

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

DEC 02 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

By: JAMES W. MCCORMACK, CLERK
DEP CLERK

MARY RANKIN, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

THE COCA-COLA COMPANY and
COCA-COLA REFRESHMENTS USA, INC.

Defendants.

4:13cv0690 KGB
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

Plaintiff Mary Rankin ("Rankin" or "Plaintiff"), individually, and on behalf of similarly situated persons, brings this lawsuit against defendants The Coca-Cola Company and Coca-Cola Refreshments USA, Inc. (collectively "Defendants").

PRELIMINARY STATEMENT

1. This case is about Coca-Cola, one of the most famous and respected brands in the world. Faced with clear evidence that it was losing market share because consumers increasingly preferred beverages without artificial flavoring and chemical preservatives, The Coca-Cola Company, owner of the brand, responded not by providing consumers with what they wanted -- a natural and healthy drink -- but by deceiving them into thinking that Coca-Cola was natural and healthy when in fact it contained artificial flavoring and chemical preservatives. This choice by The Coca-Cola Company was not just an example of bad corporate citizenship. It also clearly violated federal and state laws specifically prohibiting the precise kind of misbranding and misleading behavior exhibited by The Coca-Cola Company.

2. The Coca-Cola Company is the world's largest beverage company. Its product, Coca-

Cola,¹ is the world's most popular soft drink and is one of the most well-known and trusted brand names in the world. Sales of Coca-Cola, however, are fueled by false and deceptive representations that Coca-Cola is not only a healthy product, but one free of artificial flavoring and chemical preservatives. Every container of Coca-Cola sold in the United States either falsely states that it does not contain artificial flavoring and chemical preservatives, or fails to affirmatively state - - as required by state and federal law - - that it, in fact, contains both artificial flavoring and chemical preservatives.

3. Advertisements containing the "Coca-Cola" brand name are ubiquitous throughout the country. There are few places in the United States where it is not prominently displayed on billboards, television and radio advertisements, and in-store displays. Defendants leverage this brand name to sell millions of containers of Coca-Cola. Through their advertising efforts, Defendants portray Coca-Cola as an all-American product. They also falsely portray Coca-Cola as a healthy and all-natural product.

4. Indeed, The Coca-Cola Company's own website directs consumers to the website of The Coca-Cola Company Beverage Institute for Health & Wellness, which portrays Defendants' products, including Coca-Cola, as an integral part of a healthy diet and an excellent means of maintaining proper hydration. The website specifically states that: "Global in scope, the Beverage Institute for Health & Wellness (BIHW) is part of The Coca-Cola Company's ongoing commitment to use evidence-based science to advance knowledge and understanding of beverages, beverage ingredients, and the important role that active healthy lifestyles play in supporting health and wellbeing." See <http://beverageinstitute.org/us/about-us/>.

¹ For the avoidance of any confusion, by "Coca-Cola," Plaintiff mean that specific soft drink that is commonly sold by Defendants in red cans or bottles containing red labels, and that is sometimes referred to by Defendants as the "original formula." As used herein, the term "Coca-Cola" is not meant to include any distinct soft drinks, such as Diet Coke, Cherry Coke, or Caffeine Free Coca-Cola, which may have similar names.

5. It goes so far as to recommend that Defendants' products, including Coca-Cola, should specifically be used to maintain the health and well-being of children. It states: "Studies suggest that active children consume more fluids and stay better hydrated when the liquid is flavored. Beverages that are sweetened with caloric sweeteners or with low- and no-calorie sweeteners can be an important contributor to hydration, providing a sweet taste that encourages a child to consume more fluid." See <http://beverageinstitute.org/us/article/special-considerations-for-children/>.

6. Defendants' concerted efforts to employ false and deceptive labeling practices to mislead consumers into thinking Coca-Cola is natural and healthy, when in fact it is neither, did not occur by accident. Rather, it was a response to changing consumer preferences, which were causing Coca-Cola, as well as other carbonated soft drinks, to lose market share.

7. By 2008, Defendants realized they had a significant problem. Sales of carbonated sodas were precipitously dropping and reached their lowest levels since 1997. See Jessica Wohl, *U.S. Soft-Drink Volume Decline Steepest in Decades*, Reuters, Mar. 30, 2009.

8. Worse still, consumers were not only buying and drinking less soda, they were switching to other beverages entirely. Studies showed that because soda was associated with empty calories and artificial ingredients, consumers were fundamentally changing their drinking habits. One leading study showed that between 2003 and 2008 the regular carbonated soft drink market lost 15.6 million adult drinkers. Marketing research showed that consumers were increasingly interested in all natural foods that did not contain chemical preservatives or artificial flavors. See *Classic Soft Drinks Fall Out of Favor*, Mar. 30, 2009 (available at <http://www.mintel.com/press-centre/food-and-drink/classic-soft-drinks-fall-out-of-favor>).

9. These developments were a major concern for Defendants because their beverage business, and their flagship Coca-Cola brand, contained chemical preservatives and artificial flavorings.

