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12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN MATEO**

14 YOLANDA PITRE, on behalf of herself and all  
15 others similarly situated

16 Plaintiff,

17 v.

18 KEVITA INC.

19 Defendant.

Case No. 24-CIV-04791

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR JURY TRIAL**

Electronically  
**FILED**  
by Superior Court of California, County of San Mateo  
ON 8/1/2024  
By /s/ Una Finau  
Deputy Clerk

**INTRODUCTION**

1  
2 1. Plaintiff Yolanda Pitre (“Plaintiff”) brings this action for herself and on behalf of all  
3 others in California who purchased one or more containers of *Sparkling Lemonade with Prebiotics*  
4 (“the Product”) created, manufactured, marketed and/or sold by KeVita Inc. (“Defendant”).

5 2. This action seeks to redress Defendant’s false and misleading marketing campaign  
6 which deceptively claims that its lemonade Product promotes gut health when, in fact, it is  
7 essentially a sweetened sparkling water wrapped in an undeserved health halo.

8  
9 3. Nearly 40% of all adults now seek out “functional beverages” with ingredients that  
10 claim to further wellness.<sup>1</sup> The addition of so-called “prebiotic” ingredients is the latest marketing  
11 trend in the highly competitive carbonated beverage market.<sup>2</sup> Recently, “a growing interest in gut  
12 health has led to a plethora of processed foods with added fiber, including ... carbonated prebiotic  
13 drinks.”<sup>3</sup> Because plant-based fiber provides nourishment for beneficial gut microbes and most  
14 Americans do not consume enough fiber from food sources, fiber-infused beverages promise a tasty,  
15 convenient (but expensive) boost to the microbiome.<sup>4</sup>  
16

17 4. To profit from consumers’ well placed focus on improving gut health, the front of the  
18 can of Defendant’s *Sparkling Lemonade with Prebiotics* product line (which comes in Classic,  
19  
20

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21 <sup>1</sup> Rachel Metzger Warren. *Are Prebiotic Sodas and Other Wellness Drinks Really Good for You?* The  
22 Washington Post (May 27, 2024), <https://www.washingtonpost.com/wellness/2024/05/27/probiotic-green-beverages-health-promises/> (last viewed July 25, 2024).

23 <sup>2</sup> Dani Blum, *Are Prebiotics Important for Gut Health?*. New York Times (October 28, 2022),  
24 <https://www.nytimes.com/2022/10/28/well/eat/prebiotic-supplements-gut-health.html> (noting that  
from 2022 to 2030, the prebiotic market was expected to grow about 15% a year).

25 <sup>3</sup> Maria Godoy, *Prebiotic Sodas Promise to Boost Your Gut Health. Here’s What to Eat Instead*. NPR.  
26 August 8, 2023. <https://www.npr.org/sections/health-shots/2023/08/08/1192329196/gut-health-fiber-probiotic-olipop-poppi> (last viewed July 15, 2024).

27 <sup>4</sup> Sales of such beverages soared after a “marketing blitz” on TikTok. See Teddy Amenabar and  
28 Anahad O’Connor. *Prebiotic Sodas Claim to Boost your Health. Experts Are Skeptical*. Washington  
Post (April 4, 2023), <https://www.washingtonpost.com/wellness/2023/04/03/prebiotic-soda-olipop-poppi>, (last viewed on July 15, 2024).

1 Mango, and Peach flavors) prominently features the phrase “PREBIOTICS FOR GUT HEALTH,”  
2 in all capital letters, while the back encourages consumers to “Trust your gut ... your tummy .. will  
3 thank you!” The images below depict the front and back of a representative can:



18  
19 5. A reasonable consumer would interpret the phrase “PREBIOTICS FOR GUT  
20 HEALTH” and “Trust your gut .. your tummy ... will thank you” as representations that a serving of  
21 the product is good for the gut microbiome.

22 6. In fact, however, Defendant’s product is not beneficial for the gut microbiome  
23 because it contains just three grams of dietary fiber derived from acacia, when consumption of at  
24 least 10 grams of this fiber is necessary to improve gut health, and it contains 4 grams of added  
25 sugars, which negatively impact the functioning of the gut biome

26  
27 7. Defendant’s “PREBIOTICS FOR GUT HEALTH” and “Trust your gut .. your  
28 tummy ... will thank you” is likely to deceive reasonable consumers like Plaintiff by suggesting that

1 the Product is beneficial for gut health when it is not.

