SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| GABRIELA ZAMORA, SAMII HARTMAN, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br>v.<br><br>GT'S LIVING FOODS, LLC, a California corporation,<br><br>Defendants. | Case No.: 19STCV05710<br><br>ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION<br><br>Hearing Date: October 12, 2021<br>Time: 3:00 p.m.<br>Dept.: 7 |

Plaintiffs Gabriela Zamora and Samii Hartman (collectively "Plaintiffs") move the Court to certify a class of "[a]ll persons who purchased GT's Gingerade, Gingerberry, Original, and Trilogy Enlightened and Synergy Kombucha in California on or after March 1, 2017." Plaintiffs also move the Court to appoint them as class representatives and Stephen D. Weisskopf, Ronald C. Cohen, and Terry J. Kent of LevatoLaw, LLP as class counsel. Defendant GT's Living Foods, LLC ("GT" or "Defendant") opposes Plaintiffs' motion.

The Court, for the following reasons, GRANTS Plaintiffs' motion for class certification.

I. Allegations

Plaintiffs allege GT misrepresented the alcohol content of its "variously flavored" Enlightened Kombucha, a fermented beverage (the "Kombucha"). (Third Amended Complaint ("3AC"), ¶¶ 6-7.) Testing revealed the Kombucha contained more than 0.5% alcohol by volume ("ABV"), though GT "publicly" maintained that its Kombucha contained less than 0.5% ABV and sold its Kombucha to persons under 21 years old. (3AC, ¶¶ 25-26.) "GT's' deceptive marketing and false labeling of its Enlightened Kombucha — including the misrepresentations that it has less alcohol … than it actually contains — is part of GT's' effort to portray the product as healthy." (3AC, ¶ 2.) Plaintiffs bring causes of action for (1) unfair competition, (2) false advertising, and (3) unfair business practices. They pray for, among other relief, declaratory and injunctive relief, compensatory and punitive damages, and attorney's fees. (3AC Prayer for Relief, ¶¶ 1-8.)

Plaintiffs now move the Court to certify a class of "All persons who purchased GT's Gingerade, Gingerberry, Original, and Trilogy Enlightened and Synergy Kombucha in California on or after March 1, 2017." (Plaintiffs' Supp. Brief in Support, 6:6-8.) GT opposes Plaintiff's motion for class certification.

II. Legal Standard: Class Certification

If "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) Class certification is "essentially a procedural [question] that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-40 (*Linder*).)

The party moving for certification must, with "substantial" evidence, show:

(A) "a sufficiently numerous, ascertainable class";

(B) "a well-defined community of interest," which has three factors,

(1) "predominant common questions of law or fact,"

(2) "class representatives with claims or defenses typical of the class," and

(3) "class representatives who can adequately represent the class"; and

(C) "certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods."

(*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089 (*Fireside*); *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1354-55.)

III. Plaintiffs Demonstrate the Proposed Class Is Sufficiently Numerous and Ascertainable.

A. The Proposed Class Is Sufficiently Numerous.

"[N]o set number" determines whether a class is "sufficiently numerous"; the test is whether a class is so numerous that "it is impracticable to bring them all before the court." (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223 [citing Code Civ. Proc., § 382].)

According to its discovery responses, GT sold enough bottles of Kombucha in California from March 1, 2017 to December 31, 2019 to infer that the class potentially includes "thousands" of consumers.[1] (Declaration of Stephen D. Weisskopf in Support ("Weisskopf Decl.") ¶¶ 11-13, Exhs. 1-3; Motion Brief, 9:20-21; Plaintiffs' Supp. Brief in Support, 6:9-11.) GT does not dispute the class's numerosity.

The proposed class is sufficiently numerous.

B. The Proposed Class Is Ascertainable.

A class is "ascertainable" if it is defined by "objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) The purpose of the "ascertainable" requirement is to determine who will receive notice and be bound by the eventual judgement. (*Id.* at p. 987 [a class is ascertainable if the definition creates

[1] GT's exact sales figures, redacted from Plaintiffs' moving papers, are subject to a motion to seal.

"no ambiguity as to who will and will not be bound by the outcome" of the action]; *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (*Sevidal*).)

The proposed class here is objectively defined: "All persons who purchased GT's Gingerade, Gingerberry, Original, and Trilogy Enlightened and Synergy Kombucha in California on or after March 1, 2017." (Plaintiffs' Supp. Brief in Support, 6:6-8.) This definition leaves no ambiguity as to who will be bound by the judgment, and therefore the proposed class is ascertainable.

GT contends the proposed class is not ascertainable because it is overbroad, encompassing consumers who bought Kombucha that did not exceed 0.5% ABV. "Courts have recognized that 'class certification can be denied for lack of ascertainability when the proposed definition is overbroad and the plaintiff offers no means by which only those class members who have claims can be identified from those who should not be included in the class.'" (*Sevidal, supra,* 189 Cal.App.4th at p. 921 [citing *Ghazaryan v. Diva Limousine Ltd.* (2008) 169 Cal.App.4th 1524, 1533, fn. 8, disapproved on another ground by *Noel, supra,* 7 Cal.5th at p. 974, fn. 8].) Thus, in *Sevidal*, the court refused to certify a class defined as "any California consumer who purchased any product from Target.com on or after November 21, 2003 which was identified on Target.com as 'Made in USA,' when such product was actually not manufactured or assembled in the United States." (*Id.* at p. 911.) The court declined to find ascertainability because "approximately 80 percent of the online purchasers" made their purchases without ever seeing the country-of-origin representation that was only visible to consumers who selected the 'Additional Info' icon. (*Id.* at p. 921.) The problem was that consumers who did not follow the link could not self-identify; they had no way of knowing whether they purchased a product mislabeled as "made in USA." *Sevidal* is distinguishable because, in this case, Plaintiffs accuse GT of omitting the required warning on all products purchased by the class. Class members can easily self-identify as persons who purchased the relevant products during the relevant time period.

