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14

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
17

18 AHMED ASHOUR, individually and
19 on behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 ARIZONA BEVERAGES USA LLC,
HORNELL BREWING CO., INC.,
23 BEVERAGE MARKETING USA,
INC., ARIZONA BEVERAGES
24 HOLDINGS LLC, and ARIZONA
BEVERAGES HOLDINGS 2 LLC,

25 Defendants.
26
27
28

CASE NO. 2:19-cv-4170

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Ahmed Ashour (“Plaintiff”), individually and on behalf of all others
2 similarly situated, brings this class action complaint against AriZona Beverages
3 USA LLC, Hornell Brewing Co., Inc., Beverage Marketing USA, Inc., AriZona
4 Beverages Holdings LLC, and AriZona Beverages Holdings 2 LLC, (collectively,
5 “AriZona” or “Defendants”), and alleges upon personal knowledge as to Plaintiff’s
6 acts and experiences, and, as to all other matters, upon information and belief,
7 including investigation conducted by Plaintiff’s attorneys.

8 **INTRODUCTION**

9 1. Defendants manufacture, market, label, and distribute beverage
10 products (“Product” or “Products”) affirmatively labeled as containing “No
11 Preservatives.”

12 2. These Products include:

- 13 a. AriZona Iced Tea with Lemon Flavor;
- 14 b. AriZona Green Tea with Ginseng and Honey;
- 15 c. AriZona Arnold Palmer Lite – Half Iced Tea, Half Lemonade;
- 16 d. AriZona Zero Calorie Iced Tea with Peach Flavor;
- 17 e. AriZona Grapeade;
- 18 f. AriZona Iced Tea with Raspberry Flavor;
- 19 g. AriZona Southern Style Real Brewed Sweet Tea;
- 20 h. AriZona Arnold Palmer Zero – Half Iced Tea, Half Lemonade;
- 21 i. Golden Bear Lemonade Lite (Strawberry);
- 22 j. AriZona Decaf – Zero Green Tea with Ginseng;
- 23 k. AriZona Kiwi Strawberry Fruit Juice;
- 24 l. AriZona Watermelon Fruit Juice;
- 25 m. AriZona Fruit Punch Fruit Juice;
- 26 n. AriZona Mucho Mango Fruit Juice;
- 27 o. AriZona Rx Energy Herbal Tonic;

1 p. AriZona Zero Green Tea with Ginseng; and

2 q. Any other AriZona product representing it contains no
3 preservatives despite containing citric acid.¹

4 3. All of the Products are substantially similar in that AriZona represents
5 that the Products contain “no preservatives,” yet they contain citric acid.

6 4. Citric acid is a common preservative added to foods and beverages to
7 prevent the growth of bacteria.

8 5. There is a significant consumer demand for products that do not contain
9 preservatives, and consumers are willing to choose products and/or pay premium
10 prices for products without preservatives because, rightly or wrongly, reasonable
11 consumers believe that products without preservatives are superior to products with
12 preservatives.

13 6. In fact, reasonable consumers purchase the Products believing that they
14 do not contain preservatives as promised on the packaging of each and every
15 Product.

16 7. Defendants seek to take advantage of the premium placed on products
17 without preservatives by specifically labeling and packaging their Products as
18 containing no preservatives.

19 8. To the detriment of consumers, the Products do, in fact, contain
20 preservatives as they contain citric acid, a known preservative.

21 9. Accordingly, as a result of Defendants’ false and deceptive labeling,
22 Plaintiff and the Classes (defined below) have been misled, have purchased products
23 they otherwise would not have purchased, and have paid more for products than
24 they otherwise would have paid.

25
26 _____
27 ¹ Photographs of the listed products are attached hereto in Exhibit A.

1 10. Plaintiff brings this action on behalf of himself and all others similarly
2 situated to halt the dissemination of Defendants' false, misleading and deceptive
3 advertising, correct the inaccurate perception they have created in the mind of
4 consumers, and obtain redress for those who have purchased Defendants' Products.

5 **JURISDICTION AND VENUE**

6 11. The Court has original jurisdiction under 28 U.S.C. § 1332(d)(2)
7 because the matter in controversy, exclusive of interest and costs, exceeds the sum
8 or value of \$5,000,000 and is a class action in which there are in excess of 100 class
9 members, and some of the members of the class are citizens of states different from
10 Defendants.

11 12. This Court has personal jurisdiction over Defendants because
12 Defendants conduct business in California, and Plaintiff purchased the Products in
13 this district in California. Defendants have marketed, promoted, distributed, and
14 sold the Products in California, rendering exercise of jurisdiction by California
15 courts permissible.

16 13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
17 because a substantial part of the events and omissions giving rise to Plaintiff's
18 claims occurred in this district. Venue also is proper under 18 U.S.C. § 1965(a)
19 because Defendants transact substantial business in this district.

20 **PARTIES**

21 14. Plaintiff Ahmed Ashour is a citizen of the State of California, and, at all
22 times relevant to this action, resided in Los Angeles County.

23 15. Defendant AriZona Beverages USA LLC, is limited liability
24 corporation headquartered in Woodbury, New York.

25 16. Defendant Hornell Brewing Co., Inc. is a corporation headquartered in
26 Woodbury, New York.

27 17. Defendant Beverage Marketing USA, Inc. is a corporation
28

1 headquartered in Woodbury, New York.

2 18. Defendant AriZona Beverages Holdings LLC is a limited liability
3 corporation headquartered in Woodbury, New York.

4 19. Defendant AriZona Beverages Holdings 2 LLC is a limited liability
5 corporation headquartered in Woodbury, New York.

6 **FACTUAL ALLEGATIONS**

7 **I. To the detriment of consumers, the Products contain preservatives**

8 20. Citric acid is a commonly used and recognized preservative in food and
9 beverage products.

10 21. Although citric acid is a natural acid found in citrus fruits,
11 approximately 99% of today's citric acid is manufactured by using the fungus
12 *Aspergillus niger*.² Generally, the process involves growing the fungus in a mixture
13 of sugar and salt which causes the fungus to excrete a large amount of citric acid.³

14 22. This process is far more cost effective than extracting citric acid from
15 fruits and allows for production of citric acid on an industrial scale. It is estimated
16 that 70% of citric acid manufactured today is used in food and beverages.⁴

17 23. According to the FDA, a chemical preservative is "any chemical that,
18

19 ² Iliana E. Sweis and Bryan C. Cressey, *Potential role of the common food additive*
20 *manufactured citric acid in eliciting significant inflammatory reactions contributing*
21 *to serious disease states: A series of four case reports*, Toxicol Rep. (2018),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>.

