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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JACQUELINE RICHARDSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PHUSION PROJECTS, LLC, a Delaware limited liability company dba Drink Four Brewing Co., and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: **'11CV0456 JM BGS**

CLASS ACTION

COMPLAINT FOR EQUITABLE RELIEF AND DAMAGES

JURY TRIAL DEMANDED

Plaintiff, JACQUELINE RICHARDSON, by and through counsel, files this Complaint individually and on behalf of all others similarly situated, and alleges against Defendant, PHUSION PROJECTS, LLC dba DRINK FOUR BREWING COMPANY ("Phusion"), as follows:

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I. VENUE AND JURISDICTION

1. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1332, *et seq.*, which explicitly provides for the original jurisdiction of the Federal Courts over any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs.

2. As set forth below, Plaintiff is a citizen of California, and Defendant can be considered a citizen of either Delaware or Illinois. Therefore, diversity of citizenship exists under CAFA, as required by 28 U.S.C. § 1332(d)(2)(A).

3. Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of $5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

4. Furthermore, Plaintiff alleges that more than two-thirds of all of the members of the proposed Plaintiff Class in the aggregate are citizens of a state other than California, where this action is originally being filed, and that the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

5. This Court has authority to exercise personal jurisdiction over Defendant because Phusion, directly and through its agents, has substantial contacts with and receives benefits and income from and through the State of California.

6. Venue in this Judicial District is proper pursuant to 28 U.S.C. §1391(a) because, as set forth below, Defendant conducts business in this Judicial District, and Plaintiff purchased the subject product of this action in this Judicial District.

7. The Declaration of Alan M. Mansfield, Pursuant to Civil Code §1780(c) of the Consumers Legal Remedies Act, Civil Code §1750, *et seq*. ("CLRA") regarding venue under the California Consumer Legal Remedies Act is submitted herewith and is incorporated herein by reference.

II. PARTIES

8. Plaintiff is an individual who at all times relevant herein was over the age of 18 and a citizen of California who resides in the County of San Diego. She respectfully requests a jury trial on all claims so triable.

9. Phusion Projects, LLC is a Delaware limited liability company that does business as Drink Four Brewing Company ("Phusion," or "Defendant"). Phusion lists with the California Secretary of State a principal place of business located at 1658 Milwaukee Avenue, #424, Chicago, Illinois 60647, and an agent for service of process by the name of Sarah Stephany, whose address is listed as 8834 Morro Road, Atascadero, California 93422.

10. Phusion is the manufacturer, distributor, marketer, promoter, and seller of the subject product of this Complaint, "Four Loko" energy drink/alcoholic beverage, and conducts business in this jurisdiction and in this Judicial District by advertising and through its agents that deliver and sell Four Loko to consumers.

III. GENERAL ALLEGATIONS

11. All allegations herein, except as to Plaintiff, are based on information and belief and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

12. At all times relevant herein, Phusion and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the agents, servants and employees of Phusion, and at all times relevant herein, each was acting within the purpose and scope of that agency and employment.

13. At all times relevant herein, the distributors and retailers who delivered and sold Four Loko, as well as their respective employees, also were Phusion's agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment.

14. The true names and capacities of Defendants named herein as Does 1 through 10, inclusive, are unknown to Plaintiff who therefore sues said Defendants, and each of them, by such fictitious names. Plaintiff will amend this Complaint to show their true names and capacities

when the same has been ascertained. Defendant named herein and each of said fictitiously named Defendants are negligently or otherwise legally responsible in some manner for the occurrences herein alleged and that the injuries and damages as hereinafter alleged were proximately caused by said negligence or other acts.

15. Whenever reference in this Complaint is made to any act by Phusion or its subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Phusion committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Phusion while actively engaged in the scope of their duties.

IV. FACTUAL ALLEGATIONS

16. Phusion manufactures, markets, advertises and sells a variety of flavored alcoholic beverages throughout the United States. Among those is a beverage known as Four Loko.

17. The Product, which contains 6 to 12 percent alcohol by volume depending on state regulations,[1] comes in flavors such as fruit punch, orange blend, grape, watermelon, blue raspberry, kiwi strawberry, lemonade, cranberry lemonade, and lemon lime. Standard beer usually contains 4 to 5 percent alcohol by volume.[2]

18. In addition to the high alcohol content, Four Loko contained 135 milligrams of caffeine in each 23.5-ounce can. According to the Mayo Clinic, an 8-ounce cup of coffee contains 100 to 200 milligrams and a 12-ounce Coke has 35 milligrams. [3]

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[1] "Serious Concerns Over Alcoholic Beverages with Added Caffeine," Consumer Update, FDA Consumer Health Information, Food and Drug Administration, November 2010, http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM234132.pdf, retrieved November 21, 2010. A true and correct copy of that Consumer Update is attached hereto as Exhibit A and incorporated by reference.

[2] *Id.*

[3] Katie Zezima, "A Mix Attractive to Students and Partygoers," *New York Times,* October 26, 2010 (http://www.nytimes.com/2010/10/27/us/ 27drinkbox.html), retrieved on November 21, 2010.

19. One 23.5-ounce can of Four Loko, often called "blackout in a can" by those who are familiar with it, is comparable to four or five beers.[4]

20. The Product also contained guarana and taurine. Guarana contains very high concentrations of caffeine and has been used as a stimulant and appetite suppressant. It has not been evaluated by the U.S. Food and Drug Administration ("FDA") for safety, effectiveness, or purity, and persons with heart problems, high blood pressure, kidney disease, an overactive thyroid (hyperthyroidism) or an anxiety or nervous disorder have been discouraged from ingesting guarana.[5] Taurine, an amino acid that supports neurological development and helps regulate the level of water and mineral salts in the blood, also is believed to have antioxidant properties. The effects of heavy or long-term taurine use are largely unknown.[6]

21. On November 16, 2010, Phusion announced that it would reformulate its products to remove caffeine, guarana and taurine, and in the future would produce only non-caffeinated versions of Four Loko.[7] In the press release announcing the reformulation, Phusion's three co-founders and current managing partners, Chris Hunter, Jeff Wright and Jaisen Freeman, stated: "We are taking this step after trying – unsuccessfully – to navigate a difficult and politically-charged regulatory environment at both the state and federal levels."[8]

22. Indeed, the day after Phusion announced the reformulation, the FDA sent the company a warning letter stating that: "FDA is aware that, based on the publicly available literature, a number of qualified experts have concerns about the safety of caffeinated alcoholic

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[4] Martinne Geller, "Regulators warn on 'blackout in a can' drinks," *Reuters,* November 17, 2010 (http://www.reuters.com/article/idUSTRE6AG4V120101117?pageNumber=1), retrieved November 21, 2010.

[5] "Guarana," Drugs.com, http://www.drugs.com/mtm/guarana.html, retrieved on November 21, 2010.

[6] Katherine Zeratsky, R.D., L.D., "Taurine in energy drinks: What is it?" MayoClinic.com, http://www.mayoclinic.com/health/taurine/AN01856, retrieved November 21, 2010.

[7] "Phusion Projects to Remove Caffeine, Guarana and Taurine from Products," press release by Phusion Projects LLC, November 16, 2010, http:// www.phusionprojects.com/ media_reformulation.html, retrieved November 21, 2010. A true and correct copy of that press release is attached hereto as Exhibit B and incorporated by reference.