The ascertainability problem in *Pfizer Inc. v. Superior Court* (2010) 182 Cal.App.4th 622 (*Pfizer*) is also not present here. In *Pfizer,* the plaintiff took issue with Pfizer's "as effective as floss" Listerine marketing campaign, alleging it was a "fraudulent" practice under the UCL. (*Id.* at pp. 625, 629-630.) The *Pfizer* court reasoned that the proposed class of "all purchasers of Listerine in California during a six-month period" was "grossly overbroad" because 19 of the 34 different labels on the Listerine bottles at issue "never included any statement comparing Listerine mouthwash to floss"; not every bottle shipped during the class period "bore such a label"; and Pfizer's television commercials "did not run continuously." This was a problem because "there [wa]s no evidence that a majority of Listerine customers viewed any of those commercials." (*Id.* at pp. 631-633.)

*Pfizer* and *Sevidal* are distinguishable from this case in two ways. First, the plaintiffs in both cases challenged an affirmative misrepresentation to which, the evidence showed, a "majority" of the proposed class was never exposed. (*Sevidal, supra,* 189 Cal.App.4th at p. 928; *Pfizer, supra,* 182 Cal.App.4th at pp. 631-633.) Here, in contrast, Plaintiffs' theory of recovery is primarily based on class members' exposure to GT's labels, all of which omitted the same alcohol-content warning. (Complaint, ¶¶ 7-24, 27.)

Second, the evidence supporting certification in this case provides a means for identifying class members. "Overbreadth" has two elements: (1) an overly broad proposed class definition and (2) "no means by which only those class members who have claims can be identified from those who should not be included in the class." (*Sevidal, supra,* 189 Cal.App.4th at p. 921.) For purposes of the second element, the *Sevidal* plaintiffs' evidence of product sales was not limited to "only the items which were misidentified or the dates on which a misidentification occurred," and instead included "all items that Target has been able to determine were ever [correctly or incorrectly] described as 'Made in the USA' on its website." (*Id.* at p. 920.) To make matters worse, the evidence "certain products were misidentified [did] not provide a basis to determine who purchased those products." (*Ibid.*) Here, in contrast, Plaintiffs challenge an omission that applies to all of the relevant products sold to consumers. Class members can self-identify as purchasers of these products.

The Court is similarly not persuaded by GT's "overbreadth" argument based on its contention GT Kombucha did not exceed 0.5% ABV and, therefore, few if any class members are entitled to recovery. This contention argues the merits of the case. "[W]e are not convinced," wrote the Supreme Court, "that certification should be conditioned upon a showing that class claims for relief are likely to prevail." (*Linder, supra,* 23 Cal.4th at pp. 440, 443.) "When the substantive theories and claims of a proposed class suit are alleged to be without legal or factual merit, the interests of fairness and efficiency are furthered when the contention is resolved in the context of a formal pleading (demurrer) or motion (judgment on the pleadings, summary judgment, or summary adjudication) that affords proper notice and employs clear standards." (*Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1453 [quoting *Linder,* at p. 440].) Whether or not, in fact, the Kombucha purchased by the proposed class actually exceeded 0.5% ABV goes to the merits rather than the ascertainability of the class.

The proposed class is ascertainable and the class definition is not "significant[ly]" overbroad. (*Sevidal, supra,* 189 Cal.App.4th at p. 921.)

IV. Plaintiffs Demonstrate a "Well-Defined Community of Interest."

The "community of interest" requirement embodies three factors: (A) "predominant common questions of law or fact"; (B) "class representatives with claims or defenses typical of the class"; and (C) "class representatives who can adequately represent the class." (*Fireside, supra,* 40 Cal.4th at p. 1089.)

A. Plaintiffs' Theories Raise Predominately Common Questions of Law and of Fact.

To assess whether common questions predominate, a court "must examine the issues framed by the pleadings and the law applicable to the causes of action alleged. [Citations.] It must determine whether the elements necessary to establish liability are susceptible of common proof, or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1024 (*Brinker*).) The question is whether "the operative legal principles, as applied to the facts or

the case, render the claims susceptible to resolution on a common basis." (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 530 (*Ayala*).) In other words, the "pertinent questions" are: "(1) What elements must be proven to establish the defendant's liability? and (2) Are these elements susceptible of common proof?" (*Downey v. Public Storage, Inc.* (2020) 44 Cal.App.5th 1103, 1113.) As a "general rule," "if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Brinker,* at p. 1022.)

1. Unfair Competition Law Violation (Count 1)

The UCL prohibits three different "varieties" of business practices: unlawful, unfair, and fraudulent. (Bus. & Prof. Code, § 17200; *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 162, 180 (*Cel-Tech*).) Its purpose is to "protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.) Plaintiffs' apparent theory is that GT, by failing to affix a warning label to its Kombucha, violated all three prongs of the UCL. (3AC, ¶¶ 26-27, 39-41.)

First, the "unlawful" prong of the UCL is perhaps simplest: it "borrows" violations of other laws, "treats them as unlawful practices," and makes them "independently actionable." (*Cel-Tech, supra,* 20 Cal.4th at p. 180.) Violations of "[v]irtually any law" — state or federal — can support a "unlawful" UCL claim. (*State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102-1103, abrogated on other grounds by *Cel-Tech, supra,* 20 Cal.4th 162; *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 676.) Plaintiffs here allege that GT violated federal and state statutes and regulations, namely Business and Professions Code sections 25000, 25502, and 25503, which regulate "exclusivity, marketing, sales, and promotions of alcoholic beverages"; the California Alcoholic Beverages Act (Bus. & Prof. Code, § 23000 et seq.); title 27 of the Code of Federal Regulations; and the Federal Alcoholic Administration Act, which makes it "unlawful for any person to manufacture to manufacture, import, or bottle for sale or distribution

in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

> 'GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.'"