10. Defendants were aware that sales were declining because, as established by consumer

surveys, an overwhelming majority of consumers correctly and accurately perceived their products to be unnatural, artificial and chemically preserved. This critical fact was compounded as competitors like Pepsi and Red Bull began introducing new cola products that were being touted as “all natural” or “100% natural” and which lacked certain artificial ingredients, like the phosphoric acid the Defendants used to artificially flavor and chemically preserve their Coca-Cola products.

11. The situation so substantially affected Defendants that the Coca-Cola Company’s Chief Marketing and Commercial Officer referred to these changes in consumer preferences as a “category five” hurricane that was “really bearing down on us.” *See* FD (Fair Disclosure) Wire, *The Coca Cola Company Analyst Meeting Day 1*, Nov. 16, 2009. He went on to note that: “That is not a fad. Consumers who classify themselves as LOHAS [Lifestyles of Health and Sustainability] or those who value natural ingredients represent in some markets 35% of the total market.” *Id.*

The Pemberton Campaign

12. Rather than reformulate Coca-Cola and their other soft drinks to appeal to these changing consumer preferences for natural and healthy beverages, Defendants adopted a global campaign of disinformation, false advertising, false labeling and misbranding, dubbed “Pemberton” after the pharmacist who invented Coca-Cola. This campaign was designed to fool consumers into the erroneous belief that their products were not artificially flavored or chemically preserved. In so doing, they not only misled and deceived consumers but, as described below, broke a number of federal and state food labeling laws designed to protect consumers from such illegal and deceptive practices.

13. The main goal of the Pemberton campaign was, as admitted at the time by the Global Brand Director of Coca-Cola, to falsely represent to consumers that Coca-Cola never had, and never would, add chemical preservatives or artificial flavorings. “‘Pemberton’ is more fact-based, affirming for consumers that Coca-Cola never has had, and never will have, added preservatives or

artificial flavors.” *See Coke Campaign Focuses on What's Not in the Can; ‘No Added Preservatives or Artificial Flavors,’ New York Times*, Aug. 6, 2008.

14. As part of the campaign, Defendants placed false statements on product labels of, for example, two-liter bottles and 12-pack and 24-pack cartons of Coca-Cola, including “no artificial flavors. no preservatives added. since 1886.” This statement, as well as the entire premise of the Pemberton campaign, was false and misleading.

15. In fact, Coca-Cola contains phosphoric acid. Phosphoric acid is both an artificial flavoring and a chemical preservative.

16. Also false was the prominent representation on Coca-Cola containers and advertisements that Coca-Cola is still made with the “original formula” devised by Pemberton in 1886. In fact, the composition of Coca-Cola has repeatedly changed over time. These changes have included, among other things, an increase in the amount of unhealthy ingredients like sugar and corn syrup and the addition of artificial ingredients like phosphoric acid. *See Coca-Cola Bottling Company of Shreveport, Inc. v. The Coca-Cola Company*, 563 F. Supp. 1122, 1131 (D. Del. 1983).

17. Ignoring the falsity of their statements and labeling, Defendants conceded that Pemberton was designed to deceive consumers by misrepresenting that Coca-Cola does not use chemical preservatives or artificial flavorings. According to one of Defendants’ marketing directors: “When we talked to consumers about Coke, we realized they did not know that it has no added preservatives or artificial flavors. We felt it was important to reassure Coke drinkers of this fact.” *See Coke Campaign Focuses on What's Not in the Can; ‘No Added Preservatives or Artificial Flavors,’ NEW YORK TIMES*, Aug. 6, 2008.

18. Similarly, a regional marketing director for a Coca-Cola entity was quoted as saying: “Our research has highlighted that there is a need and an opportunity to remind consumers that Coca-Cola is the ‘real thing.’ The Pemberton campaign is simply about letting consumers know that the

formula for Coca-Cola has not changed for more than 120 years.” *See Coca-Cola: New and Improved? Nope, Still the Same*, MARKETING MAGAZINE, Sept. 5, 2008.

19. The Coca-Cola Company’s own CFO, Gary Fayard, made the following statement at a consumer conference held on September 3, 2008:

North America, it's the one last market we really need to turnaround. We acknowledge it but we've got some very good plans to do that. We think we know what we need to do. We needed to fix our marketing and we think we've done that. We've got very good marketing in the US now. We've started what we call Project Pemberton. This is about sparkling beverages. It will be print. You'll see it soon. It will be print but it's actually re-educating the consumer, and I don't know that you can read what it says there but it says “No preservatives added, no artificial flavors since 1886. Never has, never will”. And if you think about the new teenagers today and young adults as they've grown up and there's just an explosion of choices they didn't grow up with their limited choices like I did and maybe they've forgotten that Coke actually was born in 1886 and there weren't artificial ingredients back then. This is all pretty natural stuff and we're just -- to remind people.

See The Coca-Cola Company at Lehman Brothers Back-to-School Consumer Conference, FD (Fair Disclosure) Wire, Sept. 3, 2008.

