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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS IGLESIAS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

HORNELL BREWING CO., INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT,
CIVIL CODE § 1750, *et. seq.*
2. VIOLATION OF CALIFORNIA FALSE
ADVERTISING LAW, BUSINESS AND
PROFESSIONS CODE § 17500, *et. seq.*
3. VIOLATION OF CALIFORNIA UNFAIR
COMPETITION LAW, BUSINESS AND
PROFESSIONS CODE § 17200, *et. seq.*
4. UNJUST ENRICHMENT
5. BREACH OF EXPRESS WARRANTY

DEMAND FOR JURY TRIAL

Plaintiff Thomas Iglesias, (“Plaintiff”), individually and on behalf of all other similarly situated purchasers (the “Class”), brings this class action lawsuit against Hornell Brewing Co., Inc. (referred to herein as “Defendant”), and alleges as follows:

INTRODUCTION

1. Defendant falsely labels and advertises its AriZona beverage products, including but not limited to, AriZona Kiwi Strawberry Fruit Juice Cocktail, Lemonade Fruit Juice Cocktail, Mucho Mango Fruit Juice Cocktail, Fruit Punch Fruit Juice Cocktail, Orangeade, Grapeade, Lemonade Drink Mix, Golden Bear Strawberry Lemonade, and Rx Energy as being “All Natural,” when in reality, they contain added coloring, including but not limited to “beta carotene,” “fruit and vegetable juices,” “annatto,” and “vegetable juice.” The “All Natural” AriZona beverages are collectively referred to as (the “Products”). *See* Figures 1-10, *infra*. The prominent label “ALL NATURAL” is depicted on the front of the Product container, to mislead consumers to believe that the Products are entirely natural.



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1 2. Plaintiff brings this class action lawsuit on behalf of all purchasers of the Products
2 within the State of California, during the last four years.

3 3. Plaintiff brings this class action against Defendant, who is among the United States’
4 leading producers of beverage products. Defendant has realized that, based on the public’s concern
5 about natural and healthy foods, there is a financial benefit to be derived in selling products claiming
6 to be natural. Accordingly, Defendant labels its Products as “All Natural,” even though the Products
7 contain added coloring in violation of California and federal advertising laws.

8 4. Plaintiff seeks to secure injunctive relief and restitution for the Class against
9 Defendant for false and misleading advertising in violation of California’s Business & Professions
10 Code section 17200, *et seq.*, Business & Professions Code section 17500, *et seq.*, and the Consumers
11 Legal Remedies Act Civil Code section 1750, *et seq.* Defendant made and continues to make false
12 and misleading statements in its advertising of the Products. Specifically, Defendant labels the
13 Products as “All Natural” (depicted in capital letters on the front label) and markets them as such,
14 even though the Products contain coloring additives.

15 5. By letter dated December 14, 2021, Plaintiff advised Defendant of its false and
16 misleading claims pursuant to California Civil Code Section 1782(a). Plaintiff has provided
17 Defendant with notice of its violations of the CLRA pursuant to Civil Code section 1782(a).

18 **PARTIES**

19 6. Plaintiff is, and at all times relevant hereto was, a citizen of California. Plaintiff
20 purchased the Mucho Mango Fruit Juice Cocktail from a Foods Co. in San Francisco, California in
21 on several occasions since 2017. Plaintiff paid approximately \$4 for the Product. In making his
22 purchase, Plaintiff relied upon Defendant’s labeling and advertising claims, namely, the “All
23 Natural” label clearly printed on the front of the Product. These claims were prepared and approved
24 by Defendant and its agents and disseminated statewide and nationwide, to encourage consumers to
25 purchase the Products. If Plaintiff had known that the Product was not completely natural, he would
26 not have purchased the Product.

27 7. Hornell Brewing Co., Inc. is a corporation headquartered in Woodbury, New York.
28 Hornell Brewing Co., Inc. maintains its principal business office at 60 Crossways Park Drive W.,

1 Ste. 400, Woodbury, New York 11797. Hornell Brewing Co., Inc., directly and through its agents,
 2 has substantial contacts with and receives substantial benefits and income from and through the
 3 State of California. Hornell Brewing Co., Inc. is the owner, manufacturer, and distributor of the
 4 Products, and is the company that created and/or authorized the false, misleading, and deceptive
 5 packaging of the Products.

6 **JURISDICTION AND VENUE**

7 8. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. Section
 8 1332 and the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members,
 9 (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and
 10 costs, and (iii) there is minimal diversity because at least one plaintiff and defendant are citizens of
 11 different states. This Court has supplemental jurisdiction over any state law claims pursuant to 28
 12 U.S.C. Section 1367.

