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15 Christopher Rhinesmith and the Proposed Class

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

21 Plaintiff

22 v.

23 Tradewinds Beverage Company; Sweet
24 Leaf Tea Company; Nestle Waters North
25 America, Inc. and DOES 1 through 25,
26 inclusive.

27 Defendants.

Case No. 2:17-cv-00408

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 Defendants, Tradewinds Beverage
5 Company, Sweet Leaf Tea Company and Nestle Waters North America, Inc.

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 Iced Tea products that are branded,
13 manufactured, distributed, marketed and sold by Nestle Waters of North America, Inc.

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

20 **PARTIES**

21 3. Plaintiff, Christopher Rhinesmith (“Plaintiff”), is a citizen of California,
22 who resides in the county of Los Angeles. Plaintiff has purchased Defendants’ iced tea
23 products regularly over a period of more than one year and thereby altered his position in
24 an amount equal to the amount he paid for the Defendants’ products. Plaintiff and the
25 Proposed Class would not have purchased or paid a premium for the Tradewinds

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

3 4. Defendant, Nestle Waters of North America, Inc., is a Delaware corporation
4 with its headquarters in Stamford, Connecticut.

5 5. Defendant, Sweet Leaf Tea Company, is a Texas corporation with its
6 headquarters in Austin, Texas.

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

9 7. Defendants Nestle Waters of North America, Inc., Sweet Leaf Tea Company
10 and Tradewinds Beverage Company are hereinafter referred to collectively as the
11 “Defendants” or “Tradewinds”.

12 8. The Tradewinds iced tea products that are the subject of this action include
13 *Unsweet Tea, Unsweet Tea with Hint of Lemon, Unsweet Tea with Hint of Raspberry,*
14 *Unsweet Tea with Hint of Peach, Sweet Tea, Extra Sweet Tea, Raspberry Tea, Lemon*
15 *Tea, and Jimmy Buffet Tropical Citrus Green Tea* (hereinafter the “Tradewinds
16 Products”). The Tradewinds Products are manufactured, packaged, marketed, distributed
17 and sold by the Defendants via supermarket chains and retail stores throughout the
18 United States.

19 9. The Defendants make false, deceptive and misleading claims regarding
20 natural ingredients used in the Tradewinds Products. Defendants created and/or
21 authorized the false, misleading, and deceptive advertisements and/or packaging and
22 labeling for the Tradewinds Products that falsely claim they are natural or contain all
23 natural ingredients.

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

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

13 12. On information and belief, Plaintiff alleges that Defendants carried out a
14 joint scheme with a common business plan and policies in all respects pertinent hereto
15 and that all acts and omissions herein complained of were performed in knowing
16 cooperation with each other.

17 13. On information and belief, Plaintiff alleges that the shareholders, executive
18 officers, managers, and supervisors of the Defendants directed, authorized, ratified and/or
19 participated in the actions, omissions and other conduct that gives rise to the claims
20 asserted herein. Defendants' officers, directors, and high-level employees caused
21 Tradewinds Products to be sold with knowledge or reckless disregard that the statements
22 and representations concerning the Tradewinds Products were false and misleading.

23 14. Plaintiff is informed and believes, and thereon alleges, that each of the
24 Defendants is in some manner intentionally, negligently, or otherwise responsible for the
25 acts, omissions, occurrences, and transactions alleged herein.

JURISDICTION AND VENUE

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

8 16. Plaintiff is a citizen of California and this Court has personal jurisdiction
9 over Defendants because Defendants conduct business in California and otherwise
10 intentionally avail themselves of the markets in California so as to render the exercise of
11 jurisdiction by this Court proper. Defendants have marketed, promoted, distributed, and
12 sold the Tradewinds Products in California and in this District, which is where Plaintiff
13 purchased Defendants’ products.

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

FACTUAL BACKGROUND

17
18 18. Plaintiff has purchased the Tradewinds Products for more than one year
19 from various locations throughout Los Angeles and other counties in the state of
20 California. Plaintiff’s preference for iced teas is similar to other consumers seeking the
21 health and wellness benefits of a natural product, which is why the Plaintiff has sought
22 out been willing to pay a higher premium price for the Defendants’ iced tea. Plaintiff
23 purchased and paid a premium therefore in reliance on such statements as “All Natural”,
24 “100% Natural”, “With All Natural Ingredients”, and “Naturally Flavored with All
25 Natural Flavors”.