20. Additionally, Defendants concealed the fact that their Coca-Cola products contained artificial flavors and chemical preservatives by failing to make legally mandated labeling disclosures detailing the function of ingredients like phosphoric acid that are used as artificial flavorings and chemical preservatives in those products.

21. Under both federal and Arkansas state law, Defendants are required to disclose the presence of artificial flavoring and chemical preservatives in food products. Defendants are also required to clearly state the function of any ingredient that is used as either an artificial flavoring or a chemical preservative.

22. Nowhere on any Coca-Cola product does the label identify the function of phosphoric acid.

23. Nowhere on any Coca-Cola product does the label state that the product contains

artificial flavoring or chemical preservatives. In fact, many containers of Coca-Cola affirmatively state that they do not contain any artificial flavoring or chemical preservatives.

24. Such false statements and omissions violate both federal law and Arkansas state law and render these products illegally misbranded. These products cannot be lawfully manufactured, distributed, or sold to consumers.

25. The Food, Drug & Cosmetic Act ("FDCA") and regulations promulgated thereunder bar food manufacturers and distributors like Defendants from selling misbranded and illegal products that contain labels that fail to accurately disclose the nature of their contents.

26. The FDCA and regulations promulgated thereunder are expressly adopted by Arkansas as its own labeling regulations. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular," and incorporates the FDCA's labeling provisions found in 21 C.F.R. part 101. Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of the FDCA, by definition, is also a violation of Arkansas state law. In addition, Arkansas has adopted its own independent labeling requirements that are parallel to federal regulations and impose requirements identical to federal regulations.

27. Under federal and Arkansas state law, products such as Coca-Cola are "misbranded" if their "labeling is false or misleading in any particular" or does not contain certain information on its labeling. *See* 21 U.S.C. § 343(a),(f),(k); A.C.A. § 20-56-209 (1),(6),(11).

28. Coca-Cola products are misbranded under both federal and Arkansas state law, *inter alia*, because they fail to disclose on their labeling that they contain artificial flavors or chemical preservatives. *See* 21 U.S.C. § 343(k); A.C.A. § 20-56-209 (1),(6),(11).

29. Because the manufacture and sale of Coca-Cola violates the food labeling laws of Arkansas, the actions of Defendants also constitute predicate acts under Arkansas's consumer

protection laws, including A.C.A. § 4-88-107 and 108.

30. Defendants are major international food manufacturers and are well aware of the requirements of federal and state laws. Yet, they have chosen to ignore those laws in order to increase sales and profits at the expense of consumers, including Plaintiff.

31. In order to conceal from consumers (including Plaintiff) that Coca-Cola and other soft drinks include artificial flavorings and chemical preservatives, Defendants have knowingly and intentionally failed to disclose the existence of these chemicals in their products and have thus misled consumers, including Plaintiff, about the ingredients in Coca-Cola and other soft drinks.

32. Plaintiff, individually, and on behalf of other consumers who purchased Coca-Cola, now brings this action, not only to recover damages, but to stop Defendants from continuing to engage in such unlawful actions and from continuing to deceive consumers.

PARTIES

33. Plaintiff is a resident of Pulaski County, Arkansas. Plaintiff is an elder person who is at least 60 years in age. Plaintiff purchased more than \$25.00 worth of Coca-Cola in Arkansas within the five years preceding the filing of this action (the "Arkansas Class Period"). Plaintiff bought Coca-Cola in Arkansas throughout the Arkansas Class Period. Plaintiff saw and relied on Defendants label statement that Coca-Cola had "no artificial flavors. no preservatives added. since 1886." and was the "original formula." In addition, none of the Coca-Cola purchased by Plaintiff disclosed the fact that the Coca-Cola contained artificial flavors and chemical preservatives despite the fact that such disclosure was required by law. Plaintiff would not have bought Coca-Cola products had Plaintiff known the truth about these products and that these products were falsely labeled, misbranded and illegal to sell or possess.

34. Upon information and belief, Defendant The Coca-Cola Company is a Delaware corporation, with its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia.

35. It has the world's largest beverage distribution system. More than 1.8 billion servings of its products are consumed every day.

36. Upon information and belief, defendant Coca-Cola Refreshments USA, Inc. is a Delaware corporation with its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia.

37. Upon information and belief, defendant Coca-Cola Refreshments USA, Inc. is The Coca-Cola Company's bottling and customer service organization for North America.

38. Coca-Cola Refreshments USA, Inc. manufactures, distributes, and sells approximately 88 percent of The Coca-Cola Company's unit case volume in the United States. Upon information and belief, this includes Coca-Cola.

JURISDICTION AND VENUE

39. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action in which: (1) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; (2) a member of the class of plaintiffs is a citizen of a State different from a defendant; and (3) the number of members of the Class in the aggregate is greater than 100.

40. The Court has personal jurisdiction over Defendants because a substantial portion of the wrongdoing alleged herein occurred in Arkansas. Defendants also have sufficient minimum contacts with Arkansas and have otherwise intentionally availed themselves of the markets in Arkansas through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

41. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (3) because a substantial part of the events or omissions giving rise to these claims occurred in this District, a

substantial part of the property that is the subject of this action is situated in this District, and Defendants are subject to the Court's personal jurisdiction with respect to this action.

