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15 Attorneys for Defendants
16 BCI COCA-COLA BOTTLING COMPANY OF
17 LOS ANGELES and COCA-COLA BOTTLING
18 COMPANY OF SONORA, CALIFORNIA, INC.

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

21 PAUL MERRITT, on Behalf of Himself
22 and All Others Similarly Situated,

23 Plaintiff,

24 v.

25 BCI COCA-COLA BOTTLING
26 COMPANY OF LOS ANGELES; COCA-
27 COLA BOTTLING COMPANY OF
28 SONORA, CALIFORNIA, INC., and
DOES 1-100, Inclusive

Defendants.

Case No. **'13CV2749 DMS WVG**

NOTICE OF REMOVAL

1 **TO THE JUDGES FOR THE UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

3 PLEASE TAKE NOTICE that Defendants BCI Coca-Cola Bottling Company
4 of Los Angeles (“Coca-Cola Bottling of LA”), and Coca-Cola Bottling Company of
5 Sonora, California, Inc. (“Coca-Cola Bottling of Sonora”), hereby remove this action
6 pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 from the Superior Court for the State
7 of California for the County of San Diego to the United States District Court for the
8 Southern District of California. The grounds for removal are set forth below.

9 1. On October 17, 2013, Plaintiff Paul Merritt (“Merritt”) filed a Class
10 Action Complaint in the Superior Court for the State of California for the County of
11 San Diego captioned *Paul Merritt, on Behalf of Himself and All Others Similarly*
12 *Situated vs. BCI Coca-Cola Bottling Company of Los Angeles; Coca-Cola Bottling*
13 *Company of Sonora, California, Inc., and DOES 1-100, Inclusive*, No. 37-2013-
14 00071687-CU-BT-CTL.

15 2. A true and correct copy of the Complaint is attached hereto as Ex. 1 to
16 the Decl. of Tammy B. Webb.

17 3. The Complaint is dated October, 17, 2013, and Defendants received
18 notice of the Complaint on October 18, 2013.

19 4. No proof of service has been filed by Merritt in the Superior Court for the
20 State of California, and, while Merritt has informed counsel for Defendants that the
21 Complaint was served, Defendants have not been able to confirm that service was
22 properly effectuated.

23 5. Nevertheless, this Notice of Removal is timely because it is filed within
24 thirty days of Defendants’ receipt of the Complaint by service or otherwise. *See* 28
25 U.S.C. § 1446(b).

26 **PLAINTIFF’S COMPLAINT**

27 6. Merritt alleges that he is a resident of California. Complaint ¶ 18.

1 7. Defendants are subsidiaries of The Coca-Cola Company with
2 responsibility for bottling and distributing Coca-Cola products in parts of California.
3 Complaint ¶ 20.

4 8. Merritt's claims relate to allegedly misleading business practices with
5 respect to the labeling and advertising for the popular soft drink Coca-Cola.
6 Specifically, Merritt alleges, among other things, that Coca-Cola is "misbranded and
7 illegal" because the product's labeling does not identify phosphoric acid as an
8 artificial flavor or chemical preservative, which Merritt alleges is required under the
9 federal Food, Drug and Cosmetic Act and implementing regulations published by the
10 U.S. Food and Drug Administration. Complaint ¶¶ 29-62.

11 9. Merritt asserts claims under the Unfair Competition Law ("UCL"), Cal.
12 Bus. & Prof. Code §§ 17200 *et seq.* (Counts I-III), False Advertising Law ("FAL"),
13 Cal. Bus. & Prof. Code §§ 17500 *et seq.* (Count IV-V), and Consumer Legal
14 Remedies Act ("CLRA"), Civil Code § 1750 *et seq.* (Count VI). Complaint ¶¶ 107-
15 174.

16 10. Merritt also asserts a common law claim of "Unjust Enrichment/Quasi-
17 Contract" (Count VII). Complaint ¶¶ 175-180.

18 11. In Counts I-V, Merritt seeks disgorgement of alleged "ill-gotten gains"
19 and "money paid for Coca-Cola soda" by himself and putative class members, and
20 injunctive relief. Complaint ¶¶ 117, 127, 134, 145, 156.

21 12. In Count VI, Merritt seeks actual and punitive damages, injunctive relief,
22 restitution, attorneys' fees, and "any other relief deemed appropriate and proper by the
23 Court" Complaint ¶¶ 161-163.

24 13. In Count VII, Merritt seeks "restitution to Plaintiff and the Class of all
25 monies paid to Defendants" for Coca-Cola Classic. Complaint ¶ 179.

26 14. Merritt seeks to litigate his claims on behalf of himself and a proposed
27 class defined as:

All persons who, while residing in California and within four years from the commencement of this law suit (the “Class Period”), purchased Coca-Cola soda (the “Class”) in California.

Complaint ¶ 90.

15. As explained below, this Court has jurisdiction over Merritt’s action, and it is properly removed to this Court.

**BASIS OF FEDERAL JURISDICTION UNDER
CLASS ACTION FAIRNESS ACT**

16. This action is removable to this Court because federal diversity jurisdiction, 28 U.S.C. § 1332, exists over Merritt’s claims pursuant to the Class Action Fairness Act of 2005, Pub L. 109-2, 119 Stat. 4 (2005) (“CAFA”), codified in various sections of Title 28 of the United States Code including 28 U.S.C. §§ 1332(d) & 1453.

17. CAFA became effective on February 18, 2005, and applies to any civil action on or after that date. CAFA applies to this action because it was commenced on October 17, 2013.

18. Congress enacted CAFA to enlarge federal jurisdiction over proposed class actions. CAFA provides that a class action against a non-governmental entity may be removed to federal court if: (a) the number of proposed class members is not less than 100; (b) any member of the proposed class is a citizen of a state different from any defendant; and (c) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. See 28 U.S.C. §§ 1332(d)(2), 1332(d)(5) & 1453(b). As set forth below, all of the requirements for removal are satisfied.

Class Size

19. CAFA’s first requirement, that the proposed class contain at least 100 members, 28 U.S.C. § 1332 (d)(5), is satisfied.

1 20. Merritt's proposed classes contain "[a]ll persons who, while residing in
2 California and within four years from the commencement of this law suit (the "Class
3 Period"), purchased Coca-Cola soda . . . in California." Complaint ¶ 90.

4 21. Coca-Cola is the most popular soft drink in the world, and, according to
5 the Complaint, the number of people in the purported class "is potentially in the
6 millions." Complaint ¶ 93.