2 8. Consumers, like Plaintiff, who purchased *Sparkling Lemonade with Prebiotics*  
3 Products have been deceived by Defendant's false and misleading claims that this Product is  
4 beneficial for gut health when it is not.

5 9. As a result of their reliance on Defendant's misrepresentations, Plaintiff and Class  
6 Members have suffered an ascertainable loss of money, including, but not limited to, out of pocket  
7 costs incurred in purchasing *Sparkling Lemonade with Prebiotics* or having paid a prime premium for  
8 the Product as compared to other sparkling beverages that don't make the same false and deceptive  
9 claims.  
10

11 10. Plaintiff brings this action against Defendant on behalf of herself and Class Members  
12 who purchased the Products during the applicable statute of limitations period (the "Class Period").

13 **THE PARTIES**

14 **PLAINTIFF YOLANDA PITRE**

15 11. Plaintiff Yolanda Pitre is a citizen and resident of the State of California, County of  
16 San Mateo.  
17

18 12. Plaintiff Yolanda Pitre purchased Defendant's *Sparkling Lemonade with Prebiotics* at  
19 her local Target store in the County of San Mateo on two occasions, the first time in or about  
20 November 2023 and more recently, in or about February 2024.

21 13. Prior to purchasing *Sparkling Lemonade with Prebiotics*, Plaintiff observed the  
22 deceptive "Prebiotics for gut health" claim on the front label.  
23

24 14. Prior to purchasing the Product, Plaintiff saw the product's packaging for *Sparkling*  
25 *Lemonade with Prebiotics* and, in particular, the representation on the front that the product contains  
26 "prebiotics for gut health."

27 15. Plaintiff purchased the *Sparkling Lemonade with Prebiotics* reasonably believing that  
28 Defendant's product contains prebiotics that were beneficial for her gut health.

1           16. Plaintiff is aware of the health benefits of prebiotics, and reasonably believed she was  
2 purchasing a product that was healthy for her gut microbiome because it contained prebiotics.

3           17. Plaintiff drank the Product as directed but found it to be ineffective to improve her  
4 gut health.

5           18. Had Plaintiff known that Defendant's *Sparkling Lemonade with Prebiotics* did not  
6 contain prebiotics beneficial for her gut, she would not have purchased Defendant's products or, at  
7 the very least, would have paid less for it.

8  
9 **DEFENDANT**

10           19. Defendant KeVita, Inc. is a California corporation with its principal place of business  
11 in Oxnard, California.

12           20. Defendant markets, sells, and distributes various beverage products, including  
13 *Sparkling Lemonade with Prebiotics*.

14           21. Defendant markets, sells, and distributes *Sparkling Lemonade with Prebiotics* in  
15 California and throughout the United States, including, but not limited to, through mass retailers  
16 such as Target, as well as on-line retailers such as Target.com.

17           22. Defendant is responsible for the marketing, advertising, labeling, and packaging of  
18 the *Sparkling Lemonade with Prebiotics*.

19  
20 **JURISDICTION & VENUE**

21           23. This Court has jurisdiction over this action pursuant to California Code of Civil  
22 Procedure § 410.10. Personal jurisdiction over Defendant is proper because Defendant is  
23 incorporated in California and has purposefully availed itself of the privilege of conducting business  
24 activities in California, including but not limited to, testing, manufacturing, marketing, distributing,  
25 and/or selling *Sparkling Lemonade with Prebiotics* to Plaintiff and other prospective Class Members.

26           24. This class action is brought pursuant to California Code of Civil Procedure § 382.  
27 Plaintiff is a California resident. The monetary damages and restitution sought by Plaintiff and  
28

1 prospective Class Members exceed the minimum jurisdictional limits of the Superior Court and will  
2 be established according to proof at trial.