13 9. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this action
 14 because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred
 15 in this District. Plaintiff is a citizen of California who resides in San Francisco County; Defendant
 16 made the challenged false representations to Plaintiff in San Francisco County; Plaintiff purchased
 17 the Product in this County; and Plaintiff consumed the Product in this County. Moreover, Defendant
 18 receives substantial compensation from sales in San Francisco County, actively advertises and sells
 19 Products in San Francisco County, and Defendant made numerous misrepresentations through its
 20 advertising and labeling of Products which had a substantial effect in San Francisco County.

21 10. Defendant is subject to personal jurisdiction in California based upon sufficient
 22 minimum contacts which exist between Defendant and California. Defendant is authorized to do
 23 and is doing business in California.

24 **FACTUAL ALLEGATIONS**

25 11. Defendant labels and advertises its Products being “All Natural.” In reality, the
 26 Products cannot be labeled as “All Natural” because they contain added coloring. The specific food
 27 coloring agents in the Products are “vegetable juice,” “fruit and vegetable juices,” “annatto,” and
 28 “beta carotene.”

12. Consumers are willing to pay more for all natural products because of the association with a healthy and organic diet. According to Nielsen’s 2015 Global Health & Wellness Survey that polled over 30,000 people, 88% of Americans are willing to pay more for healthier foods.¹ This sentiment is further evidenced by the fact that global sales of health foods reached \$1 trillion in 2017, according to Euromonitor.²

13. By representing the Products to be “All Natural,” Defendant seeks to capitalize on consumers’ preference for food items with no artificial additives.

14. Defendant’s practice of capitalizing on consumers’ preferences for healthier products is deceptive. This deception continues today, as consumers continue to purchase the Products under the mistaken belief that they are all natural based on Defendant’s false, deceptive, and misleading label claims “All Natural.”

15. Plaintiff and other consumers of the Products made their purchase decisions in reliance upon Defendant’s advertised claims that that Products are “All Natural.”

16. By falsely labeling the Products as being “All Natural,” Defendant has profited from consumers’ preference for food products that are perceived to be healthier and made free from any added coloring.

A. Defendant’s “All Natural” Label Claim

17. The Food and Drug Administration (“FDA”) does not regard foods with added coloring as natural, no matter the source of the coloring agent. According to their guidelines, they “have considered ‘natural’ to mean that nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, the product that would not normally be expected to be there (56 FR 60421 at 60466).”³

¹ See Global Health and Wellness Report 2015, NIELSON, <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/Nielsen20Global20Health20and20Wellness20Report20-20January202015-1.pdf> (last visited February 15, 2022).

² See Health and Wellness the Trillion Dollar Industry in 2017, EUROMONITOR, <https://blog.euromonitor.com/health-and-wellness-the-trillion-dollar-industry-in-2017-key-research-highlights> (last visited February 15, 2022).

³ Leslie Kux, *FDA Rulemaking Re Term Natural*, 12 November 2015, <https://www.federalregister.gov/documents/2015/11/12/2015-28779/use-of-the-term-natural-in->

18. On November 10, 2015, in response to citizen petitions and consumer requests, the FDA announced the establishment of a docket to receive information and comments on the use of the term “natural” in the labeling of human food products to determine whether a definition of “natural” should be established.

19. Among the 7,687 public comments received by the FDA, not one comment from the public stated that “natural” should be allowed in food labeling if color is added to a food; rather, hundreds of comments stated “natural” should only be used for foods which are free from added coloring. Some representative examples include:

a. “When I see the word ‘Natural’ on packaging, I expect the contents to have only ingredients as they are found in nature. No chemicals, no coloring, no flavoring, no GMO’s.” (Comment from Kristine Milochik. Posted 02/23/2016)

b. “I think the term ‘Natural’ should be banned from food labeling. It is too ambiguous! It should be removed from all descriptors, including: Natural Flavor, Natural colors, All Natural and so on. I think for the interest of transparency all food ingredients should be simply labeled. The consumer has the right to know what they are eating or drinking.” (Comment from Daniel Kinkelaar. Posted 08/26/2016)

c. “I firmly believe that consumers should be made aware of what they are purchasing when shopping for food and too many times companies are fooling the public by using the word ‘Natural’ when in fact it is not. When I see the word Natural on a food product, I consider this to mean that it is free from all additives, GMOs, Preservatives, Drugs, or colors. It is in it’s natural state. I would like to see the FDA put more stringent requirements on companies who wish to use this term in their products.” (Comment from Artemis Hader. Posted on 02/18/2016)

d. “The term ‘Natural’ should only appear on foods that are organic without any preservatives or man-made chemicals. The food should be GMO-free and contain no added colors, flavors, or synthetic substances. If a food product fails to meet any of these requirements, then it

the-labeling-of-human-food-products-request-for-information-and-comments (Last visited February 15, 2022).

1 should not be allowed to have the label ‘Natural’ on it.” (Comment from Sara Burr. Posted on
2 03/16/2016)

3 e. “Natural should indeed mean no preservatives, additives, GMO's and or flavor
4 or color enhancers...” (Comment from Roy Collicutt. Posted on 03/15/2016)

5 20. To date, the FDA has not announced its decision to further define or regulate the term
6 “natural” in food labeling.

7 21. The “All Natural” label is prominently and conspicuously printed on the front of the
8 Products. But the added coloring agents in the Products render the “All Natural” label claims false.
9 The added coloring agents, regardless of their source, are not ingredients consumers would normally
10 expect to be included products that are labeled as “All Natural.”

11 22. There are market incentives for companies to label their products as “natural.”
12 According to a national representative survey, more than half of consumers look for products with
13 a “natural” food label, often under “the false belief that they’re produced without...artificial
14 ingredients.”⁴ As stated *supra*, the FDA considers “natural” to be defined as a product that includes
15 nothing artificial “including colors *regardless of source*” [emphasis added].⁵ The process by which
16 naturally-sourced food coloring is added to products alters their status and renders them as no longer
17 “natural.” Therefore, the reasonable consumer will pay a price premium for products with an “All
18 Natural” label because they believe these products are safer, more nutritious, or otherwise have
19 different attributes than products that do not have the label, all things being equal. Thus, these
20 market forces push producers, like Defendant, to deceptively label their products as “All Natural”
21 to give themselves a market advantage.

22 23. Reasonable consumers do not expect a product prominently labeled as “All Natural”
23 to have added coloring. The Products’ labels have the “capacity, likelihood, or tendency to deceive
24 or confuse the public” into believing that they are fully natural and are truthfully labeled. *Williams*
25 *v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (citing *Kasky v. Nike, Inc.*, 27 Cal.4th 939,

26
27 ⁴ Andrea Rock, “Peeling Back the ‘Natural’ Food Label.” *Consumer Reports*, 27 January 2016.
28 <https://www.consumerreports.org/food-safety/peeling-back-the-natural-food-label/> (Last visited
February 15, 2022).

⁵ See Leslie Kux, *supra* note 5.

1 951 (2002) and *Leoni v. State Bar*, 39 Cal. 3d 609, 626 (1985)) (The California Supreme Court has
2 recognized “that [consumer protection] laws prohibit ‘not only advertising which is false, but also
3 advertising which, although true, is either actually misleading or which has a capacity, likelihood
4 or tendency to deceive or confuse the public.’”).

5 24. Reasonable consumers such as Plaintiff do not have specialized knowledge necessary
6 to identify ingredients in the Products as being inconsistent with Defendant’s advertised claim of
7 “being “All Natural.”

8 25. Defendant knows that consumers are willing to pay more for foods that are labeled
9 “All Natural” because they perceive it to be a healthier alternative to similar products without any
10 added coloring, and advertises the Products with the intention that consumers rely on the
11 representation made on the front of the Products’ packaging made in all capital letters with
12 prominent bold font “All Natural.”

13 26. Plaintiff and other consumers purchased the Products due to their belief that the
14 Products are safer, more nutritious, or otherwise have different attributes than do products that do
15 not have the “All Natural” labels.

16 27. Plaintiff and the Class made their purchasing decisions in reliance upon Defendant’s
17 advertised claims that that Products are “All Natural.”

18 28. Plaintiff and the Class reasonably and detrimentally relied upon the Products’ front
19 labels indicating that the Products are “All Natural.”

20 29. Plaintiff and the Class would not have purchased the Products had they known that
21 the Products contained ingredients that were added for coloring, thus rendering the Products no
22 longer as being “All Natural.”

23 30. Defendant’s conduct threatens California consumers by using false, deceptive, and
24 misleading labels. Defendant’s conduct also threatens other companies, large and small, who “play
25 by the rules.” Defendant’s conduct stifles competition, has a negative impact on the marketplace,
26 and reduces consumer choice.

27 31. There is no practical reason for the false or misleading labeling and advertising of the
28 Products, other than to mislead consumers as to the actual ingredients of the Products being

1 purchased by consumers while simultaneously providing Defendant with a financial windfall as a
2 result of money saved from lower supply costs.

3 32. Plaintiff makes the allegations herein upon personal knowledge as to himself and his
4 own acts and experiences, and as to all other matters, upon information and belief, including
5 investigation conducted by his attorneys.

6 **CLASS ALLEGATIONS**

7 33. Plaintiff brings this action on his behalf and on behalf of all other persons similarly
8 situated. The Class which Plaintiff seeks to represent comprises:

9 All persons who purchased the Products in the State of California, for
10 personal consumption and not for resale during the time period of four
years prior to the filing of the complaint through the present.

11 Said definition may be further defined or amended by additional pleadings, evidentiary
12 hearings, a class certification hearing, and orders of this Court.

13 34. The class is so numerous and likely consists of hundreds of thousands of individuals,
14 the joinder of whom is impracticable.

15 35. There is a well-defined community of interest in the questions of law and fact involved
16 affecting the parties to be represented. The questions of law and fact common to the Class
17 predominate over questions which may affect individual Class members. Common questions of law
18 and fact include, but are not limited to, the following:

19 a. Whether Defendant's conduct constitutes an unfair method of competition, or
20 unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;

21 b. Whether Defendant used deceptive representations in connection with the sale
22 of the Products in violation of Civil Code section 1750, *et seq.*;

23 c. Whether Defendant represented the Products as having characteristics or
24 qualities that they do not have in violation of Civil Code section 1750, *et seq.*;

25 d. Whether Defendant advertised the Products with intent not to sell them as
26 advertised in violation of Civil Code section 1750, *et seq.*;

27 e. Whether Defendant's labeling and advertising of the Products are untrue or
28 misleading in violation of Business and Professions Code section 17500, *et seq.*;

1 f. Whether Defendant knew or by the exercise of reasonable care should have
2 known its labeling and advertising was and is untrue or misleading in violation of Business and
3 Professions Code section 17500, *et seq.*;

4 g. Whether Defendant's conduct is an unfair business practice within the
5 meaning of Business and Professions Code section 17200, *et seq.*;

6 h. Whether Defendant's conduct is a fraudulent business practice within the
7 meaning of Business and Professions Code section 17200, *et seq.*;

8 i. Whether Defendant's conduct is an unlawful business practice within the
9 meaning of Business and Professions Code section 17200, *et seq.*;

10 j. Whether Plaintiff and the Class paid more money for the Products than they
11 actually received; and

12 k. How much more money Plaintiff and the Class paid for the Products than they
13 actually received.

14 36. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and
15 adequately represent and protect the interests of the Class. Plaintiff has retained competent and
16 experienced counsel in class action and other complex litigation.

17 37. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
18 Defendant's false representations and material omissions. Plaintiff purchased the Product under the
19 false belief that they were "All Natural." Plaintiff relied upon Defendant's packaging and would not
20 have purchased the Products if he had known that the Product contained ingredients that were added
21 for coloring.

22 38. A class action is superior to other available methods for fair and efficient adjudication
23 of this controversy. The expense and burden of individual litigation would make it impracticable or
24 impossible for the Class to prosecute their claims individually.

25 39. The trial and litigation of Plaintiff's claims are manageable. Individual litigation of
26 the legal and factual issues raised by Defendant's conduct would increase delay and expense to all
27 parties and the court system. The class action device presents far fewer management difficulties and
28

1 provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
2 supervision by a single court.

3 40. Defendant has acted on grounds generally applicable to the entire Class, thereby
4 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the
5 Class as a whole. The prosecution of separate actions by individual Class members would create the
6 risk of inconsistent or varying adjudications with respect to individual Class members that would
7 establish incompatible standards of conduct for Defendant.

8 41. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.
9 Because of the small size of the individual Class members' claims, few, if any, Class members could
10 afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the
11 Class will continue to suffer losses and Defendant will be allowed to continue these violations of
12 law and to retain the proceeds of its ill-gotten gains.

13 **COUNT ONE**

14 **Violation of California Consumers Legal Remedies Act,**

15 **California Civil Code Section 1750, *et seq.***

16 42. Plaintiff repeats and realleges all allegations of the previous paragraphs, and
17 incorporate the same as if set forth herein at length.

18 43. Plaintiff brings this cause of action pursuant to Civil Code section 1750, *et seq.*, the
19 Consumers Legal Remedies Act ("CLRA"), on his own behalf and on behalf of all other persons
20 similarly situated.

21 44. Plaintiff and the Class members are "consumers" within the meaning of California
22 Civil Code Section 1761(d).

23 45. The sale of Defendant's products to Plaintiff's and Class members constitutes a
24 "transaction" within the meaning of California Civil Code Section 1761(e).

25 46. Defendants products are "goods" within the meaning of California Civil Code Section
26 1761(a).

27 47. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive
28 acts or practices" in connection with a sale of goods and prohibits "representing that goods or

1 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that
2 they do not have.” California Civil Code Section 1770 (d)(5).

3 48. The CLRA also prohibits representing that the products are of “a particular standard,
4 quality, or grade” when it is of another. California Civil Code Section 1770(a)(7).

5 49. The CLRA prohibits advertising goods with the intent not to sell them as advertised
6 and representing the goods have been supplied in accordance with a previous representation
7 when the they have not. California Civil Code Section 1770(a)(9) and (a)(16).

8 50. The practices described herein, specifically Defendant’s packaging, advertising, and
9 sale of the Products, were intended to result and did result in the sale of the Products to the
10 consuming public and violated and continue to violate the CLRA by (1) using deceptive
11 representations in connection with the Products, including representing them as having
12 characteristics, benefits and qualities they do not have; (2) representing them to be of a particular
13 quality and standard as “All Natural” while they were not “all natural” and contained added
14 coloring; and (3) advertising and packaging the Products with intent not to sell them as advertised
15 – specifically as being “All Natural.”

16 51. Defendant fraudulently deceived Plaintiff and the Class by misrepresenting the
17 Products as having characteristics which they do not have, e.g., advertising the Products in such a
18 way to represent them being “All Natural” when the Products contain coloring additives. In doing
19 so, Defendant misrepresented and concealed material facts from Plaintiff and the Class. Said
20 misrepresentations and concealment were done with the intention of deceiving Plaintiff and the
21 Class and depriving them of their legal rights and money.

22 52. Defendant fraudulently deceived Plaintiff and the Class by labeling and advertising
23 the Products with the intent not to sell them as advertised. Specifically, Defendant intentionally
24 labeled and misrepresented the Products as being “All Natural,” and failed to disclose the coloring
25 agents in the Products. In doing so, Defendant intentionally misrepresented and concealed material
26 facts from Plaintiff and the Class. Said misrepresentations and concealment were done with the
27 intention of deceiving Plaintiff and the Class and depriving them of their legal rights and money.

28 53. Defendant knew or should have known, through the exercise of reasonable care, that

1 the Products' labeling and advertising were misleading.

2 54. Defendant's actions as described herein were done with conscious disregard of
3 Plaintiff's rights, and Defendant was wanton and malicious in its concealment of the same.

4 55. Defendant's labeling and advertising of the Products were a material factor in
5 Plaintiff's and the Class's decisions to purchase the Products. Based on Defendant's labeling and
6 advertising of the Products, Plaintiff and the Class reasonably believed that they were purchasing
7 products that were safer, more nutritious, or otherwise had different attributes than products that do
8 not have the "All Natural" labels. Had they known the truth of the matter, Plaintiff and the Class
9 would not have purchased the Products.

10 56. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
11 Defendant's unfair, unlawful, and fraudulent conduct. Specifically, Plaintiff paid for a beverage that
12 was different from what he reasonably expected to receive when he decided to make his purchase.
13 Plaintiff would not have purchased the Product had he known that the Products contained coloring
14 agents that rendered the natural claims false.

15 57. Defendant's false and misleading labeling and advertising should be enjoined due to
16 its false, misleading, and/or deceptive nature.

17 58. By letter dated January 8, 2021, Plaintiff advised Hornell Brewing Co., Inc. of its false
18 and misleading claims pursuant to California Civil Code Section 1782(a).

19 59. Pursuant to Section 1780(a) of the Act, Plaintiff seeks injunctive relief in the form of
20 an order enjoining the above-described wrongful acts and practices of Defendant, including, but not
21 limited to, an order enjoining Defendant from continuing to make the label and advertising claims
22 challenged herein. Plaintiff also requests an order awarding Plaintiff and the Class restitution of the
23 money wrongfully acquired by Defendant. Plaintiff shall be irreparably harmed if such an order is
24 not granted.

25 60. Plaintiff respectfully requests that the Court enjoin Defendant from continuing to
26 employ the unlawful methods, acts, and practices alleged herein pursuant to § 1780(a)(2). In
27 addition, Defendant should be compelled to provide restitution and damages to consumers who paid
28 for Products that are not what they expected to receive due to Defendant's misrepresentations.

1 a. Plaintiff and members of the Class are entitled to equitable relief as no
2 adequate remedy at law exists.

3 (1) Injunctive relief is appropriate on behalf of Plaintiff and members of
4 the Class because Defendant continues to deceptively label the Products as
5 being “All Natural.” Injunctive relief is necessary to prevent Defendant from
6 continuing to engage in the unlawful conduct described herein and to prevent
7 future harm—none of which can be achieved through available legal remedies.
8 Further, injunctive relief, in the form of packaging or label modifications, is
9 necessary to dispel public misperception about the Products that has resulted
10 from years of Defendant’s unfair, fraudulent, and unlawful marketing efforts.
11 Such modifications would include, reformulating the Products so they do not
12 contain added coloring or removing the “ “All Natural” label claims. Such
13 relief is also not available through a legal remedy as monetary damages may
14 be awarded to remedy past harm (i.e., purchasers who have been misled),
15 while injunctive relief is necessary to remedy future harm (i.e., prevent future
16 purchasers from being misled), under the current circumstances where the
17 dollar amount of future damages is not reasonably ascertainable at this time.
18 Plaintiff is, currently, unable to accurately quantify the damages caused by
19 Defendant’s future harm (e.g., the dollar amount that Plaintiff and Class
20 members overpay pay for the falsely labeled Products), rendering injunctive
21 relief a necessary remedy.

22 **COUNT TWO**

23 **Violation of California False Advertising Law,**

24 **Business & Professions Code Section 17500, *et seq.***

25 61. Plaintiff repeats and reallege the allegations set forth in the preceding paragraphs, and
26 incorporate the same as if set forth herein at length.

27 62. Plaintiff brings this cause of action pursuant to Business and Professions Code section
28 17500, *et seq.*, on his own behalf and on behalf of all other persons similarly situated.

63. California’s False Advertising Law, California Business and Professions Code section 17500, *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or performance or disposition thereof, 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.”

64. Defendant knowingly disseminated misleading claims regarding the Products in order to mislead the public about the ingredient makeup of the Products.

65. Defendant controlled the labeling, packaging, production and advertising of the Products. Defendant knew or should have known, through the exercise of reasonable care, that its representations and omissions about the ingredients of the Products were untrue, deceptive, and misleading.

66. Defendant’s action of displaying misleading claims and omissions about the ingredients of the Products in prominent type face on each of the Products’ front labels is likely to deceive the general public.

67. Defendant’s actions in violation of Section 17500 were false and misleading such that the general public is and was likely to be deceived.

68. As a direct and proximate result of Defendant’s conduct alleged herein in violation of the FAL, Plaintiff and members of the Class, pursuant to § 17535, are entitled to an order of this Court enjoining such future wrongful conduct on the part of Defendant, and requiring Defendant to disclose the true nature of its misrepresentations.

b. Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

(1) The scope of permissible plaintiffs under the FAL is broader than the CLRA to include, for example, individuals or entities who purchased the Products for non-personal, non-family, and non-household purposes. Thus,

1 Plaintiff and class members may be entitled to restitution under the FAL, while
2 not entitled to damages under the CLRA.

3 (2) Injunctive relief is appropriate on behalf of Plaintiff and members of
4 the Class because Defendant continues to deceptively label the Products and
5 deliberately omit that the Products contain coloring additives that render the
6 Products no longer as being “All Natural.” Injunctive relief is necessary to
7 prevent Defendant from continuing to engage in the unlawful conduct
8 described herein and to prevent future harm—none of which can be achieved
9 through available legal remedies. Further, injunctive relief, in the form of label
10 modifications, is necessary to dispel public misperception about the Products
11 that has resulted from years of Defendant’s unfair, fraudulent, and unlawful
12 marketing efforts. Such modifications would include, but are not limited to,
13 reformulating the Products or removing the false “All Natural” labeling. Such
14 relief is also not available through a legal remedy as monetary damages may
15 be awarded to remedy past harm (i.e., purchasers who have been misled),
16 while injunctive relief is necessary to remedy future harm (i.e., prevent future
17 purchasers from being misled), under the current circumstances where the
18 dollar amount of future damages is not reasonably ascertainable at this time.
19 Plaintiff is, currently, unable to accurately quantify the damages caused by
20 Defendant’s future harm (e.g., the dollar amount that Plaintiff and Class
21 members overpay for the falsely labeled Products), rendering injunctive relief
22 a necessary remedy.

23 69. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
24 Defendant’s false representations. Plaintiff purchased the Products in reliance upon the claims and
25 omissions by Defendant that the Products are “All Natural,” as represented by Defendant’s labeling
26 and advertising. Plaintiff would not have purchased the Products if he had known that the claims
27 and advertising as described herein were false and misleading.
28

70. Plaintiff and members of the Class also request an order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by Defendant by means of such acts of false advertising, plus interests and attorneys' fees.

COUNT THREE

Violation of California Unfair Competition Law

Business and Professions Code § 17200 et seq.

71. Plaintiff repeats and realleges the allegations set forth above, and incorporate the same as if set forth herein at length.

72. Plaintiff brings this cause of action pursuant to Business and Professions Code § 17200, *et seq.*, on his own behalf and on behalf of all other persons similarly situated.

73. The UCL prohibits "any unlawful, unfair... or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

A. "Unfair" Prong

74. Under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et. seq.*, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

75. Defendant's advertising and labeling of the Products as being "All Natural," when the Products contain coloring additives, is false, misleading, and deceptive.

76. Defendant's false advertising of the Products causes injuries to consumers, who do not receive the promised benefits from the Products in proportion to their reasonable expectations.

77. Through false, misleading, and deceptive labeling of the Products, Defendant seeks to take advantage of consumers' desire for "All Natural" products, while reaping the financial benefits of manufacturing lower quality Products.

78. When Defendant labels the Products as being "All Natural," it provides false promises to consumers and stifles competition in the marketplace.

79. Consumers cannot avoid any of the injuries caused by Defendant's false and misleading advertising of the Products.

1 80. Some courts conduct a balancing test to decide if a challenged activity amounts to
2 unfair conduct under California Business and Professions Code Section 17200. The courts “weigh
3 the utility of the Defendant’s conduct against the gravity of the harm alleged to the victim.” *Davis*
4 *v. HSBC Bank Nevada, N.A.*, 691 F. 3d 1152, 1169 (9th Cir. 2012).

5 81. Defendant’s material omissions result in financial harm to consumers. Thus, the utility
6 of Defendant’s conduct is vastly outweighed by the gravity of its harm.

7 82. Some courts require the “unfairness must be tethered to some legislative declared
8 policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless*
9 *Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

10 83. Defendant’s advertising of the Products, as alleged in the preceding paragraphs, is
11 false, deceptive, misleading, and unreasonable, and constitutes unfair conduct.

12 84. Defendant knew or should have known of its unfair conduct.

13 85. As alleged in the preceding paragraphs, the material misrepresentations by Defendant
14 detailed above constitute an unfair business practice within the meaning of California Business &
15 Professions Code § 17200.

16 86. There were reasonably available alternatives to further Defendant’s legitimate
17 business interests other than the conduct described herein. Defendant could have marketed the
18 Products without making any false statements about the Products’ ingredients.

19 87. All of the conduct alleged herein occurs and continues to occur in Defendant’s
20 business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct
21 repeated on thousands of occasions daily.

22 88. Pursuant to Business & Professions Code Section 17203, Plaintiff and the Class seek
23 an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice
24 of false and deceptive advertising of the Products. Likewise, Plaintiff and the Class seek an order
25 requiring Defendant to disclose such misrepresentations, and additionally request an order awarding
26 Plaintiff restitution of the money wrongfully acquired by Defendant by means of responsibility
27 attached to Defendant’s failure to disclose the existence and significance of said misrepresentations
28 in an amount to be determined at trial.

89. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unfair conduct. Plaintiff paid an unwarranted premium for the Product. Plaintiff would not have purchased the Product if he had known that the Product's "All Natural" label claims were false.

B. "Fraudulent" Prong

90. California Business and Professions Code § 17200, *et seq.* considers conduct fraudulent and prohibits said conduct if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

91. Defendant's advertising of the Products as being "All Natural," without referring to their actual characterization, is likely to deceive members of the public into believing that the Products are natural.

92. Defendant's advertising of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable and constitutes fraudulent conduct.

93. Defendant knew or should have known of its fraudulent conduct.

94. As alleged in the preceding paragraphs, the material misrepresentations and omissions by Defendant detailed above constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

95. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Defendant could have refrained from labeling the Products as being "All Natural."

96. All of the conduct alleged herein occurs and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

97. Pursuant to Business & Professions Code Section 17203, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice of false and deceptive advertising of the Products. Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendant by means of responsibility

1 attached to Defendant's failure to disclose the existence and significance of said misrepresentations
2 in an amount to be determined at trial.

3 98. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
4 Defendant's fraudulent conduct. Plaintiff and the Class paid an unwarranted premium for the
5 Products. Plaintiff and the Class would not have purchased the Products if they had known that the
6 Products were not "All Natural."

7 **C. "Unlawful" Prong**

8 99. California Business and Professions Code Section 17200, *et seq.*, identifies violations
9 of other laws as "unlawful practices that the unfair competition law makes independently
10 actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

11 100. Defendant's advertising of the Products, as alleged in the preceding paragraphs,
12 violates California Civil Code Section 1750, *et seq.*, California Business and Professions Code
13 Section 17500, *et seq.*

14 101. Defendant's packaging, labeling, and advertising of the Products, as alleged in the
15 preceding paragraphs, are false, deceptive, misleading, and unreasonable, and constitute unlawful
16 conduct.

17 102. Defendant knew or should have known of its unlawful conduct.

18 103. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed
19 above constitute an unlawful business practice within the meaning of California Business and
20 Professions Code Section 17200.

21 104. There were reasonably available alternatives to further Defendant's legitimate
22 business interests other than the conduct described herein. Defendant could have refrained from
23 omitting the true characteristics of the Products.

24 105. All of the conduct alleged herein occurred and continues to occur in Defendant's
25 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
26 repeated on thousands of occasions daily.

27 106. Pursuant to Business and Professions Code Section 17203, Plaintiff and the Class seek
28 an order of this Court enjoining Defendant from continuing to engage, use, or employ its practice

of false and deceptive advertising of the Products. Likewise, Plaintiff and the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendant by means of responsibility attached to Defendant's failure to disclose the existence and significance of said misrepresentations in an amount to be determined at trial.

107. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's unlawful conduct. Plaintiff paid an unwarranted premium for the Product. Plaintiff would not have purchased the Product if he had known that Defendant purposely deceived consumers into believing that the Products were "All Natural."

108. As a result of the business acts and practices described above, Plaintiff and members of the Class, pursuant to § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendant and such other orders and judgments that may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for the Products as a result of the wrongful conduct of Defendant.

c. Plaintiff and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

(1) The applicable limitations period is four years for claims brought under the UCL, which is one year longer than the applicable statute of limitations under the FAL and CLRA. Thus, class members who purchased the Products between 3 and 4 years prior to the filing of the complaint will be barred from the Class if equitable relief were not granted under the UCL.

(2) The scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein to include, for example, the overall false and misleading marketing scheme of labeling the Products as being "All Natural." Thus, Plaintiff and class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an

1 individual who seeks or acquires, by purchase or lease, any goods or services
2 for personal, family, or household purposes) and other statutorily enumerated
3 conduct).

