

U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

JUL 07 2014

CHRIS R. JOHNSON, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BY

JENNY CRAIG, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

TWININGS NORTH AMERICA, INC.

Defendant.

No. 14-5214 TLB

[Circuit Court of Washington
County, Arkansas, Case No.
CV14-928-4]

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, Defendant TWININGS NORTH AMERICA, INC. ("Twinnings" or "Defendant") hereby removes this action from the Circuit Court of Washington County, Arkansas, to the United States District Court for the Western District of Arkansas. Twinnings respectfully submits that removal to this Court is proper because: (1) this Court has original jurisdiction over the case, and (2) the Western District of Arkansas is the district encompassing the place in which the state court litigation is pending. Twinnings appears specifically for the purpose of removal and preserves any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure.

In support of this Notice of Removal, Twinnings respectfully states as follows:

1. Plaintiff, Jenny Craig ("Plaintiff"), individually and on behalf of a purported class of similarly situated consumers, filed a complaint (the "Complaint") on May 22, 2014, in the Circuit Court of Washington County, Arkansas, bearing the Case No. CV-2014-928-4 (the "Removed Action").

2. On June 6, 2014, Twinings' registered agent for service, The Corporation Trust Company, Wilmington, DE, received a copy of the summons and Complaint in the Removed Action. Enclosed with the copy of the summons and Complaint were the Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Document Requests. A true and correct copy of these documents received by Twinings' registered agent for service on June 6, 2014 is attached hereto as Exhibit A.

3. Receipt of these documents was the first notice to Twinings of the existence of a pleading containing a claim for relief asserted by the plaintiff that could be removed to this Court. This Notice is filed within thirty (30) days of receipt of service of these documents, and is therefore timely pursuant to 28 U.S.C. §§ 1446(b) and 1453(b).

THE PARTIES

4. Upon information and belief, and as stated in the Complaint, Plaintiff is a resident of Fayetteville, Washington County, Arkansas. Compl. ¶¶ 22.

5. Twinings is a Delaware corporation with its principal place of business in Clifton, New Jersey.

THE PLAINTIFFS' ALLEGATIONS

6. The Complaint alleges, in short, that Twinings marketed and sold tea products with labeling that is unlawful, misleading, deceptive, unfair and fraudulent. See, e.g., Compl. ¶¶ 10, 17. Plaintiff asserts five causes of action based on these labeling claims: namely, violation of the Arkansas Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-101, *et seq.* ("ADTPA"), unjust enrichment, breach of the implied warranty of merchantability, breach of express warranty, and negligence. Compl. ¶¶ 81-124.

7. The putative class that Plaintiff seeks to represent consists of: "All persons who purchased Twinings' Irish Breakfast Tea and English Breakfast Tea, in Arkansas, since May 22, 2009 (the "Class")." Compl. ¶ 71.

8. As set forth more fully below, this Court has jurisdiction over this matter and it is properly removed pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

JURISDICTION UNDER CAFA

9. This action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

10. The Class Action Fairness Act of 2005 ("CAFA"), Pub. L. 109-2, 119 Stat. 4 (partially codified at 28 U.S.C. § 1332(d)), vests the federal district courts with original, diversity jurisdiction over any (1) purported class action in which (2) "any member of a class of plaintiffs is a citizen of a State different from any defendant," (3) the proposed class contains at least 100 members, and (4) the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2), (5)&(6). This case meets these requirements.

11. The Complaint alleges that "the aggregate amount in controversy will not exceed the sum or value of \$4,999,999.00, including compensatory damages, and restitution" and, under a different formulation, that "[t]he aggregate amount in controversy of the Class Members' claims does not and will not exceed \$4,999,999.00, excluding interest." Compl. ¶ 29. To the extent that Plaintiff seeks to evade CAFA's jurisdictional threshold through these allegations, they must be ignored as a matter of law. *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1349 (2013) ("[A] plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified."). Indeed, this Court has previously

recognized that *Standard Fire* "definitively states that such stipulations may not prevent removal under CAFA." *Basham v. American Nat. County Mut. Ins. Co.*, No. 4:12-CV-4005, 2013 WL 5755684, at *2 (W.D. Ark. Oct. 23, 2013).

A. The Action is a Class Action Under CAFA

12. First, the case is a purported class action. See Compl. p.1 ("Plaintiff brings this action on behalf of Plaintiff and a statewide class of Arkansas consumers"); Compl. ¶ 71 ("Plaintiff brings this action as a class action pursuant to the Arkansas Rule of Procedure 23 on behalf of the following class: All persons who purchased Twinings' Irish Breakfast Tea and English Breakfast Tea, in Arkansas, since May 22, 2009").

B. The Parties Are Diverse

13. Second, this case satisfies CAFA's minimal diversity requirement. 28 U.S.C. § 1332(d)(2)(A).

14. The Complaint states that Plaintiff is a resident of Fayetteville, Washington County, Arkansas. Compl. ¶¶ 22.

15. Twinings is a Delaware corporation with its principal place of business in Clifton, New Jersey. See 28 U.S.C. § 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business").

C. The Class Includes At Least 100 Members

16. Third, Plaintiff alleges that she and "thousands of others in Arkansas" purchased the tea products at issue in her Complaint (Compl. ¶ 7), and estimates that "the Class numbers in the thousands." Compl. ¶ 74. These allegations are sufficient to satisfy CAFA's requirement that the aggregate class include 100 or more class members. See *Hardig v. Certaineed Corp.*,

2012 U.S. Dist. LEXIS 15852, at *5 (W.D.N.C. Feb. 9, 2012) ("The court must construe Plaintiff's Complaint as drafted [which alleged that the 'Class is composed of thousands of persons'], and finds that the class could potentially consist of thousands ...") (denying motion to remand).

D. The Complaint Places More Than \$5 Million In Controversy

17. Finally, the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of costs and interest.

18. As the Eighth Circuit has explained, "a party seeking to remove under CAFA must establish the amount in controversy by a preponderance of the evidence regardless of whether the complaint alleges an amount below the jurisdictional minimum." *Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009). Moreover, a removing defendant's burden of describing how the controversy exceeds \$5 million constitutes a pleading requirement, not a demand for proof. *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944-945 (8th Cir. 2012).

19. In analyzing the amount in controversy, the question is "not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are." *Bell*, 557 F.3d at 959 (internal quotations, citation and emphasis omitted). If a defendant "prove[s] by a preponderance of the evidence that the amount in controversy is satisfied, remand is only appropriate if [the plaintiff] can establish that it is legally impossible to recover in excess of the jurisdictional minimum." *Id.*

20. CAFA provides that "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6).

1. Damages, Restitution, and Disgorgement

21. Plaintiff requests an award of "damages, restitution, or disgorgement" in an amount to which Plaintiff and the putative class are entitled. Compl. p. 24, Prayer For Relief ¶ B. As detailed below, the Complaint asserts that Plaintiff and the putative class are entitled to damages equaling as much as the entire purchase price that was paid by the Plaintiff and other putative class members for the Twinings' products at issue in the Complaint.

22. In particular, Plaintiff claims that, as result of the ADTPA violations alleged in her complaint, she and other putative class members are "entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas any money paid for Defendant's Misbranded Food Products." Compl. ¶ 93. (emphasis added)

23. In addition, Plaintiff seeks restitution of "the monies paid" to Twinings for the tea products at issue in the Complaint under a theory of unjust enrichment. Compl. ¶ 96.

24. Finally, Plaintiff seeks damages of up to the entire purchase price that Plaintiff and other putative class members paid for Twinings' products under a theory of breach of implied warranty (Compl. ¶ 107), as well as damages for breach of express warranty (Compl. ¶ 118), and damages for injury and loss under a theory of negligence (Compl. ¶ 124).

25. Attached hereto as Exhibit B is the Declaration of Daniel R. Martin. In his Declaration, Mr. Martin estimates that, for the 5-year period to May 22, 2009, the total dollar value of sales in Arkansas for all varieties of Twinings' Irish Breakfast Tea and English Breakfast Tea products with labeling that included the statements "Natural source of

antioxidants" or "Tea is a natural source of antioxidants" (see, e.g., Compl. p. 1; ¶¶ 4, 7, 11, 16, 47) was \$457,202.52. Exhibit B ¶ 7.

2. Punitive Damages

26. The Complaint is silent on whether Plaintiff and other putative class members seek punitive damages (i) with respect to qualifying members of the putative class, pursuant to Arkansas Code Annotated § 4-88-202(b) for elderly and other specifically designated persons and/or (ii) for the entire putative class, based on allegations of Twinings' fraudulent and deceptive conduct. Plaintiff asserts, however, that she will "seek[] the maximum possible recovery for the Class." Compl. ¶ 77.

27. Defendants deny engaging in any conduct that would give rise to punitive damages. Nonetheless, Plaintiffs' factual allegations must be accepted as true for purposes of analyzing the amount in controversy. See, e.g., *Wiemers v. Good Samaritan Soc'y*, 212 F. Supp. 2d 1042, 1048 (N.D. Iowa 2002).

28. Plaintiff's allegations of deceptive and misleading labeling sound in fraud, and the Complaint alleges "fraudulent" conduct in the marketing and sale of Twinings tea products with respect to "material" facts. See, e.g., Compl. ¶¶ 10, 76, 89. In particular, the Complaint asserts that Twinings "engaged in a scheme of offering Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling," (Compl. ¶ 114), that Twinings "knowingly and intentionally misbranded" its tea products (Compl. ¶ 99), and that Twinings repeatedly made unlawful and misleading claims about antioxidants "[i]n order to appeal to consumer preferences." Compl. ¶ 7. The Complaint further claims that Twinings' "misrepresentations are part of an extensive labeling, advertising

and marketing campaign" that is "designed to increase sales of the products at issue." Compl. ¶ 64.

29. Furthermore, Plaintiff alleges that she "reviewed the labels on the respective Twinings Products that she purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products." Compl. ¶ 10; see also *id.* ¶¶ 41 (Plaintiff "was misled because she erroneously believed the implicit misrepresentation that the Twinings products she was purchasing were beneficial, healthy and met the minimum nutritional threshold to make such claims."); 52 (pleading reliance); 58 (pleading reasonable reliance).

