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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SYDNEY COHEN, an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

EAST WEST TEA COMPANY, LLC, an
Oregon Limited Liability Company, and
DOES 1-50, inclusive,

Defendants.

Case No: '17CV2339 JLS BLM

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF UNFAIR
COMPETITION LAW, Business
& Professions Code § 17200, et
seq.;**
- 2. VIOLATION OF FALSE
ADVERTISING LAW, Business
& Professions Code § 17500, et
seq.;**
- 3. VIOLATION OF THE
CONSUMERS LEGAL
REMEDIES ACT, Civil Code §
1750, et seq.;**
- 4. BREACH OF EXPRESS
WARRANTY, Commercial
Code § 2313, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Sydney Cohen (“Plaintiff”), individually and on behalf of all others
2 similarly situated, brings this consumer class action against Defendant East West Tea
3 Company, LLC (“Defendant”), for unlawful, unfair, and deceptive business practices in
4 violation of California Business & Professions Code Section 17200 *et seq.*, California
5 Business & Professions Code Section 17500 *et seq.*, California Civil Code Section 1750 *et*
6 *seq.*, and Breach of California Express Warranty, and alleges as follows:

7 **I. NATURE OF THE ACTION**

8 1. Defendant manufactures, distributes, markets, and sells a tea varietal, called
9 Yogi Green Tea Kombucha¹ (collectively, the “Kombucha Products”). A typical
10 Kombucha beverage is prepared by brewing tea, adding sugar, bacteria, and yeast, and
11 fermenting the mixture, which results in the production of live bacteria cultures, commonly
12 referred to as “probiotics”. Kombucha unequivocally contains live cultures.

13 2. Defendant represents on its packaging that the Kombucha Products are
14 comprised of a proprietary blend of herbs containing, among other ingredients, “Organic
15 Kombucha.” (*See generally*, Exhibit A, product packaging.) Defendant advertises that the
16 tea “combines Green Tea with Kombucha to supply antioxidants to support overall health.”
17 (*See id.*)

18 3. However, Defendant’s advertising and marketing campaign was false,
19 deceptive, and misleading because the Kombucha Products did not contain any “Organic
20 Kombucha” in its tea bags. In other words, Defendant advertises and sells its tea as
21 containing “Organic Kombucha,” when in fact, it is simply not possible that it contains any
22 kombucha, or alternatively, is pasteurized, resulting in the destruction of any potential
23 probiotic value once heated and prepared for consumption.

24 4. Defendant’s strategy to create a line of Kombucha Products for sale in the
25 health food market is not accidental. The recent spike in consumer fascination for this
26

27 _____
28 ¹ Defendant also sells a Decaf version of the Yogi Green Tea Kombucha.

1 fermented beverage, called “kombucha,” is due to its innate characteristic that it contains
2 live, beneficial bacteria and cultures. The “good kind” of bacteria that is produced during
3 the fermentation process, commonly referred to as probiotics, is associated with providing
4 the purported health benefits, such as improved digestion, a boosted immune system, and
5 overall supported health. Consumers purchase kombucha in hopes that they will receive
6 the positive health attributes associated with the probiotic brew.

7 5. Since at least 2015, Defendant, capitalizing on the public’s heightened
8 intrigue for the magic elixir, has manufactured, distributed, marketed, and sold the
9 Kombucha Products at various health food retail stores and in the online marketplace,
10 targeting health-conscious consumers who desire attaining the probiotic benefits associated
11 with kombucha.

12 6. Plaintiff and those similarly situated (“Class Members”) relied on Defendant’s
13 misrepresentation that their Kombucha Products did in fact contain kombucha when
14 deciding to purchase the Products. Plaintiff and Class Members would not have purchased
15 the Kombucha Products absent Defendant’s misrepresentation regarding the composition
16 of the Kombucha Products. As a result, Plaintiff and the Class Members suffered monetary
17 damages as a result of Defendant’s false and misleading advertising.

18 **II. JURISDICTION**

19 7. This Court has subject matter jurisdiction under the Class Action Fairness Act,
20 28 U.S.C. section 1332(d) in that: (1) this is a class action involving more than 100 Class
21 Members; (2) Plaintiff is a citizen of the State of California and Defendant is a citizen of
22 the State of Oregon; and (3) the amount in controversy exceeds the sum of \$5,000,000.00,
23 exclusive of interest and costs.

24 8. The Court has personal jurisdiction over Defendant because Defendant
25 conducts business in California. Defendant has marketed, promoted, distributed, and sold
26 the Kombucha Products in California, and Defendant has sufficient minimum contacts with
27 this State and/or has sufficiently availed itself of the market in this State through their
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1 promotion, sales, distribution, and marketing within this State to render the exercise of
2 jurisdiction by this Court permissible.

