

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

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Case No.

BRISTOL I. AUMILLER and all  
Others similarly situated,

JURY TRIAL DEMANDED

*Plaintiff,*

v.

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

*Defendants.*

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**CLASS ACTION COMPLAINT**

Plaintiff Bristol Aumiller (“Plaintiff”), individually, and on behalf of all similarly situated persons, through their undersigned attorneys, bring this lawsuit against defendants The Coca-Cola Company and Coca-Cola Refreshments USA, Inc. (Collectively “Defendants”).

**SUMMARY OF THE CASE**

1. The Coca-Cola Company is one of the world’s largest beverage companies.
2. Defendants receive a large percentage of their revenue from the sale of containers of Coca-Cola, the world’s most popular soft drink.
3. Containers of Coca-Cola, however, fail to state that they contain artificial flavoring or chemical preservatives.
4. Indeed, many containers of Coca-Cola affirmatively and falsely state that they contain no artificial flavoring or chemical preservatives.

5. Such false statements and omissions violate both federal law and Florida state law and render these products legally misbranded and illegal to manufacture, distribute, or sell to consumers.

6. Defendants are well aware of the health concerns of consumers and knowingly and intentionally engage in such unlawful conduct to deceive consumers and increase profits.

7. Plaintiff, individually, and on behalf of other consumers who purchased Coca-Cola, now bring 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.

8. Federal and Florida laws regulate the content of labels on packaged food. The federal Food, Drug & Cosmetic Act (“FDCA”) and regulations promulgated thereunder, bar food manufacturers and distributors like the Defendants from selling misbranded and illegal products that contain labels that fail to accurately disclose the nature of the contents in those products.

9. The FDCA and regulations promulgated thereunder are expressly adopted in Florida’s Food Safety Act. *See* Florida Food Safety Act § 500 et seq.

10. Under federal and Florida state law, products such as Coca-Cola are “misbranded” if their “labeling is false or misleading in any particular,” or if it does not contain certain information on its labeling. *See* 21 U.S.C. § 343(a); Florida Food Safety Act § 500 et seq.

11. Further, any violation of the Florida Food Safety Act also constitutes a violation of Florida’s Consumer Protection Statutes §501.201-§501.213, Florida Deceptive and Unfair Trade Practice Act, Breach of Express Warranty; Merchantability; Usage of Trade Pursuant to §672.314 Florida Statutes, Breach of Implied Warranty pursuant to Uniform Commercial Code §2-314 and Unjust Enrichment. In this action, Plaintiff asserts claims under these state statutes, as well as under common law.

12. Under both the FDCA and the Florida Food Safety Act, Defendants are required to disclose that a product ingredient is being used as artificial flavoring or as a chemical preservative.

13. Coca-Cola contains phosphoric acid, an artificial, manmade chemical that Defendants use both for flavoring and as a preservative.

14. Defendants however, knowingly and intentionally fail to disclose on Coca-Cola containers that phosphoric acid is used in Coca-Cola as either an artificial flavoring or as a chemical preservative.

15. On 2-liter bottles, 24-packs of 12 ounce cans, and 12-packs of 12 ounce cans of Coca-Cola (all of which were purchased by Plaintiff), Defendants knowingly and intentionally falsely state, “no artificial flavors, no preservatives added. Since 1886.”

16. For the reasons stated herein, all containers of Coca-Cola sold in the United States are misbranded and illegal.

17. Plaintiff now seeks to stop Defendants’ unlawful conduct.

### **PARTIES**

18. Plaintiff Bristol Aumiller is a resident of Tallahassee, Florida.

19. Plaintiff purchased more than \$25.00 worth of Coca-Cola in Tallahassee or Leon County, within the four years preceding the filing of this action (the “Class Period”).

20. Defendant The Coca-Cola Company is a Delaware corporation, with its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia.

21. The Coca-Cola Company is the world’s largest beverage company.

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

23. Defendant Coca-Cola Refreshments USA, Inc. is a Delaware corporation with its principal place of business at One Coca-Cola Plaza, Atlanta, Georgia.