7 22. Merritt's proposed class therefore contains at least 100 members.

8 **Minimal Diversity of Citizenship**

9 23. CAFA's second requirement, that any one member of the proposed class
10 be a citizen of a state different from any defendant, is satisfied. *See* 28 U.S.C. §
11 1332(d)(2).

12 24. Merritt alleges that he resides in California. Complaint ¶ 18. The
13 proposed class includes all residents of California who purchased Coca-Cola products
14 in the last four years. Complaint ¶ 90. As such, Merritt and/or many members of the
15 putative class are citizens of California.

16 25. At least one Defendant in this action is a citizen of a state other than
17 California. Specifically, Defendant Coca-Cola Bottling of Los Angeles is a Delaware
18 corporation with its "principal place of business located at One Coca-Cola Plaza,
19 Atlanta, Georgia." Complaint ¶ 20. A true and correct copy of a page from the
20 California Secretary of State's website, which reflects BCI Coca-Cola Bottling of Los
21 Angeles's state of incorporation and place of business, is attached as Ex. 2. to the
22 Decl. of Tammy B. Webb.

23 26. Diversity therefore exists between "any one member" of the proposed
24 class and "any defendant" in satisfaction of 28 U.S.C. § 1332(d)(2).

25 **Amount in Controversy**

26 27. CAFA's third requirement, that the aggregate amount in controversy
27 exceed \$5 million exclusive of interest and costs, 28 U.S.C. § 1332(d)(2), is satisfied.

1 28. Although Defendants dispute liability and damages, Merritt’s claims on
2 behalf of himself and his proposed class for monetary relief, if granted, would exceed
3 \$5 million.

4 29. Merritt seeks disgorgement, restitution, and punitive damages.
5 Complaint ¶¶ 117, 127, 134, 145, 156, 161-163, 179. Even if the Court looks only to
6 Merritt’s claim for disgorgement of “money paid for Coca-Cola soda” by himself and
7 putative class members, the \$5 million amount in controversy threshold is satisfied.
8 Complaint ¶¶ 117, 127, 134, 145, 156.

9 30. Consumers purchase more than 1.8 billion servings of Coca-Cola every
10 day. Complaint ¶ 21.

11 31. California residents purchased well in excess of \$5 million of Coca-Cola
12 products in 2012 alone. Revenues from “money paid for Coca-Cola” in California
13 during the class period, therefore, exceed \$5 million.

14 32. A declaration from a corporate employee of Defendants’ parent company
15 verifying that revenues from the sale of Coca-Cola products in California during the
16 class period exceed \$5 million is attached as Ex. 3 to the Decl. of Tammy B. Webb.

17 33. The amount in controversy threshold is met.

18 34. For all of the foregoing reasons, this action is properly removed to this
19 Court.

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1 WHEREFORE, Defendants in the above-titled action, respectfully remove this
2 action from the Superior Court for the State of California for the County of San Diego
3 (Case No. 37-2013-00071687-CU-BT-CTL), to this Court pursuant to 28 U.S.C. §§
4 1332, 1441, and 1446. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of
5 Removal is being contemporaneously filed with the Clerk of the Superior Court for
6 the State of California for the County of San Diego and served upon plaintiff.

7
8 Dated: November 15, 2013

SHOOK, HARDY & BACON L.L.P.

9
10 By: /s/ Tammy B. Webb
11 Tammy B. Webb

12 Attorneys for Defendants BCI
13 Coca-Cola Bottling Company of Los
14 Angeles and Coca-Cola Bottling
Company of Sonora, California, Inc.

JS 44 (Rev. 12/12)

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

PAUL MERRITT

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jeffrey R. Krinsk, Esq. / Mark Knutson, Esq. / William R. Restis, Esq.
FINKELSTEIN & KRINSK LLP, 501 W. Broadway, Ste. 1250
San Diego, CA 92101; Tel: 619.238.1333; Fax: 619.238.5425

DEFENDANTS

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES and
COCA-COLA BOTTLING COMPANY OF SONORA, CA, INC.

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

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

Attorneys (If Known) **'13CV2749 DMS WVG**
Tammy B. Webb, SBN 227593
SHOOK, HARDY & BACON L.L.P., One Montgomery, Ste. 2700
San Francisco, CA 94104; Tel: 415.544.1900; Fax: 415.391.0281

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 checked="" 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 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	PERSONAL INJURY <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 checked="" 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 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

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 ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. 1332 and Class Action Fairness Act 28 U.S.C. 1332 & 1453
 Brief description of cause:
 Consumer fraud class action allege misbranding of Coca-Cola

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 Hon. Jeffrey S. White, ND of California DOCKET NUMBER 3:13-cv-03990-JSW

DATE
11/15/2013

SIGNATURE OF ATTORNEY OF RECORD

Tammy B. Webb

FOR OFFICE USE ONLY

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

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15 Attorneys for Defendants
16 BCI COCA-COLA BOTTLING COMPANY OF
17 LOS ANGELES, AND COCA-COLA BOTTLING
18 COMPANY OF SONORA, CALIFORNIA, INC.

19 UNITED STATES DISTRICT COURT

20 SOUTHERN DISTRICT OF CALIFORNIA

21 PAUL MERRITT, on Behalf of
22 Himself and All Others Similarly
23 Situated,

24 Plaintiff,

25 v.

26 BCI COCA-COLA BOTTLING
27 COMPANY OF LOS ANGELES;
28 COCA-COLA BOTTLING
COMPANY OF SONORA,
CALIFORNIA, INC., and DOES 1-
100, Inclusive

Defendants.

Case No. **'13CV2749 DMS WVG**

**DECLARATION OF TAMMY B.
WEBB IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

1 I, Tammy B. Webb, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all the Courts of this
3 State, and I am an attorney with the law firm of Shook, Hardy & Bacon L.L.P.,
4 counsel of record for Defendants BCI Coca-Cola Bottling Company of Los Angeles
5 and Coca-Cola Bottling Company of Sonora, California, Inc., in this action. The
6 statements in this declaration are made on the basis of my own personal knowledge
7 and I could, and would, competently testify thereto if called upon to do so. This
8 declaration is made in support of Defendants' Notice of Removal.

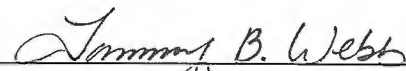
9 2. Attached as **Exhibit 1** is a true and correct copy of the Complaint filed
10 in *Paul Merritt, on behalf of himself and all others similarly situated v. BCI Coca-*
11 *Cola Bottling Company of Los Angeles, Coca-Cola Bottling Company of Sonora,*
12 *California, Inc.*, San Diego County Superior Court, Case no. 37-2013-00071687-
13 CU-BT-CTL.

