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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 SARA CILLONI and SIMONE ZIMMER,  
13 individually, and on behalf of all others  
similarly situated,

14 Plaintiffs,

15 v.

16 CRAFT BREW ALLIANCE, INC., a  
17 corporation; and DOES 1 through 50,  
inclusive,

18 Defendants.  
19  
20  
21

CASE NO.:

**CLASS ACTION COMPLAINT**

1. **Violation of California False Advertising Law**
2. **Violation of California Consumer Legal Remedies Act**
3. **Violation of California Unfair Competition Law**
4. **Breach of Express Warranty**
5. **Negligent Misrepresentation**
6. **Unjust Enrichment and Common Law Restitution**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Sara Cilloni and Simone Zimmer (“Plaintiffs”), on behalf of themselves and all  
 2 others similarly situated, bring this class action against Defendant Craft Brew Alliance, Inc. and  
 3 Does 1 through 50 (“Craft Brew” or “Defendants”) to recover monetary damages, injunctive  
 4 relief, and other remedies. Plaintiffs make the following allegations based on the investigation of  
 5 their counsel and on information and belief, except as to allegations pertaining to Plaintiffs  
 6 individually, which is based on their personal knowledge.

### 7 **INTRODUCTION**

8 1. Through false and deceptive advertising, Craft Brew intentionally misleads  
 9 consumers into believing that Kona Brewing Company beer (a brand of Craft Brew) is a local beer  
 10 made in Hawaii. In actuality, this beer is made in the continental United States.

11 2. The falsely advertised beer at issue in this action includes but is not limited to  
 12 Longboard Island Lager, Big Wave Golden Ale, Fire Rock Pale Ale, Wailua Wheat Ale, Hanalei  
 13 Island IPA, and Castaway IPA. Kona Brewing Company also sells seasonal beers, referred to as  
 14 the Aloha series, which include but are not limited to Lemongrass Luau, Koko Brown, and  
 15 Pipeline Porter. Hereinafter, these beers are referred to as “Kona Brewing Co. beer.”

16 3. Craft Brew advertises, markets, distributes, and sells these brands of beer to  
 17 consumers via retail stores and restaurants throughout the United States based on the  
 18 misrepresentation that these beers are brewed by Kona Brewing Company in Hawaii. However,  
 19 none of these brands of beer (bottled, canned, and continental U.S. draft) are brewed by the Kona  
 20 Brewing Company in Hawaii.<sup>1</sup> Rather, these beers are made by Craft Brew in Oregon,  
 21 Washington, Tennessee, and/or New Hampshire.

22 4. Plaintiffs and other consumers purchased Kona Brewing Co. beer because they  
 23 reasonably believed – based on Craft Brew’s advertising and labeling – that this beer originates  
 24 from Hawaii. As a result, Plaintiffs and other consumers have been deceived and have suffered  
 25 economic injury.

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26  
 27 <sup>1</sup> Kona Brewing Company’s draft beers (i.e., non-bottled or canned) sold in Hawaii may actually  
 28 be brewed in Kona, Hawaii.





of such DOE Defendants. Plaintiffs will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE Defendants when ascertained.

### **FACTUAL ALLEGATIONS**

#### **Kona Brewing Company is Highly Profitable**

16. In a 2016 SEC 10-Q filing, Craft Brew reported the following financials:<sup>2</sup>

Six Months Ended June 30	2015 Shipments (In Barrels)	2014 Shipments (In Barrels)	Percent Change
Kona	168,200	154,700	8.7%
Redhook	94,500	112,100	-15.7%
Widmer Brothers	98,400	106,500	-7.6%
Omission	25,700	24,200	6.2%
Total	386,800	397,500	-2.7%

17. The statistics in the table above demonstrate that Kona Brewing Company is one of Craft Brew's most commercially successful brands. Craft Brew sells hundreds of thousands of barrels of Kona Brewing Co. beer per year. According to standard measurements, one barrel (or keg) of beer is equivalent to approximately 165 twelve ounce bottles. Thus, in 2015 alone, Craft Brew sold the equivalent of over 27 million twelve ounce bottles.

18. And the Kona Brewing brand continues to grow. Craft Brew's Chief Executive Officer, Andy Thomas, stated in a May 4, 2016 publication on Craft Brew's website that "solid second quarter performance" in 2016 reflects, at least in part, "significant progress in strengthening our topline by sustaining Kona's remarkable growth . . ."<sup>3</sup> In the same publication, Craft Brew reported a 19% growth for Kona Brewing Co. beer.

<sup>2</sup><http://secfilings.nasdaq.com/filingFrameset.asp?FilingID=10843167&RcvdDate=8/5/2015&CoName=CRAFT%20BREW%20ALLIANCE%2C%20INC.&FormType=10-Q&View=orig>

<sup>3</sup><http://craftbrew.com/2016/08/03/craft-brew-alliance-reports-largest-net-sales-shipments-and-depletions-in-company-history/>

**Kona Brewing Co. Beer is Falsely Labeled as Made in Hawaii**

19. Craft Brew deceptively labels its Kona Brewing Co. beer as made in Hawaii in order to exploit strong consumer sentiment for Hawaiian-made products.

20. In order to maximize profits, Craft Brew has capitalized on the Hawaii brand image of Kona Brewing Co. beer. The entire brand image of Kona Brewing Company – including the name itself – revolves around its purported Hawaii origins. Craft Brew ubiquitously uses Hawaii imagery, references, metaphors, and outright misstatements in order to cultivate this image.

21. Intentionally deceptive Hawaii-origin representations on the bottle label and cardboard packaging of all Kona Brewing Co. beer brands include the following:

- The Kona Brewing Co. logo is displayed on the front of the bottle and on the bottle caps.
- It states “*Liquid Aloha*” on the front of the bottle.
- Embedded into the front of the bottle is an image of the Hawaiian island chain.

*See, e.g.,* Figure 1.

- “KONA BREWING CO.” is prominently printed on the front of the cardboard packaging.
- On the front of the cardboard packaging it prominently states, “BREWING *Liquid Aloha* SINCE ’94.”

*See, e.g.,* Figure 2.

22. The different Kona Brewing Co. beer brands each also bear their own specific misleading Hawaii-origin representations based on the particular theme of the beer:

**Longboard Island Lager**

23. The name Long Board Island Lager refers to surfing and the Hawaiian lifestyle.

24. There is imagery of surfboards and surfers on waves in front of Diamond Head (a landmark in Oahu, Hawaii) on both the bottle label and the packaging.

25. On the label of the neck of the bottle it states, “A spirited, crisp and refreshing brew, Longboard Island Lager is a smooth ride all the way in. Thirst’s up! Waikiki Beach in Honolulu is the birth place of longboard surfing. Kona Brewing pays tribute to this iconic place with our own Longboard Island Lager.”

1           26.     It states on both the bottle label and the packaging, “Longboard surfing in the  
2 shadow of Diamond Head has been a tradition for over 100 years at Waikiki beach. Our  
3 Longboard Island Lager pays tribute to this grand history.”

4           27.     On the cardboard packaging of six-pack containers it prominently states,  
5 “THIRST’S UP!”

6           28.     On the bottom of the cardboard packaging of twelve-pack containers, there is the  
7 Kona Brewing Co. label and an image of Oahu. It also states:

8           “THE BEACH WHERE IT BEGAN

9           Thanks to a legendary local Hawaiian, Longboards have been a constant feature at Waikiki  
10          Beach for over 90 years. The great Duke Kahanamoku, father of modern surfing and  
11          Olympic Gold Medalist paddled his hand-shaped, wooden board – a whopping 16 feet long  
12          and weighing 114 pounds – out into the surf to ride the waves off Waikiki. This behemoth  
13          was dubbed a Longboard and the ancient Polynesian sport of surfing was reborn. Today,  
14          in the shadow of Diamond Head, under swaying palm trees, Waikiki Beach is still the spot  
15          to learn the tradition of Longboard surfing. Here you can catch set after set of rolling  
16          waves until the sun fades below the horizon, and then it’s time for a beer!

17          THIRST’S UP!

18          Kona Brewing Co. pays tribute to the big board of surfing and this famous Hawaiian beach  
19          with our refreshing Longboard Island Lager. This crisp, pale gold lager is made with  
20          premium pale malt and aromatic hops brewed in a traditional lager style. Like the last  
21          wave of the day at your favorite surf break, Longboard is a smooth and easy going brew  
22          that you can enjoy time and time again. Thirst’s up!”

23          *See, e.g.,* Figures 3 and 4.

24          **Big Wave Golden Ale**

25          29.     The name Big Wave Golden Ale refers to waves and the power of the ocean  
26 surrounding Hawaii.

27          30.     There is imagery of four people in an outrigger canoe (a traditional Polynesian  
28 canoe) riding a wave on both the bottle label and the packaging.

          31.     It also states on both the bottle label and the cardboard packaging, “Makaha. Our  
brewers wanted to make a beer that went down easy after a day in the water. Big Wave Golden  
Ale is just the ticket.”

1           32.     On the label of the neck of the bottle it states, “Our sun-drenched Big Wave Golden  
2 Ale is a smooth brew, inspired by what makes Hawaii great. Catch a wave! Year-round, the  
3 waves that roll onto Hawaiian beaches are some of the best in the world. Catch the crest of a  
4 breaking wave and ride it all the way in.”