24. Coca-Cola Refreshments USA, Inc. is the Coca-Cola Company's bottling and customer service organization for North America.

25. 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. This includes Coca-Cola.

### **JURISDICTION AND VENUE**

26. 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 Plaintiff is a citizen of a State different from a defendant; and (3) the number of members of all proposed plaintiff classes in the aggregate is greater than 100.

27. The Court has personal jurisdiction over Defendants because a substantial portion of the wrongdoings alleged herein occurred in Florida. Defendants also has sufficient minimum contacts with Florida, and has otherwise intentionally availed itself of the markets in Florida 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.

28. Venue is proper in this District pursuant to 28 U.S.C. § 139(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.

## FACT RELEVANT TO ALL CLAIMS

### **Coca-Cola products are branded and illegal**

29. All containers of Coca-Cola sold in the United States are misbranded and illegal.
30. Their sale constitutes violations of both the FDCA and the Florida Food Safety Act.
31. Defendants knowingly and intentionally sold these misbranded products to consumers (including Plaintiff) with the intent to deceive.
32. Plaintiff purchased Coca-Cola within the Class Period.
33. Plaintiff Bristol Aumiller purchased Coca-Cola in 2 liter bottles, 1 liter bottles, 24-packs of 12 ounces cans, 12-packs of 12 ounce cans, and 8-packs of 8 ounce cans.
34. Containers of Coca-Cola do not state that any Coca-Cola ingredients are used as artificial flavoring or as a chemical preservative.
35. Label on 2 liter bottles, 1 liter bottles, 24-packs of 12 ounces cans, 12-packs of 12 ounce cans, and 8-packs of 8 ounce cans of Coca-Cola state, “no artificial flavors. No preservatives added. Since 1886.”
36. The ingredients in Coca-Cola include phosphoric acid.
37. Coca-Cola’s own website states: “Phosphoric acid is a used in certain soft drink, including Coca-Cola, to add tartness to the beverage. Phosphoric acid contains phosphorus, one of the basic elements of nature and essential nutrient. Phosphorus is a major component of bones.”
38. Coca-Cola’s own website also discusses acidulants 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 tarts taste which helps to balance the sweetness. They also help to reduce the growth of microorganisms (i.e., protect the food from spoiling).”

39. Although Coca-Cola’s website notes that “[p]hosphorus is a major component of bones,” phosphoric acid and phosphorus are two different things.

40. The phosphoric acid added to Coca-Cola is a man-made substance.

41. Phosphoric acid is used in Coca-Cola as an artificial flavoring.

42. Phosphoric acid is used in Coca-Cola as a chemical preservative.

43. 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 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.

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

45. 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.

46. 21 C.F.R. § 101.22(a)(3) provides that, “The term *natural flavor* or *natural flavoring* meanings 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 pant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function is food is flavoring rather than nutritional.

47. A significant function of phosphoric acid in Coca-Cola is flavoring rather than nutritional.

48. 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.

49. 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.”

50. As used in Coca-Cola, phosphoric acid tends to prevent or retard deterioration thereof.

51. 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.

52. 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.”

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

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

55. All provisions in 21 C.F.R. § 101.22, including those set forth above, are adopted in Florida's Food Safety Act.

56. Because Coca-Cola containers do not contain statements that they contain artificial flavoring or chemical preservatives, they are misbranded under both the FDCA and the Florida Food Safety Act.

57. Certain Coca-Cola containers also contain the affirmative statement that there are "no artificial favors. No preservatives added."

58. This statement is false.

59. Because these Coca-Cola containers falsely represent that they contain no artificial flavors or preservatives, they are misbranded under both the FDCA and the Florida Food Safety Act.

60. 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.

61. 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.

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

63. Had Plaintiff known that Coca-Cola was an illegally sold product, she would not have purchased Coca-Cola.



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

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

66. Plaintiff's reliance was reasonable.

67. A reasonable consumer would have been misled by the Defendant's actions.

68. With respect to each of the aforementioned misbranded Coca-Cola products, Defendants have violated the FDCA and regulations promulgated thereunder.