3 25. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395,  
4 395.5 and California Civil Code § 1780 because Defendant is doing business in San Mateo County  
5 and Plaintiff purchased *Sparkling Lemonade with Prebiotics* in San Mateo County. Plaintiff's  
6 Declaration, as required under Cal. Civil Code § 1780(d), which reflects that Defendant is doing  
7 business in San Mateo County, California, is filed concurrently as Exhibit 1.

### 8 FACTUAL ALLEGATIONS

9  
10 26. Consumers increasingly are becoming aware of the benefits of living a healthy  
11 lifestyle and of maintaining a healthy gut microbiome through the consumption of dietary fiber.

12 27. Prebiotics are ingredients in certain foods, such as garlic, onions, bananas, asparagus,  
13 and whole grain products, which the intestines cannot fully digest and which “act as nutrition for gut  
14 bacteria.”<sup>5</sup> Non-digestible complex carbohydrates found in fruits, vegetables and other plant  
15 material resist the body’s absorption process and travel intact to the colon, providing a “feast” for  
16 gut bacteria.<sup>6</sup> In doing so, they promote high microbiome diversity -- defined as one “equipped to  
17 process a diverse array of dietary fiber to produce health-promoting compounds for our body.”<sup>7</sup> A  
18 high microbiome diversity has been linked to better health outcomes including a reduced risk of  
19 colorectal cancer and improved intestinal absorption of dietary calcium.<sup>8</sup> Experts generally  
20  
21  
22

23 <sup>5</sup> Lisa Catanese, ELS, *Prebiotics: Understanding Their Role in Gut Health*, Harvard Health Publishing  
24 (May 15, 2024), <https://www.health.harvard.edu/nutrition/prebiotics-understanding-their-role-in-gut-health> (last visited July 15, 2024).

25 <sup>6</sup> Maya Shetty, *Probiotics, Prebiotics and Postbiotics: What Are They and Why Are They Important?*  
26 *Stanford Lifestyle Magazine* (April 8, 2024), <https://longevity.stanford.edu/lifestyle/2024/04/08/probiotics-prebiotics-and-postbiotics-what-are-they-and-why-are-they-important/> (last visited July 25, 2024).

27 <sup>7</sup> *Id.*

28 <sup>8</sup> *Id.*

1 recommend the consumption of fibrous foods over supplements to ensure a “diverse array of fiber  
2 types.”<sup>9</sup>

3 28. Regrettably, Defendant can lay no legitimate claim as to these properties benefiting  
4 its consumers as its allegedly prebiotic ingredient is not included in sufficient quantity to offer any  
5 health benefit from the consumption of a single can.

6 29. The ingredient list for the Product demonstrates that its fiber content derives from the  
7 inclusion of acacia, also known as gum arabica, commonly added to soft drinks as an emulsifier and  
8 stabilizer because it binds sugar to the drink.<sup>10</sup>

CONTAINS 19% JUICE

<b>Nutrition Facts</b>	
Serving size	1 can
Amount Per Serving	
<b>Calories</b>	<b>60</b>
	% Daily Value*
Total Fat 0g	0%
Sodium 25mg	1%
Total Carbohydrate 15g	5%
Dietary Fiber 3g	12%
Total Sugars 9g	
Includes 4g Added Sugars	8%
Protein 0g	
Calcium 40mg	2%
Not a significant source of saturated fat, trans fat, cholesterol, vitamin D, 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.	

INGREDIENTS: SPARKLING WATER, APPLE JUICE CONCENTRATE\*, MANGO PUREE\*, ACACIA\*, CANE SUGAR\*, LEMON JUICE CONCENTRATE\*, NATURAL FLAVORS\*, FRUIT AND VEGETABLE JUICE FOR COLOR\*, CITRIC ACID, PURIFIED STEVIA LEAF EXTRACT\*, \*CERTIFIED ORGANIC INGREDIENT

26 <sup>9</sup> Shetty, *supra*.

27 <sup>10</sup> Rich McEachran, *Gum Arabica: The Invisible Ingredient in Soft Drink Supply Chains*. The Guardian  
28 (August 16, 2013). <https://www.theguardian.com/sustainable-business/gum-arabic-soft-drink-supply-chain> (last visited July 15, 2024).