[8] *Id.*

beverages. Moreover, the agency is not aware of data or other information to establish the safety of the relevant conditions of use for your product."[9]

23. In that Warning Letter, the FDA cited studies reflecting its concerns about beverages containing an alcohol/caffeine mix:

> Based upon the publicly available literature, FDA has the following specific concerns about the safety of caffeine when used in the presence of alcohol.2 [Footnote in original.]
> • Reports in the scientific literature have described behavioral effects that may occur in young adults when energy drinks are consumed along with alcoholic beverages (O'Brien et al., 2008; Thombs et al., 2010; Miller, 2008).
> • Studies suggest that the combined ingestion of caffeine and alcohol may lead to hazardous and life-threatening situations because caffeine counteracts some, but not all, of alcohol's adverse effects. In one study, a mixture of an energy drink and alcohol reduced subjects' subjective perception of intoxication but did not improve diminished motor coordination or slower visual reaction times using objective measures (Ferreira et al., 2006). In a dual-task model, subjects co-administered caffeine and alcohol reported reduced perception of intoxication but no reduction of alcohol-induced impairment of task accuracy (Marczinski and Fillmore, 2006).
> • Because caffeine alters the perception of alcohol intoxication, the consumption of pre-mixed products containing added caffeine and alcohol may result in higher amounts of alcohol consumed per drinking occasion, a situation that is particularly dangerous for naïve drinkers (Oteri et al., 2007).
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> [2] As used in the discussion below, the term "energy drink" identifies beverages that contain a significant amount of calories and caffeine as well as other ingredients, such as taurine, herbal extracts, or vitamins (Heckman et al., 2010).

24. The FDA's Warning Letter gave Phusion 15 days to address the issues raised in the letter or face possible enforcement action, which could range from "seizure of illegal products and injunctions and prosecutions against manufacturers and distributors of those products."[10]

[9] "Warning Letter," dated November 17, 2010, from Joann M. Givens, Acting Director, Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, to Jaisen Freeman, Chris Hunter and Jeff Wright, Phusion Projects, LLC 9dba Drink Four Brewing Company), http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm234023.htm, retrieved November 21, 2010 ("Warning Letter"). A true and correct copy of that Warning Letter is attached hereto as Exhibit C and incorporated by reference.

[10] *Id.*

25. Phusion and manufacturers of similar products have been under scrutiny by the FDA for at least the past year. In November 2009, at the request of 18 state Attorneys General, the agency contacted Phusion and other manufacturers of caffeinated alcoholic beverages to

provide information on the safety of adding caffeine to their products. In July 2010, U.S. Senator Charles E. Schumer of New York asked the Federal Trade Commission to investigate whether the drinks, which are sold in colorful packaging fruit flavors, were "explicitly designed to attract under-age drinkers."[11]

26. Schumer had expressed concern that the vibrant packaging increased the probability that the caffeinated alcoholic beverages would be attract younger consumers, and that

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[11] Abby Goodnough, "F.D.A. Issues Warning Over Alcoholic Energy Drinks," *New York Times,* November 17, 2010 (http://www.nytimes.com/2010/11/18/us/18drinks.html), retrieved November 22, 2010; "FDA Warning Letters issued to four makers of caffeinated alcoholic beverages," FDA News Release, November 17, 2010, http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm234109.htm, retrieved November 22, 2010. A true and correct copy of that press release is attached hereto as Exhibit D and incorporated herein by reference.

parents and business owners stocking the products might be misled by the packaging. He also noted that Four Loko is "stocked next to other energy drinks, creating further confusion."[12]

27. The FDA's Action followed several incidents involving Four Loko that attracted significant media attention. Students at Ramapo College in Mahwah, New Jersey and Central Washington University in Ellensburg, Washington, ended up in emergency rooms after drinking Four Loko, some with high levels of alcohol poisoning. Four Loko also has been blamed for several deaths in recent months.[13]

28. "FDA does not find support for the claim that the addition of caffeine to these alcoholic beverages is 'generally recognized as safe,' which is the legal standard," said Dr. Joshua M. Sharfstein, Principal Deputy Commissioner, FDA. "To the contrary, there is evidence that the combinations of caffeine and alcohol in these products pose a public health concern."[14]

29. As a result of the deceptive marketing of Four Loko as set forth above, Defendant has been able to charge a price premium for Four Loko over similar alcoholic beverages that do not contain caffeine.

30. Based on the advertising and labeling of these products and the omissions of material facts from such labeling and advertising, Plaintiff purchased Four Loko Fruit Punch on August 20 and 21, 2010 from Boulevard Liquor in El Cajon, San Diego County, California, for a purchase price of approximately $3.00 per can. Nothing in the advertising, labeling, packaging, marketing, promotion and selling of Four Loko gave her any warning of the particular dangers of drinking a caffeinated beverage with high alcoholic content, set forth in detail above.

31. Given the foregoing, Plaintiff was misled by Defendant into purchasing and paying for a dangerous product that was not what it was represented to be.

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[12] "Schumer: FDA To Effectively Ban Caffeinated Alcoholic Drinks; FTC Will Notify Manufacturers That They May Be Engaged In Illegal Marketing Of Unsafe Beverages," press release from the Office of U.S Senator Charles E. Schumer, November 16, 2010, http://schumer.senate.gov/new_website/ record.cfm?id=328578, retrieved November 22, 2010. A true and correct copy of that press release is attached hereto as Exhibit E and incorporated by reference.

[13] See Note 9, "F.D.A. Issues Warning Over Alcoholic Energy Drinks."

[14] See Note 9, "FDA Warning Letters issued to four makers of caffeinated alcoholic beverages."

32. As a direct result, Plaintiff has suffered injury in fact and a loss of money or property in that she has been deprived of the benefit of her bargain and has spent money purchasing Four Loko at a price premium when it actually had significantly less value than was reflected in the price she paid for it.

33. In fact, had Plaintiff known the true material facts about Four Loko set forth above, she would not have purchased it at all.

V. CLASS ACTION ALLEGATIONS

34. Plaintiff realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

35. Pursuant to California Civil Code §1781, California Code of Civil Procedure §382, and Federal Rule of Civil Procedure ("FRCP") 23, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of herself and all persons who, during the Class Period (defined as the period extending back four years prior to the filing of this action, or to the date Four Loko was first sold in its caffeinated formulation, whichever is most recent), purchased for personal use the caffeinated Four Loko manufactured, advertised and sold by Defendant.

36. Defendant's practices and omissions were applied uniformly to all members of the Class, including any subclass arising out of the California statutory claims, so that the questions of law and fact are common to all members of the Class. All members of the Class were and are similarly affected by not receiving disclosure of the risks associated with drinking Four Loko, and the relief sought herein is for the benefit of Plaintiff and members of the Class.

37. Excluded from the Class are employees and agents of Defendant, the Judge and his or her relatives back to the second degree of affinity, officers and directors of Defendant, and counsel for Plaintiff and the Class.

38. The proposed Class is so numerous that joinder of all members would be impracticable. Based on the annual sales of Four Loko and its popularity, it is apparent that the number of consumers of Four Loko would be so large as to make joinder impossible.