69. As a result, Defendants have violated the Florida Food Safety Act.

70. *Inter alia*, Defendants have specifically violated the following Florida Food Safety Act provisions.

71. Defendants have violated Florida Food Safety Act § 500 et seq. because Coca-Cola products bear or contain artificial flavoring, artificial coloring, or chemical preservative without labeling stating that fact.

72. Defendants have violated Florida Food Safety Act § 500 et seq. because words, statements, or other information required pursuant to the Florida Food Safety Act 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.

73. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful to disseminate false or misleading food advertisements that include statements on

products and product packaging or labeling or any other medium used to directly or indirectly induce the purchase of a food product.

74. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful to manufacture, sell, deliver, hold, or offer to sell any falsely advertised food.

75. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful to manufacture, sell, deliver, hold, or offer to sell any falsely advertised food.

76. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

77. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful for any person to misbrand any food.

78. Defendants have violated Florida Food Safety Act § 500 et seq., which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer any such food for delivery.

79. Defendants have violate Florida Food Safety Act § 500 et seq. because their labeling is false and misleading in one or more ways.

80. Defendants have violated Florida Food Safety Act § 500 et seq. because their labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and the regulations promulgated thereunder.

81. Defendants have violated Florida Food Safety Act § 500 et seq. because their labeling fails to conform to the requirements for nutrients content and health claims set forth in 21 U.S.C. § 343(r) and the regulations promulgated thereunder.

### **Purchasers of Misbranded Coca-Cola Have Been Injured**

82. Plaintiff read and reasonably relied on the labels as described herein when buying Coca-Cola.

83. Plaintiff relied on Defendant's labeling, and based and justified the decision to purchase Coca-Cola, in substantial part, on these labels.

84. At point of sale, Plaintiff did not know, and had no reason to know, that Coca-Cola contained artificial flavoring or chemical preservatives.

85. At point of sale, Plaintiff did not know, and had no reason to know, that Coca-Cola products were unlawful and misbranded.

86. Had Plaintiff been aware of these material facts, she would not have bought Coca-Cola.

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

88. Defendant's labeling as alleged herein is false and misleading and was designed to increase sales of the Coca-Cola.

89. Defendants' misrepresentations are part of its systematic labeling practice.

90. A reasonable person would attach importance to Defendants' misrepresentations in determining whether to purchase Coca-Cola.

91. Plaintiff's purchase of Coca-Cola damaged her.

92. Such purchases damages Plaintiff because, *inter alia*, misbranded products are illegal and have no economic value.

93. Such purchases damages Plaintiff because, *inter alia*, Plaintiff had cheaper alternatives available and paid an unwarranted premium for Coca-Cola.

94. All purchasers of Coca-Cola were injured.

### CLASS ACTION ALLEGATIONS

95. 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:

All persons nationwide who, within the Class Period, purchased Coca-Cola (the "Class").

96. Alternatively, Plaintiff brings this action on behalf of the following class: All persons in Florida who, within the Class Period, purchased Coca-Cola.

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

98. 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.

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

100. **Common Questions Predominate:** The 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 to 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 flavoring and preservatives in Coca-Cola;

d. Whether Defendant violated Florida's Consumer Protection Statutes §501.201-§501.213, Florida Deceptive and Unfair Trade Practice Act, Breach of Express Warranty; Merchantability; Usage of Trade Pursuant to §672.314 Florida Statutes, Breach of Implied Warranty pursuant to Uniform Commercial Code §2-314, the Florida Food Safety Act; or the FDCA and regulations promulgated thereunder;

e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;

f. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class; and

g. Whether Defendants were unjustly enriched by their deceptive practices.

101. **Typicality:** Plaintiff's claims are typical of the claims of the Class because Plaintiff purchase Defendants' products during the Class Period. Defendant's 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 Defendant's 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 a based on the same legal theories.

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

103. **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.

104. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has 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.

105. 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.

106. Plaintiff and her 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.

107. Plaintiff is a member of the Class she 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' claims are typical and representative of the Class.

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

109. 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 their counsel will fairly and adequately represent and protect the interests of the Class.

