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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CIVIL ACTION CASE NO:CV10-01139-JF

Lauren Ries and Serena Algozer,  
individually and on behalf of all  
others similarly situated,  
  
Plaintiffs,  
  
v.  
  
Arizona Beverages USA LLC, Hornell  
Brewing Company, Inc., Beverage  
Marketing USA, Inc., and Ferolito,  
Vultaggio & Sons, Inc.  
  
Defendants.

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
CALIFORNIA BUSINESS AND  
PROFESSIONS CODE §§ 17200, ET SEQ.,  
17500, ET SEQ., AND THE CONSUMERS  
LEGAL REMEDIES ACT (“CLRA”) CIVIL  
CODE § 1750 ET SEQ.**

1 Plaintiffs, by and through undersigned counsel, bring this action both on their own  
 2 behalf and on behalf of the class comprised of all other individuals similarly situated within the  
 3 State of California, pursuant to California's Unfair Competition Law, Business and Professions  
 4 Code §§ 17200 *et seq.* ("UCL"), California's False Advertising Law Business and Professions Code  
 5 §§ 17500, *et seq.* ("FAL") and The Consumers Legal Remedies Act Civil Code § 1750, *et seq.*  
 6 ("CLRA"), against Arizona Beverage USA LLC; Hornell Brewing Company, Inc.; Beverage  
 7 Marketing USA, Inc.; and Ferolito, Vultaggio & Sons, Inc. (collectively referred to as "AriZona" or  
 8 "Defendants"). Plaintiffs assert that the Defendants engaged in the unfair, unlawful, deceptive, and  
 9 fraudulent practice of describing their AriZona products as "100% Natural", "Natural" or "All  
 10 Natural" (hereinafter referred to, collectively, as "All Natural Products") when these products  
 11 contain non-natural or artificial ingredients, such as high fructose corn syrup ("HFCS") and citric  
 12 acid. Those products labeled "All Natural Products", but that contain HFCS and/or citric acid,  
 13 include the following products<sup>1</sup>:

- 14 • Arizona Lemon Tea
- 15 • Arizona Peach Tea
- 16 • Arizona Raspberry Tea
- 17 • Arizona Green Tea
- 18 • Arizona Lemonade with Ginseng
- 19 • Arizona Pomegranate Green Tea
- 20 • Arizona Blueberry White
- 21 • Arizona Mandarin Orange
- 22 • Arizona Crazy Cocktail
- 23 • Arizona Asia Plum Tea
- 24 • Arizona Rx Stress
- 25 • Arizona Rx Energy Herbal Tonic
- 26 • Arizona Lemonade
- 27 • Arizona Mucho Mango
- 28 • Arizona Kiwi Strawberry
- Arizona Watermelon
- Arizona Orangeade
- Arizona Fruit Punch
- Arizona Grapeade
- Arizona Green Tea Brick
- Arizona Lemonade with Ginseng
- Arizona Green Half & Half
- Arizona Red Apple Green Tea with Ginseng and Apple
- Arizona Extra Sweet Green Tea with Ginseng and Honey

27 <sup>1</sup> As of this date, the list is the universe of known products at issue. However, as discovery  
 28 progresses, the list of "All Natural Products" may change somewhat as additional facts become  
 known.

- 1 • Arizona Georgia Peach Green Tea with Ginseng and Honey
- 2 • Arizona Lemon Tea Brick
- 3 • Arizona Hypotonic - Lemon Lime
- 4 • Arnold Palmer Green Tea
- 5 • Arizona Black and White
- 6 • Arizona Sun Brewed Style Iced Tea with Lemon Flavor
- 7 • Arizona Black Tea with Ginseng and Honey
- 8 • Arizona Unsweetened Tea
- 9 • Arizona Sun Brewed Style Iced Tea with Raspberry Flavor
- 10 • Arizona Sun Brewed Style Iced Tea with Peach Flavor
- 11 • Arizona Black Tea with Ginseng and Honey
- 12 • Arizona Lemon Iced Tea
- 13 • Arizona Raspberry Iced Tea
- 14 • Arizona Peach Iced Tea
- 15 • No Calorie Iced Tea with Lemon Flavor
- 16 • Arizona Pina Colada Fruit Smoothie Mix
- 17 • Arizona Pine Apple Coconut Fruit Smoothie Mix
- 18 • Arizona Orchard Peach Fruit Smoothie Mix
- 19 • Arizona Sweet Strawberry Fruit Smoothie Mix
- 20 • Arizona Mucho Mango Fruit Smoothie Mix
- 21 • Arizona Crazy Berry
- 22 • Rx Power Herbal Punch
- 23 • Rx Health Herbal Iced Tea
- 24 • Rx Memory Herbal Tonic

Collectively, the products shall be referred to as “All Natural Products”.

