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11 Attorneys for Plaintiff
Christopher Rhinesmith and the Proposed Class
12

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15

16 Christopher Rhinesmith, an individual on
17 behalf of himself and all others similarly
18 situated and the general public,

19 Plaintiff

20 v.

21 Tradewinds Beverage Company and DOES
22 1 through 25, inclusive,

23 Defendant.
24

Case No. 2:17-cv-00408

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 COMES NOW PLAINTIFF, CHRISTOPHER RHINESMITH, WHO HEREBY
2 ALLEGES THE FOLLOWING:

3 Plaintiff, Christopher Rhinesmith (“Plaintiff”) brings this action on behalf of
4 himself and all others similarly situated against Defendant, Tradewinds Beverage
5 Company.

6 The allegations in this Complaint, stated on information and belief, have
7 evidentiary support or are likely to have evidentiary support after a reasonable
8 opportunity for further investigation and discovery.

9
10 **NATURE OF ACTION**

11 1. Plaintiff files this class action lawsuit on behalf of himself and all similarly
12 situated persons who purchased Tradewinds Products (as defined below).

13 2. Plaintiff brings this action on behalf of himself and a California and
14 Nationwide proposed class of purchasers of the Tradewinds Products (as defined below)
15 for violations of the California Consumer Legal Remedies Act, the California False
16 Advertising Law, the California Unfair Competition Law, breach of express warranty,
17 breach of the implied warranty of merchantability and for fraud and negligent
18 misrepresentation.

19 **PARTIES**

20 3. Plaintiff, Christopher Rhinesmith (“Plaintiff”), is a citizen of California,
21 who resides in the county of Los Angeles.

22 4. Plaintiff has purchased Defendant’s iced tea products from 2013 to
23 December 2016 in store locations in Orange County and Los Angeles and thereby altered
24 his position in an amount equal to the amount he paid for the Defendant’s Tradewinds
25 Products. Plaintiff and the Proposed Class would not have purchased or paid a premium
26

1 for the Tradewinds Products had they known that the “natural” and “all-natural” claims
2 were false, deceptive and misleading.

3 5. Plaintiff saw and read the front of the product packaging and relied on the
4 representations, statements, and warranties “All Natural”, “100% Natural”, “With All
5 Natural Ingredients”, to mean the Products were ‘natural’ and did not contain synthetic
6 and/or artificial ingredients. Plaintiff and class members read the labeling on the front of
7 of the Tradewinds Products, relying on the statements such as “All Natural”, “100%
8 Natural”, “With All Natural Ingredients” prior to making purchase. Plaintiff purchased
9 one or more of the Defendant’s Products at a premium price and would not have made
10 the purchase had she known the labeling was false, deceptive, and/or misleading.

11 6. Defendant, Tradewinds Beverage Company, is an Ohio corporation
12 with its headquarters in Carlisle, Ohio.

13 7. Defendant, Tradewinds Beverage Company shall hereinafter referred to
14 collectively as the “Defendant” or “Tradewinds”.

15 8. The Tradewinds iced tea products that are the subject of this action include:
16 *Unsweet Tea, Unsweet Tea with Hint of Lemon, Unsweet Tea with Hint of Raspberry,*
17 *Unsweet Tea with Hint of Peach, Sweet Tea, Extra Sweet Tea, Raspberry Tea, and Lemon*
18 *Tea* (hereinafter the “Tradewinds Products”). The Tradewinds Products are
19 manufactured, packaged, marketed, distributed and sold by the Defendant via
20 supermarket chains and retail stores throughout the United States.

21 9. The Tradewinds Products contain false, deceptive and misleading claims
22 regarding “natural” related claims (“All Natural”, “100% Natural”, “With All Natural
23 Ingredients”) and “all-natural” content that are the subject of the instant lawsuit.
24 Defendant created and/or authorized the false, misleading, and deceptive advertisements
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26

1 and/or packaging and labeling for the Tradewinds Products that falsely claim they are
2 natural or contain all natural ingredients.

3 10. That the true names and capacities, whether individual, corporate, associate
4 or otherwise of each of the Defendant designated herein as a DOE are unknown to
5 Plaintiff at this time, who therefore, sue said Defendant by fictitious names, and will ask
6 leave of this Court for permission to amend this Complaint to show their names and
7 capacities when the same have been ascertained. Plaintiff is informed and believes and
8 thereon alleges that each of the Defendant designated as a DOE is legally responsible in
9 some manner for the events and happenings herein referred to, and caused injuries and
10 damages thereby to these Plaintiffs as alleged herein.

11 11. On information and belief, Plaintiff alleges that at all times herein
12 mentioned, each of the Defendant was acting as the agent, servant or employee of the
13 other Defendant and that during the times and places of the incident in question,
14 Defendant and each of their agents, servants, and employees became liable to Plaintiff
15 and class members for the reasons described in the complaint herein, and thereby
16 proximately caused Plaintiff to sustain damages as set forth herein.

17 12. On information and belief, Plaintiff alleges that Defendant carried out a joint
18 scheme with a common business plan and policies in all respects pertinent hereto and that
19 all acts and omissions herein complained of were performed in knowing cooperation with
20 each other.

21 13. On information and belief, Plaintiff alleges that the shareholders, executive
22 officers, managers, and supervisors of the Defendant directed, authorized, ratified and/or
23 participated in the actions, omissions and other conduct that gives rise to the claims
24 asserted herein. Defendant' officers, directors, and high-level employees caused
25 Tradewinds Products to be sold with knowledge or reckless disregard that the statements
26

1 and representations concerning the Tradewinds Products were false and misleading.

2 14. Plaintiff is informed and believes, and thereon alleges, that each of the
3 Defendant is in some manner intentionally, negligently, or otherwise responsible for the
4 acts, omissions, occurrences, and transactions alleged herein.

5 **JURISDICTION AND VENUE**

6 15. This Court has subject matter jurisdiction according to 28 U.S.C. § 1332(d),
7 because this case is a class action where the aggregate claims of all members of the
8 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs and most
9 members of the proposed class are citizens of states different from Defendant. This
10 Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. §
11 1367.

12 16. Plaintiff is a citizen of California and this Court has personal jurisdiction
13 over Defendant because Defendant conduct business in California and otherwise
14 intentionally avail themselves of the markets in California so as to render the exercise of
15 jurisdiction by this Court proper. Defendant have marketed, promoted, distributed, and
16 sold the Tradewinds Products in California and in this District, which is where Plaintiff
17 purchased Defendant's products.

18 17. Pursuant to 28 U.S.C. §1391(b), this Court is the proper venue since the
19 Defendant are subject to personal jurisdiction in this district and a substantial part of the
20 events or omissions giving rise to the claims occurred in this district.

21 **FACTUAL BACKGROUND**

22 18. Plaintiff has purchased the Tradewinds Products since 2013 through 2016
23 from locations in Los Angeles County and Orange County. Plaintiff's preference for iced
24 teas is similar to other consumers seeking the benefits of products that are 'natural' and
25 contain no artificial and/or synthetic ingredients, which is why the Plaintiff has sought

1 out been willing to pay a higher premium price for the Tradewinds Products. Plaintiff
2 and class members purchased and paid a premium therefore in reliance on such
3 statements as “All Natural”, “100% Natural”, and “With All Natural Ingredients”
4 believing that the Tradewinds Products contained no artificial and/or synthetic
5 ingredients.

6 19. The Defendant’s “natural” related claims (“All Natural”, “100% Natural”,
7 “With All Natural Ingredients”) are printed on labels affixed to the Tradewinds Products
8 and are widely disseminated on Tradewinds website as of the date of filing this action.
9 At all times, Plaintiff believed that he was purchasing “natural” products when
10 purchasing the Tradewinds Products. In fact, Plaintiff continued to purchase the
11 Tradewinds Products believing them to be ‘natural’ and Defendant continued to maintain
12 that its Products were ‘natural’ until the end of December 2016 on its website. Within
13 the period Defendant maintained the ‘natural’ claims on its website, Plaintiff, at one time
14 or another, viewed Defendant’s website and saw that Defendant claimed its Products
15 were ‘natural’. Plaintiff and class members would not have continued to purchase the
16 Tradewinds Products, absent the misleading all natural-related statements and
17 representations made by Defendant.

18 20. Defendant manufacture, distributes, and/or produces a variety of sweetened
19 and unsweetened iced teas. Defendant claim that the Tradewinds Products are “All
20 Natural”, “100% Natural”, are made “With All Natural Ingredients”, and are “Naturally
21 Flavored with All Natural Flavors” (hereinafter the “All Natural Claims”). The All
22 Natural Claims made by the Defendant regarding the Tradewinds Products are false,
23 misleading and deceptive. The Tradewinds Products cost more than other similar
24 products that do have misleading labeling setting forth false All Natural Claims. If the
25 Defendant were enjoined from making the false All Natural Claims, the market demand
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1 and price for the Tradewinds Products would be reduced insofar as the market prices
 2 have been artificially inflated as a result of the Defendant's false 'natural' related claims
 3 ("All Natural", "100% Natural", "With All Natural Ingredients"). Plaintiff and class
 4 members expected that any labeling from Defendant to be truthful and honest. Prior to
 5 making any purchase, Plaintiff and class members read the label prominently displayed
 6 by Defendant that the Tradewinds Products were 'natural' ("All Natural", "100%
 7 Natural", "With All Natural Ingredients"). Plaintiff and class members on the basis of
 8 Defendant's labeling did not expect there to be any artificial and/or synthetic ingredients
 9 present.

10 21. Defendant admits on the Tradewinds website that they use caramel color in
 11 the Tradewinds Products.¹ The following statement is prominently in the Frequently
 12 Asked Questions section of the Tradewinds website, admitting caramel color is used in
 13 the Tradewinds Products:

14 Do Tradewinds Teas contain 4-MEI caramel color?

15 No. Our teas are made with Class I caramel color, so it does not contain 4-MEI and is safe for consumption (and enjoyment).

16 22. The Defendant prominently display claims that the Tradewinds Products are
 17 "100% Natural" on the labels affixed to the products and on its website. From 2013,
 18 Plaintiff saw and read similar labels prominently displayed on the Tradewinds Products at
 19 stores located in Los Angeles County and Orange County with the language "100%
 20 Natural", which Plaintiff relied on in deciding to purchase Tradewinds Products. Plaintiff
 21 also viewed Defendant's website, at one time or another, at some time through December
 22 2016, which also displayed the 'natural' related claims which caused Plaintiff to purchase
 23 Tradewinds Products at stores located in Los Angeles County and/or Orange County.
 24 The following images show an example:

25 _____
 26 ¹ www.tradewindsteas.com/faq/



23. The Defendant prominently display claims that the Tradewinds Products are made “With all Natural Ingredients” on the labels affixed to the products and on its website. From 2013, Plaintiff saw and read similar labels prominently displayed on the Tradewinds Products at stores located in Los Angeles County and Orange County with the language “with ALL NATURAL ingredients”, which Plaintiff relied on in deciding to

1 purchase Tradewinds Products. Plaintiff also viewed Defendant's website, at one time or
 2 another, at some time through December 2016, which also displayed the 'natural' related
 3 claims which caused Plaintiff to purchase Tradewinds Products at stores located in Los
 4 Angeles County and/or Orange County. The following images show an example:



13 24. The FDA considers the term "natural" to mean that nothing artificial or
 14 synthetic (including all color additives regardless of source) has been included in, or has
 15 been added to, a food that would not normally be expected to be in that food.² At all
 16 times, Plaintiff and class members believed that the Tradewinds Products were 'natural'
 17 based on the labeling ("All Natural", "100% Natural", "With All Natural Ingredients")
 18 containing the representations and/or warranties and concluded there were no artificial
 19 and/or synthetic ingredients.

20 25. By the Defendant's own admissions, the Tradewinds Products are artificially
 21 colored with caramel color. Caramel colors are artificial or synthetic, have been added,
 22 and would not normally be expected to be in iced tea. Insofar as the Defendant make
 23 very specific representations that the Tradewinds Products are "natural," those

25 ² 21 CFR Part 101 [Docket No. FDA-2014-N-1207]: Use of the Term "Natural" in the
 26 Labeling of Human Food Products

representations and the All Natural Claims are false, deceptive and misleading.

PRIVATE ATTORNEYS GENERAL ALLEGATIONS

26. In addition to asserting class claims, Plaintiffs assert claims on behalf of class members pursuant to *California Business & Professions Code § 17200, et seq.* The purpose of such claims is to obtain injunctive orders regarding the false labeling, deceptive marketing and consistent pattern and practice of falsely promoting natural claims and the disgorgement of all profits and/or restoration of monies wrongfully obtained through the Defendant's pattern of unfair and deceptive business practices as alleged herein. This private attorneys general action is necessary and appropriate because Defendant have engaged in wrongful acts described herein as part of the regular practice of its business.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated pursuant to Federal Rule of Civil Procedure 23.

28. Plaintiff seeks to represent the following Class and Sub-Class (hereinafter collectively the "Classes"):

All persons residing in the United States who purchased the Tradewinds Products for personal use and not for resale during the time period January 16, 2013, through the present (the "Class").

All persons residing in the State of California who purchased the Tradewinds Products for personal use and not for resale during the time period January 16, 2013, through the present (the "Sub-Class").

29. The Classes comprise many thousands of persons throughout the United States and California, the joinder of whom is impracticable, and the disposition of their

1 claims in a class action will benefit the parties and the Court. The Classes are sufficiently
2 numerous because on information and belief, thousands to hundreds of thousands of units
3 of the Tradewinds Products have been sold in the United States and State of California
4 during the time period January 16, 2013, through the present (the “Class Period”).

5 30. There is a well-defined community of interest in this litigation and the
6 Classes are easily ascertainable:

- 7 a. Numerosity: The members of the Classes are so numerous that any form of
8 joinder of all members would be unfeasible and impractical. On information
9 and belief, Plaintiff believes the size of the Classes exceed thousands of
10 members.
- 11 b. Typicality: Plaintiff is qualified to and will fairly and adequately protects the
12 interests of each member of the Classes with whom he has a well-defined
13 community of interest and the claims (or defenses, if any), are typical of all
14 members of the Classes.
- 15 c. Adequacy: Plaintiff does not have a conflict with the Classes and is qualified to
16 and will fairly and adequately protect the interests of each member of the
17 Classes with whom he has a well- defined community of interest and typicality
18 of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to
19 the Court to make known any relationship, conflict, or difference with any
20 putative class member. Plaintiff’s attorneys and proposed class counsel are
21 well versed in the rules governing class action and complex litigation regarding
22 discovery, certification, and settlement.
- 23 d. Superiority: The nature of this action makes the use of class action adjudication
24 superior to other methods. Class action will achieve economies of time, effort,
25 and expense as compared with separate lawsuits, and will avoid inconsistent
26

1 outcomes because the same issues can be adjudicated in the same manner and at
2 the same time for the entire class.

3 31. There exist common questions of law and fact that predominate over
4 questions that may affect individual class members. Common questions of law and fact
5 include, but are not limited to, the following:
6

- 7 a. Whether Defendant' conduct is a fraudulent business act or practice within the
8 meaning of Business and Professions Code section 17200, *et seq.*;
 - 9 b. Whether Defendant' advertising is untrue or misleading within the meaning of
10 Business and Professions Code section 17500, *et seq.*;
 - 11 c. Whether Defendant made false and misleading representations in the advertising
12 and/or packaging of the Tradewinds Products;
 - 13 d. Whether Defendant knew or should have known that the All Natural Claims and
14 representations were false;
 - 15 e. Whether Defendant represented that the Tradewinds Products have characteristics,
16 benefits, uses, or quantities which they do not have;
 - 17 f. Whether Defendant representations regarding the Tradewinds Products are false;
 - 18 g. Whether Defendant warranted the health and wellness of the Tradewinds Products
19 by virtue of the All Natural Claims;
 - 20 h. Whether the Defendant breached warranties regarding the Tradewinds Products;
 - 21 i. Whether the Defendant committed statutory and common law fraud; and
 - 22 j. Whether Defendant' conduct as alleged herein constitutes an unlawful business act
23 or practice within the meaning of Business and Professions Code section 17200, *et*
24 *seq.*;
- 25
26

1 32. Plaintiff's claims are typical of the claims of the Classes, and Plaintiff will
2 fairly and adequately represent and protect the interests of the Classes. Plaintiff has
3 retained competent and experienced counsel in class action and other complex litigation.

4 33. Plaintiff and the Classes have suffered injury in fact and have lost money as
5 a result of Defendant's false representations. Indeed, Plaintiff purchased the Tradewinds
6 Products under the belief that they were "natural". Plaintiff relied on Defendant's
7 packaging, labeling, marketing and website and would not have purchased the
8 Tradewinds Products or paid a premium for them if he had known that they did not have
9 the characteristics, ingredients, uses, benefits, or quantities as represented vis-à-vis the
10 All Natural Claims.

11 34. The Defendant's misrepresentations regarding the All Natural Claims were
12 material insofar as consumers relate to "natural" claims as indicative of healthier foods
13 and tend to be willing to pay a price premium for healthier foods. The Defendant are
14 aware of consumer preference for healthier "natural" products and therefore have
15 implemented a strategic false advertising and marketing campaign intended to deceive
16 consumers into thinking that the Tradewinds Products are all natural, even though they
17 contain artificial or synthetic ingredients.

18 35. A class action is superior to other available methods for fair and efficient
19 adjudication of this controversy. The expense and burden of individual litigation would
20 make it impracticable or impossible for class members to prosecute their claims
21 individually.

22 36. The trial and litigation of Plaintiff's claims are manageable. Individual
23 litigation of the legal and factual issues raised by Defendant's conduct would increase
24 delay and expense to all parties and the court system. The class action device presents far
25

1 fewer management difficulties and provides the benefits of a single, uniform
2 adjudication, economies of scale, and comprehensive supervision by a single court.

3 37. Defendant have acted on grounds generally applicable to the Classes as a
4 whole, thereby making final injunctive relief and/or corresponding declaratory relief
5 appropriate with respect to the Classes as a whole. The prosecution of separate actions by
6 individual class members would create the risk of inconsistent or varying adjudications
7 with respect to individual members of the Classes that would establish incompatible
8 standards of conduct for the Defendant.

9 38. Absent a class action, Defendant are likely to retain the benefits of their
10 wrongdoing. Because of the small size of the individual class members' claims, few, if
11 any, class members could afford to seek legal redress for the wrongs complained of
12 herein. Absent a representative action, the class members will continue to suffer losses
13 and Defendant will be allowed to continue these violations of law and to retain the
14 proceeds of their ill-gotten gains.

15 39. Excluded from the class are the Defendant in this action, any entity in which
16 Defendant have a controlling interest, including, but not limited to officers, directors,
17 shareholders, current employees and any and all legal representatives, heirs, successors,
18 and assigns of Defendant.

19 40. Were it not for this class action, most class members would find the cost
20 associated with litigating claims extremely prohibitive, which would result in no remedy.

21 41. This class action would serve to preserve judicial resources, the respective
22 parties' resources, and present fewer issues with the overall management of claims, while
23 at the same time ensuring a consistent result as to each class member.

FIRST CAUSE OF ACTION

Violations of California Civil Code § 1750, *et seq.*
By Plaintiff and the Proposed Sub-Class against Defendant
(Injunctive Relief Only with Reservation)

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

43. Plaintiff and the Sub-Class are “consumers” as defined by Cal. Civ. Code § 1761(d) and the Tradewinds Products are each a “good” as defined by Cal. Civ. Code § 1761(a).

44. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), expressly prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” The Defendant have violated § 1770(a)(5) insofar as the ‘natural’ related claims (“All Natural”, “100% Natural”, “With All Natural Ingredients”) constitute characteristics, ingredients and/or benefits that the Tradewinds Products do not have.

45. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(7), expressly prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” The Defendant have violated § 1770(a)(7) insofar as the Tradewinds Products are represented as all natural via the ‘natural’ related claims (“All Natural”, “100% Natural”, “With All Natural Ingredients”), which constitutes a particular quality or grade, when in truth they contain artificial and synthetic ingredients and are not all natural.

46. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9), expressly prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” The Defendant have violated § 1770(a)(9) insofar as the

1 Tradewinds Products have been advertised with ‘natural’ related claims (“All Natural”,
2 “100% Natural”, “With All Natural Ingredients”) , but are not advertised or sold in a
3 manner consistent with those claims. Because the Defendant know and have admitted
4 that the Tradewinds Products contain artificial or synthetic ingredients, the Defendant
5 intended not to the sell the Tradewinds Products as advertised, in violation of the CLRA.

6 47. The California Consumers Legal Remedies Act, Cal. Civ. Code §
7 1770(a)(16), expressly prohibits “[r]epresenting that the subject of a transaction has been
8 supplied in accordance with a previous representation when it has not.” The Defendant
9 have violated § 1770(a)(16) insofar as the Defendant have represented that the Plaintiff
10 and Sub-Class have been supplied with “all natural” iced tea when they have not.

11 48. Plaintiff and the proposed Sub-Class of California class members suffered
12 injuries caused by Defendant because they would not have purchased the Tradewinds
13 Products if the true facts were known concerning the Defendant’ false and misleading
14 ‘natural’ related claims (“All Natural”, “100% Natural”, “With All Natural Ingredients”).

15 49. On or about January 13, 2017, prior to filing this action, a notice letter was
16 served on Defendant advising the Defendant that they are in violation of the CLRA and
17 demanding remedies for Plaintiff and class members in accordance with Cal. Civ. Code
18 1782(a), which is attached to this complaint as “Exhibit A”.

19 50. Plaintiff seeks injunctive relief and damages for this violation of the CLRA
20 on behalf of himself and class members.. In compliance with Cal. Civ. Code 1782(d),
21 Plaintiff has executed the affidavit of venue attached hereto and filed concurrently
22 herewith.

SECOND CAUSE OF ACTION

Violations of California Business & Professions Code §§17500, *et seq.*
By Plaintiff and the Proposed Sub-Class against Defendant

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

52. Pursuant to Cal. Bus. & Prof. Code §§ 17500, *et seq.*, it is “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

53. Defendant committed acts of false advertising, as defined by §17500, by making the All Natural Claims regarding the Tradewinds Products because those claims are false and misleading.

54. Because the Defendant’s website and product labeling admit the Tradewinds Products contain artificial or synthetic ingredients, Defendant knew or should have known through the exercise of reasonable care that the All Natural Claims regarding the Tradewinds Products were false, untrue and misleading to Plaintiff and class members.

55. Defendant’s actions in violation of § 17500 were false and misleading such that the Plaintiff, the Proposed Sub-Class and the general public are and were likely to be deceived.

56. Plaintiff and the Proposed Sub-Class lost money or property as a result of Defendant’s false advertising violations, because they would not have purchased or paid a premium for the Tradewinds Products if they had not been deceived by the false All Natural Claims.

57. Plaintiff and the Proposed Sub-Class paid a premium for the Tradewinds Products due to their reliance on the All Natural Claims and on the Defendant's good faith and reputation.

THIRD CAUSE OF ACTION

For Breach of Express Warranty

Violations of Cal. Com. Code § 2313(1)

By Plaintiff and the Proposed Sub-Class against the Defendant

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

59. Defendant made representations, promises and/or affirmations of fact constituting express warranties regarding the 'natural' related claims ("All Natural", "100% Natural", "With All Natural Ingredients") which are/were contained on the front of Tradewinds Products and on Defendant's website. Defendant's statements, representations, and/or warranties formed a basis of the bargain on which the Plaintiff and the Proposed Sub-Class relied on in deciding to purchase and actually purchasing the Tradewinds Products. The warranties failed to comply with the affirmation that the Tradewinds Products were natural since they contain artificial and/or synthetic ingredients.

60. The Defendant breach the express warranties by selling the Tradewinds Products in contravention of the express warranties insofar as the Tradewinds Products contained artificial and/or synthetic ingredients.

61. Defendant's breach of the express warranties were the actual and proximate cause of damage to the Plaintiff and the Proposed Sub-Class including, *inter alia*, the loss of the purchase prices and/or the payment of a price premium in connection with their purchase of the Tradewinds Products.

62. Plaintiff provided written notice of breach to the Defendant, who failed to adequately respond or remedy the breach. The notice is attached to this complaint as “Exhibit A”.

63. Accordingly, Plaintiff and the Proposed Sub-Class seek actual damages arising from the Defendant’s breach of express warranty.

FOURTH CAUSE OF ACTION

For Breach of the Implied Warranty of Merchantability
Violations of Cal. Com. Code § 2314
By Plaintiff and the Proposed Sub-Class against the Defendant

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

65. Defendant made representations in the form of marketing and product labeling setting forth the All Natural Claims. The Defendant are merchants that sold the Tradewinds Products to Plaintiff and the Proposed Sub-Class, which carried with it an implied warranty that the Tradewinds Products were merchantable. Defendant made representations, promises and/or affirmations of fact constituting warranties regarding the ‘natural’ related claims (“All Natural”, “100% Natural”, “With All Natural Ingredients”) which are/were contained on the front of Tradewinds Products and on Defendant’s website. Defendant’s statements, representations, and/or warranties formed a basis of the bargain on which the Plaintiff and the Proposed Sub-Class relied on in deciding to purchase and actually purchasing the Tradewinds Products. The warranties failed to comply with the affirmation that the Tradewinds Products were natural since they contain artificial and/or synthetic ingredients.

66. The Defendant breach the implied warranty in that the All Natural Claims regarding Tradewinds Products were false.

67. As an actual and proximate result of the Defendant' breach of implied warranty, Plaintiff and the Proposed Sub-Class did not receive the Tradewinds Products in a manner that conformed to the promises and affirmations made on the labels thereof, in violation of Cal. Com. Code § 2314(2)(f).

68. Plaintiff provided written notice of breach to the Defendant, who failed to adequately respond or remedy the breach. The notice is attached as "Exhibit A" to this complaint.

69. Accordingly, Plaintiff and the Proposed Sub-Class seek actual damages arising from the Defendant' breach of implied warranty.

FIFTH CAUSE OF ACTION

For Fraud

By Plaintiff and Proposed Class against Defendant

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

71. Plaintiff brings this claim individually and on behalf of the Proposed Class against Defendant. At all times in purchasing Tradewinds Products, Plaintiff and class members believed prior to making purchase that they were purchasing products that did not contain artificial and/or synthetic ingredients as a result of Defendant's labeling. From 2013, Plaintiff saw and read similar labels prominently displayed on the Tradewinds Products at stores located in Los Angeles County and Orange County with the language "with ALL NATURAL ingredients" and "100% NATURAL", which Plaintiff relied on in deciding to purchase Tradewinds Products. Plaintiff also viewed Defendant's website, at one time or another, at some time through December 2016, which also displayed the 'natural' related claims which caused Plaintiff to purchase Tradewinds Products at stores located in Los Angeles County and/or Orange County. Plaintiff and

1 class members read Defendant's labeling on the front of the Tradewinds Products and on
2 Defendant's website containing 'natural' related claims ("All Natural", "100% Natural",
3 "With All Natural Ingredients") and paid a premium as a result of Defendant's
4 statements, representations, and/or warranties.

5 72. As discussed above, Defendant provided Plaintiff and Class members with
6 false or misleading material information in connection with the 'natural' related claims
7 ("All Natural", "100% Natural", "With All Natural Ingredients") contained on the
8 labeling of the Tradewinds Products and the Defendant's website. Plaintiff and class
9 members relied on Defendant's statements, representations, and warranties prior to
10 making the decision to purchase the Tradewinds Products. Defendant misrepresented
11 and/or failed to disclose material facts to Plaintiff and class members about the
12 Tradewinds Products – that the Tradewinds Products contained artificial and/or synthetic
13 ingredients.

14 73. Defendant misrepresented the nature and content of the Tradewinds Products
15 by making the false 'natural' related claims ("All Natural", "100% Natural", "With All
16 Natural Ingredients") that Plaintiff and the class members relied on to their detriment..

17 74. The Defendant' misrepresentations and omissions were made with
18 knowledge of the falsehood thereof or in conscious disregard of the likelihood of their
19 falsehood.

20 75. The misrepresentations and/or omissions made by Defendant, upon which
21 Plaintiff and Class members reasonably and justifiably relied, were intended to induce
22 and actually induced Plaintiff and the Proposed Class members to purchase the
23 Tradewinds Products.

1 76. The fraudulent actions of Defendant caused damage to Plaintiff and the
2 Proposed Class members, who are entitled to damages, punitive damages, and other legal
3 and equitable relief as a result.

4
5 **SIXTH CAUSE OF ACTION**

6 For Negligent Misrepresentation

7 By Plaintiff and Proposed Class against Defendant

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

10 78. Plaintiff brings this claim individually and on behalf of the Proposed Class
11 against Defendant. At all times in purchasing Tradewinds Products, Plaintiff and class
12 members believed prior to making purchase that they were purchasing products that did
13 not contain artificial and/or synthetic ingredients as a result of Defendant's labeling.
14 Plaintiff and class members read Defendant's labeling on the front of the Tradewinds
15 Products containing 'natural' related claims ("All Natural", "100% Natural", "With All
16 Natural Ingredients") and paid a premium as a result of Defendant's statements,
17 representations, and/or warranties.

18 79. Defendant misrepresented the nature, quality and ingredients of the
19 Tradewinds Products. Defendant had a duty to disclose this information.

20 80. At the time Defendant made the false 'natural' related claims ("All Natural",
21 "100% Natural", "With All Natural Ingredients") and representations, Defendant knew or
22 should have known that these representations were false or made them without
23 knowledge of their truth or veracity.

24 81. Defendant negligently misrepresented and omitted material facts about the
25 Tradewinds Products, in that they were not "natural" and in fact contained artificial
26 and/or synthetic ingredients. Plaintiff and the Proposed Class relied upon the negligent

1 statements or omissions and were deceived and induced into purchasing the Tradewinds
2 Products.

3 82. The negligent misrepresentations and/or omissions made by Defendant,
4 upon which Plaintiff and the Proposed Class members reasonably and justifiably relied,
5 were intended to induce and actually induced Plaintiff and the Proposed Class members
6 to purchase the Tradewinds Products.

7 83. Plaintiff and Class members would not have purchased the Tradewinds
8 Products and/or would not have paid a price premium therefore, if the true facts had been
9 known to them regarding the falsity of the All Natural Claims.

10 84. The negligent actions of Defendant caused damage to Plaintiff and the
11 Proposed Class members, who are entitled to damages and other legal and equitable relief
12 as a result.

13
14 **SEVENTH CAUSE OF ACTION**

15 For Violation Cal. Bus. & Prof. Code § 17200, *et seq.*
16 By Plaintiff and Proposed Sub-Class against Defendant

17 85. Plaintiff hereby incorporates by reference the allegations contained in all
18 preceding paragraphs of this complaint.

19 86. Plaintiff brings this claim individually and on behalf of the proposed Sub-
20 Class against Defendant.

21 87. Defendant is subject to California's Unfair Competition Law, Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* (the "UCL"). The UCL provides, in pertinent part: "Unfair
23 competition shall mean and include unlawful, unfair or fraudulent business practices and
24 unfair, deceptive, untrue or misleading advertising"

1 88. Defendant know and have known that the All Natural Claims are false,
2 deceptive and misleading as a result of the inclusion of caramel color and beta-carotene
3 in the Tradewinds Products.

4 89. The foregoing acts and omissions by the Defendant constitute unfair,
5 fraudulent business acts or practices and false advertising.

6 90. As alleged hereinabove, the false, deceptive and misleading All Natural
7 Claims by the Defendant are and were likely to deceive the Plaintiff, the Proposed Sub-
8 Class, reasonable consumers and members of the general public and are therefore
9 “fraudulent” within the meaning of the UCL.

10 91. The foregoing violations of the Consumer Legal Remedies Act, the False
11 Advertising Law and the California Commercial Code constitute “unlawful” business
12 practices within the meaning of the UCL.

13 92. Under the facts alleged hereinabove, the Defendant have also violations the
14 Federal Food, Drug and Cosmetic Act [21 C.F.R. §§ 301, 343(a)] and the California
15 Sherman Food & Drug and Cosmetic Act [Cal. Health & Safety Code § 109875], both of
16 which constitute unlawful business practices within the meaning of the UCL.

17 93. Defendant’ misrepresentations and other conduct, described herein, violated
18 the “unfair” prong of the UCL in that its conduct is substantially injurious to consumers,
19 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the
20 gravity of the conduct outweighs any alleged benefits. The harm is substantial given the
21 fact consumers are misled as to the nature of the Tradewinds Products and ‘natural’
22 related claims (“All Natural”, “100% Natural”, “With All Natural Ingredients”). Plaintiff
23 and the Proposed Sub-Class have thereby been deceived and misled into unfairly paying
24 premium prices.