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

## **CAUSES OF ACTION**

### **COUNT I**

**VIOLATIONS OF THE FLORIDA FOOD SAFETY ACT  
PURSUANT TO STATUTE §500 et seq.**

111. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

112. This cause of action is brought pursuant to Chapter 500 of the Florida Food Safety Act §500 et seq. (the “Act”). Coca-Cola products are goods within the meaning of the Act.

113. Defendants violated and continue to violate the Act by engaging in the following practices proscribed by §500.001 et seq. (2013):

(a) the dissemination of any false advertisement of [Coca-Cola products]... [the] advertisement is alleged to be false because it is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to consumers.

(b) the distribution in commerce of [Coca-Cola products with] labeling or advertis[ment that] is in violation of this part.

(c) the manufacturing, repackaging, packaging, selling, delivery, holding, or offering for sale of [Coca-Cola products in]which the advertising or labeling is false or misleading.

(d) the advertising of [Coca-Cola products] that is adulterated or misbranded.

(e) the receiving in commerce of [Coca-Cola products] that is falsely advertised or labeled or the delivering or proffering for delivery of [Coca-Cola products]

114. Defendants violated the Act by representing through their advertisement and labeling that their containers of Coca-Cola, and Coca-Cola products, were safe and effective as



described above when they knew, or should have known, that the representations and advertisements were unsubstantiated, false and misleading.

115. Pursuant to Florida Statutes §500.001 et seq. (2013) Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

## COUNT II

### **VIOLATION OF FLORIDA CONSUMER PROTECTION STATUTES §501.201- §501.213, FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

116. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

117. Defendants' conduct constitutes unlawful business acts and practices.

118. Defendants sold Coca-Cola in Florida and throughout the United States during the Class Period.

119. Florida Consumer Protection Statute §501.204 (2012) prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. For the reasons discussed above. Defendants have engaged in unfair, deceptive, untrue and misleading advertising in violation of Florida Consumer Protection Statute §501.

120. The Florida Deceptive and Unfair Trade Practices Act also prohibits any "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in conduct of any trade or commerce." Defendants have violated §501.204's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and violating 21

U.S.C. §342, 21 U.S.C. §343, 21 U.S.C. §379aa-1, 15 U.S.C. §45 (a)(I), 49 Fed. Reg. 30999 (Aug. 2, 1984), Federal Food, Drug and Cosmetic Act §402(f)(1)(A), and the common law.

121. Plaintiff and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and constitutes to this date.

122. Defendants' acts, omissions, misrepresentations, practices and non-disclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of The Florida Deceptive and Unfair Trade Practices Act §501.201-§501.213 *et seq.* in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributed to such conduct.

123. As stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair competition, and truth-in-advertising laws in Florida resulting in harm to consumers. Defendants' conduct constitutes violations of the public policies against engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers as proscribed by Florida Deceptive and Unfair Trade Practices Act §501.201-§501.213.

124. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

125. Defendants' claims, nondisclosures and misleading statements, as more fully set forth above and collectively as a scheme, were false, misleading and likely to deceive the consuming public within the meaning of Florida Deceptive and Unfair Trade Practices Act.

126. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff and Class members have suffered injury in fact and have lost money as a result of Defendants' unlawful, unfair and fraudulent conduct.

127. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

128. Plaintiff, on behalf of herself, all others similarly situated, and the general public, seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competitions, an injunction prohibiting Defendants from containing such practices, corrective advertising, including providing notification of the product's health risks, and all other relief this Court deems appropriate, consistent with Florida Deceptive and Unfair Trade Practices Act.

### **COUNT III**

#### **BREACH OF EXPRESS WARRANTY; MERCHANTABILITY; USAGE OF TRADE PRUSUANT TO § 672.314 FLORIDA STATUTES**

129. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

130. Plaintiff, and each member of the Class, formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased Coca-Cola products. The terms of that contract include the promises and affirmations of fact made by Defendants on Coca-Cola products packaging and through their marketing campaign, as described above. Coca-Cola product packaging and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one end, and Defendants on the other.

