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Admitted *pro hac vice*

14  
15 Counsel for Plaintiff and Putative Class

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA  
18

19 BRENDAN PEACOCK, on Behalf of  
20 Himself, and All Others Similarly  
Situated,

21 Plaintiff,

22 v.

23 PABST BREWING COMPANY, LLC,

24 Defendant.  
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Case No: 2:18-cv-00568-TLN-CKD

Pleading Type: Class Action

**AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR JURY  
TRIAL**

**Nature of the Case**

1  
2 1. Defendant, Pabst Brewing Company, LLC (“Defendant”) is falsely creating the  
3 impression in the minds of its consumers that its Olympia beer products are exclusively brewed  
4 using artesian water in Washington, when in fact, the beers are now brewed in a mass-production  
5 brewery located in Los Angeles County, California. As a result of this false advertising, Plaintiff  
6 Brendan Peacock (“Plaintiff”) sues Defendant on behalf of himself and the putative class of  
7 purchasers of Defendant’s Olympia beer products, seeking damages and injunctive relief.  
8

**Jurisdiction and Venue**

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10 2. This Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (the Class Action  
11 Fairness Act) because the matter in controversy exceeds the sum or value of \$5 million, exclusive  
12 of interest and costs, and there is diversity of citizenship between the proposed class members and  
13 Defendant.

14 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial  
15 part of the events or omissions giving rise to the claim occurred here.  
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**Parties**

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18 4. Plaintiff Brendan Peacock is a resident of California.

19 5. Defendant, Pabst Brewing Company, LLC, is a Delaware limited liability  
20 company with its principal place of business in Los Angeles, California.

**Allegations**

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22 6. In the 1850’s Leopold F. Schmidt purchased property in Tumwater, Washington  
23 and founded the Capital Brewing Company; in 1896, it began brewing and selling the Olympia  
24 Pale Export using artesian spring water from Schmidt’s property. The Olympia beer became  
25 Capital Brewing Company’s flagship beer, and in 1902, the slogan “It’s the Water” was born to  
26 explain the popularity of the Tumwater lagers.  
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1 7. Tumwater is a city near the Deschutes River, in the southernmost point of Puget  
2 Sound. Tumwater is home to a famous series of cascades near where the Deschutes River empties  
3 into Budd Inlet. The area is known for its natural beauty and waterfalls.<sup>1</sup>

4 8. In 1983, the Olympia Brewing Company was purchased by G. Heileman Brewing  
5 Company, a Wisconsin brewery itself founded in the mid-1800's. G. Heileman Brewing Company  
6 ceased operations in 1996, and through a series of mergers, acquisitions and consolidations,  
7 Defendant acquired Olympia Brewing Company in 1999.

8 9. The Olympia beer consumers purchase now is no longer brewed in Tumwater, nor  
9 does it use the artesian spring water from Tumwater, Washington. The former Olympia brewery  
10 in Tumwater permanently closed in 2003. Following is a panoramic view of the falls at Tumwater,  
11 and the former Olympia brewery:<sup>2</sup>



21  
22 10. Olympia beer today is brewed by a mega-brewery located in 15801 W. 1st Street,  
23 Irwindale, California.

24  
25  
26 <sup>1</sup> In 1962, the Olympia Brewing Company donated 15 acres of land surrounding the Tumwater  
27 falls, creating the Tumwater Falls Park, which hosts 200,000 visitors annually. *See*  
28 [https://en.wikipedia.org/wiki/Tumwater\\_Falls](https://en.wikipedia.org/wiki/Tumwater_Falls) (last accessed February 5, 2018).

<sup>2</sup> [https://en.wikipedia.org/wiki/Tumwater,\\_Washington#/media/File:Tumwater\\_pano\\_01.jpg](https://en.wikipedia.org/wiki/Tumwater,_Washington#/media/File:Tumwater_pano_01.jpg) (last  
accessed February 5, 2018).

1           11.     Nonetheless, Defendant continues to market and sell Olympia beer with the now  
2 famous “It’s the Water” slogan in its promotional advertising and on the packaging and containers  
3 of its Olympia brand beer, despite the fact that it is no longer brewed with the artesian water for  
4 which the beer was famed.

5           12.     Defendant contract-brews its beer in Irwindale, a city in the San Gabriel Valley,  
6 which is “almost entirely urbanized and is an integral part of the Greater Los Angeles metropolitan  
7 area.”<sup>3</sup>

8           13.     Consumers do not associate the water from the San Gabriel Valley as artesian water  
9 or having the same type of quality and purity as artesian water.  
10

11           14.     Defendant markets and sells its beer in order to create the impression in the minds  
12 of consumers that the beer is being exclusively brewed using artesian waters from Tumwater,  
13 Washington. Defendant does this by continuing to use the slogan and imagery on its product  
14 packaging which depict images of Tumwater, Washington and creating an impression in the mind  
15 of consumers that the beer is brewed using a unique water source.  
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28 <sup>3</sup> [https://en.wikipedia.org/wiki/San\\_Gabriel\\_Valley](https://en.wikipedia.org/wiki/San_Gabriel_Valley)

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15. Defendant also creates the impression in the minds of consumers that the beer was brewed using artesian waters from Tumwater, Washington, through statements on its websites and in other media. For instance, Defendant’s website describes the product below:

First brewed in 1896 at a four-story wooden brewhouse near Puget Sound in Washington State, Olympia lager blends nature’s finest raw materials from the Great Northwest’s fields into an icon as stunning as the land itself. Crowned with a garland of fresh herbal hops, Olympia beer stands shoulders above other beers. Olympia Beer. It’s the water.