5           33.     On the cardboard packaging of six-pack containers it prominently states, “CATCH  
6 A WAVE!”

7           34.     On the top of the cardboard packaging of twelve-pack containers, there is the Kona  
8 Brewing Co. label and an image of Oahu. It also states:

9           “HAWAIIAN SWEET SPOT

10           The waves in Hawaii are legendary. In the winter months, the island’s north and west  
11 coasts see big waves that often climb to 40 feet, with huge curls of white water breaking  
12 just off shore. This is just one reason why surfers, body boarders, paddlers and those of  
13 just willing to watch from the beach make this pilgrimage. There is no other place on earth  
14 like Hawaii. The north shore of Oahu gets all the attention (as it should), but the waves at  
15 Makaha are just as sweet. This is the place where the first surf competition in Hawaii was  
16 held in 1954 and continues to attract world class pros to ride the giants of winter surf.

17           CATCH A WAVE!

18           Our brewers wanted to make a beer that went down easy after a day out on the water. Big  
19 Wave Golden Ale is just the ticket. Big Wave is a lighter bodied golden ale with a tropical  
20 hop aroma and flavor – a smooth, easy drinking refreshing ale. The use of caramel malt  
21 contributes to the golden hue of this beer and our special blend of hops provides a bright  
22 quenching finish.”

23           *See, e.g.*, Figures 2 and 5.

24           **Fire Rock Pale Ale**

25           35.     The name Fire Rock Pale Ale refers to volcanoes and the geographical uniqueness  
26 of Hawaii.

27           36.     There is imagery of the Kilauea Volcano (one of Hawaii’s active volcanoes) with  
28 lava flowing into the ocean on both the bottle label and the packaging.

          37.     It also states on both the bottle label and the cardboard packaging, “Kilauea  
Caldera. The power and copper glow of molten lava flowing to the sea from the Big Island’s  
Kilauea Caldera is evoked in our Fire Rock Pale Ale.”



1           38.     On the label of the neck of the bottle it states, “Active volcanoes on the Big Island  
2 of Hawaii leave visitors awestruck by their power. The glow of lava as it meets the ocean is an  
3 amazing sight. Our Fire Rock Pale Ale is inspired by this place with a bright copper color and  
4 rich roasted malt taste. Aloha!

5           *See, e.g.*, Figures 6 and 7.

6           **Wailua Wheat Ale**

7           39.     The name Wailua Wheat Ale refers to the Wailua waterfalls – a landmark in Maui,  
8 Hawaii.

9           40.     There is imagery of a woman standing in front of a waterfall on both the bottle  
10 label and the packaging.

11          41.     On the label of the neck of the bottle it reads, “Wailua is Hawaiian for two fresh  
12 water streams mingling. This was just the inspiration we needed for our Wailua Wheat Ale.  
13 Brewed with tropical passionfruit, it’s a refreshing, citrusy, sun-colored ale with the cool taste of  
14 Hawaii.”

15          42.     On the cardboard packaging of six-pack containers it prominently states,  
16 “PARADISE FOUND.”

17          43.     It also states on both the bottle label and the cardboard packaging, “Wailua Falls.  
18 This spectacular 95’ waterfall on Maui inspired our Wailua Wheat ale.”

19          44.     On the bottom of the cardboard packaging of six-pack containers there is an image  
20 of the island of Maui and it states:

21           “LAID BACK IN TIME

22           Imagine travelling along a 90 year-old winding road on the north coast of Maui, crossing  
23 one-lane stone bridges that take you back to old Hawaii. This simple “highway” is known  
24 as the Road to Hana, a historic fishing village and the birth place of a Hawaiian Queen.  
25 This journey grips the edge of the island with ocean views and cascading waterfalls around  
26 nearly every bend. Wailua Falls is one of these spectacular sights. The falls plunge 95 feet  
27 into a natural pool, cradled in the surrounding volcanic rock. Take a dip in the cool,  
28 refreshing water, under the canopy of palm trees, and you will feel the timelessness of this  
Hawaiian paradise.

PARADISE FOUND

Wailua is Hawaiian for two fresh water streams mingling. This was just the inspiration we needed to create our Wailua Wheat Ale. This refreshing, gold colored ale blends with the crisp, slightly sweet citrus flavor of tropical passionfruit, known locally as Lilikoi. This thirst quenching Kona Brew is the perfect companion to a day in the sun – even if you are not on Maui. Just sit back, relax and enjoy paradise anytime!”

*See, e.g.*, Figures 8 and 9.

### **Hanalei Island IPA**

45. The name Hanalei Island IPA refers to Hanalei – a town in Kauai, Hawaii.

46. There is imagery of two people kayaking in the ocean in front of the mountains in Hawaii on both the bottle label and the packaging.

47. On the label of the neck of the bottle it states, “Kayak the stunning Hanalei Bay and ease your way through the tropical paradise of northern Kauai. Refresh your senses with this crisp Island IPA – the subtle bitterness of hops is balanced by passionfruit, orange and guava. Easy does it.”

48. On the cardboard packaging of six-pack containers it prominently states, “EASY DOES IT.”

49. On the bottom of the cardboard packaging of six-pack containers there is an image of the island of Kauai and it states:

#### **“PADDLER’S PARADISE**

On the north coast of Kauai, the perfect crescent shape of Hanalei Bay tucks up against lush, green mountains streaked with waterfalls fed by the warm Pacific rain. This is the Hawaii of your dreams. Launch your kayak into the calm blue waters at the historic pier and take in the iconic view of white sand beaches, the small village of Hanalei, and Makana Mountain (famously known as Bali Hai) towering above you. Paddling from this bay out to the Nā Pali Coast or up the Hanalei River you will discover more natural wonders that can only be seen as you glide through the water. With the sun above and your troubles behind, you might just feel like this place is as close to paradise as you’ll ever get.

#### **EASY DOES IT**

Our easy-drinking Hanalei Island IPA is our brewer’s homage to the Garden Isle and the Hawaiian classic drink, POG. Passionfruit, orange, and guava balance the subtle bitterness of aromatic Azacca and Galaxy hops to deliver a coppery, laidback, session-style ale, bright with tropical flavors and just 4.5% ABV. After all, a day on the bay calls for something that’s relaxed and smooth, like our namesake, and refreshing enough to remind

1 you that you're in the South Pacific. And even if you aren't, with this Kona Brew in hand,  
2 Hawaii is only a sip away. Easy does it."

3 *See, e.g.*, Figure 10.

4 **Castaway IPA**

5 50. There is imagery of four people in an outrigger canoe (a traditional Polynesian  
6 canoe) riding a wave on both the bottle label and the packaging.

7 51. On the label of the neck of the bottle it states, "A smooth yet spirited brew, it's as  
8 refreshing as the wind in your face when you set sail for adventure."

9 52. It also states on both the bottle label and the cardboard packaging, "Channel of  
10 Bones. The Ka'iwi Channel, or Channel of Bones, between Molokai and Oahu, is a treacherous  
11 route that early explorers adventured through. The steep, emerald volcanic sea cliffs off the north  
12 shore of Molokai loomed over these early explorers. Our Castaway IPA pays homage to these  
13 early explorers who braved the shark infested waters between these cliffs."

14 53. On the cardboard packaging of six-pack containers it prominently states, "SET  
15 SAIL FOR ADVENTURE."

16 54. On the bottom of the cardboard packaging of six-pack containers there is an image  
17 of the island of Oahu with the Kona Brewing Co. Koko Marina Pub delineated on the island. It  
18 also states:

19 "THE FIRST ISLAND HOPPERS

20 Hand-carved, wooden outrigger canoes once carried Hawaiians from island to island,  
21 where massive waves would crash over their hulls and toss them toward the horizon. The  
22 Ka'iwi Channel, or "Channel of Bones," between Oahu and Molokai was a particularly  
23 treacherous route. The steep, emerald green volcanic sea cliffs off the north shore of  
24 Molokai loomed over these early island explorers as they searched for safe harbors from  
25 the shark-infested waters. Only the strongest survived these perilous trips, many were cast  
26 away and lost. Today, this 26-mile wide passage challenges champion swimmers and  
27 paddlers who continue to race against the high winds and strong currents, earning  
28 worldwide admiration and acclaim.

SET SAIL FOR ADVENTURE!

It is those early island explorers, and the new ones too, that inspired us to make an equally  
spirited IPA. Take a sip of this copper-colored India Pale Ale and you'll taste bold, citrusy  
hops with a touch of tropical mango and passion fruit balanced by the rich caramel malts.

1 Castaway IPA has a clean, crisp finish that's as fresh as the wind in your face when you set  
2 sail for adventure."

3 *See, e.g.*, Figure 11.

4 **Aloha Series**

5 55. On both the bottle label and the packaging of Lemongrass Luau beer there is  
6 imagery of three women dancing hula on the beach with the mountains in the background. On the  
7 cardboard packaging of six-pack containers it prominently states, "ALWAYS ALOHA." *See, e.g.*,  
8 Figure 12.

9 56. On both the bottle label and the packaging of Pipeline Porter beer there is imagery  
10 of a surfer standing on the beach about to paddle out into the surf. It also says, "PIPELINE porter  
11 made with HAWAIIAN KONA COFFEE."

