13. According to its Annual Report on form 10-K for the fiscal year ended January 28,
10 2023 , Private Selection is Kroger’s “main premium quality brand.”¹

11 14. The true names and capacities of Does 1 through 10, inclusive, are unknown to
12 Plaintiff at this time, and Plaintiff therefore sues such Doe defendants under fictitious names. On
13 information and belief, each defendant designated as a Doe is in some manner highly responsible
14 for the occurrences alleged herein, and Plaintiff’s and Class members’ injuries and damages, as
15 alleged herein, were proximately caused by the conduct of such Doe defendants. Plaintiff will seek
16 leave of the Court to amend this Complaint to allege the true names and capacities of such Doe
17 defendants when ascertained.

18 **FACTUAL ALLEGATIONS**

19 **A. The *Avocado Oil Representation* is False and Deceptive**

20 15. The Class Products are sold in various sizes (e.g. 17 fl. oz., 1 liter, 2 liters), but the
21 *Avocado Oil Representation* is prominently displayed in the same manner on all Class Products, as
22 depicted in the following representative images:
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27 _____
28 ¹<https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/56873/000155837023004767/kr-20230128x10k.htm> (last accessed February 20, 2024).

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1 16. As can be seen from the above images, the *Avocado Oil Representation* conveys the
2 unequivocal message that the Class Products are pure avocado oil.

3 17. This message is reinforced by the ingredient list on the Class Products’ back label,
4 which lists “avocado oil” as the only ingredient.

5 18. Nor does Kroger disclose anywhere that the Class Products are adulterated with other
6 oils. Thus, consumers reasonably believe the Class Products are pure avocado oil. But this belief is
7 mistaken. Based on Plaintiff’s investigation, which includes testing and analysis of the Class
8 Products performed by third party laboratories, the fatty acid and sterol profiles of the Class Products
9 show that the Class Products are not pure avocado oil and are in fact adulterated. Thus, the claim is
10 false and misleading.

11 **C. The *Avocado Oil Representation* is Material**

12 19. The *Avocado Oil Representation* is material—i.e., it is important to consumers with
13 respect to their decision to purchase the Class Products.²

14 20. Avocado oil is well-known to be one of the healthiest cooking oils. For example,
15 studies have indicated that compounds in avocado oil may help protect the liver, lower blood
16 pressure, LDL cholesterol, as well as reduce osteoarthritis-related joint pain, post-meal blood sugar,
17 and total cholesterol levels.³ It is also high in monounsaturated fat, which is considered more heart
18 healthy than saturated fat while being slightly more stable than the polyunsaturated fats typically
19 found in vegetable oils.⁴ Avocado oil is also a high demand cooking oil because it has the highest
20 smoke point of all plant-based cooking oils.⁵

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24 ² For instance, a 17 fl. oz. bottle of the Class Product costs \$10.29, or \$0.60 per fluid ounce. By
25 contrast, a 48 fl. oz. bottle of Kroger Pure Canola Oil costs \$4.49, or \$0.09 per fluid ounce. Similarly,
26 a 48 fl. oz. bottle of Kroger Pure Vegetable Oil costs \$3.99, or \$0.08 per fluid ounce.

27 ³ https://www.healthline.com/nutrition/9-avocado-oil-benefits#TOC_TITLE_HDR_4 (last visited
28 on February 20, 2024).

⁴ <https://www.masterclass.com/articles/what-is-avocado-oil-a-guide-to-cooking-with-avocado-oil>
(last visited on February 20, 2024).

⁵ *Id.*

1 21. Regardless of whether consumers believe avocado oil is superior to other oils, the
2 issue of whether the Avocado oil is pure or is adulterated is material to reasonable consumers
3 because consumers of the Class Products reasonably expect to know what type of oil they are
4 consuming.

5 22. Consumers purchased, and continue to purchase, the Class Products in part because
6 the *Avocado Oil Representation* conveys the unequivocal message that it is pure avocado oil.
7 Plaintiff and Class members would have paid less for the Class Products, or would not have
8 purchased them at all, but for the *Avocado Oil Representation*. Therefore, Plaintiff and Class
9 members have suffered a financial injury in the form of paying a price premium that the Class
10 Products commanded in the market as a result of Kroger's representations that the Class Products
11 are pure avocado oil.

