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18 Attorneys for Plaintiffs

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES**

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

27 Plaintiffs,

28 vs.

THE WINE GROUP, INC. a California
29 Corporation ; THE WINE GROUP, LLC,
30 a California Corporation; SUTTER
31 HOME WINERY, INC., D/B/A,

Case No.:

CLASS ACTION COMPLAINT

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

JURY TRIAL DEMANDED

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

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

9
10
11 Defendants.

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

15 **NATURE OF ACTION**

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

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

1 arsenic, in some cases **up to 500% or more** than what is considered the maximum acceptable safe
2 daily intake limit. **Put differently, just a glass or two of these arsenic-contaminated wines a day**
3 **over time could result in dangerous arsenic toxicity to the consumer.**

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

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

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

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

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

8 PARTIES

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

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

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

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

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

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

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

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

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

1 relevant to this Complaint, manufactured, distributed, or sold **Bandit** (*Pinot Grigio, Ex. A, line 10;*
2 *Chardonnay, Ex. A, line 11; Cabernet Sauvignon, Ex. A, line 12*) brand wines.

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

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

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

1 defendants sell, or have, at times relevant to this Complaint, manufactured, distributed, or sold
2 **Concannon** (*Glen Ellen Reserve Pinot Grigio, Ex. A, line 20; Selected Vineyards Pinot Noir, Ex. A,*
3 *line 21; Glen Ellen Reserve Merlot, Ex. A, line 22)* brand wines.

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

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

25 20. Defendants Sutter Home Winery, Inc., d/b/a, Trinchero Family Estates and SeaGlass
26 Wine Co. (collectively, “SeaGlass”) produce, manufacture, sell and/or distribute wine in California
27 and throughout the United States and the world. Sutter Home Winery, Inc., d/b/a, Trinchero
28 Family, upon information and belief, is a parent company, with its principal place of business

1 located at 100 St. Helena Highway South Street, Helena, California; and SeaGlass Wine Co., upon
2 information and belief, is a company, with its principal place of business located at PO Box 248, St.
3 Helena, California. SeaGlass defendants sell, or have, at times relevant to this Complaint,
4 manufactured, distributed, or sold **SeaGlass** (*Sauvignon Blanc, Ex. A, line 55*) brand wine.

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

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

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

1 *Ex. A, line 28)* brand wine.

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

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

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

25 27. Defendants Constellation Wines, US, Woodbridge Winery, Inc. and Simply Naked
26 Winery (collectively, “Simply Naked”) produce, manufacture, sell and/or distribute wine in
27 California and throughout the United States and the world. Constellation Wines, US, upon
28 information and belief, is a company, with its principal place of business located at 801 Main Street,

1 St. Helena, California; Woodbridge Winery, Inc., upon information and belief, is a company, with
2 its principal place of business located at 1649 E Victor Rd, 1C, Lodi, California; and Simply Naked
3 Winery, upon information and belief, is a company, with its principal place of business located in
4 Acampo, California. Simply Naked defendants sell, or have, at times relevant to this Complaint,
5 manufactured, distributed, or sold **Simply Naked** (*Moscato, Ex. A, line 56*) brand wine.

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

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

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

28 31. Defendants The Wine Group, Inc., The Wine Group, LLC, Constellation Wines, US,

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

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

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

28 34. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively,

1 “Trapiche”) produce, manufacture, sell and/or distribute wine in California and throughout the
2 United States and the world. The Wine Group, Inc., upon information and belief, is a parent
3 company, with its principal place of business located at 4596 South Tracy Blvd., Tracy, California;
4 and The Wine Group, LLC, upon information and belief, is a limited liability company, with its
5 principal place of business located at 4596 South Tracy Blvd., Tracy, California. Trapiche
6 defendants sell, or have, at times relevant to this Complaint, manufactured, distributed, or sold
7 **Trapiche** (*Malbec, Ex. A, line 71*) brand wine.

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

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

26 37. Defendants The Wine Group, Inc. and The Wine Group, LLC (collectively,
27 “Cupcake”) produce, manufacture, sell and/or distribute wine in California and throughout the
28 United States and the world. The Wine Group, Inc., upon information and belief, is a parent

1 company, with its principal place of business located at 4596 South Tracy Blvd., Tracy, California;
2 and The Wine Group, LLC, upon information and belief, is a limited liability company, with its
3 principal place of business located at 4596 South Tracy Blvd., Tracy, California. Cupcake
4 defendants sell, or have, at times relevant to this Complaint, manufactured, distributed, or sold
5 **Cupcake** (*Malbec, Ex. A, line 26*) brand wine.

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

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

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

26 41. Defendant Constellation Wines, US (individually, “Richards Wild Irish Rose”) produces,
27 manufactures, sells and/or distributes wine in California and throughout the United States
28 and the world. Constellation Wines, US, upon information and belief, is a company, with its

1 principal place of business located at 801 Main Street, St. Helena, California. Richard Wild Irish
2 Rose defendant sells, or has, at times relevant to this Complaint, manufactured, distributed, or sold
3 **Richard Wild Irish Rose** (*Red Wine, Ex. A, line 54*) brand wine.

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

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

21 44. Defendants Jean-Claude Boisset Wines, USA Inc. and Raymond Vineyard and
22 Cellar/Raymond Vineyard and Cellar, Inc. (collectively, “R. Collection by Raymond”) produce,
23 manufacture, sell and/or distribute wine in California and throughout the United States and the
24 world. Jean-Claude Boisset Wines, USA, Inc., upon information and belief, is a subsidiary
25 company, with its principal place of business is located at 849 Zinfandel Lane, Saint Helena,
26 California; and Raymond Vineyard and Cellar/Raymond Vineyard and Cellar, Inc., upon
27 information and belief, are subsidiary companies, with their principal place of business located at
28 849 Zinfandel Lane, Saint Helena, California. R. Collection by Raymond defendants sell, or have,

1 at times relevant to this Complaint, manufactured, distributed, or sold **R. Collection by Raymond**
2 (*Chardonnay, Ex. A, line 53*) brand wine.

3 45. Plaintiffs are currently ignorant of the true names and capacities, whether individual,
4 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1
5 through 200, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will
6 amend this complaint to allege the true names and capacities of said fictitiously named defendants
7 when their true names and capacities have been ascertained. Plaintiffs are informed and believe and
8 thereon allege that each of the fictitiously named Doe defendants are legally responsible in some
9 manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiffs
10 and members of the Class.

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

15 **JURISDICTION AND VENUE**

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

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

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

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

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GENERAL ALLEGATIONS

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

FACTUAL ALLEGATIONS

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

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

54. Wine may contain both organic and inorganic arsenic. Of these, inorganic arsenic is substantially more toxic and dangerous to humans. Based upon independent sample testing on the wines at issue in this complaint, inorganic arsenic makes up the overwhelming majority of the arsenic in these wines. Inorganic arsenic is: (1) acutely toxic when introduced into the human body; (2) proven to cause cancer; (3) known to cause and contribute to a host of debilitating illnesses, and (4) when consumed over time, increases the likelihood of early death. The World Health

1 Organization classifies inorganic arsenic as a “MAJOR PUBLIC HEALTH CONCERN.” Ingestion
2 of arsenic can cause nausea, vomiting, abdominal pain, severe diarrhea, disturbances of the
3 cardiovascular and nervous systems, and eventual death. Chronic arsenic toxicity results in multi-
4 system disease and has been linked to a variety of dermal symptoms (exfoliative dermatitis,
5 keratosis, vitiligo, skin cancer), peripheral neuropathy, encephalopathy, bronchitis, pulmonary
6 fibrosis, portal hypertension, peripheral vascular disease/“black foot disease,” atherosclerosis,
7 various cancers (including skin, bladder, lung, liver, kidney, nasal passage, prostate and colon
8 cancer) and diabetes mellitus.

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

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

27 57. Defendants manufacture and/or distribute wines labeled, marketed and intended for
28 immediate human consumption (without being made a constituent or ingredient of another product,

1 nor requiring substantial additional preparation), including but not limited to the wines referenced
2 herein. These wines are manufactured, distributed and/or sold in California.