FACTS RELEVANT TO ALL CLAIMS

Coca-Cola products are misbranded and illegal

42. All containers of Coca-Cola sold in the United States are misbranded and illegal.
43. Defendants knowingly and intentionally sold these misbranded products to consumers (including Plaintiff) with the intent to deceive.
44. Plaintiff purchased Coca-Cola in Arkansas within the Arkansas Class Period in Arkansas .
45. Plaintiff's purchases of Coca-Cola included 2 liter bottles.
46. Plaintiff's purchases of Coca-Cola also included 24-packs of 12 ounce cans and 12-packs of 12 ounce cans.
47. All containers of Coca-Cola fail to state that any Coca-Cola ingredients are used as artificial flavoring or as a chemical preservative.
48. All containers of Coca-Cola state that Coca-Cola is produced in accordance with the "original formula."
49. Labels on 2 liter bottles, 24-packs of 12 ounce cans, and 12-packs of 12 ounce cans of Coca-Cola state, "no artificial flavors. no preservatives added. since 1886."
50. The ingredients in Coca-Cola include phosphoric acid.

Phosphoric acid is an artificial flavoring

51. Phosphoric acid is an artificial flavoring.
52. The Coca-Cola Company's own website states: "Phosphoric acid is a used in certain soft drinks, including Coca-Cola, to add tartness to the beverage." *See* <http://beverageinstitute.org/us/beverage-ingredient-glossary/>.

53. The Coca-Cola Company's website also discusses acidulants such as phosphoric acid and states that acidulants are: "Acids, which include phosphoric acid and citric acid, and acidic salts help to provide flavoring. They are responsible for the tart taste which helps to balance the sweetness. They also help to reduce the growth of microorganisms (i.e., protect the food from spoiling)." See <http://beverageinstitute.org/us/beverage-ingredient-glossary/>.

54. Previously, these definitions were found at <http://productnutrition.thecoca-colacompany.com/ingredients>. Defendants recently moved these definitions to the website of the affiliated The Coca-Cola Company Beverage Institute for Health & Wellness.

55. Further, the board of directors of the American Beverage Association (which is a leading trade association for soda manufacturers) is chaired by an officer of a Coca-Cola entity. Seven officers of The Coca-Cola Company or affiliated entities are board members of the American Beverage Association.

56. The American Beverage Association website defines "Phosphoric Acid" in the following manner: "This flavoring agent in soft drinks is a preservative that provides tartness." See <http://www.ameribev.org/resources/beverage-industry-terms/>.

57. 21 C.F.R. § 101.22(a)(1) provides that, "The term *artificial flavor* or *artificial flavoring* means any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.

58. Similarly, the Coca-Cola Company's website defines "artificial flavors" as "substances used to impart flavor that are not derived from a natural substance such as a spice, fruit or fruit juice, vegetables or herbs." See <http://beverageinstitute.org/us/beverage-ingredient-glossary/>.

59. The function of phosphoric acid in Coca-Cola, in part, is to impart flavor.

60. Phosphoric acid is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.

61. Therefore, phosphoric acid is an artificial flavoring under 21 C.F.R. § 101.22(a)(1). Phosphoric acid also meets Defendants' own definition of "artificial flavor."

62. Phosphoric acid also does not meet the criteria to be a natural flavoring.

63. 21 C.F.R. § 101.22(a)(3) provides that, "The term *natural flavor* or *natural flavoring* means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional.

64. Similarly, the website of Defendants or affiliated entities defines "natural flavors" as follows: "Natural flavors are derived from the essential oils or extracts of spices, fruits, vegetables and herbs." See <http://beverageinstitute.org/us/beverage-ingredient-glossary/>.

65. Phosphoric acid is not an essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof.

66. Therefore, phosphoric acid is not a "natural flavor," as defined in 21 C.F.R. § 101.22(a)(3). Nor does it meet the Defendants' own definition of a natural flavor.

Phosphoric acid is a chemical preservative

67. Phosphoric acid is also a chemical preservative.

68. 21 C.F.R. § 101.22(a)(5) provides that, “The term *chemical preservative* means any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.”

69. Phosphoric acid is not a common salt, sugar, vinegar, spice, or oil extracted from spices, nor is it a substance added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

70. As used in Coca-Cola, phosphoric acid prevents or retards deterioration of the product.

71. Therefore, phosphoric acid is a “chemical preservative,” as defined in 21 C.F.R. § 101.22(a)(5).

Coca-Cola products are misbranded and illegal

72. Because Coca-Cola contains artificial flavoring and chemical preservations, Coca-Cola product labels are required to state the presence of such artificial flavoring and chemical preservations and must specifically identify the function of phosphoric acid, as used in Coca-Cola.

73. 21 C.F.R. § 101.22(c) provides that “[a] statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food or on its container or wrapper, or on any two or all three of these, as may be necessary to render such statement likely to be read by the ordinary person under customary conditions of purchase and use of such food.”

