

1 **FARUQI & FARUQI, LLP**
Barbara A. Rohr (SBN 273353)
2 Benjamin Heikali (SBN 307466)
10866 Wilshire Boulevard, Suite 1470
3 Los Angeles, CA 90024
4 Telephone: (424) 256-2884
Facsimile: (424) 256-2885
5 E-mail: brohr@faruqilaw.com
bheikali@faruqilaw.com
6

7 *Attorneys for Plaintiff Theodore Broomfield*
8 *and the putative classes*

8 **THE WAND LAW FIRM**
Aubry Wand (SBN 281207)
9 400 Corporate Pointe, Suite 300
10 Culver City, California 90230
Telephone: (310) 590-4503
11 Facsimile: (310) 590-4596
E-mail: awand@wandlawfirm.com

12 *Attorneys for Plaintiffs Sara Cilloni and*
13 *Simone Zimmer and the putative classes*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 THEODORE BROOMFIELD, *et al.*,

18 Plaintiffs,

19 v.

20 CRAFT BREW ALLIANCE, INC., *et al.*,

21 Defendants.
22
23
24
25
26
27
28

CASE NO.: 5:17-cv-01027-BLF

CLASS ACTION

**CONSOLIDATED CLASS ACTION
COMPLAINT**

1. **Violation of California Consumer Legal Remedies Act**
2. **Violation of California Unfair Competition Law**
3. **Violation of California False Advertising Law**
4. **Breach of Express Warranty**
5. **Breach of Implied Warranty**
6. **Common Law Fraud**
7. **Intentional Misrepresentation**
8. **Negligent Misrepresentation**
9. **Unjust Enrichment and Common Law Restitution**

DEMAND FOR JURY TRIAL

1 Plaintiffs Theodore Broomfield, Sara Cilloni, and Simone Zimmer, (collectively, the
2 “Plaintiffs”), on behalf of themselves and all others similarly situated, bring this class action
3 against Defendants Craft Brew Alliance, Inc. d/b/a Kona Brewing Co., and DOES 1 through 50
4 (collectively, the “Defendants”), seeking monetary damages, injunctive relief, and other remedies.
5 Plaintiffs make the following allegations based on the investigation of their counsel and on
6 information and belief, except as to allegations pertaining to Plaintiffs individually, which is based
7 on their personal knowledge.

8 INTRODUCTION

9 1. Through false and deceptive packaging and advertising, Defendants intentionally
10 mislead consumers into believing that their Kona Brewing Co. brand beers are brewed in Hawaii.
11 In reality, these beers are brewed in the continental United States.¹

12 2. The falsely advertised beers at issue in this action include, but are not limited to,
13 Kona Brewing Co. brand Longboard Island Lager, Big Wave Golden Ale, Fire Rock Pale Ale,
14 Wailua Wheat Ale, Hanalei Island IPA, Castaway IPA, Lavaman Red Ale, Lemongrass Luau,
15 Koko Brown, and Pipeline Porter (hereinafter, collectively referred to as the “Kona Brewing Co.
16 Beers”).

17 3. At all relevant times, Defendants have packaged, advertised, marketed, distributed,
18 and sold the Kona Brewing Co. Beers to consumers via retail stores and restaurants throughout the
19 continental United States based on the misrepresentation that the Kona Brewing Co. Beers are
20 brewed in Hawaii. However, none of the Kona Brewing Co. Beers that are available for sale in
21 the continental United States are brewed by Defendants in Hawaii. Rather, the Kona Brewing Co.
22 Beers are brewed by Defendants in Oregon, Washington, Tennessee, and New Hampshire.

23 4. Defendants intentionally play on the false impression that the Kona Brewing Co.
24 Beers are brewed in Hawaii and then imported to the continental United States. Craft Brew
25 Alliance, Inc.’s Chief Marketing Officer recently admitted so on the company’s third quarter 2016
26 earnings call by stating: “I’d also like to remind everyone again about why the Kona brand is

27 _____

28 ¹ Kona Brewing Co.’s draft beers sold in Hawaii are brewed in Hawaii.

1 special among the over 5,000 craft brands available in the U.S. First, *the Kona brand plays like a*
2 *craft brand imported from Hawaii* and has the benefit of being a lifestyle, a craft and an
3 important play... Kona's performance in California highlights *Kona's ability trends in craft*
4 *localness and play as an imported craft brand from Hawaii.*"² (emphases added).

5 5. Plaintiffs and other consumers purchased the Kona Brewing Co. Beers because
6 they reasonably believed, based on Defendants' packaging and advertising that the Kona Brewing
7 Co. Beers are brewed in Hawaii. Had Plaintiffs and other consumers known that the Kona
8 Brewing Co. Beers were not brewed in Hawaii, they would not have purchased the Kona Brewing
9 Co. Beers or would have paid significantly less for them. As a result, Plaintiffs and other
10 consumers have been deceived and have suffered economic injury.

11 6. Plaintiffs seek relief in this action individually, and on behalf of all other similarly
12 situated individuals who purchased the Kona Brewing Co. Beers during the relevant statute of
13 limitations period, for violations of California's Consumer Legal Remedies Act ("CLRA"), Cal.
14 Civ. Code §§ 1750, *et seq.*, California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof.
15 Code §§ 17200, *et seq.*, California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§
16 17500, *et seq.*, and for breach of express warranty, breach of implied warranty, common law
17 fraud, intentional misrepresentation, negligent misrepresentation, and unjust enrichment.

18 7. Plaintiffs seek to represent a Nationwide Class, a California Subclass, and a
19 California Consumer Subclass (defined *infra* in paragraph 99) (hereinafter, collectively referred to
20 as "Classes").

21 8. As a result of the unlawful scheme alleged herein, Defendants have been able to
22 overcharge Plaintiffs and other consumers for beer, induce purchases that would otherwise not
23 have occurred, and/or obtain wrongful profits. Defendants' misconduct has caused Plaintiffs and
24 other consumers to suffer monetary damages. Plaintiffs, on behalf themselves and other similarly
25

27 ² [https://seekingalpha.com/article/4019249-craft-brew-alliances-brew-ceo-andrew-thomas-q3-](https://seekingalpha.com/article/4019249-craft-brew-alliances-brew-ceo-andrew-thomas-q3-2016-results-earnings-call-transcript)
28 2016-results-earnings-call-transcript (last visited on April 7, 2016).

1 situated consumers, seek damages, restitution, declaratory and injunctive relief, and all other
2 remedies provided by applicable law or this Court deems appropriate.

3 **JURISDICTION AND VENUE**

4 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because
5 Plaintiffs are citizens of the State of California, Defendant Craft Brew Alliance, Inc. is a citizen of
6 the State of Oregon and the State of Washington, and the amount in controversy exceeds the sum
7 or value of \$75,000, exclusive of interest and costs. This Court also has subject matter jurisdiction
8 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class
9 action filed under Rule 23 of the Federal Rules of Civil Procedure, there are thousands of
10 proposed Class members, the aggregate amount in controversy exceeds \$5,000,000 exclusive of
11 interest and costs, and Defendant Craft Brew Alliance, Inc. is a citizen of a state different from
12 that of Plaintiffs and members of the proposed Classes.

13 10. This Court has personal jurisdiction over Defendants because Defendants have
14 sufficient minimum contacts with the State of California, and/or otherwise intentionally avail
15 themselves of the markets in the State of California through the promotion, marketing, and sale of
16 Kona Brewing Co. Beers in this State to render the exercise of jurisdiction by this Court
17 permissible under traditional notions of fair play and substantial justice.

18 11. Venue is proper in this District under 28 U.S.C. § 1391(a)-(d) because a substantial
19 part of the events or omissions giving rise to the claims occurred in this District.

20 **PLAINTIFFS**

21 12. Plaintiff Theodore Broomfield is a citizen of the United States and the State of
22 California, and he currently resides in the County of San Francisco. In February of 2017, Mr.
23 Broomfield purchased a twelve-pack of Longboard Island Lager from Walgreens in San
24 Francisco. In purchasing the Longboard Island Lager, Mr. Broomfield saw and relied on the
25 packaging of the Longboard Island Lager. Specifically, Mr. Broomfield saw and relied on the
26 following illustrations and representations on the packaging: a beach, surfers, surfboards,
27 “Longboard Island Lager,” “Liquid Aloha,” and an image of a map of the major Hawaiian Islands,
28 which depicts the location of the Kona Brewing Co. Brewery on the Big Island. Based on these

1 representations, Mr. Broomfield believed he was purchasing a beer brewed in Hawaii. However,
2 unbeknownst to Mr. Broomfield, Longboard Island Lager, like the other Kona Brewing Co. Beers,
3 was not brewed in Hawaii, but was instead brewed in the continental United States. Mr.
4 Broomfield would not have purchased the Longboard Island Lager or would have paid
5 significantly less for it had he known that it was brewed in the continental United States.
6 Therefore, Mr. Broomfield suffered injury in fact and lost money as a result of Defendants'
7 misleading, false, unfair, and fraudulent practices, as described herein.

8 13. Plaintiff Sara Cilloni is a citizen of the United States and the State of California,
9 and currently resides in the County of Santa Clara. Plaintiff Cilloni has regularly purchased the
10 Longboard Island Lager over the relevant Class Period. Her most recent purchase of the
11 Longboard Island Lager was a six-pack in or around July 2016 from a retailer in San Jose,
12 California. In purchasing the Longboard Island Lager, Ms. Cilloni saw and relied on the
13 packaging of the Longboard Island Lager. Specifically, Ms. Cilloni saw and relied on the
14 following illustrations and representations on the packaging: a beach, surfers, surfboards,
15 "Longboard Island Lager" and "Liquid Aloha." Based on these representations, Ms. Cilloni
16 believed she was purchasing a beer brewed in Hawaii. However, unbeknownst to Ms. Cilloni,
17 Longboard Island Lager, like the other Kona Brewing Co. Beers, was not brewed in Hawaii, but
18 was instead brewed in the continental United States. Ms. Cilloni would not have purchased the
19 Longboard Island Lager or would have paid significantly less for the beer had she known that the
20 beer was brewed in the continental United States. Therefore, Ms. Cilloni suffered injury in fact
21 and lost money as a result of Defendants' misleading, false, unfair, and fraudulent practices, as
22 described herein.