22 ³ Belén Max, José Manuel Salgado, et al., *Biotechnological production of citric*
23 *acid*, Braz J Microbiol (Dec. 1, 2010),
24 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769771/>.

25 ⁴ Iliana E. Sweis and Bryan C. Cressey, *Potential role of the common food additive*
26 *manufactured citric acid in eliciting significant inflammatory reactions contributing*
27 *to serious disease states: A series of four case reports*, Toxicol Rep. 2018; 5: 808–
28 812, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>.

1 when added to food, tends to prevent or retard deterioration thereof.”⁵

2 24. More specifically, a preservative “prevent[s] food spoilage from
3 bacteria, molds, fungi, or yeast (antimicrobials); slow[s] or prevent[s] changes in
4 color, flavor, or texture and delay[s] rancidity (antioxidants); [and] maintain[s]
5 freshness.”⁶

6 25. Citric acid acts as a preservative by increasing “the acidity of a
7 microbe's environment, making it harder for bacteria and mold to survive and
8 reproduce.”⁷

9 26. The FDA mentions citric acid as a preservative in its *Overview of Food*
10 *Ingredients, Additive, and Colors* on its website.⁸

11 **II. Defendants’ product labeling and packaging are designed to lead**
12 **reasonable consumers to believe the Products do not contain**
13 **preservatives**

14 27. Defendants prominently label each of the Products as containing “No
15 Preservatives” on the back and often in other locations on the product labeling as
16 _____

17 ⁵ 21 C.F.R. § 101.22(a)(5).

18 ⁶International Food Information Council (IFIC) and U.S. Food and Drug
19 Administration (FDA), *Overview of Food Ingredients, Additives & Colors*, fda.gov
20 (*Apr. 2010*),
21 <https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm094211.htm>.

22 ⁷ William Harris, *Top 10 Most Common Ingredients in Fast Food*,
23 howstuffworks.com (May 4, 2009), <https://recipes.howstuffworks.com/10-ingredients-fast-food1.htm>.

24 ⁸ International Food Information Council (IFIC) and U.S. Food and Drug
25 Administration (FDA), *Overview of Food Ingredients, Additives & Colors*, fda.gov
26 (*Apr. 2010*),
27 <https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm094211.htm>.

1 well. Defendants often display “No Preservatives” in bold-face type.

2 28. Overall, the Product labels are designed to lead consumers to believe
3 the Products are superior products or somehow healthier by stating, “No
4 Preservatives.”

5 29. Despite Defendants’ affirmative representations that the Products
6 contain “No Preservatives,” the Products contain citric acid, a known and common
7 preservative.

8 30. Reasonable consumers are not required to examine ingredient lists at
9 the point of purchase, nor are they required to know which ingredients are widely
10 accepted preservatives.

11 31. However, a reasonable consumer would not believe a product contains
12 “No Preservatives” if it, in fact, contains ingredients considered to be preservatives.

13 **III. The impact of Defendants’ advertising and labeling practices**

14 32. Plaintiff and the Classes have been, and will continue to be, deceived
15 and mislead by Defendants’ false and deceptive labeling and representations on the
16 Products’ packaging.

17 33. Defendants’ Product labeling and packaging lead reasonable consumers
18 to believe Defendants’ Products did not contain preservatives: (i) the Products are
19 labeled as containing “No Preservatives,” and (ii) Defendants’ website affirms that
20 the Products do not have “Preservatives.”

21 34. Defendants’ labeling and marketing of the Products as containing “No
22 Preservatives” is a material factor influencing consumer purchase decisions.

23 35. Had Plaintiff and the Classes known the truth about the Products, they
24 would not have purchased the Products and/or would not have paid the prices they
25 paid for the Products.

26 36. Plaintiff and the Classes were harmed by purchasing Defendants’
27 Products because they did not receive what they paid for, and as a result lost money
28

1 and property.

2 **IV. Plaintiff Ashour's Experience**

3 37. Plaintiff Ashour purchased the Products, specifically AriZona Rx
4 Energy Herbal Tonic and AriZona Green Tea with Ginseng and Honey, on several
5 occasions, roughly two to three time per week at various drug stores and
6 convenience stores including CVS Pharmacy and 7-Eleven in Los Angeles.

7 38. Plaintiff Ashour relied upon the "No Preservative" markings on the
8 Products when purchasing the Products, believing that the Products did not contain
9 any preservatives as represented.

10 39. Had the Products not displayed the "No Preservative" marking,
11 Plaintiff Ashour either would not have purchased the Products or would not have
12 been willing to pay a premium for the Products. If Plaintiff Ashour could rely upon
13 the truthfulness of Defendants' labeling, he would continue to purchase the Products
14 in the future.

15 **RULE 9(b) ALLEGATIONS**

16 40. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n
17 alleging fraud or mistake, a party must state with particularity the circumstances
18 constituting fraud or mistake. Fed. R. Civ. P. 9(b). To the extent necessary, as
19 detailed in the paragraphs above and below, Plaintiff has satisfied the requirements
20 of Rule 9(b) by establishing the following elements with sufficient particularity:

21 41. WHO: Defendants falsely and deceptively labeled and represented that
22 their Products contained "No Preservatives."

23 42. WHAT: Defendants falsely and deceptively labeled and represented
24 that their Products contained "No Preservatives" when their Products contain citric
25 acid, a commonly used and recognized preservative. Defendants' false and
26 deceptive representations were material because a reasonable consumer would not
27 have purchased the Products if they knew that the Products did contain
28

1 preservatives.

2 43. WHEN: Defendants falsely and deceptively labeled and represented
3 that their Products contained “No Preservatives” continuously throughout the Class
4 Period.

5 44. WHERE: Defendants’ false and deceptive representations were made
6 on their Products and on Defendants’ website.

7 45. HOW: Defendants made written false and deceptive representations
8 that their Products contained “No Preservatives.”

9 46. WHY: Defendants falsely and deceptively labeled and represented that
10 their Products contained “No Preservatives” for the express purpose of inducing
11 Plaintiff and other reasonable consumers to purchase the Products. Defendants
12 profited by selling the Products to hundreds of thousands of customers.

