

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/09/2016** at 12:02:24 PM

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By Cody Newlan, Deputy Clerk

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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
24 **COUNTY OF SAN DIEGO**

25 CHRISTINE CUMMING, on behalf of  
26 herself, all others similarly situated, and the  
27 general public,

28 Plaintiff,

v.

BETTERBODY FOODS & NUTRITION,  
LLC,

Defendant.

Case No: 37-2016-00019510-CU-BT-CTL

CLASS ACTION

**COMPLAINT FOR:**

**VIOLATIONS OF CAL. BUS. &  
PROF. CODE §§17200 et seq.; CAL.  
BUS. & PROF. CODE §§17500 et seq.;**  
**CAL. CIV. CODE §§ 1750 et seq.; and**  
**BREACH OF EXPRESS & IMPLIED**  
**WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiff Christine Cumming, on behalf of herself, all others similarly situated, and the  
2 general public, by and through her undersigned counsel, hereby sues defendant BetterBody  
3 Foods, LLC, and alleges the following upon her own knowledge, or where she lacks personal  
4 knowledge, upon information and belief, including the investigation of her counsel.

### 5 **INTRODUCTION**

6 1. BetterBody misleadingly markets various coconut oil products as both  
7 inherently healthy, and as healthy alternatives to butter and other oils, despite that they are  
8 actually inherently *unhealthy* and *less healthy* options to these alternatives.

9 2. Plaintiff relied upon BetterBody’s misleading and unlawful claims when  
10 purchasing its Extra Virgin Coconut Oil and lost money as a result. She brings this action  
11 challenging BetterBody’s labeling claims relating to its coconut oil products on behalf of  
12 herself and all others similarly situated consumers in the United States, alleging violations of  
13 the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”),  
14 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”), and False  
15 Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”). Plaintiff further alleges that BetterBody  
16 breached express and implied warranties under state law.

17 3. Plaintiff seeks an order, *inter alia*, compelling BetterBody to (a) cease marketing  
18 its coconut oil products using the misleading and unlawful tactics complained of herein, (b)  
19 destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising  
20 campaign, (d) restore the amounts by which it has been unjustly enriched, and (e) pay  
21 restitution, damages, punitive damages, and attorneys’ fees and costs as allowed by law.

### 22 **JURISDICTION & VENUE**

23 4. The California Superior Court has jurisdiction over this matter as a result of  
24 defendant’s violations of the California Business and Professions Codes, California Civil  
25 Codes, and California common law principles.

1           5.     The aggregate monetary damages and restitution sought herein exceed the  
2 minimum jurisdictional limits for the Superior Court and will be established at trial, according  
3 to proof.

4           6.     The California Superior Court also has jurisdiction in this matter because there  
5 is no federal question at issue, as the issues herein are based solely on California statutes and  
6 law.

7           7.     The Court has personal jurisdiction over BetterBody because it has purposely  
8 availed itself of the benefits and privileges of conducting business activities within California.

9           8.     Venue is proper in San Diego County because a substantial part of the events or  
10 omissions giving rise to the class claims occurred in San Diego County.

#### 11                                   **PARTIES**

12           9.     Plaintiff Christine Cumming is a resident of California.

13           10.    Defendant BetterBody Foods, LLC is a Utah limited liability corporation with  
14 its principal place of business in Lindon, Utah. BetterBody manufactures, distributes, and  
15 markets the Extra Virgin Coconut Oil and Naturally Refined Coconut Oil products that are  
16 the subject of this lawsuit.

#### 17                                   **FACTS**

#### 18     **I.     Saturated Fat Consumption Increases the Risk of Cardiovascular Heart Disease** 19                   **and Other Morbidity**

##### 20           **A.     The Role of Cholesterol in the Human Body**

21           11.    Cholesterol is a waxy, fat-like substance found in the body’s cell walls. The body  
22 uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body  
23 synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called  
24 lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL  
25 cholesterol, and high density lipoproteins, or HDL cholesterol.

26           12.    LDL cholesterol is sometimes called “bad” cholesterol because it carries  
27 cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

1 13. HDL cholesterol is sometimes called “good” cholesterol because it takes excess  
2 cholesterol away from tissues to the liver, where it is removed from the body.

3 **B. High Total and LDL Blood Cholesterol Levels are Associated with**  
4 **Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke**

5 14. Total and LDL cholesterol blood levels are two of the most important risk factors  
6 in predicting coronary heart disease (CHD), with higher total and LDL cholesterol levels  
7 associated with increased risk of CHD.<sup>1</sup>

8 15. High LDL cholesterol levels are dangerous because “[e]levated blood LDL  
9 cholesterol increases atherosclerotic lipid accumulation in blood vessels.”<sup>2</sup> That is, if there is  
10 too much cholesterol in the blood, some of the excess may become trapped along artery walls.  
11 Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque  
12 narrows vessels and makes them less flexible, a condition called atherosclerosis.

13 16. This process can happen to the coronary arteries in the heart and restricts the  
14 provision of oxygen and nutrients to the heart, causing chest pain or angina.

15 17. When atherosclerosis affects the coronary arteries, the condition is called  
16 coronary heart disease.

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21 <sup>1</sup> See, e.g., Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and*  
22 *Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) (“Heart attack and stroke  
23 risk can be largely predicted based on total and LDL cholesterol levels in people” because “as  
24 cholesterol levels increase so does one’s risk of symptomatic and deadly heart disease.”),  
available at <http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html>.

25 <sup>2</sup> USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and*  
26 *Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011)  
27 [hereinafter, “USDA, Review of the Evidence”], available at  
[http://www.cnpp.usda.gov/sites/default/files/nutrition\\_insights\\_uploads/Insight44.pdf](http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf).

1 18. Cholesterol-rich plaques can also burst, causing a blood clot to form over the  
2 plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or  
3 debilitating heart attack or stroke.

4 19. Thus, “[f]or the health of your heart, lowering your LDL cholesterol is the single  
5 most important thing to do.”<sup>3</sup>

6 **C. Saturated Fat Consumption Causes Increased Total and LDL Blood**  
7 **Cholesterol Levels, Increasing the Risk of CHD and Stroke**

8 20. The consumption of saturated fat negatively affects blood cholesterol levels  
9 because the body reacts to saturated fat by producing cholesterol. More specifically, saturated  
10 fat consumption causes coronary heart disease by, among other things, “increas[ing] total  
11 cholesterol and low density lipoprotein (LDL) cholesterol.”<sup>4</sup>

12 21. Moreover, “[t]here is a positive linear trend between total saturated fatty acid  
13 intake and total and low density lipoprotein (LDL) cholesterol concentration and increased  
14 risk of coronary heart disease (CHD).”<sup>5</sup>

15 22. This linear relationship between saturated fat intake and risk of coronary heart  
16 disease is well established and accepted in the scientific community.

17 23. For example, the Institute of Medicine’s Dietary Guidelines Advisory  
18 Committee “concluded there is strong evidence that dietary SFA [saturated fatty acids]  
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22 <sup>3</sup> Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, available at  
23 <https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html>.

24 <sup>4</sup> USDA Review of the Evidence, *supra* n.2.