**INTRODUCTION**

1. Plaintiffs bring this action both on their own behalf and on behalf of the putative Class they seek to represent to redress Defendants’ deceptive, misleading and untrue advertising, and unlawful, unfair and fraudulent business acts and practices related to the manufacture, marketing, advertising, sale and distribution of the Defendants’ “All Natural Products” listed above.

2. As discussed in detail below, as part of a scheme to make their “All Natural Products” more appealing to consumers, boost sales and increase profits, Defendants prominently stated in marketing, advertising, point of sale materials, labeling and packaging that their products were “All Natural Products.” Indeed, Defendants’ website [www.drinkarizona.com](http://www.drinkarizona.com) proclaims “100% Natural” on the introductory screen and throughout the various web pages that comprise the website. The marketing, website, point of sale, and other advertising was all done to further enforce the belief the products at issue were indeed “All Natural Products”, as labeled.

3. A reasonable consumer would, therefore, be under the impression and belief that all of

1 the Defendants' drink products are "All Natural Products". This belief is further reinforced by  
2 Defendants' mantra "Here's to your health", which is also prominent in their advertising and  
3 marketing materials, and on their website.

4 4. Terms such as "All Natural" and "100% Natural" are used by manufacturers such as  
5 the Defendants to induce consumers, such as the Plaintiffs and members of the putative Class, into  
6 believing that the product being described contains only naturally occurring ingredients, and not  
7 chemically altered or man-made ingredients, and is not altered using a patented enzymatic process,  
8 and therefore, that the product is natural and healthy.

9 5. By using this "All Natural" branding strategy, Defendants are stating that their products  
10 are superior to, better than, and more nutritious than competing products that do not proclaim to be  
11 "All Natural".

12 6. As a direct result of its misleading, deceptive, and untrue advertising and its unlawful,  
13 unfair and fraudulent business practices related to the "All Natural Products", Defendants caused  
14 Plaintiffs and other members of the Class to purchase, purchase more of, or pay more for, these  
15 "All Natural Products".

16 7. Plaintiffs and the members of the putative Class would have made different purchasing  
17 decisions had they known that the "All Natural Products" contained one or more non-natural or  
18 artificial ingredient(s), such as high fructose corn syrup and artificial citric acid, which has in turn  
19 caused injury to Plaintiffs and the class. Specifically, Plaintiffs and members of the Putative Class  
20 would not have purchased, or would not have paid as much for, the "All Natural Products" but for  
21 Defendants' representations.

## 22 PARTIES

23 8. Plaintiff Lauren Ries is an individual adult resident citizen of San Jose, California.  
24 Plaintiff Algozer is an individual adult resident citizen of San Francisco, California.

25 9. Plaintiff Ries and Plaintiff Algozer have purchased and consumed some of the "All  
26 Natural Products" made the basis of this First Amended Complaint during the class period.

27 10. Plaintiffs purchased the offending products for their own consumption in Santa Clara  
28 County, San Francisco County, and elsewhere in California during the period of time relevant to

1 this action.

2 11. Plaintiffs are “consumers” and “real parties in interest” as required to bring this action  
3 and as set out in Civil Code § 1780(a). Moreover, Plaintiffs suffered damages and injury as a  
4 result of Defendants’ conduct as alleged hereto.

5 12. Defendant Hornell Brewing Company, Inc. is a New York corporation/company with  
6 its principal executive offices located in Woodbury, New York. This Defendant is licensed to do  
7 business in the State of California. This Defendant advertises markets, sells and distributes the  
8 products at issue throughout the United States, including in this Judicial District.

9 13. Defendant Beverage Marketing USA Inc. is a New York corporation with its principal  
10 executive offices located in Lake Success, New York. Upon information and belief, this  
11 Defendant advertises, markets, sells and distributes the products at issue throughout the United  
12 States, including in this Judicial District.

13 14. Defendant, Ferolito, Vultaggio & Sons, Inc. (hereinafter “Ferolito”) is a New York  
14 corporation with its principal executive offices located in Lake Success, New York. Upon  
15 information and belief, this Defendant advertises, markets, sells and distributes the products at  
16 issue throughout the United States, including in this Judicial District.

17 15. Defendant, Arizona Beverages USA LLC is a New York Corporation with its principal  
18 executive offices located in Woodbury, New York. Upon information and belief, this Defendant,  
19 advertises, markets, sells and distributes the products at issue throughout the United States,  
20 including in this Judicial District.

21 .  
22 **JURISDICTION AND VENUE**

23 16. The claims made by the Plaintiffs on their behalf and on behalf of members of the  
24 Class are brought pursuant to the UCL, FAL and CLRA for relief including, injunctive relief and  
25 restitution (under the UCL and FAL) well in excess of \$5,000,000.00, exclusive of interests and  
26 costs. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332(d)(2).

27 17. This Court has diversity jurisdiction over the subject matter of this action pursuant to  
28 28 U.S.C. § 1332(d)(2)(A), 28 U.S.C. § 1332(a)(1) and 29 U.S.C. § 1367.

