

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MARIO ALIANO, *individually, and on behalf of  
all others similarly situated,*

Plaintiff,

v.

MOLSON COORS BREWING COMPANY, a  
Colorado corporation; MILLERCOORS, LLC, a  
Delaware limited liability company, and  
MILLER BREWING COMPANY, a Wisconsin  
corporation, *individually, and on behalf of all  
others similarly situated,*

Defendants.

Case No.

Jury Trial Demanded

**CLASS ACTION COMPLAINT**

Plaintiff MARIO ALIANO, individually, and on behalf of all other similarly situated person and entities, files this Class Action Complaint (hereinafter "Complaint") and alleges upon personal knowledge matters pertaining to himself and his own acts, and as to all other matters, upon information and belief, based upon the investigation undertaken by his counsel:

**I. SUMMARY OF THE ACTION**

1. This is a nationwide class action lawsuit brought by the Plaintiff, individually (hereinafter "Plaintiff"), and on behalf of all other similarly situated persons and entities (hereinafter "Plaintiff Class") against MOLSON COORS BREWING COMPANY, MILLERCOORS, LLC and MILLER BREWING COMPANY, each individually (hereinafter "Defendants"), and as the representatives of a Defendants class (hereinafter "Defendants Class") comprised of all persons and entities that produce, manufacture, distribute and/or otherwise market Coors Light and Coors Beer products (hereinafter "Product") that have been subsequently purchased by Plaintiff and the Plaintiff Class. Specifically, Plaintiff brings this action on behalf of those persons and entities who purchased the Product between August 1 to October 31, 2009.

2. Defendants, in an effort to increase sales of their Product, instituted a promotion whereby silver Sweepstakes Tickets (hereinafter “Ticket”) with a unique sweepstakes entry code (hereinafter “Code”) would be inserted into cartons of their Product. The promotion was named “The Coors Light Silver Ticket Sweepstakes” (hereinafter “Sweepstakes”). The cartons were produced and marketed with the Sweepstakes promotion printed on cartons of the Product.

3. After purchasing the Product, and opening the Product’s carton, the consumer would reveal a Ticket containing a Code. Instructions printed on the Ticket would direct the consumer to go to the Website [www.coorslight.com/silverticket](http://www.coorslight.com/silverticket) (hereinafter “Website”) to enter the Code to win the prizes. Alternatively, the consumer could text the Code to a specific text number indicated on the Ticket, via cellular phone or via the Website.

4. The Coors Light Silver Ticket Sweepstakes began at or about 8:00 a.m., Mountain time (MT), on August 1, 2009, and will end at 5:00 p.m., MT, on October 31, 2009 (hereinafter “Sweepstakes Period”).

5. The prizes that were offered were:

- a. Grand Prize (256): Two (2) Tickets to a 2009 regular-season NFL game that occurs after winner verification. Important Notice: Transportation and lodging are not included. Excludes postseason games. Approximate Retail Value (ARV): \$80–\$180, depending on the game/available Ticket level; and
- b. First Prize (125): A \$100 NFLShop.com gift certificate.

## **II. PARTIES**

6. Plaintiff is a resident of the state of Illinois. Plaintiff purchased Coors Light bearing the mark of Defendants and the Sweepstakes promotion for the sole purpose of entering into the Sweepstakes.

7. Defendant Molson Coors Brewing Company is a Colorado corporation with its principal offices located in Colorado. This Defendant brews, manufactures, markets, distributes, and sells an array of beer products, which are distributed throughout the United States.

8. Defendant Miller Brewing Company is a Wisconsin corporation with its principal offices located in Wisconsin. This Defendant brews, manufactures, markets, distributes, and sells an array of beer products, which are distributed throughout the United States.

9. Defendant MillerCoors LLC is a Delaware limited liability company which is a joint venture between the other two Defendants, whose purpose is to brew, manufacture, market, distribute, and sell an array of beer products, which are distributed throughout the United States.

### **III. JURISDICTION AND VENUE**

10. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d). The Plaintiff Class involves more than 100 individuals. A member of the Plaintiff Class is a citizen of a state different from the Defendants, and the amount of controversy, in the aggregate, exceeds the sum of \$5,000,000 exclusive of interest and costs.

11. Venue is proper in this district under 28 U.S.C. §1391, because a substantial part of the events and omissions giving rise to the claims occurred in this district.

### **IV. FACTUAL ALLEGATIONS**

12. Plaintiff purchased the Product based on and as a result of Defendants' marketing campaign, so that Plaintiff could enter into the Sweepstakes for a chance to win the prizes indicated on the Ticket and on the Website.

13. Plaintiff purchased the Product, opened the carton, removed the Ticket and proceeded to enter the Code properly on the Website. After agreeing to the Corporate Official Rules, as indicated on the Website, and submitting the Code, Plaintiff received the message: "This

is not a valid code.” Plaintiff re-entered the Code and received the same results.

14. Plaintiff attempted to input the Code on Defendants’ Website to have Defendants send the Sweepstakes results to Plaintiff’s cellular telephone phone via a text message. Again, the message “This is not a valid code” appeared.

15. Plaintiff was therefore unable to enter the Sweepstakes using the invalid Code printed on his Ticket.

16. Upon information and belief, Defendants issued approximately five million (5,000,000) Tickets containing invalid Codes.

17. Upon information and belief, Defendants have received and continue to receive several hundred complaints from across the country to Defendants’ customer service line and via various websites, wherein members of the Plaintiff Class complained that the Codes printed on their Tickets were invalid and that they were unable to enter the Sweepstakes.

18. During all times relevant hereto, the Defendants knowingly issued approximately five million (5,000,000) Tickets containing invalid Codes.

19. Defendants’ labeling and packaging of their Product has and continues to deceive the Plaintiff and Plaintiff Class by marketing and promoting a Sweepstakes contest which Defendants knew the Plaintiff and the Plaintiff Class would not be able to enter or win, as the Tickets in Defendants’ Product contained invalid Codes.

20. The Product purchased by Plaintiff and the Plaintiff Class from Defendants contained advertisements that promoted the Sweepstakes contest and stated that a consumer would be able to enter the Sweepstakes by purchasing the Product and using the Sweepstakes entry Code on the Ticket in the Product packaging. Plaintiff and the Plaintiff Class relied on Defendants’ representations and purchased Product that was produced, distributed, marketed, and/or sold by Defendants.

21. Plaintiff and the Plaintiff Class purchased the Product, unaware that Defendants issued approximately five million (5,000,000) Tickets bearing an invalid Code, because Defendants did not issue any statements or post on their corporate Websites that the Tickets were defective in that some Tickets contained invalid Codes. Had the Plaintiff and Plaintiff Class known this information, they would not have purchased the Product. There is no way that a consumer could determine whether a particular Product's Ticket contained an invalid Code without first purchasing the Product and thereafter attempting to enter the Code in Defendants' Website.

22. This lack of consumer awareness is a direct result of the Defendants' efforts to perpetuate a very lucrative revenue stream that would be interrupted and reduced if the general public and persons similarly situated to Plaintiff were to be informed that their purchase of the Product would not result in their ability to enter into the Sweepstakes for a chance to win prizes.

23. Although Plaintiff and the Plaintiff Class understand the likelihood of winning a Sweepstakes in which potentially millions of people may enter is remote, millions of people nevertheless purchased the Product in reliance on this chance.

#### **V. CLASS ACTION ALLEGATIONS**

24. Plaintiff brings this class action claim pursuant to Rule 23 of the Federal Rules of Civil Procedure. The requirements of Rule 23 are met with respect to the classes defined below.

##### **A. The Plaintiff Class.**

25. The Plaintiff brings his claim on his own behalf, and on behalf of the following class:

All persons and entities in the United States who, between August 1, 2009 and October 31, 2009, purchased Coors Light and Coors Beer products containing the advertisement of the "Coors Light Silver Ticket Sweepstakes" promotion and whose Silver Tickets had invalid sweepstakes entry codes.

Excluded from the Plaintiff Class are the Defendants named in this complaint and the members of the Defendants Class, their officers, directors, agents, trustees, parents, children, corporations,

trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendants and the members of the Defendants Class, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendants and the members of the Defendants Class, or any of them; the Judge assigned to this action and any member of the Judge's immediate family; and all governmental entities.

26. Plaintiff reserves the right to amend or modify his Complaint and/or the Plaintiff Class definition in connection with meaningful discovery and/or a Motion for Class Certification.

27. Members of the Plaintiff Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. The Plaintiff Class, upon information and belief, includes millions of geographically dispersed persons and entities throughout the United States. The precise number and identities of Class members are unknown to Plaintiff but can be easily obtained through notice and discovery. Indeed, notice can be provided through a variety of means including publication, the cost of which is properly imposed upon the Defendants.

28. Plaintiff will fairly and adequately protect the interests of all Plaintiff Class members and has retained counsel competent and experienced in class and consumer litigation.

29. Plaintiff's claims are typical of the claims of the Plaintiff Class, and all Plaintiff Class members sustained uniform damages arising out of the conduct challenged in this action. The Plaintiff Class is ascertainable and there is a well-defined community of interests in the questions of law and/or fact alleged, since the rights of each Plaintiff Class member were infringed or violated in a similar fashion based upon the Defendants' wrongdoing. The injuries sustained by the Plaintiff and the Plaintiff Class members flow, in each instance, from a common nucleus of operative facts — the Defendants' wrongdoing. In every related case, Plaintiff and the Plaintiff Class members suffered uniform damages caused by their purchase of Coors Light and Coors Beer products produced, distributed, marketed, and/or sold by the Defendants.

30. There are questions of law and fact common to the Plaintiff Class that predominate over any questions solely affecting individual Plaintiff Class members. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the Plaintiff Class members. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Plaintiff Class members is impracticable. Furthermore, the expense and burden of individual litigation make it impossible for the Plaintiff Class members to individually redress the wrongs done to them.

32. Defendants have acted or have refused to act on grounds generally applicable to the Plaintiff Class thereby making it appropriate to grant final declaratory and injunctive relief with respect to the Plaintiff Class as a whole.

**B. The Defendants Class.**

33. Defendants are sued herein individually and as the representatives of the Defendants Class defined as:

All persons and entities that produce, manufacture, distribute and/or otherwise market Coors Light and Coors beer products containing the “Coors Light Silver Ticket Sweepstakes” promotional advertisement.

34. The Defendants Class is composed of numerous companies substantially similar to Defendants, so much so that joinder of all of the Defendants as named Defendants would be impracticable.

35. The claims and defenses of the Defendants are typical of the claims and defenses of the other member of the Defendants Class, and Defendants will fairly and adequately protect the interests of all other members of the Defendants Class.

36. There are questions of law and fact common to the members of the Defendants Class that predominate over any individual questions affecting individual Defendants. Defendants and the Defendants Class engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the Plaintiff Class members. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

37. Prosecution of separate actions by individual members of the Defendants Class would create a risk of inconsistent or varying adjudications with respect to individual members of the proposed class, which would establish incompatible standards of conduct for the Defendants.

38. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual members of the Defendants Class do not have a great interest in individually controlling the defense of separate actions. Further, many of the members of the proposed Defendants Class do not have individual defenses to this action, and any core ruling or precedent affecting the named Defendants would be equally applicable to all members of the Defendants Class.

**C. General Benefits of this Class Action.**

39. Concentrating this litigation in one class action case is a superior method to adjudicate the claims, because it would greatly conserve judicial resources and provide for the expedient and efficient resolution of the claims asserted herein.

40. This proposed class action does not present any extraordinary or unusual difficulties affecting its management as a class action. Plaintiff knows of no difficulties that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Indeed, it would be the most appropriate structure of litigation.

## **VI. CAUSES OF ACTION**

### **COUNT I**

#### **For Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq*, Based Upon Omission or Concealment**

41. Count I is brought by Plaintiff, individually and on behalf of the Plaintiff Class. Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

42. Defendants and the Defendants Class engaged in unfair and/or deceptive acts and practices by, among other things, concealing, suppressing, omitting or failing to inform Plaintiff and members of the Plaintiff Class, that certain Tickets were printed with invalid Codes.

43. Upon information and belief, Defendants and the Defendants Class knew or should have known of the invalid Codes that were printed on the Tickets contained in their Product, but did not disclose the information to Plaintiff and members of the Plaintiff Class.

44. Defendants and the Defendants Class intended that Plaintiff and the members of the Plaintiff Class rely on their omissions and concealment of material facts regarding the invalid Codes in an effort to increase sales of their Coors Light and Coors Beer products.

45. If not for Defendants' and the Defendants Class members' deceptive and unfair act of failing to inform Plaintiff and the members of the Plaintiff Class as to the existence of the invalid Codes, Plaintiff and members of the Plaintiff Class would not have purchased the Product.

46. Defendants and the Defendants Class were able to sell millions of Coors Light and Coors Beer products that they would not have otherwise sold absent their deceptive marketing campaign which caused the Plaintiff and members of the Plaintiff Class substantial injuries.

47. The acts, practices, misrepresentations and omissions by Defendants and the Defendants Class described above, with intent that Plaintiff and other members of the Plaintiff Class rely upon the concealment, suppression and omission of such material facts, constituted unfair

and/or deceptive acts and practices occurring in the course of conduct involving trade or commerce within the meaning of 815 ILCS section 505/1, *et seq.*

48. Defendants' and the Defendants Class members' misconduct in the course of trade and/or commerce offends public policy and is immoral, unethical, oppressive, and/or unscrupulous and caused substantial inconvenience and cost to the Plaintiff and the Plaintiff Class.

49. Plaintiff and members of the Plaintiff Class suffered damages as a result of Defendants' and the Defendants Class members' deceptive and/or unfair acts. Accordingly, Plaintiff, on behalf of himself and the other Plaintiff Class members, seeks monetary damages, punitive damages and such other and further relief as set forth in the Illinois Consumer Fraud and Deceptive Business Practices Act.

## **COUNT II**

### **For Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, Based Upon Misrepresentation**

50. Count II is brought by Plaintiff, individually and on behalf of the Plaintiff Class. Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

51. Defendants and the Defendants Class engaged in unfair and/or deceptive acts and practices by, among other things, the dissemination of deceptive and misleading advertising and marketing materials stating that the Tickets contained in the Product contained valid Codes that would afford Plaintiff and the Plaintiff Class the opportunity to enter into the Sweepstakes with the possibility of winning the prizes advertised by Defendants and the Defendants Class.

52. Upon information and belief, Defendants and the Defendants Class knew or should have known of the defect in the Tickets, in that the Tickets contained invalid Codes and the Tickets were inserted in their Product, but Defendants and the Defendants Class did not disclose the information to Plaintiff and members of the Plaintiff Class.

53. Defendants and the Defendants Class intended that Plaintiff and the members of the Plaintiff Class rely on their deceptive acts and misrepresentations, and Plaintiff and the members of the Plaintiff Class were actually deceived by Defendants' and the Defendants Class members' representations that the Tickets contained valid entry Codes that would afford Plaintiff and the Plaintiff Class the opportunity to enter the proper Code into the Sweepstakes and to potentially win any of the prizes advertised.

54. If not for Defendants' and the Defendants Class members' deceptive and misleading representations, Plaintiff and members of the Plaintiff Class would not have purchased the Product.

55. Defendants and the Defendants Class were able to sell millions of Coors Light and Coors Beer products that they would not have otherwise sold absent their deceptive marketing campaign which caused the Plaintiff and members of the Plaintiff Class substantial injuries.

56. The acts, practices and misrepresentations by Defendants and the Defendants Class described above, with intent that Plaintiff and other members of the Plaintiff Class rely upon the deceptive acts and misrepresentations, constituted unfair and/or deceptive acts and practices occurring in the course of conduct involving trade or commerce within the meaning of 815 ILCS section 505/1, *et seq.*

57. Defendants' and the Defendants Class members' misconduct in the course of trade and/or commerce offends public policy and is immoral, unethical, oppressive, and/or unscrupulous and caused substantial injury to Plaintiff and the Plaintiff Class.

58. Plaintiff and members of the Plaintiff Class suffered damages as a result of Defendants' and the Defendants Class members' deceptive and/or unfair acts. Accordingly, Plaintiff, on behalf of himself and the other Plaintiff Class members, seeks monetary damages, punitive damages and such other and further relief as set forth in the Illinois Consumer Fraud and Deceptive Business Practices Act.

**COUNT III****For Violations of the Implied Warranty of  
Merchantability on Behalf of Residents of Certain States**

59. Count III is brought by Plaintiff, individually, and on behalf of all similarly situated residents of Alaska, Arkansas, Colorado, Delaware, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Virginia, West Virginia and Wyoming (hereinafter “Implied Warranty Subclass”). Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

60. At all times, there were in effect the following statutes governing the implied warranty of merchantability: Alaska Stat. § 45.02.314; Ark. Code Ann § 4-2-314; CRS § 4-2-314; 6 Del. C. § 2-314; HRS § 490:2-314; § 554.2314; 11 M.R.S.A. § 2-314; Md. Code Ann. Art. 95B § 2-314; Mass. Gen. Laws. Ch. 106 § 2-314; Miss. Code. Ann. § 75-2-314; MCA 30-2-314; Neb. UCC 2-314; NRS 104.2314; N.J.S.A. 12A:2-314; NDCC 2-314; O.S. 1991 § 2-314; G.L. 1956 §6A-2-314; S.C. Code Ann. § 36-2-314; SDCL 57A-2-314; Tex. Bus. and Com. Code Ann. § 2-314; VA. Code § 8.2-314; W. VA. Code § 46-2-314; and Wyo. Stat. 34.1-2-314 (hereinafter “Acts”).

61. As the manufacturer, producer, marketer, and seller of the Product, Defendants and the Defendants Class are “merchants” within the meaning of the various states’ commercial Acts governing the implied warranty of merchantability.

62. The Product and the Tickets contained therein are “goods,” as defined in various states’ commercial Acts governing the implied warranty of merchantability.

63. Implied in the sale of the Product is a warranty of merchantability that requires, among other things, that the Tickets contained in the Product pass without objection in the trade and are of merchantable quality and any representations made by Defendants and the Defendants Class as to the accuracy of the Sweepstakes and the validity of the Code on the Tickets are accurate.

64. Because the invalidity of the Codes contained on the Tickets inherently caused damage to Plaintiff and Plaintiff Class members as a result of the inability of the Plaintiff and Plaintiff Class to enter the Sweepstakes using the Codes on the Tickets contained in the Product that they purchased, the Tickets and the Product were therefore not merchantable at the times they were sold, as implicitly warranted by Defendants and the Defendants Class.

65. Due to Defendants' and the Defendants Class members' wrongful conduct as alleged herein, Plaintiff and members of the Plaintiff Class could not have known about the invalidity of the Codes associated with the Sweepstakes until after Plaintiff and the Plaintiff Class suffered damage caused by the purchase of the Product and their subsequent attempt to enter the Codes on the Defendants' Website.

66. Defendants and the Defendants Class were put on notice of the invalid Codes early in the Sweepstakes promotion, as several hundred complaints were made to Defendants' customer service telephone line concerning the defect of the invalid Codes, and Defendants and the Defendants Class knew that they sent an order to their printing company to print approximately five million (5,000,000) Tickets with Codes that were not valid, as these Codes were not entered into Defendants' database.

67. As a direct and proximate result of the breach of said warranties, and as the direct and legal result of the promotion of the Sweepstakes indicating that the Codes printed on the Tickets contained in the Product were valid, whereby the Product's packaging and promotions were designed, packaged, labeled and supplied by Defendants and the Defendants Class, and other wrongdoing of Defendants and the Defendants Class described herein, Plaintiff and members of the Plaintiff Class were caused to suffer damages as alleged herein.

**COUNT IV****For Breach of Express Warranty**

68. Count IV is brought by Plaintiff, individually and on behalf of the Plaintiff Class. Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

69. Defendants and the Defendants Class expressly warranted that the Codes were valid for the purpose of entering the Code on the Defendants' Website, whereby Plaintiff and the Plaintiff Class would therefore be entered into a Sweepstakes with a chance to win certain Prizes.

70. Defendants and the Defendants Class did not conform to these express representations, because the Codes printed on approximately five million (5,000,000) Tickets were invalid and would not allow those Ticket holders to enter into the Sweepstakes.

71. Due to Defendants' and the Defendants Class members' wrongful conduct as alleged herein, Plaintiff and members of the Plaintiff Class could not have known about the invalid Codes until after Plaintiff and the Plaintiff Class purchased the Product and attempted to enter the Codes on the Defendants' Website.

72. Defendants and the Defendants Class were put on notice of the invalid Codes early in the Sweepstakes promotion, as several hundred complaints were made to Defendants' customer service telephone line concerning the defect of the invalid Codes, and Defendants and the Defendants Class knew that they sent an order to their printing company to print approximately five million (5,000,000) Tickets with Codes that were not valid, as these Codes were not entered into Defendants' database.

73. As a direct and proximate result of the breach of said warranties, and as the direct and legal result of the promotion of the Sweepstakes indicating that the Codes printed on the Tickets contained in the Product were valid, whereby the Product's packaging and promotions were

designed, packaged, labeled and supplied by Defendants and the Defendants Class, and other wrongdoing of Defendants and the Defendants Class described herein, Plaintiff and members of the Plaintiff Class were caused to suffer damages as alleged herein.

## **COUNT V**

### **Negligence**

74. Count V is brought by Plaintiff, individually and on behalf of the Plaintiff Class. Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

75. Defendants and the Defendants Class had a duty to exercise reasonable care in the design, manufacture and printing of the Tickets, and the sale, distribution and marketing of the Sweepstakes and Product containing the Tickets which Defendants and the Defendants Class placed into the stream of commerce, including a duty to assure that the Tickets contained valid Codes and that the Product did not cause harm or damage to the Plaintiff and the Plaintiff Class.

76. Defendants and the Defendants Class failed to exercise ordinary care in the design, manufacture, sale, and printing of the Tickets, quality assurance, quality control, and/or distribution of the Tickets into interstate commerce in that Defendants and the Defendants Class knew or should have known that the Tickets contained invalid Codes that posed a risk of injuring the Plaintiff and Plaintiff Class. Defendants' and the Defendants Class members' failure to exercise reasonable care in the design, manufacture and printing of the Tickets, and the sale, distribution and marketing of the Sweepstakes and Product containing the Tickets was grossly negligent.

77. Specifically, Defendants and the Defendants Class were grossly negligent in the design, manufacture and printing of the Tickets, and the advertising, marketing, and sale of Product and Sweepstakes in that they:

- a. Failed to use due care in designing, manufacturing, printing and marketing the Product and Tickets, so as to avoid the aforementioned risks to Plaintiff and Plaintiff Class members;
- b. Failed to withdraw the marketing campaign of the Sweepstakes or otherwise amend the Website to indicate the Sweepstakes was ending due to numerous invalid Codes;
- c. Failed to conduct adequate post-marketing surveillance to determine the validity of the Codes;
- d. Failed to warn Plaintiff and members of the Plaintiff Class prior to actively encouraging the sale of Product either directly or indirectly, orally or in writing, about the following: that the Product contained Sweepstakes Tickets containing invalid Codes as described herein; and
- e. Were otherwise careless or grossly negligent.

78. Despite the fact that Defendants and the Defendants Class knew or should have known that the invalid Codes could cause unreasonable damage to Plaintiff and Plaintiff Class members, Defendants and the Defendants Class continued to market the Sweepstakes and Product to Plaintiff and the Plaintiff Class.

79. Defendants and the Defendants Class knew or should have known that Plaintiff and the Plaintiff Class would foreseeably suffer damages associated with their purchase of the Product, as a result of Defendants' and the Defendants Class members' failure to exercise ordinary care as described above.

80. Defendants' and the Defendants Class members' negligence was a proximate cause of Plaintiff's and the Plaintiff Class' economic damages, as previously set forth herein.

## **COUNT VI**

### **Unjust Enrichment for Residents of Certain States**

81. Count VII is brought by Plaintiff individually, and on behalf of all similarly situated residents of Alaska; Arkansas; California; Colorado; Connecticut; District of Columbia; Florida; Georgia; Hawaii; Illinois; Indiana; Iowa; Kansas; Kentucky; Maine; Michigan; Minnesota;

Mississippi; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Utah; Vermont; Virginia; Washington; West Virginia; and Wisconsin for unjust enrichment (hereinafter “Unjust Enrichment Subclass”). Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein.

82. At all times relevant hereto, Defendants and the Defendants Class designed, produced, marketed, and sold Product that contained Tickets with invalid entry Codes.

83. Plaintiff and members of the Plaintiff Class conferred upon Defendants and the Defendants Class, without knowledge that the Tickets posed a risk of financially damaging Plaintiff and the Plaintiff Class, payment for the Product which are benefits that were non-gratuitous.

84. Defendants and the Defendants Class appreciated, or had knowledge of the non-gratuitous benefits conferred upon them by Plaintiff and members of the Plaintiff Class.

85. Defendants and the Defendants Class accepted or retained the non-gratuitous benefits conferred by Plaintiff and members of the Plaintiff Class, with full knowledge and awareness that, as a result of Defendants’ and Defendants Class members’ unconscionable wrongdoing, Plaintiff and members of the Plaintiff Class were purchasing Product that contained Tickets with invalid Codes which Tickets were represented by Defendants and the Defendants Class as being valid and reasonable as Plaintiff and the Plaintiff Class would have expected. Retaining the non-gratuitous benefits conferred upon Defendants and the Defendants Class by Plaintiff and members of the Plaintiff Class under these circumstances made Defendants’ and the Defendants Class members’ retention of the non-gratuitous benefits unjust and inequitable.

86. Because Defendants’ and the Defendants Class members’ retention of the non-gratuitous benefits conferred by Plaintiff and members of the Plaintiff Class is unjust and inequitable, Plaintiff and members of the Plaintiff Class are entitled to, and hereby seek

disgorgement and restitution of Defendants' and the Defendants Class members' wrongful profits, revenue, and benefits in a manner established by the Court.

## COUNT VII

### **Alternative Claim for Relief Under the State Consumer Protection Acts<sup>1</sup>**

87. Plaintiff repeats and realleges all of the foregoing paragraphs of this complaint as if fully set forth herein:

88. Count VIII is brought by Plaintiff, individually, and on behalf of all similarly situated residents of each of the 50 states for violations of the state consumer protection acts including:

- a. the Alaska Unfair Trade Practices And Consumer Protection Act, AS § 45.50.471 *et seq.*;
- b. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521 *et seq.*;
- c. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101 *et seq.*;
- d. the California Unfair Competition Law, Bus. and Prof. Code §§17200, *et seq.* and 17500 *et seq.*;
- e. the California Plaintiffs Legal Remedies Act, Civil Code §1750, *et seq.*;
- f. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- g. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;
- h. the Delaware Consumer Fraud Act, 6 Del. C. § 2513., *et seq.*;
- i. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- j. the Florida Deceptive And Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- k. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- l. the Hawaii Unfair Competition Law, H.R.S. § 480-2, *et seq.*;
- m. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;

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<sup>1</sup> This Count is plead in the alternative to Counts I and II.

- n. the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- o. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- p. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- q. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- r. the Louisiana Unfair Trade Practices And Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- s. the Maine Unfair Trade Practices Act 5 M.R.S.A. § 207, *et seq.*;
- t. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- u. the Massachusetts Regulation of Business Practices for Plaintiffs Protection Act, M.G.L.A. 93A, *et seq.*;
- v. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- w. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F, *et seq.*;
- x. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- y. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- z. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*
- aa. the New Hampshire Regulation of Business Practices For Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- bb. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- cc. the New Mexico Unfair Practices Act, N.M.S.A. 1978 §§ 57-12-1, *et seq.*;
- dd. the New York Consumer Protection from Deceptive Acts and Practices, GBL § 349, *et seq.*;
- ee. the North Carolina Unfair And Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- ff. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- gg. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- hh. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;

- ii. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- jj. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- kk. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- ll. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- mm. the South Dakota Deceptive Trade Practices and Consumer Protection SDCL § 37-24-1, *et seq.*;
- nn. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- oo. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. and C. § 17.41, *et seq.*;
- pp. the Utah Consumer Sales Practices Act, UT ST § 13-11-175, *et seq.*;
- qq. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- rr. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-199, *et seq.*;
- ss. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- tt. the West Virginia Consumer Credit And Protection Act, W.Va.Code §46A, *et seq.*;
- uu. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- vv. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

89. The acts, practices, misrepresentations and omissions by Defendants and the Defendants Class described above, and Defendants' and Defendants Class members' dissemination of deceptive and misleading advertising and marketing materials in connection therewith, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes.

90. Defendants' and Defendants Class members' acts and practices created a likelihood of confusion or of misunderstanding and misled, deceived or damaged Plaintiff and members of the Plaintiff Class in connection with the sale or advertisement of the "Coors Light Silver Ticket Sweepstakes." Defendants' and Defendants Class members' conduct also constituted the use or employment of deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged in violation of each of the above-enumerated statutes.

91. Plaintiff, on behalf of himself and the other Plaintiff Class members, seeks monetary damages, treble damages and such other and further relief as set forth in each of the above-enumerated statutes.

#### **VII. JURY TRIAL DEMANDED**

92. Plaintiff and the proposed Plaintiff Class demand a jury of twelve.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, request that he and the other applicable Plaintiff Class members have judgment entered in their favor and against Defendants and the Defendants Class, as follows:

- A. An order certifying that this action, involving Plaintiff's and the Plaintiff Class members' claims against Defendants and the Defendants Class, be maintained as a nationwide class action under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his undersigned counsel to represent the Plaintiff Class;
- B. An award of actual damages in the form of restitution;
- C. Appropriate injunctive relief;
- D. Reasonable attorneys' fees and costs; and

E. Such further appropriate relief this Court deems necessary.

Plaintiff MARIO ALIANO, individually, and on behalf of all others similarly situated,

By: s/ Thomas A. Zimmerman, Jr.  
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