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10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 EVAN PARENT, an individual on  
13 behalf of himself, a class of persons  
14 similarly situated, and the general  
15 public,

16 Plaintiff,

17 v.

18 MILLERCOORS LLC, a Delaware  
19 Limited Liability Company authorized  
20 to do business in California, and DOES  
21 1 to 50 inclusive,

22 Defendants.

CASE NO.: 15-cv-01204-GPC-WVG

**CLASS ACTION**

**FIRST AMENDED COMPLAINT  
FOR DAMAGES, RESTITUTION,  
AND INJUNCTIVE RELIEF:**

**(1) VIOLATIONS OF THE  
CONSUMER LEGAL REMEDIES  
ACT (CAL. CIV. CODE § 1750 et  
seq.);**

**(2) DECEPTIVE AND MISLEADING  
ADVERTISING (CAL. BUS. & PROF.  
CODE § 17500 et seq.); and**

**(3) UNFAIR COMPETITION (CAL.  
BUS. & PROF. CODE § 17200 et seq.)**

**DEMAND FOR JURY TRIAL**

23  
24 Plaintiff Evan Parent (hereinafter “Plaintiff”), by and through his attorneys of  
25 record, brings this action on behalf of himself and all persons similarly situated,  
26 against Defendant MillerCoors LLC (hereinafter “MillerCoors” or “Defendant”), on  
27 the following grounds:  
28

1 **INTRODUCTION**

2 1. This class action is brought on behalf of all consumers who purchased  
3 Blue Moon beer from a retailer within the state of California for personal, family, or  
4 household purposes, and not for resale purposes.

5 2. All allegations in this Complaint are based upon information and belief  
6 except for those allegations that pertain to Plaintiff, which are based on his own  
7 personal knowledge. Each allegation in this Complaint has evidentiary support or is  
8 likely to have evidentiary support after a reasonable opportunity for further  
9 investigation and discovery.

10 **JURISDICTION AND VENUE**

11 3. Pursuant to Cal. Civ. Proc. Code § 382, Cal. Civ. Code § 1781, and Cal.  
12 Bus. & Prof. Code § 17203, Plaintiff brings this action on behalf of himself, and on  
13 behalf of all persons within the Class, as defined below.

14 4. The Court has jurisdiction over this action pursuant to the Class Action  
15 Fairness Act (“CAFA”), codified at 28 U.S.C. § 1332(d). On May 30, 2015,  
16 Defendant removed this action from the San Diego County Superior Court to this  
17 Court, based on evidence that the aggregated claims of the putative class, exclusive  
18 of interest, costs, and attorneys’ fees, exceeds \$5 million.

19 5. Venue is proper in this judicial district pursuant to Cal. Civ. Proc. Code  
20 § 395(a). Defendant transacts business through a number of retail locations  
21 throughout San Diego County. The unlawful acts alleged herein have a direct effect  
22 on Plaintiff and those similarly situated within San Diego County and the state of  
23 California.

24 **CLASS DEFINITION**

25 6. The proposed Class consists of all consumers who purchased Blue  
26 Moon beer from a retailer within the state of California for personal, family, or  
27 household purposes, and not for resale purposes, during the period commencing on  
28 the date that is within four (4) years prior to the filing of this Complaint and through

1 the present date (hereinafter the “Class Period”).<sup>1</sup> To the extent that equitable tolling  
2 operates to toll claims by the Class against Defendant, the Class Period should be  
3 adjusted accordingly.

4 7. The Class is comprised of “consumers” and “members of the public,” as  
5 the terms are used in California’s Civil Code and Business and Professions Code.

6 **THE PARTIES**

7 8. At all material times mentioned herein, Plaintiff Evan Parent resided in  
8 San Diego, California. During the relevant time period, Plaintiff frequently  
9 purchased Blue Moon beer from San Diego-area retailers, including Ralph’s, Vons,  
10 and 7-11. Relying on its advertising, its placement among other craft beers, and the  
11 premium price it commanded, Plaintiff believed that Blue Moon was a microbrew or  
12 “craft beer,” as the term is defined in paragraph 14.

13 9. Defendant MillerCoors LLC is a limited liability company organized  
14 and existing under the laws of the state of Delaware, with its principal place of  
15 business at 250 South Wacker Drive, Chicago, Illinois 60606. According to the  
16 company’s web site (<http://www.millercoors.com/who-we-are/timeline.aspx>),  
17 MillerCoors was formed in 2008 as a joint U.S. venture between SAB Miller and  
18 Molson Coors Brewing Company.

19 10. Defendant manufactures, markets and sells beer throughout the United  
20 States under numerous brand names, including Coors Light, Miller Genuine Draft,  
21 Miller High Life, Icehouse, Milwaukee’s Best, Keystone, Olde English and Blue  
22 Moon.