1 18. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as a substantial part of the  
2 events, omissions and harm occurred to Plaintiffs in Santa Clara County.

3 19. Plaintiff Ries is a resident citizen of Santa Clara County, California, and thus a resident  
4 citizen of this Judicial District, as well as this Division. Plaintiff Algozer is a resident citizen of  
5 San Francisco County, California, and thus a resident citizen of this Judicial District. The residency  
6 affidavits of Plaintiffs Ries and Algozer were filed concurrently with the original Complaint.

7 20. Defendants market, sell, and distribute their products in this Judicial District, and this  
8 Division, and are therefore, subject to personal jurisdiction in the Northern District, San Jose  
9 Division.

10 **FACTUAL ALLEGATIONS**

11 21. This action seeks redress for Defendants' deliberate and unlawful, mislabeling and  
12 misbranding of products as being "All Natural", "Natural", "100% Natural" or similar  
13 misrepresentations of AriZona products which contain one or more non-natural or artificial  
14 ingredients, such as high fructose corn syrup ("HFCS") and/or citric acid.

15 22. The Defendants are in the business of producing, distributing and marketing products  
16 to the general public throughout the United States and in many foreign countries.

17 23. Their website, drinkarizona.com, as well as the labels on the "All Natural Products" at  
18 issue contain the words "All Natural", "100% Natural", "Natural" or similar phrases. However,  
19 these products are not "Natural" because they contain ingredients that are not natural, HFCS and/or  
20 citric acid.

21 24. HFCS does not occur naturally, instead it is produced by milling corn to produce corn  
22 starch, then processing that corn starch to yield corn syrup, which is almost entirely glucose, and  
23 then adding enzymes which change the glucose to fructose. The resulting syrup (after enzyme  
24 conversion) contains 90% fructose and is known as HFCS 90. To make the other common forms  
25 of HFCS, the HFCS 90 is mixed with 100% glucose corn syrup in the appropriate ratios to form  
26 the desired HFCS. HFCS 55 is commonly used to sweeten soft drinks and other processed foods.  
27 The enzyme process which changes the 100% glucose corn syrup into HFCS 90 is complicated and  
28 requires at least three steps.

1 25. First, cornstarch is treated with alpha-amylase to produce shorter chains of sugars  
2 called  
3 oligosaccharides.

4 26. Second, glucoamylase breaks the sugar chains down even further to yield the simple  
5 sugar glucose.

6 27. Third, Xylose isomerase converts glucose to a mixture of about 42% fructose and 50-  
7 52% glucose with some other sugars mixed in.

8 28. Defendants use HFCS in their products for a variety of reasons, all of which benefit  
9 their monetary interests. First, HFCS is often cheaper to use than alternative natural sweeteners  
10 due to the relative abundance of corn and the relative lack of sugar beets, as well as farm subsidies  
11 and sugar import tariffs in the United States. Second, HFCS is easier to blend and transport  
12 because it is a liquid. Third, HFCS usage leads to products with a much longer shelf life.

13 29. The complicated process used to create HFCS does not occur in nature; in fact, no  
14 HFCS existed before 1957, the year that the process to create HFCS was invented. Therefore, any  
15 product containing HFCS cannot be represented as “All Natural”, “100% Natural”, or “Natural.”

16 30. Furthermore, the molecules in HFCS (and Defendants’ “All Natural Products”) were  
17 not extracted from natural sources, but instead were created through enzymatically catalyzed  
18 chemical reactions in factories.

19 31. When one examines the process used to create HFCS, it is obvious why it is misleading  
20 to consumers to label products that contain HFCS as “Natural”. Indeed the processes used to  
21 create HFCS are patented, and thus by definition cannot be natural, as natural processes, such as  
22 photosynthesis, cannot be patented.

23 32. Because HFCS is a man-made product that does not occur in Nature, its use in  
24 Defendants’ products which are labeled “Natural”, “All Natural”, “100% Natural” or similar  
25 language, is deceptive and misleading to consumers, including the Plaintiffs and the members of  
26 the Class which they seek to represent.

27 33. Similarly, many of Defendants’ “All Natural Products” contain citric acid, a man-made  
28 ingredient. The chemical formula for citric acid is C<sub>6</sub>H<sub>8</sub>O<sub>7</sub>. It is used in citrus fruits and sodas. It



1 is produced from certain strains of the mold *Aspergillus niger*.

2 34. While certain forms of citric acid occurs naturally, the citric acid used by  
3 Defendants is made via a chemical process. In this chemical process, cultures of *Aspergillus niger*  
4 (“mold”) are fed on a sucrose or glucose-containing medium to produce citric acid.

5 35. After the mold is filtered out of the resulting solution, citric acid is isolated by  
6 precipitating it with lime to yield calcium citrate salt, from which citric acid is regenerated by  
7 treatment with sulfuric acid.

8 36. Some of Defendants “All Natural Products” contain citric acid, the man-made  
9 substance described above. Plaintiffs and the Class are reasonably misled and deceived.