<http://pabstbrewingco.com/beer/olympia> (last accessed February 5, 2018).

16. Defendant similarly creates the impression in the minds of consumers that the beer is being exclusively brewed using artesian waters from Tumwater, Washington through statements and imagery on its social media, such as the Defendant’s official Facebook page for Olympia beer which posted the following image and caption (“It really is the water. #OlympiaBeer”):

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The statements and impressions that Defendant’s beer is exclusively brewed using artesian waters from Tumwater, Washington are false, deceptive, and misleading.

**Plaintiff’s Allegations**

17. Plaintiff is a beer, and craft beer, consumer.

18. On or about April 21, 2017, Plaintiff purchased Olympia Beer from Grocery Outlet #57 located at 2801 Zinfandel Drive, Rancho Cordova, California 95670. Prior to Plaintiff’s purchase of the beer, Plaintiff was exposed to Defendant’s marketing messaging and impressions that the beer is exclusively brewed using artesian waters from Tumwater, Washington.







1           33. The acts, omissions, misrepresentations, practices, and non-disclosures of  
2 Defendant as alleged herein constitute unlawful business acts and practices, including but not  
3 limited to Defendant's acts which violate California Business & Professions Code §17500 *et seq.*  
4 and the common law of unfair competition.

5           34. Defendant leveraged its deception to induce Plaintiff and members of the Class to  
6 buy products that were of lesser value and quality than advertised, including but not limited to  
7 being of a different origin.

8           35. Plaintiff suffered injury in fact and lost money or property as a result of Defendant's  
9 deceptive advertising: he was denied the benefit of the bargain in purchasing the beer. Had  
10 Plaintiff been aware of Defendant's false and misleading advertising tactics, he would not have  
11 purchased the beer. Moreover, had Defendant not engaged in the false and misleading advertising  
12 tactics, Plaintiff and the members of the Class would have paid less for the beer because Defendant  
13 would not have been able to charge them a premium for the product.

14           36. The false and misleading labeling and advertising of beer, as alleged herein,  
15 constitutes "unfair" business acts and practices because such conduct is immoral, unscrupulous,  
16 and offends public policy. Further, the gravity of Defendant's conduct outweighs any conceivable  
17 benefit of such conduct.

18           37. The acts, omissions, misrepresentations, practices, and non-disclosures of  
19 Defendant as alleged herein constitute "fraudulent" business acts and practices because  
20 Defendant's conduct is false and misleading to Plaintiff, Class members, and the general public.

21           38. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining  
22 Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts  
23 and practices and to commence a corrective advertising campaign.  
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1 or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing,  
2 plus pre- and post-judgment interest thereon;

3 H. that the Court order Defendant to disgorge all monies wrongfully obtained and all  
4 revenues and profits derived by Defendant as a result of its acts or practices as alleged in this  
5 Complaint;

6 I. that the Court award injunctive relief and restitution to Plaintiff and the Class;

7 J. the common fund doctrine, and/or any other appropriate legal theory; and

8 K. that the Court grant such other and further relief as may be just and proper.  
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10 **Demand for Jury Trial**

11 Plaintiff hereby demands trial by jury in this action on all issues so triable.

12 DATED: May 18, 2018

13 Respectfully submitted,

14 /s/ Elizabeth Lee Beck \_\_\_\_\_

15 Elizabeth Lee Beck

16 Counsel for Plaintiff and Putative Class  
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# Exhibit A

----- Forwarded message -----

From: <[867.5309@gmx.com](mailto:867.5309@gmx.com)>

Date: On Fri, Jul 7, 2017 at 7:43 AM

Subject: Fwd: RE: Olympia

To: <[brendanpeacock@protonmail.com](mailto:brendanpeacock@protonmail.com)>

CC:

Forwarded email > From: "Product Info " > Date: April 25, 2017 at 2:46 PM > To: "867.5309@gmx.com " <[867.5309@gmx.com](mailto:867.5309@gmx.com)> > Subject: RE: Olympia > > Thank you for taking the time to contact Pabst Brewing Company in regards to Olympia products. > > Our Olympia products are brewed out of our Irwindale CA brewery. All of our beer products are made in several different brewing locations around the United States. These facilities are owned by outside companies, the largest of which is Miller Brewing Company, which is a common practice in the beer industry. > > We hope this information helps, and apologize for any inconvenience this may have caused. Thank you again for contacting Pabst Brewing Company. > > Indulge Responsibly - Drink Exceptionally > Consumer Relations Representative > Pabst Brewing Company > > > > > -----Original Message----- > From: [867.5309@gmx.com](mailto:867.5309@gmx.com) [mailto:[867.5309@gmx.com](mailto:867.5309@gmx.com)] > Sent: Tuesday, April 25, 2017 12:38 PM > To: Product Info > Subject: Olympia > > Where is Olympia beer brewed? > > Thanks