14 3. Attached as **Exhibit 2** is a true and correct copy of the page from the
15 California Secretary of State's website, reflecting BCI Coca-Cola Bottling Company
16 of Los Angeles' state of incorporation and place of business.

17 4. Attached as **Exhibit 3** is a true and correct copy of the Declaration of
18 Kevin Hamilton in support of Defendants' Notice of Removal, dated November 15,
19 2013.

20 I declare under penalty of perjury under the laws of the State of California
21 that the foregoing is true and correct.

22 Executed this 15th day of November, 2013, at San Francisco, California.

23
24 
25 Tammy B. Webb
26
27
28

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2 MARK KNUTSON (SBN 131770)
WILLIAM R. RESTIS (SBN 246823)
3 501 W. Broadway, Suite 1250
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4 Tel: (619) 238-1333
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5 Attorneys for Plaintiff
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/17/2013 at 03:11:40 PM
Clerk of the Superior Court
By Calvin Beutler, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 PAUL MERRITT, on Behalf of Himself and
All Others Similarly Situated,
11
12 Plaintiffs,

13 v.

14 BCI COCA-COLA BOTTLING COMPANY
OF LOS ANGELES; COCA-COLA
15 BOTTLING COMPANY OF SONORA,
CALIFORNIA, INC., and DOES 1-100,
16 Inclusive,
17 Defendants.

Case No. 37-2013-00071687-CU-BT-CTL

CLASS ACTION

CLASS ACTION AND REPRESENTATIVE ACTION

COMPLAINT FOR DAMAGES, EQUITABLE AND INJUNCTIVE RELIEF

18
19 Plaintiff Paul Merritt (collectively, "Plaintiff"), individually, and on behalf of similarly
20 situated California residents, through his undersigned attorneys, bring this lawsuit against defendant
21 BCI Coca-Cola Bottling Company Bottling Company of Los Angeles ("Coca-Cola LA") and Coca-
22 Cola Bottling Company of Sonora, California, Inc, ("Coca-Cola Sonora") (or jointly "Defendants").

23 **SUMMARY OF THE CASE**

24 1. The Coca-Cola Company is one of the world's largest beverage company, operates in
25 California through its subsidiaries, defendants BCI Coca-Cola Bottling Company of Los Angeles and
26 Coca-Cola Bottling Company of Sonora, California, Inc.

27 2. Coca-Cola LA and Coca-Cola Sonora receive a large percentage of their revenue
28 from the sale of Coca-Cola soda wrapped in cartons/containers branded by the Defendants to residents

1 in California, including the named Plaintiff.

2 3. The carton/containers of Coca-Cola manufactured and labeled by Defendants for
3 distribution and sale in California, however, fail to state that they contain artificial flavoring or
4 chemical preservatives.

5 4. Indeed, many of the cartons and containers of Defendants' Coca-Cola brand sodas
6 affirmatively and falsely state that they contain no artificial flavoring or chemical preservatives.

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

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

12 7. Plaintiff, individually, and on behalf of other consumers who purchased Coca-Cola
13 branded soft drinks manufactured and labeled by Coca-Cola LA and/or Coca-Cola Sonora now bring
14 this class action, not only to recover class-wide damages, but to also stop the Defendants from
15 continuing to engage in such unlawful actions and from continuing to deceive California-resident
16 consumers.

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

21 9. The FDCA and regulations promulgated thereunder are expressly adopted in
22 California's Sherman Food Drug & Cosmetic Law (the "Sherman Law"). *See* California Health &
23 Safety Code § 109875, *et seq.* Therefore, any labeling violation of the FDCA, by definition, is also a
24 violation of the Sherman Law.

25 10. Under federal and California state law, products such as Coca-Cola are "misbranded"
26 if their "labeling is false or misleading in any particular," or if it does not contain certain information
27 on it's labeling. *See* 21 U.S.C. § 343(a); California Health & Safety Code § 110660.

28 11. Further, any violation of the Sherman Law also constitutes a violation of California's

1 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”); Cal. Bus. & Prof. Code §
2 17500, *et seq.*; and California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*
3 (“CLRA”). In this action, Plaintiff asserts claims under these state statutes, as well as under common
4 law.

5 12. Under both the FDCA and the Sherman Law, Defendants are required to disclose that
6 a product ingredient is being used as artificial flavoring or as a chemical preservative.

7 13. Coca-Cola soda contains phosphoric acid, an artificial, man-made chemical, that
8 Defendants use both for flavoring and as a preservative.

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

12 15. Indeed, on 2-liter bottles, 20-packs of 12 ounce cans and other Coca-Cola products
13 (all of which were purchased by Plaintiff), Defendants knowingly and intentionally falsely stated that,
14 “no artificial flavors no preservatives added since 1886.”

15 16. For all these reasons, all cartons/containers of Coca-Cola sold in California are
16 misbranded and illegal under this State’s statutory laws.

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

18 **PARTIES**

19 18. Plaintiff is a resident of Laguna Beach, California, but has purchased Coca-Cola soda
20 both in Los Angeles and San Francisco, California during the relevant time period.

21 19. Plaintiff purchased more than \$25.00 worth of Coca-Cola in Laguna Beach or Orange
22 County, and in San Francisco Country within the four years preceding the filing of this action (the
23 “Class Period”).

24 20. Upon information and belief, Defendants BCI Coca-Cola Bottling Company of Los
25 Angeles and Coca-Cola Bottling Company of Sonora, California, Inc., are subsidiary affiliates of the
26 Coca-Cola Company, with their respective principal place of business located at One Coca-Cola
27 Plaza, Atlanta, Georgia, and 3624 Jefferson Avenue, Redwood City, CA 94062.

28 21. Defendants’ parent company is the Coca-Cola Company located on Atlanta, Georgia

1 which is one of the world's largest soda beverage company, with more than 1.8 billion servings of its
2 Coca-Cola sodas are consumed world-wide every day.

3 22. Coca-Cola LA and Coca-Cola Sonoma (combined) manufacture, distribute, and sell
4 approximately 50 percent of the Coca-Cola Company's unit case volume of Coca-Cola soda in
5 California.

6 **JURISDICTION AND VENUE**

7 23. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the
8 California Constitution, California Business and Professions Code § 17203, Civil Code § 1780(d) and
9 Code of Civil Procedure §§ 382 and 410.10.