12 57. The name "Pipeline Porter" refers to one of the world's most famous surf breaks,  
13 the Banzai Pipeline, which is located on the north shore of Oahu

14 58. On the label of the neck of the bottle of Pipeline Porter it states, "Our Pipeline  
15 porter is a bold, but smooth blend of roasted barley and rich Hawaiian-grown coffee-the perfect  
16 ode to the Banzai Pipeline, one of the most spectacular surf spots on the planet." On the cardboard  
17 packaging it prominently states, "A WAVE LIKE NO OTHER." *See, e.g.*, Figures 13 and 14.

18 59. On both the bottle label and the packaging of Koko Brown beer there is imagery of  
19 a man paddle surfing in front of Koko Head. It also says, "Ale brewed with TOASTED  
20 COCONUT."

21 60. The name Koko Brown refers to Koko Head – a landmark in Oahu, Hawaii.

22 61. On the label on the neck of the bottle of Koko Brown beer, it states, "the ancient  
23 Hawaiian tradition of Standup Paddling appreciates a revival in the idyllic setting of Maunalua  
24 Bay." *See, e.g.*, Figure 15.

25 62. In sum, the prominent Hawaii imagery and wording on the product labels, taken in  
26 both isolation and as a whole, are clearly designed to create the mistaken impression that Kona  
27 Brewing Co. beer is made in Hawaii.  
28

**Kona Brewing Co. Beer Bottles Falsely State They are Brewed in Hawaii**

63. Kona Brewing Co. beer bottles contain an affirmative, false statement that the beer is made in Kona, Hawaii.

64. In small lettering on the side of the bottle labels of all Kona Brewing Co. beer it states:

“KONA BREWING COMPANY CO KONA HI • PORTLAND, OR • WOODINVILLE, WA • PORTSMOUTH, NH • MEMPHIS TN

FRESH, RESPONSIBLE, ALWAYS ALOHA.”

*See, e.g.*, Figure 16 (relevant portion circled in red).

65. There is no other information on the bottle, can, or on any of the packaging of Kona Brewing Co. beer that could be construed as any type of disclosure regarding the beer’s origin.<sup>4</sup>

66. To the extent Craft Brew intended the language quoted above to be some type of disclosure, or that a reasonable consumer understands the above-listed locations to be where the beer is brewed, this labeling constitutes a flat-out misrepresentation, since none of the bottled/canned beer, or draft beer sold in the continental United States, is brewed in Hawaii. In other words, the statement “Kona, HI” is false. The only specific information regarding geographic origin affirmatively misrepresents to consumers that Kona Brewing Co. beer is made in Kona, Hawaii.

**Kona Brewing Co. Beer is Falsely Advertised as Made in Hawaii**

67. In addition to false advertising and statements on the product labels and packaging themselves, Craft Brew has undertaken a pervasive advertising campaign to cultivate its unique Hawaii image.

68. Kona Brewing Company’s social media – which on information and belief is operated by Craft Brew – is rife with Hawaii imagery and references.

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<sup>4</sup> During a small portion of the beginning of the statute of limitations period the language quoted in paragraph 64 may not have been listed, and there was simply no information on Kona Brewing Co. beer labels or packaging relating to geographic origin.

69. For instance, on its Twitter Homepage, it states, “Fresh brews made with spirit, passion, and quality. The brewery is headquartered where it began in 1994, in Kailua-Kona on Hawaii’s Big Island.” There are 4,235 tweets, 1050 photos, and 28.2k followers as of the date the Complaint was filed.

70. Almost every single one of these thousand-plus photos depicted on Twitter have strong Hawaii imagery. *See, e.g.*, Figures 17-20.

71. Many of the tweets also contain Hawaii references. Some of these tweets include:

- “Fire up, bruddahs and sistahs! Fire Rock is now available with your other craft beer favorites...” December 19, 2016.
- “What’s cooler than a pineapple wearing shades? A pineapple wearing shades with a Longboard Lager...” November 6, 2016.
- “Spending your #AlohaFriday right?” October 28, 2016
- “A Hanalei sunset in a glass.” September 30, 2016.

**Kona Brewing Co. Beer is Made in the Continental United States**

72. Kona Brewing Co. beer brands are widely distributed and sold in every state in the United States and in 26 different countries. This widespread distribution has been facilitated by Anheuser-Busch InBev’s acquisition of a significant percentage of Craft Brew.

73. Kona Brewing Co. beer that is bottled and canned, and draft beer sold in the mainland, is made by Craft Brew in the continental United States.

74. On Kona Brewing Company’s website, it states:

“Kona Brewing Company runs its flagship brewhouse in Kailua-Kona on Hawaii’s Big Island, which produces more than 12,000 barrels of beer annually.

Under strict guidance, Kona Brewing Company also produces its bottled beer and mainland draft beer in Portland, Oregon, Woodinville, Washington, Memphis, Tennessee, and Portsmouth, New Hampshire, as part of its partnership with Craft Brew Alliance Inc.

Recipes and beer specifications are dictated by Kona Brewing Company’s brewmaster, who oversees each of Kona Brewing Company’s partner breweries as the beer is brewed and packaged. The beer brewed at Kona Brewing Company’s partner breweries utilizes Kona’s hops, malt and proprietary yeast. The water mineral levels at each brewery are adjusted to replicate the water used in Hawaii. A sample of each batch of beer is sent to the

1 Kailua-Kona brewery for sensory evaluation. The brewmaster and quality assurance  
2 employees are in daily contact with mainland partner breweries.

3 An integral component of Kona Brewing Company's business plan is to grow the business  
4 with ecological integrity, reducing the company's carbon footprint whenever possible. By  
5 producing its bottled beer and mainland draft beer on the mainland, close to markets, Kona  
6 Brewing Company has dramatically reduced its reliance upon transportation fuel for raw  
7 materials, packaging and distribution."<sup>5</sup>

8 See Figure 21 (relevant text circled in red).

9 75. Thus, Craft Brew admits that all bottled/canned and mainland draft Kona Brewing  
10 Co. beer is made in Oregon, Washington, Tennessee, and/or New Hampshire.

11 76. Moreover, Craft Brew and/or Kona Brewing Co. state in a YouTube video  
12 published March 19, 2014, entitled "THE SOURCE of Liquid Aloha Discovered: Kona Brewing  
13 Hawaii," "at this brewery [the flagship Kailua-Kona brewery], the staff of 6 produces an  
14 impressive 310 gallons of brew a year, or 4,000 kegs, *for enjoyment throughout the islands.*"  
15 (emphasis added). Kona Brewing Co.'s Managing Director for Restaurants and Retail then states,  
16 "as of 2013, we were in 35 states, we'll be launching four more states in 2014."<sup>6</sup>

17 77. By comparison, Craft Brew produced 154,700 kegs of beer in 2014 alone.

18 78. The significance of brewing Kona Brewing Co. beer in the mainland, as opposed to  
19 Hawaii, extends beyond consumer sentiment. Craft Brew and/or Kona Brewing Co. publicly  
20 acknowledge that, as a result of brewing Kona Brewing Co. beer in the continental United States,  
21 this beer does not contain Hawaii water. Craft Brew and/or Kona Brewing Co. further  
22 acknowledge that using mainland water materially impacts the taste and quality of the beer. The  
23 Kona Brewing Co. website states, "The beer brewed at Kona Brewing Company's partner  
24 breweries utilizes Kona's hops, malt and proprietary yeast. The water mineral levels at each  
25 brewery are adjusted to replicate the water used in Hawaii."

26 79. In an article published on June 26, 2015, Kona Brewing Co.'s brewmaster at the  
27 time, Billy Smith, was quoted as saying: "Hawaii County water is hard and high in calcium  
28

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<sup>5</sup> <http://konabrewingco.com/about/>

<sup>6</sup> <https://www.youtube.com/watch?v=PZ4ihoclNCs>



1 chloride. Fortunately, these characteristics are great for making beer and can help showcase the  
 2 malt and hop flavor.”<sup>7</sup> Smith goes on to state, “I was one of the brewers at the brewery that  
 3 brewed the first batch of Longboard Island Lager on the East Coast, so I know the challenges they  
 4 face on the mainland, firsthand.” According to the article, Kona Brewing Co. installed a water  
 5 treatment system to mimic Hawaiian water. Smith further stated, “Today, every week a sample  
 6 [of the beer] is sent to the brewery in Kona to make sure the recipe at her sister breweries are  
 7 ‘on.’”

8 80. Indeed, water makes up more than 90 percent of beer. It is generally accepted that  
 9 the type of water used impacts the taste and quality of the beer.<sup>8</sup> And even if Craft Brew could  
 10 adequately replicate the taste of Hawaii water in its mainland beer (Plaintiffs allege it cannot)  
 11 consumers are still being deprived of what Craft Brew has promised them and what they have paid  
 12 for – namely, a Hawaiian beer.

13 81. On information and belief, Craft Brew owns and operates Kona Brewing  
 14 Company’s website. For instance, if you click on the “CAREER OPPORTUNITIES” link from  
 15 the dropdown menu “ABOUT US” on the Kona Brewing Company website, it immediately  
 16 redirects you to Craft Brew’s website. *See* Figure 22. Similarly, if you click on the “Investor  
 17 Relations” section of Kona Brewing Company’s website, it directs you to a link to Craft Brew’s  
 18 investor relations page. Moreover, on Craft Brew’s website, there is a direct link to the Kona  
 19 Brewing Co. website. *See* Figure 23. These websites are interrelated and are either controlled  
 20 solely by Craft Brew or jointly by Craft Brew and Kona Brewing Company.