25 <sup>5</sup> Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter “IOM, Dietary Reference Intakes”], available at [http://www.nap.edu/catalog.php?record\\_id=10490](http://www.nap.edu/catalog.php?record_id=10490).

1 increase serum total and LDL cholesterol and are associated with increased risk of CVD  
2 [cardiovascular disease].”<sup>6</sup>

3 24. In addition, “[s]everal hundred studies have been conducted to assess the effect  
4 of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake  
5 of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL)  
6 cholesterol concentrations.”<sup>7</sup>

7 25. Importantly, there is “no safe level” of saturated fat intake because “any  
8 incremental increase in saturated fatty acid intake increases CHD risk.”<sup>8</sup>

9 26. For this reason, while the Institute of Medicine sets tolerable upper intake levels  
10 (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse  
11 health effects to almost all individuals in the general population, “[a] UL is not set for  
12 saturated fatty acids.”<sup>9</sup>

13 27. In addition, “[t]here is no evidence to indicate that saturated fatty acids are  
14 essential in the diet or have a beneficial role in the prevention of chronic diseases.”<sup>10</sup>

15 28. Further, “[i]t is generally accepted that a reduction in the intake of SFA will  
16 lower TC [total cholesterol] and LDL-cholesterol.”<sup>11</sup>

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21 <sup>6</sup> USDA Review of the Evidence, *supra* n.2.

22 <sup>7</sup> IOM, Dietary Reference Intakes, *supra* n.5, at 481.

23 <sup>8</sup> *Id.* at 422.

24 <sup>9</sup> *Id.*

25 <sup>10</sup> *Id.* at 460.

26 <sup>11</sup> Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement*  
27 *with unsaturated fats*, 85 *Brit. J. Nutr.* 583, 583 (2001) [hereinafter “Mendis, Coconut fat”].

1 29. For these reasons, “reduction in SFA intake has been a key component of dietary  
2 recommendations to reduce risk of CVD.”<sup>12</sup>

3 30. The Institute of Medicine’s Dietary Guidelines for Americans, for example,  
4 “recommend reducing SFA intake to less than 10 percent of calories.”<sup>13</sup> And “lowering the  
5 percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD.”<sup>14</sup>

6 31. In short, consuming saturated fat increases the risk of CHD and stroke.<sup>15</sup>

7 **D. In Contrast to Saturated Fat, the Consumption of Dietary Cholesterol has**  
8 **No Impact on Blood Cholesterol Levels**

9 32. For many years, there has been a common misperception that dietary cholesterol  
10 affects blood cholesterol levels. According to the USDA and Department of Health and  
11 Human Services (DHHS), however, “available evidence shows no appreciable relationship  
12 between consumption of dietary cholesterol and serum cholesterol.”<sup>16</sup>

13 33. In fact, the USDA and DHHS have concluded that “Cholesterol is not a nutrient  
14 of concern for overconsumption.”<sup>17</sup>

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19 <sup>12</sup> USDA Review of the Evidence, *supra* n.2.

20 <sup>13</sup> *Id.*

21 <sup>14</sup> *Id.*

22 <sup>15</sup> *See* Mendis, Coconut fat, *supra* n.11, at 583.

24 <sup>16</sup> USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015)  
25 [hereinafter “USDA & DHHS, Dietary Guidelines”], *available at*  
26 <http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf>.

27 <sup>17</sup> *Id.*

1 34. By contrast, the USDA and DHHS state that “[s]trong and consistent evidence  
2 from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats,  
3 especially [polyunsaturated fats], significantly reduces total and LDL cholesterol.”<sup>18</sup>

4 35. Therefore, the USDA and DHHS specifically recommend replacing “tropical  
5 oils (e.g., palm, palm kernel, *and coconut oils*)” with “vegetable oils that are high in  
6 unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils).”<sup>19</sup>

7 **II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil**  
8 **Increases the Risk of Cardiovascular Heart Disease and Other Morbidity**

9 36. While it is well established that diets generally high in saturated fatty acids  
10 increase the risk of CHD,<sup>20</sup> several studies have also specifically shown that consuming  
11 coconut oil—which is approximately 90 percent saturated fat—increases the risk of CHD and  
12 stroke.

13 37. For example, in 2001 the British Journal of Nutrition published a 62-week  
14 intervention study that examined the “effect of reducing saturated fat in the diet . . . on the  
15 serum lipoprotein profile of human subjects.”<sup>21</sup> The study had two intervention phases. In  
16 Phase 1 (8 weeks), “the total fat subjects consumed was reduced from 31 to 25 % energy . . .  
17 by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake.”<sup>22</sup>  
18 “At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in  
19 LDL and no significant change in HDL and triacylglycerol.”<sup>23</sup>

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21 <sup>18</sup> *Id.* Part D, Chapter 6, at 12.

22 <sup>19</sup> *Id.* (emphasis added).

23 <sup>20</sup> *See* Mendis, Coconut fat, *supra* n.11, at 583.

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

25 <sup>22</sup> *Id.*

26 <sup>23</sup> *Id.*



1           38. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25  
2 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.<sup>24</sup>  
3 At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and  
4 an 11% mean reduction in LDL cholesterol.<sup>25</sup>

5           39. The authors of the study noted that “[a] sustained reduction in blood cholesterol  
6 concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et  
7 al. 1994).” Further, “[i]n primary prevention, a reduction of cholesterol by 20% has produced  
8 a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and  
9 22% less total mortality (Grundy, 1997).”<sup>26</sup>

10          40. Based on these relationships, the researchers estimated that “the reduction in  
11 coronary morbidity and mortality brought about by the current dietary intervention would be  
12 of the order of about 6-8 %.”<sup>27</sup>

13          41. Simply put, the results of the yearlong study showed that reducing coconut oil  
14 consumption “results in a lipid profile that is associated with a low cardiovascular risk.”<sup>28</sup>

15          42. The detrimental health effects of consuming coconut oil, however, are not  
16 limited to long-term consumption. To the contrary, a 2006 study published in the Journal of  
17 the American College of Cardiology found that consuming a single high-fat meal containing  
18 fat from coconut oil “reduces the anti-inflammatory potential of HDL and impairs arterial  
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22 <sup>24</sup> *Id.*

23 <sup>25</sup> *Id.* at 586.

24 <sup>26</sup> *Id.* at 588.

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

26 <sup>28</sup> *Id.* at 587.

1 endothelial function.”<sup>29</sup> In the study, researchers examined the effect of consuming a single  
2 isocaloric meal that contained “1 g of fat/kg of body weight,” with “coconut oil (fatty acid  
3 composition: 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)” as  
4 the source of fat.<sup>30</sup> They found that consuming the coconut oil meal significantly “reduces  
5 the anti-inflammatory potential of HDL and impairs arterial endothelial function.”<sup>31</sup> In  
6 contrast, when the fat from the same isocaloric meal came from “safflower oil (fatty acid  
7 composition: 75% polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat),” “the  
8 anti-inflammatory activity of HDL improve[d].”<sup>32</sup>

9 43. Other studies have similarly demonstrated that coconut oil consumption  
10 negatively affects blood plasma markers when compared to other fats.