10 24. This Court has jurisdiction over Defendants because it they are registered to conduct,
11 and do conduct, substantial business within California and San Diego including the distribution and
12 sale of Coca-Cola soda in this County.

13 25. Plaintiff does not assert any claims arising under the laws of the United States of
14 America, and the amount of Plaintiff's individual claims for relief and *pro rata* share of any attorney
15 fees and costs of suit which may be awarded pursuant to this action is significantly below the \$75,000
16 jurisdictional requirement for the original filing of this action in the United States District Court
17 pursuant to 28 U.S.C. §1332 or the removal of this action to the United States District Court pursuant
18 to 28 U.S.C. §1441.

19 26. The Court has personal jurisdiction over Defendants because a substantial portion of
20 the wrongdoing alleged herein occurred in San Diego, California. Defendants also have sufficient
21 minimum contacts with California, and otherwise have intentionally availed themselves of the
22 markets in California through the promotion, marketing, and sale of Coca-Cola soda in California
23 sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of
24 fair play and substantial justice.

25 27. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because a
26 substantial or significant portion of the conduct complained of herein occurred and continues to occur
27 within this County.

28 28. The true names and capacities of Defendants sued herein under Cal. Code of Civ.

1 Proc. §474 as DOES 1 through 100, inclusive, are presently unknown to plaintiff, who therefore sues
2 these Defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include
3 these Doe Defendants' true names and capacities when they are ascertained. Each of the fictitiously-
4 named Defendants is responsible in some manner for the illegal conduct alleged herein and for the
5 injuries suffered by the general public as a consequence thereof.

6 **FACTS RELEVANT TO ALL CLAIMS**

7 **Coca-Cola products are misbranded and illegal**

8 29. All cartons/containers of Coca-Cola soda sold in California are misbranded and
9 illegal.

10 30. The sale of these mislabeled containers constitutes a violation of both the California
11 Unfair Competition Laws (the "UCL") and the Consumer's Legal Remedies Act (the "CLRA").

12 31. Defendants knowingly and intentionally sold these misbranded products to consumers
13 (including Plaintiff) with the intent to deceive.

14 32. During the relevant time period, Plaintiff purchased Coca-Cola products in 2 liter
15 bottles and in 20-can packs sizes of 12 ounce cans.

16 33. Containers of Coca-Cola soda do not state that any Coca-Cola ingredients are used as
17 artificial flavoring or as a chemical preservative.

18 34. Carton, packaging and/or other labeling on Coca-Cola soda state proclaimed that
19 there were "no artificial flavors no preservatives added since 1886."

20 35. The ingredients in Coca-Cola soda include phosphoric acid.

21 36. Coca-Cola's own website states: "Phosphoric acid is used in certain soft drinks,
22 including Coca-Cola, to add tartness to the beverage. Phosphoric acid contains phosphorus, one of the
23 basic elements of nature and an essential nutrient. Phosphorus is a major component of bones."

24 37. Coca-Cola's own website also discusses acidulants and states that acidulants are
25 "Acids, which include phosphoric acid and citric acid, and acidic salts help to provide flavoring. They
26 are responsible for the tart taste which helps to balance the sweetness. They also help to reduce the
27 growth of microorganisms (*i.e.*, protect the food from spoiling)."

28 38. Although Coca-Cola's website notes that "[p]hosphorus is a major component of

1 bones,” phosphoric acid and phosphorus are two different things. The phosphoric acid added to Coca-
2 Cola soda is a man-made substance. Phosphoric acid is used in Coca-Cola as an artificial flavoring.
3 Phosphoric acid is used in Coca-Cola as a chemical preservative.

4 39. 21 C.F.R. § 101.22(a)(1) provides that, “The term *artificial flavor* or *artificial*
5 *flavoring* means any substance, the function of which is to impart flavor, which is not derived from a
6 spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or
7 similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.

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

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

12 42. 21 C.F.R. § 101.22(a)(3) provides that, “The term *natural flavor* or *natural flavoring*
13 means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product
14 of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice,
15 fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar
16 plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose
17 significant function in food is flavoring rather than nutritional.

18 43. A significant function of phosphoric acid in Coca-Cola soda is flavoring rather than
19 nutritional.

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

25 45. 21 C.F.R. § 101.22(a)(5) provides that, “The term *chemical preservative* means any
26 chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not
27 include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food
28 by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal

1 properties.”

2 46. As used in Coca-Cola soda, phosphoric acid tends to prevent or retard deterioration
3 thereof.

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

7 48. 21 C.F.R. § 101.22(c) provides that, “A statement of artificial flavoring, artificial
8 coloring, or chemical preservative shall be placed on the food or on its container or wrapper, or on
9 any two or all three of these, as may be necessary to render such statement likely to be read by the
10 ordinary person under customary conditions of purchase and use of such food.”

11 49. However, cartons/containers/labels on Coca-Cola soda products do not contain a
12 statement that they contain artificial flavoring.

13 50. Carton/containers/labels of Coca-Cola soda do not contain a statement that they
14 contain chemical preservatives.

15 51. All provisions in 21 C.F.R. § 101.22, including those set forth above, are adopted in
16 California’s Sherman Law.

17 52. Because Coca-Cola soda cartons/containers/labels do not contain statements that they
18 contain artificial flavoring or chemical preservatives, they are misbranded under both the FDCA and
19 the Sherman Law.

20 53. Certain Coca-Cola soda cartons/containers/labels also contain the affirmative
21 statement that there are “no artificial flavors. No preservatives added.” This statement is false.

22 54. Because these Coca-Cola soda cartons/containers/labels falsely represent that they
23 contain no artificial flavors or preservatives, they are misbranded under both the FDCA and the
24 Sherman Law.

25 55. Defendants knowingly and intentionally failed to include statements on the cartons,
26 containers and/or labels of Coca-Cola soda regarding the presence of artificial flavoring and chemical
27 preservatives, despite the fact that Coca-Cola contains artificial flavoring and chemical preservatives.

28 56. Defendants knowingly and intentionally falsely stated that Coca-Cola soda has “no

1 artificial flavors. No preservatives added,” despite the fact that Coca-Cola soda contains artificial
2 flavoring and chemical preservatives.

3 57. Had Plaintiff known that Coca-Cola soda was misbranded, Plaintiff would not have
4 purchased Coca-Cola soda.