74. It further provides that “[a] food to which a chemical preservative(s) is added shall ...bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., “preservative”, “to retard spoilage”, “a mold inhibitor”, “to help protect flavor” or “to promote color retention.”

75. Containers of Coca-Cola do not have a statement that they contain artificial flavoring.

76. Containers of Coca-Cola do not have a statement that they contain chemical preservatives.

77. Containers of Coca-Cola do not specify the function of phosphoric acid, as used in the product.

78. Because Coca-Cola containers do not have labels with statements that they contain artificial flavoring or chemical preservatives, they are misbranded under both the FDCA and Arkansas food labeling law.

79. Because Coca-Cola containers do not have labels with statements that the function of phosphoric acid therein is as an artificial flavor or chemical preservative, they are misbranded under both the FDCA and the food labeling laws of Arkansas.

80. Certain Coca-Cola containers (2-liter bottles, 24-packs of 12 ounce cans, and 12-packs of 12 ounce cans) also contain the affirmative statement that there are “no artificial flavors. no preservatives added.”

81. This statement is false.

82. Defendants knowingly and intentionally failed to include statements on containers of Coca-Cola regarding the presence of artificial flavoring and chemical preservatives, despite the fact that Coca-Cola contains artificial flavoring and chemical preservatives.

83. Defendants knowingly and intentionally falsely stated that Coca-Cola has “no artificial flavors. no preservatives added,” despite the fact that Coca-Cola contains artificial flavoring and chemical preservatives.

84. Because these Coca-Cola containers falsely represent that they contain no artificial flavors or preservatives, they are misbranded under both the FDCA and the labeling laws of Arkansas.

85. Defendants have violated the requirements of 21 C.F.R. § 101.22, 21 U.S.C. § 343(a), and 21 U.S.C. § 343(f) and 21 U.S.C. § 343(k), all of which are adopted by and incorporated into the food labeling laws of Arkansas.

86. Defendants have also violated 21 C.F.R. § 1.21 by, *inter alia*, failing to reveal material facts on the labels of Coca-Cola containers.

87. Defendants have also, *inter alia*, violated the following Arkansas food labeling law provisions.

88. Defendants have violated Arkansas A.C.A. § 20-56-209 (11) because Coca-Cola products bear or contain artificial flavoring, artificial coloring, or chemical preservative without labeling stating that fact.

89. Defendants have violated Arkansas A.C.A. § 20-56-215 which make it unlawful to manufacture, sell, deliver, hold, or offer to sell any misbranded food.

90. Defendants have violated Arkansas A.C.A. § 20-56-214 and § 20-56-215 which make it unlawful to falsely or misleadingly advertise food or food.

91. Defendants have violated Arkansas A.C.A. § 20-56-215 (6) because words, statements, or other information required pursuant to Arkansas's food labeling laws to appear on the label or labeling are not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

92. Defendants have violated Arkansas A.C.A. § 20-56-215 (1) because, for all the reasons set forth herein, Coca-Cola labeling is false and misleading in one or more ways. Among other things, the labeling is false and misleading because it: fails to identify the presence of chemical preservatives and artificial flavors; affirmatively misrepresents that there are "no

artificial flavors”; affirmatively misrepresents that there are “no preservatives added”; affirmatively misrepresents that there have been “no artificial flavors and “no preservatives added” “since 1886;” and falsely states that Coca-Cola is made with the same original formula used “since 1886.”

93. Defendants have a duty to disclose the true nature of the contents of Coca-Cola and failed to abide by that duty.

94. Significantly, under 21 U.S.C. § 333(a)(1) and the food labeling laws of Arkansas, Defendants’ violations of the FDCA and the food labeling laws of Arkansas (including all of the aforementioned provisions) are strict liability crimes for which no showing of intent to deceive or defraud is required.

95. Under both the FDCA and the food labeling laws of Arkansas, it is a strict liability crime to, *inter alia*, manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

96. By manufacturing and selling misbranded products, Defendants have committed a predicate unlawful act, regardless of any misrepresentation or reliance thereon.

97. Because Defendants’ products are misbranded and illegal they have a value of zero.

98. Plaintiff and other consumers were injured when paying money for a worthless product.

Purchasers of Misbranded Products Have Been Injured

99. Had Plaintiff known that Coca-Cola was misbranded, Plaintiff would not have purchased Coca-Cola.

100. Had Plaintiff known that Coca-Cola was an illegal product, Plaintiff would not have purchased Coca-Cola.

101. Had Plaintiff known that Coca-Cola violated federal and state laws and regulations, Plaintiff would not have purchased Coca-Cola.