1           30.     Although a study has suggested that the consumption of gum arabica powder  
2 dissolved in water can provide prebiotic benefits at a dose of 10 grams per day taken over four  
3 weeks,<sup>11</sup> a single serving of the Product contains only 3 grams of dietary fiber. This means that, even  
4 accepting the findings of that study, a consumer would have to drink more than three cans a day for a  
5 month to derive any meaningful benefit to the gut microbiome.

6           31.     Consuming three cans of the Product would result in the consumption of 12 grams of  
7 added sugar per day, roughly a quarter of the recommended daily maximum of added sugar under  
8 current US dietary guidelines,<sup>12</sup> and half the 25 grams of added sugar recommended as a daily  
9 maximum for women by the American Heart Association.<sup>13</sup>

11          32.     Sugar sweetened beverages account for 24% of the added sugar intake for Americans  
12 aged 1 and older.<sup>14</sup> The U.S. Department of Agriculture cautions that “[w]hen added sugars in foods  
13 and beverages exceed 10 percent of calories, a healthy dietary pattern within calories limits is very  
14 difficult to achieve.” A diet that is high in processed food and added sugar can eliminate healthful  
15 bacteria in the gut and worsen early metabolic disease.<sup>15</sup> This is because “sugar eliminates the  
16

17 \_\_\_\_\_  
18 <sup>11</sup> Wim Calame et al., *Gum Arabica Establishes Prebiotic Functionality in Healthy Human Volunteers*  
19 *in a Dose-Dependent Manner*, 2008 British Journal of Nutrition 100: 1269-1275 (December 1, 2008),  
20 available at <https://www.cambridge.org/core/journals/british-journal-of-nutrition/article/gum-arabic-establishes-prebiotic-functionality-in-healthy-human-volunteers-in-a-dosedependent-manner/328AAF4058E37D1C198B540DEC9DA148>.

21 <sup>12</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary*  
22 *Guidelines for Americans, 2020-2025*. 9th Edition. December 2020. Available at  
[https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf#page=31](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf#page=31) (last visited July 25, 2024).

23 <sup>13</sup> American Heart Association. *Added Sugars*, (May 22, 2024), <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/added-sugars> (last visited July 25, 2024).

24 <sup>14</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary*  
25 *Guidelines for Americans, 2020-2025*. 9th Edition. December 2020. Available at  
26 [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf#page=31](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf#page=31)

27 <sup>15</sup> Yoshinaga Kawano, et al., *Microbiota Imbalance Induced By Dietary Sugar Disrupts Immune-*  
28 *mediated Protection From Metabolic Syndrome*, 185 Cell 19: 3501-19 (September 15, 2022). available  
at <https://doi.org/10.1016/j.cell.2022.08.005>; See also Han Fang et al., *Dietary Sugar Lowers Immunity and Microbiota That Protect Against Metabolic Disease*, 34 Cell Metabolism, 10:1422-1424

1 filamentous bacteria [in the gut], and the protective Th17 cells disappear as a consequence.”<sup>16</sup>

2 33. Thus, any hypothetically beneficial effects to the gut microbiome derived from  
3 consuming enough cans of Product to reach the 10-gram dosage at which acacia shows potential as  
4 an effective prebiotic supplement would be reduced or eliminated by the detrimental effects to the  
5 gut microbiome and other adverse health effects of 12 grams of added sugars. Notably, in the 2008  
6 study discussed in paragraph 30, *supra*, the gum arabica powder was dissolved in water with no added  
7 sugars or sweeteners.

8 34. Moreover, experts caution that “it is not clear that prebiotic fibers added to processed  
9 foods and drinks have the same health benefits that come from eating a variety of whole foods that  
10 are naturally high in fiber.”<sup>17</sup> Purified fibers added to foods are “simpler structures” that are  
11 “fermented faster” in the gut, and thus might not even reach the microbes of the large intestine.<sup>18</sup> In  
12 addition, because the fiber all comes from one source – acacia – consumers are “only getting the  
13 type of prebiotic added in, while [they] would likely benefit more from the variety of prebiotics in  
14 fiber-rich foods.”<sup>19</sup> As one expert cautioned, “it’s very difficult to imagine how putting one purified  
15 prebiotic into this [intestinal] community could foster the kind of biodiversity you need in your gut  
16 microbiome.”<sup>20</sup> To the contrary, “[t]he consumption of a singular fiber restricts the nutritional  
17 support available for our microbiome, and can limit the overall diversity that is crucial for a healthy  
18  
19  
20  
21

22 (October 4, 2022), available at <https://doi.org/10.1016/j.cmet.2022.09.006>.