11 44. A 2011 study published in the American Journal of Clinical Nutrition found that  
12 consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased  
13 postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular  
14 disease.<sup>33</sup>

15 45. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and  
16 safflower oil found that coconut oil consumption had the worst effect on subjects’ blood lipid  
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20 <sup>29</sup> Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory*  
21 *Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio.  
715 (2006).

22 <sup>30</sup> *Id.*

23 <sup>31</sup> *Id.*

24 <sup>32</sup> *Id.*, at 715.

25  
26 <sup>33</sup> P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0),*  
27 *or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and*  
*inflammatory markers in healthy Malaysian adults*, 94 Am. J. Clin. Nutr. 1451 (2011).

1 profiles.<sup>34</sup> The authors noted that “[o]f these fats, only CO [coconut oil] appears to  
2 consistently elevate plasma cholesterol when compared with other fats.”<sup>35</sup>

3 46. Finally, in another study, researchers found that that subjects who consumed 30  
4 percent of energy from fat, with 66.7% coming from coconut oil, had “increased serum  
5 cholesterol, LDL, and apo B.”<sup>36</sup> Apo B is a protein involved in the metabolism of lipids and  
6 is the main protein constituent of VLDL (very low-density lipoproteins) and LDL.  
7 Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the  
8 greater the risk of heart disease. In sum, the study found that consuming coconut oil increased  
9 all three cholesterol markers, signifying an increased risk of cardiovascular disease.<sup>37</sup>

### 10 **III. BetterBody’s Virgin and Refined Coconut Oil Products**

#### 11 **A. BetterBody’s Sale of the Coconut Oil Products**

12 47. BetterBody has distributed, marketed, and sold its Extra Virgin and Refined  
13 Coconut Oils on a nationwide basis.

14 48. According to BetterBody’s website, its coconut oil products are sold in national  
15 grocery retailers including, among others, Walmart, Sam’s Club, Kroger, Lucky’s and Save  
16 Mart Supermarkets.<sup>38</sup>

17 49. BetterBody Extra Virgin Coconut Oil is available in multiple sizes, between 15.5  
18 and 56 fluid ounces, and is sold for between approximately \$10 and \$25.

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21 <sup>34</sup> Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat,*  
22 *coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

23 <sup>35</sup> *Id.*

24 <sup>36</sup> V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or*  
25 *coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103  
26 (Mar. 1996).

27 <sup>37</sup> *Id.*

28 <sup>38</sup> BetterBody, *About Us*, <http://www.betterbodyfoods.com/about>

1 50. BetterBody Refined Coconut Oil is also available in multiple sizes, between 15.5  
2 and 56 fluid ounces, and is sold for between \$8 and \$20.

3 **B. The Composition of BetterBody’s Extra Virgin and Naturally Refined**  
4 **Coconut Oil**

5 51. The Nutrition Facts box for BetterBody’s Extra Virgin and Refined Coconut  
6 Oils are as follows:

| <b>Nutrition Facts</b>                                                                                                |                       |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------|
| Serving Size 1 Tbsp (15mL)                                                                                            |                       |
| Servings Per Container 30                                                                                             |                       |
| Amount Per Serving                                                                                                    |                       |
| <b>Calories</b> 120                                                                                                   | Calories from Fat 120 |
| % Daily Value*                                                                                                        |                       |
| <b>Total Fat</b> 14g                                                                                                  | <b>21%</b>            |
| Saturated Fat 13g                                                                                                     | <b>64%</b>            |
| Trans Fat 0g                                                                                                          |                       |
| Polyunsaturated Fat 0g                                                                                                |                       |
| Monounsaturated Fat 1g                                                                                                |                       |
| <b>Sodium</b> 0mg                                                                                                     | <b>0%</b>             |
| <b>Total Carbohydrate</b> 0g                                                                                          | <b>0%</b>             |
| <b>Protein</b> 0g                                                                                                     |                       |
| Not a significant source of calories from dietary fiber, sugars, vitamin A, vitamin C, calcium, cholesterol and iron. |                       |
| *Percent Daily Values are based on a 2,000 calorie diet.                                                              |                       |

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Extra Virgin

| <b>Nutrition Facts</b>                                                                                  |                       |
|---------------------------------------------------------------------------------------------------------|-----------------------|
| Serving Size 1 Tbsp (15mL)                                                                              |                       |
| Servings Per Container 55                                                                               |                       |
| Amount Per Serving                                                                                      |                       |
| <b>Calories</b> 120                                                                                     | Calories from Fat 120 |
| % Daily Value*                                                                                          |                       |
| <b>Total Fat</b> 14g                                                                                    | <b>21%</b>            |
| Saturated Fat 13g                                                                                       | <b>64%</b>            |
| Trans Fat 0g                                                                                            |                       |
| Polyunsaturated Fat 0g                                                                                  |                       |
| Monounsaturated Fat 1g                                                                                  |                       |
| <b>Sodium</b> 0mg                                                                                       | <b>0%</b>             |
| <b>Total Carbohydrate</b> 0g                                                                            | <b>0%</b>             |
| <b>Protein</b> 0g                                                                                       |                       |
| Not a significant source of cholesterol, dietary fiber, sugars, vitamin A, vitamin C, calcium and iron. |                       |
| *Percentage Daily Values are based on a 2,000 calorie diet                                              |                       |

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Refined

20 52. Each 1 tablespoon, or 15mL serving of either the Extra Virgin or Refined  
21 Coconut Oil contains 120 calories—all of which come from fat. In each 14-gram serving  
22 there are 14 grams of fat.

23 53. Further, both coconut oil products contain 13 grams of saturated fat per 14-gram  
24 serving.

25 54. In other words, BetterBody’s Extra Virgin and Refined Coconut Oils are both  
26 100 percent fat, 93 percent of which is saturated fat.

1           **C. The Composition of Oils and Fats for Which BetterBody Claims its Coconut**  
2           **Oils are Healthy Substitutes**

3           55. The USDA’s National Nutrient Database for Standard Reference lists a 14-gram  
4 serving of butter as being composed of 12 grams of fat, 7 of which are saturated, 3 of which  
5 are monounsaturated, and 0.5 of which are polyunsaturated.<sup>39</sup>

6           56. The USDA’s National Nutrient Database for Standard Reference lists a 14-gram  
7 serving of margarine as being composed of 11 grams of fat, 2 of which are saturated, 5 of  
8 which are monounsaturated, and 4 of which are polyunsaturated.<sup>40</sup>

9           57. The USDA’s National Nutrient Database for Standard Reference lists a 14-gram  
10 serving of canola oil as being composed of 14 grams of fat, 1 of which is saturated, 9 of which  
11 are monounsaturated, and 4 of which are polyunsaturated.<sup>41</sup>

12           58. The USDA’s National Nutrient Database for Standard Reference lists a 1  
13 tablespoon serving of olive oil as being composed of 13.5 grams of fat, 2 of which are  
14 saturated, 10 of which are monounsaturated, and 1 of which is polyunsaturated.<sup>42</sup>

15           59. BetterBody’s Extra Virgin and Refined Coconut Oils are higher in saturated fat,  
16 lower in monounsaturated fat, and lower in polyunsaturated fat, than all of these alternatives.

17           60. Thus, using the BetterBody coconut oil products as a substitute for butter,  
18 margarine, canola oil, or olive oil would result in increased saturated fat consumption.