4 (3) Injunctive relief is appropriate on behalf of Plaintiff and members of
5 the Class because Defendant continues to deceptively label the Products.
6 Injunctive relief is necessary to prevent Defendant from continuing to engage
7 in this unfair, fraudulent, and/or unlawful conduct described herein and to
8 prevent future harm—none of which can be achieved through available legal
9 remedies. Further, injunctive relief, in the form of packaging or label
10 modifications, is necessary to dispel public misperception about the Products
11 that has resulted from years of Defendant’s unlawful marketing efforts. Such
12 modifications could include, but are not limited to, reformulating the Products
13 so they do not contain added coloring, or remove the “All Natural” label
14 claims. Such relief is not available through a legal remedy, as monetary
15 damages may be awarded to remedy past harm (i.e., purchasers who have been
16 misled), while injunctive relief is necessary to remedy future harm (i.e.,
17 prevent future purchasers from being misled), under the current circumstances
18 where the dollar amount of future damages is not reasonably ascertainable at
19 this time. Plaintiff is, currently, unable to accurately quantify the damages
20 caused by Defendant’s future harm (e.g., the dollar amount that Plaintiff and
21 Class members will pay for the falsely labeled Products), rendering injunctive
22 relief a necessary remedy.

23 109. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
24 judgment interest as a direct and proximate result of Defendant’s unfair and fraudulent business
25 conduct. The amount on which interest is to be calculated is a sum certain and capable of calculation,
26 and Plaintiff and the Class are entitled to interest in an amount according to proof.

27 ///

28 ///

COUNT FOUR**Unjust Enrichment**

110. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

111. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly sold the Products to Plaintiff and members of the Class in a manner that was unfair, unconscionable, and oppressive.

112. Defendant knowingly received and retained wrongful benefits and funds from Plaintiff and members of the Class. In so doing, Defendant acted with conscious disregard for the rights of Plaintiff and members of the Class.

113. As a result of Defendant's wrongful conduct as alleged herein, Defendant has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

114. Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

115. Under the common law doctrine of unjust enrichment, it is inequitable for Defendant to be permitted to retain the benefits it received, without justification, from selling the Products to Plaintiff and members of the Class in an unfair, unconscionable, and oppressive manner. Defendant's retention of such funds under such circumstances making it inequitable to do so constitutes unjust enrichment.

116. The financial benefits derived by Defendant rightfully belong to Plaintiff and members of the Class. Defendant should be compelled to return in a common fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds received by Defendant.

117. Plaintiff and members of the Class have no adequate remedy at law.

COUNT FIVE**Breach of Express Warranty**

118. Plaintiff repeats and realleges all the allegations of the previous paragraphs and incorporate the same as if set forth herein at length.

119. Defendant expressly warrants that the Products are "All Natural," as set forth above.

Defendant's claims constitute an affirmation of fact, promise, and/or description of the goods that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise. Plaintiff placed importance on Defendant's claims.

120. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

121. Defendant breached the terms of the contract, including the express warranties, with Plaintiff and the Class by not providing Products that conform to the advertising and label claims.

122. As a result of Defendant's breach of contract, Plaintiff and the Class have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment and relief on all Causes of Action as follows:

- A. This action be certified as a class action;
- B. Plaintiff be appointed as the representative of the Class;
- C. Defendant's conduct be declared unlawful;
- D. An order enjoining Defendant from continuing to label and advertise the Products as challenged herein;
- E. An order for Defendant to issue a corrective advertising campaign;
- F. For an award of restitutionary damages in an amount according to proof at trial;
- G. An order of disgorgement of profits for Defendant's unjust enrichment obtained as a result of its unlawful, unfair, and fraudulent practices;
- H. For pre-judgment interest from the date of filing this suit;
- I. Punitive damages;
- J. Reasonable attorneys' fees;
- K. Costs of this suit; and
- L. Such other and further relief as the Court may deem necessary or appropriate.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: March 21, 2022

CLARKSON LAW FIRM, P.C.

/s/ Yana Hart

Ryan J. Clarkson, Esq.

Yana Hart, Esq.

Attorneys for Plaintiff

CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Thomas Iglesias

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Yana Hart, Clarkson Law Firm, P.C.
22525 Pacific Coast Highway, Malibu, CA 90265; (213) 788-4050

DEFENDANTS

Hornell Brewing Co.,

County of Residence of First Listed Defendant Nassau County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
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)*

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

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):*
CLRA § 1750, False Advertising § 17500, Unfair Competition Law § 17200, Unjust Enrichment, Breach of Express Warranty

Brief description of cause:
Class action based on state law consumer protection/false advertising/breach of warranty/restitution claims

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. 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

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 03/21/2022

SIGNATURE OF ATTORNEY OF RECORD /s/ Yana Hart

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

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

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