5 58. Had Plaintiff known that Coca-Cola soda was an illegally sold product, Plaintiff
6 would not have purchased Coca-Cola soda.

7 59. Had Plaintiff known that Coca-Cola soda contained artificial flavoring, Plaintiff
8 would not have purchased Coca-Cola soda.

9 60. Had Plaintiff known that Coca-Cola soda contained chemical preservatives, Plaintiff
10 would not have purchased Coca-Cola soda.

11 61. Plaintiff’s reliance was reasonable.

12 62. A reasonable consumer would have been misled by the Defendants’ actions.

13 **Defendants Have Violated California Law**

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

16 64. As a result, Defendants have violated the Sherman Law.

17 65. *Inter alia*, Defendants have specifically violated the following Sherman Law
18 provisions.

19 66. Defendants have violated California Health & Safety Code § 110740 because Coca-
20 Cola products bear or contain artificial flavoring, artificial coloring, or chemical preservative without
21 labeling stating that fact.

22 67. Defendants have violated California Health & Safety Code § 110705 because words,
23 statements, or other information required pursuant to the Sherman Law to appear on the label or
24 labeling are not prominently placed upon the label or labeling with conspicuousness, as compared
25 with other words, statements, designs, or devices in the labeling and in terms as to render it likely to
26 be read and understood by the ordinary individual under customary conditions of purchase and use.

27 68. Defendants have violated California Health & Safety Code § 110390, which makes it
28 unlawful to disseminate false or misleading food advertisements that include statements on products

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

3 69. Defendants have violated California Health & Safety Code § 110395, which makes it
4 unlawful to manufacture, sell, deliver, hold, or offer to sell any falsely advertised food.

5 70. Defendants have violated California Health & Safety Code §§ 110398 and 110400,
6 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food
7 that has been falsely advertised.

8 71. Defendants have violated California Health & Safety Code § 110760, which makes it
9 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
10 misbranded.

11 72. Defendants have violated California Health & Safety Code § 110765, which makes it
12 unlawful for any person to misbrand any food.

13 73. Defendants have violated California Health & Safety Code § 110770, which makes it
14 unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer
15 any such food for delivery.

16 74. Defendants have violated California Health & Safety Code § 110660 because their
17 labeling is false and misleading in one or more ways.

18 75. Defendants have violated California Health & Safety Code § 110665 because their
19 labeling fails to conform to the requirements for nutrient labeling set forth in 21 U.S.C. § 343(q) and
20 the regulations promulgated thereunder.

21 76. Defendants have violated California Health & Safety Code § 110670 because their
22 labeling fails to conform to the requirements for nutrient content and health claims set forth in 21
23 U.S.C. § 343(r) and the regulations promulgated thereunder.

24 **Purchasers of Misbranded Coca-Cola Soda Have Been Injured**

25 77. Plaintiff read and reasonably relied on the cartons/packaging/labeling as described
26 herein when buying Coca-Cola soda.

27 78. Plaintiff relied on Defendants' labeling and based and justified the decision to
28 purchase Coca-Cola, in substantial part, on these labels.

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

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

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

10 a. Whether Defendants engaged in unfair, unlawful or deceptive business practices
11 by failing to properly package and label Coca-Cola soda sold to consumers;

12 b. Whether the food products at issue were misbranded or unlawfully packaged and
labeled as a matter of law;

13 c. Whether Defendants made unlawful and misleading claims regarding flavoring
14 and preservatives in Coca-Cola soda;

15 d. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*,
16 California Bus. & Prof. Code § 17500 *et seq.*, the Consumer Legal Remedies Act,
Cal. Civ. Code. § 1750 *et seq.*, the Sherman Law; or the FDCA and regulations
promulgated thereunder;

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

18 f. Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiff
19 and the Class; and

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

21 95. **Typicality:** Plaintiff's claims are typical of the claims of the Class because Plaintiff
22 bought Defendants' Coca-Cola soda products during the Class Period. Defendants' unlawful, unfair,
23 and fraudulent actions concern the same business practices described herein irrespective of where
24 they occurred or were experienced. The injuries of each member of the Class were caused directly by
25 Defendants' wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is
26 common to all Class members and represents a common thread of misconduct resulting in injury to
27 all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that
28 give rise to the claims of the Class members and are based on the same legal theories.

1 96. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the Class.
2 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the
3 interests of the Class members. Plaintiff has retained highly competent and experienced class action
4 attorneys to represent Plaintiff's interests and those of the members of the Class.

5 97. Plaintiff and Plaintiff's counsel have the necessary resources to adequately and
6 vigorously litigate this class action, and Plaintiff and his counsel are aware of their fiduciary
7 responsibilities to the Class members and will diligently discharge those duties by vigorously seeking
8 the maximum possible recovery for the Class.

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

23 99. The prerequisites to maintaining a class action for injunctive or equitable relief
24 pursuant to California law are met as Defendant has acted or refused to act on grounds generally
25 applicable to the Class, thereby making appropriate injunctive or equitable relief with respect to the
26 Class as a whole.

27 100. The prerequisites to maintaining a class action pursuant to Cal. Civ. Proc. § 389 are
28 met as questions of law or fact common to class members predominate over any questions affecting

1 only individual members, and a class action is superior to other available methods for fairly and
2 efficiently adjudicating the controversy.

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

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

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

10 104. No conflicts of interest exist between Plaintiff and the other Class members.

11 105. Plaintiff has retained counsel that is competent and experienced in complex class
12 action litigation. Plaintiff and his counsel will fairly and adequately represent and protect the interests
13 of the Class.

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

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **Business and Professions Code § 17200, et seq.**
19 **Unlawful Business Acts and Practices**

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

21 108. Defendants' conduct constitutes unlawful business acts and practices.

22 109. Defendants sold Coca-Cola soda in California during the Class Period.

23 110. Defendants are corporations and, therefore, are "persons" within the meaning of the
24 Sherman Law.

25 111. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
26 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the
27 misbranded food provisions of Article 6 of the Sherman Law.

28 112. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
29 Defendants' violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

1 113. Defendants' business practices are unlawful under § 17200, *et seq.* by virtue of
2 Defendants' violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

3 114. Defendants sold to Plaintiff and the Class products that were not capable of being
4 sold legally, and which have no economic value.

5 115. Plaintiff and the Class paid a premium price for these products.

6 116. Defendants' unlawful business acts present a threat and reasonable continued
7 likelihood of injury to Plaintiff and the Class.