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24 <sup>39</sup> USDA Agricultural Research Service, *National Nutrient Database for Standard Reference*  
25 *Release 28*, NDB No. 01001, Butter, salted, available at <http://ndb.nal.usda.gov/ndb/foods>.

26 <sup>40</sup> *Id.* NDB No. 04611, Margarine, regular.

27 <sup>41</sup> *Id.* NDB No. 04582, Oil, canola.

28 <sup>42</sup> *Id.* NDB No. 04053, Oil, olive.

1 **IV. BetterBody Markets the Coconut Oil Products with Misleading Health and**  
2 **Wellness Claims**

3 **A. BetterBody Strategically Markets the Coconut Oils as Health Products**

4 61. BetterBody strategically markets the coconut oil products as being healthy in  
5 order to increase sales.

6 62. It is well known that the average consumer is willing to pay more for healthier  
7 foods. Nielsen’s 2015 Global Health & Wellness Survey, for instance, found that “88% of  
8 those polled are willing to pay more for healthier foods.”<sup>43</sup>

9 63. BetterBody is well aware of this and therefore employs a strategic marketing  
10 campaign intended to convince consumers that the coconut oil products are “healthy,” despite  
11 that they are almost entirely composed of saturated fat.

12 **B. BetterBody Places Misleading Health and Wellness Claims Directly On the**  
13 **Coconut Oil Products’ Packaging**

14 64. Through statements placed directly on the coconut oil products’ labels,  
15 BetterBody markets and advertises the coconut oil products as both inherently healthy, and  
16 as a healthy alternative to butter, margarine, and other oils, despite that the coconut oils  
17 products’ total fat and saturated fat content make them unhealthy, and less healthy  
18 alternatives.

19 65. As depicted below, the labeling for BetterBody’s Extra Virgin Coconut Oil is  
20 nearly identical to the labeling of its Refined Coconut Oil. In fact, BetterBody uses the exact  
21 same deceptive claims on both coconut oil products’ labels.

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26 <sup>43</sup> Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*  
27 (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the*  
28 *world*, at 11 (Jan. 2015)).



Extra Virgin



Refined

66. Below are exemplars of the side of BetterBody’s Virgin and Refined Coconut Oils.

**Our Organic Extra Virgin Coconut Oil,** cold pressed from fresh coconuts, is one of the **healthiest oils in the world.** Full of MCTs, aka good fats, coconut oil is an immediate source of energy. It is cholesterol-free, making it a perfect substitute for butter or margarine in cooking and baking. It also makes a great moisturizer. No other oil has more benefits that go beyond the kitchen!

*For recipes & product information*  
[www.betterbodyfoods.com/coconut](http://www.betterbodyfoods.com/coconut)

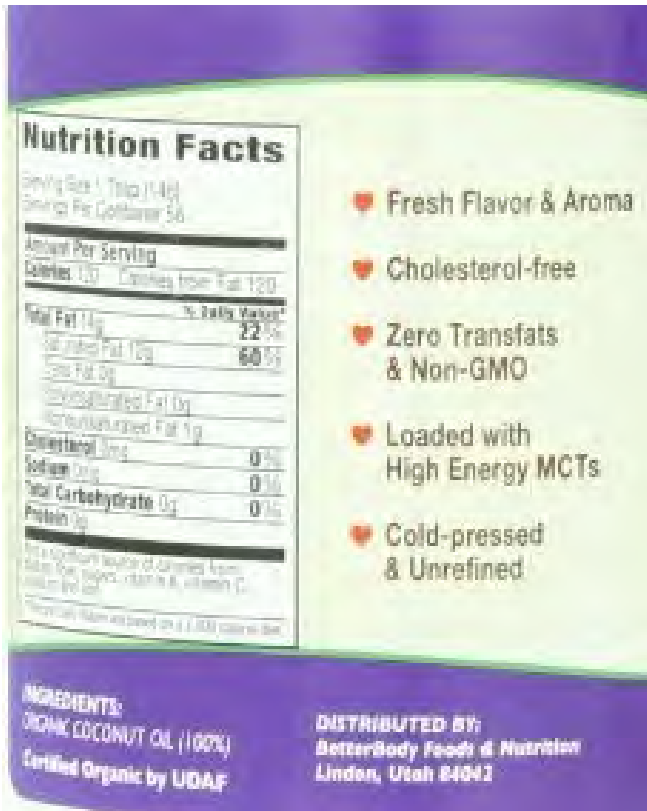
Extra Virgin

**Our Organic Naturally Refined Coconut Oil** is one of the **healthiest oils in the world.** Full of MCTs, aka good fats, coconut oil is an immediate source of energy. It is cholesterol-free, making it an ideal substitute for butter or margarine. Its neutral flavor and smell, and high flash point of 425°F make it perfect for cooking and sautéing.

*For recipes & product information*  
[www.betterbodyfoods.com/coconut](http://www.betterbodyfoods.com/coconut)

Refined

67. Below are exemplars of the back of BetterBody’s Extra Virgin and Refined Coconut Oils.



Extra Virgin



Refined

68. As depicted above, BetterBody deceptively markets the coconut oil products with a variety of labeling claims and symbols intended to convince consumers that the coconut oil products are healthy, and to conceal or distract from the fact that the coconut oil products are pure fat, almost all of which is saturated fat.

69. On the front of each product’s label, BetterBody prominently states that it is “A Healthy Alternative to Butter & Cooking Oil.” BetterBody further claims that each product is “one of the healthiest oils in the world. Full of MCTs, aka good fats,” and “is cholesterol-free, making it an ideal substitute for butter or margarine.”

70. In addition, the labels of both BetterBody coconut oil products state that the oils contain “Zero Transfats” and are “loaded with high energy MTCs.”

71. Further, BetterBody places images of red hearts directly next to claims such as “Cholesterol-free” and “Zero transfats,” which misleadingly implies that the BetterBody coconut oil products are generally healthy, and specifically heart-healthy.



1 72. These statements and images, which appear directly on the BetterBody coconut  
2 oil products' labels, taken individually and especially in context of the label as a whole,  
3 misleadingly imply that the BetterBody coconut oil products are generally healthy and  
4 specifically heart healthy when they are not, and that the products are healthier or more  
5 nutritious than butter, margarine, and other cooking oils, which they are not.

6 73. In addition, the heart symbols and the claims that the BetterBody coconut oil  
7 products are "cholesterol-free" and therefore a healthy cooking substitute are further false  
8 and misleading because they imply that the products do not negatively affect cholesterol  
9 levels when, in fact, they do. This plays on the common misconception that dietary  
10 cholesterol negatively affects blood cholesterol levels when it does not.

11 74. BetterBody's marketing suggests that replacing butter, margarine, and other oils  
12 with its coconut oils is a healthy choice despite that doing so would increase consumption of  
13 saturated fat and decrease consumption unsaturated fat and despite that "Strong and consistent  
14 evidence from RCTs and statistical modeling in prospective cohort studies shows that  
15 replacing SFA with PUFA reduces the risk of CVD events and coronary mortality."<sup>44</sup>

16 **C. BetterBody Bolsters the Coconut Oils' Misleading Labels With Its**  
17 **Misleading Website**

18 75. Directly on the label of both coconut oil products, BetterBody directs consumers  
19 to its website, [www.betterbodyfoods.com/coconut](http://www.betterbodyfoods.com/coconut), for "recipes & product information."