(3AC, ¶¶ 13, 40; 27 U.S.C. § 215(a).)

Second, the "unfair" prong of the UCL is "very broad" in scope, although "not unlimited." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719.) The Supreme Court has adopted a definition of "unfair" but has expressly limited it to "an action by a competitor alleging anticompetitive practices" while expressing no view on the test that applies in UCL actions by consumers alleging "unfair" practices. (*Cel-Tech, supra,* 20 Cal.4th at p. 187, fn. 12.) Therefore, the "state of the law on what constitutes an unfair business practice in consumer cases is somewhat unsettled," and authorities are split on the definition of "unfair" in the consumer context. (*Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 594-595 [surveying cases] (*Davis*); Stern, Business & Professions Code Section 17200 Practice (The Rutter Group 2021) § 3.118.)

The trend, according to Stern, appears to be the three-factor test called "excellent" and adopted by the Second District Court of Appeal in *Davis, supra,* 179 Cal.App.4th at p. 597: "(1) The consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." (Stern, Business & Professions Code Section 17200 Practice (The Rutter Group 2021) § 3.121.1.) Neither party discusses which standard should apply, but the Court assumes the *Davis* test will apply at trial.

Lastly, a business practice is "fraudulent" if "members of the public are likely to be deceived." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211 (*Committee*).) The test is objective and based on the "likely effect" the business practice would have on a reasonable consumer; a plaintiff "need not show that he or others were actually deceived or confused by the conduct or business practice in question." (*McKell v. Washington*

*Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471 (*McKell*); *Schnall v. Hertz Corp.* (2000) 78 Cal.App.4th 1144, 1167.) A "fraudulent" business practice may be based on "untrue" representations to the public or representations that are "accurate on some level" but "nevertheless tend to mislead or deceive." (*McKell,* at p. 1471.)

Although Plaintiffs' 3AC alleges that "[t]esting, using headspace gas chromatography combined with mass spectrometry, demonstrated that GT's Enlightened Kombucha contains more than 0.5% alcohol by volume," Plaintiffs initially failed to submit evidence of this testing in support of their class certification motion. (3AC, ¶ 25.) At the Court's request, Plaintiffs supplemented their motion with testimony from their scientific consultant and expert, Blake Ebersole. Based on his testing, Ebersole opines that the "overwhelming majority" of GT's Kombucha "contains more than 0.5% ABV by volume." (Declaration of Blake Ebersole ("Ebersole Decl."), ¶ 12.) His methodology was to purchase six bottles of six GT Kombucha flavors, 36 bottles total, at chain retail stores in three California cities: San Francisco, San Diego, and Los Angeles. (*Id.* at ¶ 30.) The bottles were then refrigerated, packaged, and shipped overnight to a laboratory in Wisconsin for testing. (*Id.* at ¶¶ 31-35.) Ebersole's Declaration presents the results of this testing. (*Id.* at ¶ 36.) To provide common proof as to the historic alcohol content for the entire class period, Ebersole proposes to rely on studies — conducted by him and other researchers — in late 2015, mid-2016, 2017, 2018, and 2019. (Ebersole Decl., ¶¶ 37-74.)

GT, on the other hand, presents test results from Michelson Laboratories and Eurofins Food Integrity and Innovation f/k/a Covance Food Solutions finding less than 0.5% ABV in its Kombucha. (Declaration of Zach A. Tafoya in Opposition ("Tafoya Decl."), ¶¶ 2-11, Exhs. 1-9.)[2] These tests were apparently conducted at GT's request, before Plaintiffs sued, and was then later produced by GT in discovery. (Tafoya Decl., ¶ 2.)

Viewed through the lens of Plaintiffs' theory of recovery, the Court is persuaded the parties' dueling test results bear on the merits of the case and do not defeat commonality. Both sides propose to use sample evidence to prove the percentage of Kombucha bottles sold with over

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[2] Exhibits 1-9 are subject to a motion to seal.

0.5% ABV. The parties' proposed methods of proof presume that GT's Kombucha formula was static — that is, the formula did not significantly change during the class period — such that expert witnesses may offer "reliable" opinions on the levels of alcohol based on data gleaned from random samples. (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 42 (*Duran*).) Sample evidence based on a random selection "sufficiently large to provide reliable information" is an acceptable means of proving, by a preponderance of the evidence, that GT had a practice of selling bottles of Kombucha, x percent of which contained over 0.5% ABV. (See *Duran,* at pp. 41-49 [statistical sampling guidelines].)

Whether the percentage of noncompliant sales amounts to an unlawful, unfair, or fraudulent practice therefore presents a question for the trier of fact, allowing both sides to argue that selling x percent of Kombucha with more than 0.5% alcohol violates or does not violate the UCL. A factfinder might reasonably conclude that a failure to disclose the alcohol content is not unlawful, unfair, or fraudulent where, for example, testing reveals that only 1% of the products have more than 0.5% ABV. On the other hand, a factfinder might reasonably conclude that the failure to disclose is unlawful, unfair, or fraudulent if most or a substantial percentage of products were sold with more than 0.5% ABV.