12 **CLASS ACTION ALLEGATIONS**

13 23. Plaintiff brings this class action pursuant to Cal. Civ. Proc. Code § 382, and all other
14 applicable laws and rules, individually, and on behalf of all members of the following Classes:

15 **California Class**

16 All natural persons who purchased at least one of the Class Products in the State of California
17 within the applicable statute of limitations period.

18 **California Consumer Subclass**

19 All natural persons who purchased at least one of the Class Products in the State of
20 California, for personal, family, or household purposes, within the applicable statute of
21 limitations period.

22 24. Excluded from the Classes are the following individuals and/or entities: Kroger and
23 its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity
24 in which Kroger has a controlling interest; all individuals who make a timely election to be excluded
25 from this proceeding using the correct protocol for opting out; and all judges assigned to hear any
26 aspect of this litigation, as well as their immediate family members.

27 25. Plaintiff reserves the right to modify or amend the definition of the proposed Classes
28 and/or add subclasses before the Court determines whether class certification is appropriate.

26. Plaintiff is a member of both classes.

1 27. Numerosity: The proposed Classes are so numerous that joinder of all members
2 would be impractical. The Class Products are sold throughout the United States and the State of
3 California. The number of individuals who purchased Class Product during the relevant time period
4 is at least in the hundreds. Accordingly, Class members are so numerous that their individual joinder
5 herein is impractical. While the precise number of Class members and their identities are unknown
6 to Plaintiff at this time, these Class members are identifiable and ascertainable.

7 28. Common Questions Predominate: There are questions of law and fact common to the
8 proposed Classes that will drive the resolution of this action and will predominate over questions
9 affecting only individual Class members. These questions include, but are not limited to, the
10 following:

- 11 a. Whether Kroger misrepresented material facts and/or failed to disclose material
12 facts in connection with the packaging, marketing, distribution, and sale of the
13 Class Products;
- 14 b. Whether Kroger's use of the challenged packaging, i.e., the *Avocado Oil*
15 *Representation*, constituted false or deceptive advertising;
- 16 c. Whether Kroger engaged in unfair, unlawful and/or fraudulent business
17 practices;
- 18 d. Whether Kroger's unlawful conduct, as alleged herein, was intentional and
19 knowing;
- 20 e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and
21 if so, in what amount;
- 22 f. Whether Plaintiff and the Classes are entitled to an injunctive relief;
- 23 g. Whether Plaintiff and the Classes are entitled to punitive damages, and if so, in
24 what amount; and
- 25 h. Whether Plaintiff and the Classes are entitled to an award of reasonable
26 attorneys' fees, interest, and costs of suit.

27 29. Kroger has engaged in a common course of conduct giving rise to violations of the
28 legal rights sought to be enforced uniformly by Plaintiff on behalf of the proposed Classes. Similar

1 or identical statutory and common law violations, business practices, and injuries are involved. The
2 injuries sustained by members of the proposed Classes flow, in each instance, from a common
3 nucleus of operative fact, namely, Kroger's deceptive packaging and advertising of the Class
4 Products. Each instance of harm suffered by Plaintiff and Class members has directly resulted from
5 a single course of unlawful conduct. Each Class member has been exposed to the same deceptive
6 practice, as the packaging of Class Products: (a) bears the same material *Avocado Oil*
7 *Representation*, and (b) the Class Products do not meet this representation of fact. Therefore,
8 individual questions, if any, pale in comparison to the numerous common questions presented in
9 this action.

10 30. Superiority: Because of the relatively small damages at issue for each individual
11 Class member, no Class member could afford to seek legal redress on an individual basis.
12 Furthermore, individualized litigation increases the delay and expense to all parties and multiplies
13 the burden on the judicial system presented by the complex legal and factual issues of this case.
14 Individualized litigation also presents a potential for inconsistent or contradictory judgments. A
15 class action is superior to any alternative means of prosecution.

16 31. Typicality: The representative Plaintiff's claims are typical of those of the proposed
17 Classes, as all members of the proposed Classes are similarly affected by Kroger's uniform unlawful
18 conduct as alleged herein.

19 32. Adequacy: Plaintiff will fairly and adequately protect the interests of the proposed
20 Classes as her interests do not conflict with the interests of the members of the proposed Classes she
21 seeks to represent, and she has retained counsel competent and experienced in similar class action
22 litigation. The interests of the members of the Classes will be fairly and adequately protected by the
23 Plaintiff and her counsel.

24 33. Kroger has also acted, or failed to act, on grounds generally applicable to Plaintiff
25 and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards
26 of conduct toward the members of the Classes.