20 76. BetterBody utilizes its website as a vital platform for its health marketing  
21 campaign.

22 77. BetterBody's health marketing strategy is evident on its website where it claims  
23 to be "committed to providing the best organic and natural foods for cooking, baking, health  
24  
25  
26

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27 <sup>44</sup> USDA & DHHS, Dietary Guidelines, *supra* n.16 at Part D, Chapter 6 at 12.  
28

1 and wellness. Our goal is to teach our customers about how to use these revolutionary  
2 products to make powerful and healthy changes in their lives.”<sup>45</sup>

3 78. BetterBody’s website further states that it added coconut oils to its product line  
4 as a result of its “search for new healthy foods.”<sup>46</sup>

5 79. BetterBody’s health marketing strategy focuses on highlighting that the coconut  
6 oil products are “cholesterol-free,” and trying to convince consumers that the products are  
7 therefore healthy alternatives to other oils.

8 80. On its website, BetterBody states that “Coconut oil has many amazing qualities.  
9 It is cholesterol free and contains no trans fats.”<sup>47</sup>

10 81. BetterBody encourages consumers to go to “the recipe section of our blog for  
11 healthy and delicious coconut oil recipes.”<sup>48</sup>

12 82. Thus in sum, the BetterBody coconut oil product labels, packaging, and online  
13 marketing convey the concrete message to a reasonable consumer that the product is healthy,  
14 and a healthier alternative to butter, margarine, shortening and other cooking oils. BetterBody  
15 intended consumers to rely upon this message, which is false and misleading for the reasons  
16 stated herein.

17 **V. The Labeling of BetterBody’s Virgin and Refined Coconut Oils Violates**  
18 **California and Federal Law**

19 **A. Any Violation of Federal Food Labeling Statutes or Regulations is a**  
20 **Violation of California Law**

21 83. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health  
22 & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has expressly adopted the  
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24 <sup>45</sup> <http://www.betterbodyfoods.com/about>

25 <sup>46</sup> *Id.*

26 <sup>47</sup> <http://www.betterbodyfoods.com/products/naturally-refined-coconut-oil>

27 <sup>48</sup> *Id.*

1 federal food labeling requirements as its own, *see id.* § 110665 (“Any food is misbranded if  
2 its labeling does not conform with the requirements for nutrition labeling as set forth in  
3 Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant  
4 thereto.”).

5 84. The Federal Food Federal Food, Drug, and Cosmetic Act (FDCA) expressly  
6 authorizes state regulations, such as the Sherman Law, that are “identical to the  
7 requirement[s]” of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

8 85. Because the Sherman Law’s requirements are identical to the requirements of  
9 the FDCA and its implementing regulations, the Sherman law is explicitly authorized by the  
10 FDCA.

11 **B. The BetterBody Coconut Oil Products’ False and Misleading Labeling**  
12 **Claims Render Them Misbranded Under California and Federal Law**

13 86. BetterBody’s deceptive statements described herein violate Health & Safety  
14 Code § 109875 and 21 U.S.C. § 343(a), which deem a food product misbranded when its  
15 label contains any statement that is “false or misleading in any particular.”

16 87. In addition, each coconut oil product’s label is misleading, and thus misbranded,  
17 because “it fails to reveal facts that are material in light of other representations.” 21 C.F.R §  
18 1.21.

19 **C. The BetterBody Coconut Oils Are Misbranded Because They Make**  
20 **Unauthorized Nutrient Content Claims**

21 88. BetterBody’s coconut oil products are further misbranded because their labels  
22 bear nutrient content claims, but the products either do not meet the requirements for making  
23 such claims, or bear unauthorized nutrient content claims.

24 89. Under 21 U.S.C. § 343(r)(1)(A), a claim that characterizes the level of a nutrient  
25 which is of the type required to be in the labeling of the food must be made in accordance  
26 with a regulation promulgated by the Secretary (or, by delegation, the FDA) authorizing the  
27 use of such a claim.

1 90. Characterizing the level of a nutrient on food labels and labeling of a product  
2 without complying with the specific requirements pertaining to nutrient content claims for  
3 that nutrient renders the product misbranded under 21 U.S.C. § 343(r)(1)(A) and, by  
4 extension Cal. Health & Safety Code § 110670 (“Any food is misbranded if its labeling does  
5 not conform with the requirements for nutrient content or health claims” set by federal law.).

6 91. The BetterBody coconut oil products are misbranded because they both bear the  
7 claim “cholesterol-free,” but do not meet the requirements for making this claim.

8 92. Under 21 C.F.R. § 101.62(d)(4)(ii), to bear the nutrient content claim  
9 “cholesterol-free,” a food must, among other things, “contain[] 2 g or less of saturated fatty  
10 acids per reference amount customarily consumed” (RACC), 21 C.F.R. § 101.62(d)(4)(ii)(C),  
11 and must also disclose the level of total fat in a serving immediate proximity to such to the  
12 claim, 21 C.F.R. § 101.62(d)(4)(ii)(D).

13 93. The RACC for oils, including the BetterBody coconut oil products, is 1  
14 tablespoon, or 15ml. 21 C.F.R. § 101.12(b).

15 94. According to the coconut products’ labels, the products each contain 14 grams  
16 of total fat, and 13 grams of saturated fat, per 1-tablespoon serving, and therefore do not meet  
17 the requirement to make the nutrient content claim, “cholesterol-free.” 21 C.F.R. §  
18 101.62(d)(4)(ii).

19 95. Further, the required disclosure statement regarding total fat is not present  
20 anywhere on either product’s label, further violating 21 C.F.R. § 101.62(d)(4)(ii) and adding  
21 to the misleading nature of the label.

22 96. Accordingly, the products are misbranded. 21 U.S.C. § 343(r)(1)(A); 21 C.F.R.  
23 § 101.62(f) (“Any label or labeling containing any statement concerning fat, fatty acids, or  
24 cholesterol that is not in conformity with this section shall be deemed to be misbranded.”);  
25 *see also* 21 C.F.R. § 101.13(h).

26 97. Like the less cholesterol claim, the phrase “Zero Transfats,” contained on the  
27 label of both BetterBody coconut oil products meets the definition of a nutrient content claim  
28

1 because it characterizes the level of trans fat in the BetterBody coconut oil products, which  
2 is a nutrient of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

3 98. “Zero Transfats,” however, is an unauthorized nutrient content claim, which has  
4 not been defined by the FDA, rendering the coconut products misbranded pursuant to 21  
5 U.S.C. §§ 343(a) & 343(r).

6 99. In addition, the BetterBody coconut oil products’ labels bear additional  
7 “implied” nutrient content claims because they display statements suggesting that the  
8 BetterBody coconut oil products may be useful in maintaining healthy dietary practices and  
9 those statements are made in connection with claims or statements about nutrients. 21 C.F.R.  
10 § 101.13(b)(2). Specifically, the labels bear the claims, among others, that each product “is  
11 cholesterol-free, making it a perfect substitute for butter or margarine,” is “one of the  
12 healthiest oils in the world,” is “a healthy alternative to butter and cooking oil,” and contains  
13 “Zero Transfats.”

