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14 Safora Nowrouzi and Travis Williams

15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **SAFORA NOWROUZI AND**  
18 **TRAVIS WILLIAMS,**  
19 **INDIVIDUALLY AND ON**  
**BEHALF OF ALL OTHERS**  
**SIMILARLY SITUATED,**

20 Plaintiffs,

21 v.

22  
23  
24 **MAKER'S MARK DISTILLERY,**  
25 **INC., d.b.a. MAKER'S MARK,**  
26

27 Defendant.  
28

Case No.: '14CV2885 JAH NLS

**CLASS ACTION COMPLAINT  
FOR DAMAGES, RESTITUTION  
AND INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

- 1.) CALIFORNIA BUS. & PROF.  
§§ 17500 ET SEQ.
- 2.) CALIFORNIA BUS. & PROF.  
§§ 17200 ET SEQ.
- 3.) **NELIGENCT  
MISREPRESENTATION**
- 4.) **INTENTIONAL  
MISREPRESENTATION**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

- 1  
2 1. Plaintiffs, SAFORA NOWROUZI and TRAVIS WILLIAMS, (collectively as  
3 “Plaintiffs”), bring this statewide Class Action Complaint to enjoin the  
4 deceptive advertising and business practices of MAKER’S MARK  
5 DISTILLERY, INC., d.b.a. MAKER’S MARK (collectively as “Defendant”)  
6 with regard to Defendant’s false and misleading promotion of its whisky.  
7 Defendant promotes its whisky as being “Handmade” when in fact  
8 Defendant’s whisky is manufactured using mechanized and/or automated  
9 processes, which involves little to no human supervision, assistance or  
10 involvement, as demonstrated by photos and video footage of Defendant’s  
11 manufacturing process.
- 12 2. Defendant labels the whisky products it manufactures and sells as  
13 “Handmade.” However, photos and video footage of Defendant’s  
14 manufacturing process show Defendant actually employs mechanized and/or  
15 automated processes to manufacture and bottle its whisky, including but not  
16 limited to, (1) the process involved in grinding/breaking up the grains; (2) the  
17 process involved in mixing the grains with other ingredients, such as yeast  
18 and water; (3) the process involved in transferring this mixture into its  
19 fermenting location; and, (4) the process involved in bottling the whisky.
- 20 3. Defendant attaches these untrue and misleading labels to all of the whisky  
21 bottles it markets and sells throughout the state of California and throughout  
22 the United States.
- 23 4. This nationwide sale and advertising of deceptively labeled products  
24 constitutes: (1) a violation California’s False Advertising Law (“FAL”), Bus.  
25 & Prof. Code §§ 17500 et seq.; (2) a violation of California’s Unfair  
26 Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 et seq.; (3)  
27 negligent misrepresentation; and (4) intentional misrepresentation. This  
28 conduct caused Plaintiffs and other similarly situated damages, and requires

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1 restitution and injunctive relief to remedy and prevent further harm.

- 2 5. Unless otherwise indicated, the use of any Defendant's name in this  
3 Complaint includes all agents, employees, officers, members, directors, heirs,  
4 successors, assigns, principals, trustees, sureties, subrogees, representatives  
5 and insurers of the named Defendant

6 **JURISDICTION AND VENUE**

- 7 6. Jurisdiction of this Court arises under 28 U.S.C. § 1332(d), as the matter in  
8 controversy, exclusive of interest and costs, exceeds the sum or value of  
9 \$5,000,000 and is a class action in which a named Plaintiff is a citizen of a  
10 State different than at least one Defendant.
- 11 7. Based upon information and belief, Plaintiffs allege that Defendant has  
12 shipped approximately 1.4 million cases of whisky in 2013. Each of these  
13 cases holds 6 bottles. Based upon the high advertised price of Defendant's  
14 product and its nationwide availability, Plaintiffs are informed, believe, and  
15 thereon allege the class damages exceed the \$5,000,000 threshold as set by 28  
16 U.S.C. § 1332(d) for a diversity jurisdiction class action.
- 17 8. The court has personal jurisdiction over Defendant because Defendant  
18 conducts business in the County of San Diego, State of California. Therefore,  
19 Defendant has sufficient minimum contacts with this state, and otherwise  
20 purposely avails itself of the markets in this state through the promotion, sale,  
21 and marketing of its products in this state, to render the exercise of jurisdiction  
22 by this Court permissible under traditional notions of fair play and substantial  
23 justice.
- 24 9. Venue is proper in the United States District Court, Southern District of  
25 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i)  
26 Plaintiffs reside in the County of San Diego, State of California which is  
27 within this judicial district; (ii) the conduct complained of herein occurred  
28 within this judicial district; (iii) Defendant conducted and does substantial

1 business in the County of San Diego, State of California; and (iv) Defendant is  
 2 subject to personal jurisdiction in this district.

### 3 PARTIES

4 10. Plaintiff, Safora Nowrouzi, is a natural person who resides in the County of  
 5 San Diego, State of California, who was negligently and/or intentionally  
 6 induced into purchasing Defendant's falsely advertised product.

7 11. Plaintiff, Travis Williams, is a natural person who resides in the County of  
 8 San Diego, State of California, who was negligently and/or intentionally  
 9 induced into purchasing Defendant's falsely advertised product.

10 12. Defendant, Maker's Mark Distillery, Inc., d.b.a Maker's Mark, is a  
 11 corporation that is incorporated under the laws of the State of Kentucky, and  
 12 does business within the State of California and within this district.

### 13 NATURE OF THE CASE

14 13. At all times relevant, Defendant made, and continues to make, affirmative  
 15 misrepresentations regarding the whisky it manufactures, markets and sells.  
 16 Specifically, Defendant packaged, advertised, marketed, promoted, and sold  
 17 its whisky to Plaintiffs and other consumers similarly situated, which was  
 18 represented by Defendant to be "Handmade."

19 14. However, Defendant's whisky was and is not "Handmade," as photos and  
 20 video footage of Defendant's manufacturing process, which was made in  
 21 association with Defendant, clearly demonstrate.

22 15. The photos and the video footage made in association with Defendant of  
 23 Defendant's manufacturing process, one of which is titled "Maker's Mark  
 24 Distillery Tour"<sup>1</sup> ("Tour Video") and another titled "Maker's Mark Bourbon  
 25 Factory,"<sup>2</sup> ("Factory Video"), vividly depict the manufacturing process as  
 26 being mechanized and/or automated, rather than "Handmade" as Defendant  
 27

28 <sup>1</sup>See <https://www.youtube.com/watch?v=TkAtdtewjb0>

<sup>2</sup>See <https://www.youtube.com/watch?v=22PrqoJb3rM>

1 claims.

2 16. “Handmade” and “handcrafted” are terms that consumers have long  
3 associated with higher quality manufacturing and high-end products. This  
4 association and public perception is evident in the marketplace where  
5 manufacturers charge a premium for “handcrafted” or “handmade” goods. In  
6 the case of a 750 milliliter bottle of whiskey, similar to the ones Defendant  
7 manufactures and sells, most commercially available whiskies range in price  
8 from as little as \$12.99 to \$24.99.<sup>3</sup> Defendant’s purportedly “Handmade” 750  
9 milliliter bottle of whisky is listed at \$31.99.<sup>4</sup>

10 17. Defendant affixes identical labels on all its “Maker’s Mark Kentucky Straight  
11 Bourbon Whisky” (“Maker’s Mark”). On these labels, the claim  
12 “**Handmade**” appears in large *bold* font on the front of the bottle, and two  
13 more times on the side of the label. *See* ¶ 30, 31. The side of the label reads,  
14 “Maker’s Mark is America’s only handmade bourbon whisky – never mass  
15 produced” and that “[w]e’re proud of our unique and full-flavored handmade  
16 bourbon.” *Id.* Defendant’s website also states that, “[w]hile most distilleries  
17 use a modern hammer mill to break up their grains, Maker’s Mark uses an old  
18 antique roller mill, which is less efficient, but reduces the chance of scorching  
19 the grain and creating a bitter taste.”<sup>5</sup> This is done in an apparent attempt to  
20 market the whisky as being of higher quality by virtue of it being made *by*  
21 *hand*. As a result, Defendant induces consumers to purchase, purchase more  
22 of, and pay more for its whisky on the basis it is of supposedly of superior  
23 quality and workmanship.

