

1 David N. Lake, Esq., State Bar No. 180775  
2 **LAW OFFICES OF DAVID N. LAKE**  
3 **A Professional Corporation**  
4 16130 Ventura Boulevard, Suite 650  
5 Encino, California 91436  
6 Telephone: (818) 788-5100  
7 Facsimile: (818) 479-9990  
8 david@lakelawpc.com

9 Attorneys for Plaintiff

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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
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JOHN PELS, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

KEURIG DR. PEPPER. INC., a  
Delaware corporation,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT  
FOR:**

1. **VIOLATION OF  
CALIFORNIA'S  
CONSUMERS LEGAL  
REMEDIES ACT;**
2. **VIOLATION OF  
CALIFORNIA'S UNFAIR  
COMPETITION LAW; and**
3. **VIOLATION OF  
CALIFORNIA'S FALSE  
ADVERTISING LAW**

**JURY TRIAL DEMANDED**

1 Plaintiff John Pels, on behalf of himself and all others similarly situated,  
2 through his undersigned attorneys, alleges this Class Action Complaint against  
3 Defendant Keurig Dr. Pepper. Inc. (“Keurig”) on actual knowledge as to his own  
4 acts, and on information and belief after due investigation as to all other allegations,  
5 as follows:

6 **NATURE OF THE ACTION**

7 1. This is a consumer class action against Keurig, one of the world’s  
8 largest bottlers and distributors of bottled water and flavored beverages.

9 2. Plaintiff is a California consumer who, within the Class Period alleged  
10 herein, purchased and consumed bottled beverages distributed as part of Keurig’s  
11 popular Peñafiel brand. This brand consists of about 14 different Peñafiel varieties  
12 including Peñafiel Mineral Spring Water, the particular variety Plaintiff purchased.

13 3. Peñafiel Mineral Spring Water has been contaminated by toxic levels  
14 of arsenic for many years. Indeed, the FDA detected these unlawful arsenic levels  
15 on more than one occasion. Keurig disregarded the danger, and did not shut down  
16 operations at its Peñafiel plant in Mexico, did not undertake remedial measures until  
17 recently (or so it has claimed), and to this day has failed to issue a recall. Keurig has  
18 concealed that thousands of its customers have ingested bottled water which  
19 contains unsafe levels of arsenic, a known poison.

20 4. Keurig would not even have undertaken the recently reported remedial  
21 measures except that it was embarrassed into doing so by an exposé in *Consumer*  
22 *Reports*. Of the many water brands tested by *Consumer Reports*, Peñafiel water was  
23 the only brand that exhibited such high toxicity.

24 5. Peñafiel is part of Dr. Pepper Snapple Group, owned by Defendant  
25 Keurig, which markets more than 50 beverage brands throughout North America. It  
26 is likely that the other Peñafiel varieties—which draw water from the same source—  
27 are similarly dangerous to unsuspecting consumers.

28



1 **PARTIES**

2 11. Plaintiff Pels is an individual and a resident of Sonoma County,  
3 California and a citizen of California. During the Class Period (as defined below)  
4 Plaintiff purchased Peñafiel Mineral Spring Water, was deceived by Defendant in  
5 that he was of the belief he was obtaining a safe product made in conformity with  
6 the law, and suffered an ascertainable loss and monetary damages as a result of  
7 Defendant's unlawful conduct alleged herein. Should Defendant reform its conduct,  
8 Plaintiff will resume buying Peñafiel bottled water.

9 12. Defendant Keurig is a for-profit corporation formed and existing under  
10 the laws of the State of Delaware with its principal place of business at 83 South  
11 Avenue, Burlington, Massachusetts 01803, and thus is a citizen of Delaware and  
12 Massachusetts.

13 **FACTUAL ALLEGATIONS**

14 13. The demand for bottled water continues to grow in the United States  
15 and internationally. Consumers believe bottled water is healthy, unadulterated and  
16 more flavorful in many cases than tap water.

17 14. Trade organizations like the International Bottled Water Association  
18 work hard to reinforce in the public mind that the bottled product is safely sourced  
19 and subject to stringent testing:

20 Once the water enters the bottled water plant several processes are  
21 employed to ensure that it meets the U.S. Food and Drug  
22 Administration (FDA) purified water standard. *These treatments can*  
23 *include utilizing a multi-barrier approach. Measures in a multi-*  
24 *barrier approach may include one or more of the following: reverse*  
25 *osmosis, distillation, micro-filtration, carbon filtration, ozonation,*  
26 *and ultraviolet (UV) light. The finished water product is then placed*  
27 *in a sealed bottle under sanitary conditions and sold to the consumer.*  
28

1 Moreover, the water from public water systems is often compromised  
2 after emergency situations or natural disasters (e.g., hurricanes, floods,  
3 tornados, fires, or boil alerts). During these times, bottled water is a  
4 necessary and reliable alternative to deliver clean, safe drinking water.<sup>1</sup>

5 15. Bottled water is subject to comprehensive government regulation at  
6 both the federal and state level. In addition, the International Bottled Water  
7 Association (IBWA) has adopted industry standards (IBWA Bottled Water Code of  
8 Practice) that are, in some instances, more stringent than FDA or EPA requirements.  
9 As mandated by federal law, FDA's bottled water standards must be no less  
10 stringent and no less protective of the public health than EPA's regulations for  
11 public drinking water.

12 16. Both the FDA and the EPA are underfunded and understaffed.  
13 Accordingly, they sometimes limit themselves to notifying distributors of a problem,  
14 and expecting them to act responsibly in rectifying it. Most such companies do act  
15 responsibly. Others, like Keurig here, do not.

16 17. One of the chief concerns about any drinking water is that it may  
17 become contaminated by either naturally-occurring (yet harmful) substances, or by  
18 artificial toxins.

19 18. Arsenic is poisonous to humans and regulations exist to limit the  
20 amount of arsenic in drinking water. Since arsenic is a naturally occurring element  
21 it may leach into water sources used for drinking unless detected and filtered out. If  
22 it is not, this poses a serious public health risk. For example:

23 (a) **It Damages the Heart:** CNN reported on May 7, 2019:  
24 "Young adults free of diabetes and cardiovascular disease developed heart damage  
25 after only five years of exposure to low-to-moderate levels of arsenic commonly  
26 found in groundwater. This was the finding of a study published Tuesday in

27  
28 <sup>1</sup> *Bottled Water Vs. Tap Water*, International Bottled Water Association, available at:  
<https://www.bottledwater.org/health/bottled-water-vs-tap-water>

1 Circulation: Cardiovascular Imaging, an American Heart Association Journal.  
2 “Low-level arsenic exposure is associated with a disproportionate growth of the  
3 heart independent of hypertension and other traditional risk factors,” the study's lead  
4 author, Dr. Gernot Pichler, wrote. “The higher the arsenic content in drinking water,  
5 the greater the damage to the heart.”

6 (b) **It is a Carcinogen:** The International Agency for Research on  
7 Cancer (IARC), part of the World Health Organization (WHO), has one of its major  
8 goals to identify causes of cancer. IARC classifies arsenic and inorganic arsenic  
9 compounds as “carcinogenic to humans.” This is based on sufficient evidence in  
10 humans that these compounds can cause: lung cancer, bladder cancer and skin  
11 cancer.

12 (c) **It can Lead To Kidney Disease:** Arsenic exposure can lead to  
13 chronic kidney disease and kidney fibrosis. Numerous scientific studies have shown  
14 that arsenic exposure led to various forms of renal dysfunction. Normally after an  
15 acute kidney injury, kidney cells regrow to recover the organ’s function. However,  
16 chronic exposure to toxicants, like arsenic, injures the kidneys repeatedly and leads  
17 to the development of chronic kidney disease, an irreversible condition for which  
18 there is no current treatment. Worse still, chronic kidney disease is progressive and  
19 leads to kidney failure.

20 (d) **It Increases the Risk of Diabetes:** Science Daily reported in  
21 2018 that chronic exposure to arsenic interferes with insulin secretion in the  
22 pancreas, which may increase the risk of diabetes. It drew on research published in  
23 the American Journal of Physiology -- Regulatory, Integrative and Comparative  
24 Physiology.

25 19. Under federal and state standards, companies like Keurig are required  
26 to ensure that water and water-based products contain arsenic levels no higher than  
27 10 parts per billion (ppb). The FDA has advised:  
28

1 Producers of bottled water are responsible for assuring, through  
2 appropriate manufacturing techniques and sufficient quality control  
3 procedures, that all bottled water products introduced or delivered for  
4 introduction into interstate commerce comply with the quality standard  
5 (§ 165.110(b)). *Bottled water that is of a quality below the prescribed*  
6 *standard is required by § 165.110(c) to be labeled with a statement of*  
7 *substandard quality.* Moreover, any bottled water containing a  
8 substance at a level that causes the food to be adulterated under section  
9 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory  
10 action, even if the bottled water bears a label statement of substandard  
11 quality.<sup>2</sup>

12 20. Peñafiel water was first bottled in Mexico in 1948 by the Peñafiel  
13 family. It became wildly popular. Large companies became interested in it—after a  
14 period during which it was owned and run by Cadbury Schweppes. It was acquired  
15 (and is now run) by Keurig’s Dr. Pepper Snapple Group unit. The bottling  
16 operations remain in Mexico.

17 21. As early as 2013, high levels of arsenic were detected in Peñafiel water  
18 during an inspection of a company named R.R. Importaciones Inc. in Passaic, New  
19 Jersey. The proprietor represented that he had only imported the product for  
20 personal use in 2012, yet one year later dozens of bottles from that same distributor  
21 were ordered destroyed. Keurig has disclaimed knowledge of this incident, yet it  
22 may be inferred that high levels of arsenic were in Peñafiel water as early as 2012.  
23 It is difficult to understand how Keurig would not know the destination of bottles it  
24 exported to the United States.

25 22. In 2015 and again in early 2018, the FDA issued import alerts entitled:  
26 “Detention Without Physical Examination of Bottled Water due to Arsenic \*\*\*and

27  
28 <sup>2</sup> Available at: <https://www.federalregister.gov/documents/2004/12/02/04-26531/beverages-bottled-water>



1 Flavored Water Beverages\*\*\* Due to Inorganic Arsenic.” Among the producers  
2 listed was Peñafiel; the toxic products were identified as carbonated water (March 4,  
3 2015) and mineral water (April 4, 2018). Nonetheless the issue persisted and import  
4 of these dangerous products continued into the United States unabated.

5 23. On April 18, 2019 Consumerreports.org published an article entitled,  
6 “*Arsenic in Some Bottled Water Brands at Unsafe Levels, Consumer Reports*  
7 *Says.*”<sup>3</sup> The article reflects Consumer Reports’ independent review of various  
8 brands of bottled water. Only 11 brands out of 130 tested had detectable levels of  
9 arsenic. Peñafiel water stood alone in exhibiting a high level of toxicity—70%  
10 above the legal standard:

11 As part of our investigation, CR also was able to purchase two brands  
12 of imported water—Jermuk from Armenia and Peñafiel from Mexico—  
13 that are on an import alert issued by the federal government for  
14 previously having arsenic levels above the federal limit of 10 ppb. Such  
15 an alert is meant to “prevent potentially violative products from being  
16 distributed in the United States,” according to the Food and Drug  
17 Administration. Even so, CR easily purchased the two brands in retail  
18 stores in two states and on Amazon.

19 Beverage giant Keurig Dr. Pepper provided CR in March with  
20 Peñafiel's bottled water quality report for 2018, *which stated that the*  
21 *water had nondetectable amounts of arsenic.* But the company said  
22 this week that it had conducted new testing, because of CR’s questions,  
23 and confirmed levels above the federal limit, at an average of 17 ppb.