102. Plaintiff did not know that phosphoric acid was a chemical preservative or an artificial flavoring.

103. Had Plaintiff known that Coca-Cola contained artificial flavoring, Plaintiff would not have purchased Coca-Cola.

104. Had Plaintiff known that Coca-Cola contained chemical preservatives, Plaintiff would not have purchased Coca-Cola.

105. Because Coca-Cola products are illegal and misbranded, they are economically worthless.

106. Because Coca-Cola products are illegal and misbranded, they are cannot be lawfully resold.

107. Plaintiff paid money for Coca-Cola products that, under applicable law, were worth nothing.

108. Had Plaintiff known that Coca-Cola was economically worthless, Plaintiff would not have purchased Coca-Cola.

109. Had Plaintiff known that Coca-Cola could not be lawfully resold, Plaintiff would not have purchased Coca-Cola.

110. Plaintiff could have purchased cheaper alternative products that were not illegal, misbranded, and worthless.

111. Plaintiff paid an unwarranted premium for Coca-Cola over cheaper alternative products that were not illegal, misbranded, or worthless.

112. Plaintiff relied on the Coca-Cola labels to Plaintiff's detriment.

113. Plaintiff's reliance was reasonable.

114. A reasonable consumer would have been misled by the Defendants' actions.

115. As a result of Defendants' unlawful misrepresentations, Plaintiff and millions of others in Arkansas and throughout the United States purchased Coca-Cola.

116. Plaintiff and millions of others in Arkansas and throughout the United States who purchased Coca-Cola were injured as a result of Defendants' actions.

117. Plaintiff and other purchasers of Coca-Cola paid money for products that were worth zero.

118. Plaintiff and other purchasers of Coca-Cola paid money for products that were of a lesser value and quality than represented by Defendants.

119. Plaintiff and other purchasers of Coca-Cola also paid an unwarranted premium above alternative products that were not illegal, misbranded, or worthless.

CLASS ACTION ALLEGATIONS

120. Plaintiff bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following Class:

1) All persons in Arkansas who, within the last five years, purchased Coca-Cola.

121. Plaintiff seeks to represent the members of the Class who purchased Coca-Cola in Arkansas. Plaintiff also seeks to represent members of the Class who purchased Coca-Cola in Arkansas.

122. The following persons are expressly excluded from the Class and Sub-Classes: (1) Defendants and their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class or Sub-Classes; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

123. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

124. **Numerosity**: Based upon Defendants' publicly available sales data with respect to Coca-Cola, it is estimated that the number of Class is potentially in the millions, and that joinder of all Class members is impracticable.

125. **Common Questions Predominate**: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

- a. Whether Defendants engaged in unfair, unlawful or deceptive business practices by failing to properly package and label Coca-Cola sold to consumers;
- b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;
- c. Whether Defendants made unlawful and misleading claims regarding artificial flavoring and preservatives in Coca-Cola;
- d. Whether Defendants unlawfully sold misbranded products in violation of the FDCA and the labeling laws of Arkansas;
- e. Whether Defendants violated the food laws and deceptive trade laws of Arkansas.
- f. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- g. Whether Defendants' unlawful, unfair and deceptive practices harmed Plaintiff and the Class; and
- h. Whether Defendants were unjustly enriched by their deceptive practices.

126. **Typicality**: Plaintiff's claims are typical of the claims of the Class because Plaintiff bought Defendants' Purchased Products during the Class Period. Defendants' unlawful, unfair, and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of each member of the Class were caused directly by Defendants' wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct

resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

127. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff have retained highly competent and experienced class action attorneys to represent Plaintiff's interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiff and Plaintiff's counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

128. **Superiority**: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of Class members' rights and the disposition of their interests through actions to which they are not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class

treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

129. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate injunctive or equitable relief with respect to the Class as a whole.

130. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

131. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

132. Plaintiff is a member of the Class Plaintiff seeks to represent. Plaintiff's claims are typical of the Class members' claims. Plaintiff will fairly and adequately protect the interests of the Class in that Plaintiff's claims are typical and representative of the Class.

133. There are no unique defenses which may be asserted against Plaintiff individually, as distinguished from the Class. The claims of Plaintiff are the same as those of the Class.

134. No conflicts of interest exist between Plaintiff and the other Class members. Plaintiff has retained counsel that is competent and experienced in complex class action litigation. Plaintiff and Plaintiff's counsel will fairly and adequately represent and protect the interests of the Class.

135. This class action is superior to any other method for the fair and efficient adjudication of this dispute.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Violation of A.C.A. § 4-88-101 et seq.)**

136. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

137. Defendants' conduct constitutes unlawful deceptive and unconscionable trade practices. Defendants' conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendants engaged in false, misleading and unlawful advertising, marketing and labeling of Coca-Cola. Defendants' manufacturing, distribution and sale of Coca-Cola were similarly unlawful.

138. Defendants unlawfully sold Coca-Cola in Arkansas and throughout the United States during the Class Period.

139. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Coca-Cola to Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas, Defendants engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

140. Defendants' misleading marketing, advertising, packaging and labeling of Coca-Cola were likely to deceive reasonable consumers.

141. Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas were deceived.

142. Defendants have engaged in unlawful deceptive and unconscionable trade practices .

143. Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas were injured by Defendants' unlawful deceptive and unconscionable trade practices.

144. Defendants' fraud and deception caused Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas to purchase Coca-Cola that they would otherwise not have purchased had they known the true nature of these products.

145. Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas were injured as a result of Defendants' unlawful deceptive and unconscionable trade practices.