GT's counsel at oral argument offered a hypothetical: if Plaintiffs prove, by a preponderance of the evidence, that GT's business practice is to sell 50% of its Kombucha, for example, with over 0.5% ABV, and the Court further concludes this business practice violates the UCL, then, by definition, 50% of the class will not have purchased an offending bottle and thus the class definition is overbroad. Counsel's argument assumes, however, that every class member each bought only one bottle. All else remaining constant, while there is a 50% chance a consumer who bought one bottle, under the hypothetical, bought a bottle with over 0.5% ABV, there is a 75% chance a customer who bought two bottles bought at least one with too much alcohol; the probability of buying at least one offending bottle increases to 87.5% for three bottles bought, 93.8% for four bottles bought, 96.9% for five, and so forth. After the Court considers whether GT's business practice is "unfair, unlawful, or fraudulent" to determine GT's liability, if any, under the UCL, the class members might still need to prove they purchased a certain number of bottles

in order to share in the class recovery. A class action "can be maintained even if each class member must at some point individually show his or her eligibility for recovery or the amount of his or her damages...." (*McAdams v. Monier, Inc.* (2010) 182 Cal.App.4th 174, 186-187 (*McAdams*) [citing *Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, 397].)

Although each side objects to the other side's expert testimony, it is premature for the Court to exercise its gatekeeping function under *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 (*Sargon*). *Sargon* does not apply to expert testimony "offered in support of class certification" that is "unnecessary" to the certification analysis, *Apple, Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1120. The Court therefore declines to address objections to expert testimony here and instead concludes that common legal and factual questions in the experts' models and opinions predominate over individual issues.

The Court finds that questions common to the class predominate Plaintiffs' UCL claim.

2. False Advertising Law Violation (Count 2)

Under the FAL, it is "unlawful for any person, ... corporation ..., or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services ... or to induce the public to enter into any obligation relating thereto, to make or disseminate ... before the public in this state, ... in any newspaper or other publication ... or in any other manner or means whatever ... any statement, concerning that real or personal property or those services ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...." (Bus. & Prof. Code, § 17500.) "Any violation of the [FAL] ... necessarily violates the UCL and the "restitutionary remedies" of both statutes "are identical and construed in the same manner." (*Committee, supra,* 35 Cal.3d at pp. 210; *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 694 (*Colgan*).) To state an FAL claim, "it is necessary only to show that 'members of the public are likely to be deceived.'" (*Committee,* at p. 211.)

Plaintiffs allege GT violated the FAL by "offering mislabeled bottles of GT's [Kombucha] for sale to Plaintiffs and the Class members by way of product packaging, labeling, and other

promotional materials." (3AC, ¶ 45.) GT also allegedly "disseminated advertisements in print, online, and television formats which contained materially misleading and deceptive information and omitted material information, as discussed throughout the Complaint, for purposes of inducing customers to purchase" Kombucha. (*Id.* at ¶ 46.)

The Court cannot conclude common questions predominate Plaintiffs' FAL claim to the extent it challenges GT's allegedly affirmative representations. Plaintiffs do not present any evidence GT's purportedly false "print, online, and television" advertising uniformly reached the class members, except for the labeling on the Kombucha bottles, which the Court can infer class members were necessarily exposed to when they bought the product. (3AC, ¶ 46.) As discussed above, Plaintiffs mainly challenge GT's allegedly misleading omission of a fact that it was under a duty to disclose. The theory that GT uniformly omitted an alcohol-content warning from the label on its Kombucha bottles is predominated by questions common to the class for purposes of the FAL.

3. Restitution and GT's Defenses

GT contends two questions are individualized and predominate: (1) restitution and (2) GT's own defenses. The Court briefly addresses these issues.

"The remedies available in a UCL or FAL action are limited to injunctive relief and restitution." (*In re Vioxx Class Cases* (2009) 180 Cal.App.4th 116, 130 (*Vioxx*).) Restitution means the "restoration of any interest in 'money or property, real or personal, which may have been acquired by means of'" unfair competition. (*In re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 795 (*Tobacco*).) One measure of restitution is "[t]he difference between what the plaintiff paid and value of what the plaintiff received." (*Vioxx,* at p. 131.) While not the "exclusive measure" of restitution available in a UCL case, this measure is often applied "when the product had [some] value to consumers notwithstanding the alleged deceptive advertising." (*Ibid.*; *Tobacco,* at pp. 792, 796.)

GT's arguments largely address the "viability" of Plaintiffs' restitution model, which is a proposed consumer survey by Dr. George E. Belch. (Opposition, 15-18.) GT argues Dr. Belch is

not qualified as an expert and his survey model is faulty. (*Ibid.*) In reply, Plaintiffs defend their model by, among other things, citing a federal case discussing a study by Dr. Belch, *Hilsey v. Ocean Spray Cranberries, Inc.* (S.D. Cal. 2018) 2018 WL 6300479, and they, in turn, attack GT's expert testimony.

The Court is not persuaded restitution raises individualized questions that predominate the case. A class action, as discussed, "can be maintained even if each class member must at some point individually show his or her eligibility for recovery or the amount of his or her damages, so long as each class member would not be required to litigate substantial and numerous factually unique questions to determine his or her individual right to recover." (*McAdams, supra,* 182 Cal.App.4th at pp. 186-187.) While UCL plaintiffs must establish "the existence of a 'measurable amount' of restitution," the trial court has "broad discretion" to order restitution "even in the absence of individualized proof of injury." (*Colgan, supra,* 135 Cal.App.4th at p. 700; *Vioxx, supra,* 180 Cal.App.4th at p. 136.) As GT argues, Plaintiffs and the class might not be entitled to restitution because they actually received a higher-value product — alcoholic kombucha, a line of which GT markets and sells with a government warning — than the Kombucha they purchased. (Opposition Brief, 18:4-8.) GT's alcoholic kombucha might thus serve as a "comparator" product that determines the value of what Plaintiffs received in the bargain. But crucially here, the "issue of a proper comparator" is not a consumer-specific issue that raises predominately individual questions. (Cf. *Vioxx,* at p. 136 ["proper comparator drug" depended on each individual patient's "medical history, treatment needs, and drug interactions…"].)