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39. Questions of law and fact common to the Class exist that predominate over questions affecting only individual members, including, *inter alia*:

a. Whether Defendant's practices, representations and failure to warn of the dangers of Four Loko made in connection with the labeling, packaging, advertising, marketing, promotion and sales of Four Loko were deceptive, unlawful or unfair in any respect, thereby violating California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq*.;

b. Whether Defendant's practices, representations and failure to warn of the dangers of Four Loko made in connection with the labeling, packaging, advertising, marketing, promotion and sales of Four Loko were deceptive, unlawful or unfair in any respect, thereby violating California's False Advertising Law ("FAL"), Bus. & Prof Code § 17500, *et seq*.;

c. Whether Defendant's practices made in connection with the labeling, packaging, advertising, marketing, promotion and sales of Four Loko violated California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq*.;

d. Whether Defendant misrepresented the characteristics or other aspects of Four Loko;

e. Whether Defendant failed to disclose, withheld or misrepresented material information regarding adverse health effects from the use of Four Loko in an effort to deceive consumers;

f. Whether Defendant knowingly and intentionally concealed from Plaintiff and members of the Class material information regarding adverse health effects from the use of Four Loko;

g. Whether Defendant's conduct as set forth above injured consumers and, if so, the nature and extent of the injury; and

h. Whether Defendant have been unjustly enriched, such that disgorgement of profits is proper, for the wrongful conduct set forth herein.

40. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendant and the relief sought is common.

41. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

42. Certification of this class action is appropriate under California Civil Code §1781, California Code of Civil Procedure §382, and FRCP 23 because the questions of law or fact common to the respective members of the Class predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

43. Certification also is appropriate because Defendant acted or refused to act on grounds generally applicable to the Class, thereby making appropriate the relief sought on behalf of the Class as a whole. Further, given the large number of consumers of Four Loko, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

44. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the Courts that individual actions would engender.

45. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

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VI. FIRST CAUSE OF ACTION

Violations of the UCL, Bus. & Prof. Code §17200, *et seq*.

(Against Phusion and Does 1 through 10, inclusive)

46. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

47. This cause of action is brought pursuant to Cal. Bus. & Prof. Code §17200, *et seq*., which provides that "unfair competition shall mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code."

48. Plaintiff alleges that Defendant committed unfair business acts and/or practices.

49. The utility of Defendant's practices related to the advertising, labeling, packaging, marketing, promotion and selling of Four Loko without warning of the dangers inherent in consuming a caffeinated beverage with high alcohol content is negligible, if any, when weighed against the harm to the general public, Plaintiff and members of the Class.

50. The harmful impact upon members of the general public and the Class who purchased and used Four Loko outweighs any reasons or justifications by Defendant for the unfair business practices Defendant employed to sell Four Loko described herein.

51. Defendant had an improper motive (profit before accurate marketing) in its practices related to the advertising, labeling, packaging, marketing, promotion and selling of Four Loko, as set forth above.

52. The use of such unfair business acts and practices was and is under the sole control of Defendant, and was deceptively hidden from members of the Class and the general public in Defendant's advertising, labeling, packaging, marketing, promotion and selling of Four Loko.

53. Defendant committed a deceptive act or practice by failing to properly disclose to consumers the dangers associated with drinking Four Loko, as set forth in detail above. Defendant also committed a deceptive act or practice by using fruit flavor names for the product,

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as well as vibrant colors and designs in the packaging and labeling of Four Loko, and by promoting the stocking of Four Loko near non-alcoholic energy drinks.

54. These deceptive acts and practices had a capacity, tendency, and/or likelihood to deceive or confuse reasonable consumers into believing that Four Loko posed no greater risk to the health of those who drank it than did other non-caffeinated alcoholic beverages.

50. Defendant also committed unlawful business practices by violating the FAL and CLRA as set forth in detail below, as well as Health and Safety Code and state regulations that make it illegal to sell any misbranded or adulterated beverage products. For the reasons set forth above, the products at issue fall within the definition of misbranded or adulterated products. The violations of these statutes serve as predicate violations of this prong of the UCL.

55. As a purchaser and consumer of Defendant's Four Loko, and as a member of the general public in California who purchased and used Four Loko, Plaintiff is entitled to and does bring this class action seeking all available remedies under the UCL.

56. Defendant's practices, as set forth above, were intended to promote the sale of Four Loko and constitute unfair, deceptive and/or unlawful business practices within the meaning of California Bus. & Prof. Code §17200, *et seq*.

57. Pursuant to California Bus. & Prof. Code §17203, Plaintiff seeks an order of this Court for injunctive relief and restoring all monies that may have been acquired by Defendant as a result of such unfair, deceptive and/or unlawful business acts or practices.

58. Plaintiff, the Class and the general public may be irreparably harmed and/or denied an effective and complete remedy if such relief is not granted.

59. As a result of Defendant's violations of the UCL, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm.

60. Pursuant to Civil Code §3287(a), Plaintiff and members of the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful conduct. The amount on which interest is to be applied is a sum certain and capable of calculation, and Plaintiff and members of the Class are entitled to interest in an amount according to proof.

VII. SECOND CAUSE OF ACTION

Violations of the FAL, Bus. & Prof. Code §17500, *et seq*.

(Against Phusion and Does 1 through 10, inclusive)

61. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

62. In violation of California Bus. & Prof. Code §17500, Defendant has disseminated, or caused to be disseminated advertising, labeling, packaging, marketing, and promotion of Four Loko that is deceptive because of its failure to warn of the particular dangers inherent in consuming a caffeinated beverage with high alcohol.

63. Defendant compounded this deception by using fruit names for the product, as well as vibrant colors and designs in the advertising, packaging and labeling of Four Loko, and by promoting the stocking of Four Loko near non-alcoholic energy drinks.

64. These acts deceptively represented Four Loko as posing no greater risk to the health of those who drank it than did other non-caffeinated alcoholic beverages.

65. Defendant's representations and omissions of material facts for Four Loko are by their very nature unfair, deceptive and/or unlawful within the meaning of California Bus. & Prof. Code §17500, *et seq*., and were likely to deceive reasonable consumers.

66. In making and disseminating the representations and omissions alleged herein, Defendant should have known they were misleading, particularly given the existence of peer-reviewed scientific studies indicating the dangers of caffeinated alcoholic beverages, as referenced in the FDA Warning Letter. Accordingly, Defendant acted in violation of California Bus. & Prof. Code §17500, *et seq*.

67. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and members of the Class have suffered substantial harm.

68. Pursuant to Bus. & Prof. Code §17535, Plaintiff seeks an order of this Court for injunctive relief and restoring all monies that may have been acquired by Defendant as a result of such deceptive acts and/or practices.

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69. As a result of Defendant's violations of the FAL, Plaintiff and the Class are entitled to restitution for out-of-pocket expenses and economic harm.

70. Pursuant to Civil Code §3287(a), Plaintiff and members of the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendant's wrongful conduct. The amount on which interest is to be applied is a sum certain and capable of calculation, and Plaintiff and members of the Class are entitled to interest in an amount according to proof.

VIII. THIRD CAUSE OF ACTION

Violations of the CLRA, Cal. Civil Code § 1750, *et seq*.

(Against Phusion and Does 1-10, inclusive)

71. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

72. This cause of action is brought pursuant to the CLRA.

73. Plaintiff and each member of the Class are "consumers" within the meaning of Civil Code §1761(d).

74. The purchases of Four Loko by Plaintiff and each member of the Class were and are "transactions" within the meaning of Civil Code §1761(e).