24 “An arsenic level of 17 ppb is a clear violation of the federal bottled  
25 water standard of 10 ppb,” says Jean Halloran, director of food policy  
26 initiatives at CR.

27  
28 <sup>3</sup> Available at: <https://www.consumerreports.org/water-quality/arsenic-in-some-bottled-water-brands-at-unsafe-levels/>



1           24. The Mexican government's Office of the Federal Prosecutor for the  
2 Consumer has now started an investigation of its own, and Keurig has been asked to  
3 supply information about the product.

4           25. Hazardous water is of no use and of no value to consumers, and  
5 threatens their health. Keurig has acted irresponsibly and unlawfully in connection  
6 with Peñafiel water, and appears to have engaged in an attempt to conceal the truth.

7           26. For the foregoing reasons, Plaintiff brings this action for restitutionary  
8 and injunctive relief.

9   **CLASS ACTION ALLEGATIONS**

10           27. Plaintiff brings this action as a class action pursuant to Rules 23(a) and  
11 23(b)(2) and 23 (b)(3) of the Federal Rule of Civil Procedure, seeking damages and  
12 injunctive relief under state consumer protection statutes on behalf of himself and all  
13 members of the Class.

14           28. The Class consists of all consumers who, while in California,  
15 purchased any Peñafiel beverage within the applicable statute(s) of limitations.

16           29. The Class for whose benefit this action is brought is so numerous that  
17 joinder of all members is impracticable. While the exact number and identities of  
18 the persons who fit within each proposed class are presently unknown, it includes  
19 thousands of persons and the exact number can be ascertained from Defendant's  
20 records or by resort to vendor records. Peñafiel beverages are sold by Target, Wal-  
21 mart, Instacart and over Amazon.com.

22           30. Common Questions Predominate: This action involves common  
23 questions of law and fact to the Class because each Class Member's claim derives  
24 from the same allegedly unlawful and deceptive action. The common questions of  
25 law and fact involved predominate over questions that affect only Plaintiff or  
26 individual Class Members. Thus, proof of a common or single set of facts will  
27 establish the right of each member of the Class to recover.

1           31. Among the questions of law and fact common to the Class are:

2           a. Whether Defendant marketed and sold in an unlawful manner;

3           b. Whether Defendant's actions were deceptive and misleading in  
4 connection with marketing and sale of Peñafiel beverages;

5           c. Whether Defendant engaged in the course of conduct complained  
6 of herein;

7           d. Whether Defendant's marketing and offer for sale the items on  
8 the website constitutes a deceptive practice; and

9           e. The proper measure of damages.

10          32. Typicality: Plaintiff's claims are typical of the Class because he bought  
11 Peñafiel during the Class Period. Defendant's allegedly deceptive actions concern  
12 the same business practices described herein. Thus, Plaintiff and Class Members  
13 sustained the same injuries and damages arising out of Defendant's conduct in  
14 violation of law. The injuries and damages of each Class Member were caused  
15 directly by Defendant's wrongful conduct in violation of law as alleged herein.

16          33. Adequacy: Plaintiff will fairly and adequately protect the interests of all  
17 Class Members because it is in their best interests to prosecute the claims alleged  
18 herein to obtain full compensation they are due for the illegal conduct of which they  
19 complain. Plaintiff also has no interests that conflict with or are antagonistic to the  
20 interests of Class Members. Plaintiff has retained highly competent and experienced  
21 class action attorneys to represent their interests and that of the Class. No conflict of  
22 interest exists between Plaintiff and Class Members because all questions of law and  
23 fact regarding liability of Defendant are common to Class Members and  
24 predominate over the individual issues that may exist. Plaintiff and his counsel have  
25 the necessary financial resources to adequately and vigorously litigate this class  
26 action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the  
27 Class Members and are determined to diligently discharge those duties seeking the  
28 maximum possible recovery for the Class Members.

1       34. Superiority: There is no plain, speedy, or adequate remedy other than  
2 by maintenance of this class action. The prosecution of individual remedies by  
3 members of the Class will tend to establish inconsistent standards of conduct for  
4 Defendant and result in the impairment of Class Members' rights and disposition of  
5 their interests through actions to which they were not parties. Class action treatment  
6 will permit a large number of similarly situated persons to prosecute their common  
7 claims in a single forum simultaneously, efficiently, and without the unnecessary  
8 duplication of effort and expense that numerous individual actions would engender.  
9 Furthermore, as the damages suffered by each individual member of the Class may  
10 be relatively small, the expenses and the burden of individual litigation would make  
11 it difficult or impossible for individual members of the Class to redress the wrongs  
12 done to them, while an important public interest will be served by addressing the  
13 matter as a class action.

14       35. The prerequisites to maintaining a class action for injunctive or  
15 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted  
16 or refused to act on grounds generally applicable to the Class, thereby making  
17 appropriate final injunctive or equitable relief with respect to the Class as a whole.

18       36. Plaintiff is unaware of any difficulties that are likely to be encountered  
19 in the management of this action that would preclude its maintenance as a class  
20 action.

21                   **FIRST CLAIM FOR RELIEF**

22                   **(Violation of California's Consumers Legal Remedies Act ("CLRA"))**

23                   **Cal. Civ. Code §§ 1750, *et seq.* (Equitable relief only)**

24       37. Plaintiff realleges and incorporates by reference all previous allegations  
25 of the Complaint as if they were set forth in full herein.

26       38. This Claim is brought pursuant to CLRA, California Civil Code §§  
27 1750, *et seq.*

1           39. CLRA prohibits any unfair, deceptive, and/or unlawful practices, as  
2 well as unconscionable commercial practices in connection with the sale of any  
3 goods or services to consumers. *See* Cal. Civ. Code § 1770. The CLRA “shall be  
4 liberally construed and applied to promote its 15 underlying purposes, which are to  
5 protect consumers against unfair and deceptive business 16 practices and to provide  
6 efficient economical procedures to secure such protection.” Cal. Civ. Code § 1760.

7           40.. Defendant is a “person” under the CLRA. Cal. Civ. Code § 1761(c).  
8 Plaintiff is a “consumer” under the CLRA. Cal. Civ. Code § 1761(d). The Peñafiel  
9 beverages are “good(s)” under the CLRA, Cal. Civ. Code § 1761(a). Plaintiff’s  
10 purchase of the Peñafiel beverages constitute a “transaction[.]” under the CLRA.  
11 Cal. Civ. Code § 1761. Defendant’s actions and conduct described herein constitute  
12 transactions that have resulted in the sale of goods to consumers.

13           41. Defendant’s failure to conform the Peñafiel beverages’ contents to  
14 required safety standards is an unfair, deceptive, unlawful, and unconscionable  
15 commercial practice.

16           42. As a result, Defendant’s conduct violates several provisions of the  
17 CLRA, including, but not limited to:

18               a. 1770(a)(5): Representing that goods or services have  
19 sponsorship, ***approval, characteristics, ingredients, uses, benefits***, or quantities that  
20 they do not have—here, each Peñafiel beverage carried with it the impression that it  
21 was a safe, legally compliant product which consumers could use without risking  
22 serious illness;

23               b. 1770(a)(7): Representing that goods or services are of a  
24 particular standard, quality, or grade, or that goods are of a particular style or model,  
25 if they are of another—as above, each Peñafiel beverage carried with it the  
26 impression that it was a safe, legally compliant product which consumers could use  
27 without risking serious illness; and  
28

43. As a result of Defendant's violations, pursuant to Cal. Civ. Code 1780(a)(2) Plaintiff is entitled to an injunction to prevent the wrongdoing from continuing.

44. In accordance with Cal. Civ. Code § 1780(d), Plaintiffs have attached a "venue affidavit" to this Complaint, showing that this action has been commenced in the proper county.

## **SECOND CLAIM FOR RELIEF**

### **(Violation of California's Unfair Competition Law ("UCL")**

#### **Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Prong)**

45. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

46. Section 17200 of the California Business & Professions Code, known as the Unfair Competition Law ("UCL"), prohibits any "unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or misleading advertising ...." Section 17200 specifically prohibits any "unlawful ... business act or practice."

47. The UCL borrows violations of other laws and statutes and considers those violations also to constitute violations of California law.

48. Defendant's conduct was and continues to be unlawful under FDA regulations.

49. Defendant's conduct in unlawfully offering for sale and selling Peñafiel beverages that are unlawfully contaminated by arsenic is without excuse or justification.

50. Defendant has violated the FDA arsenic level rules which make it unlawful to disseminate beverage containing arsenic at levels higher than 10 ppb.

51. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an order requiring Defendant to immediately cease the above described unlawful acts. In addition, Plaintiff seeks restitution for himself and for the Class.

**THIRD CLAIM FOR RELIEF**

**(Violation of California’s Unfair Competition Law (“UCL”)**

**Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unfair Prong)**

52. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

53. Section 17200 of the California Business & Professions Code (the “UCL”) prohibits any “unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or misleading advertising ...” Section 17200 specifically prohibits any “unfair ...business act or practice.” Defendant’s practices violate the UCL’s “unfair” prong.

54. A business act or practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims. A business act or practice is also “unfair” under the UCL if a defendant’s conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. A business act or practice is also “unfair” under the UCL where the consumer injury is substantial, the injury is not outweighed by any countervailing benefits to consumers or competition, and the injury is one that consumers themselves could not reasonably have avoided considering the available alternatives.

55.. Defendant’s conduct, as detailed herein, constitutes unfair business practices. Defendant’s practices, as described herein, are “unfair” within the meaning of the UCL because the conduct is unethical and injurious to California residents, and the utility of the conduct to Defendant does not outweigh the gravity of the harm to consumers, including Plaintiff and Class Members.

56. While Defendant’s decision to market the Peñafiel beverages despite their violative nature and in violation of federal and California law may have utility to Keurig in that it allows Defendant to sell more Peñafiel beverages without

1 incurring high compliance costs, this is exactly the type of conduct which the law  
2 prohibits.

3 57. Defendant's misconduct not only injures the persons who purchase the  
4 Peñafiel beverages, but it also injures also injures competing food product  
5 manufacturers, distributors, and sellers that do not engage in the same unfair and  
6 unethical conduct, and who do filter their beverages.

7 58. Section 17200 also prohibits any "unfair, deceptive, untrue or  
8 misleading advertising." For the reasons set forth above, Defendant engaged in  
9 unfair, deceptive, untrue, and misleading advertising in violation of California  
10 Business & Professions Code § 17200, the UCL.

11 59. Pursuant to California Business & Professions Code § 17203, Plaintiff  
12 seeks an order requiring Defendant to immediately cease such acts of unlawful,  
13 unfair, and/or fraudulent business practices. In addition, Plaintiff seeks restitution  
14 for himself and for the Class.

#### 15 **FOURTH CLAIM FOR RELIEF**

#### 16 **(Violation of California's False Advertising Law ("FAL"))**

#### 17 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

18 60. Plaintiff realleges and incorporates by reference all previous allegations  
19 of the Complaint as if they were set forth in full herein.

20 61. Defendant made and distributed, in California and in interstate  
21 commerce, the Peñafiel beverages wherein the product was adulterated with high  
22 levels of arsenic.

23 62. The FAL states:

24 It is unlawful for any person, firm, corporation or association, or any  
25 employee thereof with intent directly or indirectly to dispose of real  
26 or personal property or to perform services, professional or  
27 otherwise, or anything of any nature whatsoever or to induce the  
28



1 public to enter into any obligation relating thereto, to make or  
2 disseminate or cause to be made or disseminated before the public in  
3 this state, or to make or disseminate or cause to be made or  
4 disseminated from this state before the public in any state, in any  
5 newspaper or other publication, or any advertising device, or by  
6 public outcry or proclamation, or in any other manner or means  
7 whatever, including over the Internet, any statement,  
8 concerning that real or personal property or those services,  
9 professional or otherwise, or concerning any circumstance or matter  
10 of fact connected with the proposed performance or disposition  
11 thereof, which is untrue or misleading, and which is known, or  
12 which by the exercise of reasonable care should be known, to be  
13 untrue or misleading, or for any person, firm, or corporation to so  
14 make or disseminate or cause to be so made or disseminated any  
15 such statement as part of a plan or scheme with the intent not to  
16 sell that personal property or those services, professional or  
17 otherwise, so advertised at the price stated therein, or as so  
18 advertised.

19 63. Defendant's business practices as alleged herein constitute unfair,  
20 deceptive, untrue and misleading advertising pursuant to California's FAL because  
21 Defendant advertised the Peñafiel beverages in a manner that is untrue and  
22 misleading, and that is known or reasonably should have been known to Defendant  
23 to be untrue or misleading, as Defendant created the impression that the product was  
24 safe to consume when, in fact, it was not.

25 64. Pursuant to section 17535 of the California Business and Professions  
26 Code, Plaintiff seeks an order of this Court enjoining Defendant from continuing to  
27 engage in deceptive business practices, false advertising, and any other act  
28

1 prohibited by law, including those set forth in the Complaint. In addition, Plaintiff  
2 seeks restitution for himself and for the Class.

3  
4 **DEMAND FOR JURY TRIAL**

5 Plaintiff demands a trial by jury on all claims for which a jury is available.  
6

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, on behalf of himself and the general public,  
9 demands judgment against Defendant and requests the entry of:

10 a. An order declaring that the conduct complained of herein violates the  
11 CLRA;

12 b. An order declaring that the conduct complained of herein violates the  
13 UCL;

14 c. An order declaring that the conduct complained of herein violates the  
15 FAL;

16 d. An order enjoining Defendant's unlawful and unfair practices;

17 e. An order requiring Defendant to undertake corrective action;

18 f. An Order of restitution for Plaintiff and for the Class.

19 g. An award of attorneys' fees and the reimbursement of all litigation  
20 costs pursuant to, *inter alia*, CLRA, Cal. Civ. Proc. Code § 1021.5, and pursuant to  
21 the doctrine set forth in *Graham v. DaimlerChrysler Corp.* 34 Cal.4th 553, 576-77  
22 (2004). Such an award is appropriate because: (a) this litigation is aimed at  
23 enforcing important rights affecting the public interest; (b) it seeks to confer a  
24 significant benefit on the general public or a large class of persons; and (c) the  
25 necessity and financial burden of private enforcement is such as to make the award  
26 appropriate; and  
27  
28

1           h.       Such other and further relief as this Court may deem just, equitable, or  
2 proper.

3  
4 Dated: June 3, 2019

5  
6 **LAW OFFICES OF DAVID N. LAKE**

7  
8 By:       /s/ *David N. Lake*        
9                               David N. Lake

10 Laurence D. Paskowitz  
11 **THE PASKOWITZ LAW FIRM P.C.**  
12 208 East 51<sup>st</sup> Street, Suite 380  
13 New York, NY 10022  
14 212-685-0969  
15 lpaskowitz@pasklaw.com

16  
17 and

18 Roy L. Jacobs  
19 **ROY JACOBS & ASSOCIATES**  
20 420 Lexington Avenue, Suite 2440  
21 New York, NY 10170  
22 212-867-1156  
23 [rjacobs@jacobsclasslaw.com](mailto:rjacobs@jacobsclasslaw.com)

24  
25 *Attorneys for Plaintiff*  
26  
27  
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