23 14. Plaintiff Simone Zimmer is a citizen of the United States and the State of
24 California, and she currently resides in the County of San Bernardino. Plaintiff Zimmer has
25 regularly purchased the Kona Brewing Co. Beers over the relevant Class Period, including, but not
26 limited to, six-packs of the Fire Rock Pale Ale, the Big Wave Golden Ale, and the Island Hopper
27 Variety twelve-pack (which includes Big Wave Golden Ale, Longboard Island Lager, Fire Rock
28 Pale Ale, and Castaway IPA). Ms. Zimmer's most recent purchase of the Kona Brewing Co.

1 Beers was the Island Hopper Variety twelve-pack in or around January 2017. During the relevant
2 Class Period, Ms. Zimmer purchased the Kona Brewing Co. Beers at various retailers in San
3 Bernardino, California, including Ralph's and Rite-Aid. In purchasing the Kona Brewing Co.
4 Beers, Ms. Zimmer saw and relied on the packaging of the Kona Brewing Co. Beers. Specifically,
5 Ms. Zimmer saw and relied on the following illustrations and representations on the packaging of
6 the Fire Rock Pale Ale: an erupting volcano, an ocean, and "Fire Rock Pale Ale." Ms. Zimmer
7 also saw and relied on the following illustrations and representations on the packaging of the Big
8 Wave Golden Ale: blue water, waves, an outrigger canoe, and "Big Wave Golden Ale." In
9 addition, Ms. Zimmer also saw and relied on the following illustrations and representations on the
10 packaging of the Island Hopper Variety Pack: the ocean, the volcano in the background, the
11 images of the four different beers, and an image of a map of the major Hawaiian Islands, which
12 depicts the location of the Kona Brewing Co. Brewery on the Big Island. Based on these
13 representations, Ms. Zimmer believed that each of the Kona Brewing Co. Beers she purchased was
14 brewed in Hawaii. However, unbeknownst to Ms. Zimmer, the Kona Brewing Co. Beers she
15 purchased were not brewed in Hawaii, but instead were brewed in the continental United States.
16 Ms. Zimmer would not have purchased the Kona Brewing Co. Beers or would have paid
17 significantly less for the Kona Brewing Co. Beers had she known that the Kona Brewing Co.
18 Beers were brewed in the continental United States. Therefore, Ms. Zimmer suffered injury in fact
19 and lost money as a result of Defendants' misleading, false, unfair, and fraudulent practices, as
20 described herein.

21 DEFENDANTS

22 15. Defendant Craft Brew Alliance, Inc. (d/b/a Kona Brewing Co.) is a Washington
23 corporation with its principle place of business at 929 North Russell Street, Portland, Oregon
24 97227-1733. Defendant Craft Brew Alliance, Inc. acquired Kona Brewing Co., Inc., in 2010.³
25 According to a December 9, 2015 filing with the Oregon Secretary of the State, Defendant Craft
26 Brew Alliance, Inc. is responsible for the production, marketing, and sales of craft brewed beer.

27 _____

28 ³ Craft Brew Alliance, Inc., Annual Report (Form 10-K) p. 1 (Mar. 31, 2011).

1 16. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
2 Plaintiffs at this time, and Plaintiffs therefore sues such DOE Defendants under fictitious names.
3 Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE
4 is in some manner highly responsible for the occurrences alleged herein, and that Plaintiffs and
5 Class members’ injuries and damages, as alleged herein, were proximately caused by the conduct
6 of such DOE Defendants. Plaintiffs will seek leave of the Court to amend this Complaint to allege
7 the true names and capacities of such DOE Defendants when ascertained.

8 **FACTUAL ALLEGATIONS**

9 **A. Background**

10 17. Kona Brewing Co., Inc. began brewing beer in Hawaii in 1994.⁴

11 18. Defendant Craft Brew Alliance, Inc. is a publicly traded company and it “is the
12 sixth largest craft brewing company in the U.S. and a leader in brewing, branding, and bringing to
13 market some of the world-class American craft beers.”⁵ In addition to acquiring Kona Brewing
14 Co., Inc. in 2010, Defendant Craft Brew Alliance, Inc. operates the following brands: Red Hook,
15 Widmer Brothers, Omission, and Square Mile Cider Company.

16 19. A spokesperson for Defendant Craft Brew Alliance, Inc. was quoted in an
17 Associated Press article admitting that all packaged Kona Brewing Co. Beers are produced in
18 Oregon, Washington state, New Hampshire, and Tennessee. The spokesperson also admitted that
19 a Kailua-Kona, Hawaii brewery produces draft beer that’s sold in Kona Brewing pubs and
20 elsewhere in the islands.⁶

21
22
23
24
25 ⁴ Craft Brew Alliance, Inc., Annual Report (Form 10-K) p. 4 (Mar. 16, 2017) (hereinafter “2016
26 10-K”).

27 ⁵ *Id.* at 2.

28 ⁶ <http://bigstory.ap.org/article/5a1d5beaa14e4ebd86aa6641c1540503/suit-kona-brewing-dupes-drinkers-seeking-hawaii-made-beer> (last visited on April 7, 2017).

1 20. In fact, Defendants’ Hawaiian brewery only has a 10,000 barrel⁷ capacity per year.⁸
2 This is in comparison to a 630,000 barrel capacity at their Oregon brewery, a 220,000 barrel
3 capacity at their Washington brewery, a 100,000 barrel capacity at the Tennessee brewery and a
4 215,000 barrel capacity at their New Hampshire brewery.⁹ Defendants then distribute their beer
5 throughout the continental United States through a distribution agreement with Anheuser-Busch,
6 LLC.¹⁰

7 21. As of December 21, 2016, Anheuser-Busch, LLC owned approximately 31.5% of
8 Craft Brew Alliance, Inc.¹¹ Anheuser-Busch is the world’s largest producer of alcoholic
9 beverages and it controls approximately 45 percent of the U.S. beer market.¹²

10 22. The Kona Brewing Co. Beers are sold across California and the United States at
11 grocery chains, pharmacy chains, myriad liquor stores and mom and pop stores, and large retail
12 outlets including, but not limited to, Walgreens Pharmacy, Rite-Aid Pharmacy, CVS Pharmacy,
13 Safeway, Ralphs, 7-Eleven, Walmart, BevMo!, Target, and Buy–Rite Liquors. The Kona Brewing
14 Co. Beers consist of at least the following ten varieties:

- 15 a. Longboard Island Lager;
- 16 b. Big Wave Golden Ale;
- 17 c. Fire Rock Pale Ale;
- 18 d. Wailua Wheat Ale;
- 19 e. Hanalei Island IPA;
- 20 f. Castaway IPA;
- g. Lavaman Red Ale;
- h. Lemongrass Luau;
- i. Koko Brown; and
- j. Pipeline Porter.

22
23 ⁷ According to standard measurements, one barrel (or keg) of beer is equivalent to approximately
165 twelve ounce bottles.

24 ⁸ 2016 10-K at 19.

25 ⁹ *Id.*

26 ¹⁰ *Id.* at 7.

27 ¹¹ *Id.* at 10.

28 ¹² <http://www.chicagotribune.com/business/ct-megabrew-ab-inbev-sabmiller-merger-20161010-story.html> (last visited on April 7, 2017).

1 **B. The packaging and marketing of the Kona Brewing Co. Beers are misleading to**
2 **reasonable consumers**

3 23. The packaging and marketing of the Kona Brewing Co. Beers are misleading to
4 reasonable consumers, including Plaintiffs and other Class members.

5 24. Defendants deceptively advertise the Kona Brewing Co. Beers as craft beer brewed
6 in Hawaii in order to exploit strong consumer sentiment for Hawaiian-made goods, such as beer.

7 25. In order to maximize profits, Defendants have capitalized on the Hawaiian brand
8 image of Kona Brewing Company. The overall brand image of the Kona Brewing Co. Beers
9 revolves around their purported Hawaiian origins. In order to create the impression that the Kona
10 Brewing Co. Beers are brewed in Hawaii, Defendants make references to and depict images of
11 Hawaiian landmarks, traditions, history, and culture. In essence, Defendants intentionally mislead
12 consumers into believing that a small brewery in Hawaii – which it owns and operates – brews all
13 of the Kona Brewing Co. Beers that Defendants sell on the mainland. This is untrue.

14 **Representations on all Kona Brewing Co. Beers:**

15 26. The false and misleading representations that are on all of the Kona Brewing Co.
16 Beers' packaging and marketing include, but are not limited to, the following:

- 17 a. On the top of the packaging of the twelve-packs, an image of a map of the
18 major Hawaiian Islands, which depicts the location of the Kona Brewing Co.
19 Brewery on the Big Island;¹³
- 20 b. An image of the Hawaiian island chain embossed into the front of each bottle;
- 21 c. The phrase “Liquid Aloha” embossed into the front of each bottle;
- 22 d. On the top of the packaging of the twelve-packs, the following statement: “We
23 invite you to visit our *brewery* and pubs whenever you are in Hawaii.
24 MAHALO!” (emphasis added);¹⁴ and
- 25 e. Images of orchid flowers and palm trees on the packaging.

26
27 ¹³ See representative image, *infra*, paragraph 32.

28 ¹⁴ See representative image, *infra*, paragraph 32.

1 27. Furthermore, Defendants have implemented a multi-million dollar integrated
2 marketing campaign which further reinforces the notion that the Kona Brewing Co. Beers are
3 brewed in Hawaii. Among this campaign is a series of 30-second “Dear Mainland” television
4 commercials which were shot in Hawaii in a lushly tropical backdrop. The commercials feature
5 two Hawaiian residents drinking Kona beer, addressing the mainland United States and offering
6 comical island-style alternatives to common mainland customs. The commercials conclude with
7 close up images of Kona beer bottles and the phrase “Kona Brewing Co. Kona Hawaii”
8 prominently across the screen:¹⁵



20
21
22
23
24
25
26
27
28 ¹⁵ <https://www.youtube.com/watch?v=PAJdan1yZH8> (last visited on April 7, 2017).



Additional representations on Kona Brewing Co. Beers:

28. Each of the Kona Brewing Co. Beers also include false and misleading representations that reinforce the overall image that the beer is brewed in Hawaii:

Longboard Island Lager

29. The name Long Board Island Lager refers to longboard surfing, a type of surfing that was born in Hawaii. When one thinks of Hawaii, surfing and the ocean are two images that immediately come to mind.

30. The packaging of this beer includes an image of Waikiki Beach, longboard surfboards, and individuals surfing in front of Diamond Head, a landmark near Waikiki Beach in Oahu, Hawaii. Above the handle of the packaging for the six-pack, it prominently states, "THIRST'S UP!"

31. On the packaging, there is a map image of Oahu, Hawaii, next to which it states:

"THE BEACH WHERE IT BEGAN

Thanks to a legendary local Hawaiian, Longboards have been a constant feature at Waikiki Beach for over 90 years. The great Duke Kahanamoku, father of modern surfing and Olympic Gold Medalist paddled his hand-shaped, wooden board – a whopping 16 feet long and weighing 114 pounds – out into the surf to ride the

1 waves off Waikiki. This behemoth was dubbed a Longboard and the ancient
2 Polynesian sport of surfing was reborn. Today, in the shadow of Diamond Head,
3 under swaying palm trees, Waikiki Beach is still the spot to learn the tradition of
4 Longboard surfing. Here you can catch set after set of rolling waves until the sun
5 fades below the horizon, and then it's time for a beer!

6 **THIRST'S UP!**

7 Kona Brewing Co. pays tribute to the big board of surfing and this famous
8 Hawaiian beach with our refreshing Longboard Island Lager. This crisp, pale gold
9 lager is made with premium pale malt and aromatic hops brewed in a traditional
10 lager style. Like the last wave of the day at your favorite surf break, Longboard is
11 a smooth and easy going brew that you can enjoy time and time again. Thirst's
12 up!"

13 32. Nowhere on the packaging does it disclose that the Longboard Island Lager beer is
14 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is "75-5629
15 Kuakini Highway, Kailua-Kona, Hawaii 96740."¹⁶



16 ¹⁶ <https://www.walmart.com/ip/Kona-Brewing-Co.-Longboard-Island-Lager-Beer-12-fl-oz-6-pack/20695856> (last visited on April 7, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



THE BEACH WHERE IT BEGAN

Thanks to a legendary local Hawaiian, Longboards have been a constant feature at Waikiki Beach for over 90 years. The great Duke Kahanamoku, father of modern surfing and Olympic Gold Medalist, paddled his hand-shaped, wooden board – a whopping 16 feet long and weighing 114 pounds – out into the surf to ride the waves off Waikiki. This behemoth was dubbed a Longboard and the ancient Polynesian sport of surfing was reborn. Today, in the shadow of Diamond Head, under swaying palm trees, Waikiki Beach is still the spot to learn the tradition of Longboard surfing. Here you can catch set after set of rolling waves until the sun fades below the horizon, and then it's time for a beer!



THIRST'S UP!

Kona Brewing Co. pays tribute to the big board of surfing and this famous Hawaiian beach with our refreshing Longboard Island Lager. This crisp, pale gold lager is made with premium pale malt and aromatic hops brewed in a traditional lager style. Like the last wave of the day at your favorite surf break, Longboard is a smooth and easy going brew that you can enjoy time and time again. Thirst's up!

www.KonaBrewingCo.com

Kona Brewing Co., Kona, Hawaii 75-5629 Kuakini Highway, Kailua-Kona, Hawaii 96740 (808) 334-1133





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Big Wave Golden Ale

33. The name Big Wave Golden Ale refers to the big waves off of Hawaii’s beaches and the influence of the ocean in Hawaiian life.

34. The packaging includes an image of four individuals in an outrigger canoe, a traditional Polynesian canoe, riding a wave in Makaha beach.

35. On the handle of the packaging for the six-pack it prominently states, “CATCH A WAVE!”

36. On the packaging there is a map image of Oahu, Hawaii, next to which it states: “HAWAIIAN SWEET SPOT

The waves in Hawaii are legendary. In the winter months, the island’s north and west coasts see big waves that often climb to 40 feet, with huge curls of white water breaking just off shore. This is just one reason why surfers, body boarders, paddlers and those of just willing to watch from the beach make this pilgrimage. There is no other place on earth like Hawaii. The north shore of Oahu gets all the attention (as it should), but the waves at Makaha are just as sweet. This is the place

1 where the first surf competition in Hawaii was held in 1954 and continues to attract
2 world class pros to ride the giants of winter surf.

3 CATCH A WAVE!

4 Our brewers wanted to make a beer that went down easy after a day out on the
5 water. Big Wave Golden Ale is just the ticket. Big Wave is a lighter bodied
6 golden ale with a tropical hop aroma and flavor – a smooth, easy drinking
7 refreshing ale. The use of caramel malt contributes to the golden hue of this beer
8 and our special blend of hops provides a bright quenching finish.”

9 37. Nowhere on the packaging does it disclose that the Big Wave Golden Ale beer is
10 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629
11 Kuakini Highway, Kailua-Kona, Hawaii 96740.”¹⁷



12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 ¹⁷ <https://www.walmart.com/ip/Kona-Brewing-Co.-Big-Wave-Golden-Ale-Beer-12-fl-oz-6-Pack/38498865> (last visited on April 7, 2017).
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HAWAIIAN SWEET SPOT

The waves in Hawaii are legendary. In the winter months, the island's north and west coasts see big waves that often climb to 40 feet, with huge curls of white water breaking just off shore. This is just one reason why surfers, body boarders, paddlers and those of us just willing to watch from the beach make this pilgrimage. There is no other place on earth like Hawaii. The north shore of Oahu gets all the attention (as it should), but the waves at Makaha are just as sweet. This is the place where the first surf competition in Hawaii was held in 1954 and continues to attract world class pros to ride the giants of winter surf.

MAKAHA

OAHU

*Kona Brewing Co.
Koko Marina Pub*

CATCH A WAVE!

Our brewers wanted to make a beer that went down easy after a day out on the water. Big Wave Golden Ale is just the ticket. Big Wave is a lighter bodied golden ale with a tropical hop aroma and flavor – a smooth, easy drinking refreshing ale. The use of caramel malt contributes to the golden hue of this beer and our special blend of hops provides a bright quenching finish.

WWW.KONABREWINGCO.COM

Kona Brewing Co., Kona, Hawaii 75-5629 Kuakini Highway, Kailua-Kona, Hawaii 96740 (808) 334-1133

KONA BREWING CO.

7 96030 11496 0 WC 1.13 RCPP

Fire Rock Pale Ale

38. The name Fire Rock Pale Ale refers to volcanoes and the geographical uniqueness of Hawaii.

39. The packaging has an image of two individuals observing lava flow into the Pacific Ocean from the Kilauea Volcano, one of Hawaii’s active volcanoes, at the Hawaii Volcanoes National Park.

40. On the handle of the packaging for the six-pack it prominently states, “GO WITH THE FLOW!”

41. On the packaging there is a map image of the Big Island of Hawaii, next to which it states:

“THE BIG ISLAND GETS BIGGER

The southern point of The Big Island of Hawaii is punctuated by two active volcanoes, Mauna Loa and Kilauea. Eruptions from the east rift zone of Kilauea, the longest continuously erupting volcano, send rivers of red hot lava down its slopes to plunge into the Pacific Ocean. Steam clouds billow from the shore as the

1 lava hits the water. The best way to experience this spectacle is at sunset, when the
2 lava glows against the darkening sky and can be seen for miles. The island is
3 expanding thanks to this force of nature, and Hawaii is one of the few accessible
4 places in the world where you can watch it happen before your eyes.

4 GO WITH THE FLOW!

5 Northwest of Kilauea Volcano on the Kona Coast is the Kona Brewery, home of
6 the Fire Rock Pale Ale. A copper colored ale made from roasted malts and a
7 selection of five premium hops with a smooth Hawaiian style all its own. Inspired
8 by the island environment, Fire Rock is smooth, yet bold in flavor and aroma.

8 42. Nowhere on the packaging does it disclose that the Fire Rock Pale Ale beer is
9 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629
10 Kuakini Highway, Kailua-Kona, Hawaii 96740.”¹⁸



11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 ¹⁸ <https://www.walmart.com/ip/Kona-Brewing-Co.-Fire-Rock-Pale-Ale-12-oz-6pk/38361225> (last
28 visited on April 7, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE BIG ISLAND GETS BIGGER
 The southern point of The Big Island of Hawaii is punctuated by two active volcanoes, Mauna Loa and Kilauea. Eruptions from the east rift zone of Kilauea, the longest continuously erupting volcano, send rivers of red hot lava down its slopes to plunge into the Pacific Ocean. Steam clouds billow from the shore as the lava hits the water. The best way to experience this spectacle is at sunset, when the lava glows against the darkening sky and can be seen for miles. The island is expanding thanks to this force of nature, and Hawaii is one of the few accessible places in the world where you can watch it happen before your eyes.

HAWAII [THE BIG ISLAND]

Kona Brewing Co. Brewery & Pub

VOLCANOES NATIONAL PARK & KILAUEA CRATER

GO WITH THE FLOW!
 Northwest of Kilauea Volcano on the Kona Coast is the Kona Brewery, home of Fire Rock Pale Ale. A copper colored ale made from roasted malts and a selection of premium hops with a smooth Hawaiian style all its own. Inspired by the island environment, Fire Rock is smooth, yet bold in flavor and aroma.

WWW.KONABREWINGCO.COM
 Kona Brewing Co., Kona, Hawaii 75-5629 Kuakini Highway, Kailua-Kona, Hawaii 96740 (808) 334-1133

KONA BREWING CO.

7 96030 11497 7

Wailua Wheat Ale

43. The name Wailua Wheat Ale refers to the Wailua Falls, a landmark in Maui, Hawaii.

44. The packaging includes the image of a woman standing in the pool at the base of the Wailua waterfalls, with the waterfall and a lush green landscape in the background.

45. On the handle of the packaging for the six-pack it prominently states, “PARADISE FOUND.”

46. On the packaging there is a map image of Maui, next to which it states: “LAID BACK IN TIME

Imagine travelling along a 90 year-old winding road on the north coast of Maui, crossing one-lane stone bridges that take you back to old Hawaii. This simple “highway” is known as the Road to Hana, a historic fishing village and the birth place of a Hawaiian Queen. This journey grips the edge of the island with ocean views and cascading waterfalls around nearly every bend. Wailua Falls is one of these spectacular sights. The falls plunge 95 feet into a natural pool, cradled in the

1 surrounding volcanic rock. Take a dip in the cool, refreshing water, under the
2 canopy of palm trees, and you will feel the timelessness of this Hawaiian paradise.

3 PARADISE FOUND

4 Wailua is Hawaiian for two fresh water streams mingling. This was just the
5 inspiration we needed to create our Wailua Wheat Ale. This refreshing, gold
6 colored ale blends with the crisp, slightly sweet citrus flavor of tropical
7 passionfruit, known locally as Lilikoi. This thirst quenching Kona Brew is the
8 perfect companion to a day in the sun – even if you are not on Maui. Just sit back,
9 relax and enjoy paradise anytime!”

8 47. Nowhere on the packaging does it disclose that the Wailua Wheat Ale beer is
9 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629
10 Kuakini Highway, Kailua-Kona, Hawaii 96740.”¹⁹



26
27
28 ¹⁹ <https://www.walmart.com/ip/Kona-Brewing-Co.-Wailua-Wheat-Ale-12-fl-oz-12-pack/48057804> (last visited on April 7, 2017).

1 Hanalei Island IPA

2 48. The name Hanalei Island IPA refers to Hanalei, a town in Kauai, Hawaii.

3 49. The packaging includes an image of kayakers on the ocean in front of a town and
4 mountains.

5 50. On the handle of the packaging for the six-pack it prominently states, “EASY
6 DOES IT.”

7 51. On the packaging there is a map image of Kauai, next to which it states::

8 “PADDLER’S PARADISE

9
10 On the north coast of Kauai, the perfect crescent shape of Hanalei Bay tucks up
11 against lush, green mountains streaked with waterfalls fed by the warm Pacific rain.
12 This is the Hawaii of your dreams. Launch your kayak into the calm blue waters at
13 the historic pier and take in the iconic view of white sand beaches, the small village
14 of Hanalei, and Makana Mountain (famously known as Bali Hai) towering above
15 you. Paddling from this bay out to the Nā Pali Coast or up the Hanalei River you
16 will discover more natural wonders that can only be seen as you glide through the
17 water. With the sun above and your troubles behind, you might just feel like this
18 place is as close to paradise as you’ll ever get.

19 EASY DOES IT

20 Our easy-drinking Hanalei Island IPA is our brewer’s homage to the Garden Isle
21 and the Hawaiian classic drink, POG. Passionfruit, orange, and guava balance the
22 subtle bitterness of aromatic Azacca and Galaxy hops to deliver a coppery,
23 laidback, session-style ale, bright with tropical flavors and just 4.5% ABV. After
24 all, a day on the bay calls for something that’s relaxed and smooth, like our
25 namesake, and refreshing enough to remind you that you’re in the South Pacific.
26 And even if you aren’t, with this Kona Brew in hand, Hawaii is only a sip away.
27 Easy does it.”

28 52. Nowhere on the packaging does it disclose that the Hanalei Island IPA beer is
29 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629
30 Kuakini Highway, Kailua-Kona, Hawaii 96740.”²⁰

27 ²⁰ [https://www.brewbound.com/news/craft-brew-alliance-launches-new-kona-hanalei-island-ipa-](https://www.brewbound.com/news/craft-brew-alliance-launches-new-kona-hanalei-island-ipa-california)
28 [california](https://www.brewbound.com/news/craft-brew-alliance-launches-new-kona-hanalei-island-ipa-california) (last visited on April 7, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Castaway IPA

53. The packaging includes an image of an individual in an outrigger canoe, a traditional Polynesian canoe, riding over a breaking wave towards a sea cliff.

54. The name Castaway IPA refers to the many explorers traveling the treacherous route between the islands of Oahu and Molokai, who were “cast away” and lost during their excursion.

55. On the handle of the packaging for the six-pack it prominently states, “SET SAIL FOR ADVENTURE!”

56. On the packaging there is a map image of Oahu and Molokai, next to which it states:

1 “THE FIRST ISLAND HOPPERS

2 Hand-carved, wooden outrigger canoes once carried Hawaiians from island to
3 island, where massive waves would crash over their hulls and toss them toward the
4 horizon. The Ka’iwi Channel, or “Channel of Bones,” between Oahu and Molokai
5 was a particularly treacherous route. The steep, emerald green volcanic sea cliffs
6 off the north shore of Molokai loomed over these early island explorers as they
7 searched for safe harbors from the shark-infested waters. Only the strongest
8 survived these perilous trips, many were cast away and lost. Today, this 26-mile
9 wide passage challenges champion swimmers and paddlers who continue to race
10 against the high winds and strong currents, earning worldwide admiration and
11 acclaim.

12 SET SAIL FOR ADVENTURE!

13 It is those early island explorers, and the new ones too, that inspired us to make an
14 equally spirited IPA. Take a sip of this copper-colored India Pale Ale and you’ll
15 taste bold, citrusy hops with a touch of tropical mango and passion fruit balanced
16 by the rich caramel malts. Castaway IPA has a clean, crisp finish that’s as fresh as
17 the wind in your face when you set sail for adventure.”

18 57. Nowhere on the packaging does it disclose that the Castaway IPA beer is brewed
19 anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629 Kuakini
20 Highway, Kailua-Kona, Hawaii 96740.”²¹

21 _____
22
23
24
25
26
27 ²¹ <https://beerinhawaii.com/2014/03/21/kona-brewings-castaway-ipa-gets-bottled/> (last visited
28 April 7, 2017); <https://www.walmart.com/ip/Kona-Brewing-Co.-Aloha-Series-Koko-Brown-Ale-12-fl-oz-6-pack/25568789> (last visited April 7, 2017)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE FIRST ISLAND HOPPERS

Hand-carved, wooden outrigger canoes once carried Hawaiians from island to island, where massive waves would crash over their hulls and toss them toward the horizon. The Ka'iwi Channel, or "Channel of Bones," between Oahu and Molokai was a particularly treacherous route. The steep, emerald green volcanic sea cliffs off the north shore of Molokai loomed over these early island explorers as they searched for safe harbors from the shark-infested waters. Only the strongest survived these perilous trips, many were cast away and lost. Today, this 26-mile wide passage challenges champion swimmers and paddlers who continue to race against the high winds and strong currents, earning worldwide admiration and acclaim.

SET SAIL FOR ADVENTURE!

It is those early island explorers, and the new ones too, that inspired us to make an equally spirited IPA. Take a sip of this copper-colored India Pale Ale and you'll taste bold, citrusy hops with a touch of tropical mango and passion fruit, balanced by the rich caramel malts. Castaway IPA has a clean, crisp finish that's as fresh as the wind in your face when you set sail for adventure.

www.KONABREWINGCo.COM

Kona Brewing Co., Kona, Hawaii 75-5629 Kuakini Highway, Kailua-Kona, Hawaii 96740 (808) 334-1133

KONA BREWING CO.

7 96030 11493 9 III B RCPFP

Lavaman Red Ale

58. The name Lavaman Red Ale refers to the Lavaman Waikoloa triathlon that is held on the Big Island of Hawaii.

59. The packaging includes an image of a man running through towards a volcano – clearly a reference to the famous triathlon.

60. Nowhere on the packaging does it disclose that the Lavaman Red Ale beer is brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629 Kuakini Highway, Kailua-Kona, Hawaii 96740.”²²

²² <http://www.target.com/p/kona-lava-man-6pk-bottles/-/A-51256065> (last visited on April 7, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Lemongrass Luau

61. The name Lemongrass Luau refers to a luau, a traditional Hawaiian feast or party.

62. The packaging includes an image of three women dancing hula in traditional Hawaiian clothing on a beach with the sunset and mountains in the background.

63. On the handle of the packaging for the six-pack it prominently states, "ALWAYS ALOHA."

1 64. Nowhere on the packaging does it disclose that the Lemongrass Luau beer is
2 brewed anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629
3 Kuakini Highway, Kailua-Kona, Hawaii 96740.”²³



27 ²³ <https://beerinhawaii.com/2016/05/31/kona-brewing-releases-lemongrass-luau-bottles/> (last
28 visited on April 7, 2017).

1 Pipeline Porter

2 65. The name Pipeline Porter refers to one of the world’s most famous surf breaks, the
3 Banzai Pipeline, which is located on the north shore of Oahu.

4 66. The packaging includes an image of a surfer standing on the beach in front of a
5 crashing wave, about to paddle out into the surf.

6 67. Nowhere on the packaging does it disclose that the Pipeline Porter beer is brewed
7 anywhere else but Hawaii. Rather, the only address listed on the packaging is “75-5629 Kuakini
8 Highway, Kailua-Kona, Hawaii 96740.”



1 Koko Brown

2 68. The name Koko Brown refers to Koko Crater, a landmark in Oahu, Hawaii.

3 69. The packaging includes an image of a man standing on a paddle board in the ocean
4 with a mountain in the background and coconut trees in the foreground.

5 70. On the handle of the packaging for the six-pack it prominently states, “CRACK
6 OPEN ALOHA.”

7 71. On the packaging there is a map image of Oahu, Hawaii.

8 72. Nowhere on the packaging does it disclose that the Koko Brown beer is brewed
9 anywhere else but Hawaii.²⁴



24 http://www.binnys.com/beer/Kona_Koko_Brown_51828.html (last visited April 7, 2017).

1 73. In sum, the prominent references to and images of Hawaiian landmarks, traditions,
2 history, and culture, taken in isolation and as a whole, are clearly designed to create the false
3 impression that the Kona Brewing Co. Beers are brewed in Hawaii.

4 **C. Defendants have manifested their intention of deceiving consumers into believing that**
5 **the Kona Brewing Co. Beers are brewed in Hawaii**

6 74. Defendants have acknowledged, through various public statements and documents,
7 their intent to create the impression that the Kona Brewing Co. Beers are brewed in Hawaii and
8 then imported to the continental United States.

9 75. Craft Brew Alliance, Inc.’s Chief Marketing Officer admitted so on the company’s
10 third quarter 2016 earnings call by stating: “I’d also like to remind everyone again about why the
11 Kona brand is special among the over 5,000 craft brands available in the U.S. First, *the Kona*
12 *brand plays like a craft brand imported from Hawaii* and has the benefit of being a lifestyle, a
13 craft and an important play . . . Kona’s performance in California highlights *Kona’s ability trends*
14 *in craft localness and play as an imported craft brand from Hawaii.*”²⁵ (emphases added).

15 76. Furthermore, in the company’s fourth quarter 2014 earnings call, Craft Brew
16 Alliance, Inc.’s Chief Marketing Officer also admitted that: “First, Kona, our lead brand is
17 *positioned as a craft [beer] imported from Hawaii.* Kona is Liquid Aloha and embodies the
18 culture and spirit of the people of Hawaii.”²⁶ (emphasis added).