1 94. Defendant have specific knowledge that its natural claims are false and
2 misleading, but continued to market the Tradewinds Products with the intent of making
3 substantial profits based on the unfair, fraudulent, deceptive practices alleged herein.

4 95. The Defendant' conduct is also unfair given the huge profits derived from
5 the sale of the Tradewinds Products at the expense of consumers as a result of the false
6 and misleading 'natural' related claims ("All Natural", "100% Natural", "With All
7 Natural Ingredients")..

8 96. Defendant violated the "fraudulent" prong of the UCL by making false
9 statements, untruths, and misrepresentations about the Tradewinds Products vis-à-vis the
10 'natural' related claims ("All Natural", "100% Natural", "With All Natural Ingredients")
11 which are/were likely to deceive the Plaintiff, the Proposed Sub-Class, reasonable
12 consumers and the general public.

13 97. Plaintiff, the Class, and the Sub-Class lost money or property as a result of
14 Defendant' UCL violations because they would not have purchased the Tradewinds
15 Products, would not have purchased the amount of Tradewinds Products they purchased,
16 and/or would not have paid the premium price they paid for the Tradewinds Products if
17 the true facts were known concerning the false and misleading All Natural Claims.

18 98. Defendant' business practices, as detailed above, are unethical, oppressive
19 and unscrupulous, and they violate fundamental policies of this state. Further, any
20 justification for Defendant' wrongful conduct is outweighed by the adverse effects of
21 such conduct.

22 99. Plaintiff and the Sub-Class members could not reasonably avoid the harm
23 caused by Defendant' wrongful practices. Assuming, arguendo, that Defendant' practices
24 are/were not express violations of the laws set forth above, those practices fall within the
25 penumbra of such laws and a finding of unfairness can properly be tethered to the public

1 policies expressed therein. Thus, Defendant engaged in unfair business practices
2 prohibited by California Business & Professions Code § 17200 et seq.

3 100. Plaintiff, the Class, and the Sub-Class are entitled to restitution and
4 injunctive relief.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
7 seeks judgment against Defendant, as follows:

- 8 a. For an order certifying the nationwide Class and the Sub-Class under Rule 23 of
9 the Federal Rules of Civil Procedure;
- 10 b. For an order certifying Plaintiff as the representative of the Class and Sub-Class
11 and Plaintiff's attorneys as Class Counsel to represent members of the Class and
12 Sub-Class;
- 13 c. For an order declaring the Defendant's conduct violates the statutes and laws
14 referenced herein;
- 15 d. For an order to correct, destroy, and change all false and misleading labeling and
16 website terms relating to the All Natural Claims;
- 17 e. For an order finding in favor of Plaintiff, the Class and the Sub-Class on all counts
18 asserted herein;
- 19 f. For compensatory and punitive damages in amounts to be determined;
- 20 g. For prejudgment interest on all amounts awarded;
- 21 h. For an order of restitution, disgorgement of profits, and all other forms of equitable
22 monetary relief;
- 23 i. For injunctive relief as pleaded or as the Court may deem proper; and
- 24 j. For an order awarding Plaintiff, the Class, and the Sub-Class their reasonable
25 attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

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

Respectfully submitted,

Dated: May 4, 2017

NATHAN & ASSOCIATES, APC

By: /s/ Reuben D. Nathan
Reuben D. Nathan, Esq.
Attorneys for Plaintiff Christopher
Rhinesmith and the Proposed Classes

EXHIBIT A

LAW OFFICES OF
ROSS CORNELL
A PROFESSIONAL CORPORATION

111 WEST OCEAN BLVD., SUITE 400 • LONG BEACH, CALIFORNIA 90802
TELEPHONE (562) 612-1708 • FACSIMILE (562) 394-9556
EMAIL: ROSS.LAW@ME.COM

January 13, 2017

Nestle Waters of North America, Inc.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

Via Certified U.S. Mail
Return Receipt Requested

Tradewinds Beverage Co.
c/o CT Corporation System
1300 E. 9th Street
Cleveland, OH 44114

Via Certified U.S. Mail
Return Receipt Requested

Sweet Leaf Tea Company
c/o CT Corporation System
1999 Bryan St., Suite 900
Dallas, TX 75201

Via Certified U.S. Mail
Return Receipt Requested

Re: Notice of Violation of California Consumer Legal Remedies Act and 30 Day Right to Cure Under Civil Code Section 1782. This is a Demand Letter and Must be Forwarded to the Appropriate Party For Immediate Resolution.

Dear Sir or Madame:

PLEASE TAKE NOTICE that we believe Nestle Waters of North America, Inc., Tradewinds Beverage Co. and Sweet Leaf Tea Company (hereinafter collectively “Tradewinds”) are in violation of the California Consumer Legal Remedies Act, *Cal. Civil Code* § 1750, *et seq.* (the “CLRA”), for the reasons set forth below.

We represent California consumer Christopher Rhinesmith, who purchased iced tea products from Tradewinds. The product purchases by our client and other similarly situated consumers, including *Unsweet Tea*, *Unsweet Tea with Hint of Lemon*, *Unsweet Tea with Hint of Raspberry*, *Unsweet Tea with Hint of Peach*, *Sweet Tea*, *Extra Sweet Tea*, *Raspberry Tea*, *Lemon Tea*, and *Jimmy Buffet Tropical Citrus Green Tea* (hereinafter the “Tradewinds Products”), were induced by false and misleading statements regarding the supposed “all natural” ingredients. Our client and similarly situated persons paid for the Tradewinds Products in reliance on Tradewinds’ “all natural” representations set forth in marketing materials and on product labels and is, therefore, an aggrieved customer.