75. Defendant's marketing, promotion, and sales of Four Loko within California, as alleged herein, violated the CLRA in at least the following respects for the reasons set forth in detail above, in violation of Civil Code §1770(a)(5), (a)(7), (a)(9) and (a)(16). Plaintiff reserves the right to identify additional violations of this statute.

76. Plaintiff seeks and is entitled to equitable relief in the form of an order for injunctive relief and:

a. Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described above; and

b. Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described above.

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77. Plaintiff, by and through counsel, is notifying Defendant in writing of the particular violations of section 1770 of the CLRA and demanding that it take certain corrective actions within the period prescribed by the CLRA for such demands.

78. In the event that Defendant fails to adequately respond to the demands for corrective action within the time prescribed by the CLRA, Plaintiff intends to amend this pleading to request statutory damages, actual damages, plus punitive damages and interest as authorized by section 1780(a) of the CLRA.

79. Regardless of an award of damages, however, Plaintiff seeks and is entitled to, pursuant to section 1780(a)(2) of the CLRA, an order for the equitable relief described above, as well as costs, attorney's fees and any other relief which the Court deems proper.

IX. FOURTH CAUSE OF ACTION

Fraudulent Concealment

(Against Phusion and Does 1 through 10, inclusive)

80. Plaintiff incorporates by reference each preceding paragraph as though fully set forth at length herein.

81. Defendant withheld and suppressed facts in its advertising, labeling, packaging, marketing and promotion of Four Loko that led consumers to falsely believe that Four Loko posed no greater risk to the health of those who drank it than did other non-caffeinated alcoholic beverages.

82. Due to the safety matters at issue, Defendant was bound to disclose the truth about these matters, but failed to do so.

83. Defendant knew that its claims were false, given the prevalence of peer-reviewed scientific studies indicating the dangers of caffeinated alcoholic beverages, as referenced in the FDA Warning Letter.

84. Nevertheless, Defendant concealed the dangers inherent in Four Loko's combination of high levels of caffeine with high alcohol content, and it took steps in the advertising, labeling, packaging, marketing and promotion of Four Loko to prevent consumers from learning the true facts regarding the product.

85. The concealment of the true facts from Plaintiff and members of the Class was done with the intent to induce Plaintiff and members of the Class to purchase and use Four Loko.

86. The reliance by Plaintiff and members of the Class was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business.

87. As a direct and proximate result of the fraud and deceit alleged, Plaintiff and members of the Class suffered actual damages in that they have been deprived of the benefit of their bargain and have spent money purchasing Four Loko at a price premium when it actually had significantly less value than was reflected in the price they paid for it.

88. Defendant intended for consumers to rely on its advertising, labeling, packaging, marketing and promotion of Four Loko, as well as its suppression of the true facts about Four Loko, in purchasing and drinking the product.

89. Plaintiff and other members of the Class, in purchasing and using the Four Loko as herein alleged, did rely on Defendant's advertising, labeling, packaging, marketing and promotion of Four Loko, as well as Defendant's suppression of facts, all to their damage as alleged.

90. In doing these things, Defendant was guilty of malice, oppression and fraud, and Plaintiff and members of the Class are, therefore, entitled to recover punitive damages.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for a judgment as appropriate for the claims set forth above:

1. Certifying the Class as requested herein;

2. Awarding Plaintiff and the proposed Class members damages;

3. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;

4. Awarding declaratory and injunctive relief as permitted by law or equity, including directing Defendant to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

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5. Ordering that Defendant be required to make full restitution of all monies wrongfully obtained as a result of the conduct described above and required to disgorge all ill-gotten gains flowing from the conduct described above.

6. Ordering that Defendant be required to engage in a corrective advertising campaign;

7. Awarding attorneys' fees and costs; and

8. Providing such further relief as may be just and proper.

XI. JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: March 4, 2011

THE CONSUMER LAW GROUP

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Attorneys for Plaintiff

Exhibit A

Serious Concerns Over Alcoholic Beverages with Added Caffeine

Caffeinated alcoholic beverages, or CABs, are alcoholic beverages that contain caffeine as an additive and are packaged in combined form.

Alcoholic beverages to which caffeine has been added as a separate ingredient have raised health concerns at the Food and Drug Administration (FDA) as well as in other federal, state, and local agencies.

On Nov. 17, 2010, FDA announced that it had sent warning letters to four companies that make malt versions of these beverages, advising them that the caffeine included as a separate ingredient is an "unsafe food additive."

These warning letters were not directed at alcoholic beverages that only contain caffeine as a natural constituent of one or more of their ingredients, such as a coffee flavoring.

A Troubling Mix

According to data and expert opinion, caffeine can mask sensory cues that people may rely on to determine how intoxicated they are. This means that individuals drinking these beverages may consume more alcohol—and become more intoxicated—than they realize. At the same time, caffeine does not change blood alcohol content levels, and thus does not reduce the risk of harms associated with drinking alcohol.

Studies suggest that drinking caffeine and alcohol together may lead to hazardous and life-threatening behaviors. For example, serious concerns are raised about whether the combination of alcohol and caffeine is associated with an increased risk of alcohol-related consequences, including alcohol poisoning, sexual assault, and riding with a driver who is under the influence of alcohol.

Malt versions of premixed alcoholic beverages come in containers holding between 12 and 32 liquid ounces. Some may also contain stimulant ingredients in addition to caffeine. Their advertised alcohol-by-volume value is as high as 12 percent, compared to standard beer's usual value of 4 to 5 percent.

These alcoholic beverages are available in many states in convenience stores and other outlets. They often come in large, boldly colored cans comparable in size to "tall" cans of beer—or in containers resembling regular beer bottles.

FDA Warns Four Firms

FDA issued its November 2010 warning letters to four companies that make caffeinated alcoholic beverages: Charge Beverages Corp., New Century Brewing Co. LLC, Phusion Projects LLC (which does business as the Drink Four Brewing Co.), and United Brands.

The caffeinated malt beverages referenced in these warning letters are

- Core High Gravity HG Green
- Core High Gravity HG Orange
- Four Loko
- Joose
- Lemon Lime Core Spiked
- Moonshot (This product is labeled as "premium beer with caffeine")
- Max

The manufacturers of these products have failed to show that the direct addition of caffeine to their malt beverages is "generally recognized as safe" by qualified experts. Rather, there is evidence that the combinations of caffeine and alcohol in these products pose a public health concern.

"Consumers should avoid these caffeinated alcoholic beverages, which do not meet the FDA's standards for safety," says Joshua M. Sharfstein, M.D., FDA's principal deputy commissioner.

The agency has given the firms 15 days to respond to the warning letters and then may proceed to court to stop their sale. In addition, other alcoholic beverages containing added caffeine may be subject to agency action in the future if scientific data indicate that the use of caffeine in those products does not meet safety standards. FDA

Find this and other Consumer Updates at *www.fda.gov/ForConsumers/ConsumerUpdates*

Sign up for free e-mail subscriptions at *www.fda.gov/consumer/consumerenews.html*

Exhibit B

Phusion Projects, LLC

FOR IMMEDIATE RELEASE

MEDIA CONTACT:
(888) 901-6344
media@drinkfour.com

Phusion Projects to Remove Caffeine, Guarana and Taurine from Products

Tuesday, November 16, 2010, Chicago, Ill. – Phusion Projects today announced the company's intent to reformulate its products to remove caffeine, guarana and taurine nationwide, saying it has taken the necessary steps to do so and is informing its employees and distributors of the plans. Going forward, Phusion will produce only non-caffeinated versions of Four Loko.