14 100. Under 21 C.F.R. § 101.13(h), a food that bears a nutrient content claim, express  
15 or implied, that contains more than 13 grams of total fat or 4 grams of saturated fat per  
16 serving, must also bear a disclosure statement on the label (immediately adjacent to the claim)  
17 referring the consumer to nutrition information for that nutrient, e.g., “See nutrition  
18 information for total fat and saturated fat content.” 21 C.F.R. § 101.13(h)(1).

19 101. Despite that the BetterBody coconut oil products contain 14 grams of total fat  
20 and 13 grams of saturated fat, the BetterBody coconut oil products fail to bear these  
21 mandatory disclosure statements, which provide consumers with material nutrition  
22 information. Therefore, the BetterBody coconut oil products are further misbranded.

23 **D. The BetterBody Coconut Oils are Misbranded Because They Bear**  
24 **Unauthorized “Healthy” Nutrient Content Claims**

25 102. The BetterBody coconut oil products are further misbranded because their labels  
26 claim the products are healthy, but do not meet the requirements for making such health  
27 claims.

1 103. To “use the term ‘healthy’ or related terms (e.g., ‘health,’ ‘healthful,’  
2 ‘healthfully,’ ‘healthfulness,’ ‘healthier,’ ‘healthiest,’ ‘healthily,’ and ‘healthiness’)” foods  
3 must satisfy specific “conditions for fat, saturated fat, cholesterol, and other nutrients.” 21  
4 C.F.R. § 101.65(d)(2).

5 104. The BetterBody coconut oils, which are foods “not specifically listed” in the  
6 table contained in 21 C.F.R. § 101.65(d)(2)(i), are governed by section (F) of the table. *See*  
7 *id.* § 101.65(d)(2)(i)(F).

8 105. Under 21 C.F.R. § 101.65(d)(2)(i)(F), to use a “healthy” claim, a food must (1)  
9 be “Low fat as defined in § 101.62(b)(2),” (2) be “Low saturated fat as defined in §  
10 101.62(c)(2),” and (3) contain “At least 10 percent of the RDI or the DRV per RA of one or  
11 more of vitamin A, vitamin C, calcium, iron, protein or fiber.” *See* 21 C.F.R. §  
12 101.65(d)(2)(i)(F) (incorporating by reference total fat requirement, 21 C.F.R. § 101.62(b)(2),  
13 and saturated fat requirement, 21 C.F.R. § 101.62(c)(2)).

14 106. In addition, the food must comply “with the definition and declaration  
15 requirements in this part 101 for any specific nutrient content claim on the label or in  
16 labeling.” 21 C.F.R. § 101.65(d)(2)(iii).

17 107. Section 101.62(b)(2)(i)(B) provides the applicable definition of “low fat” for the  
18 BetterBody coconut oil products because they have RACCs of less than 30 grams. Under §  
19 101.62(b)(2)(i)(B), a food is low fat only if it “contains 3 g or less of fat per reference amount  
20 customarily consumed and per 50 g of food.”

21 108. The BetterBody coconut oil products each contain 14 grams of total fat per  
22 RACC and 50 grams of total fat per 50 grams. Thus the BetterBody coconut oil products do  
23 not meet the definition of low total fat as required by §101.65(d)(2)(i)(F).

24 109. Under 21 C.F.R. § 101.62(c)(2), a food is “low saturated fat” only if it “contains  
25 1 g or less of saturated fatty acids per reference amount customarily consumed and not more  
26 than 15 percent of calories from saturated fatty acids.”  
27  
28

1 110. The BetterBody coconut oil products each contain 13 grams of saturated fat per  
2 RACC and approximately 92 percent of calories come from saturated fat. Thus the  
3 BetterBody coconut oil products do not meet the definition of low saturated fat as required  
4 by § 101.65(d)(2)(i)(F).

5 111. Further, the BetterBody coconut oil products do not contain “at least 10 percent  
6 of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein  
7 or fiber,” as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

8 112. Finally, the BetterBody coconut oil products fail to comply “with the definition  
9 and declaration requirements in this part 101 for any specific nutrient content claim on the  
10 label or in labeling,” 21 C.F.R. § 101.65(d)(2)(iii).

11 113. Therefore, the BetterBody coconut oil products cannot bear the term “healthy”  
12 (or any equivalent) on their labels.

13 114. Neither the Better Body Virgin Coconut Oil, nor the Refined Coconut Oil meets  
14 these clear and specific criteria that the FDA requires for using the term healthy (and  
15 variations) to describe a food. BetterBody’s use of the term healthy (and variations) to  
16 describe the BetterBody coconut oil products not only violates 21 C.F.R. § 101.65 and  
17 misbrands the BetterBody coconut oil products, but also misleads consumers regarding the  
18 nature of the BetterBody coconut oil products in the specific manner the detailed regulations  
19 are intended to prevent.

## 20 **VI. Plaintiff’s Purchase, Reliance and Injury**

21 115. Plaintiff has purchased the BetterBody Extra Virgin Coconut Oil approximately  
22 6 times. To the best of her recollection, she first purchased the Extra Virgin Coconut Oil in  
23 or around June of 2014, from New Leaf Community Markets located at 1210 41st Ave,  
24 Capitola, California 95010. Plaintiff believes she paid approximately \$12 each time she  
25 purchased the Extra Virgin Coconut Oil. Plaintiff recalls purchasing the Extra Virgin Coconut  
26 Oil most recently in or around September of 2015, from the same New Leaf Community  
27 Markets store. Plaintiff consumed the Extra Virgin Coconut Oil after purchasing it.

1 116. When deciding to purchase BetterBody’s Extra Virgin Coconut Oil, plaintiff  
2 read and relied on the following claims and images contained on the packaging of  
3 BetterBody’s Extra Virgin Coconut Oil:

- 4 a. “Our organic extra virgin coconut oil . . . is one of the healthiest oils in the world”
- 5 b. “a healthy alternative to butter & cooking oil”
- 6 c. “cholesterol-free”
- 7 d. “Zero Transfats”
- 8 e. “It is cholesterol free, making it a perfect substitute for butter or margarine”
- 9 f. “Full of MCTs, aka good fats”
- 10 g. “loaded with high energy MCTs”
- 11 h. Images of red hearts.

12 117. Based on these representations, plaintiff reasonably believed that BetterBody  
13 Extra Virgin Coconut Oil was both inherently healthy, and healthier than butter, margarine,  
14 and other cooking oils, and that the product would not raise or otherwise detriment her blood  
15 cholesterol levels, or subject her to increased risk of morbidity, including CHD and stroke.

16 118. When purchasing the coconut oils, plaintiff was seeking a product that had the  
17 qualities described on the BetterBody coconut oil products’ labeling, namely, healthy oils  
18 that were healthier than butter, margarine and other cooking oils, the consumption of which  
19 would not increase risk of CHD, stroke, and other morbidity.