At oral argument, GT further noted Plaintiffs have not developed a trial plan that models how they intend to prove damages. The Supreme Court has advised trial courts to obtain a trial plan "before deciding to certify a class action" if "statistical evidence will comprise part of the proof" of liability — rather than damages — on class action claims. (*Duran, supra,* 59 Cal.4th at pp. 31-32.) Plaintiffs will, of course, need to submit a trial plan before trial. But as a federal court observed, *Duran* "did not compel California courts to require a trial plan from class action plaintiffs at the class certification stage" but instead advised that it may be in a court's best interest to seek trial plans early, rather than "risk being forced to decertify the class at a later stage in the

proceedings." (*Aldapa v. Fowler Packing Company, Inc.* (E.D. Cal. 2016) WL 11662115 *2.) "Concerns about how the trial of the class action will be managed are, for obvious reasons, often best reserved until it becomes clear there may actually be a class action trial (i.e. after a class is certified). They are normally, therefore, properly raised after significant merits-phase discovery has taken place." (*Ibid.*)

GT also argues certification vitiates its right to litigate purportedly bottle-specific or consumer-specific defenses. "[I]f liability is to be established on a classwide basis, defendants must have an opportunity to present proof of their affirmative defenses within whatever method the court and the parties fashion to try these issues." (*Duran, supra,* 59 Cal.4th at p. 38.) Among these defenses is GT's argument that third parties are at fault for not properly storing and refrigerating its product, which apparently can increase Kombucha's alcohol content. But the Court is not persuaded Plaintiffs' sampling model forecloses GT's defenses. GT may, if it chooses, show the samples upon which Dr. Belch bases his survey were not representative because, for example, they were mishandled by the retailer, or it might introduce evidence of widespread mishandling sufficient to raise an inference that its own practices — the focus of the litigation — do not violate the UCL.[3] Ultimately, Plaintiffs' "statistical model of proof" does not eliminate GT's "chance to impeach that model" or prevent it from introducing individualized defensive evidence. (*Duran,* at p. 38.)

B. Plaintiffs' Claims Are Typical of the Class.

Class representatives must have "claims or defenses typical of the class." (*Fireside, supra,* 40 Cal.4th at p. 1089.) Claims are "typical" if "other members have the same or similar injury," the action is based on conduct "which is not unique to the named plaintiffs," and "other class members have been injured by the same course of conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502 (*Seastrom*).) Typicality does not concern the "specific facts" from

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[3] Plaintiffs theorize that GT had a duty to affix a warning label if its Kombucha's alcohol content reached 0.5% "*at any time* during the manufacturing, distribution, or sales processes…." (3AC, ¶ 40, italics added.)

which claims arise or "relief sought," and its purpose as a requirement is to "assure that the interest of the named representative aligns with the interests of the class." (*Ibid.*)

Each Plaintiff allegedly purchased GT's Kombucha "in multiple flavors from various retail stores in California on or after March 1, 2017." (3AC, ¶¶ 1-2.) Zamora says she purchased Trilogy, Gingerade, Gingerberry, Multi-Green, Cosmic Cranberry, and Original flavors of GT's Kombucha, paying about "three to four dollars per 16-ounce bottle" "most often" at a Lassen's grocery store in Los Angeles. (Declaration of Gabriela Zamora in Support ("Zamora Decl."), ¶¶ 4, 6-7.) When she first purchased GT's Kombucha, she "read and relied upon the lack of a government warning label concerning the alcohol content...." (*Id.* at ¶ 9.) Hartman says she purchased Gingerade, Multi-Green, and Tantric Tumeric flavors of GT's Kombucha, paying "four to five dollars per 16-ounce bottle and nine to ten dollars per 48-ounce bottle," "most often" at Whole Foods Market, Trader Joe's, and Target stores in the Los Angeles area. (Declaration of Samii Hartman in Support ("Hartman Decl."), ¶¶ 4, 6-7.) Like Zamora, when Hartman first purchased GT's Kombucha, she "read and relied upon the lack of a government warning label concerning the [Kombucha's] alcoholic content...." (*Id.* at ¶ 9.)

GT did not contest Plaintiffs' adequacy in its initial brief, but in supplement it argues Zamora is not typical because she is subject to unique defenses: "failure to mitigate damages," "consent," and res judicata. (Supplemental Brief in Opposition, 4:15-19.) These defenses are based on evidence that Zamora made a claim and received a settlement payment in *Retta v. Millennium Products, Inc.* (C.D. Cal. 2017) 2017 WL 5479637 *1 (*Retta*), "a class action lawsuit against Defendants Millennium Products, Inc. ... and Whole Foods Market, Inc. ... for false or misleading representations on Millennium's kombucha beverages," some of which appear to be named similarly or the same as the Kombucha beverages challenged here. (See Supplemental Declaration of Zach A. Tafoya in Opposition ("Supp. Tafoya Decl."), ¶ 4, Exh. 23, p. 21.) The *Retta* plaintiffs alleged Millennium mislabeled its kombucha by "labeling the products as 'non-alcoholic' when they allegedly contain alcohol in excess of the amount permitted for non-alcoholic beverages." (*Retta,* at *1.) The parties reached, and the Court approved, a settlement that, among other things, required Millennium to add a label warning that its Kombucha "contain[s] naturally

occurring alcohol and should not be consumed by individuals seeking to avoid alcohol due to pregnancy, allergies, sensitivities or religious beliefs" and to conduct "regular sample testing using third-party laboratories" to "ensure compliance with federal and state labeling standards…." (*Id.* at * 2.)

