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11 GT's Living Foods, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GABRIELA ZAMORA, SAMII HARTMAN
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GT'S LIVING FOODS, LLC

Defendant.

Case No.: 19STCV05710

**GT'S LIVING FOODS, LLC'S
ANSWER TO PLAINTIFFS' THIRD
AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF**

Judge: Hon. Amy D. Hogue
Dept.: 7 (Complex Civil Litigation)

FILED
Superior Court of California
County of Los Angeles

NOV 25 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By Isaac Lovs Deputy

1 Defendant GT's Living Foods, LLC ("GT's Living Foods") answers the unverified
2 Third Amended Complaint herein (the "COMPLAINT") as follows:

3 Pursuant to California Civil Procedure Code § 431.30, GT's Living Foods denies
4 each and every, all and singular, allegations of the COMPLAINT, and also denies that
5 plaintiffs Gabriella Zamora, Samii Hartman, or any member of any purported classes
6 defined in the COMPLAINT (collectively, "PLAINTIFFS"), was injured or damaged in the
7 sum or manner alleged or in any sum or manner at all. GT's Living Foods also denies that
8 any of the claims alleged by PLAINTIFFS in the COMPLAINT properly may be
9 adjudicated on a class-action basis.

10 **AFFIRMATIVE DEFENSES**

11 While specifically denying any liability to PLAINTIFFS and members of the purported
12 class, or anyone, and that the requisites for class action treatment are present and that this action
13 could properly proceed as a class action, and without assuming any legal or factual burden not
14 otherwise assigned to it by virtue of listing these affirmative defenses, GT's Living Foods asserts
15 the following affirmative defenses:

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Claim)**

18 The COMPLAINT fails to state any claim upon which relief may be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Lack of Standing)**

21 The COMPLAINT may be barred, in whole or in part, for lack of standing.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Statute of Limitations)**

24 The COMPLAINT may be time-barred, in whole or in part, under applicable statutes of
25 limitations, including but not limited to, California Civil Code § 1783, California Business and
26 Professions Code § 17208, and/or California Code of Civil Procedure §§ 312 through 365.
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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 The COMPLAINT may be barred, in whole or in part, by the doctrine of laches.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(First Amendment)**

6 The COMPLAINT may be barred, in whole or in part, by the First Amendment to the
7 United States Constitution.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 **(Plaintiff and Third-Party Fault)**

10 The COMPLAINT may be barred, in whole or in part, because the alleged injuries or
11 damages complained of by PLAINTIFFS, if there actually were any, were caused by the acts or
12 omissions of PLAINTIFFS and/or third parties over whom GT's Living Foods had no control or
13 right of control.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 **(Intervening and Superseding Causes)**

16 The COMPLAINT may be barred, in whole or in part, because the alleged injuries or
17 damage complained of by PLAINTIFFS, if there actually were any, were caused by the intervening
18 and superseding events and/or actions of persons or entities other than GT's Living Foods.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(No Causation)**

21 The COMPLAINT may be barred, in whole or in part, because any alleged injury to
22 PLAINTIFFS was not caused by GT's Living Foods' conduct.

23 **NINTH AFFIRMATIVE DEFENSE**

24 **(No Damages)**

25 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS have not
26 suffered any damages.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(No Injury)**

3 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS have not
4 suffered any cognizable injury.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 **(No Reliance)**

7 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS did not
8 justifiably and/or reasonably rely on any false or misleading statement or omission by GT's Living
9 Foods.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 **(Good Faith/Reasonable Belief as to Accuracy and Validity)**

12 The COMPLAINT may be barred, in whole or in part, because at all times at issue herein
13 GT's Living Foods' conduct was in good faith and/or because any representations or statements
14 alleged to have been made by GT's Living Foods were true and accurate at the time made and/or
15 otherwise were made in good faith and with a reasonable belief as to their validity and accuracy
16 and with a reasonable belief that all of GT's Living Foods' conduct was lawful.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 **(Justification)**

19 The COMPLAINT may be barred, in whole or in part, because GT's Living Foods'
20 conduct was at all times justified and/or privileged or immunized on the basis of business
21 justification and/or the business judgment rule.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 **(Safe Harbor)**