3 **III. VENUE**

4 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because
5 a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while
6 Plaintiff resided in this judicial district.

7 **IV. PARTIES**

8 10. Plaintiff Sydney Cohen ("Plaintiff") is, and at all times relevant hereto was,
9 an individual residing in San Diego County, California. In approximately October 2015,
10 Plaintiff purchased Yogi Green Tea Kombucha from a Sprouts store located at 4175 Park
11 Blvd., San Diego, CA 92103. Plaintiff read the Kombucha Product packaging, specifically,
12 Defendant's representation that the Green Tea Kombucha contained "Organic Kombucha"
13 and that the tea "combines Green Tea with Kombucha to supply antioxidants to support
14 your overall health." Plaintiff purchased the Kombucha Products, believing she was
15 receiving a tea that contained kombucha and its associated health benefits. In making her
16 purchasing decision, she relied on Defendant's misrepresentation that the Kombucha
17 Products did in fact contain kombucha. Plaintiff would not have purchased the Green Tea
18 Kombucha but for Defendant's misrepresentation that the tea did in fact contain "Organic
19 Kombucha." Indeed, had Plaintiff known that the Kombucha Products did not contain
20 kombucha, Plaintiff would just have purchased a regular green tea varietal.

21 11. Defendant East West Tea Company, LLC (doing business as "Yogi") is a
22 limited liability company existing under the laws of Oregon with its headquarters located
23 at 950 International Way, Springfield, Oregon 97477. Defendant privately owns and
24 operates a tea company that prides itself with providing consumers with healthy, natural
25 and organic teas nationwide. Among Defendant's sixty (60) tea varietals, it manufactures,
26 markets, and sells two (2) Kombucha Products: Yogi Green Tea Kombucha and Yogi
27 Green Tea Kombucha Decaf. Defendant sells its Kombucha Products through its own
28 online channel (www.shop.yogiproducts.com) and at various natural, grocery, and mass

1 market retailers such as Whole Foods Market, Sprouts, Walmart, Target, and Amazon.
2 Defendant created and/or authorized the false, misleading, and deceptive advertisements
3 and packaging of the Kombucha Products. Defendant, directly and through its agents, has
4 substantial contacts with and receives substantial benefits and income from and through
5 the State of California.

6 **V. SUBSTANTIVE ALLEGATIONS**

7 **a. Background of Kombucha**

8 12. Dating back as early as 220 BC, kombucha has been consumed for its
9 “suspected magical properties².” As a result of trade route expansion through China,
10 kombucha consumption spread to Russia and Eastern Europe, as the affiliation with its
11 “supposed detoxifying effects on the blood and digestive system” grew. *Id.* Today,
12 consumers in the United States drink kombucha to attain these well-recognized, purported
13 health benefits, which are supposedly derived from the brew’s probiotic cultures. In
14 addition to supporting an individual’s overall health, some proponents even believe
15 kombucha consumption is linked to combatting and preventing the onset of terminal
16 illnesses, such as cancer and AIDS.

17 13. “The global kombucha market is estimated to grow from USD 0.6 Billion in
18 2015 to USD 1.8 Billion by 2020, at a CAGR [compound annual growth rate] of 25.0%
19 from 2015 to 2020³.” The kombucha market is reportedly “the fastest-growing market in
20 the functional beverage industry.” *Id.*

21 14. Companies like Defendant have capitalized on the worldwide recognition of
22 this trendy beverage and as a result, have marketed and advertised kombucha in the health
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25 ² See C.J. Greenwalt et al., a Review, *Kombucha, the Fermented Tea: Microbiology,*
26 *Composition, and Claimed Health Effects*, J. Food Prot., Vol. 63, No. 7, 2000 at 976, last
accessed November 8, 2017.

27 ³ Markets and Markets, “Kombucha Market by Types (Bacteria, Yeast, Mold, Others),
28 Flavors (Herbs & Spices, Citrus, Berries, Apple, Coconut & Mangoes, Flowers, Others),
& by Region – Forecasts to 2020,” published August 2015.

1 food segment through the sale of popular kombucha brands such as GT’S Kombucha and
2 Kevita⁴. Consumers purchase this elixir, but do so at a hefty price. Kombucha is sold at
3 retail prices upwards of \$5.00 a bottle.

4 15. Proponents of kombucha’s health benefits tout that the beverage improves
5 mental health, brain development, digestion, gut health, assists in immune support, and
6 may even prevent serious health conditions such as cancer⁵. While scientific testing about
7 kombucha’s purported benefits on the human body is limited, the general consensus is that
8 kombucha is a detoxifying drink that provides antioxidants and probiotics due to its
9 fermented composition⁶. Notably, it is purportedly the fermented quality of the tea that is
10 associated with its probiotic value, since probiotics are created as a byproduct of the
11 fermentation process⁷. Notwithstanding the limited scientific research, “[s]ome health
12 benefits are likely since kombucha, when raw or unpasteurized, is rich in probiotics, good
13 gut bacteria (like those in yogurt) that have been shown to boost immunity and overall
14 health⁸.”

18 ⁴ See generally GT’S Living Foods, www.gtslivingfoods.com, last visited October 17,
19 2017; Kevita Master Brew Kombucha, www.kevita.com, last visited October 17, 2017.

20 ⁵ See e.g., Brent A. Bauer, M.D., *What is kombucha tea? Does it have any health*
21 *benefits?*, Mayo Clinic July 8, 2017, [https://www.mayoclinic.org/healthy-](https://www.mayoclinic.org/healthy-lifestyle/consumer-health/expert-answers/kombucha-tea/faq-20058126)
22 [lifestyle/consumer-health/expert-answers/kombucha-tea/faq-20058126](https://www.mayoclinic.org/healthy-lifestyle/consumer-health/expert-answers/kombucha-tea/faq-20058126), last accessed
23 October 17, 2017; Markets and Markets, “Kombucha Market by Types (Bacteria, Yeast,
24 Mold, Others), Flavors (Herbs & Spices, Citrus, Berries, Apple, Coconut & Mangoes,
25 Flowers, Others), & by Region – Forecasts to 2020,” published August 2015.

26 ⁶ See Kelli Miller, *Kombucha Tea/Alcohol: Is it Safe?*, WebMD January 25, 2016, at
27 <https://www.webmd.com/food-recipes/news/20160125/kombucha-tea-is-it-safe#1>, last
28 accessed October 17, 2017.

⁷ See generally, C.J. Greenwalt et al., Review, *Kombucha, the Fermented Tea*, at 976–81.

⁸ Ellie Krieger, *Kombucha: Is it really good for you?*, The Washington Post, October 29,
2014, at [https://www.washingtonpost.com/lifestyle/wellness/2014/10/28/7ba5f68a-5ad6-](https://www.washingtonpost.com/lifestyle/wellness/2014/10/28/7ba5f68a-5ad6-11e4-8264-deed989ae9a2_story.html?utm_term=.f43e03990b5d)
11e4-8264-deed989ae9a2_story.html?utm_term=.f43e03990b5d, last accessed November
9, 2017.

1 16. Kombucha is a centuries-old brew that is made by fermenting steeped tea
2 (typically, green or black) with sugar, yeast, and bacteria⁹. Similar to making wine, a
3 minimal amount of alcohol is produced as a byproduct during the fermentation phase.
4 Typically, the process to create kombucha is as follows:

- 5 a) Infuse tea leaves into freshly boiled water;
- 6 b) Add sugar to the mixture;
- 7 c) Remove tea leaves and allow tea to cool to room temperature;
- 8 d) Add the symbiotic colony of bacteria and yeast (“SCOBY”)¹⁰;
- 9 e) Cover tea with a cloth and store at room temperature for
10 approximately 7 to 10 days to allow for fermentation;
- 11 f) Remove SCOBY from tea; and
- 12 g) The final product is Kombucha¹¹.

13 17. The process of creating kombucha can best be described as cyclical. This is
14 because the SCOBY, which functions as the key ingredient to the fermentation process,
15 can be used over and over again to brew kombucha. The SCOBY looks like a wet, sponge-
16 like mushroom substance that floats atop the liquid. Once brewed, layers of the SCOBY
17 will materialize and can be peeled off to make subsequent batches. Thus, SCOBYs can
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19

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21 ⁹ See *Kombucha*, Alcohol and Tobacco Tax and Trade Bureau (“TTB”), U.S. Department
22 of The Treasury September 18, 2015, last updated June 22, 2017,
<https://ttb.gov/kombucha/index.shtml#information>, last accessed November 8, 2017.

23 ¹⁰ See C.J. Greenwalt et al., Review, *Kombucha, the Fermented Tea*, at 977 (“The
24 fermented tea is produced by the action of a floating microbial mat/colony [or SCOBY]
25 consisting of aerobic bacteria and yeasts. The colony’s appearance often resembles a
26 surface mold or a mushroom but is actually a floating cellulose mat produced during
27 microbial growth.”).

28 ¹¹ See *id.* at 976; see also Brian A. Nummer, PhD, an Abstract, *Kombucha Brewing Under
the Food and Drug Administration Model Food Code: Risk Analysis and Processing
Guidance*, Journal of Environmental Health, Volume 76, No. 4, November 2013, at 8, last
accessed November 8, 2017.

1 either be purchased from the store, or recycled from previous batches to make brand new
2 batches of kombucha.

3 18. In other words, kombucha is not a tea leaf—rather, it is the end result of
4 fermenting brewed tea comprised of live organisms created as a result of the fermentation
5 process. Thus, it cannot be dried and stuffed into a tea bag, as Defendant suggests through
6 the marketing and sale of its Kombucha Products.

7 19. Since the purported health benefits associated with kombucha are attributed
8 to its live organisms that naturally occur after fermentation, it is essential that the tea
9 remains “raw,” or avoids pasteurization in order to experience any of the probiotic benefits.
10 Pasteurization, which is the process of heating liquid in order to sterilize it of harmful
11 bacteria, although helpful to guard against food-borne illnesses, results in destroying the
12 beneficial bacteria in kombucha, such as *Acetobacter xylinoides*, *A.pasteurianus*,
13 *A.xylinium*, *A.aceti*, and *Bacterium gluconicum*¹². Although “[t]he FDA suggested that
14 kombucha be pasteurized, killing the microbes before delivery to the consumer [in order
15 to] help standardize the alcohol content, it would ruin the whole idea of the drink and its
16 purported benefits¹³.” Thus, it is critical to the integrity of kombucha and its probiotic value
17 that it remains in “raw” form.

18 20. Defendant’s representation that the Kombucha Products contain “Organic
19 Kombucha” is false, misleading, and deceptive because the Kombucha Products do not
20 contain any kombucha, or alternatively, have been pasteurized, resulting in the destruction
21 of any potential probiotic value once heated and prepared for consumption.
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24 ¹² See Caili Fu et al., *Antioxidant activities of kombucha prepared from three different*
25 *substrates and changes in content of probiotics during storage*, Food Sci. Technol.
(Campinas), Vol. 34, n.1, March 2014 at 123–26, last accessed November 8, 2017.

26 ¹³ See James Hamblin, *Is Fermented Tea Making People Feel Enlightened Because*
27 *of...Alcohol?*, The Atlantic, December 8, 2016, at
28 <https://www.theatlantic.com/health/archive/2016/12/the-promises-of-kombucha/509786/>,
last accessed November 9, 2017.

1 21. Consumers lack the meaningful ability to test or independently ascertain or
2 verify whether the Kombucha Products contain what they say they contain, especially at
3 the point of sale. Discovery that Kombucha Products do not contain “Organic Kombucha”
4 as advertised requires a scientific investigation and knowledge of chemistry beyond that of
5 the average consumer.

6 **b. Defendant’s Advertising and Marketing of the Kombucha Products**

7 22. Defendant markets and sells its Kombucha Products in the tea aisle of health
8 food grocery stores such as Sprouts and Whole Foods, as well as at other large retail chains
9 such as Walmart and Target. Specifically, Defendant manufactures, markets and sells (1)
10 Yogi Green Tea Kombucha (16 tea bags), and (2) Yogi Green Tea Kombucha Decaf (16
11 tea bags).

12 23. On the front packaging of Defendant’s Kombucha Products, the largest print
13 readily apparent to consumers is the term “Kombucha.” Immediately underneath that is the
14 claim that Defendant’s Green Tea Kombucha “supplies antioxidants to support overall
15 health.” On one side of the packaging label, the Supplement Facts list the tea as containing
16 a “proprietary blend of herbs,” one being “Organic Kombucha.” On the back of the
17 packaging label, Defendant claims that it “combines Green Tea with Kombucha to supply
18 antioxidants to support your overall health.” (*See generally*, Exhibit A, product packaging.)

19 24. Defendant seeks to take advantage of the public’s desire for this trendy
20 beverage and its probiotic health benefits by advertising their Green Tea Kombucha
21 Products as containing “Organic Kombucha,” which is brewed to “supply antioxidants to
22 support [consumers’] overall health.”

23 25. Unfortunately, Defendant’s promise that its Products in fact contain “Organic
24 Kombucha” to supply antioxidants and support overall health is nothing but a sham.

25 26. Defendant’s Kombucha Products do not contain **any** kombucha or
26 alternatively, have been pasteurized, resulting in the destruction of any potential probiotic
27 value once heated and prepared for consumption.
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1 27. Throughout the liability period as defined below, Defendant has engaged in
2 an advertising and marketing campaign that falsely represents that its Kombucha Products
3 actually contain “Organic Kombucha” and thus, provide the positive health benefits widely
4 recognized and associated with consuming kombucha.

5 28. As a result of this deception, Defendant has sold hundreds of thousands of
6 units of the Kombucha Products through stores such as Sprouts, Walmart, Target, Whole
7 Foods, and many other retail and online channels.

8 29. Plaintiff and members of the Class have been, and will continue to be,
9 deceived or misled by Defendant’s deceptive advertising claims. Each Class Member
10 purchased and consumed the Kombucha Products during the liability period and in doing
11 so, read and considered the advertising claims on the Kombucha Products’ packaging and
12 based their decision to purchase the Kombucha Products on the advertising claims.
13 Defendant’s advertising claim that the Kombucha Products did in fact contain kombucha
14 was not only a material factor, but the only factor in influencing Plaintiff’s decision to
15 purchase and consume the Kombucha Products. Plaintiff and the Class Members would
16 not have purchased the Kombucha Products had they known that they did not contain *any*
17 kombucha, and thus, did not contain any of the health benefits associated with kombucha.

18 30. Unfortunately for Plaintiff and Class Members, Defendant’s advertising
19 claims, in their entirety, are false and deceptive.

20 **c. Defendant’s Advertising Claims for the Kombucha Products are False**
21 **and Deceptive**

22 31. Whether the Kombucha Products contain “Organic Kombucha” can be
23 determined with objective factual evidence.

24 32. The marketing of the Kombucha Products as containing “Kombucha” is in a
25 prominent place on the front label of the Products, throughout the Class Period,
26 demonstrates Defendant’s awareness that this claim about the Products’ composition is
27 material to consumers.
28

1 33. Defendant's deceptive representations and omissions are material in that a
2 reasonable person would attach importance to such information and would be induced to
3 act upon such information in making purchasing decisions.

4 34. Plaintiff and Class Members reasonably relied to their detriment on
5 Defendant's misleading representations and omissions.

6 35. In making the false, misleading, and deceptive representations and omissions
7 described herein, Defendant knew and intended that consumers would purchase a Product
8 advertised as containing "Kombucha" over comparable teas that are not advertised as
9 containing "Kombucha."

10 36. In fact, Defendant has admitted on its website that its Kombucha Products do
11 not contain "live organisms as does traditional kombucha¹⁴." Defendant also admits that
12 their Kombucha creation process "pasteurizes the infusion's microbial culture." *Id.*

13 37. As an immediate, direct, and proximate result of Defendant's false,
14 misleading, and deceptive representations and omissions, Defendant injured Plaintiff and
15 the Class Members in that the Class:

- 16 a. Paid a sum of money for a Product that was not what Defendant
17 represented;
- 18 b. Were deprived of the benefit of the bargain because the Product they
19 purchased was different from what Defendant warranted; and
- 20 c. Were deprived of the benefit of the bargain because the Product they
21 purchased has less value than what Defendant represented.

22 38. Had Defendant not made the false, misleading, and deceptive representations
23 and omissions, Plaintiff and the Class Members would not have purchased the Kombucha
24 Products at all.

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27 ¹⁴ Becca Lesser, *Weekly Q&A with our Facebook Fans*, Yogi February 16, 2017, at
28 <https://www.yogiproductions.com/2010/03/weekly-qa-with-our-facebook-fans5/>, last
accessed November 8, 2017.

1 39. Consequently, Plaintiff and the Class Members have suffered an injury in fact
2 and lost money or property as a result of Defendant’s wrongful conduct.

3 **VI. CLASS ALLEGATIONS**

4 40. Plaintiff brings this action on behalf of herself and all other similarly situated
5 Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks
6 certification of the following Class against Defendant for violations of California state
7 laws:

8 All consumers within the State of California who purchased the Yogi
9 Kombucha Products during the applicable liability period for their personal
10 use, rather than for resale or distribution. Excluded from the Class are
11 Defendant’s current or former officers, directors, and employees; counsel for
12 Plaintiff and Defendant; and the judicial officer to whom this lawsuit is
13 assigned.

14 41. **Numerosity**: The members of the Class are so numerous that joinder of all
15 members is impracticable. Plaintiff is informed and believes that the proposed Class
16 contains hundreds of thousands of individuals who have been damaged by Defendant’s
17 conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff.

18 42. **Existence and Predominance of Common Questions of Law and Fact**: This
19 action involves common questions of law and fact, which predominate over any questions
20 affecting individual Class Members. These common legal and factual questions include,
21 but are not limited to, the following:

- 22 a. Whether the Products contain Kombucha or not;
- 23 b. Whether Defendant made false and/or misleading statements to the
24 Class and the public concerning the contents of their Products;
- 25 c. Whether Defendant’s mass media advertising and/or the packaging
26 for the Products is misleading and deceptive;
- 27 d. Whether Defendant has engaged in unfair, fraudulent, or unlawful
28 business practices with respect to the advertising, marketing, and
 sale of the Products;

- 1 e. Whether Defendant's false and misleading statements concerning
- 2 their Products were likely to deceive the public;
- 3 f. Whether Defendant represents to consumers that the Products have
- 4 characteristics, uses, benefits, or qualities that the Products do not
- 5 have;
- 6 g. Whether Defendant advertised the Products with intent to sell them
- 7 not as advertised; and
- 8 h. Whether Defendant engaged in false advertising with respect to the
- 9 Products.

10 43. **Typicality**: Plaintiff's claims are typical of the claims of the Class Members
11 because, *inter alia*, all Class Members have been deceived (or were likely to be deceived)
12 by Defendant's false and misleading advertising claims about the composition of
13 Defendant's Products. Plaintiff is advancing the same claims and legal theories on behalf
14 of herself and all Class Members.

15 44. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the Class
16 Members. Plaintiff has retained counsel experienced in complex consumer class action
17 litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no
18 antagonistic or adverse interests to those of the Class.

19 45. **Superiority**: The nature of this action and the nature of the laws available to
20 Plaintiff and the Class make the use of the class action format a particularly efficient and
21 appropriate procedure to afford relief to her and the Class for the wrongs alleged. The
22 damages or other financial detriment suffered by individual Class Members is relatively
23 modest compared to the burden and expense that would be entailed by individual litigation
24 of their claims against Defendant. It would thus be virtually impossible for Plaintiff and
25 Class Members, on an individual basis, to obtain effective redress for the wrongs done to
26 them. Absent the class action, Class Members and the general public would not likely
27 recover, or would not likely have the chance to recover damages or restitution, and
28 Defendant will be permitted to retain the proceeds of its fraudulent and deceptive misdeeds.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of California’s Unfair Competition Law (“UCL”)**
4 **California Business & Professions Code Section 17200, *et seq.***

5 46. Plaintiff repeats and re-alleges the allegations contained in every preceding
6 paragraph as if fully set forth herein.

7 47. The UCL defines “unfair business competition” to include any “unlawful,
8 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
9 misleading” advertising. Cal. Bus. & Prof. Code § 17200.

10 48. Plaintiff has standing to pursue this claim because Plaintiff has suffered
11 injury-in-fact and has lost money or property as a result of Defendant’s unlawful, unfair,
12 and fraudulent actions. Specifically, Plaintiff purchased the Kombucha Product for her
13 own personal use. In doing so, Plaintiff relied upon the false representations that the
14 Product contained “Organic Kombucha,” when in fact, it contained none. Plaintiff
15 expended money in the transaction that she otherwise would not have had she known
16 Defendant’s advertising claims were false.

17 ***“Unfair” Prong***

18 49. A business act or practice is “unfair” under the UCL if it offends an
19 established public policy or is immoral, unethical, oppressive, unscrupulous, or
20 substantially injurious to consumers, and that unfairness is determined by weighing the
21 reasons, justifications, and motives of the practice against the gravity of the harm to the
22 alleged victims.

23 50. Defendant’s conduct constitutes an “unfair” business practice because, as
24 alleged, Defendant engaged in a false advertising campaign that misled consumers into
25 believing that they were receiving a Product that contained Kombucha and the positive
26 health benefits that are publicly associated with and widely recognized of the ingredient.

27 51. Defendant’s conduct harms the interests of consumers and market
28 competition. There is no valid justification for Defendant’s conduct.

///

1 ***“Fraudulent” Prong***

2 52. A business act or practice is “fraudulent” under the UCL if it is likely to
3 deceive members of the consuming public.

4 53. Defendant engaged in a fraudulent business practice by knowingly
5 representing the Product as containing “Organic Kombucha.” Defendant’s practice
6 deceived Plaintiff and are highly likely to deceive members of the consuming public who
7 purchased the Product in reliance on its advertised composition. Such practice is devoid
8 of utility and outweighed by the gravity of harm to Plaintiff and the Class who lost money
9 or property by paying for the Product.

10 ***“Unlawful” Prong***

11 54. A business act or practice is “unlawful” under the UCL if it violates any other
12 law or regulation.

13 55. Defendant’s actions, as alleged herein, constitute illegal and unlawful
14 practices committed in violation of the Consumer Legal Remedies Act, Cal. Civ. Code §
15 1750, *et seq.*, (the “CLRA”). Particularly, Defendant has unlawfully marketed and
16 advertised the Kombucha Products because Defendant violates sections 1770(a)(5),
17 1770(a)(7), and 1770(a)(9) of the CLRA.

18 56. Each of Defendant’s unfair, fraudulent, and unlawful practices enumerated
19 above was the direct and proximate cause of financial injury to Plaintiff and the Class.
20 Defendant has unjustly benefitted as a result of its wrongful conduct. Plaintiff and Class
21 Members are accordingly entitled to have Defendant disgorge and restore to Plaintiff and
22 Class Members all monies wrongfully obtained by Defendant as a result of the conduct as
23 alleged herein.

24 57. Therefore, Plaintiff prays for the relief as set forth below.

25 **SECOND CAUSE OF ACTION**

26 **Violation of California’s False and Misleading Advertising Law (“FAL”)**
27 **California Business & Professions Code Section 17500, *et seq.***

28 58. Plaintiff repeats and re-alleges the allegations contained in every preceding
paragraph as if fully set forth herein.

1 59. Plaintiff has standing to pursue this claim because Plaintiff has suffered
2 injury-in-fact and has lost money or property as a result of Defendant’s unlawful, unfair,
3 and fraudulent actions. Specifically, Plaintiff purchased the Kombucha Product for her
4 own personal use. In doing so, Plaintiff relied upon the false representations that the
5 Product contained “Organic Kombucha,” when in fact, it contained none. Plaintiff
6 expended money in the transaction that she otherwise would not have had she known
7 Defendant’s advertising claims were false.

8 60. Defendant violated Business & Professions Code § 17500 by publicly
9 disseminating false, misleading, and unsubstantiated advertisements regarding the
10 Kombucha Products.

11 61. Defendant’s false, misleading and unsubstantiated advertisements were
12 disseminated to increase the sales of the Kombucha Products.

13 62. Defendant knew or should have known their advertisements for the
14 Kombucha Products were false and misleading.

15 63. Plaintiff and the members of the Class have suffered harm as a result of these
16 violations of the FAL because they have incurred charges and/or paid monies for the
17 Kombucha Products that they otherwise would not have incurred or paid.

18 64. Defendant is aware, or by the exercise of reasonable care should have been
19 aware, that the representations were untrue or misleading.

20 65. Plaintiff and the members of the Class have suffered injury in fact and have
21 lost money as a result of Defendant’s false representations and false advertising.

22 66. Plaintiff and the members of the Class seek an order awarding Plaintiff and
23 other members of the Class restitution of the money wrongfully acquired by Defendant by
24 means of responsibility attached to Defendant’s failure to disclose the existence and
25 significance of said misrepresentations.

26 67. Therefore, Plaintiff prays for the relief as set forth below.

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THIRD CAUSE OF ACTION

**Violation of California’s Consumer Legal Remedies Act (“CLRA”)
California Civil Code Section 1750, *et seq.***

68. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if fully set forth herein.

69. As alleged herein, Plaintiff has standing to pursue this claim because Plaintiff has suffered injury-in-fact and has lost money or property as a result of Defendant’s unlawful, unfair, and fraudulent actions. Specifically, Plaintiff purchased the Kombucha Product for her own personal use. In doing so, Plaintiff relied upon the false representations that the Product contained “Organic Kombucha,” when in fact, in contained none. Plaintiff expended money in the transaction that she otherwise would not have had she known Defendant’s advertising claims were false.

70. The Consumer Legal Remedies Act (“CLRA”) was enacted to protect consumers against unfair and deceptive business practices. The CLRA applies to Defendant’s acts and practices because the Act covers transactions involving the sale of goods to consumers.

71. Plaintiff and the members of the Class are “consumers” within the meaning of § 1761(d) of the California Civil Code, and they engaged in “transactions” within the meaning of §§ 1761(e) and 1770 of the California Civil Code, including the purchases of the Products.

72. Defendant is a “person” under Cal. Civ. Code § 1761(c).

73. The Products are “goods” under Cal. Civ. Code § 1761(a).

74. Defendant’s unfair and deceptive business practices were intended to and did result in the sale of the Products.

75. Defendant violated the CLRA by engaging in the following unfair and deceptive acts and practices:

§ 1770(a)(5) Representing that [the Kombucha Products have] . . . characteristics, . . . uses [or] benefits . . . which [they do] not have

1 § 1770(a)(7) Representing that [the Kombucha Products are] of a particular
2 standard, quality or grade . . . if [they are] of another.