In a statement, Chris Hunter, Jeff Wright and Jaisen Freeman, Phusion's three co-founders and current managing partners said:

"We have repeatedly contended – and still believe, as do many people throughout the country – that the combination of alcohol and caffeine is safe. If it were unsafe, popular drinks like rum and colas or Irish coffees that have been consumed safely and responsibly for years would face the same scrutiny that our products have recently faced.

"In addition, if our products were unsafe, we would not have expected the federal agency responsible for approving alcoholic beverage formulas – the Tobacco Tax and Trade Bureau (TTB) – to have approved them. Yet, all of our product formulas and packaging were reviewed and approved by the TTB before being offered to consumers.

"We are taking this step after trying – unsuccessfully – to navigate a difficult and politically-charged regulatory environment at both the state and federal levels.

"Over the last several months we have been more than willing to talk with regulators and policymakers on the national, state and local levels. Our company has a history of being as cooperative as we possibly can to ensure that our products are consumed safely, responsibly and only by of-age adults.

"We hoped that clear, consistent, industry-wide standards regulating pre-packaged caffeinated alcoholic beverages would be the outcome of these conversations. We also hoped others would share our commitment to transparency and fairness.

"By taking this action today, we are again demonstrating leadership, cooperation and responsible corporate citizenship."

Making concessions like this is something the company has a history of doing. It added multiple additional label warnings to its cans at the request of regulators; its alcohol-by-volume warnings are in a font as large as is allowed by law; and where required, Phusion sells versions of its product with reduced alcohol content.

Additionally, the company works with its distributors to share information about the appropriate way to stock and market its products; it works with retailers to provide point of sale information that reinforces the importance of asking for ID when selling any alcoholic beverage; and it includes warnings and labels on its cans that go above and beyond what the federal government requires – helping to ensure that consumers are informed and that its products don't end up in the hands of minors.

In an open letter to regulators this month, Phusion said it would welcome the opportunity to work together to create uniform standards for all liquor and malt-based caffeinated alcoholic beverages. The company also stated that uniformity means uniformity in how the laws are written, applied and enforced. The company, unfortunately, was not given that opportunity.

About Phusion Projects

Phusion Projects, LLC is a Chicago-based alcoholic beverage company that sells its products nationwide. Its Four Loko and Four MaXed drinks combine alcohol with caffeine, guarana and taurine, while its Earthquake product is a non-caffeinated High Gravity Lager. From the company's inception, Phusion Projects has been committed to making contributions to communities, operating as a responsible member of the alcoholic beverage industry and setting unmatched standards in this regard. To learn more about Phusion and our commitment to responsible drinking, please visit our website: http://www.phusionprojects.com.

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Exhibit C

U.S. Food and Drug Administration

Inspections, Compliance, Enforcement, and Criminal Investigations

Phusion Projects Inc. 11/17/10

Department of Health and Human Services

Public Health Service
Food and Drug Administration
College Park, MD 20740

NOV 17, 2010

WARNING LETTER

OVERNIGHT MAIL via UPS

Mr. Jaisen Freeman
Mr. Chris Hunter
Mr. Jeff Wright
Phusion Projects, LLC (dba Drink Four Brewing Company)
1658 N. Milwaukee Avenue, Suite 424
Chicago, IL 60647

Re: 134051

Dear Messrs. Freeman, Hunter, and Wright

The Food and Drug Administration (FDA) has reviewed the regulatory status of the ingredients declared on the label of your product, "Four Loko"[1] which contains caffeine that has been directly added to an alcoholic beverage and packaged in combined caffeine and alcohol form. As it is used in you product, caffeine is an unsafe food additive, and therefore your product is adulterated under section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 342(a)(2)(C)]. Regulations on the general provisions for food additives are located in Title 21, Code of Federal Regulations, Part 170 (21 CFR 170). You may find copies of the Act and these regulations through links in FDA's Internet home page at http://www.fda.gov[1].

As defined in section 201(s) of the Act [21 U.S.C. § 321(s)], the term "food additive" refers to any substance the intended use of which results in its becoming a component of any food, unless the substance is the subject of a prior sanction or is generally recognized as safe (GRAS) among qualified experts under the conditions of its intended use. Under section 409 of the Act [21 U.S.C. § 348], a food additive is unsafe unless a regulation is in effect that prescribes the conditions under which the additive may be safely used, and the additive and its use or intended use are in conformity with that regulation. There is no food additive regulation authorizing the use of caffeine as a direct addition to alcoholic beverages, and we are not aware of any information to establish that caffeine added directly to alcoholic beverages is the subject of a prior sanction. Likewise, we are not aware of any basis to conclude that caffeine is GRAS under these conditions of use.

FDA's regulations in 21 CFR Part 170 describe the eligibility criteria for classification of a substance added to food as GRAS. Under 21 CFR 170.30(a)-(c), general recognition of safety must be based on the views of qualified experts. The basis of such views may be either (1) scientific procedures or (2) in the case of a substance used in food prior to January 1, 1958, through experience based on common use in food. Further, general recognition of safety requires common knowledge about the substance throughout the scientific community knowledgeable about the safety of substances directly added to food.

FDA's regulations in 21 CFR Part 170 define "common use in food" and establish eligibility criteria for classification as GRAS through experience based on common use in food. Under 21 CFR 170.3(0, common use in food means "a substantial history of consumption of a substance for food use by a significant number of consumers." Under 21 CFR 170.30(c)(1), "[g]eneral recognition of safety through experience based on common use in food prior to January 1, 1958, shall be based solely on food use of the substance prior to January 1, 1958, and shall ordinarily be based upon generally available data and information." Importantly, however, the fact that a substance was added to food before 1958 does not, in itself, demonstrate that such use is safe, unless the pre-1958 use is sufficient to demonstrate to qualified experts that the substance is safe when added to food. See section 201(s) of the Act [21 U.S.C. § 321(s)]; see also Fmali Herb, Inc. v. Heckler, 715 F.2d 1385, 1389-90 (9th Cir. 1983) ("Under the statute, 'common use in food' of an ingredient does not automatically exempt the substance from pretesting requirements. Instead, 'common use in food' merely describes one form of evidence that may be introduced by a proponent for the purpose of meeting the ultimate standard... ").

Similarly, FDA's regulations in 21 CFR Part 170 define "scientific procedures" and establish eligibility criteria for classification as GRAS through scientific procedures. Under 21 CFR 170.3(h), scientific procedures "include those human, animal, analytical, and other scientific studies, whether published or unpublished, appropriate to establish the safety of a substance." Under 21 CFR 170.30(b), general recognition of safety based upon scientific procedures "shall require the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient." Section 170.30(b) further states that general recognition of safety through scientific procedures is ordinarily based upon published studies which may be corroborated by unpublished studies and other data and information.