146. Defendants' conduct was in disregard of the rights of the elder and disabled persons who were part of the Class. Defendants knew or should have known that in addition to being directed to consumers of Coca-Cola, the Defendants' conduct was also directed to elder persons and disabled persons who were part of the Class. Plaintiff and other members of the Class are entitled to punitive damages pursuant to A.C.A. § 4-88-204.

147. Defendants' actions were willful, wanton, malicious, and in total disregard for the rights of the Plaintiff and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct as alleged herein would naturally and probably result in damages to Plaintiff and Class Members. Defendants continued their wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued their course of conduct for the purpose of causing Plaintiff and Class Members damages. Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

148. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendants sold to Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas, products that were not capable of being sold legally, and which have no economic value. Defendants' violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

149. As a direct and proximate cause of Defendants violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas were injured

when they paid good money for these illegal and worthless products. Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas have been damaged in an amount to be determined at trial.

150. As a result of Defendants' unlawful deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas any money paid for Coca-Cola. In addition, Plaintiff and the members of the Class who purchased Coca-Cola in Arkansas are entitled to recover their actual damages and punitive damages pursuant to A.C.A. § 4-88-204.

**SECOND CAUSE OF ACTION
(Breach of Express Warranty)**

151. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

152. Defendants' affirmations of fact and/or promises relating to their Coca-Cola products created express written warranties that the products would conform to Defendants' affirmations of fact and/or promises.

153. Alternatively, Defendants' descriptions of their Coca-Cola products became part of the bases of the bargains, creating express written warranties that the products purchased by Plaintiff and the other Class members would conform to Defendants' descriptions and specifications.

154. In fact, the Coca-Cola products purchased by Plaintiff did not so conform.

155. Defendants provided written warranties that their Coca-Cola products were labeled in compliance with state and federal law and were not misbranded under state and federal law. Defendants breached these express written warranties. Defendants also provided written warranties that their Coca-Cola products 1) contained no artificial flavors or added preservatives, 2) since 1886 had never contained artificial flavors or added preservatives and 3) were formulated according to the

original formula created in 1886. Defendants breached these express written warranties.

156. As a result of the foregoing, Plaintiff and the other Class members have suffered damages, in that the value of the products they purchased was less than warranted by Defendants.

157. Plaintiff assert this cause of action for violations of the laws of Arkansas pertaining to express warranties.

158. Defendants engaged in a scheme of offering Coca-Cola for sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling, and other promotional materials.

159. In furtherance of its plan and scheme, Defendants prepared and distributed within Arkansas and nationwide via product packaging and labeling, and other promotional materials, statements that misleadingly and deceptively represented the composition and nature of Coca-Cola.

160. Plaintiff and the Class were the intended targets of such representations.

161. Plaintiff and the Class reasonably relied on Defendants' representations.

162. Plaintiff and the Class were injured as a result of Defendants' breach of their express warranties about Coca-Cola.

THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

163. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

164. Implied in the purchase of Coca-Cola by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully resold.

165. Defendants knowingly and intentionally misbranded Coca-Cola products.

166. Defendants knew those Coca-Cola products were illegal.

167. When Defendants sold those products they impliedly warranted that the products were legal and could be lawfully resold.

168. Plaintiff would not have knowingly purchased products that were illegal and unsellable.

169. No reasonable consumer would knowingly purchase products that are illegal and unsellable.

170. The purchased Coca-Cola products were unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

171. In fact, these Coca-Cola products were illegal, misbranded, and economically worthless.

172. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal, and unsellable product.

173. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Coca-Cola products.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

174. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

175. In making representations of fact to Plaintiff and the other Class members about their Coca-Cola products, Defendants failed to fulfill their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendants.

176. Plaintiff and the other Class members, as a direct and proximate cause of Defendants' breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages in an amount to be proved at trial.

FIFTH CAUSE OF ACTION
(Negligence)

177. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

178. In making representations of fact to Plaintiff and the other Class members about their Coca-Cola products, Defendants failed to fulfill lawfully label or advertise their products their Coca-Cola products and violated their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendants.

179. Plaintiff and the other Class members, as a direct and proximate cause of Defendants' breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

180. As described above, Defendants' actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendants' illegal actions constitute negligence *per se*. Moreover, the statutory food labeling and misbranding provisions violated by Defendants are strict liability provisions.

181. As alleged above, Plaintiff and the Class were injured by Defendants' statutory violations and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendants' negligence.

SIXTH CAUSE OF ACTION
(Unjust Enrichment)

182. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

183. As a result of Defendants unlawful and deceptive actions described above, Defendants were enriched at the expense of Plaintiff and the Class through the payment of the purchase price for Coca-Cola.

184. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from the Plaintiff and the Class, in

light of the fact that the Coca-Cola purchased by Plaintiff and the Class was an illegal product and was not what Defendants represented it to be. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendants for Coca-Cola.

SEVENTH CAUSE OF ACTION
(Recovery of Funds Paid For Misbranded Products That Are Illegal To Sell)

185. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

186. The sale of a misbranded food product is an illegal act in Arkansas. Such a sale is expressly prohibited by Arkansas law.