10 37. Defendants represent to consumers that their products are “Natural”, when they are not  
11 because they contain one or more non-natural, man-made or artificial ingredient(s) as described  
12 above.

13 38. The Defendants’ culpability is exacerbated by claims, such as those found on the  
14 Defendants’ website, of the health benefits of consuming their All Natural Products. For example,  
15 the Defendants’ website, as well as point of sale materials state “Here’s to your health” and similar  
16 phrases intended to mislead any reasonable consumer about the health benefits of their beverages.  
17 In addition, the Defendants market products such as “AriZona Rx Energy Herbal Tonic” and  
18 “AriZona Rx Stress Tea” which are clearly designed to deceive consumers into believing that these  
19 drink products are healthy and natural drinks, which further enhances Defendants’ natural branding  
20 scheme.

21 39. Defendants do not mention that the “All Natural Products” contain the artificial  
22 ingredients, HFCS and citric acid, except in inconspicuous and hard-to-read type in the  
23 “Ingredients” panel on the back or sides of these products. Even if consumers read the fine-print,  
24 the average consumer would not know whether high fructose corn syrup is a natural ingredient, or  
25 whether citric acid used is natural. Given the “natural” moniker, reasonable California consumers  
26 would necessarily believe that all the ingredients are natural.

27 40. Defendants are purposefully manipulating the labeling of the natural products in  
28 violation of the UCL, FAL and CLRA.



1 41. Plaintiffs purchased several of the Defendants' "All Natural Products" during the  
2 "Class Period" covered by this First Amended Complaint. In making these purchases, Plaintiffs  
3 were, in part, looking for a healthy and natural product.

4 42. Plaintiffs relied on the representations that the "All Natural Products" they purchased  
5 were "All Natural" and reasonably assumed that this representation indicated that these products  
6 contained either ingredients found in nature or ingredients minimally processed from things found  
7 in nature. Plaintiffs did not know that the Defendants' products contained one or more non-natural  
8 or artificial ingredients, including HFCS and/or citric acid. Plaintiffs do not consider HFCS and/or  
9 citric to be "natural" ingredients.

10 43. Plaintiffs reasonably relied on the labels and advertising created by the Defendants and  
11 did not double-check those representations against the ingredient list in small type on the back of  
12 the container. Had Plaintiffs not been deceived by the labels, they would not have purchased these  
13 products, or would have been willing to pay less for these products.

14 **CLASS ACTION ALLEGATIONS**

15 44. Plaintiffs bring this class action for California consumers pursuant to Rule 23 of the  
16 Federal Rules of Civil Procedure. Plaintiffs bring this action on behalf of themselves and all  
17 members of the following Class comprised of:

18 **All persons in California who purchased an Arizona brand beverage**  
19 **from March 17, 2006 until the present time which contained High**  
20 **Fructose Corn Syrup or citric acid during the "Class Period" and**  
21 **which were marketed, advertised or labeled as being "All Natural",**  
22 **"Natural" or "100% Natural".**

23 45. Excluded from the Class are employees and agents of Defendants, the Judge and  
24 his/her relatives back to the 2nd degree of affinity, officers and directors of any Defendant, and  
25 counsel for Plaintiffs and the Class.

26 46. The "Class Period" is defined as being the four (4) years immediately preceding the  
27 filing of the original Complaint (March 17, 2006), up to the date the case is certified as a class  
28 action.

47. Plaintiffs aver that the proposed Class is so numerous that joinder of all members is

1 impracticable. Upon information and belief, Plaintiffs allege that there are tens of thousands of  
2 members of the proposed Class.

3 48. There are many common questions of law and fact involving and affecting the parties  
4 to be represented. These common questions of law or fact predominate over any questions  
5 affecting only individual members of the Class. Common questions include, but are not limited to,  
6 the following:

- 7 a. Whether Defendants misrepresent the ingredients, characteristics or other  
8 aspects of their “All Natural Products”;
- 9 b. Whether Defendants mislabel their “All Natural Products”;
- 10 c. Whether Defendants’ misrepresentations are unfair, deceptive, untrue, or  
11 misleading advertising as defined under California Business and  
12 Professions Code § 17500 *et seq.*;
- 13 d. Whether Defendants’ mislabeling of their products constitutes unfair,  
14 deceptive, untrue, or misleading advertising as defined under California  
15 Business and Professions Code § 17500 *et seq.*;
- 16 e. Whether Defendants’ mislabeling of the products is unlawful, unfair or  
17 fraudulent under California Business and Professions Code § 17200, *et seq.*;
- 18 f. Whether Defendants’ misrepresentations are unlawful, unfair or  
19 fraudulent under California Business and Professions Code § 17200, *et seq.*;
- 20 g. Whether Defendants’ knew, or by the exercise of reasonable care should  
21 have known, that their misrepresentations and mislabeling of their products  
22 were untrue or would be misleading to a reasonable consumer;
- 23 h. Whether Defendants knowingly and intentionally concealed from Plaintiffs  
24 and the class that their “All Natural Products” were mislabeled and that the  
25 ingredients were misrepresented;
- 26 i. Whether Defendants engaged in unfair and deceptive conduct in violation of  
27 California Civil Code section 1750, *et seq.*
- 28 j. Whether Defendants engaged in unfair and deceptive conduct in violation of

