

1 JOHN H. DONBOLI (SBN: 205218)  
2 JL SEAN SLATTERY (SBN: 210965)  
3 DEL MAR LAW GROUP, LLP  
4 12250 El Camino Real, Suite 120  
San Diego, CA 92130  
Telephone: (858) 793-6244  
Facsimile: (858) 793-6005

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/15/2014** at 03:05:13 PM  
Clerk of the Superior Court  
By Andrea Santiago, Deputy Clerk

5 Attorneys for Plaintiff: GARY HOFMANN, an individual and on behalf  
6 of all others similarly situated  
7

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO  
9

10 GARY HOFMANN, an individual and on  
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 FIFTH DIMENSION, INC., a Texas  
15 corporation; and DOES 1 through 100,  
inclusive,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23

CASE NO. 37-2014-00031150-CU-NP-CTL

**CLASS ACTION**

**COMPLAINT FOR:**

- (1) VIOLATION OF BUSINESS &  
PROFESSIONS CODE § 17200 *ET*  
*SEQ.* (CALIFORNIA UNFAIR  
COMPETITION LAW);
- (2) VIOLATION OF BUSINESS &  
PROFESSIONS CODE § 17500 *ET*  
*SEQ.* (FALSE AND MISLEADING  
ADVERTISING);
- (3) VIOLATION OF CONSUMERS  
LEGAL REMEDIES ACT (CIVIL  
CODE § 1750 *ET SEQ.*);
- (4) NEGLIGENT  
MISREPRESENTATION

24  
25 COMES NOW, plaintiff GARY HOFMANN ("Plaintiff"), as an individual and on behalf  
26 of the general public and all others similarly situated, by his undersigned attorneys, alleges as  
27 follows:  
28

1 **NATURE OF THE CASE**

2 1. This is a class action case brought on behalf of all purchasers of all vodka  
3 (“Vodka”) manufactured, distributed, marketed, and/or sold by FIFTH DIMENSION, INC. dba  
4 Tito’s Handmade Vodka (hereinafter “TITO’S”). Through a fraudulent, unlawful, deceptive and  
5 unfair course of conduct, TITO’S, and DOES 1 through 100 (collectively “Defendants”),  
6 manufactured, marketed, and/or sold their “TITO’S HANDMADE” Vodka to the California  
7 general public with the false representation that the Vodka was “handmade” when, in actuality,  
8 the Vodka is made via a highly-mechanized process that is devoid of human hands. There is  
9 simply nothing “handmade” about the Vodka, under any definition of the term,<sup>1</sup> because the  
10 Vodka is: (1) made from commercially manufactured "neutral grain spirit" (“NGS”) that is  
11 trucked and pumped into TITO’s industrial facility; (2) distilled in a large industrial complex  
12 with modern, technologically advanced stills; and (3) produced and bottled in extremely large  
13 quantities (i.e., it is “mass produced”). The Vodka is sold through various retailers in California.

14 **PARTIES**

15 2. Plaintiff is an individual residing in San Diego, California.

16 3. Defendant is a corporation that is organized and exists under the laws of the State  
17 of Texas. Its business address (as listed on the Texas Secretary of State website) is 12101 Moore  
18 Road, Austin, Texas 78719. FIFTH DIMENSION, INC. can be served via its registered agent  
19 for service of process: Bert Beveridge, 12101 Moore Road, Austin, Texas 78719.

20 4. Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
21 as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by such fictitious names.  
22 Plaintiff is informed and believes that each of the fictitious named defendants are legally  
23 responsible in some manner for the occurrences herein alleged, assisted in and about the wrongs  
24 complained herein by providing financial support, advice, resources or other assistance. Plaintiff  
25 will amend the complaint to allege their true names and capacities when ascertained.

26 \_\_\_\_\_  
27 <sup>1</sup> The Oxford Dictionary defines the term “handmade” as “[m]ade by hand, not by machine, and  
28 typically therefore of superior quality.”

1           5.       Plaintiff is informed and believes that all defendants were agents, servants and  
2 employees of their co-defendants, and in doing the things hereinafter mentioned, were acting  
3 within the scope of their authority as such agents, servants and employees with the permission  
4 and consent of their co-defendants.

5                                   **JURISDICTION AND VENUE**

6           6.       This Court has jurisdiction in this matter because Defendants routinely transact  
7 business in San Diego County.

8           7.       Venue in this Court is proper pursuant to Code of Civil Procedure §§ 395 and  
9 395.5 and Business & Professions Code §§ 17203 and 17204 because Defendants do business in  
10 San Diego County and Plaintiff's transaction took place in San Diego County.

11                                   **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12           8.       Plaintiff realleges and incorporates herein by reference all of the allegations  
13 contained in paragraphs 1 through 7, inclusive, of this complaint as though fully set forth herein.

14           9.       During the relevant statutory time period, Defendants manufactured, marketed,  
15 and/or sold Vodka with printed labels that prominently claimed the Vodka was "Handmade."

16           10.      During the relevant four year statutory time period, Defendants manufactured,  
17 marketed, and/or sold Vodka with printed bottle labels that also prominently claimed that the  
18 Vodka was "Crafted in an Old Fashioned Pot Still by America's Original Microdistillery." An

19       ///

20       ///

21       ///

22       ///

23       ///

24       ///

25       ///

26       ///

27       ///

28

exemplar image of the label is as follows:



11. On information and belief, the Vodka was made, manufactured and/or produced in “massive buildings containing ten floor-to-ceiling stills and bottling 500 cases an hour”<sup>2</sup> using automated machinery that is the antithesis of “handmade” that is in direct contradiction to both the “Handmade” representation and the “Crafted in an Old Fashioned Pot Still” representation on the product. Discovery will further reveal the specific automated manner in which the Vodka is made.

12. Defendants marketed and represented to the general public that the Vodka was “Handmade” and, in doing so, concealed the highly automated nature of the Vodka manufacturing and bottling process. Defendants also concealed the fact that the Vodka is no longer made in old fashioned pot stills of the variety TITO’s proudly displayed in the 2013

<sup>2</sup> A 2013 article in Forbes magazine noted that the Forbes photographer was purposefully directed away by the Tito’s brand manager from “massive buildings containing ten floor-to-ceiling stills and bottling 500 cases an hour and into the shack with the original still, cobbled from two Dr. Pepper kegs and a turkey-frying rig to cook bushels of corn into booze.”

1 Forbes article (i.e., in a shack containing a pot still cobbled from two Dr. Pepper kegs and a  
2 turkey-frying rig to cook bushels of corn). The disclosure of this information was necessary in  
3 order to make Defendants' representations truthful and not misleading. Defendants possess  
4 superior knowledge of the true facts that were not disclosed, thereby tolling the running of any  
5 applicable statute of limitations.

6 13. Consumers are particularly vulnerable to these kinds of false and deceptive  
7 labeling practices. Most consumers possess very limited knowledge of the likelihood that  
8 products, including the Vodka at issue herein, that are claimed to be "Handmade" are in fact: (1)  
9 made from commercially manufactured NGS that is trucked and pumped into TITO's industrial  
10 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;  
11 and (3) produced and bottled in extremely large quantities (i.e., it is "mass produced"). This  
12 entire process is devoid of the caring touch of human hands. This is a material factor in many  
13 individuals' purchasing decisions, as they believe they are purchasing a product made in small  
14 amounts that is of inherently superior quality.

15 14. Consumers generally believe that "Handmade" products are of higher quality than  
16 their non-handmade counterparts. Due to Defendants' scheme to defraud the market, members  
17 of the general public were fraudulently induced to purchase Defendants' Vodka at inflated  
18 prices. California laws are designed to protect consumers from this type of false representation  
19 and predatory conduct. Defendants' scheme to defraud consumers is ongoing and will victimize  
20 consumers each and every day until altered by judicial intervention.

### 21 **THE PLAINTIFF TRANSACTION**

22 15. In August 2014, Plaintiff purchased TITO's Vodka at a San Diego BevMo! store.  
23 At the time of purchase, the product itself was prominently marked with a "Handmade" label  
24 when in fact there was nothing "Handmade" about the product. The product was also labeled as  
25 being "Crafted in an Old Fashioned Pot Still by America's Original Microdistillery."

26 16. When Plaintiff, and Class Members, purchased the Vodka they saw and relied  
27 upon the "Handmade" representation that is prominently displayed on all of TITO's Vodka  
28

1 products. This reliance on the “Handmade” label to make their purchasing decisions is typical of  
2 most California consumers.

3 17. Simply stated, Plaintiff and Class Members were deceived as a result of  
4 Defendants’ false labeling. Their purchasing decisions were supported by the “Handmade”  
5 representation made by Defendants, which is absent from most (if not all) of Defendants’  
6 competitors. Plaintiff believed at the time he purchased the Vodka that he was in fact buying a  
7 high-quality product made by human hands that was not made in large industrial vats in mass  
8 quantities, etc.

9 18. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by  
10 Defendants as a result of Defendants’ false “Handmade” claim set forth on the offending  
11 product. Furthermore, he suffered an “injury in fact” by paying for something he believed was  
12 genuinely “Handmade,” when it was not. Essentially, the Vodka is not worth the purchase price  
13 paid. Plaintiff and Class Members are entitled to monetary damages; the specific measure of  
14 which is the subject of expert testimony. Plaintiff and Class Members were undoubtedly injured  
15 as a result of Defendants’ false “Handmade” representations that are at issue in this litigation.

### 16 **CLASS ALLEGATIONS**

17 19. Plaintiff brings this action on behalf of himself as an individual and on behalf of  
18 all other persons similarly situated in the State of California who purchased Defendants’ Vodka  
19 (the “Class”). Specifically excluded from the Class are any persons who have a controlling  
20 interest in Defendants, any of Defendants’ parent companies, subsidiaries, and Defendants’  
21 officers, directors, managers, shareholders and members of their immediate families, and their  
22 heirs, successors and assigns, pursuant to Code of Civil Procedure § 382 and Business &  
23 Professions Code § 17200 *et seq.* The Class also does not include any persons who previously  
24 filed suit against Defendants for similar violations of California law and/or the Hon. Judge  
25 presiding over this matter and his or her judicial staff.

26 20. The members of the Class are so numerous that joinder of all members is  
27 impracticable. The disposition of their claims in a class action will provide substantial benefits  
28

1 to the parties and the Court. On information and belief, the exact number and identities of the  
2 members of the Class are ascertainable from the records in Defendants' possession or that of  
3 Defendants' retail customers (e.g., BevMo!).

4 21. There is a well-defined community of interest in the questions of law and fact  
5 involved in this case.

6 22. All causes of action herein have been brought and may properly be maintained as  
7 a class action pursuant to the provisions of Code of Civil Procedure § 382 because there is a  
8 well-defined community of interest in the litigation and the proposed class is easily  
9 ascertainable:

10 a. Numerosity: On information and belief, the Class is so numerous that the  
11 individual joinder of all members would be impracticable.

12 b. Common Questions Predominate: Common questions of law and fact  
13 exist as to all members of the Class, and those questions clearly predominate over any questions  
14 that might affect members individually. These common questions of law and fact include, for  
15 example, whether Defendants violated Business & Professions Code § 17500 *et seq.* by  
16 misrepresenting the "Handmade" nature of the Vodka because of the highly automated nature of  
17 the manufacturing of the Vodka and whether Defendants' actions in this regard constitute an  
18 unfair, unlawful, or fraudulent business practice pursuant to Business & Professions Code §  
19 17200 *et seq.*

20 c. Typicality: On information and belief, Plaintiff's claims are typical of the  
21 claims of the members of the Class. Plaintiff and all members of the Class sustained damages  
22 arising out of Defendants' common course of conduct complained herein.

23 d. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
24 members of the Class because Plaintiff has no interests which are adverse to the interests of  
25 absent class members and because Plaintiff has retained counsel who possesses significant  
26 litigation experience regarding alleged violations of consumer statutes.

27 e. Superiority: A class action is superior to other available means for the fair  
28

1 and efficient adjudication of this controversy since individual joinder of all members would be  
2 impracticable. Class action treatment will permit a large number of similarly situated persons to  
3 prosecute their common claims in a single forum simultaneously, efficiently and without the  
4 unnecessary duplication of effort and expense that numerous individual actions would engender.  
5 Furthermore, since most class members' individual claims for damages are likely to be modest,  
6 the expenses and burdens of litigating individual actions would make it difficult or impossible  
7 for individual members of the Class to redress the wrongs done to them. An important public  
8 interest will be served by addressing the matter as a class action, substantial economies to the  
9 litigants and to the judicial system will be realized and the potential for inconsistent or  
10 contradictory judgments will be avoided.

#### 11 **FIRST CAUSE OF ACTION**

##### 12 **(Violation of Business & Professions Code § 17200 *et seq.* Against All Defendants)**

13 23. Plaintiff realleges and incorporates herein by reference all of the allegations  
14 contained in Paragraphs 1 through 22, inclusive, of this complaint as though fully set forth  
15 herein.

16 24. Business & Professions Code § 17200 *et seq.* provides that unfair competition  
17 means and includes "any unlawful, unfair or fraudulent business act or practice and unfair,  
18 deceptive, untrue or misleading marketing."

19 25. By and through their conduct, including the conduct detailed above, Defendants  
20 engaged in activities which constitute unlawful, unfair, and fraudulent business practices  
21 prohibited by Business & Professions Code § 17200 *et seq.*

22 26. Beginning at an exact date unknown as yet and continuing up through the present,  
23 Defendants committed acts of unfair competition that are prohibited by Business & Professions  
24 Code § 17200 *et seq.* Defendants engaged in a pattern of "unfair" business practices that violate  
25 the wording and intent of the statutes, by engaging in practices that threaten an incipient  
26 violation of law, or violate the policy or spirit of laws because its effects are comparable to or the  
27 same as a violation of the law by manufacturing, distributing, and marketing Vodka with a false  
28



1 “Handmade” label when the product is in fact: (1) made from commercially manufactured NGS  
2 that is trucked and pumped into TITO’s industrial facility; (2) distilled in a large industrial  
3 complex with modern, technologically advanced stills; and (3) produced and bottled in extremely  
4 large quantities (i.e., it is “mass produced”).

5           a.       Alternatively, Defendants engaged in a pattern of “unfair” business  
6 practices that violate the wording and intent of the statutes, by engaging in practices that are  
7 immoral, unethical, oppressive or unscrupulous, the utility (if any) of which conduct is far  
8 outweighed by the harm done to consumers and public policy by manufacturing, distributing,  
9 marketing, and advertising Vodka with a false “Handmade” label when the product is in fact: (1)  
10 made from commercially manufactured NGS that is trucked and pumped into TITO’s industrial  
11 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;  
12 and (3) produced and bottled in extremely large quantities (i.e., it is “mass produced”).

13           b.       Alternatively, Defendants engaged in a pattern of “unfair” business  
14 practices that violate the wording and intent of the statutes, by engaging in practices wherein: (1)  
15 the injury to the consumer was substantial; (2) the injury was not outweighed by any  
16 countervailing benefits to consumers or competition; and (3) the injury was of the kind that the  
17 consumers themselves could not reasonably have avoided by manufacturing, distributing,  
18 marketing, and advertising Vodka with a false “Handmade” label when the product is in fact: (1)  
19 made from commercially manufactured NGS that is trucked and pumped into TITO’s industrial  
20 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;  
21 and (3) produced and bottled in extremely large quantities (i.e., it is “mass produced”).

22       27.       Beginning at an exact date unknown as yet and continuing up through the present,  
23 Defendants committed acts of unfair competition, including those described above, prohibited by  
24 Business & Professions Code § 17200 *et seq.* by engaging in a pattern of “fraudulent” business  
25 practices within the meaning of Business & Professions Code § 17200 *et seq.*, by manufacturing,  
26 distributing, marketing, and/or selling Vodka products with a false “Handmade” representation  
27 when the product is in fact: (1) made from commercially manufactured NGS that is trucked and  
28

1 pumped into TITO's industrial facility; (2) distilled in a large industrial complex with modern,  
2 technologically advanced stills; and (3) produced and bottled in extremely large quantities (i.e., it  
3 is "mass produced").

4 28. Defendants engaged in these unlawful, unfair and fraudulent business practices  
5 for the primary purpose of collecting unlawful and unauthorized monies from Plaintiff and all  
6 others similarly situated, thereby unjustly enriching Defendants.

7 29. As a result of the repeated violations described herein, Defendants received  
8 unearned commercial benefits at the expense of their competitors and the public.

9 30. Defendants' unlawful, unfair and fraudulent business practices present a  
10 continuing threat to the public in that Defendants continue to engage in unlawful conduct.

11 31. Such acts and omissions are unfair and/or fraudulent and constitute a violation of  
12 Business & Professions Code § 17200 *et seq.* Plaintiff reserves the right to identify additional  
13 violations by Defendants as may be established through discovery.

14 32. As a direct and legal result of their unlawful, unfair and fraudulent conduct  
15 described herein, Defendants have been and will be unjustly enriched by the receipt of ill-gotten  
16 gains from customers, including Plaintiff, who unwittingly provided their money to Defendants  
17 based on Defendants' fraudulent "Handmade" representation.

18 33. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by  
19 Defendants as a result of Defendants' false "Handmade" claim set forth on the Vodka.

20 34. In prosecuting this action for the enforcement of important rights affecting the  
21 public interest, Plaintiff seeks the recovery of attorneys' fees pursuant to Code of Civil  
22 Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general  
23 public.

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Violation of Business & Professions Code § 17500 *Et Seq.* Against All Defendants)**

26 35. Plaintiff realleges and incorporates herein by reference all of the allegations  
27 contained in Paragraphs 1 through 34, inclusive, of this complaint as though fully set forth  
28

1 herein.

2 36. Business & Professions Code § 17500 *et seq.* provides that it is “unlawful for any  
3 person, firm [or other party] . . . to make or disseminate before the public . . . any statement  
4 which is untrue or misleading” in connection with the sale or disposition of goods or services.

5 37. Beginning at an exact date unknown as yet and continuing up through the present,  
6 Defendants committed acts of unfair competition, including those set forth above, prohibited by  
7 Business & Professions Code § 17500 *et seq.* by engaging in a pattern of false and misleading  
8 advertising and business practices that violate the wording and intent of the statutes.

9 38. On information and belief, Defendants engage in unlawful advertising practices  
10 with the intent to induce members of the public to purchase goods that they believe to be of a  
11 particular quality.

12 39. Defendants’ deceptive advertising practices, including the “Handmade”  
13 representations detailed herein, present a continuing threat to members of the public in that  
14 Defendants continue to engage in the conduct described above.

15 40. Such acts and omissions are unfair and/or deceptive and/or untrue and/or  
16 misleading and constitute a violation of Business & Professions Code § 17500 *et seq.* Plaintiff  
17 reserves the right to identify additional violations by Defendants as may be established through  
18 discovery.

19 41. As a direct and legal result of Defendants’ conduct described above, Defendants  
20 have been and will be unjustly enriched with ill-gotten gains. Plaintiff and the general public are  
21 entitled to restitution and/or reimbursement of the gains Defendants received because of the  
22 misdeeds described herein.

23 42. In prosecuting this action for the enforcement of important rights affecting the  
24 public interest, Plaintiff seeks the recovery of attorneys’ fees pursuant to Code of Civil  
25 Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general  
26 public.

27 ///

1 **Third Cause of Action**

2 **(Violation of Consumers Legal Remedies Act Against Defendants)**

3 43. Plaintiff realleges and incorporates herein by reference all of the allegations  
4 contained in Paragraphs 1 through 42, inclusive, of this complaint as though fully set forth  
5 herein.

6 44. California Civil Code § 1750 *et seq.* (entitled the Consumers Legal Remedies  
7 Act) provides a list of “unfair or deceptive” practices in a “transaction” relating to the sale of  
8 “goods” or “services” to a “consumer.” The Legislature’s intent in promulgating the Consumers  
9 Legal Remedies Act is expressed in Civil Code § 1760, which provides, *inter alia*, that its terms  
10 are to be:

11 [C]onstrued liberally and applied to promote its underlying  
12 purposes, which are to protect consumers against unfair and  
13 deceptive business practices and to provide efficient and  
14 economical procedures to secure such protection.

14 45. Defendants’ products constituted “goods” as defined in Civil Code § 1761(a).

15 46. Plaintiff, and Class members, are each a “Consumer” as defined in Civil Code  
16 § 1761(d).

17 47. Plaintiff’s purchase of Defendants’ Vodka constituted a “transaction” as defined  
18 in Civil Code § 1761(e).

19 48. Civil Code § 1770(a)(5) prohibits a defendant from “[r]epresenting that goods or  
20 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities  
21 which they do not have or that a person has a sponsorship, approval, status, affiliation, or  
22 connection which he or she does not have.”

23 49. Civil Code § 1770(a)(7) also prohibits a defendant from “[r]epresenting that  
24 goods or services are of a particular standard, quality, or grade, or that goods are of a particular  
25 style or model, if they are of another.”

26 50. Defendants violated Civil Code § 1770(a)(5) and (7) by marketing and  
27 representing that their Vodka products are “Handmade” when they are actually: (1) made from  
28

1 commercially manufactured NGS that is trucked and pumped into TITO's industrial facility; (2)  
2 distilled in a large industrial complex with modern, technologically advanced stills; and (3)  
3 produced and bottled in extremely large quantities (i.e., it is "mass produced") such that there is  
4 nothing "Handmade" about the Vodka.

5 51. It is alleged on information and belief that Defendants' violation(s) of the  
6 Consumer Legal Remedies Act set forth herein was done with awareness of the fact that the  
7 conduct alleged was wrongful and was motivated solely for increased profit. It is also alleged on  
8 information and belief that Defendants did these acts knowing the harm that would result to  
9 Plaintiff and Class Members and that Defendants did these acts notwithstanding that knowledge.

10 52. Plaintiff is contemporaneously providing the requisite 30-day notice to TITO'S  
11 pursuant to the Consumer Legal Remedies Act. Plaintiff and Class Members are not seeking  
12 actual and/or statutory damages against TITO's at this time pursuant to Civil Code § 1780.  
13 Plaintiff may, however, amend this Complaint to allege actual damages and punitive damages to  
14 the extent TITO's fails to properly respond to the 30-day notice to correct, repair, replace, or  
15 otherwise rectify the false "Handmade" label as it relates to offending Vodka sold in California.

16 53. As a direct and proximate result of Defendants' violations of the Consumers Legal  
17 Remedies Act, Plaintiff and Class members are entitled to the following remedies: (a) a  
18 declaration that Defendants violated the Consumers Legal Remedies Act; and (b) an injunction  
19 preventing Defendants' unlawful actions.

20 54. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by  
21 Defendants as a result of Defendants' false "Handmade" claims set forth on its Vodka.  
22 Furthermore, he suffered an "injury in fact" by paying for a Vodka product that he believed was  
23 genuinely "Handmade," when it was not.

24 55. Plaintiff is filing an Affidavit of Venue along with this Complaint to be in  
25 compliance with the requirement set forth in Civil Code § 1780(d).

26 ///

27 ///

28

1 **FOURTH CAUSE OF ACTION**

2 **(For Negligent Misrepresentation Against All Defendants)**

3 56. Plaintiff realleges and incorporates herein by reference all of the allegations  
4 contained in Paragraphs 1 through 55, inclusive, of this complaint as though fully set forth  
5 herein.

6 57. During the relevant statutory time period, Defendants made false "Handmade"  
7 representations to Plaintiff and Class Members as it pertains to the sale of their Vodka.

8 58. The representation that Defendants' Vodka was "Handmade" was false. The true  
9 facts are that the Vodka is: (1) made from commercially manufactured NGS that is trucked and  
10 pumped into TITO's industrial facility; (2) distilled in a large industrial complex with modern,  
11 technologically advanced stills; and (3) produced and bottled in extremely large quantities (i.e., it  
12 is "mass produced").

13 59. When Defendants made the representations set forth above, they had no  
14 reasonable grounds for believing them to be true.

15 60. Defendants made the representations with the intention of inducing Plaintiff and  
16 Class Members to act in reliance upon these representations in the manner hereafter alleged, or  
17 with the expectation that they would so act.

18 61. Plaintiff and Class Members, at the time the representations were made by  
19 Defendants, and at the time Defendants took the actions herein alleged, were ignorant of the  
20 falsity of the representations and believed them to be true. In reliance on these representations,  
21 Plaintiff and Class Members were induced to and did pay monies to purchase Defendants'  
22 Vodka.

23 62. Had Plaintiff and Class Members known the actual facts, they would not have  
24 taken such action. Furthermore, Plaintiff and other California consumers had no reason to  
25 believe that Defendants would act otherwise than as to rely on the "Handmade" representation.

26 63. Without knowledge, Plaintiff and Class Members acted on the false "Handmade"  
27 representation and purchased the Vodka products they did not truly want (in hindsight). Had  
28

1 Plaintiff and Class Members known the actual facts, they would not have taken such action.

2 64. As a proximate result of the fraudulent conduct of Defendants as herein alleged,  
3 Plaintiff and Class Members paid monies to Defendants, through Defendants' regular retail sales  
4 channels, to which Defendants are not entitled, and have been damaged in an amount to be  
5 proven at trial.

6 65. Plaintiff and Class Members seek the recovery of a large portion of their purchase  
7 monies, plus prejudgment interest, and reasonable attorneys' fees (pursuant to Code of Civil  
8 Procedure § 1021.5) and costs as will be determined at time of trial. The specific amount of  
9 Class Members' recovery is the realm of expert testimony and will be established at trial.

10 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

11 **PRAYER**

12 1. For a judgment declaring this action to be a proper class action;

13 2. A declaration that Defendants violated the provisions of California Business &  
14 Professions Code § 17200 *et seq.*;

15 3. A declaration that Defendants violated the provisions of California Business &  
16 Professions Code § 17500 *et seq.*;

17 4 A declaration that Defendants violated Civil Code § 1750 *et seq.*;

18 5. Pursuant to Business & Professions Code § 17204 and pursuant to the equitable  
19 powers of this Court, a judgment enjoining Defendants, their subsidiaries, affiliates, and their  
20 successors, agents, servants, officer, directors, employees, and all persons, acting in concert with  
21 them, directly or indirectly, from engaging in conduct violative of Business & Professions Code  
22 § 17200 *et seq.* as more fully described above;

23 6. Pursuant to Business & Professions Code § 17204, a judgment requiring  
24 Defendants to provide restitution to compensate, and to restore all persons in interest, including  
25 all Class Members, with all monies acquired by means of Defendants' unfair competition,  
26 including a refund of the monies Class Members paid to purchase the offending Vodka plus sales  
27 taxes;

1           7.       Plaintiff and each of the other members of the Class recover the amounts by  
2 which Defendants have been unjustly enriched;

3           8.       Plaintiff's reasonable attorneys' fees as it relates to all causes of action pursuant  
4 to Code of Civil Procedure § 1021.5;

5           9.       For punitive damages as to the Third Cause of Action only;

6           10.      For costs of suit incurred herein;

7           11.      For prejudgment interest as allowed by law; and

8           12.      For such other and further relief as this Court finds just, equitable and proper,  
9 including, but not limited to, the remedy of disgorgement.

10       Dated: September 15, 2014

DEL MAR LAW GROUP, LLP

11  
12                               By: /s/John H. Donboli  
13                               John H. Donboli  
14                               JL Sean Slattery  
15                               Attorneys for: GARY HOFMANN, an  
16                               individual and on behalf of all others similarly  
17                               situated  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



## General Information

<b>Court</b>	California Superior Court, San Diego County
<b>Docket Number</b>	201400031150