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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 SARA CILLONI and SIMONE ZIMMER,
13 individually, and on behalf of all others
similarly situated,

14 Plaintiffs,

15 v.

16 CRAFT BREW ALLIANCE, INC., a
17 corporation; and DOES 1 through 50,
inclusive,

18 Defendants.
19
20
21

CASE NO.:

CLASS ACTION COMPLAINT

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

DEMAND FOR JURY TRIAL

1 Plaintiffs Sara Cilloni and Simone Zimmer (“Plaintiffs”), on behalf of themselves and all
2 others similarly situated, bring this class action against Defendant Craft Brew Alliance, Inc. and
3 Does 1 through 50 (“Craft Brew” or “Defendants”) to recover monetary damages, injunctive
4 relief, and other remedies. Plaintiffs make the following allegations based on the investigation of
5 their counsel and on information and belief, except as to allegations pertaining to Plaintiffs
6 individually, which is based on their personal knowledge.

7 **INTRODUCTION**

8 1. Through false and deceptive advertising, Craft Brew intentionally misleads
9 consumers into believing that Kona Brewing Company beer (a brand of Craft Brew) is a local beer
10 made in Hawaii. In actuality, this beer is made in the continental United States.

11 2. The falsely advertised beer at issue in this action includes but is not limited to
12 Longboard Island Lager, Big Wave Golden Ale, Fire Rock Pale Ale, Wailua Wheat Ale, Hanalei
13 Island IPA, and Castaway IPA. Kona Brewing Company also sells seasonal beers, referred to as
14 the Aloha series, which include but are not limited to Lemongrass Luau, Koko Brown, and
15 Pipeline Porter. Hereinafter, these beers are referred to as “Kona Brewing Co. beer.”

16 3. Craft Brew advertises, markets, distributes, and sells these brands of beer to
17 consumers via retail stores and restaurants throughout the United States based on the
18 misrepresentation that these beers are brewed by Kona Brewing Company in Hawaii. However,
19 none of these brands of beer (bottled, canned, and continental U.S. draft) are brewed by the Kona
20 Brewing Company in Hawaii.¹ Rather, these beers are made by Craft Brew in Oregon,
21 Washington, Tennessee, and/or New Hampshire.

22 4. Plaintiffs and other consumers purchased Kona Brewing Co. beer because they
23 reasonably believed – based on Craft Brew’s advertising and labeling – that this beer originates
24 from Hawaii. As a result, Plaintiffs and other consumers have been deceived and have suffered
25 economic injury.

26
27 _____
28 ¹ Kona Brewing Company’s draft beers (i.e., non-bottled or canned) sold in Hawaii may actually
be brewed in Kona, Hawaii.

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

3 **PLAINTIFFS**

4 10. Plaintiff Cilloni is a citizen of the United States and the State of California and she
5 currently resides in the County of Santa Clara. During the statute of limitations period, Plaintiff
6 Cilloni purchased Kona Brewing Co. beer at a retail store located in the County of Santa Clara,
7 among other locations.

8 11. Plaintiff Zimmer is a citizen of the United States and the State of California and she
9 currently resides in the County of San Bernardino. During the statute of limitations period,
10 Plaintiff Zimmer purchased Kona Brewing Co. beer at a retail store located in County of San
11 Bernardino, among other locations.

12 **DEFENDANT**

13 12. Craft Brew is a publicly traded company and the fifth-largest craft brewing
14 company in the United States. Craft Brew owns and operates five breweries. In addition to Kona
15 Brewing Company, Craft Beer owns the Red Hook, Widmer Brothers, Omission, Square Mile
16 Cider Company, and KCCO brands. Craft Brew's corporate headquarters are located at 929 North
17 Russell Street, Portland, Oregon 97227.

18 13. Craft Brew acquired Kona Brewing Company in 2010. During the statute of
19 limitations period, Craft Brew has sold hundreds of thousands barrels and bottles of Kona Brewing
20 Co. beer throughout the State of California and the United States.

21 14. As of January 2013, Anheuser-Busch InBev owned approximately 32.2% of Craft
22 Brew. Anheuser-Busch InBev is the world's largest producer of alcoholic beverages.

23 15. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
24 Plaintiffs at this time, and Plaintiffs therefore sues such DOE Defendants under fictitious names.
25 Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE
26 is in some manner highly responsible for the occurrences alleged herein, and that Plaintiffs and
27 Class members' injuries and damages, as alleged herein, were proximately caused by the conduct
28

1 of such DOE Defendants. Plaintiffs will seek leave of the Court to amend this Complaint to allege
2 the true names and capacities of such DOE Defendants when ascertained.

3 FACTUAL ALLEGATIONS

4 Kona Brewing Company is Highly Profitable

5 16. In a 2016 SEC 10-Q filing, Craft Brew reported the following financials:²

6 Six Months Ended June 30	7 2015 Shipments (In Barrels)	8 2014 Shipments (In Barrels)	9 Percent Change
10 Kona	168,200	154,700	8.7%
11 Redhook	94,500	112,100	-15.7%
12 Widmer Brothers	98,400	106,500	-7.6%
Omission	25,700	24,200	6.2%
Total	386,800	397,500	-2.7%

13 17. The statistics in the table above demonstrate that Kona Brewing Company is one of
14 Craft Brew's most commercially successful brands. Craft Brew sells hundreds of thousands of
15 barrels of Kona Brewing Co. beer per year. According to standard measurements, one barrel (or
16 keg) of beer is equivalent to approximately 165 twelve ounce bottles. Thus, in 2015 alone, Craft
17 Brew sold the equivalent of over 27 million twelve ounce bottles.

18 18. And the Kona Brewing brand continues to grow. Craft Brew's Chief Executive
19 Officer, Andy Thomas, stated in a May 4, 2016 publication on Craft Brew's website that "solid
20 second quarter performance" in 2016 reflects, at least in part, "significant progress in
21 strengthening our topline by sustaining Kona's remarkable growth . . ."³ In the same publication,
22 Craft Brew reported a 19% growth for Kona Brewing Co. beer.
23
24
25

26 ²<http://secfilings.nasdaq.com/filingFrameset.asp?FilingID=10843167&RcvdDate=8/5/2015&CoName=CRAFT%20BREW%20ALLIANCE%2C%20INC.&FormType=10-Q&View=orig>

27 ³<http://craftbrew.com/2016/08/03/craft-brew-alliance-reports-largest-net-sales-shipments-and-depletions-in-company-history/>
28

1 **Kona Brewing Co. Beer is Falsely Labeled as Made in Hawaii**

2 19. Craft Brew deceptively labels its Kona Brewing Co. beer as made in Hawaii in
3 order to exploit strong consumer sentiment for Hawaiian-made products.

4 20. In order to maximize profits, Craft Brew has capitalized on the Hawaii brand image
5 of Kona Brewing Co. beer. The entire brand image of Kona Brewing Company – including the
6 name itself – revolves around its purported Hawaii origins. Craft Brew ubiquitously uses Hawaii
7 imagery, references, metaphors, and outright misstatements in order to cultivate this image.

8 21. Intentionally deceptive Hawaii-origin representations on the bottle label and
9 cardboard packaging of all Kona Brewing Co. beer brands include the following:

- 10 • The Kona Brewing Co. logo is displayed on the front of the bottle and on the bottle caps.
11 • It states “*Liquid Aloha*” on the front of the bottle.
12 • Embedded into the front of the bottle is an image of the Hawaiian island chain.

13 *See, e.g.,* Figure 1.

- 14 • “KONA BREWING CO.” is prominently printed on the front of the cardboard packaging.
15 • On the front of the cardboard packaging it prominently states, “BREWING *Liquid Aloha*
16 SINCE ’94.”

17 *See, e.g.,* Figure 2.

18 22. The different Kona Brewing Co. beer brands each also bear their own specific
19 misleading Hawaii-origin representations based on the particular theme of the beer:

20 **Longboard Island Lager**

21 23. The name Long Board Island Lager refers to surfing and the Hawaiian lifestyle.

22 24. There is imagery of surfboards and surfers on waves in front of Diamond Head (a
23 landmark in Oahu, Hawaii) on both the bottle label and the packaging.

24 25. On the label of the neck of the bottle it states, “A spirited, crisp and refreshing
25 brew, Longboard Island Lager is a smooth ride all the way in. Thirst’s up! Waikiki Beach in
26 Honolulu is the birth place of longboard surfing. Kona Brewing pays tribute to this iconic place
27 with our own Longboard Island Lager.”

28

1 26. It states on both the bottle label and the packaging, “Longboard surfing in the
2 shadow of Diamond Head has been a tradition for over 100 years at Waikiki beach. Our
3 Longboard Island Lager pays tribute to this grand history.”

4 27. On the cardboard packaging of six-pack containers it prominently states,
5 “THIRST’S UP!”

6 28. On the bottom of the cardboard packaging of twelve-pack containers, there is the
7 Kona Brewing Co. label and an image of Oahu. It also states:

8 “THE BEACH WHERE IT BEGAN

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

17 THIRST’S UP!

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

23 *See, e.g.*, Figures 3 and 4.

24 **Big Wave Golden Ale**

25 29. The name Big Wave Golden Ale refers to waves and the power of the ocean
26 surrounding Hawaii.

27 30. There is imagery of four people in an outrigger canoe (a traditional Polynesian
28 canoe) riding a wave on both the bottle label and the packaging.

 31. It also states on both the bottle label and the cardboard packaging, “Makaha. Our
brewers wanted to make a beer that went down easy after a day in the water. Big Wave Golden
Ale is just the ticket.”

1 32. On the label of the neck of the bottle it states, “Our sun-drenched Big Wave Golden
2 Ale is a smooth brew, inspired by what makes Hawaii great. Catch a wave! Year-round, the
3 waves that roll onto Hawaiian beaches are some of the best in the world. Catch the crest of a
4 breaking wave and ride it all the way in.”

5 33. On the cardboard packaging of six-pack containers it prominently states, “CATCH
6 A WAVE!”

7 34. On the top of the cardboard packaging of twelve-pack containers, there is the Kona
8 Brewing Co. label and an image of Oahu. It also states:

9 “HAWAIIAN SWEET SPOT

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

17 CATCH A WAVE!

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

23 *See, e.g.*, Figures 2 and 5.

24 **Fire Rock Pale Ale**

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

27 36. There is imagery of the Kilauea Volcano (one of Hawaii’s active volcanoes) with
28 lava flowing into the ocean on both the bottle label and the packaging.

 37. It also states on both the bottle label and the cardboard packaging, “Kilauea
Caldera. The power and copper glow of molten lava flowing to the sea from the Big Island’s
Kilauea Caldera is evoked in our Fire Rock Pale Ale.”

