

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)
Sarah N. Westcot (State Bar No. 264916)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
swestcot@bursor.com
apersinger@bursor.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SARAH A. SALAZAR, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HONEST TEA, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Sarah A. Salazar (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant Honest Tea, Inc. (“Honest Tea”). Plaintiff makes the
3 following allegations pursuant to the investigation of her counsel and based upon information and
4 belief, except as to the allegations specifically pertaining to her, which are based on personal
5 knowledge.

6 **INTRODUCTION**

7 1. Honest Tea’s marketing and promotion of bottled Honest Tea Honey Green Tea is
8 dishonest. This is a class action lawsuit on behalf of purchasers of Honest Tea Honey Green Tea
9 (“Honey Green Tea”), which Defendants market as a source of antioxidant green tea flavonoids. In
10 fact, Honest Tea Honey Green Tea does not contain the amount of antioxidants touted on the label.

11 2. Plaintiff Salazar purchased numerous bottles of Honey Green Tea, which did not
12 contain the amount of “antioxidants green tea flavonoids” represented on the label. Independent
13 testing by a laboratory retained by Plaintiff’s counsel determined that 16.9 fluid ounce bottles of
14 Honey Green Tea contained an average of 186.7 mg of flavonoids per bottle. While Honest Tea
15 claims on their website and in their “Keeping It Honest Mission Report” that they use “honesty and
16 integrity” to craft their products, the testing showed that the total flavonoids per bottle is 24%
17 below the “247 mg Antioxidants Green Tea Flavonoids Per Bottle” highlighted on the label. Thus,
18 contrary to its “Honest” trade name, Honest Tea’s Honey Green label is false and misleading.
19 Honest Tea is cheating purchasers by providing less antioxidants than purchasers are paying for.

20 3. Plaintiff Salazar asserts claims on behalf of herself and a nationwide class of
21 purchasers of Honey Green Tea for breach of express warranty, breach of the implied warranty of
22 merchantability, breach of implied warranty of fitness for a particular purpose, violation of the
23 California Consumer Legal Remedies Act (“CLRA”), violation of the California Unfair
24 Competition Law (“UCL”), violation of the California False Advertising Law (“FAL”), negligent
25 misrepresentation, and fraud.

26 **PARTIES**

27 4. Plaintiff Sarah A. Salazar is a citizen of California, residing in Benicia. From 2012
28 until August 2013, Ms. Salazar regularly purchased Honest Tea Honey Green Tea. Prior to

FACTS COMMON TO ALL CAUSES OF ACTION

Honest Tea’s False and Misleading Name

8. Defendant uses the trade name “Honest Tea” to represent to the public that it’s honest, truthful, and trustworthy. Indeed, “Honest Tea” is an intentional pun on the word “honesty.” Honest Tea uses the word “Honest” and the “honesty” pun to reinforce its other express claims about the characteristics of its products.

9. Honest Tea doesn’t stop with its trade name. Honest Tea also claims on its website and in other marketing materials that its products are “Refreshingly Honest” and “Honest Tea: If it’s not real, it’s not Honest.”

10. In 2011, when Honest Tea re-styled Honey Green Tea’s label, co-founder Seth Goldman stated that “In recognition of the fact that the word ‘Honest’ is the most important part of our name, we decided to move away from having the word ‘Honest Tea’ all on one line. While some were worried that breaking up the words might make it easier for consumers to miss the pun (Honest Tea = ‘Honesty’), we decided that the benefits of creating one uniform brand identity that emphasizes the word ‘Honest’ was worth the tradeoff.”

11. Additionally, as part of its “brutally honest campaign” Honest Tea took common lies and turned them in to truths to help the consumers remember the honesty of Honest Tea. The result was billboards that stated in giant bold letters: “YES, THAT DRESS DOES MAKE YOU LOOK FAT, BE REAL. GET HONEST” and “IT’S NOT ME IT’S YOU, BE REAL. GET HONEST.”

12. As part of its honesty marketing campaign, Honest Tea even conducted “the first National Honesty Index social experiment” where Honest Tea set up unmanned Honest Tea kiosks that offered its beverages for \$1 on the honor system in over 30 cities across the country. Honest Tea recorded whether consumers paid \$1. The results suggested that most of the American population is honest. Unfortunately, the same cannot be said for Honest Tea.

13. Contrary to its “brand identity” and advertising campaign, Honest Tea is not honest. Instead, as described more fully below, Honest Tea has made false claims on Honey Green Tea’s label since at least 2008.

1 **Antioxidant Green Tea Flavonoids**

2 14. It is common knowledge that antioxidants provide health benefits. Based on Honest
3 Tea's representations about the antioxidant content in Honey Green Tea, Plaintiff and the class
4 members purchased Honey Green Tea for its antioxidant content.