21 **Consumers Purchase Kona Brewing Co. Beer Because They Reasonably Believe That**  
 22 **it is Made in Hawaii**

23 82. The Hawaii-brand image in the context of marketing and consumer purchase  
 24 decisions is extremely powerful.

25  
 26 \_\_\_\_\_  
 27 <sup>7</sup> <https://munchies.vice.com/en/articles/your-favorite-hawaiian-beer-is-actually-brewed-in-new-hampshire>

28 <sup>8</sup> <https://beerandbrewing.com/VUKd4igAABCrKdWe/article/brewing-water>



1           83.     Consumers purchase items, and are willing to pay more for items, because they are  
2 from Hawaii. Craft Brew is well aware of this.

3           84.     In an August 2016 article in Hawaii Business Magazine, business coach and author  
4 Mark Brigden was quoted as saying, “There’s German efficiency and Swedish creativity. Hawaii,  
5 on the other hand, brings an emotive feeling of relaxation, enjoyment, well-being and being on  
6 Island time.”<sup>9</sup>

7           85.     The same article noted that large companies are offering more made in Hawaii  
8 products. For instance, Whole Foods Market says it purchased nearly \$12 million in products  
9 from Hawaii suppliers in 2015. Dabney Gough, metro marketing field team leader at Whole  
10 Foods, was quoted as saying, “Hawaii boasts not only an incredible diversity of agricultural  
11 products that cannot be grown on the Mainland, but the quality of our local coffee, bean-to-bar  
12 chocolate, and dried fruits and nuts – just to name a few – is simply unbeatable. The opportunities  
13 are ripe for additional Mainland and global expansion.”

14           86.     In the same article, the director of retail operations for Big Island Candies (a  
15 Hawaii company), Lance Duyao, stated, “One thing that kept us afloat and sustained us is that we  
16 are careful about our expansion. Quality is so important to us. We don’t want to spread ourselves  
17 thin by opening too many locations. Nothing is made anywhere else but here. And when people  
18 order stuff online and see that the box is actually postmarked in Hilo, there is an incredible value  
19 to that.”

20           87.     In a November 2011 article in Hawaii Business Magazine, Jeff Leichter, general  
21 manager for Tim’s Cascade Snacks (a mainland company), which sells Hawaiian style chips, was  
22 quoted as saying, “We know ‘Luau Barbeque Rings’ doesn’t make sense, but 98 percent of the  
23 country doesn’t know . . . The Hawaii image is a powerful brand – and it’s done well for us.”<sup>10</sup> In  
24 the same article, Mr. Leichter also said, “Everybody wishes they were in Hawaii enjoying the  
25  
26

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27 <sup>9</sup> <http://www.hawaiibusiness.com/made-in-hawaii/>

28 <sup>10</sup> <http://www.hawaiibusiness.com/not-made-in-hawaii/>

1 surf, sunny weather and cool tropical breezes and the Hawaii name evokes all those things. That's  
2 one of the reasons our chips have been so successful."

3 **Plaintiffs' and Class Members' Purchases**

4 88. During the statute of limitations period, Plaintiffs each separately purchased Kona  
5 Brewing Co. beer at retail stores located in the State of California.

6 89. Plaintiffs each read the labels on the Kona Brewing Co. beer bottles and packaging,  
7 and based on this labeling and advertising, they reasonably believed that the beer was made in  
8 Hawaii.

9 90. Plaintiffs' reasonable beliefs that the Kona Brewing Co. beer they purchased was  
10 made in Hawaii was a significant factor in their decision to purchase the beer. Plaintiffs would not  
11 have purchased the beer, or would have paid significantly less for the beer, had they known the  
12 true origins of the Kona Brewing Co. beer they purchased.

13 91. As with Plaintiffs, Class members were likely to be deceived by Craft Brew's  
14 misrepresentations regarding the origin of Kona Brewing Co. beer, in that they would not have  
15 purchased the beer, or would have paid substantially less for the beer, but for the  
16 misrepresentations.

17 92. As a result of Craft Brew's misrepresentations, Plaintiffs and the Class have been  
18 injured to the financial benefit of Craft Brew.

19 **CLASS ACTION ALLEGATIONS**

20 93. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil  
21 Procedure, individually and on behalf of all members of the following Class and California  
22 Subclass:

23 **Class**

24 All persons who purchased any Kona Brewing Co. beer in the United States at any time  
25 beginning four (4) years prior to the filing of this action and ending at the time this action  
26 settles or proceeds to final judgment.  
27  
28

1        **California Subclass**

2        All persons who purchased any Kona Brewing Co. beer in the State of California at any  
3        time beginning four (4) years prior to the filing of this action and ending at the time this  
4        action settles or proceeds to final judgment.

5        94.       Excluded from the Class and California Subclass are the following individuals  
6        and/or entities: all persons who purchased any Kona Brewing Co. draft beer (i.e., non-bottled or  
7        canned) in the State of Hawaii; Craft Brew and its parents, subsidiaries, affiliates, officers and  
8        directors, current or former employees, and any entity in which Craft Brew has a controlling  
9        interest; all individuals who make a timely election to be excluded from this proceeding using the  
10       correct protocol for opting out; and all judges assigned to hear any aspect of this litigation, as well  
11       as their immediate family members.

12       95.       Plaintiffs reserve the right to modify or amend the definition of the proposed  
13       classes and/or add subclasses before the Court determines whether certification is appropriate.

14       96.       The proposed classes are so numerous that joinder of all members would be  
15       impractical. The number of individuals who purchased a Kona Brewing Co. beer within the  
16       United States and the State of California during relevant time period is at least in the thousands.  
17       These Class members are identifiable and ascertainable through Craft Brew's records and other  
18       records and proofs of purchase.

19       97.       There are questions of law and fact common to the proposed classes that will drive  
20       the resolution of this action. These questions include, but are not limited to, the following:

- 21           a.       Whether Craft Brew misrepresented material facts and/or failed to disclose  
22           material facts in connection with the labeling, marketing, distribution, and sale  
23           of Kona Brewing Co. beer;
- 24           b.       Whether Craft Brew's use of false or deceptive labeling and advertising  
25           constituted false advertising;
- 26           c.       Whether Craft Brew engaged in unfair, unlawful and/or fraudulent business  
27           practices;
- 28           d.       Whether Craft Brew's unlawful conduct, as alleged herein, was intentional and  
              knowing;

- e. Whether Plaintiffs and the Class are entitled to damages and/or restitution, and in what amount;
- f. Whether Craft Brew is likely to continue using false, misleading or unlawful conduct such that an injunction is necessary; and
- g. Whether Plaintiffs and the Class are entitled to an award of reasonable attorneys' fees, interest, and costs of suit.

98. Craft Brew engaged in a common course of conduct giving rise to violations of the legal rights sought to be enforced uniformly by Plaintiffs and Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Therefore, individual questions, if any, pale in comparison to the numerous common questions presented in this action.

99. The injuries sustained by members of the proposed classes flow, in each instance, from a common nucleus of operative fact. Each instance of harm suffered by Plaintiffs and Class members has directly resulted from a single course of illegal conduct – namely, Craft Brew's false labeling and advertising of Kona Brewing Co. beer.

100. Given the similar nature of the Class members' claims and the absence of material differences in the statutes and common laws upon which the Class members' claims are based, the proposed classes will be easily managed by the Court and the parties.

101. Because of the relatively small size of the individual Class members' claims, no Class member could afford to seek legal redress on an individual basis. A class action is superior to any alternative means of prosecution.

102. The representative Plaintiffs' claims are typical of those of the Class and California Subclass, as all members of the proposed classes are similarly affected by Craft Brew's uniform unlawful conduct as alleged herein.

103. Craft Brew acted, and failed to act, on grounds generally applicable to Plaintiffs and the proposed classes, supporting the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and California Subclass.

104. Plaintiffs will fairly and adequately protect the interests of the proposed classes, and they have retained counsel competent and experienced in class action litigation. The Class representatives have no interests which conflict with or are adverse to those of the other Class members.

## **COUNT I**

### **Violation of the California False Advertising Law**

#### **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

105. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 104.

106. California's False Advertising Law ("FAL"), California Business and Professions Code § 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading advertising.

107. Craft Brew's practice of representing that its Kona Brewing Co. beer is made in Hawaii violates the FAL. Specifically, the FAL makes it unlawful for "[a]ny person . . . to make or disseminate or cause to be made or disseminated from this state before the public in any state . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

108. Craft Brew has engaged in a scheme of offering mislabeled beer for sale to Plaintiffs and Class members by way of product packaging, labeling, internet advertising, and other promotional materials. These labels and materials misrepresented and/or omitted the true content and nature of the mislabeled beer. Craft Brew's labels, advertisements, and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.*, in that the product packaging, labeling, and promotional materials were intended as inducements to purchase Kona Brewing Co. beer, and they are statements disseminated by Craft Brew to Plaintiffs and Class members. Craft Brew knew or should have known that these statements were inaccurate and misleading.

1 109. Craft Brew's false advertisements, as alleged herein, were calculated to induce  
2 Plaintiffs and Class members to purchase beer they otherwise would not have and/or to spend  
3 more money than they otherwise would have spent, in order to increase Craft Brew's profits.