131. At all times, and as detailed above, Defendants expressly warranted that Coca-Cola products were safe, effective and fit for use by consumers and users, including Plaintiff and the Class, for their intended use, that they were of merchantable quality, that they did not produce dangerous side effects, that they were made from natural ingredients.

132. At the time of making these and other warranties with respect to the safety, efficacy, testing and characteristics of Coca-Cola products, Defendants knew or should have known that despite the above and other warranties alleged herein, it had breached the terms of her contract, including the warranties with Plaintiff and the Class by providing Coca-Cola products that contained artificial flavoring or chemical preservatives.

133. Members of the public, including Plaintiff, reasonably relied upon the skill and judgment of Defendants, and upon said express warranties in purchasing Coca-Cola products.

134. Plaintiff and the Class purchased Coca-Cola products for without knowledge that these products contained artificial flavoring or chemical preservatives.

135. Due to Defendant's wrongful conduct as alleged herein, Plaintiff and the Class could not have known about the nature of the risks and side effects associated with Coca-Cola Products.

136. As a direct and proximate result of Defendant's breach of their contract, including the breach of express warranties with respect to Coca-Cola products, Plaintiff suffered injuries as set forth above, entitling Plaintiff to judgment and equitable relief against Defendants, as well as restitution, including all monies paid for Coca-Cola products and disgorgement of profits from Defendants received from sales of Coca-Cola products, attorneys' fees, punitive damages, and costs, as set forth in the Prayer for Relief.

137. All conditions precedent to Defendants' liability under this contract, including notice, have been performed by Plaintiff and the Class.

#### COUNT IV

##### **BREACH OF IMPLIED WARRANTY PURSUANT TO UNIFORM COMMERCIAL CODE §2-314**

138. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

139. The Uniform Commercial Code §2-314 provides that, unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of the kind.

140. At all times, Florida and the following 48 states including the District of Columbia, have codified and adopted the provisions the Uniform Commercial Code governing the implied warranty of merchantability. Ala. Code §7-2-314; Alaska Stat. §45.02.314; Ariz. Rev. Stat. Ann. §47-2314; Ark. Code Ann §4-2 314; Cal. Comm. Code §2314; Colo. Rev. St §4-2-314; Conn. Gen. Stat. Ann. §42a-2-314; 6 Del. C. §2-314; D.C. Code §28:2-314; Fla. Stat. Ann §672.314; Ga. Code. Ann. §11-2-314; Haw. Rev. Stat. §490:2-314; Id. Code §28-2- 314; Ill. Comp. Stat. Ann. Ch 810, 5/2-314; Ind. Code. Ann. §26-1-2-314; Iowa Code Ann. §554.2314; Kansas Stat. Ann. §84-2-314; Ky. Rev. Stat. Ann §355.2-314; La. Civ. Code Ann. Art. §2520; 11 Maine Rev. Stat. Ann. §2-314; Md. Code Ann. §2-314; Mass. Gen. Laws. Ch. 106 §2-314; Mich. Comp. Laws Ann. §440.2.314; Minn. Stat. Ann §336.2-314; Miss. Code. Ann. §75-2-314; Missouri Rev. Stat §400.2-314; Mont. Code. Ann §30-2-314; Nev. Rev. Stat. U.C.C §104.2314; N.H. Rev. Ann. §382-A:2-314; N.J. Stat. Ann. §12A:2-314; N.M. Stat. Ann §55-2-314; N.Y. U.C.C. Law 2-314; N.C. Gen. Stat. Ann §25-2-314; N.D. Stat. §41-02-314; Ohio Rev. Code Ann. §1302.27; Okla. Stat. §2-314; Or. Rev. Stat. §72.3140; Pa. Stat. Ann §2314; R.I. Gen Laws

§6A-2-314; S.C. Code Ann. §36-2-314; S.D. Stat. 57A-2-314; Tenn. Code Ann. §47-2-314; Tex. Bus. & Com. Code Ann. §2-314; Ut. Code Ann. §70A-2-314; VA Code §8.2-314; Vt. Stat. Ann §9A-2-314; W.VA. Code §46-2-314; Wis. Stat. Ann §402.314; and Wyo. Stat. §34.1-2-314

141. Coca-Cola products are “goods” as defined in the various states’ commercial codes governing the implied warranty of merchantability.

