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25 MILLERCOORS LLC

26 UNITED STATES DISTRICT COURT
27 SOUTHERN DISTRICT OF CALIFORNIA

28 EVAN PARENT, an individual on
behalf of himself, a class of persons
similarly situated, and the general
public,

Plaintiff,

v.

MILLERCOORS LLC, a Delaware
Limited Liability Company
authorized to do business in
California, and DOES 1-50,
inclusive,

Defendants.

No. **'15CV1204 GPC WVG**

[Removed from San Diego Super. Ct.
Case No. 37-2015-00013913-CU-BT-
CTL]

NOTICE OF REMOVAL

Compl. filed: April 24, 2015
Trial date: None Set

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1446 and
3 1453, Defendant MillerCoors LLC (“Defendant”) hereby removes the state court
4 action described below from the California Superior Court for the County of San
5 Diego to the United States District Court for the Southern District of California.

6 **I. BACKGROUND**

7 **A. Procedural Background**

8 1. On or about April 24, 2015, Plaintiff Evan Parent (“Plaintiff”)
9 commenced a class action against Defendant in the California Superior Court for the
10 County of San Diego, entitled *Evan Parent v. MillerCoors LLC*, as case number 37-
11 2015-00013913-CU-BT-CTL (the “Complaint”). Copies of the Summons and
12 Complaint, and all other documents served on Defendant, are attached as Exhibit A.

13 2. Defendant was served with the Summons and Complaint on April 30,
14 2015. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it
15 was filed within 30 days of service of the Summons and Complaint. Fed. R. Civ. P.
16 6(a); *Cifuentes v. Red Robin Int’l, Inc.*, No. C-11-5635-EMC, 2012 WL 693930, at
17 *1 (N.D. Cal. Mar. 1, 2012) (CAFA removal deadline extended to Monday where
18 30-day deadline fell on a Saturday); *see also Teitelbaum v. Soloski*, 843 F. Supp.
19 614, 615 n.4 (C.D. Cal. 1994) (noting that Rule 6 applies to removal deadlines).

20 **B. The Complaint**

21 3. The Complaint alleges three causes of action: (1) Violation of
22 California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civil Code § 1750, *et*
23 *seq.*; (2) Violation of California’s False Advertising Law (“FAL”), Cal. Bus. &
24 Prof. Code § 17500, *et seq.*; and (3) Violation of California’s Unfair Competition
25 Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*

26 4. Each cause of action in the Complaint derives from Defendant’s
27 advertising, including product packaging, and sale of Blue Moon beer. Compl. ¶¶
28

1 1, 12-22.

2 5. The Complaint, which was filed as a putative class action, purports to
3 seek relief on behalf of Plaintiff individually, the general public, and a class defined
4 as “[a]ll consumers who purchased Blue Moon beer from a retailer within the state
5 of California for personal, family, or household purposes, and not for resale
6 purposes, during the period commencing on the date that is within four (4) years
7 prior to the filing of [the] Complaint and through the present date. . . .” *Id.* ¶ 6.

8 6. The remedies sought by Plaintiff include, *inter alia*, damages,
9 restitution, disgorgement, and attorney’s fees and costs. Compl. Prayer.

10 **II. GROUND FOR REMOVAL**

11 **A. The Court Has Jurisdiction Over This Action Pursuant To The Class**
12 **Action Fairness Act.**

13 7. Under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d),
14 federal district courts have original jurisdiction over any putative class action in
15 which (1) there are at least 100 putative class members, (2) any putative class
16 member is a citizen of a state different from any defendant, and (3) the aggregated
17 claims of the members of the putative class exceed \$5 million. 28 U.S.C. §
18 1332(d). This action may be removed pursuant to 28 U.S.C. §§ 1446 and 1453
19 because each of these requirements is satisfied, and this case is timely and properly
20 removed by the filing of this Notice.

21 **a. The Putative Class Consists of More Than 100 Members.**

22 8. CAFA defines “class action” as “any civil action filed under rule 23 of
23 the Rules of Civil Procedure or similar state statute or rule of judicial procedure
24 authorizing an action to be brought by 1 or more representative persons as a class
25 action.” 28 U.S.C. § 1332(d)(1)(B). Here, the Complaint is titled “Class Action”
26 and is purported to be brought by Plaintiff on behalf of himself and “a class of
27 persons similarly situated, and the general public.” Compl. Caption. The
28

1 Complaint states that this is a class action under California Code of Civil Procedure
2 § 382, Cal. Civ. Code § 1781, and Cal. Bus. & Prof. Code § 17203. *Id.* ¶ 3. Under
3 the section entitled “Class Allegations,” Plaintiff further alleges that “[t]he persons
4 who comprise the Class are so numerous that the individual joinder of all such
5 persons is impracticable and the disposition of their claims as a class will benefit
6 the parties and the Court.” *Id.* ¶ 24(a).

7 9. The Complaint is temporally limited to purchases made during the four
8 years prior to the filing of the Complaint and through the present date. *Id.* ¶ 6.
9 Thus, the putative nationwide class consists of consumers within California who
10 purchased many varieties of Blue Moon beer within the state of California for
11 personal, family, or household purposes, and not for resale purposes from April 24,
12 2011 through the present date.

13 10. Defendant’s revenues from California retail sales of Blue Moon from
14 2011 until 2015 exceed the \$5 million threshold for removal. Declaration of
15 Kristin O’Hara in Support of Notice of Removal (“O’Hara Decl.”), ¶ 4. Blue Moon
16 beer may be purchased as individual bottles, in six-pack cases, or in larger
17 containers with prices for the various containers ranging from \$1.29 - \$28.99. *Id.* ¶
18 2. *Id.* ¶ 3. Consequently, given the price of Blue Moon, the purported class will
19 exceed 100 members. *See id.* ¶¶ 2-4.

20 **b. Minimal Diversity Exists Between The Parties.**

21 11. CAFA requires that only “minimal diversity” exist; that is, the
22 citizenship of at least one putative class member differs from that of at least one
23 defendant. 28 U.S.C. §§ 1332(d)(2)(A).

24 12. Plaintiff is a resident of California and therefore a citizen of California.
25 Compl. ¶ 8; 28 U.S.C. § 1332(a)(1) (an individual is a citizen of the state in which
26 she resides).

27 13. For CAFA “minimal diversity” purposes, a limited liability company
28

1 is a citizen of the State where it has its principal place of business and the State
2 under whose laws it is organized. 28 U.S.C. § 1332(d)(10); *Ferrell v. Express*
3 *Check Advance of SC LLC*, 591 F.3d 698, 705 (4th Cir. 2010). Plaintiff alleges that
4 Defendant is a limited liability company organized and existing under the laws of
5 Delaware with its principal place of business in Illinois. Compl. ¶ 9.

6 14. Thus, the citizenship of “any member of a class of plaintiffs is a citizen
7 of a State different from any defendant,” as required under CAFA. 28 U.S.C. §
8 1332(d)(2)(A).

9 **c. The Amount In Controversy Requirement Is Satisfied.**

10 15. Plaintiff’s lawsuit also meets CAFA’s amount-in-controversy
11 requirements because it seeks restitution and other relief that, in the aggregate,
12 exceed CAFA’s \$5 million threshold.

13 16. Under CAFA, “the claims of individual class members shall be
14 aggregated to determine whether the matter in controversy exceeds the sum or
15 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6).
16 Plaintiff does not plead a specific amount in controversy, so Defendant needs only
17 to make “a plausible allegation that the amount in controversy exceeds the
18 jurisdictional threshold.” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193,
19 1195 (9th Cir. 2015) (citing *Dart Basin Operating Co. v. Owens*, — U.S. —, —,
20 135 S.Ct. 547, 554, 190 L.Ed.2d 495 (2014)).

21 17. Under CAFA, the “claims of the individual class members must be
22 aggregated.” 28 U.S.C. § 1332(d)(6). “[T]he [CAFA] statute tells the District
23 Court to determine whether it has jurisdiction by adding up the value of the claim
24 of each person who falls within the ... proposed class and determine whether the
25 resulting sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct.
26 1345, 1348 (2013). Attorney’s fees are properly included in the calculation.
27 *Deaver v. BBVA Compass Consulting & Benefits, Inc.*, No. 13-CV-00222, 2014
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1 WL 2199645, at *3 (N.D. Cal. May 27, 2014). If the Court is uncertain whether the
2 amount in controversy exceeds \$5 million, “the court should err in favor of
3 exercising jurisdiction over the case.” S. Rep. No. 109-14, at 42 (2005).

4 18. Plaintiff seeks a restitution and disgorgement for himself and the
5 putative class, repeatedly alleging that he and the Class would not have purchased
6 the Blue Moon products but for the alleged advertising. *See, e.g.*, Compl. ¶¶ 45, 57.
7 Plaintiff also seeks attorney’s fees and costs, as well as “any other relief the Court
8 deems just and proper.” Compl. Prayer. Together, as shown below, removal is
9 proper because these remedies exceed \$5 million, as required for federal
10 jurisdiction:

11 19. Restitution. As detailed in the Declaration of Kristin O’Hara filed in
12 support of this Notice of Removal, the sales of Blue Moon products since April 24,
13 2011 have exceeded \$5 million in California. O’Hara Decl. ¶¶ 4. Thus, the
14 amount in controversy unquestionably exceeds the CAFA threshold. *Watkins v.*
15 *Vital Pharms., Inc.*, No. 13-55755, 2013 WL 3306322, at *2 (9th Cir. July 2, 2013)
16 (per curiam) (holding that a declaration stating that total sales of the product at
17 issue exceeded \$5 million during the class period was sufficient to meet CAFA’s
18 amount in controversy requirement).

19 20. Statutory relief. On behalf of a putative California class, Plaintiff
20 seeks restitution, disgorgement and other relief the Court deems just and proper.
21 Compl. Prayer. Under the CLRA, “[a]ny consumer who suffers any damage” as a
22 result of a practice declared to be unlawful under the statute may recover actual
23 damages (and at least \$1000 in the case of a class action), and “any other relief that
24 the court deems proper.” Cal. Civ. Code § 1780. The CLRA allows for an
25 additional statutory award of up to \$5,000 to senior citizens or disabled persons
26 under certain circumstances, including where the trier of fact finds that “an
27 additional award is appropriate.” *Id.* § 1752. Remedies available under the CLRA
28

1 are not exclusive and are available in addition to “other procedures or remedies for
2 any violation or conduct provided for in any other law.” *Id.*

3 21. Hence, to the extent that a court may find that Defendant’s alleged
4 conduct violated the CLRA, and damages may be awarded to Plaintiff and the class,
5 the amount in controversy is even higher than the restitution amount mentioned
6 above.

7 22. Attorney’s Fees. Plaintiff also seeks attorney’s fees and costs. Compl.
8 Prayer. State law governs the award of attorney’s fees in class actions where the
9 underlying causes of action are based on state law. *Vizcaino v. Microsoft Corp.*,
10 290 F.3d 1043, 1047 (9th Cir. 2002). The CLRA allows a prevailing plaintiff to
11 recover court costs and attorney’s fees as a matter of right. Cal. Civ. Code §
12 1780(e). Upon motion, a court may award attorneys’ fees to the prevailing party in
13 a UCL or FAL action. Cal. Civ. Proc. Code § 1021.5. The Ninth Circuit has
14 approved 25 percent of the total common fund recovery as a “bench mark” for
15 adequate compensation of attorney’s fees in a class action suit. *Paul, Johnson,*
16 *Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989). Plaintiff does not
17 allege an estimate as to the amount in controversy here. However, based on
18 Defendant’s own calculations of the minimum cost of restitution at issue,
19 reasonable attorney’s fees could be substantial.

20 23. Total Amount in Controversy. As discussed above, the amount in
21 controversy exceeds the \$5 million threshold as required for removal to federal
22 court under 28 U.S.C. § 1332(d). The actual value of the restitution sought by
23 Plaintiff is at least \$5 million, without even accounting for attorney’s fees and other
24 monetary relief. Should additional relief be granted, as requested by Plaintiff, the
25 potential cost to Defendant is even higher.

26 **B. No CAFA Exceptions Apply**

27 24. This action does not fall within any exclusion to removal jurisdiction
28

1 under 28 U.S.C. § 1332(d), and Plaintiff has the burden of proving otherwise. *See*
2 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).

3 **C. Defendant Has Satisfied All Other Requirements For Removal.**

4 25. Intradistrict Assignment. Pursuant to 28 U.S.C. § 1441(a), assignment
5 to the United States District Court for the Southern District of California is proper
6 because Plaintiff filed this action in the Superior Court of California, County of
7 San Diego.

8 26. Attachment of Pleadings. Pursuant to 28 U.S.C. § 1446, Defendant
9 hereby provides this Court with copies of all process, pleadings, and orders served
10 on Defendant in this action, attached as Exhibit A. Defendant has not received any
11 pleadings, process or orders besides those attached.

12 27. Notice to State Court/Plaintiff. Pursuant to 28 U.S.C. § 1446(d),
13 Defendant will promptly serve on Plaintiff and file with the Superior Court a
14 Notice to Plaintiff of Removal to Federal Court. Pursuant to Federal Rule of Civil
15 Procedure 5(d), Defendant will also file with this Court a Certificate of Service of
16 its Notice to Plaintiff.

17 **D. Non-Waiver of Defenses**

18 28. Defendant expressly reserves all of its defenses. By removing the
19 Action to this Court, Defendant does not waive any rights or defenses available
20 under federal or state law. Defendant expressly reserves the right to move for
21 dismissal of the Complaint pursuant to Rule 12 of the Federal Rules of Civil
22 Procedure. Nothing in this Notice of Removal should be taken as an admission that
23 Plaintiff's allegations are sufficient to state a claim or have any substantive merit.

24 //

25 //

26 //

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1 WHEREFORE, Defendant hereby removes the above-entitled case to this
2 Court.

3
4 DATED: May 30, 2015

PERKINS COIE LLP

By: /s/ Julie L. Hussey

Julie L. Hussey, Bar No. 237711
JHussey@perkinscoie.com

Attorneys for Defendant
MILLERCOORS LLC

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EXHIBIT A

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MILLERCOORS LLC, a Delaware Limited Liability Company authorized to do business in California, and DOES 1 to 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

EVAN Parent, an individual on behalf of himself, a class of persons similarly situated, and the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/24/2015 at 04:43:29 PM

Clerk of the Superior Court
By Adriane Bennett, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California, by and for the County of San Diego, 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número) 37-2015-00013913-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): James M. Treglio, Clark & Treglio, 205 West Date Street, San Diego, CA 92101

DATE: 04/27/2015
(Fecha)

Clerk, by
(Secretario)

A Bennett
A. Bennett

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): MILLERCOORS LLC
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): a Limited Liability Company
4. by personal delivery on (date):

1 R. Craig Clark (SBN 129219)
James M. Treglio (SBN 228077)
2 **CLARK & TREGLIO**
205 West Date Street
3 San Diego, CA 92101
4 Telephone: (619) 239-1321
Facsimile: (888) 273-4554

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/24/2015 at 04:43:29 PM
Clerk of the Superior Court
By Adriane Bennett, Deputy Clerk

5 Attorneys for Plaintiff and the Putative Class
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10
11 EVAN PARENT, an individual on behalf of
himself, a class of persons similarly situated,
12 and the general public,

13 Plaintiffs,

14 v.

15 MILLERCOORS LLC, a Delaware Limited
Liability Company authorized to do business
16 in California, and DOES 1 to 50 inclusive,

17 Defendants.
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20
21

CASE NO.: 37-2015-00013913-CU-BT-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF:**

**(1) VIOLATIONS OF THE CONSUMER
LEGAL REMEDIES ACT (CAL. CIV. CODE
§ 1750 et seq.);**

**(2) DECEPTIVE AND MISLEADING
ADVERTISING (CAL. BUS. & PROF. CODE
§ 17500 et seq.); and**

**(3) UNFAIR COMPETITION (CAL. BUS. &
PROF. CODE § 17200 et seq.)**

DEMAND FOR JURY TRIAL

22 Plaintiff Evan Parent (hereinafter "Plaintiff" or "Mr. Parent"), by and through his attorneys
23 of record, brings this action on behalf of himself and all persons similarly situated, against
24 Defendant MillerCoors LLC (hereinafter "Defendant"), on the following grounds:

25 **INTRODUCTION**

26 1. This class action is brought on behalf of all consumers who purchased Blue Moon
27 beer from a retailer within the state of California for personal, family, or household purposes, and
28 not for resale purposes.

THE PARTIES

1
2 8. At all material times mentioned herein, Plaintiff Evan Parent resided in, and
3 continues to reside in, San Diego, California. During the relevant time period, Plaintiff frequently
4 purchased Blue Moon beer from San Diego-area retailers, including Ralph's, Vons, and 7-11.
5 Relying on its advertising, its placement among other craft beers, and the premium price it
6 commanded, Plaintiff believed that Blue Moon was a microbrew or "craft" beer.

7 9. Defendant MillerCoors LLC is a limited liability company organized and existing
8 under the laws of the state of Delaware, with its principal place of business at 250 South Wacker
9 Drive, Chicago, Illinois 60606. According to the company's web site
10 (<http://www.millercoors.com/who-we-are/timeline.aspx>), MillerCoors was formed in 2008 as a
11 joint U.S. venture between SAB Miller and Molson Coors Brewing Company.

12 10. Defendant manufactures, markets and sells beer throughout the United States under
13 numerous brand names, including Coors Light, Miller Genuine Draft, Miller High Life,
14 Milwaukee's Best, Keystone and Blue Moon.

15 11. The true names and capacities, whether individual, corporate, subsidiary,
16 partnership, associate, or otherwise of Defendant Does 1 through 50, are unknown to Plaintiff, who
17 therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
18 Plaintiff will amend the complaint to allege the true names and capacities of Does 1 through 50
19 when they are ascertained.

20 **FACTUAL ALLEGATIONS**

21 12. Over the past 25 years, craft brewing in the United States has seen tremendous
22 growth, with the number of craft breweries increasing from approximately 250 in 1989 to more
23 than 3,400 in 2014. With nearly 400 craft breweries, California is home to more craft breweries
24 than any other state. The economic impact of craft brewing in California is estimated to exceed
25 \$4.5 billion.

26 13. Beer consumers, including Plaintiff, are willing to pay, and do pay, a premium for
27 high quality, small batch, craft beers. On average, a six pack of craft beer typically costs \$2.00 to
28 \$3.00 more than a six pack of macrobrewed, or mass produced beer.

1 14. The Brewers Association, an organization dedicated to promoting and protecting
2 American craft brewers, defines craft breweries as “small, independent and traditional.” To qualify
3 as an American craft brewer, a brewery must:

- 4 (a) Produce less than 6 million barrels of beer annually;
5 (b) Be less than 25 percent owned or controlled by a non-craft brewer; and
6 (c) Make beer using only traditional or innovative brewing ingredients.

7 15. With eight major breweries located in California, Colorado, Georgia, North
8 Carolina, Ohio, Texas, Virginia, and Wisconsin, Defendant produces more than 76 million barrels,
9 or 2.4 billion gallons, of beer on an annual basis. Based on the volume of beer it produces, as well
10 as the ownership interests of its parent companies, Defendant clearly does not qualify as a craft
11 brewer.

12 16. Defendant began producing Blue Moon beer in 1995 to compete in the burgeoning
13 craft beer market. While Defendant was operating as Coors Brewing Company at the time, it sold
14 Blue Moon beer under the name, Blue Moon Brewing Company.

15 17. Blue Moon Brewing Company is a small, limited capacity brewery located inside
16 Coors Field, home to the Colorado Rockies baseball team. The Blue Moon beer that is sold in
17 stores is not brewed at or by the Blue Moon Brewing Company. Rather, it is brewed by
18 MillerCoors at the company’s Golden, Colorado and Eden, North Carolina breweries. In addition
19 to brewing Blue Moon, these breweries produce all of Defendant’s other beers, including Coors,
20 Milwaukee’s Best, Miller High Life, Hamm’s, Icehouse and Olde English.

21 18. Despite brewing Blue Moon for the past 20 years, Defendant goes to great lengths
22 to disassociate Blue Moon beer from the MillerCoors name. MillerCoors does not appear anywhere
23 on the Blue Moon bottle. Moreover, while Blue Moon is prominently displayed on the MillerCoors
24 web site, there is not a single reference to MillerCoors on the Blue Moon Brewing Company web
25 site. In this regard, Defendant gains the benefit of having a top selling beer included among its
26 brands, while at the same time avoiding the loss of sales that would undoubtedly come with having
27 Blue Moon branded as a macrobrew and/or a MillerCoors beer.

28 19. In addition to fraudulently claiming that Blue Moon is brewed by Blue Moon

1 Brewing Company and intentionally omitting the MillerCoors name from Blue Moon products and
2 advertising, Defendant also uses the registered trademark “Artfully Crafted” to falsely portray Blue
3 Moon as a craft beer. This phrase, which appears on Defendant’s web site and in print advertising,
4 further serves to further mislead consumers by implying that Blue Moon is a true craft beer brewed
5 by an almost entirely fictitious brewery.

6 20. Through its false and deceptive marketing, Defendant misleads consumers to
7 believe that Blue Moon is an independently brewed, hand-crafted beer. While MillerCoors clearly
8 does not constitute a craft brewer, and thus Blue Moon does not constitute a craft beer, Defendant
9 falsely identifies it as such on the MillerCoors web site. This practice misleads consumers and
10 allows Defendant to charge up to 50% more for Blue Moon beer than it charges for other
11 MillerCoors products.

12 21. From 2011 until mid-2012, Plaintiff frequently purchased Blue Moon beer from San
13 Diego-area retailers for personal and family consumption. Relying on its advertising, its placement
14 among other craft beers, and the premium price it commanded, Plaintiff, who is also a beer
15 aficionado and home brewer, purchased Blue Moon believing it was a craft beer, as the term is
16 commonly used by beer consumers and the Brewers Association.

17 22. In or around July 2012, Plaintiff was informed by friends that Blue Moon is not a
18 craft beer, but rather a mass produced beer made by MillerCoors. Plaintiff was initially skeptical,
19 but eventually verified the facts through his own research. As a result, Plaintiff has not purchased
20 Blue Moon since approximately July 2012.

21 **CLASS ALLEGATIONS**

22 23. Plaintiff brings this action on behalf of himself, and on behalf of all persons within
23 the defined Class.

24 24. This class action meets the statutory prerequisites for the maintenance of a class
25 action, as set forth in Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781, in that:

- 26 (a) The persons who comprise the Class are so numerous that the joinder of all
27 such persons is impracticable and the disposition of their claims as a class
28 will benefit the parties and the Court;

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- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every member of the Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;
- (c) The parties opposing the Class have acted or have refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole; and
- (d) Common questions of law and fact exist as to the members of the Class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of Class members in individually controlling the prosecution or defense of separate actions;
 - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
 - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
 - iv. The difficulties likely to be encountered in the management of a class action.

25. The Court should permit this action to be maintained as a class action pursuant to Cal. Civ. Proc. Code § 382 and Cal. Civ. Code § 1781 because:

- (a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of Class members' claims;
- (c) The members of the Class are so numerous that it is impractical to bring all Class members before the Court;

- 1 (d) Plaintiff's claims are typical of the claims of the Class;
- 2 (e) Plaintiff, and the other members of the Class, will not be able to obtain
- 3 effective and economic legal redress unless the action is maintained as a
- 4 class action;
- 5 (f) There is a community of interest in obtaining appropriate legal and equitable
- 6 relief for the common law and statutory violations and other improprieties
- 7 alleged, and in obtaining adequate compensation for the damages which that
- 8 Defendant's actions have inflicted upon the Class;
- 9 (g) Plaintiff can, and will, fairly and adequately protect the interests of the
- 10 Class;
- 11 (h) There is a community of interest in ensuring that the combined assets and
- 12 available insurance of Defendant are sufficient to adequately compensate the
- 13 members of the Class for the injuries sustained; and
- 14 (i) Defendant has acted or refused to act on grounds generally applicable to the
- 15 Class, thereby making final injunctive relief appropriate with respect to the
- 16 Class as a whole.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**
19 **(By Plaintiff and the Class against all Defendants)**
20 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
21 **[Cal. Civ. Code § 1750 et seq.]**

22 26. Plaintiff realleges and incorporates by this reference, as though fully set forth
23 herein, the proceeding paragraphs of this Complaint.

24 27. California's Consumer Legal Remedies Act ("CLRA"), as codified in Cal. Civ.
25 Code § 1750 et seq., prohibits certain unfair or deceptive acts "in a transaction intended to result or
26 which results in the sale or lease of goods or services to any consumer." Cal. Civ. Code § 1770(a).

27 28. Blue Moon beer constitutes "goods" as defined by the CLRA. Cal. Civ. Code §§
28 1761(a) and 1770.

29 29. Defendant is a "person" within the meaning of the CLRA. Cal. Civ. Code § 1761(c)
specifically defines "person" as any "individual, partnership, corporation, limited liability

1 company, association, or other group, however organized.”

2 30. Individuals who purchased Blue Moon beer, including Plaintiff and other members
3 of the proposed Class, are “consumers” within the meaning of the CLRA. Under the CLRA, the
4 term “consumer” includes any “individual who seeks or acquires, by purchase or lease, any goods
5 or services for personal, family, or household purposes.” Cal. Civ. Code § 1761(d).

6 31. Plaintiff and each and every Class member’s purchase of Blue Moon beer
7 constitutes a “transaction” under the CLRA. Cal. Civ. Code § 1761(e) defines “transaction” as “an
8 agreement between a consumer and another person, whether or not the agreement is a contract
9 enforceable by action, and includes the making of, and the performance pursuant to, that
10 agreement.”

11 32. Defendant violated and continues to violate the CLRA by engaging in the following
12 practices proscribed by Cal. Civ. Code § 1770(a) in transactions with Plaintiff and the other
13 members of the Class, which were intended to result in, and did result in, the purchase of Blue
14 Moon beer:

- 15 (a) Violating Cal. Civ. Code § 1770(a)(1) by passing off Blue Moon as a
16 product of Blue Moon Brewing Company, when it is in fact a product of
17 MillerCoors;
- 18 (b) Violating Cal. Civ. Code § 1770(a)(2) by representing that Blue Moon is
19 brewed by Blue Moon Brewing Company, when it was in fact brewed in a
20 MillerCoors brewery;
- 21 (c) Violating Cal. Civ. Code § 1770(a)(3) by making both affirmative
22 misrepresentations and omissions regarding the affiliation, connection, and
23 association between MillerCoors and Blue Moon beer; and
- 24 (d) Violating Cal. Civ. Code § 1770(a)(7) by representing that Blue Moon is a
25 craft beer when Defendant does not qualify as a craft brewer based on the
26 volume of beer it produces, as well as the ownership interests of its parent
27 companies.

28 33. Defendant violated the CLRA by misrepresenting and failing to disclose material

1 facts on Blue Moon bottles, cans, packaging, and associated advertising, as described herein, when
2 it knew or should have known that its representations were unsubstantiated, false, and misleading,
3 and that the omissions were of material facts and were contrary to the actual representations made
4 by Defendant.

5 34. Moreover, Defendant's practices, acts, and course of conduct in connection with its
6 production and sale of Blue Moon beer are materially deceptive and are likely to mislead, and
7 actually do mislead, reasonable consumers to purchase Blue Moon beer when they would not have
8 otherwise purchased it, or would have only purchased it at a lower price.

9 35. Pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiff and the other members of the
10 Class are entitled to, and do seek, an order enjoining the above-described wrongful acts and
11 practices of Defendant.

12 36. Pursuant to Cal. Civ. Code § 1780(a)(3), Plaintiff and the other members of the
13 Class are entitled to, and do seek, restitutionary disgorgement of all monies wrongfully acquired by
14 Defendant from the deceptive and unfair sale of Blue Moon beer.

15 37. Pursuant to Cal. Civ. Code § 1780(e), Plaintiff and the Class are entitled to, and do
16 seek, reasonable attorneys' fees and all costs incurred in bringing this action, as well as any other
17 relief this Court deems just and proper.

18 **SECOND CAUSE OF ACTION**
19 **(By Plaintiff and the Class against all Defendants)**
20 **DECEPTIVE AND MISLEADING ADVERTISING**
21 **[Cal. Bus. & Prof. Code § 17500 et seq.]**

22 38. Plaintiff realleges and incorporates by this reference, as though fully set forth
23 herein, the proceeding paragraphs of this Complaint.

24 39. Under Cal. Bus. & Prof. Code § 17500, it is unlawful to make an untrue or
25 misleading statement in connection with the sale or dissemination of goods or services if the person
26 making the statement knew or should have known the statement was untrue or misleading. Section
27 17500 prohibits "not only advertising which is false, but also advertising which[,] although true, is
28 either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the
public." *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal. App. 4th 663, 679. The test under

1 § 17500 is whether a reasonable consumer would be deceived. *Id.* at 682. “A ‘reasonable
2 consumer’ is the ordinary consumer acting reasonably under the circumstances, and is not versed in
3 the art of inspecting and judging a product, in the process of its preparation or manufacture.” *Id.*
4 (internal quotation marks omitted).

5 40. In addition, Cal. Bus. & Prof. Code § 17505 provides:

6 No person shall state, in an advertisement of his goods, that he is a
7 producer, manufacturer, processor, wholesaler, or importer, or that he
8 owns or controls a factory or other source of supply of goods when
such is not the fact, and no person shall in any other manner
misrepresent the character, extent, volume, or type of his business.

9 41. Under California law, virtually any statement made in connection with the sale of
10 products or services constitutes advertising. *See e.g., Chern v. Bank of America* (1976) 15 Cal. 3d
11 866. This includes statements printed on a product label or packaging. *See Kwikset Corp. v.*
12 *Superior Court* (2011) 51 Cal. 4th 310.

13 42. In connection with the sale of Blue Moon beer, Defendant disseminated or caused
14 the dissemination of untrue, misleading, and deceptive advertising to the general public regarding
15 the quality, source, and characteristics of Blue Moon. On its web site, Defendant advertises Blue
16 Moon as a craft beer even though the company knows or should know that Blue Moon does not
17 qualify as a craft beer under the Brewers Association guidelines, or as the term is generally
18 understood by beer consumers. Moreover, Defendant reiterates and emphasizes its false and
19 deceptive statements by employing the trademarked term, “Artfully Crafted.”

20 43. Additionally, on various advertising materials, as well as on each bottle of Blue
21 Moon, Defendant falsely states that the beer is brewed by Blue Moon Brewing Company. While
22 there is in fact a Blue Moon Brewing Company, the facility does not brew the Blue Moon beer sold
23 in stores. Rather, the Blue Moon beer purchased from retail stores by Plaintiff and the other
24 members of the Class is brewed by MillerCoors at a MillerCoors brewing facility.

25 44. Defendant uses untrue, misleading, and deceptive advertising for the purpose of
26 selling Blue Moon beer to consumers, including Plaintiff and the Class. Such advertising, as
27 described herein, is likely to, and actually did deceive and confuse, reasonable consumers as to the
28 identity of the actual brewer of Blue Moon beer.

1 allow courts maximum discretion in prohibiting new schemes to defraud consumers. *See Cel-Tech*
2 *Comm'ns, Inc. v. Los Angeles Cellular Tel. Co.*, *supra*, 20 Cal. 4th 163, 180-81.

3 52. A business act or practice may be deemed “fraudulent” under the UCL where
4 “members of the public are likely to be deceived.” *Blakemore v. Superior Court* (2005) 129 Cal.
5 App. 4th 36, 49. That is, a showing of actual deception, reasonable reliance, or damages is not
6 required. *Id.* Moreover, under § 17200, even a true statement may be unlawful if it is “couched in
7 such a manner that it is likely to mislead or deceive . . . , such as by failure to disclose other
8 relevant information.” *See Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal. App. 4th 230, 253.

9 53. As set forth in the preceding paragraphs, Defendant’s business practices violate all
10 three prongs of California’s UCL.

11 54. Defendant committed, and continues to commit, unlawful business practices, in
12 violation of Cal. Civ. Code § 1770(a)(1)-(3), (7), by falsely representing that Blue Moon is a craft
13 beer brewed by Blue Moon Brewing Company and by intentionally omitting the fact that Blue
14 Moon is produced by MillerCoors. In addition, Defendant’s business practices violate the federal
15 Food Drug & Cosmetic Act, as well as California’s Sherman Act, which make it unlawful to
16 “manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.” Under both Acts,
17 food is misbranded if it fails to include the “name and place of business of the manufacturer,
18 packer, or distributor.” *See* 21 U.S. Code § 343; Cal. Health & Saf. Code § 110675.

19 55. Defendant’s conduct also constitutes an unfair business practice in that it
20 intentionally deceives consumers to the detriment of MillerCoors competitors, particularly those
21 who are properly defined as craft brewers. Plaintiff, in direct reliance on Defendant’s
22 representation that Blue Moon was a craft beer brewed by Blue Moon Brewing Company, was
23 willing to, and actually did pay, a premium price for Blue Moon beer. By omitting the fact that
24 Blue Moon was brewed by MillerCoors, Defendant deceived and misled Plaintiff to believe that he
25 was purchasing a craft beer from a small, independent brewery. In the absence of Defendant’s
26 representations and omissions, Plaintiff would not have purchased Blue Moon or would have only
27 purchased it at a lower price.

28 56. Claiming that Blue Moon beer is brewed by Blue Moon Brewing Company, rather

1 than by MillerCoors, also constitutes a fraudulent business practice under the UCL. Indeed, even if
2 there is some element of truth to Defendant’s representation, the conduct nonetheless violates Cal.
3 Bus. & Prof. Code § 17200 because it is “couched in such a manner that it is likely to mislead or
4 deceive” members of the public. *See Boschma v. Home Loan Ctr., Inc., supra*, 198 Cal. App. 4th at
5 253.

6 57. Defendant’s business practices are immoral, unethical, oppressive, and
7 unscrupulous, and cause substantial injury to consumers, including Plaintiff and the other members
8 of the Class. As a direct and proximate result of Defendant’s unlawful business practices, Class
9 members suffered injury in that they paid a premium price for a product that would not ordinarily
10 command a premium price, or purchased a product they otherwise would not have purchased,
11 absent Defendant’s misrepresentations and omissions.

12 58. Defendant subjected Plaintiff and the Class to the same unfair, unlawful, and
13 deceptive practices and harmed them in the same manner.

14 59. Through its unlawful, unfair, and fraudulent business practices, Defendant reaped,
15 and continues to reap, benefits and profits at the expense of Plaintiff and members of the Class.
16 Moreover, the business practices alleged herein are ongoing, and there is no indication that
17 Defendant will refrain from such activities in the future. Plaintiff believes, and on that basis
18 alleges, that if Defendant is not enjoined, it will continue to engage in conduct that is injurious to
19 the public and violates California law. As such, injunctive relief is appropriate.

20 60. Plaintiff and the Class are entitled to, and do seek, restitution, an injunction
21 prohibiting Defendant from continuing its unlawful, unfair, and fraudulent business practices, and
22 any other relief the Court deems appropriate, consistent with Cal. Bus. & Prof. Code § 17203.

23 61. Pursuant to Cal. Civ. Code § 1021.5, Plaintiff and the Class also seek reasonable
24 attorneys’ fees and all costs incurred in bringing this action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, and on behalf of a Class of persons similarly situated, prays for judgment against Defendant as follows:

**AS TO THE FIRST CLAIM
(Violation of Cal. Civ. Code § 1750 et seq.)**

- 1. For restitution and disgorgement;
- 2. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code § 1780(e); and
- 3. For any other relief the Court deems just and proper.

**AS TO THE SECOND CLAIM
(Violation of Cal. Bus. & Prof. Code § 17500 et seq.)**

- 1. For restitution and disgorgement;
- 2. For injunctive relief ordering the above-described unfair business practices to cease and ordering corrective advertising;
- 3. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code § 1021.5; and
- 4. For any other relief the Court deems just and proper.

**AS TO THE THIRD CLAIM
(Violation of Cal. Bus. & Prof. Code § 17200 et seq.)**

- 1. For restitution and disgorgement;
- 2. For injunctive relief ordering the above-described unfair business practices to cease;
- 3. For attorneys' fees and costs incurred in bringing this action, pursuant to Cal. Civ. Code § 1021.5; and
- 4. For any other relief the Court deems just and proper.

Dated: April 24, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

Attorneys for Plaintiff and the Putative Class


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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues triable to a jury.

Dated: April 24, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

Attorneys for Plaintiff and the Putative Class