

322 William Hughberger

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CAE

1 Brian S. Kabateck, SBN 152054
2 bsk@kbklawyers.com
3 Joshua H. Haffner, SBN 188652
4 jhh@kbklawyers.com
5 KABATECK BROWN KELLNER LLP
6 644 S. Figueroa Street
7 Los Angeles, California 90017
8 Telephone: (213) 217-5000
9 Fax: (213) 217-5010

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 19 2015

Sherri R. Carter, Executive Officer/Clerk
By SB Deputy
Shaunya Bolden

6 Michael S. Burg (Pro Hac Vice application pending)
7 mburg@burgsimpson.com
8 David K. TeSelle (Pro Hac Vice application pending)
9 dteselle@burgsimpson.com
10 Seth A. Katz (Pro Hac Vice application pending)
11 skatz@burgsimpson.com
12 David P. Hersh (Pro Hac Vice application pending)
13 dhersh@burgsimpson.com
14 BURG SIMPSON
15 ELDREDGE HERSH & JARDINE, P.C.
16 40 Inverness Drive East
17 Englewood, CO 80112
18 Telephone: (303) 792-5595
19 Fax: (303) 708-0527

13 Mike Papantonio (Pro Hac Vice application pending)
14 mpapantonio@levinlaw.com
15 Ben Gordon (Pro Hac Vice application pending)
16 bgordon@levinlaw.com
17 LEVIN PAPANTONIO THOMAS MITCHELL
18 RAFFERTY & PROCTOR, P.A.
19 316 S. Baylan St., #600
20 Pensacola, FL 32502
21 Telephone: (850) 435-7000
22 Fax: (850) 435-7001

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

21 DORIS CHARLES, an individual;
22 ALVIN JONES, an individual; JASON
23 PELTIER, an individual; and JENNIFER
24 PELTIER, an individual; on behalf of
25 themselves and all others similarly
26 situated,

Plaintiffs,

vs.

27 THE WINE GROUP, INC. a California
28 Corporation; THE WINE GROUP, LLC,
a California Corporation; SUTTER
HOME WINERY, INC., d/b/a

Case No.:

BC 576061

CLASS ACTION COMPLAINT

- (1) Violation of the Consumers Legal Remedies Act (Cal. Civil Code §§1750 et seq.)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§17200 et seq.)
- (3) Violation of Unfair Competition Law (Cal. Business & Professions Code §§17500 et seq.)
- (4) Unjust Enrichment
- (5) Breach of the Implied Warranty of Merchantability
- (6) Negligent Misrepresentation/Omission

JURY TRIAL DEMANDED

CIT/CLERK: DCS76661
LEA/DEF#:
RECEIPT #: CCH465980030
DATE PAID: 03/19/15 08:59 AM
PAYMENT: \$1,000.00
RECEIVED: 310
CHECK: \$1,000.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

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RECEIPT #: CCH465980029
DATE PAID: 03/19/15 08:59 AM
PAYMENT: \$1,000.00
RECEIVED: 310
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

03/19/2015

1 TRINCHERO FAMILY ESTATES, a
2 California Corporation; FOLIE À DEUX
3 WINERY, a California Corporation;
4 CALIFORNIA NATURAL PRODUCTS,
5 a California Corporation; REBEL WINE
6 CO., LLC a California Corporation;
7 GOLDEN STATE VINTNERS, a
8 California Corporation; VARNI
9 BROTHERS, CORP., a California
10 Corporation; TREASURY WINES
11 ESTATES AMERICAS CO., a California
12 Corporation; TREASURY WINES
13 ESTATES HOLDING, INC., a California
14 Corporation; BERINGER VINEYARDS,
15 a California Corporation; SEAGLASS
16 WINE CO., a California Corporation;
17 CONSTELLATION WINES, US, a
18 California Corporation; SMITH & HOOK
19 WINERY CORPORATION, a/k/a
20 SMITH AND HOOK, a California
21 Corporation, d/b/a HAHN FAMILY
22 WINES, a California Corporation;
23 RAYMOND VINEYARD AND
24 CELLAR/RAYMOND VINEYARD
25 AND CELLAR, INC., a California
26 Corporation; JEAN-CLAUDE BOISSET
27 WINES, USA, INC., a California
28 Corporation; FETZER VINEYARDS, a
California Corporation; F. KORBEL &
BROS., INC., a California Corporation;
MEGAN MASON AND RANDY
MASON, D/B/A MASON CELLARS, a
California Corporation; OAKVILLE
WINERY MANAGEMENT CORP., GP,
a California Corporation;
WOODBIDGE WINERY, INC., a
California Corporation; SIMPLY NAKED
WINERY, a California Corporation;
WINERY EXCHANGE, INC., a
California Corporation; SONOMA WINE
CO., LLC, a California Corporation;
DON SEBASTIANI & SONS
INTERNATIONAL WINE

1 NÉGOCIANTS, CORP., a California
2 Corporation; and DON SEBASTIANI &
3 SONS INTERNATIONAL WINE
4 NÉGOCIANTS, a California Corporation;
5 BRONCO WINE COMPANY, a
6 California Corporation; TRADER JOE'S
7 COMPANY, a California Corporation,
8 and DOES 1 - 200, Inclusive,

Defendants.

9 Plaintiffs Doris Charles, Alvin Jones, Jason Peltier and Jennifer Peltier ("Plaintiffs"),
10 individually and on behalf of themselves and all others similarly situated, are informed and believe,
11 and on that basis allege as follows:

12 **NATURE OF ACTION**

13 1. Inorganic arsenic is an odorless, colorless, and highly toxic poison known to cause
14 illness and death when ingested by humans. During the Middle Ages, arsenic was a favored form of
15 intentional poisoning among the privileged classes, primarily because it was both virtually
16 undetectable and extremely lethal (even in trace amounts over time). The deaths of Napoleon
17 Bonaparte, Simon Bolivar, King George III, Francesco De Medici, King Faisal I, and many other
18 prominent historical figures, whose deaths were believed at the time to have other mysterious causes,
19 were all, through the course of history, proven later to have been caused and/or accelerated by arsenic
20 poisoning.

21 2. California wines are among the most popular and widely consumed wines in the world.
22 The majority of responsible California wineries, through choice of the proper grapes/juice, proper
23 filtering processes and the use of proper equipment, limit the amount of inorganic arsenic present in
24 their wines to "trace" levels considered acceptable (if not completely safe) for human consumption.
25 However, three separate testing laboratories skilled in arsenic testing have now independently
26 confirmed that several California wineries (including those named as Defendants in this action)
27 instead produce and market wines that contain dangerously high levels of inorganic arsenic, in some
28 cases up to 500% or more than what is considered the maximum acceptable safe daily intake limit.

1 Put differently, just a glass or two of these arsenic-contaminated wines a day over time could
2 result in dangerous arsenic toxicity to the consumer.

3 3. Despite the known dangers/risks associated with human ingestion of this highly toxic
4 poison, and despite the fact that the responsible wineries have been able to limit inorganic arsenic
5 levels in their wines to acceptable legal limits through responsible wine making and filtering
6 procedures, the Defendant wineries do not, and instead manufacture, distribute, and/or sell these
7 arsenic-contaminated wines and conceal and do not disclose, warn, or otherwise advise, to their
8 customers or to the ultimate consumers, the existence and/or the dangers/risks posed by the toxic
9 excessive levels of inorganic arsenic contamination in their wine.

10 4. Defendants' sale of arsenic-contaminated wine violates California laws and standards,
11 poses a risk to the public, and unfairly undercuts those wine makers and sellers who do not make or
12 sell arsenic tainted wines. Responsible California wineries who do have proper methods and
13 processes in place to reduce inorganic arsenic to acceptable levels are unable to compete at the same
14 price point in the wine market with those wineries who choose instead not to implement the proper
15 methods and processes (and incur the costs thereof) to ensure their wine customers are not exposed to
16 dangerous levels of inorganic arsenic from their contaminated wines.

17 5. For years, Defendants have long known and/or should have known about the serious health risks posed to their
18 consumers by failing to limit and reduce the amount of highly toxic inorganic arsenic in the offending
19 wines. Yet instead of reducing the exposure to acceptable levels as responsible wineries have done,
20 Defendants have knowingly and recklessly engaged in a consistent pattern and practice of selling
21 arsenic-contaminated wine to California consumers, without disclosing either the existence of the
22 toxin in their product, or the health risks it posed, thereby secretly poisoning wine consumers in direct
23 violation of California law.

24 6. This is a consumer class action that seeks, among other things, injunctive relief, civil
25 penalties, disgorgement, and damages to remedy several years of Defendants' negligent, reckless
26 and/or knowing sale of inorganic arsenic contaminated wines, as well as Defendants' failure to warn
27 California wine consumers of the existence of, and the dangers/risks associated with, consuming
28 inorganic arsenic when they drink Defendants' contaminated wines, identified in part in **Exhibit A**,

1 attached hereto. Plaintiffs, upon information and belief, further allege that Defendants are also in
2 violation of California law for the years prior and subsequent to the vintage identified for each
3 wine/variety in **Exhibit A**. The State of California has known, at least since 1987, that exposure to
4 inorganic arsenic causes cancer and causes and/or contributes to a host of other debilitating/fatal
5 diseases. This action further seeks to remedy Defendants' unfair, misleading and deceptive conduct,
6 and to ensure that all wine consumers are, at the very least, warned that they are being exposed to
7 toxic levels of inorganic arsenic before purchasing and/or consuming any of the Defendants' wine.

8 **PARTIES**

9 7. Plaintiff Doris Charles is an individual and resident of San Diego County, State of
10 California.

11 8. Plaintiff Alvin Jones is an individual and resident of Los Angeles County, State of
12 California.

13 9. Plaintiff Jason Peltier is an individual and resident of San Diego County, State of
14 California.

15 10. Plaintiff Jennifer Peltier is an individual and resident of San Diego County, State of
16 California.

17 11. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Franzia")
18 produce, manufacture, sell and/or distribute wine in California and throughout the United States and
19 the world. The Wine Group, Inc., upon information and belief, is a parent company, with its principal
20 place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine Group, LLC,
21 upon information and belief, is a limited liability company, with its principal place of business located
22 at 4596 South Tracy Blvd., Tracy, California. Franzia defendants sell, or have, at times relevant to
23 this Complaint, manufactured, distributed, or sold **Franzia** (*Vintner Select White Grenache, Ex. A,*
24 *line 34; White Zinfandel, Ex. A, line 35; Vintner Select White Merlot, Ex. A, line 36; Vintner Select*
25 *Burgundy, Ex. A, line 37*) brand wine.

26 12. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates and Folie à
27 Deux Winery (collectively, "Ménage à Trois") produce, manufacture, sell and/or distribute wine in
28 California and throughout the United States and the world. Sutter Home Winery, Inc., d/b/a,

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1 Trinchero Family, upon information and belief, is a parent company, with its principal place of
2 business located at 100 St. Helena Highway South Street, Helena, California; and Folie à Deux
3 Winery, upon information and belief, is a subsidiary company, with its principal place of business
4 located at 7481 St. Helena Highway, Oakville California. Ménage à Trois defendants sell, or have, at
5 times relevant to this Complaint, manufactured, distributed, or sold **Ménage à Trois** (*Pinot Grigio*,
6 *Ex. A, line 42; Moscato, Ex. A, line 43; White Blend, Ex. A, line 44; Chardonnay, Ex. A, line 45; Rose,*
7 *Ex. A, line 46; Cabernet Sauvignon, Ex. A, line 47; California Red Wine, Ex. A, line 48)* brand wines.

8 13. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates, and California
9 Natural Products (collectively, "Wine Cube") produce, manufacture, sell and/or distribute wine in
10 California and throughout the United States and the world. Sutter Home Winery, Inc., d/b/a,
11 Trinchero Family, upon information and belief, is a parent company, with its principal place of
12 business located at 100 St. Helena Highway South Street, Helena, California; and California Natural
13 Products, Co., upon information and belief, is a subsidiary company, with its principal place of
14 business located at 1250 East Lathrop Road, Lathrop, California. Wine Cube defendants sell, or have,
15 at times relevant to this Complaint, manufactured, distributed, or sold **Wine Cube** (*Moscato, Ex. A,*
16 *line 75; Pink Moscato, Ex. A, line 76; Pinot Grigio, Ex. A, lines 77-78; Chardonnay, Ex. A, lines 79-*
17 *80; Red Sangria, Ex. A, line 81; Sauvignon Blanc, Ex. A, line 82; Cabernet Sauvignon/Shiraz, Ex. A,*
18 *line 83)* brand wines.

19 14. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates, Rebel Wine
20 Co., LLC and California Natural Products (collectively, "Bandit") produce, manufacture, sell and/or
21 distribute wine in California and throughout the United States and the world. Sutter Home Winery,
22 Inc., d/b/a, Trinchero Family, upon information and belief, is a parent company, with its principal
23 place of business located at 100 St. Helena Highway South Street, Helena, California; Rebel Wine
24 Co., LLC, upon information and belief, is a subsidiary company, with its principal place of business
25 located at 100 St. Helena Highway South Street, Helena, California; and California Natural Products,
26 upon information and belief, is a subsidiary company, with its principal place of business located at
27 1250 East Lathrop Road, Lathrop, California. Bandit defendants sell, or have, at times relevant to this
28 Complaint, manufactured, distributed, or sold **Bandit** (*Pinot Grigio, Ex. A, line 10; Chardonnay, Ex.*

1 A, line 11; Cabernet Sauvignon, Ex. A, line 12) brand wines.

2 15. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates and California
3 Natural Products (collectively, "Sutter Home") produce, manufacture, sell and/or distribute wine in
4 California and throughout the United States and the world. Sutter Home Winery, Inc., upon
5 information and belief, is a parent company, with its principal place of business located at 100 St.
6 Helena Highway South Street, Helena, California; and California Natural Products, upon information
7 and belief, is a subsidiary company, with its principal place of business located at 1250 East Lathrop
8 Road, Lathrop, California. Sutter Home defendants sell, or have, at times relevant to this Complaint,
9 manufactured, distributed, or sold and **Sutter Home** (*Sauvignon Blanc*, Ex. A, line 58;
10 *Gewurztraminer*, Ex. A, line 59; *Pink Moscato*, Ex. A, line 60; *Pinot Grigio*, Ex. A, line 61; *Moscato*,
11 *Ex. A, line 62*; *Chenin Blanc*, Ex. A., line 63; *Sweet Red*, Ex. A, line 64; *Riesling* Ex. A, line 65; *White*
12 *Merlot*, Ex. A, line 66; *Merlot*, Ex. A, line 67; *White Zinfandel*, Ex. A, lines 68-69; *Zinfandel*, Ex. A,
13 *line 70*) brand wines.

14 16. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Mogen
15 David") produce, manufacture, sell and/or distribute wine in California and throughout the United
16 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
17 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
18 Group, LLC, upon information and belief, is a limited liability company, with its principal place of
19 business located at 4596 South Tracy Blvd., Tracy, California. Mogen David defendants sell, or have,
20 at times relevant to this Complaint, manufactured, distributed, or sold **Mogen David** (*Concord*, Ex. A,
21 *line 49*; *Blackberry Wine*, Ex. A, line 50) brand wines.

22 17. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively,
23 "Concannon ") produce, manufacture, sell and/or distribute wine in California and throughout the
24 United States and the world. The Wine Group, Inc., upon information and belief, is a parent company,
25 with its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The
26 Wine Group, LLC, upon information and belief, is a limited liability company, with its principal place
27 of business located at 4596 South Tracy Blvd., Tracy, California. Concannon defendants sell, or
28 have, at times relevant to this Complaint, manufactured, distributed, or sold **Concannon** (*Glen Ellen*

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1 *Reserve Pinot Grigio, Ex. A, line 20; Selected Vineyards Pinot Noir, Ex. A, line 21; Glen Ellen*
2 *Reserve Merlot, Ex. A, line 22)* brand wines.

3 18. Defendants The Wine Group, Inc., The Wine Group, LLC and Varni Brothers, Corp.
4 (collectively, "Flipflop") produce, manufacture, sell and/or distribute wine in California and
5 throughout the United States and the world. The Wine Group, Inc., upon information and belief, is a
6 parent company, with its principal place of business located at 4596 South Tracy Blvd., Tracy,
7 California; The Wine Group, LLC, upon information and belief, is a limited liability company, with its
8 principal place of business located at 4596 South Tracy Blvd., Tracy, California; and Varni Brothers
9 Corp., upon information and belief, is a company, with its principal place of business located at 400
10 Hosmer Ave., Modesto, California. Flipflop defendants sell, or have, at times relevant to this
11 Complaint, manufactured, distributed, or sold **Flipflop** (*Pinot Grigio, Ex. A, line 30; Moscato, Ex. A,*
12 *line 31; Cabernet Sauvignon, Ex. A, line 32)* brand wine.

13 19. Defendants Treasury Wines Estates Americas Co., Treasury Wines Estates Holding,
14 Inc. and Beringer Vineyards (collectively, "Beringer") produce, manufacture, sell and/or distribute
15 wine in California and throughout the United States and the world. Treasury Wines Estates Americas
16 Co., upon information and belief, is a parent company, with its principal place of business located 610
17 Air Park Road, Napa, California; Treasury Wines Estates Holding, Inc., upon information and belief,
18 is an ultimate parent company, with its principal place of business located at PO Box 4500, Napa,
19 California; and Beringer Vineyards, upon information and belief, is a company, with its principal
20 place of business located 2000 Main St., St. Helena, California. Beringer defendants sell, or have, at
21 times relevant to this Complaint, manufactured, distributed, or sold **Beringer** (*White Merlot, Ex. A,*
22 *line 14; White Zinfandel, Ex. A, line 15; Red Moscato, Ex. A, line 16; Refreshingly Sweet Moscato, Ex.*
23 *A, line 17)* brand wine.

24 20. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates and SeaGlass
25 Wine Co. (collectively, "SeaGlass") produce, manufacture, sell and/or distribute wine in California
26 and throughout the United States and the world. Sutter Home Winery, Inc., d/b/a, Trinchero Family,
27 upon information and belief, is a parent company, with its principal place of business located at 100
28 St. Helena Highway South Street, Helena, California; and SeaGlass Wine Co., upon information and

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1 belief, is a company, with its principal place of business located at PO Box 248, St. Helena,
2 California. SeaGlass defendants sell, or have, at times relevant to this Complaint, manufactured,
3 distributed, or sold **SeaGlass** (*Sauvignon Blanc, Ex. A, line 55*) brand wine.

4 21. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Tribuno")
5 produce, manufacture, sell and/or distribute wine in California and throughout the United States and
6 the world. The Wine Group, Inc., upon information and belief, is a parent company, with its principal
7 place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine Group, LLC,
8 upon information and belief, is a limited liability company, with its principal place of business located
9 at 4596 South Tracy Blvd., Tracy, California. Tribuno defendants sell, or have, at times relevant to
10 this Complaint, manufactured, distributed, or sold **Tribuno** (*Sweet Vermouth, Ex. A, line 72*) brand
11 wine.

12 22. Defendants Constellation Wines, US and Smith & Hook Winery Corporation, a/k/a
13 Smith and Hook, d/b/a Hahn Family Wines (collectively, "HRM Rex-Goliath") produce, manufacture,
14 sell and/or distribute wine in California and throughout the United States and the world. Constellation
15 Wines, US, upon information and belief, is a company, with its principal place of business located at
16 801 Main Street, St. Helena, California; Hahn Family Wines, upon information and belief, is a
17 company, with its principal place of business located at 700 California Boulevard, Napa, California;
18 and Smith & Hook Winery Corporation, a/k/a Smith and Hook, upon information and belief, is a
19 company, with its principal place of business located at 37700 Foothill Road (Drawer C), Soledad,
20 California. HRM Rex-Goliath defendants sell, or have, at times relevant to this Complaint,
21 manufactured, distributed, or sold **HRM Rex-Goliath** (*Moscato, Ex. A, line 39*) brand wine.

22 23. Defendant Fetzer Vineyards (individually, "Fetzer") produces, manufactures, sells
23 and/or distributes wine in California and throughout the United States and the world. Fetzer
24 Vineyards, upon information and belief, is a subsidiary, with its principal place of business located at
25 12901 Old River Road, Hopland, California. Fetzer defendant sells, or has, at times relevant to this
26 Complaint, manufactured, distributed, or sold **Fetzer** (*Moscato, Ex. A, line 27; Pinot Grigio, Ex. A,
27 line 28*) brand wine.

28 24. Defendant F. Korbel & Bros., Inc. (individually, "Korbel") produces, manufactures,

1 sells and/or distributes wine in California and throughout the United States and the world. F. Korbel
2 & Bros., Inc., upon information and belief, is a company, with its principal place of business located at
3 13250 River Road, Guerneville, California. Defendant Korbel sells, or has, at times relevant to this
4 Complaint, manufactured, distributed, or sold **Korbel** (*Sweet Rose Sparkling Wine, Ex. A, line 40;*
5 *Extra Dry Sparkling Wine, Ex. A, line 41*) brand wine.

6 25. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Corbett
7 Canyon") produce, manufacture, sell and/or distribute wine in California and throughout the United
8 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
9 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
10 Group, LLC, upon information and belief, is a limited liability company, with its principal place of
11 business located at 4596 South Tracy Blvd., Tracy, California. Corbett Canyon defendants sell, or
12 have, at times relevant to this Complaint, manufactured, distributed, or sold **Corbett Canyon** (*Pinot*
13 *Grigio, Ex. A, line 24; Cabernet Sauvignon, Ex. A, line 25*) brand wine.

14 26. Defendants Megan Mason and Randy Mason, d/b/a Mason Cellars and Oakville
15 Winery Management Corp., GP (collectively, "Pomelo") produce, manufacture, sell and/or distribute
16 wine in California and throughout the United States and the world. Megan Mason and Randy Mason,
17 d/b/a Mason Cellars, upon information and belief is a parent company, with its principal place of
18 business located at 5 Heritage Court, Yountville, California; and Oakville Winery Management Corp.,
19 GP, upon information and belief, is a company, with its principal place of business located at PO Box
20 434, Oakville, California. Pomelo defendants sell, or have, at times relevant to this Complaint,
21 manufactured, distributed, or sold **Pomelo** (*Sauvignon Blanc, Ex. A, line 52*) brand wine.

22 27. Defendants Constellation Wines, US, Woodbridge Winery, Inc. and Simply Naked
23 Winery (collectively, "Simply Naked") produce, manufacture, sell and/or distribute wine in California
24 and throughout the United States and the world. Constellation Wines, US, upon information and
25 belief, is a company, with its principal place of business located at 801 Main Street, St. Helena,
26 California; Woodbridge Winery, Inc., upon information and belief, is a company, with its principal
27 place of business located at 1649 E Victor Rd, 1C, Lodi, California; and Simply Naked Winery, upon
28 information and belief, is a company, with its principal place of business located in Acampo,

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1 California. Simply Naked defendants sell, or have, at times relevant to this Complaint, manufactured,
2 distributed, or sold **Simply Naked** (*Moscato, Ex. A, line 56*) brand wine.

3 28. Defendants Winery Exchange, Inc. and Sonoma Wine Co., LLC (collectively,
4 “Acronym”) produce, manufacture, sell and/or distribute wine in California and throughout the United
5 States and the world. Winery Exchange, Inc., upon information and belief, is a company, with its
6 principal place of business located at 500 Redwood Blvd., Ste. 200, Novato California; and Sonoma
7 Wine Co., LLC, upon information and belief, is a limited liability company, with its principal place of
8 business located at 9119 Graton Road, Graton, California. Acronym defendants sell, or have, at times
9 relevant to this Complaint, manufactured, distributed, or sold **Acronym** (*Gr8rw Red Blend, Ex. A, line*
10 *1*) brand wine.

11 29. Defendants Constellation Wines, US and California Natural Products (collectively,
12 “Vendange”) produce, manufacture, sell and/or distribute wine in California and throughout the
13 United States and the world. Constellation Wines, US, upon information and belief, is a company,
14 with its principal place of business located at 801 Main Street, St. Helena, California; and California
15 Natural Products, upon information and belief, is a company, with its principal place of business
16 located at 1250 East Lathrop Road, Lathrop California. Vendange defendants sell, or have, at times
17 relevant to this Complaint, manufactured, distributed, or sold **Vendange** (*Merlot, Ex. A, line 73; White*
18 *Zinfandel, Ex. A, line 74*) brand wines.

19 30. Defendant Constellation Wines, US (individually, “Cooks”) produces, manufactures,
20 sells and/or distributes wine in California and throughout the United States and the world.
21 Constellation Wines, US, upon information and belief, is a company, with its principal place of
22 business located at 801 Main Street, St. Helena, California. Cooks defendant sells, or has, at times
23 relevant to this Complaint, manufactured, distributed, or sold **Cooks** (*Spumante, Ex. A, line 23*) brand
24 wine.

25 31. Defendants The Wine Group, Inc., The Wine Group, LLC, Constellation Wines, US,
26 (collectively, “Almaden”) produce, manufacture, sell and/or distribute wine in California and
27 throughout the United States and the world. The Wine Group, Inc., upon information and belief, is a
28 parent company, with its principal place of business located at 4596 South Tracy Blvd., Tracy,

1 California; The Wine Group, LLC, upon information and belief, is a limited liability company, with its
2 principal place of business located at 4596 South Tracy Blvd., Tracy, California; and Constellation
3 Wines, US, upon information and belief, is a company, with its principal place of business located at
4 801 Main Street, St. Helena, California. Almaden defendants sell, or have, at times relevant to this
5 Complaint, manufactured, distributed, or sold **Almaden** (*Heritage White Zinfandel, Ex. A, lines 2, 4;*
6 *Heritage Moscato, Ex. A, line 3; Heritage Chardonnay, Ex. A, line 5; Mountain Burgundy, Ex. A, line*
7 *6; Mountain Rhine, Ex. A, line 7; Mountain Chablis, Ex. A, line 8*) brand wine.

8 32. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Oak
9 Leaf") produce, manufacture, sell and/or distribute wine in California and throughout the United
10 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
11 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
12 Group, LLC, upon information and belief, is a limited liability company, with its principal place of
13 business located at 4596 South Tracy Blvd., Tracy, California. Oak Leaf defendants sell, or have, at
14 times relevant to this Complaint, manufactured, distributed, or sold **Oak Leaf** (*White Zinfandel, Ex. A,*
15 *line 51*) brand wine.

16 33. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Foxhorn")
17 produce, manufacture, sell and/or distribute wine in California and throughout the United States and
18 the world. The Wine Group, Inc., upon information and belief, is a parent company, with its principal
19 place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine Group, LLC,
20 upon information and belief, is a limited liability company, with its principal place of business located
21 at 4596 South Tracy Blvd., Tracy, California. Foxhorn defendants sell, or have, at times relevant to
22 this Complaint, manufactured, distributed, or sold **Fox Horn** (*White Zinfandel, Ex. A, line 33*) brand
23 wine.

24 34. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively,
25 "Trapiche") produce, manufacture, sell and/or distribute wine in California and throughout the United
26 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
27 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
28 Group, LLC, upon information and belief, is a limited liability company, with its principal place of

1 business located at 4596 South Tracy Blvd., Tracy, California. Trapiche defendants sell, or have, at
2 times relevant to this Complaint, manufactured, distributed, or sold **Trapiche** (*Malbec, Ex. A, line 71*)
3 brand wine.

4 35. Defendants The Wine Group, Inc., The Wine Group, LLC and Golden State Vintners
5 (collectively, "Fisheye") produce, manufacture, sell and/or distribute wine in California and
6 throughout the United States and the world. The Wine Group, Inc., upon information and belief, is a
7 parent company, with its principal place of business located at 4596 South Tracy Blvd., Tracy,
8 California; The Wine Group, LLC, upon information and belief, is a limited liability company, with its
9 principal place of business located at 4596 South Tracy Blvd., Tracy, California; and Golden State
10 Vintners, upon information and belief, is a parent company, with its principal place of business located
11 at 4596 South Tracy Blvd., Tracy, California. Fisheye defendants sell, or have, at times relevant to
12 this Complaint, manufactured, distributed, or sold **Fisheye** (*Pinot Grigio, Ex. A, line 29*) brand wine.

13 36. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively, "Bay
14 Bridge") produce, manufacture, sell and/or distribute wine in California and throughout the United
15 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
16 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
17 Group, LLC, upon information and belief, is a limited liability company, with its principal place of
18 business located at 4596 South Tracy Blvd., Tracy, California. Bay Bridge defendants sell, or have, at
19 times relevant to this Complaint, manufactured, distributed, or sold **Bay Bridge** (*Chardonnay, Ex. A,*
20 *Line 13*) brand wine.

21 37. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively,
22 "Cupcake") produce, manufacture, sell and/or distribute wine in California and throughout the United
23 States and the world. The Wine Group, Inc., upon information and belief, is a parent company, with
24 its principal place of business located at 4596 South Tracy Blvd., Tracy, California; and The Wine
25 Group, LLC, upon information and belief, is a limited liability company, with its principal place of
26 business located at 4596 South Tracy Blvd., Tracy, California. Cupcake defendants sell, or have, at
27 times relevant to this Complaint, manufactured, distributed, or sold **Cupcake** (*Malbec, Ex. A, line 26*)
28 brand wine.

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1 38. Defendants Treasury Wines Estates Americas Co. and Treasury Wines Estates Holding,
2 Inc. (collectively, "Colores Del Sol") produce, manufacture, sell and/or distribute wine in California
3 and throughout the United States and the world. Treasury Wines Estates Americas Co., upon
4 information and belief, is a parent company, with its principal place of business located 610 Air Park
5 Road, Napa, California; and Treasury Wines Estates Holding, Inc., upon information and belief, is an
6 ultimate parent company, with its principal place of business located at PO Box 4500, Napa,
7 California. Colores Del Sol defendants sell, or have, at times relevant to this Complaint,
8 manufactured, distributed, or sold **Colores Del Sol** (*Malbec, Ex. A, line 19*) brand wine.

9 39. Defendant Winery Exchange, Inc. (individually, "Arrow Creek") produces,
10 manufactures, sells and/or distributes wine in California and throughout the United States and the
11 world. Winery Exchange, Inc., upon information and belief, is a company, with its principal place of
12 business located 500 Redwood Blvd., Ste. 200, Novato, California. Defendant Arrow Creek sold, or
13 have, at times relevant to this Complaint, manufactured, distributed, or sold **Arrow Creek** (*Coastal*
14 *Series Cabernet Sauvignon, Ex. A, line 9*) brand wine.

15 40. Defendant Winery Exchange, Inc. (individually, "Hawkstone") produces,
16 manufactures, sells and/or distributes wine in California and throughout the United States and the
17 world. Winery Exchange, Inc., upon information and belief, is a company, with its principal place of
18 business located 500 Redwood Blvd., Ste. 200, Novato, California. Defendant Hawkstone sold, or
19 have, at times relevant to this Complaint, manufactured, distributed, or sold **Hawkstone** (*Cabernet*
20 *Sauvignon, Ex. A, line 38*) brand wine.

21 41. Defendant Constellation Wines, US (individually, "Richards Wild Irish Rose")
22 produces, manufactures, sells and/or distributes wine in California and throughout the United States
23 and the world. Constellation Wines, US, upon information and belief, is a company, with its principal
24 place of business located at 801 Main Street, St. Helena, California. Richard Wild Irish Rose
25 defendant sells, or has, at times relevant to this Complaint, manufactured, distributed, or sold **Richard**
26 **Wild Irish Rose** (*Red Wine, Ex. A, line 54*) brand wine.

27 42. Defendants Don Sebastiani & Sons International Wine Négociants, Corp. and Don
28 Sebastiani & Sons International Wine Négociants (collectively, "Smoking Loon") produce,

1 manufacture, sell and/or distribute wine in California and throughout the United States and the world.
2 Don Sebastiani & Sons International Wine Négociants, Corp., upon information and belief, is a
3 company, with its principal place of business located 485 1st West, Sonoma, California; and California
4 and Don Sebastiani & Sons International Wine Négociants, upon information and belief, is a parent
5 company, with its principal place of business located at 520 Airport Road, Napa, California. Smoking
6 Loon defendants sell, or have, at times relevant to this Complaint, manufactured, distributed, or sold
7 **Smoking Loon** (*Viognier, Ex. A, line 57*) brand wine.

8 43. Defendants Bronco Wine Company and Trader Joe's Company (collectively, "Charles
9 Shaw") produce, manufacture, sell and/or distribute wine in California and throughout the United
10 States and the world. Bronco Wine Company, upon information and belief, is a parent company, with
11 its principal place of business located 6342 Bystrum Road, Ceres, California; and Trader Joe's
12 Company, upon information and belief, is a company, with its principal place of business located 800
13 S. Shamrock Ave., Monrovia, California. Charles Shaw defendants sell, or have, at times relevant to
14 this Complaint, manufactured, distributed, or sold **Charles Shaw** (*White Zinfandel, Ex. A, line 18*)
15 brand wine.

16 44. Defendants Jean-Claude Boisset Wines, USA Inc. and Raymond Vineyard and
17 Cellar/Raymond Vineyard and Cellar, Inc. (collectively, "R. Collection by Raymond") produce,
18 manufacture, sell and/or distribute wine in California and throughout the United States and the world.
19 Jean-Claude Boisset Wines, USA, Inc., upon information and belief, is a subsidiary company, with its
20 principal place of business is located at 849 Zinfandel Lane, Saint Helena, California; and Raymond
21 Vineyard and Cellar/Raymond Vineyard and Cellar, Inc., upon information and belief, are subsidiary
22 companies, with their principal place of business located at 849 Zinfandel Lane, Saint Helena,
23 California. R. Collection by Raymond defendants sell, or have, at times relevant to this Complaint,
24 manufactured, distributed, or sold **R. Collection by Raymond** (*Chardonnay, Ex. A, line 53*) brand
25 wine.

26 45. Plaintiffs are currently ignorant of the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1
28 through 200, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will

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1 amend this complaint to allege the true names and capacities of said fictitiously named defendants
2 when their true names and capacities have been ascertained. Plaintiffs are informed and believe and
3 thereon allege that each of the fictitiously named Doe defendants are legally responsible in some
4 manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiffs and
5 members of the Class.

6 46. As sued herein, "Defendants" shall mean the above-named Defendants, including all
7 entities through which they do business and its predecessors, successors, affiliates, representatives,
8 attorneys, employees, and/or assigns who, in concert and/or acting as agents for one another, engaged
9 in the conduct complained of herein.

10 **JURISDICTION AND VENUE**

11 47. This class action is brought pursuant to the California Code of Civil Procedure section
12 382. The damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limit of the
13 Superior Court and will be established according to proof at trial.

14 48. This Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those
16 given by statute to other courts." The statutes under which this action is brought do not specify any
17 other basis for jurisdiction.

18 49. This Court has jurisdiction over the Defendants because, upon information and
19 belief, each Defendant is a citizen and/or resident of California.

20 50. Venue is proper in this Court because, upon information and belief, all Defendants
21 reside in and/or transact business in this County and the acts and omissions alleged herein took place
22 in this County.

23 **GENERAL ALLEGATIONS**

24 51. All allegations in this complaint are based on information and belief that they will have
25 evidentiary support, after a reasonable opportunity for further investigation or discovery. Whenever
26 allegations in this complaint are contrary or inconsistent, such allegations shall be deemed to be
27 alleged in the alternative.

28

1 **FACTUAL ALLEGATIONS**

2 52. California contains the largest wine region in the United States. California has more
3 than 1,200 wineries, ranging from small boutique wineries to large corporations. California wineries
4 account for nearly 90 percent of American wine production, and are responsible for producing more
5 than 60% of all wine consumed in the country. If California were a separate country, it would be the
6 fourth largest wine producer in the world. According to the Wine Institute, in 2013, California wine
7 shipments within the United States alone were 215 million cases - 2,580,000,000 bottles of wine -
8 with an estimated retail value of \$23.1 billion.

9 53. California wineries typically do not disclose the ingredients or chemicals (beyond
10 alcohol content and sulfites) that are present in the wine they are selling. Moreover, no government
11 regulatory agency is regularly monitoring or testing these wines to ensure they are free from toxic
12 poisons that could sicken or kill consumers over time. Specifically, no government agency is
13 regularly testing wine for toxic ingredients such as inorganic arsenic, leaving the wineries to police
14 their own wines, and wine consumers to fend for themselves, without regulatory protection or the
15 necessary warnings to make an informed decision.

16 54. Wine may contain both organic and inorganic arsenic. Of these, inorganic arsenic is
17 substantially more toxic and dangerous to humans. Based upon independent sample testing on the
18 wines at issue in this complaint, inorganic arsenic makes up the overwhelming majority of the arsenic
19 in these wines. Inorganic arsenic is: (1) acutely toxic when introduced into the human body; (2)
20 proven to cause cancer; (3) known to cause and contribute to a host of debilitating illnesses, and (4)
21 when consumed over time, increases the likelihood of early death. The World Health Organization
22 classifies inorganic arsenic as a "MAJOR PUBLIC HEALTH CONCERN." Ingestion of arsenic can
23 cause nausea, vomiting, abdominal pain, severe diarrhea, disturbances of the cardiovascular and
24 nervous systems, and eventual death. Chronic arsenic toxicity results in multi-system disease and has
25 been linked to a variety of dermal symptoms (exfoliative dermatitis, keratosis, vitiligo, skin cancer),
26 peripheral neuropathy, encephalopathy, bronchitis, pulmonary fibrosis, portal hypertension, peripheral
27 vascular disease/"black foot disease," atherosclerosis, various cancers (including skin, bladder, lung,
28 liver, kidney, nasal passage, prostate and colon cancer) and diabetes mellitus.

1 55. Along with the alarming carcinogenicity of arsenic and its implication in multiple
2 cancers (including skin, bladder, lung, liver, kidney, nasal passages, prostate and colon), comes the
3 very real concern which has been identified in medical literature between arsenic toxicity, type 2
4 diabetes mellitus and obesity. This association is of the utmost importance, as incidence and
5 prevalence of type 2 diabetes and obesity have reached epidemic proportions representing a public
6 health emergency. Specifically, the U.S. Center for Disease Control projects that 1 in 3 of children
7 born in the year 2000 will become diabetic in their lifetime, and 1 in 2 among Hispanic females.

8 56. While inorganic arsenic is considered to be more toxic than organic arsenic, several
9 methyl and phenyl derivatives of arsenic such as monomethylarsonic acid (MMA), and dimethyl
10 arsenic acid (DMA) are of possible health concern as per the Agency for Toxic Substances and
11 Disease Registry (*ATSDR 2007 Toxicological Profile for Arsenic* (1). The International Agency for
12 Research on Cancer has classified arsenic as a Class I human carcinogen. The U.S. Environmental
13 Protection Agency clearly states that the maximum contaminant level goal (MCLG) for *any* arsenic is
14 *zero*, based on the best available science to prevent potential health problems. The resulting
15 maximum contaminant level (MCL) , which represents the enforceable target level for arsenic in
16 water, considers cost and feasibility and was set at 10 ppb. Of note, this measurement is for *total*
17 arsenic and does not consider or require any speciation analysis of organic versus inorganic.

18 57. Defendants manufacture and/or distribute wines labeled, marketed and intended for
19 immediate human consumption (without being made a constituent or ingredient of another product,
20 nor requiring substantial additional preparation), including but not limited to the wines referenced
21 herein. These wines are manufactured, distributed and/or sold in California.

22 58. Defendants produce, manufacture and/or distribute wine in California that contains
23 inorganic arsenic in amounts far in excess of what is allowed in drinking water. Defendants do not
24 warn that their products contain unsafe amounts of inorganic arsenic, nor do they disclose even the
25 existence of inorganic arsenic in the wine. Consequently, Defendants' California wine consumers
26 have been made unwitting "guinea pigs" of arsenic exposure, being involuntarily exposed to toxic
27 levels of inorganic arsenic over and over again by the Defendants. Even today, with the sophisticated
28 testing equipment available to wine makers and distributors, Defendants still conceal and/or refuse to

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1 warn the typical California wine consumer about the true risks they are taking by ingesting and
2 consuming their product.

3 59. The wines at issue in this case contain toxic inorganic arsenic at levels that exceed
4 California standards, resulting in human ingestion/exposure to Class I carcinogens without any
5 disclosure or warning to the consumer.

6 60. Inorganic arsenic has long been known to be toxic to humans, and acceptable limits of
7 inorganic arsenic in food and drink have been repeatedly lowered over the years. It is now well-
8 understood that even very small amounts of inorganic arsenic can be harmful to humans.

9 61. During the four years preceding the filing of this complaint, in Los Angeles County,
10 California, Defendants sold, and Plaintiffs and the other members of the Class purchased Defendants'
11 wine, described above.

12 62. Plaintiffs and other similarly situated California consumers bought the wine primarily
13 for personal, family, or household purchases. Defendants know and intend that individuals will
14 consume their wines.

15 63. The named Defendants produce and distribute wine to California consumers at
16 inorganic arsenic levels significantly higher than what the State of California considers the maximum
17 acceptable limit for safe daily exposure.

18 64. Each of the Defendants manufacture and/or distribute and/or sell wine in California
19 containing toxic levels of inorganic arsenic, yet Defendants have failed, and continue to fail, to
20 comply with state health law standards or to provide the wine consumer with any warning of this fact.
21 Defendants actually knew and/or should have known of the toxic levels of inorganic arsenic in their
22 wines, yet continued to manufacture and/or distribute their toxic wine without disclosing or warning
23 of that fact, instead actively concealing such information from the general public.

24 65. Defendants' marketing and advertising of their wines was, and continues to be unfair,
25 untrue, deceptive and misleading. This conduct includes, but is not limited to:

- 26 (a) Failing to warn that Defendants' wine contains inorganic arsenic, a chemical
27 known to the State of California to cause cancer and other serious illnesses;
28 (b) Failing to warn that Defendants' wine contains levels of inorganic arsenic

1 widely considered to be unsafe and inappropriate for human consumption;

2 (c) Representing to Plaintiffs and similarly situated consumers and the general
3 public that Defendants' wines were safe and fit for human use, knowing that
4 said representations were false, and concealing from Plaintiffs and similarly
5 situated consumers and the general public that its wine contains inorganic
6 arsenic;

7 (d) Engaging in advertising programs designed to create the image, impression and
8 belief by consumers that Defendants' wines are safe and fit for human use, even
9 though Defendants knew this to be false, and even though Defendants had no
10 reasonable grounds to believe them to be true; and

11 (e) Purposefully downplaying and understating the health hazards and risks
12 associated with Defendants' wines.

13 66. Defendants could have taken measures to limit or reduce the amount of inorganic
14 arsenic levels in the offending wines to allowable levels, but did not do so in order to enjoy additional
15 profits at the expense of the wine consumer.

16 67. But for Defendants' unfair, untrue, deceptive and misleading conduct, Defendants
17 would not have been able to sell the wine and Plaintiffs and other similarly situated California
18 consumers would not have purchased the wine.

19 68. But for Defendants' unfair, untrue, deceptive and misleading conduct, Defendants
20 would have to warn consumers of the inorganic arsenic in its wine or take steps in the manufacturing
21 of the wine to prevent unsafe levels of inorganic arsenic from getting into the wine or to reduce the
22 unsafe levels of inorganic arsenic in the wine.

23 69. Plaintiffs and all other California consumers similarly situated are therefore entitled to
24 damages and full restitution of their purchases of Defendants' wines. All Plaintiffs, and all others
25 similarly situated are also entitled to injunctive relief to prevent the continued sale of wine with
26 excessive levels of inorganic arsenic. In addition, all consumers of Defendants' wines who were
27 denied the ability to make a knowing choice as to whether to purchase the wines with excessive levels
28 of inorganic arsenic should be refunded the full purchase price of the wines.

1 70. As a result of Defendants' conduct described above, Plaintiffs and the Class have in
2 fact suffered economic injuries and lost money, including the purchase price of the wine, as described
3 herein.

4 CLASS ALLEGATIONS

5 71. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
6 situated pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent the following
7 Class:

8 **All persons residing in California who purchased any of the Wines**
9 **Listed on Exhibit A of any vintage from January 1, 2011 through the**
10 **present.**

11 72. Upon information and belief, the scope of this Class definition, including its temporal
12 scope, may be further refined after discovery of Defendants' and/or third party records.

13 73. Excluded from the Class are governmental entities, Defendants, any entity in which
14 Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal
15 representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class is any
16 judge, justice, or judicial officer presiding over this matter and the members of their immediate
17 families and judicial staff.

18 74. All members of the Class, and any subclass that may be certified, were and are
19 similarly affected by Defendants' conduct or omission regarding the non-disclosure of the toxic
20 substances in the product, and the relief sought herein is for the benefit of Plaintiffs and members of
21 the Class and any subclass.

22 75. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are a member of the
23 Class they seek to represent. Plaintiffs are members of a Class of California consumers, and the
24 members of this Class of consumers were similarly situated and similarly affected by the conduct
25 alleged of Defendants and incurred similar damage, as alleged in this complaint, as a result of
26 Defendants' conduct. Members of the Class are ascertainable from Plaintiffs' description of the Class
27 and/or Defendants' records and/or records of third parties accessible through discovery.

28 76. The representative Plaintiffs will fairly and adequately represent the members of the
Class and have no interests that are antagonistic to the claims of the Class. Plaintiffs' interests in this

1 action are antagonistic to the interests of Defendants, and they will vigorously pursue the claims of the
2 Class.

3 77. The representative Plaintiffs have retained counsel who are competent and experienced
4 in consumer class action litigation, and have successfully represented consumers in complex class
5 actions.

6 78. Common questions of law or fact impact the rights of each member of the Class and a
7 common remedy by way of permissible damages, restitutionary disgorgement and/or injunctive relief
8 is sought for the Class.

9 79. There are numerous and substantial questions of law or fact common to all members of
10 the Class that will predominate over any individual issues, including but not limited to:

- 11 (a) whether Defendants' wines contain unacceptably high levels of inorganic arsenic;
- 12 (b) whether Defendants were required to disclose to the Class that their wines contain
- 13 unacceptably high levels of inorganic arsenic;
- 14 (c) whether the Class has been damaged as a result of Defendants' conduct;
- 15 (d) whether the Defendants have been unjustly enriched by their conduct;
- 16 (e) whether Defendants' conduct violated California law;
- 17 (f) whether the Class members are the beneficiaries of a warranty and if that warranty
- 18 has been breached.

19 80. A class action provides a fair and efficient method, if not the only method, for
20 adjudicating this controversy. The substantive claims of the representative Plaintiffs and the Class are
21 nearly identical and will require evidentiary proof of the same kind and application of the same law.

22 81. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy because the number of Class members is believed to be at least in the
24 thousands and individual joinder is impracticable. The expense and burden of individual litigation
25 would make it impracticable or impossible for proposed Class members to prosecute their claims
26 individually. Trial of Plaintiffs' and the Class members' claims are manageable. Unless a Class is
27 certified, Defendants will be unjustly enriched at the expense of Class members.

28 82. There is no plain, speedy, or adequate remedy other than by maintenance of this class

1 action because Plaintiffs are informed and believe that damage to each member of the Class is
2 relatively small, making it economically unfeasible to pursue remedies other than by way of a class
3 action.

4 83. The persons in the Class are so numerous that the joinder of all such persons
5 individually in this case is impracticable, and the disposition of their claims in this case and as part of
6 a single class action lawsuit, rather than thousands of individual lawsuits, will benefit the parties and
7 greatly reduce the aggregate judicial resources that would be spent if this matter were handled as
8 thousands of separate lawsuits.

9 84. Plaintiffs know of no difficulty that will be encountered in the management of this
10 litigation, which would preclude its maintenance of a class action.

11 85. Defendants have acted on grounds generally applicable to the entire Class, thereby
12 making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class
13 as a whole. Prosecution of separate actions by individual members of the Class would create the risk
14 of inconsistent or varying adjudications with respect to individual members of the Class that would
15 establish incompatible standards of conduct for the Defendants.

16 86. Without a class action, Defendants will likely retain the benefit of their wrongdoing
17 and will continue a course of action that will result in further damages to Plaintiffs and the Class.
18 Plaintiffs envision no difficulty in the management of this action as a class action.

19 87. On the basis of all of the facts alleged hereinabove, Defendants' conduct and actions
20 were despicable, and were done maliciously, oppressively and fraudulently, with a willful and
21 conscious disregard of Plaintiffs' rights, thereby subjecting Plaintiffs to unjust hardship and distress,
22 entitling Plaintiffs to punitive damages under California Civil Code section 3294. Defendants'
23 officers, directors and managing agents were personally informed and involved in the decision-making
24 process with respect to the misconduct alleged herein and to be proven at trial.

1 FIRST CAUSE OF ACTION

2 (Violation of Consumers Legal Remedies Act – Civ. Code § 1750, *et seq.*)

3 (By Plaintiffs and all Class members against all Defendants)

4 88. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
5 in the preceding paragraphs of this complaint as though fully set forth herein.

6 89. Plaintiffs are “consumers” within the meaning of California Civil Code § 1761(d).

7 90. Defendants have engaged in deceptive practices, unlawful methods of competition,
8 and/or unfair acts as defined by Civil Code section 1750, *et seq.*, to the detriment of Plaintiffs and
9 members of the Class. The following deceptive practices have been intentionally, knowingly, and
10 unlawfully perpetrated upon Plaintiffs and members of the Class by Defendants:

11 91. In violation of Civil Code section 1770(a)(2), Defendants misrepresented the source,
12 sponsorship, approval, or certification of goods or services;

13 92. In violation of Civil Code section 1770(a)(5), Defendants represented that goods or
14 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
15 they do not have;

16 93. In violation of Civil Code section 1770(a)(7), Defendants represented that goods or
17 services are of a particular standard, quality, or grade, or that goods are of a particular style or model,
18 if they are of another;

19 94. In violation of Civil Code section 1770(a)(9), Defendants advertised goods or services
20 with intent not to sell them as advertised.

21 95. As a result of the use or employment by Defendants of the above-alleged methods, acts,
22 and practices, Plaintiff and the Class suffered damage within the meaning of Civil Code section
23 1780(a), entitling them to, *inter alia*, restitution, injunctive relief, attorneys’ fees and costs. Plaintiffs
24 and the Class further intend to seek compensatory damages, and, in light of defendants willful and
25 conscious disregard for the rights of Plaintiffs and the Class, and in light of defendants’ intentional
26 and fraudulent concealment of material facts, Plaintiffs and the Class also intend to seek an award of
27 punitive damages. Pursuant to Civil Code section 1782(a), Plaintiffs will serve defendants with notice
28 of alleged violations of the CLRA by certified mail return receipt requested. If within 30 days after

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1 the date of such notification Defendants fail to provide appropriate relief for the violations of the
2 CLRA, Plaintiffs will amend this complaint to seek monetary damages (both compensatory and
3 punitive) under the CLRA.

4 96. Plaintiffs and the Class request an injunction requiring Defendants to stop selling wine
5 to the public with excessive levels of inorganic arsenic.

6 **SECOND CAUSE OF ACTION**

7 **(Unfair Business Practices – Business & Professions Code § 17200, *et seq.*)**

8 **(By Plaintiffs and all Class members against all Defendants)**

9 97. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
10 in the preceding paragraphs of this complaint as though fully set forth herein

11 98. California Business & Professions Code §17200 provides that unfair competition shall
12 mean and include “all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
13 misleading advertising.”

14 99. Defendants’ business practices are unlawful under Business & Professions Code
15 section 17200, *et seq.* by virtue of, among other things, Defendants’ violations of Health & Safety
16 Code § 25249.5, *et seq.*

17 100. Defendants’ business practices are unfair under California Business & Professions
18 Code section 17200 because it exposes California wine consumers to excessive levels of arsenic,
19 potentially damaging to their health, without warning.

20 101. Defendants’ business practices are fraudulent under Business & Professions Code
21 section 17200, *et seq.* because Defendants fail to warn of the high levels of arsenic, which conduct is
22 deceptive and likely to mislead the public.

23 102. As a result of Defendants’ illegal business practices, Plaintiffs and the members of the
24 Class are entitled to an order, pursuant to Business and Professions Code section 17203, enjoining
25 such future conduct and such other orders and judgments that may be necessary to provide
26 restitutionary disgorgement of Defendants’ ill-gotten gains and to restore to any Class member any
27 money paid for the tainted wine.
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1 **THIRD CAUSE OF ACTION**

2 **(Misleading and Deceptive Advertising – Business & Professions Code, § 17500, *et seq.*)**

3 **(By Plaintiffs and all Class members against all Defendants)**

4 103. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
5 in the preceding paragraphs of this complaint as though fully set forth herein.

6 104. California Business & Professions Code §17500 provides that it is unlawful for any
7 person, firm, corporation, or association to dispose of property or perform services, or to induce the
8 public to enter into any obligation relating thereto, through the use of untrue or misleading statements.

9 105. By engaging in the conduct described above, Defendants have committed acts of
10 disseminating untrue and misleading statements as defined by California Business & Professions Code
11 § 17500.

12 106. The foregoing practices constitute false and misleading advertising within the meaning
13 of California Business & Professions Code § 17500.

14 107. As a result of its conduct described above, Defendant has and will be unjustly enriched.
15 Specifically, Defendants have been unjustly enriched by receipt of ill-gotten gains from the sale of the
16 wine, sold in large part as a result of the acts and omissions described herein.

17 108. Pursuant to California Business California Business & Professions Code § 17535,
18 Plaintiffs seek an order of this court compelling the Defendants to provide restitution, damages and
19 injunctive relief calling for Defendants to cease such false and misleading advertising in the future.

20 **FOURTH CAUSE OF ACTION**

21 **(Unjust Enrichment)**

22 **(By Plaintiffs and all Class members against all Defendants)**

23 109. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
24 in the preceding paragraphs of this complaint as though fully set forth herein.

25 110. As a result of Defendants' deceptive marketing and sale of its wine products, as
26 described above, Defendants were enriched, at the expense of Plaintiffs and those similarly situated,
27 through the payment of the purchase price for the wine.

28 111. Under the circumstances, it would be against equity and good conscience to permit

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1 Defendants to retain the ill-gotten benefits that it received from Plaintiffs and those similarly situated,
2 in light of the fact that the wines purchased by Plaintiffs, and those similarly situated, was not what
3 Defendants purported it to be, *i.e.*, a product safe for human consumption and free of toxins at any
4 level for which labeling and disclosure was required. This, it would be unjust or inequitable for
5 Defendants to retain the benefit without restitution to the Plaintiffs, and those similarly situated, for
6 monies paid to Defendants for the wine.

7 **FIFTH CAUSE OF ACTION**

8 **(Breach of the Implied Warranty of Merchantability)**

9 **(By Plaintiffs and all Class members against all Defendants)**

10 112. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
11 in the preceding paragraphs of this complaint as though fully set forth herein.

12 113. Plaintiffs and other Class members purchased Defendants' wine product, which were
13 marketed and sold as compliant with California state disclosure requirements and free of toxins at any
14 level for which labeling and disclosure were required. Pursuant to these sales, Defendants impliedly
15 warranted that its wine products would be merchantable and fit for the ordinary purpose for which
16 such goods are used. They were not.

17 114. As a proximate result of this breach of warranty by Defendants, Plaintiffs and Class
18 members have suffered damages in an amount to be determined at trial. In addition, Plaintiffs and
19 Class members were deprived of the benefit of their bargain and spent money on Defendants wine
20 products, without being told it contained un-safe levels of toxic inorganic arsenic that made it unfit for
21 human consumption.

22 **SIXTH CAUSE OF ACTION**

23 **(Negligent Misrepresentation/Omission)**

24 **(By Plaintiffs and all claims members against all Defendants)**

25 115. Plaintiffs and the Class re-allege and incorporate by reference the allegations contained
26 in the preceding paragraphs of this complaint as though fully set forth herein.

27 116. Defendants owed a duty to Plaintiffs and Class members to exercise reasonable care in
28 making representations and disclosures about their wine when sold to consumers.

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1 117. Defendants knew, or should have known by the exercise of reasonable care, that the
2 wine contained unsafe amounts of inorganic arsenic and thus should not have sold the wine to
3 consumers without proper labeling and disclosure of the risks of consumption.

4 118. Plaintiffs and the Class members believe and relied upon the failure to properly label
5 and failure to disclose the risks posed to consumers of inorganic arsenic in their product when
6 deciding to purchase the wine, and how much to pay for the wine.

7 119. As a direct and proximate result of Defendants' negligent and/or reckless conduct,
8 Plaintiff and the Class have been damaged in an amount to be proven at trial.

9 **PRAYER FOR RELIEF**

10 WHEREFORE Plaintiffs, individually and on behalf of all others similarly situated, and on
11 behalf of the general public, pray for judgment against Defendants as follows:

12 1. For an order certifying this case as a class action, and appointing Plaintiffs and their
13 counsel to represent the Class;

14 2. For a declaratory judgment that Defendants exposure to inorganic arsenic to consumers
15 when drinking their wines is unlawful;

16 3. For an order requiring Defendants, at its own cost, to notify all Class members of the
17 unlawful and deceptive conduct herein;

18 4. For an order requiring Defendants to make full disclosure of the risks of consuming
19 inorganic arsenic from their wines on the wine's label such that it complies with all applicable food
20 labeling rules and regulations;

21 5. For an order requiring Defendants to engage in corrective advertising regarding the
22 conduct discussed above;

23 6. For an order awarding, as appropriate, compensatory damages and restitutionary
24 disgorgement to Plaintiffs and the Class;

25 7. For an order enjoining Defendants from continuing to market, advertise, distribute, and
26 sell these products in the unlawful manner described herein, and ordering Defendants to engage in
27 corrective action;

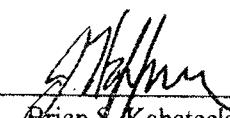
28 8. For all remedies available pursuant to the Civil Code;

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- 9. For an order awarding attorneys' fees and costs;
- 10. For an order awarding punitive damages;
- 11. For an order awarding pre- and post-judgment interest; and
- 12. For an order providing such further relief as this Court deems proper.

Dated: March 18, 2015

KABATECK BROWN KELLNER LLP
BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.
LEVIN PAPANTONIO THOMAS MITCHELL
RAFFERTY & PROCTOR, P.A.

By: 

Brian S. Kabateck
Joshua H. Haffner
Attorneys for Plaintiffs

03/19/2015

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of their claims.

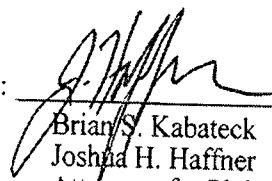
Dated: March 18, 2015

KABATECK BROWN KELLNER LLP

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

**LEVIN PAPANTONIO THOMAS MITCHELL
RAFFERTY & PROCTOR, P.A.**

By: _____



Brian S. Kabateck
Joshua H. Haffner
Attorneys for Plaintiffs

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