8 117. As a result of Defendants' illegal business practices, Plaintiff and the Class, pursuant
9 to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and
10 such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and
11 to restore to any Class member any money paid for Coca-Cola soda.

12 **SECOND CAUSE OF ACTION**
13 **Business and Professions Code § 17200, *et seq.***
14 **Unfair Business Acts and Practices**

15 118. Plaintiff repeats and realleges each of the above allegations as if fully set forth.

16 119. Defendants' conduct as set forth herein constitutes unfair business acts and practices.

17 120. Plaintiff and members of the Class suffered a substantial injury by virtue of buying
18 Coca-Cola that they would not have purchased absent Defendant's illegal conduct.

19 121. Defendants' deceptive marketing, advertising, packaging and labeling of Coca-Cola
20 soda and their sale of unsalable misbranded products was of no benefit to consumers, and the harm to
21 consumers and competition is substantial.

22 122. Defendants sold to Plaintiff and the Class products that were not capable of being
23 legally sold and that have no economic value.

24 123. Plaintiff and the Class paid a premium price for Coca-Cola soda.

25 124. Plaintiff and the Class who purchased Coca-Cola soda had no way of reasonably
26 knowing that the products were misbranded and were not properly marketed, advertised, packaged
27 and labeled, and thus could not have reasonably avoided the injury each of them suffered.

28 125. The consequences of Defendants' conduct as set forth herein outweigh any
justification, motive or reason therefor.

1 126. Defendants' conduct is and continues to be immoral, unethical, unscrupulous,
2 contrary to public policy, and is substantially injurious to Plaintiff and the Class.

3 127. As a result of Defendants' conduct, Plaintiff and the Class, pursuant to Business and
4 Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendants, and
5 such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and
6 restore any money paid for Coca-Cola soda by Plaintiff and the Class.

7 **THIRD CAUSE OF ACTION**
8 **Business and Professions Code § 17200, *et seq.***
9 **Fraudulent Business Acts and Practices**

10 128. Plaintiff repeats and realleges each of the above allegations as if fully set forth.

11 129. Defendants' conduct as set forth herein constitutes fraudulent business practices
12 under California Business and Professions Code § 17200, *et seq.*

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

15 131. Plaintiff and members of the Class were deceived.

16 132. Defendants have engaged in fraudulent business acts and practices.

17 133. Defendants' fraud and deception caused Plaintiff and the Class to purchase Coca-
18 Cola soda that they would otherwise not have purchased had they known the true nature of these
19 products.

20 134. As a result of Defendants' conduct as set forth herein, Plaintiff and the Class,
21 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
22 conduct by Defendants, and such other orders and judgments which may be necessary to disgorge
23 Defendants' ill-gotten gains and restore any money paid for Coca-Cola soda by Plaintiff and the
24 Class.

25 **FOURTH CAUSE OF ACTION**
26 **Business and Professions Code § 17500, *et seq.***
27 **Misleading and Deceptive Advertising**

28 135. Plaintiff repeats and realleges each of the above allegations as if fully set forth

136. Plaintiff asserts this cause of action for violations of California Business and
Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendants.

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

4 138. These materials misrepresented and/or omitted the true contents and nature of Coca-
5 Cola soda.

6 139. Defendants' advertisements and inducements were made within California and
7 throughout the United States and come within the definition of advertising as contained in Business
8 and Professions Code § 17500, *et seq.* in that such product packaging, labeling, and promotional
9 materials were intended as inducements to purchase Coca-Cola soda and are statements disseminated
10 by Defendants to Plaintiff and the Class that were intended to reach members of the Class.

11 140. Defendants knew, or in the exercise of reasonable care, should have known, that these
12 statements were misleading and deceptive as set forth herein.

13 141. In furtherance of its plan and scheme, Defendants prepared and distributed within
14 California and nationwide via product packaging and labeling, and other promotional materials,
15 statements that misleadingly and deceptively represented the composition and the nature of Coca-
16 Cola soda.

17 142. Plaintiff and the Class necessarily and reasonably relied on Defendants' materials,
18 and were the intended targets of such representations.

19 143. Defendants' conduct in disseminating misleading and deceptive statements in
20 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
21 consumers by obscuring the true composition and nature of Coca-Cola soda in violation of the
22 "misleading prong" of California Business and Professions Code § 17500, *et seq.*

23 144. As a result of Defendants' violations of the "misleading prong" of California
24 Business and Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the
25 expense of Plaintiff and the Class.

26 145. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
27 entitled to an order enjoining such future conduct by Defendants, and such other orders and
28 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money

1 paid for Coca-Cola soda by Plaintiff and the Class.

2 **FIFTH CAUSE OF ACTION**
3 **Business and Professions Code § 17500, *et seq.***
4 **Untrue Advertising**

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

6 147. Plaintiff assert this cause of action against Defendants for violations of California
7 Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

8 148. Defendants engaged in a scheme of offering Coca-Cola soda for sale to Plaintiff and
9 the Class by way of product packaging and labeling, and other promotional materials.

10 149. These materials misrepresented or omitted the true contents and nature of Coca-Cola
11 soda.

12 150. Defendants' advertisements and inducements were made in California and throughout
13 the United States and come within the definition of advertising contained in Business and Professions
14 Code §17500, *et seq.* where the product packaging, labeling, and promotional materials were intended
15 as inducements to purchase Coca-Cola soda, and are statements disseminated by Defendants to
16 Plaintiff and the Class.

17 151. Defendants knew, or in the exercise of reasonable care, should have known, that these
18 statements were untrue.

19 152. In furtherance of its plan and scheme, Defendants prepared and distributed in
20 California and nationwide via product packaging and labeling, and other promotional materials,
21 statements that falsely advertise the composition of Coca-Cola soda, and falsely misrepresented the
22 nature of Coca-Cola.

23 153. Purchasers like Plaintiff and the Class were the intended targets of such
24 representations and would reasonably be deceived by Defendants' materials.

25 154. Defendants' conduct in disseminating untrue advertising throughout the United States
26 and California deceived Plaintiff and members of the Class by obfuscating the contents, nature and
27 quality of Coca-Cola soda in violation of the "untrue prong" of California Business and Professions
28 Code § 17500.

155. As a result of Defendants' violations of the "untrue prong" of California Business and

1 Professions Code § 17500, *et seq.*, Defendants have been unjustly enriched at the expense of Plaintiff
2 and the Class.

3 156. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
4 entitled to an order enjoining such future conduct by Defendants, and such other orders and
5 judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore any money
6 paid for Coca-Cola soda by Plaintiff and the Class.