1 38. On the label of the neck of the bottle it states, “Active volcanoes on the Big Island
2 of Hawaii leave visitors awestruck by their power. The glow of lava as it meets the ocean is an
3 amazing sight. Our Fire Rock Pale Ale is inspired by this place with a bright copper color and
4 rich roasted malt taste. Aloha!

5 *See, e.g.*, Figures 6 and 7.

6 **Wailua Wheat Ale**

7 39. The name Wailua Wheat Ale refers to the Wailua waterfalls – a landmark in Maui,
8 Hawaii.

9 40. There is imagery of a woman standing in front of a waterfall on both the bottle
10 label and the packaging.

11 41. On the label of the neck of the bottle it reads, “Wailua is Hawaiian for two fresh
12 water streams mingling. This was just the inspiration we needed for our Wailua Wheat Ale.
13 Brewed with tropical passionfruit, it’s a refreshing, citrusy, sun-colored ale with the cool taste of
14 Hawaii.”

15 42. On the cardboard packaging of six-pack containers it prominently states,
16 “PARADISE FOUND.”

17 43. It also states on both the bottle label and the cardboard packaging, “Wailua Falls.
18 This spectacular 95’ waterfall on Maui inspired our Wailua Wheat ale.”

19 44. On the bottom of the cardboard packaging of six-pack containers there is an image
20 of the island of Maui and it states:

21 “LAID BACK IN TIME

22 Imagine travelling along a 90 year-old winding road on the north coast of Maui, crossing
23 one-lane stone bridges that take you back to old Hawaii. This simple “highway” is known
24 as the Road to Hana, a historic fishing village and the birth place of a Hawaiian Queen.
25 This journey grips the edge of the island with ocean views and cascading waterfalls around
26 nearly every bend. Wailua Falls is one of these spectacular sights. The falls plunge 95 feet
27 into a natural pool, cradled in the surrounding volcanic rock. Take a dip in the cool,
28 refreshing water, under the canopy of palm trees, and you will feel the timelessness of this
Hawaiian paradise.

PARADISE FOUND

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

6 *See, e.g.*, Figures 8 and 9.

7 **Hanalei Island IPA**

8 45. The name Hanalei Island IPA refers to Hanalei – a town in Kauai, Hawaii.

9 46. There is imagery of two people kayaking in the ocean in front of the mountains in
10 Hawaii on both the bottle label and the packaging.

11 47. On the label of the neck of the bottle it states, “Kayak the stunning Hanalei Bay and
12 ease your way through the tropical paradise of northern Kauai. Refresh your senses with this crisp
13 Island IPA – the subtle bitterness of hops is balanced by passionfruit, orange and guava. Easy does
14 it.”

15 48. On the cardboard packaging of six-pack containers it prominently states, “EASY
16 DOES IT.”

17 49. On the bottom of the cardboard packaging of six-pack containers there is an image
18 of the island of Kauai and it states:

19 “PADDLER’S PARADISE

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

EASY DOES IT

Our easy-drinking Hanalei Island IPA is our brewer’s homage to the Garden Isle and the
Hawaiian classic drink, POG. Passionfruit, orange, and guava balance the subtle bitterness
of aromatic Azacca and Galaxy hops to deliver a coppery, laidback, session-style ale,
bright with tropical flavors and just 4.5% ABV. After all, a day on the bay calls for
something that’s relaxed and smooth, like our namesake, and refreshing enough to remind

1 you that you're in the South Pacific. And even if you aren't, with this Kona Brew in hand,
2 Hawaii is only a sip away. Easy does it."

3 *See, e.g.*, Figure 10.

4 **Castaway IPA**

5 50. There is imagery of four people in an outrigger canoe (a traditional Polynesian
6 canoe) riding a wave on both the bottle label and the packaging.

7 51. On the label of the neck of the bottle it states, "A smooth yet spirited brew, it's as
8 refreshing as the wind in your face when you set sail for adventure."

9 52. It also states on both the bottle label and the cardboard packaging, "Channel of
10 Bones. The Ka'iwi Channel, or Channel of Bones, between Molokai and Oahu, is a treacherous
11 route that early explorers adventured through. The steep, emerald volcanic sea cliffs off the north
12 shore of Molokai loomed over these early explorers. Our Castaway IPA pays homage to these
13 early explorers who braved the shark infested waters between these cliffs."

14 53. On the cardboard packaging of six-pack containers it prominently states, "SET
15 SAIL FOR ADVENTURE."

16 54. On the bottom of the cardboard packaging of six-pack containers there is an image
17 of the island of Oahu with the Kona Brewing Co. Koko Marina Pub delineated on the island. It
18 also states:

19 "THE FIRST ISLAND HOPPERS

20 Hand-carved, wooden outrigger canoes once carried Hawaiians from island to island,
21 where massive waves would crash over their hulls and toss them toward the horizon. The
22 Ka'iwi Channel, or "Channel of Bones," between Oahu and Molokai was a particularly
23 treacherous route. The steep, emerald green volcanic sea cliffs off the north shore of
24 Molokai loomed over these early island explorers as they searched for safe harbors from
25 the shark-infested waters. Only the strongest survived these perilous trips, many were cast
26 away and lost. Today, this 26-mile wide passage challenges champion swimmers and
27 paddlers who continue to race against the high winds and strong currents, earning
28 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.

1 Castaway IPA has a clean, crisp finish that’s as fresh as the wind in your face when you set
2 sail for adventure.”

3 *See, e.g.*, Figure 11.

4 **Aloha Series**

5 55. On both the bottle label and the packaging of Lemongrass Luau beer there is
6 imagery of three women dancing hula on the beach with the mountains in the background. On the
7 cardboard packaging of six-pack containers it prominently states, “ALWAYS ALOHA.” *See, e.g.*,
8 Figure 12.

9 56. On both the bottle label and the packaging of Pipeline Porter beer there is imagery
10 of a surfer standing on the beach about to paddle out into the surf. It also says, “PIPELINE porter
11 made with HAWAIIAN KONA COFFEE.”

12 57. The name “Pipeline Porter” refers to one of the world’s most famous surf breaks,
13 the Banzai Pipeline, which is located on the north shore of Oahu

14 58. On the label of the neck of the bottle of Pipeline Porter it states, “Our Pipeline
15 porter is a bold, but smooth blend of roasted barley and rich Hawaiian-grown coffee-the perfect
16 ode to the Banzai Pipeline, one of the most spectacular surf spots on the planet.” On the cardboard
17 packaging it prominently states, “A WAVE LIKE NO OTHER.” *See, e.g.*, Figures 13 and 14.

18 59. On both the bottle label and the packaging of Koko Brown beer there is imagery of
19 a man paddle surfing in front of Koko Head. It also says, “Ale brewed with TOASTED
20 COCONUT.”

21 60. The name Koko Brown refers to Koko Head – a landmark in Oahu, Hawaii.

22 61. On the label on the neck of the bottle of Koko Brown beer, it states, “the ancient
23 Hawaiian tradition of Standup Paddling appreciates a revival in the idyllic setting of Maunalua
24 Bay.” *See, e.g.*, Figure 15.

25 62. In sum, the prominent Hawaii imagery and wording on the product labels, taken in
26 both isolation and as a whole, are clearly designed to create the mistaken impression that Kona
27 Brewing Co. beer is made in Hawaii.

1 **Kona Brewing Co. Beer Bottles Falsely State They are Brewed in Hawaii**

2 63. Kona Brewing Co. beer bottles contain an affirmative, false statement that the beer
3 is made in Kona, Hawaii.

4 64. In small lettering on the side of the bottle labels of all Kona Brewing Co. beer it
5 states:

6 “KONA BREWING COMPANY CO KONA HI · PORTLAND, OR · WOODINVILLE,
7 WA · PORTSMOUTH, NH · MEMPHIS TN

8 FRESH, RESPONSIBLE, ALWAYS ALOHA.”

9 *See, e.g.*, Figure 16 (relevant portion circled in red).

10 65. There is no other information on the bottle, can, or on any of the packaging of
11 Kona Brewing Co. beer that could be construed as any type of disclosure regarding the beer’s
12 origin.⁴

13 66. To the extent Craft Brew intended the language quoted above to be some type of
14 disclosure, or that a reasonable consumer understands the above-listed locations to be where the
15 beer is brewed, this labeling constitutes a flat-out misrepresentation, since none of the
16 bottled/canned beer, or draft beer sold in the continental United States, is brewed in Hawaii. In
17 other words, the statement “Kona, HI” is false. The only specific information regarding
18 geographic origin affirmatively misrepresents to consumers that Kona Brewing Co. beer is made
19 in Kona, Hawaii.

20 **Kona Brewing Co. Beer is Falsely Advertised as Made in Hawaii**

21 67. In addition to false advertising and statements on the product labels and packaging
22 themselves, Craft Brew has undertaken a pervasive advertising campaign to cultivate its unique
23 Hawaii image.

24 68. Kona Brewing Company’s social media – which on information and belief is
25 operated by Craft Brew – is rife with Hawaii imagery and references.

26 _____
27 ⁴ During a small portion of the beginning of the statute of limitations period the language quoted
28 in paragraph 64 may not have been listed, and there was simply no information on Kona Brewing
Co. beer labels or packaging relating to geographic origin.

1 69. For instance, on its Twitter Homepage, it states, “Fresh brews made with spirit,
2 passion, and quality. The brewery is headquartered where it began in 1994, in Kailua-Kona on
3 Hawaii’s Big Island.” There are 4,235 tweets, 1050 photos, and 28.2k followers as of the date the
4 Complaint was filed.

5 70. Almost every single one of these thousand-plus photos depicted on Twitter have
6 strong Hawaii imagery. *See, e.g.*, Figures 17-20.

7 71. Many of the tweets also contain Hawaii references. Some of these tweets include:

- 8 • “Fire up, bruddahs and sistahs! Fire Rock is now available with your other craft beer
9 favorites...” December 19, 2016.
- 10 • “What’s cooler than a pineapple wearing shades? A pineapple wearing shades with a
11 Longboard Lager...” November 6, 2016.
- 12 • “Spending your #AlohaFriday right?” October 28, 2016
- 13 • “A Hanalei sunset in a glass.” September 30, 2016.

14 **Kona Brewing Co. Beer is Made in the Continental United States**

15 72. Kona Brewing Co. beer brands are widely distributed and sold in every state in the
16 United States and in 26 different countries. This widespread distribution has been facilitated by
17 Anheuser-Busch InBev’s acquisition of a significant percentage of Craft Brew.

18 73. Kona Brewing Co. beer that is bottled and canned, and draft beer sold in the
19 mainland, is made by Craft Brew in the continental United States.

20 74. On Kona Brewing Company’s website, it states:

21 “Kona Brewing Company runs its flagship brewhouse in Kailua-Kona on Hawaii’s Big
22 Island, which produces more than 12,000 barrels of beer annually.

23 Under strict guidance, Kona Brewing Company also produces its bottled beer and
24 mainland draft beer in Portland, Oregon, Woodinville, Washington, Memphis, Tennessee,
and Portsmouth, New Hampshire, as part of its partnership with Craft Brew Alliance Inc.

25 Recipes and beer specifications are dictated by Kona Brewing Company’s brewmaster,
26 who oversees each of Kona Brewing Company’s partner breweries as the beer is brewed
27 and packaged. The beer brewed at Kona Brewing Company’s partner breweries utilizes
Kona’s hops, malt and proprietary yeast. The water mineral levels at each brewery are
28 adjusted to replicate the water used in Hawaii. A sample of each batch of beer is sent to the

1 Kailua-Kona brewery for sensory evaluation. The brewmaster and quality assurance
2 employees are in daily contact with mainland partner breweries.

3 An integral component of Kona Brewing Company's business plan is to grow the business
4 with ecological integrity, reducing the company's carbon footprint whenever possible. By
5 producing its bottled beer and mainland draft beer on the mainland, close to markets, Kona
6 Brewing Company has dramatically reduced its reliance upon transportation fuel for raw
7 materials, packaging and distribution."⁵

8 *See* Figure 21 (relevant text circled in red).

9 75. Thus, Craft Brew admits that all bottled/canned and mainland draft Kona Brewing
10 Co. beer is made in Oregon, Washington, Tennessee, and/or New Hampshire.

11 76. Moreover, Craft Brew and/or Kona Brewing Co. state in a YouTube video
12 published March 19, 2014, entitled "THE SOURCE of Liquid Aloha Discovered: Kona Brewing
13 Hawaii," "at this brewery [the flagship Kailua-Kona brewery], the staff of 6 produces an
14 impressive 310 gallons of brew a year, or 4,000 kegs, *for enjoyment throughout the islands.*"
(emphasis added). Kona Brewing Co.'s Managing Director for Restaurants and Retail then states,
15 "as of 2013, we were in 35 states, we'll be launching four more states in 2014."⁶

16 77. By comparison, Craft Brew produced 154,700 kegs of beer in 2014 alone.

17 78. The significance of brewing Kona Brewing Co. beer in the mainland, as opposed to
18 Hawaii, extends beyond consumer sentiment. Craft Brew and/or Kona Brewing Co. publicly
19 acknowledge that, as a result of brewing Kona Brewing Co. beer in the continental United States,
20 this beer does not contain Hawaii water. Craft Brew and/or Kona Brewing Co. further
21 acknowledge that using mainland water materially impacts the taste and quality of the beer. The
22 Kona Brewing Co. website states, "The beer brewed at Kona Brewing Company's partner
23 breweries utilizes Kona's hops, malt and proprietary yeast. The water mineral levels at each
24 brewery are adjusted to replicate the water used in Hawaii."

25 79. In an article published on June 26, 2015, Kona Brewing Co.'s brewmaster at the
26 time, Billy Smith, was quoted as saying: "Hawaii County water is hard and high in calcium

27 ⁵ <http://konabrewingco.com/about/>

28 ⁶ <https://www.youtube.com/watch?v=PZ4ihoclNCs>

1 chloride. Fortunately, these characteristics are great for making beer and can help showcase the
2 malt and hop flavor.”⁷ Smith goes on to state, “I was one of the brewers at the brewery that
3 brewed the first batch of Longboard Island Lager on the East Coast, so I know the challenges they
4 face on the mainland, firsthand.” According to the article, Kona Brewing Co. installed a water
5 treatment system to mimic Hawaiian water. Smith further stated, “Today, every week a sample
6 [of the beer] is sent to the brewery in Kona to make sure the recipe at her sister breweries are
7 ‘on.’”

8 80. Indeed, water makes up more than 90 percent of beer. It is generally accepted that
9 the type of water used impacts the taste and quality of the beer.⁸ And even if Craft Brew could
10 adequately replicate the taste of Hawaii water in its mainland beer (Plaintiffs allege it cannot)
11 consumers are still being deprived of what Craft Brew has promised them and what they have paid
12 for – namely, a Hawaiian beer.

13 81. On information and belief, Craft Brew owns and operates Kona Brewing
14 Company’s website. For instance, if you click on the “CAREER OPPORTUNITIES” link from
15 the dropdown menu “ABOUT US” on the Kona Brewing Company website, it immediately
16 redirects you to Craft Brew’s website. *See* Figure 22. Similarly, if you click on the “Investor
17 Relations” section of Kona Brewing Company’s website, it directs you to a link to Craft Brew’s
18 investor relations page. Moreover, on Craft Brew’s website, there is a direct link to the Kona
19 Brewing Co. website. *See* Figure 23. These websites are interrelated and are either controlled
20 solely by Craft Brew or jointly by Craft Brew and Kona Brewing Company.

21 **Consumers Purchase Kona Brewing Co. Beer Because They Reasonably Believe That**
22 **it is Made in Hawaii**

23 82. The Hawaii-brand image in the context of marketing and consumer purchase
24 decisions is extremely powerful.

25
26 _____
27 ⁷ <https://munchies.vice.com/en/articles/your-favorite-hawaiian-beer-is-actually-brewed-in-new-hampshire>

28 ⁸ <https://beerandbrewing.com/VUKd4igAABCrKdWe/article/brewing-water>

1 83. Consumers purchase items, and are willing to pay more for items, because they are
2 from Hawaii. Craft Brew is well aware of this.

3 84. In an August 2016 article in Hawaii Business Magazine, business coach and author
4 Mark Brigden was quoted as saying, “There’s German efficiency and Swedish creativity. Hawaii,
5 on the other hand, brings an emotive feeling of relaxation, enjoyment, well-being and being on
6 Island time.”⁹

7 85. The same article noted that large companies are offering more made in Hawaii
8 products. For instance, Whole Foods Market says it purchased nearly \$12 million in products
9 from Hawaii suppliers in 2015. Dabney Gough, metro marketing field team leader at Whole
10 Foods, was quoted as saying, “Hawaii boasts not only an incredible diversity of agricultural
11 products that cannot be grown on the Mainland, but the quality of our local coffee, bean-to-bar
12 chocolate, and dried fruits and nuts – just to name a few – is simply unbeatable. The opportunities
13 are ripe for additional Mainland and global expansion.”

14 86. In the same article, the director of retail operations for Big Island Candies (a
15 Hawaii company), Lance Duyao, stated, “One thing that kept us afloat and sustained us is that we
16 are careful about our expansion. Quality is so important to us. We don’t want to spread ourselves
17 thin by opening too many locations. Nothing is made anywhere else but here. And when people
18 order stuff online and see that the box is actually postmarked in Hilo, there is an incredible value
19 to that.”

20 87. In a November 2011 article in Hawaii Business Magazine, Jeff Leichter, general
21 manager for Tim’s Cascade Snacks (a mainland company), which sells Hawaiian style chips, was
22 quoted as saying, “We know ‘Luau Barbeque Rings’ doesn’t make sense, but 98 percent of the
23 country doesn’t know . . . The Hawaii image is a powerful brand – and it’s done well for us.”¹⁰ In
24 the same article, Mr. Leichter also said, “Everybody wishes they were in Hawaii enjoying the
25
26

27 ⁹ <http://www.hawaiibusiness.com/made-in-hawaii/>

28 ¹⁰ <http://www.hawaiibusiness.com/not-made-in-hawaii/>

1 surf, sunny weather and cool tropical breezes and the Hawaii name evokes all those things. That's
2 one of the reasons our chips have been so successful.”

3 **Plaintiffs' and Class Members' Purchases**

4 88. During the statute of limitations period, Plaintiffs each separately purchased Kona
5 Brewing Co. beer at retail stores located in the State of California.

6 89. Plaintiffs each read the labels on the Kona Brewing Co. beer bottles and packaging,
7 and based on this labeling and advertising, they reasonably believed that the beer was made in
8 Hawaii.

9 90. Plaintiffs' reasonable beliefs that the Kona Brewing Co. beer they purchased was
10 made in Hawaii was a significant factor in their decision to purchase the beer. Plaintiffs would not
11 have purchased the beer, or would have paid significantly less for the beer, had they known the
12 true origins of the Kona Brewing Co. beer they purchased.

13 91. As with Plaintiffs, Class members were likely to be deceived by Craft Brew's
14 misrepresentations regarding the origin of Kona Brewing Co. beer, in that they would not have
15 purchased the beer, or would have paid substantially less for the beer, but for the
16 misrepresentations.

17 92. As a result of Craft Brew's misrepresentations, Plaintiffs and the Class have been
18 injured to the financial benefit of Craft Brew.

19 **CLASS ACTION ALLEGATIONS**

20 93. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil
21 Procedure, individually and on behalf of all members of the following Class and California
22 Subclass:

23 **Class**

24 All persons who purchased any Kona Brewing Co. beer in the United States at any time
25 beginning four (4) years prior to the filing of this action and ending at the time this action
26 settles or proceeds to final judgment.
27
28

1 **California Subclass**

2 All persons who purchased any Kona Brewing Co. beer in the State of California at any
3 time beginning four (4) years prior to the filing of this action and ending at the time this
4 action settles or proceeds to final judgment.

5 94. Excluded from the Class and California Subclass are the following individuals
6 and/or entities: all persons who purchased any Kona Brewing Co. draft beer (i.e., non-bottled or
7 canned) in the State of Hawaii; Craft Brew and its parents, subsidiaries, affiliates, officers and
8 directors, current or former employees, and any entity in which Craft Brew has a controlling
9 interest; all individuals who make a timely election to be excluded from this proceeding using the
10 correct protocol for opting out; and all judges assigned to hear any aspect of this litigation, as well
11 as their immediate family members.

12 95. Plaintiffs reserve the right to modify or amend the definition of the proposed
13 classes and/or add subclasses before the Court determines whether certification is appropriate.

14 96. The proposed classes are so numerous that joinder of all members would be
15 impractical. The number of individuals who purchased a Kona Brewing Co. beer within the
16 United States and the State of California during relevant time period is at least in the thousands.
17 These Class members are identifiable and ascertainable through Craft Brew’s records and other
18 records and proofs of purchase.