1 California Civil Code section 1770(a)(5) which prohibits: “Representing that  
2 goods or services have sponsorship, approval, characteristics, ingredients,  
3 uses, benefits, or quantities which they do not have or that a person has a  
4 sponsorship, approval, status, affiliation, or connection which he or she does  
5 not have.”;

6 k. Whether Defendants engaged in unfair and deceptive conduct in violation of  
7 California Civil Code section 1770(a)(7) which prohibits: “Representing  
8 that goods or services are of a particular standard, quality, or grade, or that  
9 goods are of a particular style or model, if they are of another.”;

10 l. Whether Plaintiffs and the class have been injured or suffered losses and, if  
11 so, the extent of their injury or loss;

12 m. Whether Defendants should be enjoined from engaging in the conduct  
13 complained of herein.;

14 n. Whether Defendants have been unjustly enriched through the wrongful  
15 conduct set forth herein.; and

16 o. Whether Defendants should be required to make restitution to the class.

17 49. Plaintiffs’ claims are typical of the claims of the absent class members.

18 50. Plaintiffs will fairly and adequately protect the interests of the class, and have retained  
19 attorneys experienced in class and complex litigation as their counsel.

20 51. The prosecution of individual actions by class members would create the risk of: (1)  
21 inconsistent or varying adjudications with respect to individual members of the class which would  
22 establish incompatible standards of conduct for Defendants; and (2) adjudications with respect to  
23 individual members of the class which would, as a practical matter, be dispositive of the interests  
24 of the other members not parties to the adjudications or substantially impair or impede their ability  
25 to protect their interests.

26 52. Defendants have acted or refused to act on grounds generally applicable to the class,  
27 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect  
28 to the advertising, marketing, and labeling of Defendants’ “All Natural Products”.

1 53. Plaintiffs aver that the prerequisites for class action treatment apply to this action and  
2 that questions of law or fact common to the class predominate over any questions affecting only  
3 individual members, and that a class action is superior to other available methods for the fair and  
4 efficient adjudication of the controversies which are the subject of this action.

5 54. Plaintiffs further state that the interests of judicial economy will be served by  
6 concentrating litigation concerning these claims in this Court, and that the management of the  
7 proposed class will not be difficult.

8  
9 **FIRST CAUSE OF ACTION**

10 (Business and Professions Code § 17500, *et seq.* - Misleading and Deceptive Advertising)

11 55. Plaintiffs repeat each and every allegation contained in the paragraphs above and  
12 incorporate such allegations by reference herein.

13 56. Plaintiffs assert that this cause of action for violations of California Business and  
14 Professions Code §17500, *et seq.* for misleading and deceptive advertising against Defendants.

15 57. At all material times, Defendants have engaged in a scheme of offering for sale “All  
16 Natural Products” to Plaintiffs and other members of the class by way of, *inter alia*, the World  
17 Wide Web (Internet), product packaging and labeling, and other promotional materials. These “All  
18 Natural Products” actually contain HFCS and/or citric acid, artificial and man-made ingredients.

19 58. Said labeling and other representations were made within the State of California and  
20 come within the definition of advertising as contained in Business and Professions Code §17500,  
21 *et seq.* in that such promotional materials and product labeling are intended as inducements to  
22 purchase the products and are statements disseminated by Defendants to Plaintiffs and the class,  
23 and are intended to reach these consumers.

24 59. Defendants knew, or in the exercise of reasonable care should have known, that these  
25 statements would be misleading and deceptive to the reasonable consumer.

26 60. In furtherance of said plan and scheme, Defendants have manufactured and distributed  
27 within the State of California, via the World Wide Web (Internet), product packaging and labeling,  
28 and other promotional materials containing statements that falsely advertise the true nature of their

1 “All Natural Products”.

2 61. The “All Natural Products” contain an artificial man-made sweetener, HFCS, as well as  
3 man-made citric acid.

4 62. Consumers, including Plaintiffs and Class members, necessarily and reasonably relied  
5 on the representation made on the product label that the beverage was all natural, as well as other  
6 marketing materials for these products.

7 63. Consumers, including Plaintiffs and Class members were among the intended targets of  
8 these representations and statements.

9 64. The above acts of Defendants, in disseminating said misleading and deceptive  
10 representations and statements throughout the State of California to consumers, including Plaintiffs  
11 and class members, were and are likely to deceive reasonable consumers by obfuscating the nature  
12 of the ingredients of the “All Natural Products”, all in violation of the "misleading prong" of  
13 California Business and Professions Code § 17500, *et seq.*

14 65. As a result of the above violations of the misleading prong of Business and Professions  
15 Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiffs and the  
16 class.