20 119. These representations, however, were false and misleading, and had the  
21 capacity, tendency, and likelihood to confuse or confound plaintiff and other consumers  
22 acting reasonably (including the putative Class) because, as described in detail herein, the  
23 BetterBody coconut oil products are not healthy but instead their consumption increases the  
24 risk of CHD, stroke, and other morbidity.

25 120. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay  
26 consumer who did not have the specialized knowledge that BetterBody had regarding the  
27 nutrients present in its coconut oils. Plaintiff acted reasonably in relying on the health and  
28



1 wellness claims that BetterBody intentionally placed on the BetterBody coconut oil products’  
2 labels with the intent to induce average consumers into purchasing the BetterBody coconut  
3 oil products.

4 121. Plaintiff and members of the Class would not have purchased the BetterBody  
5 coconut oil products if they knew that the products are misbranded pursuant to California and  
6 federal regulations because their labels bear nutrient content claims when they do not meet  
7 the requirements to do so and omit material information and disclosures, all of which render  
8 the labels misleading.

9 122. BetterBody coconut oils cost more than similar products without misleading  
10 labeling, and/or would have cost less in the marketplace (i.e., would have demanded a lower  
11 price) absent the false and misleading statements complained of herein.

12 123. Plaintiff paid more for BetterBody Extra Virgin Coconut Oil, and would only  
13 have been willing to pay less, or unwilling to purchase it at all, absent the false and misleading  
14 labeling complained of herein.

15 124. For these reasons, BetterBody’s Extra Virgin Coconut oil was worth less than  
16 what plaintiff for it, and may have been worth nothing given its high total and saturated fat  
17 content, subjecting plaintiff to increased risk of CHD, stroke, and other morbidity.

18 125. Instead of receiving a product that had actual healthful qualities, the BetterBody  
19 coconut oil products that plaintiff and the Class received were ones that are not healthy, but  
20 rather cause CHD, stroke, and other morbidity.

21 126. Plaintiff would not have purchased BetterBody Extra Virgin Coconut Oil if she  
22 knew that the product was misbranded pursuant to California and FDA regulations or that its  
23 labeling claims were false and misleading.

24 127. Plaintiff lost money as a result of BetterBody’s deceptive claims and practices  
25 in that she did not receive what she paid for when purchasing the BetterBody coconut oil  
26 products.

1 128. Plaintiff detrimentally altered her position and suffered damages in an amount  
2 equal to the amount she paid for the product, or at least some portion thereof.

3 129. The senior officers and directors of BetterBody allowed BetterBody coconut oils  
4 to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent,  
5 unlawful, and misleading.

6 **CLASS ACTION ALLEGATIONS**

7 130. California Code of Civil Procedure section 382 provides that “when the question  
8 is one of a common or general interest, of many persons, or when the parties are numerous,  
9 and it is impracticable to bring them all before the court, one or more may sue or defend for  
10 the benefit of all.”

11 131. While reserving the right to redefine or amend the class definition prior to  
12 seeking class certification, plaintiff brings this suit as a class action pursuant to Cal. Code  
13 Civ. P. § 382 on behalf of herself and a Class of all persons who, on or after January 1, 2013  
14 (the “Class Period”), purchased, for personal or household use, and not for resale or  
15 distribution purposes, BetterBody’s Extra Virgin Coconut Oil, or BetterBody’s Refined  
16 Coconut Oil (the “Class”).

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

20 133. Questions of law and fact common to Plaintiff and the Class include:

- 21 a. whether BetterBody communicated a message regarding
- 22 healthfulness of the BetterBody coconut oil products through their packaging
- 23 and advertising;
- 24 b. whether that message was material to reasonable consumers;
- 25 c. whether the challenged claims are false, misleading, or likely to
- 26 deceive the public because of the BetterBody coconut oil products’ high
- 27 saturated fat content;
- 28

1 d. whether BetterBody's conduct was immoral, unethical,  
2 unscrupulous, or substantially injurious to consumers and whether the utility of  
3 its conduct, if any, outweighs the gravity of the harm to its victims;

4 e. whether BetterBody's conduct violates public policy;

5 f. whether the consumer injury caused by BetterBody's conduct was  
6 substantial, not outweighed by benefits to consumers or competition, and not  
7 one consumers themselves could reasonably have avoided

8 g. whether BetterBody's conduct violates state or federal food statutes  
9 or regulations;

10 h. whether BetterBody's statements relating to the coconut oils  
11 created implied or express warranties, and whether BetterBody breached any  
12 such warranties;

13 i. the proper amount of damages, including punitive damages;

14 j. the proper amount of restitution;

15 k. the proper scope of injunctive relief; and

16 l. the proper amount of attorneys' fees.

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

19 135. Plaintiff's claims are typical of Class Members' claims because they are based  
20 on the same underlying facts, events, and circumstances relating to BetterBody's conduct.  
21 Specifically, all Class Members, including plaintiff, were subjected to the same misleading  
22 and deceptive conduct when they purchased the challenged BetterBody coconut oil products,  
23 and suffered economic injury because the BetterBody coconut oil products are  
24 misrepresented. Absent BetterBody's business practice of deceptively and unlawfully  
25 labeling its products, plaintiff and Class members would not have purchased the BetterBody  
26 coconut oil products.

1 136. Plaintiff will fairly and adequately represent and protect the interests of the  
2 Class, has no interests incompatible with the interests of the Class, and has retained counsel  
3 competent and experienced in class action litigation, and specifically in litigation involving  
4 the false and misleading advertising of foods.

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

8 138. Questions of law and fact common to the Class predominate over any questions  
9 affecting only individual Class Members.

10 139. BetterBody has acted on grounds applicable to the Class, thereby making  
11 appropriate final injunctive and declaratory relief concerning the Class as a whole.

## 12 **CAUSES OF ACTION**

### 13 **FIRST CAUSE OF ACTION**

#### 14 **Violations of the Unfair Competition Law,**

#### 15 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

16 140. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
17 as if set forth in full herein.

18 141. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”  
19 Cal. Bus. & Prof. Code § 17200.

20 142. The acts, omissions, misrepresentations, practices, and non-disclosures of  
21 BetterBody as alleged herein constitute business acts and practices.

#### 22 **Fraudulent**

23 143. A statement or practice is fraudulent under the UCL if it is likely to deceive the  
24 public, applying a reasonable consumer test.

25 144. As set forth herein, the BetterBody’s claims relating to the BetterBody coconut  
26 oil products are likely to deceive reasonable consumers and the public.

1 **Unlawful**

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

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

9 **Unfair**

10 146. BetterBody’s conduct with respect to the labeling, advertising, and sale of the  
11 BetterBody coconut oil products was unfair because BetterBody’s conduct was immoral,  
12 unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct,  
13 if any, does not outweigh the gravity of the harm to its victims.

14 147. BetterBody’s conduct with respect to the labeling, advertising, and sale of the  
15 BetterBody coconut oil products was also unfair because it violated public policy as declared  
16 by specific constitutional, statutory or regulatory provisions, including but not limited to the  
17 False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions  
18 of the California Sherman Food, Drug, and Cosmetic Law.

19 148. BetterBody’s conduct with respect to the labeling, advertising, and sale of the  
20 BetterBody coconut oil products was also unfair because the consumer injury was substantial,  
21 not outweighed by benefits to consumers or competition, and not one consumers themselves  
22 could reasonably have avoided.