FDA's regulations in 21 CFR Part 170 also define "safe" and "safety." Under 21 CFR 170.3(i), "[s]afe or safety means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use." The regulations identify factors to be considered in determining the safety of a substance added to food. 21 CFR 170.3(i).

By letter dated November 12,2009, FDA requested that, within 30 days, your company provide evidence of the rationale, along with supporting data and information, for concluding that the use of caffeine in your product is GRAS or prior sanctioned. The letter informed your company that if FDA determined that the use of caffeine in your alcoholic beverage is neither GRAS nor the subject of a prior sanction, the agency would take appropriate action to ensure that the product is removed from the marketplace. FDA's letter also reiterated that it is the continuing responsibility of your company to ensure that the foods it markets are safe and in compliance with all applicable legal and regulatory requirements.

FDA acknowledges that, in response to the agency's November 12 letter, your firm submitted a letter within the 30 day timeframe requested, indicating that you would submit a GRAS Notice pursuant to proposed 21 CFR 170.36 (62 FR 18938; April 17, 1997) at a later date. The agency received your GRAS Notice (GRN No. 000347) ("GRAS Notice"), dated June 25, 2010, and filed it on June 30, 2010. But, as discussed in more detail below, FDA has reviewed that notice and continues to have safety concerns about your caffeinated alcoholic beverage product. Accordingly, the agency is issuing this warning letter.

To establish that the use of a substance in food is GRAS under its specific conditions of use (for example, the GRAS status of caffeine when directly added to an alcoholic beverage), there must be consensus among qualified experts that the substance is safe under its conditions of use, based on

publicly available data and information. FDA is aware that, based on the publicly available literature, a number of qualified experts have concerns abou the safety of caffeinated alcoholic beverages. Moreover, the agency is not aware of data or other information to establish the safety of the relevant conditions of use for your product. Therefore, the criteria for GRAS status have not been met for the caffeine in your beverage.

Based upon the publicly available literature, FDA has the following specific concerns about the safety of caffeine when used in the presence of alcohol.[2]

- Reports in the scientific literature have described behavioral effects that may occur in young adults when energy drinks are consumed along with alcoholic beverages (O'Brien et al., 2008; Thombs et al., 2010; Miller, 2008).
- Studies suggest that the combined ingestion of caffeine and alcohol may lead to hazardous and life-threatening situations because caffeine counteracts some, but not all, of alcohol's adverse effects. In one study, a mixture of an energy drink and alcohol reduced subjects' subjective perception of intoxication but did not improve diminished motor coordination or slower visual reaction times using objective measures (Ferreira et al., 2006). In a dual-task model, subjects co-administered caffeine and alcohol reported reduced perception of intoxication but no reduction o alcohol-induced impairment of task accuracy (Marczinski and Fillmore, 2006).
- Because caffeine alters the perception of alcohol intoxication, the consumption of pre-mixed products containing added caffeine and alcohol may result in higher amounts of alcohol consumed per drinking occasion, a situation that is particularly dangerous for naIve drinkers (Oteri et al., 2007).

GRAS status is not an inherent property of a substance, but must be assessed in the context of the intended conditions of use of the substance (sectio 201(s) of the Act [21 U.S.C. § 321(s)]). The assessment includes a consideration of the population that will consume the substance (21 CFR 170.30 (b); section 409(b) of the Act [21 U.S.C. § 348(b)]). Therefore, the scientific data and information that support a GRAS determination must consider the conditions under which the substance is safe for the use for which it is marketed. Reports in the scientific literature have raised concerns regarding the formulation and packaging of pre-mixed products containing added caffeine and alcohol. For example, these products, presented as fruity soft drinks in colorful single-serving packages, seemingly target the young adult user. Furthermore, the marketing of the caffeinated versions of this class of alcoholic beverage appears to be specifically directed to young adults (Bonnie and O'Connell, 2004). FDA is concerned that the young adults to whom these pre-mixed, added caffeine and alcohol products are marketed are especially vulnerable to the adverse behavioral effects associated with consuming caffeine added to alcohol, a concern reflected in the publicly available literature (O'Brien et al., 2008; Simon and Mosher, 2007).

It is FDA's view that the caffeine content of your beverage could result in central nervous system effects if a consumer drank one or more containers o your product. Therefore, FDA believes that the consumption of your product, "Four Loko," may result in adverse behavioral outcomes because the caffeine is likely to counteract some, but not all, of the adverse effects of alcohol. The agency is unaware of any data that address the complex, potentially hazardous behaviors that have been identified in the scientific literature as associated with these beverages or that otherwise alleviate our concerns about the effects of consuming these pre-mixed caffeine and alcohol beverages. Moreover, FDA is not aware of any publicly available data to establish affirmatively safe conditions of use for caffeine added directly to alcoholic beverages and packaged in a combined form.

As noted, FDA has reviewed the information in your GRAS Notice as well as other publically available information and continues to have safety concerns about your caffeinated alcoholic beverage product. In considering the totality of the information presented in the GRAS Notice, FDA notes tha the GRAS Notice did not cite any scientific literature of which the agency was not already aware.[3] Furthermore, we wish to comment generally on two lines of argument presented in your GRAS Notice.

First, your GRAS Notice relies primarily upon safety studies of caffeine alone (i.e., not in the presence of alcohol) to support your view that caffeine is safe under the relevant conditions of use (that is, in combination with alcohol). Importantly, however, the current scientific literature, which we cite above, establishes that significant safety concerns are raised by the co-consumption of caffeine and alcohol. Accordingly, data and information addressing the safety of caffeine alone are not sufficient to establish the safety, and the general recognition of the safety, of beverages that combine caffeine with alcohol.

Second, we note that one section of your GRAS Notice reviews some of the studies that have reported the adverse behavioral effects elicited by the co consumption of caffeine and alcohol and identifies purported deficiencies in the design and interpretation of these studies. Even if certain studies in the scientific literature have limitations due to their design or the interpretation of their results, the peer-reviewed literature as a whole is sufficient to raise, among qualified experts, safety concerns about alcoholic beverages to which caffeine has been directly added. Similarly, even if the results from no single study are sufficiently comprehensive to characterize fully the potential responses to beverages containing caffeine added to alcohol, these studies are collectively sufficient to raise concerns about consumption of this combination and to support the conclusion that more research is required Furthermore, FDA is not aware of any reports in the literature that refute the association between the co-consumption of alcohol and caffeine and adverse behavioral results or that otherwise affirmatively establish the safety of these beverages. Indeed, our review of this literature, as well as certain related studies in animals, shows that there are currently no studies or other information that refute the safety concerns or otherwise affirmatively establish the safety of caffeine directly added to alcoholic beverages. Therefore, we are not aware of a sufficient basis to support a conclusion that caffeine, when directly added to alcohol to form a single beverage, is generally recognized as safe.

The agency is aware that your company received a Certification/Exemption of Label/Bottle Approval (COLA) from the Alcohol and Tobacco Tax and Trade Bureau (TTB) and that, as part of your application for the COLA, you informed TTB that your product would contain caffeine. A COLA does not constitute a food additive petition approval, a statement regarding GRAS status, or a prior sanction, and you are obligated to abide by the provisions o the Federal Food, Drug, and Cosmetic Act.