According to the *Retta* settlement administrator, Zamora submitted a claim on March 18, 2017 and later received a payment. (Declaration of Troy Walitsky in Supplemental Opposition, ¶¶ 4-5, Exhs. 1-2.) In exchange for the payment, she and the *Retta* class released "any and all claims … that … [¶] (iv) relate in any way to communications, disclosures, representations, statements, claims, nondisclosures and/or omissions, packaging, advertising, labeling, testing, and/or marketing of or concerning the Subject Products related to the alleged alcohol content of the products" from March 11, 2011 "up to and including the Notice Date," which was February 26, 2017. (Supp. Tafoya Decl., ¶ 4, Exh. 23, pp. 15, 18-19; *Retta, supra,* 2017 WL 5479637 *3 [notice date].) The class period in this case commences on April 1, 2017. Zamora's release of claims arguably does not apply because it releases claims for a timespan that precedes the class period here and does not negate her proof of typicality.

GT contends its defenses against Zamora "cannot be addressed on a class-wide basis," but this is not the legal standard for typicality. (Supplemental Brief in Opposition, 3:14.) "[A] defendant's raising of unique defenses against a proposed class representative does not automatically render the proposed representative atypical." (*Fireside, supra,* 40 Cal.4th at p. 1091.) "The risk posed by such defenses is the possibility they may distract the class representative from common issues; hence, the relevant inquiry is whether, and to what extent, the proffered defenses are 'likely to become a major focus of the litigation.'" (*Ibid.*) Even if some or all of Zamora's claims are arguably barred as res judicata, this is a relatively straightforward defense that is not likely to become a "major focus" of the litigation.

Plaintiffs' claims are typical of the class.

C. Plaintiffs Can Adequately Represent the Class.

The third "community of interest" factor is plaintiffs who can "adequately represent the class." (*Fireside, supra,* 40 Cal.4th at p. 1089.) Plaintiffs "adequately represent the class" by "vigorously and tenaciously protecting the class members' interests." (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 352.) "Typically, '[t]he adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit.'" (*Ibid.*)

Zamora says she is willing to represent the class. (Zamora Decl., ¶ 14.) She says she understands she must act for the class's best interests, "being involved and informed about the action, actively participating in the case, and making [herself] available for trial." (*Id.* at ¶ 17.) She is prepared to serve as a witness. (*Ibid.*) Hartman also says she is willing to represent the class and understands she must act for the class's best interests, participate in the case, and be available for trial. (Hartman Decl., ¶¶ 13, 16.) GT's only challenge to Plaintiffs' adequacy is its argument regarding defenses to Zamora's claims that is addressed above and, in the Court's view, does not suggest she cannot represent the class's best interests.

Plaintiffs can adequately represent the class.

V. Proceeding as a Class Is Superior to Adjudicating Each Claim Individually.

Lastly, the class action must confer "substantial benefits" that "render proceeding as a class superior to the alternatives." (*Fireside, supra,* 40 Cal.4th at p. 1089.)

Class-wide adjudication is the superior method of resolving this case. Plaintiffs' UCL and FAL claims challenge GT's alleged uniform practice of not warning consumers that its Kombucha contains (or is likely to contain) over 0.5% ABV. These claims are best adjudicated once rather than multiple times in actions by each individual class member. Separate actions by each of GT's customers would likely implicate the same or similar evidence of its policies and practices, and the same questions, in every case. Therefore, examining the common evidence and resolving the common questions as a class proceeding is the efficient and superior method of adjudication.

VI. The Court Certifies Plaintiffs' CLRA Class Claims (Count 3).

Unlike the broadly worded UCL and FLA, the CLRA prohibits specific sales practices. (Civ. Code, § 1770.) To prevail on a CLRA claim, a plaintiff must prove four elements: (1) she acquired, or sought to acquire, by purchase or lease, a product for personal, family or household purposes; (2) the defendant committed one of the prohibited practices; (3) plaintiff was harmed; and (4) her harm resulted from defendant's conduct. (CACI No. 4700.) While CLRA claims commonly challenge a seller's representations, "an omission is actionable under the CLRA if the omitted fact is (1) 'contrary to a [material] representation actually made by the defendant' or (2) is 'a fact the defendant was obliged to disclose.'" (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1258 [citing *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 836].)

The CLRA also has its own class-action requirements. A court "shall permit" a CLRA suit "to be maintained on behalf of all members of the represented class if all of the following conditions exist:"

(A) "It is impracticable to bring all members of the class before the court."

(B) "The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members."

(C) "The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class."

(D) "The representative plaintiffs will fairly and adequately protect the interests of the class."

(Civ. Code, § 1781, subd. (b).) Unlike the "substantial benefits" requirement that gives a court some discretion over allowing other class actions to proceed, if the "statutory criteria" for a CLRA class action are met, "a trial court is under a duty to certify the class and is vested with no discretion to deny certification based upon other considerations." (*Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 140.)

A. It Is Impracticable to Bring All Members of the Class Before the Court.

Based on the "sufficiently numerous" analysis *supra,* it is impracticable to bring all members of the class before the Court. (Civ. Code, § 1781, subd. (b)(1).)

B. The Common Questions Are Substantially Similar and They Predominate Over Individual Questions.

The question of law or fact common to the class must be "substantially similar" and "predominate over the questions affecting the individual members." (Civ. Code, § 1781, subd. (b)(2).) This requirement has been, in turn, described as "substantially similar" to the commonality requirement for UCL and other class actions. (*Davis-Miller v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 106, 123.)

The CLRA's "as a result of" language, as mentioned above, requires plaintiffs prove a defendant's deception caused them harm. (*Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1291 (*Massachusetts*).) On a class-wide basis, causation can be inferred. (*Vioxx, supra,* 180 Cal.App.4th at p. 129.) "If the trial court finds that material misrepresentations have been made to the entire class, an inference of reliance arises as to the class" because "a representation is considered material if it induced the consumer to alter his position to his detriment." (*Ibid.*) Materiality "is judged by a 'reasonable man' standard," meaning a misrepresentation is material if "a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." (*Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 157 (*Steroid*); CACI No. 4700 ["A fact is material if a reasonable consumer would consider it important in deciding whether to buy or lease the goods."].) Materiality is a question of fact unless the "fact misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable man would have been influenced by it." (*Steroid,* at p. 157.)

Two cases frame the materiality-to-infer-reliance analysis. The first involved Vioxx, a prescription-only drug that was taken off the market after a study showed it could cause cardiovascular problems. (*Vioxx, supra,* 180 Cal.App.4th at p. 120.) A group of plaintiffs brought a CLRA claim against Merck, the drug manufacturer, contending that Vioxx, because of its

cardiovascular risks, was less safe than "other, less expensive, pain relievers" and Merck had known about the risks but "engaged in a campaign to hide or explain away those risks." (*Ibid.*) Common issues did not predominate, and the trial court correctly denied plaintiffs' motion for class certification. A physician's decision to prescribe Vioxx was an "individual" decision based on "many different factors" that varied "from patient to patient" and the evidence showed that, because of individual health conditions, "the cardiovascular risks of Vioxx were *not material* for all patients." (*Id.* at pp. 133-134.) "When all of the[] patient-specific factors are a part of the prescribing decision, the materiality of any statements made by Merck to any particular prescribing decision cannot be presumed." (*Id.* at p. 134.)

As a counterexample, Mass Mutual sold a life insurance policy under which policyholders could receive dividends. (*Massachusetts, supra,* 97 Cal.App.4th at p. 1286.) "In theory and as suggested by Mass Mutual's agents in sales presentations, over time the principal amount of accumulated premiums would be large enough so that the amount of the discretionary dividend would pay the annual premium due on the policy." (*Ibid.*) A class of 33,000 people who bought policies over 15 years brought a CLRA claim, contending that when they purchased their policies Mass Mutual "was paying a discretionary dividend rate" that it "had no intention of maintaining" and instead planned to "ratchet down" over time. (*Ibid.*) Common reliance, the court held, could be inferred. "The plaintiffs contend Mass Mutual failed to disclose its own concerns about the premiums it was paying and that those concerns would have been material to any reasonable person contemplating the purchase of an N–Pay premium payment plan. If plaintiffs are successful in proving these facts, the purchases common to each class member would in turn be sufficient to give rise to the inference of common reliance on representations which were materially deficient." (*Id.* at p. 1293.) And while the trial court would need to consider whether Mass Mutual disclosed "other information" about its dividends that gave buyers "all the material information they needed in making a decision" to buy insurance, the information that was provided "appear[ed] to have been broadly disseminated" and thus "the ultimate question of whether the undisclosed information was material was a common question of fact suitable for treatment in a class action." (*Id.* at p. 1294.)

This case is analogous to *Massachusetts.* Like the plaintiffs who challenged Mass Mutual's allegedly uniform failure to disclose its intent to pay fewer dividends, Plaintiffs here challenge GT's allegedly uniform failure to disclose, using a government warning, that its Kombucha contained over 0.5% ABV. Some information that GT did disclose was "widely disseminated" — and consumers were necessarily exposed to it — because it appeared on the label of every Kombucha bottle sold. Moreover, both parties propose using expert testimony to prove or disprove that GT Kombucha's alleged alcohol content was "material" to consumers. (Declaration of Dr. George E. Belch in Support; Declaration of Hal Poret in Opposition ("Poret Decl.").)[4] If an alcohol-content warning "would have been material to any reasonable person contemplating the purchase" of GT's Kombucha, then "the purchases common to each class member would in turn be sufficient to give rise to the inference of common reliance on representations which were materially deficient." (*Massachusetts, supra,* 97 Cal.App.4th 1293.)

This case is also similar to *Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 150 (*Steroid*), where the plaintiff brought a CLRA claim against GNC for allegedly selling over-the-counter nutritional supplements without notifying consumers the supplements contained androstenediol, a controlled substance. "[T]he question that must be answered in this case is whether a reasonable person would find it important when determining whether to purchase a product that it is unlawful to sell or possess that product. It requires no stretch to conclude that the proper answer is 'yes' — we assume that a reasonable person would not knowingly commit a criminal act." (*Id.* at p. 157.) Here the question is whether a reasonable person would find a government alcohol warning "important" when deciding to buy GT's Kombucha considering it contains, or is likely to contain, over 0.5% ABV. And although the answer to this question is perhaps less clear than in *Steroid* — and might at trial turn out to be "no" — it does not require a consumer-by-consumer examination of the factors considered when buying Kombucha.

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[4] Like the parties' expert testimony on alcohol content, the Court expresses no view on whether this evidence is ultimately admissible. The Court is instead satisfied that materiality, as an analytical matter, is a question amenable to class-wide resolution.

GT contends individual questions predominate the materiality-causation element for three reasons. First, it cites Plaintiffs' deposition testimony as evidence that materiality varies among consumers. If a warning label was affixed to GT's Kombucha, Zamora would not consider buying it; she testified alcohol content is "really important" to her for health and other personal reasons and she "just want[s] nonalcoholic kombucha." (Tafoya Decl., Exh. 16, 26:16-20, 90:4-14, 157:23-25, 158:1-9.) Hartman, on the other hand, said she reads the "whole label" on "[a]ll food" and while, if GT's Kombucha had an alcohol label, she would likely only drink it on weekends or at night, she would not stop "buying [Kombucha] in the first place." (Tafoya Decl., Exh. 17, 29:18-25, 30:1-9, 171:10-15.) But even assuming Plaintiffs' testimony bears on whether an alcohol warning label would have been "material" to them — based on the quoted testimony alone, a debatable point — causation is proven at trial by showing materiality to "most of the class," and a showing that an issue was not material to "a few individual class members does not transform the common question into a multitude of individual ones" for class certification purposes. (*Massachusetts, supra,* 97 Cal.App.4th at p. 1292 [citing *Blackie v. Barrack* (9th Cir. 1975) 524 F.2d 891, 907, fn. 22].)