4 110. Through its unfair acts and practices, Craft Brew has improperly obtained money  
5 from Plaintiffs and the Class. As such, Plaintiffs request that this Court cause Craft Brew to  
6 restore this money to Plaintiffs and all Class members, and to enjoin Craft Brew from continuing  
7 to violate the FAL in the future.

8 111. In prosecuting this action for the enforcement of important rights affecting the  
9 public interest, Plaintiffs also request that the Court award reasonable attorneys' fees and costs  
10 pursuant to Cal. Code of Civ. Proc. § 1021.5.

11 **COUNT II**

12 **Violation of the California Consumer Legal Remedies Act**

13 **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

14 112. Plaintiffs incorporate herein by specific reference, as though fully set forth, the  
15 allegations in paragraphs 1 through 111.

16 113. This cause of action is brought pursuant to the California Consumer Legal  
17 Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

18 114. Plaintiffs and Class members are "consumers" within the meaning of Cal. Civ.  
19 Code § 1761(d).

20 115. The sale of Kona Brewing Co. beer to Plaintiffs and Class members were  
21 "transactions" within the meaning of Cal. Civ. Code § 1761(e). The beer purchased by Plaintiffs  
22 and Class members are "goods" within the meaning of Cal. Civ. Code § 1761(a).

23 116. As alleged herein, Craft Brew violated the CLRA by falsely labeling and  
24 advertising that the beer is made in Hawaii, when in fact, the beer is made in the continental  
25 United States.

26 117. In so doing, Craft Brew has violated several provisions of the CLRA. Cal. Civ.  
27 Code § 1770(a)(4) prohibits using "deceptive representations or designations of geographic origin  
28 in connection with goods or services." Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that

1 goods or services have . . . characteristics, ingredients, uses, benefits, or quantities which they do  
 2 not have . . . ” Cal. Civ. Code § 1770(a)(7) prohibits representing “that goods or services are of a  
 3 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
 4 another. Finally, Cal. Civ. Code § 1770(a)(9)) prohibits “[a]dvertising goods or services with  
 5 intent not to sell them as advertised.”

6 118. By engaging in the conduct alleged herein, Craft Brew violated, and continues to  
 7 violate, sections 1770(a)(4), (5), (7) and (9) of the CLRA.

8 119. Plaintiffs relied on the misrepresentation that the Kona Brewing Co. beer they  
 9 purchased was made in Hawaii. Plaintiffs would not have purchased the beer, or would have paid  
 10 significantly less for the beer, but for Craft Brew’s unlawful conduct. Plaintiffs and Class  
 11 members acted reasonably when they purchased Kona Brewing Co. beer based on the belief the  
 12 beer was made in Hawaii because they were misled by the clear-cut and deceptive representations  
 13 alleged herein.

14 120. Under Cal. Civ. Code § 1780(a), Plaintiffs and Class members seek injunctive and  
 15 equitable relief for Craft Brew’s violations of the CLRA. On February 28, 2017, Plaintiffs sent a  
 16 notice letter by certified mail to Craft Brew of their intent to pursue claims under the CLRA, and  
 17 an opportunity to cure, consistent with Cal. Civ. Code § 1782. Concurrent with the filing of the  
 18 Complaint, Plaintiffs are filing declarations of venue, consistent with Cal. Civ. Code § 1780(d),  
 19 attached hereto as Exhibit A.

20 121. Plaintiffs seek injunctive relief only pursuant to the CLRA. If Craft Brew fails to  
 21 take corrective action within 30 days of receipt of the notice letter, Plaintiffs intend to amend the  
 22 Complaint to include a request for damages as permitted under Cal. Civ. Code § 1782(d).

### 23 **COUNT III**

#### 24 **Violation of the California Unfair Competition Law**

#### 25 **(On behalf of Plaintiffs and the California Subclass against Craft Brew)**

26 122. Plaintiffs incorporate herein by specific reference, as though fully set forth, the  
 27 allegations in paragraphs 1 through 121.

1           123. Plaintiffs and Class members are “persons” within the meaning of Cal. Bus. &  
2 Prof. Code § 17204.

3           124. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200,  
4 *et seq.*, defines unfair business competition to include any “unlawful, unfair or fraudulent” act or  
5 practice, as well as any “unfair, deceptive, untrue or misleading” advertising.

6           125. A business act or practice is “unfair” under the UCL if the reasons, justifications  
7 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged  
8 victims. A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
9 members of the consuming public. A business act or practice is “unlawful” under the UCL if it  
10 violates any other law or regulation.

11           126. Craft Brew has violated the “unfair” prong of the UCL by mislabeling and falsely  
12 advertising its Kona Brewing Co. beer in order to induce consumers to believe the beer is made in  
13 Hawaii when it is not.

14           127. The business acts and practices alleged herein are unfair because they caused  
15 Plaintiffs and Class members to falsely believe that Craft Brew is offering a beer that is superior  
16 and/or more desirable to what they actually received. This deception was likely to have induced  
17 reasonable consumers, including Plaintiffs, to buy Kona Brewing Co. beer, which they otherwise  
18 would not have purchased, or would have paid substantially less for such beer.

19           128. The gravity of the harm to Plaintiffs and Class members resulting from these unfair  
20 acts and practices outweighs any conceivable reasons, justifications and/or motives of Craft Brew  
21 for engaging in such deceptive acts and practices. By committing the acts and practices alleged  
22 herein, Craft Brew has engaged in, and continues to engage in, unfair business practices within the  
23 meaning of California Business & Professions Code § 17200, *et seq.*

24           129. Craft Brew has also violated the “unlawful” prong of the UCL by violating several  
25 California laws, as alleged herein, including the FAL, Cal Bus. & Prof. Code § 17533.7 and the  
26 CLRA.





1 Class members are likely to have reasonably relied upon Craft Brew's express warranties in  
2 purchasing Kona Brewing Co. beer.

3 **COUNT V**

4 **Negligent Misrepresentation**

5 **(On behalf of Plaintiffs and the Class against Craft Brew)**

6 138. Plaintiffs incorporate herein by specific reference, as though fully set forth, the  
7 allegations in paragraphs 1 through 137.

8 139. As alleged herein, Craft Brew misrepresented that its Kona Brewing Co. beer is  
9 made in Hawaii.

10 140. At the time Craft Brew made these representations, Craft Brew knew or should  
11 have known that these representations were false, or made them without knowledge of their truth  
12 or veracity.

13 141. At minimum, Craft Brew negligently misrepresented and/or negligently omitted  
14 material facts about its Kona Brewing Co. beer.

15 142. The negligent misrepresentations and omissions made by Craft Brew, upon which  
16 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce, and  
17 actually induced, Plaintiffs and Class members to purchase the beer at issue.

18 143. Plaintiffs would not have purchased the Kona Brewing Co. beer, or they would  
19 have paid substantially less for the beer, if the true qualities and characteristics of the beer had  
20 been known to her. Similarly, Class members are likely to have reasonably relied upon Craft  
21 Brew's deceptive labeling and advertising in purchasing Kona Brewing Co. beer.

22 144. The negligent actions of Craft Brew caused harm to Plaintiffs and Class members,  
23 who are entitled to damages and other legal and equitable relief as a result.

24 **COUNT VI**

25 **Unjust Enrichment and Common Law Restitution**

26 **(On behalf of Plaintiffs and the Class against Craft Brew)**

27 145. Plaintiffs incorporate herein by specific reference, as though fully set forth, the  
28 allegations in paragraphs 1 through 144.

1 146. As a result of Craft Brew's wrongful and deceptive conduct, Plaintiffs and Class  
2 members have suffered a detriment while Craft Brew has received a benefit.

3 147. Craft Brew's misleading, inaccurate and deceptive marketing and labeling  
4 intentionally cultivates the perception that consumers are being offered a product that they are not.  
5 Plaintiffs and Class members were intended to rely upon Craft Brew's misrepresentations when  
6 they purchased Kona Brewing Co. beer. Plaintiffs and Class members likely would not have  
7 purchased Kona Brewing Co. beer, or would have paid significantly less for it, if Craft Brew had  
8 not misrepresented the nature of this beer.

9 148. Craft Brew has received a premium price benefit and/or additional sales from  
10 Plaintiffs and Class members as a result of this unlawful conduct.

11 149. Craft Brew should not be allowed to retain the premium price profits and/or  
12 additional sales generated from the sale of products that were unlawfully marketed, advertised and  
13 promoted. Allowing Craft Brew to retain these unjust profits would offend traditional notions of  
14 justice and fair play and induce companies to misrepresent key characteristics of their products in  
15 order to increase sales.

16 150. Thus, Craft Brew is in possession of funds that were wrongfully retained from  
17 Plaintiffs and Class members that should be disgorged as illegally gotten gains.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiffs, individually and on behalf of the Class and California  
20 Subclass, respectfully pray for following relief:

21 1. Certification of this case as a class action on behalf of the Class and California  
22 Subclass defined above, appointment of Plaintiffs as Class representatives, and appointment of  
23 their counsel as Class counsel;

24 2. A declaration that Craft Brew's actions, as described herein, violate the claims  
25 described herein;

26 3. An award of injunctive and other equitable relief as is necessary to protect the  
27 interests of Plaintiffs and the Class, including, *inter alia*, an order prohibiting Craft Brew from  
28 engaging in the unlawful act described above;

1           4.       An award to Plaintiffs and the proposed classes of restitution and/or other equitable  
2 relief, including, without limitation, restitutionary disgorgement of all profits and unjust  
3 enrichment that Craft Brew obtained from Plaintiffs and the proposed classes as a result of its  
4 unlawful, unfair and fraudulent business practices described herein;

5           5.       An award to Plaintiffs and their counsel of their reasonable expenses and attorneys'  
6 fees;

7           6.       An award to Plaintiffs and the proposed classes of pre and post-judgment interest,  
8 to the extent allowable; and

9           7.       For such further relief that the Court may deem just and proper.

10                               **DEMAND FOR JURY TRIAL**

11           Plaintiffs, on behalf of themselves and the proposed classes, hereby demand a jury trial  
12 with respect to all issues triable of right by jury.

13  
14 DATED: February 28, 2017

THE WAND LAW FIRM

15  
16                               By: /s/ Aubry Wand  
17                               AUBRY WAND

**Figure 1**





Figure 2

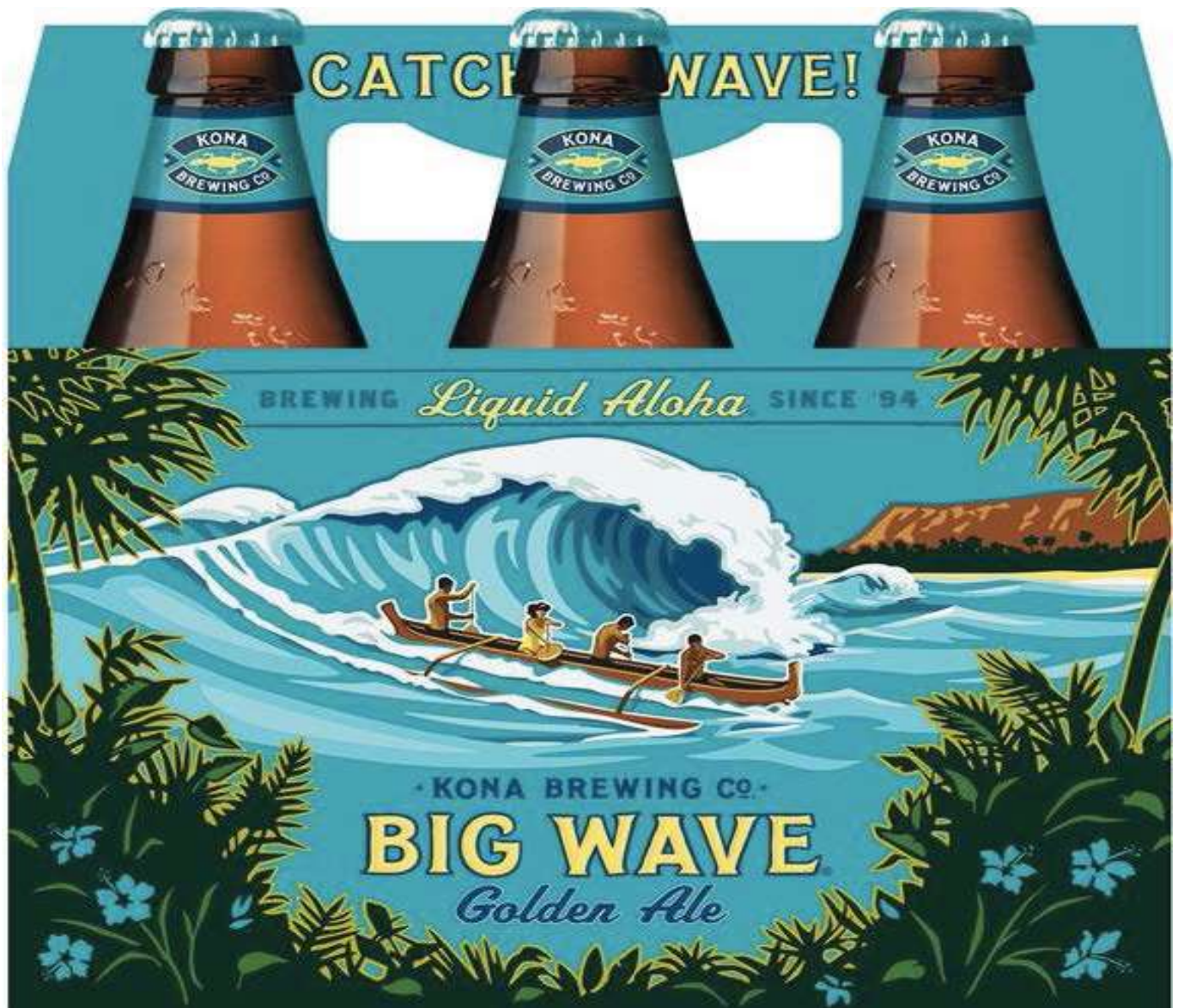


Figure 3





Figure 4







**Figure 6**



Figure 7

konabrewingco.com





Figure 8



Figure 9





Figure 10



**Figure 11**





Figure 12





Figure 13



Figure 14

[konabrewingco.com](http://konabrewingco.com)



**Figure 15**





Figure 16



Figure 17

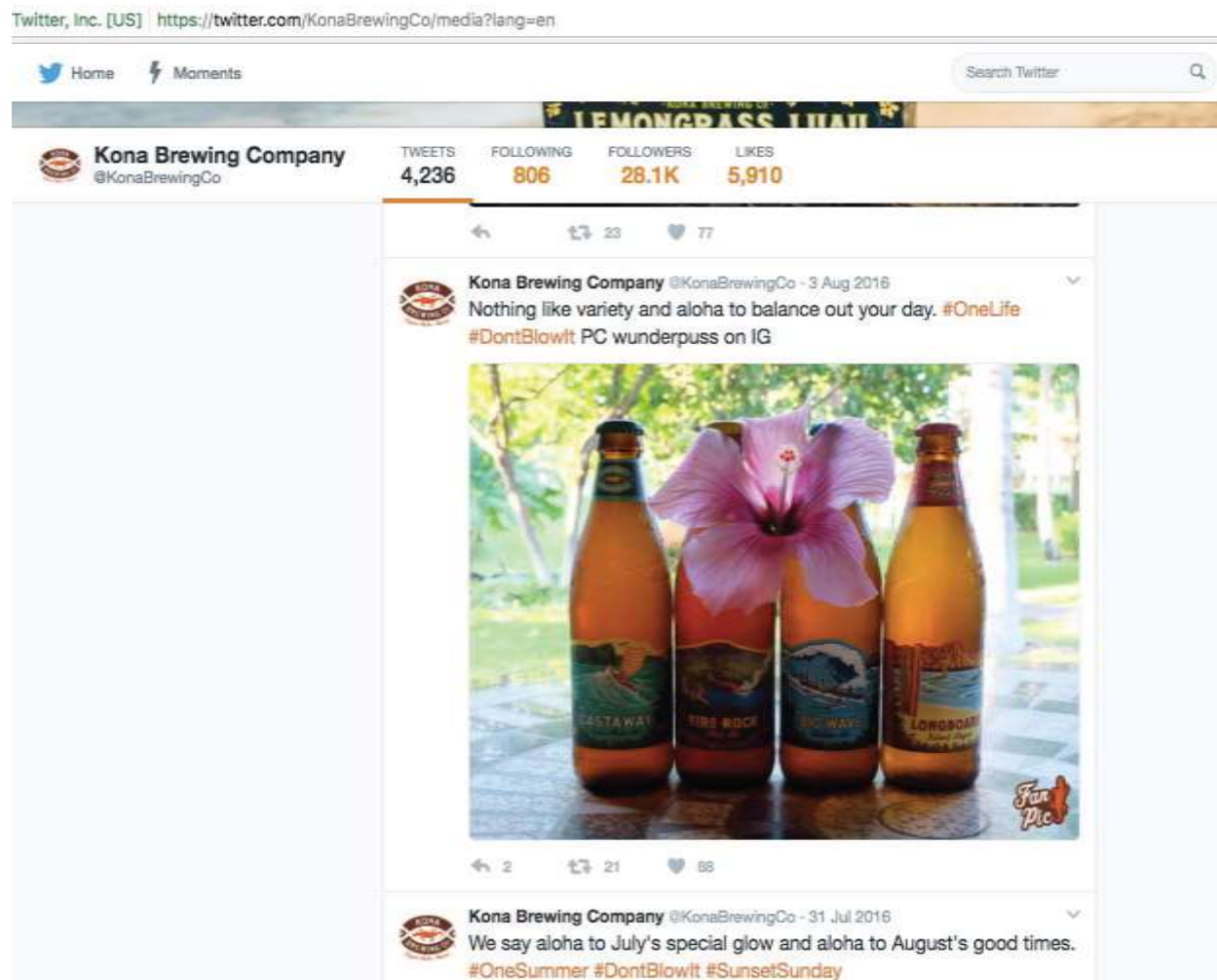


Figure 18

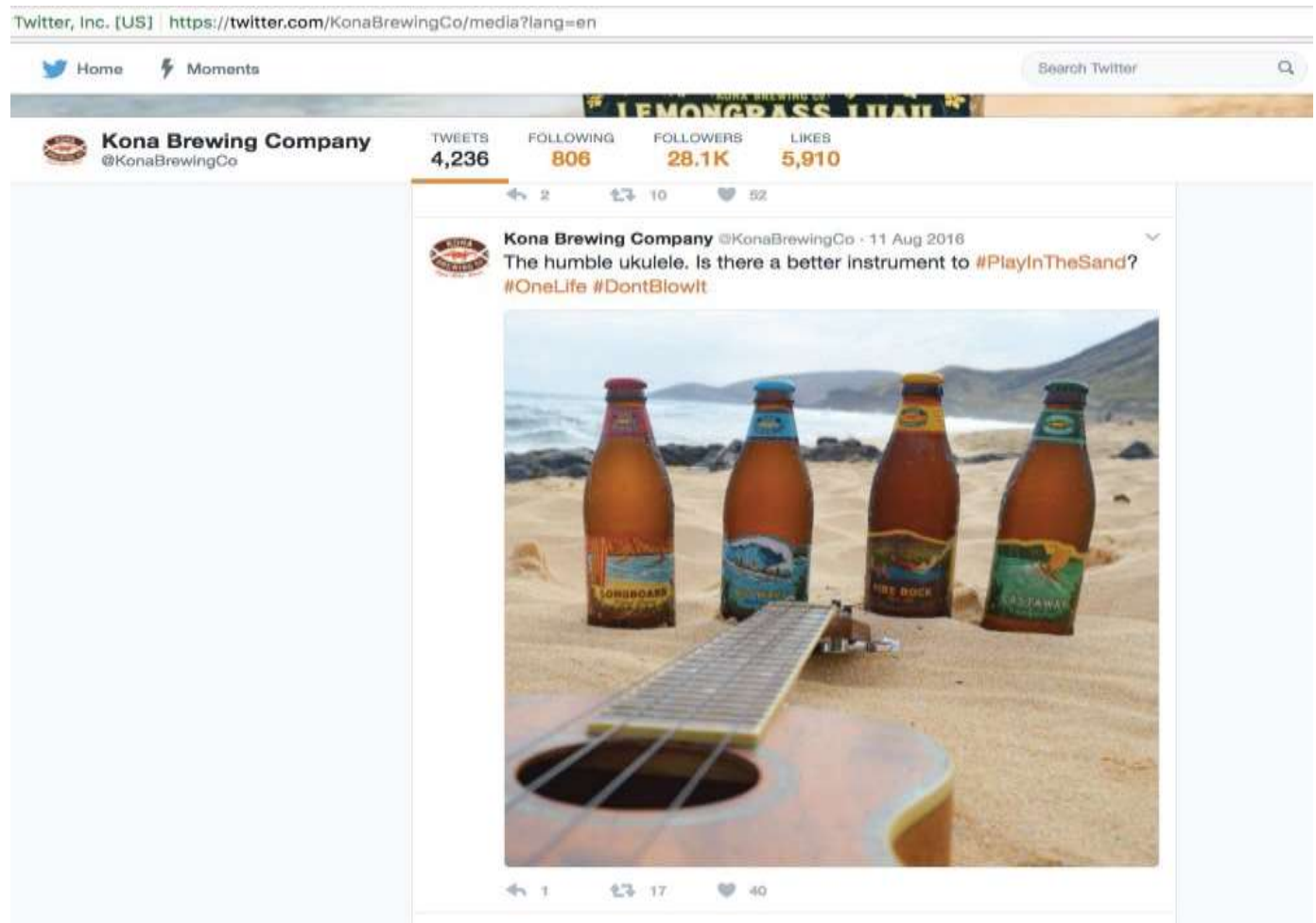




Figure 19

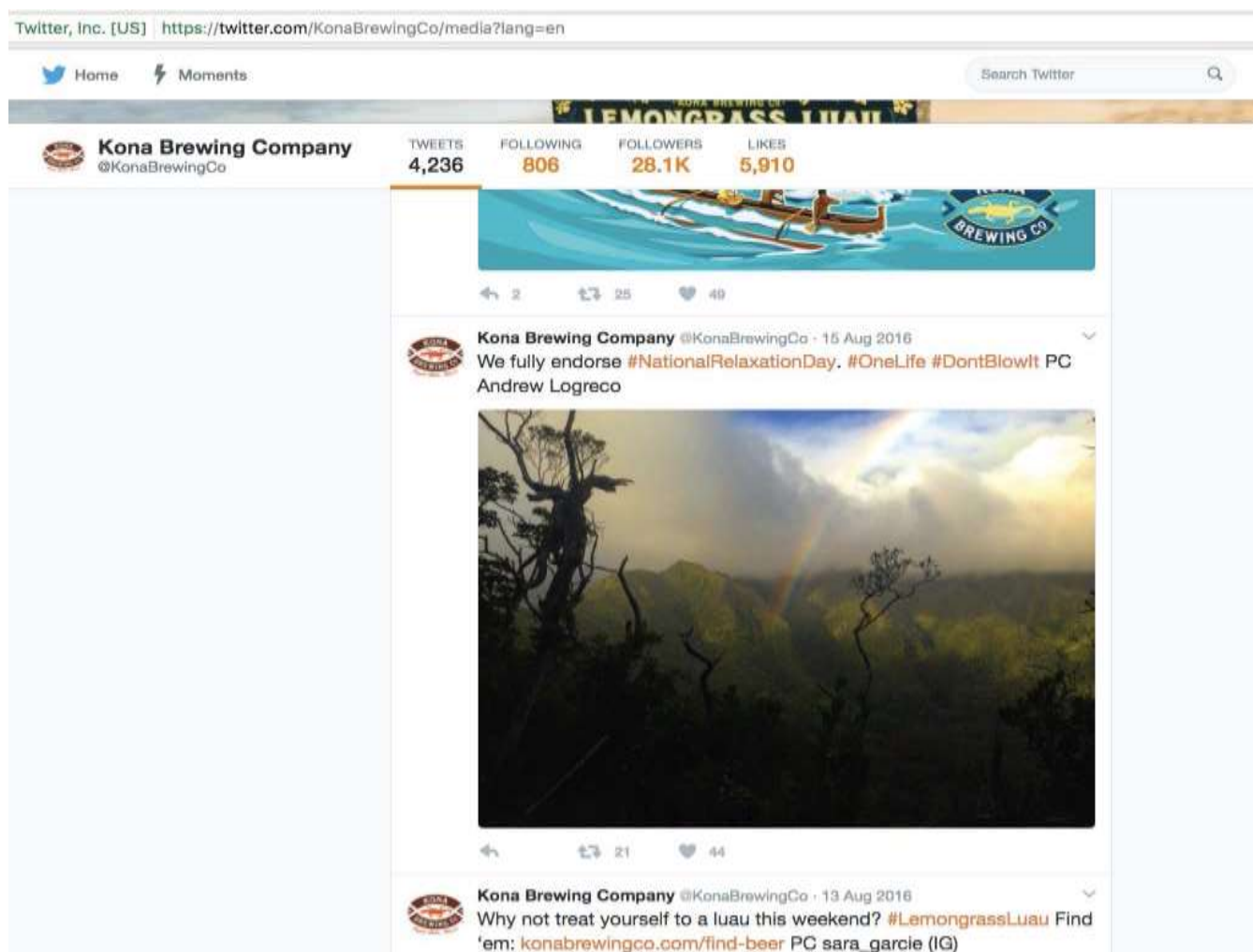
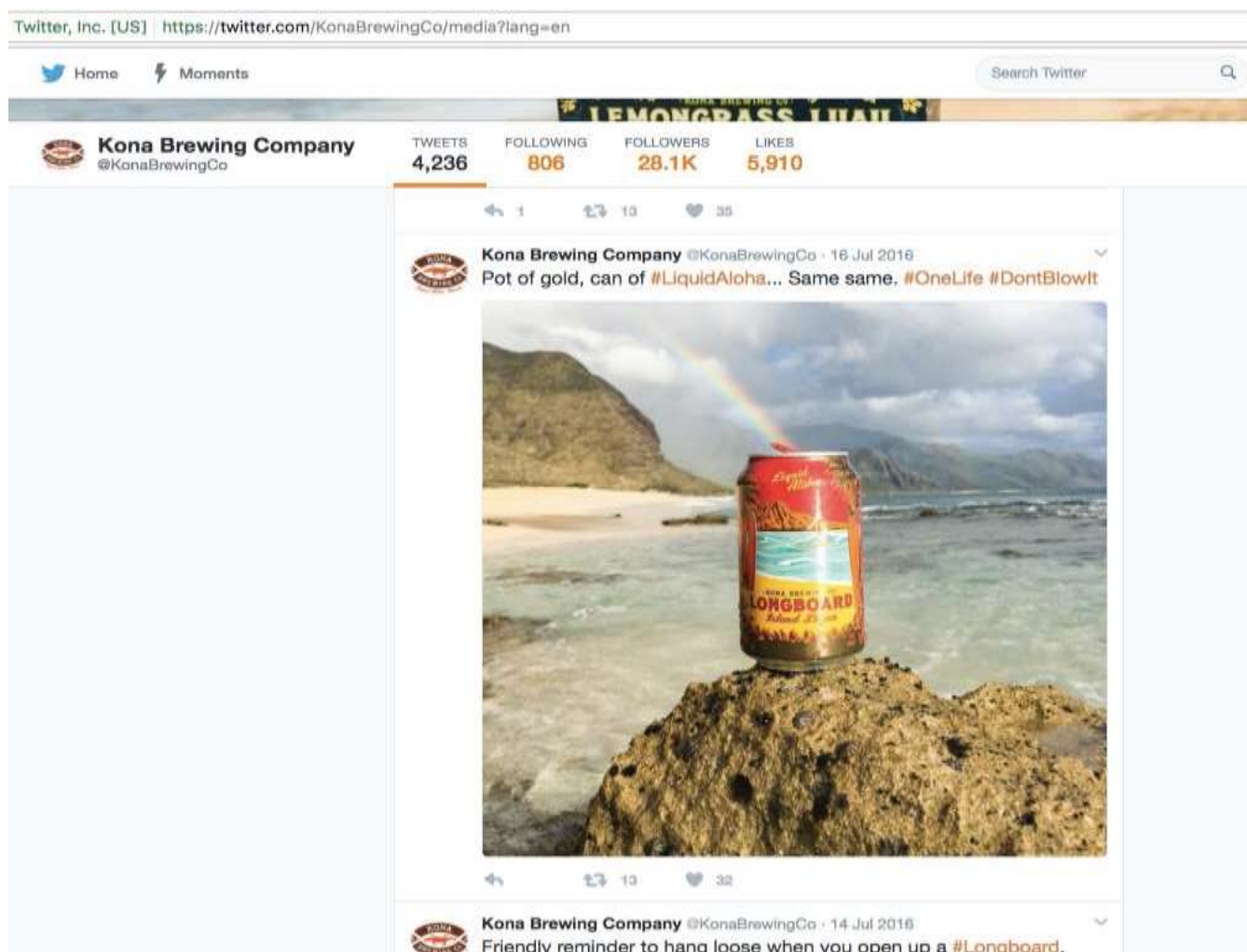


Figure 20



**Figure 21**

konabrewingco.com/about/

local organic salads and fresh beers on draft that you can't find anywhere else. Every Sunday evening local musicians provide live entertainment.

#### KOKO MARINA PUB... THE GATHERING PLACE

In December 2003, Kona Brewing Company opened its second restaurant location at Koko Marina Center in Hawaii Kai in East Oahu. The restaurant is set on the docks of Koko Marina. The outdoor seating has unparalleled views of Koko Marina and the lush green Ko'olau Mountain Range that form Hawaii Kai's backdrop. The chefs serve up luscious appetizers, fresh fish and meat entrées and incredible pizzas with a pint of fresh beer from one of the 24 taps at the bar. Local musicians provide entertainment ranging from traditional and contemporary Hawaiian to blues to jazz every Friday, Saturday and Sunday evening.

#### OUR BREWERIES

Kona Brewing Company runs its flagship brewhouse in Kailua-Kona on Hawaii's Big Island, which produces more than 12,000 barrels of beer annually.

Under strict guidance, Kona Brewing Company also produces its bottled beer and mainland draft beer in Portland, Oregon, Woodinville, Washington, Memphis, Tennessee, and Portsmouth, New Hampshire, as part of its partnership with Craft Brew Alliance Inc.

Recipes and beer specifications are dictated by Kona Brewing Company's brewmaster, who oversees each of Kona Brewing Company's partner breweries as the beer is brewed and packaged. The beer brewed at Kona Brewing Company's partner breweries utilizes Kona's hops, malt and proprietary yeast. The water mineral levels at each brewery are adjusted to replicate the water used in Hawaii. A sample of each batch of beer is sent to the Kailua-Kona brewery for sensory evaluation. The brewmaster and quality assurance employees are in daily contact with mainland partner breweries.

Kona Brewing Company champions recycling, is careful with its waste and supports groups that strive to protect the environment. Throughout its facilities, much of the building material has been recycled. Its disposable cups that are used at festivals and events are biodegradable, and its to-go containers are compostable. The brewery uses heat exchangers to reclaim thermal energy for water heating in the brewing process. The pub uses a heat reclamation system on its air conditioner for water heating in the kitchen. A whiskey barrel collects more than 90 gallons of condensation per day from air conditioning systems, and the water is used for landscaping irrigation. The list goes on and on.

An integral component of Kona Brewing Company's business plan is to grow the business with ecological integrity, reducing the company's carbon footprint whenever possible. By producing its bottled beer and mainland draft beer on the mainland, close to markets, Kona Brewing Company has dramatically reduced its reliance upon transportation fuel for raw materials, packaging and distribution.

Kona Brewing Company is an integral part of its community and thus, sees a strong need to and feels passionate about giving back to its community. Kona Brewing Company has supported or hosted numerous fundraising campaigns for community organizations, such as Bishop Museum, Kokua Festival, Sierra Club's Blue Water Campaign and Surfrider Organization. It plays a continued role in organizing the Kona Brewers Festival, which raises more than \$100,000 every year for local environmental, educational and cultural organizations over the past 21 years. The company also provides support to sporting events, such as the Molokai World Championships canoe and surf ski race and the Ironman Triathlon World Championship.

Aloha!



Figure 22

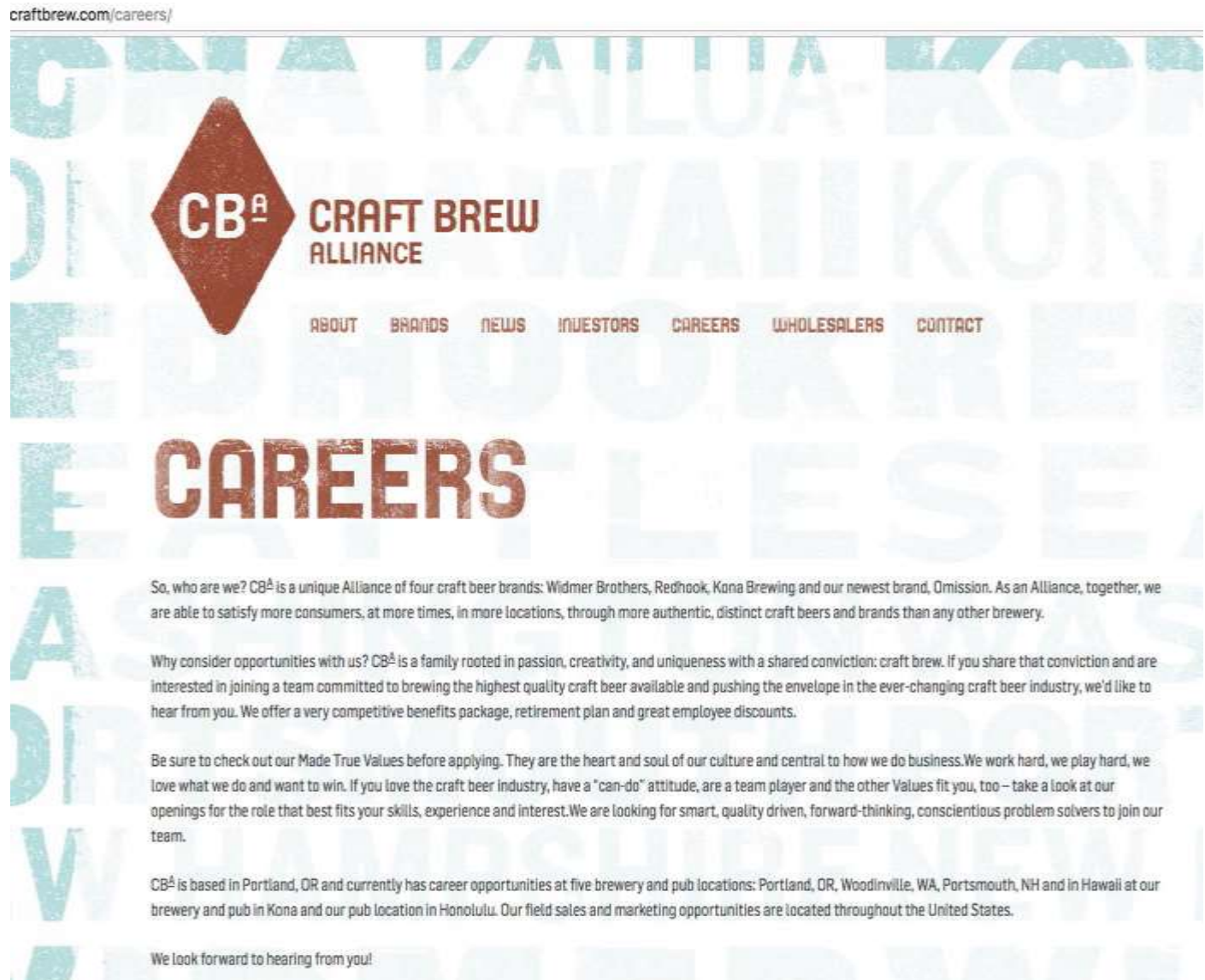


Figure 23



# **EXHIBIT A**



**DECLARATION OF SARA CILLONI**

I, Sara Cilloni, hereby declare:

1. I am a Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of Santa Clara in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of Kona Brewing Company beer – occurred at a store located in the County of Santa Clara.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on 2.17.17 at Los Gatos, California.

  
Sara Cilloni

**DECLARATION OF SIMONE ZIMMER**

I, Simone Zimmer, hereby declare:

1. I am a Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of San Bernardino in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of Kona Brewing Company beer – occurred at a store located in the County of San Bernardino.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on Feb 15, 2017 at Rancho Cucamonga, California.

Simone Zimmer  
Simone Zimmer