24 The COMPLAINT may be barred, in whole or in part, because GT's Living Foods'
25 business practices were and are not unfair, unlawful, fraudulent, deceptive, and/or likely to mislead
26 because GT's Living Foods' conduct falls within a safe harbor created by law and/or because
27 PLAINTIFFS' claims are barred by the doctrines of statutory and regulatory compliance.
28

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Inadequate Notice)**

3 The COMPLAINT may be barred, in whole or in part, by PLAINTIFFS' failure to comply
4 with the notice and demand procedures required under California Civil Code § 1750 *et seq.*

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **(Corrective Action)**

7 The COMPLAINT may be barred, in whole or in part, because damages may not be
8 awarded to PLAINTIFFS pursuant to California Civil Code §§ 1782(b), 1782(c), and 1784.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 **(Preemption)**

11 The COMPLAINT may be barred, in whole or in part, by the doctrine of federal
12 preemption.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 **(Primary Jurisdiction)**

15 The COMPLAINT may be barred, in whole or in part, by the doctrine of primary
16 jurisdiction.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 **(Abstention)**

19 The COMPLAINT may be barred, in whole or in part, by the doctrine of abstention.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 **(No Entitlement to Relief Sought)**

22 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS seek relief to
23 which they are not entitled.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 **(Speculative Damages)**

26 The COMPLAINT may be barred, in whole or in part, because the damages sought are too
27 speculative and remote.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 The COMPLAINT may be barred, in whole or part, due to PLAINTIFFS' failure to
4 mitigate damages.

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

6 **(Adequate Remedy at Law)**

7 Any injury or damage suffered by PLAINTIFFS, if there were any, would be adequately
8 compensated in an action at law for damages.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(No Entitlement to Punitive Damages)**

11 Any award of punitive damages to PLAINTIFFS is barred under the relevant law and
12 would violate GT's Living Foods' state or federal constitutional rights.

13 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

14 **(No Basis for Restitution)**

15 There is no basis for restitution as GT's Living Foods has not been unjustly enriched.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(No Entitlement to Injunctive Relief)**

18 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS fail to state a
19 claim for injunctive relief.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 **(No Extraterritorial Application of California Law)**

22 The COMPLAINT may be barred, in whole or in part, because the extraterritorial
23 application of PLAINTIFFS' claims, arising under California law, to wholly interstate or foreign
24 commerce, and/or the application of California laws to the claims of non-residents under the
25 circumstances of this case, would violate the laws of California or otherwise be beyond the scope
26 of jurisdiction of those laws, and/or violate the United States Constitution or otherwise be
27 unconstitutional.
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1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 (Consent)

3 The COMPLAINT may be barred, in whole or in part, to the extent PLAINTIFFS
4 consented to, approved of, and/or ratified all acts and omissions about which PLAINTIFFS now
5 complain.

6 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

7 (Puffery)

8 The COMPLAINT may be barred, in whole or in part, to the extent it asserts claims arising
9 out of non-actionable puffery.

10 **THIRTIETH AFFIRMATIVE DEFENSE**

11 (Equitable Defenses)

12 The COMPLAINT may be barred, in whole or in part, based on principles of equity,
13 including, but not limited to, the doctrines of unclean hands, waiver, and estoppel.

14 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

15 (Reservation of Rights)

16 GT's Living Foods is informed and believes and on such basis alleges that it may have
17 additional defenses available which are not fully known and of which GT's Living Foods is not
18 presently aware. GT's Living Foods reserves the right to raise and assert additional defenses after
19 such defenses have been ascertained.

20 **PRAYER FOR JUDGMENT**

21 WHEREFORE, GT's Living Foods prays for judgment in its favor as follows:

- 22 1. That this suit cannot be maintained as a class action;
- 23 2. That the COMPLAINT be dismissed in its entirety on the merits;
- 24 3. That PLAINTIFFS take nothing by the COMPLAINT;
- 25 4. That GT's Living Foods be awarded its costs, disbursements, and expenses
26 incurred herein;
- 27 5. That GT's Living Foods be awarded reasonable attorneys' fees as provided
28 by law; and

1 6. That GT's Living Foods be awarded such other relief as the Court may deem
2 proper.

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5 Dated: November 25, 2019

O'MELVENY & MYERS LLP

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7 By: Scott M. Voelz
8 Scott M. Voelz
9 Zach A. Tafoya
10 Attorneys for Defendant

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