7 **SIXTH CAUSE OF ACTION**
8 **Consumer Legal Remedies Act, Cal. Civ. Code §1750, *et seq.***

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

10 158. This cause of action is brought pursuant to the CLRA. This cause of action does not
11 currently seek monetary relief and is limited to injunctive relief.

12 159. Plaintiff intends to amend this Complaint to seek monetary relief in accordance with
13 the CLRA after providing Defendants with notice pursuant to Cal. Civ. Code § 1782.

14 160. At the time of any amendment seeking damages under the CLRA, Plaintiff will
15 demonstrate that the violations of the CLRA by Defendants were willful, oppressive and fraudulent,
16 thus supporting an award of punitive damages.

17 161. Consequently, Plaintiff and the Class will be entitled to actual and punitive damages
18 against Defendants for its violations of the CLRA.

19 162. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff and the Class will be
20 entitled to an order enjoining the above-described acts and practices, providing restitution to

21 163. Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other
22 relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

23 164. Defendants' actions, representations, and conduct have violated, and continue to
24 violate the CLRA, because they extend to transactions that are intended to result, or which have
25 resulted, in the sale of goods or services to consumers.

26 165. Defendants sold Coca-Cola soda in California and nationwide during the Class
27 Period.

28 166. Plaintiff and members of the Class are "consumers" as that term is defined by the

1 CLRA in Cal. Civ. Code § 1761(d).

2 167. Coca-Cola soda is a “good” within the meaning of Cal. Civ. Code §1761(a).

3 168. By engaging in the conduct set forth herein, Defendants violated and continue to

4 169. violate Section 1770(a)(5), of the CLRA, because Defendants’ conduct constitutes
5 unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent the
6 particular ingredients, characteristics, uses, benefits and quantities of the goods.

7 170. By engaging in the conduct set forth herein, Defendants violated and continue to
8 violate Section 1770(a)(7) of the CLRA, because Defendant’s conduct constitutes unfair methods of
9 competition and unfair or fraudulent acts or practices in that it misrepresents the particular standard,
10 quality or grade of the goods.

11 171. By engaging in the conduct set forth herein, Defendants violated and continue to
12 violate Section 1770(a)(9) of the CLRA, because Defendants’ conduct constitutes unfair methods of
13 competition and unfair or fraudulent acts or practices in that it advertises goods with the intent not to
14 sell the goods as advertised.

15 172. By engaging in the conduct set forth herein, Defendants have violated and continue to
16 violate Section 1770(a)(16) of the CLRA, because Defendants’ conduct constitutes unfair methods of
17 competition and unfair or fraudulent acts or practices in that it represents that a subject of a
18 transaction has been supplied in accordance with a previous representation when they have not.

19 173. Plaintiff requests that the Court enjoin Defendants from continuing to employ the
20 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2).

21 174. If Defendants are not restrained from engaging in these practices in the future,
22 Plaintiff and the Class will continue to suffer harm.

23 **SEVENTH CAUSE OF ACTION**
24 **Restitution Based on Unjust Enrichment/Quasi-Contract**

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

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

28 177. Defendants sold Coca-Cola soda to Plaintiff and the Class that was not capable of

1 being sold and had no economic value.

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

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

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

9 **JURY DEMAND**

10 Plaintiff hereby demands a trial by jury of his claims.

11 **PRAYER FOR RELIEF**

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

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

16 B. For an order awarding, as appropriate, damages, restitution, or disgorgement to
17 Plaintiff and the Class;

18 C. For an order requiring Defendants to immediately cease and desist from selling Coca-

19 D. Cola in violation of law; enjoining Defendants from continuing to market, advertise,
20 distribute, and sell Coca-Cola soda in the unlawful manner described herein; and ordering Defendants
21 to engage in corrective action;

22 E. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

23 F. For an order awarding attorneys' fees and costs;

24 G. For an order awarding punitive damages;

- 1 H. For an order awarding pre-judgment and post-judgment interest; and
2 I. For an order providing such further relief as this Court deems proper.

3 Respectfully submitted,

4 FINKELSTEIN & KRINSK LLP

5 Dated: October 17, 2013

6 By: 

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Service Options

Name Availability

Forms, Samples & Fees

Statements of Information

(annual/biennial reports)

Filing Tips

Information Requests

(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- [Business Resources](#)
- [Tax Information](#)
- [Starting A Business](#)

Customer Alerts

- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, November 12, 2013. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES
Entity Number:	C1849343
Date Filed:	12/30/1992
Status:	ACTIVE
Jurisdiction:	DELAWARE
Entity Address:	1 COCA-COLA PLAZA
Entity City, State, Zip:	ATLANTA GA 30313
Agent for Service of Process:	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE
Agent Address:	2710 GATEWAY OAKS DR STE 150N
Agent City, State, Zip:	SACRAMENTO CA 95833

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

[Modify Search](#) [New Search](#) [Printer Friendly](#) [Back to Search Results](#)

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3 Email: twebb@shb.com
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5 San Francisco, California 94104
6 Telephone: (415) 544-1904
7 Facsimile: (415) 391-0281

8 Attorneys for Defendants BCI Coca-Cola Bottling
9 Company of Los Angeles, and Coca-Cola Bottling
10 Company of Sonora, California, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 PAUL MERRITT, on Behalf of
14 Himself and All Others Similarly
15 Situated,

16 Plaintiff,

17 v.

18 BCI COCA-COLA BOTTLING
19 COMPANY OF LOS ANGELES;
20 COCA-COLA BOTTLING
21 COMPANY OF SONORA,
22 CALIFORNIA, INC., THE COCA-
23 COLA COMPANY, and DOES 1-
24 100, Inclusive

25 Defendants.

Case No. '13CV2749 DMS WVG

**DECLARATION OF KEVIN
HAMILTON IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

26
27
28
DECLARATION ISO DEF'S
NOTICE OF REMOVAL

1 I, KEVIN HAMILTON, declare under penalty of perjury as follows.

2 1. I am Finance Director, Sparkling Category Brands for The Coca-Cola
3 Company (“Coca-Cola”), the maker of the popular soft drink Coca-Cola (“Coke”). I
4 submit this declaration based upon my personal knowledge in support of the Notice
5 of Removal filed by Defendants in this action.

6 2. I understand that the plaintiff in this case alleges, among other things,
7 that Coke is an “illegal” product with “no economic value” because the product’s
8 labeling does not identify phosphoric acid as an artificial flavor or chemical
9 preservative, which plaintiff alleges is required under the federal Food, Drug and
10 Cosmetic Act and regulations published by the U.S. Food and Drug Administration.