19 77. Kona Brewing company’s president has also succinctly described the intent behind
20 Defendants’ advertising: “[w]e’re delivering more of that sense of place that Kona is known for,
21 and I think this new bottle and package really brings Hawaii home . . . The new labels really
22 mimic the vivid hues I’m lucky enough to see every day in Hawaii. My favorite design element is
23
24
25

26 ²⁵ <https://seekingalpha.com/article/4019249-craft-brew-alliances-brew-ceo-andrew-thomas-q3-2016-results-earnings-call-transcript> (last visited on April 7, 2016).

27 ²⁶ <https://seekingalpha.com/article/2978286-craft-brew-alliances-brew-ceo-andy-thomas-on-q4-2014-results-earnings-call-transcript?part=single> (last visited on April 7, 2016).
28

1 the embossed island chain with Liquid Aloha on the shoulder of the bottle—it makes for a more
2 tactile experience because you can literally feel Hawaii as you drink a Kona brew.”²⁷

3 78. As demonstrated in their SEC filings, Defendants are acutely aware of the
4 significance of the Hawaii-brand image of Kona Brewing Co. Beers and the tremendous impact
5 that image has on their bottom line. For example, Defendants state, “Our distinctive brand
6 portfolio is positioned to address significant changes in consumer trends, including increased
7 demand for innovative flavors and styles, a growing interest in sustainability, and the increasing
8 importance of local relevance. As an example, Kona Brewing is one of the most distinctive craft
9 brewers, with a broad portfolio of beers that reflect a uniquely Hawaiian flavor profile, a
10 recognized track record in sustainable business practices, and deep ties to its local community as
11 Hawaii’s oldest and largest craft brewery.”²⁸

12 **D. Defendants falsely and deceptively represent that the Kona Brewing Co. Beers are**
13 **craft beers brewed by a craft brewer**

14 79. Part and parcel with the misrepresentation regarding the Kona Brewing Co. Beers’
15 origin is the misrepresentation that the beer is a “craft beer” brewed by a “craft brewer.” For
16 instance, Defendant Craft Brew Alliance, Inc. touts in its 2016 10-K notes that it markets,
17 distributes, and sells what it purports to be craft beer: “Kona Brewing is one of the most
18 distinctive craft brewers...” and “Kona Brewing Company has become one of the top craft beer
19 brands in the world.”²⁹

20 80. According to the Brewers Association, a 501(c)(6) not-for-profit trade association
21 set up to promote and protect American craft brewers, in order for an American brewer to be
22 considered a “craft brewer” it needs to be “independent”, meaning “[l]ess than 25 percent of the
23
24
25

26 ²⁷ <http://www.prweb.com/releases/2013/4/prweb10633226.htm> (last visited on April 7, 2017).

27 ²⁸ 2016 10-K at 3.

28 ²⁹ *Id.* at 3-4.

1 craft brewery is owned or controlled (or equivalent economic interest) by a beverage alcohol
2 industry member that is not itself a craft brewer.”³⁰

3 81. Accordingly, Craft Brew Alliance, Inc. cannot be considered a “craft brewer”
4 because more than 25% of the brewery is owned or controlled by Anheuser-Busch, LLC, which
5 owns 31.5% and is an alcohol industry member not itself considered a craft brewer.

6 **E. Defendants’ misrepresentations regarding where Kona Brewing Co. Beers are**
7 **brewed are material**

8 82. The Hawaii-brand image in the context of marketing and consumer purchase
9 decisions is extremely powerful. Consumers purchase items, and are willing to pay more for
10 items, because they are from Hawaii. Defendants are well aware of this.

11 83. Craft Brew Alliance, Inc.’s CEO noted during the company’s fourth quarter 2015
12 earnings call that: “Better ingredients, knowing where the beer came from, the activity or the
13 inclusion of that brand within that local community, that all carries a premium with it”³¹

14 84. In a November 2011 article in Hawaii Business Magazine, Jeff Leichleiter, general
15 manager for Tim’s Cascade Snacks (a mainland company), which sells Hawaiian style chips, was
16 quoted as saying, “We know ‘Luau Barbeque Rings’ doesn’t make sense, but 98 percent of the
17 country doesn’t know . . . The Hawaii image is a powerful brand – and it’s done well for us.”³²

18 85. In that same article, James “Jimmy” Chan, the owner of Hawaiian Chip Co., was
19 quoted as saying, “If your product is made in Hawaii, I think that’s instantly added value to the
20 product . . . People tend to understand that, if it’s made here, it will cost more”³³

21 86. The director of retail operations for Big Island Candies (a Hawaii company), Lance
22 Duyao, stated, “One thing that kept us afloat and sustained us is that we are careful about our
23 expansion. Quality is so important to us. We don’t want to spread ourselves thin by opening too

24 _____
25 ³⁰ <https://www.brewersassociation.org/statistics/craft-brewer-defined/> (last visited April 7, 2017).

26 ³¹ <https://seekingalpha.com/article/3953186-craft-brew-alliance-incorporateds-brew-ceo-andy-thomas-q4-2015-results-earnings-call> (last visited April 7, 2017).

27 ³² <http://www.hawaiibusiness.com/not-made-in-hawaii/> (last visited April 7, 2017).

28 ³³ *Id.*

1 many locations. Nothing is made anywhere else but here. And when people order stuff online and
2 see that the box is actually postmarked in Hilo, there is an incredible value to that.”³⁴

3 **F. The location of beer brewing significantly affects the taste and quality of Kona**
4 **Brewing Co. Beers**

5 87. Water makes up more than 90 percent of beer and the type of water used greatly
6 influences the taste and quality of the beer, just as climate and terroir greatly influence the taste
7 and quality of wine.³⁵

8 88. According to Kona’s president, “All of the water used to brew beer in Kona is
9 Hawaii County water, naturally percolated through the porous lava rock that makes up the island.
10 Hawaii County water is hard and high in calcium and chloride, and fortunately, these
11 characteristics are great for making beer.”³⁶

12 89. Defendants do not use water from Hawaii in brewing the Kona Brewing Co. Beers.
13 Rather, the water used to make the Kona Brewing Co. Beers all comes from the continental United
14 States. On information and belief, Defendants use water at the site of the brewery (e.g., from
15 Oregon, Washington, Tennessee, and New Hampshire).³⁷

16 **G. Plaintiffs and Class members were deceived and harmed**

17 90. During the relevant statute of limitations period, Plaintiffs each separately
18 purchased at least one of the Kona Brewing Co. Beers at retail stores located in the State of
19 California.

20 91. Plaintiffs and other Class members purchased the Kona Brewing Co. Beers relying
21 on the content of the packaging described above,³⁸ and reasonably believing that the Kona

22 _____
23 ³⁴ <http://www.hawaiibusiness.com/made-in-hawaii/> (last visited on April 7, 2017).

24 ³⁵ <https://beerandbrewing.com/VUKd4igAABcrKdWe/article/brewing-water> (last visited on April
25 7, 2017).

26 ³⁶ [http://www.sdcoastkeeper.org/act/media-center/press-releases/kon-brewings-liquid-aloha-](http://www.sdcoastkeeper.org/act/media-center/press-releases/kon-brewings-liquid-aloha-festival-raises-more-than-18000-for-san-diego-coastkeeper)
27 [festival-raises-more-than-18000-for-san-diego-coastkeeper](http://www.sdcoastkeeper.org/act/media-center/press-releases/kon-brewings-liquid-aloha-festival-raises-more-than-18000-for-san-diego-coastkeeper) (last visited April 7, 2017)

28 ³⁷ Moreover, Kona Brewing Co. Beers do not contain hops – another critical ingredient in beer –
from Hawaii.

³⁸ See, *supra*, Paragraphs 11-14.

1 Brewing Co. Beers were brewed in Hawaii. Plaintiffs' and Class members' reasonable beliefs that
2 the Kona Brewing Co. Beers they purchased were brewed in Hawaii were significant factors in
3 each of their decisions to purchase the Kona Brewing Co. Beers. Plaintiffs and Class members
4 would not have purchased the Kona Brewing Co. Beers, or would have paid significantly less for
5 the Kona Brewing Co. Beers, had they known the true location of brewing of the Kona Brewing
6 Co. Beers.

7 92. Plaintiffs and Class members did not know, and have no reason to know, that the
8 Kona Brewing Co. Beers were not brewed in Hawaii because of how the Kona Brewing Co. Beers
9 are deceptively packaged and advertised to create the impression that they are brewed in Hawaii.

10 93. Defendants know, knew or should have known that Plaintiffs and other Class
11 members did and would rely on the packaging and advertising of the Kona Brewing Co. Beers in
12 purchasing the Kona Brewing Co. Beers, and would reasonably believe that the Kona Brewing Co.
13 Beers were brewed in Hawaii.

14 94. Because the Kona Brewing Co. Beers are not brewed in Hawaii as reasonably
15 expected by Plaintiffs and other consumers, Defendants' branding of the Kona Brewing Co. Beers
16 was and continues to be misleading and deceptive.

17 95. Each Class member has been exposed to the same or substantially similar deceptive
18 practice, as each of the Kona Brewing Co. Beers (1) have the same core misleading statements and
19 images concerning Hawaii, and (2) have additional misleading representations based on
20 themes/concepts centered around Hawaiian landmarks, traditions, history, and culture. All of the
21 Kona Brewing Co. Beers create the similar impression that they are each brewed in Hawaii.

22 96. Plaintiffs and other consumers have paid a premium for the Kona Brewing Co.
23 Beers. Plaintiffs and other consumers would have paid significantly less for the Kona Brewing
24 Co. Beers had they known that the Kona Brewing Co. Beers were not brewed in Hawaii, but were
25 instead brewed in the continental United States. In the alternative, Plaintiffs and other consumers
26 would not have purchased the Kona Brewing Co. Beers at all had they known that the Kona
27 Brewing Co. Beers were not brewed in Hawaii, but were instead brewed in the continental United
28 States. Therefore, Plaintiffs and other consumers purchasing the Kona Brewing Co. Beers

1 suffered injury in fact and lost money as a result of Defendants' false, unfair, and fraudulent
2 practices, as described herein.

3 97. As a result of its misleading business practice, and the harm caused to Plaintiffs and
4 other consumers, Defendants should be enjoined from deceptively representing that the Kona
5 Brewing Co. Beers are brewed in Hawaii. Furthermore, Defendants should be required to pay for
6 all damages caused to misled consumers, including Plaintiffs.

7 98. Despite being misled by Defendants, Plaintiffs would likely purchase the Kona
8 Brewing Co. Beers in the future if the Kona Brewing Co. Beers were in fact brewed in Hawaii.

9 **CLASS ACTION ALLEGATIONS**

10 99. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure, individually and on behalf of all members of the following Nationwide Class,
12 California Subclass, and California Consumer Subclass.

13 **Nationwide Class**

14 All persons in the United States who purchased any of the Kona Brewing Co. Beers within
15 the relevant statute of limitations periods.

16 **California Subclass**

17 All persons, who are California residents who purchased any of the Kona Brewing Co.
18 Beers, or who purchased any of the Kona Brewing Co. Beers within the State of
California, during the relevant statute of limitations periods.

19 **California Consumer Subclass**

20 All persons, who are California residents who purchased any of the Kona Brewing Co.
21 Beers, or who purchased any of the Kona Brewing Co. Beers within the State of
22 California, for personal, family, or household purposes during the relevant statute of
limitations periods.

23 100. Excluded from the Classes are the following individuals and/or entities: Defendants
24 and their parents, subsidiaries, affiliates, officers and directors, current or former employees, and
25 any entity in which Defendants have a controlling interest; all individuals who make a timely
26 election to be excluded from this proceeding using the correct protocol for opting out; and all
27 judges assigned to hear any aspect of this litigation, as well as their immediate family members.

28

1 101. Plaintiffs reserve the right to modify or amend the definition of the proposed
2 Classes after having had an opportunity to conduct discovery.

3 102. Plaintiffs are members of all Classes.

4 103. Numerosity: The proposed Classes are so numerous that joinder of all members
5 would be impractical. For the year ended December 31, 2016, Defendant Craft Brew Alliance,
6 Inc., shipped 397,400 barrels³⁹ of Kona brand beer. Furthermore, Kona Brewing Co. Beers are
7 sold across California and the United States at grocery chains, pharmacy chains, myriad liquor
8 stores and mom and pop stores, and large retail outlets including, but not limited to, Walgreens
9 Pharmacy, Rite-Aid Pharmacy, CVS Pharmacy, Safeway, Ralphs, 7-Eleven, BevMo!, Walmart,
10 Target, and Buy-Rite Liquors. The number of individuals who purchased the Kona Brewing Co.
11 Beers within the United States and the State of California during relevant time period is at least in
12 the thousands. Accordingly, Class members are so numerous that their individual joinder herein is
13 impractical. While the precise number of Class members and their identities are unknown to
14 Plaintiffs at this time, these Class members are identifiable and ascertainable through Defendants'
15 records and other records and proofs of purchase.

16 104. Common Questions Predominate: There are questions of law and fact common to
17 the proposed Classes that will drive the resolution of this action and will predominate over
18 questions affecting only individual Class members. These questions include, but are not limited
19 to, the following:

- 20 a. Whether Defendants misrepresented material facts and/or failed to disclose
21 material facts in connection with the packaging, marketing, distribution, and
22 sale of the Kona Brewing Co. Beers;
- 23 b. Whether Defendants' use of false or deceptive packaging and advertising
24 constituted false or deceptive advertising;
- 25 c. Whether Defendants engaged in unfair, unlawful and/or fraudulent business
26 practices;

27 _____
28 ³⁹ This equates to 65,571,000 12-ounce bottles of Kona Brewing Co. Beers.

- 1 d. Whether Defendants' unlawful conduct, as alleged herein, was intentional and
2 knowing;
- 3 e. Whether Plaintiffs and the Classes are entitled to damages and/or restitution,
4 and in what amount;
- 5 f. Whether Defendants are likely to continue using false, misleading or unlawful
6 conduct such that an injunction is necessary; and
- 7 g. Whether Plaintiffs and the Classes are entitled to an award of reasonable
8 attorneys' fees, interest, and costs of suit.

9 105. Defendants engaged in a common course of conduct giving rise to violations of the
10 legal rights sought to be enforced uniformly by Plaintiffs and Class members. Similar or identical
11 statutory and common law violations, business practices, and injuries are involved. The injuries
12 sustained by members of the proposed Classes flow, in each instance, from a common nucleus of
13 operative fact, namely, Defendants' deceptive packaging and advertising of the Kona Brewing Co.
14 Beers. Each instance of harm suffered by Plaintiffs and Class members has directly resulted from
15 a single course of illegal conduct. Therefore, individual questions, if any, pale in comparison to
16 the numerous common questions presented in this action.

17 106. Superiority: Because of the relatively small size of the individual Class members'
18 claims, no Class member could afford to seek legal redress on an individual basis. Furthermore,
19 individualized litigation increases the delay and expense to all parties and multiplies the burden on
20 the judicial system presented by the complex legal and factual issues of this case. Individualized
21 litigation also presents a potential for inconsistent or contradictory judgments. A class action is
22 superior to any alternative means of prosecution.

23 107. Typicality: The representative Plaintiffs' claims are typical of those of the proposed
24 Classes, as all members of the proposed Classes are similarly affected by Defendants' uniform
25 unlawful conduct as alleged herein.

26 108. Adequacy: Plaintiffs will fairly and adequately protect the interests of the proposed
27 Classes as their interests do not conflict with the interests of the members of the proposed Classes
28 they seeks to represent, and they have retained counsel competent and experienced in class action

1 litigation. The interests of the members of the Classes will be fairly and adequately protected by
2 the Plaintiff and his counsel.

3 109. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
4 23(b)(2) because Defendants acted, or failed to act, on grounds generally applicable to Plaintiffs
5 and the proposed Classes, supporting the imposition of uniform relief to ensure compatible
6 standards of conduct toward the members of the Classes.

7
8 **FIRST CLAIM FOR RELIEF**
9 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
10 **California Civil Code §§ 1750, et seq.**
11 ***(for the California Consumer Subclass)***

12 110. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
13 forth herein.

14 111. Plaintiffs bring this claim individually and on behalf of the members of the
15 proposed California Consumer Subclass against Defendants.

16 112. The Kona Brewing Co. Beers are “goods” within the meaning of Cal. Civ. Code §
17 1761(a), and the purchases of such Kona Brewing Co. Beers by Plaintiffs and members of the
18 California Consumer Subclass constitute “transactions” within the meaning of Cal. Civ. Code §
19 1761(e).

20 113. Cal. Civ. Code § 1770(a)(2) prohibits “misrepresenting the source, sponsorship,
21 approval, or certification of goods or services.” By marketing the Kona Brewing Co. Beers with
22 their current packaging and advertisements, Defendants have represented and continue to represent
23 that the source of the Kona Brewing Co. Beers is Hawaii, when it is not. Defendant Craft Brew
24 Alliance, Inc. misrepresents that it is a “craft brewer” when it is not. Therefore, Defendants have
25 violated section 1770(a)(2) of the CLRA.

26 114. Cal. Civ. Code § 1770(a)(4) prohibits “using deceptive representations or
27 designations of geographical origin in connection with goods or services.” By marketing the Kona
28 Brewing Co. Beers with their current packaging and advertisements, Defendants have used deceptive
representations and designations of the beer’s geographical origin (Hawaii). Therefore, Defendants
have violated section 1770(a)(4) of the CLRA.

1 115. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have .
3 . . .” By marketing the Kona Brewing Co. Beers with their current packaging and advertisements,
4 Defendants have represented and continue to represent that the beer has characteristics (that it is
5 brewed in Hawaii) which it does not have. Defendants also misrepresent the characteristics of Kona
6 Brewing Co. Beers as “craft beers” when they are not. Therefore, Defendants have violated section
7 1770(a)(5) of the CLRA.

8 116. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
9 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are
10 of another.” By marketing the Kona Brewing Co. Beers with their current packaging and
11 advertisements, Defendants have represented and continue to represent that the beer is of a particular
12 style (that it is brewed in Hawaii) when it is of another (brewed in the continental USA). Defendants
13 also misrepresent the style and/or standard of Kona Brewing Co. Beers as “craft beers” when they are
14 not. Therefore, Defendants have violated section 1770(a)(7) of the CLRA.

15 117. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent
16 not to sell them as advertised.” By packaging and marketing the Kona Brewing Co. Beers with
17 popular images of Hawaii and statements concerning Hawaiian landmarks, history, traditions, and
18 culture so much so that a reasonable consumer would believe that the beer was brewed in Hawaii, and
19 then intentionally not selling the beer as beers brewed in Hawaii, Defendants have violated section
20 1770(a)(9) of the CLRA. Defendants also advertise Kona Brewing Co. Beers as “craft beers” with the
21 intent not to sell them as such, therefore violating section 1770(a)(9) of the CLRA.

22 118. At all relevant times, Defendants have known or reasonably should have known
23 that the Kona Brewing Co. Beers were not craft beers brewed in Hawaii, but instead were brewed
24 in the continental United States, and that Plaintiffs and other members of the California Consumer
25 Subclass would reasonably and justifiably rely on the packaging and other advertisements in
26 purchasing the beer.

27 119. Plaintiffs and members of the California Consumer Subclass have reasonably and
28 justifiably relied on Defendants’ misleading, and fraudulent conduct when purchasing the Kona

1 Brewing Co. Beers. Moreover, based on the materiality of Defendants' fraudulent and misleading
2 conduct, reliance on such conduct as a material reason for the decision to purchase the beer may
3 be presumed or inferred for Plaintiffs and members of California Consumer Subclass.

4 120. Plaintiffs and members of the California Consumer Subclass have suffered and
5 continue to suffer injuries caused by Defendants because they would not have purchased the Kona
6 Brewing Co. Beers or would have paid significantly less for the Kona Brewing Co. Beers had they
7 known that Defendants' conduct was misleading and fraudulent.

8 121. Under Cal. Civ. Code § 1780(a), Plaintiffs and members of the California
9 Consumer Subclass are seeking injunctive relief pursuant to the CLRA, preventing Defendants
10 from further wrongful acts and unfair and unlawful business practices, as well as restitution,
11 disgorgement of profits, and any other relief this Court deems proper.

12 122. Pursuant to Cal. Civ. Code § 1782, on February 28, 2017, counsel for Plaintiffs
13 Cilloni and Zimmer mailed a notice and demand letter by certified mail, with return receipt
14 requested, to Defendant Craft Brew Alliance, Inc.. Defendant Brew Alliance, Inc. received the
15 notice and demand letter on March 3, 2017. On February 22, 2017, counsel for Plaintiff
16 Broomfield mailed a notice and demand letter by certified mail, with return receipt requested, to
17 Defendant Craft Brew Alliance, Inc. Defendant Craft Brew Alliance, Inc. received the notice and
18 demand letter on February 25, 2017. Because Defendant Craft Brew Alliance, Inc. has failed to
19 fully rectify or remedy the damages caused after waiting more than the statutorily required 30 days
20 after it received the notice and demand letters, Plaintiffs are timely filing this Complaint for
21 damages pursuant to the CLRA.

22 **SECOND CLAIM FOR RELIEF**
23 **Violation of California's Unfair Competition Law ("UCL"),**
24 **California Business & Professions Code §§ 17200, et seq.**
(for the California Subclass and California Consumer Subclass)

25 123. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
26 forth herein.

27 124. Plaintiffs bring this claim individually and on behalf of the members of the
28 proposed California Subclass and California Consumer Subclass against Defendants.

1 125. UCL §17200 provides, in pertinent part, that “unfair competition shall mean and
2 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
3 misleading advertising”

4 126. Under the UCL, a business act or practice is “unlawful” if it violates any
5 established state or federal law.

6 127. Defendants’ false and misleading advertising of the Kona Brewing Co. Beers
7 therefore was and continues to be “unlawful” because it violates the CLRA, California’s False
8 Advertising Law (“FAL”), and other applicable laws as described herein.

9 128. As a result of Defendants’ unlawful business acts and practices, Defendants have
10 unlawfully obtained money from Plaintiff, and members of both the California Subclass and
11 California Consumer Subclass.

12 129. Under the UCL, a business act or practice is “unfair” if the defendants’ conduct is
13 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
14 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the
15 gravity of the harm to the alleged victims.

16 130. Defendants’ conduct was and continues to be of no benefit to purchasers of the
17 Kona Brewing Co. Beers, as it is misleading, unfair, unlawful, and is injurious to consumers who
18 rely on the beer’s packaging and marketing. Creating consumer confusion as to the actual location
19 of brewing and the characteristics of the beer (as a craft beer) is of no benefit to consumers.
20 Therefore, Defendants’ conduct was and continues to be “unfair.”

21 131. As a result of Defendants’ unfair business acts and practices, Defendants have and
22 continue to unfairly obtain money from Plaintiffs, and members of both the California Subclass
23 and California Consumer Subclass.

24 132. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or
25 is likely to deceive members of the consuming public.

26 133. Defendants’ conduct here was and continues to be fraudulent because it has the
27 effect of deceiving consumers into believing that the Kona Brewing Co. Beers are craft beers
28 brewed in Hawaii, when they are not. Because Defendants misled Plaintiffs and members of both

1 the California Subclass and California Consumer Subclass, Defendants' conduct was "fraudulent."

2 134. As a result of Defendants' fraudulent business acts and practices, Defendants have
3 and continue to fraudulently obtain money from Plaintiffs, and members of both the California
4 Subclass and California Consumer Subclass.

5 135. Plaintiffs requests that this Court cause Defendants to restore this unlawfully,
6 unfairly, and fraudulently obtained money to Plaintiffs, and members of both the California
7 Subclass and California Consumer Subclass, to disgorge the profits Defendants made on these
8 transactions, and to enjoin Defendants from violating the UCL or violating it in the same fashion
9 in the future as discussed herein. Otherwise, Plaintiffs, and members of both the California
10 Subclass and California Consumer Subclass, may be irreparably harmed and/or denied an effective
11 and complete remedy if such an order is not granted.

12 **THIRD CLAIM FOR RELIEF**

13 **Violation of California's False Advertising Law ("FAL"),**
14 **California Business & Professions Code §§ 17500, et seq**
(for the California Subclass and California Consumer Subclass)

15 136. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
16 forth herein.

17 137. Plaintiffs bring this claim individually and on behalf of the members of the
18 proposed California Subclass and California Consumer Subclass against Defendants.

19 138. California's FAL makes it "unlawful for any person to make or disseminate or
20 cause to be made or disseminated before the public . . . in any advertising device . . . or in any
21 other manner or means whatever, including over the Internet, any statement, concerning . . .
22 personal property or services professional or otherwise, or performance or disposition thereof,
23 which is untrue or misleading and which is known, or which by the exercise of reasonable care
24 should be known, to be untrue or misleading."

25 139. Defendants have represented and continue to represent to the public, including
26 Plaintiffs and members of both the California Subclass and California Consumer Subclass,
27 through Defendants' deceptive packaging and marketing, that the Kona Brewing Co. Beers are
28 craft beers brewed in Hawaii. Defendants' representations are misleading because the Kona

1 Brewing Co. Beers are not craft beers and are brewed in the continental United States. Because
2 Defendants have disseminated misleading information regarding the Kona Brewing Co. Beers, and
3 Defendants know, knew, or should have known through the exercise of reasonable care that the
4 representation was and continues to be misleading, Defendants have violated the FAL.

5 140. Furthermore, Defendants know, knew or should have known through the exercise
6 of reasonable care that such representation was and continues to be unauthorized and misleading.

7 141. As a result of Defendants' false advertising, Defendants have and continue to
8 fraudulently obtain money from Plaintiffs and members of both the California Subclass and
9 California Consumer Subclass.

10 142. Plaintiffs request that this Court cause Defendants to restore this fraudulently
11 obtained money to Plaintiffs and members of both the California Subclass and California
12 Consumer Subclass, to disgorge the profits Defendants made on these transactions, and to enjoin
13 Defendants from violating the FAL or violating it in the same fashion in the future as discussed
14 herein. Otherwise, Plaintiffs and members of both the California Subclass and California
15 Consumer Subclass may be irreparably harmed and/or denied an effective and complete remedy if
16 such an order is not granted.

17 **FOURTH CLAIM FOR RELIEF**

18 **Breach of Express Warranty**

19 **California Commercial Code § 2313**

20 *(for the California Subclass and California Consumer Subclass)*

21 143. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
22 forth herein.

23 144. Plaintiffs bring this claim individually and on behalf of the members of the
24 proposed California Subclass and California Consumer Subclass against Defendants.

25 145. California Commercial Code § 2313 provides that "(a) Any affirmation of fact or
26 promise made by the seller to the buyer which relates to the goods and becomes part of the basis
27 of the bargain creates an express warranty that the goods shall conform to the affirmation or
28 promise," and "(b) Any description of the goods which is made part of the basis of the bargain
creates an express warranty that the goods shall conform to the description." Cal. Com. Code §

1 2313.

2 146. Defendants have expressly warranted on the packaging of the Kona Brewing Co.
3 Beers that the beers are brewed in Hawaii. These representations about the Kona Brewing Co.
4 Beers: (1) are affirmations of fact or promises made by Defendants to consumers that the Kona
5 Brewing Co. Beers are in fact brewed in Hawaii; (2) became part of the basis of the bargain to
6 purchase the Kona Brewing Co. Beers; and (3) created an express warranty that the Kona Brewing
7 Co. Beers would conform to these affirmations of fact or promises. In the alternative, the
8 representations about the Kona Brewing Co. Beers are descriptions of goods which were made as
9 part of the basis of the bargain to purchase the Kona Brewing Co. Beers, and which created an
10 express warranty that the Kona Brewing Co. Beers would conform to the product descriptions.

11 147. Plaintiffs and members of both the California Subclass and California Consumer
12 Subclass reasonably and justifiably relied on the foregoing express warranties, believing that the
13 Kona Brewing Co. Beers did in fact conform to these warranties.

14 148. Defendants have breached the express warranties made to Plaintiffs and members
15 of both the California Subclass and California Consumer Subclass by failing to brew the Kona
16 Brewing Co. Beers in Hawaii.

17 149. Plaintiffs and members of both the California Subclass and California Consumer
18 Subclass paid a premium price for the Kona Brewing Co. Beers but did not obtain the full value of
19 the beers as represented. If Plaintiffs and members of both the California Subclass and California
20 Consumer Subclass had known of the true nature of the Kona Brewing Co. Beers, they would not
21 have purchased the beers or would not have been willing to pay the premium price associated with
22 beers.

23 150. As a result, Plaintiffs and members of both the California Subclass and California
24 Consumer Subclass suffered injury and deserve to recover all damages afforded under the law.

25 **FIFTH CLAIM FOR RELIEF**

26 **Breach of Implied Warranty**

27 **California Commercial Code § 2314**

28 *(for the California Subclass and California Consumer Subclass)*

29 151. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set

1 forth herein.

2 152. Plaintiffs bring this claim individually and on behalf of the members of the
3 proposed California Subclass and California Consumer Subclass against Defendants.

4 153. California Commercial Code § 2314(1) provides that “a warranty that the goods
5 shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect
6 to goods of that kind.” Cal. Com. Code § 2314(1).

7 154. California Commercial Code § 2314(2) provides that “[g]oods to be merchantable
8 must be at least such as . . . (f) conform to the promises or affirmations of fact made on the
9 container or label if any.” Cal. Com. Code § 2314(2)(f).

10 155. Defendants are merchants with respect to the sale of beer Kona Brewing Co. Beers,
11 including the Kona Brewing Co. Beers here. Therefore, a warranty of merchantability is implied
12 in every contract for sale of the Kona Brewing Co. Beers to California consumers.

13 156. By advertising the Kona Brewing Co. Beers with their current packaging,
14 Defendants made an implied promise that the Kona Brewing Co. Beers were brewed in Hawaii.
15 By not brewing the Kona Brewing Co. Beers in Hawaii, Defendants have not “conformed to the
16 promises...made on the container or label.” Plaintiffs and California consumers did not receive
17 the goods as impliedly warranted by Defendants to be merchantable.

18 157. Therefore, the Kona Brewing Co. Beers are not merchantable under California law
19 and Defendants have breached their implied warranty of merchantability in regard to the Kona
20 Brewing Co. Beers.

21 158. If Plaintiffs and members of both the California Subclass and California Consumer
22 Subclass had known that the Kona Brewing Co. Beers were not brewed in Hawaii, they would not
23 have purchased the beer or would not have been willing to pay the premium price associated with
24 the beer. Therefore, as a direct and/or indirect result of Defendants’ breach, Plaintiffs and
25 members of both the California Subclass and California Consumer Subclass have suffered injury
26 and deserve to recover all damages afforded under the law.

27
28

SIXTH CLAIM FOR RELIEF
Common Law Fraud
(for the Classes)

1
2
3 159. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
4 forth herein.

5 160. Plaintiffs bring this claim individually and on behalf of the members of the Classes
6 against Defendants.

7 161. Defendants have willfully, falsely, or knowingly packaged and marketed the Kona
8 Brewing Co. Beers in a manner indicating that the Kona Brewing Co. Beers are craft beers brewed
9 in Hawaii. However, the Kona Brewing Co. Beers are not craft beers and are not brewed in Hawaii
10 and instead are brewed in the continental United States. Therefore, Defendants have made
11 misrepresentations as to the Kona Brewing Co. Beers.

12 162. Defendants' misrepresentations are and were material (i.e., the type of
13 misrepresentations to which a reasonable person would attach importance and would be induced to
14 act thereon in making purchase decisions) because they relate to the characteristics of the beer and
15 where the brewing of the beer that the consumer is receiving occurred.

16 163. Defendants knew or recklessly disregarded the fact that the Kona Brewing Co.
17 Beers are not craft beers and are not brewed in Hawaii.

18 164. Defendants intend that Plaintiffs and others consumers rely on these
19 representations, as evidenced by Defendants' intentionally using packaging that invokes popular
20 Hawaiian images, and makes references to Hawaiian landmarks, history, traditions, and culture.
21 Furthermore, Defendants' admissions in paragraphs 74-78 confirm this intention.

22 165. Plaintiffs and members of the Classes have reasonably and justifiably relied on
23 Defendants' misrepresentations when purchasing the Kona Brewing Co. Beers and had the correct
24 facts been known, would not have purchased the Kona Brewing Co. Beers or would not have
25 purchased them at the prices at which they were offered.

26 166. Therefore, as a direct and proximate result of Defendants' fraud, Plaintiffs and
27 members of the Classes have suffered economic losses and other general and specific damages,
28 including but not limited to the amounts paid for the Kona Brewing Co. Beers, and any interest

1 that would have accrued on those monies, all in an amount to be proven at trial.

2 **SEVENTH CLAIM FOR RELIEF**
3 **Intentional Misrepresentation**
4 ***(for the Classes)***

5 167. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
6 forth herein.

7 168. Plaintiffs bring this claim individually and on behalf of the members of the Classes
8 against Defendants.

9 169. Defendants marketed the Kona Brewing Co. Beers in a manner indicating that the
10 Kona Brewing Co. Beers were craft beers brewed in Hawaii. However, the Kona Brewing Co.
11 Beers are not craft beers and not brewed in Hawaii and instead are brewed in the continental
12 United States. Therefore, Defendants have made misrepresentations as to the Kona Brewing Co.
13 Beers.

14 170. Defendants' misrepresentations regarding the Kona Brewing Co. Beers are material
15 to a reasonable consumer because they relate to the characteristics of the beer and the location of
16 the brewing of the beer received by consumers. A reasonable consumer would attach importance
17 to such representations and would be induced to act thereon in making purchase decisions.

18 171. At all relevant times when such misrepresentations were made, Defendants knew
19 that the representations were misleading, or have acted recklessly in making the representations,
20 without regard to the truth.

21 172. Defendants intend that Plaintiffs and others consumers rely on these
22 representations, as evidenced by Defendants' intentionally using packaging that invokes popular
23 Hawaiian images, and makes references to Hawaiian landmarks, history, traditions, and culture.
24 Furthermore, Defendants' admissions in paragraphs 74-78 confirm this intention.

25 173. Plaintiffs and members of the Classes have reasonably and justifiably relied on
26 Defendants' intentional misrepresentations when purchasing the Kona Brewing Co. Beers, and
27 had the correct facts been known, would not have purchased the Kona Brewing Co. Beers or
28 would not have purchased them at the prices at which they were offered.

174. Therefore, as a direct and proximate result of Defendants' intentional

1 misrepresentations, Plaintiffs and members of the Classes have suffered economic losses and other
2 general and specific damages, including but not limited to the amounts paid for the Kona Brewing
3 Co. Beers, and any interest that would have accrued on those monies, all in an amount to be
4 proven at trial.

5 **EIGHTH CLAIM FOR RELIEF**
6 **Negligent Misrepresentation**
7 *(for the Classes)*

8 175. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
9 forth herein.

10 176. Plaintiffs bring this claim individually and on behalf of the members of the Classes
11 against Defendants.

12 177. Defendants marketed the Kona Brewing Co. Beers in a manner indicating that the
13 Kona Brewing Co. Beers were craft beers brewed in Hawaii. However, the Kona Brewing Co.
14 Beers are not craft beers and are not brewed in Hawaii and instead are brewed in the continental
15 United States. Therefore, Defendants have made misrepresentations as to the Kona Brewing Co.
16 Beers.

17 178. Defendants' misrepresentations regarding the Kona Brewing Co. Beers are material
18 to a reasonable consumer because they relate to the characteristics of the beer and the location of
19 the brewing of the beer received by the consumer. A reasonable consumer would attach
20 importance to such representations and would be induced to act thereon in making purchase
21 decisions.

22 179. At all relevant times when such misrepresentations were made, Defendants knew or
23 had been negligent in not knowing that that the Kona Brewing Co. Beers were not craft beers
24 brewed in Hawaii and instead were brewed in the continental United States. Defendants had no
25 reasonable grounds for believing their misrepresentations were not false and misleading.

26 180. Defendants intend that Plaintiffs and others consumers rely on these
27 representations, as evidenced by Defendants' intentionally using packaging that invokes popular
28 Hawaiian images, and makes references to Hawaiian landmarks, history, traditions, and culture.
Furthermore, Defendants' admissions in paragraphs 74-78 confirm this intention.

1 181. Plaintiffs and members of the Classes have reasonably and justifiably relied on
2 Defendants' negligent misrepresentations when purchasing the Kona Brewing Co. Beers, and had
3 the correct facts been known, would not have purchased the Kona Brewing Co. Beers or would
4 not have purchased them at the prices at which they were offered.

5 182. Therefore, as a direct and proximate result of Defendants' negligent
6 misrepresentations, Plaintiffs and members of the Classes have suffered economic losses and other
7 general and specific damages, including but not limited to the amounts paid for the Kona Brewing
8 Co. Beers, and any interest that would have accrued on those monies, all in an amount to be
9 proven at trial.

10 **NINTH CLAIM FOR RELIEF**
11 **Quasi Contract/Unjust Enrichment/Restitution**
12 ***(for the Classes)***

13 183. Plaintiffs repeat the allegations contained in paragraphs 1-100 above as if fully set
14 forth herein.

15 184. Plaintiffs bring this claim individually and on behalf of the members of the Classes
16 against Defendants.

17 185. As alleged herein, Defendants have intentionally and recklessly made misleading
18 representations to Plaintiffs and members of the Classes to induce them to purchase the Kona
19 Brewing Co. Beers. Plaintiffs and members of the Classes have reasonably relied on the
20 misleading representations and have not received all of the benefits promised by Defendants.
21 Plaintiffs and members of the Classes therefore have been induced by Defendants' misleading and
22 false representations about the Kona Brewing Co. Beers, and paid for them when they would
23 and/or should not have or paid more money to Defendants for the beer than they otherwise would
24 and/or should have paid.

25 186. Plaintiffs and members of the Classes have conferred a benefit upon Defendants as
26 Defendants have retained monies paid to them by Plaintiffs and members of the Classes.

27 187. The monies received were obtained under circumstances that were at the expense of
28 Plaintiffs and members of the Classes – i.e., Plaintiffs and members of the Classes did not receive
the full value of the benefit conferred upon Defendants.

1 188. Therefore, it is inequitable and unjust for Defendants to retain the profit, benefit, or
2 compensation conferred upon them without paying Plaintiffs and the members of the Classes back
3 for the difference of the full value of the benefits compared to the value actually received.

4 189. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs and
5 members of the Classes are entitled to restitution, disgorgement, and/or the imposition of a
6 constructive trust upon all profits, benefits, and other compensation obtained by Defendants from
7 its deceptive, misleading, and unlawful conduct as alleged herein.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs, individually and on behalf of the Classes, respectfully pray for
10 following relief:

11 1. Certification of this case as a class action on behalf of the Classes defined above,
12 appointment of Plaintiffs as Class representatives, and appointment of their counsel as Class
13 counsel;

14 2. A declaration that Defendants' actions, as described herein, violate the claims
15 described herein;

16 3. An award of injunctive and other equitable relief as is necessary to protect the
17 interests of Plaintiffs and the Classes, including, *inter alia*, an order prohibiting Defendants from
18 engaging in the unlawful act described above;

19 4. An award to Plaintiffs and the proposed classes of restitution and/or other equitable
20 relief, including, without limitation, restitutionary disgorgement of all profits and unjust
21 enrichment that Defendants obtained from Plaintiffs and the proposed classes as a result of their
22 unlawful, unfair and fraudulent business practices described herein;

23 5. An award of all economic, monetary, actual, consequential, and compensatory
24 damages caused by Defendants' conduct;

25 6. An award of punitive damages;

26 7. An award to Plaintiffs and their counsel of their reasonable expenses and attorneys'
27 fees;

28

1 8. An award to Plaintiffs and the proposed classes of pre and post-judgment interest,
2 to the extent allowable; and

3 9. For such further relief that the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs, on behalf of themselves and the proposed classes, hereby demand a jury trial
6 with respect to all issues triable of right by jury.

7
8 DATED: April 7, 2017

FARUQI AND FARUQI LLP

9 By: /s/ Barbara S. Rohr

10 Barbara A. Rohr (SBN 273353)
11 Benjamin Heikali (SBN 307466)
12 10866 Wilshire Boulevard, Suite 1470
13 Los Angeles, CA 90024
14 Telephone: (424) 256-2884
15 Facsimile: (424) 256-2885
16 E-mail: brohr@faruqilaw.com
17 bheikali@faruqilaw.com

18 *Attorneys for Plaintiff Theodore Broomfield and the putative
19 class*

20
21 DATED: April 7, 2017

THE WAND LAW FIRM

22 By: /s/ Aubry Wand

23 Aubry Wand (SBN 281207)
24 400 Corporate Pointe, Suite 300
25 Culver City, California 90230
26 Telephone: (310) 590-4503
27 Facsimile: (310) 590-4596
28 E-mail: awand@wandlawfirm.com

*Attorneys for Plaintiffs Sara Cilloni and Simone Zimmer and
the putative class*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Dated: April 7, 2017

By: /s/ Barbara A. Rohr

Barbara A. Rohr