5 15. Consumers make purchasing decisions based on claims about antioxidants.
6 According to a consumer survey by Bossa Nova, half of adults rank antioxidants as the top nutrient
7 they are most concerned about adding to their diets – ahead of calcium, fiber and iron.¹

8 16. Antioxidants prevent harmful chemical reactions in which oxygen is combined with
9 other substances.²

10 17. Flavonoids, also called bioflavonoids, are antioxidants that have medicinal
11 properties, including the ability to defend against cancer and viruses. Flavonoids also have anti-
12 microbial, antihistamine, and anti-inflammatory characteristics.³ Flavonoids are a comprehensive
13 classification of antioxidants that includes all types of “catechins.” A “catechin” is a tannin
14 peculiar to green tea. Catechins are a powerful, water soluble polyphenols and antioxidants that
15 are easily oxidized. Green tea contains four main catechin substances: epicatechin (EC),
16 epicatechin gallate (ECG), epigallocatechin (EGC), and epigallocatechin gallate (EGCG), all of
17 which fall under the umbrella term “catechin.” EGCG is the most powerful of the green tea
18 catechins. EGCG as an antioxidant is about 25-100 times more potent than vitamins C and E.⁴

19 **The Marketing of Honest Tea Honey Green Tea**

20 18. Honest Tea's marketing campaign for Honey Green Tea capitalizes on consumer
21 interest in consuming antioxidants. Honest Tea sells hundreds of thousands of bottles of Honey
22 Green Tea because of its claims about its “antioxidant[] green tea flavonoid” content and the health
23 benefits consumers associate with antioxidants. While Honest Tea encourages consumers to trust

24 ¹ See New Survey Finds Antioxidants #1 Nutrient Concern Amongst Consumers, PR Newswire,
25 [http://www.prnewswire.com/news-releases/new-survey-finds-antioxidants-1-nutrient-concern-
amongst-consumers-106440093.html](http://www.prnewswire.com/news-releases/new-survey-finds-antioxidants-1-nutrient-concern-amongst-consumers-106440093.html).

26 ² See Antioxidant Definition, MERRIAM-WEBSTER.COM, [http://www.merriam-
webster.com/dictionary/antioxidant](http://www.merriam-webster.com/dictionary/antioxidant).

27 ³ See Jennifer Nelson, What is a flavonoid? Mother Nature Network,
<http://www.mnn.com/food/healthy-eating/stories/what-is-a-flavonoid>.

28 ⁴ See Green Tea, White Tea: Catechin Health Benefits, Green Tea Lovers: Healthy Tea that Tastes
Great, <http://www.greentealovers.com/greenteahealthcatechin.htm>.

1 them by constantly citing “honesty” in its name, and in its marketing materials, Honest Tea’s
2 claims about the antioxidant content in Honey Green Tea are false.



3
4
5
6
7
8
9
10
11
12
13 19. Despite Honest Tea’s “Refreshingly Honest” tag line, Honest Tea makes
14 demonstrably false claims on its Honey Green Tea label. Honest Tea represents that its 16.9 fl. oz.
15 bottles contain “247 mg Antioxidants Green Tea Flavonoids per bottle.” Independent testing has
16 confirmed that Honest Tea’s representation is false. Additionally, Honest Tea’s Honey Green Tea
17 label states that:

18
19 We won’t sweet talk you. We’ll just say two words: Epigallocatechin
20 gallate. It may not have the ring of “sweetheart” but EGCG is our favorite
21 flavonoid, one of many tea antioxidants. Sure, we add a kiss of honey, but
22 not enough to gross you out.

23 Honestly yours,

24 Seth + Barry



20. By touting the “247 mg antioxidant[.]” content in its tea, and by employing the word “Honest” in its name, on the label and on its website, Honest Tea hooks in consumers who would otherwise purchase green tea leaves or bags of green tea to brew that provide more flavonoid antioxidants for much less.

21. Further, while Honest Tea claims on the Honey Green Tea label that it is “JUST A TAD SWEET,” and that they “add a kiss of honey, but not enough to gross you out,” Honey Green Tea contains as much sugar as half a can of soda. Indeed, there is more “Organic Cane Sugar” in Honey Green Tea than “Organic Green Tea Leaves” and “Organic Honey.” The only ingredient in a greater amount than “Organic Cane Sugar” is water. As such, unlike green tea from brewed leaves or tea bags, Honey Green Tea is mainly sugar water.

22. Since Honey Green Tea does not contain the amount of antioxidants represented on the label, Plaintiff and the class members did not get what they paid for.

Honest Tea’s Predecessor Labels Were Also False And Misleading

23. Since 2008, Honest Tea has misrepresented the antioxidant content in Honey Green Tea. In 2011, Honest Tea changed Honey Green Tea’s label representations from “250mg EGCG Super Antioxidant” to “Antioxidants 190mg Tea Catechins/Bottle.” In 2013, Honest Tea changed Honey Green Tea’s label representation to “247 mg Antioxidants Green Tea Flavonoids Per

1 Bottle.” All three labels’ representations about the antioxidant content per bottle are false and
2 misleading. Honest Tea changed Honey Green Tea’s label in 2011 and 2013 but did not change
3 the formulation of Honey Green Tea.