13 **CLASS DEFINITION AND ALLEGATIONS**

14 47. Plaintiff, pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), brings this
15 action on behalf of:

16 (a) Nationwide Class: All persons who purchased Defendants’
17 Products within the United States and within the applicable statute of
18 limitation period.

19 (b) California Class: All persons who purchased Defendants’
20 Products within the state of California and within the applicable statute of
21 limitation period (collectively, the “Classes”).

22 48. Excluded from the Classes are Defendants, their parents, subsidiaries,
23 affiliates, officers, and directors, those who purchase the Product for resale, all
24 persons who make a timely election to be excluded from the Classes, the judge to
25 whom this case is assigned and any immediate family members thereof, and those
26 who assert claims for personal injury.

27 49. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The
28

1 members of the Classes are so numerous that individual joinder of all Class
2 members is impracticable. Defendants have sold many thousands of units of the
3 Products to Class members.

4 **50. Commonality and Predominance – Federal Rule of Civil Procedure**
5 **23(a)(2) and 23(b)(3).** This action involves common questions of law and fact,
6 which predominate over any questions affecting individual Class members,
7 including, without limitation:

8 (a) whether the representations discussed herein that Defendants
9 made about the Products were or are true, misleading, or likely to deceive a
10 reasonable consumer;

11 (b) whether the representations discussed herein were material to a
12 reasonable consumer;

13 (c) whether Defendants' conduct violates public policy;

14 (d) whether Defendants engaged in false or misleading advertising;

15 (e) whether Defendants' conduct constitutes violations of the laws
16 asserted herein;

17 (f) whether Plaintiff and the other Class members have been injured
18 and the proper measure of their losses as a result of those injuries;

19 (g) whether Defendants have been unjustly enriched as a result of their
20 deceptive labeling and marketing of the Products; and

21 (h) whether Plaintiff and the other Class members are entitled to
22 injunctive, declaratory, or other equitable relief.

23 **51. Typicality – Federal Rules of Civil Procedure 23(a)(3).** Plaintiff's
24 claims are typical of those of the other Class members because, among other things,
25 Plaintiff and all Class members were comparably injured through the uniform
26 conduct described herein.

27 **52. Adequacy of Representation – Federal Rule of Civil Procedure**
28

1 **23(a)(4).** Plaintiff is an adequate representative of the Classes because Plaintiff's
 2 interests do not conflict with the interests of the other Class members Plaintiff seeks
 3 to represent, Plaintiff has retained counsel competent and experienced in complex
 4 commercial and class action litigation; and Plaintiff intends to prosecute this action
 5 vigorously. The interests of the Class members will be fairly and adequately
 6 protected by Plaintiff and his counsel.

7 **53. Declaratory and Injunctive Relief – Federal Rule of Civil**

8 **Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally
 9 applicable to Plaintiff and the other Class members, thereby making appropriate
 10 final injunctive relief and declaratory relief, as described below, with respect to the
 11 Classes as a whole.

12 **54. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class
 13 action is superior to any other available means for the fair and efficient adjudication
 14 of this controversy, and no unusual difficulties are likely to be encountered in the
 15 management of this class action. The damages or other financial detriment suffered
 16 by Plaintiff and the other Class members are relatively small compared to the
 17 burden and expense that would be required to individually litigate their claims
 18 against Defendants, making it impracticable for Class member to individually seek
 19 redress from Defendants' wrongful conduct. Even if Class members could afford
 20 individual litigation, the court system could not. Individualized litigation creates a
 21 potential for inconsistent or contradictory judgments, and increases the delay and
 22 expense to all parties and the court system. By contrast, the class action device
 23 presents far fewer management difficulties, and provides the benefits of single
 24 adjudication, economies of scale, and comprehensive supervision by a single court.

25 **CLAIMS ALLEGED**

26 **COUNT I**

27 **Violation of the California Unfair Competition Law ("UCL")**

Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(ON BEHALF OF THE CALIFORNIA CLASS)

55. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

56. Plaintiff brings this claim individually and on behalf of the California Class.

57. Plaintiff and Defendants are “persons” within the meaning of the UCL. Cal. Bus. Prof. Code § 17201.

58. The UCL defines unfair competition to include any “unlawful, unfair or fraudulent business act or practice,” as well as any “unfair, deceptive, untrue or misleading advertising.” Cal. Bus. Prof. Code § 17200.

59. In the course of conducting business, Defendants engaged in unlawful business practices by violating Cal. Civ. Code § 1770 and Cal. Bus. & Prof. Code § 17500, as explained more fully below. Plaintiff reserves the right to allege other violations of law, which constitute other unlawful business acts or practices.

60. In the course of conducting business, Defendants also committed “unfair” and “fraudulent” business practices by, among other things, representing that their Products contain “No Preservatives,” when, in fact, they do.

61. These representations, Defendants’ corresponding omissions, and Defendants’ other related action and conduct, were false, misleading, and likely to deceive the consuming public.

62. Additionally, there were reasonably available alternatives to Defendants’ conduct, and Defendants’ false and deceptive advertising provided no societal benefit. Plaintiff and the California Class paid large sums of money to Defendants to receive products truthfully labeled as not containing preservatives, but did not receive such products.

63. Receiving money as a result of false or misleading advertising is

1 contrary to public policy and is immoral, unethical, oppressive, unscrupulous, and
2 causes substantial injury to consumers. And, as demonstrated by the many
3 California laws prohibiting false and deceptive advertising, there is no justification
4 or motive that outweighs the harm caused by Defendants' false and deceptive
5 advertising.

6 64. Defendants knew, or should have known, their material
7 misrepresentations and omissions would be likely to deceive and harm the
8 consuming public and result in consumers making payments to Defendants to obtain
9 products without preservatives, that did in fact contain preservatives.

10 65. Plaintiff and the California Class lost money and suffered injury in fact
11 by purchasing Defendants' Products, and Defendants were unjustly enriched by
12 receiving payments from Plaintiff and the California Class in return for providing
13 Plaintiff and the California Class products that were not as advertised.

14 66. Unless restrained and enjoined, Defendants will continue to engage in
15 the unlawful, unfair, and fraudulent conduct described herein.

16 67. Accordingly, Plaintiff, individually and on behalf of all others similarly
17 situated, and on behalf of the general public, seeks restitution from Defendants of all
18 money from Plaintiff and the California Class obtained as a result of Defendants'
19 unfair competition, an injunction prohibiting Defendants from continuing and
20 further engaging in their unlawful, unfair and fraudulent conduct, corrective
21 advertising, and all other relief the Court deems appropriate.

22 **COUNT II**

23 **Violation of the California Consumer Legal Remedies Act ("CLRA")**

24 **Cal. Civ. Code §§ 1750, *et seq.***

25 **(Injunctive Relief Only)**

26 **(ON BEHALF OF THE CALIFORNIA CLASS)**

27 68. Plaintiff incorporates the preceding paragraphs as if fully set forth
28

1 herein.

2 69. The Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.,
3 was designed and enacted to protect consumers from unfair and deceptive business
4 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and
5 practices in Civil Code § 1770.

6 70. Plaintiff brings this claim individually and on behalf of the California
7 Class.

8 71. Plaintiff is a “consumer,” Defendants are “persons,” and the Products
9 are “goods” within the meaning of the CLRA. Cal. Civ. Code § 1761(a), (c) and
10 (d).

11 72. Defendants’ sale and advertisement of the Products constitute
12 “transactions” within the meaning of the CLRA. Cal. Civ. Code. § 1761(e).

13 73. Plaintiff has standing to pursue these claims because he has suffered
14 injury in fact and a loss of money and/or property as a result of the wrongful
15 conduct alleged herein.

16 74. The CLRA declares as unlawful the following unfair method of
17 competition and unfair or deceptive acts or practices when undertaken by any person
18 in a transaction intended to result, or which results in the sale of goods to any
19 consumer.

20 (5) Representing that goods ... have ... approval, characteristics, ... uses
21 [and] benefits ... which [they do] no have

22 (7) Representing that goods ... are of a particular standard, quality or grade
23 ... if they are of another.

24 (9) Advertising goods ... with intent not to sell them as advertised.

25 (16) Representing that [goods] have been supplied in accordance with a
26 previous representation when [they have] not.

27 Cal. Civ. Code § 1770(a)(5), (7), (9) and (16).

28

1 75. Defendants violated the CLRA by representing that their Products
2 contain “No Preservatives,” when the Products do, in fact, contain preservatives as
3 they contain citric acid.

4 76. Defendants knew or should have known their content and ingredient
5 representations were false or misleading.

6 77. Defendants’ violations of the CLRA proximately caused injury in fact
7 to the Plaintiff and the California Class.

8 78. Plaintiff and the California Class purchased Defendants’ Products on
9 belief that the Products contained no preservatives.

10 79. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on
11 behalf of other members of the California Class, seeks a Court order enjoining the
12 above-described wrongful acts and practices of Defendants.

13 80. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and the
14 California Class seek injunctive and equitable relief for violations of the CLRA,
15 including restitution and disgorgement.

16 81. Plaintiff’s affidavit stating facts showing that venue in this Court is
17 proper pursuant to Cal. Civ. Code § 1780(d) is attached hereto as Exhibit B.

18 82. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff’s counsel will notify
19 Defendants in writing by certified mail of the particular violations of § 1770 of the
20 CLRA and demand that it rectify the problems associated with the actions detailed
21 above and give notice to all affected consumers of Defendants’ intent to act. If
22 Defendants fail to respond to Plaintiff’s letter or agree to rectify the problems
23 associated with the actions described above and give notice to all affected
24 consumers within 30 days of the date of written notice, as proscribed by § 1782,
25 Plaintiff will move to amend his complaint to pursue claims for actual, punitive, and
26 statutory damages, as appropriate against Defendants. As to this cause of action at
27 this time, Plaintiff only seeks injunctive relief.

COUNT III

Violation of the California False Advertising Law (“FAL”)

Cal. Bus. & Prof. Code §§ 17500, *et seq.*

(ON BEHALF OF THE CALIFORNIA CLASS)

83. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

84. Plaintiff brings this claim individually and on behalf of the California Class.

85. The FAL, in relevant part, states that “[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading[.]” Cal. Bus. & Prof. Code § 17500.

86. Defendants’ material misrepresentations and omission alleged herein violate Cal. Bus. & Prof. Code § 17500.

87. Defendants knew or should have known that their misrepresentations and omission were false, deceptive, and misleading.

88. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the California Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of falsely and misleadingly labeling their Products.

89. The required intent is the intent to dispose of property, not the intent to mislead the public in the disposition of such property.

1 90. Defendants violated the FAL by representing that their Products
2 contain no preservatives, when the Products do in fact contain preservatives as they
3 contain citric acid.

4 91. As a direct and proximate result of Defendants' untrue and misleading
5 advertising, Plaintiff and the California Class have suffered injury in fact and have
6 lost money.

7 92. Accordingly, Plaintiff requests that the Court order Defendants to
8 restore the money Defendants have received from Plaintiff and the California Class,
9 and that the Court enjoin Defendants from continuing their unlawful practices.

10 **COUNT IV**

11 **Unjust Enrichment**

12 **(ON BEHALF OF THE CLASSES)**

13 93. Plaintiff incorporates the preceding paragraphs as if fully set forth
14 herein.

15 94. At all times relevant hereto, Defendants deceptively marketed,
16 advertised, and sold merchandise to Plaintiff and the Classes.

17 95. Plaintiff and the Classes conferred upon Defendants non-gratuitous
18 payments for the Products that they would not have if not for Defendants' deceptive
19 advertising and marketing. Defendants accepted or retained the non-gratuitous
20 benefits conferred by Plaintiff and the Classes, with full knowledge and awareness
21 that, as a result of Defendants' deception, Plaintiff and the Classes were not
22 receiving a product of the quality, nature, fitness, or value that had been represented
23 by Defendants and reasonable consumers would have expected.

24 96. Defendants have been unjustly enriched in retaining the revenues
25 derived from purchases of merchandise by Plaintiff and the Classes, which retention
26 under these circumstances is unjust and inequitable because Defendants
27 misrepresented, among other things, that the Products contained no preservatives,
28

1 which caused injuries to Plaintiff and the Classes because they paid a price premium
2 due to the misleading advertising and markings on the Products.

3 97. Retaining the non-gratuitous benefits conferred upon Defendants by
4 Plaintiff and the Classes under these circumstances made Defendants' retention of
5 the non-gratuitous benefits unjust and inequitable. Thus, Defendants must pay
6 restitution to Plaintiff and the Classes for unjust enrichment, as so ordered by the
7 Court.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of the other members of
10 the proposed classes, respectfully requests that the Court enter judgment in
11 Plaintiff's favor against Defendants as follows:

12 A. Certifying the Classes as requested herein, designating Plaintiff as class
13 representative, and appointing the undersigned counsel as class counsel;

14 B. Declaring that Defendants are financially responsible for notifying the
15 Class members of the pendency of this suit;

16 C. Ordering restitution and disgorgement of all profits and unjust
17 enrichment Defendants obtained from Plaintiff and the Class members as a result of
18 Defendants' unlawful, unfair, and fraudulent business practices.

19 D. Ordering injunctive relief as permitted by the law or equity, including
20 enjoining Defendants from continuing the unlawful practices as set forth herein, and
21 ordering Defendants to engage in a corrective advertising campaign;

22 E. Ordering Defendants to pay actual, statutory, punitive, and all other
23 damages;

24 F. Ordering Defendants to pay attorneys' fees and litigation costs to
25 Plaintiff and the other members of the Classes;

26 G. Ordering Defendants to pay both pre and post judgment interest on any
27 amount awarded; and
28

1 H. Ordering such other and further relief as may be just and proper.

2 **JURY DEMAND**

3 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

4
5 DATED: May 14, 2019

PEARSON, SIMON & WARSHAW, LLP

6
7 By: /s/ Daniel L. Warshaw

8 DANIEL L. WARSHAW

9 DANIEL L. WARSHAW (Bar No. 185365)
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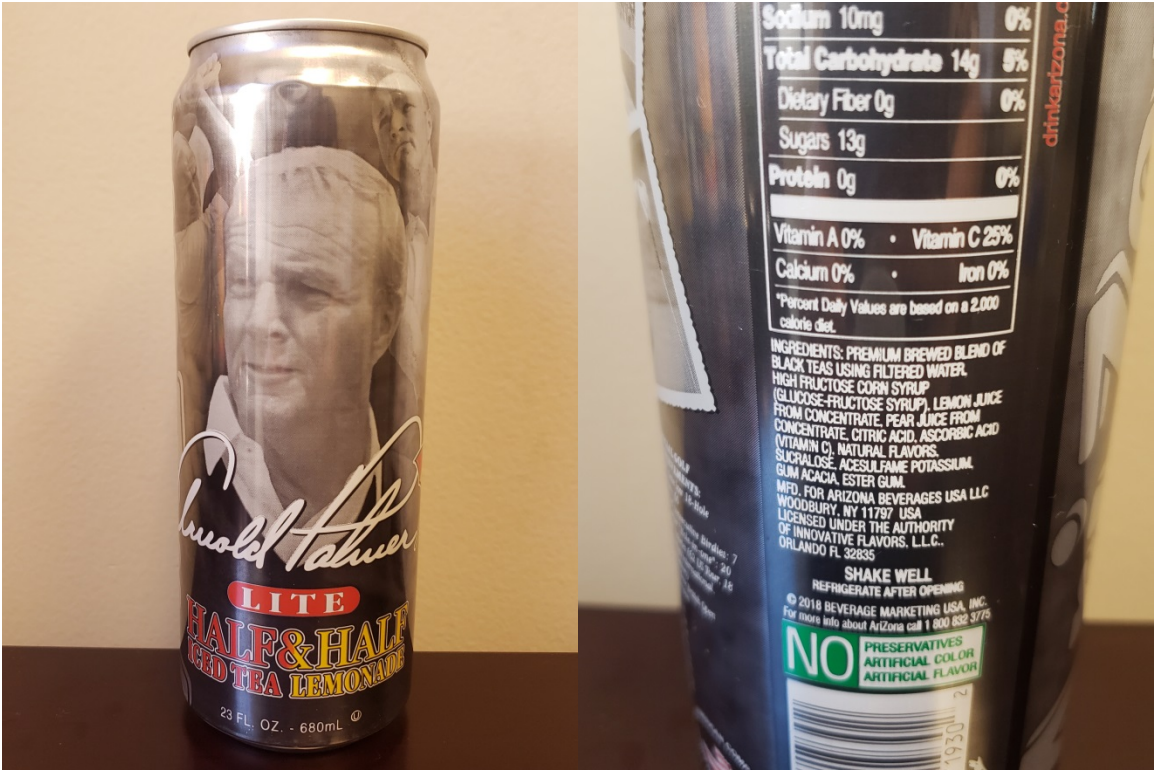
28 *Attorneys for Plaintiff and the Proposed Class*

EXHIBIT A

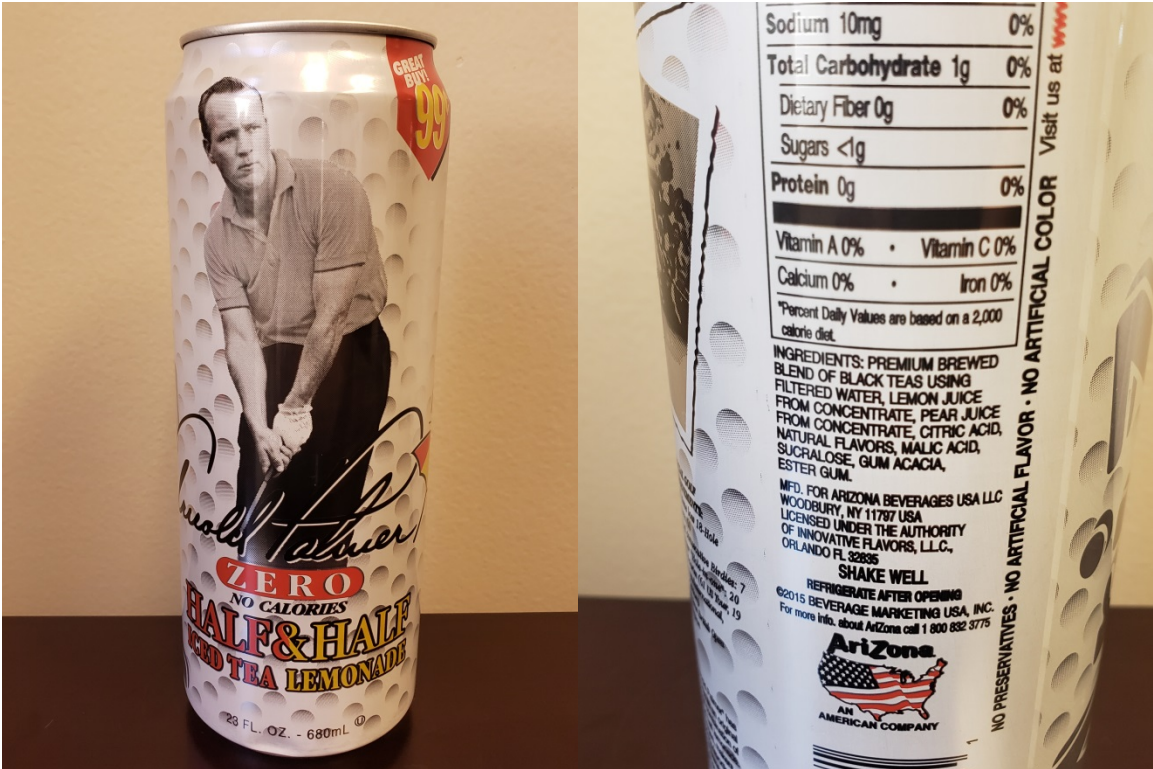
AriZona Ice Tea Lite Half Iced Tea Half Lemonade – Bottle



AriZona Ice Tea Lite Half Iced Tea Half Lemonade – Can



AriZona Ice Tea Zero Half Iced Tea Half Lemonade – Can



AriZona Fruit Punch Fruit Juice Cocktail – Bottle



AriZona Fruit Punch Fruit Juice Cocktail– Can



AriZona Golden Bear Strawberry Lite Lemonade – Can



AriZona Grapeade Fruit Juice Cocktail – Can



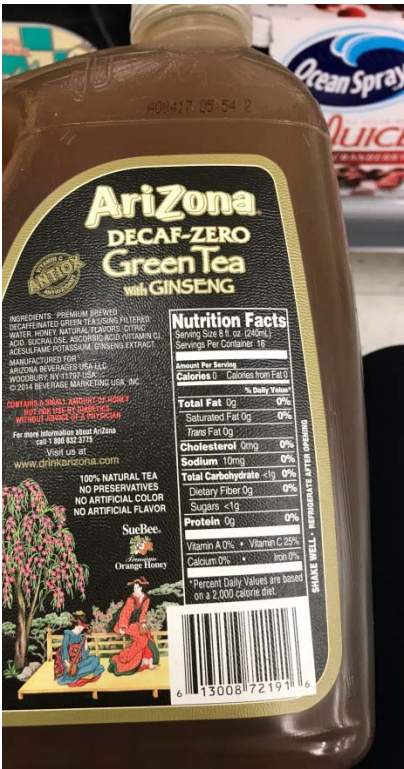
AriZona Green Tea w/ Ginseng and Honey – Alita Battle Angel Can



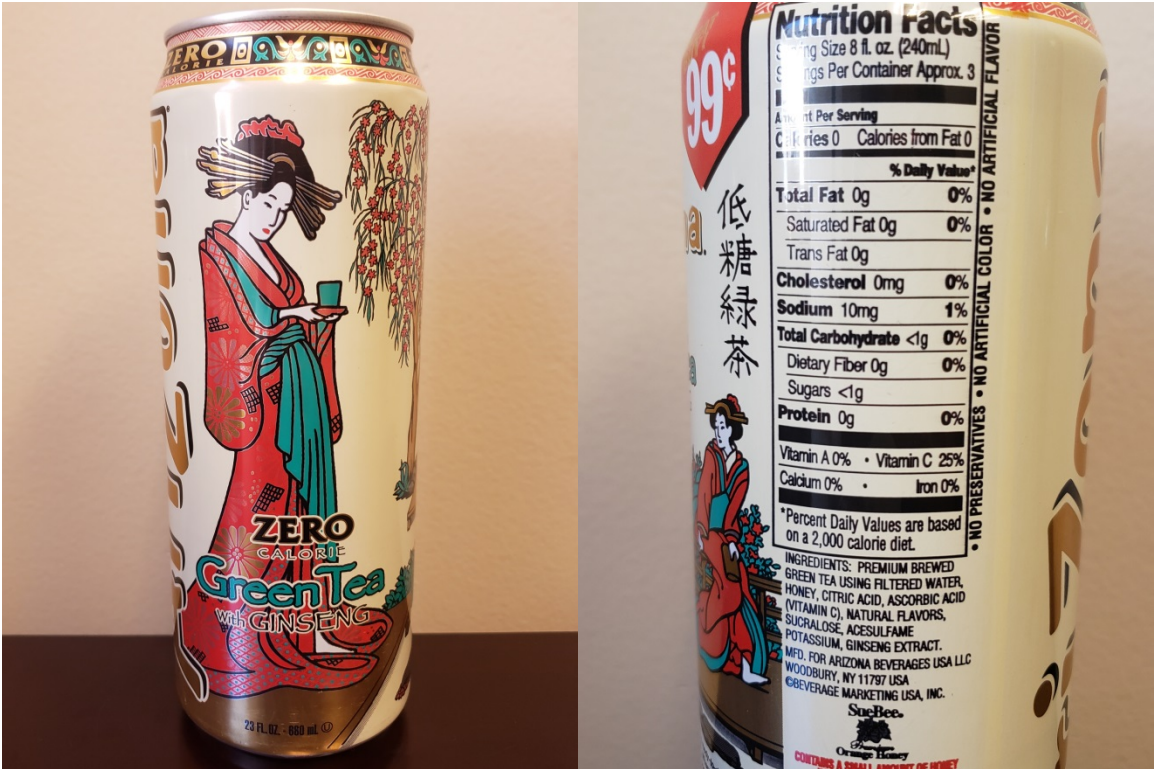
AriZona Green Tea w/ Ginseng and Honey – Bottle



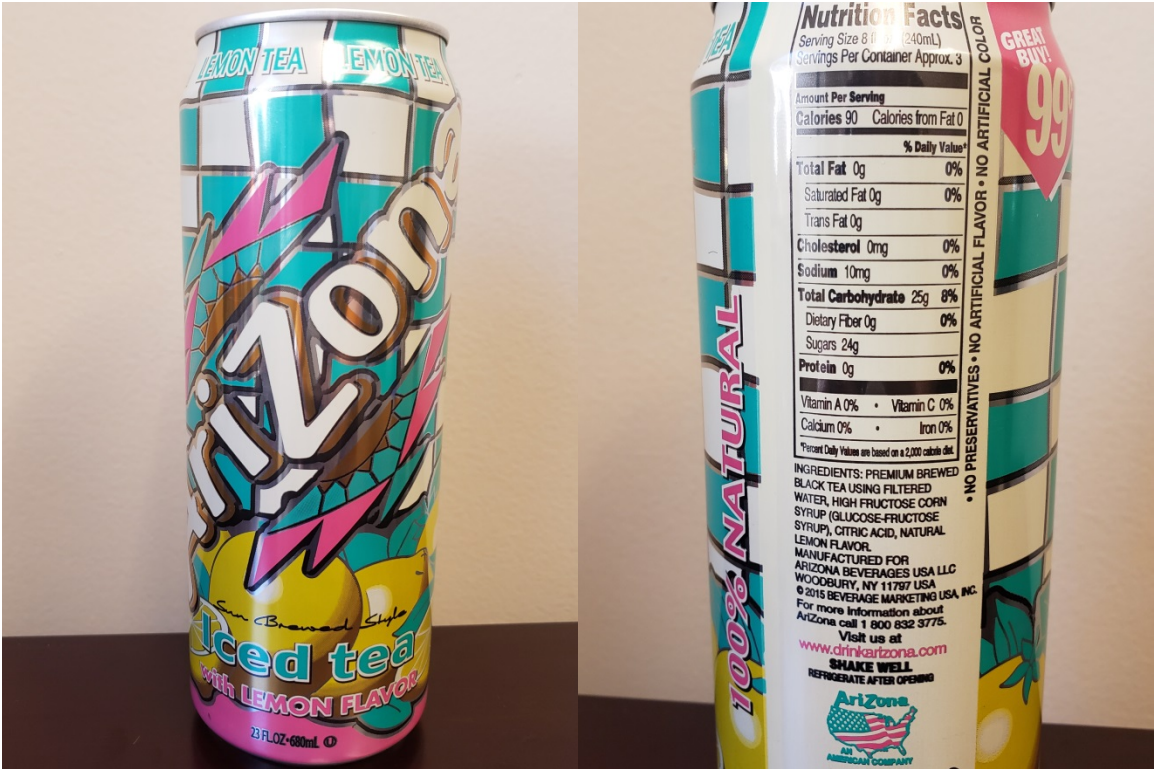
AriZona Decaf-Zero Green Tea w/ Ginseng – Jug



AriZona Zero Green Tea w/ Ginseng – Can



AriZona Tea w/ Lemon – Can



AriZona Kiwi Strawberry Fruit Juice Cocktail– Bottle



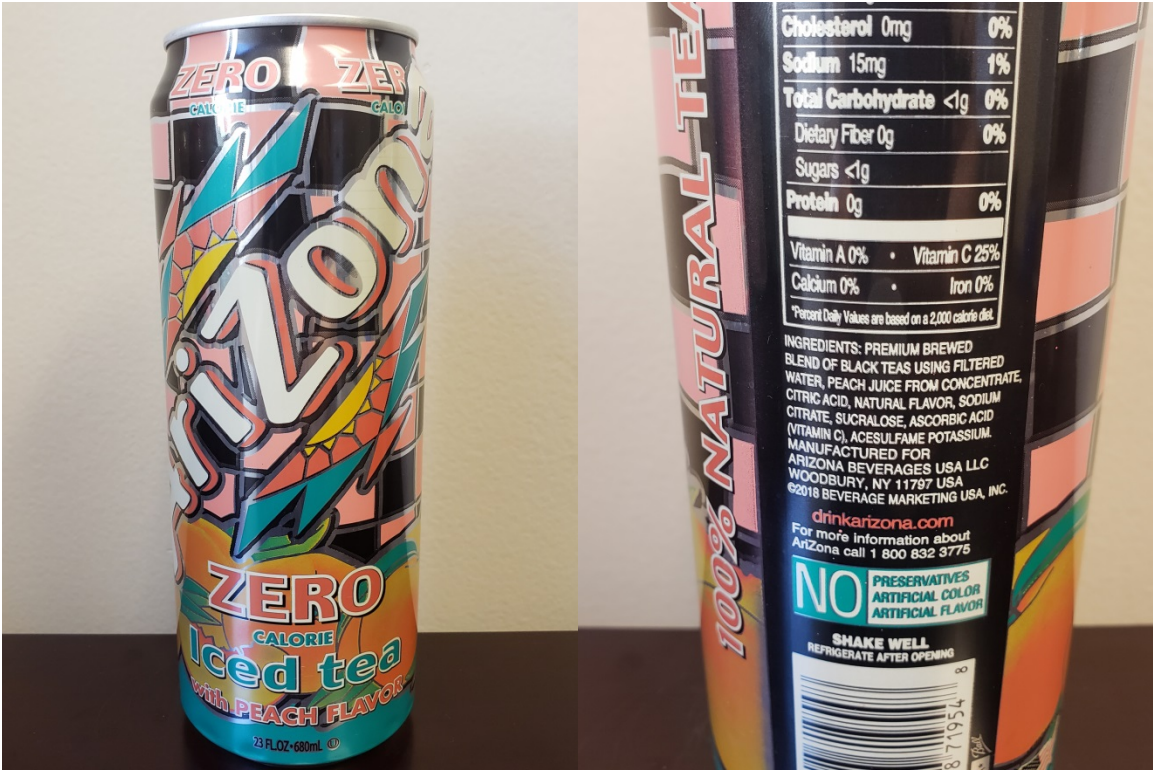
AriZona Mucho Mango Fruit Juice Cocktail– Bottle



AriZona Mucho Mango Fruit Juice Cocktail– Can



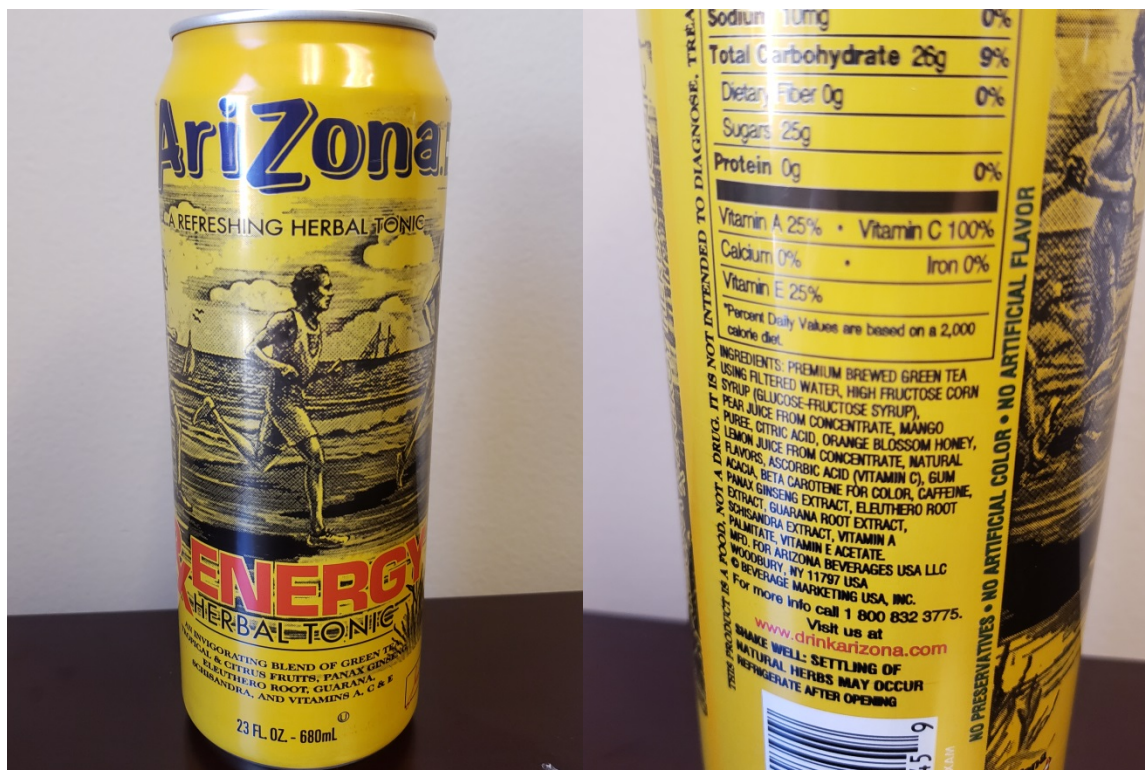
AriZona Zero Calorie Iced Tea with Peach Flavor– Bottle



AriZona Rx Energy Tonic– Bottle



AriZona Rx Energy Tonic– Can



AriZona Sweet Tea – Bottle



AriZona Sweet Tea - Can



AriZona Watermelon Fruit Juice Cocktail– Bottle



AriZona Watermelon Fruit Juice Cocktail– Can



AriZona Iced Tea with Raspberry Flavor – Can

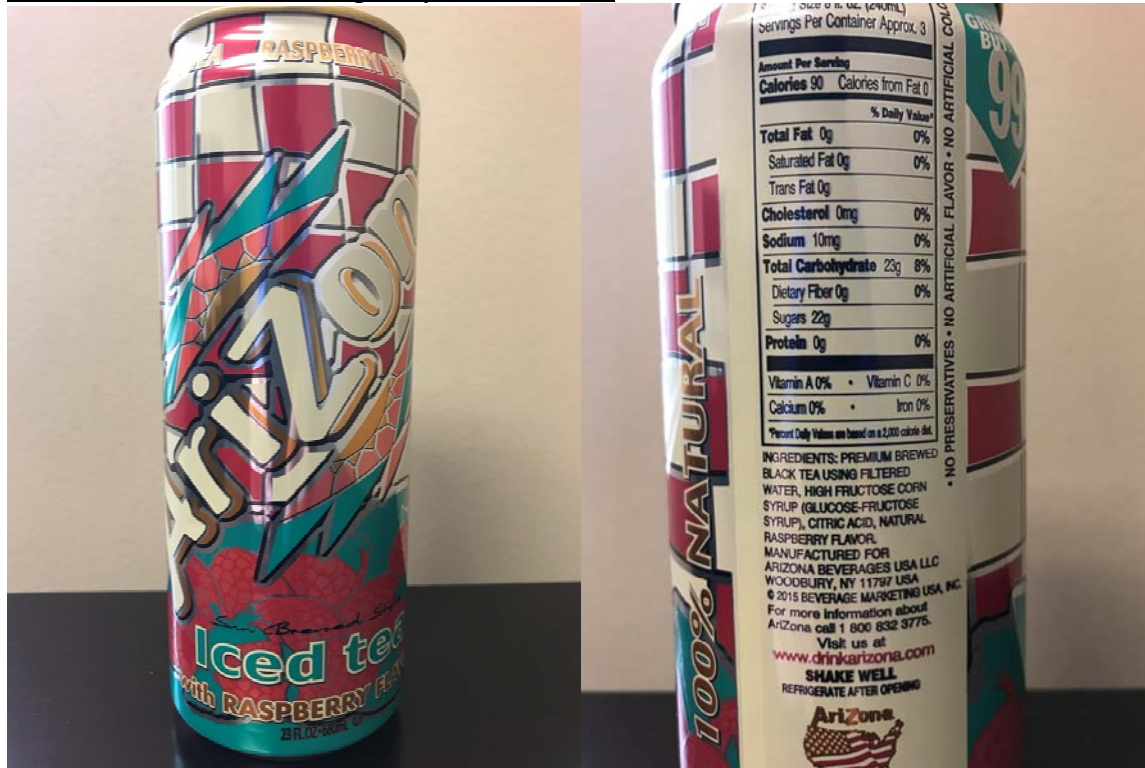


EXHIBIT B

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13 *Attorneys for Plaintiff*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
16

17 AHMED ASHOUR, individually and
18 on behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 ARIZONA BEVERAGES USA LLC,
22 HORNELL BREWING CO., INC.,
23 BEVERAGE MARKETING USA,
INC., ARIZONA BEVERAGES
HOLDINGS LLC, and ARIZONA
BEVERAGES HOLDINGS 2 LLC,

24 Defendants.
25
26
27
28

CASE NO. 2:19-cv-4170

CLASS ACTION

**DECLARATION OF AHMED
ASHOUR PURSUANT TO
CALIFORNIA CIVIL CODE § 1780**

1
2 Ahmed Ashour declares:

3 1. I am personally familiar with the facts set forth in this declaration, and
4 if called as a witness, I could and would competently testify to the matters stated
5 herein.

6 2. This action has been commenced in a county described in California
7 Civil Code section 1780 as a proper place for trial of this action. The transactions or
8 a substantial portion thereof occurred in Los Angeles County, California.

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

11 Executed on May 8, 2019, at 2:05 AM, California.

12
13 Ahmed Ashour

14 Ahmed Ashour
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