30. The allegations in the Complaint could form the basis for a possible fraud claim by Plaintiff and the putative class. Under Arkansas law, the elements of a claim for misrepresentation or fraud are: "(1) that the defendant made a false representation of material fact; (2) that the defendant knew that the representation was false or that there was insufficient evidence upon which to make the representation; (3) that the defendant intended to induce action or inaction by the plaintiff in reliance upon the representation; (4) that the plaintiff justifiably relied on the representation; and (5) that the plaintiff suffered damage as a result of the false representation." *Harrill & Sutter P.L.L.C. v. Kosin*, 424 S.W.3d 272, 275, 2012 Ark. 385 (Ark. 2012); *Ray Dodge, Inc. v. Moore*, 479 S.W.2d 518, 522 (Ark. 1972) ("If, then, there was evidence tending to show that appellant intentionally performed a deliberate act with the intention of misleading a prospective purchaser about a material matter to his injury, it was proper to permit the jury to consider the award of exemplary or punitive damages.").

31. Arkansas law allows punitive damages to be awarded on claims for fraud. See *Curtis Lumber Co. v. La. Pac. Corp.*, 618 F.3d 762, 785 (8th Cir. 2010). Where punitive

damages are recoverable, both actual and punitive damages are to be included in determining the amount in controversy. *Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 240 (1943); *Allison v. Security Ben. Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992) ("Punitive damages are included in determining the amount in controversy.") (citing *Bell*, 320 U.S. at 240); *Peacock & Peacock, Inc. v. Stuyvesant Ins. Co.*, 332 F.2d 499, 502 (8th Cir. 1964) (punitive damages to be included in the amount in controversy).

32. Punitive damages can potentially be awarded under Arkansas law even though Plaintiffs do not expressly request them in the Complaint. The Arkansas Rules of Civil Procedure provide that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Ark. R. Civ. P. 54(c); see also *Bowles v. Osmose Utils. Servs.*, 2004 WL 4910143, at *9 (W.D. Ark. Dec. 21, 2004), *aff'd*, 443 F.3d 671, 675 (8th Cir. 2006) (awarding punitive damages, after a bench trial, where there was no prayer for punitive damages in the complaint). As this Court has recognized, where punitive damages are potentially available on the allegations asserted in the complaint, such damages may be included in calculating the amount in controversy under CAFA, even though the plaintiff has not expressly requested them. See *Basham v. American Nat. County Mut. Ins. Co.*, No. 4:12-CV-4005, 2013 WL 5755684, at *6 (W.D. Ark. Oct. 23, 2013); *Knowles v. Standard Fire Ins. Co.*, 2013 WL 3968490, *10 (W.D. Ark. Aug. 2, 2013); *Thatcher v. Hanover Ins. Group, Inc.*, 2012 WL 1933079, *6 (W.D. Ark. May 29, 2012).

33. Here, considering all of the elements comprising the amount in controversy, CAFA's jurisdictional threshold is met by an award of punitive damages calculated anywhere in the range of 7.2 to 10 times the amount of compensatory damages, that is, punitive damages of between \$3,291,858.14 and \$4,572,025.20. See *Ross v. Kansas City Power & Light Co.*, 293

F.3d 1041 (8th Cir 2002) (10-to-1 ratio upheld); *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568 (8th Cir. 1997) (10-to-1 ratio upheld); *Superior Federal Bank v. Jones & Mackey Const. Co.*, 219 S.W.3d 644, 653 (Ark. Ct. App. 2005) (17.6-to-1 ratio upheld).

3. Attorneys' Fees

34. Although the Complaint does not expressly request an award of attorneys' fees, it pleads a cause of action for violation of the ADTPA. Compl. ¶¶ 81-93.

35. The ADTPA permits the recovery of "reasonable attorney's fees" in suits by private litigants who suffer actual damage or injury as a result of an offense or violation of the statute's provisions. A.C.A. § 4-88-113(f). Accordingly, the Complaint, taken as true, asserts a factual basis for the award of reasonable attorneys' fees.

36. In calculating the amount in controversy for purposes of CAFA jurisdiction, courts have considered attorneys' fees of 30% and above of the damages that the class may recover. See *Frederico v. Home Depot*, 507 F.3d 188, 199 (3^d Cir. 2007) (a court calculating the amount in controversy for CAFA removal purposes "must also consider attorney's fees" and observing that "[f]ees could be as much as thirty percent of the judgment"); *Zellner-Dion v. Wilmington Fin., Inc.*, No. 10-CV-2587 (PJS/JSM), 2012 U.S. Dist. LEXIS 99986, at *8-9 (D. Minn. July 19, 2012) (contemplating attorney's fees of 33%); *DiPonzio v. Bank of Am. Corp.*, No. 11-CV-06192, 2011 U.S. Dist. LEXIS 74158, at *7-8 (N.D.N.Y. July 11, 2011) ("Attorneys' fees of 33% of damages are consistent with the norms of class litigation in the Second Circuit" and estimating attorneys' fees of that percentage "for the limited purpose of determining the amount in controversy").

37. In putative class actions involving insurance claims, this Court has concluded that attorneys' fees of 40% of the total potential recovery are properly included in the amount-

in-controversy calculation under CAFA. *Basham*, 2013 WL 5755684, at *7; *Knowles*, 2013 WL 3968490, at *6; *Thatcher*, 2012 WL 1933079, *6 (W.D. Ark. May 29, 2012); *Knowles v. Standard Fire Ins. Co.*, No. 4:11-CV-04044, 2011 WL 6013024, at *3 (W.D. Ark. Dec. 2, 2011).

38. As stated above, for purposes of the amount in controversy, the Complaint asserts actual damages for violations of the ADTPA totaling some \$457,202.52. Punitive damages in the range of 7.2 to 10 times this amount of compensatory damages brings the amount in controversy to between \$3,749,060.66 and \$5,029,227.72. In this case, therefore, a potential attorneys' fee award, calculated at the rate of 33%, would add a further \$1,255,935.32 ($0.33 \times \$3,749,060.66$) to \$1,684,791.86 ($0.33 \times \$5,029,227.72$) to the amount in controversy.

4. The Total Amount in Controversy

39. Based on the above factors, the amount in controversy in this action exceeds \$5,000,000. Specifically, the amount in controversy in this action is at least \$5,004,995.99 comprised of: (i) damages, restitution, and/or disgorgement in the amount of \$457,202.52; (ii) punitive damages in the amount of \$3,291,858.14; and (iii) attorneys' fees in the amount of \$1,255,935.32. Thus, the fourth and final requirement of CAFA is satisfied and removal is proper.

E. None of the Exceptions to CAFA Jurisdiction Apply

40. Twinings is not a citizen of Arkansas, the state in which the action was filed. Accordingly, 28 U.S.C. §§ 1332(d)(3) and (d)(4) do not apply.

41. Twinings is not a State, State official or other governmental entity against which this Court may be foreclosed from ordering relief. Accordingly, Section 1332(d)(5)(A) does not apply.

42. Section 1332(d)(5)(B) does not apply because the number of members of all proposed plaintiff classes in the aggregate exceeds 100, as set forth above.

43. Section 1332(d)(9) does not apply because Plaintiff's claims do not involve securities or the internal affairs or governance of a corporation or other form of business enterprise.

44. Accordingly, because none of the exceptions to CAFA jurisdiction applies, this Court has original jurisdiction under CAFA.

REMOVAL PROCEDURE

45. Twinings has not previously moved to remove this action.

46. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Twinings in the state court action are attached as Exhibit A hereto.

47. Pursuant to 28 U.S.C. § 1446(d), Twinings will serve on Plaintiff's counsel of record and will file with the Clerk of the Circuit Court of Washington County, Arkansas, written notice of this request for removal, attaching a copy of this Notice of Removal.

NO PREJUDICE OR WAIVER OF DEFENSES

48. By filing this Notice of Removal, Twinings expressly preserves and does not waive any defenses that may be available to it. Moreover, by seeking to prove that the amount in controversy is greater than the jurisdictional amount, Twinings does not concede that the jurisdictional amount is recoverable. Rather, Twinings denies that any amount is recoverable by Plaintiff or the putative class.

WHEREFORE, Defendants respectfully submit that this action is duly removed to this Court, and hereby provide notice of removal.

Respectfully submitted,

Kevin A. Crass (84029)
R. Christopher Lawson (93083)
FRIDAY, ELEDREDGE & CLARK, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201-3522
(501) 370-1592 Phone
(501) 244-5370 Fax
crass@fridayfirm.com
lawson@fridayfirm.com

*Attorneys for Defendant,
Twinings North America, Inc.*

By: 

KEVIN A. CRASS

CERTIFICATE OF SERVICE

I, Kevin A. Crass, do hereby certify that a copy of the foregoing was served upon the following counsel of record, *via* regular United States Mail, this 7th day of July, 2014:

Mr. Kenneth R. Shemin
Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway, Ste. 603
Rogers, AR 72758

Mr. Thomas P. Thrash
Thrash Law Firm, P.A.
1101 Garland Street
Little Rock, AR 72201



KEVIN A. CRASS



**Service of Process
Transmittal**

06/06/2014
CT Log Number 525095868

TO: Carmen Sciackitano
ABF North America Corp.
7171 Goodlett Farms Parkway
Cordova, TN 38016-4909

RE: Process Served in Delaware

FOR: Twinings North America, Inc. (Domestic State: DE)

RECEIVED
JUN 11 2014

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Jenny Craig, etc., Pltf. vs. Twinings North America, Inc., Dft.

DOCUMENT(S) SERVED: Letter(s), Notice(s), Civil Action Complaint, Exhibit(s), First Set of Interrogatories, First Set of Requests, Certificate(s)

COURT/AGENCY: Washington County Circuit Court, AR
Case # CV149284

NATURE OF ACTION: Product Liability Litigation - Manufacturing Defect - Twinings Tea

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Certified Mail on 06/06/2014 postmarked on 06/02/2014

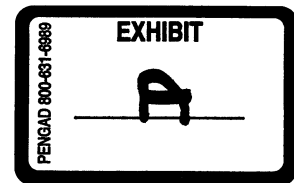
JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Kenneth R. Shemin
3333 Pinnacle Hills Parkway
Suite 603
Rogers, AR 72758
479-845-3305

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 770235548368

SIGNED: The Corporation Trust Company
PER: Gretchen McDougal
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 302-658-7581



Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, Arkansas 72758

CERTIFIED MAIL



7011 1570 0001 3034 1963

neopost
06/02/2014
US POSTAGE

FIRST-CLASS MAIL
\$02.45



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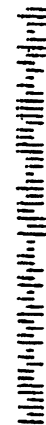
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06/02/2014
US POSTAGE

\$08.00



ZIP 72758
041L10226953

Corporation Trust Company
A/S for Ocean Spray Cranberries
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



SHEMIN LAW FIRM
A PROFESSIONAL LIMITED LIABILITY COMPANY
3333 PINNACLE HILLS PARKWAY, SUITE 603
ROGERS, ARKANSAS 72758
TELEPHONE (479) 845-3305
FACSIMILE (479) 845-2198

KENNETH R. SHEMIN

Ken@sheminlaw.com

June 2, 2014

Via U.S. Certified Mail

Corporation Trust Company
A/S for Twinings North America, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Re: Jenny Craig v. Twinings North America, Inc.