11 3. I further understand that the plaintiff is seeking to recover on behalf of
12 a purported class of California residents who have purchased Coke at any time from
13 October 17, 2009 to the present (the “Class Period”).

14 4. I was asked by counsel for Defendants whether revenues from the sale
15 of Coke in California from October 17, 2009 to present have exceeded \$5 million. I
16 can testify with certainty that revenues from the sale of Coke in California from
17 October 17, 2009 to present has been substantially in excess of \$5 million, for
18 several reasons.

19 5. Coke is the most popular soft drink in the world, and the best-selling
20 soft drink in the United States.

21 6. As has been publicly reported, Coca-Cola’s revenues from the sale of
22 Coke exceed \$10 billion per year, and a substantial portion of those revenues come
23 from sales of Coke in the United States.

24 7. Based on my review of company records, I can testify that revenues
25 from the sales of Coke in California in 2012 alone – just one year of the Class
26 Period – were well in excess of \$5 million. Revenues from the sale of Coke in
27
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1 California over the entirety of the Class Period would be substantially in excess of
2 that amount.

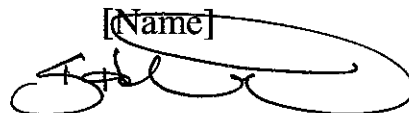
3 8. In addition, insofar as the plaintiff is seeking to recover the total
4 amount that California consumers paid for Coke at retail during the Class Period,
5 that amount would be even higher because the retail prices that consumers pay
6 would normally include the retailers' mark up.

7
8 I declare under penalty of perjury under the laws of the State of Georgia and the
9 United States that the foregoing facts are true and correct.

10
11 Executed this 15th day of November 2013 in Atlanta, Georgia.

12
13
14 KEVIN HASKINSON

15 [Name]

16 

1 Tammy B. Webb, SBN 227593
tbwebb@shb.com
2 SHOOK, HARDY & BACON L.L.P.
One Montgomery, Suite 2700
3 San Francisco, California 94104-2700
Telephone: 415.544.1900
4 Facsimile: 415.391.0281

5 Steven A. Zalesin (*pro hac* to be filed)
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6 PATTERSON BELKNAP WEBB & TYLER LLP
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7 New York, New York 10036-6710
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8 Facsimile: 212.336.2222

9 Attorneys for Defendants
BCI COCA-COLA BOTTLING COMPANY OF
10 LOS ANGELES and COCA-COLA BOTTLING
COMPANY OF SONORA, CALIFORNIA, INC.
11

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 PAUL MERRITT, on Behalf of Himself
and All Others Similarly Situated,

15 Plaintiff,

16 v.

17 BCI COCA-COLA BOTTLING
18 COMPANY OF LOS ANGELES;
COCA-COLA BOTTLING COMPANY
19 OF SONORA, CALIFORNIA, INC., and
DOES 1-100, Inclusive,

20 Defendants.
21
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Case No. '13CV2749 DMS WVG

CERTIFICATE OF SERVICE

23
24 I, Ruby G. Darmstadt, am employed in the City and County of San Francisco in
25 the State of California. I am over the age of eighteen years and not a party to the
26 within action. My business address is Shook, Hardy & Bacon L.L.P., One
27 Montgomery, Suite 2700, San Francisco, California 94104.

28 I am readily familiar with the business practices of this office for collection and

1 processing of documents for mailing with the U.S. postal service, which is that
2 correspondence for mailing via U.S. Mail is collected and deposited on the same day
3 in the ordinary course of business.

4
5 On November 15, 2013, I served the following document(s):

- 6 • **CIVIL COVER SHEET;**
- 7 • **DEFENDANTS' NOTICE OF REMOVAL;**
- 8 • **DECLARATION OF TAMMY B. WEBB IN SUPPORT OF**
DEFENDANTS' NOTICE OF REMOVAL; and
- 9 • **NOTICE TO PLAINTIFF OF FILING NOTICE OF REMOVAL**

10 on the parties in this action by placing a true copy thereof in a sealed envelope
11 addressed as follows:

11 Jeffrey R. Krinsk, Esq. jrk@classactionlaw.com 12 Mark Knutson, Esq. mlk@classactionlaw.com 13 William R. Restis, Esq. wrrestis@classactionlaw.com 14 FINKELSTEIN & KRINSK LLP 501 W. Broadway, Suite 1250 15 San Diego, California 92101 Telephone: 619.238.1333 16 Facsimile: 619.238.5425	Counsel for Plaintiff PAUL MERRITT
---	---------------------------------------

17
18
19 Further, the above-referenced documents were served electronically through the
20 CM/ECF system.

21 I declare under penalty of perjury that the foregoing is true and correct.
22 Executed at San Francisco, California on November 15, 2013.

23
24
25 

 RUBY G. DARMSTADT

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tbwebb@shb.com
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One Montgomery, Suite 2700
3 San Francisco, California 94104-2700
Telephone: 415.544.1900
4 Facsimile: 415.391.0281

5 Steven A. Zalesin (*pro hac* to be filed)
sazalesin@pbwt.com
6 PATTERSON BELKNAP WEBB & TYLER LLP
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7 New York, New York 10036-6710
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9 Attorneys for Defendants
10 BCI COCA-COLA BOTTLING COMPANY OF
LOS ANGELES and COCA-COLA BOTTLING
11 COMPANY OF SONORA, CALIFORNIA, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 PAUL MERRITT, on Behalf of Himself
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17 BCI COCA-COLA BOTTLING
18 COMPANY OF LOS ANGELES;
COCA-COLA BOTTLING COMPANY
19 OF SONORA, CALIFORNIA, INC., and
DOES 1-100, Inclusive,

20 Defendants.
21
22

Case No. _____

**NOTICE TO PLAINTIFF OF
FILING NOTICE OF REMOVAL**

23 TO PLAINTIFF PAUL MERRITT:

24 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in
25 the United States District Court of the Southern District of California on November
26 15, 2013. A copy of the said Notice of Removal is attached hereto as Exhibit A.
27
28

1 Dated: November 15, 2013

SHOOK, HARDY & BACON L.L.P.

2
3
4 By: /s/ Tammy B. Webb
Tammy B. Webb

5
6 Attorneys for Defendants BCI
Coca-Cola Bottling Company of Los
7 Angeles and Coca-Cola Bottling
Company of Sonora, California, Inc.
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