4 24. As depicted below, Honest Tea’s label previously represented that the bottle
5 contained “EGCG Super-Antioxidant 250 mg per bottle.”



17 25. But Honest Tea’s own marketing materials demonstrate that the 250 mg EGCG
18 claim was false. On its website, Honest Tea cites two editions of Men’s Health Magazine, which
19 Honest Tea claims “independently tested” Honey Green Tea in January 2009 and June 2008. Both
20 articles state that bottles of Honey Green Tea contained 71 mg of EGCG per bottle.⁵ Seventy-one
21 milligrams of EGCG is not even a third of the EGCG per bottle that Honest Tea claimed on the
22 label. Thus, even the testing done by Men’s Health that Honest Tea flaunts on their website
23 demonstrates that Honest Tea’s 250mg EGCG labeling claim was false. Unsurprisingly, as shown
24 below in the image from Men’s Health that is reproduced on Honest Tea’s website, the image of
25 the prior label is so small that the false 250mg of EGCG claim is illegible.

26
27
28 ⁵ See <http://www.honesttea.com/mission/philosophy/antioxidants/>

Men's Health

June 2008

THE REPUBLIC OF TEA POMEGRANATE GREEN (16.9 OZ)
Catechins/EGCG: 9 mg/0.4 mg
Calories: 0
Caffeine: 0.25 mg
Taste: Floral notes, no tea taste

LIPTON PURELEAF GREEN TEA WITH HONEY (16 OZ)
Catechins/EGCG: 97 milligrams (mg)/22 mg
Calories: 22
Caffeine: 130 mg
Taste: Earthy, nicely sweet

HONEST TEA ORGANIC HONEY GREEN TEA (16.9 OZ)
Catechins/EGCG: 215 mg/71 mg
Calories: 74
Caffeine: 97 mg
Taste: Well balanced and slightly sweet, with citrus notes

SNAPPLE ASIAN PEAR GREEN TEA (17.5 OZ)
Catechins/EGCG: 46 mg/25 mg
Calories: 120
Caffeine: 31 mg
Taste: A heavy dose of honey flavor, but no detectable pear taste

ARIZONA GREEN TEA WITH GINSENG AND HONEY (20 OZ)
Catechins/EGCG: 30 mg/5 mg
Calories: 175
Caffeine: 25 mg
Taste: More like a syrupy soda

HARNEY & SONS ORGANIC GREEN (16 OZ)
Catechins/EGCG: 183 mg/50 mg
Calories: 40
Caffeine: 80 mg
Taste: Heavy citrus notes and no cloying sweetness

ITO EN TEA'S TEA LEMONGRASS GREEN (16.9 OZ)
Catechins/EGCG: 28 mg/6 mg
Calories: 0
Caffeine: 48 mg
Taste: Earthy, savory flavor

For the complete results of our test, go to Men'sHealth.com/greentea.

SHARE

26. Additionally, independent testing showed that Honey Green Tea contained on average only 70 mg of EGCG per bottle. Similarly, a report published by ConsumerLab.com on December 21, 2012, and updated and republished on May 30, 2013, found 57.5 mg of EGCG per bottle. That is only 23% to 28% of the 250 mg represented on the label.

27. In 2011, Honest Tea introduced new labels for their plastic bottles.⁶ As shown below, the new labels represented that Honey Green Tea contained “190 mg of naturally occurring green tea catechins” per 16.9 fl. oz. bottle. But that claim was false and misleading. The report published by ConsumerLab.com found only 119 mg of catechins, and 57.5 mg of the catechin EGCG, per 16.9 fl. oz. bottle of Honest Tea Green Tea with Honey. Consumerlab.com stated that “only 62.7%” of the 190 mg of green tea catechins listed on the label were found in testing. Based on its test results, ConsumerLab.com listed Honest Tea Green Tea with Honey as “Not

⁶ Labels stating that Honey Green Tea contains “Antioxidants 190mg Tea Catechins/Bottle” are still in circulation. As shown in the image included herein, the tea in the bottle bearing the “Antioxidants 190 mg Tea Catechins” label does not expire until December 2013.

1 Approved' ...for failing to meet a label claim."⁷ Furthermore, the testing done by the independent
2 lab retained by Plaintiff supports ConsumerLab.com's finding.



19 28. Like its current label, the predecessor labels for Honest Tea's Honey Green Tea
20 were false and Plaintiff and the class members were injured as a result.

21 **Independent Testing Confirms that Honest Tea's Labels Are False And Misleading**

22 29. Plaintiff's counsel retained an independent lab to test the total bioflavonoids in
23 Honey Green Tea. Plaintiff's counsel sent the lab multiple unopened samples of Honey Green Tea
24 in their original containers.