3 58. Defendants produce, manufacture and/or distribute wine in California that contains
4 inorganic arsenic in amounts far in excess of what is allowed in drinking water. Defendants do not
5 warn that their products contain unsafe amounts of inorganic arsenic, nor do they disclose even the
6 existence of inorganic arsenic in the wine. Consequently, Defendants' California wine consumers
7 have been made unwitting "guinea pigs" of arsenic exposure, being involuntarily exposed to toxic
8 levels of inorganic arsenic over and over again by the Defendants. Even today, with the
9 sophisticated testing equipment available to wine makers and distributors, Defendants still conceal
10 and/or refuse to warn the typical California wine consumer about the true risks they are taking by
11 ingesting and consuming their product.

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

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

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

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

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

27 64. Each of the Defendants manufacture and/or distribute and/or sell wine in California
28 containing toxic levels of inorganic arsenic, yet Defendants have failed, and continue to fail, to

1 comply with state health law standards or to provide the wine consumer with any warning of this
2 fact. Defendants actually knew and/or should have known of the toxic levels of inorganic arsenic in
3 their wines, yet continued to manufacture and/or distribute their toxic wine without disclosing or
4 warning of that fact, instead actively concealing such information from the general public.

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

- 7 (a) Failing to warn that Defendants' wine contains inorganic arsenic, a chemical
8 known to the State of California to cause cancer and other serious illnesses;
- 9 (b) Failing to warn that Defendants' wine contains levels of inorganic arsenic
10 widely considered to be unsafe and inappropriate for human consumption;
- 11 (c) Representing to Plaintiffs and similarly situated consumers and the general
12 public that Defendants' wines were safe and fit for human use, knowing that
13 said representations were false, and concealing from Plaintiffs and similarly
14 situated consumers and the general public that its wine contains inorganic
15 arsenic;
- 16 (d) Engaging in advertising programs designed to create the image, impression
17 and belief by consumers that Defendants' wines are safe and fit for human
18 use, even though Defendants knew this to be false, and even though
19 Defendants had no reasonable grounds to believe them to be true; and
- 20 (e) Purposefully downplaying and understating the health hazards and risks
21 associated with Defendants' wines.

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

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

28 68. But for Defendants' unfair, untrue, deceptive and misleading conduct, Defendants

1 would have to warn consumers of the inorganic arsenic in its wine or take steps in the
2 manufacturing of the wine to prevent unsafe levels of inorganic arsenic from getting into the wine
3 or to reduce the unsafe levels of inorganic arsenic in the wine.

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

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

13 CLASS ALLEGATIONS

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

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

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

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

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

1 the Class and any subclass.

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

8 76. The representative Plaintiffs will fairly and adequately represent the members of the
9 Class and have no interests that are antagonistic to the claims of the Class. Plaintiffs' interests in
10 this action are antagonistic to the interests of Defendants, and they will vigorously pursue the claims
11 of the Class.

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

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

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

20 (a) whether Defendants' wines contain unacceptably high levels of inorganic
21 arsenic;

22 (b) whether Defendants were required to disclose to the Class that their wines
23 contain unacceptably high levels of inorganic arsenic;

24 (c) whether the Class has been damaged as a result of Defendants' conduct;

25 (d) whether the Defendants have been unjustly enriched by their conduct;

26 (e) whether Defendants' conduct violated California law;

27 (f) whether the Class members are the beneficiaries of a warranty and if that
28 warranty has been breached.

80. A class action provides a fair and efficient method, if not the only method, for
adjudicating this controversy. The substantive claims of the representative Plaintiffs and the Class

1 are nearly identical and will require evidentiary proof of the same kind and application of the same
2 law.

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

9 82. There is no plain, speedy, or adequate remedy other than by maintenance of this
10 class action because Plaintiffs are informed and believe that damage to each member of the Class is
11 relatively small, making it economically unfeasible to pursue remedies other than by way of a class
12 action.

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

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

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

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

28 87. On the basis of all of the facts alleged hereinabove, Defendants' conduct and actions
were despicable, and were done maliciously, oppressively and fraudulently, with a willful and
conscious disregard of Plaintiffs' rights, thereby subjecting Plaintiffs to unjust hardship and distress,

1 entitling Plaintiffs to punitive damages under California Civil Code section 3294. Defendants’
2 officers, directors and managing agents were personally informed and involved in the decision-
3 making process with respect to the misconduct alleged herein and to be proven at trial.

4 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

24 95. As a result of the use or employment by Defendants of the above-alleged methods,
25 acts, and practices, Plaintiff and the Class suffered damage within the meaning of Civil Code
26 section 1780(a), entitling them to, *inter alia*, restitution, injunctive relief, attorneys’ fees and costs.
27 Plaintiffs and the Class further intend to seek compensatory damages, and, in light of defendants
28 willful and conscious disregard for the rights of Plaintiffs and the Class, and in light of defendants’

1 intentional and fraudulent concealment of material facts, Plaintiffs and the Class also intend to seek
2 an award of punitive damages. Pursuant to Civil Code section 1782(a), Plaintiffs will serve
3 defendants with notice of alleged violations of the CLRA by certified mail return receipt requested.
4 If within 30 days after the date of such notification Defendants fail to provide appropriate relief for
5 the violations of the CLRA, Plaintiffs will amend this complaint to seek monetary damages (both
6 compensatory and punitive) under the CLRA.

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

9 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

26 102. As a result of Defendants’ illegal business practices, Plaintiffs and the members of
27 the Class are entitled to an order, pursuant to Business and Professions Code section 17203,
28 enjoining such future conduct and such other orders and judgments that may be necessary to

1 provide restitutionary disgorgement of Defendants' ill-gotten gains and to restore to any Class
2 member any money paid for the tainted wine.

3 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

23 **FOURTH CAUSE OF ACTION**

24 **(Unjust Enrichment)**

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

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

28 110. As a result of Defendants' deceptive marketing and sale of its wine products, as

1 described above, Defendants were enriched, at the expense of Plaintiffs and those similarly situated,
2 through the payment of the purchase price for the wine.

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

10 **FIFTH CAUSE OF ACTION**

11 **(Breach Of The Implied Warranty Of Merchantability)**

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

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

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

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

25 **SIXTH CAUSE OF ACTION**

26 **(Negligent Misrepresentation/Omission)**

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

28 115. Plaintiffs and the Class re-allege and incorporate by reference the allegations

1 contained in the preceding paragraphs of this complaint as though fully set forth herein.

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

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

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

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

12 **PRAYER FOR RELIEF**

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

- 15 1. For an order certifying this case as a class action, and appointing Plaintiffs and their
16 counsel to represent the Class;
- 17 2. For a declaratory judgment that Defendants exposure to inorganic arsenic to
18 consumers when drinking their wines is unlawful;
- 19 3. For an order requiring Defendants, at its own cost, to notify all Class members of the
20 unlawful and deceptive conduct herein;
- 21 4. For an order requiring Defendants to make full disclosure of the risks of consuming
22 inorganic arsenic from their wines on the wine's label such that it complies with all applicable food
23 labeling rules and regulations;
- 24 5. For an order requiring Defendants to engage in corrective advertising regarding the
25 conduct discussed above;
- 26 6. For an order awarding, as appropriate, compensatory damages and restitutionary
27 disgorgement to Plaintiffs and the Class;
- 28 7. For an order enjoining Defendants from continuing to market, advertise, distribute,

1 and sell these products in the unlawful manner described herein, and ordering Defendants to engage
2 in corrective action;

- 3 8. For all remedies available pursuant to the Civil Code;
- 4 9. For an order awarding attorneys' fees and costs;
- 5 10. For an order awarding punitive damages;
- 6 11. For an order awarding pre- and post-judgment interest; and
- 7 12. For an order providing such further relief as this Court deems proper.

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9 Dated: March 18, 2015

KABATECK BROWN KELLNER LLP

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

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

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14 By: _____
15 Brian S. Kabateck
16 Joshua H. Haffner
17 Attorneys for Plaintiffs

18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a trial by jury of their claims.

21 Dated: March __, 2015

KABATECK BROWN KELLNER LLP

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