3 § 1770(a)(9) Advertising goods or services with intent not to sell them as
4 advertised.

5 76. If Plaintiff and the Class Members had known that the Products did not
6 contain “Organic Kombucha” as advertised, they would not have purchased the Products
7 at all.

8 77. As a direct and proximate result of Defendant’s conduct, Plaintiff and the
9 Class Members suffered injury and damages in an amount to be determined at trial.

10 78. On information and belief, Defendant’s actions were willful, wanton, and
11 fraudulent.

12 79. On information and belief, officers, directors, or managing agents of
13 Defendant authorized the use of the misleading statements about the Kombucha Products.

14 80. Plaintiff has concurrently filed the declaration of venue required by Civil
15 Code § 1780(d) with this complaint.

16 81. On November 17, 2017, Plaintiff, through counsel, sent a CLRA demand
17 letter to Defendant that provided notice of Defendant’s violation of the CLRA and
18 demanded Defendant correct, repair, replace, or otherwise rectify the unlawful, unfair,
19 false, and deceptive practices complained of herein. The letter also stated that if Defendant
20 refused to do so, Plaintiff would file a complaint seeking damages in accordance with the
21 CLRA. If Defendant does not respond to Plaintiff’s letter or agree to rectify the problems
22 associated with the actions detailed above and give notice to all affected consumers within
23 30 days of the date of written notice pursuant to § 1782, Plaintiff will amend her complaint
24 to seek actual, punitive, and statutory damages, as appropriate against Defendant.

25 82. Therefore, Plaintiff prays for the relief as set forth below.

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FOURTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY

California Commercial Code Section 2313, *et seq.*

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3 83. Plaintiff repeats and re-alleges the allegations contained in every preceding
4 paragraph as if fully set forth herein.

5 84. Defendant was at all relevant times a “seller” within the meaning of Cal. Com.
6 Code § 2103(d).

7 85. The Kombucha Products, at all relevant times, were “goods” within the
8 meaning of Cal. Com. Code § 2105 (1).

9 86. On the Kombucha Products’ packaging, Defendant expressly warranted to all
10 purchasers that the Product contained Kombucha.

11 87. Plaintiff and the Class Members formed a contract with Defendant at the time
12 they purchased the Kombucha Products. As part of that contract, Defendant represented
13 that the Kombucha Products contained “Organic Kombucha,” as described above. This
14 representation constitutes an express warranty and became part of the basis of the bargain
15 between Plaintiff and the Class Members.

16 88. Defendant made the above-described representations to induce Plaintiff and
17 the Class Members to purchase the Kombucha Products, and Plaintiff and the Class
18 Members relied on the representations in purchasing the Kombucha Products.

19 89. Defendant knowingly breached its warranty because the Kombucha Products
20 did not contain “Organic Kombucha” as advertised.

21 90. As a result, Plaintiff and the members of the Class are entitled to damages in
22 an amount to be determined at trial.

23 91. Within a reasonable time after they knew or should have known of such
24 breach, Plaintiff, on behalf of herself and the other members of the Class, placed Defendant
25 on notice thereof.

26 92. Therefore, Plaintiff prays for the relief as set forth below.

27 **VIII. JURY DEMAND**

28 93. Plaintiff demands a trial by jury on all issues so triable.

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays on behalf of herself and all others similarly situated,
3 for judgment against Defendant as follows:

- 4 A. Certifying the Class as requested herein, appointing Plaintiff as Class
5 Representative, and appointing her counsel as Class Counsel;
- 6 B. Awarding monetary damages and punitive damages;
- 7 C. Ordering Defendant to disgorge and make restitution of all monies
8 Defendant acquired by means of the unlawful practices set forth above;
- 9 D. Awarding declaratory and injunctive relief as permitted by law or equity,
10 including: enjoining Defendant from continuing the unlawful practices as
11 set forth herein, and directing Defendant to identify, with Court
12 supervision, victims of its conduct and pay them all money it is required
13 to pay;
- 14 E. Ordering Defendant to engage in a corrective advertising campaign;
- 15 F. Awarding Plaintiff and Class Members their costs and expenses incurred
16 in the action, including reasonable attorney's fees; and
- 17 G. Providing such further relief as may be just and proper.

18
19 Date: November 17, 2017

Respectfully submitted,

20
21 /s/ Brittany C. Casola
CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP

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Proposed Class Counsel