25
26
27 ⁷ "Green Tea Supplements, Drinks, and Brewable Teas Reviewed by ConsumerLab.com" (initial
28 [posting 12/21/12, updated 5/30/13, abstract available at
https://www.consumerlab.com/reviews/Green_Tea_Review_Supplements_and_Bottled/Green_Tea
Δ\).](https://www.consumerlab.com/reviews/Green_Tea_Review_Supplements_and_Bottled/Green_Tea)

1 36. Plaintiff also seeks to represent a subclass of all Class members who purchased the
2 product in California (the “California Subclass”).

3 37. Defendant sells hundreds of thousands of bottles of Honest Tea Honey Green Tea.
4 Honey Green Tea is available in major supermarkets nationwide. Accordingly, members of the
5 Class and Subclass are so numerous that their individual joinder herein is impracticable. The
6 precise number of Class members and their identities are unknown to Plaintiff at this time but may
7 be determined through discovery. Class members may be notified of the pendency of this action
8 by mail and/or publication through the distribution records of Defendants and third party retailers
9 and vendors.

10 38. Common questions of law and fact exist as to all Class members and predominate
11 over questions affecting only individual Class members. Common legal and factual questions
12 include, but are not limited to whether Defendant’s labeling, marketing and promotion of Honest
13 Tea Honey Green Tea is false, and misleading.

14 39. The claims of the named Plaintiff are typical of the claims of the Class in that the
15 named Plaintiff was exposed to Defendants’ false, and misleading labels, purchased Honest Tea
16 Honey Green Tea, and suffered a loss as a result of that purchase.

17 40. Plaintiff is an adequate representative of the Class and Subclass because her
18 interests do not conflict with the interests of the Class members she seeks to represent, she has
19 retained competent counsel experienced in prosecuting class actions, and she intends to prosecute
20 this action vigorously. The interests of Class members will be fairly and adequately protected by
21 Plaintiff and her counsel.

22 41. The class mechanism is superior to other available means for the fair and efficient
23 adjudication of the claims of the Class and Subclass members. Each individual Class member may
24 lack the resources to undergo the burden and expense of individual prosecution of the complex and
25 extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases
26 the delay and expense to all parties and multiplies the burden on the judicial system presented by
27 the complex legal and factual issues of this case. Individualized litigation also presents a potential
28 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer

1 management difficulties and provides the benefits of single adjudication, economy of scale, and
2 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment
3 of the liability issues will ensure that all claims and claimants are before this Court for consistent
4 adjudication of the liability issues.

5 **COUNT I**

6 **Breach Of Express Warranty**

7 42. Plaintiff hereby incorporates by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 43. Plaintiff brings this claim individually and on behalf of the members of the
10 proposed Class and California Subclass against Defendant.

11 44. Plaintiff, and each Class member, formed a contract with Defendant at the time
12 Plaintiff and each Class member purchased Honest Tea Honey Green Tea. The terms of the
13 contract include the promises and affirmations of fact relating to the antioxidant content on
14 Defendant's product labels and through its marketing campaign, as described above. The
15 representations on the product labels became part of the basis of the bargain and are part of a
16 contract between Plaintiff and the members of the Class on the one hand, and Defendant on the
17 other, and thus constituted express warranties.

18 45. Defendant, as the designer, manufacturer, marketer, distributor, or seller expressly
19 warranted the following about Honey Green Tea:

- 20 (a) "247 mg Antioxidants Green Tea Flavonoids Per Bottle,"
21 (b) "Antioxidants 190 mg Tea Catechins/Bottle,"
22 (c) "EGCG Super-Antioxidant 250mg per bottle."

23 46. Defendant sold the goods to Plaintiff and the other Class members, who bought the
24 goods from Defendant. Plaintiff and the Class members are ordinary consumers who are not
25 versed in the art of inspecting and judging the properties of green tea. Plaintiff and the Class acted
26 reasonably based on Defendant's representations.

27 47. Defendant breached the terms of this contract, including the express warranties,
28 because, as demonstrated by several studies including the lab results from the independent lab

1 retained by Plaintiff, the goods did not contain the amount of antioxidants represented on the
2 product labels. In fact, the amount of antioxidants per bottle is significantly smaller than
3 represented. Therefore, the express warranties were false, misleading and deceptive. As a result of
4 this breach, Plaintiff and the Class did not receive the goods as warranted by Defendant.

5 48. Plaintiff and Class members were injured and harmed as a direct and proximate
6 result of Defendants' breach because: (a) they would not have purchased Honey Green Tea on the
7 same terms if the true facts were known concerning its antioxidant content; (b) they paid a price
8 premium for Honey Green Tea due to Defendant's promises that it contained "247 mg
9 Antioxidants Green Tea Flavonoids," "Antioxidants 190 mg Tea Catechins/Bottle," and/or "EGCG
10 Super-Antioxidant 250mg per bottle"; and (3) Honey Green Tea did not have the characteristics,
11 ingredients, uses, benefits, or quantities as promised.

12 COUNT II

13 **Breach Of Implied Warranty Of Merchantability**

14 49. Plaintiff hereby incorporates by reference the allegations contained in all preceding
15 paragraphs of this complaint.