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FIRST CLAIM FOR RELIEF
Violation of California’s False Advertising Law
California Business & Professions Code § 17500, *et seq*
(*For the Classes*)

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4 34. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
5 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

6 35. Plaintiff brings this claim individually and on behalf of the members of the proposed
7 Classes against Kroger pursuant to California’s False Advertising Law (“FAL”), Cal. Bus. & Prof.
8 Code § 17500, *et seq.*

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

15 37. Kroger has represented and continues to represent to the public, including Plaintiff
16 and members of the proposed Classes, through its deceptive packaging, that the Class Products are
17 pure avocado oil. Because Kroger has disseminated misleading information regarding the Class
18 Products, and Kroger knows, knew, or should have known, through the exercise of reasonable care,
19 that the *Avocado Oil Representation* is misleading, Kroger has violated the FAL.

20 38. As a result of Kroger’s false advertising, Kroger has and continues to unlawfully
21 obtain money from Plaintiff and members of both Classes. Plaintiff therefore requests that the Court
22 cause Kroger to restore this fraudulently obtained money to her and members of the proposed
23 Classes, to disgorge the profits Kroger made on these transactions, and to enjoin Kroger from
24 violating the FAL or violating it in the same fashion in the future as discussed herein. Otherwise,
25 Plaintiff and members of the proposed Classes may be irreparably harmed and/or denied an effective
26 and complete remedy.

27 39. Plaintiff and members of the proposed Classes have no adequate remedy at law and
28 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to

1 recover the amount of Defendant’s ill-gotten gains, and/or other sums as may be just and equitable.

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

6 40. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
7 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

8 41. Plaintiff brings this claim individually and on behalf of the members of the proposed
9 Classes against Kroger.

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

13 43. Under the UCL, a business act or practice is “unlawful” if it violates any established
14 state or federal law. Kroger’s false and misleading advertising of Class Products was and continues
15 to be “unlawful” because it violates, *inter alia*, the CLRA and the FAL, as alleged herein. As a result
16 of Kroger’s unlawful business acts and practices, Kroger has unlawfully obtained money from
17 Plaintiff, and members of the proposed Classes.

18 44. Under the UCL, a business act or practice is “unfair” if the Kroger’s conduct offends
19 an established public policy, or is immoral, unethical, oppressive, unscrupulous, or substantially
20 injurious to consumers, as the benefits for committing such acts or practices are outweighed by the
21 gravity of the harm to the alleged victims. Kroger’s conduct was and continues to be of no benefit
22 to purchasers of the Class Products, as it is misleading, unfair, unlawful, and is injurious to
23 consumers who rely on the packaging. Deceiving consumers into believing the Class Products are
24 pure avocado oil, when they are not, is of no benefit to consumers. Therefore, Kroger’s conduct was
25 and continues to be “unfair.” As a result of Kroger’s unfair business acts and practices, Kroger has
26 and continues to unfairly obtain money from Plaintiff, and members of the proposed Classes.

27 45. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is
28 likely to deceive members of the consuming public. Kroger’s conduct was and continues to be
fraudulent because it has the effect of deceiving consumers into believing Class Products are pure

1 avocado oil. Because Kroger misled Plaintiff and members of both Classes, Kroger’s conduct was
2 “fraudulent.” As a result of Kroger’s fraudulent business acts and practices, Kroger has and
3 continues to fraudulently obtain money from Plaintiff and members of the proposed Classes.

4 46. Plaintiff requests that the Court cause Kroger to restore this unlawfully, unfairly, and
5 fraudulently obtained money to her, and members of the proposed Classes, to disgorge the profits
6 Kroger made on these transactions, and to enjoin Kroger from violating the UCL or violating it in
7 the same fashion in the future as discussed herein. Otherwise, Plaintiff and members of the proposed
8 Classes may be irreparably harmed and/or denied an effective and complete remedy.

9 47. Plaintiff and members of the proposed Classes have no adequate remedy at law and
10 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to
11 recover the amount of Defendant’s ill-gotten gains, and/or other sums as may be just and equitable.