Section 1770 of the CLRA lists a number of unfair methods of competition and unfair or deceptive acts or practices. The following are some of the prohibited acts under CLRA:

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- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have [Civil Code § 1770(a)(5)]
- Representing that goods are of a particular standard, quality or grade if they are of another [Civil Code § 1770(a)(7)]
- Advertising goods with the intent not to sell them as advertised [Civil Code § 1770(a)(9)]
- Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not [Civil Code § 1770(a)(16)]

Tradewinds claims that the Tradewinds Products are “All Natural”, “100% Natural”, are made “With All Natural Ingredients”, and are “Naturally Flavored with All Natural Flavors” (hereinafter the “All Natural Claims”). The All Natural Claims are false because the Tradewinds Products contain artificial caramel and beta-carotene color additives that are not considered “natural” ingredients under current FDA regulations, but instead are artificial and/or synthetic.¹

The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), expressly prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” Tradewinds violated § 1770(a)(5) insofar as the All Natural Claims constitute characteristics, ingredients and/or benefits that the Tradewinds Products do not have.

The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(7), expressly prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Tradewinds violated § 1770(a)(7) insofar as the Tradewinds Products are represented as all natural via the All Natural Claims, which constitutes a particular quality or grade, when in truth they contain artificial and synthetic ingredients and are not all natural.

The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9), expressly prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” Tradewinds violated § 1770(a)(9) insofar as the Tradewinds Products have been advertised with All Natural Claims, but are not advertised or sold in a manner consistent with those claims. Because Tradewinds knows that the Tradewinds Products contain artificial or synthetic ingredients, Tradewinds intended not to sell them as advertised, in violation of the CLRA.

The California Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(16), expressly prohibits “[r]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not.” Tradewinds violated § 1770(a)(16)

¹ 21 CFR Part 101 [Docket No. FDA–2014–N–1207]: Use of the Term “Natural” in the Labeling of Human Food Products

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insofar as the Tradewinds has represented that the Plaintiff and similarly situated consumers have been supplied with “all natural” iced tea when they have not.

Mr. Rhinesmith and others reasonably relied on the language advertised by Tradewinds in promoting, marketing, labeling and selling the Tradewinds Products. Mr. Rhinesmith and others are, therefore, the victims of a planned pattern and scheme of misleading advertising regarding the advertising, promotion, and sale of goods that violates the CLRA.

Tradewinds’ pattern and practice of violating the CLRA and falsely advertising fabricated All Natural Claims constitute unfair business practices within the meaning of California Business and Professions Code § 17200 and false advertising pursuant to § 17500. Furthermore, the aforementioned conduct constitutes a violation of Cal. Com. Code § 2313(1) and 2314 and the rules regarding express and implied warranties.

YOU HAVE THIRTY (30) DAYS from the date on which this notice is served upon you to correct, repair, replace, or otherwise rectify the foregoing violations as to our client and all aggrieved consumers. Our client demands that Tradewinds immediately cease the unlawful business practices described herein, disgorge the profits derived from its unlawful business practice and false advertising, and make restitution to our client and all similarly situated purchasers of the Tradewinds Products, without limitation.

FAILURE TO TAKE ACTION WITHIN 30 DAYS OF THE RECEIPT OF THIS NOTICE SHALL RESULT IN THE FILING OF A CIVIL LAWSUIT IN U.S. DISTRICT COURT for damages, restitution and injunctive relief and all other appropriate relief on behalf of our client and all others similarly situated pursuant to *Cal. Civil Code* § 1780, *et seq.*, *Cal. Business and Prof. Code* §§ 17200 and 17500 and for statutory damages, punitive damages, treble damages, and attorney fees and costs as authorized by law.

Any response hereto shall be provided in written format and shall be clear and understandable and mailed via certified mail to the following addresses:

ROSS CORNELL
111 W. OCEAN BLVD., SUITE 400
LONG BEACH, CA 90802

REUBEN D. NATHAN
600 W BROADWAY STE 700
SAN DIEGO, CA 92101-3370

NOTICE AND DEMAND TO PRESERVE EVIDENCE. This letter also constitutes notice to Tradewinds that it is not to destroy, conceal or alter in any manner whatsoever any evidence, documents, merchandise, information, paper or electronic data and/or other tangible items or property potentially discoverable in the above- referenced matter,

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including but not limited to documents that relate to Tradewinds' processes for advertising Products online, Tradewinds' process for creating marketing materials and product labels, and all documents that relate to Tradewinds' advertising practices regarding the Tradewinds Products. In order to assure that Tradewinds' obligation to preserve documents and things will be met, please forward a copy of this letter to any and all persons and entities with custodial responsibilities for the items referred to herein and other relevant evidence.

We look forward to your written response. If you fail to adequately redress the matters set forth herein within thirty (30) days, be advised that we will seek damages under Civil Code § 1780 on a class-wide basis.

Best regards,

A handwritten signature in black ink, appearing to be "Ross Cornell", with a long horizontal flourish extending to the right.

ROSS CORNELL


EXHIBIT B

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1. I am the Plaintiff in the within lawsuit against Tradewinds Beverage Company, Sweet Leaf Tea Company and Nestle Waters North America, Inc. and specifically to the First Cause of Action for Violations of the Consumer Legal Remedies Act.

2. The Complaint in this action is filed in the proper place for trial because the Defendant is doing business in Los Angeles County, which is where a substantial portion of the transactions at issue in the complaint arose.

Executed this 17th day of January 2017 in Los Angeles, California.

DocuSigned by:

 D538023ADE504DE...
 Christopher Rhinesmith