19 97. There are questions of law and fact common to the proposed classes that will drive
20 the resolution of this action. These questions include, but are not limited to, the following:

- 21 a. Whether Craft Brew misrepresented material facts and/or failed to disclose
22 material facts in connection with the labeling, marketing, distribution, and sale
23 of Kona Brewing Co. beer;
- 24 b. Whether Craft Brew’s use of false or deceptive labeling and advertising
25 constituted false advertising;
- 26 c. Whether Craft Brew engaged in unfair, unlawful and/or fraudulent business
27 practices;
- 28 d. Whether Craft Brew’s unlawful conduct, as alleged herein, was intentional and
 knowing;

- 1 e. Whether Plaintiffs and the Class are entitled to damages and/or restitution, and
- 2 in what amount;
- 3 f. Whether Craft Brew is likely to continue using false, misleading or unlawful
- 4 conduct such that an injunction is necessary; and
- 5 g. Whether Plaintiffs and the Class are entitled to an award of reasonable
- 6 attorneys' fees, interest, and costs of suit.

7 98. Craft Brew engaged in a common course of conduct giving rise to violations of the
8 legal rights sought to be enforced uniformly by Plaintiffs and Class members. Similar or identical
9 statutory and common law violations, business practices, and injuries are involved. Therefore,
10 individual questions, if any, pale in comparison to the numerous common questions presented in
11 this action.

12 99. The injuries sustained by members of the proposed classes flow, in each instance,
13 from a common nucleus of operative fact. Each instance of harm suffered by Plaintiffs and Class
14 members has directly resulted from a single course of illegal conduct – namely, Craft Brew's false
15 labeling and advertising of Kona Brewing Co. beer.

16 100. Given the similar nature of the Class members' claims and the absence of material
17 differences in the statutes and common laws upon which the Class members' claims are based, the
18 proposed classes will be easily managed by the Court and the parties.

19 101. Because of the relatively small size of the individual Class members' claims, no
20 Class member could afford to seek legal redress on an individual basis. A class action is superior
21 to any alternative means of prosecution.

22 102. The representative Plaintiffs' claims are typical of those of the Class and California
23 Subclass, as all members of the proposed classes are similarly affected by Craft Brew's uniform
24 unlawful conduct as alleged herein.

25 103. Craft Brew acted, and failed to act, on grounds generally applicable to Plaintiffs
26 and the proposed classes, supporting the imposition of uniform relief to ensure compatible
27 standards of conduct toward the members of the Class and California Subclass.

28

1 104. Plaintiffs will fairly and adequately protect the interests of the proposed classes,
2 and they have retained counsel competent and experienced in class action litigation. The Class
3 representatives have no interests which conflict with or are adverse to those of the other Class
4 members.

5 **COUNT I**

6 **Violation of the California False Advertising Law**

7 **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

8 105. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 104.

10 106. California's False Advertising Law ("FAL"), California Business and Professions
11 Code § 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading advertising.

12 107. Craft Brew's practice of representing that its Kona Brewing Co. beer is made in
13 Hawaii violates the FAL. Specifically, the FAL makes it unlawful for "[a]ny person . . . to make
14 or disseminate or cause to be made or disseminated from this state before the public in any state . .
15 . in any advertising device . . . or in any other manner or means whatever, including over the
16 Internet, any statement, concerning . . . personal property or services, professional or otherwise, or
17 performance or disposition thereof, which is untrue or misleading and which is known, or which
18 by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. &
19 Prof. Code § 17500.

20 108. Craft Brew has engaged in a scheme of offering mislabeled beer for sale to
21 Plaintiffs and Class members by way of product packaging, labeling, internet advertising, and
22 other promotional materials. These labels and materials misrepresented and/or omitted the true
23 content and nature of the mislabeled beer. Craft Brew's labels, advertisements, and inducements
24 were made in California and come within the definition of advertising as contained in Bus. & Prof.
25 Code § 17500, *et seq.*, in that the product packaging, labeling, and promotional materials were
26 intended as inducements to purchase Kona Brewing Co. beer, and they are statements
27 disseminated by Craft Brew to Plaintiffs and Class members. Craft Brew knew or should have
28 known that these statements were inaccurate and misleading.

1 109. Craft Brew’s false advertisements, as alleged herein, were calculated to induce
2 Plaintiffs and Class members to purchase beer they otherwise would not have and/or to spend
3 more money than they otherwise would have spent, in order to increase Craft Brew’s profits.

4 110. Through its unfair acts and practices, Craft Brew has improperly obtained money
5 from Plaintiffs and the Class. As such, Plaintiffs request that this Court cause Craft Brew to
6 restore this money to Plaintiffs and all Class members, and to enjoin Craft Brew from continuing
7 to violate the FAL in the future.

8 111. In prosecuting this action for the enforcement of important rights affecting the
9 public interest, Plaintiffs also request that the Court award reasonable attorneys’ fees and costs
10 pursuant to Cal. Code of Civ. Proc. § 1021.5.

11 **COUNT II**

12 **Violation of the California Consumer Legal Remedies Act**

13 **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

14 112. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 111.

16 113. This cause of action is brought pursuant to the California Consumer Legal
17 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

18 114. Plaintiffs and Class members are “consumers” within the meaning of Cal. Civ.
19 Code § 1761(d).

20 115. The sale of Kona Brewing Co. beer to Plaintiffs and Class members were
21 “transactions” within the meaning of Cal. Civ. Code § 1761(e). The beer purchased by Plaintiffs
22 and Class members are “goods” within the meaning of Cal. Civ. Code § 1761(a).

23 116. As alleged herein, Craft Brew violated the CLRA by falsely labeling and
24 advertising that the beer is made in Hawaii, when in fact, the beer is made in the continental
25 United States.

26 117. In so doing, Craft Brew has violated several provisions of the CLRA. Cal. Civ.
27 Code § 1770(a)(4) prohibits using “deceptive representations or designations of geographic origin
28 in connection with goods or services.” Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that

1 goods or services have . . . characteristics, ingredients, uses, benefits, or quantities which they do
2 not have . . . ” Cal. Civ. Code § 1770(a)(7) prohibits representing “that goods or services are of a
3 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
4 another. Finally, Cal. Civ. Code § 1770(a)(9)) prohibits “[a]dvertising goods or services with
5 intent not to sell them as advertised.”

6 118. By engaging in the conduct alleged herein, Craft Brew violated, and continues to
7 violate, sections 1770(a)(4), (5), (7) and (9) of the CLRA.

8 119. Plaintiffs relied on the misrepresentation that the Kona Brewing Co. beer they
9 purchased was made in Hawaii. Plaintiffs would not have purchased the beer, or would have paid
10 significantly less for the beer, but for Craft Brew’s unlawful conduct. Plaintiffs and Class
11 members acted reasonably when they purchased Kona Brewing Co. beer based on the belief the
12 beer was made in Hawaii because they were misled by the clear-cut and deceptive representations
13 alleged herein.

14 120. Under Cal. Civ. Code § 1780(a), Plaintiffs and Class members seek injunctive and
15 equitable relief for Craft Brew’s violations of the CLRA. On February 28, 2017, Plaintiffs sent a
16 notice letter by certified mail to Craft Brew of their intent to pursue claims under the CLRA, and
17 an opportunity to cure, consistent with Cal. Civ. Code § 1782. Concurrent with the filing of the
18 Complaint, Plaintiffs are filing declarations of venue, consistent with Cal. Civ. Code § 1780(d),
19 attached hereto as Exhibit A.

20 121. Plaintiffs seek injunctive relief only pursuant to the CLRA. If Craft Brew fails to
21 take corrective action within 30 days of receipt of the notice letter, Plaintiffs intend to amend the
22 Complaint to include a request for damages as permitted under Cal. Civ. Code § 1782(d).

23 **COUNT III**

24 **Violation of the California Unfair Competition Law**

25 **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

26 122. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 121.

28

1 123. Plaintiffs and Class members are “persons” within the meaning of Cal. Bus. &
2 Prof. Code § 17204.

3 124. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200,
4 *et seq.*, defines unfair business competition to include any “unlawful, unfair or fraudulent” act or
5 practice, as well as any “unfair, deceptive, untrue or misleading” advertising.

6 125. A business act or practice is “unfair” under the UCL if the reasons, justifications
7 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
8 victims. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
9 members of the consuming public. A business act or practice is “unlawful” under the UCL if it
10 violates any other law or regulation.

11 126. Craft Brew has violated the “unfair” prong of the UCL by mislabeling and falsely
12 advertising its Kona Brewing Co. beer in order to induce consumers to believe the beer is made in
13 Hawaii when it is not.

14 127. The business acts and practices alleged herein are unfair because they caused
15 Plaintiffs and Class members to falsely believe that Craft Brew is offering a beer that is superior
16 and/or more desirable to what they actually received. This deception was likely to have induced
17 reasonable consumers, including Plaintiffs, to buy Kona Brewing Co. beer, which they otherwise
18 would not have purchased, or would have paid substantially less for such beer.

19 128. The gravity of the harm to Plaintiffs and Class members resulting from these unfair
20 acts and practices outweighs any conceivable reasons, justifications and/or motives of Craft Brew
21 for engaging in such deceptive acts and practices. By committing the acts and practices alleged
22 herein, Craft Brew has engaged in, and continues to engage in, unfair business practices within the
23 meaning of California Business & Professions Code § 17200, *et seq.*

24 129. Craft Brew has also violated the “unlawful” prong of the UCL by violating several
25 California laws, as alleged herein, including the FAL, Cal Bus. & Prof. Code § 17533.7 and the
26 CLRA.

27
28

1 130. Craft Brew also violated the “fraudulent” prong of the UCL by misleading
2 Plaintiffs and Class members to believe that its Kona Brewing Co. beer is Hawaii-made, when in
3 actuality, it is brewed in the continental United States.

4 131. Through its unlawful acts and practices, Craft Brew has improperly obtained
5 money from Plaintiffs and the Class. As such, Plaintiffs request that this Court cause Craft Brew
6 to restore this money to Plaintiffs and the Class, and to enjoin Craft Brew from continuing to
7 violate the UCL as alleged herein.

8 132. In prosecuting this action for the enforcement of important rights affecting the
9 public interest, Plaintiffs also request that the Court award reasonable attorneys’ fees and costs
10 pursuant to Cal. Code of Civ. Proc. § 1021.5.

11 **COUNT IV**

12 **Breach of Express Warranty**

13 **(On behalf of Plaintiffs and the Class against Craft Brew)**

14 133. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 132.

16 134. In connection with the sale of its Kona Brewing Co. beer, Craft Brew issued an
17 express warranty that these brands of beer were in fact made in Hawaii.

18 135. Craft Brew’s affirmation of fact and promise on the beer labels and packaging
19 themselves and in advertisements became part of the basis of the bargain between Craft Brew and
20 Plaintiffs and Class members, thereby creating express warranties that this beer would conform to
21 Craft Brew’s affirmation of fact, representations, promise, and description.

22 136. Craft Brew breached its express warranty because its Kona Brewing Co. beer is not
23 made in Hawaii, but rather, is made in the continental United States. Simply put, the beer at issue
24 here does not live up to Craft Brew’s express warranty.

25 137. Plaintiffs were injured as a result of Craft Brew’s breach because they would not
26 have purchased the Kona Brewing Co. beer if they had known that the beer did not have the
27 characteristics or qualities as expressly warranted by Craft Brew, or they would have paid
28 substantially less for the beer had they been aware of its true quality and characteristics. Similarly,

1 Class members are likely to have reasonably relied upon Craft Brew's express warranties in
2 purchasing Kona Brewing Co. beer.

3 **COUNT V**

4 **Negligent Misrepresentation**

5 **(On behalf of Plaintiffs and the Class against Craft Brew)**

6 138. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 137.

8 139. As alleged herein, Craft Brew misrepresented that its Kona Brewing Co. beer is
9 made in Hawaii.

10 140. At the time Craft Brew made these representations, Craft Brew knew or should
11 have known that these representations were false, or made them without knowledge of their truth
12 or veracity.

13 141. At minimum, Craft Brew negligently misrepresented and/or negligently omitted
14 material facts about its Kona Brewing Co. beer.

15 142. The negligent misrepresentations and omissions made by Craft Brew, upon which
16 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce, and
17 actually induced, Plaintiffs and Class members to purchase the beer at issue.

18 143. Plaintiffs would not have purchased the Kona Brewing Co. beer, or they would
19 have paid substantially less for the beer, if the true qualities and characteristics of the beer had
20 been known to her. Similarly, Class members are likely to have reasonably relied upon Craft
21 Brew's deceptive labeling and advertising in purchasing Kona Brewing Co. beer.

22 144. The negligent actions of Craft Brew caused harm to Plaintiffs and Class members,
23 who are entitled to damages and other legal and equitable relief as a result.

24 **COUNT VI**

25 **Unjust Enrichment and Common Law Restitution**

26 **(On behalf of Plaintiffs and the Class against Craft Brew)**

27 145. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 144.

1 146. As a result of Craft Brew's wrongful and deceptive conduct, Plaintiffs and Class
2 members have suffered a detriment while Craft Brew has received a benefit.

3 147. Craft Brew's misleading, inaccurate and deceptive marketing and labeling
4 intentionally cultivates the perception that consumers are being offered a product that they are not.
5 Plaintiffs and Class members were intended to rely upon Craft Brew's misrepresentations when
6 they purchased Kona Brewing Co. beer. Plaintiffs and Class members likely would not have
7 purchased Kona Brewing Co. beer, or would have paid significantly less for it, if Craft Brew had
8 not misrepresented the nature of this beer.

9 148. Craft Brew has received a premium price benefit and/or additional sales from
10 Plaintiffs and Class members as a result of this unlawful conduct.

11 149. Craft Brew should not be allowed to retain the premium price profits and/or
12 additional sales generated from the sale of products that were unlawfully marketed, advertised and
13 promoted. Allowing Craft Brew to retain these unjust profits would offend traditional notions of
14 justice and fair play and induce companies to misrepresent key characteristics of their products in
15 order to increase sales.

16 150. Thus, Craft Brew is in possession of funds that were wrongfully retained from
17 Plaintiffs and Class members that should be disgorged as illegally gotten gains.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiffs, individually and on behalf of the Class and California
20 Subclass, respectfully pray for following relief:

21 1. Certification of this case as a class action on behalf of the Class and California
22 Subclass defined above, appointment of Plaintiffs as Class representatives, and appointment of
23 their counsel as Class counsel;

24 2. A declaration that Craft Brew's actions, as described herein, violate the claims
25 described herein;

26 3. An award of injunctive and other equitable relief as is necessary to protect the
27 interests of Plaintiffs and the Class, including, *inter alia*, an order prohibiting Craft Brew from
28 engaging in the unlawful act described above;

1 4. An award to Plaintiffs and the proposed classes of restitution and/or other equitable
2 relief, including, without limitation, restitutionary disgorgement of all profits and unjust
3 enrichment that Craft Brew obtained from Plaintiffs and the proposed classes as a result of its
4 unlawful, unfair and fraudulent business practices described herein;

5 5. An award to Plaintiffs and their counsel of their reasonable expenses and attorneys’
6 fees;

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

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

10 **DEMAND FOR JURY TRIAL**

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

14 DATED: February 28, 2017

THE WAND LAW FIRM

16 By: /s/ Aubry Wand
17 AUBRY WAND

Figure 1



Figure 2

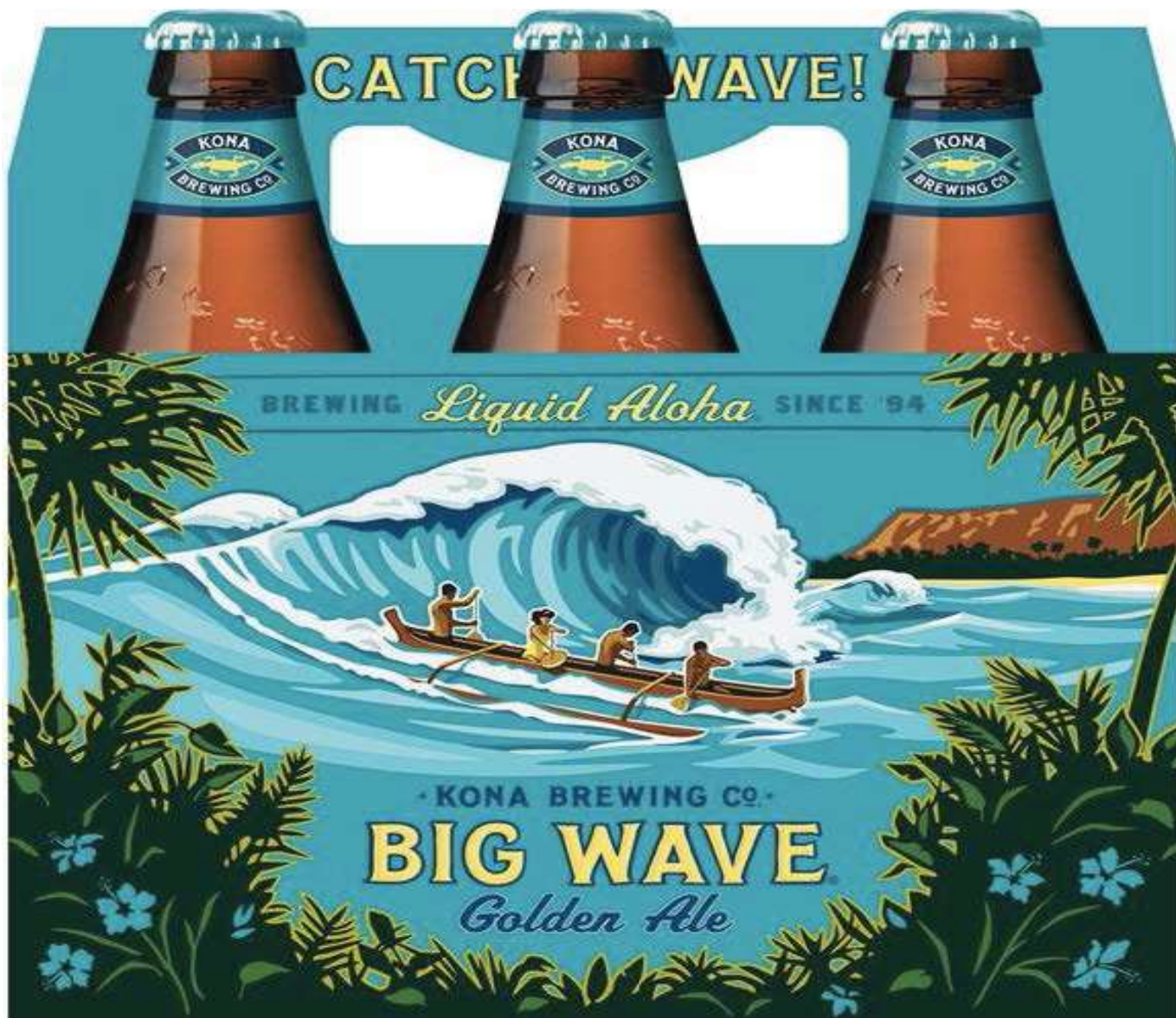


Figure 3



Figure 4

konabrewingco.com

ABOUT US BEERS STORE FIND BEER  PUBS BREWERY NEWS SUSTAINABILITY



Longboard
ISLAND LAGER

Kaui
Oahu
Waikiki Beach

Longboard surfing in the shadow of Diamond Head has been a tradition for over 100 years at Waikiki beach. Our Longboard Island Lager pays tribute to this grand history.

HANG LOOSE WITH OUR REFRESHING AND STURVED ISLAND LAGER. PURE LIQUID ALOHA.

LONGBOARD
Island Lager

THE LATEST BREWERY NEWS

Kona, Hawaii
Weather Report

February 10, 2017
Skies: Sunny
High: 0°F
Low: 0°F



 Join our Ohana on Facebook!

Figure 5

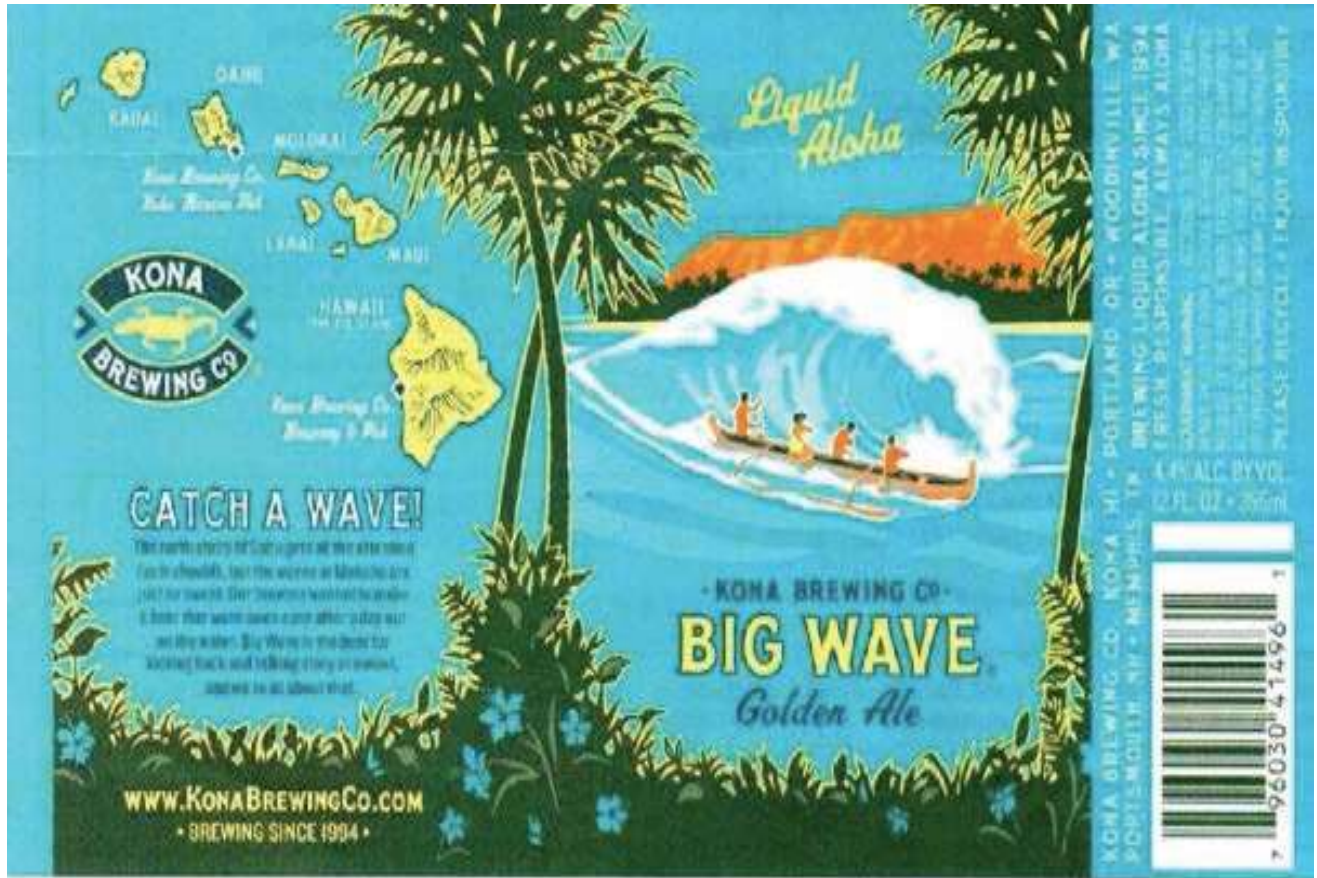


Figure 6



Figure 7

konabrewingco.com

The screenshot shows the homepage of Kona Brewing Co. The navigation bar at the top includes links for ABOUT US, BEERS, STORE, FIND BEER, Pubs, BREWERY, NEWS, and SUSTAINABILITY. The Kona Brewing Co. logo is prominently displayed in the center. The main banner features a sunset over a mountain range with the text "Fire Rock PALE ALE" and "THE SIGNATURE BIG ISLAND BEER, OUR PALE ALE IS THE PERFECT TICKET TO PARADISE." To the left of the banner is a map of Hawaii with a callout for "Kilauea Caldera" and a description of its volcanic activity. To the right is a bottle of Fire Rock Pale Ale and a glass of beer, with a green gecko perched on the bottle. Below the banner, there is a "Kona, Hawaii Weather Report" for February 10, 2017, showing a sunny sky and temperatures of 0°F. A Facebook logo and the text "Join our Ohana on Facebook!" are also visible.

ABOUT US BEERS STORE FIND BEER Pubs BREWERY NEWS SUSTAINABILITY

KONA BREWING CO.
Specialty Alcoholic Beverages

Fire Rock
PALE ALE

THE SIGNATURE BIG ISLAND BEER, OUR PALE ALE IS THE PERFECT TICKET TO PARADISE.

Kilauea Caldera
The power and copper glow of molten lava flowing to the sea from the Big Island's Kilauea Caldera is evoked in our Fire Rock Pale Ale.

THE LATEST BREWERY NEWS

Kona, Hawaii
Weather Report

February 10, 2017
Skies: Sunny
High: 0°F
Low: 0°F

Join our Ohana on Facebook!

Figure 8



Figure 9



Figure 10



Figure 11



Figure 12



Figure 13



Figure 14

konabrewingco.com

ABOUT US BEERS STORE FIND BEER Pubs BREWERY NEWS SUSTAINABILITY

KONA BREWING CO.
Liquid Aloha - Hawaii

Pipeline

PORTER

Banzai Pipeline
The mecca of surfing, these steep, curling waves inspired our Pipeline Porter.

Kauai Oahu Molokai

MADE WITH 100% HAWAIIAN KONA COFFEE! FINALLY, A PORTER WITH A KICK AS THRILLING AS THE WAVES THAT INSPIRED IT.

THE LATEST BREWERY NEWS

Kona, Hawaii
Weather Report

February 10, 2017
Skies: Sunny
High: 0°F
Low: 0°F

Join our Ohana on Facebook!

Figure 15



Figure 16



Figure 17

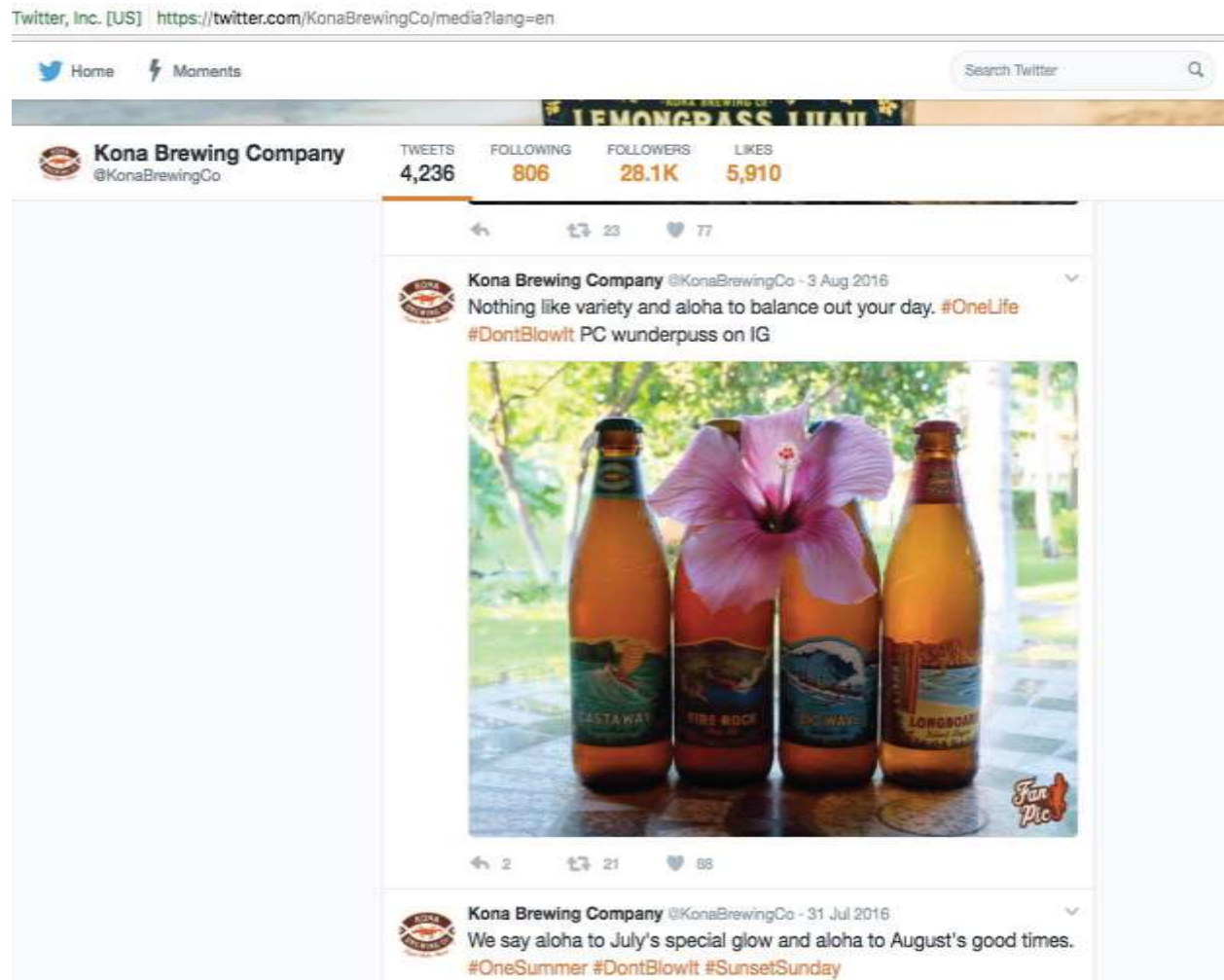


Figure 18

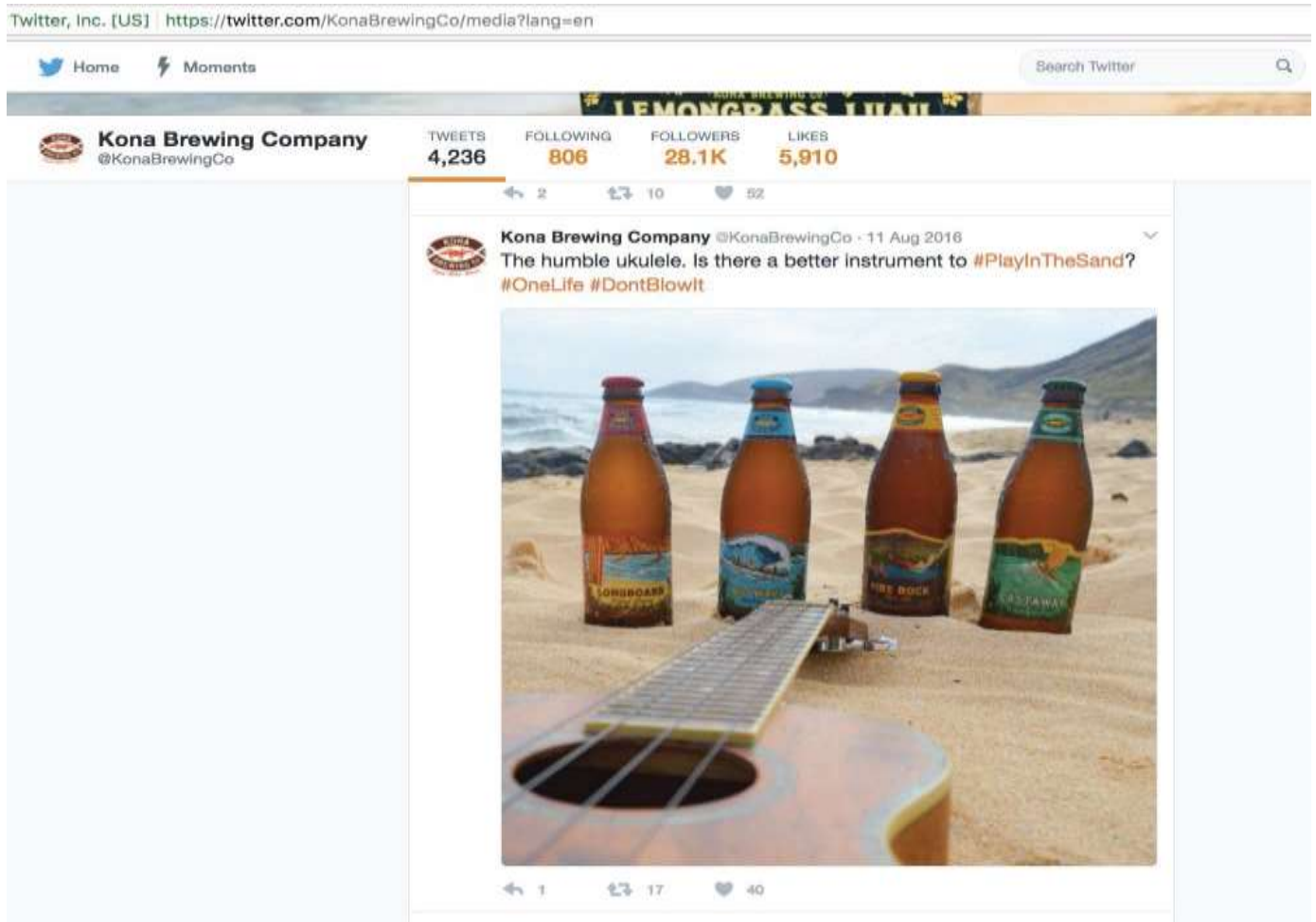


Figure 19

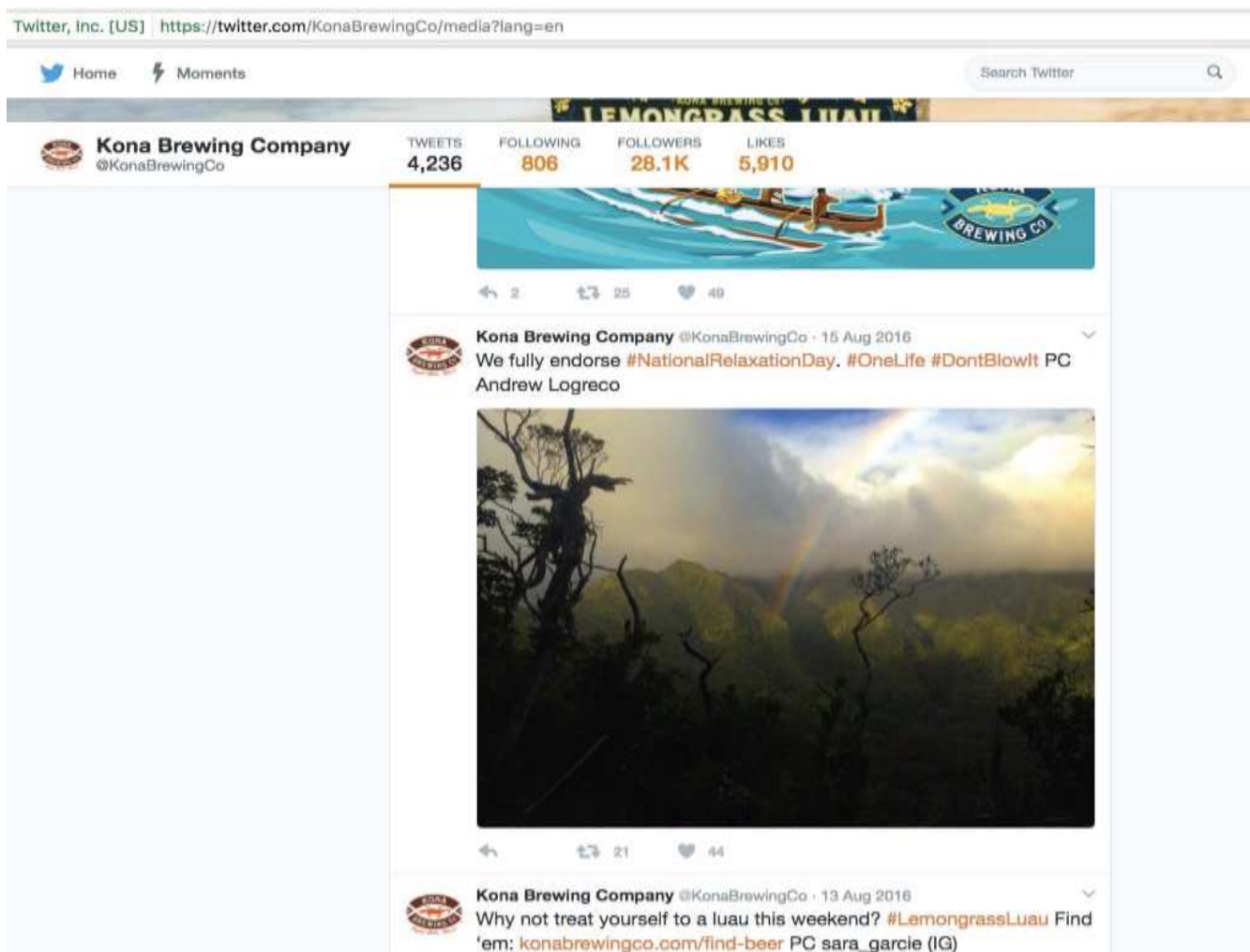


Figure 20

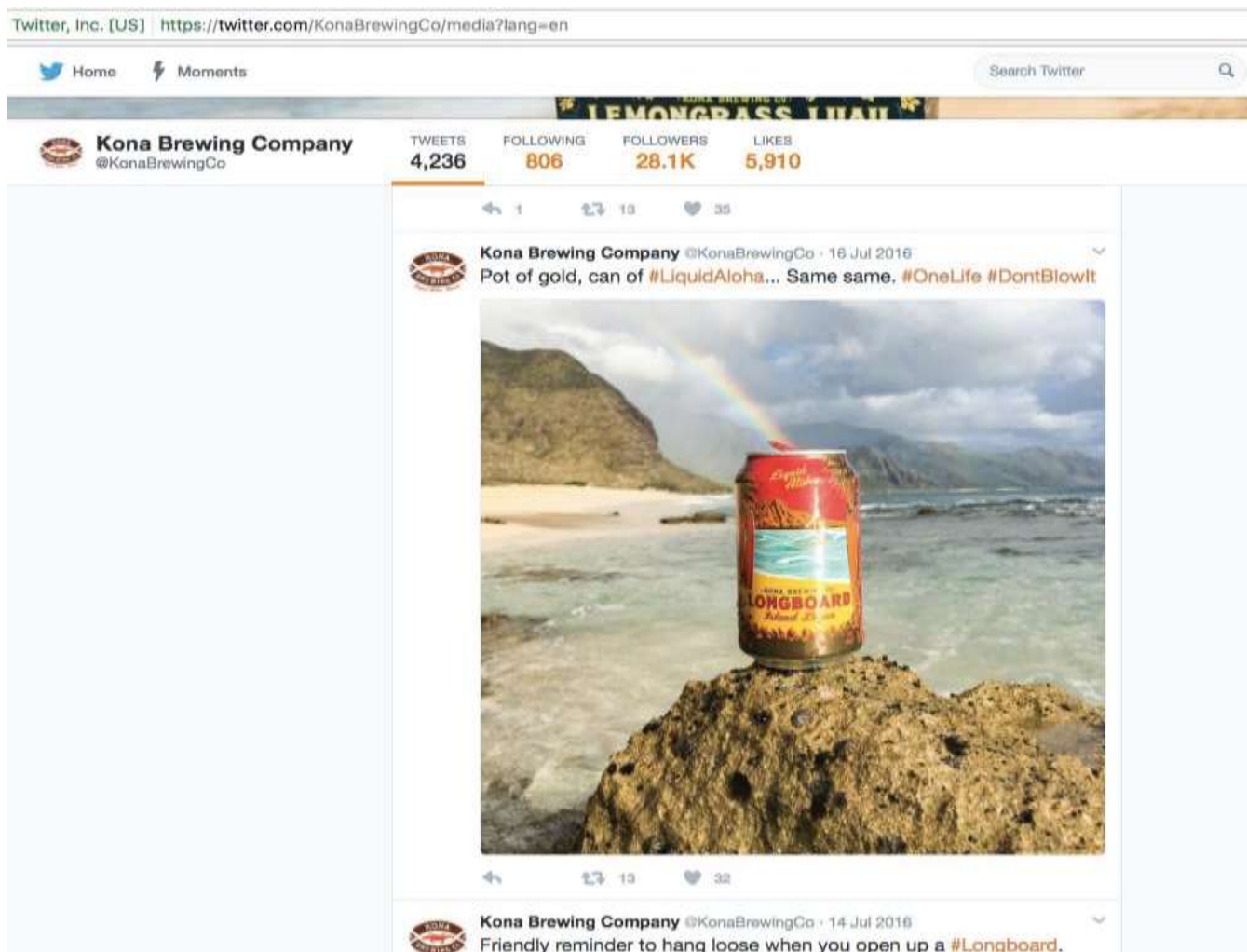


Figure 21

konabrewingco.com/about/

local organic salads and fresh beers on draft that you can't find anywhere else. Every Sunday evening local musicians provide live entertainment.

KOKO MARINA PUB... THE GATHERING PLACE

In December 2003, Kona Brewing Company opened its second restaurant location at Koko Marina Center in Hawaii Kai in East Oahu. The restaurant is set on the docks of Koko Marina. The outdoor seating has unparalleled views of Koko Marina and the lush green Ko'olau Mountain Range that form Hawaii Kai's backdrop. The chefs serve up luscious appetizers, fresh fish and meat entrées and incredible pizzas with a pint of fresh beer from one of the 24 taps at the bar. Local musicians provide entertainment ranging from traditional and contemporary Hawaiian to blues to jazz every Friday, Saturday and Sunday evening.

OUR BREWERIES

Kona Brewing Company runs its flagship brewhouse in Kailua-Kona on Hawaii's Big Island, which produces more than 12,000 barrels of beer annually.

Under strict guidance, Kona Brewing Company also produces its bottled beer and mainland draft beer in Portland, Oregon, Woodinville, Washington, Memphis, Tennessee, and Portsmouth, New Hampshire, as part of its partnership with Craft Brew Alliance Inc.

Recipes and beer specifications are dictated by Kona Brewing Company's brewmaster, who oversees each of Kona Brewing Company's partner breweries as the beer is brewed and packaged. The beer brewed at Kona Brewing Company's partner breweries utilizes Kona's hops, malt and proprietary yeast. The water mineral levels at each brewery are adjusted to replicate the water used in Hawaii. A sample of each batch of beer is sent to the Kailua-Kona brewery for sensory evaluation. The brewmaster and quality assurance employees are in daily contact with mainland partner breweries.

Kona Brewing Company champions recycling, is careful with its waste and supports groups that strive to protect the environment. Throughout its facilities, much of the building material has been recycled. Its disposable cups that are used at festivals and events are biodegradable, and its to-go containers are compostable. The brewery uses heat exchangers to reclaim thermal energy for water heating in the brewing process. The pub uses a heat reclamation system on its air conditioner for water heating in the kitchen. A whiskey barrel collects more than 90 gallons of condensation per day from air conditioning systems, and the water is used for landscaping irrigation. The list goes on and on.

An integral component of Kona Brewing Company's business plan is to grow the business with ecological integrity, reducing the company's carbon footprint whenever possible. By producing its bottled beer and mainland draft beer on the mainland, close to markets, Kona Brewing Company has dramatically reduced its reliance upon transportation fuel for raw materials, packaging and distribution.

Kona Brewing Company is an integral part of its community and thus, sees a strong need to and feels passionate about giving back to its community. Kona Brewing Company has supported or hosted numerous fundraising campaigns for community organizations, such as Bishop Museum, Kokua Festival, Sierra Club's Blue Water Campaign and Surfrider Organization. It plays a continued role in organizing the Kona Brewers Festival, which raises more than \$100,000 every year for local environmental, educational and cultural organizations over the past 21 years. The company also provides support to sporting events, such as the Molokai World Championships canoe and surfski race and the Ironman Triathlon World Championship.

Aloha!

Figure 22

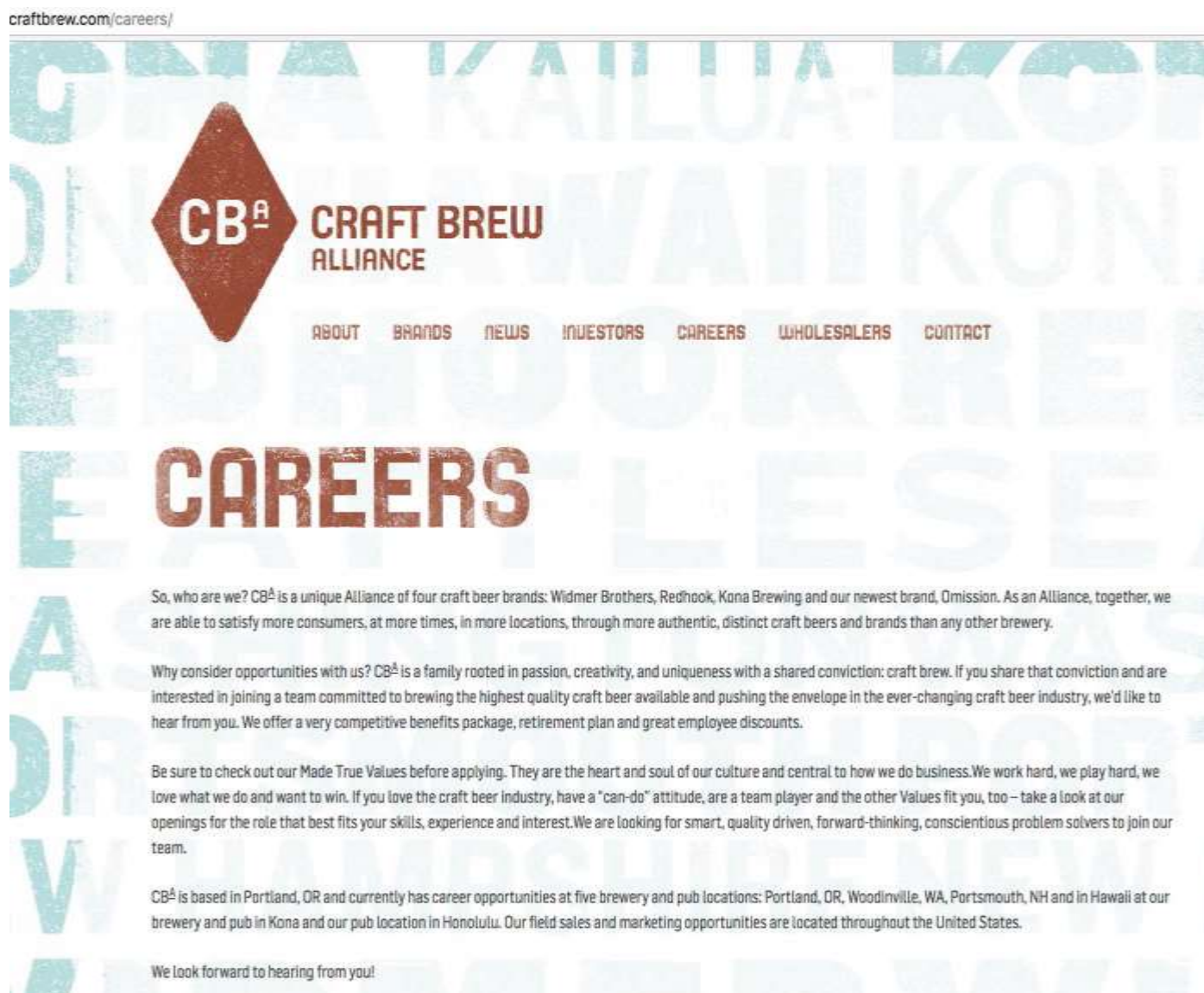


Figure 23

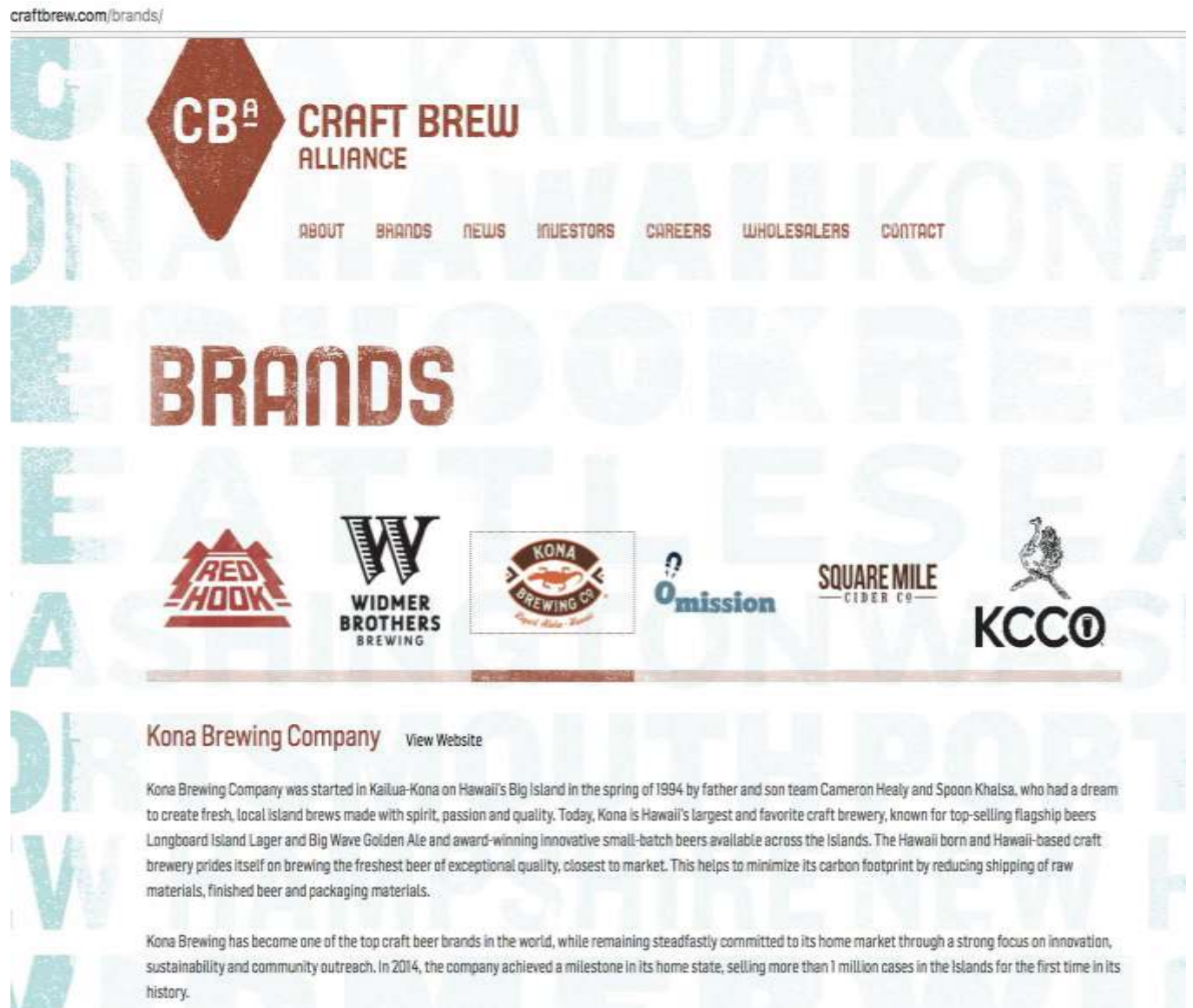


EXHIBIT A

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DECLARATION OF SARA CILLONI

I, Sara Cilloni, hereby declare:


1. I am a Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of Santa Clara in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of Kona Brewing Company beer – occurred at a store located in the County of Santa Clara.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on 2.17.17 at Los Gatos, California.



Sara Cilloni

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DECLARATION OF SIMONE ZIMMER

I, Simone Zimmer, hereby declare:

1. I am a Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of San Bernardino in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of Kona Brewing Company beer – occurred at a store located in the County of San Bernardino.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on Feb 15, 2017 at Bancho Cucamonga, California.

Simone Zimmer
Simone Zimmer

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns: CITIZENSHIP, PTF, DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: SIGNATURE OF ATTORNEY OF RECORD:

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.