23 \* \* \*

24 149. BetterBody profited from its sales of the falsely, deceptively, and unlawfully  
25 advertised the BetterBody coconut oil products to unwary consumers.

1 150. Plaintiff and Class Members are likely to be damaged by BetterBody’s deceptive  
2 trade practices, as BetterBody continues to disseminate misleading information. Thus,  
3 injunctive relief enjoining this deceptive practice is proper.

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

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

10 153. Plaintiff also seeks, on behalf of herself and the Class, an order for the restitution  
11 of all monies from the sale of the BetterBody coconut oil products, which were unjustly  
12 acquired through acts of unlawful competition.

13 **SECOND CAUSE OF ACTION**

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

16 154. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
17 as if set forth in full herein.

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

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

1 157. As alleged herein, the advertisements, labeling, policies, acts, and practices of  
2 BetterBody relating to its coconut oil products misled consumers acting reasonably as to the  
3 healthfulness of the products.

4 158. Plaintiff suffered injury in fact as a result of BetterBody's actions as set forth  
5 herein because plaintiff purchased the BetterBody Extra Virgin Coconut Oil in reliance on  
6 BetterBody's false and misleading marketing claims that the product, among other things, is  
7 inherently healthy, is healthier than butter, margarine, shortening and other cooking oils, and  
8 does not negatively affect blood cholesterol levels.

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

13 160. BetterBody profited from its sales of the falsely and deceptively advertised  
14 coconut oil products to unwary consumers.

15 161. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff and the Class  
16 are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement  
17 of the funds by which BetterBody was unjustly enriched.

18 **THIRD CAUSE OF ACTION**

19 **Violations of the Consumer Legal Remedies Act,**

20 **Cal. Civ. Code §§ 1750 *et seq.***

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

23 163. The CLRA prohibits deceptive practices in connection with the conduct of a  
24 business that provides goods, property, or services primarily for personal, family, or  
25 household purposes.

26 164. BetterBody's false and misleading labeling and other policies, acts, and practices  
27 were designed to, and did, induce the purchase and use of BetterBody's products for personal,  
28

1 family, or household purposes by plaintiff and Class Members, and violated and continue to  
2 violate the following sections of the CLRA:

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

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

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

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

11 165. BetterBody profited from its sales of the falsely, deceptively, and unlawfully  
12 advertised coconut oil products to unwary consumers.

13 166. As a result, plaintiff and the Class have suffered harm, and therefore seek (a)  
14 actual damages in the amount of the total retail sales price of the BetterBody coconut oil  
15 products sold throughout the Class Period to all Class Members, (b) punitive damages in an  
16 amount sufficient to deter and punish, (c) injunctive relief in the form of modified advertising  
17 and a corrective advertising plan, and (d) restitution.

18 167. BetterBody's wrongful business practices constituted, and constitute, a  
19 continuing course of conduct in violation of the CLRA.

20 168. Pursuant to California Civil Code § 1782, on or around December 11, 2015,  
21 plaintiff notified BetterBody in writing by certified mail, return receipt requested, of her  
22 claims and the particular violations of § 1770 of the Act, but BetterBody failed to remedy the  
23 violations within 30 days thereafter. Because BetterBody failed to implement all remedial  
24 measures demanded, plaintiff, on behalf of herself and the Class, seeks injunctive relief under  
25 Civil Code § 1782(d), as well as actual and punitive damages, including attorneys' fees.

26 169. In compliance with Cal. Civ. Code § 1780(d), plaintiff's affidavit of venue is  
27 filed concurrently herewith, attached to the Complaint.



1 **FOURTH CAUSE OF ACTION**

2 **Breach of Express Warranties,**

3 **Cal. Comm. Code § 2313(1)**

4 170. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
5 as if set forth in full herein.

6 171. Through the BetterBody coconut oil product labels, BetterBody made  
7 affirmations of fact or promises, or description of goods, which were “part of the basis of the  
8 bargain,” in that plaintiff and the Class purchased the products in reasonable reliance on those  
9 statements. Cal. Com. Code § 2313(1).

10 172. BetterBody breached its express warranties by selling products that are not  
11 healthy, not healthier than butter, margarine, shortening, or other cooking oils, and that  
12 negatively affect cholesterol levels, increasing risk of CHD and stroke.

13 173. That breach actually and proximately caused injury in the form of the lost  
14 purchase price that plaintiff and Class members paid for the BetterBody coconut oils.

15 174. As a result, plaintiff seeks, on behalf of herself and other Class Members, their  
16 actual damages arising as a result of BetterBody’s breaches of express warranty.

17 **FIFTH CAUSE OF ACTION**

18 **Breach of Implied Warranty of Merchantability,**

19 **Cal. Comm. Code § 2314**

20 175. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
21 as if set forth in full herein.

22 176. BetterBody, through its acts and omissions set forth herein, in the sale,  
23 marketing and promotion of the BetterBody coconut oils, made representations to plaintiff  
24 and the Class that, among other things, the products are healthy.

25 177. Plaintiff and the Class bought BetterBody coconut oils manufactured,  
26 advertised, and sold by BetterBody, as described herein.

1 178. BetterBody is a merchant with respect to the goods of this kind which were sold  
2 to plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an  
3 implied warranty that those goods were merchantable.

4 179. However, BetterBody breached that implied warranty in that the BetterBody  
5 coconut oils are not healthy, are not healthier than butter, margarine, shortening or other  
6 cooking oils, and negatively affect cholesterol levels, increasing risk of CHD and stroke, as  
7 set forth in detail herein.

8 180. As an actual and proximate result of BetterBody's conduct, plaintiff and the  
9 Class did not receive goods as impliedly warranted by BetterBody to be merchantable in that  
10 they did not conform to promises and affirmations made on the container or label of the goods.

11 181. Plaintiff and Class have sustained damages as a proximate result of the foregoing  
12 breach of implied warranty in the amount of the coconut oil products' purchase price.

13 **PRAYER FOR RELIEF**

14 182. Wherefore, Plaintiff, on behalf of herself, all others similarly situated and the  
15 general public, prays for judgment against BetterBody as to each and every cause of action,  
16 and the following remedies:

17 A. An Order declaring this action to be a proper class action, appointing  
18 plaintiff as class representative, and appointing undersigned counsel as class counsel;

19 B. An Order requiring BetterBody to bear the cost of class notice;

20 C. An Order enjoining BetterBody from using any challenged labeling or  
21 marketing claim that is found to be false, misleading, or unlawful;

22 D. An Order requiring BetterBody to pay compensatory damages where  
23 permitted by law;

24 E. An Order requiring BetterBody to pay restitution to restore all funds  
25 acquired by means of any act or practice declared by this Court to be an unlawful,  
26 unfair, or fraudulent business act or practice, untrue or misleading advertising, plus  
27 pre-and post-judgment interest thereon;  
28

- 1 F. An award of attorneys' fees and costs; and  
2 G. Any other and further relief that Court deems necessary, just, or proper.

3 **JURY DEMAND**

4 Plaintiff hereby demands a trial by jury on all issues so triable.

5  
6 Dated: June 9, 2016

7   
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