23 11. The true names and capacities, whether individual, corporate,  
24 subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, are  
25 unknown to Plaintiff, who therefore sues these defendants by such fictitious names

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27 <sup>1</sup> Excluded from the Class are Plaintiff’s attorneys of record, their employees,  
28 and their family members, as well as any judges to which this action is assigned, and  
their family members.

1 pursuant to Cal. Civ. Proc. Code § 474. Plaintiff will amend the complaint to allege  
2 the true names and capacities of Does 1 through 50 when they are ascertained.

3 **FACTUAL ALLEGATIONS**

4 12. Over the past 25 years, the craft brewing industry in the United States  
5 has seen tremendous growth, with the number of craft breweries increasing from  
6 approximately 250 in 1989 to more than 3,400 in 2014. With nearly 400 craft  
7 breweries, California is home to more craft breweries than any other state. The  
8 economic impact of craft brewing in California is estimated to exceed \$4.5 billion.

9 13. Beer consumers, including Plaintiff, are willing to pay, and do pay, a  
10 premium for high quality, small batch, craft beers. On average, a six pack of craft  
11 beer typically costs \$2.00 to \$3.00 more than a six pack of macrobrewed, or mass  
12 produced beer.

13 14. The term “craft beer” is defined by Merriam-Webster Dictionary as, “a  
14 specialty beer produced in limited quantities.” Similarly, Cambridge Dictionary  
15 defines “craft beer” as, “beer made using traditional methods in small independent  
16 breweries.” Finally, in Oxford English Dictionary a “craft beer” is defined as “a beer  
17 made in a traditional or non-mechanized way by a small brewery.”

18 15. The Brewers Association, an organization dedicated to promoting and  
19 protecting American craft brewers, defines a craft brewer as “small, independent and  
20 traditional.” In order to qualify as a craft brewer, a brewery must:

- 21 (a) Produce less than 6 million barrels of beer annually;  
22 (b) Be less than 25 percent owned or controlled by a non-craft  
23 brewer; and  
24 (c) Make beer using only traditional or innovative brewing  
25 ingredients.

26 16. With eight major breweries located in California, Colorado, Georgia,  
27 North Carolina, Ohio, Texas, Virginia, and Wisconsin, Defendant produces more  
28 than 76 million barrels, or 2.4 billion gallons, of beer on an annual basis. Based on

1 the volume of beer it produces, as well as the ownership interests of its parent  
2 companies, Defendant clearly does not qualify as a craft brewer. As such, any beer  
3 produced by Defendant is not, under any definition of the term, a “craft beer.”

4 17. Defendant began producing Blue Moon beer in 1995 to compete in the  
5 burgeoning craft beer market. Defendant tasked one of its employees, Keith Villa,  
6 Ph.D., with developing a beer recipe, provided him with complete financial backing,  
7 and created the trade name “Blue Moon Brewing Company.” Dr. Villa, whose Ph.D.  
8 in brewing science was entirely paid for by Defendant, “created” Blue Moon beer  
9 with the aid of Defendant’s marketing team and at the insistence of MillerCoors  
10 executives.

11 18. While Defendant’s use of the Blue Moon Brewing Company trade name  
12 is undoubtedly lawful, Defendant’s representations regarding the origins of Blue  
13 Moon beer serve to paint an entirely fictitious story. Blue Moon beer is and always  
14 has been brewed by Defendant. Unlike a craft brewer that is subsequently acquired  
15 by a non-craft brewery, Blue Moon has never been a craft beer, nor has it ever been  
16 produced by a craft brewery. Rather, it is a wholesale fiction created by Defendant  
17 that was designed to deceive consumers into purchasing a MillerCoors product at a  
18 substantially higher price.

19 19. Although Defendant cannot properly be characterized as a craft brewer,  
20 it nonetheless markets and sells Blue Moon as a craft beer in order to command a  
21 premium price from consumers and to compete in, and to capture as much of the  
22 craft beer market as possible. Defendant does this in the following ways:

23 (a) Portraying Blue Moon Brewing Company as a Small Brewery

24 Despite the fact that Blue Moon is brewed and bottled at  
25 Defendant’s Golden, Colorado and Eden, North Carolina brewing  
26 facilities, Defendant represents that Blue Moon is brewed at a  
27 small, limited capacity brewpub known as “The SandLot  
28 Brewery.” These representations, which appear on Defendant’s

1 Blue Moon Brewing Company website and on the company's  
2 YouTube channel, include, video images of Blue Moon being  
3 brewed in 10-barrel, or 310 gallon, brew tanks<sup>2</sup> (*The Story of*  
4 *Blue Moon*, <https://www.youtube.com/BlueMoonBrewingCo>),  
5 referring to Blue Moon brewers as, "The SandLot Guys"  
6 (<http://www.blumoonbrewingcompany.com/Brewers>), and video  
7 images of a small, brick building with a sign that reads, "Blue  
8 Moon Brewing Company at The SandLot" (*Our Approach to*  
9 *Brewing*, <http://www.blumoonbrewingcompany.com/OurStory>).  
10 These images, along with references to Keith Villa being the  
11 founder of Blue Moon Brewing Company, falsely represent that  
12 Blue Moon is brewed by a small, independent craft brewery,  
13 rather than the second largest brewing company in the United  
14 States.

15 (b) Stocking Blue Moon Among Craft Beers in Retail Establishments

16 In order to portray Blue Moon as a craft beer, Defendant requires  
17 that retail establishments stock Blue Moon among the craft beers.  
18 Plaintiff alleges that Defendant, like most alcoholic beverage  
19 manufacturers, contracts with a network of distributors, who in  
20 turn contract with retailers based on Defendant's requirements, to  
21 ensure that Blue Moon is stocked and sold in the retailer's craft  
22 beer section. Accordingly, Defendant is not only aware that this  
23 practice occurs, but encourages it, and whenever possible,  
24 requires it. Blue Moon's placement among true craft beers (i.e.,  
25 those that fall within the commonly understood definition of craft  
26 beer) misleads consumers into thinking that they are buying a

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28 <sup>2</sup> In contrast, Blue Moon beer, like most of Defendant's beer, is generally brewed in 60,000 to 80,000 gallon tanks.

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craft beer.

(c) Endorsing Third-Party Misrepresentations About Blue Moon

In addition to ensuring that retail establishments stock and sell Blue Moon as a craft beer, Defendant endorses third-party representations that misidentifying Blue Moon as a craft beer. Such representations are frequently made by retailers, who advertise Blue Moon as a craft beer in store circulars and television commercials. For example, Stater Bros. Markets, a Southern California based supermarket chain, recently announced its Craft Beer Sale. The ads, which appeared on television and in print, feature images of two different Blue Moon products with the tagline, “great savings on the best craft beers out there.” As the ads feature Defendant’s trademark protected logo, Plaintiff alleges that they were created with Defendant’s knowledge and consent, if not at Defendant’s direction.

(d) Advertising Blue Moon as a Craft Beer at Concert Venues

Through its sponsorship and distribution agreements, Defendant falsely advertises Blue Moon as a craft beer at various concert and sporting venues. For example, at the Sleep Train Amphitheatre in San Diego County, a sign above the concession stand features the Blue Moon logo and reads, “CRAFT BEER.” Again, because the sign features Defendant’s trademark protected logo, it was created either at Defendant’s direction, or with its knowledge and consent. Moreover, Defendant’s practice of advertising Blue Moon as a craft beer allows the company to charge consumers \$2.00 to \$3.00 more than it charges for other beers, such as Coors Light.

1 (e) Selling Blue Moon as Craft Beer in Non-Retail Venues

2 In many non-retail establishments, particularly national restaurant  
3 chains such as Applebee's and TGI Friday's, Blue Moon is  
4 openly identified and sold as a craft beer on the establishment's  
5 menu and in print advertising. This is done either at Defendant's  
6 direction, vis-à-vis Defendant's contracts with its distributors, or  
7 done with Defendant's knowledge and consent. While the  
8 proposed Class definition is limited to consumers who purchased  
9 Blue Moon beer at a California retailer, Defendant's  
10 representations in non-retail establishments nonetheless serve to  
11 influence and inform consumers' retail purchases.

12 (f) Pricing Blue Moon as a Craft Beer – In order to further deceive  
13 consumers, Plaintiff alleges that at Defendant's direction, Blue  
14 Moon is priced as a craft beer. That is, \$2.00 to \$3.00, or up to 50  
15 percent more per six pack than the average macrobrew. While the  
16 price of a product alone may not constitute an actionable  
17 statement under California's consumer protection laws, falsely  
18 representing that a product has characteristics that command a  
19 premium price, and then actually charging a premium price for  
20 the product, is undoubtedly actionable. This practice is  
21 tantamount to selling a cubic zirconia ring for the price of a  
22 diamond ring and referring to the product as a diamond ring. In  
23 contrast, if the ring was priced as a cubic zirconia, a reasonable  
24 consumer could rightfully be expected to question its authenticity.  
25 Here, the premium price Defendant charges for Blue Moon is not  
26 only part of Defendant's pattern of deception, it also constitutes  
27 the damages that Plaintiff alleges.

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1 20. Through its false and deceptive marketing, including fictitious  
2 statements about the origins and history of Blue Moon beer, Defendant deceives and  
3 misleads consumers to believe that Blue Moon is an independently brewed, craft  
4 beer produced by a small brewery. Defendant is then able to capitalize on  
5 consumers' confusion and charge up to 50% more for Blue Moon beer than it  
6 charges for other MillerCoors products.

7 21. Relying upon the price of Blue Moon, the placement of Blue Moon in  
8 the craft beer section, and advertisements by Defendant and other entities referring to  
9 Blue Moon Brewing Company as a small, independent brewer, Plaintiff frequently  
10 purchased Blue Moon beer from San Diego-area retailers between 2011 and mid-  
11 2012 for personal and family consumption. Plaintiff, a home brewer and beer  
12 aficionado, purchased Blue Moon believing that it was a craft beer, as the term is  
13 defined and commonly understood.

14 22. In or around July 2012, Plaintiff was informed by a friend who worked  
15 as a bartender that Blue Moon is not a craft beer, but rather a mass produced beer  
16 made by MillerCoors. While Plaintiff was initially skeptical, he was eventually able  
17 to verify it through his own research. Plaintiff alleges that had he known the truth  
18 about Blue Moon, he would not have purchased it or would have only purchased it at  
19 a lower price.

### 20 CLASS ALLEGATIONS

21 23. Plaintiff brings this action on behalf of himself, and on behalf of all  
22 persons within the defined Class.

23 24. This class action meets the statutory prerequisites for the maintenance  
24 of a class action, as set forth in Cal. Civ. Proc. Code § 382 and Cal. Civ. Code §  
25 1781, in that:

- 26 (a) The persons who comprise the Class are so numerous that the  
27 joinder of all such persons is impracticable and the disposition of  
28 their claims as a class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive
- 2 relief issues that are raised in this Complaint are common to the
- 3 Class and will apply uniformly to every member of the Class, and
- 4 as a practical matter, be dispositive of the interests of the other
- 5 members not party to the adjudication;
- 6 (c) The parties opposing the Class have acted or have refused to act
- 7 on grounds generally applicable to the Class, thereby making
- 8 final injunctive relief or corresponding declaratory relief
- 9 appropriate with respect to the Class as a whole; and
- 10 (d) Common questions of law and fact exist as to the members of the
- 11 Class and predominate over any question affecting only
- 12 individual members, and a class action is superior to other
- 13 available methods for the fair and efficient adjudication of the
- 14 controversy, including consideration of:
  - 15 i. The interests of Class members in individually controlling
  - 16 the prosecution or defense of separate actions;
  - 17 ii. The extent and nature of any litigation concerning the
  - 18 controversy already commenced by or against members of
  - 19 the Class;
  - 20 iii. The desirability or undesirability of concentrating the
  - 21 litigation of the claims in this particular forum; and
  - 22 iv. The difficulties likely to be encountered in the management
  - 23 of a class action.

24 25. The Court should permit this action to be maintained as a class action  
25 pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781 because:

- 26 (a) Questions of law and fact common to the Class are substantially
- 27 similar and predominate over any questions affecting only
- 28 individual members;

- 1 (b) A class action is superior to any other available method for the
- 2 fair and efficient adjudication of Class members' claims;
- 3 (c) The members of the Class are so numerous that it is impractical
- 4 to bring all Class members before the Court;
- 5 (d) Plaintiff's claims are typical of the claims of the Class;
- 6 (e) Plaintiff, and the other members of the Class, will not be able to
- 7 obtain effective and economic legal redress unless the action is
- 8 maintained as a class action;
- 9 (f) There is a community of interest in obtaining appropriate legal
- 10 and equitable relief for the common law and statutory violations
- 11 and other improprieties alleged, and in obtaining adequate
- 12 compensation for the damages which that Defendant's actions
- 13 have inflicted upon the Class;
- 14 (g) Plaintiff can, and will, fairly and adequately protect the interests
- 15 of the Class;
- 16 (h) There is a community of interest in ensuring that the combined
- 17 assets and available insurance of Defendant are sufficient to
- 18 adequately compensate the members of the Class for the injuries
- 19 sustained; and
- 20 (i) Defendant has acted or refused to act on grounds generally
- 21 applicable to the Class, thereby making final injunctive relief
- 22 appropriate with respect to the Class as a whole.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**  
25 **(By Plaintiff and the Class against all Defendants)**  
26 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**  
27 **[Cal. Civ. Code § 1750 et seq.]**

28 26. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

1           27. California’s Consumer Legal Remedies Act (“CLRA”), as codified in  
2 Cal. Civ. Code § 1750 et seq., prohibits certain unfair or deceptive acts “in a  
3 transaction intended to result or which results in the sale or lease of goods or services  
4 to any consumer.” Cal. Civ. Code § 1770(a).

5           28. Blue Moon beer is a “good” as defined by the CLRA. Cal. Civ. Code §§  
6 1761(a) and 1770.

7           29. Defendant constitutes a “person” under the CLRA. Section 1761(c) of  
8 the California Civil Code defines a “person” as any “individual, partnership,  
9 corporation, limited liability company, association, or other group, however  
10 organized.”

11           30. Individuals who purchased Blue Moon beer, including Plaintiff and the  
12 other members of the proposed Class, are “consumers” within the meaning of the  
13 CLRA. Under the CLRA, the term “consumer” includes any “individual who seeks  
14 or acquires, by purchase or lease, any goods or services for personal, family, or  
15 household purposes.” Cal. Civ. Code § 1761(d).

16           31. Plaintiff and each and every Class member’s purchase of Blue Moon  
17 beer constitutes a “transaction” under the CLRA. Section 1761(e) of the California  
18 Civil Code defines a “transaction” as “an agreement between a consumer and  
19 another person, whether or not the agreement is a contract enforceable by action, and  
20 includes the making of, and the performance pursuant to, that agreement.”

21           32. Defendant violated and continues to violate the CLRA by engaging in  
22 the following practices proscribed by Cal. Civ. Code § 1770(a) in transactions with  
23 Plaintiff and the other members of the Class, which were intended to result in, and  
24 did result in, the purchase of Blue Moon beer:

- 25           (a) Violating Cal. Civ. Code § 1770(a)(3), which makes it unlawful  
26 to misrepresent “the affiliation, connection, or association with,  
27 or certification by, another,” by holding Keith Villa, Ph.D. out as  
28 an independent brewer and founder of Blue Moon Brewing

- 1 Company and as the creator of Blue Moon beer, when in fact,  
2 Blue Moon was created purely at the insistence of MillerCoors  
3 executives and with complete financial backing by Defendant;
- 4 (b) Violating Cal. Civ. Code § 1770(a)(5), which makes it unlawful  
5 to represent “that goods or services have sponsorship, approval,  
6 characteristics, ingredients, uses, benefits, or quantities which  
7 they do not have,” by representing that Blue Moon beer is brewed  
8 by at a small, limited capacity brewery known as The SandLot  
9 Brewery, when in reality, Blue Moon is mass produced by  
10 Defendant in one of its colossal brewing facilities; and
- 11 (c) Violating Cal. Civ. Code § 1770(a)(7), which makes it unlawful  
12 to represent “that goods or services are of a particular standard,  
13 quality, or grade, or that goods are of a particular style or model,  
14 if they are of another,” by representing that Blue Moon is a craft  
15 beer when Defendant does not qualify as a craft brewer, and thus  
16 Blue Moon does not constitute a craft beer.

17 33. Defendant has repeatedly violated, and continues to violate the CLRA  
18 by misrepresenting and failing to disclose material facts on its website, in  
19 promotional materials, and in associated advertising, as described herein. More  
20 specifically, Defendant knew or should have known that its representations, and  
21 those made by third parties at its direction, were unsubstantiated, false, and  
22 misleading, and that a reasonable consumer would rely on such representations with  
23 respect to his or her purchase of Blue Moon beer. This is especially true as  
24 consumers are often willing to pay more for products that they perceive to be of a  
25 certain quality.

26 34. A reasonable consumer, relying on information gleaned from  
27 Defendant’s Blue Moon Brewing Company website, the premium price Defendant  
28 charges for Blue Moon, and the fact that Defendant directs retailers to sell Blue

1 Moon in the craft beer section, would likely be misled to believe that Blue Moon is a  
2 craft beer. Moreover, third party representations, made at Defendant's direction or  
3 with its knowledge and consent, serve to further perpetuate the deception by  
4 substantiating Defendant's misrepresentations.

5 35. As a result of Defendant's practices, acts, and course of conduct in  
6 connection with the sale of Blue Moon beer, and in reliance on representations made  
7 by, or with Defendant's knowledge and consent, Plaintiff and the other members of  
8 the Class suffered a loss of money by paying more for Blue Moon than they would  
9 have in the absence of Defendant's misrepresentations and omissions.

10 36. Plaintiff alleges that Defendant directs third parties, including retailers,  
11 entertainment venues, and restaurants, to advertise and sell Blue Moon beer as a craft  
12 beer. However, even if these third party representations are not made at Defendant's  
13 specific direction, Defendant is nonetheless aware of, and actively encourages these  
14 representations, and is therefore liable because it retains the benefit of such  
15 representations after knowing that they were falsely made.

16 37. Under California law, and pursuant to Cal. Civ. Code § 1780(a)(2),  
17 Plaintiff and the putative Class are entitled to, and do seek, an order enjoining  
18 Defendant's above-described wrongful acts and practices.

19 38. Pursuant to Cal. Civ. Code § 1780(a)(3), Plaintiff and the putative Class  
20 are entitled to, and do seek, restitution and disgorgement of all monies wrongfully  
21 acquired by Defendant from the deceptive advertisement and sale of Blue Moon  
22 beer.

23 39. Pursuant to Cal. Civ. Code § 1780(e), Plaintiff and the putative Class  
24 are entitled to, and do seek, reasonable attorneys' fees and all costs incurred in  
25 bringing this action, as well as any other relief this Court deems just and proper.