1 19. The Defendants’ “natural” claims are printed on labels affixed to the
2 Tradewinds Products and are widely disseminated on Tradewinds website as of the date
3 of filing this action. At all times, Plaintiff believed that he was purchasing “all natural”
4 products when purchasing the Tradewinds Products. Plaintiff would not have continued
5 to purchase the products, or would have purchased them but at a lesser price, absent the
6 misleading all natural-related statements and representations made by Defendants.

7 20. Defendants manufacture and produce a variety of sweetened and
8 unsweetened iced teas. Defendants claim that the Tradewinds Products are “All Natural”,
9 “100% Natural”, are made “With All Natural Ingredients”, and are “Naturally Flavored
10 with All Natural Flavors” (hereinafter the “All Natural Claims”). The All Natural Claims
11 made by the Defendants regarding the Tradewinds Products are false, misleading and
12 deceptive. The Tradewinds Products cost more than other similar products that do have
13 misleading labeling setting forth false All Natural Claims. If the Defendants were
14 enjoined from making the false All Natural Claims, the market demand and price for the
15 Tradewinds Products would be reduced insofar as the market prices have been artificially
16 inflated as a result of the Defendants’ false All Natural Claims.

17 21. Defendants admit on the Tradewinds website that they use caramel color in
18 the Tradewinds Products.¹ The following statement is prominently in the Frequently
19 Asked Questions section of the Tradewinds website, admitting caramel color is used in
20 the Tradewinds Products:

21 **Do Tradewinds Teas contain 4-MEI caramel color?**

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

23
24 22. The Defendants prominently display claims that the Tradewinds Products

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26 ¹ www.tradewindsteas.com/faq/

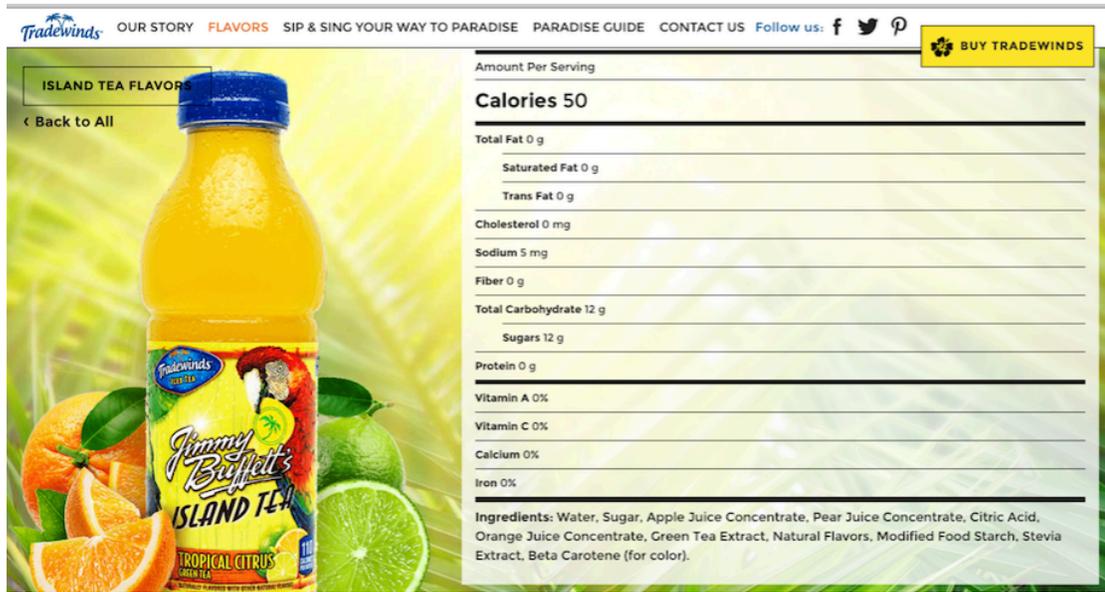
1 are “100% Natural” on the labels affixed to the products and on its website. The
2 following images show an example:



10 23. The Defendants prominently display claims that the Tradewinds Products
11 are made “With all Natural Ingredients” on the labels affixed to the products and on its
12 website. The following images show an example:



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21 24. The Defendants admit on product labels and on its website that beta-carotene
22 coloring is used in the “Jimmy Buffet’s” line of iced teas. The following images show an
23 example:
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Ingredients: Water, Sugar, Apple Juice Concentrate, Pear Juice Concentrate, Citric Acid, Orange Juice Concentrate, Green Tea Extract, Natural Flavors, Modified Food Starch, Stevia Extract, Beta Carotene (for color).

25. The FDA considers the term “natural” to mean that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food.² By the Defendants’ own admissions, the Tradewinds Products are artificially colored with caramel color and/or beta-carotene. Caramel color and/or beta-carotene are artificial or synthetic, have been added, and would not normally be expected to be in iced tea. Insofar as the Defendants make very specific representations that the Tradewinds Products are “natural,” those representations and the All Natural Claims are false, deceptive and misleading.

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

PRIVATE ATTORNEYS GENERAL ALLEGATIONS

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

11 **CLASS ACTION ALLEGATIONS**

12 27. Plaintiff brings this action on his own behalf and on behalf of all other
13 persons similarly situated pursuant to Federal Rule of Civil Procedure 23.
14

15 28. Plaintiff seeks to represent the following Class and Sub-Class (hereinafter
16 collectively the “Classes”):

17 All persons residing in the United States who purchased the Tradewinds
18 Products for personal use and not for resale during the time period January
19 18, 2013, through the present (the “Class”).

20 All persons residing in the State of California who purchased the Products
21 for personal use and not for resale during the time period January 18, 2013,
22 through the present (the “Sub-Class”).

23 29. The Classes comprise many thousands of persons throughout the United
24 States and California, the joinder of whom is impracticable, and the disposition of their
25 claims in a class action will benefit the parties and the Court. The Classes are sufficiently
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1 numerous because on information and belief, thousands to hundreds of thousands of units
2 of the Tradewinds Products have been sold in the United States and State of California
3 during the time period January 18, 2013, through the present (the “Class Period”).

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

- 6 a. Numerosity: The members of the Classes are so numerous that any form of
7 joinder of all members would be unfeasible and impractical. On information
8 and belief, Plaintiff believes the size of the Classes exceed thousands of
9 members.
- 10 b. Typicality: Plaintiff is qualified to and will fairly and adequately protect the
11 interests of each member of the Classes with whom he has a well-defined
12 community of interest and the claims (or defenses, if any), are typical of all
13 members of the Classes.
- 14 c. Adequacy: Plaintiff does not have a conflict with the Classes and is qualified to
15 and will fairly and adequately protect the interests of each member of the
16 Classes with whom he has a well- defined community of interest and typicality
17 of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to
18 the Court to make known any relationship, conflict, or difference with any
19 putative class member. Plaintiff’s attorneys and proposed class counsel are
20 well versed in the rules governing class action and complex litigation regarding
21 discovery, certification, and settlement.
- 22 d. Superiority: The nature of this action makes the use of class action adjudication
23 superior to other methods. Class action will achieve economies of time, effort,
24 and expense as compared with separate lawsuits, and will avoid inconsistent
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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 Defendants' conduct is a fraudulent business act or practice within the
8 meaning of Business and Professions Code section 17200, *et seq.*;
- 9 b. Whether Defendants' advertising is untrue or misleading within the meaning of
10 Business and Professions Code section 17500, *et seq.*;
- 11 c. Whether Defendants made false and misleading representations in the advertising
12 and/or packaging of the Tradewinds Products;
- 13 d. Whether Defendants knew or should have known that the All Natural Claims and
14 representations were false;
- 15 e. Whether Defendants represented that the Tradewinds Products have characteristics,
16 benefits, uses, or quantities which they do not have;
- 17 f. Whether Defendants representations regarding the Tradewinds Products are false;
- 18 g. Whether Defendants warranted the health and wellness of the Tradewinds Products
19 by virtue of the All Natural Claims;
- 20 h. Whether the Defendants breached warranties regarding the Tradewinds Products;
- 21 i. Whether the Defendants committed statutory and common law fraud; and
- 22 j. Whether Defendants' conduct as alleged herein constitutes an unlawful business
23 act or practice within the meaning of Business and Professions Code section 17200, *et*
24 *seq.*;

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 Defendants' false representations. Indeed, Plaintiff purchased the Tradewinds
6 Products under the belief that they were "natural". Plaintiff relied on Defendants'
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 Defendants' 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 Defendants 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 Defendants' conduct would increase
24 delay and expense to all parties and the court system. The class action device presents far
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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. Defendants 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 Defendants.

9 38. Absent a class action, Defendants 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 Defendants 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 Defendants in this action, any entity in
16 which Defendants have a controlling interest, including, but not limited to officers,
17 directors, shareholders, current employees and any and all legal representatives, heirs,
18 successors, and assigns of Defendants.

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 Defendants
(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 Defendants have violated § 1770(a)(5) insofar as the All Natural Claims 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 Defendants have 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.

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 Defendants have violated § 1770(a)(9) insofar as the

1 Tradewinds Products have been advertised with All Natural Claims, but are not
2 advertised or sold in a manner consistent with those claims. Because the Defendants
3 know and have admitted that the Tradewinds Products contain artificial or synthetic
4 ingredients, the Defendants intended not to the sell the Tradewinds Products as
5 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 Defendants
9 have violated § 1770(a)(16) insofar as the Defendants 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 Defendants because they would not have purchased the Tradewinds
13 Products if the true facts were known concerning the Defendants’ false and misleading
14 All Natural Claims.

15 49. On or about January 13, 2017, prior to filing this action, a notice letter was
16 served on Defendants advising the Defendants 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).

19 50. Plaintiff seeks injunctive relief only for this violation of the CLRA, but
20 reserves it right to amend this complaint to include allegations for the recovery of
21 damages under the CLRA. In compliance with Cal. Civ. Code 1782(d), Plaintiff has
22 executed the affidavit of venue attached hereto and filed concurrently herewith.

SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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5 **THIRD CAUSE OF ACTION**

6 For Breach of Express Warranty

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

8 By Plaintiff and the Proposed Sub-Class against the Defendants

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

11 59. Defendants made representations, promises and/or affirmations of fact
12 constituting express warranties regarding the All Natural Claims, which formed a basis of
13 the bargain on which the Plaintiff and the Proposed Sub-Class relied in purchasing the
14 Tradewinds Products.

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

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

22 62. Plaintiff provided written notice of breach to the Defendants, who failed to
23 adequately respond or remedy the breach.

24 63. Accordingly, Plaintiff and the Proposed Sub-Class seek actual damages
25 arising from the Defendants' 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 Defendants

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

65. Defendants made representations in the form of marketing and product labeling setting forth the All Natural Claims. The Defendants 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.

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

67. As an actual and proximate result of the Defendants' 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 Defendants, who failed to adequately respond or remedy the breach.

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

FIFTH CAUSE OF ACTION

For Fraud

By Plaintiff and Proposed Class against Defendants

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

1 71. Plaintiff brings this claim individually and on behalf of the Proposed Class
2 against Defendants.

3 72. As discussed above, Defendants provided Plaintiff and Class members with
4 false or misleading material information in connection with the All Natural Claims and
5 failed to disclose material facts about the Tradewinds Products.

6 73. Defendants misrepresented the nature and content of the Tradewinds
7 Products by making the false All Natural Claims.

8 74. The Defendants' misrepresentations and omissions were made with
9 knowledge of the falsehood thereof or in conscious disregard of the likelihood of their
10 falsehood.

11 75. The misrepresentations and/or omissions made by Defendants, upon which
12 Plaintiff and Class members reasonably and justifiably relied, were intended to induce
13 and actually induced Plaintiff and the Proposed Class members to purchase the
14 Tradewinds Products.

15 76. The fraudulent actions of Defendants caused damage to Plaintiff and the
16 Proposed Class members, who are entitled to damages, punitive damages, and other legal
17 and equitable relief as a result.

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19 **SIXTH CAUSE OF ACTION**

20 For Negligent Misrepresentation

21 By Plaintiff and Proposed Class against Defendants

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

24 78. Plaintiff brings this claim individually and on behalf of the Proposed Class
25 against Defendants.

1 79. Defendants misrepresented the nature, quality and ingredients of the
2 Tradewinds Products. Defendants had a duty to disclose this information.

3 80. At the time Defendants made the false All Natural Claims and
4 representations, Defendants knew or should have known that these representations were
5 false or made them without knowledge of their truth or veracity.

6 81. Defendants negligently misrepresented and omitted material facts about the
7 Tradewinds Products, in that they were not “all natural” and in fact contained artificial
8 and/or synthetic ingredients. Plaintiff and the Proposed Class relied upon the negligent
9 statements or omissions and were deceived and induced into purchasing the Tradewinds
10 Products.

11 82. The negligent misrepresentations and/or omissions made by Defendants,
12 upon which Plaintiff and the Proposed Class members reasonably and justifiably relied,
13 were intended to induce and actually induced Plaintiff and the Proposed Class members
14 to purchase the Tradewinds Products.

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

18 84. The negligent actions of Defendants caused damage to Plaintiff and the
19 Proposed Class members, who are entitled to damages and other legal and equitable relief
20 as a result.

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22 **SEVENTH CAUSE OF ACTION**

23 For Violation Cal. Bus. & Prof. Code § 17200, *et seq.*
24 By Plaintiff and Proposed Sub-Class against Defendants

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

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

3 87. Defendant is subject to California’s Unfair Competition Law, Cal. Bus. &
4 Prof. Code §§ 17200, *et seq.* (the “UCL”). The UCL provides, in pertinent part: “Unfair
5 competition shall mean and include unlawful, unfair or fraudulent business practices and
6 unfair, deceptive, untrue or misleading advertising”

7 88. Defendants know and have known that the All Natural Claims are false,
8 deceptive and misleading as a result of the inclusion of caramel color and beta-carotene
9 in the Tradewinds Products.

10 89. The foregoing acts and omissions by the Defendants constitute unfair,
11 fraudulent business acts or practices and false advertising.

12 90. As alleged hereinabove, the false, deceptive and misleading All Natural
13 Claims by the Defendants are and were likely to deceive the Plaintiff, the Proposed Sub-
14 Class, reasonable consumers and members of the general public and are therefore
15 “fraudulent” within the meaning of the UCL.

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

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

23 93. Defendants’ misrepresentations and other conduct, described herein, violated
24 the “unfair” prong of the UCL in that its conduct is substantially injurious to consumers,
25 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the

1 gravity of the conduct outweighs any alleged benefits. The harm is substantial given the
2 fact consumers are misled as to the nature of the Tradewinds Products and All Natural
3 Claims and Plaintiff and the Proposed Sub-Class have thereby been deceived and misled
4 into unfairly paying premium prices.

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

8 95. The Defendants' conduct is also unfair given the huge profits derived from
9 the sale of the Tradewinds Products at the expense of consumers as a result of the false
10 and misleading All Natural Claims.

11 96. Defendant violated the "fraudulent" prong of the UCL by making false
12 statements, untruths, and misrepresentations about the Tradewinds Products vis-à-vis the
13 All Natural Claims which are/were likely to deceive the Plaintiff, the Proposed Sub-
14 Class, reasonable consumers and the general public.

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

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

24 99. Plaintiff and the Sub-Class members could not reasonably avoid the harm
25 caused by Defendants' wrongful practices. Assuming, arguendo, that Defendants'

1 practices are/were not express violations of the laws set forth above, those practices fall
2 within the penumbra of such laws and a finding of unfairness can properly be tethered to
3 the public policies expressed therein. Thus, Defendants engaged in unfair business
4 practices prohibited by California Business & Professions Code § 17200 et seq.

5 100. Plaintiff, the Class, and the Sub-Class are entitled to restitution and
6 injunctive relief.

7
8 **PRAYER FOR RELIEF**

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

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

- 1 i. For injunctive relief as pleaded or as the Court may deem proper; and
2 j. For an order awarding Plaintiff, the Class, and the Sub-Class their reasonable
3 attorneys' fees and expenses and costs of suit.
4

5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff demands a trial by jury of all issues so triable.
7

8 Respectfully submitted,
9

10 Dated: January 18, 2017

LAW OFFICES OF ROSS CORNELL, APC

11 By: /s/ Ross Cornell
12 Ross Cornell, Esq.
13 Attorneys for Christopher Rhinesmith
14 and the Proposed Classes
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DECLARATION OF CHRISTOPHER RHINESMITH

I, Christopher Rhinesmith, declare as follows:

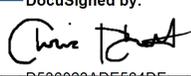
1. I am the Plaintiff in the within lawsuit against Tradewinds Beverage Company, Sweet Leaf Tea Company and Nestle Waters North America, Inc. and specifically to the First Cause of Action for Violations of the Consumer Legal Remedies Act.

2. I am competent adult, over eighteen years of age, and at all times material to this action I have been a citizen of the United States, residing in California. I make this affidavit as required by California Civil Code §1780(d).

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.

I declare under penalty of perjury under the laws of the United States that the foregoing is true to the best of my knowledge.

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

DocuSigned by:


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Christopher Rhinesmith