12 **THIRD CLAIM FOR RELIEF**
13 **Violation of California’s Consumers Legal Remedies Act**
14 **California Civil Code § 1750, *et seq.***
15 **(For the California Consumer Subclass)**

16 48. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
17 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

18 49. Plaintiff brings this claim individually and on behalf of the members of the proposed
19 California Consumer Subclass against Kroger pursuant to California’s Consumers Legal Remedies
20 Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

21 50. The Class Products are a “good” within the meaning of Cal. Civ. Code § 1761(a),
22 and the purchases of the Class Product by Plaintiff and members of the California Consumer
23 Subclass constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

24 51. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
25 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
26 have...” By marketing the Class Products with its current packaging, Kroger has represented and
27 continues to represent that the Class Products have characteristics (i.e., it is pure avocado oil) that it
28 does not have. Therefore, Kroger has violated section 1770(a)(5) of the CLRA.

1 52. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
2 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another.” By marketing the Class Products with their current packaging, Kroger has represented and
4 continues to represent that the Class Products are of a particular standard, quality, or grade (i.e., it is
5 pure avocado oil) which they do not possess. Therefore, Kroger has violated section 1770(a)(7) of the
6 CLRA.

7 53. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not
8 to sell them as advertised.” By marketing the Class Products as pure avocado oil, but not intending to
9 sell Class Products as such (i.e., selling it with the knowledge that it is adulterated), Kroger has violated
10 section 1770(a)(9) of the CLRA.

11 54. At all relevant times, Kroger has known or reasonably should have known that its
12 *Avocado Oil Representation* on the Class Product’s packaging is false and deceptive, and that
13 Plaintiff and other members of the California Consumer Subclass would reasonably and justifiably
14 rely on it when purchasing the Class Products. Nonetheless, Kroger persisted in making the *Avocado*
15 *Oil Representation* on the Class Products’ labels to deceive consumers into believing they are
16 buying and consuming pure avocado oil when they are not.

17 55. Plaintiff and members of the California Consumer Subclass have justifiably relied
18 on Kroger’s misleading *Avocado Oil Representation* when purchasing the Class Products.
19 Moreover, based on the materiality of Kroger’s misleading and deceptive conduct, reliance may be
20 presumed or inferred for Plaintiff and members of California Consumer Subclass.

21 56. Plaintiff and members of the California Consumer Subclass have suffered and
22 continue to suffer injuries caused by Kroger because they would have paid less for the Class
23 Products, or would not have purchased them at all, had they known that the *Avocado Oil*
24 *Representation* was untrue.

25 57. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a declaration of venue,
26 attached as **Exhibit A** to this Complaint.

27 58. On October 9, 2023, Plaintiff, by and through her counsel, sent a notice and demand
28 letter by certified mail to Kroger of her intent to pursue claims under the CLRA, and an opportunity

1 to cure, consistent with Cal. Civ. Code § 1782. Kroger received this notice and demand letter on
2 October 13, 2023, but has done nothing to rectify the unlawful conduct described herein.

3 59. Because Kroger has failed to fully rectify or remedy the damages caused after waiting
4 more than the statutorily required 30 days after Kroger received the foregoing notice and demand
5 letter, Plaintiff is timely filing this Complaint for damages as permitted under Cal. Civ. Code §
6 1782(d). Plaintiff also requests an award of actual and punitive damages, attorneys' fees and costs,
7 and any other relief that the Court deems proper, pursuant to Cal. Civ. Code § 1780(a).

8 60. Plaintiff and members of the proposed Classes have no adequate remedy at law and
9 are therefore entitled to restitution, disgorgement, and/or the imposition of a constructive trust to
10 recover the amount of Defendant's ill-gotten gains, and/or other sums as may be just and equitable.

11 **FOURTH CLAIM FOR RELIEF**
12 **Breach of Express Warranty**
13 **California Commercial Code § 2313**
14 ***(For the Classes)***

15 61. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
16 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

17 62. Plaintiff brings this claim individually and on behalf of the members of the proposed
18 Classes against Kroger.

19 63. California's express warranty statute provides that "(a) Any affirmation of fact or
20 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of
21 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,"
22 and "(b) Any description of the goods which is made part of the basis of the bargain creates an
23 express warranty that the goods shall conform to the description." Cal. Com. Code § 2313.

24 64. Kroger has expressly warranted on the Class Products' packaging that they are pure
25 avocado oil through the *Avocado Oil Representation*.

26 65. This representation about the Class Products is: (a) an affirmation of fact or promise
27 made by Kroger to consumers that Class Products are pure avocado oil; (b) became part of the basis
28 of the bargain to purchase the Class Products when Plaintiff and other consumers relied on the
representation; and (c) created an express warranty that the Class Products would conform to the

1 affirmation of fact or promise. In the alternative, the representation about the Class Products is a
2 description of goods which were made as part of the basis of the bargain to purchase the Class
3 Products, and which created an express warranty that the Class Products would conform to the Class
4 Products' description.

5 66. Plaintiff and members of the Classes reasonably and justifiably relied on the
6 foregoing express warranties, believing that the Class Products did in fact conform to those
7 warranties.

8 67. Kroger has breached the express warranties made to Plaintiff and members of the
9 proposed Classes by failing to produce the Class Products in accordance with the *Avocado Oil*
10 *Representation*, as expressly warranted on the packaging.

11 68. Plaintiff and members of the proposed Classes paid a premium price for the Class
12 Products but did not obtain the full value of the Class Products as represented. If Plaintiff and
13 members of the proposed Classes had known of the true nature of the Class Products, they would
14 not have been willing to pay the premium price charged in the market, or would not have purchased
15 them at all. As a result, Plaintiff and members of the Classes suffered injury and deserve to recover
16 all damages afforded under the law.

17 69. Within a reasonable amount of time after Plaintiff discovered that Kroger did in fact
18 breach the express warranty, Plaintiff notified Kroger of the breach. *See supra* ¶ 58.

19 **FIFTH CLAIM FOR RELIEF**
20 **Breach of Implied Warranty**
21 **California Commercial Code § 2314 (2)(f)**
22 **(For the Classes)**

23 70. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
24 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

25 71. Plaintiff brings this claim individually and on behalf of the members of the
26 proposed Classes against Kroger.

27 72. California's implied warranty of merchantability statute provides that "a warranty
28 that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant
with respect to goods of that kind." Cal. Com. Code § 2314(1).

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

4 74. Kroger is a merchant with respect to the sale of the Class Products. Therefore, a
5 warranty of merchantability is implied in every contract for sale of the Class Products to California
6 consumers.

7 75. By advertising the Class Products with its current packaging, Kroger made an
8 implied promise that the Class Products are pure avocado oil. The Class Products do not, however,
9 “conform to the promises . . . made on the container or label” because they are not pure avocado oil.
10 Plaintiff, as well as consumers, did not receive the goods as impliedly warranted by Kroger to be
11 merchantable.

12 76. Therefore, the Class Products are not merchantable under California law and
13 Kroger has breached its implied warranty of merchantability with respect to the Class Products.

14 77. If Plaintiff and members of the Classes had known that the Class Products were not
15 pure avocado oil, they would not have been willing to pay the premium price associated with them,
16 or would not have purchased them at all. Therefore, as a direct and/or indirect result of Kroger’s
17 breach, Plaintiff and members of the Classes have suffered injury and deserve to recover all
18 damages afforded under the law.

19 78. Within a reasonable amount of time after Plaintiff discovered that Kroger did in fact
20 breach the implied warranty, Plaintiff notified Kroger of the breach. *See supra* ¶ 58.

21 **SIXTH CLAIM FOR RELIEF**
22 **Intentional Misrepresentation**
(for the Classes)

23 79. Plaintiff repeats the allegations contained in paragraphs 1-33 above as if fully set
24 forth herein and, to the extent necessary, pleads this cause of action in the alternative.

25 80. Plaintiff brings this claim individually and on behalf of the members of the proposed
26 Classes against Kroger.

27 81. Kroger marketed the Class Products in a manner indicating that it is pure avocado
28 oil. Therefore, Kroger has made misrepresentations about the Class Products.

- 1 D. An award of injunctive and other equitable relief as is necessary to protect the
- 2 interests of Plaintiff and the Class members, including, *inter alia*, an order prohibiting Kroger from
- 3 engaging in the unlawful acts described above;
- 4 E. An award of all economic, monetary, actual, consequential, and compensatory
- 5 damages caused by Kroger's conduct;
- 6 F. An award of punitive damages;
- 7 G. An award of nominal damages;
- 8 H. An award to Plaintiff and her counsel of reasonable expenses and attorneys' fees;
- 9 I. An award to Plaintiff and the proposed Classes of pre and post-judgment interest, to
- 10 the extent allowable; and
- 11 J. For such further relief that the Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

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

15
16 DATED: February 23, 2024

THE WAND LAW FIRM, P.C.

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18 By: _____
19 Aubry Wand

20 **FARUQI & FARUQI, LLP**
21 Lisa T. Omoto

22 *Attorneys for Plaintiff and the Putative*
23 *Classes*

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