In light of the safety concerns identified above, the use of added caffeine in the alcoholic beverage product "Four Loko" does not satisfy the criteria for GRAS status outlined above. Further, FDA is aware of no other exemption from the food additive definition that would apply to caffeine when used as an ingredient in an alcoholic beverage product. Therefore, caffeine as used in your product is a food additive under section 201(s) of the Act [21 U.S.C § 321(s)] and is subject to the provisions of section 409 of the Act [21 U.S.C. § 348]. Under the latter, a food additive is required to be approved by FDA for its proposed conditions of use prior to marketing. Because caffeine is not an approved food additive for its use in your product, "Four Loko," this product is adulterated within the meaning of section 402(a)(2)(C) of the Act [21 U.S.C. § 342 (a)(2)(C)].

You should take prompt action to correct this violation and prevent its recurrence. Failure to do so may result in enforcement action without further notice. The Act authorizes the seizure of illegal products and injunctions and prosecutions against manufacturers and distributors of those products. Also, we want you to be aware that FDA did not conduct an all-inclusive review of your product, "Four Loko," or any other product that you may manufacture or distribute. Under the applicable law, it is your responsibility, as a manufacturer of this product, to ensure that the foods your firm markets are safe and otherwise in compliance with all applicable legal requirements.

Please advise this office in writing within fifteen (15) days from your receipt of this letter as to the specific steps you have taken to correct the violatio identified above and to assure that similar violations do not occur. Your response should include any documentation necessary to show that correction has been achieved. If you cannot complete all corrections within the 15 days, please explain the reason for your delay and the date by which each suc item will be corrected and documented.

Please send your reply to Seyra Hammond, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Compliance (HFS-605), 5100 Paint Branch Parkway, College Park, MD 20740.

Sincerely,

/s/

Joann M. Givens

Acting Director
Office of Compliance

Center for Food Safety
and Applied Nutrition,

cc: Food and Drug Administration
Chicago District Office

References

Bonnie, R. and O'Connell, M., Editors, Reducing underage drinking: a collective responsibility. The National Academies Press, 2004.

Ferreira SE, de Mello MT, Pompeia S, and de Souza-Formigoni ML. Effects of energy drink ingestion on alcohol intoxication. Alcohol Clin Exp Res 30, 598-605, 2006.

Heckman, MA, Sherry, K., and Gonzalez de Mejia, E. Energy drinks: an assessment of their market size, consumer demographics, ingredient profile, functionality, and regulations in the United States. Compr Rev Food Sci Food Saf, 9, 303-317, 2010.

Marczinski, CA and Fillmore, MT. Clubgoers and their trendy cocktails: implications of mixing caffeine into alcohol on information processing and subjective reports of intoxication. Exp Clin Psychopharmacol,14,450-458,2006.

Miller, KE. Wired: energy drinks, jock identity, masculine norms, and risk taking. J Am College Health, 56,481-489,2008.

O'Brien, MC, McCoy, TP, Rhodes, SD, Wagoner, A, and Wolfson, M. Caffeinated cocktails: energy drink consumption, high-risk drinking, and alcohol-related consequences among college students. Acad Emerg Med 15, 453 -460, 2008.

Oteri A, Salvo F, Caputi AP, and Calapai G. Intake of energy drinks in association with alcoholic beverages in a cohort of students of the School of Medicine of the University of Messina. Alcohol Clin Exp Res 31, 1677-1680,2007.

Simon M. and Mosher J. Alcohol, energy drinks, and youth: a dangerous mix. Marin Institute, 2007.

Thombs, DL, O'Mara, RJ, Tsukamoto, M, Rossheim, ME, Weiler, RM, Merves, ML, and Goldberger, BA. Event-level analysis of energy drink consumptio and alcohol intoxication in bar patrons. Addict Behav 35,325-330,2010.

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[1] This letter addresses the following flavors of "Four Loko": cranberry lemonade, uva, watermelon, fruit punch, lemonade, and blue raspberry.

[2] As used in the discussion below, the term "energy drink" identifies beverages that contain a significant amount of calories and caffeine as well as other ingredients, such as taurine, herbal extracts, or vitamins (Heckman et al., 2010).

[3] We note that in an e-mail dated August 10,2010, the Office of Food Additive Safety did request three references cited within your GRAS Notice. We had been aware of these references but due to their age, had not been able to locate them.

Links on this page:

1. http://www.fda.gov

Exhibit D

U.S. Food and Drug Administration

Home> News & Events> Newsroom> Press Announcements

News & Events

FDA NEWS RELEASE

For Immediate Release: Nov. 17, 2010
Media Inquiries: Michael Herndon, 301-796-4673, michael.herndon@fda.hhs.gov
Consumer Inquiries: 888-INFO-FDA

FDA Warning Letters issued to four makers of caffeinated alcoholic beverages
These beverages present a public health concern

The U.S. Food and Drug Administration today warned four companies that the caffeine added to their malt alcoholic beverages is an "unsafe food additive" and said that further action, including seizure of their products, is possible under federal law.

The companies receiving Warning Letters and their products are:

• Charge Beverages Corp.: Core High Gravity HG, Core High Gravity HG Orange, and Lemon Lime Core Spiked
• New Century Brewing Co., LLC: Moonshot
• Phusion Projects, LLC (doing business as Drink Four Brewing Co.): Four Loko
• United Brands Company Inc.: Joose and Max

FDA's action follows a scientific review by the Agency. FDA examined the published peer-reviewed literature on the co-consumption of caffeine and alcohol, consulted with experts in the fields of toxicology, neuropharmacology, emergency medicine, and epidemiology, and reviewed information provided by product manufacturers. FDA also performed its own independent laboratory analysis of these products.

"FDA does not find support for the claim that the addition of caffeine to these alcoholic beverages is 'generally recognized as safe,' which is the legal standard," said Dr. Joshua M. Sharfstein, Principal Deputy Commissioner. "To the contrary, there is evidence that the combinations of caffeine and alcohol in these products pose a public health concern."

Experts have raised concerns that caffeine can mask some of the sensory cues individuals might normally rely on to determine their level of intoxication. The FDA said peer-reviewed studies suggest that the consumption of beverages containing added caffeine and alcohol is associated with risky behaviors that may lead to hazardous and life-threatening situations.

The agency said the products named in the Warning Letters are being marketed in violation of the Federal Food, Drug, and Cosmetic Act (the FFDCA). Each Warning Letter requests that the recipient inform the FDA in writing within 15 days of the specific steps that will be taken to remedy the violation and prevent its recurrence. If a company does not believe its products are in violation of the FFDCA, it may present its reasoning and any supporting information as well.

If the FDA believes that the violation continues to exist, the agency may pursue an enforcement action that could include seizure of the products or an injunction to prevent the firm from continuing to produce the product until the violation has been corrected.

FDA's action today follows a November 2009 request to manufacturers to provide information on the safety of adding caffeine to their products.

FDA is aware that on November 16, Phusion Projects, LLC, the maker of Four Loko, announced its intention to remove caffeine and other stimulants from its drinks. FDA views this announcement as a positive step. FDA has not yet heard officially from the company about this announcement, including how quickly it will remove present product from circulation and how quickly it will reformulate its product. FDA intends to work with Phusion Projects, LLC and the other manufacturers to assure their products meet safety standards.

