

**DISTRICT COURT, BOULDER COUNTY, COLORADO**  
Boulder County Combined Court  
1777 6th Street  
Boulder, CO 80302

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CASE NUMBER: 2017CV31132

**Plaintiff:** INDIAN PEAKS BREWING COMPANY D/B/A  
LEFT HAND BREWING COMPANY, a Colorado  
Corporation,

v.

**Defendant:** WHITE LABS, INC., a Colorado Corporation.

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Case Number:

Div.:

**COMPLAINT AND JURY DEMAND**

Plaintiff Indian Peaks Brewing Company d/b/a Left Hand Brewing Company (“Left Hand”), by and through its counsel Holland & Hart LLP, brings this Complaint against Defendant White Labs, Inc. (“White Labs”), and in support, states and alleges the following:

**INTRODUCTION**

1. Left Hand’s Milk Stout Nitro is also called America’s Stout™, and until late 2016, it garnered a significant share of the national and international craft beer market for stout-style beers.

2. Milk Stout Nitro was the first bottled, nitrogenated beer in the U.S. craft beer industry, and quickly earned a reputation for its distinctive smoothness and nitrogen cascade, which a consumer experiences when pouring a bottle of Milk Stout Nitro into a glass.

3. However, the market share and consistently-increasing sales of Milk Stout Nitro significantly decreased after contaminated yeast product supplied by White Labs caused secondary fermentation in beers brewed using that yeast, including Milk Stout Nitro, resulting in over-pressurized bottles, broken bottles, off flavors, and disruption of the distinctive nitrogen cascade.

4. The secondary fermentation caused by White Labs' contaminated yeast required Left Hand to destroy and/or recall approximately \$2 million of beer product, including market recalls of Milk Stout Nitro, Extrovert IPA, and Warrior Fresh Hop IPA, and the destruction of several thousand more barrels of unpackaged inventory

5. In addition, Left Hand had to completely shut down its entire brewery for over two weeks, ceasing production of all beer, disassembling all production equipment, and rebuilding all valves and pipe pathways in an effort to discover and correct the cause of the contamination.

6. As a result of White Labs' contaminated yeast, Left Hand has incurred millions of dollars in monetary damages, including product recall costs, lost sales of recalled and destroyed product, lost distributor accounts, extended lost profits after the recalls, and decreased market share.

#### **PARTIES, JURISDICTION, AND VENUE**

7. Plaintiff Left Hand is a Colorado corporation with its principal place of business at 1265 Boston Avenue, Longmont, Boulder County, Colorado 80501. Left Hand is a craft brewery in the business of producing, marketing, and selling fermented malt beverages (beer), including canned and bottled products distributed domestically and internationally.

8. Defendant White Labs, Inc., is a Colorado corporation with its principal place of business at 9495 Candida Street, San Diego, California 92126. White Labs designs, develops, markets, and sells yeast products to breweries for use in the brewing of craft beer. White Labs is known for carrying a variety of yeast strains for use in brewing beer.

9. Left Hand ordered the yeast from White Labs in Boulder County and White Labs delivered the yeast to Left Hand in Boulder County for the collectively understood purpose of brewing beer in Boulder County. As a result of White Lab's contaminated yeast, Left Hand has suffered damages in excess of the jurisdictional minimum for Colorado district courts.

10. Accordingly, this Court has jurisdiction and venue is proper in Boulder County pursuant to C.R.C.P. 98.

## GENERAL ALLEGATIONS

### The U.S. Craft Beer Industry

11. The U.S. craft beer industry contributed \$67.8 billion to the national economy and accounted for more than 12% market share of the \$107.6 billion beer market in 2016.<sup>1</sup>

12. U.S. craft beer sales volume grew 6.2% in 2016, and exported craft beer grew 4.4%.<sup>2</sup>

13. Colorado alone experienced a \$3 billion economic impact in 2016 from craft beer sales, ranking it first in the nation for economic impact per capita.<sup>3</sup>

14. The U.S. craft beer industry has continued to grow annually in the last five years, with each subsequent year's sales surpassing the last.

### Left Hand Brewing Company

15. Left Hand has been in operation since 1993 and established itself early on as a major player in the craft beer industry.

16. In 2015, Left Hand was the 39th largest craft brewery in the U.S.<sup>4</sup> with customers in 40 states, the District of Columbia, and eight foreign countries throughout Europe & Japan.

17. Left Hand is committed to quality, integrity, and the customer experience, and is also one of the most honored and recognized breweries in Colorado, with over 28 Great American Beer Festival medals, 11 World Beer Cup awards, and nine European Beer Star awards.

18. With a longstanding commitment to its community and people, Left Hand has contributed \$3.6 million in cash and like-kind donations since 2008 to Colorado and beyond.

19. In 2015, Left Hand became an employee-owned, ESOP-structured organization honoring its dedication to brewing independence and broad employee ownership.

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<sup>1</sup> Brewers Association, Boulder, CO.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Due to the recalls and lost market share caused by the Yeast contamination at issue here, Left Hand's rank fell to the 44th largest craft brewery at the end of 2016.

## **Left Hand Milk Stout Nitro**

20. Left Hand changed craft beer history when it introduced bottled Milk Stout Nitro in 2011, becoming the first brewery in the U.S. craft industry to bottle a nitrogenated beer, giving Milk Stout Nitro the sole claim to being the first of its kind in the industry.

21. Until the 2016 recall, Milk Stout Nitro enjoyed a steady consumer following and consistently increasing sales and was the leading beer in Left Hand's portfolio, making up approximately half of all historical sales.

22. The success of Milk Stout Nitro has also translated to additional bottled Nitro beers produced by Left Hand, including Sawtooth Nitro and Wake Up Dead Nitro.

23. Until early 2017, Left Hand used White Labs yeast products exclusively to brew several beers, including Milk Stout Nitro, Extrovert IPA, and Warrior Fresh Hop IPA.

24. White Labs sold WLP090 yeast, also known as San Diego Super Yeast, (the "Yeast Products") to Left Hand in 2016 pursuant to a purchase order contract, which Left Hand used to brew its Milk Stout Nitro and Extrovert IPA beers.

25. As part of sales of the Yeast Products, White Labs issued Left Hand a Certificate of Quality Assurance certifying the purity of the Yeast Products and that they were not contaminated.

26. As described below, multiple of the Yeast Products sold by White Labs were contaminated with *Saccharomyces Cerevisiae variant Diastaticus* ("Diastaticus").

## **Product Issues, Consumer Complaints, and Left Hand's Diligent Investigation**

27. Left Hand first learned of a potential problem with bottles of its Milk Stout Nitro on July 6, 2016, when a customer complained of abnormally-high pressure in the finished product.

28. Left Hand investigated the customer complaint by pulling beer from its archive and testing the package pressure, as well as by conducting a microbiological analysis.

29. Based on the absence of any clear causal factor discovered from this investigation, Left Hand initially believed that the high pressure complaint was due to an anomaly from the bottling line.

30. Accordingly, unaware that there may be an issue with the White Labs Yeast Products used to brew Milk Stout Nitro, Extrovert IPA, and Warrior Fresh Hop IPA, Left Hand continued to brew, bottle, package, distribute and sell those beers.

31. However, Left Hand began to receive additional customer complaints of high bottle pressure and gushing beer.

32. Left Hand diligently investigated these reports by analyzing whether storage conditions and package pressures were within established specifications.

33. Left Hand also searched for any sensory characteristics in the beer that might indicate the source of the problem. Left Hand discovered off flavors in another of its products—Extrovert IPA—which exhibited phenolic characteristics.

34. At that point, Left Hand also requested that sales representatives in the field return any bottles included in packages that resulted in a customer complaint.

35. Bottles returned from the field in late August 2016 gave Left Hand its first clue as to the cause of the problems appearing with bottles of Milk Stout Nitro. Not only did those bottles have high pressure, but the product inside also showed an increase in alcohol, which could only result from continued fermentation. This was the first indication that the issue was with the beer itself, and Left Hand began numerous steps to investigate further and isolate the cause.

36. In September 2016, Left Hand sent bottles of Milk Stout Nitro to White Labs for microbiological testing. Left Hand also sent bottles of Milk Stout Nitro to a larger craft brewery for laboratory analysis.

37. Left Hand received the results of White Labs' microbiological and analytical testing on September 6, 2016, which broadly indicated some form of non-Saccharomyces contaminant.

38. The results of the laboratory analysis from the other craft brewery indicated that there was secondary fermentation by a contaminating yeast strain, most likely from primary fermentation early in the brewing process.

39. In late September 2016, a second craft brewery outside of Colorado, having become aware of the issues with Milk Stout Nitro, contacted Left Hand to ask whether the issues were caused by a Diastaticus contamination.

40. At the time, the cause of the secondary fermentation issues was still unknown, so this second brewery, on its own initiative, purchased bottles of Milk Stout Nitro in its local market and tested the product via Polymerase Chain Reaction (PCR), which is a form of genetic identification.

41. This second brewery's PCR test revealed that the Milk Stout Nitro was contaminated by Diastaticus.

42. *Saccharomyces Cerevisiae* variant *Diastaticus* is a wild yeast that is known to cause secondary fermentation when used in the production of beer.

43. In October 2016, MIDI Labs in Newark, DE, to which Left Hand had also sent bottles of Milk Stout Nitro for testing, confirmed via fatty acid analysis (FAME) that Left Hand's house yeast strain (not made from the White Labs Yeast Products) did not contain *Diastaticus*.

44. Accordingly, Left Hand was then able to differentiate its house yeast strain (used for other beers besides Milk Stout Nitro, Extrovert IPA, and Warrior Fresh Hop IPA) from the *Diastaticus*-contaminated yeast to try to segregate the contamination.

45. Left Hand used PCR testing and GeneDisc Yeast ID plates to identify and locate *Diastaticus*-contaminated yeast, which was only found in the beers .

46. In January 2017, The Colorado Department of Public Health & Environment confirmed by test results that Milk Stout Nitro beer samples provided to it, which were brewed using White Labs' Yeast Products, were contaminated with *Diastaticus*.

47. That is, the only beers with *Diastaticus* contamination used pitchable yeast strains using the White Labs Yeast Products, while all other beers brewed with other (non-White Labs) yeast strains did not have *Diastaticus*.

#### **Left Hand's Product Recall, Damage Control and Mitigation Measures**

48. After Left Hand determined in late August 2016 that there was an issue with its Milk Stout Nitro, but before it had discovered the cause, it performed a voluntary withdrawal of all Milk Stout Nitro products from the market.

49. Left Hand also issued recalls of two other products due to quality issues, Extrovert IPA on and Warrior Fresh Hop IPA, which were also brewed using the White Labs Yeast Products.

50. Additionally, Left Hand also was forced to recall its Mountain Mixer variety packs, which featured four Left Hand bottled beers, including Extrovert IPA and Milk Stout Nitro.

51. In an effort to discover the cause of the problem and take every possible step to prevent reoccurrence, Left Hand immediately undertook a massive audit of its cellar operations—especially yeast-handling practices—in August 2016.

52. Additionally, in September and October 2016, the brewery was shut down and all brewing operations were stopped for two weeks so that Left Hand could dismantle its entire production system and rebuild multiple valves and pipe pathways.

53. Left Hand brought in welding teams to rebuild pipework and modify vessels.
54. Left Hand also brought in its chemical providers to validate its cleaning procedures.
55. Everything from chemical titration specifications to pipe flow rates were checked and verified to be working as intended.
56. Left Hand's entire team of brewers and maintenance personnel worked day and night to make sure every single soft gasket, pipe junction, automated venting tank top, and basically every nook and cranny of the brewery was inspected, cleaned, and repaired or replaced as necessary.
57. After completely overhauling the entire brewery, Left Hand ordered a new batch of the Yeast Product from White Labs and began brewing again.
58. When it re-started production, Left Hand had its own PCR instrument and newly-devised GeneDiscs from Pall Corporation to test for Diastaticus.
59. When this testing was performed on these new products, it revealed that the beers brewed using the new White Labs Yeast Products were again contaminated with Diastaticus, while other beers—which shared the same tanks, pipe pathways, and other pieces of equipment, but used existing house yeast strains that did not contain the Yeast Products—were not contaminated.
60. In order to begin shipping recalled product again, Left Hand began applying a sensory panel test to every batch of Milk Stout Nitro brewed, and destroying the entire batch if there were any sign of Diastaticus fermentation based on sensory characteristics.
61. In addition, Left Hand filtered the batches that passed the sensory panel tests before packaging.
62. Even though considerably more time and resource consuming, filtering the beer was the only way Left Hand could ensure the removal of all the Diastaticus and prevent any secondary fermentation from occurring once the beer was packaged.
63. As an additional precaution, Left Hand abandoned its traditional clarification practice of centrifugation and instead filtered all of its products.
64. Based on its thorough and wide-ranging investigation, and confirmed by multiple test results, Left Hand determined that White Labs' Yeast Products were the source of the Diastaticus contamination.
65. Left Hand has since changed yeast vendors, and has not experienced any Diastaticus contamination since.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Express Warranty)**

66. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

67. White Labs sold multiple batches of the Yeast Products to Left Hand in 2016.

68. By and through its Certificate of Quality Assurance and other representations, White Labs expressly warranted that the Yeast Products were not contaminated.

69. Left Hand was reasonably expected to, and did, use the Yeast Products to brew beer, which Left Hand sold to customers and consumers.

70. The Yeast Products were in fact contaminated, contrary to White Labs' express warranty, which constitutes a breach.

71. White Labs' breach of its express warranty caused damages to Left Hand.

72. Left Hand notified White Labs of White Labs' breach of warranty within a reasonable time, and White Labs has done nothing to rectify it.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Implied Warranty for a Particular Purpose)**

73. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

74. White Labs sold multiple batches of the Yeast Products to Left Hand in 2016.

75. White Labs marketed the Yeast Products to breweries, like Left Hand, and impliedly warranted that the yeast was not contaminated and was fit for brewing beer.

76. Left Hand was reasonably expected to, and did, use the Yeast Products to brew beer, which Left Hand sold to customers and consumers.

77. Contrary to White Labs' warranty, the Yeast Products were in fact contaminated, making it not suitable for brewing beer, and constituting a breach.

78. White Labs' breach of its implied warranty caused damages to Left Hand.

79. Left Hand notified White Labs of White Labs' breach of warranty within a reasonable time, and White Labs has done nothing to rectify it.



**THIRD CLAIM FOR RELIEF**  
**(Breach of Implied Warranty of Merchantability)**

80. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

81. White Labs sold multiple batches of the Yeast Products to Left Hand in 2016.

82. White Labs, a merchant of brewing yeasts, marketed the Yeast Products to breweries and offered the product for the purpose brewing beer.

83. Left Hand was reasonably expected to use the Yeast Products to brew beer, which Left Hand would sell to customers and consumers.

84. The Yeast Products were in fact contaminated, and therefore not of merchantable quality.

85. White Labs' breach of its implied warranty caused damages to Left Hand.

86. Left Hand notified White Labs of White Labs' breach of warranty within a reasonable time, and White Labs has done nothing to rectify it.

**FOURTH CLAIM FOR RELIEF**  
**(Colorado Consumer Protection Act)**

87. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

88. White Labs sold the Yeast Products to Left Hand in 2016 in the normal course of White Labs' business.

89. White Labs, a merchant of brewing yeasts, marketed the Yeast Products to breweries and offered the product for the purpose brewing beer to be sold to the public.

90. Left Hand was reasonably expected to, and did, use the Yeast Products to brew beer, which it sold to customers and consumers.

91. White Labs issued Left Hand a Certificate of Quality Assurance as part of White Labs' sale of the Yeast Products to Left Hand.

92. White Labs' Certificate of Quality Assurance was White Labs' representation to Left Hand that the Yeast Products sold to Left Hand:

- (a) had certain purity characteristics;
- (b) had passed LCMS tests to detect wild yeasts;

- (c) was not contaminated; and
- (d) was of a particular standard, quality, or grade.

93. Subsequent laboratory test results, established that the Yeast Products White Labs sold to Left Hand in 2016 were contaminated with wild yeast, including *Diastaticus*.

94. When confronted by Left Hand after the initial contamination, White Labs represented that it lacked the capability to test for *Diastaticus*.

95. In the event that the tests performed by White Labs was insufficient to detect the *Diastaticus* wild yeast, White Labs failed to disclose that material information in connection with its representation that the Yeast Products had been tested and did not contain wild yeasts.

96. White Labs' representations, including those found on its Certificate of Quality Assurance, were false.

97. White Labs knew or should have known that the yeast it sold Left Hand in 2016 was contaminated.

98. White Labs' representations, including those found on its Certificate of Quality Assurance, constitute deceptive trade practices under Sections 6-1-105(1)(b), (e), (g), and (u) of the Colorado Consumer Protection Act.

99. White Labs' deceptive and/or unfair trade practices, as described in this Complaint, significantly impact the public as actual or potential consumers of the beer brewed using the Yeast Products.

100. White Labs acted in bad faith as defined in C.R.S. § 6-1-113(2.3) in that its misrepresentations and conduct was fraudulent, willful, knowing, and/or intentional and caused injury.

101. As a proximate result of White Labs' willful and malicious conduct described in this Complaint, Left Hand has suffered, and continues to suffer, irreparable harm and actual damages and losses for which it is entitled to recover in amounts to be proved at trial.

102. Left Hand was injured and has suffered damages as the result of White Labs' Certificate of Quality Assurance and contaminated yeast.

**FIFTH CLAIM FOR RELIEF**  
**(Strict Product Liability)**

103. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

104. White Labs was engaged in the business of producing, mixing, designing, manufacturing, and selling yeast products for use by brewers such as Left Hand in brewing beer to sell to customers.

105. White Labs was the producer, mixer, designer and/or manufacturer of the Yeast Products that it sold to Left Hand.

106. The Yeast Products were contaminated with Diastaticus at the time it left White Labs' control and were thus defective, causing Left Hand's beers to secondarily ferment, resulting in increased bottle pressure, broken bottles, higher alcohol content, and products that were unreasonably dangerous to the consumer.

107. The Diastaticus contaminant constitutes a manufacturing defect or foreign object in White Labs' Yeast Products sold to Left Hand for use in brewing beer to be sold to consumers.

108. White Labs' Yeast Products were expected to and did reach Left Hand without substantial change in the condition in which it was sold.

109. White Labs' defective Yeast Products have caused injury to Left Hand, including brand damage, loss of customer trust, and decreased market share, among other injuries.

110. Left Hand has suffered damages as the result of White Labs' defective Yeast Products.

**SIXTH CLAIM FOR RELIEF**  
**(Negligent Product Liability)**

111. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

112. White Labs produced, mixed, designed, manufactured, and sold the Yeast Products to Left Hand for use in brewing beer to sell to its customers.

113. As its customer, Left Hand was one of those persons White Labs should reasonably have expected to use the Yeast Products.

114. White Labs owed Left Hand a duty to exercise reasonable care in the mixing, production and/or design of the Yeast Products to prevent them from creating an unreasonable risk of harm to those who might reasonably be expected to use the Yeast Products and to ensure the Yeast Products sold and delivered to Left Hand was contaminant-free and fit for brewing beer.

115. White Labs breached its duty to Left Hand and was negligent by mixing, producing and delivering contaminated Yeast Products to Left Hand, and furthermore by

negligently representing to Left Hand in White Labs' Certificate of Quality Assurance that the Yeast Products were not contaminated.

116. The Yeast Products were contaminated and defective, and caused Left Hand's beers to secondarily ferment, resulting in increased bottle pressure, broken bottles, higher alcohol content, and potentially hazardous products.

117. While using the Yeast Products in a manner White Labs should reasonably have expected, as a result of Defendant's negligence Left Hand suffered damages, including contaminated product, lost sales, recalled and wasted product, lost accounts, lost market share, brand damage, and monetary damages.

**SEVENTH CLAIM FOR RELIEF**  
**(Negligence)**

118. Left Hand restates and re-alleges the above paragraphs as though fully set forth herein.

119. White Labs owed Left Hand a duty to ensure the Yeast Products were contaminant-free and fit for brewing beer.

120. Left Hand was one of White Labs' customers and one of those persons White Labs should reasonably have expected to use the Yeast Products.

121. White Labs breached its duty to Left Hand by delivering contaminated Yeast Products to Left Hand, and furthermore by negligently representing to Left Hand in White Labs' Certificate of Quality Assurance that the yeast was not contaminated.

122. White Labs was negligent by failing to exercise reasonable care in the formulation, mixing, and/or production of the Yeast Products to prevent the Yeast Products from creating an unreasonable risk of harm to the persons who might reasonably be expected to use the beer brewed using the Yeast Products.

123. As a result of White Labs' negligence, Left Hand suffered injuries and damages as more fully alleged above while using the Yeast Products to brew beer as White Labs intended and reasonably expected.

124. White Labs' breach proximately caused Left Hand to suffer contaminated product, lost sales, wasted product, lost accounts, lost market share, brand damage, and monetary damages.

**PRAYER FOR RELIEF**

WHEREFORE, Left Hand prays that the Court enter judgment in its favor and against Defendant White Labs on each and every claim for relief and award to Left Hand:

A. Actual, compensatory, consequential, special and extra-contractual damages for, among other things, recalled and wasted product, lost sales, lost revenue, brand damage, and lost market share, in an amount to be proven at trial;

B. Treble damages three times the amount of its actual damages, as provided by COLO. REV. STAT. § 6-1-113(2)(a);

C. Costs and attorney fees, as provided by COLO. REV. STAT. § 6-1-113(2)(b);

D. Prejudgment and post-judgment interest on any award of damages to the extent permitted by law; and

E. Such other and further relief as the Court deems proper.

### **JURY DEMAND**

Plaintiff respectfully requests a jury trial.

DATED: November 14, 2017.

Respectfully submitted,

*s/ J. Lee Gray*

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J. Lee Gray (#27306)

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