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**SECOND CAUSE OF ACTION**  
**(By Plaintiff and the Class against all Defendants)**  
**DECEPTIVE AND MISLEADING ADVERTISING**  
**[Cal. Bus. & Prof. Code § 17500 et seq.]**

16 40. Plaintiff realleges and incorporates by this reference, as though fully set  
17 forth herein, the proceeding paragraphs of this Complaint.

18 41. Under Cal. Bus. & Prof. Code § 17500, it is unlawful to make an untrue  
19 or misleading statement in connection with the sale or dissemination of goods or  
20 services, if the person making the statement knew or should have known the  
21 statement was untrue or misleading. Section 17500 prohibits “not only advertising  
22 which is false, but also advertising which[,] although true, is either actually  
23 misleading or which has a capacity, likelihood or tendency to deceive or confuse the  
24 public.” *Colgan v. Leatherman Tool Group, Inc.*, 135 Cal. App. 4th 663, 679 (2006).  
25 An advertiser who uses words that have double meaning cannot escape liability by  
26 arguing that the words were true as they were intended. *See Garvai v. Board of*  
27 *Chiropractic Examiners*, 216 Cal. App. 2d 374, 379 (1963).

28 42. The test under § 17500 is whether a reasonable consumer would be  
deceived. *Id.* at 682. California law defines a “reasonable consumer” as “the ordinary  
consumer acting reasonably under the circumstances, [who] is not versed in the art of  
inspecting and judging a product, in the process of its preparation or manufacture.”  
*Id.* (internal quotation marks omitted).

43. Section 17505 of the California Business and Professions Code states:

No person shall state, in an advertisement of his goods, that  
he is a producer, manufacturer, processor, wholesaler, or  
importer, or that he owns or controls a factory or other  
source of supply of goods when such is not the fact, and no  
person shall in any other manner misrepresent the character,  
extent, volume, or type of his business.

44. Under California law, virtually any statement made in connection with  
the sale of products or services constitutes advertising. *See e.g., Chern v. Bank of*  
*America*, 15 Cal. 3d 866 (1976). Further, in determining whether advertising is

1 misleading or deceptive, California's courts evaluate the advertisement's entire  
2 impression, including words, images, format and product placement. *See Committee*  
3 *on Children's Television, Inc. v. General Foods Corp.*, 35 Cal. 3d 197, 210 (1983).

4 45. In connection with the sale of Blue Moon beer, Defendant disseminated  
5 or caused the dissemination of untrue, misleading, and deceptive advertising to the  
6 general public regarding the quality, source, and characteristics of Blue Moon beer.  
7 As detailed herein, Defendant directly and indirectly advertises Blue Moon as a craft  
8 beer even though the company knows or should know that it does not qualify as a  
9 craft brewer, and thus Blue Moon is not a craft beer, as the terms are commonly  
10 defined and understood by consumers and the brewing industry.

11 46. Additionally, in various advertising materials, including Defendant's  
12 Blue Moon Brewing Company website and the company's YouTube channel,  
13 Defendant represents that Blue Moon beer is brewed at a small, limited capacity  
14 brewpub known as "The SandLot Brewery." While there is in fact a SandLot  
15 Brewery, it is entirely owned and operated by MillerCoors and the facility does not  
16 brew the Blue Moon beer sold in retail establishments. Rather, the Blue Moon beer  
17 purchased by Plaintiff and the other members of the Class is mass produced in one of  
18 Defendant's eight major breweries.

19 47. Finally, Defendant further perpetuates this deception by misrepresenting  
20 and omitting material facts with regard to the history and origins of Blue Moon beer.  
21 While Defendant states that Blue Moon beer was created by Keith Villa, Ph.D., the  
22 company's advertising represents that Dr. Villa is home brewer who created Blue  
23 Moon as the first and flagship beer of an independent start up brewery. Defendant  
24 not only omits, but actively conceals, the fact that that Dr. Villa was an employee of  
25 MillerCoors when he allegedly "created" Blue Moon and that he did so at the  
26 insistence of MillerCoors executives. Defendant also omits and actively conceals the  
27 fact that Blue Moon is, and always has been mass produced by MillerCoors, but is  
28 falsely and deceptively marketed to compete with the craft beer industry.



1 Defendant's fictitious story regarding Blue Moon's history and origins allows it to  
2 portray Blue Moon beer as something it is not, namely an independently brewed  
3 craft beer.

4 48. Defendant uses, and directs third parties to use, untrue, misleading, and  
5 deceptive advertising for the purpose of selling Blue Moon beer to consumers at a  
6 premium price. Such advertising, as described herein, is likely to, and actually does  
7 cause consumers to falsely believe that Blue Moon is a craft beer.

8 49. Over the past couple of years, some news sources have reported that  
9 Blue Moon is not a craft beer. However, Defendant's Blue Moon Brewing Company  
10 website, promotional materials, and associated advertising continue to falsely portray  
11 Blue Moon as a craft beer. Where advertising is false, misleading, or has the capacity  
12 to deceive or confuse the public, California law does not require a reasonable  
13 consumer to look beyond the deceptive advertising to discover the truth. *See*  
14 *Williams v. Gerber Products Co.*, 552 F.3d 934, 938 (9th Cir. 2008).

15 50. Plaintiff alleges that Defendant directs various third parties to advertise  
16 Blue Moon as a craft beer. However, even if the third party representations are not  
17 made at Defendant's direction, Defendant is nonetheless liable as it retains the  
18 benefit of such representations, namely the premium price that consumers pay, after  
19 knowing that the third party made false representations.

20 51. As a result of Defendant's untrue, misleading, and deceptive  
21 advertising, Plaintiff and the other members of the Class have suffered injury in fact  
22 because they paid up to 50 percent more for Blue Moon than they would have paid in  
23 the absence of such advertising, or they purchased Blue Moon when they otherwise  
24 would have purchased another beer.

25 52. Plaintiff and the putative Class are entitled to, and do seek, equitable  
26 relief in the form of full restitution of all monies paid for Blue Moon beer and  
27 disgorgement of the profits derived from Defendant's false and misleading  
28 advertising, as well as reasonable attorneys' fees and all costs incurred in bringing

1 this action.

2 53. Under California law, Plaintiff and the Class are also entitled to, and do  
3 seek, an injunction prohibiting Defendant from continuing such conduct and for an  
4 order requiring Defendant to make full disclosures to correct its prior  
5 misrepresentations and omissions.

6 **THIRD CAUSE OF ACTION**  
7 **(By Plaintiff and the Class against all Defendants)**  
8 **UNFAIR BUSINESS PRACTICES**  
9 **[Cal. Bus. & Prof. Code § 17200 et seq.]**

10 54. Plaintiff realleges and incorporates by this reference, as though fully set  
11 forth herein, the proceeding paragraphs of this Complaint.

12 55. As codified in Cal. Bus. & Prof. Code § 17200 et seq., California’s  
13 Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or  
14 fraudulent business act or practice.”

15 56. The UCL permits a cause of action to be brought if a practice violates  
16 some other law. In effect, the “unlawful” prong of the UCL makes a violation of the  
17 underlying law a per se violation of Cal. Bus. & Prof. Code § 17200. *Cel-Tech*  
18 *Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).  
19 Virtually any law or regulation—federal or state, statutory or common law—can  
20 serve as predicate for a § 17200 “unlawful” violation. *See Farmers Ins. Exch. v. Sup.*  
21 *Ct.*, 2 Cal. 4th 377, 383 (1992).

22 57. Under the UCL, a practice may be “unfair” even if not specifically  
23 proscribed by some other law. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.  
24 4th 1134, 1143 (2003). The California Supreme Court has made it clear that the  
25 “unfair” standard is intentionally broad to allow courts maximum discretion in  
26 prohibiting new schemes to defraud consumers. *See Cel-Tech Commc’ns, Inc. v. Los*  
27 *Angeles Cellular Tel. Co.*, *supra*, 20 Cal. 4th 163, 180-81.

28 58. A business act or practice may be deemed “fraudulent” under the UCL  
where “members of the public are likely to be deceived.” *Blakemore v. Superior*

1 *Court*, 129 Cal. App. 4th 36, 49 (2005). That is, a showing of actual deception,  
2 reasonable reliance, or damages is not required. *Id.* Moreover, under § 17200, even a  
3 true statement may be unlawful if it is “couched in such a manner that it is likely to  
4 mislead or deceive . . . , such as by failure to disclose other relevant information.”  
5 *See Boschma v. Home Loan Ctr., Inc.*, 198 Cal. App. 4th 230, 253 (2011).

6 59. As set forth in the preceding paragraphs, Defendant’s business practices  
7 violate all three prongs of California’s UCL.

8 60. Defendant committed, and continues to commit, unlawful business  
9 practices in violation of Cal. Civ. Code § 1770(a)(1)-(3), (7) and Cal. Bus. & Prof.  
10 Code § 17500. Despite the fact that Defendant does not qualify as a craft brewer,  
11 Defendant directly and indirectly holds Blue Moon out as craft beer. Similarly, while  
12 Blue Moon beer is brewed in mass quantities across the United States, Defendant  
13 states that it is brewed in a small, limited capacity brewpub located inside of a  
14 baseball stadium.