For More Information:

- Caffeinated Alcoholic Beverages -- FDA Web Page[1]
- Caffeinated Alcoholic Beverages -- Consumer Update[2]
- Caffeinated Alcoholic Beverages – Warning Letters:
  - Charge Beverages Corp.: Core High Gravity HG Green, Core High Gravity HG Orange, and Lemon Lime Core Spiked[3]
  - New Century Brewing Co., LLC: Moonshot[4]
  - Phusion Projects, LLC (doing business as Drink Four Brewing Co.): Four Loko[5]
  - United Brands Company Inc.: Joose and Max[6]
- Qs & As on Caffeine in Alcoholic Beverages[7]
- Caffeinated Alcoholic Beverages -- FDA Page on Flickr[8]
- Caffeinated Alcoholic Beverages -- CDC Fact Sheet[9]
- FTC Sends Warning Letters to Marketers of Caffeinated Alcohol Drinks[10]
- TTB Issues Warning on the Sale or Shipment of Caffeinated Alcohol Beverages Determined by FDA to Be Adulterated[11]

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1. http://www.fda.gov/Food/FoodIngredientsPackaging/ucm190366.htm

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3. http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm233990.htm
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12. http://www.facebook.com/FDA
13. http://www.fda.gov/AboutFDA/ContactFDA/StayInformed/RSSFeeds/PressReleases/rss.xml
14. http://www.fda.gov/AboutFDA/ContactFDA/StayInformed/RSSFeeds/ucm144575.htm

Exhibit E

Press Release

Printer-friendly Version

FOR IMMEDIATE RELEASE: November 16, 2010

SCHUMER: FDA TO EFFECTIVELY BAN CAFFEINATED ALCOHOLIC DRINKS; FTC WILL NOTIFY MANUFACTURERS THAT THEY MAY BE ENGAGED IN ILLEGAL MARKETING OF UNSAFE BEVERAGES

After Months of Pressure by Schumer, FDA to Send Notice to Manufacturers of Caffeinated Alcoholic Beverages that Product is Not Considered Safe; Move Will Effectively Ban Products from the Market

FTC to Send Notices to Manufacturers That They Are Engaged in the Marketing of Unsafe Alcoholic Drinks

Schumer: Let This Serve as a Warning to Anyone Who Tries to Peddle Dangerous Beverages to Our Kids, Do it, And We Will Shut You Down

U.S Senator Charles E. Schumer announced today that the Food and Drug Administration (FDA) will rule that caffeine is an unsafe food additive to alcoholic beverages, effectively making products such as Four Loko, Joose, and others like them, prohibited for sale in the United States. Additionally, the Federal Trade Commission (FTC) plans to notify manufacturers that they are engaged in the potential illegal marketing of unsafe alcoholic drinks. These announcements come after months of intense pressure by Senator Schumer to have the drinks banned because of serious risks to consumer health and safety.

"Let these rulings serve as a warning to anyone who tried to peddle dangerous and toxic brews to our children. Do it and we will shut you down," said Schumer. "This ruling should be the nail in the coffin of these dangerous and toxic drinks. Parents should be able to rest a little easier knowing that soon their children won't have access to this deadly brew."

After calls by Schumer to ban the drinks in New York, just this past week, the State Liquor Authority and the state's largest beer distributors agreed to stop selling these dangerous drinks in New York. In addition to New York's efforts, Oklahoma, Utah, Michigan, and Washington acted to ban the drinks as did a number of colleges, including Ramapo College, Worcester State University, the University of Rhode Island and the Wentworth Institute of Technology.

Popular drinks such as Four Loko and Joose contain as much as 2-3 coffee cups worth of caffeine and 2-3 cans of beer per container – a potent, dangerous mix that can be extremely hazardous for teens and adults alike. Last month, nine students passed out and were hospitalized after drinking Four Loko, leading states and universities across the country to issue ban, limit, or issue warnings about the drink.

Compounded with its health risks, beverages like Four Loko pose a unique danger because they target young people. The style of the beverages – with a vibrantly colored

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go

aluminum can colors and funky designs –appeal to younger consumers, increasing the likelihood that the beverages will be consumed by young adults and creating a problem for parents and business owners who might be misled by the branding. Four Loko is also stocked next to other energy drinks, creating further confusion.

Last week, Schumer was joined in his efforts to ban the drink by Jacqueline Celestino, grandmother of Nicole Lynn Celestino, an 18 year old from Long Island who passed away after drinking the caffeinated alcoholic beverage Four Loko. Nicole, went into cardiac arrest after drinking Four Loko this past August, she had taken a diet pill that day. Nicole's family has become outspoken advocates for a ban on alcoholic caffeinated drinks like Four Loko.

The dangers of these drinks are well known. A recent study found that young and underage drinkers who combine alcohol with caffeine, which occurs with increasing frequency given the prevalence of beverages like Four Loko and Joose, are more likely to suffer injury, be the victim of sexual assault, drive while intoxicated, and require medical attention than drinkers who consume caffeine-free beverages. In 2008, Anheuser-Busch InBev NV and MillerCoors LLC reformulated caffeinated alcoholic beverages under pressure from several states and regulatory bodies, but smaller companies like the manufacturers of Four Loko and Joose managed to remain unnoticed.

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TTD: 202-224-0420

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Melville, NY 11747
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100 State Street, Room 3040
Rochester, NY 14614
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Fax: 585-263-3173

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100 South Clinton Street
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JACQUELINE RICHARDSON

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan M. Mansfield/THE CONSUMER LAW GROUP
(See Attachment)

DEFENDANTS

PHUSION PROJECTS, LLC dba Drink Four Brewing Co.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0456 JM BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
CAFA, 28 U.S.C. Section 1332(d)

Brief description of cause:
SEE ATTACHMENT

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ In excess of $5 million

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 3/4/11

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT TO CIVIL COVER SHEET

I.(c) Attorney's (Firm name, etc.) Cont'd:

THE CONSUMER LAW GROUP
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LAW OFFICES OF HOWARD RUBINSTEIN
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(To Apply *Pro Hac Vice*)
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Fax: (561) 688-0630

VI. CAUSE OF ACTION (Cont'd):

Consumer Class Action for restitution for money paid for products that were illegal to sell in California.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JACQUELINE RICHARDSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PHUSION PROJECTS, LLC, a Delaware limited liability company dba Drink Four Brewing Co., and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: **'11CV0456 JM BGS**

CLASS ACTION

DECLARATON OF VENUE

I, ALAN M. MANSFIELD, declare as follows:

1. I am one of the counsel for Plaintiff in this action and make this declaration to the best of my knowledge of the facts stated herein.

1. At all times herein, Defendant Phusion Projects, LLC dba Drink Four Brewing Co. was a Delaware corporation, registered to do business in the State of California, and doing

business in the Counties of San Luis Obispo and San Diego, California and throughout the United States. Plaintiff Jacqueline Richardson is a resident of the County of San Diego.

2. The transactions which form the basis of this action, or a substantial portion thereof, occurred in the County of San Diego.

2. Plaintiff's Complaint filed in this matter contains a cause of action for violation of the Consumers Legal Remedies Act as against Defendant Phusion Projects, LLC dba Drink Four Brewing Co.

3. Per the foregoing assertions, this cause of action has been properly commenced in the proper county or judicial district for trial.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed on the 4th day of March, 2011, at San Diego, California.

S/Alan M. Mansfield
ALAN M. MANSFIELD