16 50. Plaintiff brings this claim individually and on behalf of the members of the
17 proposed Class and California Subclass against Defendant.

18 51. Defendants as the designer, manufacturer, marketers, distributors, and/or sellers
19 impliedly warranted that Green Tea with Honey was fit for its intended purpose of offering
20 consumers a source of:

- 21 (a) "247 mg Antioxidants Green Tea Flavonoids Per Bottle,"
- 22 (b) "Antioxidants 190 mg Tea Catechins/Bottle,"
- 23 (c) "EGCG Super-Antioxidant 250mg per bottle."

24 52. Defendants breached the warranty implied in the contract for the sale of Honey
25 Green Tea because it could not pass without objection in the trade under the contract description,
26 the goods were not of fair average quality within the description, and the goods were unfit for their
27 intended and ordinary purpose because Green Tea with Honey contains significantly less
28

1 antioxidants than represented. As a result, Plaintiff and Class members did not receive the goods
2 as impliedly warranted by Defendant to be merchantable.

3 53. In reliance upon Defendants' skill and judgment and the implied warranties of
4 fitness for the purpose, Plaintiff and Class members purchased Honey Green Tea as a source of
5 "247 mg Antioxidants Green Tea Flavonoids," "Antioxidants 190 mg Tea Catechins/Bottle,"
6 and/or "EGCG Super-Antioxidant 250mg per bottle."

7 54. Honey Green Tea was not altered by Plaintiff and Class members.

8 55. Honey Green Tea was defective when it left the exclusive control of Defendant.

9 56. Defendant knew Honey Green Tea would be purchased and used without additional
10 testing for efficacy by Plaintiff and Class members.

11 57. Honey Green Tea was defectively designed and unfit for its intended purpose, and
12 Plaintiff and Class members did not receive the goods as warranted.

13 58. As a direct and proximate cause of Defendants' breach of the implied warranty,
14 Plaintiff and Class members have been injured and harmed because: (a) they would not have
15 purchased Honey Green Tea on the same terms if the true facts were known concerning its
16 antioxidant content; (b) they paid a price premium for Honey Green Tea due to Defendant's
17 promises that it contained "247 mg Antioxidants Green Tea Flavonoids Per Bottle," "Antioxidants
18 190 mg Tea Catechins/Bottle," and/or "EGCG Super-Antioxidant 250mg per bottle" (3) Honey
19 Green Tea did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

20 **COUNT III**

21 **Breach Of Implied Warranty Of Fitness For A Particular Purpose**

22 59. Plaintiff hereby incorporates by reference the allegations contained in all preceding
23 paragraphs of this complaint.

24 60. Plaintiff brings this claim individually and on behalf of the members of the
25 proposed Class and California Subclass against Defendant.

26 61. Defendant marketed, distributed, and/or sold Green Tea with Honey with implied
27 warranties that it was fit for its intended purposes in that it contained:

28 (a) "247 mg Antioxidants Green Tea Flavonoids Per Bottle,"

1 (b) “Antioxidants 190 mg Tea Catechins/Bottle,”

2 (c) “EGCG Super-Antioxidant 250mg per bottle.”

3 62. At the time that Green Tea with Honey was sold, Defendant knew or had reason to
4 know that Plaintiff and Class members were relying on Defendant’s skill and judgment to select or
5 furnish a product containing “247 mg Antioxidants Green Tea Flavonoids Per Bottle,”
6 “Antioxidants 190 mg Tea Catechins/Bottle,” and/or “EGCG Super-Antioxidant 250mg per
7 bottle.”

8 63. Plaintiff and Class members purchased Honey Green Tea in reliance upon
9 Defendant’s implied warranties.

10 64. Honey Green Tea was not altered by Plaintiff or Class members.

11 65. As a direct and proximate cause of Defendant’s breach of the implied warranty,
12 Plaintiff and Class members have been injured and harmed because: (a) they would not have
13 purchased Honey Green Tea on the same terms if the true facts were known concerning its
14 antioxidant content; (b) they paid a price premium for Honey Green Tea due to Defendant’s
15 promises that it contained “247 mg Antioxidants Green Tea Flavonoids Per Bottle,” “Antioxidants
16 190 mg Tea Catechins/Bottle,” and/or “EGCG Super-Antioxidant 250mg per bottle” (3) Honey
17 Green Tea did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

18 **COUNT IV**

19 **Violation Of California’s Consumers Legal Remedies Act,**

20 **California Civil Code §§ 1750, et seq.**

21 66. Plaintiff hereby incorporates by reference the allegations contained in all preceding
22 paragraphs of this complaint.

23 67. Plaintiff brings this claim individually and on behalf of the members of the
24 proposed California Subclass against Defendant.

25 68. Plaintiff and the Subclass members are consumers who purchased Honey Green Tea
26 for personal, family or household purposes. Plaintiff and the Subclass members are “consumers”
27 as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiffs and the Subclass
28

1 members are not sophisticated experts with independent knowledge of the amount of antioxidants
2 found in Honey Green Tea.

3 69. Honey Green Tea beverages that Plaintiff and other Class Members purchased from
4 Defendant were “goods” within the meaning of Cal. Civ. Code § 1761(a).

5 70. Defendant’s actions, representations, and conduct have violated, and continue to
6 violate the CLRA, because they extend to transactions that intended to result, or which have
7 resulted in, the sale of goods to consumers.

8 71. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits
9 “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,
10 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,
11 affiliation, or connection which he or she does not have.” Cal. Civ. Code § 1770(a)(9) further
12 prohibits “[a]dvertising goods or services with intent not to sell them as advertised.”

13 72. Defendant violated Cal. Civ. Code § 1770(a)(5) and (a)(9) by misrepresenting the
14 amount of antioxidant flavonoids, antioxidant green tea catechins, and EGCG antioxidants in
15 Honey Green and selling Honey Green Tea with a significantly smaller amount of flavonoids,
16 green tea catechins, and EGCG.

17 73. Plaintiff and the California Subclass suffered injuries caused by Defendant because:
18 (a) they would not have purchased Honey Green Tea on the same terms if the true facts were
19 known concerning its antioxidant content; (b) they paid a price premium for Honey Green Tea due
20 to Defendant’s promises that it contained “247 mg Antioxidants Green Tea Flavonoids Per Bottle,”
21 “Antioxidants 190 mg Tea Catechins/Bottle,” and/or “EGCG Super-Antioxidant 250mg per
22 bottle”; and (3) Honey Green Tea did not have the characteristics, ingredients, uses, benefits, or
23 quantities as promised.

24 74. On or about September 10, 2013, prior to filing this action, a CLRA notice letter
25 was served on Defendant which complies in all respects with California Civil Code § 1782(a).
26 Plaintiff Salazar sent Honest Tea, Inc. a letter via certified mail, return receipt requested, advising
27 Honest Tea, Inc. that it is in violation of the CLRA and demanding that it cease and desist from
28

1 such violations and make full restitution by refunding the monies received therefrom. A true and
2 correct copy of Plaintiff Salazar's letter is attached hereto as Exhibit A.

3 75. Wherefore, Plaintiff seeks damages, restitution, and injunctive relief for this
4 violation of the CLRA.

5 **COUNT V**

6 **Violation Of California's Unfair Competition Law,**
7 **California Business & Professions Code §§ 17200, et seq.**

8 76. Plaintiff hereby incorporates by reference the allegations contained in all preceding
9 paragraphs of this complaint.

10 77. Plaintiff brings this claim individually and on behalf of the members of the
11 proposed California Subclass against Defendant.

12 78. Defendant is subject to California's Unfair Competition Law, Cal. Bus. & Prof.
13 Code §§ 17200, et seq. The UCL provides, in pertinent part: "Unfair competition shall mean and
14 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
15 misleading advertising"

16 79. Defendant's misrepresentations and other conduct, described herein, violated the
17 "unlawful" prong of the UCL by violating the CLRA and the FAL.

18 80. Defendant's misrepresentations and other conduct, described herein, violated the
19 "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends
20 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the
21 conduct outweighs any alleged benefits. Defendant's dishonesty is of no benefit to consumers.

22 81. Defendant violated the "fraudulent" prong of the UCL by making
23 misrepresentations about Honey Green Tea, as described herein.

24 82. Plaintiff and the Class are not sophisticated experts about the amount of antioxidants
25 in bottled green tea, or lack thereof, and they acted reasonably when they purchased Defendant's
26 products based on their belief that Defendant's representations were true.

27 83. Plaintiff and the California Subclass lost money or property as a result of
28 Defendant's UCL violations because: (a) they would not have purchased Honey Green Tea on the

1 same terms if the true facts were known concerning its antioxidant content; (b) they paid a price
2 premium for Honey Green Tea due to Defendant's promises that it contained "247 mg
3 Antioxidants Green Tea Flavonoids Per Bottle," "Antioxidants 190 mg Tea Catechins/Bottle,"
4 and/or "EGCG Super-Antioxidant 250mg per bottle"; and (3) Honey Green Tea did not have the
5 characteristics, ingredients, uses, benefits, or quantities as promised.

6 **COUNT VI**

7 **Violation Of California's False Advertising Law,**

8 **California Business & Professions Code §§ 17200, et seq.**

9 84. Plaintiff hereby incorporates by reference the allegations contained in all preceding
10 paragraphs of this complaint.

11 85. Plaintiff brings this claim individually and on behalf of the members of the
12 proposed California Subclass against Defendant.

13 86. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
14 makes it "unlawful for any person to make or disseminate or cause to be made or disseminated
15 before the public in this state, ... in any advertising device ... or in any other manner or means
16 whatever, including over the Internet, any statement, concerning ... personal property or services,
17 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and
18 which is known, or which by the exercise of reasonable care should be known, to be untrue or
19 misleading."

20 87. Defendant committed acts of false advertising, as defined by §17500, by
21 misrepresenting that Green Tea with Honey contained "247 mg Antioxidants Green Tea
22 Flavonoids Per Bottle," "Antioxidants 190 mg Tea Catechins/Bottle," and/or "EGCG Super-
23 Antioxidant 250mg per bottle." These misrepresentations likely deceived and are still deceiving
24 the general public, and lead reasonable consumers to believe that Honey Green Tea in fact
25 contained "247 mg Antioxidants Green Tea Flavonoids Per Bottle," "Antioxidants 190 mg Tea
26 Catechins/Bottle," and "EGCG Super-Antioxidant 250mg per bottle."

27 88. Defendant knew or should have known, through the exercise of reasonable care that
28 their representations about Honey Green Tea were untrue and misleading.

1 89. Defendant's actions in violation of § 17500 were false and misleading such that the
2 general public is and was likely to be deceived.

3 90. Plaintiff and the California Subclass lost money or property as a result of
4 Defendant's FAL violations because: (a) they would not have purchased Honey Green Tea
5 on the same terms if the true facts were known concerning its antioxidant content; (b) they
6 paid a price premium for Honey Green Tea due to Defendant's promises that it contained
7 "247 mg Antioxidants Green Tea Flavonoids Per Bottle," "Antioxidants 190 mg Tea
8 Catechins/Bottle," and/or "EGCG Super-Antioxidant 250mg per bottle"; and (3) Honey
9 Green Tea did not have the characteristics, ingredients, uses, benefits, or quantities as
10 promised.

11 **COUNT VII**

12 **Negligent Misrepresentation**

13 91. Plaintiff hereby incorporates by reference the allegations contained in all preceding
14 paragraphs of this complaint.

15 92. Plaintiff brings this claim individually and on behalf of the members of the
16 proposed Class and California Subclass against Defendant.

17 93. As discussed above, Defendant misrepresented that Honey Green Tea contained
18 "247 mg Antioxidants Green Tea Flavonoids Per Bottle," "Antioxidants 190 mg Tea
19 Catechins/Bottle," and/or "EGCG Super-Antioxidant 250mg per bottle." Defendant had a duty to
20 disclose correct information.

21 94. At the time Defendant made these representations, Defendant knew or should have
22 known that these representations were false or made them without knowledge of their truth or
23 veracity.

24 95. At an absolute minimum, Defendant negligently misrepresented and/or negligently
25 omitted material facts about Honey Green Tea.

26 96. The negligent misrepresentations and omissions made by Defendant, upon which
27 Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually
28 induced Plaintiff and Class members to purchase Honey Green Tea.

1 97. Plaintiff and Class members would not have purchased Honey Green Tea if the true
2 facts had been known.

3 98. The negligent actions of Defendant caused damage to Plaintiff and Class members,
4 who are entitled to damages and other legal and equitable relief as a result.

5 **COUNT VIII**

6 **Fraud**

7 99. Plaintiff hereby incorporates by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 100. Plaintiff brings this claim individually and on behalf of the members of the
10 proposed Class and California Subclass against Defendant.

11 101. As discussed above, Defendant provided Plaintiff and Class members with false or
12 misleading material information and failed to disclose material facts about Honey Green Tea,
13 including but not limited to the fact that it contained “247 mg Antioxidants Green Tea Flavonoids
14 Per Bottle,” “Antioxidants 190 mg Tea Catechins/Bottle,” and “EGCG Super-Antioxidant 250mg
15 per bottle.” These misrepresentations and omissions were made with knowledge of their
16 falsehood.

17 102. The misrepresentations and omissions made by Defendant, upon which Plaintiff and
18 Class members reasonably and justifiably relied, were intended to induce and actually induced
19 Plaintiff and Class members to purchase Honey Green Tea.

20 103. The fraudulent actions of Defendant caused damage to Plaintiff and Class members,
21 who are entitled to damages and other legal and equitable relief as a result.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
24 judgment against Defendants, as follows:

- 25 a. For an order certifying the nationwide Class and the Subclass under Rule 23 of the
26 Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class
27
28

1 and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and
2 Subclass members;

- 3 b. For an order declaring the Defendants' conduct violates the statutes referenced
4 herein;
- 5 c. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on
6 all counts asserted herein;
- 7 d. For compensatory and punitive damages in amounts to be determined by the Court
8 and/or jury;
- 9 e. For prejudgment interest on all amounts awarded;
- 10 f. For an order of restitution and all other forms of equitable monetary relief;
- 11 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 12 h. For an order awarding Plaintiff and the Class and Subclass his reasonable attorneys'
13 fees and expenses and costs of suit.

14 **DEMAND FOR TRIAL BY JURY**

15 Plaintiff demands a trial by jury of all issues so triable.

16
17 Dated: November 6, 2013

Respectfully submitted,

18 **BURSOR & FISHER, P.A.**

19
20 By: /s/ L. Timothy Fisher
L. Timothy Fisher

21 L. Timothy Fisher (State Bar No. 191626)
22 Sarah N. Westcot (State Bar No. 264916)
23 Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
24 Walnut Creek, CA 94596
Telephone: (925) 300-4455
25 Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
26 swestcot@bursor.com
apersinger@bursor.com

27 *Attorneys for Plaintiff*

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Sarah Salazar, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. The complaint filed in this action is filed in the proper place because Honest Tea sells hundreds of thousands of bottles of its tea products, including Honey Green Tea, in this District.

3. While living in Benicia, California, I purchased numerous 16.9 fl. oz. bottles of Honest Tea Honey Green Tea for my household and for my personal use. I purchased Honest Tea Honey Green Tea after I read the labels on the bottles that said that the bottles of Honey Green Tea contained antioxidants, including EGCG. The representations on the label were substantial factors influencing my decision to purchase Honest Tea Honey Green Tea. I would not have purchased Honest Tea Honey Green Tea had I known that the bottles did not have the amount of antioxidants that Honest Tea represented on its labels.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on October 23, 2013 at Benicia, California.


SARAH SALAZAR

CIVIL COVER SHEET

USDC Form 123 (11/13)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September, 2013, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. <http://www.uscourts.gov/uscrt/forms>

I. (a) PLAINTIFFS
 SARAH A. SALAZAR, individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff: Solano County

(c) Attorneys (Print Name, Title, and Telephone Number):
 E. Timothy Fisher, Barrow & Fisher, P.A.
 1960 N. California Blvd., Suite 930
 Walnut Creek, CA 94596
 Tel: (925) 940-4455

DEFENDANTS
 HONEST FLA, INC.

County of Residence of First Listed Defendant: CA

NOTE: ALL STATES CONDEMNATION CASES LISTED IN LOCATION OF THE TRACT OF LAND INDICATED.

Attorneys (Print Name):

II. BASIS OF JURISDICTION (Place check in the appropriate box)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question

4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place check in the appropriate box)

1 Plaintiff Citizen of This State

2 Plaintiff Citizen of Another State

3 Plaintiff Citizen of Subject of a Foreign Country

1 Defendant Incorporated or Principal Place of Business in This State

2 Defendant Incorporated in Another State

3 Defendant Foreign Entity

IV. NATURE OF SUIT (Place check in the appropriate box)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Detained Student Loan <input type="checkbox"/> 180 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 190 Stockholders Suit <input type="checkbox"/> 200 Other Contract <input type="checkbox"/> 210 Contract/Property Liability <input type="checkbox"/> 220 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 210 Airplane <input type="checkbox"/> 215 Airplane Product Liability <input type="checkbox"/> 220 Assault, Battery & Snider <input type="checkbox"/> 230 Federal Employee Liability <input type="checkbox"/> 240 Marine <input type="checkbox"/> 245 Marine Product Liability <input type="checkbox"/> 250 Motor Vehicle <input type="checkbox"/> 255 Motor Vehicle Product Liability <input type="checkbox"/> 260 Other Personal Injury <input type="checkbox"/> 265 Personal Injury Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 265 Personal Injury - Product Liability <input type="checkbox"/> 267 Healthcare <input type="checkbox"/> 268 Pharmaceutical Personal Injury <input type="checkbox"/> 269 Product Liability <input type="checkbox"/> 270 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 270 Other Fraud <input type="checkbox"/> 271 Truth in Lending <input type="checkbox"/> 280 Other Personal Property Damage <input type="checkbox"/> 285 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 600 Drug Related Seizure of Property 21 - 36 - 883 <input type="checkbox"/> 600 Other	BANKRUPTCY <input type="checkbox"/> 430 Appraisal 28 USC 158 <input type="checkbox"/> 435 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 270 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Antitrust <input type="checkbox"/> 440 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat. TV <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 900 Other Statutory Actions <input type="checkbox"/> 920 Agricultural Acts <input type="checkbox"/> 930 Environmental Matters <input type="checkbox"/> 940 Freedom of Information Act <input type="checkbox"/> 960 Arbitration <input type="checkbox"/> 990 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 990 Constitutionality of State Statutes		
					REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Easement <input type="checkbox"/> 230 Rent Lease Agreement <input type="checkbox"/> 240 Ejectment <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 110 Other Civil Rights <input type="checkbox"/> 111 Voting <input type="checkbox"/> 142 Employment <input type="checkbox"/> 143 Housing <input type="checkbox"/> 144 Accommodations <input type="checkbox"/> 145 Age w/ Disabilities <input type="checkbox"/> 146 Age w/ Disability - Other <input type="checkbox"/> 148 Education

V. ORIGIN (Place check in the appropriate box)

Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Use the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

28 USC Section: 1321(a)(2)(A)

Brief description of cause of action: Contract Misrepresentations - Breach of Warranties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23 F.R.C.P.

DEMANDS: CHECK YES only if demanded in complaint

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

Case Number: _____ JUDGE: _____

DATE: 11/06/2013

SIGNATURE OF ATTORNEY OF RECORD: E. Timothy Fisher