Dear Sir and/or Madam:

Pursuant to the enclosed Summons and Complaint, please be advised that a lawsuit has been filed against you. In connection with that lawsuit, please find enclosed Plaintiff's First Set of Interrogatories as well as Plaintiff's First Set of Requests for Production of Documents..

Respectfully,



Kenneth R. Shemin

KRS/pb
Enclosure(s)
cc: Client

**SUMMONS
IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS**

PLAINTIFF: Jenny Craig, individually and on behalf of all others similarly situated

v. Case No. CV-2014- 928-4

DEFENDANT: Twinings North America, Inc.

PLAINTIFF'S ATTORNEY: Kenneth R. Shemin
Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway
Suite 603
Rogers, AR 72758
Office: (479) 845-3305
Facsimile: (479) 845-2198

STATE OF ARKANSAS TO DEFENDANT: Twinings North America, Inc.

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements.

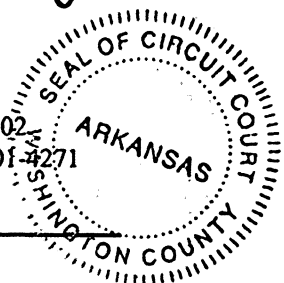
A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.

B. It must be filed in the court clerk's office within **thirty (30) days** from the day you were served with this summons.

3. If you desire to be represented by an attorney, you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

4. **ADDITIONAL NOTICES:** _____
WITNESS MY HAND AND SEAL OF THE COURT this 22 day of May, 2014.

Mr. Kyle Sylvester
Circuit Court Clerk
Courthouse
280 N. College Ave., Ste. 302
Fayetteville, Arkansas 72701-4271



By: [Signature]
Deputy Clerk

STATE OF ARKANSAS)
)
COUNTY OF _____))SS.

On this _____ day of May, 2014, I have duly served the within writ, by delivering a copy and stating the substance thereof, to the within named _____.

Sheriff Deputy Sheriff Process Server

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

Jenny Craig, individually and on behalf of all
others similarly situated,

Plaintiff,

-vs-

TWININGS NORTH AMERICA, INC.

Defendant.

CLASS ACTION COMPLAINT

Case No. CV 14-928-4

JURY TRIAL DEMANDED

FILED FOR RECORD
MAY 22 PM 4:10
WASHINGTON COUNTY
CIRCUIT CLERK
K. SYLVES

Plaintiff brings this lawsuit against Defendant, Twinings North America, Inc. ("Twinings" or "Defendant"). In order to remedy the harm arising from Defendant's illegal conduct which has resulted in unjust profits, Plaintiff brings this action on behalf of Plaintiff and a statewide class of Arkansas consumers who, within the last five years, purchased any Twinings tea products: labeled with the nutrient claim "Natural source of antioxidants," "Tea is a natural source of antioxidants;" referred to herein as "Misbranded Food Products" and/or "Twinings Products").

DEFINITIONS

1. "Class Period" is May 22, 2009 to the present.
2. Over the last five years, Plaintiff, Jenny Craig, has purchased Irish Breakfast Tea and English Breakfast Tea (hereinafter the "Twinings Products, "Misbranded Food Products" and/or "Purchased Products"). Pictures of the Purchased Products are attached at Exhibit "1."
3. "Misbranded Food Products" and/or "Twinings Products" are the Purchased Products identified herein.
4. The Twinings Products, sold during the class period ("Class Products") are listed below.

TWININGS MISBRANDED PRODUCTS

English Breakfast
Irish Breakfast

The issue in this case is the label violations and/or misrepresentations on the labels of these Twinings Products. The use of the terms "Natural source of antioxidants," and/or "Tea is a natural source of antioxidants," are in violation of A.C.A. § 20-56-201, *et seq.*

SUMMARY OF THE CASE

5. Twinings is a wholly owned subsidiary of Associated British Foods which is based in London, England. Twinings actively promotes the presence of antioxidants in its tea products and the alleged health benefits from using these products. It does this on its product labels.

6. All Misbranded Food Products are substantially similar. The products are of a single kind (tea). All products come from the same plant—*Camellia sinensis*. The only difference is flavor. All of Twining Products share the same size and shape packaging. Substantially similar unlawful antioxidant related nutrient content claims appear on the labels of each of the Misbranded Food Products.

7. The label for each of Defendant's Twining Products has the same unlawful "*Tea is a Natural Source of Antioxidants*" seal on the label.

8. The claims on the labels that Twinings' teas "contain" or "provide" or are a "natural source" of antioxidants are false and unlawful. Defendant's teas do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the Reference Daily Intake ("RDI") or the Daily Reference Value ("DRV") of a nutrient with a recognized RDI per reference amount customarily consumed.

9. Defendant packaged and labeled the Twinings Products in violation of Arkansas law. These violations render the Twinings Products "misbranded." Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally

worthless. The sale, purchase or possession of misbranded food is a criminal act in Arkansas and food companies are subject to seizure of misbranded products. This “misbranding” – standing alone without any allegations of deception by Defendant other than the failure to disclose as per its duty, the material fact that the product was illegal, entitles Plaintiff to relief even absent review of or reliance on the labels by Plaintiff and is a strict liability claim.

10. The labels on the Twinings Products – aside from being unlawful under the Arkansas law – are also misleading, deceptive, unfair and fraudulent. Plaintiff reviewed the labels on the respective Twinings Products that she purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products. The very fact that Defendant sold such illegal Twinings Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the products. Plaintiff relied upon the Defendant’s implied representation that Defendant’s products were legal that arose from Defendant’s material omission of the facts that its products were in fact, actually illegal.

11. During various times during the Class Period, Plaintiff read the health claims and nutrient content claims (antioxidant claims) appearing on Defendant’s product labels as specified above, including the claims that Twinings Tea was a “*natural source of antioxidants*,” prior to purchasing said products and relied on this information in making her decisions to purchase Twinings Products.

12. Plaintiff did not know, and had no reason to know, that Defendant’s Twinings Products were misbranded under Arkansas law and that the products bore misleading food labeling claims. Plaintiff did not know, and had no reason to know, that Defendant’s product labels were false and misleading.

13. Arkansas law requires truthful, accurate information on the labels of packaged foods. The law is clear: misbranded food cannot legally be sold or possessed. Misbranded food has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price.

14. If manufacturers, like Defendant, are going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. These laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such benefits.

15. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels. Under Arkansas law, Defendant's food labeling practices are both (i) unlawful and (ii) deceptive and misleading to consumers.

16. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products in violation of Arkansas laws. In particular, Defendant has violated Arkansas labeling regulations by listing "Tea is a natural source of antioxidants."

17. Defendant's violations of law include the illegal labeling, distribution, delivery and sale of Defendant's Misbranded Food Products to consumers in Arkansas.

18. Plaintiff paid a premium for Defendant's products with the purported health benefits. Had Plaintiff known the truth-- that the products did not in fact contain recognized and accepted nutritional and healthful value, Plaintiff would not have paid such a premium or would not have bought the products.

19. Under Arkansas law, the Defendant's food labeling practices, described herein, are unlawful because they are deceptive and misleading to consumers. These include:

- a. Making unlawful nutrient content claims/antioxidant claims on the labels of food products that fail to meet the minimum nutritional requirements required for the antioxidant claims being made;
- b. Making unlawful and unapproved health claims about their products that are prohibited by law; and
- c. Making unlawful claims that suggest to consumers that their products can prevent the risk or treat the effects of certain diseases like cancer or heart disease.

20. These practices are not only illegal but they mislead consumers and deprive them of the information they require to make informed purchasing decisions. Arkansas laws have placed requirements on food companies that are designed to ensure that the claims that companies make about their products to consumers are truthful, accurate and backed by acceptable forms of scientific proof. When a company such as Twinings makes unlawful antioxidant related nutrient content or health claims that are prohibited by law, consumers such as Plaintiff are misled.

21. Arkansas law regulates the content of labels on packaged food. Under Arkansas law, food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its labels or in its labeling. A.C.A. § 20-56-209. Misbranding includes not only false and untruthful claims, but also those claims that are misleading.

PARTIES

22. Plaintiff, Jenny Craig, is a resident of Fayetteville, Washington County, Arkansas who purchased various Twinings Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the "Class Period").

23. Twinings of North America, Inc. is a Delaware corporation, with its principal place of business in Clifton, New Jersey, doing business in the State of Arkansas.

24. Defendant is a leading producer of retail specialty tea products, including the Misbranded Food Products. Defendant sells its food products to consumers through grocery and other retail stores throughout Arkansas.

JURISDICTION AND VENUE

25. This Court has jurisdiction pursuant to Ark. Const., Amend. 80, § 6, and A.C.A. § 16-13-201(a). This Court also has jurisdiction pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

26. This Court has personal jurisdiction over Defendant, Twinings, pursuant to A.C.A. § 16-4-101. At all times material to this action, Defendant was conducting business in the State of Arkansas. The Plaintiff purchased product sold and manufactured by the Defendant in the State of Arkansas and part of the transactions which give rise to this action took place in Washington County, Arkansas.

27. Venue is proper in this judicial district pursuant to A.C.A. § 16-55-213, *et al*, on the grounds that Defendant's misconduct occurred, in part, in Washington County.

28. The named Plaintiff and the Class Members assert no federal question. The state law causes of action asserted herein are not federally pre-empted.

29. The named Plaintiff and the Class Members assert that the aggregate amount in controversy will not exceed the sum or value of \$4,999,999.00, including compensatory damages, and restitution. The aggregate amount in controversy of the Class Members' claims does not and will not exceed \$4,999,999.00, excluding interest. No Class Member has a claim which exceeds \$74,999.00, including compensatory damages, and restitution.

FACTUAL ALLEGATIONS

A. **Arkansas Laws Regulate Food Labeling**

30. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

31. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq.*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

1. **Defendant Has Made Unlawful and Misleading Nutrient Content Claims (Antioxidant Claims) That Violate the General Nutrient Content Labeling Rules**

32. Regulations adopted by Arkansas law govern the use of expressed and implied nutrient content claims on labels of food products that are intended for sale for human consumption. Nutrient content claims are defined under current regulations for use with nutrients having established DRVs and/or RDIs.

33. Nutrient content claims that Twinings Products "contain" or "provide" or are a "natural source" of antioxidants are false and unlawful. Defendant's teas do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the RDI or the DRV of a nutrient with a recognized RDI per reference amount customarily consumed.

34. In order to appeal to consumer preferences, Defendant has repeatedly made unlawful nutrient content claims about antioxidants. Defendant's nutrient contents claims on its product labels that its teas are a "natural source of antioxidants" are unlawful and misleading.

35. These nutrient content claims are unlawful because these nutrients do not have established daily values.

36. Defendant's claims concerning unnamed antioxidant nutrients are false because Defendant's use of a defined term is in effect a claim that the products have met the minimum nutritional requirements for the use of the defined term when they have not. For example, antioxidant related nutrient content claims that Defendant makes on the labels of its teas are false and unlawful because they use the term "*natural source*." Defendant uses this term to describe antioxidants in its teas that fail to satisfy the minimum nutritional thresholds for these defined terms.

37. The statements regarding antioxidants appear on each variety of Defendant's tea products. The Twinings Products are substantially similar in that they are all the same product (tea), derived from the same plant, packaged the same and bear the same or similar nutrient content claims on the product packages.

38. By using terms such as "natural source of," Defendant is, in effect, falsely asserting that its products meet at least the lowest minimum threshold for any nutrient content claim which would be 10% of the daily value of the nutrient at issue. Such a threshold represents the lowest level that a nutrient can be present in a food before it becomes deceptive and misleading to highlight its presence in a nutrient content claim. Thus, for example, it is deceptive and misleading for Defendant to claim that its teas are a "natural source" of antioxidants. Twinings' tea does not contain an antioxidant with a recognized RDI, much less at a level as required by the regulations. None of the nutrients in tea has a DRV and thus it is unlawful to make nutrient content claims about them.

39. The nutrient content claims regulations discussed above are intended to ensure that consumers are not misled as to the actual or relative levels of nutrients in food products.

40. These types of misrepresentations made by Twinings could be considered by a reasonable consumer like the Plaintiff when deciding to purchase the products. Plaintiff placed,

and a reasonable consumer would place, great importance on the claim that the Twinings Products were a "*natural source of antioxidants*" in choosing Defendant's products over other tea products and alternative beverage products.

41. Defendant has violated these referenced regulations. Plaintiff relied on Twinings' nutrient content claims (antioxidant claims) when making her purchase decisions and was misled because she erroneously believed the implicit misrepresentation that the Twinings products she was purchasing were beneficial, healthy and met the minimum nutritional threshold to make such claims. Antioxidant content claims were important to the Plaintiff in trying to buy "healthy" food products. Plaintiff would not have purchased these products had she known that the Twinings Products did not have the beneficial effects claimed and in fact did not satisfy such minimum nutritional requirements with regard to the claimed nutrients.

42. For these reasons, Defendant's nutrient content claims are false and misleading and in violation of Arkansas law. The Twinings Products at issue are misbranded as a matter of law and cannot be sold or held and thus have no economic value and are legally worthless. Plaintiff and members of the Class who purchased the Defendant's Misbranded Food Products paid an unwarranted premium for the products.

43. Plaintiff was misled by the Defendant's unlawful labeling practices and actions into purchasing products she would not have otherwise purchased had she known the truth about those products.

2. **Defendant Has Made Unlawful and Misleading Antioxidant Related Nutrient Content Claims That Violate the Specific Antioxidant Labeling Rules**

44. In addition to Defendant's violation of the general, basic provisions of Arkansas law as to making a nutrient content claim, Defendant has also violated labeling regulations specific to antioxidants.

45. Regulations adopted by Arkansas law regulate antioxidant claims as a particular type of nutrient content claim. Applicable regulations contains special requirements for nutrient claims that use the term “antioxidant”:

- (1) the name of the antioxidant must be disclosed;
- (2) there must be an established Recommended Daily Intake (“RDI”) for that antioxidant, and if not, no “antioxidant” claim can be made about it;
- (3) the label claim must include the specific name of the nutrient that is an antioxidant and cannot simply say “antioxidants;”¹
- (4) the nutrient that is the subject of the antioxidant claim must also have recognized antioxidant activity, *i.e.*, there must be scientific evidence that after it is eaten and absorbed from the gastrointestinal tract, the substance participates in physiological, biochemical or cellular processes that inactivate free radicals or prevent free radical-initiated chemical reactions;
AND
- (5) the antioxidant nutrient must meet the requirements for nutrient content claims. For example, for a “Good Source” claim, the food would have to contain between 10-19% of the DRV or RDI per serving.

46. The antioxidant labeling for Twinings’ Misbranded Food Products violates Arkansas law: (1) because the names of the antioxidants are not disclosed on the product labels; (2) because there are no RDIs for the antioxidants being touted; (3) because the claimed antioxidant related nutrients fail to meet the requirements for nutrient content claims for “Good Source” claims, and/or “More” claims; and (4) because Defendant lacks adequate scientific evidence that the claimed antioxidant nutrients participate in physiological, biochemical, or cellular processes that inactivate free radicals or prevent free radical-initiated chemical reactions after they are eaten and absorbed from the gastrointestinal tract.

¹ Alternatively, when used as part of a nutrient content claim, the term “antioxidant” or “antioxidants” (such as “high in antioxidants”) may be linked by a symbol (such as an asterisk) that refers to the same symbol that appears elsewhere on the same panel of a product label followed by the name or names of the nutrients with the recognized antioxidant activity. If this is done, the list of nutrients must appear in letters of a type size height no smaller than the larger of one half of the type size of the largest nutrient content claim or 1/16 inch.

47. As discussed above, the package label of the Twinings Products bears the statement "*tea is a natural source of antioxidants.*"

48. For these reasons, Defendant's antioxidant claims at issue are misleading and in violation of Arkansas law, and the products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold and have no economic value and are legally worthless. Plaintiff and members of the Class who purchased these products paid an unwarranted premium for these products.

49. The Twinings antioxidant claims directly contradict current scientific research, which has concluded the evidence does not support a direct relationship between tea consumption and a physiological antioxidant benefit.

50. The scientific evidence and consensus conclusively establishes the improper nature of the Defendant's antioxidant claims as they cannot satisfy the legal and regulatory requirement that the nutrient that is the subject of the antioxidant claim must also have recognized antioxidant activity, *i.e.*, there must be substantial scientific evidence that after it is eaten and absorbed from the gastrointestinal tract, the substance provides a physiological antioxidant benefit.

51. The antioxidant regulations discussed above are intended to ensure that consumers are not misled as to the actual or relative levels of antioxidants in food products and purported beneficial health benefits from consuming the food product.

52. Plaintiff relied on Defendant's nutrient content, antioxidant and health claims when making her purchase decisions over the last five years and was misled because she erroneously believed the implicit misrepresentation that the Defendant's products she was purchasing met the minimum nutritional threshold to make such claims. Antioxidant content was important to Plaintiff in trying to buy "healthy" food products. Plaintiff would not have purchased these products had she known that the Defendant's products did not in fact satisfy such minimum

nutritional requirements with regard to antioxidants and the consumption of defendant's tea did not, in fact, result in the purported health benefits touted by Defendant.

53. For these reasons, Defendant's antioxidant claims are false and misleading and in violation of Arkansas law, and the products at issue are misbranded as a matter of law. Therefore, Defendant's Misbranded Food Products are misbranded as a matter of Arkansas law and cannot be sold or held and thus have no economic value and are legally worthless. Additionally, Plaintiff was misled and deceived by the actions of the Defendant in violation of Arkansas Law.

54. Defendants' claims in this respect are false and misleading and the products are in this respect misbranded under Arkansas law, Misbranded products cannot be legally sold and have no economic value and are legally worthless. Plaintiff and members of the Class who purchased these products paid an unwarranted premium for these products.

B. Plaintiff Purchased Defendant's Misbranded Food Products

55. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

56. Prior to making her decisions to purchase Defendant's products, Plaintiff read the labels regarding the antioxidant content claims on Defendant's products.

57. Plaintiff purchased the Misbranded Food Products on numerous occasions throughout the Class Period, which included the following products: Irish Breakfast Tea and English Breakfast Tea.

58. Plaintiff reasonably relied on Defendant's package labeling, including the claims that the Twinings Product was "*a natural source of antioxidants.*" Plaintiff based and justified her decision to purchase Twinings Products in substantial part on Defendant's package labeling including the nutrient content claims (antioxidant claims) and health labeling claims related to Defendant's food products before purchasing them.

59. At the point of sale, Plaintiff did not know, and had no reason to know, that Defendant's products were misbranded as set forth herein and did not contain the healthful benefits claimed by the Defendant and would not have bought the products, or paid a premium for them, had she known the truth about them.

60. At point of sale, Plaintiff did not know and had no reason to know, that Defendant's nutrient content (antioxidant claim) and health claims were false, unlawful and unauthorized as set forth herein, and would not have bought the products had she know the truth about them.

61. After Plaintiff learned that Defendant's Misbranded Food Products are falsely labeled, she stopped purchasing them.

62. Plaintiff justified the decision to purchase Defendant's products in substantial part on Defendant's false and unlawful representations.

63. As a result of Defendant's misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Misbranded Food Products at issue.

64. Defendant's labeling, advertising and marketing as alleged herein are false and misleading and were designed to increase sales of the products at issue. Defendant's misrepresentations are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendant's representations in determining whether to purchase the products at issue.

65. A reasonable person would also attach importance to whether Defendant's products were legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products had she known they were not capable of being legally sold or held.

66. These Misbranded Food Products 1) whose essential characteristics had been misrepresented by the Defendant; 2) which had their nutritional and health benefits misrepresented and overstated by the Defendant, and 3) which were misbranded products which could not be sold and whose very possession was illegal; had no economic value; and were worthless to the Plaintiff and as a matter of law.

67. A reasonable person would also attach importance to whether Defendant's products were legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products had Plaintiff known they were not capable of being legally sold or held.

C. All Misbranded Food Products Are Substantially Similar

68. The Misbranded Food Products have the same labels, labeling, packaging, and sizes as shown by way of example in Exhibit 1. The Defendant makes the same antioxidant related nutrient content claims on the labels of all of its Twinings Products.

69. The Misbranded Food Products are the same product. The only difference in the Misbranded Food Products is the flavor of the tea. The same or substantially similar antioxidant related nutrient content claims are made on all Twinings Products.

70. Because of the similarity of the products (tea) and the similar claims (nutrient content—antioxidant) and for judicial economy, all the Misbranded Food Products should be included in the class.

CLASS ACTION ALLEGATIONS

71. Plaintiff brings this action as a class action pursuant to the Arkansas Rule of Procedure 23 on behalf of the following class:

All persons who purchased Twinings' Irish Breakfast Tea and English Breakfast Tea, in Arkansas, since May 22, 2009 (the "Class").

72. The following persons are expressly excluded from each Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

73. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

74. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

75. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its food products it sold to consumers;
- b. Whether the food products at issue were misbranded as a matter of law;
- c. Whether Defendant made unlawful and misleading nutrient content claims with respect to its food products sold to consumers;
- d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act (A.C.A. § 20-56-201, *et. seq.*);
- e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);
- f. Whether Defendant breached its implied warranty of merchantability;
- g. Whether Defendant breached its express warranties;

- h. Whether Defendant was negligent in its labeling of the Twinings Products;
- i. Whether Defendant unlawfully sold misbranded products in violation of the labeling laws of Arkansas;
- j. Whether Defendant violated the food laws and deceptive trade practice laws of Arkansas.
- k. Whether Defendant's unlawful, unfair and deceptive practices harmed Plaintiff and the Class;
- l. Whether Plaintiff and the Class have been damaged by the unlawful actions of the Defendant and the amount of damages to the Class; and
- m. Whether Defendant were unjustly enriched by their deceptive practices.

76. Typicality: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class Member sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of each Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members of each class and represents a common thread of misconduct resulting in injury to all members of each Class. Plaintiff' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

77. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and

Plaintiff and counsel are aware of their fiduciary responsibilities to the members of the class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

78. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of each Class member's rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

79. Predominance: The prerequisites to maintaining a class action pursuant to ARK. R. CIV. P. 23 are met as questions of law or fact common to each class member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

80. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Violation of A.C.A. § 4-88-101 et seq.)**

81. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

82. Defendant's conduct constitutes unlawful deceptive and unconscionable trade practices. Defendant's conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of Defendant's Misbranded Food Products. Defendant's manufacturing, distribution and sale of Defendant's Misbranded Food Products were similarly unlawful.

83. Defendant unlawfully sold Defendant's Misbranded Food Products in Arkansas during the Class Period.

84. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Twinings Products to Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, Defendant engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

85. Defendant's misleading marketing, advertising, packaging and labeling of Defendant's Misbranded Food Products were likely to deceive reasonable consumers.

86. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were deceived.

87. Defendant has engaged in unlawful deceptive and unconscionable trade practices.

88. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured by Defendant's unlawful deceptive and unconscionable trade practices.

89. Defendant's fraud and deception caused Plaintiff and other members of the Class

who purchased Defendant's Misbranded Food Products in Arkansas to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had Plaintiff known the true nature of these products.

90. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured as a result of Defendant's unlawful deceptive and unconscionable trade practices.

91. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, products that were not capable of being sold legally, and which have no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

92. As a direct and proximate cause of Defendant violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured when they paid for these illegal and worthless products. Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas have been damaged in an amount to be determined at trial.

93. As a result of Defendant's unlawful deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas any money paid for Defendant's Misbranded Food Products.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

94. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

95. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for Misbranded Food Products.

96. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that they received from the Plaintiff and the Class, in light of the fact that the Misbranded Food Products purchased by Plaintiff and the Class was an illegal product and was not what Defendant represented it to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendant for Misbranded Food Products.

THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

97. Plaintiff repeats and realleges each of the above allegations as is fully set forth herein.

98. Implied in the purchase of Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully resold.

99. Defendant knowingly and intentionally misbranded their Misbranded Food Products.

100. Defendant knew those Misbranded Food Products were illegal.

101. When Defendant sold those products it impliedly warranted that the products were legal and could be lawfully possessed and/or sold and therefore, merchantable.

102. Plaintiff would not have knowingly purchased products that were illegal to own or

possess.

103. No reasonable consumer would knowingly purchase products that are illegal to own or possess.

104. The purchased Misbranded Food Products were unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

105. In fact, these Misbranded Food Products were illegal, misbranded, and economically worthless.

106. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal, and unsellable product.

107. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Products.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

108. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

109. During the Class Period, the Twinings Products have falsely warranted and represented that the Twinings Products contained minimum levels of antioxidants to justify the representation that the Twinings Products were in fact a "*natural source*" of antioxidants. These representations were false and a breach of warranty by Twinings. Twinings has used the terms "*natural source*" of antioxidants to represent that the Twinings Products contained minimum levels of healthy antioxidants. Twinings Products do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the Reference Daily Intake ("RDI") or the Daily Reference Value ("DRV") of a nutrient with a recognized RDI per reference amount customarily consumed.

110. Defendant's representations of fact and/or promises on the labels relating to their

Misbranded Food Products created express written warranties that the products would conform to Defendant's representation of fact and/or promises.

111. The Defendant's descriptions of their Misbranded Food Products became part of the bases of the bargains, creating express written warranties that the products purchased by Plaintiff and the other Class Members would conform to Defendant's descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

112. Defendant provided written warranties that its Misbranded Food Products were labeled in compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

113. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the products they purchased was less than warranted by Defendant.

114. Defendant engaged in a scheme of offering Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

115. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products.

116. Plaintiff and the Class were the intended targets of such representations and warranties.

117. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

118. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant's breach of their express warranties about Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

119. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FIFTH CAUSE OF ACTION
(Negligence)

120. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

121. In making representations of fact to Plaintiff and the other Class members about their Misbranded Food Products, Defendant failed to lawfully label or advertise their Misbranded Food Products and violated their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

122. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

123. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence per se. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

124. As alleged above, Plaintiff and the Class were injured by Defendant's negligence and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

JURY DEMAND

Plaintiff hereby demands a trial by jury of her claims.

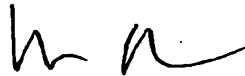
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendants as follows:

- A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class in an amount to which Plaintiff and the Class are entitled; and
- C. For an order awarding pre-judgment and post-judgment interest.

Dated: May 22, 2014.

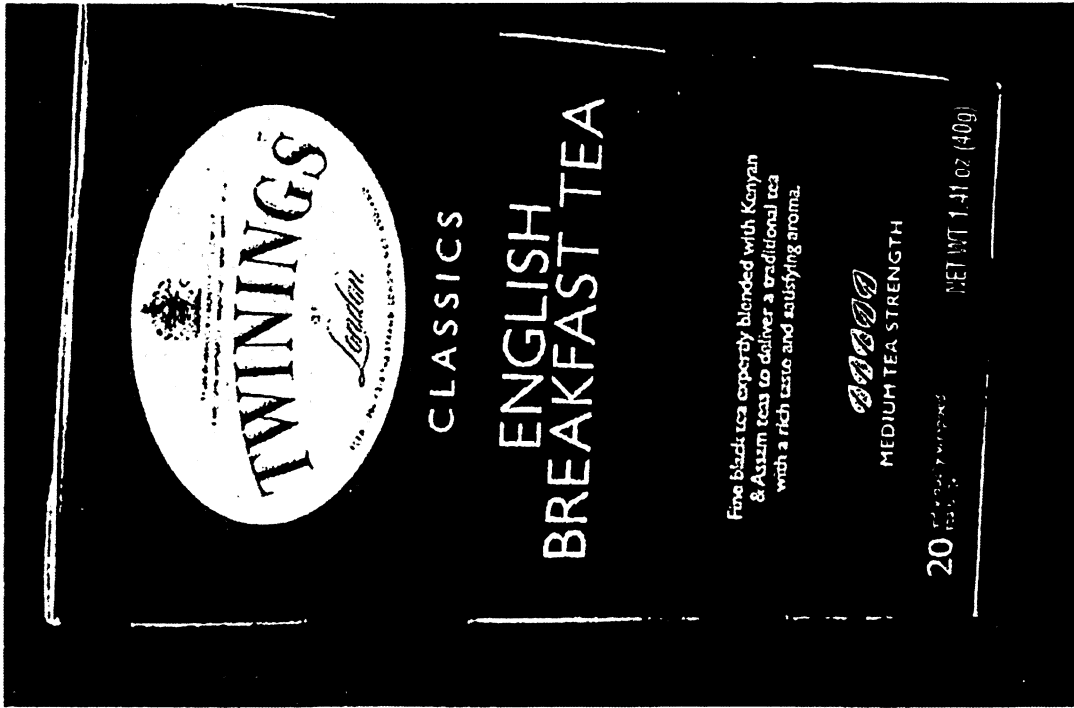
Respectfully submitted,



Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 845-3305
Fax: (479) 845-2198

Thomas P. Thrash
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Phone: (501) 374-1058
Fax: (501) 375-2222
Bar No. 80147

Attorneys for Plaintiff



CLASSICS

ENGLISH
BREAKFAST TEA

Fine black tea expertly blended with Kenyan & Assam teas to deliver a traditional tea with a rich taste and satisfying aroma.



MEDIUM TEA STRENGTH

20 TWININGS TEAS

NET WT 1.41 OZ (40g)



ENGLISH BREAKFAST TEA

Originally blended to complement the *trad* *lunch*, hearty English Breakfast, from which its name derives. Not just for breakfast - the rich taste and satisfying aroma makes Twinnings English Breakfast Tea one of the most popular black teas to drink at any time.



CLASSICS TRADITIONAL STYLE BLACK TEAS

For over 300 years, Twinnings has been sourcing and blending the finest high-quality teas from around the globe to ensure that your tea has the perfect balance of tea taste, flavour and aroma. Twinnings blends to perfection the finest black teas to give you a line of great-tasting teas with an enticing flavour, fresh taste and invigorating aroma.

THE TWINNINGS STORY

In 1706 Thomas Twining began selling fine tea from an English storefront in The Strand, London. Today, Twinnings still sells some of the world's best teas from the original store and in more than

ASIA TEA

plement the traditional,
from which its name
kfast - the rich
na makes
st Tea
black
e.





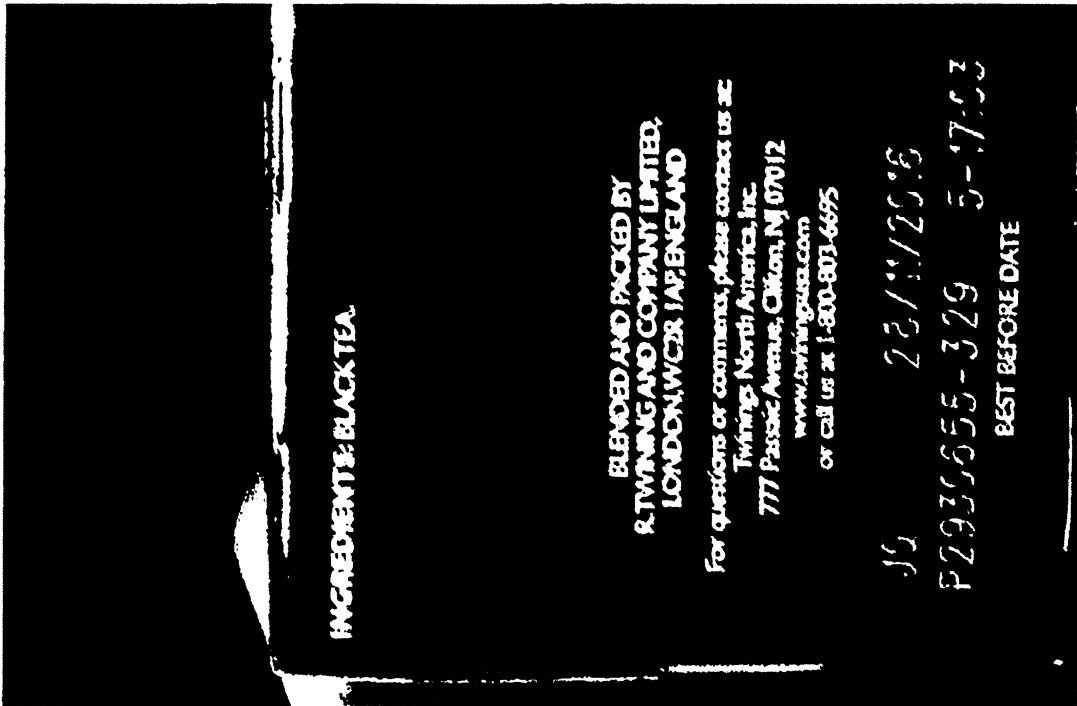
ENGLISH BREAKFAST TEA

BREWING SUGGESTIONS

HOT TEA: Pour freshly boiled water over tea bag and allow to brew for 2-5 minutes depending on desired strength. Enjoy sweetened or plain, with or without milk—the choice is yours.

REFRESHING ICED TEA: To make 1 Quart of Iced Tea, use 4 tea bags and brew as suggested above using 4 cups of water. Allow to cool, then serve over ice.

Find out about our membership at:
www.englishbreakfast.com/tea/tea.asp
Working for a responsible tea industry

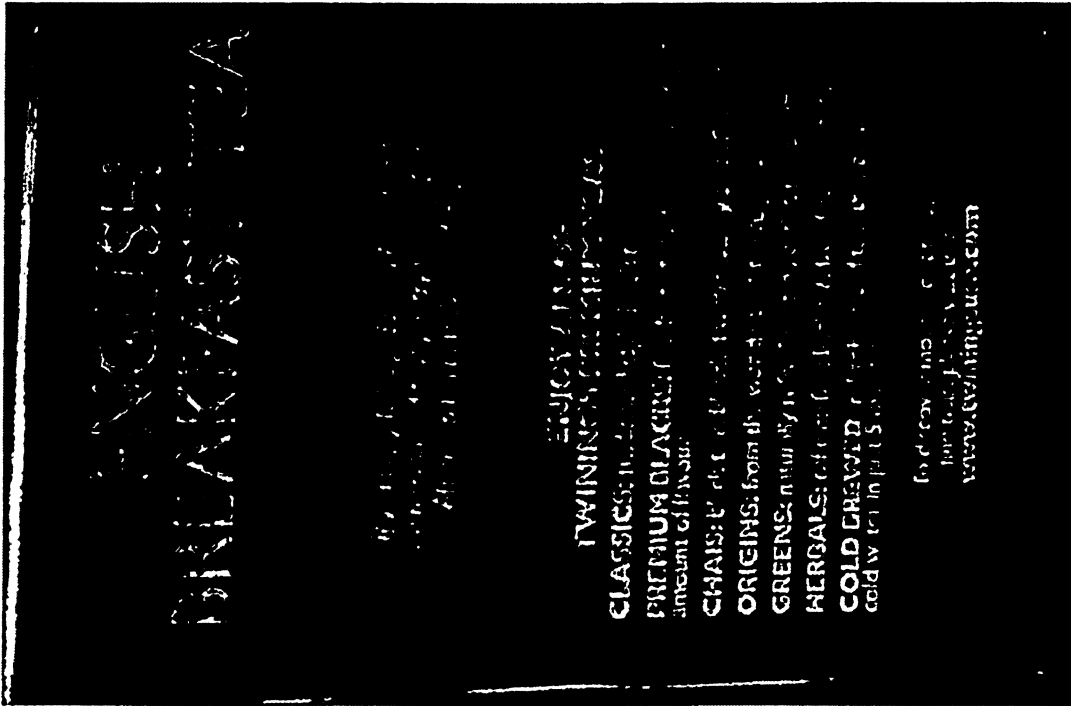


INGREDIENTS: BLACK TEA

BLENDED AND PACKED BY
R. TWINING AND COMPANY LIMITED,
LONDON W1C 2PL ENGLAND

For questions or comments, please contact us at
Twining North America, Inc.
777 Passaic Avenue, Clifton, NJ 07012
www.twiningusa.com
or call us at 1-800-803-6695

J5 23/11/2018
P2939655-329 5-17-13
BEST BEFORE DATE





INGREDIENTS: BLACK TEA.

BLENDED AND PACKED BY
R. TWINING AND COMPANY LIMITED,
LONDON, WC2R 1AP, ENGLAND

For questions or comments, please contact us at
Twinnings North America, Inc.
777 Passaic Avenue, Clifton, NJ 07012
www.twinningsusa.com
or call us at 1-800-803-5595

JQ 26/10/2016
P2865645-291 5-03:53

BEST BEFORE DATE

IRISH BREAKFAST TEA

BREWING SUGGESTIONS

HOT TEA: Pour freshly boiled water over tea bag and allow to brew for 2-5 minutes depending on desired strength. Enjoy sweetened or plain, with or without milk—the choice is yours.

REFRESHING ICED TEA: To make 1 Quart of Iced Tea, use 4 tea bags and brew as suggested above using 4 cups of water. Allow to cool, then serve over ice.

find out about our membership at:
www.teaforamerica.org
working for a responsible tea industry

IRISH BREAKFAST TEA

The Irish really love their tea. In fact, they are amongst the most frequent tea drinkers around the world. In celebration of this tradition, Twinings Irish Breakfast Tea is specially blended to deliver a full-bodied tea with a robust taste and hearty aroma.

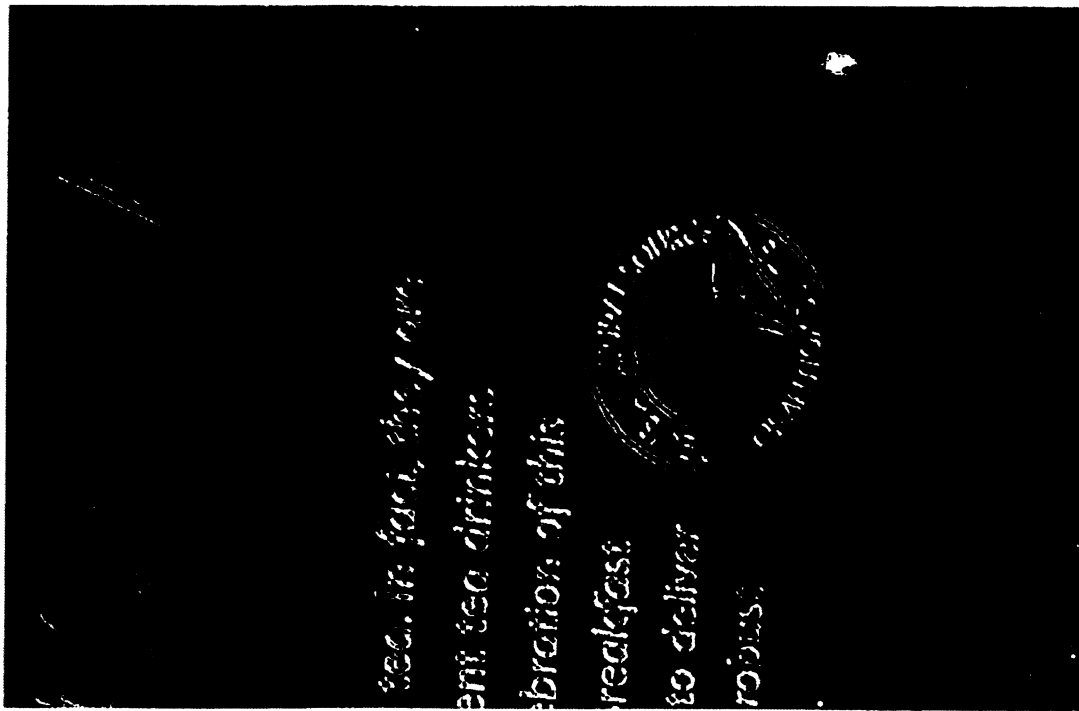


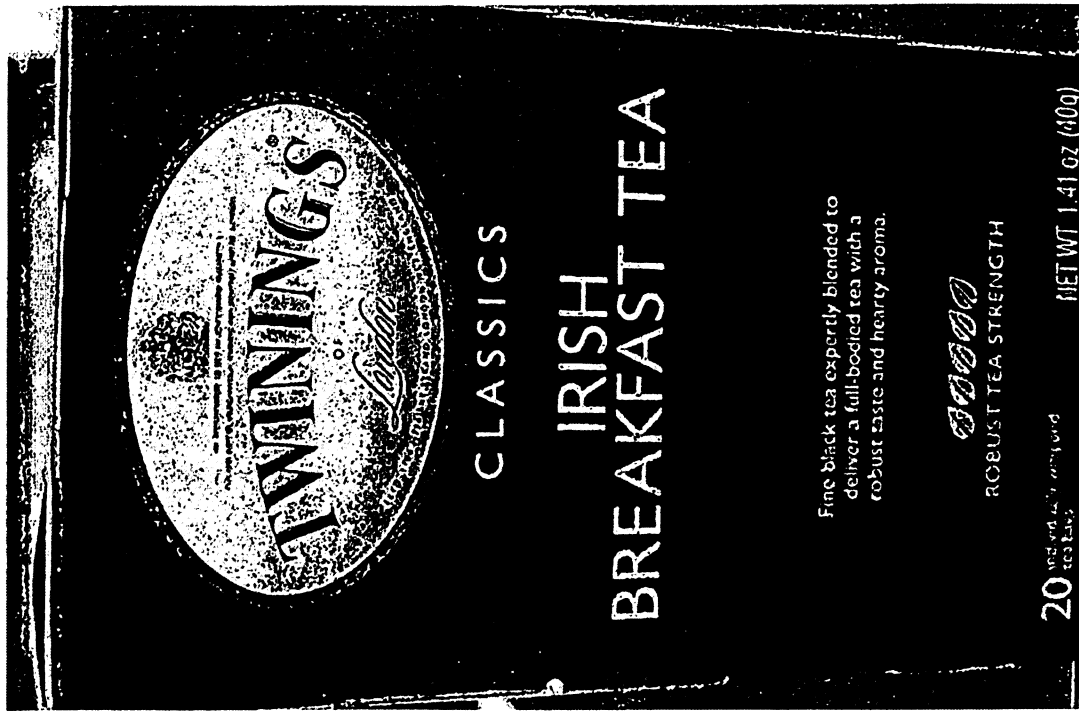
CLASSICS TRADITIONAL STYLE BLACK TEAS

For over 300 years, Twinings has been sourcing and blending the finest, high-quality teas from around the globe to ensure that your tea has the perfect balance of tea taste, flavour and aroma. Twinings blends to perfection the finest black teas to give you a line of *breakfast* teas with an enticing flavour, fresh taste and invigorating aroma.

THE TWININGS STORY

In 1769 Thomas Twining began selling fine tea from his shop in the Strand, London. Today, Twinings still has some of the world's best teas from its own gardens and from more than 100 countries around the world.





CLASSICS

IRISH
BREAKFAST TEA

Fine black tea expertly blended to
deliver a full-bodied tea with a
robust taste and hearty aroma.



ROBUST TEA STRENGTH

20
individual tea bags

NET WT 1.41 oz (40g)

IRISH BREAKFAST TEA

*If you enjoy Twinings Irish Breakfast Tea,
we recommend that you try Twinings
English Breakfast Tea or Chai.*

ENJOY ALL OF TWININGS PREMIUM TEAS...

CLASSICS: traditional style black teas

PREMIUM BLACKS: fine black teas with just the right amount of flavour

CHAI: black teas blended with savoury spice flavours

ORIGINS: from the world's best tea regions

GREENS: naturally refreshing teas with a smooth taste

HERBALS: caffeine free herbal & fruit flavour blends

COLD BREWED: refreshing iced teas that brew in cold water in just 5 minutes

To discover more about these
fine teas, please visit us at
www.twiningsusa.com

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
4th DIVISION

JENNY CRAIG, individually and on behalf of
all others similarly situated,

Plaintiff,

-vs-

TWININGS OF NORTH AMERICA, INC.

Defendant.

Case No. CV14-928-4

PLAINTIFF'S FIRST SET OF INTERROGATORIES

Plaintiff, Jenny Craig, propounds the following *First Set of Interrogatories* to be answered by the Defendant, Twinings of North America, Inc., under oath according to Arkansas law.

DEFINITIONS AND INSTRUCTIONS.

For the purposes of these Interrogatories, the following terms shall be deemed to have the following meanings:

- A. "Complaint" means the Class Action Complaint filed on May 22, 2014 in this action.
- B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.
- C. "You " "your" or "Defendant" means Defendant, Twinings of North America, Inc., its parent companies, if any, and their respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint ventures, present and former officers, directors, partners, principals, employees, representatives, agents, attorneys, advisors, and all other persons acting or purporting to act on their behalf.

D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Relevant Time Period" or "Class Period" means May 22, 2009 to the present.

F. "Tea Products" means all of your green, black and white Tea Products offered for sale during the Relevant Time Period (from May 22, 2009 to the present).

G. "Label" means any and all text, symbols or other information on any and all surfaces of the packaging or your Tea Products, including but not limited to the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your food products.

H. "Health Claim" means any claim made on your labels that expressly or by implication (including "third party" references, written statements, symbols, or vignettes) characterizes the relationship of any substance to a disease or health-related condition.

I. "Label Claims" means the allegedly unlawful labeling on the packages of your Tea Products as described in the Complaint. Label Claims include, but are not limited to, the following representations:

1. "Natural Source of Antioxidants;" and/or
2. "Tea is a Natural Source of Antioxidants"

J. "FDA" means the Federal Food and Drug Administration.

K. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

L. "Document" or "documents" means any and all writings of any kind as said terms are defined in Fed. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft thereof. The term document shall also include every other means by which information is recorded

or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

M. "Communications" means documents or other means of transferring information (audio or video) concerning or showing the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether effected through oral, written, telephonic, electronic, or any other means, including, but not limited to, documents, face-to-face meetings, telephone conversations, electronic mail, or text messaging.

INSTRUCTIONS

A. Unless stated otherwise, the time period covered by these interrogatories is five (5) years preceding the filing of the original complaint in this action on May 22, 2014 to the present.

B. All definitions and instructions set forth in Rules 26 and 33 of the Arkansas Rules of Civil Procedure apply to all requests for information herein.

C. Your answer to each interrogatory must include all information known to you or available to you, including information within the knowledge or possession of your attorneys, investigators or other agents.

D. When a complete answer to a particular interrogatory is not possible, answer the interrogatory to the extent possible and state why you are giving only a partial answer.

E. If you withhold any information called for by any interrogatory on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine,

provide sufficient information to permit Plaintiff's counsel to determine whether protection from disclosure is warranted.

F. These interrogatories shall be deemed to be continuing. Any information responsive to these interrogatories that you acquire at any time between when you first respond to these interrogatories and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

G. When asked to "identify" or provide the "identity" of a person or persons, the following information should be provided:

1. The person's full name;
2. The person's last known business address;
3. The person's last known home address;
4. The person's last known business phone number;
5. The person's last known home phone number;
6. The name and address of the person's last known employer;
7. The person's last known title, position, business or employment;
8. The person's social security number and date of birth; and
9. The person's whereabouts.

H. When asked to "identify" or provide the "identity" of a product, the commonly used name used at the point of sale should be used.

INTERROGATORIES

Interrogatory No. 1: Identify each person known to you to have knowledge or information relevant to the facts alleged and the claims for damages asserted in the Plaintiff's Complaint and indicate the scope and nature of such person's knowledge.

Interrogatory No. 2: Identify each person (other than your attorneys) who assisted in the preparation of your responses to these interrogatories and the specific interrogatories with which each such person assisted and list all documents you consulted to prepare your answers to these interrogatories.

Interrogatory No. 3: Identify by caption, case number and forum any litigation, mediation, or arbitration regarding your Tea Products and Label Claims where you were or are a party.

Interrogatory No. 4: Identify all of your Tea Products offered for sale in Arkansas from five (5) years before the filing of the Complaint until present.

Interrogatory No. 5: Identify all of your Tea Products with Label Claims.

Interrogatory No. 6: For each product listed in Interrogatory No. 4 and No. 5, in regard to Arkansas sales please list, by year, the amount of units sold per product and the average retail and wholesale price per unit.

Interrogatory No. 7: For each label produced in response to Document Request number 1, please identify, list or describe the following:

- a. the date(s) each label was included on each product;
- b. the person(s) most knowledgeable about the creation of the label and any changes to the label;
- c. where the label was created, in whole or in part, including the state or states where the persons listed in 7(b) are located;
- d. any person or entity that assisted in creation of the label and the name and location of such persons or entities.

Interrogatory No. 8: Describe and explain, in detail, the process by which you make decisions regarding your labels generally and Label Claims specifically, including but not limited to, why Label Claims or labels are changed, who decides what new Label Claims or labels are used and

when, what department drafts new Label Claims or labels, what department(s) review the proposed Label Claims or labels, what criteria are used for selecting Label Claims or labels, and who ensures label compliance with applicable standards and laws.

Interrogatory No. 9: Describe and explain, in detail, your efforts to promote and advertise your Tea Products as containing antioxidants and/or “healthy” including, but not limited to, the reasons for any such promotion, the dates any such promotion began, the specific steps taken in furtherance of this promotion, and the impact on your sales as a result of this promotion.

Interrogatory No. 10: Identify, describe and explain, in detail, all scientific/medical information, studies or reports that you claim support any Label Claims you make on your Tea Products.

Interrogatory No. 11: Identify each person responsible and/or has the responsibility for ensuring that your labels were and are in compliance with federal and Arkansas labeling laws and regulations.

Interrogatory No. 12: Identify your departments, divisions, business units, third parties, attorneys, or agents who are (or have been) responsible for or otherwise involved in each of the following:

- a. creation of labels and/or Label Claims for your Tea Products;
- b. marketing materials, marketing studies, consumer research, or advertising of your Tea Products;
- c. accounting and sales data for your Tea Products;
- d. compliance with all Arkansas and federal labeling regulations.

Interrogatory No. 13: Identify the person(s) most knowledgeable about the Label Claims.

Interrogatory No. 14: Identify all marketing materials concerning or containing the Label

Claims.

Interrogatory No. 15: Describe and explain, in detail, any regulatory compliance action undertaken by the FDA and or the FTC concerning you; your Tea Products; or the Label Claims (whether made by you or another tea company); and identify the person(s) most knowledgeable about such action(s).

Interrogatory No. 16: Identify the person(s) most knowledgeable about your retail and wholesale prices for your Tea Products.

Interrogatory No. 17: Identify any regulatory or scientific/medical expert with whom you have communicated before or after the filing of the Complaint concerning your Tea Products and/or the Label Claims.

Interrogatory No. 18: Identify any persons in the area of labeling regulatory compliance who have given you any opinions, written or oral, concerning your Tea Products and/or the Label Claims.

Interrogatory No. 19: If you contend that your labels do not violate the federal regulations and/or Arkansas law, describe the factual basis for this contention.

Interrogatory No. 20: Have you been a member of any trade associations or industry organizations? If yes, please list these groups and the dates of your membership.

Interrogatory No. 21: Identify every person who participated in answering or otherwise responding to Plaintiff's Discovery Requests.

Interrogatory No. 22: Identify each person who may be called to testify at the class certification hearing or trial, including the claims asserted and any alleged defenses to be raised and, for each such person, provide a statement summarizing that person's knowledge or information regarding this lawsuit and the relevance of such knowledge or information to the asserted claims or any defense to be raised.

Interrogatory No. 23: State whether any information or documents have been withheld on the basis of any form of privilege in response to these Interrogatories or Plaintiff's First Request for Production of Documents, whether based on statute or otherwise, and provide all information required by the Definitions and Instructions section with respect to each such document or piece of information which has been withheld.

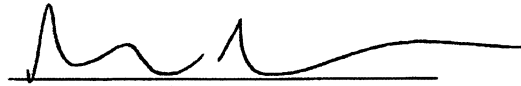
Interrogatory No. 24: Identify all persons you intend to call as an expert witness at the Class Certification hearing and/or Trial and provide for each, a summary of their opinions and/or expected testimony.

Interrogatory No. 25: For each expert witness you will call to testify at the Class Certification hearing or the trial of this case state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;
- c. The identity of all documents that have been provided to each expert or have been reviewed in connection with the expert's expected testimony in this case;
- d. The identity of all reports, schedules, photographs, charts, diagrams, work papers, and all other documents that each expert witness in connection with this proceeding; and
- e. The date and subject matter of all communications that each expert has had with any party to this action, the identity of the party with whom each expert has communicated concerning this action and the identity of all documents relating to such communications.

Dated: June 2, 2014.

Respectfully submitted,



Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 250-4764
Fax: (479) 845-2198

Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 2nd day of June, 2014.

The Corporation Trust Company
Agent of Service for Twinings North America, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



Kenneth R. Shemin

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
4th DIVISION

JENNY CRAIG, individually and on behalf of
all others similarly situated,

Plaintiff,

--

TWININGS OF NORTH AMERICA, INC.

Defendant.

Case No. CV14-928-4

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff, Jenny Craig, propounds the following *First Set of Requests for Production of Documents* to be answered by the Defendant, Twinings of North America, Inc., under oath according to Arkansas law.

DEFINITIONS AND INSTRUCTIONS.

For the purposes of these Requests for Production of Documents, the following terms shall be deemed to have the following meanings:

- A. "Complaint" means the Class Action Complaint filed on May 22, 2014 in this action.
- B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.
- C. "You" "your" or "Defendant" means Defendant, Twinings of North America, Inc., its parent companies, if any, and their respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint ventures, present and former officers, directors, partners, principals, employees, representatives, agents,

attorneys, advisors, and all other persons acting or purporting to act on their behalf.

D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Relevant Time Period" or "Class Period" means May 22, 2009 to the present.

F. "Tea Products" means all of your green, black and white Tea Products offered for sale during the Relevant Time Period (from May 22, 2009 to the present).

G. "Label" means any and all text, symbols or other information on any and all surfaces of the packaging or your Tea Products, including but not limited to the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your food products.

H. "Health Claim" means any claim made on your labels that expressly or by implication (including "third party" references, written statements, symbols, or vignettes) characterizes the relationship of any substance to a disease or health-related condition.

I. "Label Claims" means the allegedly unlawful labeling on the packages of your Tea Products as described in the Complaint. Label Claims include, but are not limited to, the following representations:

1. "Natural Source of Antioxidants;" and/or

2. "Tea is a Natural Source of Antioxidants"

J. "FDA" means the Federal Food and Drug Administration.

K. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

L. "Document" or "documents" means any and all writings of any kind as said terms are defined in Ark. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft

thereof. The term document shall also include every other means by which information is recorded or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

M. "Communications" means documents or other means of transferring information (audio or video) concerning or showing the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether effected through oral, written, telephonic, electronic, or any other means, including, but not limited to, documents, face-to-face meetings, telephone conversations, electronic mail, or text messaging.

INSTRUCTIONS

A. Unless stated otherwise, the time period covered by these requests is five (5) years preceding the filing of the original complaint in this action on May 22, 2014 to the present.

B. All definitions and instructions set forth in Rules 26 and 33 of the Arkansas Rules of Civil Procedure apply to all requests for information herein.

C. Your answer to each request must include all information known to you or available to you, including information within the knowledge or possession of your attorneys, investigators or other agents.

D. When a complete answer to a particular request is not possible, answer the request to the extent possible and state why you are giving only a partial answer.

E. If you withhold any information called for by any request on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine, provide

sufficient information to permit Plaintiff's counsel to determine whether protection from disclosure is warranted.

F. These requests shall be deemed to be continuing. Any information responsive to these requests that you acquire at any time between when you first respond to these requests and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

G. When asked to "identify" or provide the "identity" of a person or persons, the following information should be provided:

1. The person's full name;
2. The person's last known business address;
3. The person's last known home address;
4. The person's last known business phone number;
5. The person's last known home phone number;
6. The name and address of the person's last known employer;
7. The person's last known title, position, business or employment;
8. The person's social security number and date of birth; and
9. The person's whereabouts.

H. When asked to "identify" or provide the "identity" of a product, the commonly used name used at the point of sale should be used.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: Produce an example of each and every label you have used on the Tea Products during the Relevant Time Period.

Request for Production No. 2: All drafts or proofs of any label produced in response to document request number 1.

Request for Production No. 3: All documents that you relied upon, including but not limited to: scientific/medical studies, research, government reports, and nutritional data to support your Label Claims.

Request for Production No. 4: All documents concerning the decision to place the Label Claims on your Tea Products.

Request for Production No. 5: Documents sufficient to establish the dates on which your labels in use during the five (5) years prior to the filing of the Complaint were first prepared and used on your Tea Products.

Request for Production No. 6: Documents sufficient to establish the dates on which your labels in use during the five (5) years prior to the filing of the Complaint were modified, changed and/or removed or deleted.

Request for Production No. 7: All documents, including, but not limited to, scientific/medical studies, research, government reports, and nutritional data that were relied upon to support the following statements and/or that formed the basis for making such statements:

- (a) that tea is a natural source of antioxidants;
- (b) that flavonoid antioxidants can help to keep cells and tissue healthy;
- (c) that green tea is naturally rich in antioxidants that may help protect the body from damage caused by free radicals;
- (d) that Black and green teas also contain Vitamins A, B1, B2 and B6, along with calcium, zinc and folic acid;
- (e) that Tea is a rich source of potassium—vital for maintaining a normal heartbeat and regulating fluid levels in cells and manganese, an essential mineral for bone growth;
- (f) that tea will boost the immune system;
- (g) that tea will increase metabolism;

- (h) that tea will help maintain healthy skin and complexion;
- (i) that tea will promote restful sleep;
- (j) that tea will help with digestion;
- (k) that tea will stop plaque;
- (l) that tea will prevent gum disease;
- (m) that tea will reduce bad breath.

Request for Production No. 8: All communications by you or others on your behalf with the FDA relating to your statements concerning the claimed health benefits of your Tea Products as alleged in the Complaint.

Request for Production No. 9: All communications between you (or others on your behalf) and the FDA concerning the Label Claims.

Request for Production No. 10: All documents pertaining to the nutrient content levels, including antioxidant levels, in your Tea Products.

Request for Production No. 11: All documents concerning your efforts to develop, market and sell your Tea Products to consumers concerned with weight management, nutrition, cancer prevention/treatment, dental health and/or cardiovascular health.

Request for Production No. 12: Any study, report, evaluation, assessment, analysis and/or any similar document related to consumer preference for Tea Products containing advertisements concerning "antioxidants" and/or "health," including but not limited, to the Label Claims made on the labels of any of your Tea Products.

Request for Production No. 13: All documents concerning consumer willingness to pay a premium for Tea Products with Label Claims.

Request for Production No. 14: Documents sufficient to show gross sales of your Tea

Products (in Arkansas) broken down by quarter and by individual Tea Product. This request seeks sales data beginning four (4) years prior to the placement of the Label Claims on a particular Tea Product until the present.

Request for Production No. 15: An Excel spreadsheet showing the gross sales data produced in response to document request number 13.

Request for Production No. 16: All documents concerning your efforts to comply with the FDCA and/or Arkansas law and any other labeling requirements concerning making Label Claims.

Request for Production No. 17: All marketing and advertising materials concerning the promotion of the Tea Products.

Request for Production No. 18: All documents concerning nationwide and/or regional and/or Arkansas expenditures associated with the advertising and promotion of the Tea Products.

Request for Production No. 19: All documents, including but not limited to minutes of any meetings, relating to the pricing and/or the profitability of the Tea Products.

Request for Production No. 20: All documents related to discussions of the effect of the Label Claims on your product sales, pricing and/or profitability.

Request for Production No. 21: All minutes of investor/shareholder conference calls hosted by you discussing the effect of the Label Claims on your product sales, pricing and/or profitability.

Request for Production No. 22: Copies of all quarterly and annual reports issued or made available by you to your investors discussing the Label Claims.

Request for Production No. 23: All documents concerning the projected profitability of the Tea Products.

Request for Production No. 24: All documents concerning regulatory compliance actions concerning the Label Claims including, but not limited to, FDA warning letters regarding the Label Claims involving you or other companies with similar products or Labels.

Request for Production No. 25: All documents sufficient to ascertain the prices, both wholesale and retail, of the Tea Products for each year of production for the four (4) years immediately preceding the year in which the Label Claims were added to the labels until the present.

Request for Production No. 26: All documents concerning any analysis of the price or market share(s) of competitors' Tea Products, including, but not limited to, those competitors' products that have or those that do not have similar Label Claims on their labels.

Request for Production No. 27: Documents sufficient to ascertain the cost associated with labeling the Tea Products for the last five (5) years.

Request for Production No. 28: All documents concerning deliberations by you to alter or remove the Label Claims from the labels.

Request for Production No. 29: All documents relating in any way to the issue of compliance with federal and Arkansas regulations relating to labeling the Tea Products.

Request for Production No. 30: All documents relating in any way to any internal analyses of your Label Claims for compliance with federal and Arkansas regulations.

Request for Production No. 31: All documents supporting any asserted affirmative defenses.

Request for Production No. 32: Produce any and all documents provided by you to each expert you intend to call as a witness at the hearing on class certification or at the trial of this matter.

Requests for Production No. 33: With respect to each expert identified in response to the Interrogatories, please produce:

- a. A copy of the expert's most recent curriculum vitae;
- b. A copy of any document, study, article, book, or any other material the expert reviewed, relied upon, referenced, or utilized in any fashion in forming his opinion;
- c. A list of the expert's publications or other writings; and
- d. A list of the experts' deposition and/or trial testimony in the last 10 years, including the case name, Court, case number and name of attorneys.

Request for Production No. 34: You are requested to produce for inspection and copying all documents which you or any witness will use or refer to at the Class Certification hearing or at trial in this cause, or any exhibit you intend to use at the Class Certification hearing or at trial in this cause.

Dated: June 2, 2014.

Respectfully submitted,



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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 12th day of June, 2014.

The Corporation Trust Company
Agent of Service for Twinings North America, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



Kenneth R. Shemin