Second, at oral argument, GT's counsel noted that while Plaintiffs intend to prove materiality using a consumer survey, their survey has not yet been conducted. On the other hand, GT's expert, Hal Poret, has already conducted a survey from which he concludes "that inclusion on the GT's Enlightened product label of a statement that the product contains alcohol and the inclusion of the Government Warning regarding alcohol do not substantially impact consumers' likelihood of purchasing the product or their perception of the price of the product." (Poret Decl., ¶ 2, Exh. 1, p. 3.) "The survey results also demonstrate," according to Poret, "that there is not commonality across the proposed class, as the large majority of actual and prospective GT's purchasers indicated that they would be likely to purchase the GT's Enlightened Product even when it includes the statement that the product contains alcohol and the Government Warning regarding alcohol, and only a negligible percentage answered that they would be unlikely to purchase the product due to alcohol content." (*Ibid.*)

Poret's testimony addresses the merits of Plaintiffs' theory, not predominance of common questions. "The answer" to the predominance issue "hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.'" (*Duran, supra,* 59 Cal.4th at p. 28 [citing *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327].) As an analytical matter, Plaintiffs' theory does not raise any more individual questions than, say, a consumer's decision to buy life insurance as in *Massachusetts,* and is not inherently individualized like a doctor's decision to prescribe a drug as in *Vioxx.* Additionally, the fact Plaintiffs have not yet conducted their planned survey does not mean individual issues predominate. Even at trial, materiality can be proven with evidence other than a consumer survey; a completed survey is thus not required at class certification. "California courts have explicitly 'reject[ed] [the] view that a plaintiff must produce' extrinsic evidence 'such as expert testimony or consumer surveys' in order 'to prevail on a claim that the public is likely to be misled by a representation' under the FAL, CLRA, or UCL." (*Hadley v. Kellogg Sales Company* (2018) 324 F.Supp.3d 1084, 1115 [quoting *Colgan, supra,* 135 Cal.App.4th at pp. 681-682].) Lastly — and again, as an analytical matter — consumers can be expected, when buying GT's Kombucha or any other product, to consider more than one, and perhaps several, different factors. But this does not mean individual issues predominate or Plaintiffs' case is meritless. "While a plaintiff must show that the misrepresentation was an immediate cause of the injury-producing conduct, the plaintiff need not demonstrate it was the only cause." (*Tobacco, supra,* 46 Cal.4th at p. 326.) "'It is not ... necessary that [the plaintiff's] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor influencing his conduct.... It is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing his decision.'" (*Ibid.*)

Third and lastly, the Court is not persuaded by GT's reliance on *Fairbanks v. Farmers New World Life Ins. Co.* (2011) 197 Cal.App.4th 544, where the plaintiff alleged Farmers Insurance marketed as "permanent" its universal life insurance when it was not, in fact, permanent. Crucially, the evidence showed that Farmers did not use a "common … strategy" to market its policies, a finding that distinguished *Massachusetts.* (*Id.* at pp. 546, 563.) The court, however,

went on to discuss materiality — an element of the UCL's "fraudulent" prong — and found individual issues predominated "under the circumstances of this case." (*Id.* at p. 565.) The court pointed out that universal life insurance from term life insurance differ in "many other ways" besides permanence. (*Ibid.*) "Permanence would be irrelevant" to a consumer who purchased universal life insurance "with the goal," for example, "of obtaining insurance for a fixed term." (*Ibid.*) The factors the court cited were not "hypothetical" but established — and this is the point GT emphasizes — by expert testimony that "many, if not most" buyers of universal life "do not intend for the insurance to be permanent or do not have an expectation one way or the other as to policy permanence." (*Ibid.*) The expert's testimony and the court's findings, however, impliedly addressed and disproved the merits of Fairbanks's theory, that is, whether a reasonable consumer would find "permanence" "important" or "material" when buying Farmers universal life insurance. The materiality question, on a CLRA claim, is a merits question of fact to be decided by the jury. (See *Steroid, supra,* 181 Cal.App.4th at p. 157; CACI No. 4700.) For this reason, and because the product and surrounding circumstances -- life insurance versus beverages -- is inherently, the Court is not persuaded by *Fairbanks.*

The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members. (Civ. Code, § 1781, subd. (b)(2).)

(C) Plaintiffs' Claims and Defenses Are Typical of the Class.

Based on the analogous "typicality" analysis *supra,* the claims or defenses of the representative Plaintiffs are typical of the claims or defenses of the class. (Civ. Code, § 1781, subd. (b)(3).)

(D) Plaintiffs Will Fairly and Adequately Protect the Class's Interests.

Based on the analogous "adequacy" analysis *supra*, Plaintiffs will fairly and adequately protect the interests of the class. (Civ. Code, § 1781, subd. (b)(4).)

VII. Conclusion

The Court GRANTS Plaintiffs' motion for class certification. Pursuant to California Rules of Court, rule 3.765(a), the Court adopts Plaintiffs' proposed class definition:

> All persons who purchased GT's Gingerade, Gingerberry, Original, and Trilogy Enlightened and Synergy Kombucha in California on or after March 1, 2017.

(Plaintiffs' Supp. Brief in Support, 6:6-8.) The Court appoints Plaintiffs Gabriela Zamora and Samii Hartman as class representatives and Stephen D. Weisskopf, Ronald C. Cohen, and Terry J. Kent, all of LevatoLaw, LLP, as class counsel.

Pursuant to California Rules of Court, rule 3.766(c), the Court shall as soon after issuing this Order as practicable issue a subsequent order regarding notice to class members. The Court orders the parties to meet and confer in an effort to present to the Court a joint proposed form of class notice at least five Court days prior to the status conference calendared for 1:30 p.m., November 15, 2021.

Dated: OCT 15 2021

AMY D. HOGUE

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT