

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

Michael D. Braun (SBN 167416)  
**KUZYK LAW, LLP**  
1999 Avenue of the Stars, Ste. 1100  
Los Angeles, California 90067  
Telephone: (213) 401-4100  
Facsimile: (213) 401-0311  
Email: mdb@kuzykclassactions.com

Jordan L. Lurie (SBN 130013)  
Ari Y. Basser (SBN 272618)  
**POMERANTZ LLP**  
1100 Glendon Avenue, 15<sup>th</sup> Floor  
Los Angeles, CA 90024  
Telephone: (310) 432-8492  
E-Mail: jllurie@pomlaw.com  
abasser@pomlaw.com

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**TATIANA GALVEZ and JAMES  
KELLY on behalf of themselves and  
all others similarly situated,**

**Plaintiffs,**

**v.**

**THE BOSTON BEER COMPANY,  
INC.**

**Defendant.**

**CASE NO.: '21CV1508 L BGS**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY,  
AND INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Tatiana Galvez and James Kelly (“Plaintiffs”), individually and on  
2 behalf of themselves and all others similarly situated, bring this class action against  
3 Defendant The Boston Beer Company Inc. (“BBC,” “Boston Beer” or “Defendant”),  
4 and on the basis of personal knowledge, information and belief, and the investigation  
5 of counsel, allege as follows:

6 **INTRODUCTION**

7  
8 1. This is a proposed class action on behalf of a nationwide, California and  
9 New York class (collectively, “Class”) of consumers seeking redress for Defendant’s  
10 deceptive practices associated with the advertising, labeling and sale of its Truly Hard  
11 Seltzers (“THS”).

12 2. Defendant BBC manufactures, markets, advertises, and sells a line of  
13 hard seltzers under the brand name Truly Hard Seltzers (“Seltzers” or “Products”).

14 3. Hard Seltzer, also known as spiked seltzer, is one of the fastest-growing  
15 alcoholic beverage categories in the U.S. It combines seltzer water, with a variety of  
16 alcohols, cane sugar and either fruit or fruit flavor. “While Hard Seltzers have been  
17 around for centuries, millennial consumers' demands for healthier, lower-calorie  
18 alcoholic beverages have helped drive the growth of the segment.”<sup>1</sup> Indeed, the Hard  
19 Seltzer market, which is currently valued at \$4.4 billion dollars, is expected to reach  
20 \$30 billion in sales by 2025.<sup>2</sup>

21  
22  
23  
24  
25 <sup>1</sup> See e.g., <https://www.t4.ai/industry/hard-seltzer-market-share>.

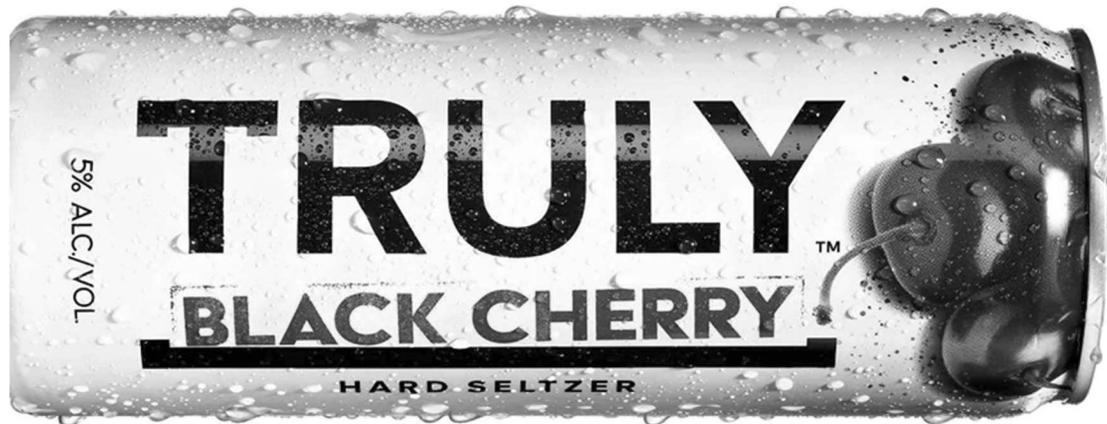
26 <sup>2</sup> Forbes, *The Hard Seltzer Market Is Getting More Crowded*, January 12, 2021,  
27 [https://www.forbes.com/sites/hudsonlindenberger/2021/01/12/the-hard-seltzer-](https://www.forbes.com/sites/hudsonlindenberger/2021/01/12/the-hard-seltzer-market-is-getting-more-crowded/?sh=1ba6398f1201)  
28 [market-is-getting-more-crowded/?sh=1ba6398f1201](https://www.forbes.com/sites/hudsonlindenberger/2021/01/12/the-hard-seltzer-market-is-getting-more-crowded/?sh=1ba6398f1201).

1           4.       According to recent market data, the top three brands, which collectively  
2 control the majority of the hard seltzer market, are White Claw (45%), Truly Hard  
3 (17.4%) and High Noon Spirits Company (10.4%).<sup>3</sup>

4           5.       The hard seltzer market is highly competitive with a continual influx of  
5 new market entrants vying for consumer attention and their purchasing dollars.  
6 Manufactures compete on a few material differences, including most significantly, the  
7 content of their beverages.

8           6.       THS comes in 12 fruit flavors. Plaintiffs were frequent purchasers of  
9 THS Seltzers in a variety of flavors including, but not limited to, Truly Black Cherry.  
10 Other than the name of the characterizing fruit, all 12 THS Seltzers share materially  
11 identical labeling, including the false and misleading portion described herein.

12           7.       The following front label for Truly Black Cherry Hard Seltzer is  
13 illustrative of the issue complained of herein.



24           8.       The Seltzer’s principal display panel (“PDP”) boldly characterizes the  
25 Product as “Black Cherry,” both in name and by a prominent vignette of four fresh  
26

27 <sup>3</sup> PR Newswire, June 23, 2021, <https://www.prnewswire.com/news-releases/new-data-shows-white-claw-losing-on-premise-market-share-of-hard-seltzers-301318665.html>  
28

1 cherries. Notably, the name is also colored to match the natural color of cherries. In  
2 addition, BBC chose the name “Truly,” which further emphasizes the veracity and  
3 authenticity of the Product’s contents.

4 9. Despite being characterized as a “black cherry” beverage, however, the  
5 Product does **not** contain its characterizing ingredient (i.e., black cherry), but rather  
6 entirely derives its taste from lab synthesized ingredients described as “natural  
7 flavors.” By characterizing the Product in this manner – failing to either include its  
8 characterizing ingredient (black cherry) in the formulation, or alternatively, clearly  
9 indicating on the Product’s principal display panel that it is a “flavored” beverage,  
10 Boston Beer has falsely and misleadingly labeled its Products, deceived its consumers,  
11 and violated the law.

12 10. Throughout the applicable class period, Defendant has falsely  
13 represented the true nature of its hard seltzers, and as a result of this false and  
14 misleading labeling, was able to sell these Products to hundreds of thousands of  
15 unsuspecting consumers throughout California, New York and the United States.

16 11. Plaintiffs allege Defendant’s conduct is in breach of warranty, violates  
17 California’s Business and Professions Code § 17200, *et. seq.*, California’s Business &  
18 Professions Code § 17500, *et. seq.*, California Civil Code § 1750, *et seq.*, N.Y. Gen.  
19 Bus U. Law § 349 *et seq.*, N.Y. Gen. Bus. Law § 350 *et seq.*, and is otherwise  
20 grounds for restitution on the basis of quasi-contract/unjust enrichment.

21  
22 **JURISDICTION AND VENUE**

23 12. Jurisdiction of this Court is proper under 28 U.S.C. § 1332(d)(2).  
24 Diversity jurisdiction exists as Plaintiff Galvez is a resident of Chula Vista, California,  
25 Plaintiff Kelly is a resident of Centereach, New York, and Defendant Boston Beer is a  
26 Massachusetts corporation with its principal place of business in Boston,  
27 Massachusetts. The amount in controversy exceeds \$5,000,000 for the Plaintiff and  
28 members of the Class collectively, exclusive of interest and costs, by virtue of the

1 combined purchase prices paid by Plaintiffs and members of the putative Class, and  
2 the profits reaped by Defendant from its transactions with Plaintiffs and the Class, as a  
3 direct and proximate result of the wrongful conduct alleged herein, and by virtue of  
4 the injunctive and equitable relief sought.

5 13. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391  
6 because a substantial portion of the underlying transactions and events complained of  
7 occurred and affected persons and entities located in this judicial district, and  
8 Defendant has received substantial compensation from such transactions and business  
9 activity in this judicial district.

10 **PARTIES**

11  
12 14. Plaintiff Tatiana Galvez is a resident of Chula Vista, California.

13 15. Ms. Galvez purchased a variety of THS Products throughout the  
14 applicable class period, including but not limited to Truly Black Cherry. The  
15 purchases were made at local retail locations including but not limited to Vons and  
16 Smart & Final.

17 16. Ms. Galvez believed the representations on the Products' principal  
18 display panels -- that she was consuming beverages that contained the fruits depicted  
19 by name and vignette on their principal display panels.

20 17. She believed that Defendant lawfully marketed and sold the Products.

21 18. Ms. Galvez relied on Defendant's labeling and was misled thereby.

22 19. Ms. Galvez would not have purchased the Products, or would have  
23 purchased the Products on different terms had she known the truth about their  
24 contents.

25 20. Ms. Galvez was injured in fact and lost money as a result of Defendant's  
26 improper conduct.

1           21.     If Ms. Galvez has occasion to believe that Defendant’s marketing and  
2 labeling is truthful, non-misleading, and lawful, she would purchase THS Seltzers in  
3 the future.

4           22.     Plaintiff James Kelly is a resident of Centereach, New York.

5           23.     Mr. Kelly purchased a variety of THS Products throughout the applicable  
6 class period, including but not limited to Black Cherry. The purchases were made at  
7 several stores in his surrounding area including, but not limited to Seven Eleven and  
8 Stop & Shop.

9           24.     Mr. Kelly believed the representations on the Products’ principal display  
10 panels -- that he was consuming beverages that contained the fruits depicted by name  
11 and vignette on their principal display panels.

12           25.     He believed that Defendant lawfully marketed and sold the Products.

13           26.     Mr. Kelly relied on Defendant’s labeling and was misled thereby.

14           27.     Mr. Kelly would not have purchased the Products, or would have  
15 purchased the Products on different terms had he known the truth about their contents.

16           28.     Mr. Kelly was injured in fact and lost money as a result of Defendant’s  
17 improper conduct.

18           29.     If Mr. Kelly has occasion to believe that Defendant’s marketing and  
19 labeling is truthful, non-misleading, and lawful, he would purchase THS Seltzers in  
20 the future.

21           30.     Defendant The Boston Beer Company, Inc., manufactures, markets and  
22 sells a line of hard seltzers under the name Truly Hard Seltzer. The Seltzers are sold  
23 across a variety of retail segments including supermarkets, convenience stores and  
24 mass merchants. Boston Beer is a Massachusetts corporation that maintains its  
25 principal place of business at One Design Center Place, Suite 850, Boston,  
26 Massachusetts.

27  
28

**GENERAL ALLEGATIONS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
31. The Boston Beer Company Inc was founded in 1984 and rose to fame on the success of its Samuel Adams Boston Lager. In 1995, Boston Beer went public and by 2020 posted \$1.74 billion in net revenues marking an increase of \$486.6 million, or 38.9%, from the comparable 52-week period in 2019. Truly Hard Seltzers, which was launched in 2016,<sup>4</sup> is credited for much of the company’s recent growth. As stated by Dave Burwick, BBC’s President and CEO, “[t]he Truly brand overall generated triple-digit volume growth in 2020 and grew its velocity and its market share sequentially despite other national, regional and local hard seltzer brands entering the category. In 2020, Truly increased its market share in measured off-premise channels from 22 points to 26 points and was the only national hard seltzer, not introduced in 2020, to grow share.”<sup>5</sup>

32. THS operates in a crowded beverage space among a number of well-established and well-funded competitors but has excelled with the marketing of a healthier choice, clean label product. Indeed, among the more than 65 hard seltzer manufacturers on the market in 2020, THS was, and remains, the second-best seller. "We have a culture of people who are looking for alternatives to what they're currently consuming that fit more in balance with their lifestyles....It works for people who are

---

24 <sup>4</sup> The THS Products include: CLASSIC (Wild Berry, Blueberry & Acai, Raspberry & Lime, Black Cherry, Lime, Grapefruit, Citrus Squeeze and Lemon); TROPICAL (Passion fruit, Pineapple, Watermelon & Kiwi, and Mango); TRULY EXTRA (Peach Mango and Black Raspberry)(collectively referred to as “Class Products”).

27 <sup>5</sup> <https://www.bostonbeer.com/news-releases/news-release-details/boston-beer-reports-fourth-quarter-2020-results>

1 looking for a balanced lifestyle, who are athletic and active or health-conscious," said  
2 Casey O'Neill, a member of Truly's innovation team.<sup>6</sup>

3 33. Indeed, the growth and popularity of the hard seltzer market has been  
4 driven by consumers who have increasingly moved towards healthier, clean label  
5 beverages – a desire on which THS capitalized by falsely conveying to consumers that  
6 its hard seltzers contained the ingredients emblazoned on its Product labels.<sup>7</sup>

7 34. Despite its legal obligation to do so, BBC chose to deceptively label its  
8 Seltzers, obfuscating the material fact that they did not contain real fruit, but instead  
9 derived their flavor from highly processed, lab-synthesized flavoring packets.

10 35. By way of example, despite being labeled and characterized as a black  
11 cherry beverage by both name and vignette, the ingredient deck on the back of the  
12 Product belies the veracity of the representation on the principal display panel, by  
13 confirming that Product does not contain black cherry in any form, but instead derives  
14 its flavor from a multitude of lab synthesized flavorings.

---

15  
16  
17  
18  
19  
20  
21  
22  
23  
24 <sup>6</sup> Baltimore Sun, Alcoholic seltzer finds growing market of health-conscious drinkers,  
25 December 7, 2016, available at <https://www.baltimoresun.com/food-drink/bs-ae-hard-seltzer-trend-20161207-story.html>.

26 <sup>7</sup> Forbes, The Hard Seltzer Market Is Getting More Crowded, January 12, 2021,  
27 available at <https://www.forbes.com/sites/hudsonlindenberger/2021/01/12/the-hard-seltzer-market-is-getting-more-crowded/?sh=50db66031201>.

Nutrition Facts	
1 serving per container	
Serving size	12 FL. OZ. (355mL)
Amount per serving	
<b>Calories</b>	<b>100</b>
	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 30mg	1%
Total Carbohydrate 2g	<1%
Dietary Fiber 0g	0%
Total Sugars 1g	
Includes 1g Added Sugars	<1%
<b>Protein 0g</b>	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	0%

\*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: FILTERED CARBONATED WATER, ALCOHOL, NATURAL FLAVORS, CANE SUGAR, CITRIC ACID, AND SODIUM CITRATE

PLEASE DRINK RESPONSIBLY.  
 ©2020 HARD SELTZER BEVERAGE  
 COMPANY LLC, BOSTON, MA

★ GLUTEN FREE | BEER 20732

36. Characterizing a product as black cherry, by both name and vignette, despite the fact the Product is entirely devoid of that ingredient is deceptive, misleading and in violation of state and common laws designed to protect consumers and to promote consist, honest and transparent labeling.

**A. FLAVORING IN A PRODUCT IS A MATERIAL CONSIDERATION TO A REASONABLE CONSUMER**

37. Over the last decade, “Natural Flavors” have become ubiquitous ingredients in food and beverage formulations. According to the Environmental Working Group, which rates more than 80,000 foods on their degree of nutrition, ingredient and processing concerns, “Natural Flavor” is the fourth most common ingredient on food labels with only salt, water and sugar mentioned more frequently.<sup>8</sup>

<sup>8</sup> *Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial Flavors*, Environmental Working Group, available at <https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/>.

1           38. The federal Food Drug & Cosmetic Act (“FDCA”) defines “natural  
2 flavor” as the “essential oil, oleoresin, essence or extractive, protein hydrolysate,  
3 distillate, or any product of roasting, heating or enzymolysis, which contains the  
4 flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable  
5 juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood,  
6 poultry, eggs, dairy products, or fermentation products thereof, whose significant  
7 function in food is flavoring rather than nutritional.” 21 C.F.R. §101.22(a)(3).

8           39. In elemental terms, a natural flavor is anything that can be extracted from  
9 an animal or plant source. It is called “natural” because the original source of the  
10 flavor additive is not man-made.<sup>9</sup> Unfortunately, despite their name, natural flavors  
11 are complex, highly processed, amalgams of chemicals, carrier solvents, and  
12 preservatives.<sup>10</sup> Despite originating from a single natural source, the finalized flavor  
13 can contain as many as 250 chemically identified constituents, some of which are  
14 artificial and synthetic.<sup>11</sup> Moreover, these additional chemicals can make up 80 to 90  
15 percent of the flavor.<sup>12</sup>

16  
17 <sup>9</sup> *Attention, Allergy Sufferers: Beware of Natural Flavors*, Food Safety News,  
18 December 2, 2015, available at [https://www.foodsafetynews.com/2015/12/attention-](https://www.foodsafetynews.com/2015/12/attention-allergy-sufferers-beware-of-natural-flavors/)  
19 [allergy-sufferers-beware-of-natural-flavors/](https://www.foodsafetynews.com/2015/12/attention-allergy-sufferers-beware-of-natural-flavors/).

20 <sup>10</sup> *What are Natural Flavors?*, Food Revolution Network, available at  
21 <https://foodrevolution.org/blog/natural-flavors/>.

22 <sup>11</sup> *Is There Really Anything Natural About Natural Flavors?*, Suffolk University  
23 Journal of Health and Biomedical Law, April 4, 2019 available at  
24 [https://sites.suffolk.edu/jhbl/2019/04/04/is-there-really-anything-natural-about-](https://sites.suffolk.edu/jhbl/2019/04/04/is-there-really-anything-natural-about-natural-flavors/)  
[natural-flavors/](https://sites.suffolk.edu/jhbl/2019/04/04/is-there-really-anything-natural-about-natural-flavors/).

25 <sup>12</sup> *Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors*,  
26 EWG, available at [https://www.ewg.org/foodscores/content/natural-vs-artificial-](https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/#:~:text=Federal%20Food%20and%20Drug%20Administration,juice%2C%20vegetable%20or%20vegetable%20juice%2C)  
27 [flavors/#:~:text=Federal%20Food%20and%20Drug%20Administration,juice%2C%20](https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/#:~:text=Federal%20Food%20and%20Drug%20Administration,juice%2C%20vegetable%20or%20vegetable%20juice%2C)  
28 [vegetable%20or%20vegetable%20juice%2C](https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/#:~:text=Federal%20Food%20and%20Drug%20Administration,juice%2C%20vegetable%20or%20vegetable%20juice%2C). (These flavor mixtures often include  
amyl acetate, amyl butyrate, amyl valerate, ethyl butyrate, various aliphatic acid ester,  
ethyl acetate, ethyl valerate, ethyl isovalerate, ethyl pelargonate, vanillin, lemon

1 40. In addition to incorporating synthetic solvents and carrier systems, the  
2 base ingredient often times has no relation to the characterizing flavor of the product  
3 at all.<sup>13</sup>

4 41. Natural flavors are added to foods and beverages for a variety of reasons  
5 including to replace flavors that were eliminated in processing and pasteurizing, or to  
6 help food taste fresh even when it is not. In Products where the characterizing  
7 ingredient was never intended to be in the formulation, and is therefore wholly absent,  
8 flavors not only provide a taste and smell profile, but are specifically designed to  
9 entice and addict the consumer to the product.<sup>14</sup>

10 42. “How a food tastes is largely determined by the volatile chemicals in the  
11 food. Chemicals that give food a specific smell are extremely important because smell  
12 makes up 80 to 90 percent of the sense of taste.”<sup>15</sup> “A great deal of scientific  
13

---

14 essential oil, citral, citronellal, rose absolute, geraninol, orange essential oil, geranium  
15 essential oil, aldehyde C<sub>10</sub>, ethyl heptanoate, acetaldehyde, aldehydes C<sub>14</sub> and C<sub>16</sub>,  
16 styralyl acetate, dimethyl benzyl carbinyl acetate, benzyl formate, phenyl ethyl  
17 isobutyrate, cinnamyl isovalerate, anise essential oil, esters of colophony and  
18 benzaldehyde and may contain terpenyl isovalerate, isopropyl isovalerate, citronellyl  
19 isovalerate, geranyl isovalerate, benzyl isovalerate, cinnamyl formate, isopropyl  
20 valerate, butyl valerate, methyl allyl butyrate and potentially the synthetic ingredients  
21 cyclohexyl acetate, allyl butyrate, allyl cyclohexylvalerate, allyl isovalerate and  
22 cyclohexyl butyrate).

21 <sup>13</sup> *Id.*; *What's inside natural flavors?*, Food Business News, December 3, 2020,  
22 available at [https://www.foodbusinessnews.net/articles/17385-whats-inside-natural-  
23 flavors](https://www.foodbusinessnews.net/articles/17385-whats-inside-natural-flavors).

24 <sup>14</sup> *What does 'natural flavors' really mean?*, Washington Post, July 25, 2017,  
25 available at [https://www.washingtonpost.com/lifestyle/wellness/what-does-natural-  
26 flavors-really-mean/2017/07/24/eccdc47e-67f7-11e7-a1d7-9a32c91c6f40\\_story.html](https://www.washingtonpost.com/lifestyle/wellness/what-does-natural-flavors-really-mean/2017/07/24/eccdc47e-67f7-11e7-a1d7-9a32c91c6f40_story.html).

27 <sup>15</sup> *Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial Flavors*,  
28 Environmental Working Group, available at  
<https://www.ewg.org/foodscores/content/natural-vs-artificial-flavors/>.

1 engineering and design time goes into crafting flavors for processed foods. This  
2 specialized work is done by just 500 professional flavorists who are responsible for  
3 the majority of flavors in nearly all food processed in the U.S.”<sup>16</sup>

4 43. As made plain in a 60 Minutes expose on food flavorists, one of their  
5 primary goals is to create flavors that make foods and beverages addictive.<sup>17</sup>

6 44. Unfortunately for the consuming public, manufacturers are not required  
7 to list the sub-ingredients that constitute these flavors – a fact which results in the  
8 ability of manufacturers to obfuscate dozens of chemicals from disclosure.<sup>18</sup>

9 45. “On an ingredient label, “natural flavor” can be a sort of black box,  
10 enclosing dozens of components, including flavor chemicals, flavor modifiers, and  
11 solvents, none of which have to be individually disclosed. Many companies will use  
12 additives like propylene glycol when they can disguise them under the benign-  
13 sounding catchall “natural flavors”—even if they would reject them as individually  
14 listed ingredients.”<sup>19</sup>

15 46. This has resulted in a growing distrust of natural flavors by the  
16 consuming public.<sup>20</sup> A 2018 report from Label Insight and the Food Marketing  
17 Institute found 93% of consumers find it important for brands and manufacturers “to  
18  
19

---

20 <sup>16</sup> *Id.*

21 <sup>17</sup> *The Flavorists, Tweaking Tastes and Creating Cravings*, CBS News, November 27,  
22 2011, available at <https://www.youtube.com/watch?v=a7Wh3uq1yTc>.

23 <sup>18</sup> *What are Natural Flavors? The Truth About This “Natural” Ingredient*, Public  
24 Good, April 2, 2020, available at <https://blog.publicgoods.com/what-are-natural-flavors/>.

25  
26 <sup>19</sup> *Clean label’s dirty little secret*, The Counter, February 1, 2018, available at  
27 <https://thecounter.org/clean-label-dirty-little-secret/>.

28 <sup>20</sup> *Id.* at fn. 18.

1 provide detailed information about what is in food and how it's made" and "[t]hree  
2 quarters of shoppers in 2018 would switch brands for transparency."<sup>21</sup>

3 47. Indeed, the most significant trend driving change in the food and  
4 beverage industry right now is transparency. Consumers want to know and understand  
5 what ingredients are going into their products, which is why so many products are  
6 simplifying and shortening ingredient lists.<sup>22</sup> "Clean labels with high ethical values  
7 are more important than ever, particularly to a growing segment of consumers with  
8 special dietary needs, which means, lab-created artificial and natural flavors are not in  
9 demand; consumers want real ingredients from nature."<sup>23</sup> Moreover, today, brands are  
10 also questioning whether natural flavors, preservatives and sweetener are really  
11 clean.<sup>24</sup>

12 48. In response, a number of food and drink manufacturers have become  
13 more "honest and real about what's going into their food as consumers demand  
14 transparency and clean labeling."<sup>25</sup> Some Boston Beer competitors, such as Spindrift  
15 Seltzer, realized the fallacy of natural flavors and modified their formulation to  
16

---

17 <sup>21</sup> *The State of Transparency - 2016 vs 2018*, Label Insight, September 18, 2018,  
18 available at <https://blog.labelinsight.com/the-state-of-transparency-2016-vs-2018>.

19 <sup>22</sup> *Top Trends Driving Change In The Food Industry*, Forbes, February 16, 2019,  
20 available at <https://www.forbes.com/sites/juliabolayanju/2019/02/16/top-trends-driving-change-in-the-food-industry/?sh=302c9e636063>.

21 <sup>23</sup> *Id.*

22  
23 <sup>24</sup> *See, Clean Label 2.0: Natural Flavors and preservatives, pesticide residues, and*  
24 *Non-GMO in the spotlight*, Food Navigator USA, April 26, 2017, available at  
25 <https://www.foodnavigator-usa.com/Article/2017/04/27/Clean-label-2.0-From-natural-flavors-to-synbio-and-pesticide-residues>.

26 <sup>25</sup> *The "Natural Flavors" Ingredient Is a Total Lie*, The Daily Meal, June 26, 2017,  
27 available at <https://www.thedailymeal.com/healthy-eating/natural-flavors-ingredient-total-lie>.  
28

1 include real ingredients (i.e., fruit). Prior to making the change, Spindrift CEO Bill  
2 Creelman had tried to get to the bottom of what natural flavors were being used in his  
3 company’s drinks. “When I asked our supplier, no one would tell me, he said. It was  
4 time to make a change.”<sup>26</sup> Today, Spiked Spindrift is among several hard seltzer  
5 manufacturers offering a below 100 calorie, 4% alcoholic beverage flavored with real  
6 fruit.<sup>27</sup>

7 49. Ultimately, hard seltzer manufacturers have a choice on how to flavor  
8 their beverages. While some will choose real ingredients in their product formulations,  
9 others will choose a variety of lab synthesized flavorings. They all, however, will  
10 compete for consumers on the basis of those choices.

11 50. Recognizing that these choices (i.e., the difference between products with  
12 real ingredients versus those that are flavored) are material to the reasonable  
13 consumer, the law imposes strict rules regarding the labeling of products that have  
14 been flavored. These laws ensure consistent labeling among competitive products and  
15 are designed to clearly convey the nature of the product, minimize consumer  
16 confusion, and enable informed purchasing decisions.

17 **B. THE FEDERAL FOOD DRUG & COSMETIC ACT**

18  
19 51. The Federal Food, Drug & Cosmetic Act (“FDCA”) broadly regulates  
20 the sale of food and beverages to the consuming public. 21 U.S.C §301. It was  
21 promulgated in significant part to prevent consumer deception and was principally  
22  
23

---

24 <sup>26</sup> *Id.*

25 <sup>27</sup> See,  
26 [https://www.spindriftspiked.com/pages/spiked?gelid=CjwKCAjw3\\_KIBhA2EiwAaA\\_AlijJKKtX--](https://www.spindriftspiked.com/pages/spiked?gelid=CjwKCAjw3_KIBhA2EiwAaA_AlijJKKtX--965zTy3DsSifexSwNrTRcsc6MvLV6RczFeyDzBbH3ZiWhoCKp8QAvD_BwE)  
27 [965zTy3DsSifexSwNrTRcsc6MvLV6RczFeyDzBbH3ZiWhoCKp8QAvD\\_BwE](https://www.spindriftspiked.com/pages/spiked?gelid=CjwKCAjw3_KIBhA2EiwAaA_AlijJKKtX--965zTy3DsSifexSwNrTRcsc6MvLV6RczFeyDzBbH3ZiWhoCKp8QAvD_BwE).  
28

1 implemented through the creation of a uniform system of labeling on which  
2 consumers could rely to make informed purchasing decisions.

3 52. By extensively regulating the labeling of foods and beverages, the FDCA  
4 and its implementing regulations have identified the words and statements that must  
5 or may be included on labeling and have specified how prominently and  
6 conspicuously those words and statements must appear. These provisions ensure that  
7 statements are presented on labels in such a way as to likely be read and understood  
8 by the ordinary person. 21 U.S.C. §343(f). The FDCA consists of hundreds of sections  
9 and subsections, the following of which bear direct relevance to the case at bar.

10 53. The FDCA prohibits the misbranding of any food. 21 U.S.C. §331(b).<sup>28</sup>  
11 Generally, a food is misbranded if, among other things, its labeling is false or  
12 misleading. 21 U.S.C. §343.<sup>29</sup> In addition to this general mandate, the FDCA  
13 contains specific rules which manufacturers must follow to ensure their products are  
14 properly labeled and understood by the reasonable consumer. Among them, 21 C.F.R.  
15 §101.22, which provides:

16  
17 (i) If the label, labeling, or advertising of a food makes any direct  
18 or indirect representations with respect to the primary recognizable  
19 flavor(s), by word, vignette, e.g., depiction of a fruit, or other  
20 means, or if for any other reason the manufacturer or distributor of  
21 a food wishes to designate the type of flavor in the food other than  
22 through the statement of ingredients, such flavor shall be  
23 considered the characterizing flavor and shall be declared in the  
24 following way:

---

23 <sup>28</sup> The term food broadly means “articles used for food or drink for man...” 21 U.S.C  
24 §321(f) and incorporates beverages such as the Products which are the subject of this  
25 litigation.

26 <sup>29</sup> California’s Sherman Food, Drug and Cosmetic Law (“Sherman Law”), which  
27 adopts the FDCA in its entirety, identically provides that, “[a]ny food is misbranded if  
28 its labeling is false or misleading in any particular.” California Health & Safety Code,  
Article 6, §110660.

1 (1) If the food contains no artificial flavor which simulates,  
2 resembles or reinforces the characterizing flavor, the name of  
3 the food on the principal display panel or panels of the label  
4 shall be accompanied by the common or usual name of the  
5 characterizing flavor, e.g., "vanilla", in letters not less than one-  
6 half the height of the letters used in the name of the food, except  
7 that:

8 (i) If the food is one that is commonly expected to contain a  
9 characterizing food ingredient, e.g., strawberries in  
10 "strawberry shortcake", and the food contains natural flavor  
11 derived from such ingredient and an amount of  
12 characterizing ingredient insufficient to independently  
13 characterize the food, or the food contains no such  
14 ingredient, the name of the characterizing flavor may be  
15 immediately preceded by the word "natural" and shall be  
16 immediately followed by the word "flavored" in letters not  
17 less than one-half the height of the letters in the name of the  
18 characterizing flavor, e.g., "natural strawberry flavored  
19 shortcake," or "strawberry flavored shortcake."

20 (ii) If none of the natural flavor used in the food is derived  
21 from the product whose flavor is simulated, the food in  
22 which the flavor is used shall be labeled either with the  
23 flavor of the product from which the flavor is derived or as  
24 "artificially flavored."

25 (iii) If the food contains both a characterizing flavor from the  
26 product whose flavor is simulated and other natural flavor  
27 which simulates, resembles or reinforces the characterizing  
28 flavor, the food shall be labeled in accordance with the  
introductory text and paragraph (i) (1)(i) of this section and  
the name of the food shall be immediately followed by the  
words "with other natural flavor" in letters not less than one-  
half the height of the letters used in the name of the  
characterizing flavor.

1           54.    Class Products each bear a label which by word and/or word and vignette  
2 characterizes the Beverage’s primary recognizable flavor as one derived from a single  
3 or combination of fruits. Despite conveying to the reasonable consumer that the  
4 beverage contains the ingredient (i.e., fruit) from which its primary characterizing  
5 flavor is derived, in truth, the Beverages are entirely devoid of such ingredients.  
6 Instead, the primary recognizable flavor is derived from a lab synthesized flavoring  
7 packet consisting of potentially hundreds of undisclosed sub-ingredients.

8           55.    By law, if a product does not contain its characterizing ingredient, that  
9 fact must be stated on the principal display panel in order to properly inform  
10 consumers that this is a “flavored” product. To the extent that the “Natural Flavor” in  
11 Class Products originate from their characterizing ingredient (e.g., the natural flavor is  
12 derived from a black cherry), the front label must indicate that it is “Black Cherry  
13 Flavored.” However, to the extent that the “Natural Flavor” is derived from a natural  
14 ingredient other than a Product’s charactering ingredient, (i.e., something other than a  
15 black cherry), the front label must indicate that the product is “Artificially Flavored.”  
16 Finally, if the Product contains more than one ‘natural flavor,’ as is the case here,  
17 then it must additionally indicate on the principal display panel that is has also been  
18 flavored “With Other Natural Flavors.”

19           56.    Under any scenario, Boston Beer has failed to indicate that its Products  
20 are flavored – a failure that is in violation of the law and operates as deceit upon  
21 consumers.

22           57.    In January 1973, the FDA Commissioner published a proposal to revise  
23 the requirements contained §1.12 of the FDCA (now §101.22) with respect to the  
24 labeling of flavor contained in food. The FDA solicited public commentary, which it  
25 subsequently summarized and responded to. Federal Register Vol. 38, No. 231,  
26 December 3, 1973. Among other things, the FDA made clear that the purpose of these  
27 regulations was to provide labeling uniformity among marketplace participants in  
28 order to prevent consumer confusion and deception.

1           58.     Setting forth the general standards applicable to the flavoring regulations,  
2 the FDA recognized that although “[i]t is not possible to set out all the circumstances  
3 under which a flavor representation is or is not implied, [a]ny use of a vignette  
4 showing a fruit or vegetable clearly constitutes such a representation.... [Moreover,]  
5 use of a specific fruit flavor in the food name, such as "black cherry soda," does  
6 constitute such a representation and requires compliance with §1.12(i).” 38 Fed. Reg.  
7 at 33285.

8           59.     Some stakeholders argued that flavor designations should not be required  
9 on the front-of-package, but rather be limited to the statement of ingredients. While  
10 the Commissioner agreed that in instances where the manufacturer makes no direct or  
11 indirect representation with respect to the flavor of a product other than in the  
12 ingredients statement, no designation was necessary on the principal display panel.  
13 However, where flavor representations are made on the principal display panel ***“it is  
14 necessary to establish a uniform system of flavor designation to dispel any  
15 confusion or misrepresentation.”*** 38 Fed. Reg. at 33286. ***“The difference between a  
16 product that contains a characterizing food ingredient and a product that contains  
17 no such ingredient [] is not at all subtle, and is very important to the value of the  
18 product and thus to the consuming public.”*** *Id.* at 33285 (emphasis added).

19           60.     The Commissioner also confirmed that when an otherwise “natural flavor  
20 [] is not derived from the product whose flavor is simulated...., the product is properly  
21 labeled as artificially flavored.” *Id.* at 33285-6.

22           61.     In 1993 the FDA once again considered amendments to certain  
23 regulations of the FDCA. The FDA published the proposed amendments for public  
24 comment and provided a similar commentary process as in 1973. While considering  
25 the applicability of §101.22 in light of more specific regulations such as §102.3, the  
26 FDA reconfirmed the function and importance of §101.22.

27           “Both §§ 101.22 and 102.33 are intended to ensure that the label communicates  
28 essential information to consumers. These provisions are intended to provide

1 manufacturers with flexibility for labeling products while providing consumers  
 2 with information that they need to determine the nature of the product. The  
 3 agency concludes that both kinds of label information discussed here are  
 4 essential to adequately describe the nature of the product. One type of  
 5 information informs the consumer when flavoring substances have been added  
 6 to the product. The other type describes other aspects of the basic nature of the  
 7 product.” 58 FR 2897, \*2919. **Ultimately, “....a consumer who wants the**  
 8 **food because of its particular.... flavor is entitled to examine a label that**  
 9 **reveals facts material in light of the representations made....”** 58 Fed. Reg.  
 10 2897 \*2898 (emphasis added).

### 11 C. PRODUCT LABELS MATTER TO CONSUMERS

12  
 13 62. Front-of-Package marketing is the most important part of a product label  
 14 as consumers attempt to make quick, yet informed purchasing decisions.<sup>30</sup> Indeed, a  
 15 survey conducted by the FDA determined that 67% of respondents used Front-of-  
 16 Package labels when making purchasing decisions.<sup>31</sup> This is confirmed by numerous  
 17 studies which similarly found that consumers often rely on Front-of-Package claims to  
 18  
 19  
 20

---

21 <sup>30</sup> See, e.g. Mark Becker, et al, *Front of Pack Labels Enhance Attention to Nutrition*  
 22 *Information in Novel and Commercial Brands*, Food Policy Volume 56, October  
 23 2015, Pages 76-86. Available at <https://doi.org/10.1016/j.foodpol.2015.08.001> (“Our  
 24 results provide clear evidence that FOP labels are more effective at attracting attention  
 25 than the traditional NFP [Nutrition Facts Panel], and that this advantage is attributable  
 26 to both the location”).

26 <sup>31</sup> Hawley, K. L., Roberto, C. A., Bragg, M. A., Liu, P. J., Schwartz, M. B., &  
 27 Brownell, K. D. (2013). *The Science On Front-Of-Package Food Labels*. Public  
 28 Health Nutrition, 16(3), 430–439. Available at  
<http://doi.org/10.1017/S1368980012000754>.

1 inform their purchasing decisions, and that Front-of-Package claims can have a  
2 “strong impact on their food purchases.”<sup>32</sup>

3 63. While manufacturers are generally free to add claims to the Front-of-  
4 Package consistent with their obligations under the law, “[e]merging evidence  
5 indicates that many labels are misleading in conveying properties of food products and  
6 bear a wide array of confusing messages.”<sup>33</sup> This makes compliance with FDCA  
7 labeling requirements even more critical in order to provide consumers with  
8 recognizable standards and to prevent deception.

9 64. Not only has Defendant violated the clear letter of the FDCA, but it has  
10 separately acted to deceive and mislead consumers into purchasing products with  
11 qualities and attributes that they simply did not have in violation of the laws alleged  
12 herein.

13  
14 **D. COMPETITOR PRODUCTS**

15 65. Boston Beer is fully aware of its labeling obligations under state and  
16 federal laws as well as its overarching duty to honestly inform consumers about the  
17 products it is selling.

18 66. It is axiomatic that “the marketing industry is based on the premise  
19 that labels matter—that consumers will choose one product over another similar  
20 product based on its label and various tangible and intangible qualities they may come  
21

---

22  
23 <sup>32</sup> *Healthy Through Presence or Absence, Nature or Science? A Framework for*  
24 *Understanding Front-of-Package Food Claims*, Journal of Public Policy & Marketing  
25 2019, Vol. 38(2) 172-191 available at  
<https://journals.sagepub.com/doi/pdf/10.1177/0743915618824332>.

26 <sup>33</sup> Jennifer L. Pomeranz, *Front-of-Package Food and Beverage Labeling New*  
27 *Directions for Research and Regulation*, Am J Prev Med 2011;40(3):382–385  
28 available at <https://pubmed.ncbi.nlm.nih.gov/21335274/>.

1 to associate with a particular source.”<sup>34</sup> The FDCA was promulgated in part to prevent  
2 consumer deception by creating a uniform system of labeling on which consumers can  
3 rely in comparing similar products and thereafter make informed purchasing  
4 decisions. This is especially important with respect to the use of flavorings which have  
5 rapidly become ubiquitous in food and drink formulations. It is critical, therefore, that  
6 manufacturers label their products consistently as prescribed law.

7         67. A review of some of Truly’s competitors illustrates this clearly. For  
8 example, White Claw (Fig. 1), as the best-selling hard seltzer on the market is THS’  
9 biggest competitor. Like THS, they sell a black cherry hard seltzer stated on its  
10 principal display panel without qualification. Unlike THS, however, White Claw  
11 actually contains cherry juice, which is why the label can simply state “black cherry.”  
12 The same is true for Vizzy Hard Seltzer (Fig. 2.) and Spindrift Spiked Seltzer (Fig.3.),  
13 both of which offer fruit flavored beverages and contain their characterizing  
14 ingredients.

---

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>34</sup> *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 328; *FTC v. Proctor & Gamble*  
27 *Co.* (1967) 386 U.S. 568, 572 (noting the central role of advertising and sales  
28 promotion in generating market share where the competing products are functionally  
identical).

Fig.1



Ingredients

Purified carbonated water, alcohol, natural flavors, cane sugar, citric acid, natural cherry juice concentrate, sodium citrate.<sup>35</sup>

Fig 2.



Ingredients

Sparkling Water, Cane Sugar, Natural Flavors, Cherry Juice Concentrate, Citric Acid, Sodium Citrate, and Dried Acerola Cherry Juice.<sup>36</sup>

<sup>35</sup> <https://www.whiteclaw.com/flavors/black-cherry>

<sup>36</sup> <https://www.instacart.com/products/22036128-vizzy-hint-of-black-cherry-lime-hard-seltzer-12-0-fl-oz>

1 Fig 3.



Ingredients

CARBONATED WATER, ALCOHOL FROM FERMENTED CANE SUGAR, PINEAPPLE JUICE, CITRIC ACID.<sup>37</sup>

13 68. In contrast, Bon Viv (Fig. 4.) offers fruit flavored hard seltzers which,  
14 like Truly, do not contain their characterizing ingredients. Unlike Truly, however, Bon  
15 Viv attempts to indicate on its principal display panel that the product is flavored.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27  
28 <sup>37</sup> <https://www.spindrifftspiked.com/products/pineapple>

1 Fig 4.



Ingredients

Purified Water, Cold-fermented Corn Syrup, Natural Flavors, Sodium Citrate, Malted Rice<sup>38</sup>

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13 69. By failing to properly label its products, Boston Beer has misled and  
14 deceived consumers.

15 70. As a result of Defendant’s unlawful and deceptive conduct, Plaintiffs and  
16 members of the Class have been harmed.

17  
18 **ECONOMIC INJURY**

19 71. Plaintiffs sought to buy products that were lawfully labeled, marketed  
20 and sold.

21 72. Plaintiffs saw and relied on Defendant’s misleading labeling of its  
22 Products.

23 73. Plaintiffs believed that the Products purchased contained real fruit.

24 74. Plaintiffs believed that the Products were lawfully marketed and sold.

25  
26  
27  
28 <sup>38</sup> <https://www.instacart.com/products/17706627-bon-viv-hard-seltzer-black-cherry-can-16-fl-oz>

1           75. In reliance on the claims made by Defendant regarding the qualities of its  
2 Products, Plaintiffs paid a price premium.

3           76. As a result of their reliance on Defendant's misrepresentations, Plaintiffs  
4 received Products that lacked the promised ingredients which they reasonably  
5 believed they contained.

6           77. Plaintiffs received Products that were unlawfully marketed and sold.

7           78. Plaintiffs lost money and thereby suffered injury as they would not have  
8 purchased these Seltzers and/or paid as much for them absent the misrepresentation.

9           79. Defendant knows that the inclusion of characterizing ingredients are  
10 material to a consumer's purchasing decision.

11           80. Plaintiffs altered their positions to their detriment and suffered damages  
12 in an amount equal to the amounts they paid for the Seltzers they purchased, and/or in  
13 additional amounts attributable to the deception.

14           81. By engaging in the false and deceptive conduct alleged herein Defendant  
15 reaped, and continues to reap financial benefits in the form of sales and profits from  
16 its Products.

17           82. Plaintiffs, however, would be willing to purchase THS again in the future  
18 should they be able to rely on Defendant's marketing as truthful and non-deceptive.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

1  
2 83. Plaintiffs bring this action on behalf of themselves and on behalf of  
3 classes of all others similarly situated consumers defined as follows:

- 4 a. **National:** All persons in the United States who purchased Class  
5 Products in the United States during the Class Period.
- 6 b. **California:** All persons in California who purchased the Class  
7 Products in California during the Class Period.
- 8 c. **New York:** All persons in New York who purchased the Class  
9 Products in New York during the Class Period.
- 10 d. **Class Period** is the maximum time allowable as determined by the  
11 statute of limitation periods accompanying each cause of action.

12 84. Plaintiffs bring this Class pursuant to Federal Rule of Civil Procedure  
13 23(a), and 23(b)(1), 23(b)(2), 23(b)(3) and 23(c)(4).

14 85. Excluded from the Class are: (i) Defendant and its employees, principals,  
15 affiliated entities, legal representatives, successors and assigns; and (ii) the judges to  
16 whom this action is assigned.

17 86. Upon information and belief, there are tens of thousands of members of  
18 the Class. Therefore, individual joinder of all members of the Class would be  
19 impracticable.

20 87. There is a well-defined community of interest in the questions of law and  
21 fact affecting the parties represented in this action.

22 88. Common questions of law or fact exist as to all members of the Class.  
23 These questions predominate over the questions affecting only individual Class  
24 members. These common legal or factual questions include but are not limited to:

- 25 a. Whether Defendant marketed, packaged, or sold the Class  
26 Products to Plaintiff and those similarly situated using false,  
27 misleading, or deceptive statements or representations;
- 28 b. Whether Defendant omitted or misrepresented material facts

1 in connection with the sales of its Products;

2 c. Whether Defendant participated in and pursued the common  
3 course of conduct complained of herein;

4 d. Whether Defendant has been unjustly enriched as a result of  
5 its unlawful business practices;

6 e. Whether Defendant's actions violate the Unfair Competition  
7 Law, Cal. Bus. & Prof. Code §§17200, *et seq.* (the "UCL");

8 f. Whether Defendant's actions violate the False Advertising  
9 Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the "FAL");

10 g. Whether Defendant's actions violate the Consumers Legal  
11 Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA");

12 h. Whether Defendant's actions violate N.Y. Gen. Bus. Law §  
13 349 *et seq.*;

14 i. Whether Defendant's actions violate N.Y. Gen. Bus. Law §  
15 350 *et seq.*;

16 j. Whether Defendant should be enjoined from continuing the  
17 above-described practices;

18 k. Whether Plaintiffs and members of the Class are entitled to  
19 declaratory relief; and

20 l. Whether Defendant should be required to make restitution,  
21 disgorge profits, reimburse losses, and pay damages as a  
22 result of the above-described practices.

23 89. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs  
24 were consumers who purchased Defendant's Products. Plaintiffs are no different in  
25 any relevant respect from any other Class member who purchased the Products, and  
26 the relief sought is common to the Class.

27 90. Plaintiffs are adequate representatives of the Class because their interests  
28 do not conflict with the interests of the members of the Class they seek to represent,

1 and they have retained counsel competent and experienced in conducting complex  
2 class action litigation. Plaintiffs and their counsel will adequately protect the interests  
3 of the Class.

4 91. A class action is superior to other available means for the fair and  
5 efficient adjudication of this dispute. The damages suffered by each individual Class  
6 member likely will be relatively small, especially given the relatively small cost of the  
7 Products at issue and the burden and expense of individual prosecution of the complex  
8 litigation necessitated by Defendant's conduct. Thus, it would be virtually impossible  
9 for members of the Class individually to effectively redress the wrongs done to them.  
10 Moreover, even if members of the Class could afford individual actions, it would still  
11 not be preferable to class-wide litigation. Individualized actions present the potential  
12 for inconsistent or contradictory judgments. By contrast, a class action presents far  
13 fewer management difficulties and provides the benefits of single adjudication,  
14 economies of scale, and comprehensive supervision by a single court.

15 92. In the alternative, the Class may be certified because Defendant has acted  
16 or refused to act on grounds generally applicable to the Class, thereby making  
17 appropriate preliminary and final equitable relief with respect to each Class.

18 93. The requirements for maintaining a class action pursuant to Rule 23(b)(2)  
19 are also met, as Defendant has acted or refused to act on grounds generally applicable  
20 to the Class, thereby making appropriate final injunctive relief or corresponding  
21 declaratory relief with respect to the Class as a whole.

22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**  
**(Breach of Express Warranty)**

1  
2  
3  
4 94. Plaintiffs incorporate each and every allegation contained in the  
5 paragraphs above as if restated herein.

6 95. Plaintiffs' express warranty claims are based on violations of N.Y. CLS  
7 UCC § 2-313 and § 2-607 and Cal. Com. Code §2313. Defendant was afforded  
8 reasonable notice of this claim in advance of the filing of this complaint.

9 96. Defendant made express warranties to Plaintiffs and members of the  
10 Class that the Products they purchased contained fruit characterized by name and  
11 vignette on the Products' principal display panel.

12 97. The express warranties made to Plaintiffs and members of the Class appear  
13 on every Product label. This warranty regarding the nature of the Product marketed by  
14 Defendant specifically relates to the goods being purchased and became the basis of the  
15 bargain.

16 98. Plaintiffs and the Class purchased the Products in the belief that they  
17 conformed to the express warranties that were made on the Products' labels.

18 99. Defendant breached the express warranties made to Plaintiffs and members  
19 of the Class by failing to supply goods that conformed to the warranties it made. As a  
20 result, Plaintiffs and members of the Class suffered injury and deserve to be  
21 compensated for the damages they suffered.

22 100. Plaintiffs and the members of the Class paid money for the Products.  
23 However, Plaintiffs and the members of the Class did not obtain the full value of the  
24 advertised Products. If Plaintiffs and other members of the Class had known of the true  
25 nature of the Products, they would not have purchased them or paid less for them.  
26 Accordingly, Plaintiffs and members of the Class have suffered injury in fact and lost  
27 money or property as a result of Defendant's wrongful conduct.  
28

1 101. Plaintiffs and the Class are therefore entitled to recover damages, punitive  
2 damages, equitable relief such as restitution and disgorgement of profits, and  
3 declaratory and injunctive relief.

4  
5 **SECOND CAUSE OF ACTION**  
6 **(“Unlawful” Business Practices in Violation of**  
7 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§17200, *et seq.*)**  
8 **By Plaintiff Galvez on Behalf of the California Subclass**

9 102. Plaintiff Galvez incorporates each and every allegation contained in the  
10 paragraphs above as if restated herein.

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

14 104. A business act or practice is “unlawful” if it violates any established state  
15 or federal law.

16 105. Defendant’s acts, omissions, misrepresentations, practices, and/or non-  
17 disclosures concerning the Products alleged herein, constitute “unlawful” business  
18 acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act, 21  
19 U.S.C. §§301, *et seq.* and its implementing regulations, including, at least, the  
20 following sections:

- 21 a. 21 U.S.C. §343(a), which deems food misbranded when its  
22 labeling contains a statement that is false or misleading in any  
23 particular;  
24 b. 21 C.F.R. §102.5(a)-(d), which prohibits the naming of foods so as  
25 to create an erroneous impression about the presence or absence of  
26 ingredient(s) or component(s) therein;

1 c. 21 CFR §101.22 pertaining to the labeling requirements when  
2 products do not contain their characterizing ingredients but instead  
3 are flavored;

4 d. 21 U.S.C. §§331 and 333, which prohibits the introduction of  
5 misbranded foods into interstate commerce.

6 106. California's Sherman Food, Drug, and Cosmetic Law (“Sherman Law”),  
7 Cal. Health & Safety Code §109875 *et seq.*, broadly prohibits the misbranding of food.  
8 Cal. Health & Safety Code §110765; *See, also* Cal. Health & Safety Code §110660  
9 (“Any food is misbranded if its labeling is false or misleading in any particular.”). The  
10 Sherman Law incorporates all food labeling regulations and any amendments to those  
11 regulations adopted pursuant to the Food, Drug, and Cosmetic Act of 1938 as the food  
12 labeling regulations of California. Cal. Health & Safety Code §§110100(a), 110665,  
13 110670.

14 107. As described in detail above, by failing to label the Products in a manner  
15 that accurately represents its contents, Defendant generally violates 21 U.S.C.  
16 §343(a)(1) (“a food shall be deemed to be misbranded if its labeling is false or  
17 misleading in any particular”) as incorporated by California’s Sherman Law.  
18 Independently, by mislabeling the Products, Defendant violates Cal. Health & Safety  
19 Code § 110660 (“any food is misbranded if its labeling is false or misleading in any  
20 particular.”)

21 108. Defendant violated and continues to violate the Sherman Law, Article 6,  
22 Section 110660 and hence has also violated and continues to violate the “unlawful”  
23 prong of the UCL through the false labeling of its Product.

24 109. Defendant’s identical conduct that violates the Sherman Law, also violates  
25 FDCA §403(a)(1), 21 U.S.C. §343(a)(1), which declares food misbranded under federal  
26 law if its “labeling is false and misleading in any particular.” This identical conduct  
27 serves as the sole factual basis of each cause of action brought by this Complaint, and  
28

1 Plaintiff does not seek to enforce any of the state law claims to impose any standard of  
2 conduct that exceeds that which would violate FDCA.

3 110. By committing the unlawful acts and practices alleged above, Defendant  
4 has engaged, and continues to be engaged, in unlawful business practices within the  
5 meaning of California Business and Professions Code §§17200, *et seq.*

6 111. Through its unlawful acts and practices, Defendant has obtained, and  
7 continues to unfairly obtain, money from members of the Class. As such, Plaintiff  
8 requests that this Court cause Defendant to restore this money to Plaintiff and all  
9 members of the Class, to disgorge the profits Defendant made on these transactions,  
10 and to enjoin Defendant from continuing to violate the Unfair Competition Law or  
11 violating it in the same fashion in the future. Otherwise, the Class may be irreparably  
12 harmed and denied an effective and complete remedy if such an order is not granted.

13  
14 **THIRD CAUSE OF ACTION**  
15 **(“Unfair” Business Practices in Violation of**  
16 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**  
17 **By Plaintiff Galvez on Behalf of the California Subclass**

18 112. Plaintiff Galvez incorporates each and every allegation contained in the  
19 paragraphs above as if restated herein.

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

23 114. A business act or practice is “unfair” under the Unfair Competition Law if  
24 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the  
25 gravity of the harm to the alleged victims.

26 115. Defendant has violated, and continues to violate, the “unfair” prong of the  
27 UCL through its misleading description of the Products. The gravity of the harm to  
28 members of the Class resulting from such unfair acts and practices outweighs any

1 conceivable reasons, justifications, or motives of Defendant for engaging in such  
2 deceptive acts and practices. By committing the acts and practices alleged above,  
3 Defendant engaged, and continues to engage, in unfair business practices within the  
4 meaning of California Business and Professions Code §§17200, *et seq.*

5 116. Through its unfair acts and practices, Defendant obtained, and continues  
6 to unfairly obtain, money from members of the Class. As such, Plaintiff has been injured  
7 and requests that this Court cause Defendant to restore this money to Plaintiff and the  
8 members of the Class, to disgorge the profits Defendant made on its Products, and to  
9 enjoin Defendant from continuing to violate the Unfair Competition Law or violating it  
10 in the same fashion in the future. Otherwise, the Class may be irreparably harmed and  
11 denied an effective and complete remedy if such an Order is not granted.

12  
13 **FOURTH CAUSE OF ACTION**  
14 **(“Fraudulent” Business Practices in Violation of**  
15 **The Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*)**  
16 **By Plaintiff Galvez on Behalf of the California Subclass**

17 117. Plaintiff Galvez incorporates each and every allegation contained in the  
18 paragraphs above as if restated herein.

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

22 119. A business act or practice is “fraudulent” under the Unfair Competition  
23 Law if it actually deceives or is likely to deceive members of the consuming public.

24 120. Defendant’s acts and practices of mislabeling its Products in a manner to  
25 suggest they principally contained their characterizing ingredients.

26 121. As a result of the conduct described above, Defendant has been, and will  
27 continue to be, unjustly enriched at the expense of Plaintiff and members of the  
28

1 proposed Class. Specifically, Defendant has been unjustly enriched by the profits they  
2 have obtained from Plaintiff and the Class from the purchases of their Products.

3 122. Through its fraudulent acts and practices, Defendant has improperly  
4 obtained, and continues to improperly obtain, money from members of the Class. As  
5 such, Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff  
6 and the Class, to disgorge the profits Defendant has made, and to enjoin Defendant from  
7 continuing to violate the Unfair Competition Law or violating it in the same fashion in  
8 the future. Otherwise, the Class may be irreparably harmed and denied an effective and  
9 complete remedy if such an Order is not granted.

10  
11 **FIFTH CAUSE OF ACTION**  
12 **(False Advertising in Violation of**  
13 **California Business & Professions Code §§ 17500, *et seq.*)**  
14 **By Plaintiff Galvez on Behalf of the California Subclass**

15 123. Plaintiff Galvez incorporates each and every allegation contained in the  
16 paragraphs above as if restated herein.

17 124. Defendant uses advertising and packaging to sell its Products. Defendant  
18 disseminates advertising regarding its Products which by its very nature is deceptive,  
19 untrue, or misleading within the meaning of California Business & Professions Code  
20 §§17500, *et seq.* because those advertising statements contained on the labels are  
21 misleading and likely to deceive, and continue to deceive, members of the putative Class  
22 and the general public.

23 125. In making and disseminating the statements alleged herein, Defendant  
24 knew or should have known that the statements were untrue or misleading, and acted in  
25 violation of California Business & Professions Code §§17500, *et seq.*

26 126. The misrepresentations and non-disclosures by Defendant of the material  
27 facts detailed above constitute false and misleading advertising and therefore constitute  
28 a violation of California Business & Professions Code §§17500, *et seq.*



1           133. Defendant has violated, and continues to violate, the CLRA in at least the  
2 following respects:

- 3                   a. §1770(5) pertaining to misrepresentations regarding the  
4 characteristics of goods sold—specifying that misleading  
5 representations regarding ingredients violate the CLRA;  
6                   b. §1770(7) pertaining to misrepresentations regarding the standard,  
7 quality, or grade of goods sold; and  
8                   c. § 1770(9) pertaining to goods advertised with the intent not to  
9 provide what is advertised.

10           134. Defendant knew, or should have known, that the labeling of their Products  
11 violated consumer protection laws, and that these statements would be relied upon by  
12 Plaintiff and the members of the Class.

13           135. The representations were made to Plaintiff and all members of the Class.  
14 Plaintiff relied on the accuracy of the representations on Defendant’s labels which  
15 formed a material basis for his decision to purchase the Products. Moreover, based on  
16 the very materiality of Defendant’s misrepresentations uniformly made on or omitted  
17 from their Product labels, reliance may be presumed or inferred for all members of the  
18 Class.

19           136. Defendant carried out the scheme set forth in this Complaint willfully,  
20 wantonly, and with reckless disregard for the interests of Plaintiff and the Class, and as  
21 a result, Plaintiff and the Class have suffered an ascertainable loss of money or property.

22           137. Plaintiff and the members of the Class request that this Court enjoin  
23 Defendant from continuing to engage in the unlawful and deceptive methods, acts and  
24 practices alleged above, pursuant to California Civil Code §1780(a)(2). Unless  
25 Defendant is permanently enjoined from continuing to engage in such violations of the  
26 CLRA, future consumers of Defendant’s Products will be damaged by their acts and  
27 practices in the same way as have Plaintiff and the members of the proposed Class.  
28

1 138. Plaintiff served a CLRA demand pursuant to Civil Code §1782, via U.S.  
2 Certified Mail Return Receipt notifying Defendant of the conduct described herein and  
3 that such conduct was in violation of particular provisions of Civil Code §1770. The  
4 demand was received by Defendant on March 9, 2021. More than thirty days have since  
5 elapsed without Defendant providing the requested relief thereby enabling Plaintiff to  
6 properly seek damages as provided under Civil Code §1780.

7 139. Pursuant to Civil Code § 1780(a), Plaintiff and members of the class seek  
8 compensatory damages, punitive damages, restitution, disgorgement of profits, and an  
9 order enjoining Defendant from deceptively marketing the Products.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of New York’s Consumer Protection from Deceptive Acts and**  
12 **Practices Law N.Y. GEN. BUS. LAW § 349 *et seq.*)**  
13 **By Plaintiff Kelly on behalf of the New York Subclass**

14 140. Plaintiff Kelly incorporates each and every allegation contained in the  
15 paragraphs above as if restated herein. Plaintiff Kelly brings this claim on behalf of  
16 the New York Subclass for violation of section 349 of New York’s Consumer  
17 Protection from Deceptive Acts and Practices Law, N.Y. GEN. BUS. LAW § 349 *et*  
18 *seq.*

19 141. Section 349 prohibits “[d]eceptive acts or practices in the conduct of any  
20 business, trade or commerce or in the furnishing of any service in [the State of New  
21 York].” N.Y. Gen. Bus. Law § 349(a).

22 142. Boston Beer’s labeling and marketing of the Beverages, as alleged  
23 herein, constitute “deceptive” acts and practices, as such conduct misled Plaintiff  
24 Kelly and the New York Subclass as to the characteristics and value of the Products.

25 143. Subsection (h) of Section 349 grants private plaintiffs a right of action for  
26 violation of New York’s Consumer Protection from Deceptive Acts and Practices  
27 Law, as follows:  
28

1  
2 In addition to the right of action granted to the attorney general  
3 pursuant to this section, any person who has been injured by  
4 reason of any violation of this section may bring an action in his  
5 own name to enjoin such unlawful act or practice, an action to  
6 recover his actual damages or fifty dollars, whichever is greater,  
7 or both such actions. The court may, in its discretion, increase  
8 the award of damages to an amount not to exceed three times the  
9 actual damages up to one thousand dollars, if the court finds the  
10 defendant willfully or knowingly violated this section. The court  
11 may award reasonable attorney's fees to a prevailing plaintiff.

12 N.Y. Gen. Bus. Law § 349(h).

13 144. In accordance with subsection (h) of Section 349, Plaintiff Kelly seeks an  
14 order enjoining Boston Beer from continuing the unlawful deceptive acts and  
15 practices set out above. Absent a Court order enjoining the unlawful deceptive acts  
16 and practices, Boston Beer will continue its deceptive and misleading marketing  
17 campaign and, in doing so, irreparably harm each of the New York Subclass members.  
18 As a consequence of Boston Beer's deceptive acts and practices, Plaintiff Kelly and  
19 other members of the New York Subclass suffered an ascertainable loss of monies. By  
20 reason of the foregoing, Plaintiff Kelly and other members of the New York Subclass  
21 also seek actual damages or statutory damages of \$50 per violation, whichever is  
22 greater, as well as punitive damages. N.Y. GEN. BUS. LAW § 349(h).

23 **EIGHTH CAUSE OF ACTION**

24 **(Violation of New York's Consumer Protection from Deceptive Acts and  
25 Practices Law, N.Y. GEN. BUS. LAW § 350 *et seq.*)  
26 By Plaintiff Kelly on Behalf of the New York Subclass**

27 145. Plaintiff Kelly incorporates each and every allegation contained in the  
28 paragraphs above as if restated herein. Plaintiff Kelly brings this claim on behalf of  
the New York Subclass for violation of section 350 of New York's Consumer  
Protection from Deceptive Acts and Practices Law, N.Y. Gen. Bus. Law § 350.

1           146. Section 350 prohibits “[f]alse advertising in the conduct of any business,  
2 trade or commerce or in the furnishing of any service in [the State of New York].”  
3 N.Y. Gen. Bus. Law § 350.

4           147. New York General Business Law Section 350-a defines “false  
5 advertising” as “advertising, including labeling, of a commodity, or of the kind,  
6 character, terms or conditions of any employment opportunity if such advertising is  
7 misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a.1. The section also  
8 provides that advertising can be false by omission, as it further defines “false  
9 advertising” to include “advertising [that] fails to reveal facts material in the light of  
10 such representations with respect to the commodity . . . to which the advertising  
11 relates.” *Id.*

12           148. Boston Beer’s labeling, marketing, and advertising of its Seltzers, as  
13 alleged herein, are “misleading in a material respect” and, thus, constitute “false  
14 advertising,” as they falsely represent the Products as consisting of characteristics and  
15 lawfulness that they do not possess.

16           149. Plaintiff Kelly seeks an order enjoining Boston Beer from continuing this  
17 false advertising. Absent enjoining this false advertising, Boston Beer will continue to  
18 mislead Plaintiff Kelly and the other members of the New York Subclass as to the  
19 characteristics of their Products, and in doing so, irreparably harm each of the New  
20 York Subclass members.

21           150. As a direct and proximate result of Boston Beer’s violation of New York  
22 General Business Law §350, Plaintiff Kelly and the other members of the New York  
23 Subclass have also suffered an ascertainable loss of monies. By reason of the  
24 foregoing, Plaintiff Kelly and other members of the New York Subclass also seek  
25 actual damages or statutory damages of \$500 per violation, whichever is greater, as  
26 well as punitive damages. N.Y. GEN. BUS. LAW § 350-e.

27  
28

**NINTH CAUSE OF ACTION**

**(Restitution Based On Quasi-Contract/Unjust Enrichment)  
By Plaintiffs on Behalf of the Nationwide Class**

1  
2  
3 151. Plaintiffs incorporate each and every allegation contained in the  
4 paragraphs above as if restated herein.

5 152. Defendant’s conduct in enticing Plaintiffs and the Class to purchase is  
6 Products with false and misleading packaging is unlawful because the statements  
7 contained on the Defendant’s Product labels are untrue.

8 153. Defendant took monies from Plaintiffs and the Class for these Products  
9 and have been unjustly enriched at the expense of Plaintiffs and the Class as result of  
10 their unlawful conduct alleged herein, thereby creating a quasi-contractual obligation  
11 on Defendant to restore these ill-gotten gains to Plaintiffs and the Class.

12 154. It is against equity and good conscience to permit Defendant to retain the  
13 ill-gotten benefits received from Plaintiffs and Class members.

14 155. As a direct and proximate result of Defendant’s unjust enrichment,  
15 Plaintiffs and the Class are entitled to restitution or restitutionary disgorgement in an  
16 amount to be proved at trial.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26 ///

27 ///

28 ///

**PRAYER FOR RELIEF**

1  
2           THEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other  
3 members of the Class and for the Counts so applicable on behalf of the general public  
4 request an award and relief as follows:

5           A.     An order certifying that this action is properly brought and may be  
6 maintained as a class action, that Plaintiffs be appointed Class Representatives, and  
7 Plaintiffs’ counsel be appointed Lead Counsel for the Class.

8           B.     Restitution in such amount that Plaintiff and all members of the Class  
9 paid to purchase Defendant’s Product or restitutionary disgorgement of the profits  
10 Defendant obtained from those transactions, for Causes of Action for which they are  
11 available.

12           C.     Compensatory damages for Causes of Action for which they are  
13 available.

14           D.     Other statutory penalties for Causes of Action for which they are  
15 available.

16           E.     Punitive Damages for Causes of Action for which they are available.

17           F.     A declaration and Order enjoining Defendant from marketing and  
18 labeling its Product deceptively, in violation of laws and regulations as specified in  
19 this Complaint.

20           G.     An Order awarding Plaintiff their costs of suit, including reasonable  
21 attorneys’ fees and pre and post judgment interest.

22           H.     An Order requiring an accounting for, and imposition of, a constructive  
23 trust upon all monies received by Defendant as a result of the unfair, misleading,  
24 fraudulent and unlawful conduct alleged herein.

25           I.     Such other and further relief as may be deemed necessary or appropriate.  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all causes of action or issues so triable.

DATED: August 25, 2021

Respectfully submitted,



Michael D. Braun

**KUZYK LAW, LLP**

1999 Avenue of the Stars, Ste. 1100

Los Angeles, California 90067

Telephone: (213) 401-4100

Facsimile: (213) 401-0311

Email: mdb@kuzykclassactions.com

**POMERANTZ LLP**

Jordan L. Lurie

Ari Y. Basser

1100 Glendon Avenue, 15th Floor

Los Angeles, California 90024

Telephone: (310) 432-8492

E-Mail: jllurie@pomlaw.com

abasser@pomlaw.com

*Counsel for Plaintiffs*

**CIVIL COVER SHEET**

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Tatiana Galvez and James Kelly</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>San Diego</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Michael D. Braun (167416) Kuzyk Law, LLP, 1999 Ave of the Stars, Ste.1100, LA, CA 90067; 213-401-4100</p>	<p><b>DEFENDANTS</b> The Boston Beer Company</p> <p><b>'21CV1508 L BGS</b></p> <p>County of Residence of First Listed Defendant <u>Suffolk</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Kent J. Schmidt Dorsey &amp; Whitney, LLP</p>
---	--

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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)*:  
 CA Bus & Professions Code; CA Comm Code 2313, CA Civ Code 1750, N.Y. GEN. BUS. LAW 349-350.

Brief description of cause:  
 false and misleading product labeling

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 5,000,001.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 08-25-2021    SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_