187. The sale of a misbranded product violates the public policy of Arkansas.

188. The sale of a misbranded product in either Arkansas constitutes an illegal contract and is void under the laws of Arkansas.

189. Plaintiff and members of the Class were unaware that the Coca-Cola products purchased by Plaintiff and members of the Class were misbranded and thus illegal to sell or possess. Plaintiff and members of the Class thus lacked the factual information to indicate to Plaintiff and members of the Class that the sale of Coca-Cola in either Arkansas constituted an illegal act.

190. Plaintiff and members of the Class were justifiably ignorant of facts of which the Defendants were not ignorant.

191. Plaintiff and members of the Class were not acquainted with the statutory regulations relating to the Defendants' soda business and were justified in presuming special knowledge by the Defendants of such regulations.

192. Plaintiff and the members of the Class were thus not *in pari delicto* with the Defendants who had superior knowledge of facts of which the Plaintiff and members of the Class were unaware.

193. Plaintiffs and the members of the Class are thus entitled to recovery the funds they expended to purchase the Defendants' Coca-Cola products.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment That Defendants Violated Federal and State Laws Regarding
Mislabeled and misbranded Food Products)

194. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

195. The sale of a misbranded food product is an illegal act in Arkansas. Such a sale is expressly prohibited by Federal and Arkansas law.

196. The sale of a misbranded product violates the public policy of Arkansas.

197. The sale of a misbranded product in Arkansas constitutes an illegal contract and is void under Federal law and the laws of Arkansas.

198. Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas further seek to enjoin such unlawful deceptive and unconscionable trade practices as described above. Each of the Class members who purchased Coca-Cola in Arkansas will be irreparably harmed unless the unlawful actions of the Defendants are enjoined in that Defendants will continue to falsely and misleadingly and unlawfully conceal the artificial flavors and chemical preservatives contained in Coca-Cola and to illegally manufacture, distribute and sell this illegally labeled, misbranded product in violation of the food and drug laws that prohibit such actions. Plaintiff and other members of the Class who purchased Coca-Cola in Arkansas therefore seek to enjoin the manufacture, distribution or sale of any mislabeled or misbranded Coca-Cola in Arkansas and further request an order granting them injunctive relief ordering appropriate corrective advertising and appropriate disclosures on the labeling in advertising, marketing and promotion of Coca-Cola in Arkansas.

199. A case or controversy exists among Plaintiffs, the Class and Defendants as to applicability of the federal and state laws as to each Defendant.

200. As a direct and proximate result of Defendants' conduct, Plaintiff and Plaintiff Class have suffered and will continue to suffer damages.

201. Pursuant to Arkansas Code Ann. § 16-111-103(a), Plaintiff, on behalf of herself and the Class, requests a declaration of rights and duties with respect to all Defendants, and an Order enjoining Defendants from continuing to market, advertise, distribute, and sell Coca-Cola in the unlawful manner described herein; and ordering Defendants to engage in corrective action.

202. Absent such injunctive relief Defendants will continue to illegally manufacture, distribute and sell mislabeled and misbranded Coca-Cola to the detriment of consumers in the state of Arkansas.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendants as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled pursuant to A.C.A. § 4-88-101 *et seq.*

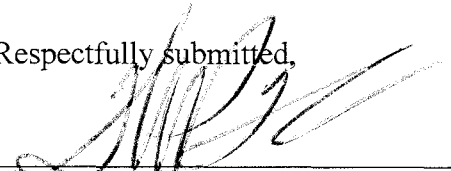
C. For an order requiring Defendants to immediately cease and desist from selling Coca-Cola in violation of law; enjoining Defendants from continuing to market, advertise, distribute, and sell Coca-Cola in the unlawful manner described herein; and ordering Defendants to engage in corrective action;

D. For all equitable remedies available pursuant to A.C.A. § 4-88-101 *et seq.* and as a result of the fact that the sale of a misbranded product is an illegal contract that is void under Arkansas law.

- E. For an order awarding attorneys' fees and costs;
- F. For an order awarding punitive damages;
- G. For an order awarding pre-judgment and post-judgment interest; and
- H. For an order providing such further relief as this Court deems proper.

Dated: December 2, 2013

Respectfully submitted,



Thomas P. Thrash
Marcus N. Bozeman
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Telephone: (501) 374-1058
Facsimile: (501) 374-2222
Attorneys for Plaintiff

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mary Rankin, individually and on behalf of all others similarly situated

DEFENDANTS

The Coca-Cola Company and Coca-Cola Refreshments USA, Inc.

(b) County of Residence of First Listed Plaintiff Pulaski

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas P. Thrash & Marcus N. Bozeman

Thrash Law Firm, P.A.

1101 Garland Street, Little Rock, AR 72201 (501) 374-1058

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Food, Drug & Cosmetic Act - FDCA 21 U.S.C. § 343

Brief description of cause:

Violation of the Arkansas Deceptive Trade Practices Act - A.C.A. § 4-88-107 and 108

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/02/2013

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____