142. As designers, manufacturers, licensors, producers, marketers, and sellers of Coca-Cola products, Defendants are “merchants” within the meaning of the various states’ commercial codes governing the implied warranty of merchantability.

143. By placing Coca-Cola products in the stream of commerce, Defendants impliedly warranted that Coca-Cola products are reasonably safe and that all claims on their packaging were true, i.e. contained no artificial flavoring or chemical preservatives.

144. As merchants of Coca-Cola products, Defendants knew that purchasers relied upon them to design, manufacture, license and sell products that were reasonably safe and contained no artificial flavoring or chemical preservatives, and in fact members of the public, including Plaintiff, reasonably relied upon the skill and judgment of Defendants and upon said implied warranties in purchasing and consuming Coca-Cola products.

145. Plaintiff and the Class members purchased Coca-Cola products for their intended purpose.

146. Coca-Cola products’ defects were not open or obvious to consumers, including Plaintiff and the Class, who could not have known about the nature of the risks and contents of Coca-Cola products until after they purchased them.

147. As a direct and proximate result of Defendants’ breach or implied warranties, Plaintiff and Class members have sustained injuries by purchasing Coca-Cola products, which

were not safe or effective as represented, thus entitling Plaintiff to judgment and equitable relief against Defendants, as well as restitution, including all monies paid for Coca-Cola products and disgorgement of profits from Defendants received from sales of Coca-Cola products, attorneys' fees, punitive damages, and costs, as set forth in the Prayer for Relief.

## **COUNT V**

### **UNJUST ENRICHMENT**

148. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

149. As a result of Defendants' fraudulent and misleading labeling, advertising, marketing, and sales of Coca-Cola, Defendants were enriched at the expense of Plaintiff and the Class.

150. Defendants sold Coca-Cola to Plaintiff and the Class that was not capable of being sold and had no economic value.

151. It would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits it received from Plaintiff and the Class in light of the fact that the products were not what Defendants purported them to be.

152. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiff and the Class of all monies paid to Defendants for the products at issue.

153. As a direct and proximate result of Defendants' actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

### **JURY DEMAND**

Plaintiff hereby demand a trial by jury of her claims.

**PRAYER FOR RELIEF**

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

- A. For an order certifying this case as a Class Action and appointing Plaintiff and their counsel to represent the Class;
- B. That the Court adjudge and decree that Defendants have engaged in the conduct alleged herein;
- C. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;
- D. Ordering Defendants to engage in a corrective advertising campaign;
- E. Awarding Plaintiff and the proposed Class members damages;
- F. Awarding restitution and disgorgement to Plaintiff and the other Class members;
- G. Awarding Plaintiff and the Classes punitive damages;
- H. Awarding Plaintiff treble damages;
- I. Awarding attorneys' fees and costs; and
- J. Providing such further relief as may be just and proper.

Dated: January 9, 2014

Respectfully submitted,

/s/ Tim Howard  
Tim Howard, J.D., Ph.D.  
Florida Counsel for the Plaintiff:  
Florida Bar No.: 655325  
Howard & Associates, P.A.



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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



BRISTOL I. AUMILLER, et al.

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Plaintiff(s)

v.

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

Civil Action No.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Coca-Cola Company
CT Corporation System
1200 S. Pine Island Rd
Planation, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tim Howard
Howard & Associates, P.A.
2120 Killarney Way, Suite 125
Tallahassee, FL 32309
(850) 298-4455

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



BRISTOL I. AUMILLER, et al.

Plaintiff(s)

v.

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

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Coca-Cola Refreshments USA, Inc. Corporation Services Company 1201 Hays Street Tallahassee, FL 32301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Time Howard Howard & Associates, P.A. 2120 Killarney Way, Suite 125 Tallahassee, FL 32309 (850) 298-4455

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: