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11 Attorneys for *Plaintiff Perry Michael*  
*Fischer*

12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14

15 PERRY MICHAEL FISCHER,  
 individually and on behalf of all others  
 16 similarly situated,  
 17 Plaintiff,  
 18 v.  
 19 DIAGEO NORTH AMERICA, INC.,  
 20 Defendant.  
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CASE NO. 2:21-cv-7249

**CLASS ACTION**

**COMPLAINT FOR DAMAGES:**

1. Violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
2. Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
3. Violation of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500;
4. Violation of North Carolina’s Unfair and Deceptive Trade Practice Act. N.C. Gen. Stat. §§75-1.1. *et seq.*;
5. Violation of Various State Breach of Express Warranty Statutes; and
6. Unjust Enrichment.

**JURY TRIAL DEMANDED**

1 Plaintiff Perry Michael Fischer (“Plaintiff”), on behalf of himself and all others  
2 similarly situated, by and through his undersigned attorneys, brings this Class Action  
3 Complaint against Diageo North America, Inc. (“Defendant”), based upon personal  
4 knowledge as to himself and his own acts as alleged in Paragraphs 10-11, and as to  
5 all other matters and Paragraphs upon information, investigation and belief of his  
6 counsel.

7 **NATURE OF THE ACTION**

8 1. Plaintiff brings this consumer protection, false advertising class action  
9 lawsuit against Defendant, based on Defendant’s misleading business practices with  
10 respect to the marketing and sale of its Ron Zacapa 23 Centenario Rum (the  
11 “Product”).

12 2. At all relevant times, Defendant marketed and sold the Product with a  
13 bold “23” on the front of the packaging, which conveys to a reasonable consumer that  
14 the rum contained in the Product has been aged for 23 years.

15 3. Plaintiff and other reasonable consumers have reasonably relied on  
16 Defendant’s deceptive packaging in purchasing the Product, believing that the  
17 Product was, in fact, aged for 23 years prior to bottling and sale, or, at a minimum,  
18 would not contain rum aged less than 23 years.

19 4. The age of a rum is material to Plaintiff and class members and impacted  
20 their purchasing decisions.

21 5. To the detriment of consumers, the rum contained in the Product has not  
22 been aged for 23 years. Instead, it is a blend of rums aged between 6 and 23 years.  
23 This material fact is not known to reasonable consumers at the point of purchase.

24 6. Plaintiff purchased the Product and paid a premium price based upon his  
25 reliance on Defendant’s representation that the Product was aged for 23 years. Had  
26 Plaintiff and Class members been aware that the Product has not been aged for 23  
27 years, Plaintiff and Class members would not have purchased the Product or would  
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1 have paid significantly less for the Product. Accordingly, Plaintiff and Class members  
2 have been injured by Defendant’s deceptive business practices.

3 **JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction under the Class Action  
5 Fairness Act, 28 U.S.C. §1332(d) in that: (1) this is a class action involving more than  
6 100 class members; (2) the parties are minimally diverse, as members of the proposed  
7 class are citizens of states different than Defendant’s home state; and (3) the amount  
8 in controversy is in excess of \$5,000,000, exclusive of interests and costs.

9 8. This Court has personal jurisdiction over Defendant because Defendant  
10 conducts and transacts substantial business in California and intentionally and  
11 purposefully placed the Product into the stream of commerce within California.

12 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a  
13 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in  
14 this District. Defendant marketed, advertised and sold the Product, and conducted  
15 extensive business, within this District. Furthermore, Plaintiff purchased the Product  
16 in this District.

17 **PARTIES**

18 **I. Plaintiff**

19 10. Plaintiff Perry Michael Fischer is a citizen of the State of Washington  
20 and currently resides in Seattle, Washington. Plaintiff made several purchases of the  
21 Product in California over the last four years, and specifically, he purchased the  
22 Product in 2020 from the following retail establishments: Total Wine & More in  
23 Redondo Beach, California, and BevMo! in Torrance, California. Plaintiff also  
24 purchased the Product in 2016 from an ABC store in Raleigh, North Carolina. In  
25 purchasing the Product, Plaintiff saw the front packaging of the Products.  
26 Specifically, Plaintiff saw the number “23” and the phrase “Aged At A High Altitude  
27 in Oak Barrels” on the front packaging. The number “23” on the front of the packaging  
28 conveyed to Plaintiff that the Product was aged for 23 years prior to bottling and sale,

1 or, at a minimum, would not contain rum aged less than 23 years. Additionally, the  
2 phrase “Aged At A High Altitude in Oak Barrels” confirmed for Plaintiff that the  
3 Product is an aged rum. The age of the Product is material to Plaintiff as he reasonably  
4 believes a rum with a higher age is of a higher quality. Had Plaintiff known that the  
5 Product was not aged for 23 years, he would not have purchased the Product or would  
6 have paid substantially less for it.

7 11. Despite being misled by Defendant, Plaintiff wishes to and is likely to  
8 purchase the Product from Defendant in the future. Although Plaintiff regularly  
9 purchases rum beverages, absent an injunction prohibiting the deceptive advertising  
10 described herein, Plaintiff will be unable to rely with confidence on Defendant’s  
11 packaging in the future. Furthermore, while Plaintiff currently believes the Product  
12 does not contain rum aged for 23 years, he lacks personal knowledge as to  
13 Defendant’s specific business practices, as he cannot determine whether the rum is  
14 aged for 23 years. This leaves doubt in his mind as to the possibility that at some point  
15 in the future Defendant’s Product could contain rum aged for 23 years. However,  
16 Plaintiff would purchase the Product, as advertised, if it was, in fact, actually rum  
17 aged 23 years. This uncertainty, coupled with his desire to purchase Defendant’s  
18 Product, is an ongoing injury that can and would be rectified by an injunction  
19 enjoining Defendant from making the misleading representations alleged herein. In  
20 addition, other Class members will continue to purchase the Product, reasonably but  
21 incorrectly, believing it contains rum aged for 23 years, when it does not.

## 22 **II. Defendant**

23 12. Defendant Diageo North America, Inc. is a Connecticut corporation and  
24 maintains its headquarters in the State of New York. Defendant is responsible for the  
25 marketing, distribution, and sale of the Product in the United States, including in this  
26 District.

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1 **FACTUAL BACKGROUND**

2 **I. Background**

3 13. Defendant is the fifth largest spirits company in the world by revenue  
4 and directly and indirectly manufactures, advertises, distributes, and/or sells various  
5 alcohol beverages under some of the world’s most iconic alcoholic brand names.

6 14. Among the brands Defendant manufactures, advertises, distributes,  
7 and/or sells in the United States and within this District is the Product—Ron Zacapa  
8 23 Centenario Rum, which is manufactured in Guatemala and imported to the U.S.

9 15. The Product is part of Defendant’s “Reserve” brands in North America.  
10 According to Defendant, the “Reserve brands are key to [its] success in North  
11 America, delivering growth through innovative production, inspiring design,  
12 exceptional liquids and memorable experiences.”<sup>1</sup>

13 16. Rum is a distilled drink made from fermented sugarcane, sugar cane  
14 syrup, molasses, or other sugar cane by-products.<sup>2</sup>

15 17. In recent years, the sale of rum in the United States has increased  
16 significantly. For example, according to the Distilled Spirits Council of the United  
17 States, “[i]n 2019, 24.1 million 9-liter cases of rum were sold in the United States,  
18 generating over \$2.3 billion in revenue for distillers.”<sup>3</sup>

19 **II. The Product’s Packaging Is Misleading to Reasonable Consumers**

20 18. As depicted below, Defendant sells the Product with the number “23”  
21 prominently affixed on the front packaging.<sup>4</sup> The front packaging also contains the  
22 phrase “Aged At A High Altitude in Oak Barrels.” *See below.*

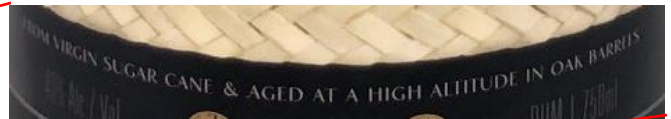
23  
24 \_\_\_\_\_  
25 <sup>1</sup> <https://www.diageo.com/en/our-business/where-we-operate/north-america/diageo-north-america/> (last visited September 9, 2021)

26 <sup>2</sup> 27 C.F.R. § 5.22(f).

27 <sup>3</sup> <https://www.distilledspirits.org/rum/> (last visited September 9, 2021)

28 <sup>4</sup> To be clear, Plaintiff is only challenging the **packaging** (i.e., the cylindrical container) holding the bottle, not the label affixed to the bottle itself.

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19. The prominent “23” on the front of the packaging conveys to reasonable consumers that the rum contained in the Product is aged for 23 years prior to bottling and sale. Additionally, the inclusion of the language “Aged At A High Altitude In Oak Barrels” confirms that the Product is an aged rum.

1           20. When reasonable consumers view the number “23” on the front of the  
2 packaging, they believe this refers to the age of the rum contained in the Product.  
3 Indeed, numbers displayed on the packaging of distilled spirits commonly indicate  
4 how many years the product has been aged. For example, the packaging of  
5 Glenfiddich Single Malt Scotch Whiskeys contains numbers such “12,” “14,” or “15”  
6 because the products have been aged for that many years:



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1           21.     However, unbeknownst to Plaintiff and other reasonable consumers, the  
2 rum in the Product is not 23 years aged, rather, it is a blend of rums aged between 6  
3 to 23 years.

4           22.     Defendant uses the solera aging and blending method to age the rum in  
5 the Product.

6           23.     “The concept of the solera method is based on stacking multiple layers  
7 of aging barrels (called “*criaderas*”) on top of each other, with each layer  
8 progressively topping up the next one down and blending with it year after year.”<sup>5</sup>

9           24.     Based on the process described above, the Product contains rum with  
10 different years of aging spanning from 6 years to 23 years old.

11          25.     As a result, Defendant’s packaging of the Products is false and  
12 misleading and only serves the profit maximizing interests of Defendant.

13          26.     This truth is unknown to reasonable consumers and impacts Plaintiff and  
14 reasonable consumers’ purchasing decisions.

15          27.     The age of rum is material to Plaintiff and reasonable consumers as a  
16 higher age signifies a higher quality rum. Reasonable consumers would not believe  
17 that a rum which contains a blend of ages spanning from 6 years to 23 years is of the  
18 same quality as a rum that is entirely aged for 23 years.

19          28.     As a manufacturer, distributor, and/or seller of the Product, Defendant is  
20 responsible for the accuracy of the information conveyed on the Product packaging.

21          29.     Defendant knew or, should have known that the Product’s packaging was  
22 false or misleading.

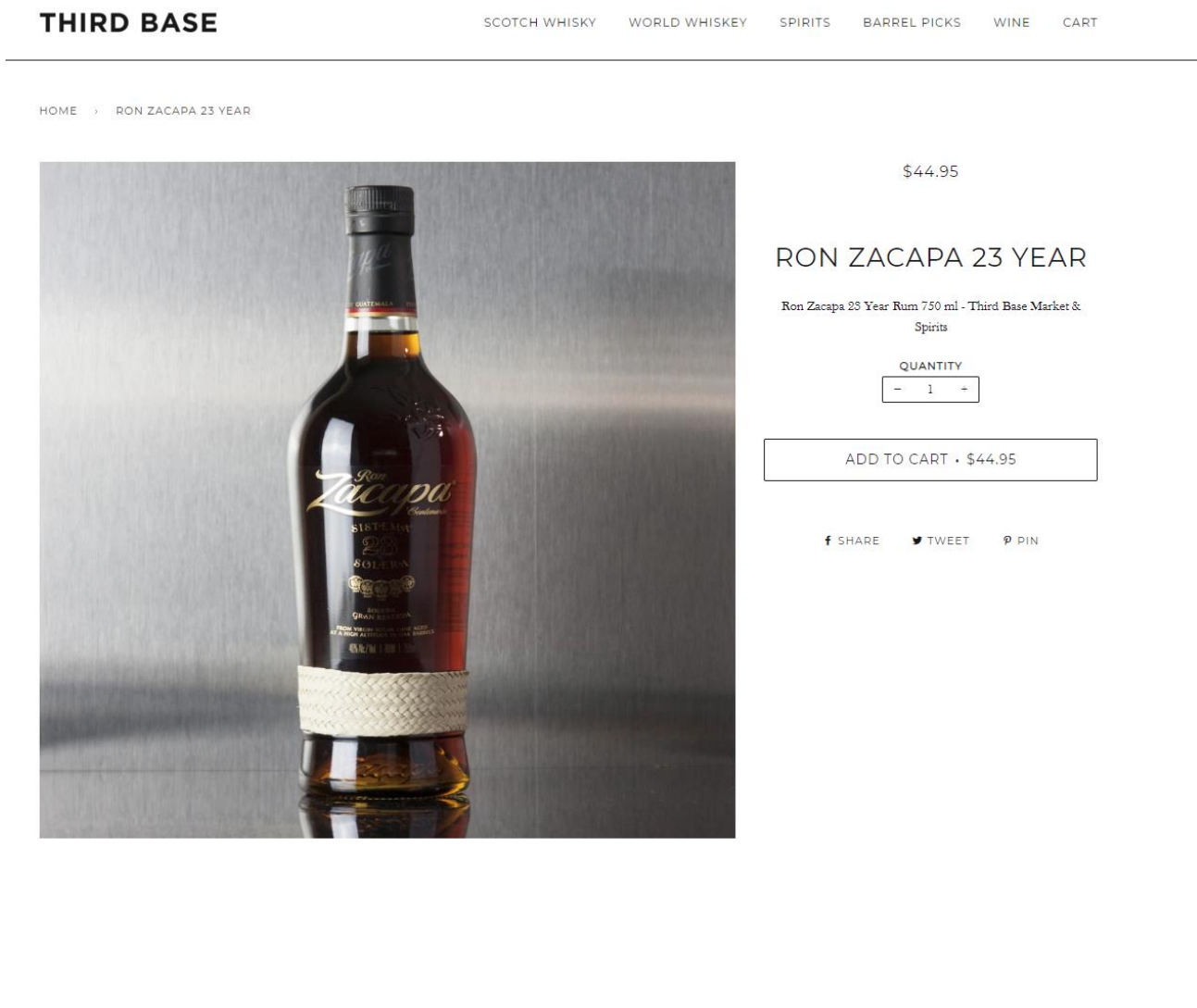
23          30.     Defendant intended for consumers to rely upon its representations and  
24 omissions concerning the Product’s true age. Defendant knows, knew or should have  
25 known that Plaintiff and other consumers did and would rely on the packaging of the  
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28 <sup>5</sup> <https://rumsocialclub.com/solera-aging-method/> (last visited September 9, 2021)

1 Product in purchasing it, and would reasonably believe that the Product was aged for  
2 23 years, or, at a minimum, would not contain rum aged less than 23 years.

3 31. Indeed, it would be reasonable for consumers to rely—as Plaintiff did—  
4 upon Defendant’s representations and omissions concerning the age of the rum in the  
5 Product and reasonably believe the Product is aged for 23 years, or, at a minimum,  
6 would not contain rum aged less than 23 years. Defendant’s misleading marketing  
7 campaign is so pervasive and convincing that even liquor retailers and bars are being  
8 deceived by the age representations, making an average consumer’s belief about the  
9 Product even more reasonable. See, e.g.,  
10 [https://thirdbasemarketandspirits.com/products/ron\\_zacapa\\_23\\_year](https://thirdbasemarketandspirits.com/products/ron_zacapa_23_year):  
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1           32. Through the use of misleading representations and omissions, Defendant  
2 commands a price Plaintiff and the Class would not have paid had they been fully  
3 informed. Indeed, the Product is priced significantly higher than non-aged rums or  
4 rums that have been aged for less years. *Compare, e.g.*, Ron Zacapa 23-year rum  
5 (\$45.99)<sup>6</sup> with Bacardi Superior rum (not aged) (\$8.99),<sup>7</sup> Plantation Grande Reserve  
6 Rum 5 year (\$19.99)<sup>8</sup> and El Dorado 8 year old aged rum (\$20.99)<sup>9</sup>.

7           33. By use of misleading packaging claims and omissions, Defendant  
8 created increased market demand for the Product and increased its market share  
9 relative to what its demand and share would have been had it marketed and packaged  
10 the Product truthfully.

11           34. Plaintiff and the Class lost money as a result of Defendant's  
12 misrepresentations and omissions in that they did not receive what they reasonably  
13 believed they were paying for based upon the misrepresentations and omissions on  
14 the Product's packaging. Plaintiff and the Class detrimentally altered their position  
15 and suffered damages as a result of Defendant's misrepresentations and omissions.

16           35. If Plaintiff had been aware that the rum in the Product was not entirely  
17 aged for 23 years, Plaintiff would have purchased a different product or paid  
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20 <sup>6</sup> [https://www.totalwine.com/spirits/rum/aged-rum/ron-zacapa-23-centenario-](https://www.totalwine.com/spirits/rum/aged-rum/ron-zacapa-23-centenario-rum/p/15593750?s=102&igrules=true)  
21 [rum/p/15593750?s=102&igrules=true](https://www.totalwine.com/spirits/rum/aged-rum/ron-zacapa-23-centenario-rum/p/15593750?s=102&igrules=true) (last visited September 9, 2021)

22 <sup>7</sup> [https://www.totalwine.com/spirits/rum/silver-rum/bacardi-](https://www.totalwine.com/spirits/rum/silver-rum/bacardi-superior/p/3636750?glia=true&s=1106&&pid=cpc:Core+Catalog+-+Shopping%2BUS%2BCALI%2BENG%2BSPART::google::&gclid=CjwKCAjwx8iIBhBwEiw)  
23 [superior/p/3636750?glia=true&s=1106&&pid=cpc:Core+Catalog+-](https://www.totalwine.com/spirits/rum/silver-rum/bacardi-superior/p/3636750?glia=true&s=1106&&pid=cpc:Core+Catalog+-+Shopping%2BUS%2BCALI%2BENG%2BSPART::google::&gclid=CjwKCAjwx8iIBhBwEiw)  
24 [+Shopping%2BUS%2BCALI%2BENG%2BSPART::google::&gclid=CjwKCAjwx](https://www.totalwine.com/spirits/rum/silver-rum/bacardi-superior/p/3636750?glia=true&s=1106&&pid=cpc:Core+Catalog+-+Shopping%2BUS%2BCALI%2BENG%2BSPART::google::&gclid=CjwKCAjwx8iIBhBwEiw)  
24 [8iIBhBwEiw](https://www.totalwine.com/spirits/rum/silver-rum/bacardi-superior/p/3636750?glia=true&s=1106&&pid=cpc:Core+Catalog+-+Shopping%2BUS%2BCALI%2BENG%2BSPART::google::&gclid=CjwKCAjwx8iIBhBwEiw) (last visited September 9, 2021)

25 <sup>8</sup> [https://www.totalwine.com/spirits/rum/aged-rum/plantation-grande-reserve-rum-5-](https://www.totalwine.com/spirits/rum/aged-rum/plantation-grande-reserve-rum-5-yr/p/98735750?s=1106&igrules=true)  
26 [yr/p/98735750?s=1106&igrules=true](https://www.totalwine.com/spirits/rum/aged-rum/plantation-grande-reserve-rum-5-yr/p/98735750?s=1106&igrules=true) (last visited September 9, 2021)

27 <sup>9</sup> <https://www.totalwine.com/spirits/rum/aged-rum/el-dorado-8-yr-rum/p/144529750>  
28 (last visited September 9, 2021)

1 significantly less for the Product, or in the alternative, not purchased the Product at  
2 all.

3 36. Plaintiff and members of the Class were exposed to and justifiably relied  
4 upon the same material misrepresentations and omissions made on the Product’s  
5 packaging, as (1) all of the Product packaging contains the same number “23” and the  
6 statement “Aged At A High Altitude in Oak Barrels,” and (2) every Product is not  
7 aged for 23 years.

8 **III. Federal Regulations Confirm Plaintiff and Class Members Were**  
9 **Reasonably Misled**

10 37. The Alcohol and Tobacco Tax and Trade Bureau (“TTB”), a bureau  
11 under the Department of the Treasury, has set basic mandatory labeling requirements  
12 for companies like Defendant to adhere to when labeling distilled spirits with  
13 statements of age.

14 38. TTB defines age as it relates to “aged” rum as “the period during which,  
15 after distillation and before bottling, distilled spirits have been stored in oak  
16 containers.”<sup>10</sup>

17 39. According to federal regulation, “Age may, but need not, be stated on  
18 labels of *rums*, brandies, and agave spirits[.]” *See* 27 C.F.R. § 5.40(b) (emphasis  
19 added).

20 40. However, if a company chooses to make an age statement on rum, the  
21 regulation requires that the age statement “shall be substantially as follows: ‘\_\_ years  
22 old’; the blank to be filled in with the *age of the youngest* distilled spirits in the  
23 product.” *Id.* (emphasis added).<sup>11</sup>

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25 <sup>10</sup> [https://www.ttb.gov/images/pdfs/spirits\\_bam/chapter8.pdf](https://www.ttb.gov/images/pdfs/spirits_bam/chapter8.pdf) (last visited September  
26 9, 2021)

27 <sup>11</sup> While this provision pertains to “labels” of distilled products, 27 C.F.R. § 5.41(a)  
28 states that the prohibitions in § 5.40 apply equally to any “covering, carton, or other  
container of the bottle used for sale at retail.”

1 41. Moreover, the TTB has issued a Beverage Alcohol Manual (“BAM”) for  
2 distilled spirits, which provides an explanation of the labeling requirements of  
3 distilled spirits. Chapter 8 of the BAM provides further guidance on using statements  
4 of age on the labels of distilled spirits.

5 42. Of note, Chapter 8 explains that when using a statement of age, it must  
6 appear as one of the following options:

7 a. “\_\_\_ YEARS OLD” (Fill in blank with specific age *or age of*  
8 *youngest distilled spirits in blend*) (emphasis added);

9 b. “AGED \_\_\_ YEARS” (Fill in blank with specific age *or age of*  
10 *youngest distilled spirits in blend*) (emphasis added); **or**

11 c. “\_\_\_% \_\_\_\_\_ YEARS OLD” OR “\_\_\_% \_\_\_\_\_  
12 AGED \_\_\_ YEARS” (This option applies to mixtures or blends, e.g., a  
13 mixture or blend of two or more rums of different ages. Fill in first blank  
14 with the percent of the finished product on a proof gallon basis  
15 contributed by each listed distilled spirits [listed percentages must total  
16 100%]; the second blank with the class/type of each distilled spirits; the  
third blank with the specific age of each distilled spirits).

17 43. Moreover, federal regulation provides that age of rum “may be  
18 understated but shall not be overstated.” 27 C.F.R. § 5.40(e)(1).

19 44. While this action is not seeking to enforce the TTB regulations, the TTB  
20 regulations certainly demonstrate that Plaintiff and Class members were reasonably  
21 deceived by Defendant’s packaging, which overpromise the Product is entirely aged  
22 for 23 years, which is false and misleading.

23 **TOLLING OF THE STATUTE OF LIMITATIONS**

24 **I. Fraudulent Concealment**

25 45. All applicable statutes of limitation have been tolled by Defendant’s  
26 knowing, active, and ongoing fraudulent concealment and denial of the facts alleged  
27 herein at all times relevant to this action.

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1           46. Since putting the Product on the market, Defendant knew that the  
2 Product was not, in fact, aged 23 years prior to bottling and sale.

3           47. Despite knowing the truth about the age of the rum in the Product,  
4 Defendant concealed the nature of the quality of the Product from Plaintiff and the  
5 class members. Defendant did not adequately disclose that the Product, in fact,  
6 contained a blend of rum aged from 6 to 23 years.

7           48. Any applicable statutes of limitation have, therefore, been tolled by  
8 Defendant's knowledge, active concealment, and denial of the facts alleged herein,  
9 which behavior remains ongoing.

10 **II. Discovery Rule**

11           49. Plaintiff and the other Class members did not immediately discover—  
12 and could not have discovered through the exercise of reasonable diligence—the full  
13 and complete nature of the misrepresentations on Defendant's packaging regarding  
14 the age of the rum.

15           50. Within the period of any applicable statutes of limitation, Plaintiff and  
16 the other Class members could not have discovered, through the exercise of  
17 reasonable diligence, that Defendant was—and still is—concealing the age of the rum.

18           51. Any applicable statutes of limitation have, therefore, been tolled by  
19 operation of the discovery rule.

20 **III. Estoppel**

21           52. Defendant was under a continuous duty to disclose to Plaintiff and the  
22 other Class members the true character, quality, and nature of the rum in the Product.

23           53. Defendant actively concealed the Product's true character, quality, and  
24 nature and knowingly misrepresented—or omitted—facts about the Product's age—  
25 a material fact to consumers.

26           54. Plaintiff and the other Class members reasonably relied upon  
27 Defendant's misrepresentations and/or active concealment of these facts.

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1 55. Based on the foregoing, Defendant is estopped from relying on any  
2 statutes of limitation in defense of this action.

3 **CLASS DEFINITION AND ALLEGATIONS**

4 56. Plaintiff brings this matter on behalf of himself and those similarly  
5 situated. Defendant’s misconduct is detailed at length in this Complaint. Defendant’s  
6 customers were uniformly impacted by and exposed to Defendant’s misconduct.  
7 Plaintiff can prove the elements of his claims on a class-wide basis using the same  
8 evidence as individual Class members would use to prove those elements in individual  
9 actions alleging the same claims. Accordingly, this Complaint is uniquely situated for  
10 class-wide resolution.

11 57. Pursuant to Rule 23 of the Federal Rules of Civil Procedure (the “Rules”  
12 or “Rule”), Plaintiff seeks to represent the following class:

13 All residents of the United States who purchased the Product for  
14 personal, family, or household use and not for resale within the  
15 applicable statute of limitation, until the date notice is disseminated  
16 (“Nationwide Class”).

17 58. Additionally, as further described herein, Plaintiff brings claims based  
18 upon state consumer protection laws on behalf of the following subclasses:

19 All residents of the [a given state or states] who purchased the Product for  
20 personal use and not for resale within the applicable statute of limitation, until  
21 the date notice is disseminated (“Multistate Class”).

22 All residents of California who purchased the Product for personal, family, or  
23 household use and not for resale within the applicable statute of limitation, until  
24 the date notice is disseminated (“California Class”).

25 All residents of North Carolina who purchased the Product for personal, family,  
26 or household use and not for resale within the applicable statute of limitation,  
27 until the date notice is disseminated (“North Carolina Class”).

28 59. The Nationwide Class, Multistate Class, California Class and North  
Carolina Class are referred to collectively as the “Class” or “Classes.”

1           60. Plaintiff reserves the right to amend the Class definitions if discovery or  
2 further investigation reveals that any Class should be expanded or narrowed, divided  
3 into additional subclasses under Rule 23(c)(5), or modified in any other way.

4           61. The following people are excluded from the Classes: (1) any Judge or  
5 Magistrate presiding over this action and the members of their family; (2) Defendant,  
6 Defendant's subsidiaries, parents, successors, predecessors, and any entity in which  
7 the Defendant or its parents have a controlling interest and their current employees,  
8 officers and directors; (3) persons who properly execute and file a timely request for  
9 exclusion from the Class; (4) persons whose claims in this matter have been finally  
10 adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and  
11 Defendant's counsel; and (6) the legal representatives, successors, and assigns of any  
12 such excluded persons.

13           62. This action is properly brought and should be maintained as a class action  
14 under Rule 23(a), satisfying the class action prerequisites of numerosity,  
15 commonality, typicality, and adequacy because:

16           63. **Numerosity**: Members of each Class are so numerous and  
17 geographically dispersed that individual joinder of all Class members is  
18 impracticable. The precise number of Class members is unknown to Plaintiff but is  
19 likely to be ascertained by the Defendant's records. At a minimum, there likely are  
20 tens of thousands of Class members.

21           64. **Commonality**: There are questions of law and fact common to the  
22 proposed class(es). Common questions of law and fact include, without limitations:

- 23           a. whether Defendant engaged in the conduct alleged herein;  
24           b. whether Defendant's course of conduct alleged herein violates the  
25 statutes and other laws that are pled in this Complaint;  
26           c. whether Defendant intended for consumers to rely upon its  
27 representations and omissions;

28

- 1 d. whether reasonable consumers would rely upon Defendant's
- 2 representations and omissions and believe the Product is aged 23 years;
- 3 e. whether Defendant had a duty to disclose the material omissions
- 4 concerning the age of the Product;
- 5 f. whether Defendant knew or should have known its representations and
- 6 omissions were false or misleading;
- 7 g. whether Defendant was unjustly enriched by retaining monies from the
- 8 sale of the Product;
- 9 h. whether certification of each Class is appropriate under Rule 23;
- 10 i. whether Plaintiff and the members of each Class are entitled to
- 11 declaratory, equitable, or injunctive relief, and/or other relief, and the
- 12 scope of such relief; and
- 13 j. the amount and nature of the relief to be awarded to the Plaintiff and the
- 14 Class, including whether Plaintiff and the Class are entitled to punitive
- 15 damages.

16 65. **Typicality:** Plaintiff's claims are typical of the other Class members  
17 because Plaintiff, as well as Class members, paid for Defendant's Product at retail.  
18 Plaintiff and the members of the Classes relied on the representations and omissions  
19 made by the Defendant prior to purchasing the Product. Plaintiff and the members of  
20 each Class paid for Defendant's Product at retail and would not have purchased it (or  
21 would have paid substantially less for it) had they known that the Defendant's  
22 representations were untrue and/or had they possessed the information Defendant  
23 omitted from the Product package.

24 66. **Adequacy:** Plaintiff is an adequate Class representative because his  
25 interests do not conflict with the interests of the Classes he seeks to represent; his  
26 claims are common to all members of the Classes and he has a strong interest in  
27 vindicating his and all other Class members' rights. Plaintiff has retained counsel  
28

1 competent and experienced in complex class action litigation and they intend to  
2 vigorously prosecute this action through judgment and appeal, if necessary.

3       67.    **Predominance:** Pursuant to Rule 23(b)(3), the common issues of law  
4 and fact identified in this Complaint predominate over any other questions affecting  
5 only individual members of the Classes. Class issues fully predominate over any  
6 individual issue because no inquiry into individual conduct is necessary; all that is  
7 required is a narrow focus on Defendant’s misconduct detailed at length in this  
8 Complaint.

9       68.    **Superiority:** A class action is superior to all other available methods for  
10 the fair and efficient adjudication of this litigation because individual litigation of  
11 each claim is impractical. It would be unduly burdensome to have individual litigation  
12 of hundreds of thousands of individual claims in separate lawsuits, every one of which  
13 would present the issues presented in the Complaint/lawsuit. Further, because of the  
14 damages suffered by any individual Class member may be relatively modest in  
15 relation to the cost of litigation, the expense and burden of individual litigation make  
16 it difficult, if not impossible. Furthermore, many of the Class members may be  
17 unaware that claims exist against the Defendant.

18       69.    **Declaratory and Injunctive Relief:** Pursuant to Rule 23(b)(2),  
19 declaratory and injunctive relief is appropriate in this matter. Defendant has acted or  
20 refused to act on grounds generally applicable to Plaintiff and the other Class  
21 members, thereby making appropriate final injunctive relief and declaratory relief, as  
22 described below, with respect to the Class members as a whole. Unless a class-wide  
23 injunction is issued, Defendant will continue to, or allow its resellers to, advertise,  
24 market, promote, and sell the Product in an unlawful and misleading manner, as  
25 described throughout this Complaint, and members of the Classes will continue to be  
26 misled, harmed, and denied their rights under the law.

27  
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**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT**

**Cal. Civ. Code §§ 1750, *et seq.***

***(On Behalf of the Nationwide Class, or in the Alternative, the California Class)***

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5       70. Plaintiff realleges and incorporates Paragraphs 1-69.

6       71. Plaintiff brings this claim individually and on behalf of the Nationwide  
7 Class, or in the alternative, the California Class.

8       72. Defendant’s conduct constitutes violations under the California’s  
9 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”).

10       73. Defendant’s conduct falls within the meaning of this statute because it  
11 caused transactions to occur resulting in the sale or lease of goods or services to  
12 consumers – namely, the sale of the Product. The Product is considered to be “goods”  
13 within the meaning of the statute under Civil Code 1761(a).

14       74. Plaintiff and members of the Nationwide Class, or in the alternative, the  
15 California Class, are “Consumers” pursuant to the statute.

16       75. Defendant violated the CLRA by way of the following provisions:

17           a. Representing that the Product has “characteristics” (i.e. is aged 23  
18 years) which it does not have, in violation of Cal. Civ. Code § 1770(a)(5);

19           b. Representing that the Product is of a “particular standard, quality,  
20 or grade” (i.e. is aged 23 years) when it is not, in violation of Cal. Civ. Code §  
1770(a)(7); and

21           c. Advertising the Product with the “intent not to sell [it] as  
22 advertised” in violation of Cal. Civ. Code § 1770(a)(9);

23       76. Defendant is aware that its representations regarding the age of the  
24 Product is false and misleading.

25       77. Due to Defendant’s conduct, Plaintiff and members of the Nationwide  
26 Class, or in the alternative, the California Class, suffered ascertainable economic  
27 injury.  
28

1 78. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on June 15, 2021,  
2 Plaintiff sent Defendant notice via certified mail, return receipt requested, providing  
3 notice to Defendant of its alleged violations of the CLRA, and demanding that  
4 Defendant correct such violations. The notice letter also provided Defendant the  
5 opportunity to correct its business practices. Defendant received the notice letter on  
6 June 16, 2021. Because Defendant has not remedied or cured its violations within 30  
7 days of receipt, Plaintiff is bringing this claim for actual damages under the CLRA.

8 79. Accordingly, Plaintiff seeks damages, injunctive relief, reasonable  
9 attorneys’ fees and costs, and all other available relief as pled in this Complaint.

10 **SECOND CLAIM FOR RELIEF**  
11 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)**  
12 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
***(On Behalf of the Nationwide Class, or in the Alternative, the California Class)***

13 80. Plaintiff realleges and incorporates Paragraphs 1-69.

14 81. Plaintiff brings this claim individually and on behalf of the Nationwide  
15 Class, or in the alternative, the California Class.

16 82. Plaintiff and Defendant are “persons” within the meaning of the UCL.  
17 Cal. Bus. & Prof. Code § 17201.

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

21 84. In the course of conducting business, Defendant engaged in “unlawful”  
22 business practices by violating 27 C.F.R. §§ 5.40(b) & 5.41(a), Cal. Civ. Code § 1770,  
23 Cal. Bus. & Prof. Code § 17500, and other laws as explained herein.

24 85. As a result of Defendant’s unlawful business acts and practices,  
25 Defendant has and continues to unlawfully obtain money from Plaintiff, and members  
26 of the California Class.

27  
28

1           86. Defendant’s foregoing business practices are also considered to be  
2 “unfair” under the UCL, which states that unfair acts are acts where the reasons,  
3 justifications and motivations of Defendant are outweighed by the harm to Plaintiff(s).

4           87. A business practice is also considered to be “unfair” if the conduct  
5 alleged is immoral, unethical, oppressive, or substantially injurious to consumers; as  
6 well as if the conduct alleged causes an injury which is not outweighed by any benefits  
7 to other consumers or to competition, and that the injury is of the type that the  
8 consumer could not have avoided. Defendant’s conduct is “unfair” pursuant to the  
9 UCL under each of the three tests described in these paragraphs.

10           88. Defendant’s behavior constitutes unfair business practices under  
11 California law.

12           89. Defendant’s retention of Plaintiff’s and Class members’ payments for the  
13 Product outweighs the economic harm that said retention imposes on consumers. The  
14 only party that benefits is Defendant. Defendant’s sale of the Product with the  
15 misrepresentations discussed herein are immoral, unethical, oppressive, and  
16 substantially injures consumers.

17           90. Plaintiff and members of the Class had no way of knowing that the rum  
18 in Defendant’s Product is not entirely aged for 23 years or contains rum aged less than  
19 23 years. As Defendant continues to unfairly retain Plaintiff’s and members of the  
20 Class’ payments for the Product, this conduct continues to be unfair under California  
21 law. This is exactly the type of unscrupulous and inexcusable business practice that  
22 the UCL was enacted to address.

23           91. Defendant’s representations are also “fraudulent” under the UCL  
24 because they have the effect of deceiving consumers into believing that the Product  
25 contains rum that is aged for a minimum of 23 years, when it does not. These  
26 representations, Defendant’s corresponding omissions, and Defendant’s other related  
27 actions and conduct were false, misleading, and likely to deceive the consuming  
28 public.

1 92. Defendant knew, or should have known, its material misrepresentations  
2 and omissions would be likely to deceive and harm the consuming public and result  
3 in consumers making payments to Defendant under the false impression about the  
4 Product.

5 93. As a result of Defendant’s conduct, Plaintiff and Class members have  
6 suffered injury-in-fact by paying more for the Product than they would have. Plaintiff  
7 requests that the Court issue sufficient equitable relief to restore them and Class  
8 members to the position they would have been had Defendant not engaged in unfair  
9 business practices. Plaintiff seeks all other available relief as pled in this Complaint.

10 **THIRD CLAIM FOR RELIEF**  
11 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**  
12 **Cal. Bus. & Prof. Code § 17500**  
13 *(On Behalf of the Nationwide Class, or in the alternative, the California Class)*

14 94. Plaintiff realleges and incorporates Paragraphs 1-69.

15 95. Plaintiff brings this claim individually and on behalf of the Nationwide  
16 Class, or in the alternative, the California Class.

17 96. Defendant violated California’s False Advertising Law, Cal. Bus. & Prof.  
18 Code § 17500 (“FAL”), by publicly disseminating misleading and false  
19 advertisements for the Product through packaging stating that the rum is aged 23  
20 years.

21 97. Defendant’s false and misleading advertisements were made in order to  
22 prop up and increase sales of the Product.

23 98. Plaintiff and members of the proposed Classes would not have bought  
24 the Product, or would have paid considerably less for it, had they known that any or  
25 all of these misrepresentations were false.

26 99. Pursuant to Business & Professions Code § 17500, Plaintiff and  
27 members of the Class seek an order of this Court permanently enjoining Defendant  
28 from continuing to publicly disseminate misleading and false advertisements as

1 alleged herein. Plaintiff and Class Members also seek an order requiring Defendant  
2 to: (a) make full restitution for all monies wrongfully obtained; and (b) disgorge all  
3 ill-gotten revenues and/or profits. Plaintiff seeks all other available relief as pled in  
4 this Complaint.

5 **FOURTH CLAIM FOR RELIEF**  
6 **VIOLATION OF NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE**  
7 **PRACTICES ACT**

8 **N.C. Gen. Stat. §§ 75-1.1, et seq.**

9 ***(On Behalf of the Nationwide Class, or in the Alternative, the North Carolina Class)***

10 100. Plaintiff realleges and incorporates Paragraph 1-69.

11 101. Plaintiff brings this claim individually and on behalf of the Nationwide  
12 Class, or in the alternative, the North Carolina Class.

13 102. North Carolina’s Unfair and Deceptive Trade Practices  
14 Act, (“NCUDTPA”), prohibits “[u]nfair methods of competition in or affecting  
15 commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” N.C.  
16 Gen Stat. § 75-1.1(a).

17 103. Defendant engaged in “commerce” within the meaning of the  
18 NCUDTPA, N.C. Gen Stat. § 75-1.1(b).

19 104. Defendant participated in unfair methods of competition in or affecting  
20 commerce, and unfair or deceptive acts or practices in or affecting commerce, with  
21 respect to the sale and advertisement of the Product purchased by Plaintiff and the  
22 North Carolina Class, in violation of N.C. Gen. Stat. § 75-1.1(a), including by making  
23 false representations or concealing the true age of the Product.

24 105. Defendant’s unfair or deceptive acts or practices detailed throughout this  
25 Complaint were reasonably and intentionally calculated to deceive Plaintiff and Class  
26 members and in fact deceived Plaintiff and Class members into purchasing the  
27 Product believing the Product was aged for 23 years, or at a minimum, not aged less  
28 than 23 years.



1 106. By failing to disclose the true age of the Product, Defendant knowingly  
2 and intentionally concealed material facts to Plaintiff and Class members.

3 107. Plaintiff and Class members relied on Defendant’s representations in that  
4 they would not have purchased or paid significantly less for the Product.

5 108. As a direct and proximate result of Defendant’s unfair or deceptive acts  
6 or practices, Plaintiff and Class members have suffered and will continue to suffer  
7 actual damages.

8 109. N.C. Gen. Stat. § 75-16 provides a private right of action for any person  
9 injured “by reason of any act or thing done by any other person, firm or corporation  
10 [.]”

11 110. Plaintiff and Class members seek actual damages against Defendants in  
12 an amount to be determined at trial and statutory, treble, and/or punitive damages  
13 under NCUDTPA, as well as an order enjoining Defendant’s unfair, unlawful, and/or  
14 deceptive practices and awarding costs, attorneys’ fees and restitution, disgorgement  
15 of funds, and any other just and proper relief available under N.C. Gen. Stat. § 75-16.

16 **FIFTH CLAIM FOR RELIEF**  
17 **VIOLATIONS OF VARIOUS STATE BREACH OF EXPRESS WARRANTY**  
18 **STATUTES**  
19 ***(On behalf of the Multistate Class or in the alternative, the California Class and***  
20 ***the North Carolina Class)***

21 111. Plaintiff realleges and incorporates Paragraph 1-68.

22 112. Plaintiff brings this claim for breach of express warranty in violation of  
23 the laws of the Multistate Class, or in the alternative, the California Class and North  
24 Carolina Class, all of which are consistent with one another.

25 113. The various state laws cited below, upon which this Count is premised,  
26 are consistent with one another and with the laws of California and North Carolina,  
27 both procedurally and substantively.

28 114. Plaintiff and the members of the Classes formed a contract with  
Defendant at the time they purchased the Product. As part of that contract, Defendant

1 represented on the Product’s labeling and packaging through use of the number “23”  
2 on the front of the packaging, that the rum in the Product has been aged for 23 years,  
3 or at a minimum, does not contain rum aged less than 23 years.

4 115. This representation constitutes an express warranty and became part of  
5 the basis of the bargain between Plaintiff and members of the Classes, on the one  
6 hand, and Defendant, on the other.

7 116. Defendant made the age representation to induce Plaintiff and members  
8 of the Classes to purchase the Product, and Plaintiff and the Class members relied on  
9 the representations in purchasing the Product.

10 117. All conditions precedent to Defendant’s liability under the above-  
11 referenced contract have been performed by Plaintiff and Class members.

12 118. Express warranties by a seller of consumer goods are created when an  
13 affirmation of fact or promise is made by the seller to the buyer, which relates to the  
14 goods and becomes the basis of the bargain. Such warranties can also be created based  
15 upon descriptions of the goods which are made as part of the basis of the bargain that  
16 the goods shall conform to the description.

17 119. Defendant breached the express warranties about the Product because,  
18 as alleged above, the Product is not aged for a minimum of 23 years.

19 120. In addition to breaching California’s warranty law (Cal. Com. Code §  
20 2313) and North Carolina’s warranty law (N.C. Gen. Stat. § 25-2-313), Defendant  
21 also breached the following state warranty laws: Alaska Stat. § 45.02.313; A.R.S. §  
22 47-2313; A.C.A. § 4-2-313; Colo. Rev. Stat. § 4-2-313; Conn. Gen. Stat. § 42a-2-313;  
23 6 Del. C. § 2-313; D.C. Code § 28:2-313; Fla. Stat. Ann. § 672.313; O.C.G.A. § 11-  
24 2-313; HRS § 490:2-313; I. C. § 28-2-313; 810 ILCS 5/2-313; Ind. Code § 26-1-2-  
25 313; K.S.A. § 84-2-313; KRS § 355.2-313; 11 M.R.S. § 2-313; Mass. Gen. Laws Ann.  
26 ch. 106 § 2-313; Minn. Stat. § 336.2-313; Miss. Code Ann. § 75-2-313; R.S. Mo. §  
27 400.2-313; Mont. Code Anno. § 30-2-313; Neb. Rev. Stat. § 2-313; Nev. Rev. Stat.  
28 Ann. § 104.2313; RSA 382-A:2-313; N.J. Stat. Ann. § 12A:2-313; N.M. Stat. Ann. §

1 55-2-313; N.Y. U.C.C. Law § 2-313; N.D. Cent. Code § 41-02-30; ORC Ann. §  
2 1302.26; 12A Okl. St. § 2-313; Or. Rev. Stat. § 72-3130; 13 Pa.C.S. § 2313; R.I. Gen.  
3 Laws section 6A-2-313; S.C. Code Ann. § 36-2-313; S.D. Codified Laws, § 57A-2-  
4 313; Tenn. Code Ann. § 47-2-313; Tex. Bus. & Com. Code § 2.313; Utah Code Ann.  
5 § 70A-2-313; 9A V.S.A. § 2-313; Va. Code Ann. § 59.1-504.2; Wash. Rev. Code  
6 Ann. § 62A.2-313; W. Va. Code § 46-2-313; Wyo. Stat. § 34.1-2-313.

7 121. As a result of Defendant’s breaches of express warranty, Plaintiff and  
8 the Class members were damaged in the amount of the premium price they paid for  
9 the Product, in amounts to be proven at trial.

10 122. On June 15, 2021, Plaintiff, on behalf of himself and Class members sent  
11 a notice and demand letter to Defendant providing notice of Defendant’s breach and  
12 demanded that Defendant correct, repair, replace, or otherwise rectify the breach  
13 complained of herein. Defendant received the notice and demand letter on June 16,  
14 2021.

15 **SIXTH CLAIM FOR RELIEF**  
16 **IN THE ALTERNATIVE, UNJUST ENRICHMENT**  
17 *(On behalf of the Nationwide Class, or in the alternative, the California Class and*  
18 *the North Carolina Class)*

19 123. Plaintiff realleges and incorporates Paragraphs 1-69.

20 124. To the extent the Court finds that Plaintiff and the members of the  
21 Classes did not form a contract with Defendant at the time they purchased the Product,  
22 Plaintiff brings this claim for unjust enrichment in the alternative, individually and on  
23 behalf of the Nationwide Class, or in the alternative, the California Class and the  
24 North Carolina Class.

25 125. Plaintiff and Class members purchased Defendant’s Product and paid a  
26 premium for the Product. The Product misrepresented or omitted the true age of the  
27 Product, which commanded a price premium.

28 126. Defendant had knowledge of such benefit and obtained the benefit by its  
misrepresentations and omissions because those misrepresentations and omissions

1 induced reasonable consumers to purchase the Product they would not otherwise have  
2 purchased or purchased at the advertised price.

3 127. Defendant appreciated this benefit and knowingly accepted it at the  
4 expense of, and to the detriment of, Plaintiff and Class members. Defendant currently  
5 retains this benefit.

6 128. Defendant's acceptance and retention of the benefits is inequitable and  
7 unjust because the benefit was obtained by Defendant's misconduct detailed at length  
8 in this Complaint.

9 129. Equity cannot in good conscience permit Defendant to be economically  
10 enriched for such action at the expense of Plaintiff and Class members, and therefore  
11 restitution and/or disgorgement of such economic enrichment is required.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of other members of the  
14 proposed Class(es), respectfully requests that the Court enter judgment in Plaintiff's  
15 favor and against Defendant as follows:

- 16 a. Declaring that this action is a proper class action, certifying the Classes  
17 as requested herein, designating Plaintiff as Class Representative and  
18 appointing the undersigned counsel as Class Counsel;
- 19 b. a declaration or declaratory judgment that Defendant's conduct has  
20 violated and continues to violate the statutes cited herein;
- 21 c. an order enjoining Defendant to refrain from the acts and practices cited  
22 herein and to undertake an immediate public information campaign to  
23 inform members of the Classes as to its prior practices;
- 24 d. an order requiring imposition of a constructive trust and and/or  
25 disgorgement of Defendant's ill-gotten gains and to pay restitution to  
26 Plaintiff and members of the Classes to restore all funds acquired by  
27 means of any act or practice declared by this Court to be an unlawful,  
28 fraudulent or unfair business act or practice;

- 1 e. an award of damages, including all available statutory and punitive
- 2 damages, pursuant to the statutes and the causes of action pled herein;
- 3 f. distribution of any monies recovered on behalf of members of the Class
- 4 via fluid recovery or *cy pres* recovery where necessary and applicable,
- 5 to prevent Defendant from retaining the benefit of its wrongful conduct;
- 6 g. an award of all recoverable costs and expenses, including reasonable fees
- 7 for Plaintiff’s attorneys; and
- 8 h. an award of pre- and post-judgment interest to Plaintiff and members
- 9 each of the Classes if applicable; and, ordering further relief as this Court
- 10 deems just and proper.

**JURY DEMAND**

11 Plaintiff and members of the Class demand a jury trial on all issues so triable.

12 DATED: September 9, 2021

13 Respectfully submitted,

14 *s/Benjamin Heikali*

15 Benjamin Heikali (CA Bar No. 307466)

16 Ruhandy Glezakos (CA Bar No. 307473)

17 Joshua Nassir (CA Bar No. 318344)

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*Attorneys for Plaintiff & Proposed*

*Classes*

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\* *Pro Hac Vice* Forthcoming



**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Perry Michael Fischer, declare as follows:

1. I am the named Plaintiff in this action and a citizen of the State of Washington. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because I purchased the challenged Product in this District.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, executed on  
9/8/2021 | 4:32 PM PDT  
\_\_\_\_\_, in Seattle, Washington.

DocuSigned by:  
*Perry Michael Fischer*  
AZCE340CCE8F427  
\_\_\_\_\_  
Perry Michael Fischer