17 66. Plaintiffs and the class, pursuant to Business and Professions Code § 17535, are  
18 entitled to an order of this Court enjoining such future wrongful conduct on the part of Defendants,  
19 and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten  
20 gains and restore to any person in interest any money paid for the “All Natural Products” as a  
21 result of the wrongful conduct of Defendants.

22 67. WHEREFORE, Plaintiffs pray for relief, for themselves and for the members of the  
23 class as set forth below.

24 **SECOND CAUSE OF ACTION**

25 (Business and Professions Code § 17500, *et seq.* - Untrue Advertising)

26 68. Plaintiffs repeat each and every allegation contained in the paragraphs above and  
27 incorporate such allegations by reference therein.

28 69. Plaintiffs assert this cause of action for violations of California Business and

1 Professions Code § 17500, et seq. for untrue advertising against Defendants.

2 70. At all material times, Defendants have engaged in a scheme of offering for sale “All  
3 Natural Products” to Plaintiffs and the Class by way of, *inter alia*, the World Wide Web (Internet),  
4 product packaging and labeling, and other promotional materials.

5 71. The “All Natural Products” contain an artificial man-made sweetener, HFCS, as well as  
6 man-made citric acid.

7 72. Consumers, including Plaintiffs and the Class members, necessarily and reasonably  
8 rely on the front of the label and other marketing materials, such as point of sale stickers and the  
9 like, for these products.

10 73. Consumers, including Plaintiffs and the Class members, were among the intended  
11 targets of these representations and statements.

12 74. The above acts of Defendants, in disseminating said misleading and deceptive  
13 representations and statements throughout the State of California to consumers, including Plaintiffs  
14 and Class members, were and are likely to deceive reasonable consumers by obfuscating the nature  
15 of the ingredients of the “All Natural Products”, all in violation of the “untrue” prong of  
16 California Business and Professions Code §17500, *et seq.*

17 75. Plaintiffs and Class members, pursuant to Business and Professions Code § 17535, are  
18 entitled to an order of this Court enjoining such future wrongful conduct on the part of Defendants,  
19 and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten  
20 gains and restore to any person in interest any money paid for the “All Natural Products” as a result  
21 of the wrongful conduct of Defendants.

22 76. WHEREFORE, Plaintiffs pray for relief, for themselves and for the Class members as  
23 set forth below.

24 **THIRD CAUSE OF ACTION**

25 (Business and Professions Code § 17200, *et seq.* - Unlawful Business Acts and Practices)

26 77. Plaintiffs repeat each and every allegation contained in the paragraphs above and  
27 incorporate such allegations by reference herein.

28 78. Such acts of Defendants, as described above, and each of them, constitute unlawful

1 business acts and practices.

2 79. Manufacturing, marketing, advertising, selling and distributing the “All Natural  
3 Products” when, in fact, they contain HFCS and citric acid, is unlawful.

4 80. The business practices alleged above are unlawful under Business and Professions Code  
5 §17200, *et seq.* by virtue of violating the Consumers Legal Remedy Act, Cal. Civ. Code §1750, *et*  
6 *seq.* (“CLRA”), which also forbids deceptive advertising, among other things.

7 81. The business practices alleged above are unlawful under Business and Professions  
8 Code §17200, *et seq.* by virtue of violating Business and Professions Code §17500, *et seq.*, which  
9 forbids untrue advertising and misleading advertising.

10 82. The business practices alleged above are also unlawful as a breach of an express  
11 warranty under California Commercial Code § 2313 and as a breach of implied warranty of fitness  
12 for a particular purpose under California Commercial Code § 2315.

13 83. As a result of the wrongful business practices described above, Plaintiffs and Class  
14 members, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining  
15 such future wrongful conduct on the part of Defendants and such other orders and judgments  
16 which may be necessary to disgorge Defendants’ ill-gotten gains and to restore to any person in  
17 interest any money paid for the products as a result of the wrongful conduct of Defendants.

18 84. The above-described unlawful business acts and practices of Defendants, and each of  
19 them, present a reasonable likelihood of deception to Plaintiffs and class in that Defendants have  
20 systematically perpetrated and continue to perpetrate such acts or practices upon members of the  
21 Class by means of misleading advertising and marketing.

22 85. WHEREFORE, Plaintiffs prays for relief, for themselves and for the Class members, as  
23 set forth below.

24 **FOURTH CAUSE OF ACTION**

25 (Business and Professions Code § 17200, *et seq.* - Unfair Business Acts and Practices)

26 86. Plaintiffs repeat each and every allegation contained in the paragraphs above and  
27 incorporate such allegations by reference herein.

28 87. Such acts of Defendants, as described above, and each of them, constitute unfair



1 business acts and practices.

2 88. Plaintiffs, and Class members who purchased any of the “All Natural Products”  
3 suffered a substantial injury by virtue of buying a product they would not have purchased , or  
4 would have paid less for, absent Defendants’ unfair advertising, by virtue of buying more of these  
5 products they would have absent Defendants’ unfair advertising, or by paying more for these  
6 products than they would have absent the Defendants’ unfair advertising.

7 89. There is no benefit to consumers or competition by falsely advertising these products.  
8 Indeed, the harm to consumers and competition is substantial.

9 90. Plaintiffs and Class members had no way of reasonably knowing that Defendants  
10 products were not “All Natural”, as labeled and otherwise advertised.

11 91. Thus, the Class could not have reasonably avoided the injury each of them suffered.

12 92. The gravity of the consequences of Defendants’ conduct as described above outweighs  
13 any justification, motive or reason therefore, particularly considering the available legal  
14 alternatives which exist in the marketplace, and is immoral, unethical, unscrupulous, offends  
15 established public policy or is substantially injurious to Plaintiffs and Class members.

16 93. As a result of the business acts and practices described above, Plaintiffs and the Class  
17 members, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining  
18 such future wrongful conduct on the part of Defendants, and such other orders and judgments  
19 which may be necessary to disgorge Defendants’ ill-gotten gains and to restore to any person in  
20 interest any money paid for the products as a result of the wrongful conduct of Defendants.

21 94. WHEREFORE, Plaintiffs pray for relief, for themselves and for the Class members as  
22 set forth below.

23 **FIFTH CAUSE OF ACTION**

24 (Business and Professions Code § 17200, *et seq.* - Fraudulent Business Acts and Practices)

25 95. Plaintiffs repeat each and every allegation contained in the paragraphs above and  
26 incorporate such allegations by reference herein.

27 96. Such acts of Defendants as described above, and each of them, constitute fraudulent  
28 business practices under California Business and Professions Code sections § 17200, *et seq.*

1 97. As more fully described above, the labeling of the “All Natural Products” is likely to  
2 deceive reasonable California purchasers, such as the Plaintiffs and Class members.

3 98. Indeed, Plaintiffs and the Class were unquestionably deceived into believing the  
4 products they purchased were “All Natural”, when in fact, they contained the artificial, man-made  
5 ingredients, HFCS and citric acid.

6 99. Said acts are fraudulent business acts and practices.

7 100. This fraud and deception caused Plaintiffs and Class members to purchase the products  
8 in question, to purchase more of the products than they would have, or to pay more than they  
9 would have, had they known the true nature of the products.

10 101. As a result of the business acts and practices described above, Plaintiffs and Class  
11 members, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining  
12 such future wrongful conduct on the part of Defendants, and each of them, and such other orders  
13 and judgments which may be necessary to disgorge Defendants’ ill-gotten gains and to restore to  
14 any person in interest any money paid for the products at issue as a result of the wrongful conduct  
15 of Defendants.

16 102. WHEREFORE, Plaintiffs pray for relief, for themselves and for the Class members, as  
17 set forth below.

18 **SIXTH CAUSE OF ACTION**

19 (California Civil Code § 1750, *et seq.* - The Consumers Legal Remedies Act)

20 (Injunctive and Declarative Relief Only)

21 103. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth at  
22 length herein.

23 104. Plaintiffs brings this action pursuant to California's Consumer Legal Remedies Act  
24 (“CLRA”) California Civil Code § 1750, *et seq.*

25 105. The CLRA provides that “unfair methods of competition and unfair or deceptive acts or  
26 practices undertaken by any person in a transaction intended to result or which results in the sale or  
27 lease of goods or services to any consumer are unlawful.” Plaintiffs, for themselves and on behalf of  
28 the Class members seeks only injunctive relief under the CLRA.

1 106. By this action, Plaintiffs seeks to enjoin the unfair, unlawful, and deceptive acts and  
2 conduct of the Defendants as more fully described above.

3 107. The “All Natural Products” at issue are “goods” as defined by the CLRA in California  
4 Civil Code § 1761(a).

5 108. Defendants are “persons” as defined by the CLRA in California Civil Code § 1761( c).

6 109. Plaintiffs and the Class are “consumers” as defined by the CLRA in California Civil Code  
7 § 1761(d).

8 110. Purchases of the “All Natural Products” by Plaintiffs and Class members are “transactions”  
9 as defined by California Civil Code § 1761(e).

10 111. The mislabeling of the “All Natural Products” is prohibited pursuant to the CLRA, since  
11 they are “undertaken by any person in a transaction intended to result or which results in the sale or  
12 lease of goods or services to any consumer.”

13 112. Defendants engaged in unfair and deceptive acts declared unlawful by the CLRA by  
14 knowingly and intentionally mislabeling the “All Natural Products”, when in fact these products  
15 contain HFCS and citric acid, both of which are artificial man-made ingredients that do not occur in  
16 nature.

17 113. This unfair and deceptive conduct is a violation of California Civil Code § 1770(a)(5),  
18 which prohibits “Representing that goods or services have sponsorship, approval, characteristics,  
19 ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship,  
20 approval, status, affiliation, or connection which he or she does not have.”

21 114. This unfair and deceptive conduct is also a violation of California Civil Code § 1770(a)(7)  
22 which prohibits: “Representing that goods or services are of a particular standard, quality, or grade,  
23 or that goods are of a particular style or model, if they are of another.”

24 115. The Defendants’ unfair and deceptive acts and conduct have violated, and continue to  
25 violate, California’s Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*, because they extend  
26 to transactions that are intended to result, or have resulted, in the sale or lease of goods or services to  
27 consumers, including the Plaintiff and the class members.

28 116. As a direct and proximate cause of Defendants’ unfair and deceptive acts or practices,

1 Plaintiffs and the class members have suffered damages in that they purchased misbranded products  
2 they would not have bought, purchased more of these products than they would otherwise have bought,  
3 or paid more for these products than they would have if these products had been honestly advertised  
4 and labeled.

5 117. Plaintiffs and the class members seek a preliminary and permanent injunctive relief against  
6 the Defendants' unfair and deceptive acts and conduct under the CLRA.

7  
8 **RELIEF DEMANDED**

9 A. An Order certifying that the action be maintained as a class action, and that the Plaintiffs  
10 are adequate to serve as representatives of the Class;

11 B. For a preliminary and permanent injunction enjoining Defendants from advertising,  
12 representing, or otherwise holding out for sale within the State of California, any products which  
13 contain HFCS or citric acid as being "All Natural", "100% Natural" or "Natural";

14 C. An Order requiring Defendants to provide a form of corrective advertising designed to  
15 correct the misrepresentations, misstatements and omissions made in the marketing, advertising,  
16 packaging and other promotional materials related to their "All Natural Products";

17 D. For a judgment of the Court, pursuant to Business & Professions Code §§ 17200 and  
18 17500, to restore, by way of restitution, refund or reimbursement, to any person in interest, any money  
19 acquired by means of Defendants' untrue, deceptive or misleading advertising and/or unfair, unlawful  
20 or fraudulent business acts and practices described herein;

21 E. Disgorgement of the excessive and ill-gotten monies obtained by Defendants as a result  
22 of the untrue and misleading advertising and unlawful, unfair or fraudulent business acts and practices  
23 described herein;

24 F. For an award of attorney fees pursuant to, *inter alia*, Code of Civil Procedure §§ 1021.5  
25 and 1032;

26 G. For costs of suit herein incurred pursuant to Code of Civil Procedure § 1033.5;

27 H. Pre and post-judgment interest; and/or

28 I. For such other and further relief as this Court deems appropriate or which is allowed for


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in law or equity.

Dated: May 4, 2011

**BAKER LAW**

A Professional Corporation

By   
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<b>UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA</b>		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) <b>LAUREN RIES AND SERENA ALGOZER, ET AL v. HORNELL BREWING COMPANY, ET AL</b>		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): G. RICHARD BAKER Baker Law PC 2229 1 <sup>st</sup> Avenue North Birmingham, AL 35203		TELEPHONE NO. Tel. (205) 241-9608
ATTORNEY FOR:  Plaintiffs, Lauren Ries and Serena Algozer	HEARING DATE – TIME	CASE NUMBER:  10-cv-01139-JF

### PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business is BAKER LAW, P.C., 2229 1<sup>st</sup> Avenue North, Birmingham, Alabama 35203.

On May 4, 2011, I served the following documents:

1. FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ., 17500, ET SEQ., AND THE CONSUMERS LEGAL REMEDIES ACT ("CLRA") CIVIL CODE § 1750 ET SEQ.

I served the documents on the person below, as follows:

Robert Donovan, Esquire  
[rdonovan@mdmc-law.com](mailto:rdonovan@mdmc-law.com)  
 Lewis H. Goldfarb, Esquire  
[lgoldfarb@mdmc-law.com](mailto:lgoldfarb@mdmc-law.com)  
 MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP  
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 One Market Plaza  
 Steuart Tower, 8<sup>th</sup> Floor  
 San Francisco, CA 94105

- By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

- By United States mail and Electronic Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addressed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United Sates Postal Service, in a sealed envelope with postage fully prepaid. I also attached the responses via electronic mail.
- By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- By ELECTRONIC SERVICE.** I served the above listed document(s), described above via the Central District of the United States Court's Electronic Filing Program on the designated recipients through electronic transmission through the CM/ECF system on the Court's website. Upon completion of said transmission and filing of said documents, a certified receipt is issued to filing party acknowledging receipt by the Court's CM/ECF system, and once all designated recipients are electronically served, proof of electronic service is returned to the filing party.

I declare that I am G. Richard Baker, executed on May 4, 2011, at Birmingham, Alabama.

s/ G. Richard Baker  
G. Richard Baker