23 <sup>16</sup> Columbia University Irving Medical Center, *Sugar Disrupts Microbiome, Eliminates Protection*  
24 *Against Obesity and Diabetes* (August 29, 2022), [https://www.cuimc.columbia.edu/news/sugar-](https://www.cuimc.columbia.edu/news/sugar-disrupts-microbiome-eliminates-protection-against-obesity-and-diabetes)  
25 [disrupts-microbiome-eliminates-protection-against-obesity-and-diabetes](https://www.cuimc.columbia.edu/news/sugar-disrupts-microbiome-eliminates-protection-against-obesity-and-diabetes) (last viewed on July 15,  
26 2024).

27 <sup>17</sup> Godoy, *supra*.

28 <sup>18</sup> *Id.*

<sup>19</sup> Warren, *supra*.

<sup>20</sup> Blum, *supra*.

1 microbiome.”<sup>21</sup>

2 35. Consumers are increasingly aware of the dangers of ultra-processed foods and are  
3 willing to pay a higher price for products that are considered healthier and more natural. Businesses,  
4 including Defendant, prominently promote “gut health” to capitalize on consumers’ belief in the  
5 health and nutritional benefits of prebiotics, when in fact each serving of the Product does not  
6 contain enough dietary fiber to have benefits for gut health, but rather contains added sugars, which  
7 can negatively impact gut health.  
8

9 36. Class Members are exposed to the front labels and front outer packaging of *Sparkling*  
10 *Lemonade with Prebiotics* where its “Prebiotics for gut health” statement is prominently displayed,  
11 as well as the back label where “trust your gut ... your tummy ... will thank you,” is displayed.

12 37. Class Members scan the front labels and outer packaging of competing cans of  
13 beverages for information about the products, and are not expected to look beyond representations  
14 on the labels to discover the truth about the label representations. Specifically, the “prebiotics for  
15 gut health” and “your tummy ... will thank you” statements are likely to deceive Class Members  
16 because it implies that consumption of a can of the Product is healthier than other beverages because  
17 it contains prebiotics that will improve gut health. In fact, a single can of *Sparkling Lemonade with*  
18 *Prebiotics* does not contain a sufficient quantity or quality of prebiotics to have any meaningful  
19 impact on gut health.  
20

21 38. As a result, consumers like Plaintiffs are deceptively induced to purchase what is  
22 essentially sweetened sparkling water at a premium price.<sup>22</sup>  
23  
24

25 \_\_\_\_\_  
26 <sup>21</sup> Shetty, *supra*.

27 <sup>22</sup> A single 12 fluid ounce can of KeVita Sparkling Lemonade with Prebiotics retails for \$2.49  
28 (\$0.21/fluid ounce) at Target.com. In contrast, a search of Target.com on July 15, 2024, showed that  
unsweetened Spindrift Lemon sparkling water retails for \$0.08/fluid ounce and San Pellegrino Zero  
Sparkling Lemonade retails for \$0.13/fluid ounce.

1 39. Defendant's false, misleading, and deceptive misrepresentations and omissions are  
2 likely to continue to deceive and mislead reasonable consumers and the public, as they have already  
3 deceived and misled Plaintiff and the Class Members.

4 40. As a result of their reliance on Defendant's gut health claims, consumers have  
5 suffered an ascertainable loss of money, including, but not limited to, out of pocket costs incurred in  
6 purchasing *Sparkling Lemonade with Prebiotics*. Further, as a result of its deceptive marketing and  
7 unfair competition with other similar manufacturers and brands, Defendant realized sizable profits.  
8

9 **CLASS DEFINITION AND ALLEGATIONS**

10 41. Plaintiff brings this lawsuit as a class action on behalf of herself and all others  
11 similarly situated as members of the proposed Class pursuant to California Code of Civil Procedure  
12 § 382.