24  
25 <sup>3</sup> *See*, the price listing for “whiskeys” on the website of BevoMo, a retailer of alcohol, and  
26 available at: [http://www.bevmo.com/Shop/ProductList.aspx/\\_/D-whiskey/N-/No-10/Ntt-whiskey?DNID=Home&Dx=mode%2Bmatchany&fromsearch=true&Ns=SalesPrice%7C0&Ntk=All&Ntx=mode%2Bmatchany](http://www.bevmo.com/Shop/ProductList.aspx/_/D-whiskey/N-/No-10/Ntt-whiskey?DNID=Home&Dx=mode%2Bmatchany&fromsearch=true&Ns=SalesPrice%7C0&Ntk=All&Ntx=mode%2Bmatchany)

27 <sup>4</sup> *See*, <http://www.bevmo.com/Shop/ProductDetail.aspx/Spirits/Bourbon/Kentucky/Maker-s-Mark-Distillery/Maker-s-Mark-Bourbon-Whisky/555>

28 <sup>5</sup> *See*, <https://www.makersmark.com/sections/88-slow-and-good>

- 1 18. However, contrary to Defendant’s misleading labeling, its whisky is  
2 predominately or entirely made by mechanized and automated processes, as  
3 demonstrated by the photos and video footage of Defendant’s manufacturing  
4 processes. *See* ¶¶ 40, 44, 47, 50, 52, 53, 56; FN 1 and 2.
- 5 19. As a consequence of Defendant’s unfair and deceptive practices, Plaintiffs and  
6 other similarly situated consumers have purchased Maker’s Mark whisky  
7 under the false impression that the whisky was of superior quality by virtue of  
8 being “Handmade” and thus worth an exponentially higher price as compared  
9 to other similar whiskies.
- 10 20. Each consumer, including Plaintiffs, were exposed to virtually the same  
11 material misrepresentations, as the identical labels were prominently placed  
12 on all of the Marker’s whisky bottles that were sold, and are currently being  
13 sold, throughout the U.S. and the State of California.
- 14 21. As a result of Defendant’s misrepresentations regarding its Maker’s Mark  
15 whisky, Plaintiffs and other consumers similarly situated overpaid for the  
16 product, and/or purchased the product under the false believe that the whisky  
17 they purchased was of superior quality since it was allegedly “Handmade.”  
18 Had Plaintiffs and other consumers similarly situated been made aware that  
19 Maker’s whisky was not “Handmade” they would not have purchased the  
20 product, or would have paid less for it, or purchased different products.
- 21 22. As a result of Defendant’s false and misleading statements, as well as  
22 Defendant’s other conduct described herein, Plaintiffs and other similarly  
23 situated consumers purchased thousands, if not millions, of bottles of Maker’s  
24 Mark whisky and have suffered, and continue to suffer, injury in fact  
25 including the lost of money and/or property.
- 26 23. Defendant’s conduct as alleged herein violates several California laws, as  
27 more fully set forth herein.

28 ///



1 “All persons who purchased a Maker’s Mark whisky  
2 in the State of California within four years prior to  
3 the filing of the Complaint in this action.”

4 Excluded from the Class are Defendant and any of its officers, directors, and  
5 employees, or anyone who purchased a Maker’s Mark whisky for the  
6 purposes of resale. Plaintiffs reserve the right to modify or amend the Class  
7 definition before the Court determines whether certification is appropriate.

8 124. *Ascertainability*. The members of the Class are readily ascertainable from  
9 Defendant’s records and/or Defendant’s agent’s records regarding retail and  
10 online sales, as well as through public notice.

11 125. *Numerosity*. The members of the Class are so numerous that their individual  
12 joinder is impracticable. Plaintiffs are informed and believe, and on that basis  
13 alleges, that the proposed class consists of thousands of members, if not  
14 millions.

15 126. *Existence and Predominance of Common Questions of Law and Fact*.  
16 Common questions of law and fact exist as to all members of the Class  
17 predominate over any questions affecting only individual Class members. All  
18 members of the Class have been subject to the same conduct and their claims  
19 are based on the standardized marketing, advertisements and promotions. The  
20 common legal and factual questions include, but are not limited to, the  
21 following:

- 22 (a) Whether Defendant’s whisky is manufactured by any  
23 mechanized and/or automated process rather than by hand;
- 24 (b) Whether Defendant’s whisky is predominately manufactured  
25 by mechanized and/or automated process rather than by hand;
- 26 (c) Whether Defendant’s claims and representations above are  
27 untrue, or are misleading, or reasonably likely to deceive;

28 ///



- 1 (d) Whether Defendant's conduct is an unlawful act or practice  
2 within the meaning of California Business & Professions Code  
3 §§ 17200 *et seq*;
- 4 (e) Whether Defendant's conduct is a fraudulent act or practice  
5 within the meaning of California Business & Professions Code  
6 §§ 17200 *et seq*;
- 7 (f) Whether Defendant's conduct is an unfair act or practice  
8 within the meaning of California Business & Professions Code  
9 §§ 17200 *et seq*;
- 10 (g) Whether Defendant's advertising is unfair, deceptive, untrue or  
11 misleading within the meaning of California Business &  
12 Professions Code §§ 17200 *et seq*;
- 13 (h) Whether Defendant's advertising is false, untrue, or misleading  
14 within the meaning of California Business & Professions Code  
15 §§ 17500 *et seq*;
- 16 (i) Whether Defendant acted intentionally in making the  
17 misrepresentations contained in its product's label.
- 18 (j) Whether Defendant, through its conduct, received money that,  
19 in equity and good conscience, belongs to Plaintiffs and  
20 members of the Class;
- 21 (k) Whether Plaintiffs and proposed members of the Class are  
22 entitled to equitable relief, including but not limited to  
23 restitution and/or disgorgement; and
- 24 (l) Whether Plaintiffs and proposed members of the Class are  
25 entitled to injunctive relief sought herein.

26 127. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the  
27 Class in that Plaintiffs are a member of the Class that Plaintiffs seek to  
28 represent. Plaintiffs, like members of the proposed Class, purchased

1 Defendant's whisky after exposure to the same material misrepresentations  
2 and/or omissions appearing in the product's labeling, and received a product  
3 that was manufactured by mechanized and/or automated means rather than by  
4 hand. Plaintiffs are advancing the same claims and legal theories on behalf of  
5 themselves and all absent members of the Class. Defendant has no defenses  
6 unique to the Plaintiffs.

7 128. *Adequacy of Representation.* Plaintiffs will fairly and adequately protect the  
8 interests of the members of the Class. Plaintiffs have retained counsel  
9 experienced in consumer protection law, including class actions. Plaintiffs  
10 have no adverse or antagonistic interest to those in the Class, and will fairly  
11 and adequately protect the interests of the Class. Plaintiffs' attorneys are  
12 aware of no interests adverse or antagonistic to those of Plaintiffs and  
13 proposed Class.

14 129. *Superiority.* A class action is superior to all other available means for the fair  
15 and efficient adjudication of this controversy. Individualized litigation would  
16 create the danger of inconsistent and/or contradictory judgments arising from  
17 the same set of facts. Individualized litigation would also increase the delay  
18 and expense to all parties and court system and the issues raised by this action.  
19 The damages or other financial detriment suffered by individual Class  
20 members may be relatively small compared to the burden and expense that  
21 would be entailed by individual litigation of the claims against the Defendant.  
22 The injury suffered by each individual member of the proposed class is  
23 relatively small in comparison to the burden and expense of individual  
24 prosecution of the complex and extensive litigation necessitated by  
25 Defendant's conduct. It would be virtually impossible for members of the  
26 proposed Class to individually redress effectively the wrongs to them. Even if  
27 the members of the proposed Class could afford such litigation, the court  
28 system could not. Individualized litigation increases the delay and expense to

1 all parties, and to the court system, presented by the complex legal and factual  
2 issues of the case. By contrast, the class action device presents far fewer  
3 management difficulties, and provides the benefits of single adjudication,  
4 economy of scale, and comprehensive supervision by a single court.  
5 Therefore, a class action is maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

6 130. Unless the Class is certified, Defendant will retain monies received as a result  
7 of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-  
8 wide injunction is issued, Defendant will also likely continue to, or allow its  
9 resellers to, advertise, market, promote and package Maker's Mark whisky in  
10 an unlawful and misleading manner, and members of the Class will continue  
11 to be misled, harmed, and denied their rights under California law.

12 131. Further, Defendant has acted or refused to act on grounds that are generally  
13 applicable to the class so that declaratory and injunctive relief is appropriate to  
14 the Class as a whole, making class certification appropriate pursuant to Fed.  
15 R. Civ. P. 23(b)(2).

### 16 PRAYER FOR RELIEF

17 **WHEREFORE**, Plaintiffs pray that judgment be entered against Defendant,  
18 and Plaintiffs and Class members be awarded damages from Defendant as follows:

- 19 • That this action be certified as a Class Action, Plaintiffs be appointed as  
20 the representatives of the Class, and Plaintiffs' attorneys be appointed  
21 Class counsel;
- 22 • A temporary, preliminary and/or permanent order for injunctive relief  
23 requiring Defendant to: (i) discontinue advertising, marketing and  
24 otherwise representing its Maker's Mark whisky as "Handmade"; (ii)  
25 disclose the mechanized and/or processes utilized in the manufacture of  
26 Maker's Mark whisky; (iii) correct any erroneous impression consumers  
27 may have derived concerning the means of production for Maker's Mark  
28 whisky, including without limitation, the placement of corrective

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1 advertising and providing written notice to the public;

- 2 • An order requiring imposition of a constructive trust and and/or
- 3 disgorgement of Defendant’s ill-gotten gains and to pay restitution to
- 4 Plaintiffs and all members of the Class and to restore to Plaintiffs and
- 5 members of the class all funds acquired by means of any act or practice
- 6 declared by this court to be an unlawful, fraudulent, or unfair business
- 7 act or practice, in violation of laws, statutes or regulations, or
- 8 constituting unfair competition;
- 9 • Distribution of any monies recovered on behalf of members of the Class
- 10 via fluid recovery or *cy pres* recovery where necessary and as applicable,
- 11 to prevent Defendant from retaining the benefits of their wrongful
- 12 conduct;
- 13 • Prejudgment and post judgment interest;
- 14 • Special, general, and compensatory damages to Plaintiffs and the Class
- 15 for negligent and/or intentional misrepresentations;
- 16 • Exemplary and/or punitive damages for intentional misrepresentations
- 17 pursuant to, *inter alia*, Cal. Civ. Code § 3294;
- 18 • Costs of this suit;
- 19 • Reasonable attorneys’ fees pursuant to, *inter alia*, California Code of
- 20 Civil Procedure § 1021.5; and
- 21 • Awarding any and all other relief that this Court deems necessary or
- 22 appropriate.

23  
24 Dated: December 5, 2014

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

25  
26  
27 By: s/ Abbas Kazerounian  
28 ABBAS KAZEROUNIAN, ESQ.  
MONA AMINI, ESQ.  
ATTORNEYS FOR PLAINTIFFS

**TRIAL BY JURY**

132. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: December 5, 2014

Respectfully submitted,

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