15 61. Defendant’s conduct also constitutes an unfair business practice in that  
16 it deceives consumers to the detriment of Defendant’s competitors, particularly those  
17 who properly qualify as craft brewers. Plaintiff, in direct reliance on Defendant’s  
18 representation that Blue Moon was a craft beer was willing to, and actually did pay, a  
19 premium price for Blue Moon beer. Defendant deceived and misled Plaintiff to  
20 believe that he was purchasing a craft beer from a small, independent brewery by: (1)  
21 placing Blue Moon in the craft beer section of retail establishments; (2) advertising  
22 that Blue Moon is entirely the creation of Keith Villa; (3) allowing third parties to  
23 use its trademark protected logo to promote Blue Moon a craft beer; and (4) pricing  
24 Blue Moon at an amount similar to true craft beers, as the term is commonly defined  
25 and understood. Absent Defendant’s representations and omissions, Plaintiff would  
26 not have purchased Blue Moon or would have only purchased it at a lower price.

27 62. Finally, Defendant’s reference to Keith Villa founding Blue Moon  
28 Brewing Company and creating Blue Moon beer, while omitting the fact that as an

1 employee of Defendant, he did so at Defendant's insistence and with complete  
2 funding from Defendant, constitutes a fraudulent business practice under the UCL.  
3 Indeed, even if there is some element of truth to Defendant's representation, the  
4 conduct nonetheless violates Cal. Bus. & Prof. Code § 17200 because it is "couched  
5 in such a manner that it is likely to mislead or deceive" members of the public. *See*  
6 *Boschma v. Home Loan Ctr., Inc., supra*, 198 Cal. App. 4th at 253. Indeed,  
7 Defendant's conduct is not only likely to deceive, it is intended to deceive, thus  
8 allowing Defendant to hold Blue Moon out as a craft beer and sell it at a premium  
9 price.

10 63. Defendant's business practices are immoral, unethical, oppressive, and  
11 unscrupulous, and cause substantial injury to consumers, including Plaintiff and  
12 other members of the putative Class. As a direct and proximate result of Defendant's  
13 unfair business practices, Class members have suffered injury in that they paid a  
14 premium price for a product that would not ordinarily command a premium price, or  
15 purchased a product they otherwise would not have purchased absent Defendant's  
16 misrepresentations. Defendant subjected Plaintiff and the Class to the same unfair,  
17 unlawful, and deceptive practices, thus harming them in the same manner.

18 64. Through its unlawful, unfair, and fraudulent business practices,  
19 Defendant reaped, and continues to reap, benefits and profits at the expense of  
20 Plaintiff and the putative Class. Plaintiff alleges that if Defendant is not enjoined, it  
21 will continue to engage in conduct that is injurious to the public and violates  
22 California law. As such, injunctive relief is appropriate.

23 65. Pursuant to California law, Plaintiff and the putative Class are entitled  
24 to, and do seek, restitution, an injunction prohibiting Defendant from continuing its  
25 unlawful, unfair, and fraudulent business practices, and any other relief the Court  
26 deems appropriate, consistent with Cal. Bus. & Prof. Code § 17203.

27 66. Pursuant to Cal. Civ. Code § 1021.5, Plaintiff and the Class also seek  
28 reasonable attorneys' fees and all costs incurred in bringing this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself, and on behalf of a Class of persons similarly situated, prays for judgment against Defendant as follows:

1. For restitution and disgorgement;
2. For an injunction prohibiting Defendant from continuing its deceptive, misleading, and unfair conduct;
3. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code §§ 1021.5 and 1780(e); and
4. For any other relief the Court deems just and proper.

Dated: November 25, 2015

**CLARK & TREGLIO**

/s/ James M. Treglio

R. Craig Clark  
James M. Treglio  
Dawn M. Berry

Attorneys for Plaintiff and the Putative Class

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues triable to a jury.

Dated: November 25, 2015

**CLARK & TREGLIO**

/s/ James M. Treglio

R. Craig Clark  
James M. Treglio  
Dawn M. Berry

Attorneys for Plaintiff and the Putative Class

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**DECLARATION OF SERVICE**

*Evan Parent v. MillerCoors LLC*

U.S.D.C., S.D. Cal., Case No. 115-cv-01204-CPC-WVG

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 205 W. Date Street, San Diego, CA 92101. On November 25, 2015, I served the document(s) described as:

**FIRST AMENDED COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF**

- BY ELECTRONIC ACCESS:** pursuant to Electronic Filing General Order 08-02 and Local Rule 5-4, I hereby certify that the above documents were uploaded to the ECF website and will be posted on the Website by the close of the next business day and the webmaster will give e-mail notification to all parties.
- BY PERSONAL SERVICE:** by causing the document(s) listed above to be delivered by hand to offices of the addressee(s).
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- BY OVERNIGHT DELIVERY** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed **above**. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY FACSIMILE:** by causing to be transmitted via facsimile the document(s) listed above to the addressee(s) at the facsimile number(s) set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on November 25, 2015, at San Diego, California.

/s/ James M. Treglio  
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James M. Treglio

**SERVICE LIST**

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