13 42. All claims alleged herein arise under California law for which Plaintiff seeks relief  
14 authorized by California law.

15 43. The class Plaintiff seeks to represent ("The Class Members") is defined as:  
16  
17 All consumers who, within the applicable statute of limitations period, purchased  
18 *Sparkling Lemonade with Prebiotics* in the State of California (whether online or in-  
19 person) manufactured, marketed, distributed, and/or sold by Defendant which  
20 Defendant warranted as containing "prebiotics for gut health" (the "Class Product").

21 44. Excluded from the class are (1) Defendant, any entity or division in which Defendant  
22 has a controlling interest, and their legal representatives, officers, directors, assigns and successors;  
23 (2) the judge to whom this case is assigned and the Judge's staff; (3) and the Judge sitting in the  
24 presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4)  
25 those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiff  
26 reserves the right to amend the Class definitions if further discovery and further investigation reveal  
27 that the Class should be expanded or otherwise modified.

28 45. There is a well-defined community of interest in the litigation and the Class is readily

ascertainable.

1  
2 46. **Numerosity**. This action is appropriately suited for a class action. The members of  
3 the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is  
4 informed, believes, and thereon alleges, that the proposed Class contains thousands of purchasers of  
5 the Class Product who have been damaged by Defendant's conduct as alleged herein. The precise  
6 number of Class members is unknown to Plaintiff.

7  
8 47. **Existence and Predominance of Common Questions of Law and Fact**. This  
9 action involves questions of law and fact common to the Class. The common legal and factual  
10 questions include, but are not limited to, the following:

- 11 a. Whether Defendant's conduct, as alleged herein, constitutes a violation of Cal.  
12 Bus. & Prof. Code § 17200, *et. seq.*;
- 13 b. Whether Defendant violated California Consumer Legal Remedies Act (Cal. Civil  
14 Code §§ 1750 *et seq.*;
- 15 c. Whether Defendant violated California Business and Professions Code §§ 1750 *et*  
16 *seq.*
- 17 d. Whether Defendant's labeling, advertising, marketing, and/or selling of the Class  
18 Products was and/or is false, fraudulent, deceptive, and/or misleading;
- 19 e. Whether the food products at issue were misbranded as a matter of law;
- 20 f. Whether representations regarding whether the Class Product contains "prebiotics  
21 for gut health" and "your tummy .. will thank you" are material to a reasonable  
22 consumer;
- 23 g. Whether Class members are entitled to payment of actual, incidental,  
24 consequential, exemplary and/or statutory damages, plus interest thereon and, if  
25 so, the nature and scope of such relief.

26 48. **Typicality**. Plaintiff's claims are typical of the claims of the members of the Class  
27 because, *inter alia*, all Class members have been injured through the uniform misconduct described  
28 above and were subject to Defendant's misrepresentations. Moreover, Plaintiff's claims are typical  
of the Class members' claims. Plaintiff is advancing the same claims and legal theories on behalf of

1 herself and all members of the Class.

2 49. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the  
3 interests of the members of the Class. Plaintiff purchased a Class Product, and she was harmed by  
4 Defendant's deceptive misrepresentations. Plaintiff has therefore suffered an injury in fact as a  
5 result of Defendant's conduct, as did all Class members who purchased Class Product. Plaintiff has  
6 retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to  
7 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the  
8 Class.  
9

10 50. **Superiority.** A class action is superior to other methods for the fair and efficient  
11 adjudication of this controversy. The damages or other financial detriment suffered by individual  
12 Class members is relatively small compared to the burden and expense that would be entailed by  
13 individual litigation of their claims against Defendant. It would be virtually impossible for a  
14 member of the Class, on an individual basis, to obtain effective redress for the wrongs done to him  
15 or her. Further, even if the Class members could afford such individualized litigation, the court  
16 system could not. Individualized litigation would create the danger of inconsistent or contradictory  
17 judgments arising from the same set of facts. Individualized litigation would also increase the delay  
18 and expense to all parties and the court system from the issues raised by this action. By contrast, the  
19 class action device provides the benefits of adjudication of these issues in a single proceeding,  
20 economies of scale, and comprehensive supervision by a single court, and presents no management  
21 difficulties under the circumstances here.  
22

23 51. Plaintiff seeks monetary damages, including statutory damages on behalf of the entire  
24 Class. Unless a Class is certified, Defendant will be allowed to profit from their deceptive practices,  
25 while Plaintiff and the members of the Class will have suffered damages.  
26  
27  
28

**COUNT I**

**Violation of the Consumer Legal Remedies Act (“CLRA”)  
Cal. Civ. Code § 1750, *et. seq.***

1  
2  
3  
4 52. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1  
5 through 51 as though fully set forth herein.

6 53. At all relevant times, Plaintiff was a “consumer” as defined by Cal. Civ. Code §  
7 1761(d).

8 54. At all relevant times, the Products were “goods” as defined by Cal. Civ. Code §  
9 1761(a).

10 55. At all relevant times, Defendant was a “person” as defined by Cal. Civ. Code §  
11 1761(c).

12 56. Cal. Civ. Code § 1770(a) prohibits “unfair or deceptive acts or practices undertaken  
13 by any person in a transaction intended to result or which results in the sale or lease of goods or  
14 services to any consumer[.]”

15  
16 57. Defendant violated and continues to violate the CLRA by engaging in the following  
17 deceptive practices proscribed by Cal. Civ. Code § 1770(a) in connection with the transactions  
18 intended to result in, and that did result in, the sale of the Class Product at issue herein to Plaintiff  
19 and members of the Class in violation of, *inter alia*, the following provisions:

20  
21 a. Representing the goods and services have characteristics, uses, or benefits which they  
22 do not have (Cal. Civ. Code § 1770(a)(5));

23 b. Representing the goods and services are of a particular standard, quality, or grade if  
24 they are of another (Cal. Civ. Code § 1770(a)(7)); and

25 c. Advertising goods and services with the intent not to sell them as advertised (Cal.  
26 Civ. Code § 1770(a)(9)).

27  
28 58. Plaintiff and members of the class are reasonable consumers who expected the

1 Products to have the characteristics as represented and/or would have considered the omitted facts  
2 detailed herein material to their purchase decision.

3 59. The representations regarding the Products were material to Plaintiff and members of  
4 the Class. Defendant intended that Plaintiff and Class members would rely on these representations  
5 and they did, in fact, rely on the representations.

6 60. As a result of Defendant's conduct and unfair or deceptive acts or practices, Plaintiff  
7 Ms. Pitre and the class suffered actual damages in that the Products are not as advertised and are not  
8 worth the amount paid, and Defendant has deprived Plaintiff and the class of the benefit of their  
9 bargain.  
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11 61. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing by certified  
12 mail served in conjunction with this Complaint of its violations of § 1770 described above and  
13 demanded that it correct the problems associated with the actions detailed above and give notice to  
14 all affected consumer of Defendant's intent to do so. If Defendant does not agree to rectify the  
15 problems identified and give notice to all affected consumers within 30 days of the date of written  
16 notice, Plaintiff will amend this Complaint to seek actual, punitive and statutory damages, as  
17 appropriate.  
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19 **COUNT II**

20 **Violation of the False Advertising Law ("FAL")**  
21 **Cal. Bus. & Prof. Code § 17500, *et seq.***

22 62. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1  
23 through 61 as though fully set forth herein.

24 63. Defendant made untrue, false, deceptive, and/or misleading statements in connection  
25 with the advertising and marketing of the Class Product.

26 64. Defendant made representations and statements that led reasonable consumers to  
27 believe that the Class Product they were purchasing contained "prebiotics for gut health," and that  
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1 their “tumm[ies] ... will thank” them, when in fact it does not contain prebiotics in sufficient  
2 quantity or quality to have any meaningful prebiotic effect on the consumer’s guts. In addition,  
3 Defendant omitted that consuming the Product in sufficient quantity to have a prebiotic effect would  
4 pose a significant risk to the health and well-being of Plaintiff and other Class Members.

5 65. Defendant knew or should have known, through the exercise of reasonable care, that  
6 its representations were false and misleading and likely to deceive consumers and cause them to  
7 purchase Defendant’s products.

8 66. Plaintiff and the Class members relied to their detriment upon Defendant’s false,  
9 misleading, and deceptive advertising and marketing practices. Had Plaintiff and the members of the  
10 Class been adequately informed and not intentionally deceived by Defendant, they would have  
11 refrained from purchasing the Class Products or paid less for them.

12 67. Defendant’s acts and omissions are likely to deceive the general public.

13 68. Defendant engaged in these false, misleading, and deceptive advertising practices to  
14 increase its profits. Accordingly, Defendant has engaged in false advertising, as defined and  
15 prohibited by Section 17500, *et seq.* of the California Business and Professions Code.

16 69. As a direct and proximate result of such actions, Plaintiff and the Class are entitled to  
17 full restitution of all monies acquired by Defendant as a result of its false, misleading, and deceptive  
18 advertising practices.

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21 **COUNT III**

22 **Violation of the Unfair Competition Law (“UCL”)**  
23 **Cal. Bus. & Prof. Code § 17200, *et seq.***

24 70. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1  
25 through 69 as though fully set forth herein.

26 71. California’s Unfair Competition Law (“UCL”) defines unfair business competition to  
27 include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue  
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1 or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

2 72. Plaintiff and other Class Members are reasonable consumers who expect  
3 manufacturers, like Defendant, to provide accurate and truthful representations regarding the health  
4 benefits of their products. Reasonable consumers, like Plaintiff, rely on those representations in  
5 determining whether to purchase a particular product and consider that information important to their  
6 purchase decision.

7 73. Defendant violated the UCL by misrepresenting that the Class Product contains  
8 “prebiotics for gut health,” and that their “tumm[ies] ... will thank” them, when in fact it does not  
9 contain prebiotics in sufficient quantity or quality to have a meaningful impact on gut health.

10 74. By engaging in the above-described acts and practices, Defendant has committed an  
11 unfair business practice within the meaning of the UCL. Consumers suffered substantial injury they  
12 could not reasonably have avoided other than by not purchasing the Products.

13 75. A business act or practice is “unlawful” under the UCL if it violates any other law or  
14 regulation. The acts and practices of Defendant are unlawful business acts and practices by virtue of  
15 its violations of Cal. Civ. Code § 1750 *et seq.* and Cal. Bus. & Prof. Code §§ 17500, *et seq.*

16 76. Plaintiff and the other Class Members had no way of reasonably knowing that the  
17 Product’s prebiotic representations were false. Thus, they could not reasonably have avoided the  
18 injury each of them suffered.

19 77. As a result of the conduct described above, Defendant has been unjustly enriched at  
20 the expense of Plaintiff and the members of the Class. Specifically, Defendant has been unjustly  
21 enriched by obtaining revenues and profits that it would not otherwise have obtained absent its false,  
22 misleading, and deceptive conduct. Additionally, Plaintiff and the Class seek restitution if monetary  
23 damages are not available.  
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**RELIEF REQUESTED**

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2       **WHEREFORE**, Plaintiff, on behalf of herself and all others similarly situated, respectfully  
3 requests that the Court enter judgment against Defendant as follows:

4       A.     An order certifying this action as a class action as soon as practicable, with the Class  
5 as defined above, designating Plaintiff as the named Class representative, and designating the  
6 undersigned as Class Counsel.

7       B.     An award to Plaintiff and Class Members for compensatory exemplary, and statutory  
8 damages, including interest;

9       C.     A declaration requiring Defendant to comply with various provisions of California's  
10 False Advertising Law and CLRA alleged herein and to make all the required representations;

11       D.     A declaration that the Defendant must disgorge, for the benefit of Class Members, all  
12 or part of the ill-gotten profits it received from the sale of *Sparkling Lemonade with Prebiotics*.

13       E.     An award of attorney's fees and costs, as allowed by law;

14       F.     An award of pre-judgment and post-judgment interest, as provided by law;

15       G.     Leave to amend the complaint to conform to the evidence produced at trial; and

16       H.     Such other and further relief as this Court deems just and proper.  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all causes of action or issues so triable.

DATED: July 30, 2024

Respectfully submitted,

**KUZYK LAW, LLP**

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